## 1

#### Interp: Precluding a future increase is not a reduction

Melinda **Harmon 12**, Judge, United States District Court for the Southern District of Texas, Houston Division, 3/6/12, Zieche v. Burlington Res., Inc., 2012 U.S. Dist. LEXIS 30134, p. lexis

Zieche contends that the Court erred when it concluded that "there was no reduction in Zieche's salary or bonus percentage" that would constitute "good reason" for his resignation. Doc. 70 at 8, 9. The Court relied on the fact that Zieche received "his full 2006 performance bonus" after he began working at ConocoPhillips and that the bonus percentage increased from 30% in 2005 to 40% in 2006 as proof that Zieche did not suffer a reduction in salary.

Zieche contends that an increase in his bonus is irrelevant to a determination of whether his salary was reduced because a "bonus is not part of the salary," but is instead [\*12] "something in addition to what is expected or strictly due." Doc. 72 at 4. Additionally, Zieche alleges that "the [C]ourt's analysis ignores the specific provisions of the retention agreement," which defines "good reason" to include "any reduction from your annual rate of base salary." Id.

Initially, although Zieche alleges that ConocoPhillips reduced his salary, he introduced no summary judgment **ev**idence to support this contention. In his Response to ConocoPhillip's Motion for Summary Judgment, Zeiche repeatedly asserts that, in his new position at ConocoPhillips, he would "**not be eligible for annual merit salary *increases***" as he had previously received at Burlington. Doc. 54 at 4 (emph. added). The summary judgment evidence before the Court included Zieche's deposition, in which he admitted that his salary "remained the same . . . up to the time [he] resigned from ConocoPhillips." Doc. 48-1 at 50 (emph. added). Nevertheless, Zieche argues that the Court unnaturally should read the word "reduce" in the retention agreement to mean "**not increase**," rather than interpreting the word according to its plain meaning. **The Court does not agree with this reasoning**, and Zieche has introduced [\*13] no evidence to convince the Court otherwise.

#### Violation: they preclude patent extensions

#### 1] Limits and ground—they allow the aff to monopolize prep by precluding a future increase anytime from now allowing affs to no link from uniqueness scenarios, delay CPs, etc which kills engageability—leads to unpredictable affs that skew the debate away from whether IP is good/bad to when a reduction should occur.

#### 2] TVA – defend the advantage to a whole rez timeframe. We don’t prevent new FWs, mechanisms, or advantages. PICs don’t solve – our model allows you to specify countries and medicines.

#### Fairness – debate is a competitive activity that requires fairness for objective evaluation. Outweighs because it’s the only intrinsic part of debate – all other rules can be debated over but rely on some conception of fairness to be justified.

#### 1NC theory is DTD – a) T indicts the whole aff so DTA is DTD b) abuse is supercharged with the 7-6 rebutal time skew c) deters future abuse

#### Competing interps – [a] reasonability is arbitrary and encourages judge intervention since there’s no clear norm, [b] it creates a race to the top where we create the best possible norms for debate.

#### No RVIs – a] illogical, you don’t win for proving that you meet the burden of being fair, logic outweighs since it’s a prerequisite for evaluating any other argument, b] RVIs incentivize baiting theory and prepping it out which leads to maximally abusive practices c] Forcing the 1NC to go all in on the shell kills substance education and neg strat which outweighs on urgency

## 2

#### The subject is alienated when it articulates its desires – incomplete signifiers structure the emergence of subjectivity and produce repetitive drives to fill the lack that justify coercive violence. Thus, the ROB is to traverse the fantasy – that means exposing drives.

Matheson 15 Calum Matheson, PhD, 2015, “Desired Ground Zeroes: Nuclear Imagination and the Death Drive,” University of North Carolina at Chapel Hill, [Calum Matheson is author of Desiring the Bomb: Communication, Psychoanalysis, and the Atomic Age (University of Alabama). He is a former high school debater. His research focuses on intersections of rhetoric, media, and theories of psychoanalysis and deconstruction. His current work focuses on right-wing political extremism, conspiracy thinking, and Lacanian concepts of anxiety and psychosis. He has also published work on argument, history of rhetoric, and games. Dr. Matheson is a former debate coach at Harvard University and a current candidate at the Pittsburgh Psychoanalytic Center.], <https://cdr.lib.unc.edu/concern/dissertations/6682x4537>, SJBE

The Real Jacques Lacan’s notion of the Real is notoriously difficult to define. In his book on the subject, Tom Eyers calls it the “most elusive” of Lacan’s concepts, but one that is also one that is “central” and “determining” for psychoanalysis (1). There are common elements of the various definitions. First, an agreement that both the economy of tropes that allows the conditions for meaning to emerge (the Symbolic) and the meanings and values invested in these tropes, including the subject itself (the Imaginary), do not and cannot perfectly capture all of existence or experience. Second, this unassimilable remainder structures the Symbolic and Imaginary, just as they structure each other, and thus all three registers are knitted together as demonstrated in Lacan’s famous “Borromean Knot.” The Real is what escapes mediation, what disrupts language itself. To explain its significance and relationship to desire requires examining its foundational role in the formation of the subject. The Real can be understood as the constitutive lack of the subject, its separation from the rest of existence by the self-definition necessary for it to come into being in the first place. This is made clear in the mirror stage, where the subject moves from a fragmented, disorganized concept of the body to the “finally donned armor of an alienating identity that will mark his [sic] entire mental development with its rigid structure” (Lacan, “Mirror Stage” 78). The formation of a discrete subject (a function in the Imaginary register) is a compromise. Its formation allows for participation in the Symbolic because to participate in that economy of exchange requires a “social I” (Lacan, “Mirror stage,” 79). This participation comes at the cost of alienation because the subject trades in a world of symbols which by their nature stand in for what is not present, and thus inescapably mediate the (Real) world outside of the subject, rather than making it present. This lack built in to the subject is the engine of desire: the subject’s divide from an object is a prerequisite for the desire of such an object, but the condition of mediation makes it impossible to ever incorporate it in a perfectly satisfying way. Thus desire remains unfulfilled and each chase for a symbol leads to another in loop which the very constitution of the subject dictates must be endless. This is the basic operation of the death drive which is not distinct from Eros. Were the impossible to occur and the drive of Eros to be fulfilled, it would be extinguished, as there would be nothing left to desire. Thus all drives aim, in a sense, at their own extinction, and therefore there is in a sense only one—the drive that aims towards the extinction of desire through its complete fulfillment in continuity with the world that was lost when the subject became distinct from it in the mirror stage. Although the death drive might stand in for the singular character of the drive, it should not be understood as a desire for the actual biological death of the subject’s body, or even the desire to inflict death on others. The self-destruction of the death drive is a desire to break the limits of the self as the alienating armor of the subject by experiencing unmediated contact with the Real. Death still defines its operation in other ways. The last portion of Lacan’s “The Function and Field of Speech and Language in Psychoanalysis” explains the metaphorical centrality of death as the center of a torus formed by incessant symbolization. The fort-da game is most significant not because it shows that the child wishes to destroy its mother or even inoculate itself against that possibility, but because it assimilates the child into the Symbolic order through the repetition of the signifiers fort and da, which stand in for presence and absence. Death is central to language because the symbol itself invokes the absence and loss of nonexistence since its function is to stand in for something that is gone. Language swirls around this absent center of death, a primordial absence encased in the inner ring of the torus, while the outer surfaces of language hold all else that cannot be symbolized at bay on the outside (Lacan, “Function and Field” 260-264). Paradoxically, death is necessarily evoked by the symbol as that which is absent and also made possible in the first place by that same symbol. The separation of the subject into its alienating identity as a social object makes a meaningful concept of death possible because without it there is no dasein, no individual, no singular human to die. George Bataille explains this with an entomological example. If a scientist picks one fly from a swarm, that fly is subject to death, because its end means the end of the discontinuous being selected by the entomologist. Without differentiation of its members, however, the swarm lives on; the selection of the fly is for the entomologist, not the animal (Bataille, “Hegel, Death and Sacrifice” 14-16). Thus it is with human beings. The subject is founded by a rejection of its sole animal nature by participating in a world of work and accumulation, mediated by language—essentially Lacan’s Symbolic. Thus individuals are made discontinuous with the general economy of matter and energy from which all things are formed by a conceptual separation inextricably bound up in death. Our existences are thus defined by discontinuity from a world of continuity, and for Bataille as for Lacan, our drives are singular in the sense that sex is a coupling that unifies with another and momentarily overcomes discontinuity just as death is the end of the subject’s brief separation from a universe differentiated only by the dismembering violence of our imposition of symbols upon it (Bataille, Erotism 13-17). The experience of death may still be unique because it suggests the absence implied by the sign and because it can be experienced only once by the subject—and for obvious reasons, cannot be symbolized by anyone with first-hand experience. As Freud argues in “Thoughts For The Times On War and Death,” we cannot even hope to imagine our own deaths because to do so demands that we imagine them from some perspective which would be destroyed in the experience itself. Death and the Real are therefore not identical, but are closely linked. The most important characteristic of the Real is not just that it suggests existence beyond language, but that this world-for-itself (to borrow from Eugene Thacker) intrudes on human reality and reveals it to be incomplete. Encompassing Max Picard’s concept of silence, the Real is not the absence of human reality so much as the traumatic revelation that that reality was always incomplete, always feigned in the face of existence so much more than human mediation has already covered. Chris Lundberg uses Lacan’s distinction between reality, being the social world of human construction, and the Real, being the occasional but inevitable failure of that reality, to develop his own distinction between failed unicity and feigned unicity. The Symbolic operates as an economy of interconnected and mutually-referential tropes weaving a kind of fabric that is the precondition for meaning, an environment in which social relationships can be understood in context. When the unified illusion of the social fails, we are compelled to stitch the tears in that fabric to maintain the world that gives us meaning (Lacan in Public 2-3). An account by Bill Laurence, the only journalist allowed to witness the Trinity test, provides evidence for this rupture and repair. While “not a sound could be heard” for the period after the flash and before the thunder, Laurence saw civilization itself collapse in an instant: The big boom came about one hundred seconds after the great flash—the first cry of a newborn world. It brought the silent, motionless silhouettes to life, gave them a voice. A loud cry filled the air. The little groups that had hitherto stood rooted to the earth like desert plants broke into a dance—the rhythm of primitive man dancing at one of his fire festivals at the coming of spring. They clapped their hands as they leaped from the ground…The dance of the primitive man lasted but a few seconds, during which an evolutionary period of about 10,000 years telescoped. Primitive man was metamorphosed into modern man—shaking hands, slapping his fellow on the back, all laughing like happy children. (12)

#### The 1AC is an ideological fantasy constructed by relentless planning at the expense of scapegoated identities, all for recognition from the Other in an attempt to fill the lack.

