## 1-T

#### Interpretation: The affirmative must only defend a reduction in intellectual property protections for medicine.

#### IPRs deal with patents, trademarks, trade secrets and copy rights

Upcounsel 20, https://www.upcounsel.com/intellectual-property-protection

Intellectual Property Protection is protection for inventions, literary and artistic works, symbols, names, and images created by the mind. Learn how you can protect your intellectual property by using: Patents, Trademarks, [Trade Secrets](https://www.upcounsel.com/trade-secret), and Copyrights.

#### Violation: Their own solvency advocate says the bill the aff happens under uses price setting- that doesn’t change anything about patents, trademarks, trade secrets or copyrights

Scott 18 Dylan Scott [grew up in Ohio, lived in Las Vegas for a year and moved to Washington in 2011. I cover health care and other domestic policy.], 12-20-2018, "Elizabeth Warren’s ambitious new bill to lower generic drug prices, explained," Vox, <https://www.vox.com/policy-and-politics/2018/12/20/18146993/elizabeth-warren-2020-election-drug-prices-bill> DD AG

The bill allows the federal government to either produce the drugs itself or contract an outside company to do it. It would set “fair” prices to cover the costs of making the drugs.

#### At best they’re extra T which still links to all of our offens

#### Vote neg:

#### 1] Precision---all neg prep is centered on words in the resolution, the precise definition of our word from a legal source means it’d be the most predictable in the lit.

#### 2] Limits- their model implodes the topic by allowing basically any policy tangentially related to making medicine more accessible which implodes neg prep burden and allows the aff to skip nuanced testing

#### TVA; 1. waive patents for insulin

#### 2. Eliminate patents for insulin

#### Competing interpretations-

#### Reasonability is arbitrary because its up to judges with different brightlines- competing interps sets the best norms

#### DTD- no arg to drop, indicts entire aff

#### No rvis

#### Illogical you don’t win for being fair

## 2- Theory

**Interp: The affirmative must delineate what intellectual property protections they reduce in the 1AC in the delineated text of the 1AC**

**Its a vague and ambiguous term with no meaning**

Richard M. **Stallman, 2018**/12/15, Did You Say “Intellectual Property”? It's a Seductive Mirage <https://www.gnu.org/philosophy/not-ipr.en.html> //SR

It has become fashionable to toss copyright, patents, and trademarks—three separate and different entities involving three separate and different sets of laws—plus a dozen other laws into one pot and call it “intellectual property”. The distorting and confusing term did not become common by accident. Companies that gain from the confusion promoted it. The clearest way out of the confusion is to reject the term entirely. According to Professor Mark Lemley, now of the Stanford Law School, the widespread use of the term “intellectual property” is a fashion that followed the 1967 founding of the World “Intellectual Property” Organization (WIPO), and only became really common in recent years. (WIPO is formally a UN organization, but in fact represents the interests of the holders of copyrights, patents, and trademarks.) Wide use dates from around 1990. (Local image copy) The term carries a bias that is not hard to see: it suggests thinking about copyright, patents and trademarks by analogy with property rights for physical objects. (This analogy is at odds with the legal philosophies of copyright law, of patent law, and of trademark law, but only specialists know that.) These laws are in fact not much like physical property law, but use of this term leads legislators to change them to be more so. Since that is the change desired by the companies that exercise copyright, patent and trademark powers, the bias introduced by the term “intellectual property” suits them. The bias is reason enough to reject the term, and people have often asked me to propose some other name for the overall category—or have proposed their own alternatives (often humorous). Suggestions include IMPs, for Imposed Monopoly Privileges, and GOLEMs, for Government-Originated Legally Enforced Monopolies. Some speak of “exclusive rights regimes”, but referring to restrictions as “rights” is doublethink too. Some of these alternative names would be an improvement, but it is a mistake to replace “intellectual property” with any other term. A different name will not address the term's deeper problem: overgeneralization. There is no such unified thing as “intellectual property”—it is a mirage. The only reason people think it makes sense as a coherent category is that widespread use of the term has misled them about the laws in question. The term “intellectual property” is at best a catch-all to lump together disparate laws. Nonlawyers who hear one term applied to these various laws tend to assume they are based on a common principle and function similarly. Nothing could be further from the case. These laws originated separately, evolved differently, cover different activities, have different rules, and raise different public policy issues. For instance, copyright law was designed to promote authorship and art, and covers the details of expression of a work. Patent law was intended to promote the publication of useful ideas, at the price of giving the one who publishes an idea a temporary monopoly over it—a price that may be worth paying in some fields and not in others. Trademark law, by contrast, was not intended to promote any particular way of acting, but simply to enable buyers to know what they are buying. Legislators under the influence of the term “intellectual property”, however, have turned it into a scheme that provides incentives for advertising. And these are just three out of many laws that the term refers to. Since these laws developed independently, they are different in every detail, as well as in their basic purposes and methods. Thus, if you learn some fact about copyright law, you'd be wise to assume that patent law is different. You'll rarely go wrong! In practice, nearly all general statements you encounter that are formulated using “intellectual property” will be false. For instance, you'll see claims that “its” purpose is to “promote innovation”, but that only fits patent law and perhaps plant variety monopolies. Copyright law is not concerned with innovation; a pop song or novel is copyrighted even if there is nothing innovative about it. Trademark law is not concerned with innovation; if I start a tea store and call it “rms tea”, that would be a solid trademark even if I sell the same teas in the same way as everyone else. Trade secret law is not concerned with innovation, except tangentially; my list of tea customers would be a trade secret with nothing to do with innovation. You will also see assertions that “intellectual property” is concerned with “creativity”, but really that only fits copyright law. More than creativity is needed to make a patentable invention. Trademark law and trade secret law have nothing to do with creativity; the name “rms tea” isn't creative at all, and neither is my secret list of tea customers. People often say “intellectual property” when they really mean some larger or smaller set of laws. For instance, rich countries often impose unjust laws on poor countries to squeeze money out of them. Some of these laws are among those called “intellectual property” laws, and others are not; nonetheless, critics of the practice often grab for that label because it has become familiar to them. By using it, they misrepresent the nature of the issue. It would be better to use an accurate term, such as “legislative colonization”, that gets to the heart of the matter. Laymen are not alone in being confused by this term. Even law professors who teach these laws are lured and distracted by the seductiveness of the term “intellectual property”, and make general statements that conflict with facts they know. For example, one professor wrote in 2006: Unlike their descendants who now work the floor at WIPO, the framers of the US constitution had a principled, procompetitive attitude to intellectual property. They knew rights might be necessary, but…they tied congress's hands, restricting its power in multiple ways. That statement refers to Article 1, Section 8, Clause 8 of the US Constitution, which authorizes copyright law and patent law. That clause, though, has nothing to do with trademark law, trade secret law, or various others. The term “intellectual property” led that professor to make a false generalization. The term “intellectual property” also leads to simplistic thinking. It leads people to focus on the meager commonality in form that these disparate laws have—that they create artificial privileges for certain parties—and to disregard the details which form their substance: the specific restrictions each law places on the public, and the consequences that result. This simplistic focus on the form encourages an “economistic” approach to all these issues. Economics operates here, as it often does, as a vehicle for unexamined assumptions. These include assumptions about values, such as that amount of production matters while freedom and way of life do not, and factual assumptions which are mostly false, such as that copyrights on music supports musicians, or that patents on drugs support life-saving research. Another problem is that, at the broad scale implicit in the term “intellectual property”, the specific issues raised by the various laws become nearly invisible. These issues arise from the specifics of each law—precisely what the term “intellectual property” encourages people to ignore. For instance, one issue relating to copyright law is whether music sharing should be allowed; patent law has nothing to do with this. Patent law raises issues such as whether poor countries should be allowed to produce life-saving drugs and sell them cheaply to save lives; copyright law has nothing to do with such matters. Neither of these issues is solely economic in nature, and their noneconomic aspects are very different; using the shallow economic overgeneralization as the basis for considering them means ignoring the differences. Putting the two laws in the “intellectual property” pot obstructs clear thinking about each one. Thus, any opinions about “the issue of intellectual property” and any generalizations about this supposed category are almost surely foolish. If you think all those laws are one issue, you will tend to choose your opinions from a selection of sweeping overgeneralizations, none of which is any good. Rejection of “intellectual property” is not mere philosophical recreation. The term does real harm. Apple used it to warp debate about Nebraska's “right to repair” bill. The bogus concept gave Apple a way to dress up its preference for secrecy, which conflicts with its customers' rights, as a supposed principle that customers and the state must yield to. If you want to think clearly about the issues raised by patents, or copyrights, or trademarks, or various other different laws, the first step is to forget the idea of lumping them together, and treat them as separate topics. The second step is to reject the narrow perspectives and simplistic picture the term “intellectual property” suggests. Consider each of these issues separately, in its fullness, and you have a chance of considering them well. And when it comes to reforming WIPO, here is one proposal for changing the name and substance of WIPO.

