# 1AC

### 1AC---Cybersecurity

#### The Advantage is Cybersecurity:

#### Standards-Setting Organizations (SSO’s) are industry members who jointly establish standards for information tech defined by the adoption of standard-essential patents (SEP’s), which are licensed to companies who wish to implement the tech in their product, called implementers, on Fair, Reasonable, and Non-Discriminatory (FRAND) terms. Current standards promote price gouging, FRAND enforcement is critical.

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I. Standard Setting and the Competitive Process The fundamental economics in the information technology sector, driven by network effects, implies that there is enormous value associated with establishing compatibility standards. Popular standards include the mobile broadband standards used in cell phones, which are established by the 3rd Generation Partnership Project (3GPP), and the Wi-Fi technology for wireless local area networks, which is enabled by the 802.11 standard established by the Institute of Electrical and Electronics Engineers (IEEE).4 There are many SSOs, and their rules and procedures differ considerably. In addition to IEEE, leading SSOs include the International Organization for Standardization (ISO), the International Telecommunication Union (ITU), the European Telecommunications Standards Institute (ETSI), the Internet Engineering Task Force (IETF), and the World Wide Web Consortium (W3C).5 SSOs generally establish standards by holding a series of committee meetings among industry participants. These meetings culminate in a vote on a technical specification that describes what features or attributes a product must have in order to comply with the standard. Most SSOs are open to all industry participants and seek to operate on a consensus basis, applying certain voting rules. SSOs do not normally engage in patent licensing, nor do they specify how patent royalties will be divided up among patent holders. They leave that to their members, which in some cases form patent pools to address these issues.6 SSOs adopt specific policies relating to intellectual property rights (IPRs).7 These IPR policies are generally intended to enable the SEP holders to obtain reasonable royalties for licensing their patents, while prohibiting them from charging excessive royalties after other industry participants have committed to the standard. At that point, firms committed to implementing the standard— which we call “implementers”—would find it very costly to avoid using the patented technology. For this purpose, most SSOs require SEP owners to license their SEPs on FRAND terms.8 FRAND policies are especially necessary because negotiations between SEP holders and implementers generally take place only after the implementers have used and infringed the technologies claimed by the SEPs. Standards involving information and communications technology can involve hundreds or even thousands of SEPs, many with uncertain boundaries for infringement. In addition, a time lag exists between patent application and patent issuance. For these and other reasons, it is impractical for implementers to enter into negotiations for patent licenses with all SEP owners prior to the establishment of a standard and to their implementation of it.9 The fact that patent negotiations generally do not take place until after implementers have used and infringed the technologies has several critical implications. First, at the time of negotiation, implementers are locked into the standard and the technologies claimed by the SEPs—that is, the cost to switch to an alternative technology or standard at that point—ex post—is much greater than it was ex ante, before the patented technology was first included in the standard. Ex post, the patent holder is no longer competing to have its technology included in the standard, nor is it competing to have implementers of the standard use its technology. Instead, because the patent holder owns an asset that is essential to the standard, implementers have no choice but to use the patented technology. If the standard is commercially successful, implementers are willing to pay a much larger royalty for use of the patented technology than they would have paid ex ante, when the SEP holder faced competition from other technologies. In these circumstances, the SEP holder can be said to have obtained monopoly power in the market in which the patented technology is licensed for use in implementing the standard.10 Second, because of lock-in and the implementer’s ongoing infringement, the potential for litigation looms large in licensing negotiations. In effect, the parties are negotiating about how to settle an infringement suit, and that negotiation is heavily influenced by their predictions as to what the court will do if they cannot agree. This situation is not unique to SEPs; it arises frequently when firms are faced with patent infringement claims for products they have independently developed or technologies they have inadvertently infringed. Patent law addresses such instances by specifying that patent holders are entitled to “reasonable royalties,” defined as the royalties that the parties would have negotiated prior to the infringement and thus prior to lock-in.11 Those hypothetical ex ante royalties reflect the market value of the patent license. Notwithstanding the law’s embrace of this principle, however, as a practical matter, patent holders are generally able to recover more than the ex ante value of the patent when litigation occurs after the implementers are locked in. Further, negotiations in the shadow of litigation after lock-in tend to result in royalties in excess of the ex ante or market value of the patented technology.12 Third, the shadow of litigation is particularly problematic in the communications and technology sector, in which products typically include hundreds or thousands of patented technologies. A court-ordered injunction involving such products would deprive the implementer of not only the value of the technology covered by the patent-in-suit, but also the value of the entire product.13 Implementers that are forced to bear the risk of an injunction are thus induced to agree to royalties greater than those that would be appropriate if only the value of the patented technology were at stake. Those royalties systematically provide SEP holders with excessive compensation in comparison with the benchmark of ex ante royalties. These implications of lock-in and ex post dealings are well-understood: they represent an example of the general concept of lock-in and opportunism developed by Oliver Williamson.14 The Federal Circuit has also recognized the market distortions caused by the inclusion of patented technologies in public standards and the resulting danger of patent holdup involving SEPs.15 For these and other reasons, the SEP holder has ex post monopoly power that, if left unchecked, would enable it to obtain royalties far in excess of the royalties that it could earn in a competitive market.16 To address this common problem and limit ex post opportunism by SEP holders, SSOs typically require participants that own SEPs to make certain FRAND commitments. In particular, by requiring a commitment to license on “fair and reasonable” terms, the FRAND requirement aims to prevent, or at least reduce, the extent of monopoly pricing by SEP holders. And by requiring a commitment to license on “nondiscriminatory” terms, the FRAND requirement can prevent SEP holders from extracting monopoly premiums by selective licensing or, more important, migrating their monopoly power from the FRAND-regulated market to unregulated standard-implementing product markets by licensing to only one or a few implementers or licensing to selected implementers on discriminatorily favorable terms.

#### Aggressive patent strategies create structural flaws in 5G standardization that imperils domestic cybersecurity---market competition reduces the incidence of vulnerability and severity of attacks.

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III. COMPETITION AND CYBERSECURITY In addition to the historical review done so far, another approach to understanding the relationship among patents, competition, and national security is to consider the role of cybersecurity. There is little doubt that computer system vulnerabilities that enable hacking and spread of computer exploits are a threat to the nation’s defenses, so better cybersecurity is a key part of national security strategy.155 Strong competition can thus complement national security by enhancing domestic cybersecurity, and patent assertion that unduly weakens competition detracts from cybersecurity.156 Competition promotes better cybersecurity in at least two ways. First, multiple studies show that competition encourages firms to improve their products on multiple vectors including cybersecurity. Second, competition avoids a situation that security experts call a “monoculture,” which increases vulnerability to severe cyberattacks. As former Secretary of Homeland Security Michael Chertoff wrote recently, “We need competition and multiple providers, not a potentially vulnerable technological monoculture,” to guarantee national security.157 Thus, cybersecurity provides a useful lens for understanding how unfettered patent assertion and licensing can detract from national security. A. Cybersecurity as Competitive Value-Add Competition enhances national security by reducing the incidence of technical vulnerabilities. That effect is especially important for security sensitive systems such as mobile telecommunications. Intuitively, a causal chain from competition to cybersecurity makes logical sense. Computer security is a value-added benefit to consumers, so firms in competitive markets are likely to use security to gain an edge over their competitors.158 In monopolized markets, though, there may be less external impetus to test products for flaws, and the monopolist may choose to focus less on security and more on new product features or increased product quality. Economic research confirms these hypotheses about competition leading to better cybersecurity. A 2009 empirical study of web browsers considered the impact of market concentration on the amount of time that vendors took to fix security vulnerabilities as they were discovered.159 The study found that the presence of more competitors correlated with faster cybersecurity response—a reduction of 8–10 days in response time per additional market rival.160 Similarly, business researchers in 2005 modeled incentives for firms to engage in sharing of cybersecurity information, and concluded that the “inclination to share information and invest in security technologies increases as the degree of competitiveness in an industry increases.”161 Another study found that, where two software firms are in competition, at least one will be willing to take on some degree of risk and responsibility for cybersecurity, whereas a monopoly software firm will consistently fail to accept such responsibility.162 To be sure, an unpublished study from 2017 found that some market concentration can make firms more responsive to cybersecurity issues, but only to a point: “being in a dominant position reduces the positive effect of having less competitors on the responsiveness of the vendor,” and indeed the “more dominant the firm is, the less rapid it is in releasing security patches.”163 This research confirms that competition is more conducive to cybersecurity. It is not hard to see how this applies to emerging communication technologies markets. In the absence of competition, the above research suggests that device manufacturers, chip makers, and software developers will lack incentives to respond to vulnerabilities, to share information about cybersecurity practices and issues, and to take responsibility for security matters. Mobile phone chips have had their share of cybersecurity failures already.164 The best way to flush out ongoing and future cybersecurity issues is to maintain competitive pressure at all levels of the supply chain. B. Vulnerabilities of “Monocultures” A second reason why monopoly undermines cybersecurity is that monopoly leads to a “monoculture” of single-vendor products, opening the door to massive systemic failure in the case of a cyberattack. Computer researchers developed the theory of software monocultures in the early 2000s, in response to the regular phenomenon of computer viruses and other attacks spreading rapidly by exploiting flaws in the dominant operating system at the time, Microsoft Windows.165 Where a computer system such as Windows has a commanding share of users, a virus that exploits a flaw in that system can quickly spread to infect a whole interconnected ecosystem. An operating system monopoly thus enables fast and easy spread of cyberattacks, and better cybersecurity would be achieved through greater diversity in online systems.166 As one research group posited, “a network architecture that supports a collection of heterogeneous network elements for the same functional capability offers a greater possibility of surviving security attacks as compared to homogeneous networks.”167 There has been considerable study of the theory that computer monocultures are naturally more vulnerable to attacks.168 In one study, computer science researchers reviewed a catalog of 6,340 software vulnerabilities recorded in 2007, to compare whether comparable software would share the same flaws.169 Of the 2,627 vulnerabilities applicable to application software (as opposed to operating systems, web scripts, and other software components), only 29 (1.1%) applied to substitute products from different vendors but providing the same functionality.170 By contrast, different versions of a single software product were found to share vulnerabilities 84.7% of the time.171 Thus, software monocultures share exploitable flaws even when there is some variation in versions across the monoculture; by contrast, diversity in software is almost guaranteed to prevent a single flaw from affecting all users. In the case of 5G and wireless mobile communications, a monoculture is an especially concerning possibility. To the extent that systems such as smart city sensors or communication networks are widely deployed in a monoculture fashion, a widespread attack could have devastating consequences, potentially blacking out a region and affecting essential services such as 911.172 A monoculture that is vulnerable to so-called “rootkits” or “backdoors”—maliciously installed software that enable bad actors to commandeer systems—could also enable mass surveillance or spying by private hackers or foreign governments.173 The presence of systems from multiple vendors would mitigate these possibilities. The monoculture theory is not without critics, but a review of those criticisms shows them to be inapplicable to contemporary communication technologies. Some critics suggest that software diversity imposes unwarranted costs on firms who must forego economies of scale and devise seemingly duplicative yet different setups of computer systems.174 But those concerns largely focus on the situation where a single firm produces and manages heterogeneous systems, concerns that are avoided where heterogeneity arises naturally through competition between two unrelated firms. Critics also argue that technological measures can create “artificial diversity” through automated randomization of software code, so software engineers can purportedly solve monoculture issues and device users need not worry about the issue.175 But even these critics acknowledge that artificial diversity techniques are often insufficient because they must make assumptions about what aspects of the technology are most vulnerable to attack, and they concede that artificial diversity cannot stop attacks involving operation of legitimate software functions in undesirable ways (sending spam emails or deleting document files, for example).176 It is widely recognized that a monoculture is unavoidable in at least one respect: Most connected devices will need to conform to technical standards.177 5G, for example, is a technical standard developed by a private industry consortium called 3GPP.178 A flaw in any such standard would render all mobile devices implementing the standard vulnerable to an identical attack.179 Avoiding these sorts of systemic flaws in standards requires rigorous development, analysis, and testing of the standard in the development process, which in turn requires ensuring that as many firms as possible, especially firms that share basic American values, are involved in the development of those standards.180 Thus, the necessary standardization of information and communication technologies is perhaps the most important reason why a competitive communication technology market is essential to cybersecurity and national security.

#### 5G rollout is inevitable and vastly broadens America’s cyber vulnerabilities.

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The continuing rollout of the fifth generation of mobile networks and technologies, known collectively as 5G, is set to radically transform the business world. Incredible new speeds, dramatically reduced latency and fresh swathes of bandwidth will allow real-time connectivity on a whole new scale. Smart cities, autonomous vehicles and augmented reality present amazing opportunities, so it’s no surprise that investment in 5G technologies from governments and businesses is enormous and growing. Amid the excitement of all this technological promise, significant new dangers are being overlooked. As digital connectivity soars to new heights and internet of things devices expand to rapidly become the internet of forgotten things, organizations will face a number of serious security challenges. As someone who specializes in cybersecurity and technology, I believe it’s crucial that organizations start to consider the threats posed by a vastly broadened attack surface, machine learning manipulation and parasitic malware. Securing The Infrastructure From my perspective, organizations, businesses and individuals will quickly become reliant on 5G networks for daily life. Inevitably, 5G technologies and infrastructure will be a prime target for foreign governments and cybercriminals. The line between protectionism and concern about espionage is blurry. Any uncertainty about the technology that forms critical infrastructure should be of major concern to business leaders. While the explosion of digital connectivity presents new opportunities, it also massively increases potential attack surfaces. Many more devices and sensors will be connected by millions of new 5G masts, and these new 5G networks have a heavier reliance on software. What this means is an explosion of new attack vectors, possible vulnerabilities and weaknesses that can be exploited by a range of bad actors. All the benefits that 5G promises in terms of greater speeds and lower latency will also benefit hacktivists, enabling them to carry out attacks more rapidly and at greater scale. Fresh Threat Landscape Spoofing and jamming of 5G networks could cause serious disruption for supply chains and dependent infrastructure. By targeting embedded IoT devices, determined attackers could put vital networks under threat. Greater speed, higher bandwidth and lower latency will enhance the potency of distributed denial of service attacks. Many traditional techniques will find fresh life in the 5G future, and the impact on business could be catastrophic. As more organizations come to rely on machine learning, I predict attackers will find new ways to exploit neural networks and subvert these systems for their own gain. Manipulated machine learning could enable attackers to enrich themselves, obfuscate and deceive, ultimately sowing confusion on a grand scale. What’s worrisome is the opportunity for parasitic malware to burrow into 5G networks and systems to steal processing power and degrade the performance or even shut down critical services like water and power. Any adoption of 5G must include a proper assessment of the risks involved and plans for protection, vigilance and remediation of security incidents.

#### Cyber escalation is more likely now than ever---empirics don’t assume intensified competition and acute geopolitical conditions.

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Situational Cyber Stability: When Cyber Capabilities Can Be Destabilizing To sum up: Cyber conflict has not escalated and there are strong, theory-backed reasons why it provides negative feedback, acting as a pressure release pushing back against geopolitical crises. We agree with these conclusions, which explain why cyber conflict has not yet escalated and may not in the future. However, we believe they hold only if the next few decades generally resemble the past few. This stability is situational and we see three major, interrelated mechanisms by which it may change. Cyber conflicts and competition are intensifying over increasing stakes and might inadvertently or intentionally spark a larger conflict; there is a higher likelihood of acute crises, far worse than the relatively bland geopolitical conditions of the past decades; and in times of acute crisis, the dynamics go through an inversion, encouraging rather than suppressing escalation. Spark: Cyber Conflict Can Cause Acute Geopolitical Crises As cyberspace becomes increasingly existential for economies and societies, states compete more aggressively over the same cyber terrain and treasure. In such circumstances, cyber capabilities add positive feedback, intensifying conflict within cyberspace. Ben Buchanan has featured some of these dynamics in his book, The Cybersecurity Dilemma. If a “potential adversary bolsters its own security by increasing its methods of secrecy and ratcheting up intrusive collection of its own — or by shooting back at the collectors — the first state will often feel a need to respond” with “still more intrusive collection.”[34](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn34) This situation is one which can easily notch upward but only with great difficulty be reversed. This section will summarize the relevant dynamics of cyber conflict, establish that conflict is escalating in cyberspace, and discuss how this dangerous mix of factors can spark war. Escalation in Cyberspace Cyber conflict and competition are intensifying. A cyber incident might cross the threshold into armed conflict either through a sense of impunity or through miscalculation or mistake. Alternatively, the cyber attack might be brazen or reckless enough to demand a muscular response from the target state. Libicki’s framework of cyber escalation requires three elements: an increase in intensity, the crossing of significant thresholds, and causal links between cyber incidents (i.e., “one attack is in response to another”).[35](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn35) A cyber incident might cross the threshold into armed conflict either through a sense of impunity or through miscalculation or mistake. We believe the first two elements are important and it is not necessary to balance each incident with its tit-for-tat response. Cyber conflict can be escalatory even if there is not a direct retaliation (“you did A, so we will do X”) but rather a trend over time (“we caught you doing A and B, and suspect you of C … so we’ll do X and Y and for good measure see no reason to further hold off on Z”). It is through this larger picture, the series of campaigns and capabilities, that the escalatory mechanics become obvious. Despite no provable chain of causation from A to Z, the series can show evidence of intensification and ignored thresholds, if the direction and magnitude of the vector are consistent over a long period of time. A full analysis of escalation requires its own paper, but as an initial analysis we have selected four points each separated by a decade over forty years in order to illustrate this trend: In 1988, nations did not have major cyber organizations. Within the U.S. Department of Defense, there were small groups planning and conducting offensive operations, but there was no dedicated civilian defensive team in the United States until the creation of the Computer Emergency Response Team, funded by the Defense Department, in November 1988. There were significant incidents — such as the Morris Worm of 1988 and a case known as the Cuckoo’s Egg of 1986 which involved German hackers who searched for information on U.S. ballistic missile defense technologies and then passed their findings along to the Soviet KGB. However shocking at the time, those incidents still had quite modest scope, duration, and intensity.[36](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn36) Ten years later in 1998, the world’s first combat cyber unit — established in the U.S. Air Force — had already been in existence for three years, with 93 officers and enlisted.[37](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn37) The first major cyber bank heist was in 1995 against Citibank, while the U.S. military created the first cyber command in 1998 in response to the internal Eligible Receiver exercise and Solar Sunrise incident.[38](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn38) This command was staffed by about two dozen defenders (including one of the authors) and worked with the larger Computer Emergency Response Team and similar teams in the military services to defend against and trace the major Moonlight Maze espionage case to Russia.[39](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn39) Within two years, the command expanded and took on responsibilities to coordinate offensive operations, growing to 122 personnel with a $26 million budget.[40](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn40) Only 10 years after that, in 2008, Estonia suffered a debilitating cyber attack from Russia. Espionage against the United States from Russia became increasingly worrisome, including a case known as Buckshot Yankee, where Russian spies breached classified networks. Chinese theft of intellectual property would be known as the “greatest transfer of wealth in history” by 2012.[41](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn41) In direct response to these incidents, the Department of Defense combined their dedicated offensive and defensive task forces into a single U.S. Cyber Command in 2010.[42](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn42) What had been a defensive-only command with 25 people in 1998 grew to cover both offense and defense with a staff of over 900 by 2011.[43](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn43) In the decade leading up to 2018, the United States launched a sophisticated cyber assault on Iranian uranium enrichment facilities; Iran conducted sustained denial of service attacks on the U.S. financial system; North Korea attacked Sony; and Russia disrupted the Ukrainian power grid in winter (twice) and the opening ceremony of the Olympics.[44](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn44) U.S. Cyber Command grew to 6,200 personnel just in the operational element.[45](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn45) Iran and China created their own cyber commands as did the Netherlands,[46](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn46) the United Kingdom,[47](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn47) France,[48](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn48) Singapore,[49](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn49) Vietnam,[50](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn50) Germany,[51](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn51) and others. If intensification is measured as worsening levels of violence, then cyber conflict has intensified across all periods. By 2018, the problems faced in 2008 seemed minor and the organizations small and limited, while the cyber incidents from 1998 and 1988 appeared positively trivial. Operations that had appeared risky 20 years beforehand were now routine. The intensification trend is also clear according to the measurement of Libicki’s “number of troops committed to the fight.” The Defense Department expanded the central cyber warfighting force from zero troops in 1988 to 25 in 1998, 900 in 2011, and at least 6,200 in 2018. The first commander of the U.S. Cyber Command noted in 2011 that its creation “garnered a great deal of attention from other militaries,” which he hoped was not a sign of militarization but rather “a reflection of concern.”[52](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn52) Nations must indeed be concerned, as there are now dozens of copycats. Jensen, Valeriano, and Maness, using more quantified methods, have similar findings to this qualitative assessment, tracking a strong growth of latent cyber power by Russia and China from 2001 through 2014.[53](https://tnsr.org/2020/09/the-escalation-inversion-and-other-oddities-of-situational-cyber-stability/#_ftn53) There is no obvious evidence pointing to a decrease or even a plateau in the intensity of cyber conflict, or that fewer thresholds are being passed now than 10, 20, or 30 years ago. The direction and magnitude of the change over four decades has marched in only one direction: a relentless increase as nations build their organizations and employ them in more frequent and more dangerous incidents.