Gunder 05 Michael Gunder, 2005, “The Production of Desirous Space: Mere Fantasies of the Utopian City?” Planning Theory 2005 4: 173, DOI: 10.1177/1473095205054604, all brackets were in the original text, SJBE

Jouissance is one of the four structuring elements of social discourse,4 or social interactions, links and relationships, where synchronic language meets diachronic speech to evoke an effect on the Other (Lacan, 2004: 3). Zupancic (2004) associates Lacan’s (2004) theory of the Four Discourses (see Gunder, 2003a, 2004; Hillier and Gunder, 2005) with the Marxian theory of commodification and surplus-value via Lacan’s concept of surplus-enjoyment (plus-de-jouir). Lacan (2004: 111) contends that surplusvalue and surplus-enjoyment are historically equivalent, especially in the situation of the Master’s injunction of ‘No!’ in the emerging early phase of Calvinistic repressive capitalism. In contrast to the historical authority and rationality of the Master’s repressive command, late capitalism is structured under a rationality of the university or bureaucracy. Now knowledge and technology, not the Master’s injunction, become ‘agency expressing a logic of governmentality and expertise (including that of planning) that does not prohibit enjoyment, but rather channels jouissance in ways that produces a “bio-politics” (after Foucault) of an alienated subject that has no option, but to enjoy and be satisfied’ (Hillier and Gunder, 2005; McGowan, 2004; Zˇ izˇek, 2004b; Zupancic, 2004). In this regard, ‘a nation exists only as long as its specific enjoyment continues to be materialised in a set of social practices and submitted through national myths [or fantasies] that structure these practices’ (Zˇ izˇek, 1993: 202). This is taken further by the barely challenged international hegemonic discourse of global capitalization and the fantasies it induces in externally structuring the nation state’s very enjoyment (Stavrakakis, 2003a: 63; Zˇ izˇek, 2004b: 61). Even the ruling British Labour government, with its ‘Third Way’, in contrast to its tradition of socialism, has placed ‘economic globalisation’ as ‘the most significant factor in shaping Labour Party thinking since the early 1990s’ (Allmendinger, 2003: 326). As McGowan (2004) observes: we trust fully in the staying power of global capitalism. The alternatives, which once seemed to be just around the corner, have become unimaginable today. The universe of global capitalism is, or so we think, here to stay, and we best not do anything to risk our status within it. Hence, we pledge our allegiance to it, and we put our trust in it. This is the fundamental mode of contemporary obedience to authority. Only by coming to understand this obedience to the dictates of global capitalism as obedience can we hope to break out of it. Global capitalism seems an unsurpassable horizon simply because we have not properly recognized our own investment in sustaining it. We see it as unsurpassable because we don’t want to lose it – and the imaginary satisfaction that it provides. (McGowan, 2004: 193) Illusion resides under this global fantasy of capital where ‘the basic feature of’ this dominant cultural imperative ‘no longer operates on the level of ideals and identifications, but directly on the level of regulating jouissance’ (Zˇ izˇek, 2004b: 113). Even in Lefebvre’s day, this was a capitalism where surplus-value was synonymous with surplus-enjoyment supporting the injunction: ‘you must enjoy!’. In this light, the role of planning is to facilitate enjoyment by sustainably providing the correct space – healthy, competitive, fit and attractive – where enjoyment can be effectively materialized and maximized under the imperative of global capitalism. Consequently: urbanism is nothing more than an ideology that claims to be either ‘art’ or ‘technology’ or ‘science’, depending on the context. This ideology pretends to be straightforward, yet it obfuscates, harbours things unsaid: which it covers, which it contains, as a form of will tending towards efficiency. Urbanism is doubly fetishistic. First, it implies the fetishism of satisfaction. What about vested interests? They must be satisfied, and therefore their needs must be understood and catered to, unchanged . . . Second, it implies the fetishism of space. Space is creation. Whoever creates space creates whatever it is that fills space. The place engenders the thing and the good place engenders good things. (Lefebvre, 2003: 159) This is exacerbated further in the current milieu of consumerist post-democracy personified by the master signifier: global capitalism. ‘Post-democracy is founded on an attempt to exclude the political awareness of lack and negativity from the political domain, leading to a political order which retains the token institutions of liberal democracy but neutralizes the centrality of political antagonism’ (Stavrakakis, 2003a: 59). In response to the dominant ‘logic’ of global competitiveness, the technocrats and experts including planners, shape, contextualize and implement public policy in the interest of the dominant hegemonic bloc. This is constructed under the logics and knowledges of university discourses (see Gunder, 2004), with an objective to remove existing or potential urban blight,‘dis-ease’ and dysfunction detracting from local enjoyment and global competitiveness (Gunder, 2005; McGuirk, 2004). Of course, the hegemonic network, or bloc, initially shapes the debate as to what constitutes desired enjoyment and what is lacking in urban competitiveness. In turn, this defines what is blighted and dysfunctional and in need of planning remedy. This is predicated on a logic, or more accurately a rhetoric, that a lack of a particular defined type of enjoyment, or competitiveness, is inherently unhealthy for the aggregate social body. Planners, programmers, and users want solutions. For what? To make people happy. To order them to be happy. It is a strange way of interpreting happiness. The science of the urban phenomenon cannot respond to these demands without the risk of validating external restrictions imposed by ideology and power. (Lefebvre, 2003: 141) Yet this lack and its resolution are more often technical in nature, rather than political. As a consequence, the technocrats in partnership with their ‘dominant stakeholders’ can ensure the impression of happiness for the many, while, not to mention, achieving the stakeholders’ specific interests. Material happiness for all but that evil other Lacanian theory suggests that a subject’s jouissance is given freest rein when an act of desire contains a dimension of transgression. It is the ‘little sin’ that gives the most pleasure; it is the prohibition as such which elevates a common everyday object into an object of desire (Zˇ izˇek, 2004b: 177). The bio-politics of contemporary planning are predicated on enjoyment – you will enjoy! – not the prior duality of repression/freedom of the Weberian capitalist master’s injunction: ‘No you cannot do that!’. The achievements of traditional utopian goals were ones of freedom to act against the repression of the negative injunction. Contemporary injunctions are to enjoy – or at least to sustain our happiness – regardless of what we actually desire. Happiness is not a class of truth, but one of an ontological class of being where: ‘happiness’ relies on the subject’s inability or unreadiness fully to confront the consequences of its desire: the price of happiness is that the subject remains stuck in the inconsistency of its desires. In our daily lives, we (pretend to) desire things which we do not really desire, so that, ultimately, the worst thing that can happen is for us to get what we ‘officially’ desire. Happiness is thus hypocritical: it is the happiness dreaming about things we do not really want. (Zˇ izˇek, 2002a: 59–60) Planning continues to succeed because it underpins the primal desire of most subjects in society for a conflict-free, safe and assured happy future, even if it can only deliver this as a fantasy-scenario of material happiness, rather than as an impossible reality that actually sates all desires (Gunder, 2003a, 2003b). This is a fantasy predicated on an obedience to a shallow consumptive quantitative imperative to be materially happy, which often occurs at the expense of our actual qualitative psychic desires. In our contemporary global society the ‘moral law’ is no longer the imperative that acts as a limitation, stopping us from enjoying too much. Instead, the cultural imperative, the now dominant moral Law itself, in its injunction for us to enjoy becomes ‘the ultimate “transgression”’ should one wish to pursue a life of moderation (Zˇ izˇek, 2004b: 174). Further, ‘the fantasy of a utopian harmonious social world can only be sustained if all the persisting disorders can be attributed to an alien intruder . . . a certain particularity which cannot be assimilated, but instead must be eliminated’ (Stavrakakis, 1999: 108). This is the stranger, the Other that is not us that can act as the ‘“scapegoat” to be stigmatised as the one who is blamed for our lack, the Evil force that stole our precious jouissance’ and stopped the fantasy from achieving its utopian vision (Stavrakakis, 2003a: 58). Even our ‘“complex” contemporary societies rely on the basic divide between included and excluded’ (Zˇ izˇek, 2004b: 86). Zˇ izˇek (2004b: 86) continues: in any society ‘there is a multitude within the system and a multitude of those excluded, and simply to encompass them both within the scope of the same notion amounts to the same obscenity as equating starvation with dieting.’ It is continually this Other that permits the delusion of harmony in our identity defining groups and for this to transpire we require an Other, external to the group for the group to define itself. We require a disparity, or gap, to allocate a degree of difference to an Other to conceptualize the group identification as who we are not and on this Other we can attribute all the signs of disharmony that jeopardize our shared fantasy (Zˇ izˇek, 1997: 5). Difference is essential to complete our fantasy of harmony, but only by providing the sacrificial Other on which we can blame the disappointment of the fantasy to deliver (Zˇ izˇek, 2004a: 158–9). In this light, planning,‘as part of the apparatus of the modern state, makes its own imprint, has its own powers for good and evil’ (Sandercock, 2004: 134). This is especially so as planning identifies, or at least names and legitimizes, what constitutes an urban pathology that detracts from what is desirous of the globally competitive city. Planning then sets out to remedy this lack or deficiency. Civil society, i.e. the public stage, and media of information dissemination are central to this process. Of course, our media are not ideologically neutral. As a consequence, media access for putting forth particular tropes of desire constitutes a central component of social, as well as economic, capital. This is well documented by Flyvbjerg (1998a) where the Aalborg Chamber of Commerce controlled the editorial content of the local newspaper. This argument is central to that of Chomsky’s (2003) multinational corporate steering of mass media content in the, so-called, ‘free’ press. This is where the mass media are free to publish almost anything, provided, of course, they do not alienate their corporate clients who provide their majority of income and profits via their advertising payments. Gunder (2003b) documented how planning actors and their affiliated partners gained public agreement via the rhetorical use of culturally shared ‘master signifiers’ and their related metonymies and metaphors. Here each signifier was linked to associations in the public’s unconscious that induced a conscious expression of desire for a particular set of values or specific consequential actions. Effective deployment of rhetorical tropes can seduce subjects ‘to relinquish previous desires (including identifications and embrace new ones) – or alternatively, to invest all the more completely in old ones’ (Bracher, 1993: 51–2). For example, does anyone wish to live in a city that is losing enjoyment to other locations because it lacks the fitness to compete? In Lacan, the construction of reality is continuous with the field of desire. Desire and reality are intimately connected . . . The nature of their link can only be revealed in fantasy . . . when harmony is not present it has to be somehow introduced in order for our reality to be coherent. It has to be introduced through a fantasmatic social construction. (Stavrakakis, 1999: 62–3) This is where, from a Lacanian outlook, by accepting rationalization as the means to fulfil a desire for completeness – via the utilization of falsifying words – ‘man does not adapt himself to reality; he adapts reality to himself’ (Roudinesco, 1997: 114). Ideological fantasies as to what constitutes an enjoyable and satisfying city are deployed to hide the dysfunctions and unpredictabilities that are ubiquitous throughout all social spheres, particularly for those lacking in sufficient capital to offset adversity. Social reality ‘is sustained by the “as if”, the fantasy of what things are like’ (Dean, 2001: 627). Rationalization, or realrationalität as Flyvbjerg (1998a) calls it, exists between the everyday activities of social life and the held universal ideals or values of what ought to be, even if it is not so, in social reality. The belief that planning is not political, but technical ‘allows the myths of objectivity, value neutrality, and technical reason to persist, and thereby fosters a certain delusion about planning practice’ (Sandercock, 2004: 134). Sandercock (2004: 134) continues: planning ‘helps to redefine political debate, producing new sources of power and legitimacy, changing the force field in which we operate’. Lefebvre suggests that planning is based on a strategy of mixing scientificity and rationality with ideology. ‘Here, as elsewhere, scientificity is an ideology, an excrescence grafted onto real, but fragmentary, knowledge’ (Lefebvre, 2003: 166). In particular, Lefebvre argues that quantitative expertise including the technology of urban planning is largely a myth. This is because planning administrators: and bad administrators at that, rarely use much actual technology. However, they have the ability to persuade the people as a whole that because these are technological decisions they should be accepted. In other words, a large part of Lefebvre’s criticism [of planners] is not that technocrats are technocrats, but that they are precisely the opposite. Technology should be put to the service of everyday life, of social life rather than being precisely the condition of its suppression and control. Urbanism, for example, is an ideology that operates under the cover of this myth of technology. (Elden, 2004: 145) Social reality can only exist in the symbolic and imaginary registries as it is composed, that is constructed, as a ‘result of a certain historically specific set of discursive practices and power mechanisms’ (Zˇ izˇek, 2001: 66). Flyvbjerg (1998a) illustrates this well in his exposé of the Aalborg Chamber of Commerce’s intervention in that city’s planning process. Here this grouping of dominant business people is given hegemonic voice to determine what constitutes acceptable transportation modes and spatial development in Aalborg’s town centre. In this example the planner’s technical facts, by themselves, produced the weaker argument. This was perhaps because the dissemination of these facts and their implications for planning action