**Standards:**

1. **Strat Skew and Clash - 1ar’s can skirt clash and moot neg ground by no linking IP specific disads or pics and making the normal means debate late breaking e.g. no counterfeit drug DA if you don’t defend trademarks**
2. **Resolvability - judges can’t know who to vote for if they don’t understand what each side is defending which also denies negs to make rigorous and nuanced strategies. Outweighs - all arguments presume you can resolve them**
3. **Worst case neg on presumption - policies inevitably fail if policymakers can’t hash out the specifics - our evidence gives empirical examples**

**Cx doesn’t check**

**- a] prep skew - we were forced to prep a 1NC that hedges around the potential of you not speccing and had to prep multiple case negs**

**b] incentivizes infinite abuse and hope you don’t get called out since its no risk if we ask you and you can strategically not meet then get extra time in cx to prep the shell since we asked**

**c] non verifiable since judges don’t flow it**

**d] no brightline to what constitutes a check**

cross apply paradigm issues

## 3- K

#### Empire has shifted from the administration of death to the production of life – the affs restructuring of global medical intervention is the new logic of biopolitical governance – no longer is imperialism a question of borders and military power, but rather the protection of bodies.

Ahuja ‘16

[Neel, English @ UNC Chapel Hill. 2016. “Bioinsecurities”] pat

One element common to this biopolitics of empire is an anxiety about the dependence of the human body on forces that appear inhuman, even inhumane: medical technologies to extend, optimize, or end life; markets and institutions that unequally distribute resources for sustaining life; environmental processes that support, deprive, or injure bodies. Such concerns were, of course, entirely common to twentieth-century modernist fears of alienation from nature, as well as to liberal, socialist, and fascist states that each proclaimed to defend the life of the people in the major imperial wars. Yet due to the ongoing expansion of government into life through technological, economic, and environmental interventions, a growing number of crises that advertise dreaded risks to life as we know it—climate change, nuclear toxicity, disease pandemics, biological weapons, and financial speculation, to name a few—have recently pressed critical studies of empire to think politics and agency at queer scales of relation, from the grand vantage of planetary geology and climate, through the lively migrations of commodities and animals, all the way down to the microbial, molecular, and quantum worlds of matter in which advanced sciences produce new technologies and knowledge. In an era in which excessive hope is invested in the idea that empire’s so-called free markets will inevitably deliver resources for improving life, discussions of risk and security increasingly provoke concern about how bodies are either threatened or safeguarded in links to other species, to ecology, and to technology. Public fears and hopes are thus invested in questions about how bodies interface beyond the skin of the organism. The living body is not only an ecology reproduced by constituent species (think of the life-sustaining work of gut bacteria or the ingested flesh of animals or plants). It is also an assemblage crosscut by technological, economic, and environmental forces (medical technologies, insurance markets, agricultural systems, toxic pollution) that render the body vulnerable as they reproduce its conditions of possibility.

Yet there remains a sense of tension concerning how social theorists frame the vulnerability of human life between biopolitics and these emerging posthumanist ideas. While biopolitical analysis foregrounds the contested figure of the human, emphasizing that the human body is an effect of power crafted through the social reproduction of nationality, race, sex, and/or class factors conjoined in inhuman fields of power, emerging posthumanist and newmaterialist fields including animal studies, environmental humanities, and object-oriented ontology more often emphasize the agency of the nonhuman and the surprising liveliness of physical matter. As such, despite the avowed critique of the human, they may take for granted the apparent universality of the human lifeworld from which they flee, foreclosing attention to the processes that anthropomorphize the human in order to characterize the human’s sovereign domination of the nonhuman. This move allows some posthumanist critics to project upon an outside, the nonhuman (in the form of environment, animal, machine, or other object), the possibility of resistance to anthropocentrism. Such thinking might be seen as a ruse of transcendence—an assumption that turning attention from the human to the nonhuman could bypass Marxist, feminist, critical race, and postcolonial critiques of imperial systems that proliferate inequality under the guise of universal human freedom.

Despite this liberal, idealist trend among posthumanists (which is more pronounced in the humanities than it is in the social sciences), studies of empire increasingly confront the fact that the apparent exteriority of the subject (the worlds of body, physical matter, and interspecies exchange) has more often formed the center of the politics of empire rather than its excluded outside. It is thus my hope that the collision of biopolitical and posthumanist thought may be salvaged in a practical if unexpected crossing: a more robust accounting of the ways in which politics, including the liberal and neoliberal politics of empire, is embedded in living bodies and planetary environments, which are themselves constituted as objects of knowledge and intervention for imperial science. Such an understanding goes beyond an assertion that life is controlled by human government, which would embrace the strong postEnlightenment division between government and life, human and nonhuman. I instead hope to explore the queer hypothesis that the adaptability, risk, and differentiation central to life increasingly constitute the very matter of politics. This book is about how disease outbreaks, medical technologies, and the relations between humans, animals, bacteria, and viruses galvanized racialized fears and hopes that determined the geopolitical form of US empire during the long twentieth century, following the continent-wide establishment of Euro-American settler networks. Before explaining that argument, however, this brief preface explores how—in addition to established methods of postcolonial study that define empire through histories of conquest, settlement, and the exploitation of labor and resources—the inequalities and violences of imperialism can productively be understood from the vantage of species, the field of life itself.

Research on colonial environmental history and disease control is long established in postcolonial studies, even as today there is growing attention to Global South environmental activism, advanced biotechnologies, and human-animal and human-plant interactions as significant concerns in the planetary routes of European and US empire. Yet my sense of an interspecies politics is still relatively unfamiliar from even the vantage of these studies. Extant studies have long highlighted questions of representation, agency, influence, and domination, explaining the unequal distribution of the privileges accorded for being anthropomorphized, for being made human through colonial ideological and social processes. While maintaining focus on such racialized inequalities fracturing the figure of the human in the worldwide routes of European and US imperialisms, it is the aim of this book to articulate an additional sense of the political as a lively zone of embodied connection and friction. “Interspecies relations form the often unmarked basis upon which scholarly inquiry organizes its objects, political interventions such as ‘human rights’ stake their claims, and capitalist endeavors maneuver resources and marshal profit.” A critique of the interspecies zone of the political—which at its broadest would expand beyond the human-animal and human-microbial relations discussed in this book to include the diversity of living species, matter, energies, and environmental systems that produce everyday life out of biosocial crossings—helps us understand the persistence of empire in a postcolonial age precisely because it conjoins power to forces that retreat into the seemingly natural and ahistorical domains of body and matter. From this vantage, empire appears not only as a process of territorial and economic accumulation across international divisions of labor and sovereignty, but also as a reproductive process managing bodies in unequal planetary conjunctions of life and death. Tracing this second phenomenon requires analysis of biosocial forms of exchange among microbes, plants, animals, and humans, as well as models of power and representation recognizing that bodies are not empty containers of human political subjects, but are lively, transitional assemblages of political matter.

There are risks in attempting to theorize a political process like empire via the material shape it takes in life and matter, anticipated in long-standing liberal and Marxist distinctions between human and natural history. Must such a move necessarily turn away from issues of interest, hegemony, violence, representation, and inequality that often define organized decolonial struggles? I would argue that this need not be so, and that vitalizing colonial discourse studies through an accounting of empire’s living textures may actually give a more grounded account of imperial power as well as the strategies of representation that have persistently masked its material articulations. To this end, I explore empire as a project in the government of species. Broadly, this idea refers to how interspecies relations and the public hopes and fears they generate shape the living form and affective lineaments of settler societies, in the process determining the possibilities and foreclosures of political life. In practice, the government of species has historically optimized and expanded some life forms (human or otherwise) due to biocapital investments in national, racial, class, and sex factors. Operating through interspecies assemblages known as bodies, such investments selectively modify and reproduce life forms and forms of life, extracting “the human” out of the planetary field of interspecies relation. Once securitized, this form is constantly under pressure from the unpredictable and inhuman risks of life in a world of ecological, economic, and political complexity. These forces in turn contribute to the ways publics experience and interpret their futures as more or less livable.

An account of the government of species thus explains that empire can be understood as a project in the management of affective relations—embodied forms of communication and sensation that may occur independently of or in tandem with sentient forms of thought and discourse. These affective relations cross the divisions of life and death, human and animal, media and bodies, and immune and environmental systems. In the process of forming the human out of cacophonous biosocial relations, empire often persists—even after the formal conclusion of colonial occupation or settlement—in part because it invests public hope in the management of bodily vulnerability and orients reproductive futures against horizons of impending risk, a phenomenon I call dread life. In such processes by which bodily vulnerability is transmuted into political urgency, techniques proliferate for managing the relations of populations and the living structures of species (human, animal, viral). As such, empire involves the control of life through accumulation of territory and capital, which may be securitized by activating life’s relational potential. Lauren Berlant describes a “lateral agency” that moves across bodies and populations rather than in the top-down fashion of sovereign power; it may, then, be possible to understand empire’s force of securitization not only through conventional dramas of domination and resistance, but rather through embodied processes of coasting, differentiating, adapting, withering, transition, and movement. These are processes that subtly determine how bodies take form, and to what extent they are able to reproduce themselves in space-time relation. They also more radically stretch the body beyond the organic lifetime and into evolutionary, environmental, and informational domains where life/death distinctions blur.

However, the intimate connection between the governmental imperatives to make live and to make die, which Jasbir Puar names “the bio-necro collaboration,” has long been obscured in social and political theories. It thus remains commonplace for biopolitical analyses to view power as either repressive or productive in essence. In his classic work on the topic, French philosopher and social theorist Michel Foucault argued that by the eighteenth century, a political form had emerged in Europe targeting the human as biological species as the central object of power. Power was no longer simply about the repressive force of the state and its controlling interests wielding the right to kill. Power was increasingly vested in the productive reshaping of the biological life of human organisms by institutions such as clinics, prisons, and asylums and their related forms of scientific knowledge; power meant letting live, albeit in constrained form. Foucault recognized the embedding of biopower across species, calling for a social history that incorporated “the evolution of relations between humanity, the bacillary or viral field, and the interventions of hygiene, medicine, and the different therapeutic techniques.” In the notes to his late lectures, he even speculated that neoliberalism involved a governmentality that can “act on the environment and systematically modify its variables.”

