# 1NC

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#### International Relations is the royal science of empire – the aff engineers “sustainable warfare” through a mutating geopolitics of violence.

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!

Because I wanted this book to inspire curiosity beyond the boundaries of international relations (ir), I considered ignoring the field altogether, removing all mentions of ir or ir theory. However, upon closer reflection, I have decided to keep these references as I think they are relevant for those outside the discipline and for those who, like myself, often feel alienated within its disciplinary boundaries. In the former case, it is important to know that, unlike some more humble fields, ir has always held itself to be a kind of royal science. Scholarship in ir, particularly in the United States, is half research, and half biding time until you have the prince’s ear. The hallowed names in the mainstream of the field are still known because they somehow changed the behavior of their intended clients—those being states, militaries, and international organizations. Therefore, some attention to ir is necessary because it has an all-too-casual relationship with institutional power that directly impacts the lives of real people, and ir is all too often lethal theory. As an American discipline, the political economy of the field is impossible without Department of Defense money, and its semiotic economy would be equally dwarfed without contributory figures like Woodrow Wilson, Henry Kissinger, and Samuel Huntington. The ubiquity of Huntington’s “clash of civilizations” thesis and Kissinger’s particular brand of realpolitik are undeniable throughout the field, as well as the world. Each, in their own way, has saturated the watchwords and nomenclature of geopolitics from an American perspective so thoroughly that both political parties in the United States fight over who gets to claim the heritage of each. Although many other fields such as anthropology and even comparative literature have found themselves in the gravitational pull of geopolitics, international relations is meant to be scholarship as statecraft by other means. That is, ir was meant to improve the global order and ensure the place of its guarantor, the United States of America. Having spent the better part of a decade listening to national security analysts and diplomats from the United States, South Korea, Japan, Europe, China, Brazil, and Russia, as well as military strategists around the planet, I found their vocabulary and worldview strikingly homogeneous.

If this seems too general a claim, one should take a peek at John Mearsheimer’s essay “Benign Hegemony,” which defends the Americanness of the ir field. What is most telling in this essay is not a defense of the U.S. as a benign hegemonic power, which Mearsheimer has done at length elsewhere. Rather, it is his vigorous defense that as a field, ir theory has done well by the world in setting the intellectual agenda for global challenges, and for creating useful theoretical approaches to addressing those problems. For Mearsheimer, the proof that American scholarly hegemony has been benign is that there is nothing important that has been left out. A quick scan of the last ten or twenty International Studies Association conferences would suggest otherwise.

That issues like rape as a weapon of war, postcolonial violence, global racism, and climate change are not squarely in the main of ir demonstrates just how benign American scholarly hegemony is not. As one prominent anthropologist said to me at dinner after touring the isa conference in 2014, “it was surreal, like a tour through the Cold War. People were giving papers and arguing as if nothing had ever changed.” These same provincial scholars aspire and succeed at filling the advisory roles of each successive American presidency. One cannot help but see a connection between the history of the ir field, and the catastrophes of U.S. foreign policy during the twentieth and twenty-first centuries. One could repeat the words of the anthropologist I mentioned to describe the 2016 presidential campaign debates over the future of U.S. foreign policy: it is as if “nothing had ever changed.” And yet these old white men still strut around the halls of America’s “best” institutions as if they saved us from the Cold War, even as the planet crumbles under the weight of their failed imperial dreams.

If international relations was meant to be the science of making the world something other than what it would be if we were all left to our own worst devices, then it has failed monumentally. The United States is once again in fierce nuclear competition with Russia. We are no closer to any significant action on climate change. We have not met any of the Millennium Development Goals determined by the United Nations on eradicating poverty. War and security are the most significant financial, creative, social, cultural, technological, and political investments of almost every nation-state on Earth. The general intellect is a martial intellect.

Despite all this failure, pessimism does not exist in international relations, at least not on paper. The seething doom of our current predicament thrives at the conference bar and in hushed office conversations but not in our research. In public, the darkness disavowed possesses and inflames the petty cynicisms and hatreds that are often turned outward at tired and predictable scapegoats.

After the fury of three decades of critique, most ir scholars still camp out either on the hill of liberal internationalism or in the dark woods of political realism. Neither offers much that is new by way of answers or even explanations, and each dominant school has failed to account for our current apocalyptic condition. One is left wondering what it is exactly that they think they do. Despite the seeming opposition between the two, one idealistic about the future of international order (liberals) and the other self-satisfied with the tragedy of cycles of war and dominance (realists), both positions are optimists of the positivist variety.

For both warring parties, ir optimism is expressed through a romantic empiricism. For all those who toil away looking for the next theory of international politics, order is out there somewhere, and dutifully recording reality will find it—or at least bring us closer to its discovery. For liberal internationalism, this will bring the long-heralded maturity of Immanuel Kant’s perpetual peace. For second-order sociopaths known as offensive realists, crumbs of “useful strategic insight” and the endless details that amplify their epistemophilia for force projection and violence capability represent a potential “advantage,” that is, the possibility to move one step forward on the global political board game of snakes and ladders. Still, the cynicism of ir always creeps back in because the world never quite lives up to the empirical findings it is commanded to obey. Disappointment here is not without reason, but we cynically continue to make the same policy recommendations, catastrophe after catastrophe.

I have an idea about where ir’s recent malaise comes from. I think it is a moment, just before the awareness of the Anthropocene, after the Cold War and before September 11, when the end of everything was only a hypothetical problem for those of a certain coddled and privileged modern form of life. The catastrophe of the human predicament was that there was no catastrophe, no reason, no generation-defining challenge or war. Now the fate of this form of life is actually imperiled, and it is too much to bear. The weird denial of sexism, racism, climate change, the sixth extinction, and loose nukes, all by a field of scholars tasked with studying geopolitics, is more than irrationalism or ignorance. This animosity toward reality is a deep and corrosive nihilism, a denial of the world. Thus ir as a strategic field is demonstrative of a civilization with nothing left to do, nothing left to destroy. All that is left is to make meaning out of being incapable of undoing the world that Euro-American geopolitics created. Emo geopolitics is not pretty, but it is real. The letdown, the failure, the apocalypse-that-was-not finally arrived, and we are too late.

Still, the United States of America continues to follow the advice of “the best and the brightest,” testing the imperial waters, not quite ready to commit out loud to empire but completely unwilling to abandon it. Stuck in between, contemporary geopolitics—as curated by the United States—is in a permanent beta phase. Neuro-torture, algorithmic warfare, drone strikes, and cybernetic nation-building are not means or ends but rather are tests. Can a polis be engineered? Can the human operating system be reformatted? Can violence be modulated until legally invisible while all the more lethal? Each incursion, each new actor or actant, and new terrains from brains to transatlantic cables—all find themselves part of a grand experiment to see if a benign or at least sustainable empire is possible. There is no seeming regard for the fact that each experiment directly competes with Thomas Jefferson’s democratic experiment. One wonders if freedom can even exist anywhere other than temporarily on the fringe of some neglected order. Is this some metaphysical condition of freedom, or is the world so supersaturated with martial orders that the ragged edges between imperial orders are all that we have left? It feels like freedom’s remains persist only in the ruins of everything else. No space is left that can be truly indifferent to the law, security, or economy. Such is the new life of a human in debt. The social contract has been refinanced as what is owed and nothing more: politics without equity. Inequity without equality.

What about the impending collapse of the post–World War II order, the self-destruction of the United States, the rise of China and a new world order? If humanity lasts long enough for China to put its stamp on the human apocalypse, I will write a new introduction. Until then, we live in the death rattle of Pax Americana. While I think the totality of this claim is true, I do not want to rule out that many of us throughout the world still make lives otherwise. Many of us even thrive in spite of it all. And yet, no form of life can be made that escapes the fact that everything can come to a sudden and arbitrary end thanks to the whim of an American drone operator, nuclear catastrophe, or macroeconomic manipulation like sanctions. There are other ways to die and other organized forms of killing outside the control of the United States; however, no other single apparatus can make everyone or anyone die irrespective of citizenship or geographic location. For me, this is the most inescapable philosophical provocation of our moment in time.