were ineffectively articulated to the public, if at all, via the local information media controlled by the Chamber of Commerce. In contrast, in Sydney, McGuirk (2004) documented how planners actively participated in and facilitated the dominant network of actors successfully pushing for a series of local, regional and national policies supporting Sydney’s global competitiveness. It appeared to be of little consequence that these policies induced adverse effects on the rest of the country, not to mention many of Sydney’s residents. Not dissimilarly, the Auckland case cited in the introduction illustrates how the planners actively consulted the dominant commercial stakeholders in developing their growth strategy, yet failed to have direct consultation with the Region’s actual residents (ARGF, 1999; Gunder, 2003a). Planners and their governance forum of dominant stakeholders appeared to inherently know what is in the best interests of their region’s residents. Planning as agonistic ethics Notwithstanding the ‘full rendering of the antagonisms which traverse our society, we indulge in the notion of society as an organic whole, kept together by forces of solidarity and co-operation’ (Zˇ izˇek, 1997: 6). Planning is one such instrument that shapes and justifies the governing ideals of utopian desire and in this ‘sphere, the fantasmatic ideal of harmony is dominant’ (Stavrakakis, 1999: 110). The subtle and not so subtle application of power defines truth, reason and rationality and this particularly comprises the deployment of power in our planning and related practices (Flyvbjerg, 1998a). Moreover, a Lacanian line of reasoning about knowledge and truth indicates that the constituting components of these induced fantasies of truth and rationality are mediated on the wants and needs of actors with the capacity to inflict their desires and wants on the Other and, as if, these desires belong to those who have been imposed on. This is via assertions of unquestionable ‘truth’, which are often supported and empowered by selected ‘distorted’ knowledge, practices and language put forward by their ideological supporters, employed professional experts and controlled media. Further, in this light traditional Kantian and related enlightenment ‘ethics is nothing more than a convenient tool for any ideology that tries to pass off its own commandments as authentic, spontaneous, and “honorable” inclinations of the subject’ (Zupancic, 1998: 41). In contrast to traditional ethics, Lacan’s (1992) theorizing may provide an alternative way to develop new values beyond those already constituted by society as traditional morals of good or evil shaping acceptable behaviours. Traditional ethics is predicated on a reality principle as to what is possible without transgression in social reality. As Zupancic (2003: 77) observes, this ‘reality principle itself is ideologically mediated; one could even claim that it constitutes the highest form of ideology, the ideology that presents itself as empirical factor or (biological, economic . . .) necessity.’ This ‘beyond good or evil’ does not have to lead to postmodern nihilism, rather Lacan lays a groundwork for an ethics of the Real, where through acknowledgement of this Real that we cannot know or articulate we can establish new ‘truths’ in relationship to the ‘good’ (Stavrakakis, 2003b; Zupancic, 2000, 2003). This is through a mechanism of ethical sublimation where we create ‘a certain space, scene, or “stage” that enables us to value something that is situated beyond the reality principle, as well as beyond the principle of common good’ (Zupancic, 2003: 78). It is the space, or stage, created when the planner, or other actor, makes the ethical decision to recommend an action or permission that is contrary to existing regulations, precedence, professional expectations, or cultural imperatives. This is perhaps because somehow for the planner, perhaps simply driven by strong feelings, the ‘correct’ and expected action is perceived as not being the right thing to do. From the Lacanian perspective of the ethics of the Real, to make the sensed wrong into a rightness is the ethically correct task, even if this requires the agent to act against what he/she thinks society expects of that actor. This act of transcending the reality principle, and being true to the actor’s desires,5 makes possible a new good, a new potential, it changes the rules as to what is possible (Gunder and Hillier, 2004: 230). ‘The ethical, then, is the constellation of events in which the subject frees herself from the symbolic law (“freedom”), commits herself to an act (“agency”), and thereby makes it possible for the law to be rethought’ (Kay, 2003: 109). The ethical ‘act is an “excessive”, trans-strategic intervention which redefines the rules and contours of the existing order’ (Zˇ izˇek, 2004b: 81). Viewed from this perspective, Kant’s categorical imperative must be rethought itself as purely transgressive: the ethical act proper is a transgression of the legal norm – a transgression which, in contrast to a simple criminal violation, does not simply violate the legal norm, but redefines what is a legal norm. The moral law does not follow the Good – it generates a new shape of what counts as ‘Good’. (Zˇ izˇek, 2001: 170) This is a transgression that introduces new spaces for what can be considered ‘good’ and hence a wider space for jouissance, beyond that of mere technically produced materialist satisfaction. Of course, a key question becomes: how can a credible planner, or other actor, transcend the accepted norms and expectations of a society to create a new space for a new concept of ‘good’? Further, how can one effectively and reasonably mobilize such an ethics of the Real in everyday life when it is so contrary to the consensual instrumental rationality of the modern project and its ready-made solutions, that are, arguably planning’s purpose and foundations? Planning theorists (e.g. Gunder and Hillier, 2004; Pløger, 2004) and researchers in other disciplines (e.g. Mouffe, 1999, 2000; Stavrakakis, 2003a; Thrift, 2004a, 2004b) are currently attempting to address these complex issues that essentially require new insight and perhaps even profound change in our very relationships towards social reality, itself. Further, they are attempting to do so in a manner that does not simply impose a new intransigent set of ideals to replace our late-modern cultural imperatives, but rather to encourage diverse opportunities for multiple opening in which imminence may continually occur (after Deleuze). Coherent and implementable means to achieve this desired state are yet to emerge as new knowledges and practices, if they can ever do so. Yet, this author suggests that mere awareness and articulation of the impossible implications that the Lacanian Real has on traditional rationality are perhaps one of many points of commencement. Of course, this discourse also may fall into the trap leading to transcendental idealism, i.e. a process of identifying a lack, or void, in our knowledge and practices and then presenting a hegemonic solution that must be implemented, regardless of effect and affect! This author suggests that to change social reality, to begin to question and where necessary traverse our norms and laws, while avoiding the imperative of idealism, calls for a return to agonism that reawakens the political awareness of lack and negativity in place of the technical injunction: you will enjoy! This permits a space for an inclusive acceptance of strife or agonism that does not exclude the Others’ voice attempting to articulate their desires and wants in response to the ‘irreducibility of the Real’ (Stavrakakis, 2003b: 331). Rather this re-politicization of the planning problematic from that of the technical, quantified, solution is one that values Lacan’s Real and Lefebvre’s lived space by making the ‘key “jump from quantity to quality”, from antagonisms subordinated to differences to the predominant role of antagonism’ as pure agonism (Zˇ izˇek, 2004b: 92). In Lefebvre’s city ‘unconscious desires and passions lay dormant, dormant beneath the surface of the real, within the surreal . . . waiting for . . . the day they can be realized in actual conscious life’ (Merrifield, 2000: 178). In this regard, rather than continuing to fill the lack generating the urban problematic and produce a largely phallic enjoyment, Stavrakakis (2003b: 332) reminds us that in Lacan’s later teachings he spoke of another form ‘of jouissance – female or feminine jouissance – which values this lack per se as something that entails a different kind of enjoyment.’ Perhaps this feminine jouissance may be more appropriate to politicize the needs and wants of lived space. Yet, to do so would require a politics that acknowledges the impossibility of the Lacanian Real. In contrast to the notion that what is meant by an utopia is an imagined ‘ideal society; what characterizes utopia is literally the construction of a u-topic space, a social space outside the existing parameters, the parameters of what appears to be “possible” in the existing social universe’ (Zˇ izˇek, 2004b: 123). This proposed utopia is one that may permit, at least aspects of Lefebvre’s ‘lived space’ of the qualitative to be both visible and articulated in conscious life. Rather than contestant cities and regions competing globally under one cultural imperative to attract and retain finite capital and resources via one ‘logic’ and vision, this article calls for a planning ethos that encourages diverse groups within cities and regions to actively contest their perspectives and desires without threat of exclusion. To achieve such a state requires planning ‘to find ways of working with agonism without automatically recurring to procedures, voting, representativity, forced consensus or compromises’ that inherently exclude (Pløger, 2004: 87). This requires a planning ethos predicated on a central awareness of the irreducible Real. This is an understanding that any forced resolution always excludes a remainder, what cannot be articulated or perceived. Further, this remainder will continue to have unconscious effect in terms of what drives our materialized actions. This suggests an overt democratic planning process, representative of a society that is explicitly and overtly hegemonic for all participants, not tacitly hegemonic in its privileging of specific groups with access to power and technocratic justification that is constituted under a logic implicitly desiring social order (Critchley, cited in Zˇ izˇek, 2004b: 95). This is in contrast to the existing social reality, where political processes, such as planning, appear to strive for public participation culminating in an harmonious public consensus, when of course this is but an ideological foil that excludes in the name of a ‘general interest’ defined by a privileged few and legitimized by technocratic ‘reason’. In contrast, a strong society ‘places conflict and power at its centre’ by guaranteeing the very ‘existence of conflict’ (Flyvbjerg, 1998b: 229). Our current dominating fantasy of harmony is sustained by the illusion of continued consumer abundance produced and brought by the cornucopia of global capitalism, at least for the first world. This enjoyment of global capitalism ‘constitutes a (partial) reality with hegemonic appeal, a horizon sustained by the hegemony of an administration of desire with seemingly unlimited resources’ (Stavrakakis, 2003a: 61). Of course, resources and global carrying capacities are axiomatically finite. So perhaps must be our desires, for they can never be sated. Traversing our fundamental fantasy for harmony: a start, not a conclusion! Lacan and his followers, such as Stavrakakis, Zˇ izˇek or Zupancic, produce valid arguments for a psychoanalytically derived philosophy of reality and ideology ‘capable of theorizing the ways our deepest commitments bind us to practices of domination’ (Dean, 2001: 627). Revealing and transversing the ideological constructs that shape and structure our social reality is inadequate in itself as a mere academic critical exercise of knowledge production. This author argues that we must radically challenge our underlying beliefs for ourselves, and, in particular, not externalize them to ‘larger cultural practices and technologies’ so that hegemonic networks, or partnerships, of dominant actors, including intellectuals and bureaucratic professionals, can do our believing and desiring for us through planning and related diverse agencies of social guidance (Dean, 2001: 628). To do so we must traverse our fundamental fantasies that seek harmony and security. This article’s application of Lacan, augmented with some of Lefebvre’s urban insights, gives us a combination of Freudian and Marxist thought that is considerably at odds to that conjured up by the Frankfurt School’s vision of society as ‘a liberated collective culture’ with little space for the individual histories of unique subjects (Jameson, 2003: 8). The latter is the School, or project, drawing on Marx and Freud, which eventually created the Habermasian product of communicative rationality. This is a rationality that sought as its seldom if ever achieved ideal, to produce undistorted (ideologically free) speech acts ‘based on recognition of the corresponding validity claims of comprehensiveness, truth, truthfulness, and rightness’ constituting a basis for consensually agreement as to how we should act (Habermas, 1979: 3). Yet, as Hillier (2003) illustrates, this is an ideal of undistorted speech that is an impossibility because of the Lacanian Real and the incompleteness it always induces in language, not to mention the impossibility of absolute truth. Yet, this author would agree with Habermas’ call for the supremacy of discourse over mere technical reason. Habermas’ last two validity claims of truthfulness to our desires and the need to act in regard of what our unconscious feeling says is rightness, even if this sense is perhaps not readily justifiable with symbolic knowledge and reasoned argument, should be given due regard through our discourses. In contrast to Habermas’ validity claims of truth and comprehensiveness, Lacan’s theorizing suggests a much more fundamental contextualization of urban ideology based on the fantasies we construct to paper over the lack induced by the Real. This is a perspective that situates our very social reality, including space and social interaction, as principally constituted and composed of ideological fantasy constructs, misrecognitions and misunderstandings (see Hillier, 2003). As Jameson (2003: 37–8) observes, we owe to Lacan ‘the first new and as yet insufficiently developed concept of the nature of ideology since Marx’. Drawing on Althusser, Jameson (2003: 37–8) continues that ideology is ‘the “representation” of the Imaginary relationships of individuals to their Real conditions of existence’, so that ‘the individual subject invents a “lived” relationship with collective systems.’ This is a symbolic, materialized, relationship of practices and rituals (Krips, 2003: 149). Here, it is the desire of this Other that we fundamentally seek and wish to please as we constantly strive to return to our idealized primordial desire for infant maternal security and contentment (Hillier and Gunder, 2005). So we construct and share illusions and fantasies – ideologies – that we are somehow achieving this impossible task. It is the aggregate of these Others, and the illusions we generate about them and ourselves, that constitutes the social reality that is our lived space.