Foucault’s description of the rise of biopower is the inspiration for a number of studies in sociology and anthropology that assess new biopolitical shifts involving advanced biomedical technologies. Given that these biopolitical studies focus largely on the United States, western Europe, China, and India— states that have built biotechnology sectors as engines of unequal neoliberal growth—it is perhaps not surprising that a concomitant line of critique has emerged acknowledging vast and growing world sectors of biological and economic precarity. Building on a number of key postcolonial/feminist studies of the 1990s exploring Foucault’s theory beyond European borders, these necropolitical critiques announce that politics today often emerges as the specter of death. The world’s poor, as well as a growing “precariat” carved from shrinking national bourgeoisies, appear less often as the objects of technological uplift than as the human surplus of the political order of things, populations at risk for displacement, dispossession, captivity, and premature death. The precaritization of sweated labor, the subjection of agrarian populations to the twin scourges of neoliberal structural adjustment and environmental devastation, the proliferation of deterritorialized war and ethnic cleansing, and the growth of predatory industries and rents to recycle capital from surplus populations all reveal that those humans targeted for biopolitical optimization constitute a shrinking population who reproduce through the cannibalistic appropriation of life elsewhere. But necropower is not simply about the distribution of death; it is also about the accumulation of social or economic capital through death and precarity. For example, when suicide passes on social force through the deathly body, or when life insurance capitalizes death, death itself thus gives form to life.

#### The aff’s positioning of competition as intrinsic good acts to maintain the stability of capital accumulation.

Christophers 16 [Brett Christophers, Professor in the Department of Social and Economic Geography at Uppsala University, “The Great Leveler: Capitalism and Competition in the Court of Law,” 2016, Harvard University Press, pp. 8-15, EA]

The aforementioned argument that capitalism has historically migrated from a state of competitiveness to a state of monopoly or oligopoly is deficient in four primary respects, both empirical and conceptual in nature.

First, there is something deeply misleading about the either/or nature of this historical narrative. One of the most important—although rarely acknowledged—of Marx’s insights was that capitalism always, everywhere, requires both. It needs competition, assuredly, not least to drive technological innovation and the reinvestment of profits, and thus growth. But it also needs monopoly—not merely to enhance visibility within and control over otherwise potentially chaotic business environments, but also to underwrite capitalist, market-based trade per se. Not for nothing does David Harvey argue, after Marx, that the “monopoly power of private property” is “both the beginning point and the end point of all capitalist activity.”20 For the legal institution of private property does confer monopoly: the exclusive power to dispose of said property as the owner alone sees fit.

Capital’s seemingly paradoxical need for both competition and monopoly is explored in Chapter 1, which extracts from Marx a conceptualization of capitalism that critically informs the remainder of the book: that of capitalism always, necessarily, teetering on a knife edge, balanced precariously between the contradictory forces of competition and monopoly, and perennially in danger of lapsing too far to one side or the other. “The problem,” Harvey shrewdly observes, “is to keep economic relations competitive enough while sustaining the individual and class monopoly privileges of private property that are the foundation of capitalism as a political-economic system.”21

And it is here that our economic laws crucially enter the picture. In metaphorical terms, the law acts as a powerful leveler: a pincer of sorts on the critical, combustible nexus of monopoly and competition, applicable from one side of the knife edge, the other, or both. Antitrust (competition) law, meaningfully enforced, serves to constrain monopoly power where it coheres too readily, thus boosting competition; IP law acts from the other side, allowing a degree of monopoly power where none “naturally” coheres, and limiting competition in the process. This conceptualization of economic law is sketched out in Chapter 3. Together, such laws help to ensure that over the long term, market-based capitalism is not too competitive (driving down prices and profits) but, in Harvey’s terms, remains competitive enough (avoiding stagnation and rent-seeking). In the process, the laws in question historically have contributed substantially to keeping capitalist accumulation regimes broadly in balance.

At the pivot of this overall mechanism sits the phenomenon of profit. Following the lead of scholars such as Robert Brenner, this book places front and center the relationship between profitability and the interrelated dynamics of competition and monopoly.22 As, indeed, did the classicals: Profit rates were, as Chapter 1 will show, fundamental to their theorization of competition. But it is vital to recognize, as writers such as Keith Cowling have done, that this relationship does not assume a simplistic less-competition-means-more-profit form, isolated as it were from other contributory factors.23 Indeed, the book shows that excesses neither of competitive intensity nor of monopoly power support long-term stability of profit-making and accumulation.

Instead, it leans more toward the type of argument proffered by Gérard Duménil and Dominique Lévy, which is that the dynamics of profitability strongly influence the state’s attempts to regularize regimes of accumulation, and that stabilizing capitalism is thus in no small part a question, ultimately, of stabilizing profitability.24 Or, as David Gordon and coauthors have written, the reproduction of capitalism is “fundamentally conditioned by the level and stability of capitalist profitability. As profits go, in short, so goes the economy.”25 The book’s particular slant on such conceptions is to consider corporate profits more in relative than absolute terms—and relative to, especially, labor and wages. While a comparable focus has recently been adopted by Thomas Piketty in his much discussed Capital in the Twenty-First Century, the inspiration underlying the approach taken here lies much further back in time, in the work in particular of Michal Kalecki.26 For as Kalecki showed both historically and conceptually, the relation of capital with labor, and profit with wages, is centrally implicated in the monopoly-competition relation and the balance that capitalism requires of it. Kalecki, it is fair to say, would have had some very interesting things to say about the Apple wage-suppression antitrust lawsuit.

A second and related problem with the linear historical narrative of from-competition-to-monopoly is its positing of monopoly and competition not only as mutually exclusive alternatives, but as separable ones. Once more, we can turn to Marx for an effective disabusal of this figuring. Monopoly and competition, he argued, are much more closely related, and much more closely connected, than is typically recognized. “Monopoly produces competition, competition produces monopoly,” he maintained, somewhat aphoristically, in a letter he wrote to Pavel Annenkov in 1846.27 Capital not only requires both but is in fact the expression, inter alia, of their synthesis—a synthesis that Marx, in trademark dialectical fashion, described not as a “formula” but as a “movement,” specifically “the movement whereby a true balance is maintained between competition and monopoly.”28 Such movement comprises opposing but connected economic dynamics of centralization and decentralization. When one or the other dynamic becomes disproportionately powerful, Marx argues, the “counteracting tendency” kicks in to return capital to a balanced configuration of monopoly and competition.

This balanced organization of productive forces—always inherently unstable and always prone to knife-edge slippages—is very close to what Edward Chamberlin would later call “monopolistic competition.”29 Such monopolistic competition internalizes monopoly and competition in dialectical relation with one another and is the capitalist norm—and always has been. “The notion of a bygone ‘competitive’ stage of capitalism where firms were price-takers is,” as Duménil and Lévy insist, “a fiction derived from the neoclassical analytical apparatus.”30 Equally fictional, albeit a fiction usually emanating from a very different analytical source, is the notion of a contemporary “monopoly” stage of capitalism absent meaningful competition.31

The historical, U.S.- and U.K.-based narrative related in this book therefore turns on precisely this dialectical, restless synthesis of monopoly and competition, and its ever-evolving, historically and geographically specific forms. In recent years, it is Harvey who has provided the most provocative reading of this dialectic and of its centrality to capitalism. It is, Harvey argues, one of numerous “moving” contradictions that plague the capital form, and with which capital constantly wrestles as it enters into and out of crisis.32 Harvey repeats Marx’s observation that capital requires a balance of competitive and monopolistic forces. He then derives from this postulate the propositions that crisis occurs when such forces become imbalanced—although this is not the only cause of crisis—and that such crisis can only be “fixed” once balance is restored. The result is that capital historically “oscillates” between relative excesses of monopoly and competition, always finding balance hard to achieve, let alone sustain.33 Understanding capital and its historical development in this particular regard, Harvey insists, requires us to recognize “how successful capital has generally been in managing the contradictions between monopoly and competition” and that “it uses crises to do so.”34

Such success, and the role played by crises or by threats thereof, are two of this book’s central, recurring themes. However, Harvey’s framing raises two vital questions that he fails, in his admittedly brief account of monopoly and competition, to answer.

First, how has this success been achieved? “Capital,” Harvey writes, “has organically arrived at a way to balance and rebalance the tendencies towards a monopolistic centralisation and decentralised competition through the crises that arise out of its imbalances.”35 Again, there is no objection here, except to press: “organically,” how? This book fashions an answer. This answer rests on the role of the law. When capital has become sufficiently overcentralized and monopolistic to threaten its own successful, profitable reproduction, antitrust law has been called upon to help restore the necessary degree of balance. This balance will never be perfect and at rest; in a dialectical relation, such as that between monopoly and competition, it never can be. When the dangerous excess has been of competition, by contrast, IP law has come to the rescue. Such laws, needless to say, have not effected this work of rebalancing by themselves, and this book documents their interaction with other pertinent dynamics; but their role has been paramount.