#### Insecure technical standards cause inevitable systemic grid collapse---extinction.

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The infrastructure was essential, ubiquitous and providing basic functionality for everything in daily life from water to heat and transportation. And in an instant it was gone, plunging tens of thousands of residents into a life-threatening crisis. This is, of course, the narrative of the recent debacle in Texas, where a winter storm overwhelmed the state’s electrical grid and brought the state to a near-total blackout. But it should also be interpreted as a preemptive warning of what Americans will face from the next generation of the internet and the new realm of cybersecurity risk it will dramatically amplify. Both forms of infrastructure—a state-run electrical grid and the 5G and “internet of things” future to which we are rapidly hurtling—share three attributes. First, their construction reflects a lack of imagination about the danger that can quickly coalesce when seemingly remote threat scenarios become real. Second, compounding a lack of analytic imagination is an absence of preparedness. Third, for both the Texas electrical grid and the emerging internet, public policy protections are either meager or completely absent. In planning for the resilience of its electrical grid, public officials in Texas discounted the potentially devastating disruption that could occur from unpredictable events—whether related to climate change or just a once-a-century anomaly. They also eschewed precautions other states take seriously by allowing for the interconnection of electrical grid supply chains across their borders, ostensibly because of their ideological rejection of federal regulatory oversight governing such arrangements. As the United States builds out a new national 5G cyber-physical communications network through private service providers, Americans similarly discount the risks—myriad in their diversity and severity—that are orders of magnitude more significant than what Texas confronted recently. More physical things than people are already connected. The super empowered internet of tomorrow, known among some in the field as the “internet of everything,” will exceed by tens of billions of devices the number of connections between individuals simply communicating via social media or digital screens. This confronts policymakers with an imminent threat: A cyber outage is no longer about losing digital communications but about losing basic societal functioning and even human life. The failure of imagination is to think of the SolarWinds attack on U.S. federal agencies and tech companies as a worst-case scenario. The failure of imagination is to think of cybersecurity through a content-centric lens rather than as possible attacks on the material world. The emergence of internet-connected cardiac devices, digitally dependent cars, and internet-connected agriculture systems portend the stakes of a cyberattack to health care, economic and social functioning, and food security. The United States should be prepared for, and certainly not be caught by surprise by, such cyberattacks. Yet, the internet of everything is notoriously insecure. Internet-connected physical objects are not necessarily upgradeable. Nor do they come with adequate default security and encryption. The 5G infrastructure that helps connect digital objects has been at the center of debates over Chinese espionage. Industrial cyber-physical systems are based on technical standards that have not been collaboratively vetted for security and interoperability. One of the most infamous cyberattacks—the so-called Mirai botnet that took down major media sites and corporations—hijacked these insecure objects in homes to carry out the assault. The United States is not yet prepared. Finally, in the race to conceive and deploy effective public policy responses, the U.S. government as a whole is hardly more anticipatory or synthesized in its response to potential calamity than the state of Texas. The focus of U.S. cyber policy remains on information policy issues such as disinformation, manipulation and violent speech rather than securing the digital world that now powers our material day-to-day lives. The Biden administration confronts an enormous challenge in crafting a comprehensive strategy to the cybersecurity risks foreshadowed by the ruinous experience in Texas and its management of vital infrastructure. While the digital world has leapt from two-dimensional to three-dimensional space, cyber policy has not at all jumped from 2D to 3D. This failure of imagination, preparedness and policy protection must not be America’s cyber future; the stakes are far too high and the costs are far too great. The Texas disaster is a potent illustration of what has always been true: Our digital society and economy are extremely vulnerable and grow more porous and subject to penetration day by day. As digital sensors and cyber control systems become further embedded in physical infrastructure like energy systems, agriculture and transportation, there is no longer a separation between security of the “real” world and security of the online world. They are entangled and increasingly enmeshed—and policy has yet to catch up to either envisioning or mitigating the looming threats the U.S. confronts. If the energy grid cannot weather a winter storm, how can it be expected to withstand a major cyberattack? What other vital forms of national infrastructure—ranging from water, bridges, highways and roads, and ultimately our day-to-day financial system—are comparably at risk? As Texas dramatizes, it is neither hyperbolic nor exaggerated to assert that our survival could now depend on securing the inevitable cyber-physical future that is accelerating with stunning rapidity.

#### Actors have the means and motivations to strike critical infrastructure.

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Among critical infrastructure sectors in the U.S., energy is perhaps the most crucial of the 16 sectors defined by the Department of Homeland Security. This sector is so vital because it provides the energy necessary to run every other critical infrastructure sector. However, the U.S. power grid, the backbone of the energy sector, is built upon an aging skeleton that is becoming increasingly vulnerable every day. Whether from terrorists or nation-states like Russia and China, the power grid is susceptible to not just physical attacks, but also to cyber intrusion as well. However, much of this threat can be mitigated if the U.S. takes the appropriate steps to safeguard the power grid and avoid a potential catastrophe in the future. Since Sept. 11, 2001, terrorism on U.S. soil has been at the forefront of American consciousness. Critical infrastructure provides an appealing target because of the disproportionally large impact even a small attack can have on the sectors. In particular, the power grid represents a particularly lucrative target, both in terms of the ease of access and the large impact it can make. The National Research Council stated that the U.S. power grid is “vulnerable to intelligent multi-site attacks by knowledgeable attackers intent on causing maximum physical damage to key components on a wide geographical scale.”[[1]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn1) Additionally, the physical security of transmission and distribution systems is difficult due to the dispersed nature of these key components, which in turn is advantageous to attackers as it reduces the likelihood of their capture.[[2]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn2) From 2002-2012, approximately 2,500 physical attacks occurred against transmission lines and towers worldwide and approximately 500 attacks against transformer substations.[[3]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn3) Terrorists have the motivation to attack the U.S. power grid but the very nature of the grid makes it highly vulnerable. The power grid is not only at risk from physical attacks, but also nation-state cyberattacks. One nation that has shown both the capability and intent to use attacks against critical energy infrastructure is Russia, as demonstrated in their 2015 annexation of Crimea from Ukraine. A Russian cyber threat group known as Sandworm, which used its BlackEnergy malware, attacked Ukrainian computer systems that provide remote control of the Ukraine power grid.[[4]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn4) This attack, and another in 2016, each left the capital Kiev without power, prompting cyber experts to raise concern about the same malware already existing in NATO and the U.S. power grids.[[5]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn5) In any conflict between Russia and NATO, not only would similar cyberattacks pose a threat, but so would potential physical attacks severing fuel oil and natural gas lines to Western Europe. Russia has both the capability and intent to attack critical infrastructure, particularly power grids, during future conflicts in their “hybrid warfare” approach. Another nation that has the capability to attack critical energy infrastructure is China, representing a threat to not just the U.S. energy infrastructure but also that of our allies whose support would be vital in a major conflict. A recent NATO report highlighted this threat from China’s Belt and Road Initiative, stating that “[China’s] foreign direct investment in strategic sectors [such as energy generation and distribution] …raises questions about whether access and control over such infrastructure can be maintained, particularly in crisis when it would be required to support the military.”[[6]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn6) Like Russia, China has been active with cyber intrusions in U.S. energy infrastructure. The Mission Support Center at Idaho National Laboratory characterized these as attacks as “multiple intrusions into US ICS/SCADA [Industrial Control Systems/Supervisory Control and Data Acquisition] and smart grid tools [that] may be aimed more at intellectual property theft and gathering intelligence to bolster their own infrastructure, but it is likely that they are also using these intrusions to develop capabilities to attack the [bulk electric system], as well.”[[7]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn7) China, therefore, has both the capability and intent to conduct cyber intrusions and attacks for myriad reasons. Another arm of this threat is the reliance the U.S. energy industry has on imports from China, especially transformers. In early 2020, federal officials seized a transformer in the port of Houston that had been imported by the Jiangsu Huapeng Transformer Company before sending it to Sandia National Laboratory in Albuquerque. Sandia is contracted by the U.S. Department of Energy for mitigating national security threats.[[8]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn8) The Wall Street Journal reported that “Mike Howard, chief executive of the Electric Power Research Institute, a utility-funded technical organization, said that the diversion of a huge, expensive transformer is so unusual – in his experience, unprecedented – that it suggests officials had significant security concerns.”[[9]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn9) Previously destined for the Washington Area Power Administration’s Ault, Colo., substation, the transformer is believed to have been seized due to “backdoor” exploitable hardware emplaced by the Chinese prior to shipment.[[10]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/#_ftn10) Shortly after these events, President Trump issued Executive Order 13920, “[Securing the United States Bulk-Power System](https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-securing-united-states-bulk-power-system/),” essentially limiting the import of Chinese-built critical energy infrastructure components due to concerns about cybersecurity.[[11]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/#_ftn11) Interestingly, Jiangsu Huapeng “boasted that it supported 10 percent of New York City’s electricity load.”[[12]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/#_ftn12) Franklin Kramer, the former Assistant Secretary of Defense for International Security Affairs, testified before a U.S. House of Representatives Energy and Commerce subcommittee during an energy and power hearing in 2011 and said that a “highly-coordinated and structured cyber, physical, or blended attack on the bulk power system, however, could result in long-term (irreparable) damage to key system components in multiple simultaneous or near-simultaneous strikes.” He added that “an outage could result with the potential to affect a wide geographic area and cause large population centers to lose power for extended periods.”[[13]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/#_ftn13) Even the inclusion of features such as smart grids to the overall grid structure poses new vulnerabilities through their connectivity. Kramer stated that “such connectivity means that the distribution system could be a key vector for a national security attack on the grid.”[[14]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/#_ftn14)

#### Those attacks cause accidental nuclear escalation.

Klare 19, \*Michael T. Klare is a professor emeritus of peace and world security studies at Hampshire College and senior visiting fellow at the Arms Control Association; (November 19th, “Cyber Battles, Nuclear Outcomes? Dangerous New Pathways to Escalation”, https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation)

Yet another pathway to escalation could arise from a cascading series of cyberstrikes and counterstrikes against vital national infrastructure rather than on military targets. All major powers, along with Iran and North Korea, have developed and deployed cyberweapons designed to disrupt and destroy major elements of an adversary’s key economic systems, such as power grids, financial systems, and transportation networks. As noted, Russia has infiltrated the U.S. electrical grid, and it is widely believed that the United States has done the same in Russia.[12](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote12) The Pentagon has also devised a plan known as “Nitro Zeus,” intended to immobilize the entire Iranian economy and so force it to capitulate to U.S. demands or, if that approach failed, to pave the way for a crippling air and missile attack.[13](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote12) The danger here is that economic attacks of this sort, if undertaken during a period of tension and crisis, could lead to an escalating series of tit-for-tat attacks against ever more vital elements of an adversary’s critical infrastructure, producing widespread chaos and harm and eventually leading one side to initiate kinetic attacks on critical military targets, risking the slippery slope to nuclear conflict. For example, a Russian cyberattack on the U.S. power grid could trigger U.S. attacks on Russian energy and financial systems, causing widespread disorder in both countries and generating an impulse for even more devastating attacks. At some point, such attacks “could lead to major conflict and possibly nuclear war.”[14](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote14) These are by no means the only pathways to escalation resulting from the offensive use of cyberweapons. Others include efforts by third parties, such as proxy states or terrorist organizations, to provoke a global nuclear crisis by causing early-warning systems to generate false readings (“spoofing”) of missile launches. Yet, they do provide a clear indication of the severity of the threat. As states’ reliance on cyberspace grows and cyberweapons become more powerful, the dangers of unintended or accidental escalation can only grow more severe.

#### Cyber-compromised NC3 causes nuclear war.

Klare 19, \*Michael T. Klare is a professor emeritus of peace and world security studies at Hampshire College and senior visiting fellow at the Arms Control Association; (November 19th, “Cyber Battles, Nuclear Outcomes? Dangerous New Pathways to Escalation”, <https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation>)

The Nuclear-Cyber Connection These links exist because the NC3 systems of the United States and other nuclear-armed states are heavily dependent on computers and other digital processors for virtually every aspect of their operation and because those systems are highly vulnerable to cyberattack. Every nuclear force is composed, most basically, of weapons, early-warning radars, launch facilities, and the top officials, usually presidents or prime ministers, empowered to initiate a nuclear exchange. Connecting them all, however, is an extended network of communications and data-processing systems, all reliant on cyberspace. Warning systems, ground- and space-based, must constantly watch for and analyze possible enemy missile launches. Data on actual threats must rapidly be communicated to decision-makers, who must then weigh possible responses and communicate chosen outcomes to launch facilities, which in turn must provide attack vectors to delivery systems. All of this involves operations in cyberspace, and it is in this domain that great power rivals seek vulnerabilities to exploit in a constant struggle for advantage. The use of cyberspace to gain an advantage over adversaries takes many forms and is not always aimed at nuclear systems. China has been accused of engaging in widespread cyberespionage to steal technical secrets from U.S. firms for economic and military advantages. Russia has been accused, most extensively in the Robert Mueller report, of exploiting cyberspace to interfere in the 2016 U.S. presidential election. Nonstate actors, including terrorist groups such as al Qaeda and the Islamic State group, have used the internet for recruiting combatants and spreading fear. Criminal groups, including some thought to be allied with state actors, such as North Korea, have used cyberspace to extort money from banks, municipalities, and individuals.[4](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote04) Attacks such as these occupy most of the time and attention of civilian and military cybersecurity organizations that attempt to thwart such attacks. Yet for those who worry about strategic stability and the risks of nuclear escalation, it is the threat of cyberattacks on NC3 systems that provokes the greatest concern. This concern stems from the fact that, despite the immense effort devoted to protecting NC3 systems from cyberattack, no enterprise that relies so extensively on computers and cyberspace can be made 100 percent invulnerable to attack. This is so because such systems employ many devices and operating systems of various origins and vintages, most incorporating numerous software updates and “patches” over time, offering multiple vectors for attack. Electronic components can also be modified by hostile actors during production, transit, or insertion; and the whole system itself is dependent to a considerable degree on the electrical grid, which itself is vulnerable to cyberattack and is far less protected. Experienced “cyberwarriors” of every major power have been working for years to probe for weaknesses in these systems and in many cases have devised cyberweapons, typically, malicious software (malware) and computer viruses, to exploit those weaknesses for military advantage.[5](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote05) Although activity in cyberspace is much more difficult to detect and track than conventional military operations, enough information has become public to indicate that the major nuclear powers, notably China, Russia, and the United States, along with such secondary powers as Iran and North Korea, have established extensive cyberwarfare capabilities and engage in offensive cyberoperations on a regular basis, often aimed at critical military infrastructure. “Cyberspace is a contested environment where we are in constant contact with adversaries,” General Paul M. Nakasone, commander of the U.S. Cyber Command (Cybercom), told the Senate Armed Services Committee in February 2019. “We see near-peer competitors [China and Russia] conducting sustained campaigns below the level of armed conflict to erode American strength and gain strategic advantage.” Although eager to speak of adversary threats to U.S. interests, Nakasone was noticeably but not surprisingly reluctant to say much about U.S. offensive operations in cyberspace. He acknowledged, however, that Cybercom took such action to disrupt possible Russian interference in the 2018 midterm elections. “We created a persistent presence in cyberspace to monitor adversary actions and crafted tools and tactics to frustrate their efforts,” he testified in February. According to press accounts, this included a cyberattack aimed at paralyzing the Internet Research Agency, a “troll farm” in St. Petersburg said to have been deeply involved in generating disruptive propaganda during the 2016 presidential elections.[6](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote06) Other press investigations have disclosed two other offensive operations undertaken by the United States. One called “Olympic Games” was intended to disrupt Iran’s drive to increase its uranium-enrichment capacity by sabotaging the centrifuges used in the process by infecting them with the so-called Stuxnet virus. Another left of launch effort was intended to cause malfunctions in North Korean missile tests.[7](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote07) Although not aimed at either of the U.S. principal nuclear adversaries, those two attacks demonstrated a willingness and capacity to conduct cyberattacks on the nuclear infrastructure of other states. Efforts by strategic rivals of the United States to infiltrate and eventually degrade U.S. nuclear infrastructure are far less documented but thought to be no less prevalent. Russia, for example, is believed to have planted malware in the U.S. electrical utility grid, possibly with the intent of cutting off the flow of electricity to critical NC3 facilities in the event of a major crisis.[8](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote08) Indeed, every major power, including the United States, is believed to have crafted cyberweapons aimed at critical NC3 components and to have implanted malware in enemy systems for potential use in some future confrontation. Pathways to Escalation Knowing that the NC3 systems of the major powers are constantly being probed for weaknesses and probably infested with malware designed to be activated in a crisis, what does this say about the risks of escalation from a nonkinetic battle, that is, one fought without traditional weaponry, to a kinetic one, at first using conventional weapons and then, potentially, nuclear ones? None of this can be predicted in advance, but those analysts who have studied the subject worry about the emergence of dangerous new pathways for escalation. Indeed, several such scenarios have been identified.[9](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote09) The first and possibly most dangerous path to escalation would arise from the early use of cyberweapons in a great power crisis to ~~paralyze~~ undermine the vital command, control, and communications capabilities of an adversary, many of which serve nuclear and conventional forces. In the “fog of war” that would naturally ensue from such an encounter, the recipient of such an attack might fear more punishing follow-up kinetic attacks, possibly including the use of nuclear weapons, and, fearing the loss of its own arsenal, launch its weapons immediately. This might occur, for example, in a confrontation between NATO and Russian forces in east and central Europe or between U.S. and Chinese forces in the Asia-Pacific region. Speaking of a possible confrontation in Europe, for example, James N. Miller Jr. and Richard Fontaine wrote that “both sides would have overwhelming incentives to go early with offensive cyber and counter-space capabilities to negate the other side’s military capabilities or advantages.” If these early attacks succeeded, “it could result in huge military and coercive advantage for the attacker.” This might induce the recipient of such attacks to back down, affording its rival a major victory at very low cost. Alternatively, however, the recipient might view the attacks on its critical command, control, and communications infrastructure as the prelude to a full-scale attack aimed at neutralizing its nuclear capabilities and choose to strike first. “It is worth considering,” Miller and Fontaine concluded, “how even a very limited attack or incident could set both sides on a slippery slope to rapid escalation.”[10](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote10) What makes the insertion of latent malware in an adversary’s NC3 systems so dangerous is that it may not even need to be activated to increase the risk of nuclear escalation. If a nuclear-armed state comes to believe that its critical systems are infested with enemy malware, its leaders might not trust the information provided by its early-warning systems in a crisis and might misconstrue the nature of an enemy attack, leading them to overreact and possibly launch their nuclear weapons out of fear they are at risk of a preemptive strike. “The uncertainty caused by the unique character of a cyber threat could jeopardize the credibility of the nuclear deterrent and undermine strategic stability in ways that advances in nuclear and conventional weapons do not,” Page O. Stoutland and Samantha Pitts-Kiefer wrote in 2018 paper for the Nuclear Threat Initiative. “[T]he introduction of a flaw or malicious code into nuclear weapons through the supply chain that compromises the effectiveness of those weapons could lead to a lack of confidence in the nuclear deterrent,” undermining strategic stability.[11](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote11) Without confidence in the reliability of its nuclear weapons infrastructure, a nuclear-armed state may misinterpret confusing signals from its early-warning systems and, fearing the worst, launch its own nuclear weapons rather than lose them to an enemy’s first strike. This makes the scenario proffered in the 2018 NPR report, of a nuclear response to an enemy cyberattack, that much more alarming.

#### Cracking down on anticompetitive patent licensing post-*Qualcomm* reintroduces cybersecurity-enhancing competition to the market.

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IV. LESSONS AND POLICY DIRECTIONS The above discussion shows that patent protection can have mixed effects on national security: On the one hand, patents can encourage innovation that ensures domestic technological leadership and produces useful security-protective technologies; on the other hand, patents can stifle innovation-producing and cybersecurity-enhancing competition and can stymie the government’s own ability to achieve national security goals. To navigate the complex effects of patent policy on national security, policymakers may consider the following recommendations as guideposts. A. Anticompetitive Patent Licensing An area of particular concern should be the use of patents and patent licensing strategies to diminish competition or put up roadblocks to new entrants. Policymakers should certainly not support these abuses of the patent system, and indeed should take steps to prevent them. In the mobile communications space, patent licensing already plays an outsized role. There are reportedly between 250,000 and 314,000 patents on the smartphone alone, and litigation over cell phone technologies has lasted decades by now. Patents will thus inevitably have an impact on technologies like 5G or the Internet of Things, so the question is what that impact will be. Patents are supposed to encourage innovation, but research finds that patents alone will not do so; competition is another requirement. A 2015 study considered the impact of competition policy and patent strength on innovation among European firms, measured in terms of research and development spending.183 Initially, the study compared firms in countries with strong patent laws against those in countries with weaker patent laws, and found that patent protection has “no effect on R&D intensity,” a conclusion consistent with multiple other studies.184 However, the study found that when a major competition reform went into effect, strong-patent countries enjoyed a boost in innovation greater than that experienced in weak-patent countries.185 In other words, strong patent protection is complementary to strong competition; the former does not promote innovation without the latter. The practical import of this research is that patent protection is beneficial up to a point, but to the extent that patents—or, more commonly, legal strategies involving patents—overreach to suppress competition, that overreach should be cause for concern. Yet today, strategic patent behavior contrary to competition is prevalent. The Federal Trade Commission’s ongoing lawsuit against mobile phone chip manufacturer Qualcomm, for example, challenges Qualcomm’s practice of refusing to sell chips to any phone manufacturer who does not first pay a hefty sum for patent licenses—even if the manufacturer does not actually have need for all those licenses.186 To the extent that Qualcomm’s “no license, no chips” practice is in fact anticompetitive—that is what the courts overseeing the case will decide—monopolization of that market could substantially harm cybersecurity for the reasons noted above.187 The company’s about-50% market share in the advanced mobile chip market 188 means that there is a virtual monoculture of Qualcomm chips already, and there are ongoing concerns about security vulnerabilities in those chips.189 It is thus puzzling that some have opposed the FTC litigation on the grounds that it is making the United States “less competitive in the global 5G arms race.”190 As one scholar explains, this rhetoric “smacks of ‘national champion’ thinking” and ultimately fails to ensure that “national security warnings are being balanced against competitive imperatives.”191 With respect to emerging information technologies, policymakers should be concerned that a leading firm could undertake similar patent licensing strategies to control the market. Indeed, the district court in the Qualcomm litigation found that Nokia and Ericsson already “have imitated Qualcomm’s practice” because it is “more lucrative.”192

### 1AC---Plan

#### Plan: The United States federal judiciary should substantially increase prohibitions on private sector conduct that is more restrictive of competition than reasonably necessary to enable creation of information technology standards.