#### The 1AC’s development discourse is the projection of repetitive desires of a capitalist system- the scapegoat is created to obscure the Real- necessitating the destruction of the third world.

Kapoor 14 [Ilan; 10/2/14; Faculty of Environmental Studies, York University, Toronto, Canada; “*Psychoanalysis and development: contributions, examples, limits*,” Third World Quarterly, 35:7, 1120-1143, DOI: 10.1080/01436597.2014.926101] Justin recut SJKS

The blind spot on which I would like to dwell a little, however, is the continuing neglect of colonialism in mainstream development discourse. This neglect coincides with the very ‘invention’ of international development in the post-Second World War period: aid to ‘underdeveloped’ areas became vital to containing what the USA and other Western powers saw as Soviet expansionism. No wonder that modernisation theory – which pioneered development as an academic field and has anchored Western foreign policy and development institutions ever since – bears the strong imprint of such cold war politics. As several analysts have argued,26 modernisation tends to take a decidedly postSecond World War view of history, thus avoiding the history of Western colonialism. For instance, Walt Rostow’s The Stages of Economic Growth – so influential in economic and foreign policy circles – fails to deal with colonial rule in any meaningful way. It’s not that Rostow doesn’t mention colonialism at all; he does, but its significance is notably downplayed. In a short section on ‘Colonialism’, he goes so far as to state that colonies were founded for ‘oblique reasons’ and colonial subjects ‘looked kindly’ on the colonizer’s efforts to organise ‘suitable political frameworks’. 27 But such disavowal continues in various guises even today. It is visible in World Bank and International Monetary Fund structural adjustment programmes, 1126 I. Kapoor Downloaded by [York University Libraries] at 10:45 02 October 2014 which make no mention of, or allowances for, the fact that the West’s colonial plunder might have something to do with the recipient’s current socioeconomic conditions. And it is evident in World Trade Organization trade deals, which so often assume a global economic level playing field in their pursuit of ‘free’ trade, amounting to trade ‘freed’ of any past colonial entanglements. Robert Fletcher calls such persistent sanitisation of colonialism ‘imperialist amnesia’. He analyses the work of several development and globalisation pundits to drive home the point: New York Times columnist Thomas Freidman, former World Bank economist Paul Collier and economist and UN advisor Jeffrey Sachs, all of whom treat wealth accumulation in the global North or poverty in the global South by omitting consideration of the imperialist extraction of Third World resources.28 In The End of Poverty, for example, Sachs claims that ‘the combination of Africa’s adverse geography and its extreme poverty creates the worst poverty trap in the world’. 29 Vandana Shiva, struck by the glaring blind spot, takes Sachs to task, declaring: This is a totally false history of poverty...The wealth accumulated by Europe and North America is largely based on riches taken from Asia, Africa and Latin America. Without the destruction of India’s rich textile industry, without the takeover of the spice trade, without the genocide of the Native American tribes [sic], without African slavery, the Industrial Revolution would not have resulted in new riches for Europe or North America. It was this violent takeover of Third World resources and markets that created wealth in the North and poverty in the South.30 What this recurring blind spot reveals is the tendency to deny the West’s complicity (and one’s own complicity as Westerner) in the plight of the Third World. It is a tendency that, as many postcolonial critics have suggested,31 is rife within the history of Western thought, which so often represses the barbarism (colonialism, racism, violence against the subaltern and women) that founds modernity. And it is a tendency, as underlined above, which equally inaugurates the field of Development Studies, since cold war politics demanded the construction of a strong and irreproachable West, cleansed of any suggestion of complicity in Third World ‘underdevelopment’. Thus, the discourse of modernisation (in its postwar and contemporary forms) can be seen as receiving back its own message to the Third World in inverted form: it is as if it is saying ‘you need to be backward, irrational, poor, terroristic, weak, exotic, fundamentalist, passive, etc since that is my way of reassuring myself that I am civilised, rational, scientific, rich, strong, secular, active, etc’. What psychoanalysis adds to the postmodern understanding of binary construction is the dimension of the Real, which shows up here in the form of the blind spot – the element of selflimitation that one cannot really come to terms with, so one averts [selflimitation] by (unconsciously) projecting it onto the Other. To conclude this section, let me underline again how psychoanalysis can help uncover the unconscious of development discourse, pointing to the latter’s desires and traumas, which so often ‘speak’ when things go wrong (eg in the form of slips and blind spots). Thus, in the examples discussed above, the mastery, credibility and neutrality of the World Bank are tripped up by the ‘Summers memo’, revealing the Bank’s desire for free market economics, even if this means First World domination of the Third World, while the traumatic Third World Quarterly 1127 Downloaded by [York University Libraries] at 10:45 02 October 2014 inability of modernisation to face its limitations and complicities shows up in its disavowal of Western colonialism. Note that both these illustrations exemplify what is known in psychoanalysis as the ‘return of the repressed’: mainstream development’s construction of itself as rational, scientific and authoritative implies precisely the evacuation of certain desires and traumas, which ‘speak’ nonetheless, sometimes at the most inopportune moments. Note as well that, even though development’s slips and stumbles may appear ‘irrational’ (eg the ‘irrational’ implications of free market economic logic), such irrationality is the product of the excess of reason (eg development’s prioritisation of positivist economics and science), that is, its inability to come to terms with its conflicting desires (eg its desire to appear pure, yet its past yearnings for colonial plunder). Irrationality, in this sense, is integral to the very construction of a rational and scientific development discourse (in the same way that, for Lacan, the unconscious is integral to the very construction of language). Finally, note the emphasis on surface rather than depth when it comes to the unconscious: Lacanian psychoanalysis is not a ‘depth psychology’ meant to excavate unconscious desires from the recesses of the individual mind; rather than going below the surface, the point is to glean the unconscious hidden in plain view. The unconscious is thus immanent to language/discourse, visible topologically. This is why the way the Summers memo is presented (its secretive form) is more important, psychoanalytically speaking, than what is uttered in it. This is also why the slips contained in ‘population control’ and ‘sustainable development’ are outwardly visible from the start, although, as pointed out earlier, they are only gleaned retroactively, in light of the institutional machinations that stem from each. Enjoying development: understanding why development discourse endures The Lacanian concept of jouissance (enjoyment) refers not to the pleasure we derive from things but, rather, to the excessive satisfaction or kick we get from doing something transgressive, irrational or even wrong. It has been called ‘the thrill of the [R]eal’, 32 and helps explain, for example, such self-destructive pursuits as smoking and binge drinking, or such ‘extreme sports’ as bungee jumping and free diving: people do them not despite the fact that they are dangerous, but because they are. Jouissance thus involves the intense pleasure taken from pain, a kind of idiotic stupor that often makes us ask for more even though we well know the risks. According to Lacan, jouissance is the outcome of the child’s separation from the primordial (m)Other and entry into the symbolic order. This is a traumatic separation that results in deep loss (of enjoyment), a loss that we are never able to forget. The tragedy is that the loss is actually a fiction (no real primordial fullness ever existed in the first place), yet it always remains with us. We repeatedly assume fullness exists but constantly remain dissatisfied, thus turning ‘nothing into something’. 33 The promise of enjoyment is always deferred, with the result that we continuously miss our goal, yet keep coming back for more. One of Žižek’s significant contributions to political theory has been to make the notion of jouissance a political factor, showing how it is a crucial ingredient 1128 I. Kapoor Downloaded by [York University Libraries] at 10:45 02 October 2014 in the formation of political community and identity.34 For example, the deep comfort people may get from following rituals (bureaucratic or religious), or the enjoyment and thrill that may binds us together against an external enemy, help explain why institutions, nations, or groups often do ‘irrational’ things – in this case, obstinately defending bureaucratic red tape or religious identity, or engaging in aggressive racism or nationalism. Jouissance elucidates why people become so attached to cultural values and socio-political systems, and why power can turn out to be so intractable, persistent and enduring. One has trouble giving up such things as racism, materialism, sexism or religious fundamentalism because one enjoys them; they give one a certain sense of stability and fulfilment, despite the fact that (and sometimes because) one may well know they can be pernicious and cruel. As Stavrakakis points out, ‘by taking into account emotion, affect [and enjoyment]...one may be able to reach a more thorough understanding of “what sticks”: both what fuels identification processes and what creates fixity’. 35 Let me provide the following three illustrations. The first concerns the emphatically capitalist orientation of development: despite the fact that capitalism has been severely criticised – it results in socioeconomic inequality, global unevenness and ecological destruction – it is very much in the ascendancy; arguably, it constitutes the only available economic horizon today, whether in the global North or the South. From a Žižekian perspective, one of the key reasons for such tremendous success is jouissance. That is to say, people enjoy capitalism. We are libidinally bound to it because we get so much from it – cars TVs, houses, nice clothes, cheap fast-food, iPhones, etc. And capitalism, especially in its latest neoliberal phase, has been very effective in appealing to our passions. It is able to exploit what Lacanians see as our deep-seated sense of lack/loss, enabling us to fill such lack through consumerism and materialism. This means that we cannot easily postpone capitalism, since it promises to heal our ontological wound. Late capitalism’s productive engine thus depends on enjoyment-as-excess; its strength and success hinge on the extent to which it can elevate jouissance ‘into the very principle of social life’. 36 This is why late capitalist societies (whether in the West or Third World) are characterised by the normalisation of excess – the desire for the best, biggest, tallest, richest, most original; the pervasiveness of ‘super-sized’ everything, from dams and buildings to coffee and art; the orgiastic show of wealth; the rise of sexual promiscuity and ‘extreme’ sports; or the over-abundance of ‘choice’, whether in TV channels, music, restaurants or university programmes. The problem, however, is that, although capitalist development promises enjoyment, it never quite delivers: a Coke doesn’t quite quench, more wealth is still never enough and super-sized fast-food sickens rather than satisfies. But such failure is written into the very logic of capitalism. For, if an end to dissatisfaction were possible, that would spell the end of the global capitalist system. Instead, the aim of the system is always to solicit and activate desire, but never to allow it to be satiated; this is what enables ever-increasing growth, profit or market share. Capitalist development, in this sense, is driven by insatiable lack, so that, try as we may to satisfy our enjoyment, we always miss our mark. As Todd McGowan states, ‘the problem with the society of enjoyment is not that we suffer from too much enjoyment, but that we don’t have enough’. 37 Third World Quarterly 1129 Downloaded by [York University Libraries] at 10:45 02 October 2014 A second illustration of jouissance involves nationalism. Indeed, little else has been more enduring than national identifications in the development context. Appeals to national bonds were of course crucial during independence struggles across the former colonies, but they have also been a key ingredient in postindependence national politics to help unify the nation on key political issues (land reform, industrialisation or liberalisation strategies, pet or prestige development projects, emergencies, humanitarian disasters, wars, etc). What is notable is that these appeals have invariably relied, not so much on rational arguments as social passions. Nationalism operates at the libidinal level (ie at the level of our ‘guts’, hearts, affect), engaging our sense of belonging, community and pride. It relies on the (fantasmatic) promise of full enjoyment, which once again helps to explain the secret of its persistence. The problem is that, while nationalism may be able to deliver on a few of its development goals, it often leads to irrationalities and excesses. We are all too aware of stories about excessive government spending on the military or costly prestige projects (mega-dams, space programmes, state-of-the-art hospitals, etc), at the expense of, say, basic health care and education. It is precisely this that Frantz Fanon warned about in his scathing critique of the national bourgeoisie, which he famously accused of pandering to nationalist sentiment as a pretext for continuing elite wealth accumulation and ‘racket’. 38 But there is also a more sinister dimension to nationalism: its tendency to scapegoat. This is a tendency that arises as part of the very formation of national identity. To construct the nation is to appeal to what makes ‘us’ unique (our customs, culture, landscapes, food, dress, festivals, etc). It is this uniqueness that provides people with an ecstatic sense of unity and togetherness (ie jouissance). Yet, as Lacanians are quick to point out, such togetherness is a fiction, masking the lack and instability at the heart of any identity. And so, usually when things go wrong and this sense of national togetherness is threatened (eg by economic crises, recessions or internal political instability), a scapegoat is constructed – fundamentalists who terrorise us, the poor who threaten our security or environment, immigrants who steal our jobs or menace our women, the Jews/Indians/Chinese who plot to rule the world. Žižek underlines how such scapegoating allows the nation to avoid confronting its own inadequacies or contradictions by projecting them onto a stereotypical Other.39 My third, related example is about racism. Since colonial times not only has Western domination of the Third World been exercised in the socioeconomic and political spheres, but also when it comes to race. As Fanon claims, the ‘White man’ has become the universal subject or master signifier, so that being Black (or a person of colour) is only meaningful in relation to whiteness.40 From the Lacanian standpoint this implies that whiteness has been constructed as the promise of being less lacking, that is, more human and more whole.41 There is thus, as Kalpana Seshadri-Crooks argues, a kernel of jouissance in the construction of race and racism, with people of colour (and white people themselves) desiring whiteness,42 something which, it must be noted, fits neatly with the preponderant idealisation of the West in development discourse. No wonder once again that, despite the fact that people decry racism, it so obstinately remains with us. Skin bleaching (‘lactification’), the denigration of local culture in favour of all things Euro-North American, racial profiling (in policing, 1130 I. Kapoor Downloaded by [York University Libraries] at 10:45 02 October 2014 immigration), the resurgence of white supremacist movements – all speak to the jouissance inherent in racism and to persistent forms of ‘internalized whiteness’, whether in the global South or North. Žižek often associates racist enjoyment with envy, claiming that our enjoyment is always imbricated with the Other’s enjoyment, so that we can never enjoy on our own; we most often enjoy by envying the Other’s enjoyment, too.43 The creation of a scapegoat, according to him, is accompanied by anxiety about the ‘theft of enjoyment’: we cannot enjoy because the Other – terrorists who are threatening our security, foreigners who are taking our jobs – has stolen our enjoyment or is enjoying more than us. Hence, only by eliminating the Other can we recover our lost enjoyment and really enjoy (of course, no such real enjoyment exists). Such a perspective would help explain why extreme forms of racism result in the Other’s extermination (eg in the Rwandan and Armenian genocides, Bosnian ethnic cleansing, the massacre of indigenous peoples in Guatemala, Nazi concentration camps, etc). But it also helps explain more subtle or everyday forms of racism. For example, the neighbour declaring she likes family X living next door, but there’s something about them that bothers her (their noisy music, their entrepreneurialism, their body odour, their cooking smells, etc). What bothers her is (her construction of) their excess, their particular mode of enjoyment. An illustration of this in the development context is the recent discourse on HIV/AIDS. As Kalpana Wilson contends, despite the fact that the AIDS pandemic has much to do with political economy, the crisis is most often explained or rationalised (eg by Western aid agencies) in terms of ‘risk behaviours’ among ‘Africans’. 