The other problematic question raised by Harvey’s framing brings us directly to our third point of divergence with the Baran and Sweezy or Foster and McChesney reading of capitalist development. Consider here the agency behind the successful, crisis-based management and rebalancing of monopolistic and competitive forces envisioned by Harvey: “capital has been successful . . .”; “capital has arrived at . . .” But what, or who, is this capital, and has its form remained constant? For Harvey, clearly, capital is the capitalist class: those that own the means of production. Yet this singularization of responsibility for regulating and reregulating the core dynamics of the capitalist economy raises all manner of questions that Harvey fails to address. Is this capitalist class homogeneous? Does it share consistent objectives in terms of economic development and management? And even if it does (and of course, it does not), what is its relation with the state and with the different tools of economic regulation, the law among them, that the state uses to govern and shape economic conduct?

If Harvey’s stimulating propositions call for circumspection on account of their simplifying structural abstractions, the connection to the “monopoly capital” thesis is that it too tends to rely upon just such totalizing, even reified, concepts. “Monopoly capital” is itself one such. One of the consistent themes of the tradition renewed by The Endless Crisis—one extending back through Baran and Sweezy’s Monopoly Capital to Rudolf Hilferding’s Finance Capital (1910) and even Lenin’s Imperialism (1917)—is its tendency not only to associate potent monopoly powers with a new stage or phase of capitalism but to depict the latter in terms of a consciously regulated and (centrally) planned system in which market-based competition largely disappears from view.36 For Lenin, this system fused the interests of capital and state (state monopoly capitalism); for Hilferding the fusion was tripartite, with finance capital also integral. But Marx, for all the stereotypes to the contrary, never saw capitalism as such. It was a totality, to be sure, but one that needs to be continually reproduced and reconstituted. This process occurs in and through the disparate actions of government, workers, consumers, businesses, and so on; when such reconstitution occurs in ways that imperil accumulation, crisis looms.

The point of saying all this is not simply to oppugn a totalizing view of “monopoly capital,” but to contrast with it the approach taken in this book, particularly to the law and its mobilization. There is not, and has not been, a single hand on the tiller, for all the obvious importance of the state as the law’s formal originator; there is no single, homogeneous entity pulling the levers, so to speak, of political-economic regulation— no consistent regime of conscious, systematic control. As with other modalities of economic regulation or governance, the law, in practice, does not “work” like that.

For one thing, there is an important difference between the written law and its interpretation. Two courts can interpret and apply the same law or laws in markedly different ways and with very different consequences. Perhaps the clearest example of this, at least in this book (Chapter 6), concerns U.S. antitrust law in the second half of the twentieth century: The nature and degree of enforcement of this law underwent a dramatic transformation in the late 1970s and early 1980s, but the law itself did not materially change. Intellectual training, social and political context, even judicial personality: These variables, and more, all matter to the law’s practical materialization. As such, we must remain constantly alive to the simple fact that, as Peter Carstensen has put it, “court doctrine is not the whole of the law in practice.”37 Relatedly, much of the enforcement of IP rights occurs at a significant remove from courts—specifically in, as argued by William T. Gallagher, the everyday practices of IP owners and their lawyers, whose “negotiations” with alleged infringers take place largely in the “shadow” of IP law.38

For another thing, just as the state never enacts new economic laws in total isolation from the influence and interests of capital, so both capital(s) and state—and indeed other economic agents—use the law to their own ends, and these ends are far from necessarily commensurate. Think, once again, about our two Apple cases. Who, in each case, instigated the legal action? Who put the law to work in their own interests? In the IP case it was Apple itself. In the class-action suit it was labor. But the latter suit was in fact itself based upon a prior government investigation launched by the Department of Justice’s Antitrust Division in 2010.39 Three legal cases, then, all driven by different actors with different motivations, but all revolving around the same political-economic locus: the knotty complex of profit generation and accumulation constituted by Apple Inc. And if the law, together with its agents, is so palpably nonsingular at the scale of the political economy of just one company, on what reasonable grounds could we ever envision it thus—as a vehicle of conscious, unified control—in relation to the political economy of capitalism more widely? The “great leveler” indicated in the book’s title, in short, is not some omnipotent regulator in charge of the law; it is the law per se.

How, then, might we more accurately characterize the human and institutional agency analyzed in the following pages in relation to the law, its mobilization, and its political-economic effects? At a general level, the conclusion reached by Paul David in his examination of the history of IP law fits particularly well: “The complex body of law, judicial interpretation, and administrative practice that one has to grapple with in this field was not created by some rational, consistent, social welfare-maximizing public agency. What one is faced with, instead, is a mixture of the intended and unintended consequences of an undirected historical process on which the varied interests of many parties, acting at different points (some widely separated in time and space), have left an enduring mark.”40 More specifically, however, we will see that although IP and competition laws have indeed performed their work under the influence of varied individuals and groups, the vast majority of the latter are ultimately committed to, and institutionally invested in, the reproduction, in as smooth a fashion as possible, of capitalism in more or less its existing form. And even more specifically, the “smoothness” here alluded to means the reproduction of capitalism especially without the kinds of problems—identified in Chapter 3—that tend to emerge when the necessary balance between monopoly and competition is substantially disrupted.

On all the above grounds, therefore, this book’s argument diverges from that which we find in the all-too-common narrative of competitive capitalism historically segueing into monopoly capitalism. Of course, none of this is to suggest that nothing has changed historically in the capitalist constellation of monopoly-competition structures and dynamics. Far from it. But the book’s fourth and final quarrel with the conventional narrative is that what has substantively, perhaps irrevocably, changed is not the relative levels of competitive intensity and monopoly power—as in, that era had more competition, this one has more monopoly—so much as the source of monopoly powers and the degree of defensibility thereof.

Capitalism, this argument runs, is always characterized by competitive undercurrents; were it not, it would not be capitalism. Meanwhile, and arising partly out of these competitive dynamics (the Marxian argument), there is an endemic drive to fashion monopoly powers. Yet the means of assembly of such powers do not remain constant, and neither does the ability of monopolistic capitalists to defend the powers thus amassed. Capitalists—and indeed the states committed to stabilizing capitalism, with the law one obvious apparatus at their disposal—must constantly find new ways of putting monopoly in place and keeping it there. “As monopoly privileges from one source diminish,” Harvey observes, “so we witness a variety of attempts to preserve and assemble them by other means.”41 Mindful, thus, of Marx’s dictum that the monopoly-versus-competition dualism is a red herring that confuses a dialectical relation for an oppositional one, this book focuses instead on the ways in which the unstable balance between the two forces is maintained—and it posits the law as the primary, necessarily mutable, instrument of such maintenance.

#### The aff’s investment in public health as a response to the threat of disease sanctions a more sinister form of biopolitical racism whereby “unhealthy” populations are subject to ethnic cleansing and state-sanctioned violence.

Elbe ‘5

[Stefan, international relations at the University of Sussex. 2005. “AIDS, Security, Biopolitics,” <https://journals.sagepub.com/doi/10.1177/0047117805058532>] pat

Why does it matter that the securitization of HIV/AIDS is biopolitical? It matters because, their humanitarian appeals to ‘life’ and ‘health’ notwithstanding, biopolitical strategies have historically been Janus-faced. They have led to the construction of hospitals and the design of universal healthcare systems, but they have also led to the justification of eugenics and mass death. Some of those advancing the securitization of HIV/AIDS clearly do so in the hope that this will have important humanitarian benefits for persons living with HIV/AIDS around the world by bolstering international AIDS initiatives. Peter W. Singer argues that presenting HIV/AIDS as a security threat ‘strengthens the call for serious action against the menace of AIDS. It is not just a matter of altruism, but simple cold self-interest.’ Many policymakers agree, including the executive director of UNAIDS, who has similarly argued that framing HIV/AIDS as a security issue is not merely an academic exercise but ‘defines how we respond to the epidemic, how much is allocated to combating it, and what sectors of government are involved in the response’. Foucault’s historical analyses, however, point to the need for a greater degree of caution regarding these normative aspirations because biopolitical strategies have in the past also engendered serious dangers that continue to accompany recent efforts to think of security in terms of the health of populations.

One of these dangers is that the biopolitical imperative of optimizing the health of populations effectively constitutes disease – and by extension the diseased – as a social and political problem that needs to be addressed, but without specifying exactly how this problem should be dealt with. Unfortunately the creation of universal healthcare programmes to treat the ill is just as compatible with a biopolitical logic as is the purging of populations of the diseased by more sinister means, such as killing them or letting them gradually die. As counter-intuitive and ironic as it may seem, a biopolitical society based on the enhancement of ‘life’ and ‘health’ can still sanction and justify instances of mass death. The European era of biopower, after all, coincided with 20th-century political projects demanding the deaths of millions. Foucault later came to understand this bizarre confluence only on the basis of a new racism that biopolitical orders can give rise to. ‘Racism’, he contended from a biopolitical perspective, ‘is primarily a way of introducing a break into the domain of life that is under power’s control: the break between what must live and what must die.’ The reason biopolitical orders can still sanction mass death is because they can generate a powerful new form of racism that pits the ‘healthy’ members of the population against the ‘unhealthy’ who are deemed to sap the strength and vitality of the population as a whole. The underlying principle of this new biopolitical racism is thus not the primacy of cultural difference, as with many more traditional forms of racism, but rather the more subtle idea ‘that the death of others makes one biologically stronger insofar as one is a member of a race or a population’. The insistence on maximizing the health of populations can thus be dangerous for those who are deemed to be unhealthy.