### 1AC---Framing

#### Nuclear conflict is underestimated, while survivors will be agents of destruction

Scarry 19, PhD, Professor of English at Harvard (Elaine Scarry, 2019, Interview, Representations, 146.1)

RA: At the Buffalo conference on pain, you gave a paper that built on some of the insights of your then most recent book, Thermonuclear Monarchy. 1 In the book, you demonstrate the incompatibility of democracy and nuclear arms at least in part on the grounds that, by the nature of their deployment, nuclear arms make it impossible for the populace to consent to their use. In your talk, you made a different but related claim that focused on the relative silence of the population regarding nuclear arms in the post-Cold War era. You were concerned, in particular, with the difficulties of imagining the consequences of nuclear war. I wonder if you could expand on this second point: why it is so hard to think about nuclear war. ES: The two points are deeply related. The architecture of nuclear arms requires that the population be eliminated from the decision about going to war. It also requires that Congress be eliminated from the decision about going to war—just because the nature of the technology requires a tiny number of people to do the launch. The result of that architecture is that people eventually, over seven decades, have internalized the fact that they’re worthless when it comes to the need to defend the country and to carry out acts of mutual aid toward one another. We now simply abandon the right of self-defense and the right of mutual aid and give unlimited injuring power to the executive branch of government and fall silent. RA: How much responsibility, how much blame, does one give to the population for remaining silent? ES: That has always been a question. Gandhi said, ‘‘You can wake a man who’s asleep, but you can’t wake a man who’s pretending to be asleep.’’ His statement marks a fork in the road. If the population has been anesthetized and is genuinely asleep, then they are morally innocent (even if infantilized and terribly reduced as moral agents). If instead the population is pretending to be asleep, we are morally culpable: the population is complicit with the genocide that’s standing in the wings waiting to happen. During my lecture and in many years of working on disarmament, I stressed the first path and tried to outline why waking up is difficult. In recent months, I’ve moved closer to the position that your question identifies, the responsibility of the population. I feel the force of Martin Luther King’s statement, ‘‘There comes a time when silence is betrayal.’’ I’m almost at the point of believing that there is a wanton refusal to [recognize] ~~see~~ the imminent peril, a refusal to understand not just that we have a responsibility to reverse it, to dismantle it, but that we have the ability to do so, and that if we don’t, it is going to happen. I don’t know if it’s going to happen this year. Or whether it’s going to happen this century. But it’s almost inconceivable that it isn’t going to happen. RA: Why is it that people have such a hard time understanding this? If you allow that people might honestly and ardently be trying to understand, what is it that is getting in the way? ES: Four or five answers come to mind. First, people often lack key pieces of information. If you ask someone in this country which nations have nuclear weapons, they are likely to say Iraq (which has none), Iran (which has none), or North Korea (which has fewer than 60; leading experts say fewer than 20). The United States has 6,500. The United States and Russia together own 93 percent of the world arsenal: the other 7 percent is owned by the other seven nuclear states—in order of numerical possession, France, China, the United Kingdom, Pakistan, India, Israel, and North Korea (see fig. 1). An equally profound misconception held by US citizens is the belief that our nuclear architecture is for ‘‘defense’’ and ‘‘retaliation.’’ In fact we have had a ‘‘presidential first-use’’ policy for the whole nuclear age. The profound obscenity of that arrangement, which has only begun to be glimpsed with the current president, has been an equally grave moral wrong from day one. Second, even when American ~~citizens~~ [denizens] and residents have this information, the outcome is derealized by its being future—that is, the unreality something has by having not yet happened is conflated with the unreality something might have by being merely imaginary. People, it’s true, are uninformed. But once they become informed, even then the flash of insight fades from their eyes after about ten minutes. RA: Why do you think that is? ES: Because they think ‘‘future’’ equals ‘‘unreal.’’ But we need to stop and understand what we mean by ‘‘future.’’ If it takes 10,000 steps to put a nuclear architecture into place, 9,999 steps have already been completed: we know how to split the atom; we know how to provide enriched uranium; we know how to deliver the bomb; we’ve completed not only the theoretical steps but the materialization steps: we’ve made the bombs; we’ve completed the delivery systems—Ohio-class submarines, the land-based ICBMs, and airdelivery B-2s and B-52s. Unlike in China and India, the weapons in the United States are already ‘‘mated’’ to the delivery systems; they are on alert; specific weapons have been assigned to specific cities in the countries of present enemies and, yes, even potential enemies. One step remains: the order to launch. So 9,999 steps are present and accounted for; one remains undone. While the 9,999 steps took vast amounts of time and resources, the last one is designed to be carried out in minutes. The word ‘‘future’’ does not apply to the 9,999 steps, only to the last one. When people decline to address the nuclear peril on the grounds that it is an ‘‘unreal’’ worry because ‘‘following the bombings of Hiroshima and Nagasaki it hasn’t yet happened,’’ they are unknowingly allying themselves with the position that our own Department of State and Department of Defense took in 1995. At that time, seventy-eight countries asked the International Court of Justice to declare the possession, threat of use, and use of nuclear weapons illegal on the basis of the humanitarian and environmental instruments such as the UN Convention on the Prevention and Punishment of the Crime of Genocide, the Geneva Protocols, the Declaration of Saint Petersburg, the Vienna Convention for the Protection of the Ozone Layer, the Rio Declaration on Environment and Poverty, and many others. Though the United States worked to invalidate the application of these protocols to our nuclear weapons one at a time, an argument they used over and over was that the firing of the weapons was ‘‘future,’’ hence ‘‘hypothetical,’’ hence ‘‘suppositional’’—this despite the billions of dollars that each year go into polishing and oiling the architecture of earth’s destruction to keep it in a present-tense state of constant readiness. RA: At the conference you also spoke about the problem of ‘‘statistical compassion.’’ ES: Let’s call that the third reason why the population is asleep. American indifference to our own genocidal nuclear architecture comes from the constraints on compassion when large numbers of people [become] ~~stand~~ to be injured. Public health physicians distinguish between narrative compassion (where one or two or three people are at risk) and statistical compassion (where thousands or millions are at risk).2 We’re fairly good at the first, and have many occasions to strengthen our capacity through daily acts of friendship and from reading literature. We’re terrible at the second, and have almost no training in strengthening our feeble abilities in this region. The nuclear peril of course entails the second: recent work on nuclear winter by Alan Robock and his colleagues shows that if even a small fraction of the current world arsenal is fired (one one-hundredth of one percent of the total available blast power), forty-four million people will be casualties on the first afternoon and one billion in the weeks following. The small shrug people make when the subject of nuclear weapons comes up—the little lift and fall of the shoulders—means they have just run a quick check on their interior brain-and-soul equipment and can report: nope, nothing in there in the way of statistical compassion. RA: Narrative compassion and statistical compassion seem to take place in widely separate spheres. How then do you see them coming into conflict with each other? ES: For me, a frightening example occurred in the Bulletin of Atomic Scientists, the wholly admirable body that sets the Doomsday Clock (now at two minutes to midnight) and that works round the clock to educate the people of the United States and the world about the hazards of nuclear weapons. Yet in commemorating the seventieth anniversary of the Nagasaki bombing in August of 2015, they published a historically factual narrative about the pilots of the plane delivering the atom bomb to Nagasaki, how many things went wrong and had to be repaired midflight. The lead-in read, ‘‘A typhoon was coming, the fuel pump failed, they had to switch planes, things were wired incorrectly, they missed their rendezvous, they couldn’t see the primary target, they ran out of gas on the way home, and they had to crash-land.’’ But the worst part was when ‘‘the Fat Man atomic bomb started to arm itself, mid-flight.’’3 The story, narrated in edge-ofyour-seat suspense, is an example of narrative compassion utterly preempting the possibility of statistical compassion: the crew might die, but if they had in fact died over the Pacific, tens of thousands of persons would not have been burned into nonexistence that day. RA: Your emphasis at the conference was on the nature of physical pain itself. ES: Yes, that was my central subject. In terms of our conversation now, we can say that a fourth and fifth reason for indifference arise from the difficulty of comprehending pain, whether it takes place in one person’s body or in the bodies of millions, and whether it occurs in the past, present, or future. (But if I were listing the reasons in the order of importance, these two would be near the top.) Once we exhaust a small handful of adjectives for physical pain, two (and almost only two) metaphors arise: the metaphor of the weapon (one may say it feels as though a knife is sticking in my shoulder blade even if it isn’t); and that of body damage (one may say it feels as though my elbow has snapped in two, even if it hasn’t). The Body in Pain concentrates on problems arising from the first; a later essay (‘‘Among Schoolchildren’’) concentrates on the second.4 Both metaphors, if carefully controlled, can help us understand the felt experience of another person’s pain; but both are highly volatile and can lead us far away from understanding. An example of the benign or genuinely expressive potential is provided by findings in neuroscience that we have mirror neurons that help us recognize another person’s physical pain. When you look at the actual experiments that were done, however, you see that the test subject is asked not to listen to a sufferer’s report of pain but to observe, for example, a pin being stuck into someone’s hand or the administration of a small electric shock. The experiments show not our comprehension of another person’s pain but our recognition of the aversivenes of being subjected to a weapon—often closely related to but by no means identical with physical pain. The very fact that a weapon can be separated from the site of the injury means that the attributes of pain can be lifted away from the sufferer and conferred on the agents inflicting the harm, so now it is not the pain that is world destroying but the inflictor of the pain. There are many examples of this in the case of nuclear weapons. For example, the mushroom cloud is often regarded as ‘‘awesome,’’ some even say ‘‘sublime.’’ But the hibakasha, the survivors in Hiroshima and Nagasaki, say, ‘‘We saw no mushroom cloud.’’ A mushroom cloud is what you see if you’re an observer far away, seated high in the sky in the airplane that dropped the weapon, or standing on the ground scores of miles beyond the radius of the harm. Like any sensible mortal, I admire J. Robert Oppenheimer, but his endlessly quoted statement following the Trinity test, ‘‘I remembered the line from the Hindu scripture ...I am become Death, the destroyer of worlds,’’ allows the scale of the injury to be transferred across the weapon and conferred on the agents, who now perceive themselves as magnificent, thrilling, almighty in their power. Oppenheimer even prefaces the quotation by saying that Vishnu here takes on a multi-armed form ‘‘to impress’’ the prince. The name he chose for the test, ‘‘Trinity,’’ shows this same fabrication of godlikeness. What if instead Oppenheimer had said, ‘‘I remembered the goddess Guanyin whose name means ‘The one who perceives the sounds of the world’ and the sounds I heard were excruciating cries, unbearable shrieks of tens of thousands scalded together in an instant of molten flesh.’’ The first statement is a fiction: Oppenheimer is neither a multi-armed god nor a three-personed god; the second statement (could we hear Guanyin) is accurate; if we could internalize and practice the second statement, we would disarm immediately. The image of the nuclear weapon, which might help make visible the pain and suffering it will bring about, instead captures the gigantic scale of the suffering, only to lift that ‘‘giganticism’’ away from the site of suffering altogether and confer it on the human agents—ordinary men, small in stature and in number, but who now appear gigantic. Insofar as any shred of ‘‘suffering’’ still remains visible, we believe it is the suffering of the nowgigantic human agent who is in mighty peril. Thus the nation spends billions of dollars on a presidential fallout shelter while convincing the public that fallout shelters for the population are ridiculous. In Thinking in an Emergency, and again in Thermonuclear Monarchy, I contrast the Swiss shelter system—Swiss law requires that every house have a fallout shelter;5 the law was reaffirmed in a 2003 referendum that had an 80 percent turnout at the polls—with the staggering constructions that have been made in the United States for... the people? no—for the president and those close to him, a shelter inside a mountain, with buildings and a lake that is, according to observers, large enough for waterskiing. One country, Switzerland, believes in what the Swiss call ‘‘equality of survival’’; the other country, the United States, believes that only the agents of nuclear [disaster] ~~holocaust~~ deserve the chance for survival. Much more detail on the multiple presidential fallout shelters is described by Garrett M. Graff in a recent book, Raven Rock: The Story of the U.S. Government’s Secret Plan to Save Itself—While the Rest of Us Die. The nuclear architecture requires that either the weapon be invisible (buried in a submarine or buried in a cornfield, like the 450 ICBMs) or, when it is visible, it must become the path across which the magnificent prowess of the human agent is seen—he’s so thrilling, so important, so vulnerable; here, please, take my tax money, use all of it to protect the man who will launch our nuclear missiles. What should bring us to our knees in sorrow and shame instead brings about a dutiful salute to the thermonuclear monarch. If one thinks fallout shelters for the population are ridiculous (ignoring the fact that the medically sophisticated Swiss have data showing otherwise), then it is informative to contrast the money lavished on our nuclear architecture with ordinary forms of safety structures for the population like bridges, dams, roads, levees. The American Society of Civil Engineers, in their 2017 report on infrastructure, gave our bridges a ‘‘Cþ’’ (56,000 are ‘‘structurally deficient’’), our dams a ‘‘D’’ (2000 have a ‘‘high-hazard potential’’), our levees a ‘‘D’’ ($80 billion is needed for structural repair), and our roads a ‘‘D’’ (one out of every five miles of highway pavement is ‘‘in poor condition’’).6 Might Americans be given a choice on whether they want their taxes spent on infrastructure or—as is currently the case—on nuclear weapons and presidential fallout shelters? Or has ‘‘no taxation without representation’’ disappeared along with all our other basic democratic principles?(112-118) RA: That all follows from the instability of the weapon; what about the second field of representation, body damage? ES: The phenomenon of body damage is like the image of the weapon but works in a much different way—almost the opposite. Whereas the problem of the weapon is its very separability from the body (and the way to make it benign is to retether it to its referent in the body), the problem of body damage is that it overlaps, overrides, and eclipses the personhood of the one underneath the damage. Either one looks away, or, if one looks, one recoils. Visual artists and writers—from Peter Paul Rubens and Andrea Mantegna in the Renaissance to fin de sie`cle artists Ka¨the Kollwitz, Aubrey Beardsley, Edvard Munch, Joris-Karl Huysmans, to twentieth-century Guatemalan writer Miguel Asturias—all solve this problem by finding a way to double the location, so that personhood remains intact in our perceptual field even if the human body is at that moment being obscenely shredded. 118 Representations If you visit the Nagasaki Atomic Bomb Museum, you will probably find yourself, as I did, surrounded by young schoolchildren, who look with courage on the visages of those who were incompletely incinerated in the bombing of that city (see figs. 2, 3, and 4). In the United States, few adults face up to the faces of those harmed there. In February of 2016, the Central Square Library in Cambridge agreed to let me—and Joseph Gerson, an American Friends Service colleague—do a monthlong program on the bombings of Hiroshima and Nagasaki with weekly lectures and an exhibit of books, drawings, and photographs. The morning after we put up the exhibit, we found all the photographs of injuries had been removed. The effort to put on an exhibit about Hiroshima and Nagasaki at the Smithsonian Institution in 1994 led to such controversy that it had to be canceled—with one exception: the Enola Gay (the plane that delivered the bomb) was put on display. Here we circle back to the phenomenon of the weapon being perceptually severed from the site of the pain. It’s in part because of museums like those in Hiroshima and Nagasaki that so many people in the Japanese population are passionately in support of nuclear disarmament. In preparation for a disarmament demonstration in New York, Cambridge and Boston activists (I include myself) worked for months to bring supporters to the march: after endless work, approximately one hundred did so. But one thousand Japanese men and women arrived that morning in New York; they carried a petition signed by six million of their countrymen, who collectively paid for the travel costs of the thousand who came. RA: Can you provide any examples of authors who ‘‘double the location,’’ as you have just described, ‘‘so that personhood remains intact’’ while the ‘‘human body is being ...shredded’’? ES: Miguel A´ngel Asturias’s Men of Maize begins with a heroic Indian in Guatemala, who ordinarily protects his people no matter what; he is able to do so, in part, because he has a level of sensory acuity that approaches genius. He knows the scent of every flower; he can discern the whole recipe of scents present in the forest in any given moment. The European colonizers can commit a slaughter of his people only if they can divert this heroic leader; and the only way to divert him is to subject him to horrible, scalding, obscene pain. Asturias must convey to us the felt experience of pain, the turning of the body inside out, and he chooses to do this through the associated phenomenon of body damage; but in order to do so without eclipsing the personhood of Gaspar Il´om, he decouples the body damage from the hero. The book opens with a dog, which the invaders have used as a test case for their pain-inducing poison laced with glass. The dog, in excruciating pain, zooms hysterically through the village square, covered with open sores, his penis erect, howling in a way that is aversive to everyone who hears and sees. This horrible scene conveys the obscenity of pain, the obscenity of bodily damage. By obscenity, I mean interior substances in the body which come before us without our consent, come before us before we are mentally prepared to comprehend what we are seeing. But the story separates this bodily desecration from the person, for now, having seen the dog, we need only be told that Gaspar Il´om has drunk this glass-laced poison to understand why he abandons his post, submerges himself in the lake, drinks all its waters, and eventually comes out. He has survived. But during the moments when he disappeared below the surface of the water, his people have been slain. RA: I wonder how you think about the role of the visual in that context. Do you think of the visual as akin to a language? ES: In visual art one can see the same phenomenon taking place, as when Ka¨the Kollwitz refuses to let an injured victim be portrayed as what Shelley called ‘‘a monstrous lump of ruin.’’ In her 1900 etching and aquatint The Downtrodden, she pushes the wounds on the body just beyond the body’s edge onto a linen sheet on which the person is lying. These mouthlike, liplike structures of open wounds are there but are not permitted to compromise figure 4. Photographs of survivors of the atomic bomb in the Nagasaki Atomic Bomb Museum. An Interview with Elaine Scarry 121 our recognition of the sufferer’s personhood. Even somebody like Aubrey Beardsley, in one of his posters, puts the wound in a tree rather than on the body of the woman. And yet the woman has attributes that make the viewer see the analogy, just like Marty South and the trees in your account of Hardy’s The Woodlanders [Scarry is referring to Rachel Ablow’s account in Victorian Pain]. Her posture, for example, is exaggeratedly erect and treelike. She wears a high-waisted skirt that is made to be a visual analogy with the tree. But our perception of her personhood remains uninterrupted. RA: One issue you have raised recently is the particular difficulty of thinking about the specific kinds of injuries caused by nuclear war, namely burns. There was a striking moment in your talk when you discussed the protocols used in burn units to help doctors and nurses in looking at burn victims. It seems so intuitively right that caretakers would have difficulty looking at these patients. It seems to suggest something about the limits on the imagination in terms of suffering. I’m wondering what it is about burns that makes it so hard to imagine the suffering they entail. Is it about the skin as the site of humanity? Is it about the face? ES: It is the visage. Without preparation and help, when we see the complete mutilation of the body, especially the face, we mistakenly feel we are seeing the mutilation of personhood. The ‘‘rule of nines’’ is devised to enable rescue workers to look at a gravely burned person and (instead of having their own minds shut down in sorrow and confusion and revulsion) to assess instantly the gravity of the injury, start appropriate treatment, and report the scale of the injury to the hospital awaiting the person’s arrival. Each part of the body is assigned an easy-to-remember number that is a multiple of nine (see fig. 5). Counting forms a key part in many forms of emergency rescue, and this is one instance. The numbers, once totaled, tell the rescuer the next step, such as whether to insert an IV for fluid resuscitation. The need to train the perceptions of those who hope to help those who are burned is also illustrated by a procedure called ‘‘staying.’’ During the years when I was part of a research group on suffering at the Hastings Center for Ethics, I heard a lecture by a physician-nurse who worked in a burn unit. She mentioned that because of the difficulty oflooking at a severely burned person, nurses assigned to burn units may begin to avert their eyes when speaking with a patient, decline to touch the patient, or stand at a greater distance each day, or request a transfer after a few days. To counteract these problems, caretakers can participate in a class on ‘‘staying’’ where they recognize the temptation to withdraw from the patient and practice trying to overcome that withdrawal. While the ‘‘rule of nines’’ and ‘‘staying’’ are brilliant inventions, we should recognize that in nuclear war there will be few rescue workers and nurses. A study in the Netherlands of what would happen if a terrorist brought into Rotterdam a very small 12 kg weapon (the size used in World War II) found that of those who had not immediately evaporated, four thousand persons would require burn beds.7 They noted that in all of the Netherlands there are only a hundred burn beds. A leading hospital in Boston, Mass General, has seven burn beds. The burn beds themselves—what few there are—will disappear in a nuclear strike. On the floor of the UK Parliament, the possession of four Trident submarines has repeatedly been justified by the potential need to bomb Moscow. In response, a Scottish study by John Ainslie looked at the scale of damage that would actually take place if a nuclear missile were launched against the Ministry of Defense building in Moscow: along with the Ministry of Defense, four major hospitals would be destroyed and four others subjected to fire and radiation that would make them inoperable. Thirty-one schools would also be destroyed with at least 700,000 children slain.8 If the missile is larger, so, too, will the disappearance of hospitals be larger. An article by Steven Starr, Lynn Eden, and Theodore A. Postol in the Bulletin of Atomic Scientists shows that if an 800-kiloton weapon were detonated above Manhattan, the center of the blast would be four times the temperature of the sun, and, within ‘‘tens of minutes,’’ a firestorm will cover 90 to 150 square miles. figure 5. Pocket card showing ‘‘Rule of Nines for Adult and Child,’’ Northwest Healthcare Response Network, https:// nwhrn.org/wp-content/ uploads/2018/08/BurnPocket-Card.pdf. An Interview with Elaine Scarry 123 RA: Was the artistic strategy that you just described of doubling the location so as to protect personhood apparent in the real-world examples you were citing, the Nagasaki children, the ‘‘rule of nines,’’ ‘‘staying’’? ES: I think so. It is not accidental that the Nagasaki Atomic Bomb Museum is itself physically beautiful in its architecture, or that as you enter you pass lavish cascades of paper cranes, inspired by the child Sadako Sasaki, like cherry blossoms in spring, or that you see an inscription about Nagasaki’s exceptional generosity to outsiders—its many centuries of open trade with foreign companies, a level of cosmopolitan hospitality not at that time found to the same degree in other regions of Japan; you see engraved inscriptions from Dwight D. Eisenhower and from the ‘‘United States Strategic Bombing Survey, Summary Report (Pacific War), July 1946’’ saying unequivocally that the atom bomb was not needed to end the war. All these elements, and many others, keep the personhood of the city’s inhabitants in view, side-by-side with the excruciating vision of burnt faces. The ‘‘rule of nines’’ lets one reconstruct the body out of a beneficent invention, toylike in its simplicity. In ‘‘staying,’’ the very name of the procedure holds the injury within the frame of sympathetic personhood. RA: Let’s return to Ghandi’s forking path. You’ve sketched the reasons why the US population is innocently sleeping. But what if they’re feigning sleep? ES: I am sometimes floored by the discrepancy between the attention we give to injuries that have happened when we can’t do anything to change them and the attention we give to injuries that haven’t yet happened when by intervention we absolutely can prevent them. I don’t know how to explain this. I have always assumed that those acts of trying to talk about the pain of torture victims in the 1970s in my case, or the pain of people in World War II, the Holocaust, that those acts are meant to act as a warning to the future. What is our motive for thinking about the unchangeable injuries of the past if not to increase our ability to prevent such injuries in the future? Yet almost incomprehensible is the distance between the willingness to think about events from the past we can’t possibly change and the complete comfort with feeling that future massacres need not concern us. Or worse, that one is slightly superior to protesting a wrong: intellectually superior because the moral wrong is an obvious moral wrong, and we only like to address sophisticated, hard to discern moral wrongs. It might be embarrassing to have to stand on a street corner with a sign or attend a public meeting. Imagine, though, if we forgave the complicity with past acts of enslavement or genocide by saying, ‘‘People saw that it was wrong, but they considered it too intellectually obvious, too compromising of their dignity, to have to stand up and protest.’’ Or take the argument that the aspiration to dismantle nuclear weapons is now many decades old, and we must turn to fresh undertakings: imagine that someone tried to defend those who tolerated slavery in 1860 because they had been hearing antislavery sentiment since 1820 and now considered such sentiments ‘‘stale.’’ We would never give a ‘‘pass’’ to anyone in the past who excused their inattention to slavery or the ~~transfer of people to concentration camps~~ on either of those two grounds; yet we believe such arguments release us from addressing weapons whose outcome is instant genocide. There are historical periods in which people were dissuaded from protesting because dissidents were beaten (Charles Sumner on the floor of the Senate) or killed (Dietrich Bonhoeffer in Germany). No such beatings or death threats excuse our own silence today. RA: Staying with this point about the relative ease of imagining pain past as opposed to pain in the future, do you attribute that to sentimentality? It sounds so reprehensible put in those terms. I wonder how you account for it. ES: I think you are right to worry that our attention to the past begins to look like sentimentality. The argument is sometimes made by academics that sympathy is less about compassion or the desire to ameliorate pain than it is a kind of cultural signaling of our moral goodness. To me that thesis seems horrifying: it lets the many who ignore past pain excuse their own inattention on the grounds that the few who do attend to pain are only doing so to announce their own goodness. So I feel a strong aversion to that argument; it works to reduce still further the number of those who show any wish to help. However, if it turns out that we only speak about irremediable injuries from the past while a huge architecture of massacre [is] ~~stands~~ waiting to be used, then one has to ask oneself: why were we looking at injuries in the distant past? Is it just sentimentality? Is it just cultural signaling?9(124-5)