44 Wilson shows that weakened immune systems are the result not merely of the spread of a virus, but of people living in poverty, and the lack of access to cheap generic retroviral drugs (blocked by the big pharmaceuticals with the support of Western governments). That people live in poverty is the product of neoliberal structural adjustment policies across sub-Saharan Africa, which has seen reduced access to educational and health services for the poorest (especially women), and high unemployment, particularly among the ranks of former civil servants, teachers and health workers (several of whom live with HIV/AIDS). Yet the HIV/AIDS discourse tends towards a racialised stereotype on sexual behaviour: Africans lack sexual control, or African men and women are promiscuous. The consequence, according to Wilson, is a tendency on the part of Western aid agencies to target not the socioeconomic causes of the pandemic, but ‘African culture’ (behavioural modification, changes in values, etc). The stereotype of the hypersexual African is an old colonial one that Fanon famously seized upon.45 He claimed, from a psychoanalytic point of view, that it displayed a certain paranoid anxiety on the part of the coloniser about ‘African’ sexual prowess. That is, white racist repulsion was accompanied by its opposite – desire for, or sexual attraction to, Black people. And the same applies to the contemporary AIDS-related stereotype about the over-sexed African. To put it in Lacanian terms, it betrays a Western racist envy of the Other’s excess or enjoyment. The ‘African’ is constructed as possessing something we lack, which is what bothers us. But of course, what such racist constructions do is blind us to our own contradictions and deficiencies, which in this case have to do, as Wilson underlines, with Western complicities in the HIV/AIDS pandemic (support Third World Quarterly 1131 Downloaded by [York University Libraries] at 10:45 02 October 2014 for the big pharmaceuticals on restricting cheaper generic drugs, imposition of structural adjustment programmes, etc). Consequently Lacanian psychoanalysis helps us glean how such an unconscious social passion as enjoyment is so intertwined with development. Enjoyment provides for a (false) sense of satisfaction, stability and togetherness (as illustrated in the examples of neoliberal capitalism, nationalism and racism), but the excess it represents can also give way to irrational conduct (overindulgent materialism, scapegoating, and so on). Yet, whether in its positive or negative form (and often in both forms simultaneously), the notion of jouissance helps explain why things stick, why people hold on to sociocultural identifications, why such social ills as racism or rabid nationalism so obdurately persist. One last important argument: I want to suggest that it is the neglect of the passions, particularly jouissance, that bedevils the likes of post-development (hence it is not just mainstream development that has tended to disavow its psychoanalytic underpinnings, but even such non-mainstream thinking as postdevelopment). Indeed, Foucault, on whose work post-development relies, is quite critical of psychoanalysis (at least in his later work), seeing desire not as some extra-discursive passion that is repressed, but as something positively produced by discourse.46 Psychoanalysis, for him, is thus a normalising technology in the service of our disciplinary modern societies. Lacanian psychoanalysis is quite consistent with Foucault’s conception of power and discourse and how these discipline bodies, produce subjects, and shape such modern institutions as asylums, prisons, hospitals, schools, and indeed psychoanalysis.47 The problem, however, is that Foucault assumes that power produces the body without any mediation, that is, without any process of interiorisation. As Copjec argues, in ‘Foucault’s work the techniques of disciplinary power (of the construction of the subject) are conceived as capable of “materially penetrat[ing] the body in depth without depending even on the mediation of the subject’s own representations. If power takes hold on the body, this isn’t through its having first to be interiorized into people’s consciousness”.’ 48 For Lacanians it is precisely desire (growing out of enjoyment) that fixes the subject (however precariously and contingently), explaining how we both (mis) perceive power and become libidinally invested in it. And such desire/enjoyment is not discursively produced, as Foucault would have it, but as noted above is an inherent excess or an extimate core (the Real) to any discourse; it is the result of the insubstantial loss that arises the moment we enter language. Thus, the problem with Foucault, according to Copjec, is his refusal of any type of transcendence (not even the internally external transcendence envisaged by Lacan): his historicist discursivism ends up reducing society to power–knowledge relationships. But because power is always immanent for Foucault, his is a historicism which can neither account for itself (how does one apprehend power/discourse if one is always within it?) nor explain how social orders persist (or can be changed).49 Post-development shares several of the same problems. Drawing primarily on Foucault, post-development analysts such as Arturo Escobar and James Ferguson have focused on the construction of discourses about the Third World and their attendant disciplinary mechanisms. Escobar, for example, examines how development discourse is produced through the problematisation of issues 1132 I. Kapoor Downloaded by [York University Libraries] at 10:45 02 October 2014 (eg ‘poverty’) and the consequent professionalisation and institutionalisation of knowledge, which end up controlling and regulating people and communities.50 Ferguson, for his part, underlines how knowledge is simplified and depoliticised as a way of aggrandising institutional authority, so much so that, even when development projects fail, they can help expand bureaucratic power.51 But the problem with such analyses is that they inadequately grapple with human/social passions, failing to confront the psychic inclinations that support development discourses. In Escobar’s case there is no explanation of how power is mediated at the level of the subject, or why people so often acquiesce in, say, neoliberal discourse (as highlighted earlier). In fact, Escobar has been criticised precisely for a facile anti-development stance, with critics pointing out that many communities (including opposition groups) often fight for development (eg more jobs, even if they are low-paid, and better access to health, education, etc).52 Jonathan Rigg contends, for example, that in Southeast Asia many groups have ‘climbed aboard the modernization bandwagon, whether they be for or against it’. 53 Similarly, while Ferguson’s is a fascinating analysis of institutional power, he reduces the bureaucratic space to the power–knowledge relationships within it. There is no consideration of institutional desire – the ways in which, for instance, development administrators may obtain a certain reassurance and stability from following bureaucratic procedures and rules, or enjoy the prestige (and in the development context, benevolence) of their bureaucratic position and the discretionary power that comes with it. This would certainly explain more adequately why institutional power is able to sustain itself: it is not only produced discursively in an almost impersonal and anonymous way (ie an anti-politics machine), but is able to take hold and expand through libidinal attachments.54 Development as fantasy: doing ideology critique It is Žižek who has almost single-handedly renewed current interest in ideology. Given the Lacanian position that reality is always ruptured by gaps and contradictions (ie the Real), ideology, according to Žižek, is that which attempts to cover up these contradictions, to obscure the Real.55 In this sense reality is thoroughly ideological, with ideology serving as a way for it to escape its traumatic core and ideology critique constantly trying to focus attention back on this escape/trauma. Thus, in the case of (the ideology of) nationalist racism discussed above, we saw how a scapegoat was produced to cover up, and divert attention away from, the nation’s internal troubles (the Real). Here, the underlying ideological fantasy is that, once the scapegoat is removed or eliminated, the nation will recover its (impossible) harmony. Note that Žižek’s position on ideology differs from the Marxist one, which implies a privileged, neutral point from which one can distinguish between ‘objective reality’ and ‘false consciousness’. For Žižek we are all ideologically produced, so there is no question of being outside ideology. Rather, what we can do in terms of ideology critique is to try and detect, in the manner of the psychoanalyst, the gaps in ideologically constructed reality, gaps which, as we have seen, show up as slips, blind spots, symptoms, irrationalities. Ideology critique is therefore possible only from within the belly of the beast, so to speak. Third World Quarterly 1133 Downloaded by [York University Libraries] at 10:45 02 October 2014 Note as well that ideological fantasies secure our consent and compliance through desire (and enjoyment).56 In fact, as Žižek points out, fantasy is the mise-en-scène for desire: it helps make reality smooth, coherent and harmonious, protecting us from trauma or lack, gentrifying turbulence or negativity, and promising a world that is more bearable, attractive and enjoyable. Fantasy thus animates and manages desire; it teaches us how to desire.57 But just as fantasy can never live up to its promises (because no fullness exists), so desire is never satiated; it is condemned to repetition and failure in search of the missing object. Let me illustrate by examining a couple of development’s ideological fantasies. To begin, the very discourse of ‘poverty’, upon which development centres, is ideological. Indeed, poverty discourse typically constructs the Third World as underdeveloped and backward, as though such ‘underdevelopment’ is a fait accompli. By so isolating underdevelopment and poverty, the discourse mystifies the close relationship between surplus extraction and impoverishment, wherein wealth in some parts of the world (ie the affluent centres of the global North and South) is the historical result of the pauperisation of others.58 Hence poverty discourse simplifies and de-historicises inequality by privileging the ‘now’ of poverty, thus eliding the Real – in this case, continuing forms of elite domination, particularly the West’s (neo)colonial immiseration of the Third World. (Note that this is the same traumatic Real that, as pointed out earlier, modernisation tries to escape by disavowing Western colonial history.) It is worth reflecting on the desires elicited by such an ideological fantasy. A typical response to the mis-en-scène of (Third World) poverty is to blame this ‘backwardness’ on individuals and values – rogue civil servants, corrupt leaders, uneducated or irresponsible mothers, ‘ethnic’ or ‘traditional’ practices – so that the solution becomes the need/desire for better (ie modern, Western-style) leadership, norms and codes of conduct. A distinct moral righteousness pervades such a discourse, with experts and elites standing as arbiters of the ‘right’ values and ‘good’ governance. Ideologies and moralising discourses such as that of poverty are most successful when they are able to depoliticise desires, precisely in order to avoid coming too close to the Real. It would be much too risky – and traumatic – for the discourse of poverty to be staged in terms of inequality, for this would doutbless animate the desire to problematise (if not eliminate) the relationship between wealth accumulation and pauperisation. This is no doubt why it is the discourse of poverty, not inequality, that is so hegemonic in development, reflecting elites’ desires to maintain the status quo. A second prevalent ideological fantasy is neoliberalism, with which, for all intents and purposes, mainstream capitalist development is closely associated these days. Neoliberalism proposes that market mechanisms maximise human well-being and are ideal for addressing social and political problems. It promises that everyone wins, and anyone can ‘make it’. 59 We have already seen how such an ideological system binds people to it by seducing them (through jouissance); it creates a series of lacks, and through a cycle of satisfaction–disappointment (and hence postponement) is able to endlessly stimulate and redirect our desires (for consumption, wealth, jobs, etc). But in pledging to eliminate our ontological loss, in vowing to make us whole, the neoliberal fantasy conceals a lot. It hides the rapaciousness of 1134 I. Kapoor Downloaded by [York University Libraries] at 10:45 02 October 2014 markets, which have led to global ecological crisis and growing inequalities and unevenness.60 It disavows the large reserve army of (sweatshop) labour upon which the smooth functioning of global capital depends. And it ignores how the neoliberal gutting of state social programmes has hit hardest those most in need (women, the unemployed, migrants, racialised minorities). Neoliberal capitalism is founded on the gentrification of, and inability to acknowledge, its contradictions and deficiencies. What can be gleaned from the above is that Žižekian ideology critique involves two complementary steps.61 The first is about examining how an ideological fantasy is constructed and what it is trying to hide or disavow. Often this means identifying the fantasy’s master signifiers, taken-for-granteds or ‘sublime objects’ (in the above two examples: ‘poverty’, ‘corruption’, ‘free market’, ‘growth’). Moreover, this means locating the ideology’s Real, that is, what it is trying to render invisible or unutterable (eg inequality, the relationship between poverty and wealth accumulation, sweatshop labour). But detecting the holes and traumas within our knowledge systems is not nearly enough. This is because of what Žižek calls the ‘fetishistic disavowal’, according to which we can know, but still continue to do.62 The problem is evident in, say, global hedge fund managers guiltily regretting the industrial layoffs caused by their own financial speculation, yet continuing their business as usual; or critical TV audience members decrying product advertising but still engaging in consumerism and shopping. The strength of ideology, according to Žižek, lies in allowing us a certain ironic distance, which makes us think we know better and can rise above ideology. In contrast to those who maintain that having the information and ‘exposing the facts’ are sufficient to undermine power, Žižek argues emphatically that, most often, it is not a lack of knowledge that is the problem, but our unconscious commands and passions that bind us to ideology despite critical distance. Acknowledging and tracking the desires and enjoyment we invest in ideology, then, is a crucial second procedure for ideology critique. It means ‘articulating the way in which...an ideology implies, manipulates, produces a pre-ideological enjoyment structured in fantasy’. 63 This is precisely why I have been arguing for the importance of psychoanalysis in development: to better identify and come to terms with our libidinal attachments and the lure of development’s many sublime objects and fantasies. Psychoanalysis tells those of us who work in this field that we do not necessarily know our interests. Our libidinal attachments so often circumscribe our thinking and actions. This is why, despite the fact that we may be critical of or despondent about development, we buy into such development fantasies as ‘doing good’ or ‘free markets’, which often screen our lacks and anxieties (about social injustice, inequality, or our own complicities as Westernised elites) and set off our desires (eg to help, to save the Other, to donate money to charity, or to call for the privatisation of public services).