The Nazi movement demonstrated the extreme ends to which this darker side of biopolitics can be taken when it carved up the European continent using the dubious criterion of ‘blood’ for deciding which populations could be usefully ‘Germanized’ and thus spared, and which ones would have to perish. It remains one of the most disconcerting testaments to the dangers of thinking security in biological terms, or on the basis of health and sickness. In Nazi Germany, moreover, this new biological racism was also projected internally to Jews who were no longer persecuted solely because of their Judaism, but also because their quasi-biologically defined ‘Jewishness’ was deemed to be undermining the purity and strength of the Aryan race. Enhancing the strength and vitality of the latter, by this logic, required the elimination of the former. In some ways this biopolitical racism is even more pernicious than a culturally defined one because, as Hannah Arendt once pointed out in her memorable phrase, whereas in the past ‘Jews had been able to escape from Judaism into conversion; from Jewishness there was no escape’. A biopolitical society aimed at promoting ‘life’ and ‘health’ still has to make decisions about whose life is worth preserving and whose life will be allowed to perish, and the function of racism in a biopolitical age is to make this very distinction not necessarily according to the principle of cultural difference, but according to the maxim of whose survival will maximize the strength and wellbeing of the population, and whose will undermine it.

By way of extension, the concomitant danger with the securitization of HIV/AIDS as a biopolitical strategy is that while it clearly dramatizes the need to address the problem of disease at the global level, it does so without specifying exactly how this is to be achieved. The securitization of HIV/AIDS may increase attention and resources for charitable and humanitarian global AIDS initiatives, and may lead to more universal access to treatment, but these, alas, are not the only outcomes that would be consistent with a security approach to the pandemic. Indeed, there are at least three more disconcerting ways in which the securitization of HIV/AIDS could – at least hypothetically – follow the path of earlier biopolitical strategies and give rise to a new biopolitical racism between the ‘healthy’ (HIV-negative) and the ‘unhealthy’ (HIV-positive) segments of a population.

#### Modern empire is unsustainable -- multiple intertwined crises make collapse inevitable which means its try-or-die -- we got charts.

von Weizsäcker and Wijkman ’17 Ernest Ulrich von Weizsäcker, Professor and Director of the United Nation Centre for Science and Technology for Development, Founder and President of the Wuppertal Institute, Member of the German Bundestag, chairing the Committees on Globalization and the Environment, Dean of the graduate School of Environmental Science and Management at the University of California, appointed Co-Chair of UNEP’s International Resource Panel, Anders Wijkman, chairman of the Swedish Association of Recycling Industries, member of the Board of the Swedish Development Authority (SIDA), appointed chair of the Swedish Cross-Party Committee on Environmental Objectives, member of the European Parliament, Assistant Secretary-General of the United Nations and Policy Director of UNDP, Secretary General of the Swedish Red Cross and Director General of the Swedish Agency for Research Cooperation with Developing Countries, Member of the Swedish Royal Academy of Sciences, the World Future Council and the International Resource Panel, 2017 (“Come On! Capitalism, Short-termism, Population and the Destruction of the Planet – A Report to the Club”, November 11th, Available Online via Subscription to Springer, Accessed 03-20-2018)

1.1 Introduction: The World in Disarray We all know that the world is in crisis. Science tells us that almost half of the top soils on earth have been depleted in the last 150 years1 ; nearly 90% of fish stocks are either overfished or fully fished.2 Climate stability is in real danger (Sects. 1.5 and 3.7); and the earth is now in the sixth mass extinction period in history.3 Perhaps the most accurate account of the ecological situation is the 2012 ‘Imperative to act’,4 launched by all the 18 recipients (till 2012) of the Blue Planet Prize, including Gro Harlem Brundtland, James Hansen, Amory Lovins, James Lovelock and Susan Solomon. Its key message reads, ‘The human ability to do has vastly outstripped the ability to understand. As a result, civilization is faced with a perfect storm of problems, driven by overpopulation, overconsumption by the rich, the use of environmentally malign technologies and gross inequalities’. And further, ‘The rapidly deteriorating biophysical situation is barely recognized by a global society infected by the irrational belief that physical economies can grow forever’. 1.1.1 Different Types of Crisis and a Feeling of Helplessness The crisis is not cyclical but growing. And it is not limited to the nature around us. There are also a social crisis, a political and a cultural crisis, a moral crisis, as well as a crisis of democracy, of ideologies and of the capitalist system. The crisis also consists of deepened poverty in many countries and the loss of jobs for a considerable part of the population worldwide. Billions of people have reached a state of mind where they don’t trust their government anymore.5 Seen from a geographic point of view, symptoms of crisis are found nearly everywhere. The ‘Arab Spring’ was followed by a series of wars and civil wars, serious human rights violations and many millions of refugees. The internal situation is not better in Eritrea, South Sudan, Somalia, Yemen or Honduras. Venezuela and Argentina, once among the richer states of the world, face huge economic challenges, and neighbouring Brazil has gone through many years of recession and political turmoil. Russia and several East European countries are struggling with major economic and political problems in their post-communist phase. Japan finds it difficult to overcome decadelong stagnation, and to deal with the 2011 tsunami and ensuing nuclear disaster. And the temporary economic upswing several African countries have enjoyed lost its dynamism as soon as the prices of mineral resources collapsed, and partly due to very unusual droughts. Land grabbing is plaguing much of Africa, but also other parts of the world, leading to involuntary dislocations of millions of people and the related problems with refugees both within countries and abroad.6 The response of governments has been concentrated, at worst, on managing their own political image, and at best to treat the symptoms of the crisis, not the cause. The problem is that the political class in the whole world is strongly influenced by investors and by powerful private companies. This indicates that the current crisis is also a crisis of global capitalism. Since the 1980s, capitalism has moved from furthering the economic development of countries, regions and the world towards maximizing profits, and then to a large extent profits from speculation. In addition, the capitalism unleashed since 1980 in the Anglo-Saxon world, and since 1990 worldwide, is mainly financial. This trend was supported by excessive deregulation and liberalization of the economy (see Sect. 2.4). The term ‘shareholder value’ popped up in the business pages of the media worldwide, as if that was now the new epiphany and guardrail for all economic action. In reality, it served to narrow business down to short-term gains, often at the expense of social and ecological values. The myth of shareholder value has been effectively debunked in a recent book by Lynn Stout.7 A different, if related, feature of ‘disarray’ is the rise of aggressive, mostly rightwing movements against globalization in OECD countries, often referred to as populism. These have become overt through Brexit and the Trump victory in the United States. As Fareed Zakaria observes, ‘Trump is part of a broad populist