The haphazard and seemingly limitless nature of U.S. violence means that even the core principles of the great political realist concepts like order and national interest are being displaced by subterranean violence entrepreneurs that populate transversal battlefields, security corridors, and border zones. Mercenaries, drug lords, chief executive officers, presidents, and sports commissioners are more alike than ever. Doomsayers like Paul Virilio, Lewis Mumford, and Martin Heidegger foretold a kind of terminal and self-annihilating velocity for geopolitics’ technological saturation, but even their lack of imagination appears optimistic. American geopolitics does not know totality or finality; it bleeds, mutates, and reforms. Furthermore, the peril of biopolitics seems now almost romantic. To make life live? Perchance to dream. The care and concern for life’s productivity is increasingly subsumed by plasticity—forming and reforming without regard to the telos of productivity, division, or normative order.

There are, of course, still orders in our geoplastic age, but they are almost unrecognizable as such. When so many citizens and states are directly invested in sabotaging publicly stated strategic ends, then concepts like national interest seem equally quaint. We are witnessing creative and horrifying experiments in the affirmative production of dying, which also deprive those targeted and in some cases whole populations from the relief of death. To follow Rucker, I want to try to see the world for what it is. We can only say that tragedy is no longer a genre of geopolitics. Tragedy redeems. The occluded character of contemporary geopolitics shoehorned into experience produces the feeling that there is no relief, no reason, no victory, no defeats, and no exit within the confines of national security’s constricted world. This is not tragedy: it is horror. We live in an age of horror that, like the victims of gore movies who never quite die so that they can be tortured more, furthers our practice of collective violence and goes on for decades as a kind of sustainable warfare.

#### The aff’s managerial concerns over space debris is techno-nationalism – liberal governance over space as a “commons” is the exclusive domain of space-faring nations

Stroikos ‘16

[Dimitrios, University of York. 2016. “China, India in Space and the Orbit of International Society: Power, Status, and Order on the High Frontier.”] Pat

Moreover, it is necessary to briefly say something about how techno-nationalism as a primary institution interacts with some of the other institutions of international space society. First, in many ways, techno-nationalism is complimentary to sovereign statehood because sovereignty in space is largely embedded in cosmopolitan and solidarist conceptions. This is partly why highly visible space projects define spacefaring hierarchies. Second, and consequently, techno-nationalism is also closely linked to great power status and great power management in the sense that different space capabilities also confer different levels of status and responsibilities in the management of international order in space. Likewise, in relation to diplomacy, highly visible techno-nationalist space feats can also offer a seat at the table of diplomatic initiatives and negotiations. Seen in this light, ‘high-visibility’ projects, such as space programmes are part of ‘recognition games’, which states play in order to acquire the status of a great power (Suzuki, 2008). As Cunningham (2009: 74) notes, ‘to be a superpower, one must be a “spacefaring” nation’. The Space Market Arguably, the economic factor has been one of the most neglected issues in the English School literature. Discussing some of the shortcomings of Bull’s work, Miller (1990: 74) pointed out in 1990, ‘a basic criticism of Bull’s account of international society’ is ‘that it does not include a strong economic component’ dealing with rules regarding trade, navigation, and investment and the common interests that permeate the sphere of economic activities. Since then, some important work has been done to bring together the economic sector and the English School, especially in the context of globalisation (Buzan, 2004; Buzan, 2005; Hurrell, 2007: 194-215). However, the question of how to consider the economic sector within the English School remains rather underdeveloped. According to Buzan, one response is to treat capitalism as a master institution, but he prefers the use of the market as a more neutral term, which has the additional merit of encompassing other practices, such as trade (Buzan, 2004: 193-4, Buzan, 2014a: 136). Consequently, given the growing globalisation and commercialisation of space activities (OECD, 2014: 9-10), there are good reasons for considering the space market as an emerging primary institution of international space society. Significantly, in some ways, since the advent of the Space Age, the space market has followed a parallel trajectory to the market as a distinctive institution at the global level. In particular, although the market was a key primary institution of the Western global international society during much of the Cold War, it has emerged as a sort of a global institution in the post-Cold War era (Buzan, 2014a: 138). Likewise, the space market was initially confined to American-led space activities, beginning as a US government initiative with the Communications Satellite Act in 1962, which led to the creation of the International Telecommunications Satellite Consortium (Intelsat) in 1964 (Moltz, 2014: 94). However, during the early Cold War, commercial activities were largely limited to the field of satellite communications and even commercial transatlantic cooperation in space was determined to a large extent by political and strategic factors and technology transfer considerations (Krige, 2013b). Equally, the idea of the commercialisation of space remained contested not the least because of the opposition of the Soviet Union and communist China to the market in general. This began to change only in the 1980s, when a number of space players emerged, including Europe and Japan, that challenged the US leadership in the fields of satellite manufacturing, launching capability, and other commercial space services. It was also during this period that the Soviet Union and China became less reluctant to get involved with commercial space activities (Krige, 2013a: 16-7). But it was after the end of the Cold War that the globalisation and commercialisation of space activities gradually led to the emergence of a global space market, which points to its inclusion as a primary institution of the international space society. According to a recent report by the Space Foundation (2015: 2), the global space economy grew up by 9 percent in 2014, totalling $330 billion, with commercial space activities accounting for the 76 percent of the global space economy and direct-to-home television services accounting for more than three-quarters of the commercial space sector. Even in the launch field, which has been traditionally reserved to the state largely due to national security and cost considerations, US small private companies have emerged like Space Exploration Technologies Corporation, known as SpaceX, and XCOR Aerospace. As Newlove-Eriksson and Eriksson (2013) argue, the globalisation of space activities has been underpinned by the growing importance of private authority and transnational Public-Private Partnerships (PPPs) and the blurred distinction between the military and civilian uses of space. Therefore, it makes sense to think of the space market as an institution of international space society. Yet, a number of points are worth noting here as they help to highlight the possibilities and limits of this move. First, despite all the attention paid to the privatisation of space travel promoted by space entrepreneurs of the likes of Elon Musk (SpaceX), Jeff Bezos (Blue Origin), and Richard Branson (Virgin Galactic), the privatisation of space should not be overstated. Not only does the degree of privatisation vary across space services and products (Moltz, 2014: 102-12), but governments also remain central actors in the space industry as key sources of initial investment and as customers for several space products and services (Brennan and Vecchi, 2011: 18, OECD, 2014: 17). Second, while it is clear that the argument over whether to have the market or not ended with the collapse of the Soviet Union, the tension between economic nationalism and economic liberalism is far from over, as there are not many states fully open to the forces of the global economy and many states support a form of capitalism that is embedded in economic nationalism. This points to the contested nature of the market as a primary institution in the sense that for many states the challenge of how to relate to the global market and make it more effective remains (Buzan, 2014a: 138). As far as international space society is concerned, it is necessary to note that the contested nature of the space market as an institution is reflected in the continuing dialectics between techno-nationalism and techno-globalism. It is commonplace among scholars to argue that Japan and China are two key examples of states that privilege a techno-nationalist approach to technology and innovation, including space technology. But even the United States has not been immune to techno-nationalist impulses. As Weiss (2014) shows, the enduring lead in high technology that the United States still enjoys is largely explained by the creation of not a liberal, but a hybrid political economy, whereby the national security state is interwoven with the commercial sector. NASA, of course, has been a key institution of the national security state since the beginning of the Space Age. But this has also been manifested in its recent efforts to catalyse the development of a commercial space industry through inviting competitive innovation (Weiss, 2014: 119-20, 27-8). This leads to the third point to make about how to understand the relationship between techno-nationalism and the space market. Because of the enduring influence of the former, it is tempting to see techno-nationalism as containing the space market (at least for the time being). Clearly, at one level, the space market can be understood as complementary to techno-nationalism in the ever-globalising international space society. Yet, at another level, the space market as a solidarist institution is staged as opposed to techno-nationalism. This tension is compounded by the fact that, in many ways, techno-nationalism occupies the crucial place of national sovereignty and territoriality in the sector of space considering that sovereignty in international space society is largely understood in cosmopolitan terms. Fourth, in discussing the market as a primary institution, Beeson and Breslin (2014) suggest that it makes more sense to treat the ‘developmental state’ and ‘regional production structures’ as primary institutions in East Asia rather than focusing on the market. This is an important consideration that serves to highlight how the global political economy is underpinned by significant regional derivations. Following from this, although it is apparent that the space market is a key feature of the social structure of international space society, it is possible to say that there are significant regional derivations. Perhaps the best expression of this is the Chinese and Indian variants of postcolonial techno-nationalism that still shape how the two rising Asian space powers relate to the space market. In light of the above, for now, it seems that there is some sort of hierarchy between techno-nationalism and the space market with the former subsuming the latter, especially with regards to space programmes in a postcolonial context. Certainly, the integration of China and India into the global space economy has accelerated over the last decades, but, as we shall see, techno-nationalism is still prominent in the ways in which the two Asian space powers approach space technology. Moreover, the space market remains contested as an emerging institution due to the ambiguity embedded in space law regarding space activities carried on by private actors. This process is further complicated by the inherent dual-use nature of space technology and the blurring of the distinction between the private and public realms (Newlove-Eriksson and Eriksson 2013). Environmental Stewardship There is now a burgeoning literature that deals with the relationship between international society and global environmentalism and assesses the extent to which environmental stewardship can be seen as a nascent institution of international society. Recent efforts to find ways to mitigate space debris as well as to create a normative framework for the sustainability of space are illustrative of how environmental stewardship is gradually becoming an institution in space. For example, in 2007, COPUOS adopted the ‘Space Debris Mitigation Guidelines’, which were wrought by the international Inter-Agency Debris Coordination Committee (IADC), consisting of experts from thirteen space agencies (United Nations Office for Outer Space Affairs, 2010). Moreover, as discussed earlier, in 2010, COPUOS formed the Working Group on the Long-term Sustainability of Outer Space Activities. Notably, the European Union proposal for a Code of Conduct for Outer Space also includes provisions on space debris control and mitigation (Council of the European Union, 2008: 9; Dickow, 2009: 159). Thus, there are grounds for considering environmental stewardship as an emerging institution of international space society. Indeed, the growing number of governments, private firms, and non-state actors that emphasise the importance of the sustainable utilisation of space suggests that space sustainability has emerged as a key norm. However, what should be noted is that these developments reflect a more pragmatic approach to maintain the space environment sustainable for the effective use of space rather than an expression of cosmopolitan values. Consequently, in the subsequent chapters, rather than examining in detail the engagement of China and India with environmental stewardship as a nascent institution in space, the focus will be on the emerging norm of space sustainability as a key great power responsibility in managing international space order and the implications of this development for China and India as aspiring great powers. Concluding Remarks Although it is clear that there are a number of ways of understanding the international politics of space, it may be worth going beyond standard theoretical approaches to understand how order is maintained in space. Drawing on key English School concepts, this chapter suggests that it is possible to conceptualise space not merely as a system, but also as an international society with a distinct social structure. This exercise of concept development is important both analytically and hermeneutically, given the notion of an exclusive club of space-faring countries. The chapter developed this argument further by highlighting how the nature of outer space as a distinctive sectoral interstate society is manifested in the ways in which its primary institutions are differentiated from such institutions at the global level (space war, space law, cosmopolitan sovereignty, space diplomacy, balance of power, great power management, techno-nationalism, space market, and environmental stewardship) in a historical and comparative context. In doing so, the chapter helps to highlight the constitutive impact of these institutions on the norms that shape the behaviour of the space-faring states.