#### The repetition of drives makes life the enemy and causes extinction

Themi 08 (Tim, Prof @ Deakin U, “How Lacan’s Ethics Might Improve Our Understanding of Nietzsche’s Critique of Platonism: The Neurosis & Nihilism of a ‘Life’ Against Life,” *Cosmos and History: The Journal of Natural and Social Philosophy* 4.1-2, 2008) SJBE, recut from Harvard BoSu

For to circle in too close to the Thing which is ethically forbidden by our reality principles––yet too the real truth of much desire––does hardly give us pleasure at all but anguish of the heaviest kind. Even if done so only as a thought experiment; as a free-association. So go there we generally don’t, and our ‘realities’ reflect as much. But henceforth when desire builds up, damns and flares return of the Thing: this is how Lacan specifically characterises the move we might make that goes beyond the pleasure principle, whose other name for Freud is ‘death-drive’. There where there is no, not pleasure yet jouissance in the transgression that the Thing would bring, a jouissance of transgression which Lacan suggests is the most direct satisfaction of a drive humanly possible[48]. But it’s also one perhaps unconsciously masochistic, that which Freud writes up as being only preliminarily sadistic, in eventually expressing itself as an “unconscious need for punishment”[49]. And if indeed we are feeling guilty, then we may yet still seek to pay the price. Why? For unknowingly possessing and inadvertently re-accessing this Thing in our real, beyond the pleasure-reality principle, our moral transgressions casting shadow long into the unconscious we know next to nothing about, and refuse even to acknowledge.¶ Could it not be thusly then that our time is behind now a sadomasochistic, wilfully ignorant drive towards death for nigh the entire species? Such punishment would too overly suffice, to be sure, for even a two-millennium length in repression…¶ But with our advancements in technological power outmatching by far any correlative advance in the awareness gained as a whole of our prehistoric Thing within: the great 21st century ecological disaster that too many academics and activists now increasingly predict, seems more than just a little possible. But to this increasingly macabre scenario, we must also add the renewed proliferation of nuclear weapons which occurs, no less, amidst a world where vital resources for energy and democracy are wearing thin[50]. For just such reasons, wilful ignorance of the Thing now bares results which Lacan’s Ethics reveals as far too terrifyingly possible to rationally accept; given that we have the Thing armed to the teeth now from that primitive id-like part of the brain, with no Sovereign Good, and all the way into a nuclear age.¶ CONCLUSION: THE NEUROSIS & NIHILISM OF A ‘LIFE’ AGAINST LIFE.¶ This is why Lacan proposes that his enquiry into ethics must be one to go “more deeply into the notion of the real”(LE:11). Further into what he would rather call the real, given that previous notions of ‘nature’ have been too far ‘different’––from being far too Platonic––than his own; and because it’s the very exclusions in these previous notions which upon return, as return of excess, are yielding our most tragic problems.¶ Today when faced with problems of the magnitude of global warming––a special but by no means solo case of adverse environment change at present due to our physical treatment of the planet––we often think the answer is to be more moral, more good, and we are thankful when exponents of the Good in some way bring attention to the problem. However, the idea of the Good as introduced by Plato, and nigh all of its descendants whether secular, rationalist, religious or not, continue to predicate themselves on a radically false picture of the human-condition: if not still of the entire cosmos––which only then lines itself up aside of an age-old repression, a repression of das Ding, that Freudian Thing in our inner real which, when it returns after being disavowed and denied in the name of the Good too long, is even more devastating.¶ Presently we are accelerating along the path of what Lacan discloses as our civilisation’s “race towards destruction”, a “massive destruction”, “a resurgence of savagery”, snaking the paths traced out before us by the centuries long dominion of Western morality [51]; and the nihilism detected by Nietzsche before the turn of the 20th has never threatened to reach such the grand finale. But what I would have us take from this enquiry here is that this is not because we aren’t in accordance enough with a moral ideal of the Sovereign good, but rather, it’s because we aren’t in accordance enough with a proper understanding of the real. It’s because we still at some level think that being more moral, in accordance with the Good’s inherited repressive structures towards our drives, desire, and truthfulness about the real, is actually the answer to––rather than the source of––our most tragic problems.¶ The goal here is by no means then to encourage all to let their Things run wild––which would probably be nothing short of an instant conflagration––but this is why and precisely why we must desist from deluding ourselves under the tightening grip of a Sovereign Good, for this is precisely the move which cuts the Thing loose after pressing down for far too long, a slippery hand’s palming on the coils of a spring, forever readying the subsequent explosion. For when that which is really real––as opposed to what Christian-Platonism falsely called the ‘real’––is forced from mind, it can’t really disappear because it is real, and it tends to end up only in our gun-sights as an imaginary overlaying of an external other, when the signifier ‘enmity’ appears. The earth itself can even seem like the enemy after while, one which like Plato in his Phaedo, we might think then to escape from “as if from a prison”, and especially from “the bonds of the body”, in the hope that we may live one day without the earthly altogether[52]. Following such negations to their logical conclusion, life itself becomes enemy too, for as being made up of the earthly and organic, life could never be free of what it is in essence. And what is the death-drive Freud tells from the start, if not to return us sundry to that dust-bowl of the inorganic; as per that “second death”[53] fantasm Lacan salvages from the Monstre de Sade, which wills to go beyond the destruction of mere beings, by destroying too the principle from which fresh sets could emerge. Such negative devaluations of our earthly, organic life though are really of our own construction: as de Sade, like any pervert, is only the mirror which shows expressed what Platonic-neurotics are but hide inside––a cess-pit of loathing contempt for life, built up from the unconscious and disowned, distorted and damned up, built up, instinctual-ideational elements of their own subjective psyches, phobically ferocious of that Thingly real lying not so dormant, and readying within…¶ But is it now still possible as Nietzsche teaches to say ‘Yes’ to the real of nature both without and within––to return to it!––even though it is more frightful and we are less guaranteed protection of it than the Platonic history of metaphysicians taught? For with the further disclosures of The Ethics of Psychoanalysis––Lacan’s following up and extension of the meta-ethical implications of Freud: perhaps even Nietzsche, our great intellectual übermensch, may too have bitten off more snake-head than he could chew? From certain moments in Nietzsche’s texts we can perhaps interpret that he may have had this Thing in his sights, but saw nothing much to come of it, so instead, elected to turn away, though not without some perhaps hinted at self-amusement.[54]¶ But with psychoanalysis, rightly or wrongly, such truths are out. It doesn’t seem all positive at first, and perhaps it never entirely will. But we must not let this deeper disclosure desist us now from the core Nietzschean project of locating and overcoming the nihilism which begs us to take cover in idealising fictions, as if life as life is not worth living. Not because nihilism and the annihilation of the species is wrong in the sense of being immoral, but rather because it is bad art, mediocre art, and the ‘knowledge’ claims it trumpets on should only make us flare. If we are at our full intellectual and creative will to power, we can only consider such cultural-civil regressions as we saw on display with that whole propaganda comedy that surrounded the war for more oil in Iraq as infantile; the hapless results of sibling rivalries gone too far astray. But we must also resist being caught up in the imaginary of those who would only re-preach to us now of a return to the Good, who would only redeploy such versions of nihilism’s precursory defensive fictions, the pernicious ones, which would only then re-falsify our data, and leave us disappointed when the truth then re-emerges. Doing more harm than good does Platonism in the end by leaving us untrained for the real, with the habit instead to take some truth as ‘error’, and error as ‘truth’––as ‘real’––to the point even of epistemic dysfunction. Take the grotesque intellectual poverty of that whole Christian middle-ages for example, whence put into relation with the heights of Aristotle and his fellow Greeks, as Augustine and Aquinas amplified some of the worst bits of Platonism, and threw the rest into abyss.¶ The overcoming of the moralising good of Christian-Platonism though does by no means imply then a subsequent affirmation of all that brutal Roman like greed, slavery, decadence, circus-bread corruption and mindless colonial expansion that we’ve heard all about, and are hardly so free of with our corporate today––just ask a Latin-American for instance![55] For it is possible within the perspectives opened up by Nietzsche, Freud, Lacan, as Silvia Ons puts it, to view a social-historical or individual neurosis of any kind: including the expressed acted-out, perverse-sadistic form that escapes when the Good is temporarily loosed of its repressive grip––and say to the would be Platonist: ‘No, not that, that’s not a cure, that’s a mirage; that’s sheer fantasy, resentment, spite; that’s not a cure it will only make things worse; worse in a different way, but worse nonetheless!’¶ By greater mindfulness then, with guided affirmation towards even that fearsome Freudian Thing that The Ethics of Psychoanalysis has us find now in our inner natures: we can eventually again say ‘Yes’-to-life in such the way that it overcomes the nihilism of not caring too much whether we as individuals or species live or die, whether we as culture or civilisation advance or decline. But we can only do this with fullest efficacy by freeing ourselves of all that wasted neurosis sickness that feels it must deny our Thing like aspect of the real: because from all those Christian-Platonic prejudices of the Good, it has been taught that such ‘things’ are too far beneath it. We must continue instead to train ourselves to stare the real directly in the face, without flinching, and that’s all we can do at least to start. For unless we can continue to utilise, sublimate, enjoy and get a positive, well-guided jouissance out of all aspects of life––including that Freudian Ding in our real––then the chances are we’re going to be at least in part, happy enough in no longer living it: offering not even a puff of genuine political praxis! We either face up to the death-drive snaking long beneath the dank, hidden history of the un-real, anti-real Good of Platonism––or let the disowned, un-understood drive resurge of its own volition until it accidentally finishes us!