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upsurge running through the Western world. … In most (countries), populism remains an opposition movement, although one that is growing in strength; in others, such as Hungary, it is now the reigning ideology’.8 This phenomenon of right-wing populism can be explained to an extent by the ‘trunk valley of the elephant curve’ (Fig. 1.1) 9 showing the decline of developed world middle classes, during a 20-year period. While more than half of the world’s population was enjoying over 60% income rises, OECD’s middle classes suffered losses caused mainly by the deindustrialization and job losses in major parts of the United States, Britain and other countries. In the United States, the median income increased by a meagre 1.2% since 1979. The stunning income growth on the left-hand side of the curve, the ‘back of the elephant’, lifting some two billion people out of poverty, was caused mainly by China’s and some other countries’ economic success. What remains invisible on the picture is the far end of ‘the trunk of the elephant’: The richest 1% of the world and, more revolting, the richest eight persons of the world now own as much wealth as the poorest half of the world population combined, a figure publicized by Oxfam during the 2017 World Economic Forum.10 The ‘elephant curve’ gives an incomplete picture for a second reason. The Oxford Poverty and Human Development Initiative (OPHI) has proposed a Multidimensional Poverty Index (MPI) going beyond just income and including ten indicators around health, education and living standards. Using that MPI, OPHI counts 1.6 billion people living in ‘multidimensional poverty’ in 2016 – nearly twice as many as the number of people living in extreme poverty measured by income alone.11 Thirdly, the interpretation of the curve requires an analysis of the people in each percentile group. In fact, they tend to move. And the curve does not distinguish those in Russia and East European countries who lost much of their income after 1990 from those in Detroit or middle England who, for very different reasons, also were among the losers.12 Another fact cannot be seen in the picture: the massive shift of money and income from the manufacturing and trade sectors to the financial sector.13 Bruce Bartlett, a senior policy advisor to both the Reagan and Bush administrations, argues that this ‘financialization’ of the economy is the cause of income inequality, falling wages and the poor performance. David Stockman, Reagan’s director of the Office of Management and Budget, agrees, describing our current situation as ‘corrosive financialization that has turned the economy into a giant casino since the 1970s’.14 Populist politicians in the OECD countries see themselves as speaking for the forgotten ‘ordinary’ people and for genuine patriotism, but they tend to fight and antagonize the people representing democratic institutions – what an irony! For the European Union (EU), the strongest trigger for populism has been the millions of refugees who came or would like to come to Europe from the Near East, from Afghanistan and from Africa. Even the most generous European countries have reached their own assumed limits for receiving these masses of refugees. The EU institutions were too weak (not too powerful, as they are depicted by the new nationalists) to deal with the ‘refugee crisis’, resulting eventually in an identity crisis in the EU. Once a success story of an entity ensuring peace and economic development, the EU has lost some of its unifying narrative. The populist right-wing movements or parties see and criticize the EU as the culprit for all kinds of undesired events. The irony is that continuing the success story would require more, not less, powers for the Union. The Union should be entrusted with border protection, a well-funded common asylum and refugee policy to deal with the refugee crisis and maintain the advantages of the Schengen agreement. And for the re-stabilization of the Euro, the EU or at least the Euro zone needs a common fiscal policy, as the new French President Emmanuel Macron is proposing. But it is these very measures of which nationalist populists are most afraid. The EU in its present form is not without shortcomings. Free market principles have come to dominate EU policymaking, leading to a subordination of other policies, like environment. Notably the UK wanted that priority, as it preferred to see the EU chiefly as a union for mutual trade. And the austerity policies pursued have blocked many benign investments and led to unnecessary suffering among tens of millions of Europeans. Such shortcomings, however, should never be used to put in question the overall objectives of the EU – a union of peace, the rule of law, human rights, cultural understanding and sustainability. Addressing the global crisis of democracy, the German Bertelsmann Foundation has published a 3000-page empirical report on progress (or lack thereof) on democracy and a social market economy, as measured by the Bertelsmann Transformation Index (BTI).15 Over the last few years, the report sees a consistent decay of such parameters as civil rights, free and fair elections, freedom of opinion and of press, freedom of assembly and separation of powers. Within the same time frame, the number of countries in which authoritarian, mostly religious, dogmas influence political decision making rose from 22% to 33%. That report was published before the assaults on democracy and civil rights that occurred in summer 2016 in Turkey or the Philippines. Symptoms of tyranny are spreading, including in some of the countries with a solid tradition of freedom and democracy.16 Let us briefly turn to a different kind of crisis. Well, not exactly a crisis but an unpleasant feature in an otherwise fruitful communication tool, the ‘social media’. Aside from being practical and useful for everyday arrangements and exchange of news and reasonable opinions, social media also have become vehicles for enhancing conflicts and vilification of mostly innocent individuals, and for spreading ‘post truth’ nonsense. Much of the contents of social media political conversation is selfenhancing political rubbish, as those media serve as ‘echo chambers’ for networks of like-minded frustrated citizens.17 An empirical study from China found that anger and indignation are the emotions that are most likely to get viral in the social media, meaning they are multiplied faster and stronger than other emotions.18 The Internet and the social media are also vehicles for ‘bots’ (short for robots) that can disrupt or destroy messages, multiply nonsense and create all kinds of mischief. There are dozens of types of malicious bots (and botnets) to harvest email addresses, to grab content of websites and reuse it without permission, to spread viruses and worms, to buy up good seats for entertainment events, to increase views for YouTube videos or to increase traffic counts in order to extract money from advertisers. A more frightening cause of disarray relates to terrorism. In earlier times, humanity’s violent conflicts occurred mostly between different countries. In recent times, systemic and at least partly religious conflicts prevail, using terror attacks with the explicit intention of making people feel insecure. During much of the twentieth century, religions remained quiet, non-aggressive and geographically confined to rather stable territories. This no longer is true. Partly because of globalized populations moving or being forced to leave their home territories, some factions of Islam have expanded geographically and are claiming strong influence over national states, for example, attacking countries like France with its tradition of laicism that does not permit religion to dominate politics. What tends to be underrepresented in the media is the positive role of religions. In Christian-dominated Europe, liberal and tolerant religion became part of the European identity a century after the Enlightenment successfully discredited the earlier doctrinaire, authoritarian and colonialist-missionary manifestations of the faith. During the Cold War, Christian goals of social cohesion helped build the system of ‘Western values’, often described as the social welfare state, or the ‘social market economy’ (for its partial demise, see Sect. 2.4). With a view towards leading Islam into an equally benign and co-operative social role, some Islamic scholars, such as Syrian born Bassam Tibi, call on Muslims in Europe to integrate into democratic society.19 Tibi, however, is not popular among radical Muslims, to put it mildly. But to understand the radicalization of Islam, one must not underestimate the role played by the West, in particular the United States, in interfering with Near Eastern states. Some would say that the troublesome situations mentioned so far, the recurring topics of media headlines, are only the surface of our world’s ‘disarray’. Deeper and more systemic problems include the breath-taking speed of technological development that may very easily run out of control. One trend is digitization that potentially threatens millions of jobs (see Sect. 1.11.4). Another trend or development can be observed in the biological sciences and technologies. The enormous acceleration of genetic engineering through the CRISPR-Cas9 technology20 is causing fears of monster creation or the extinction of species or varieties not seen as valuable under human utilitarian criteria. Generally, a non-specific feeling is spreading that ‘progress’ has scary sides and that the genie may already have left the bottle (see Sect. 1.11.3). No doubt there is a need to analyse and understand the symptoms and roots of the variety of crises, political, economic, social, technological and environmental. It is also important to recognize the extent to which people perceive the various phenomena of disarray and feel disoriented, and to recognize that the reality and the feelings of disarray have a moral and even religious dimension. 1.1.2 Financialization: A Phenomenon of Disarray An important part of the disorientation relates to financial markets. Historians will look back at the last 30 years with concern, when looking at the explosion in bank balance sheets, backed up by declining levels of equity and massive borrowing. One of the results was a temporary private-sector-led boom. The other was a massive increase in the world’s financial sector (finance, insurance, real estate – FIRE), often called financialization, and subsequently the financial crisis of 2008–2009. Excessive risk-taking developed into a crisis that was close to bringing the whole financial system to a halt. When the bubble burst, many governments were forced to step in with broad support programmes. Governments caught by the new mind-set (see Sect. 2.4) were intimately involved in all of this. True, there are many examples of serious malpractices within the private financial sector. But had it not been for the systematic deregulation of the banks by governments, with the purpose of stimulating economic growth by issuing more debt, the situation would have been radically different. The causes behind the crisis were many and varied: – Excessive lending by the banking industry – Lack of action on the part of regulators and central banks to stop (i) excessive lending, (ii) the spread of exotic financial instruments (synthetic assets and bonds, collateralized mortgage obligations/CMOs, structured debt issues, etc.) and (iii) pure speculative transactions – Opaque tax havens, and the absence of a binding legal framework that is accepted and implemented by the international community, in general, and the major jurisdictions and financial centres – Securitization and distribution by investment banks and other financial actors of mortgage-related assets and investment vehicles transferring the credit risk from the original lender to the ultimate bondholders – Failure by some rating agencies and auditing firms to properly assess and report the inherent risks posed by many of the financial products A deeper analysis is presented by economists Anat Admati and Martin Hellwig21 about the main causes behind the financial crisis. Western banks borrowed far too much with far too little equity in their balance sheets to act as a buffer if things went wrong in their business – from trading in the multitrillion-dollar derivatives markets to often reckless lending on real estate. In the decades following the Second World War, banks operated with between 20% and 30% of their liabilities as equity. By 2008, that had shrunk to just 3%. Banks obviously believed that they had invented instruments that removed the risk, allowing them to run their banks with a tenth of the buffer they had before. It proved to be very unrealistic. But they counted with the state to underwrite their risks. Bankers have enriched themselves spectacularly in the process. They made themselves ‘too big to fail’ – and too big to jail. The 2008 financial crisis was mostly caused by that irresponsible greed.22 Yet, in 2009, not only did bankers avoid criminal prosecutions and receive hundreds of billions in government bailouts, but some still paid themselves record bonuses. At the same time, almost nine million households in the United States had to abandon their homes when the value of their houses plummeted and they could no longer service the adjustable-rate mortgages – the so-called foreclosure crisis.23 Financialization refers to the dominance of the financial sector in the global economy and the tendency for accumulated profits (and leverage) to flow into real estate and other speculative investment. Debt is an intrinsic element in this process. In the United States, for example, both household debt and private sector debt more than doubled relative to GDP between 1980 and 2007.24 The same is true for most OECD countries. At the same time, ‘the value of financial assets grew from four times GDP in 1980 to ten times GDP in 2007 and the finance sector’s share of corporate profits grew from about 10% in the early 1980s to almost 40% by 2006’.25 Adair Turner, chair of the UK’s Financial Services Authority in the years following the 2007–2008 crisis, regards unchecked private credit creation as the key system fault that led to that crisis with its devastating consequences.26 From this follows that the financial sector constitutes a significant and increasing risk factor in the economy. The degree of financialization varies from country to country but the increase in the power of finance is general. The current finance sector evolved in the context of the deregulation that gathered pace from the late 1970s and expanded dramatically after the 1999 removal of the separation between commercial and investment banking in the United States.27 This barrier had been put in place in 1933 by the Roosevelt administration in response to the Wall Street Crash of 1929, when a period of rampant credit creation and financial speculation collapsed. Similar speculation preceded the crisis of 2007–2008: The face value of financial products reached US$640 trillion in September 2008, 14 times the GDP of all the countries on earth.28 Lietaer et al.29 compare speculation with ordinary money transfers paying for goods and services: ‘In 2010, the volume of foreign exchange transactions reached $4 trillion per day’, which does not even include derivatives. In comparison, ‘one day’s exports or imports of all goods and services in the world amount to about 2% of those $4 trillion’. Transactions not paying for goods and services, almost by definition are speculative. Such financial products and transactions, the authors continue, lead regularly to monetary crashes, sovereign debt crises and systemic crashes with an average of more than ten countries in crisis every year. One of the consequences of this development is that a significant part of economic growth has been distributed to the wealthy, as mentioned with the new Oxfam figures in the previous subchapter. Practices within the financial sector demonstrate a disregard for the impact they have on both people and the planet. That includes a distinct short-termism, the ratio of banks’ reserves to their loans, the ratio of banks’ lending that support the real economy versus speculation in property and derivatives, unchecked credit creation – in fact money creation – and the failure to account for long-term climate and environmental risks. In the words of Otto Scharmer at MIT,30 ‘We have a system that accumulates oversupply of money in areas that produce high financial and low environmental and social returns, while at the same an undersupply of money in areas that serve important societal investment needs’. The failure to account for environmental risks means that the pressure on already scarce natural resources accelerates – trees are felled, waterways polluted, wetlands drained and the exploitation of oil, gas and coal accelerating, as long as there is demand. It also means that huge savings, among them pension funds, are locked into investments in fossil-based assets. Such assets are increasingly looked upon as high-risk assets (see Sect. 3.4).