#### Framing China as an irresponsible power in space is tied to fear of loss of control over the “new American way of war” and the frontier of outer space – that creates new instantiations that force conflict.

Hunter ‘18

(Cameron Hunter, PhD from the University of Bristol, MA in International Security and Terrorism Studies from University of Nottingham, and MA in Research Methods from the University of Bristol. “The Rise of China in Space: Technopolitical Threat Construction in American Public Policy Discourse” PHD Dissertation. <https://research-information.bris.ac.uk/files/183271194/Final_Copy_2018_09_25_Hunter_C_PhD.pdf> )//RJG

As we have seen in this chapter, proponents of the “Chinese space threat” have attempted to overturn what they see as a dangerous lack of attention for space matters relating to military and economic issues. To do this, American policy elites have built up two fairly distinct, yet mutually supporting narratives of specific Chinese “threats” to specific aspects of the American national Self. Together these narratives provide the linguistic elements that could be deployed in debates on the technological decisions the US faced in response to China’s “rise” in space. The most important aspect of the national Self which the “Chinese space threat” is positioned as jeopardising was the new, clean and ‘virtuous’ (Der Derian 2009) “American way of war.” American policy elites have built on existing, prevailing formulations of “the new American way of war” in order to highlight the crucial roles of space technology in enabling the desirable practices of American warfighting. At times, this is done in a way which explicitly compared the ‘virtuous’ “new American way of war” with the old, undesirable practices of warfare during World War II (Der Derian 2009: 136). In matters of conventional war, they warn that China could destroy satellites and transport American back to a time when casualties were unavoidably high. Advancing a specific vision of how America should fight its wars did not always require direct comparison, however. Military and political elites also warned that the US would not be able to project power wherever it wanted and needed. Their most catastrophic visions of all warned that Chinese space technology jeopardised the President’s ability to control the nuclear stockpile, and therefore by extension the stability of American nuclear deterrence and the existence of the American homeland. All of these claims involved complex, mutual relationships between identity and technical artefacts. The overall effect was the successful supplanting of the prior discursive representation of unchallenged American military space power, with constructions of an America reliant on space but with no defense against the new “Chinese space threat.” These struggles over the meaning of space technologies and national identities also played into debates on military technology procurement, explored in the next chapter. The second major component of the technopolitical identity politics of the “Chinese space threat” related to notions of American “exceptionalism.” This manifested under two main themes: national prestige, particularly around the legacy of the Moon landings, and utopian economic visions under the rubric of the American “frontier.” Although less dominant than the discourse positioning China as a “threat” to the “new American way of war,” the “Chinese space threat” to American “exceptionalism” was an important supporting component of narrative of a threatening “rise” of China in space. In matters of economics and prestige, the “threat” advocates had some moderate success. The conventional, prevailing understandings of Apollo as an unassailable national achievement was a powerful opponent for the “Chinese space threat” advocates to overturn with their countervailing visions of Chinese flags on the Moon. The greatest success, built not only on the discourse of the utopian vision of an endless American “frontier,” but also favourably positioned to draw on the strength of the military and prestige components of the wider “Chinese space threat,” was in the implementation of specific anti-Chinese trade regulations for space technology. Much as in the case of the military threat, the threat to “exceptionalism” was also significant because it played directly into debates about grand national technological programs such as the Space Shuttle, Constellation, and Orion. By simultaneously problematising the concepts of technology and culture, it is possible to recognise in these debates over identity that, at least on one level, those sounding the alarm on China are “correct.” The “new American way of war” does indeed require certain technical affordances in order to be realised, and China possesses the capability to destroy or disable those artefacts. What is missing from this argument is the recognition that this position also relies on technopolitical constructions of both China and America, and crucially that these constructions are socially contingent. Whether it was the military, prestige, or economic components of the American national Self which was supposedly threatened by China’s space program, analysis of the discourse reveals that these linguistic moves were attempts to contest or reproduce wider, powerful discourses constituting national identity. Collectively they portray a nation that is much more fragile than their imagined audiences realised. Proponents of the “Chinese space threat” are therefore involved in creating new technopolitical relationships between China, the US, and their space technologies. While we can see their attempts at supplanting older representations of the state and space technology as broadly successful, the question remains of how successful they are in translating this success in rhetoric into transformations of American technics themselves. It is this question of the power of the “Chinese space threat” discourse on the American ‘social battlefield of technology’ which must be addressed.