#### Vote negative to embrace the lack – this requires being open to the anxiety that occurs from an encounter with the other and breaks down fantasy and drives.

McGowan 13 Todd McGowan, 2013, “Enjoying What We Don’t Have: The Political Project of Psychoanalysis,” University of Nebraska Press/Lincoln and London, SJBE

The alternative — the ethical path that psychoanalysis identifies — demands an embrace of the anxiety that stems from the encounter with the enjoying other. If there is a certain ethical dimension to anxiety, it lies in the rela- tionship that exists between anxiety and enjoyment. Contra Heidegger, the ethics of anxiety does not stem from anxiety’s relation to absence but from its relation to presence — to the overwhelming presence of the other’s enjoyment. In some sense, the encounter with absence or nothing is easier than the encounter with presence. Even though it traumatizes us, absence allows us to constitute ourselves as desiring subjects. Rather than producing anxiety, absence leads the subject out of anxiety into desire. Confronted with the lost object as a structuring absence, the subject is able to embark on the pursuit of the enjoyment embodied by this object, and this pursuit provides the subject with a clear sense of direction and even meaning. This is precisely what the subject lacks when it does not encounter a lack in the symbolic structure. When the subject encounters enjoyment at the point where it should encounter the absence of enjoyment, anxiety overwhelms the subject. In this situation, the subject cannot constitute itself along the path of desire. It lacks the lack — the absence — that would provide the space through which desire could develop. Consequently, this subject confronts the enjoying other and experiences anxiety. Unlike the subject of desire — or the subject of Heideggerean anxiety — the subject who suffers this sort of anxiety actually experiences the other in its real dimension.¶ The real other is the other caught up in its obscene enjoyment, caught up in this enjoyment in a way that intrudes on the subject. There is no safe distance from this enjoyment, and one cannot simply avoid it. There is nowhere in the contemporary world to hide from it. As a result, the contem- porary subject is necessarily a subject haunted by anxiety triggered by the omnipresent enjoyment of the other. And yet, this enjoyment offers us an ethical possibility. As Slavoj Žižek puts it, “It is this excessive and intrusive jouissance that we should learn to tolerate.”27 When we tolerate the other’s “excessive and intrusive jouissance” and when we endure the anxiety that it produces, we acknowledge and sustain the other in its real dimension.¶ Tolerance is the ethical watchword of our epoch. However, the problem with contemporary tolerance is its insistence on tolerating the other only insofar as the other cedes its enjoyment and accepts the prevailing symbolic structure. That is to say, we readily tolerate the other in its symbolic dimen- sion, the other that plays by the rules of our game. This type of tolerance allows the subject to feel good about itself and to sustain its symbolic identity. The problem is that, at the same time, it destroys what is in the other more than the other — the particular way that the other enjoys.¶ It is only the encounter with the other in its real dimension — the encounter that produces anxiety in the subject — that sustains that which defines the other as such. Authentic tolerance tolerates the real other, not simply the other as mediated through a symbolic structure. In this sense, it involves the experience of anxiety on the part of the subject. This is a difficult posi- tion to sustain, as it involves enduring the “whole opaque weight of alien enjoyment on your chest.”The obscene enjoyment of the other bombards the authentically tolerant subject, but this subject does not retreat from the anxiety that this enjoyment produces. If the embrace of the anxiety that accompanies the other’s proximate enjoyment represents the ethical position today, this does not necessarily provide us with an incentive for occupying it. Who wants to be ethical when it involves enduring anxiety rather than finding a way — a drug, a new authority, or something — to alleviate it? What good does it do to sustain oneself in anxiety? In fact, anxiety does the subject no good at all, which is why it offers the subject the possibility of enjoyment. When the subject encounters the other’s enjoyment, this is the form that its own enjoyment takes as well. To endure the anxiety caused by the other’s enjoyment is to experience one’s own simultaneously. As Lacan points out, when it comes to the enjoyment of the other and my own enjoyment, “nothing indicates they are distinct.” Thus, not only is anxiety an ethical position, it is also the key to embracing the experience of enjoyment. To reject the experience of anxiety is to flee one’s own enjoyment.¶ The notion that the other’s enjoyment is also our own enjoyment seems at first glance difficult to accept. Few people enjoy themselves when they hear someone else screaming profanities in the workplace or when they see a couple passionately kissing in public, to take just two examples. In these instances, we tend to recoil at the inappropriateness of the activity rather than enjoy it, and this reaction seems completely justified. The public display of enjoyment violates the social pact with its intrusiveness; it doesn’t let us alone but assaults our senses. It violates the implicit agreement of the public sphere constituted as an enjoyment-free zone. And yet, recoiling from the other’s enjoyment deprives us of our own.¶ How we comport ourselves in relation to the other’s enjoyment indi- cates our relationship to our own. What bothers us about the other — the disturbance that the other’s enjoyment creates in our existence — is our own mode of enjoying. If we did not derive enjoyment from the other’s enjoyment, witnessing it would not bother us psychically. We would sim- ply be indifferent to it and focused on our own concerns. Of course, we might ask an offending car radio listener to turn the radio down so that we wouldn’t have to hear the unwanted music, but we would not experience the mere exhibition of alien enjoyment through the playing of that music as an affront. The very fact that the other’s enjoyment captures our attention demonstrates our intimate — or extimate — relation to it. This relation becomes even clearer when we consider the epistemo- logical status of the enjoying other. Because the real or enjoying other is irreducible to any observable identity, we have no way of knowing whether or not the other really is enjoying. A stream of profanity may be the result of someone hurting a toe. The person playing the car radio too loud while sitting at the traffic light may have simply forgotten to turn down the radio after driving on the highway. Or the person may have difficulty hearing. The couple’s amorous behavior in public may reflect an absence of enjoyment in their relationship that they are trying to hide from both themselves and the public.¶ Considering the enjoyment of the other, we never know whether it is there or not. If we experience it, we do so through the lens of our own fantasy. We fantasize that the person blasting the radio is caught up in the enjoyment of the music to the exclusion of everything else; we fantasize that the public kisses of the couple suggest an enjoyment that has no concern for the outside world. Without the fantasy frame, the enjoying other would never appear within our experience.¶ The role of the fantasy frame for accessing the enjoying other becomes apparent within Fascist ideology. Fascism posits an internal enemy — the figure of the Jew or some analogue — that enjoys illicitly at the expense of the social body as a whole. By attempting to eliminate the enjoying other, Fascism hopes to create a pure social body bereft of any stain of enjoy- ment. This purity would allow for the ultimate enjoyment, but it would be completely licit. This hope for a future society free of any stain is not where Fascism’s true enjoyment lies, however. Fascists experience their own enjoyment through the enjoying other that they persecute. The enjoy- ment that the figure of the Jew embodies is the Fascists’ own enjoyment, though they cannot avow it as their own. More than any other social form, Fascism is founded on the disavowal of enjoyment — the attempt to enjoy while keeping enjoyment at arm’s length. But this effort is not confined to Fascism; it predominates everywhere, because no subjects anywhere can simply feel comfortable with their own mode of enjoying.¶ The very structure of enjoyment is such that we cannot experience it directly: when we experience enjoyment, we don’t have it; it has us. We experience our own enjoyment as an assault coming from the outside that dominates our conscious intentions. This is why we must fantasize our own enjoyment through the enjoying other. Compelled by our enjoyment, we can’t do otherwise; we act against our self-interest and against our own good. Enjoyment overwhelms the subject, even though the subject’s mode of enjoying marks what is most singular about the subject.¶ Even though the encounter with the enjoying other apprehends the real other through the apparatus of fantasy, this encounter is nonetheless genuine and has an ethical status. Unlike the experience of the nonexistent symbolic identity, which closes down the space in which the real other might appear, the fantasized encounter with the enjoying other leaves this space open. By allowing itself to be disturbed by the other on the level of fantasy, the subject acknowledges the singularity of the real other — its mode of enjoying — without confining this singularity to a prescribed identity.¶ The implications of privileging the encounter with the disturbing enjoy- ment of the real other over the assimilable symbolic identity are themselves disturbing. The tolerant attitude that never allows itself to be jarred by the enjoying other becomes, according to this way of seeing things, further from really encountering the real other than the attitude of hate and mis- trust. The liberal subject who welcomes illegal immigrants as fellow citizens completely shuts down the space for the other in the real. The immigrant as fellow citizen is not the real other. The xenophobic conservative, on the other hand, constructs a fantasy that envisions the illegal immigrant awash in a linguistic and cultural enjoyment that excludes natives. This fantasy, paradoxically, permits an encounter with the real other that liberal tolerance forecloses. Of course, xenophobes retreat from this encounter and from their own enjoyment, but they do have an experience of it that liberals do not. The tolerant liberal is open to the other but eliminates the otherness, while the xenophobic conservative is closed to the other but allows for the otherness. The ethical position thus involves sustaining the liberal’s toler- ance within the conservative’s encounter with the real other.

## 3

#### CP text: The member nations of the world trade organization should add more stringent requirements for filing secondary patents by requiring secondary patent filers to demonstrate increased efficacy as compared to the original. Solves all your offense by reducing purely strategic patents while permitting R and D for genuine improvements.

Newsome 17, A [(JD candidate George Washington School of Law). (2017). Side effects of evergreening may include decreased competition & increased prices in the pharmaceutical industry. AIPLA Quarterly Journal, 45(4), 791-822] Justin

The current framework for evaluating a patent application, particularly the requirements of utility and nonobviousness, is insufficient for evaluating whether a secondary patent should be issued for a drug. Given that courts are tied to the low bar for utility and inconsistent with their application of nonobviousness,1 04 it is necessary to pass legislation creating a new utility requirement tailored to secondary pharmaceutical patents. This Note's Author proposes legislation language as follows: 35 U.S.C. § 106: Patentable Pharmaceutical Inventions

(a) Utility requirement for secondary patent: In the case of a pharmaceutical invention claiming an improvement on a patented invention, the applicant shall demonstrate through clear and convincing evidence in the written description that such invention has increased efficacy as compared to the original.

(b) Increased efficacy defined: As used in part (a), "increased efficacy" refers to a proven improvement in the mechanism of action, as disclosed in the patent claims. 0 5

(c) Mechanism of action defined: As used in part (b), "mechanism of action" refers to the process by which a drug functions to produce a therapeutic effect, as disclosed in the patent claims. 06

Under this legislation, the USPTO could grant a secondary patent only if the new formula's mechanism of action, or production of the intended pharmacological effect, in fact improves upon the patented drug's mechanism of action. For example, because VidaDrug is a chemotherapy drug, the new formula must include a change in the mechanism of action which causes an improvement in the efficacy of the drug's tumor-shrinking abilities to be eligible for a secondary patent. A formula tweak that reduces side effects is insufficient, because the underlying purpose of the drug - to treat cancer - remains unaffected.

Lowell provides some precedent for creating a higher utility standard. 07 This new standard would focus on a drug's overall improved efficacy, rather than a minor tweak in the formula that would mitigate or resolve a previously caused side effect. This standard would require holding the pharmaceutical industry to a higher standard than other industries, which could potentially conflict with the United States' TRIPS Agreement obligations with the WTO.