#### Default to consequentialism

Sikkink 8, Professor of political science at the University of Minnesota (Kathryn Sikkink, 2008, “The Role of Consequences, Comparison, and Counterfactuals in Constructivist Ethical Thought,” <http://www.polisci.umn.edu/centers/theory/pdf/sikkink.pdf)>

Ethical arguments of these different types are ubiquitous and necessary. But because they are also slippery and open to manipulation and misuse, we also need to be very careful and precise about how we go about using them. I would recommend that first we distinguish very carefully between the comparison to ideals and historical empirical comparison. I believe that many critical constructivist accounts rely on the comparison to the ideal or to the conditions of possibility counterfactual argument. In almost every critical constructivist work there is an implicit ideal ethical argument. This argument is implicit because it is rarely clearly stated, but it is found in the nature of the 36 critique. So, for example, in her discussion of U.S. human rights policy, Roxanne Doty critiques a human rights policy carried out by actors who sometimes use it for their own self aggrandizement and to denigrate others. 42 The implicit ideal this presents is a human rights policy that is not used for denigration or surveillance or othering those it criticizes or conversely, of elevating those who advocate it. What would be examples of such a policy? The book does not provide examples. We do not know if examples exist in the world. So the implicit comparison is a comparison to an ideal – a never fully stated ideal, but one present in the critique of what is wrong with the policies discussed. Nicolas Guilhot makes a similar argument in his recent book. The promotion of democracy and human rights, he argues, are increasingly used in order to extend the power they were meant to limit. “The promotion of democracy and human rights defines new forms of administration on a global scale and generates a new political science.” He historically examines how progressive movements for democracy and human rights have become hegemonic because they “systematically managed to integrate emancipatory and progressive forces in the construction of imperial policies.” But once again, the book offers no alternative political scenario. In the final sentence of the book, the author clarifies that “this book has no other ambition than to contribute to the democratic critique of democracy.” 43 In the introduction, he clarifies, “This book does not provide answers to these dilemmas. At most, its only ambition is to highlight them, in the hope that a proper understanding constitutes a first step toward the invention of new courses of action.”44 Ethically, I believe this is a cop-out. Politically and intellectually, I find it too comfortable and too easy. This critique has a crucial role to play in pointing to hypocrisy (as Price highlights in the introduction). It could also serve as a catalyst for policy change in the direction of policy that would include less surveillance or less cooptation of human rights discourse. But it is unlikely to serve as a catalyst for new action or policy change unless it ventures something more than pure critique, unless it risks a political or ethical proposal. Without that, it has the impact of delegitimizing any human rights policy without suggesting any alternative. Any policy to promote human rights of democracy policy is shown to be deeply flawed or even pernicious. It is portrayed as part of the problem, certainly not as offering any kind of solution. Human rights policy appears to make the situation worse, not better. The critique has the effect of telling us clearly what we do not want, what we can not support—human rights policies by imperfect and hypocritical actors like the U.S. In its historical comparisons, it also lumps human rights policy together with colonialism and does not provide any elements to distinguish between one policy of surveillance and other. All are equally flawed. The ethical effect is to remove normative support from existing policies without producing any alternatives. This is similar to what Price means when he says that “critical accounts which do not in fact offer constructive normative theorizing to follow critique ironically lend themselves to being complicit with the conservative agenda opposing erstwhile progressive change in world politics.” Neither Doty nor Guilhot, for example, contrast two human rights policies to give examples of policies that are more of less hypocritical or where there has been more or 44 Guilhot, p. 14. 38 less surveillance. They don’t contrast human rights policies or democracy promotion policies to previous policies that were also hypocritical and self aggrandizing, but more pernicious – e.g. national security ideology and support for authoritarian regimes in the third world. By presenting no contrasts, the critique would appear to say that there is no ethical or political difference between a policy that supports coups and funds repressive military regimes and a policy that critiques coups and cuts military aid to repressive regimes. These policies would appear to be ethically indistinguishable. Indeed, by these standards, a realist policy (a la Kissinger) might be preferable. Kissinger didn’t denigrate his authoritarianism allies. He took regimes as they were. He treated them as valuable allies. He didn’t lecture them on how they should change. He also, in doing so, encouraged, in some cases, coups and mass murder. But at least he didn’t “Other”. Doty and Guilhot give me no ethical criteria to distinguish between the policies of the Kissinger administration, the Carter administration, and current Bush administration policy. Because the comparison is an implicit ideal, never an empirical real world example, the critique is very telling and can delegitimize the critiqued policy. But nothing is put in its place. So, it demobilizes any support we might have for any human rights policy. It puts the analyst in an ethically comfortable position, but by not proposing any explicit comparison, it demobilizes the reader. We learn what to oppose, to critique, but we don’t learn explicitly what to support in its stead. The result can be political paralysis. One finds it difficult to act.

#### Our analysis is uniquely good in the instance of cyberwar — because it hasn’t happened, scholarship must deploy future scenarios and allows us to find external explanatory variables

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Theory Building and Development

The structured analysis of future counterfactuals offers a unique approach for the study of causal effects in social systems. The first category, and perhaps most significant, is the ability of researchers to use scenarios to identify variables of interest and consider ways to measure them. This is an approach sometimes recommended for qualitative research; it consists of writing a notional depiction of what a case study might look like. This exercise helps researchers to think through what variables are of greatest interest, what values those variables might take on, and how they interact to cause values of the dependent variable. Scenario analysis is one way in which researchers may conduct such a notional case study. Rather than introduce a timeless or historical vignette regarding fictional circumstances, the researcher may find it beneficial to place their case in the future. This helps orient the research project toward current and anticipated political issues—thus increasing the relevance of the work—even if the actual case studies are historical. Thinking through the causal process in this way helps the researcher to identify a wider range of explanatory variables, including those that have not yet occurred or may be of very low probability (but are still consistent with existing or proposed theoretical arguments). Scenario analysis also helps the researcher to consider the range of values that the identified independent variables may take on, as exploration of different “worlds” pushes the boundaries of the researcher's predispositions going into the research project. Robust scenario analysis thus helps the researcher to identify the upper and lower bounds of their theory. Second, a commonly cited advantage of counterfactual reasoning that is useful for this process of theory building is a researcher's attempt to manipulate one variable in a causal process while holding others constant, thus isolating the effects of different values of the independent variable on the dependent variable. Manipulating one variable at a time to do a better job of analyzing causal processes is often very difficult to do, as, in the real world, interactions between variables often lead to unpredictable and nonlinear outcomes (Jervis 1997:34–60). For instance, a scholar conducting an analysis of tax rates and other domestic legislation regarding oil may use a counterfactual of a different average oil price in the 1970s. Such a counterfactual would have some fairly obvious implications for the domestic political question, but a world in which that one variable were manipulated would have a large number of equally plausible second- and third-order consequences for regional politics in the Middle East. Those consequences could conceivably feed back into domestic US politics, thus affecting the social system under analysis in a way the researcher may not have controlled for in the original scenario. Despite these acknowledged difficulties in using a “manipulate one variable” approach for the purpose of assaying real-world policy options, it is a useful input to the processes of building theory and research design. The best defense of such an approach is that all forms of modeling involve abstractions from reality, and even highly unrealistic models—such as James Fearon's famous ideal condition in which war should never occur—are useful for studying real events (Fearon 1995). Furthermore, manipulating one variable at a time is more appropriate to some kinds of counterfactual reasoning than others. Consider the three main categories of scenario use: political narratives, game theory and formal modeling, and experimentation. The “manipulate one variable” approach seems least useful to political narratives, which often try to tackle such tough questions as “What is the future of the international system?” Although scenarios offer advantages to developing and extending theory in regard to these sorts of questions, particularly in assessing key drivers and articulating world views (discussed in the next subsections), a scientific approach of controlling for various social factors is unlikely to succeed. In these projects, manipulating one variable at a time serves only to develop one of many possible futures in the interest of extending the range of the theory's explanatory power. On the other hand, the “manipulate one variable” approach offers more direct advantages for formal modeling and experimentation. The reasoning for each follows a comment made by Elinor Ostrom in her 1997 American Political Science Association presidential address. Ostrom suggested that “from…scenarios, one can proceed to formal models and empirical testing in field and laboratory settings” (Ostrom 1998). The experimental method with human subjects benefits strongly from the use of scenarios. In one study of how values factor into Americans' economic decision making, a team of researchers sought to “attribute significant differences in average responses between conditions to the independent variables manipulated in the hypothetical scenario; that is, to the factors intuitive neorealists should weigh heavily and intuitive economists should weigh lightly” (Herrmann, Tetlock, and Diascro 2001). That is to say, one variable related to individuals' world views could be manipulated at once in the experiment, and the researcher may test for the significance of variance between the test and control groups. After using scenarios to better identify variables of interest and the role of their specific values in a causal process, a third category of applications of scenario analysis to theory building is to develop new hypotheses and ways to test them. This follows from using scenarios to identify new independent variables and how their values may effect changes on the dependent variable; each new causal argument may (and should) be expressed as a hypothesis to be tested in the broader research project for which the scenario analysis was developed. Additionally, “day-after” scenarios that seek to walk back the causal processes that may have led to a consequential event are particularly well suited to developing hypotheses (Holmes and Yoshihara 2008). By definition, this type of scenario analysis seeks to discover causal pathways. For instance, one might seek to chart various paths by which a particular type of social revolution may occur in a country of interest. Each narrative of how such a revolution could come to pass would result in at least one hypothesis regarding the links between the many variables of interest. These hypotheses may then be tested against historical data or used to develop new kinds of data collection methods (discussed further in the next section). Finally, scenario analysis helps to explore completely new theoretical projects in a deductive way, whereas a great deal of qualitative work in political science tends to be inductive from the case study method. The use of scenario analysis may help scholars to pursue an “abductive,” or hybrid, method of theory building that draws on both deductive reasoning and insights from cases (Mayer and Pirri 1995). For example, a data-poor research subject, such as how states may respond to computer network attack, has few historical precedents (Mahnken 2011; Rid 2012). If a researcher were interested in identifying the circumstances under which states are more likely to resort to violence in response to cyber attack, he would be confounded by the problem that never in history has a state responded with violence to such an attack. Scenario analysis beginning with the value of violent counter-attack on the dependent variable (the DV being a state's strategy choice) would help the researcher to deduce likely circumstances under which such an outcome may occur. Historical analysis, such as regarding other kinds of information threats, would be helpful for such a project, but the differences between cyber and other kinds of information transmission would result in an incomplete causal narrative based on inductive reasoning alone. Data-Poor Research Topics Scenarios are a useful method for theory building and research design for topics that, despite being of high importance, lack an empirical base. The best example of this type of research is scholarship on nuclear warfare. An enormous literature evolved during the Cold War regarding how a nuclear war might be fought and how escalation dynamics might occur (Kahn 1962; Brown and Mahnken 2011). This literature was based almost exclusively on future counterfactuals, as there were no nuclear wars to study and a very low “n”—consisting of the Cuban Missile Crisis and very few other crises—for publicly acknowledged “close calls” (Sagan 1995). Indeed, in our survey of the use of scenarios in the discipline, more than 25% were about nuclear warfare. Other topics that are of high importance but have a very low or zero “n” include great-power war, global epidemics, climate change, large-scale cyber attack, and weapon of mass destruction terrorism. The points made earlier regarding the identification of new variables and hypotheses are relevant here. In addition to these advantages to new research topics, scenario analysis helps to identify new sources of data. This is partially because scenarios help to identify new independent variables, thus leading the researcher to think about how to measure their values, but also by helping him to think of proxies for measurement when direct observation is not possible. For instance, a day-after analysis of a scenario of interest would cause the researcher to ask what he would have needed to know to predict the occurrence of the future counterfactuals and in turn help the researcher to think about ways in which the discipline could identify that low-probability process if it begins to happen in the real world.

#### Analysis of cyberspace is crucial — our scholarship is part of an iterative process that enables scholars and policymakers to halt future cyberwars

Demchak 14 — Chris C. Demchak Codirector, Center for Cyber Conflict Studies (C3S) United States Naval War College Newport, RI, USA Jan-Frederik Kremer · Benedikt Müller Editors 1 3 Cyberspace and International Relations Theory, Prospects and Challenges

In one further area of note, this book captures several debates as they stand today, as well as possibly new elements of an emergent lexicon. The chapters with calls for “norms” to be developed and, by inference, imposed by the senior nations of the global deeply cybered community of nations such as the US are part of a widely circulating variety of arguments about how and who might best nurture a less conflictual cybered international system. It is to be expected that this book would reflect those discussions. Several interesting chapters, however, offer new terms useful in decomposing the cognitive and structural complexity of cybered conflict. If the terms capture a complex process in a short form or image such as “lawfare7 ” or “cyber Westphalia,8 ” then a form of ‘semantic infiltration’ slowly alters the perceptions of scholars and activists alike and open up cognitive opportunities for new theorization and new strategic discussions. In particular, Matthew Crosston (“Phreak the Speak: the Flawed Communications within Cyber Intelligentsia”) offers the term, a “Chinese knowledge wall,” to capture the enduring dichotomy between the technically literate and the political systems focused scholars and practitioners long noted by the scholars of the large-scale socio-technical systems (LTS) literature such as Mayntz and Hughes, Comfort, and LaPorte, among others9 . Crosston argues that this dichotomy is particularly influential in an increasingly conflictual cybered international system because the intellectual and cognitive barriers also inhibit progressive cooperation between domestic communities, and inevitably between nations

#### Policy debates over antitrust are valuable

Waller & Morse 20, \*John Paul Stevens Chair in Competition Law; Professor and Director, Institute for Consumer Antitrust Studies, Loyola University Chicago School of Law \*\*J.D. Expected 2021, Loyola University Chicago School of Law (\*Spencer Weber Waller \*\*Jacob Morse, 7-26-2020, "The Political Face of Antitrust," Brooklyn Journal of Corporate, Financial, and Commercial Law, https://ssrn.com/abstract=3660946)

IV. Antitrust in Civil Society

Competition issues are also part of the general civic discourse separate from the campaign rhetoric and legislative proposals offered by politicians. This is also a significant sign that antitrust has begun to be an important source of small “p” politics that engages substantial segments of the public at large. One example is the increased number of non-technical books intended for a lay audience that deal with the role of antitrust in a healthy economy and democracy. Recent and forthcoming books dealing with these themes include Tim Wu’s “The Curse of Bigness,”109 Matt Stoller’s “Goliath,”110 Maurice Stucke and Ariel Ezrachi’s “Competition Overdose,”111 Zephyr Teachout’s “Break ‘em Up,”112 and David Dayan’s “Monopolized.”113 On the academic side, there are a plethora of government and NGO studies of competition policy on digital competition114 and new works are flourishing which explore the broader ramifications of antitrust and competition in society.115 Long form and more mass-market journalism have also taken up the mantle of exploring the role of antitrust and competition policy. Such diverse magazines as The Atlantic,116 Time, 117 New Republic,118 American Prospect,119 Rolling Stone,120 New York Times magazine,121 Variety,122 National Review, 123 Foreign Policy,124 and other policy and opinion magazines have all run recent stories or profiles of individuals involved in antitrust issues. Before the COVID-19 pandemic effectively monopolized press coverage in the United States, there were thirty-three antitrust related stories on the front page of the New York Times or the front page of its business section over a three-month period in late 2019. 125 A majority of the stories focused on tech giants such as Apple, Microsoft, Google, Amazon, and Facebook.126 In addition, the New York Times also covered stories about mergers, merger policy, local issues such as the Chicago taxi market, and various smaller industries.127 This is separate from coverage during the same period of campaign issues and candidate statements relating to the field. A similar increase in coverage during this same period can be observed anecdotally in more business-oriented publications like Forbes, Barron’s, Wired, and the Wall Street Journal; general newspapers like USA Today, Washington Post, and Huffington Post; more local newspapers; as well as radio and television.128 Web pages and social media accounts on these issues have similarly proliferated on all ideological perspectives.129 Lobbying and public policy groups are growing in number and influence. Beyond the traditional trade associations and general think tanks there are now a number of active groups with antitrust as a large part of their focus. These include the Open Markets Institute, 130 American Antitrust Institute, 131 Anti-Monopoly Fund,132 Institute for Self-Reliance,133 Public Citizen,134 Public Knowledge,135 Demos, 136 and the International Center for Law and Economics.137 At the more technical legal end of the debate, antitrust is similarly flourishing as a field. One sees increased law school hiring in the field for the first time in decades. Academic institutes and centers abound with a wide variety of perspectives ranging from libertarian to enforcement oriented.138 Most major antitrust cases now feature multiple amicus briefs from legal and economic experts on both sides of an issue both in the Supreme Court or the Courts of Appeals.139

Conclusion

Antitrust has always been political in nature. Antitrust law provides broad legal commands dealing with how governments and private individuals can challenge different types of market behavior. In this way, antitrust has not changed. Antitrust will never take the place of sports, the Dow Jones index, or the weather for conversation at the breakfast table, but it has become a meaningful part of the political and policy debate for candidates, the legislature, and important segments of civil society. What has changed, however, is the degree that antitrust has reentered the political arena. Once mostly the domain of technocrats, antitrust issues have been proposed and debated by Presidential candidates, political parties, legislators, pundits, journalists, lobby groups, and voters alike. There are also a flurry of serious proposals and investigations that would make significant changes to the current system if adopted. This is all to the good. Even if none of the current proposals come to fruition, the antitrust debate is part of a broader engagement with political economy issues dealing with fundamental concerns such as economic concentration, globalization, income inequality, social and racial justice, and even recently the proper response to the COVID-19 emergency. The many proposals, initiatives, and pressure groups represent at a minimum the return of antitrust as part of the progressive agenda.

# 2AC

## ADV---Cybersecurity

### 2AC---!---Cyber

### 2AC---AT: Circumvention

#### Their evidence says congressional regulation fails, but courts can succeed because of expertise

JOHN J. VECCHIONE et al [KU BLUE], Senior Litigation Counsel @ Cause of Action, MICHAEL PEPSON JESSICA THOMPSON, ’19, CAUSE OF ACTION INSTITUTE BRIEF OF AMICUS CURIAE CAUSE OF ACTION INSTITUTE IN SUPPORT OF DEFENDANT-APPELLANT QUALCOMM INCORPORATED https://causeofaction.org/wp-content/uploads/2019/09/CoA-Inst.-Amicus-Br.-FTC-v.-Qualcomm-No.-19-16122.pdf

1. FTC Lacks Intellectual Property Expertise

Under Billing, a “need for [industry]-related expertise” to effectively regulate, 551 U.S. at 283, 285, weighs in favor of preclusion. Where permitting two separate regulatory regimes undermines consistency and creates a risk of arbitrary enforcement, see id. at 281-82, conflict is more likely. So too here. Effective administration of patent law requires deep understanding of the relevant technology and the economics of innovation—an expertise the USPTO, ITC, and the Federal Circuit have developed. See Sipe, supra, at 460-63. By contrast, FTC is a generalist agency. “It is…a difficult task for an antitrust regulator or court to identify and distinguish anticompetitive patent licenses from neutral or welfare-increasing behavior.”23

#### Courts are experienced and competent at calculating fair royalties.

Cary et al. 08, \*George Cary is a partner in the Washington office of Cleary Gottlieb Steen & Hamilton LLP. He is a former Deputy Director of the Federal Trade Commission's Bureau of Competition and 1976 graduate of the Boalt Hall School of Law at the University of California-Berkeley. \*Larry Work-Dembowski is an associate in the Washington office of Cleary Gottlieb Steen & Hamilton LLP and a 2002 graduate of the Georgetown University Law Center. \*Paul Hayes is an associate in the Washington office of Cleary Gottlieb Steen & Hamilton LLP and a 2001 graduate of the New York University School of Law; (“Antitrust Implications of Abuse of Standard-Setting”, 15 GEO. Mason L. REV. 1241 (2008))

Although evaluation of FRAND commitments and licensing terms can be complex and fact-intensive, there should be no doubt that the courts and enforcement agencies are competent to apply antitrust law to deceptive FRAND commitments. Assessing whether a licensor has complied with its FRAND obligations does not require courts or agencies to make any determinations that they do not already commonly make in antitrust and intellectual property cases. Courts routinely calculate "reasonable royalties" in the patent litigation context 1 ' and compare the "but for" competitive market to the market in which a restraint of competition exists in order to determine damages in the antitrust context. 4 ' In assessing whether a licensor has met its FRAND obligations, a court would engage in similar calculations; it would compare the royalties charged in the ex post market to its assessment of what royalties would have prevailed in the competitive ex ante market.'43 In determining what royalties would have prevailed ex ante, a court would likely consider, among other things, the available alternatives to the technology at issue, the royalties charged to licensees practicing other standards for comparable technologies, and the royalties charged to licensees for comparable technologies in industries where there are no standards or FRAND commitments. Although this may be a demanding task in some cases, it is necessary because the alternative-concluding that FRAND obligations cannot be defined or enforced by the courts-would render FRAND obligations meaningless, would allow unfettered exercise of monopoly power by essential patent holders, and would cause debilitating un- certainty in the standard-setting process.