#### 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 adopt martial empiricism – you should not understand the aff as a fiated plan but rather through the theory of IR that justifies it.

Bousquet et al ‘20

[Antoine Bousquet, University of London, Jairus Grove, University of Hawai‘i at Manoa, and Nisha Shah University of Ottawa. 2020. “Becoming war: Towards a martial empiricism,” <https://journals.sagepub.com/doi/full/10.1177/0967010619895660>] pat

Haunting the formations and deformations of global life, war confronts us as an abyss in the face of which cherished interpretative frameworks perilously buckle and warp. Indeed, Tarak Barkawi and Shane Brighton (2011: 129) accurately identify a ‘conceptual black hole surrounding the notion of war’ that has insistently gnawed at the study of the phenomenon. Locating the source of this lacuna in the absence of an ‘ontology of war’, they propose to ground one in ‘fighting’ (Barkawi and Brighton, 2011: 136). Although we concur on the diagnosis, we take issue with the suggested remedy. War does not obey any neat philosophical division between epistemology and ontology. For us, the resolute elusiveness of any definitive understanding of war is inherent in that very object. Every attempt to conceptually shackle war is undone by the creative advance of its new modes, residences and intensities. This speaks against the value of ontology per se less than it calls for a strange, paradoxical and provisional ontology that is consonant with the confounding mutability of war. Such an ontology, suspended between infinity and totality, being and nothingness, the sheer fecundity and utter catastrophe of war, may not be too uncanny for its object. In fairness, Barkawi and Brighton (2011: 133) gesture towards this in acknowledging ‘war’s recalcitrance as an object of knowledge’ and allowing for war to unmake any truth. Yet they seem unwilling to embrace the full force of their own insight, which Marc von Boemcken (2016: 239) ultimately declares: ‘even the statement that “war is fighting” may well be eventually undone by war. In a very fundamental manner, war escapes human intelligibility.’

This special issue on ‘Becoming War’ grapples with war as obdurate mystery. In its recurring persistence yet constant reinvention, its paradoxical ordering of life for the generation of death, or its stubborn affront to the better world we all purport to want, war never ceases to perplex us. Our world is one shot through by war, manifest in the nation-states we inhabit, the ecologies of technics that bind us to one another, and the very thoughts ricocheting through our communities of sense. And yet we still do not know war.

Rather than endeavour yet again to ‘say something fundamental about what war is’ (Barkawi and Brighton, 2011: 134, emphasis in original), we choose to explore how war becomes. This is not to say that we deny any durability or regularities in the phenomenon of war over time. Simply that, as Alfred Whitehead (1978: 35) puts it, ‘there is a becoming of continuity, but no continuity of becoming’. Accordingly, we seek to trace the lines of becoming that congeal into what comes to count as war, even as it continually frays at the edges and insolently defies habituated frames of reference. We do not, therefore, offer a theory of continuity, a formula for what all lines of becoming war might have in common, but instead sketch a style of investigation that encompasses both the enduring cohesion and the radical dispersion of war. We call this endeavour ‘martial empiricism’ to renounce attempts to devise a definitive theory of war. Instead, we favour an open-ended conceptual arsenal for following the trail of war wherever it leads us, as opposed to camping in the places where we already expect to find it.

Although we do not aim to circumscribe the remit of its investigations, martial empiricism is nonetheless inherently situational, spurred by the impulse to grasp the present martial condition we inhabit in all its calamity and promise. We would be far from the first to point out the growing inadequacy of the conceptual frameworks of war inherited from the Westphalian historical interval. Yet we still collectively flounder in the face of a combined and uneven landscape of armed conflict populated by metastasizing war machines encompassing overseas contingency operations, fullspectrum hybrid theatres, ethno-supremacist militias, crowd-sourced paramilitaries, Incel shooters and narco-state assassins. The game is definitely up when a task force led by the former head of United States Central Command can write that ‘basic categories such as “battlefield,” “combatant” and “hostilities” no longer have clear or stable meaning’ (Abizaid and Brooks, 2014: 35). Confronted with this reality and the persistent bewilderment it induces, we contend that a certain epistemic humility is in order. Rather than professing to know where war begins and ends, martial empiricism starts in the middle, with only the barest tentative intuitions necessary to explore the logistics, operations and embodiments that engender armed conflict as an unremitting condition of global life.

## Case

#### Utilitarian calculus doesn’t account for the geopolitical structure of aggregate conceptions of the good – that makes it incapable of grappling with the causes of apocalypse.

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!

Rather than see these two career trajectories as opposed, I think Crutzen’s thinking displays a continuous concern for the Northern Hemisphere and a particular cartography, rather than a geography, of human survival. Crutzen, as well as the concept of the Anthropocene itself, cannot escape preceding geopolitical conceptions of the Earth. Crutzen and others who rush so quickly to the necessity to transition efforts from climate abatement to climate modification are unsurprisingly not moved by claims that artificial cooling will likely cause droughts and famines in the tropics and subtropical zones of the global south; nor are they moved by how such plans may accelerate ocean acidification. The utilitarian risk calculus that favors the greatest good for the greatest number has no geographical or historical sensibility of how unequally aggregate conceptions of the good are distributed around the planet.

Global thinking, even in its scientific and seemingly universalist claims to an atmosphere that “we” all share, belies the geopolitics that enlivens scientific concern, as well as the global public policy agenda of geoengineering that seeks to act on behalf of it. Saving humanity as an aggregate, whether from nuclear war, Styrofoam, or climate turbulence, has never meant an egalitarian distribution of survivors and sacrifices. Instead, our new cosmopolitanism—the global environment—follows almost exactly the drawn lines, that is, the cartography or racialized and selective solidarities and zones of indifference that characterize economic development, the selective application of combat, and, before that, the zones of settlement and colonization. More than a result of contemporary white supremacy or lingering white privilege, the territorialization of who lives and who dies, who matters and who must be left behind for the sake of humanity, represents a five-hundred-year geopolitical tradition of conquest, colonization, extraction, and the martial forms of life that made them all possible through war and through more subtle and languid forms of organized killing.

I am not suggesting that Crutzen and others are part of a vast conspiracy; rather, I want to outline how climate change, species loss, slavery, the elimination of native peoples, and the globalization of extractive capitalism are all part of the same global ordering. That is, all of these crises are geopolitical. The particular geopolitical arrangement of what others have called the longue durée, and what I am calling the Eurocene, is geologically significant but is not universally part of “human activity” despite the false syllogism at the heart of popular ecological thinking that a global threat to humanity must be shared in cause and crisis by all of humanity.

Departing from Sloterdijk, I am hesitant to so easily locate modernity or explication as the root or cause of the global catastrophe. No single strategy, war, act of colonization, technological breakthrough, or worldview fully explains the apocalypse before us. However, there is something like what Gilles Deleuze and Félix Guattari call a refrain that holds the vast assemblage together, a geopolitical melody hummed along with the global expansion of a form of life characterized by homogenization rather than diversification. Accordingly, if we are to make some sense of such a vast world that is, even for Crutzen and Birks, “quite complex and difficult to model,” I think we must consider the particular refrain of geopolitics that is capable of, by scientific as well as more humbly embodied standards, destroying worlds along with the world. To eschew geopolitics simply because, as a refrain, it is too big, too grand, or too universal would ignore the conditions of possibility for nuclear weapons, power politics, and carbon-based globalization, and would greatly impoverish the explanatory capability of even the best climate models. So maybe it is not so strange that Crutzen and others’ attention to the nuclear threat of great powers has all but disappeared despite the fact that Russia and the United States still possess thousands of nuclear weapons, and as of late have been all too vocal about using them. Instead, the Anthropocene, as envisioned by Crutzen as a universal concern, requires with it a depoliticization of the causes of that concern.