#### This culminates in a form of dread life which organizes and deploys disaster biopolitics to justify constant interventionism, health apartheid, and antagonistic subject formation that turns and outweighs the aff.

Debrix ‘18  
(François Debrix, Professor and director of ASPECT, College of Liberal Arts and Human Sciences, Virginia Tech. “End piece: Dealing with disastrous life” in Biopolitical Disaster. Ed. Jennifer L. Lawrence and Sarah Marie Wiebe. 2018 Routledge forthcoming. cVs) rc/pat

Disastrous biopolitics makes possible dread life. I borrow the term “dread life” from Neel Ahuja’s recent study of the racialized dimensions of the governance and management of anxiety, particularly with regards to the fear of infectious diseases (Ahuja 2016). Dread life is a life that has grown accustomed to and has placed its trust in governance discourses that promise that life can be cared for or preserved through a series of social, political, economic, cultural, or technological interventions at the level of collective and individual bodies. Dread life is a life that has become reliant on discourses and representations of crises, looming dangers, impending catastrophes, and ongoing disasters (whether they are visible or not). As Ahuja puts it, dread life emerges as a result of discourses and representations “that (1) posit the environment as an unruly site of perpetual risk, and (2) shore up an imperial optimism in the force of the state that tends to far outstrip its actual ability to control [the crisis]” (Ahuja 2016: 9). Discourses that produce dread life abound because they keep the crisis or the disaster alive, productive, and always active. Through these discourses, the presence of dread life is a constant reminder of the fact that humanity remains under the spell cast by a bad or evil star, that, as fate has it, disasters will always be around. But, just as crucially, dread life also enables the production of an array of configurations, objects, and objectives, and subjectivities that help to make disastrous biopolitics into a set of tangible, material, and generable operations on a day-to-day basis. Thus, dread life breaks down into a series of subsets of disastrous life and living conditions. Depending on how, where, or when the crisis or disaster is mobilized (as many of this volume’s chapters have detailed), dread life can morph into resilient life, or into triaged life, or perhaps into deracinated life, or possibly into toxic life, or sometimes into emergency life, or maybe into a life suspended between disease and death. Any instance whereby dread life is placed in front of “an unruly site of perpetual risk” (as Ahuja puts it) is potentially productive of one of these (and other) subsets of disastrous life/living. Moreover, for any subset of dread life one finds a corresponding modality of governance/governmentality best suited (or so we are told) to manage the crisis or the disaster and, as such, most apt at keeping alive as dread. Thus, for example, resilient life calls for, justifies, and makes effective operations, technologies, and strategies of resilience. Secure life instantiates and authorizes security practices, policies, and politics. Toxic life requires responses in the form of environmentally conscious purifying or cleansing remedies that typically mobilize various layers of scientific expertise. Triaged life often calls for and normalizes clinical and administrative gazes that can sort bodies in order to repurpose them for upcoming disaster challenges (wars, future diseases, weather emergencies, etc.) Dread life is also productive of a range of subjects and subjectivities in charge of determining which types of interventions at the level of populations and bodies are more likely to cope with the disaster of deciding how the governing strategy that has been adopted (resilience, sustainable development, security, etc.) is to be deployed. This is precisely the point where what Ahuja calls “the optimism in the force of the state” (2016:9) is maximized. The state or, better yet, all sorts of agents/agencies in charge of the governance of dread life both depend on and become a function of the production of multiple instances of dread life so that they can serve as the ultimate guarantors of the safety, security, resilience, or sustainability of life itself (even if, more often than not, such a maintenance of dread life implies the culling of other bodies whose lives are not even worthy of being subjected to dread). Thus, as most of this volume’s chapters have revealed, one cannot think life under conditions of disaster without accounting for a series of governing or managing agents/agencies (the state, in some cases, but also various neoliberal assemblages such as corporations, environmental organizations, militaries and other security and enforcement agents, laws, policies and policy statements, extractive technologies, regimes of health, communities of experts, scientific pronouncements, etc.) that come together to make sure that dread life will be maintained as dread life and that disasters will be kept as productive discursive modalities for more dread life (and disasters) to come. This is not necessarily to say that these agents or agencies of governance of dread life are the instigators of dread life or of disastrous biopolitics. Rather, it is to say that these agents/agencies of biopolitical governance are active assemblages that are produced by discourses of disaster maintenance and by the need created in these discourses for life to remain tethered to disaster. Yet, these active assemblages of productive governance of dread life through disaster management display an actancy (through their active/creative performances) that enables discourses of disastrous biopolitics to be reproduced, re-imagined, or redeployed.

#### Voting negative adopts failed IR for a healthy dose of pessimism – at the end of the world, all we can do is hope to be buried alive together.

Grove ‘19

[Jarius, PoliSci at the University of Hawai’i. 2019. “Savage Ecology: War and Geopolitics in the Anthropocene.”] pat – ask me for the PDF!

Failed ir affirms the power of this kind of negative thinking as an alternative to the endless rehearsing of moralizing insights and strategic foresight. The negative is not “against” or reacting to something. Rather, it is the affirmation of a freedom beyond the limits of life and death. That is, it is making a life by continuing to think about the world, even if that thinking is not recuperative, and even if nothing we think can save us. In the face of it all, one celebrates useless thinking, useless scholarship, and useless forms of life at the very moment we are told to throw them all under the bus in the name of survival at all costs. This is a logic referred to lately as hope and it is as cruel as it is anxiety inducing. Hope is a form of extortion. We are told that it is our obligation to bear the weight of making things better while being chided that the failure of our efforts is the result of not believing in the possibility of real change. In such an environment, pessimism is often treated as a form of treason, as if only neoliberals and moral degenerates give up—or so goes the op-ed’s insisting upon the renewed possibility of redemption.

In response to these exhortations, pessimism offers a historical atheism, both methodologically and morally. The universe does not bend toward justice. Sometimes the universe bends toward the indifference of gravity wells and black holes. Affirming negativity, inspired by Achille Mbembe, is grounds for freedom, even if that freedom or relief is only fleeting and always insecure. I am not arrogant enough to think a book can attain freedom of this sort, but this book is inspired by refusals of critique as redemption in favor of useless critique and critique for its own sake.

That the pursuit of knowledge without immediate application is so thoroughly useless, even profane, is a diagnosis of our current moment. The neoliberal assault on the university is evidence of this condition, as is the current pitch of American politics. Our indifference as intellectuals to maximizing value has not gone unnoticed. We are still dangerous, worthy of vilification, of attack, sabotage, and derision because we fail so decadently. We are parasites according to Scott Walker, Donald Trump, and the rest. So be it. We are and shall remain irascible irritants to a worldwide assault on thinking that is well underway and facing few obstacles in other jurisdictions.

What would failed scholarship do? Learn to die, learn to live, learn to listen, learn to be together, and learn to be generous. These virtues are useless in that they do not prevent or manage things. They do not translate into learning objectives or metrics. Virtues of this order are selfsame, nontransferable experiences. They are meaningful but not useful. These are luxurious virtues. Like grieving or joy, they are ends unto themselves. But how will these ideas seek extramural grants, contribute to an outcomes-based education system, or become a policy recommendation? They will not, and that is part of their virtue.

Even if there is no straight line to where we are and where we ought to be, I think we should get over the idea that somehow the U.S. project of liberal empire is conflicted, or “more right than it is wrong,” or pragmatically preferable to the alternatives. I hope this book can contribute to the urgent necessity to get out of the way by reveling in the catastrophic failure that should inspire humility but instead seems to embolden too many to seek global control yet again. Demolition may be an affirmative act if it means insurgents and others can be better heard. And yet this may fail too. If we can accomplish nothing at all, we can at least, as Ta-Nehisi Coates and other pessimists have said, refuse to suborn the lie of America any longer. Telling the truth, even if it cannot change the outcome of history, is a certain kind of solace. In Coates’s words, there is a kind of rapture “when you can no longer be lied to, when you have rejected the dream.” Saying the truth out loud brings with it the relief that we are not crazy. Things really are as bad as we think.

If there are those of us who want to break from this one-hundred-year-old race to be the next Henry Kissinger, then why do we continue to seek respect in the form of recognizable standards of excellence? I am not sure where the answer finally lies, but I do know that professionalization will not save us. To appear as normal and recognizably rigorous will not be enough to stave off the neoliberal drive to monetize scholarship, or to demand of us strategically useful insights. The least we can do in the face of such a battle is to find comfort in meaningful ideas and the friendships they build rather than try to perform for those we know are the problem. Some will ask, who is this “we” or is that “they”—where is your evidence? More will know exactly what I am talking about.

The virtues I seek are oriented toward an academy of refuge, a place we can still live, no matter how dire the conditions of the university and the classroom. It is not the think tank, boardroom, or command center. We are, those of us who wish to be included, the last of the philosophers, the last of the lovers of knowledge, the deviants who should revel in what Harney and Moten have called the undercommons.