### 2AC---AT: Patent Law

#### SSO interests do not align with consumers. Contract law is an insufficient proxy for securing competition.

Speegle 12, \*Adam Speegle, J.D., (May 2012, “Antitrust Rulemaking as a Solution to Abuse on the Standard-Setting Process Setting Process”, https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1128&context=mlr)

Even assuming that SSO members are willing and able to engage in litigation with a firm attempting patent holdup, consumer welfare takes a backseat to the members' financial considerations.3 8 Because the incentives of the SSO members do not align with those of consumers, enforcement actions by firms in the private sector cannot be relied on to adequately protect consumers. 39 This concept is illustrated by a practice known as injunction threats, in which a patent holder threatens to bring an injunction against a manufacturer for violating its patent unless the manufacturer pays a substantial royalty.4 ° While the patent holder's threat may have questionable legal footing, the manufacturer will often pay the royalty instead of engaging in extended litigation.4 This happens for several reasons. First, the manufacturer has a disincentive to engage a patent holder in litigation because the manufacturer will bear the cost of the litigation, the result of which could benefit competitors. 42 Companies will tend to pay the royalty and wait for another company to challenge the practice. 43 Second, the costs associated with challenging injunction threats may be substantial." On top of ordinary litigation costs, if the manufacturer has already begun making and distributing goods based on the patented technology, a potential preliminary injunction could have a devastating effect on its business.4 5 While engaging a patent holder in litigation may collaterally benefit consumers in that increased royalties are not passed through to the price of the ultimate product, this benefit does not tip the scales in favor of manufacturers pursuing such a path.' Thus, reliance on litigation by SSO members or other third parties will not provide a complete solution to patent holdup, as these parties serve as poor proxies for consumers.

### 2AC---AT: SEP

## Framework

### 2AC---AT: FW

#### They’ve flinched:

#### Pessimism is wrong

Wise, their author, 8, Director of the newly-formed Association for White Anti-Racist Education (AWARE) and the author of: White Like Me: Reflections on Race from a Privileged Son (Tim Wise, 2008, “Some Cyanide to Go With That Whine? Obama's Victory and the Rage of the Barbiturate Left,” <http://www.zmag.org/znet/viewArticle/19756>)

Now, in the wake of Barack Obama's victory these barbiturate leftists are back in full effect, lecturing the rest of us about how naive we are for having any confidence whatsoever in him, or for voting at all, since "the Democrats and Republicans are all the same," and he supports FISA and the war with Afghanistan, and all kinds of other messed up policies just like many on the right. Those of us who find any significance in the election of a man of color in a nation founded on white supremacy are fools who "drank the kool-aid," unlike they, whose clear-headed radical consciousness leads them to recognize the superior morality of Ralph Nader, or the pure "scientific wisdom of chairman Bob Avakian," or the intellectual profundity of their favorite graffiti bomb: "If voting changed anything it would be illegal." Yeah, and if body piercings and anarchy tats changed anything, they would be too, and then what would some folks do to be "different?" (Note: there is nothing wrong with either type of adornment, but getting either or both doesn't make you a revolutionary, any more than voting, that's all I'm saying). These are people who think being agitators is about pissing people off more than reaching out to them. So they pull out their "Buck Fush" signs at their repetitively irrelevant antiwar demonstrations, or their posters with W sporting a Hitler mustache, because that tends to work so well at convincing folks to oppose the slaughter in Iraq. But effectiveness isn't what matters to them. What matters to them is raging against the machine for the sake of rage itself. Their message is simple: everything sucks, the earth is doomed, all cops are brutal, all soldiers are baby-killers, all people who work for corporations are evil, blah, blah, blah, right on down the line. It's as if much of the left has become co-dependent with despondency, addicted to its own isolation, and enamored of its moral purity and unwillingness to work with mere liberals. In the name of ideological asceticism, they spurn the hard work of movement building and inspiring others to join the struggle, snicker at those foolish enough to not understand or appreciate their superior philosophical constructs, and then act shocked when their movements and groups accomplish exactly nothing. But honestly, who wants to join a movement filled with people who look down on you as a sucker? If we on the left want those liberals to join the struggle for social justice and liberation, we're going to have to meet people where they are, not where Bakunin would want them to be. For those who can't get excited about Obama, so be it, but at least realize that there are millions of people who, for whatever reason, are; people who are mobilized and active, and that energy is looking for an outlet. Odds are, that outlet won't be the Obama administration, since few of them will actually land jobs with it. So that leaves activist formations, community groups and grass-roots struggles. That leaves, in short, us. Just as young people inspired by the center-right JFK candidacy in 1960 ultimately moved well beyond him on their way to the left and made up many of the most committed and effective activists of the 60s and early 70s, so too can such growth occur now among the Obama faithful. But not if we write them off. At some point, the left will have to relinquish its love affair with marginalization. We'll have to stop behaving like those people who have a favorite band they love, and even damn near worship, until that day when the band actually begins to sell a lot of records and gain a measure of popularity, at which point they now suck and have obviously sold out: the idea being that if people like you, you must not be doing anything important, and that obscurity is the true measure of integrity. Deconstructing the psychological issues at the root of such a pose is well above my pay grade, but I'm sure would prove fascinating. The simple fact is, people are inspired by Obama not because they view him as especially progressive per se (except in relation to some of the more retrograde policies of the current president, and in relation to where they feel, rightly, McCain/Palin would have led us), but because most folks respond to optimism, however ill-defined it may be. This is what the Reaganites understood, and for that matter it's what Martin Luther King Jr. and the civil rights movement knew too. It wasn't anger and pessimism that broke the back of formal apartheid in the south, but rather, hope, and a belief in the fundamental decency of people to make a change if confronted by the yawning chasm between their professed national ideals and the bleak national reality. In other words, what the 60s freedom struggle took for granted, but which the cynical barbiturate left refuses to concede, is the basic goodness of the people of this nation, and the ability of the nation, for all of its faults (and they are legion) to change. Look at pictures of the freedom riders in 1961, or the volunteers during Freedom Summer of 1964 and notice the dramatic difference between them and some of the seething radicals of today--whose radicalism is almost entirely about style and image more than actual analysis and movement building. In the case of the former, even as they stared down mobs intent on injuring or killing them, and even as they knew they might be murdered, they smiled, they laughed, they sang, they found joy. In the case of the latter, one most often notices an almost permanent scowl, a dour and depressing affect devoid of happiness, unable to appreciate life until the state is smashed altogether and everyone is subsisting on a diet of wheatgrass, bean curd and tempeh.

#### Wise’s reliance on binaries is essentialist, while his account of whiteness is wrong

Martin 10, anti-racist, feminist blogger and freelancer (Renee Martin, 11-29-2010, The Limitations of Tim Wise, <http://www.womanist-musings.com/2010/11/limitations-of-tim-wise.html>)

As a Black woman, I am very aware that I am not Wise's target audience, in fact, he seeks to exploit my experience for his own financial gain, rather than to deeply educate those that read his books. My number one criticism of Wise, is his continual essentialism regarding a Black identity. Even though I understand his book was meant to be a 101 primer to those not aware of how Whiteness and indeed race operates in the U.S., his inability, or perhaps outright failure would be more accurate, to include an intersectional approach reduces what it means to be of color in a North American context. Black people belong in various categories: we are disabled, TLBG, poor, wealthy, educated, TAB, religious, non religious, male and female, gender queer etc,. To make a definitive description of how Black people experience race, without explaining that such marginalization quite often multiplies oppression is not only irresponsible, it erases members of the Black community to present a single mendacious narrative. One really glaring example is the complete erasure of trans women of colour that die each year. Race absolutely effects who lives and who dies, and yet Wise, to my knowledge has yet to raise this issue. Wise also has a tendency to reduce race relations to a Black/White binary. To be of colour in the U.S. is to be not White of non European descent. With the exception of a small passage on the fallacies in Disney's Pocahontas, Wise mainly framed racism as something Whites do to Blacks, rather than Whiteness as an institution that is harmful to every single person of colour. This is erasure and it ignores the hierarchies of power that support Whiteness, as well as ensures that people of colour are constantly fixated on each other, rather than united to bring an end to White supremacy. Social justice is hard work and it demands a full-time commitment and therefore, I completely understand when someone attempts to earn a living, even as they raise awareness to the multiple issues that plague our planet. It is highly problematic that a White man is earning a substantial living talking about the way that race effects people of colour. Wise of course covers this by discussing Whiteness, but the truth of the matter is, that you cannot talk about Whiteness without examining people of colour. He is essentially profiting from hundred of years of our history and taking on an expert status that is denied people of colour when we discuss our lived experiences. His very existence as White, educated male of class, TAB, cisgender, heterosexual privilege, means that he is affirming much of the very narrative that he seeks deconstruct. Wise makes White people feel safe. He gives them the appropriate liberal spin that never expects them to seek truth via the people most impacted by race. Each chapter of his book began with a James Baldwin quote, proving that people of colour exist for the purposes of appropriation, but never really to interact with, unless one is in a leadership role. One of the main problems with Wise's work is that it does not encourage those researching anti-racism to seek out the opinions of people of colour, thus once again turning Whiteness into the arbitrator. This normalizes oppression and further supports White supremacy. Wise does encourage readers to take on a subordinate role, but how believable is that when he continually fails to do so himself. Wise claims that it is his right to be forthright about race because he is fighting to end White supremacy,which he sees as harmful, not only to himself but to all people, but using the operating status of Whiteness to fight the battle cannot possibly disarm, much less eradicate this sickness. In the end, I think that Wise is very well aware that what he has to say has already been said and in fact argued infinitely better by people of colour. To really challenge privilege, one must first learn from the people that it impacts the most. Depending on Tim Wise to teach you about race means that you are not ready to move out of your comfort zone and really see racism for the pure evil that it is.

#### Forward looking claims about how the world should be propels action against anti-blackness and builds praxis

Yancy, their author, 13, Professor of Philosophy, Duquesne University (George Yancy, 2013, “Introduction: Black Philosophy and the Crucible of Lived History,” The Black Scholar, Volume 43, Number 4, Winter 2013, pages 5-10)

Although above I point to the middle passage as the matrix in terms of which black identity is shaped, we must be cognizant of how black identity and black subjectivity can be erroneously tethered to that moment in time and physical space, which then raises the issue of how a specific black historical narrative can function monolithically and thus exclude those black bodies that don't narrativize the middle passage in the same way or even at all. While I will not pursue this issue here, I want to be clear that there is a diverse "terrain of blackness" in terms of the changing landscape and meaning of blackness and that this change impacts differential experiences for those who consider themselves black people. Indeed, such differential experiences have an impact on how we think about the dynamics of black identity and black philosophizing, and the latter's key normative assumptions, modalities, and different morphologies of questions and responses that emerge. My point is to remain critically cognizant of the ways in which I privilege the middle passage and how that privileging might function as a historical gap for black people who nevertheless see themselves as black and yet whose experiences are shaped differently, though not incommensurably vis-à-vis other black people who contend with anti-black racism. Black philosophy and its role are fundamentally linked with existential struggle. The lived experiences of struggle and resistance (etymologically, "to take a stand") speak to the fact that the social ontological structure of the world is not a metaphysical fait accompli. Black philosophy acknowledges its historical conditionality and emergence against the backdrop of white racism, violence, colonialism, dehumanization, enslavement, oppression, and objectification. It recognizes this backdrop as constituted through lived embodiment and configurations of thought and action that were not necessary, but that are predicated upon contingent sites of power and hegemony that are linked to oppressive ideologies and the possession of material power to superimpose such oppressive ideologies. Hence, relevant to black philosophy is its clarion call: ''The world is not as it ought to be!" It is the power of "ought" that points to the openness of human history, agency, and counter-hegemonic praxis. The "ought" implies slippage, excess, lacunae, and the capacity to create. The subtext here is that one can reconfigure the world, reshape its direction, undo its normative repetitions, and create new and ever freeing forms of political formation, relationality, and performance. The role of black philosophy, then, having its point of origin within a matrix of oppression, even as this oppression was/is diasporic, is antagonistic and iconoclastic; indeed, resistant to claims of philosophical universality that are actually forms of discourse that are predicated upon a philosophical anthropology that is, in this case, underwritten by whiteness as the transcendental norm and that valorizes its vision of the world and the meaning of humanity at the exclusion of others. Hence, to engage in black philosophy on conceptual terms set forth here is to affirm one's humanity in the face of those who deem you a sub-person, ersatz, ontologically nugatory.

#### No link: we aren’t role-playing, but a normative endorsement of a specific political action

#### They link: the alt is an endorsement of a non-personal strategy, which should trigger the “distancing” their ev’s about

## Critique

### 1

#### Pragmatic hope reinvigorates communities, whereas spiritual faith causes divisions ⁠— only the 1AC prevents the internalization of political failure

⁠— AT: Sullivan

⁠— AT: Warren

Stitzlein 18, Professor, University of Cincinnati School of Education (Sarah M. Stitzlein, 2018, "Hoping and Democracy." Contemporary Pragmatis, 15: pages 228-250)

What ought I hope for? This question guides our pursuit of the good life and its answer is often shaped by our social, political, and educational experiences. We aren’t born with ready-made hopes; rather, we shape them through our interactions with others, our growing sense of what is possible as we learn about our environment, and our experiments with the world to see what we can do within it and to change it. Other people play an important role in this process, especially through institutions like schools, social arrangements like families, and political practices like democracy. They shape the traditions and expectations we inherit, as well as the ways in which we test, challenge, and revise what has been passed on to us. Despite this, hope is too often described in individualist terms that fail to encapsulate the full process of hoping and its potential impact on shared living. Many theologians link hope with an individual’s faith in a deity who will act on his or her behalf, 1 some philosophers employ a narrow understanding of hope as an individual’s desire for an outcome in the face of uncertainty, 2 while many more psychologists describe hope as an individual’s use of willpower and “waypower” to achieve clear goals. 3 Instead, I will offer a pragmatist account of hope, which is firmly rooted in the experiences of individuals and grows out of real life circumstances, yet cannot be disconnected from social and political life. 4 I extend my account to show how a pragmatist view of hope is necessarily connected to other people and can be used to enrich our experiences in communities. Moreover, such hope can help us to better face current political struggles and social problems, all the while building a democratic identity together. 5 In this article, I will explain how pragmatism offers an enhanced understanding of hope and its role in our lives together. To examine the ways in which shared hoping and the shared content of our hopes shape our identity and our work together in democracy, I consider both how and what we hope. Unlike other accounts of hope that are largely divorced from life’s circumstances, such as theological accounts that direct our attention to deities and psychological accounts that tell us we must hope for our goals regardless of real world constraints, pragmatist hope is noteworthy because it is firmly rooted in reality. 6 Moreover, a pragmatist account addresses some of the current obstacles we face in American democracy and is capable of transforming or improving them. Perhaps more importantly, such hope can be directly and indirectly cultivated within citizens, thereby offering a feasible way that democratic life can be strengthened.

1 Present Context

Before looking at hope in detail, let’s briefly first take stock of current conditions that relate to hopelessness in personal and political life. In pragmatist spirit, the account I offer here must attend to real conditions. Unfortunately, these are conditions where hope is struggling, where democracy may be in jeopardy, and where the dominant form of hope that we do see is largely privatized. To begin, a recent study using the World Values Survey and other polling sources finds that democratic citizens have “become more cynical about the value of democracy as a political system, less hopeful that anything they do might influence public policy, and more willing to express support for authoritarian alternatives.” 7 Those citizens have increasingly withdrawn from democratic participation, whether that be through formal institutions or alternatives in the public or civic spheres, such as joining in movements or protests. There has been a dramatic shift in how the wealthy view democracy, with 16 percent of them now believing that military rule is a better way of living and an astounding 35 percent of rich young Americans holding such a view. 8 There are likely many factors impacting this current state of affairs and I will touch on a few here. 9 First, in terms of hope most overtly, Alan Mittleman rightly notes that “the legitimacy of politics is damaged in proportion to its failure to fulfil the hopes it has engendered.” 10 Indeed, several recent American candidates ran on messages of hope and yet the visions evoked have often failed to be fulfilled in reality, crushing the heightened expectations of citizens. Politicians often use the rhetoric of hope, but they tend to distort what hope really is and what it requires of citizens, as I will explain later. Instead, they make reference to the supposed destiny of the nation with God as its backer. Or, as in the cases of Barack Obama and Donald Trump, some citizens place their hope in the leader himself, invoking a messianic figure. These forms of hope entail no more citizen action than, perhaps, donating to a campaign or wearing an iconic t-shirt proclaiming “hope.” Instead, I will argue that, rather than passively relying on the hope promised by politicians, citizens must participate in shaping and fulfilling hope, making such hope more genuine and robust. Second, structural violence and inequality, common amongst poor and racial minority communities in America, has wreaked havoc on hope. In some cases, it has eroded hope. 11 In others it has rendered hope exhausting, 12

[footnote 12 begins]

Calvin Warren, “Black Nihilism and the Politics of Hope,” cr: The New Centennial Review, 15 (2015), pp. 215–248. Shannon Sullivan, “Setting aside hope: A pragmatist approach to racial justice,” in Pragmatism and Justice, ed. by Susan Dielman, David Rondel, and Christopher Voparil (New York: Oxford University Press, 2017).

[footnote 12 ends]

with marginalized citizens told that they must never give up hope and that they must keep trying to earn a better life for themselves, in part through improving their own character regardless of the stagnant harmful practices of others. Many of those citizens are left either nihilistically without hope or perpetually chasing a vision of justice that is (perhaps sometimes intentionally kept) out of reach. 13

[footnote 13 begins]

Calvin Warren, “Black Nihilism and the Politics of Hope,” cr: The New Centennial Review, 15 (2015): 215–248.

[footnote 13 ends]

I intend to describe a form of hope that is more sustainable and more attuned to the real conditions of life that we can control and others where we have limited control. Third, citizenship in America has increasingly become centered on individuals, personal responsibility, entrepreneurship, and private success. Historical accounts of rugged individualism have now joined forces with calls to educate children in grit and expectations that one will fight to earn one’s position and goods in a competitive marketplace. 14 This environment lacks trust in others and discourages collaborative effort. Often those who have not been successful in the past, or do not see viable avenues for being so in the future, fatalistically accept these conditions and become passive about countering or changing them. While others who have enough resources and power to be comfortable with the present conditions, indulge in the privilege of being cynical or apathetic. Some spread these states of hopelessness or jaded negativity through memes and messages on social media, especially about the role and effectiveness of government, rendering cynicism a collective practice. 15 Cynics, left believing that their political efforts are useless or ineffective and perhaps that everyone acts on self-interest, are left to look out merely for themselves, without a sense of responsibility to act on behalf of themselves and others. Indeed, cynics may mock others who do not hold such views as naïve and out of touch with reality. Cynicism functions as a distancing maneuver, separating citizens from each other, from formal democratic institutions, and from civic organizations, where visions of an improved world and action to achieve it tend to occur. My notion of hope aims to span those divides. Finally, what is left of hope has become privatized. 16 This is exacerbated as neoliberalism continues to assert Margaret Thatcher’s claims, “There is no such thing as society, only individuals and families,” and “there is no alternative to the market.” Hope is reduced to a mere drive to achieve one’s own limited dreams, or those of one’s children, typically only through financial terms and material goods. When citizens are rendered isolated competitors, they lose the ability to detect social problems and the motivation to ameliorate them, especially if the effects on one’s self or family are not immediate. Economist Tyler Cowen describes these citizens as the new “complacent class,” who are content with the way things are as long as they are not directly harmed and as long as they can stay surrounded by people and things that confirm their experience of the world. In their complacency, the members of the complacent class are unable to “inspire an electorate with any kind of strong positive visions, other than some marginal adjustments.” 17 I aim to show how hope is better understand as a social and political endeavor that brings us into contact with others as we craft visions of the future. In sum, these changes in citizens’ lives and views debilitate individual citizens and democracy as a whole. They keep us from recognizing and solving collective problems and from leading better lives together. Citizens sit around waiting for reasons to hope, sometimes becoming swept up in campaign rhetoric when election cycles come around, rather than acknowledging that hope is generated through action as subjects working together, as I will argue. I will turn now to depict a pragmatist account of hope that can be formally cultivated in schools and informally in our lives together—a way of hoping together that may better support democratic life in these challenging times.

2 Pragmatist Hope

I offer here a pragmatist account of hope, largely based in the philosophy of John Dewey. Notably, Dewey himself does not provide such an account, even though hope underlies much of his work and was evident in his own personal life as he encountered considerable despair at the loss of two of his children and his wife, while also facing two world wars. I construct a view of hope from Dewey’s well-articulated elements of inquiry, growth, truth, meliorism, and habits. Pragmatism begins with the real and complicated conditions of our world. It brings together intelligent reflection with inquiry, habits, and action so that we can understand and change our environments to better align with our needs and desires. Hope plays an important role in that process.