### 1NC – Extinction First

#### Grove answers the extinction first block – their analysis of catastrophe as a one off event in the future is wrong and abstracts away from the ongoing ecological extinctions of the status quo – their crisis oriented politics are the link

#### Even if extinction outweighs, it’s inevitable and this round can’t change that – but our alternative evidence proves we have an ethical obligation to create new modes of subjectivity and lives worth living in the time we have left – even if their framework arguments are true subject formation is a prior question and the only portable aspect of debate

#### Their arguments are incredible blippy and not warranted as of the 1AC – it cannot cohere a complete ethical theory

#### Moral uncertainty is fake – we’ll win that we’re right so there’s no impact to it – justifies saying “we can’t be sure slavery is bad” or “maybe imperialism is ok sometimes”

#### Moen – proves consequentialism, not util – only the K can analyze the structures that create their impacts in the first place. Not only pain and pleasure matter – the alternative evidence proves that the ability to find community and value in living is also intrinsically value and the primary question in crisis.

#### Group actor spec, act omission, and intent forsight – proves our argument about how states appropriate ethical theories in order to justify their actions as being the most “morally good” which impact turns the implications of both of these arguments

#### On death – we will win the internal link, but VTL definitely outweighs – it’s a question of the internal link to pleasure and pain which outweighs under your standard

### 1NC—Solvency

#### 1. Circumvention – antitrust 101 – the plan establishes a precedent against anti-competitive practice in US law, but that does not work without lawsuits because that’s literally how antitrust enforcement works – those fail –

#### a. Biden appointees – DOJ suits will be dead in the water.

Press, Alsbergas, and Moran, 21

[Alex N., staff writer, interviewing Elias and Max, both research assistants at the Revolving Door Project at the Center for Economic and Policy Research: "It’s Looking Like the Department of Justice Under Biden Will Have Major Influence from Corporate Law," published by Jacobin, 2-23-21. https://www.jacobinmag.com/2021/02/corporate-power-amazon-big-law-department-of-justice-biden]//AD

As the Senate Judiciary Committee hearings for Merrick Garland, Joe Biden’s choice for attorney general, get started this week, it’s worth scrutinizing Garland’s ties to the corporate sector. One of these connections comes in the form of Jamie Gorelick, a partner at the powerful law firm WilmerHale and a current board member at Amazon. While she isn’t likely to get a formal appointment in the Department of Justice, Gorelick is notably close to Garland. The two have known each other since college and Gorelick has lately been talking up her closeness to the potential attorney general in recent weeks. The Revolving Door Project, which monitors ties between business and government, recently published a report on Gorelick. The report comes at a time when there is more attention than ever on Amazon as the company fights a union drive at its warehouse in Bessemer, Alabama. As Elias Alsbergas, the report’s author, writes, “WilmerHale’s work brazenly suppressing unions and [Gorelick’s] affiliation with a monopolist like Amazon” makes her closeness with Garland particularly concerning. Given that Gorelick has been publicly discussing her ties to Garland, it is reasonable to assume that this connection will be leveraged to assist corporate clients. Further, in this week’s hearings, Garland found time to defend corporate lawyers, who will likely have a place in the Department of Justice. As the Prospect reports, Garland said that “’Fortunately or unfortunately, the best antitrust lawyers in the country have some involvement, one way or another’ in tech.” All this, of course, is taking place under a President Biden who says strengthening the labor movement is one of his priorities. Jacobin’s Alex N. Press spoke to Alsbergas and Max Moran, who helped compile the report, about Gorelick, WilmerHale, and how “BigLaw” undermines workers’ rights. ANP Who is Jamie Gorelick? EA & MM Gorelick is a partner in the government affairs wing of a “BigLaw” firm, WilmerHale. She began her career in the 1990s under the Clinton administration, at the Department of Justice. She continued her career, running the department’s criminal division into the Bush years. She defended BP at the time of the Gulf oil spill. She has defended the cities of Chicago, and Baltimore, when it comes to police killings of Laquan Mcdonald and Freddie Gray — and, in the case of Chicago, the city’s cover up. She’s also done a lot of white-collar corporate defense work for pharmaceutical companies related to the opioid crisis. But what makes her stand out among the many other corporate lawyers who have done things equally heinous is that she is personal friends with Merrick Garland, the potential future attorney general — they’ve known each other since they were undergraduates. And we’re writing about Gorelick now because she sits on Amazon’s board of directors. What this means is that there is going to be a shadow advisor, with a deep personal relationship to the next attorney general, who is one step away from Amazon, a company which is facing deep scrutiny due to antitrust monopoly issues, not to mention its anti-union and anti-worker issues. On top of being very close personal friends, Garland owes some of his career to Gorelick. For Garland’s first job at the Department of Justice (DOJ), he was hired by Gorelick as an assistant underneath her when she was the deputy attorney general. She often tells the story about how he chose to dispatch himself to investigate the Oklahoma City bombings during the Clinton years. So the two of them not only were friends as undergrads, but his first stint at the DOJ — which he is now going to be leading — is thanks to Gorelick. There is every reason to think that he will be listening to her, that she will have a great deal of sway over his thinking, as he is leading DOJ. She’s been on a mini–press blitz within the legal press, going on some of that world’s major podcasts, to give a winking nod to potential corporate clients at WilmerHale along the lines of “we’ve got the ‘in’ with the incoming attorney general, so bring us your business and we will get you off for white-collar crime.” ANP What exactly is she saying about the access her relationship with Garland will give her and, by extension, her corporate clients? EA & MM She talks a great deal about their long-standing friendship and their time together during the Clinton years. It’s also important to keep in mind that one of the main ways through which BigLaw undermines public interest law and the DOJ is through these informal networks of everybody knowing everybody; everybody doing their stints on the inside and then coming out and profiting, and then going back in and then coming out, and so on. So she has been discussing their long-standing friendship and discussing how she thinks about his approach to legal work, how she analyzes his skills as a lawyer and the way that he approaches given issues. This was taken down recently but on the WilmerHale website, they had published a blurb about these press hits she had been doing about her relationship with Merrick Garland. She’s been offering her analysis of the way that he thinks, an analysis based on their closeness. It’s a two-way street as well. If Gorelick, and Amazon by proxy, can influence the DOJ, Gorelick also benefits from having someone on the inside who can tip her off to where prosecutorial focus will be, where the eye of the DOJ will land. This is supposition, but it’s also how it works. That’s valuable to her clients; that’s what they pay given that she’s a partner in the governmental affairs division of WilmerHale. There are also lots of tidbits that emphasize her closeness with Garland. For example, she was shepherding Merrick Garland through the Supreme Court nomination process. But she heard about that before it was public. Apparently Garland’s wife called Gorelick before Garland’s nomination to the Supreme Court was announced. She was one of the few people who knew that this was going to happen. We don’t want to understate the duration of the relationship, especially given that one of them now sits on the board of the most powerful company that is facing scrutiny from the department that should be breaking it up. ANP You’ve also noted that there have been several WilmerHale appointees to the DOJ by the Biden administration. EA & MM The current acting head of DOJ civil division — which is the division of the DOJ that represents just about every other part of the federal government in legal issues — is a former WilmerHale attorney, Brian Boynton. It’s important to note that he entered DOJ after Biden was inaugurated; he was brought in specifically to fill in before they bring in a more permanent person, and he may end up being the permanent person. At WilmerHale, Boynton was the main lawyer for the for-profit college industry’s main trade group. He also represented the University of Phoenix, a company which was under investigation by DOJ and other law enforcement organizations for extremely predatory practices, most especially toward veterans and service members. Right now, there’s a civil lawsuit by for-profit college students who have been defrauded by for-profit colleges, and they want to depose Betsy DeVos to explain why she didn’t discharge their student loans afterward. Boynton is doing everything in his power to block DeVos from having to testify. In so doing, he wrote a brief alongside the former number three within the Trump Justice Department. So you have a Biden official partnering up with a Trump official to protect Betsy DeVos. Boynton is a former WilmerHale person. He doesn’t have particular Democratic Party connections and he doesn’t have any particular ties to progressive or even liberal causes, so it seems like he got this job through his firm. That’s the only plausible explanation here, and that seems to portend a good amount of influence from WilmerHale folks. There were WilmerHale partners on Biden’s Department of Justice agency review team. WilmerHale is going to have a say, even at the lower levels that will have less scrutiny. And again, with WilmerHale, that means, by proxy, Amazon. ANP Biden is very insistent that he is pro-union. For example, he immediately fired the anti-union National Labor Relations Board (NLRB) general counsel Peter Robb upon taking office. It seems contradictory to support unions through appointments at one agency and then dismantle workers’ protections through another department. EA & MM Another element is that Biden made a big point of emphasizing that he had hired Vanita Gupta and Kristen Clarke. Both of them are fantastic appointees. But every other part of the DOJ has been filled with BigLaw attorneys either from WilmerHale or from another BigLaw firm. It’s important to look past the press releases the Biden’s team are putting out about good appointees to various parts of the federal government. The federal government is a very large institution, there are many different elements there, and the positions they don’t trumpet are often just as powerful if not more so. ANP What really caught my attention about Gorelick was her résumé — she’s defended so many of the villains of recent US history. When I see something like that, I wonder if this person is uniquely bad, or simply a member of a cadre of people who all take on these clients? EA & MM This is the structural path of the elite lawyer who goes to a well-heeled school on the East Coast and who then maybe begins as an associate at a BigLaw firm. If they have ambition, they will eventually revolve into a relevant government regulatory authority, which then gives them the inside knowledge that they can then sell or parlay into much more powerful and more lucrative C-suite, or partner-level positions at a BigLaw firm. That is what these groups openly advertise. Government access gives you a skill set that these organizations want, that skill set being knowing how to undermine — and in many cases, corrupt — execution of the law. Gorelick is a very clear, concrete example because she has so many ties to awful, horrific things. For example, there was an incredible Washington Post interview with her because she was the ethics lawyer for Jared [Kushner] and Ivanka [Trump]. The Post reporter asked her, “How do you feel about people who would look at your record and criticize it?” As the Post describes it, she starts tearing up and says, “I believe in the law. I believe if you follow that system, you will get to a fair result.” The way BigLaw lawyers justify these things to themselves is to say, “I am a neutral arbiter of the glorious institution of the law and all I am doing is coming to the defense of an institution that has chosen to employ me and whatever the law dictates comes out of this thing is clearly the right and just outcome. I am merely a vessel. I cannot be judged and I should not be judged based off my decisions.” This is completely ridiculous. The only way that you become a multimillionaire in this type of work is if you take on big corporate clients, and big corporate clients want to undermine anything that’s going to get in the way of their bottom lines. You can and should be judged based on those career decisions. They portray themselves as if every one of their clients were an innocent person facing the death penalty, when in fact, they are hired guns. ANP Is there anything else people should know about either Gorelick specifically or, more generally, the dynamics of this milieu in a Democratic administration? EA & MM It’s kind of trite, but personnel is policy. That goes doubly for the people you keep around you who aren’t on the books. People like Gorelick thrive because their relationships and their work are not scrutinized. This is how Biden is able to get away with the fact that unions helped put him in the Oval Office but some of his highest-level appointees have deep long-standing relationships with people who are anathema to labor’s agenda.