In one of his final lectures, Bataille speaks of the remnants of a different human species, something not quite so doomed, something that wasted its newly discovered consciousness and tool-being on the art that still marks the walls of prehistoric caves. This lingering minor or vestigial heritage is philosophy’s beginning. Philosophy survives war, atrocity, famine, and crusades. Thinking matters in a very unusual way. Thinking is not power or emancipation. Thinking matters for a sense of belonging to the world, and for believing in the fecundity of the world despite evidence to the contrary.

How do you get all this from pessimism, from failure? Because willing failure is a temptation, a lure to think otherwise, to think dangerous thoughts. Pessimism is a threat to indifferentism and nihilism in the sense of the phenomenon of Donald Trump. Pessimism is a provocation and an enemy of skepticism, particularly of the metaphysical variety. It is not redemption from these afflictions, but in pessimism there is solace in the real. To put it another way, to study the world as it is means to care for it.

The exhortation that our care or interest should be contingent on how useful the world is and how much of it conforms to our designs is as much opposed to care as it is to empiricism. We can study airports, poetry, endurance races, borders, bombs, plastic, and warfare, and find them all in the world. To consider the depth of their existence can be an invitation to the world rather than a prelude to another policy report. One cannot make a successful political career out of such pursuits, but you might be able to make a life out of it, a life worth repeating even if nothing else happens.

At the end of Jack Halberstam’s The Queer Art of Failure, we are presented with the Fantastic Mr. Fox’s toast as an exemple of something meaningful in these dark times of ours.

They say all foxes are slightly allergic to linoleum, but it’s cool to the paw—try it. They say my tail needs to be dry cleaned twice a month, but now it’s fully detachable—see? They say our tree may never grow back, but one day, something will. Yes, these crackles are made of synthetic goose and these giblets come from artificial squab and even these apples look fake—but at least they’ve got stars on them. I guess my point is, we’ll eat tonight, and we’ll eat together. And even in this not particularly flattering light, you are without a doubt the five and a half most wonderful wild animals I’ve ever met in my life. So let’s raise our boxes—to our survival.

Halberstam says of this queer moment:

Not quite a credo, something short of a toast, a little less than a speech, but Mr. Fox gives here one of the best and most moving—both emotionally and in stop-motion terms—addresses in the history of cinema. Unlike Coraline, where survival is predicated upon a rejection of the theatrical, the queer, and the improvised, and like Where the Wild Things Are, where the disappointment of deliverance must be leavened with the pragmatism of possibility, Fantastic Mr. Fox is a queerly animated classic in that it teaches us, as Finding Nemo, Chicken Run, and so many other revolting animations before it, to believe in detachable tails, fake apples, eating together, adapting to the lighting, risk, sissy sons, and the sheer importance of survival for all those wild souls that the farmers, the teachers, the preachers, and the politicians would like to bury alive.

Although not as much fun as Halberstam’s monument to low theory, Savage Ecology is for all the other wild animals out there studying global politics. May we be buried alive together.

#### The Role of the Judge is to give up hope.

#### Hopeful affirmation warps within the biomedical sphere to structure policy toward the governance of difference – frame the debate through competing models of thought

Ehlers and Krupar ‘14

[Nadine Ehlers, Women's and Gender Studies at Georgetown University, and Shiloh Krupar, Geographer and Provost's Distinguished Associate Professor at Georgetown University. Fall 2014. “Hope Logics: Biomedicine, Affective Conventions of Cancer, and the Governing of Biocitizenry,” <https://ro.uow.edu.au/lhapapers/1849/>] pat

Hope carries utopian promise; it offers possibilities of a “not yet,” a “to come,” and an imagining of life otherwise. In contemporary critique, hope has often been deployed as the means to effect radical social transformation and the reinvention of contemporary reality. It is seen as a way of reaching beyond the stymied conditions of today by orienting toward the horizon of an alternative tomorrow. Hope is invoked as an incantation, under conditions of uncertainty; it is an insistent affirmation of the ability to effect change. This change can be imagined politically and economically, psychologically and corporeally. Indeed, hope is ubiquitous in contemporary culture, from US President Barack Obama’s political memoir—The Audacity of Hope—to international food drives—the “Convoy of Hope”4—to biomedical understandings of illness and health. As in the above quotation from “Banners of Hope” (an online outreach for children with life-threatening diseases), hope is the panacea for chronic or terminal illness. Hope might be seen to operate as a logic within the biomedical arena, one that structures subjectivities, social realities, and corporeal states. It incites particular behaviors; it induces certain forms of community and belonging; it seduces us to believe in the possible transcendence of bodily limits and/or temporal constraints. As we explore in this essay, hope is the guiding principle of biomedicine’s telos toward the affirmation of life.

This essay argues that hope is conventionalized in particular ways that work in the service of biopolitical imperatives to govern life, and to secure, optimize, and speculate on that life. We orient the investigation toward the regulation of affect within the US biomedical arena to consider how affective conventions—that is, the perceptual, emotional, and corporeal modes of managing and responding to events—of hope perform a governing function. In relation to illness, for example, they condition responses to bodily vulnerability and uncertainty, manage the present for the future, and relentlessly affirm life. We ground these broad claims in an examination of the dominant affective conventions of hope at work in cancer activism and treatment. Documenting the ways in which hope is increasingly militarized, commodified, routinized, and delimited in the neoliberal era, the essay explores how such conventions of hope are actively made and maintained through aspects of cancer-related biomedical encounters—what we call infrastructures of care and bioethics of faith within oncology. The essay concludes by considering alternative hope tactics—“hoping for other things”—in relation to cancer.

## Case

#### The plan diffuses, but does not diminish, the power of intellectual monopolization under capitalism – without strict IP regimes, companies move to secrecy in business practices along with either complete outsourcing or completely in-house production – both dispossess global south economies.

Durand and Milberg, 18

[Cédric, Associate Prof. Political Economy @ U-Geneva, member @ Paris Nord Economics Center; and William, Dean @ The New School for Social Research: “Intellectual Monopoly in Global Value Chains,” published in 2018, https://hal.archives-ouvertes.fr/hal-01850438]//AD

\*GVCs=Global Value Chains

The late 20th century internationalization of IPRs and the expansion of GVC trade have each been driven by a separate set of factors, but there is a link and we see it in the growing role of intangible assets in international trade. GVC trade is qualitatively different from the traditional exchange of final goods or primary products. It requires intense information flows to coordinate the labor process in parts across countries (see section 2.2). Moreover, the density of these information flows entails a risk of appropriation by would-be competitors, even more than in traditional trade of finished products, where a costly process of reverse engineering is required prior to any imitation (Mansfield et al., 1981). In GVCs, lead firms thus have to weigh the advantages of disaggregating the production process and the cost reduction this can bring against the risk of losing control over some of their proprietary intangible assets. 21 Management studies and transaction costs economists have stressed the importance of the IP institutional context for business decisions when there are international alliances, investment and sourcing due to the risk of so called “appropriability hazards” (Oxley, 1997; Teece, 1986). This risk seems to have expanded since the 1990s, although there are some early testimonies from chemical and information industries reporting a reluctance to transfer advanced technology in countries with weak intellectual property regimes (Mansfield, 1994, pp. 26–29). From the perspective of transaction cost economics, considering the case of a relation with a foreign supplier or buyer, the risk of IP leakage due to a weak IP environment will tend to raise the cost of relying on contract-based alliances relative to equity joint venture (Oxley, 1999, pp. 287–288; Williamson, 2008, p. 12). From the perspective of management research, careful management of the flow of technology along GVCs is imperative and necessitates strict control over information flows in countries with weak IPRs (Prasad & Sounderpandian, 2003, p. 246). Adequate governance arrangements, secrecy or restraint to outsource offshore were thus considered as the main way to deal with the risk of IP leaks in GVCs: Companies can mitigate intellectual property risk by bringing, or keeping, some production in-house, or at least under direct company control. That is a major reason why Motorola owns some of the testing equipment at supplier locations. Managers also can decrease risk by limiting the flow of new intellectual property into countries with weak legal protections. Companies like Cisco, which outsources all manufacturing, also lower risk by creating business processes that cannot be easily replicated by a single manufacturer. Electronics manufacturer Sharp Corp. even repairs equipment itself, thus preventing any possibility, accidental or otherwise, that its vendors will share proprietary information with Sharp's competitors. The company goes so far as to reprogram various computer-aided machines used by its vendors without sharing the information. (Chopra & Sodhi, 2004, p. 57) In the 2010s, a new field of business research and consulting emerged around the management of IP in global value chains. Its purpose is to circumvent the difficulty of using formal IP protection channels and to find other ways to enforce IPRs without limiting the scope of GVC activity. A first issue is supplier selection to minimize the risk of IP leaks (Wu, Li, Chu, & Sculli, 2013). There is also an attempt to move beyond legal procedure and use the reporting procedures created for the implementation of Corporate Social Responsibility to enforce stricter IPRs standards along the chains (Gillai, Rammohan, & Lee, 2014). The Center for Responsible Enterprise And Trade (CREATe.org) was founded in 2011 with the support of start-up grants from the Microsoft Corporation with this objective of fostering “a culture of IP protection and compliance” throughout the global supply chain. This agenda is becoming mainstream, as it was endorsed by the World Intellectual Property Organization in its annual report dedicated to Intangible Capital in Global Value chains (WIPO, 2017).