Inquiry, Growth, and Truth

For Dewey, hope often arises within the midst of despair, when we have lost our way and are struggling to move forward. Dewey describes these moments as “indeterminate situations.” He turns to the process of inquiry via the empirical method to help us explore those situations, consider possible courses of action, and test out various solutions. It is inquiry that helps us to understand, act upon, and reconstruct our environments and our experiences so that we are able to move forward out of the indeterminate situation. In a richly cognitive and often social practice, inquiry invokes curiosity and problem solving to move us out of ruts. Indeed, this method combats the stagnation of fatalism by urging us to formulate and try out solutions. Growth describes how reconstructions of our experiences through inquiry develops physical, intellectual, and moral capacities, actualizing them and helping them inform one another so that they continue in a chain that enables one to live satisfactorily. We grow when we learn from inquiry into indeterminate situations and create ways to re-establish smooth living that carries us from one activity to the next. Many people wrongly assume that growth necessarily has an end—as if it were “movement toward a fixed goal.” 18 We tend to think of growth as only progression toward some specific outcome, such as mastering bicycle riding or graduating from high school. But this way of thinking tends to place the emphasis on the static terminus, rather than focusing on the process of growing as itself educative and worthwhile. Dewey’s alternative view of growth does not neatly and linearly move toward a fixed goal. Instead, he describes trajectories that are more complicated, often shifting with the environment. Moreover, holding onto a fixed goal may be undesirable because doing so employs a limited or possibly foreclosed vision of the future. Instead, as changes occur in one’s environment, Dewey asserts that people must continually inquire into moments of uncertainty and changing circumstances, develop new hypotheses about those situations, and revise their aims. Dewey works with what he calls “ends-in-view,” which are relatively close and feasible, even if difficult to achieve, rather than overarching goals at some final endpoint in the future. Those ends-in-view guide our decisions and hypotheses along the way, keeping us resourceful in the present. In Dewey’s words, the discovery of how things do occur makes it possible to conceive of their happening at will, and gives us a start on selecting and combining the conditions, the means, to command their happening…there must be a realistic study of actual conditions and the mode or law of natural event, in order to give the imagined or ideal object definite form and solid substance—to give it, in short, practicality and constitute it as a working end. 19 For Dewey, ends and means are intelligently considered in light of each other, with both being revisable, and neither abstracted from the other. Each fulfilled end-in-view sustains our hope by highlighting meaningful headway and directing our further action. Ends-in-view later become means to future ends, working in an ongoing continuum. This sustenance of hope differs from theological accounts which are difficult to sustain on faith alone and may leave believers frustrated at an apparent lack of action or improvement. It also differs from positive psychology and grit literature which tends to focus on large, far-off, and challenging goals that one holds tenaciously. Many people think of hope as goal-directed and future-oriented. While objects of hope for pragmatists may temporarily serve as ends-in-view, the practice of hope moves us forward through inquiry and experimentation as we pursue our complicated trajectory. It helps to unify our past, present, and future. Hope, then, is not just about a vision of the future, but rather a way of living in the present that is informed by the past and what is anticipated to come. Whereas utopian views of what could be may actually immobilize one and may exhaust one in the present, pragmatist hope is always tied to what one is doing and feasibly can do in the present, especially when equipped with knowledge of the past. Central to pragmatist philosophy, ideas become true insofar as they “work” for us, fruitfully combine our experiences, and lead us to further experiences that satisfy our needs. Pragmatists are concerned with the concrete differences in our lived experiences that an idea’s being true will make. Pragmatic truth expresses “the successful completing of a worthwhile leading.” 20 Unlike truth as a corresponding match between proposition and reality, pragmatist truth is something that occurs when the goals of human flourishing are satisfied, at least temporarily. Built into these criteria is consideration of the well-being of others, for successful leading through experiences almost always necessarily requires working and communicating with others. Additionally, the differences an idea will make are quite limited, and therefore less truthful, if relevant only to one person. While not a comprehensive vision of the good life, certain norms including equality and just communication are entailed both in these deliberations and the determination of truth. 21 We must consider how to flourish alongside others as we craft our ends-in-view. This differs considerably from other philosophical and psychological accounts of hope based on the desire of objects or states of affairs regardless of whether they are good for us or other people.

Meliorism

Pragmatists like Dewey recognize the difficulty of present circumstances, yet approach them practically, rather than idealistically, with thoughtful action, believing that circumstances can be improved. 22 Unlike simple optimists, however, they do not hold that the situation will necessarily work out for the best, but rather they believe people should make efforts to contribute to better outcomes. Such efforts are rarely undertaken alone, instead they are tied to others who are working together to solve problems. In the words of contemporary pragmatist Cornel West, “Optimism adopts the role of the spectator who surveys the evidence in order to infer that things are going to get better. Yet when we know that the evidence does not look good…Hope enacts the stance of the participant who actively struggles against the evidence.” 23 Meliorism entails action in the face of difficulties. Dewey sees hope as a way of living aligned with meliorism, “the idea that at least there is a sufficient basis of goodness in life and its conditions so that by thought and earnest effort we may constantly make better things.” 24 Meliorism is not a belief in inevitable progress, but rather a call to human action, especially in the midst of struggle and uncertainty. Dewey firmly argued that it would be foolish to believe that there is “an automatic and wholesale progress in human affairs,” insisting instead that betterment “depends upon deliberative human foresight and socially constructive work.” 25 Martin Luther King, a champion and practitioner of hope, was enshrined on the floor of Obama’s oval office with his phrase: “The arc of the moral universe is long, but it bends toward justice.” Importantly, given how many hopes fell flat under the messianic figure of Obama, King later explained in a pragmatist spirit of meliorism, “Human progress never rolls on wheels of inevitability; it comes through the tireless efforts of men willing to be co-workers with God, and without this hard work, time itself becomes an ally of the forces of social stagnation. We must use time creatively, in the knowledge that the time is always ripe to do right.” 26 We cannot wait until we have a clear picture of our final future goals; rather, we must act now in intelligent ways and through inquiry to bring about better conditions and, thereby, truth. 27 And we must be flexible to change and redirect our efforts as they unfold. Meliorism is an alternative to both pessimism and optimism. It cultivates hope, growth, and better worlds. For some pragmatists, like Colin Koopman, this meliorism-based hope is “the pragmatist affect par excellence: ‘hope is the mood of meliorism’ (27), ‘the characteristic attitude of pragmatism is hope’ (17).” 28

### 2

### 3 and 4

#### They said metatheory ⁠— that shirks contestation for the sake of abstraction, which causes political failure and obscures their investment in every structured they’ve critiqued

Mitchell 20, Associate Professor and Feminist Studies Graduate Director, Critical Race and Ethnic Studies Department, UC Santa Cruz (Nick Mitchell, 2020, “The View from Nowhere: On Frank Wilderson’s Afropessimism,” <https://spectrejournal.com/the-view-from-nowhere/>)

\*edited for language

Afropessimism trains its reader in the leaps and bounds of faith necessary for this notion to be entertained. Though Wilderson sheds considerable ink critiquing nonBlacks for analogizing their condition to Black folks, his own understanding of his Blackness gets established through analogy, too. Early on in the book, a young Frank is with his grandmother. They are watching the rebellions in the wake of the assassination of Martin Luther King, Jr. Their conversation reads as if a dress rehearsal for Afropessimist philosophy. When, prompted by the billowing smoke and the scenes of looting, young Frank asks Grandmother Jules, “Why are we mad?” The reader is not prompted to question the integrity of the “we” that extends from the mansion in Kenwood—the well-heeled Minneapolis neighborhood that the Wildersons are integrating—to the unspecified Black postindustrial ~~ghetto~~ [zone] that “could have been anywhere and everywhere.”7 Kenwood is nowhere on that map, but it’s a nowhere that extends, by way of a gaze accompanying the presumption of shared affect, to a Black anywhere and everywhere. The presumption of shared feeling does the work of analogy without calling attention to it. When young Frank’s grandmother shouts “Go ahead, son!” at a man depicted on television as a looter, it doesn’t strike the budding Afropessimist as theoretically significant that the looter can neither hear nor speak back. The gap between Frank and Grandmother Jules on one side, and the looter on the other, gets bridged through affective projection, not a solidaristic expression among equals. For Wilderson, the defining features of the violence foundational to modern slavery (and therefore antiBlackness) are its gratuitousness, its freedom from having to serve any rational purpose, and, above all, its personal nature. (I’ll elaborate on this final point below.) Such a theory of violence makes for a situation where a reader who is left skeptical about the conclusions Wilderson draws as a narrator or theorist is encouraged to see herself [themselves] as sort of like Dr. Zhou—as someone unwilling or unable to face that nonsensical violence is precisely what makes Blackness. To insist that antiBlack violence make sense would be to impose onto it an ahistorical rationality. It would force antiBlack violence to be recognizable within the norms of violence that nonBlacks face. So, while there are moments when I questioned whether there might have been other plausible interpretations of many of the book’s pivotal scenes, part of the thrust, it would seem, is to challenge its reader to suspend disbelief. Gratuitous violence doesn’t make sense. That’s the point. It’s a hell of a rhetorical mechanism, and one of the reasons why I advocate for reading Afropessimism with a certain degree of care. Any theoretical formation with a self-defense mechanism that refashions those that disagree with it into a symptom of the problem it is diagnosing has most likely crossed the line from theory into theology. Like Marxists who reflexively label any criticism as petty bourgeois, or Lacanians anxious to read any pushback as the outcome of unconscious repression, there is no way to test it except on the terms that it has itself provided. At times it seems like Wilderson’s reading of the slave relation as a personal one turns the self into an upscaling mechanism. If second wave feminists insisted that the personal was political, Wilderson’s interpretive practice suggests that the personal is always already peculiar-institutional. It provides a means of refashioning one-on-one dynamics and interactions such that they become immediately available for generalization. Wilderson’s descriptions of the concrete seem overwhelmed by an apparent demand to represent people, in the first instance, on the model of archetypes. It is not simply that nonBlack people are always invested in the position of the master in some hazy or general way. Wilderson’s narrations indicate that nonBlack people are invested in the personal character of that relationship in such a way that makes him their slave, in particular.

THE DISAPPEARING STATE

This analytic practice of turning social relations between Black and nonBlack persons, formal and informal, into one organized in the first instance by the slave-master dualism has serious implications for Wilderson’s ability to assess complex relationships. In the art center, his co-worker Sameer, an immigrant from Palestine who seems to share with Frank an interest in revolutionary internationalist politics, is grieving. Sameer has just received news of the death of his cousin who, in a tragic accident, was trying to craft a bomb in Ramallah. As Sameer is relating his grief, he shares stories with Frank about life under settler occupation. Yet the account hinges on Sameer’s comment that, for the Palestinian under occupation confronted with Israeli troops, “shame and humiliation runs even deeper if the Israeli soldier is an Ethiopian Jew.” Wilderson is quick to dispense those questions of the complex and contradictory imbrications of racialization, religion, and nation. He instead makes Sameer’s expression of grief into one not only about Blackness, but about a Blackness that Wilderson, in spite of his geopolitical location, has an obvious and transparent claim to immediate understanding. That Sameer and Frank stand in for the possibility—now, more specifically, the impossibility—of Palestinian-Black solidarity simply goes without saying. Details of actual coalition building needn’t be fussed with. These proportions, and the idea that they can be generalized, must be treated as obvious or unspoken in order to offer the encounter its dramatic framing. With Sameer’s words, Wilderson explains, “The earth gave way. The thought that my place in the unconscious of Palestinians fighting for their freedom was the same dishonorable place I occupied in the minds of Whites in America and Israel chilled me.”8 The assumed personality of the slave relation offers a hair-trigger impulse to abstraction and analogy. With stunning quickness, it turns a state soldier into a slave and a suffering comrade into a theoretical occasion. As selves scale across space and time, they scale up in proportion: Sameer, in his grief, appears to offer unyielding access to a Palestinian collective unconscious that is already fixated on putting the slave in his place. As it scales, the Afropessimist practice of abstraction has to erase, or ignore, a lot of complicating details. The reader is not invited to consider the possibility that Sameer might have meant something quite different, that it might not make sense to analogize the racial organization in a different geopolitical context, or the significance of the fact that a Black person might participate in the consolidation of state power as anything other than its unwilling instrument. The Ethiopian soldier’s gun, for instance, is explained away in a dependent clause. But those who have embraced Afro-pessimism will likely not be swayed by anything I have said above. In the final instance, the Afropessimist imaginary is fueled by a confidence toward which it gestures but rarely states explicitly. The idea is that the virtue of Afropessimism consists in the fact that it does something important for Black people, that it allows Black people to speak deeply repressed truths about the social world, truths that make their nonBlack enemies and allies feel profoundly unsafe. My first response to this repressive hypo- thesis would of course be, “which Black people?” The second would be about the nature of the relationship between speech and action envisioned here. While many who embrace Afropessimist ideas imagine that doing so will animate a radical politics that can live beyond a kind of collective world-historical recognition of antiBlackness, that is not a confidence shared by its principal theorist. He is consistently vague: “[Afropessimism] makes us worthy of our suffering.” Or “Afropessimism is Black people at their best. . . [It] gives us the freedom to say out loud what we would other- wise whisper or deny: that no Blacks are in the world, but, by the same token, there is no world without Blacks.”9 Or, the virtue of the theory exists in the pleasure of scaling itself. Speaking of the relief of being in an all-Black group at a multiracial conference, Wilderson writes, I was able to see and feel how comforting it was for a room full of Black people to move between the spectacle of police violence, to the banality of microaggressions at work and in the classroom, to the experiences of chattel slavery as if the time and intensity of all three were the same.10 Extending the feel-good experience of this proto-Afropessimist scene of affirmation, for Wilderson, is the fact that no one asks any questions, inserts any uncertainty, or demands any specificity when group members talk about the contemporariness of chattel slavery. “Folks cried and laughed and hugged each other and called out loud for the end of the world. No one poured cold water on this by asking, What does that mean—the end of the world?”11 But when the all-Black group’s breakout session ends, they are at an impasse, because they are supposed to talk with their nonBlack “allies” about what happened. Eventually one member of the group suggests what will become their ultimate course of action: “We would go back in and refuse to speak with them. Not a protest, just a silent acknowledgement of the fact that we would not corrupt what we experienced with their demand for articulation between their grammar of suffering and ours.”12 Wilderson offers little insight into the process that led to this decision, partly because the point of the scene is to teach us to read silence in the Afropessimist register. Just as young Frank viewed Grandmother Jules laughing and yelling at the television, the reader is led, by the overwhelming sense of joy and relief in the scene, to read the absence of disagreement as the presence of assent. Silence, here, appears to affirm the criticality of Afropessimism.

THEORY—CRITIQUE—THEORY

In the book’s final pages, Frank tells a student who is visiting his office that “the thing that prevented most students from getting their heads around Afropessimism was the fact that it described a structural problem but offered no structural solution to that problem.”13 My read is different. It is not that Afropessimism offers no solution so much as it substitutes itself for one. It offers knowledge itself as the end, as a good that resides in the place that other theories would put the exhortation to practice—and in practice, to test the theory. This is something different than saying that, when it comes to Afropessimism’s political imaginary, there’s no there there. My point is that in the end, Afropessimism is a view from somewhere, and that somewhere is, perhaps all too obviously, the university. The place where all roads in Afropessimism ultimately lead, that place where theorizing is a valued mode of practice in and of itself, and where it does not need to be justified on any other terms. The modern university does not only enable the practice of diagnosing problems with no solutions to hand, and to develop critiques that do not open immediately onto strategies of redress; it enshrines the right to do so and valorizes the subject that does. Afropessimism claims to offer no sanctuary while its practitioner is in fact modeled on the privileged subject of Enlightenment humanism, which sought to liberate knowing from being judged by the actions it did or did not enable.

### Perm ⁠— 2AC

#### Perm: do both ⁠— endorses the plan and [\_\_\_\_\_] ⁠— it can overcome the aff OR fails inevitably

#### Perm do the plan and the alt in all non-mutually exclusive instances

#### Adding Afropessimistic view into the aff’s political project solves

Wilderson 20, (Frank B. Wilderson III, 4-7-2020, “Afropessimism,” pp. 14-15)

Afropessimism, then, is less of a theory and more of a metatheory: a critical project that, by deploying Blackness as a lens of interpretation, interrogates the unspoken, assumptive logic of Marxism, postcolonialism, psychoanalysis, and feminism through rigorous theoretical consideration of their properties and assumptive logic, such as their foundations, methods, form, and utility; and it does so, again, on a higher level of abstraction than the discourse and methods of the theories it interrogates. Again, Afropessimism is, in the main, more of a metatheory than a theory. It is pessimistic about the claims theories of liberation make when these theories try to explain Black suffering or when they analogize Black suffering with the suffering of other oppressed beings. It does this by unearthing and exposing the metaaporias, strewn like land mines in what these theories of so-called universal liberation hold to be true. If, as Afropessimism argues, Blacks are not Human subjects, but are instead structurally inert props, implements for the execution of White and non-Black fantasies and sadomasochistic pleasures, then this also means that, at a higher level of abstraction, the claims of universal humanity that the above theories all subscribe to are hobbled by a meta-aporia: a contradiction that manifests whenever one looks seriously at the structure of Black suffering in comparison to the presumed universal structure of all sentient beings. Again, Black people embody a meta-aporia for political thought and action— Black people are the wrench in the works.

### 5-6

#### Group last two cards:

#### 1 ⁠— their alt homogenizes black people in the US, which displaces pragmatic practices that challenge violence

Kline 17, PhD candidate at Rice (David Kline, 2017, “The Pragmatics of Resistance: Framing Anti-Blackness and the Limits of Political Ontology,” Critical Philosophy of Race, 5.1, Political Ontology and the Limitation of Social Analysis and Legitimate Praxis)