#### b. Anti-textualism – Courts soften enforcement – every major piece of antitrust legislation in US history follows this pattern – the Courts have always interpreted antitrust law as vague and indeterminate common law statute, all while disregarding the antitrust statutes’ clear text and purpose – durable fiat does not solve because you can’t fiat that every judge changes their mind on this question, just that the precedent gets established.

Crane ‘21

(Daniel [Frederick Paul Furth, Sr. Professor of Law, University of Michigan], 1/28/21, Antitrust Anti-textualism, 96 Notre Dame L. Rev. 3, p. 1205-1209, <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4952&context=ndlr>, accessed 8/24/21) JA

Scholars and judges widely agree that the U.S. antitrust statutes are open-textured, vague, indeterminate, and textually unilluminating.1 They further agree that little use can be made of the statutes’ legislative histories.2 It follows that the antitrust statutes are best understood as a legislative delegation to the courts to create an evolutionary and dynamic common law of competition.3 As the Supreme Court explained in its landmark Leegin decision on resale price maintenance, “From the beginning the Court has treated the Sherman Act as a common-law statute. . . . Just as the common law adapts to modern understanding and greater experience, so too does the Sherman Act’s prohibition on ‘restraint[s] of trade’ evolve to meet the dynamics of present economic conditions.” 4 In other words, the statutory texts disclose little of importance; the action is all in dynamic judicial interpretation. This view is so widely entrenched in the legal profession’s understanding of the antitrust laws—including, it must be admitted, this author’s—that it seems presumptuous to claim that the conventional wisdom is wrong, or at least significantly overstated. But it is. While the antitrust statutes may be lacking in some important particulars, they present a readily discernable meaning on many others. As Daniel Farber and Brett McDonnell have argued, “For the conscientious textualist, the statutory texts [of the antitrust laws] have considerably more specific meaning than the conventional wisdom would suggest.”5 And it is not simply the case that the meaning of the statutory texts could be rendered through ordinary methods of statutory interpretation but the courts have failed to see it. Rather, the courts frequently acknowledge that the statutory texts have a plain meaning, and then refuse to follow it. But it gets worse. The courts have not merely abandoned statutory textualism or other modes of faithful interpretation out of a commitment to a dynamic common-law process. Rather, they have departed from text and original meaning in one consistent direction—toward reading down the antitrust statutes in favor of big business. As detailed in this Article, this unilateral process began almost immediately upon the promulgation of the Sherman Act and continues to this day. In brief: within their first decade of antitrust jurisprudence, the courts read an atextual rule of reason into section 1 of the Sherman Act to transform an absolute prohibition on agreements restraining trade into a flexible standard often invoked to bless large business combinations; after Congress passed two reform statutes in 1914, the courts incrementally read much of the textual distinctiveness out of the statutes to lessen their anticorporate bite; the courts have read the 1936 Robinson-Patman Act almost out of existence; and the Celler-Kefauver Amendments of 1950, faithfully followed in the years immediately after their promulgation, have been watered down to textually unrecognizable levels by judicial interpretation and agency practice. It is no exaggeration to say that not one of the principal substantive antitrust statutes has been consistently interpreted by the courts in a way faithful to its text or legislative intent, and that the arc of antitrust antitexualism has bent always in favor of capital. Unlike in many debates over statutory interpretation, the issue in antitrust is not a contest between strict textualism and purposivism, including resort to legislative history.6 This Article uses “antitextualism” as a shorthand for the phenomenon of ignoring any bona fide construction of what a statute means, whether in the plain meaning of its words, linguistic or substantive interpretive canons, legislative history, or other ordinary markers of legislative meaning. Uninterested in these methods, the courts have treated the antitrust laws as a virtually unbounded delegation of common-law powers when, in important ways, the statutes quite clearly say something other than that. Inquiring into the nature and implications of antitrust antitextualism is particularly salient at the present when, for the first time in a generation, there is widespread dissatisfaction with antitrust enforcement and impetus for potential reform legislation.7 As was true at each of the prior moments of reformist sentiment, the call is for statutory reforms to curb the power of big business.8 We have seen this play before, and also its sequel. In the play, Congress announces that the antitrust laws are too weak and that reforms are necessary to protect the nation from the power of big capital. In the sequel, the courts (often abetted by the antitrust agencies and other antitrust elites) read down the statutes to accomplish less than their texts suggest or Congress meant. Will anything be different this time around, or are the legislative reforms currently on the table predestined to a similar fate? To begin informing an answer to that question, this Article undertakes to diagnose and analyze the longitudinal phenomenon of antitrust antitextualism. Part I sets the stage by contextualizing antitrust law within broader jurisprudential conceptions of statutory regimes, statutory interpretation, and legislative-judicial dynamics. More specifically, it presents the conventional understanding of the Sherman Act as a “super-statute” delegating broad common-law powers to the courts, thus removing antitrust law from usual controversies over statutory interpretation methodologies.9 It then establishes that, if the conventional wisdom is wrong and the antitrust statutes have determinate meanings that the courts are consistently ignoring in favor of big capital, the most obvious inference is that the courts have an ideological bias at odds with congressional purpose. Part I concludes by establishing a framework for assessing whether antitrust antitexualism generally represents a conservative judicial bias against the will of a more progressive Congress. Part II subjects the historical record of antitrust antitextualism to the analytical framework described in Part I. It presents the consistent pattern of judicial disregard of the antitrust statutes’ text and purpose across all five of the principal substantive antitrust statutes—the Sherman Act of 1890, the FTC and Clayton Acts of 1914, the Robinson-Patman Act of 1936, and the Celler-Kefauver Act of 1950, and shows that the pattern of judicial disregard has a unilateral direction—toward softening the blow of the antitrust laws on big business. However, Part II also shows that the progressive Congress/con servative courts hypothesis fails to capture the burden of the historical record. In particular, the judges responsible for reading down the antitrust statutes were not generally conservative by conventional measures, Congress has not shown much interest in overriding the judicial recasting of the statutes, and the courts have not undertaken to constitutionalize their holdings in order to prevent congressional overrides, even though they had many occasions to do so. Something other than ideological conflict between the legislative and judicial branches must be behind the phenomenon. Part III offers a counterhypothesis—that the antitrust laws reside in perennial tension between two fundamental impulses of the American political psyche: the romantic and idealistic attachment to smallness over bigness, and the pragmatic and often grudging realization that large-scale organization may be necessary to achieve economic efficiency. Congress expresses populist idealism through legislative pronouncements reining in big business, but then implicitly acquiesces as the courts (often in conjunction with the executive branch) read down the statutes to strike a balance between the aspirational and pragmatic impulses. For better or for worse, this is the way things have worked for 130 years. Part III concludes by considering the implications of the idealistic Congress/pragmatic courts thesis for future legislative reforms, the dynamism of the antitrust system, and jurisprudential understanding of legislative/judicial dynamics more generally.

#### They will say they solve because they’re international law:

#### 1 – refusal to specify enforcement means this is normal means

#### 2 – the thesis of our arguments about imperialism prove that colonial powers will overdetermine international decisionmaking processes

#### 3 – every piece of their uniqueness evidence is about the US NewSpace Industry – they literally read the same aff with a USFG plan but tagged the cards to be about US leadership key – proves US legal structures are what matter

### Advantage 1

#### No miscalc or escalation

James Pavur 19, Professor of Computer Science Department of Computer Science at Oxford University and Ivan Martinovic, DPhil Researcher Cybersecurity Centre for Doctoral Training at Oxford University, “The Cyber-ASAT: On the Impact of Cyber Weapons in Outer Space”, 2019 11th International Conference on Cyber Conflict: Silent Battle T. Minárik, S. Alatalu, S. Biondi, M. Signoretti, I. Tolga, G. Visky (Eds.), <https://ccdcoe.org/uploads/2019/06/Art_12_The-Cyber-ASAT.pdf>

A. Limited Accessibility Space is difficult. Over 60 years have passed since the first Sputnik launch and only nine countries (ten including the EU) have orbital launch capabilities. Moreover, a launch programme alone does not guarantee the resources and precision required to operate a meaningful ASAT capability. Given this, one possible reason why space wars have not broken out is simply because only the US has ever had the ability to fight one [21, p. 402], [22, pp. 419–420]. Although launch technology may become cheaper and easier, it is unclear to what extent these advances will be distributed among presently non-spacefaring nations. Limited access to orbit necessarily reduces the scenarios which could plausibly escalate to ASAT usage. Only major conflicts between the handful of states with ‘space club’ membership could be considered possible flashpoints. Even then, the fragility of an attacker’s own space assets creates de-escalatory pressures due to the deterrent effect of retaliation. Since the earliest days of the space race, dominant powers have recognized this dynamic and demonstrated an inclination towards de-escalatory space strategies [23]. B. Attributable Norms There also exists a long-standing normative framework favouring the peaceful use of space. The effectiveness of this regime, centred around the Outer Space Treaty (OST), is highly contentious and many have pointed out its serious legal and political shortcomings [24]–[26]. Nevertheless, this status quo framework has somehow supported over six decades of relative peace in orbit. Over these six decades, norms have become deeply ingrained into the way states describe and perceive space weaponization. This de facto codification was dramatically demonstrated in 2005 when the US found itself on the short end of a 160-1 UN vote after opposing a non-binding resolution on space weaponization. Although states have occasionally pushed the boundaries of these norms, this has typically occurred through incremental legal re-interpretation rather than outright opposition [27]. Even the most notable incidents, such as the 2007-2008 US and Chinese ASAT demonstrations, were couched in rhetoric from both the norm violators and defenders, depicting space as a peaceful global commons [27, p. 56]. Altogether, this suggests that states perceive real costs to breaking this normative tradition and may even moderate their behaviours accordingly. One further factor supporting this norms regime is the high degree of attributability surrounding ASAT weapons. For kinetic ASAT technology, plausible deniability and stealth are essentially impossible. The literally explosive act of launching a rocket cannot evade detection and, if used offensively, retaliation. This imposes high diplomatic costs on ASAT usage and testing, particularly during peacetime. C. Environmental Interdependence A third stabilizing force relates to the orbital debris consequences of ASATs. China’s 2007 ASAT demonstration was the largest debris-generating event in history, as the targeted satellite dissipated into thousands of dangerous debris particles [28, p. 4]. Since debris particles are indiscriminate and unpredictable, they often threaten the attacker’s own space assets [22, p. 420]. This is compounded by Kessler syndrome, a phenomenon whereby orbital debris ‘breeds’ as large pieces of debris collide and disintegrate. As space debris remains in orbit for hundreds of years, the cascade effect of an ASAT attack can constrain the attacker’s long-term use of space [29, pp. 295– 296]. Any state with kinetic ASAT capabilities will likely also operate satellites of its own, and they are necessarily exposed to this collateral damage threat. Space debris thus acts as a strong strategic deterrent to ASAT usage.

#### No one’s going to war over a downed satellite

Bowen 18 [Bleddyn Bowen, Lecturer in International Relations at the University of Leicester. The Art of Space Deterrence. February 20, 2018. https://www.europeanleadershipnetwork.org/commentary/the-art-of-space-deterrence/]

Space is often an afterthought or a miscellaneous ancillary in the grand strategic views of top-level decision-makers. A president may not care that one satellite may be lost or go dark; it may cause panic and Twitter-based hysteria for the space community, of course. But the terrestrial context and consequences, as well as the political stakes and symbolism of any exchange of hostilities in space matters more. The political and media dimension can magnify or minimise the perceived consequences of losing specific satellites out of all proportion to their actual strategic effect.