Wilderson’s critique of Agamben is certainly correct within the specific framework of a political ontology of racial positioning. His description of anti-Black antagonism shows a powerful macropolitical sedimentation of Black suffering in which Black bodies are ontologically frozen into (non-) beings that stand in absolute political distinction from those “who do not magnetize bullets” (Wilderson 2010, 80). In the same framework, Jared Sexton, whose work is very close to Wilderson’s, is also right when he shows how biopolitical thought—specifically the Agambenian form centered on questions of sovereignty—and its variant of “necropolitics” found in Mbembe has so often run aground on the figure of the slave (see Sexton 2010).5 Locating the reality of anti-Blackness wholly within this account of political ontology does provide an undeniably effective analysis of its violence and sedimentation over the modern world as a whole. However, in terms of a general structure, I understand Wilderson’s (and Sexton’s) political ontology to remain tied in form to Agamben’s even as it seemingly discounts it and therefore remains bound to some of the problems and limitations that beset such a formal structure, as I’ll discuss in a moment. Despite the critique of Agamben’s ontological blind spots regarding the extent to which Black suffering is non-analogous to non-black suffering, as I’ve tried to show, Wilderson keeps the basic contours of Agamben’s ontological structure in place, maintaining a formal political ontology that expands the bottom end of the binary structure so as to locate an absolute zero-point of political abjection within Black social death. To be clear, this is not to say that the difference between the content and historicity of Wilderson’s social death and Agamben’s bare life does not have profound implications for how political ontology is conceived or how questions of suffering and freedom are posed. Nor is it to say that a congruence of formal structure linking Agamben and Wilderson should mean that their respective projects are not radically differentiated and perhaps even opposed in terms of their broader implications and revelations. Rather, what I want to focus on is how the absolute prioritization of a formal ontological framework of autonomous and irreconcilable spheres of positionality—however descriptively or epistemologically accurate in terms of a regime of ontology and its corresponding macropolitics of anti-Blackness—ends up limiting a whole range of possible avenues of analysis that have their proper site within what Deleuze and Guattari describe as the micropolitical. The issue here is the distinction between the macropolitical (molar) and the micropolitical (molecular) fields of organization and becoming. Wilderson and Afro-pessimism in general privilege the macropolitical field in which Blackness is always already sedimented and rigidified into a political onto-logical position that prohibits movement and the possibility of what Fred Moten calls “fugitivity.” The absolute privileging of the macropolitical as the frame of analysis tends to bracket or overshadow the fact that “every politics is simultaneously a macropolitics and a micropolitics (Deleuze and Guattari 1987, 213). Where the macropolitical is structured around a politics of molarisation that immunizes itself from the threat of contingency and disruption, the micropolitical names the field in which local and singular points of connection produce the conditions for “lines of flight, which are molecular” (ibid., 216). The micropolitical field is where movement and resistance happens against or in excess of the macropolitical in ways not reducible to the kind of formal binary organization that Agamben and Wilderson’s political ontology prioritizes. Such resistance is not necessarily positive or emancipatory, as lines of flight name a contingency that always poses the risk that whatever develops can become “capable of the worst” (ibid., 205). However, within this contingency is also the possibility of creative lines and deterritorializations that provide possible means of positive escape from macropolitical molarisations. Focusing on Wilderson, his absolute prioritization of a political onto-logical structure in which the law relegates Black being into the singular position of social death happens, I contend, at the expense of two significant things that I am hesitant to bracket for the sake of prioritizing political ontology as the sole frame of reference for both analyzing anti-Black racism and thinking resistance within the racialized world. First, it short-circuits an analysis of power that might reveal not only how the practices, forms, and apparatuses of anti-Black racism have historically developed, changed, and reassembled/reterritorialized in relation to state power, national identity, philosophical discourse, biological discourse, political discourse, and so on—changes that, despite Wilderson’s claim that focusing on these things only “mystify” the question of ontology (Wilderson 2010, 10), surely have implications for how racial positioning is both thought and resisted in differing historical and socio-political contexts. To the extent that Blackness equals a singular ontological position within a macropolitical structure of antagonism, there is almost no room to bring in the spectrum and flow of social difference and contingency that no doubt spans across Black identity as a legitimate issue of analysis and as a site/sight for the possibility of a range of resisting practices. This bracketing of difference leads him to make some rather sweeping and opaquely abstract claims. For example, discussing a main character’s abortion in a prison cell in the 1976 film Bush Mama, Wilderson says, “Dorothy will abort her baby at the clinic or on the floor of her prison cell, not because she fights for—and either wins or loses—the right to do so, but because she is one of 35 million accumulated and fungible (owned and exchangeable) objects living among 230 million subjects—which is to say, her will is always already subsumed by the will of civil society” (Wilderson 2010, 128, italics mine). What I want to press here is how Wilderson’s statement, made in the sole frame of a totalizing political ontology overshadowing all other levels of sociality, flattens out the social difference within, and even the possibility of, a micropolitical social field of 35 million Black people living in the United States. Such a flattening reduces the optic of anti-Black racism as well as Black sociality to the frame of political ontology where Blackness remains stuck in a singular position of abjection. The result is a severe analytical limitation in terms of the way Blackness (as well as other racial positions) exists across an extremely wide field of sociality that is comprised of differing intensities of forces and relational modes between various institutional, political, socio-economic, religious, sexual, and other social conjunctures. Within Wilderson’s political ontological frame, it seems that these conjunctures are excluded—or at least bracketed—as having any bearing at all on how anti-Black power functions and is resisted across highly differentiated contexts. There is only the binary ontological distinction of Black and Human being; only a macropolitics of sedimented abjection. Furthermore, arriving at the second analytical expense of Wilderson’s prioritization of political ontology, I suggest that such a flattening of the social field of Blackness rigidly delimits what counts as legitimate political resistance. If the framework for thinking resistance and the possibility of creating another world is reduced to rigid ontological positions defined by the absolute power of the law, and if Black existence is understood only as ontologically fixed at the extreme zero point of social death without recourse to anything within its own position qua Blackness, then there is not much room for strategizing or even imagining resistance to anti-Blackness that is not wholly limited to expressions and events of radically apocalyptic political violence: the law is either destroyed entirely, or there is no freedom. This is not to say that I am necessarily against radical political violence or its use as an effective tactic. Nor is to say that I think the law should be left unchallenged in its total operation, but rather that there might be other and more pragmatically oriented practices of resistance that do not necessarily have the absolute destruction of the law as their immediate aim that should count as genuine resistance to anti-Blackness. For Wilderson, like Agamben, anything less than an absolute overturning of the order of things, the violent destruction and annihilation of the full structure of antagonisms, is deemed as “[having nothing] to do with Black liberation” (quoted in Zug 2010). Of course, the desire for the absolute overturning of the currently existing world, the decisive end of the existing world and the arrival of a new world in which “Blacks do not magnetize bullets” should be absolutely affirmed. Further, the severity and gratuitous nature of the macropolitics of anti-Blackness in relation to the possibility of a movement towards freedom should not be bracketed or displaced for the sake of appealing to any non-Black grammar of exploitation or alienation (Wilderson 2010, 142). The question I want to pose, however, is how the insistence on the absolute priority of framing this world within a rigid structure of formal ontological positions can only revert to what amounts to a kind of negative theological and eschatological blank horizon in which actually existing social sites and modes of resisting praxis are displaced and devalued by notions of whatever it is that might arrive from beyond. It seems that Wilderson, again, is close to Agamben on this point, whose ontological structure also severely delimits what might count as genuine resistance to the regime of sovereignty. As Dominick LaCapra points out regarding the possibility of liberation outside of Agamben’s formal ontological structure of bare life and sovereignty, A further enigmatic conjunction in Agamben is between pure possibility and the reduction of being to mere or naked life, for it is the emergence of mere naked life in accomplished nihilism that simultaneously generates, as a kind of miraculous antibody or creation ex nihilo, pure possibility or utterly blank utopianism not limited by the constraints of the past or by normative structures of any sort. (LaCapra 2009, 168) With life’s ontological reduction to the abjection of bare life or social death, the only possible way out, it seems, is the impossible possibility of what Agamben refers to as the “suspension of the suspension,” the laying aside of the distinction between bare life and political life, the “Shabbat of both animal and man” (Agamben 2003, 92). It is in this sense that Agamben offers, again in the words of LaCapra, a “negative theology in extremis . . . an empty utopianism of pure, unlimited possibility” (LaCapra 2009, 166). The result is a discounting and devaluing of other, perhaps more pragmatic and less eschatological, practices of resistance. With the “all or nothing” approach that posits anything less than the absolute suspension of the current state of things as unable to address the violence and abjection of bare life, there is not much left in which to appeal than a kind of apocalyptic, messianic, and contentless eschatological future space defined by whatever this world is not.

#### Prevents political alliances, divides communities, erases black/decolonial thought, and is biological essentialism

Wekker 20, Emeritus Professor of Gender and Ethnicity at Utrecht University in The Netherlands, social and cultural anthropologist, who attained her master's degree in 1981 from the University of Amsterdam, in 1992 she received a PhD from the University of California, Los Angeles (UCLA), with a doctoral dissertation on Afro‐Surinamese women's sexuality (Gloria Wekker, 11-21-2020, Afropessimism” review of Frank B. Wilderson III’s book Afropessimism,” European Journal of Women’s Studies, https://doi.org/10.1177/1350506820971224)

When the author Frank Wilderson III was recently asked in an interview to summarize his third book Afropessimism in one sentence, he replied: ‘With the narrative drive of a captivating novel and the intellectual rigor of critical theory, “Afropessimism” illustrates how black death is necessary for the material and psychic life of the human species’ (Williams, 2020). I partly agree with his characterization: Afropessimism is a mixture of memoir and theory, which intersect in almost every chapter, and the narrative part of this non-linear book does function as ‘captivating novel’. But with the second part of Wilderson’s characterization, namely ‘with the intellectual rigor of critical theory’ and his subsequent core argument about the death of Blacks, I cannot possibly agree. The compelling nature of Wilderson’s prose makes it tempting to overlook the shortcomings of his theorizations. In the end, I came to the conclusion that I find Afropessimism, as expressed in this book, loveless, hopeless and divisive. Moreover, this body of thought, although it claims otherwise, lapses into the old laziness of not being intersectional in any way.1 The insight Wilderson offers us into a contemporary Black boy’s and man’s life from a male perspective is rare these days and he paints his life, recent American political and social history, and his relationships with women with verve, sometimes conjuring up beautiful, vivid images. The book may, according to Vinson Cunningham (2020), be seen as a genre, termed ‘auto-theory’, an attempt to arrive at a philosophy by way of the self. Several African American academics, especially women, have taken up this exciting genre in recent years. A personal narrative is linked to a theoretical deepening of the important themes in a text, which, often have to do with Black death, with fungibility, the absolute substitutability and interchangeability of Black people. Christina Sharpe (2016) does this with In the Wake: On Blackness and Being and Saidiya Hartman (2007) had previously used the genre with Lose Your Mother: A Journey along the Atlantic Slave Route. Yet, Hartman (1997), like other authors, will have an axe to grind with Wilderson, because he derives all kinds of important insights and concepts from her work, especially from Scenes of Subjection; Terror, Slavery and Self-Making in Nineteenth Century America, which although he references her, also incorporates her into the current of Afropessimism, while she herself emphatically rejects that positioning (Royal Tropical Institute, personal communication, Amsterdam, October 2018).

African American academic thought

In this article, I will undertake a critical reading of Afropessimism, using an intersectional and Black feminist European perspective. First, I give some much-needed context. It exceeds the limitations of this article to give a comprehensive overview of the academic thought that Black America has produced, starting with the first Black sociologist William Edward Burghardt Du Bois (1868–1963), founder of the NAACP (National Association for the Advancement of Colored People), who, educated at Harvard and the Humboldt University in Berlin, was long associated with Atlanta University. His contributions to modern sociology are still not sufficiently appreciated. Whether it concerns the rewriting of American history during the Civil War and the period of Reconstruction, in which he takes as a starting point the important roles that Black people themselves played2 ; his contributions to urban sociology, to Pan-Africanism, to a vision of the future for Black people in America, led by ‘the talented tenth’, or to the description of Black consciousness in the heart-breaking collection of essays The Souls of Black Folk (1903), Du Bois is incorrectly not included among the founders of modern sociology. He is also hardly mentioned, let alone taught in introductory courses in that discipline, in The Netherlands and other European countries. For a description of the meaning of Du Bois and the conflict of ideas with his contemporary and rival Booker T. Washington, I refer to the beautiful study by Aldon Morris (2015), The Scholar Denied. 3 If I now confine myself to the last few decades, intersectionality is important Black American feminist intellectual heritage. Intersectionality was initiated by the second wave of feminists of colour, and in particular by Black feminists, including The Combahee River Collective, Audre Lorde, Patricia Hill Collins and Kimberlé Crenshaw, but Chicana and Asian feminists, such as Cherríe Moraga, Gloria Anzaldúa and Mari Matsuda, have also contributed to it. Crenshaw formulated the term intersectionality in 1989 (Crenshaw, 1989). According to some interpretations, including mine, intersectionality goes back to the ideas of 19th-century Black women, such as the women’s rights activist and abolitionist Sojourner Truth with her famous speech Ain’t I a woman? in Akron, Ohio, in 1851. At a meeting of White women who were fighting only for their own suffrage, she asked again and again, ‘Ain’t I a woman?’4 Intersectionality is the key concept within the discipline Gender and Women’s Studies in the Netherlands. In short, intersectionality means that it is not enough to analyse reality using just one analytical toolbox, whether it concerns gender, race, class, sexuality or another variable, but that all these different grammars of difference work simultaneously, influencing and co-creating each other. They should therefore be studied simultaneously and not alongside or separately from each other.5 Intersectionality is characterized by systematic attention to power differences, by complexity and by a certain ‘elasticity’.6 In my ‘pliable’ view, it is possible for anyone to make intersectional analyses, not only Black women; intersectionality is not only concerned with subjectivity/identity, but lends itself well to the analysis of structural social power relations, and finally, the object of research does not have to be Black, but can very well be applied, for example, to the study of Whiteness or sexuality.

Afropessimism and Afropessimism 2.0

In the last two decades, the most recent Black American academic body of thought and export product ‘Afropessimism’ has emerged, in the form in which it is now presented to us by Frank Wilderson et al. Some critics refer to this new form as Afropessimism 2.0 (AP 2.0), and I will do so, too, because Afropessimism was and still is prevalent in White Western circles and it is related to the ‘unrelentingly negative coverage of Africa in Western news media, especially in terms of its tendency toward arrested development’.7 In this discourse, hopelessness about the African continent and neo-coloniality fight for priority. The denial of the complete superfluousness and counterproductivity of the development industry on the continent is also part of this discourse. From this perspective, Africa is seen as one big tragic mess: ‘corruption, cronyism and ethnic conflict are thought to provide the governing logics of politics and other daily experiences’.8 However, Wilderson et al. do not say a word about this first, widespread movement of Afropessimism, which is strange because AP 2.0 would gain credibility as a theoretical framework, if it were to situate itself and indicate how it relates to this earlier Afropessimism, which was and is deeply rooted in Western culture. This total omission of the original and still ubiquitous Afropessimism is symptomatic and gives a first impression of an ahistorical slant, of intellectual carelessness, of African American exceptionalism, that is, being stuck in an African American framework, ~~blind~~ [ignorant] to knowledge from other parts of the Black Diaspora. British researcher Kevin Ochieng Okoth reproaches Afropessimists 2.0 for erasing all post-war anti-colonial African thought9 – and I would add Négritude from France and decolonial thought, which originates mainly from Latin America. Moreover, other Black authors, such as Frantz Fanon, Orlando Patterson, Silvia Wynter, Hortense Spillers and Saidiya Hartman, are being cannibalized. Finally, there is an apodictic propensity, an unsubstantiated grandstanding, with which there can be no dialogue under penalty of the accusation of ‘anti-Black racism’. AP 2.0 comes from circles of Black Studies or African American Studies and Frank Wilderson III and Jared Sexton are its founders. AP 2.0 is a theoretical lens, a metatheory, which, using Marxism, psychoanalysis, feminism and other critical theories, has the ambition to clarify the irreconcilable difference between, on one hand, the violence of capitalism, gender oppression and White supremacy, and, on the other hand, Anti-Black violence. In this metatheory, the world is divided into People, that is, Whites and their junior partners; that concept includes everyone except White heterosexual men and Black men and women. Junior partners, which quite intentionally already sounds nasty, are people of colour (POC), or Non-Black POC (NBPOC) members of all other minority groups, such as Palestinians and Indigenous people, the working class, all women and LGBTIQs (lesbian, gay, bisexual, transgender/transsexual, intersex and queer) who are not Black. On the other side of this classification are Blacks, who are not Human. Whites and their junior partners become Human by separating themselves from Blacks, also called, confusingly, BPOC, who are ontologically placed outside the Human order (pp. 78, 84). There can be no analogy or equivalence between the suffering of Blacks and that of Whites and their junior partners and therefore no solidarity. Black suffering is incomparable and unique. One of the core beliefs of AP 2.0 is that there is a fundamental Human need for violence against Blacks, the free, naked violence of social death. The core of AP 2.0 is that being Black equals being a Slave, during slavery, but also afterwards, ‘the afterlife of slavery’, it has remained so, with violence against Blacks being the structuring mechanism of the modern world. Human life depends on the death of Blacks for its existence and cohesion (p. 39). AP 2.0 relies heavily on the work of Jamaican sociologist Orlando Patterson (1982), particularly Slavery and Social Death, in which he introduces the concept of ‘social death’ as a characteristic of the life of Blacks. Social death is what characterizes the position of Blacks: not being a subject, not having property, not being able to assert rights to land or to family. There are three central concepts within AP 2.0 when it comes to Blacks: naked, unpunished violence against them is possible, desirable and completely normalized; total powerlessness and general dishonour; and alienation from birth, in generations before and beyond (p. 177). Black suffering and the death of Blacks is the life force of the world, and that death must be constantly repeated visually. What society needs from Blacks is not their labour force, their country or their sexuality, as is the case with the junior partners, the Marxist proletariat, the (neo)colonial subject, or White and coloured women, respectively, but the affirmation of their Humanity. Because Blacks are excluded from being Human from the outset, they lend cohesion to that Humanity. The Black/Slave is ontologically absent, a living dead person. While Blacks know ‘We are a kind of sentient beings [not persons/subjects] who cannot be wounded or killed, because we are already dead to the world’ (p. 155), Whites and their junior partners think ‘I know I am a Human, because I am not Black’ (p. 175). So the fundamental distinction in AP 2.0 is that between being a Black Non-Person and being a Non-Black Person. Anyone who does not want to see or take account of this fundamental difference is guilty of anti-Black racism. It is important to determine how and for whom the term ‘Black’ is used in AP 2.0. Annie Olaloku-Teriba (2018) devotes an incisive study to this and concludes that there is conceptual ambiguity about who is Black in AP 2.0, because it is never explicitly mentioned, and consequently also about what Anti-Black racism is. Being Black is a stable category that ‘refers to a historically coherent group of people, whose experiences of violence are necessarily linked by a common ethnicity’ (p. 10). Being a Slave is something that is permeated by both being Black and being African (p. 8), ignoring the very different historical circumstances in which different collectivities have come into being – and which is precisely what should be investigated – and thus there is an implicit biological, essentialist conception of being Black. AP 2.0 is essentially an ethnocentric, African American analysis of being Black that applies to all others classified as Slaves. Notwithstanding this conceptual muddiness, Afropessimism is high-profile both within the academy and in circles of Black activists, in the United States and in Europe. At the same time, it is controversial thinking that divides Black communities and communities of colour, internally and in relation to each other. This way of thinking has been initiated by Black men, and recently Black feminists and feminists of colour have been trying to reconcile and bring together AP 2.0 and intersectionality, which are in a complex and often tense relationship with each other (Bilge, 2020). It is still too early for me to say whether this reconciliation project is fruitful; in any case, it is urgent explicitly to mention the merits and shortcomings of AP 2.0, and I have to confess that I have some difficulty seeing the merits. I find it difficult to think how AP 2.0, with its essentialist, unshakeable and irreconcilable division of the world, can be worth saving or rethinking. That is why I find it shocking that many, especially of the younger generation in the Netherlands as well, apparently find AP 2.0 so attractive. This is particularly shocking in the light of a Black, migrant and refugee (BMR) feminist history of the late 1970s and early 1980s, in which solidarity between different groups of women, who initially identified themselves as (politically) Black and later as BMR women, was paramount (Deekman and Hermans, 2001).10 I add that it was BMR women, not BMR men, who developed a joint, protointersectional analysis of their/our situation across all their own and institutional boundaries. Women from the former Dutch East Indies, including from the Moluccan islands, Surinamese-, Antillean-, Turkish- and Moroccan-Dutch women worked on change, both within their own women’s groups and communities and with each other. Researcher Chandra Frank recently uncovered a letter from the archives of Atria in which the Black lesbian group Sister Outsider, of which I was a member, introduced ourselves to Audre Lorde after she accepted our invitation to visit us in the Netherlands. The letter makes clear that we are Black lesbian women from South Africa, Suriname and Indonesia. I had forgotten about that letter, which is not dated, but was written sometime in 1983, but when Chandra showed it to me, I realized this is an intersectional analysis, which moreover shows our shared colonial histories with the Netherlands and with each other (Frank, 2019). It was great to see that our joint study sessions, our hours of discussions, and the feverish devouring of Black American and Black British feminist stencils and pamphlets gave us an analysis of the Netherlands that still stands. What is the curious, topical appeal of AP 2.0 to younger generations? I suspect there are three things at play here. I’m following Myriam Aouragh (2018, 2019) and Annie Olaloku-Teriba,11 who point out the complex constellation of political and social factors that have come together in the last two decades. These include a general pull to the right, a weakening of the left, and the usual erasure of BMR men and women and their activities as well as (Black) anti-racist left-wing activism that has now embraced a narrowed conception of anti-racist struggle. Priority has been given to checking and disciplining White, but in particular NBPOC privilege, that personal and individualized measure of ‘undeserved privileges’, instead of paying attention to social justice in a structural sense, to transnational and anti-imperialist perspectives and to intersectionality. In particular, the relationship between race and class requires a well-considered analysis, as developed earlier, from Black Panthers to WOC women’s movements. Apart from the fact that such an approach to anti-racism is more complex, takes a longer breath and calls for alliances, tackling White and – what is seen as – NBPOC Privilege offers the immediate advantage of a positioning that puts supporters of AP 2.0 a priori in the right. After all, the basic principles do not lend themselves to refutation and the accusation of Anti-Black racism is easily made. I will come back to this in the last paragraph, but within AP 2.0, nothing is in fact asked of Black people other than to be Black. In addition, I have to conclude with pain that there is simply a lack of transgenerational knowledge about our own Dutch BMR feminist and anti-racist history, in which the search for alliances and solidarity were so prominent. Audre Lorde (1984) says noteworthy things about that in the collection of essays Sister Outsider: ‘Too often, we pour the energy needed for recognizing and exploring difference into pretending those differences are insurmountable barriers, or that they do not exist at all’ (p. 115). It was precisely externally imposed, essentialist identity constructions that were questioned, while they simultaneously led a double life, in the sense that it was acknowledged that there were, of course, differences between women from different countries of origin, but that those differences should not in any way stand in the way of cooperation. And finally, related to the previous point, I think that the popular misinterpretation of intersectionality, as if it only had to do with subjectivity and identity, is apparently also at issue.

A memoir on Black masculinity

But first let me say something about the successful part of Afropessimism. It is a compelling and beautifully told narrative; an exciting and adventurous coming of age story, a memoir of a Black man in his mid-sixties, who is now a professor in African American Studies and Drama, at the University of California, Irvine. Born in 1957, he gives us a picture of how he experienced the end of the Vietnam War; the Black liberation struggle; accompanied by the soundtrack of end of 1960s, 1970s Black music; and the birth of the AIM, American Indian Movement. Raised as the eldest son in the family of two Black psychologists, who were also activists in Minneapolis, Minnesota, in an overwhelmingly White neighbourhood, he attends a White elementary school, and he never feels at ease either in the neighbourhood or at school. He is always the Other, as when he describes that the mother of a friend, through the friend, asks him ‘what is it like to be a Negro?’ At the same time, it is a privileged childhood, in which the family travels a lot during summer vacations, especially to other American university cities. The parents are constantly on study trips or on trips with an activist purpose. When he is 18, he goes to study at élite Dartmouth College in New Hampshire, where, just before graduation, he gets kicked out for starting a political action for the poorly paid White cleaners and cafeteria staff. When he lives with his considerably older, Black lover Stella, a beautifully described, psychoanalytically analysed quarrel with their White flatmate Josephine, drives them on a hallucinatory escape from their apartment, driven by invisible assailants of an initially obscure nature. He finishes his studies at Dartmouth anyway and then becomes the first Black real estate agent in Minneapolis and earns big money. However, this existence does not give him satisfaction and after a few short episodes as a waiter and as an usher in a museum, he leaves for South Africa, to support the fight of the African National Congress (ANC) against Apartheid. He described his time in South Africa in his second book Incognegro: A Memoir of Exile and Apartheid (2008). He subsequently went back to the university and obtained his PhD, in the process suffering a psychic breakdown. This collapse has great symbolic significance and marks his entry into AP 2.0. His description of international academic conferences and presentations, which he gives as a much sought-after academic, are amusing and recognizable. Occasionally it is rather over the top, as when he compares the comments of his Marxist colleagues at a conference in Berlin, who do not take kindly to AP 2.0, without any irony or noticeable sense of exaggeration, with a lynching party, which he refers to as a ‘mixture of pleasure and psychological renewal’ (p. 74). I would like to dwell a little longer on his period as an usher in the museum, because it provides him with a key experience that will profoundly influence the development of his thinking. In conversation with his fellow hall guard, best friend and fellow revolutionary, the refugee Palestinian Sameer Bishara, the latter reveals that it is one thing to be searched by Israeli soldiers all the time, but that it is intolerable when this is done by Ethiopian Jews (p. 17, and further). Wilderson’s world collapses when he realizes that this means that he occupies the same dishonoured place in the collective unconscious of Palestinians, whom he had until then seen as his brothers in the revolutionary struggle, as he does in that of Whites in America. He concludes that Palestinian insurgents have more in common with the Israeli state and Israeli civil society than with Blacks. Sameer may have lost his country, but that is of a totally different order than the ontological placing of Blacks outside the Human Order. Later, when he has converted to AP 2.0, he systematizes that experience into a theoretically hermetic vision and a worldview in which there can be no equivalence and solidarity between the suffering of Black people and that of Whites and their junior partners, such as Sameer. A number of miraculous things happen here. The ease with which Wilderson lumps all others than Black people together, without applying any differentiations, is astonishing. Whites and their junior partners, who are subordinated and disadvantaged, but do belong to Mankind, have made common cause with each other in their negrophobogenesis, or negrophobia. With this statement, it becomes clear once again that Wilderson does not think intersectionally, but in singular terms. How is it possible to think about all these categories of people without considering the overlaps between them? Take a working-class Black woman: does she fall into the most damned category of Blacks or under the junior partners? Or how should we understand a Black Palestinian? According to Wilderson, their Blackness comes first and that cancels all their other characteristics. In other words, race is a more fundamental, ontological category, while class and gender are just ‘conflicts’ that can be resolved. Furthermore, it is problematic that one extremely unpleasant, racist experience is identified as the genesis of his exclusive vision. The exceptionalism and uniqueness of Black suffering and his anti-Palestinian point of view, part of the broader anti-NBPOC stance, curiously resembles a Zionist argument in which the suffering of Jews cannot be compared or seen in relation to the suffering of other groups. Wilderson’s position is also inconsistent with reality. In a public conversation with Gayatri Spivak in Berlin in June 2018, Angela Davis said about AP 2.0 and Palestinians: When we think of the solidarity work that Palestinian activists did in 2014, when the protest against Ferguson served as a catalyst for a new movement in the US, a Black Freedom Movement, the Black Lives Matter movement, we realize how central Palestinians were to the production of a new historical moment for Black people in the US.12 Another possible interpretation would be that some Palestinians also take part in the older Afropessism or, in my own terms, that they have mastered the dominant cultural archive, but I always want to keep open the possibility that they could liberate themselves from it. There is no such exit with AP 2.0; the relationships between Blacks, their masters and the junior partners are chiselled in marble and there is no escaping it. That is why I call AP 2.0 loveless and hopeless. Finally, what is striking about this fragment and AP 2.0 in general is, as Aouragh (2019) and Olaloku-Teriba (2018) also point out, that it is not so much Whites, but the NBPOC in particular, who, drawing parallels between Black struggles and the struggles of other groups, are the object of his ire. This is not only a break with earlier more comprehensive analyses of anti-racist struggles, it is also hopeless to fool other dominated groups into believing that they are fundamentally and irrevocably implicated in, and benefiting from, the oppression of Blacks. While we are in the midst of the uprising for the murder by a police officer of George Floyd in Minneapolis, it is tempting to think that Black suffering is unique and incomparable, but that suffering is related to other forms of suffering, and it is neither possible nor productive to establish a hierarchy in them.