### Advantage 2

#### Emphasizing critical infrastructure protection makes attacks inevitable and accepts risks

Zebrowski 17 – Lecturer in Politics and International Relations, Loughborough University [Chris Zebrowski and Daniel Sage, “The Palgrave Handbook of Security, Risk and Intelligence | Resilience and Critical Infrastructure: Origins, Theories, and Critiques,” 2017, Palgrave Macmillan,

What makes an infrastructure critical? Considerable variation exists internationally in what is recognized as ‘critical’ let alone what exactly is meant by the term ‘infrastructure’ (Burgess 2007). The term ‘infrastructure’ arose within nineteenth-century military circles to refer to installations forming the basis of a specific operation. By 1920, its usage had widened to encompass public works, including roads, canals, and railways (Dunn Cavelty and Søby Kristensen 2008a: 1). In current policy, critical infrastructures tend to be defined negatively as essential services whose interruption or failure would have a severe impact on daily life (cf. Cabinet Office 2010b: 4; US Department of Homeland Security 2009: 11; Commission of the European Communities 2005: 7). Yet, what constitutes ‘daily life’ – let alone what is ‘essential’ to its functioning – is ambiguous. Hence, defining critical infrastructures is a political process (Lundborg and Vaughan-Williams 2014), involving debates around how particular infrastructures enable certain ways of life (Burgess 2007).

Consequently, recent studies have considered how infrastructures, figured as socio-technical assemblages (Amin 2014; McFarlane 2009, 2011), even ‘Cyborgs’ (Gandy 2005), both enable and disable particular facets of urban life, in what has been dubbed the ‘infrastructural turn’ (Graham 2009). Attention to differential provision of critical infrastructures have highlighted how deepening political and economic inequalities within major urban metropolises are reflected in and reinforced by the planning of large scale infrastructure politics to accelerate ‘splintering urbanisms’ (Graham and Marvin 2001), while others have shown how these processes have increasingly made infrastructures the target of redistributive politics (Amin 2014). Critical infrastructures can thus reflect, reinforce, and progress divisions within and between cities or yield new (non-local) connections which reconfigure political, economic, and social relations. But infrastructures must not be understood solely as functional objects; they also circulate aesthetic and affective atmospheres, including utopian visions of progress, modernity and freedom. Indeed, terrorist targeting of infrastructure is symbolic as well as functional (Burgess 2007; Coward 2009; Reid 2008).

Identifying the relationship between critical infrastructure protection and ways of life provides us with a preliminary framework for understanding the recent attention afforded to the problem of critical infrastructure protection. If critical infrastructures – including roads, aqueducts, and currencies – have long enabled particular ways of life and the targeting of crucial infrastructures has long been an element of military strategy – from the raising of fields, to the poisoning of waterways, to the targeting of infrastructures within strategic bombing campaigns – then what explains the recent attention afforded to critical infrastructure protection?

On the publication of the PCIPP report, critical infrastructure protection was strongly related to the emerging threat of cyber-attacks on governmental and military facilitates whose increasing reliance on information and communication, within their day to day operations, create new and complex vulnerabilities (Bonditti 2008; Dunn 2005). In the following years, this framework was extended to encompass not simply those communications infrastructures underpinning governmental and military activities, but to a wider economy. The emphasis placed on critical infrastructure protection reflected a growing recognition of contemporary life’s reliance on networked forms of infrastructure. Our growing dependence on the ‘always on’ functioning of these systems itself means that the benefits afforded by these networked infrastructures simultaneously created new vulnerabilities (Adey et al. 2011; Dunn Cavelty and Søby Kristensen 2008b; Cabinet Office 2008b: 249). While much attention has been paid to how the value attached to critical infrastructures in enabling contemporary forms of life (Lobo-Guerrero 2009) has made them symbolic targets for terrorist attack (Burgess 2007; Coward 2009; Reid 2008), it appears that the particular vulnerability associated with critical infrastructure may be associated with the capacity of discrete failures located within one network to rapidly amplify as they cascade within and across interconnected systems (Arsenault and Sood 2007; Dunn 2005; Amin 2000).

The complex interactions of interdependent systems are now understood to exacerbate the dangers inherent to highly networked societies. Drawing on systems theory and organizational analysis, Charles Perrow’s Normal Accidents (1999) provides an elucidatory touchstone into the prevalence of low-probability, high-impact events, or ‘system accidents’ (Perrow 1999). System accidents can be distinguished from two modes in which technological accidents have historically been conceived and managed. Historically, accidents have been understood either as a result of negligence (mobilizing processes of adjudication to ascribe ‘fault’) or as a result of statistical regularity (enabling technologies of workplace insurance) (Ewald 1986). Systems accidents instead arise out of the ‘interactive complexity’ of tightly coupled complex socio-technological systems. Within tightly coupled systems, discrete failures located within one sub-system can rapidly cascade within and across sub-systems. The complex interaction of multiple, distributed failures may, in turn, give rise to the nonlinear emergence of a catastrophic system accident. The accident cannot be geographically localized to enable a declaration of ‘responsibility’ or ‘fault’ (Law and Mol 2002). A system accident is therefore a function of complex interdependence of components in relation, rather than a product of operator error or component malfunction. Efforts to protect critical infrastructures have, however, been frustrated by the fragmented and incomplete knowledge of the interconnected architecture of these systems. State efforts to map the geographical and topological spread of critical infrastructure systems (Gorman 2005) are often complicated by high levels of private ownership of critical infrastructures in the West (Graham and Marvin 1996: 135–138). Instead, the interconnections within and between critical infrastructures are more often revealed during periods of suspended service, breakdown or emergency (Graham and Marvin 1996: 50–53; see also Graham 2010: 3; Graham and Marvin 2001).

The challenge of such system accidents can also be understood through the UK’s 2008 Pitt Review. The report was commissioned to undertake a comprehensive review of the 2007 summer floods which resulted in the ‘largest loss of essential services since World War II, with almost half a million people without mains water or electricity’ (Cabinet Office 2008b: ix). Throughout the report, the particular danger of large-scale flooding is associated with ‘cascading effects’ (Cabinet Office 2008b: 238, 250–251) that allowed failures located in one system to quickly spread through interdependent ‘systems of systems’ resulting in interruptions to essential services including power supplies, transport links, telecommunications, and mains water supply (Cabinet Office 2008b: 3). In Longlevens, Gloucestershire, for example, flooding disrupted the power supply of pumping stations depending on flood response (Cabinet Office 2008b: 250) severely compounding the event’s devastating effects.

The particular danger associated with critical infrastructures is routinely attributed to an increasingly complex and interdependent world (Cabinet Office 2008a, 2010a) wherein dangers may rapidly amplify and spread across systems of systems through unpredictable processes of complex emergence. The contemporary emergency thus arises from within the very same infrastructures constructed to promote and protect contemporary ways of life. While openness and connectivity may be a source of dynamism, it may, at the same time, be that which radically endangers us. ‘Resilience’ has emerged as a security solution to this particular security problematic. If dangers cannot be sufficiently predicted or protected against, then security must instead turn to mitigating their destructive potential. Resilience promises to mitigate one’s exposure to the risks inherent within irreducibly unpredictable and insecure environments by enhancing the capacity to restore systemic functioning quickly and efficiently in the wake of a perturbation. Danger is recast as an opportunity for growth (Richardson 2002; Gunderson and Holling 2002; Pelling 2011): inciting, and exercising, processes of positive adaption and self-transformation. Resilience strategies therefore aim at the production of systems capable of living-with, or even embracing (Baker and Simon 2002), risk. Thus, in this sense, the rise of contemporary infrastructures is concomitant with many notions of resilience. Following on from this possibility, in the next section, we examine more fully the development of resilience thinking and its relationship to critical infrastructures.