### 7 and 8

#### Identifying threats from the settler present opens futures

Weiss 18, Ph.D. candidate, Anthropology, University of Chicago (Joseph J.Z. Weiss, 2018, “Conclusion: Unsettling Futures,” Shaping the Future on Haida Gwaii: Life Beyond Settler Colonialism, UBC Press, pp. 246-258)

For its opponents on Haida Gwaii, Enbridge presages a rather different future, one in which the unpredictable waters of the Hecate Strait all but guarantee a tanker spill. Such a spill would devastate the waters and lands of the islands and the neighbouring coastline of British Columbia, destroying the fish and poisoning the plants that currently draw on ocean waters and the animals that feed thereon. Neither eagles nor ravens could survive, living as they do on a diet that consists primarily of marine life. All this would all but guarantee the disappearance of Eagles and Ravens, the Haida people whose lifeways are so fundamentally tied to the islands of Haida Gwaii. Haida Gwaii could no longer be home. A song recorded in protest again Enbridge by Aboriginal artist Kinnie Starr and animated as a music video by Haidawood,3 a team of Haida and non-Haida stopmotion artists and animators, makes this threat explicit, asking in its opening lines: “Who will save our waters, save them for our great granddaughters, save them for our great grand-daughter’s sons, ... save them before all is dead and done?”4 This nightmare future, this future that is no future, is one that looms large over the whole of this book. It is familiar because it is a reiteration of the horror of ecological cataclysm that the CHN formed itself in opposition to, that the hippies risk metonymically bringing about by taking from the lands and waters without respect. But it is also familiar because, in a broader sense, it is the future that settler colonialism attempted to give to Native peoples – indeed, rendered as their already given destiny. This is the future of Indigenous erasure, of ultimate disappearance, of a closed temporality that can only end in “all dead and done.” However, Haida people take the future of “no future” neither as inevitable nor as already determined; rather, the work of future-making acts to ward off the nightmare future of Haida erasure, putting in its place multiple possible futures in which Haida people continue. Take the blue signs on the lawns of the Masset(t)s, Old and New, implicitly answering Kinnie Starr’s question with the bold declaration that the islands (will) stand “UNITED” against Enbridge. But the social significance of these futures is never encompassed solely by the ways in which they respond to the threat of nightmare futures. As we have seen, the production of a future of Haida and non-Haida unity is considerably more complicated than a declaration of shared solidarity, speaking, as it does, to a particular history of Haida and settler relations and fantasy schemas, and productive ways in which non-Haida can be integrated into Haida systems of sociality and responsibility. To speak of a future united against Enbridge is thus necessarily to speak of many other things, just as is the case when speaking of a future of Haida return, a future of care-full leadership, or a future of traditional authority. Larger social worlds unfold out of the constitution of particular futures. This is why, more than anything, I want to make clear that the significance of Haida future-making does not lie simply in the specific ways in which individual futures respond to the particular dilemmas of the settler colonial present; rather, what is most crucial about future-making as a way of thinking out from within the temporal brackets of settler colonialism’s deferred erasure is the fact of futuremaking itself. What matters most is the capacity to say, as Haida rapper Ja$e ElNino does in a guest appearance in Starr’s song, “Now expect the best from the northwest / What’s next? Just guess.” ElNino asserts the openness of the future, challenging his listeners to attempt to predict the field of possibilities still to come. At the same time, ElNino clearly locates the space out of which this field of possibilities emerges – “expect the best from the northwest,” he raps, specifying the capacity to produce “what’s next” as belonging to the “northwest,” to the coast’s First Nations and perhaps also to their non-Indigenous allies, united against Enbridge. In so doing, ElNino rejects the overdetermination of his lands and his people, suggesting that they themselves have the capacity to build their own futures that, by virtue of their very existence, challenge settler projects of destruction, environmental and otherwise. This is the space of possibility that I sketch out in Shaping the Future on Haida Gwaii. Now I want to highlight its significance for our understandings of Indigenous political life under settler colonialism and within the field of political anthropology more generally. Thinking and working with the future in the ways that Haida people do can be understood as its own potent assertion of sovereign self-determination, even though it is not restricted to any one particular legal or political claim. Rather, Haida forms of future-making track between the formal realms of law and politics and a host of other concerns, constraints, aspirations, and projects in everyday Haida life. The constitution of an autonomous Haida government that promises to protect the islands from settler incursion for the sake of future generations co-exists with the hope that those future generations will also find success in the settler world. Love for Haida Gwaii and the desire for it to endure ecologically can be understood equally as the ground for proper Haida care-full politics, the opportunity for non-Haida to learn to engage respectfully with Haida on significant environmental issues, and the object of problematic hippie fantasies. The fact that such moments can be encompassed within a relatively coherent Haida lived world and can be imagined as part of Haida futures suggests that Haida are actively retaking – and to an extent have already retaken – control of their continuing existence outside the temporal foreclosures of the project of settler colonialism. We might ask, however, to what extent this reassertion of the rights to continuing existence is of largely symbolic significance in the context of the seeming fixity of colonial nation-states and the domination of Native (and non-Native) lives by the demands of settler capitalism. To what extent can Haida people determine their futures if those futures are always calibrated according to the demands and expectations of settler society, economically and otherwise? What does future-making truly accomplish, especially when it is as much aspirational as it is something that has the capacity to be actualized? I argue that Haida future-making unsettles. It does not overthrow colonial domination, nor does it carve out an autonomous Indigenous space within Canada; rather, it proceeds through interdependencies and adoptions, ambivalences and anxieties, situating Haida people as necessarily in relation to and in relations with non-Haida. But this is also its potential power. Just as the forms of Haida time work to gradually realign temporal sensibilities on Haida Gwaii even as they appear to be bounded within the constraints of settler time-discipline, Haida future-making carries the potential for the strategic reiteration of the settler colonial present, shifting its realities even as it reinscribes them.

Sovereignty

Haida future-making takes place in the midst of a struggle over sovereignty. And this not just in the sense of the Council of the Haida Nation’s ongoing assertion of its sovereign right to govern the lands and waters of Haida Gwaii on behalf of all Haida people. Rather, as Joanne Barker argues, over the course of the latter half of the twentieth century sovereignty has emerged as a “particularly valued term within Indigenous scholarship and social movements and through the media of cultural production. It [is] a term around which analyses of Indigenous histories and cultures were organized and whereby Indigenous activists articulate their agendas for social change” (Barker 2005b, 18). Through the assertion of sovereignty, Indigenous political leaders, activists, and scholars refute “the dominant notion that Indigenous people [are] merely one among many ‘minority groups’ under the administration of state social service and welfare programs”; instead, “sovereignty defines Indigenous people with concrete rights to self-government, territorial integrity, and cultural autonomy under international law” (Barker 2005b, 18). The trouble is, of course, that Indigenous claims to sovereignty are always made within the context of colonial nationstates, whose own legitimacy is put at risk both by the prospect of self-determining Indigenous Nations (re-)emerging within their boundaries and by the troubling of their own historical narratives of sovereign rights (Comaroff and Comaroff 2003). One of these narratives reinterprets Indigenous lands as terra nullius and thus open to occupation. Thus, while sovereignty might indeed “define” Indigenous peoples with concrete rights to territorial title and selfdetermination, in theory equal under international law to the states who also lay claim to their territories, that definition does not in and of itself make possible the practice of this sovereignty. In this regard, settler states such as Canada have shifted in their response to First Peoples’ sovereignty claims from outright rejection to selective recognition, but even the latter still positions Native nations as being subject to the authority and oversight (if not the structural forms) of the state. This means that Indigenous governments such as the CHN are in a precarious position, attempting to constitute their own sovereign authority without access to many of the conventional means of sovereignty in Western political thought – for example, the monopoly on legitimate violence (Weber 1946), decisive authority to make and enact law (Schmitt 2005), and/or exclusive territorial control (Brown 2010; Hobbes 1994). Alongside this precarity is the equally anxious question of whether or not sovereignty is even an appropriate analytic around which to centre Indigenous rights precisely because it is historically a Western concept, one that has been drawn on to dispossess Indigenous peoples over the course of settler colonial history (Barker 2005b, 18–19). Indeed, the very next essay in Barker’s edited volume, by Taiaiake Alfred, categorically rejects sovereignty, calling it an inappropriate tool for Indigenous political assertions not only for these reasons but also because it draws attention away from developing and furthering “genuinely” Aboriginal political modes of thought (Alfred 2005; see also Alfred 2009). The fact that sovereignty remains such a preeminent concept in the struggle for Indigenous rights even though it is both epistemologically problematic and politically constrained has meant that there has been a recent push in both anthropology and Indigenous studies to “widen” the definition of sovereignty so that it might encompass multiple forms of Indigenous social, political, and legal practice outside of the conventional purview of “sovereign power” (e.g., Cattelino 2008; Richland 2011; Simpson 2000, 2014). Or, as Joanne Barker puts it: There is no fixed meaning for what sovereignty is – what it means by definition, what it implies in public debate, or how it has been conceptualized in international, national, or Indigenous law. Sovereignty – and its related histories, perspectives, and identities – is embedded within the specific social relations in which it is invoked and given meaning. How and when it emerges and functions are determined by the “located” political agendas and cultural perspectives of those who rearticulate it into public debate or political document to do a specific work of opposition, invitation, or accommodation. It is no more possible to stabilize what sovereignty means and how it matters to those who invoke it than it is to forget the historical and cultural embeddedness of Indigenous peoples’ multiple and contradictory political perspectives and agendas for empowerment, decolonization, and social justice. (Barker 2005b, 21, emphasis in original) The opening up of sovereignty as flexible, multiple, and subject to all manner of diverse rearticulations carries particular weight since, as a historical concept in Western political theory, sovereignty is overwhelmingly concerned with closure. As Wendy Brown argues in her Walled States, Waning Sovereignty, the classic vision of sovereign power rests in the capacity to divide the inside from the outside, to make borders around a people – a “nation” – and separate that people from those outside it. Thus Schmitt’s “friendenemy” distinction, for instance, or even John Locke’s consistent preoccupation with fences as a way of marking the existence of territory (Brown 2010; Schmitt 1996; Locke 1988). The historical conditions of Indigenous sovereignty claims in the context of settler colonialism make such absolute closures impossible for Indigenous peoples. We might add, though, that the persistent presence of these claims also challenges the closure of the settler nation-state. Indeed, this is part of Brown’s point. The fact that we see ever more spectacular performances of sovereign power on the part of contemporary nation-states – for example, the titular “walls” that are being constructed along the borders of an increasing number of states – is a sign of the insecurity of their political authority (Brown 2010).5 The conditions of settler colonial sovereignty, in other words, may be rather more “open,” and thus closer to those of Indigenous “nation-within-nations,” than they may at first appear. If this means, in turn, that the future for settler political life is becoming as uncertain as the future for Indigenous life has been since the advent of settlement, then this means what we have already begun to see: the dilemmas facing the Haida people in their future-making practices are also the dilemmas facing settler society. Take, for example, how the absence of any “one” definitive governing entity compels the constitution of an aspirational framework of accountability that could, were it realized, render Haida relations navigable to the many governments that claim Haida loyalty. Such dilemmas are not restricted to the Haida sociopolitical world; rather, they may be endemic to contemporary democratic societies and the multiple forms of governance (licit and otherwise) that emerge therein. In suggesting that there are Haida ways of refiguring a shared Haida-settler set of contemporary problematics, we might think of Haida future-making both as an instantiation of the multiple, flexible, and always contingently located practices of sovereignty to which Barker points and as a different way of thinking about Indigenous political potentiality. In the former sense, Haida future-making is without doubt concerned with carving out spaces in which Haida existence can continue, expand, and change without losing the capacity to reproduce itself as Haida existence – thus the processes of homecoming or the explicitly political attempts to establish control over the islands for future generations. If the absence of Indigenous sovereignty is the absence of the capacity of an Indigenous people to (self)-determine their own futures, then the constitution of Haida futures can be seen as sovereign work, whether in the overt sense of the CHN’s assertions or in the somewhat more implicit mode of Alice Stevens’s proposed mass adoptions. Significant here, though, is the fact that these acts of future-making carry meanings beyond their status as responses to the social and political dilemmas of contemporary Haida life. Thus Alice Stevens’s adoption project seeks to bring hippie children into the framework of Haida kinship relations, not only neutralizing their potential threat but also constituting a complex new network of social relations between Haida and non-Haida whose potential significance goes well beyond the protection of Haida territory and resources. Thus the CHN emerges as a state-like governing entity through its authorizing promise to take care of the islands, but in so doing it takes on a series of new roles in Haida political life whose full consequences remain to be seen. If it is a sovereign action to envision an opening of possible futures for Haida people, then this very openness might also exceed the boundaries of sovereignty as a problematic for Indigenous people even as it responds to them. Which is also, perhaps, why Haida futures seem so consistently to sketch out social, ecological, and political fields that encompass non-Haida – more, that are futures for Canada as well as for the Haida people living within the nation-state’s borders. What would it mean to figure an Indigenous sovereignty that speaks beyond itself, one that promises to invert the order of settler domination through reconfiguring the shared futures of Indigenous and settler peoples? This would not be a sovereignty premised on territorial closure or even absolute political autonomy. It would, however, decisively overturn any settler colonial anticipations of the inevitable erasure of Native peoples. Quite the opposite, it would position Indigenous practices of anticipation, aspiration, certainty, and anxiety at the forefront of contemporary modes of political imagination. Rather than perceiving Indigenous peoples to be running out of time, we might all be understood – or at least imagined – to be running on Haida time. Whether or not we accept the possibility that Haida future-making opens up the boundaries of sovereign possibility for Indigenous people, what is not contestable is that Haida people continue. They continue traditional practices and lifeways in sometimes transformed, sometimes continuous ways. They continue asserting their capacity to engage with settler Canadian society. And, more than anything, they continue to assert their right to envision, imagine, expect, contest, and constitute their futures. This is not always as explicit as the CHN’s authoritative attempts to safeguard the islands or even as Alice Stevens’s adoptions. More often than not, Haida people produce their futures simply by not even considering the possibility that this is not something they can, should, and have a right to do. They treat their right to continue temporally, socially, and otherwise as if it were already given and so work to reconfigure the present to make it so.

# 1AR

### AT: Wilderson

#### That makes this DA outweigh their framework: Parasite DA ⁠—

#### Their endorsement of the alt is a contradiction with the literature because for non-black people, Afropessimism is merely an intellectual enterprise

Terrefe, interviewing Sharpe, 16, Assistant Professor in English specializing in Global Black Studies, Gender and Sexuality, Psychoanalysis, Continental Philosophy, Critical Theory, and Radical and Revolutionary Politics; a scholar of English literature and Black Studies, her research focuses Black visual studies, Black queer studies, and mid-nineteenth century to contemporary African-American Literature and Culture, (Selamawit Terrefe; Christina Sharpe, 2016, "What Exceeds the Hold?: An Interview with Christina Sharpe," Rhizomes, http://www.rhizomes.net/issue29/terrefe.html)

[76] ST: Yes, and it was an amazing experience to be around over 1500 Black people with very radical if not revolutionary politics. And this song was playing after the first plenary where you had, for over half an hour, the family members of Emmett Till, Mike Brown, Rekia Boyd, Eric Garner, Jordan Davis, Kendrick Johnson, Oscar Grant, Ramarley Graham, Tamir Rice, Tanisha Anderson—whose daughter spoke about watching her mother die from the two gunshots she saw police officers pummel into her body—VonDerrit Myers, and many many more. You had these family members go onstage and talk about their murdered loved ones, and they ended each memorial with "This is why we fight." The profundity of the gratuitousness of this violence had permeated the room. And after that we have Miss Major come onstage and she shifted everything. Because at this point we were all feeling the acuity of the violence that precedes and exceeds us, as you pointedly noted about Frank's work, and our proximity to and baptism in and by violence had permeated the auditorium. After the family members had spoken, organizers had asked people in the audience to stand up if they've had family members murdered by state or vigilante violence, which of course—what room filled with Black people doesn't have a majority of participants affected by this personally? And shortly thereafter Miss Major takes the podium and tells us "You don't have to take this shit anymore!!!" and we just erupt in tears, and rage, and laughter, and clapping, and shouting, and relief. Then the plenary ends with the blaring of Lamar's "Alright" and we all just jump out of our seats and start dancing and singing. In one sense it felt amazing, but to understand the reality of Black suffering would be to acknowledge that no, everything's not going to be alright. That is the ontology, our political ontology. And until there's a revolutionary shift, or destruction of what we know, it's not going to be alright. So yes, I'm questioning; I'm thinking if this is to quell one's own anxiety or the anxiety of others it doesn't necessarily matter because we're talking about the Black psyche, a Black psyche which is never formed or conditioned outside of how white people are viewing us. So when you were speaking of Coates' use of "On y va" as punctuating a desire to be read as fully human, that reminded me of this experience of wanting Lamar's address in "Alright"­—"we gon' be alright"—to be true, also knowing the reality of where we are right now, which is a structural position always-already punctuated by the violence of/that is white desire, whether the Black psyche recognizes and/or is ready to wrestle with that positioning.

[77] Speaking of how others view us also coincides with how I interpret the response to Afropessimism that we're seeing in the academy, which sometimes seems much more violent from Black academics than from non-Black academics.

[78] CS: Can you say more about that connection? Because it makes me also think about the ways that a number of white academics have taken up Afropessimism. Particularly white male academics of a certain age group.

[79] ST: Yes, yes.

[80] CS: And how do we understand that?

[81] ST: I think the only people who can be Afropessimists are non-Black people. I don't think Black people can actually be Afropessimists; my colleague, Kara Hunt, reminded me of this. We can theorize, we can meditate on Black suffering, we can experience the violence, we're marked. But we cannot be Afropessimists since the idea and reality of being is foreclosed to us: we're non-being. The only people who can be and embrace it are particularly these white, male, young academics who are so excited. They're excited by it. And it's an invigorating theory because it's a purely intellectual enterprise for them. This is something we have to experience and re-experience viscerally when we read Frank and Jared's work. It's a traumatic experience. But it's not a trauma that is being imposed by us— by the theory or by those of us who write and critically engage with the work. It's a trauma that we're reliving because we're never outside of this trauma. So I think Black people's responses, Black academics' responses in particular...it's not a foreclosure the way white or non-Black academics would respond. If it's a negative response it's foreclosing on their own...ethical relationship—

[82] CS: Relationship to thinking, to wanting to think outside of Black suffering.

[83] ST: Yes. I think of white progressives' violent responses to the Black women of Black Lives Matter, who are taking over these stages at Bernie Sanders events. It's similar with the responses to Afropessimism—don't hold a mirror up to my position in this world. But when Black people are responding so viscerally to Afropessimism, it's because the only capacity they have is that of consciousness. Consciousness of one's positioning in this world as non-human, or more precisely anti-human. Yet some desire to forget. And Afropessimist theory reminds them of their inability to forget, reminds them of their unexamined psyches and an unresolved antagonistic relationship to Blackness itself. Whether if it's this impossible desire to forget—and this foreclosure is always blamed on the theory and its proponents—or if it's too painful for them to examine Black suffering as structural, ontological rather than experiential, I have much more sympathy for them; nevertheless, their responses can be much more vehement.

This is especially true because they’ve said Asian Conscientization as a method ⁠— it says we should have classes about Asian culture but presumes that Asian people can have a coherent relationship with antiblackness, which is a flinch ⁠— the 1NR said “they can relate” but that is a move to equate the two, which Wilderson and Warren says are impossible