#### Solves best.

Newsome 17, A [(JD candidate George Washington School of Law). (2017). Side effects of evergreening may include decreased competition & increased prices in the pharmaceutical industry. AIPLA Quarterly Journal, 45(4), 791-822] Justin

Pharmaceutical patents are inherently different from software or manufacturing patents. 144 Pharmaceutical companies create life-saving drugs that carry a very serious benefit for a vulnerable group of consumers - patients. Because of this, the pharmaceutical industry should be held to a higher standard if its companies seek to prohibit affordable generic drugs from coming to the marketplace.

1. An Efficacy-Focused Standard Will Motivate Pharmaceutical Companies to Channel Resources to Creating Real Innovation Pharmaceutical companies argue that patent-life-cycle-management strategies (their preferred name for those tactics described herein as evergreening) are essential to ensuring they recoup R&D costs. 145 However, creation of a standard such as the one proposed here would ensure that pharmaceutical companies are properly incentivized to channel R&D resources to creating measurable change in the drugs, rather than creating minor changes that prolong the time they can profit off of monopolies at the expense of patients. For those industries in which R&D is more productive, like the pharmaceutical industry, "patent procedures should be refined to tighten the relationship between patents and the underlying inventions."14 6
2. A Higher Standard for Secondary Pharmaceutical Patents Will Increase Competition & Lead to Lower Prices The patent system enables pharmaceutical companies to retain market exclusivity for their drugs, allowing them to set high prices without an eye toward competition.1 47 The companies cite the need to recoup R&D costs as the driving factor for their pricing decisions,148 but critics say their main motivation is making a profit.'49 While the pharmaceutical companies' argument may hold weight, high prices for drugs have a negative impact on those patients who need those drugs, but cannot afford them.150 Tightening patent laws to prevent pharmaceutical companies from retaining patent protection for minor changes in their patented drugs will allow other companies to enter the marketplace sooner and drive prices down through competition. 5z

## Case

### UV

#### Reasonability on 1AR shells – 1AR theory is super aff-biased because the 2AR gets to line-by-line every 2NR standard with new answers that never get responded to– reasonability checks 2AR sandbagging by preventing super abusive 1NCs while still giving the 2N a chance.

#### DTA on 1AR shells - They can blow up a blippy 20 second shell to 3 min of the 2AR while I have to split my time and can’t preempt 2AR spin which necessitates judge intervention and means 1AR theory is irresolvable so you shouldn’t stake the round on it.

#### RVIs on 1AR theory – 1AR being able to spend 20 seconds on a shell and still win forces the 2N to allocate at least 2:30 on the shell which means RVIs check back time skew – ows on quantifiaiblity

#### 1NC theory o/w a) epistemic skew- any reason I was abusive is because the 1AC was b) ca the quantifiablity warrant on rvis

### TL

#### [1] No solvency, no evidence that the aff spurns innovation.

#### [2] If second companies can repurpose that means a. they don’t solve innovation since companies will just direct r and d towards repurposing research instead of developing new drugs. B. plan gets circumvented. Companies can just acquire smaller companies to get their patents.

#### The WTO can’t enforce the aff- causes circumvention.

Lamp 19 [Nicholas; Assistant Professor of Law at Queen’s University; “What Just Happened at the WTO? Everything You Need to Know, Brink News,” 12/16/19; <https://www.brinknews.com/what-just-happened-at-the-wto-everything-you-need-to-know/>] Justin

Nicolas Lamp: For the first time since the establishment of the WTO in 1995, the Appellate Body cannot accept any new appeals, and that has knock-on effects on the whole global trade dispute settlement system. When a member appeals a WTO panel report, it goes to the Appellate Body, but if there is no Appellate Body, it means that that panel report will not become binding and will not attain legal force.

The absence of the Appellate Body means that members can now effectively block the dispute settlement proceedings by what has been called appealing panel reports “into the void.”

The WTO panels will continue to function as normal. When a panel issues a report, it will normally be automatically adopted — unless it is appealed. And so, even though the panel is working, the respondent in a dispute now has the option of blocking the adoption of the panel’s report. It can, thereby, shield itself from the legal consequences of a report that finds that the member has acted inconsistently with its WTO obligations.

### 1NC – Exclusitivites Defecit

#### THE AFF ONLY IMPACTS PATENTS AND NOT NON-PATENT EXCLUSIVITIES. THEY ARE DISTINCT WHICH MEANS THE AFF DOESN’T SOLVE SINCE COMPANIES STILL HAVE ACCESS TO EXCLUSIVITY MEASURES

FDA 20 (FDA, 2/5/2020, Frequently Asked Questions on Patents and Exclusivity, https://www.fda.gov/drugs/development-approval-process-drugs/frequently-asked-questions-patents-and-exclusivity#What\_is\_the\_difference\_between\_patents\_a)

[1. What is the difference between patents and exclusivity?](https://www.fda.gov/drugs/development-approval-process-drugs/null)  
Patents and exclusivity work in a similar fashion but are distinct from one another and governed by different statutes. Patents are a property right granted by the United States Patent and Trademark Office anytime during the development of a drug and can encompass a wide range of claims.  Exclusivity refers to certain delays and prohibitions on approval of competitor drugs available under the statute that attach upon approval of a drug or of certain supplements.  A new drug application (NDA) or abbreviated new drug application (ANDA) holder is eligible for exclusivity if statutory requirements are met.  See 21 C.F.R. 314.108, 316.31, 316.34 and sections 505A, 505E, and 505(j)(5)(B)(iv) of the FD&C Act.  Periods of exclusivity and patent terms may or may not run concurrently. Exclusivity was designed to promote a balance between new drug innovation and greater public access to drugs that result from generic drug competition.

#### YOUR OWN AUTHOR SAYS EXCLUSIVITIES ARE KEY PART OF EVERGREENING

**Feldman 2** (Robin Feldman 18, May your drug price be evergreen, Journal of Law and the Biosciences, Volume 5, Issue 3, December 2018, Pages 590–647, <https://doi.org/10.1093/jlb/lsy022> Arthur J. Goldberg Distinguished Professor of Law, Albert Abramson ’54 Distinguished Professor of Law Chair, and Director of the Center for Innovation (Study Notes: Presenting the first comprehensive study of evergreening, this article examines the extent to which evergreening behavior—which can be defined as artificially extending the protection cliff—may contribute to the problem. The author analyses all drugs on the market between 2005 and 2015, combing through 60,000 data points to examine every instance in which a company added a new patent or exclusivity.)

Anecdotal evidence has identified strategic behaviors various companies have deployed to great effect. One such practice is ‘evergreening’, which can be defined as artificially extending the life of a patent or other exclusivity by obtaining additional protections to extend the monopoly period.[30](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6534750/#fn30) Scholarly work, including our own, has documented these behaviors as examples have emerged in individual cases and in press reports.[31](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6534750/#fn31) What has been missing from the literature, however, is a comprehensive empirical view.[32](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6534750/#fn32) Just how pervasive are such behaviors? Is it simply a matter of certain bad actors, to whom everyone points repeatedly, or is the problem endemic to the industry? Only by answering this question can we contemplate the extent to which reforms are needed, as well as the extent to which strategic behavior to block generic competition may be contributing to rising drug prices. This study answers the questions. Providing a robust empirical analysis was no easy task. Transparency is not in the industry's interests, and companies have been known to go to great lengths to camouflage strategic behavior.[33](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6534750/#fn33) After all, a pharmaceutical company would be loath to let regulators and legislators know what it is up to, let alone competitors who might mimic the clever strategies. To accomplish our study, we turned to government sources, analysing more than a decade of data published by the US Food and Drug Administration (FDA). This involved extracting and analysing detailed information on as many as 11 different aspects of roughly 1800 drugs. The task would have been sufficiently challenging if the information were readily available. It was not. The project required teasing information painstakingly out of each monthly and annual publication, many of which are no longer available from the government in any form. Moreover, the complexities of pharmaceutical regulation and approval require intricate analysis of the information disclosed by the government, when that information is disclosed at all. In all, our work required assembling and analysing over 160,000 individual cells of data, all entered by hand. The results, however, were striking, and they show a startling departure from the classic conceptualization of intellectual property protection for pharmaceuticals. The data demonstrate that throughout the industry, companies create serial barriers to hold off the type of competitive entry that is fundamental to our innovative system. Key results from our 2005 to 2015 study include the following: Rather than creating new medicines, pharmaceutical companies are recycling and repurposing old ones. In fact, 78% of the drugs associated with new patents in the FDA’s records were not new drugs coming on the market, but existing drugs. Adding new patents and exclusivities to extend the protection cliff is particularly pronounced among blockbuster drugs. Of the roughly 100 best-selling drugs, more than 70% had their protection extended at least once, with almost 50% having the protection cliff extended more than once. Looking at the full group, almost 40% of all drugs available on the market created additional market barriers by having patents or exclusivities added on to them. Once a company starts down this road, there is a tendency to keep returning to the well. Eighty per cent of those who added protections added more than one. Among those adding more than one barrier, some were serial offenders, with almost half adding 4 or more protections and some adding more than 20. The problem is growing across time. The number of drugs that had a patent added on to them almost doubled during the time period. The addition of certain other types of barriers increased at an even greater rate, with some tripling.[34](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6534750/#fn34) These results may easily understate the landscape. In designing the methodology, we repeatedly adopted a conservative approach, following the path that would point away from suggesting a competitive barrier. In addition, the pharmaceutical industry has developed techniques for erecting competitive barriers that do not involve obtaining additional patents and exclusivities, techniques that would not be captured by our analysis.[35](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6534750/#fn35) Finally, we could only quantify those behaviors of which we are aware. Much behavior in the pharmaceutical industry remains obscured, and we cannot measure what we cannot see.[36](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6534750/#fn36)

### 1NC – Disease Turn

#### INNOVATION OCCURS BY BUILDING ON EXISTING MEDICAL ADVANCES, ALSO IMPROVES EFFICACY FOR TROPICAL DISEASES

**Eger 10** (Eger, T. (,Professor of Law and Economics at the University of Hamburg) P. Ebermann, and P. Ramanujam. "Incremental innovation and patent protection for pharmaceutical products in India." Economic Analysis of India (2010): 129.)

The pharmaceutical industry provides an excellent setting to test determinants of incremental and radical innovation. Radical innovation refers to the identification of new chemical entities and their development into potentially useful pharmaceutical drugs. Incremental innovation, on the other hand, works with already known chemical compounds that are merely altered or employed in a different use (Cool)20. Drug enhancements such as new dosage forms may appear at first sight to be unimportant or even trivial but they are important avenues of learning for firms. Incremental progress gives rise to families or classes of related drugs. Although several agents within a class may have the same general action, they often differ significantly in specific actions, side effects, and suitability for individual patients (Levy,21 Banbury and Mitchell22). Consequently, incremental innovation takes many forms, including improved safety and effectiveness, fewer side effects, new formulations allowing greater ease of use and improved compliance, new indications, and new versions of the medicine developed for specific groups of patients (such as children).23 It can also take the form of greater product stability during storage and transport which can be especially important in tropical climates like some regions of India.24 Thus in the pharmaceutical sector incremental innovation connotes the continuous improvement of medicines, which also requires large-scale research and development, including clinical trials, along with approval from regulators before the new product can be offered to patients. It therefore becomes important to afford protection to such innovations. 7.3.2 The Importance of Incremental Innovation For many years radical innovation had been the primary goal of research for firms in many areas of science and technology. However, breakthrough innovations are important but rare in medical research. Most medical advances—like in all other technological fields—happen by ‘incremental innovation’ that is, innovation that builds on previous inventions. In the last 20 years, a number of noticeable changes have taken place in the type of research undertaken in all industries, and pharmaceutical industries in particular. These changes were motivated by the realization that due to long-run time horizons, high failure rates, and a low probability of returns the possibility of discovering new drugs was decreasing (Min et al.;25 Bhaskaran26). As a result, the focus of research shifted and concentrated on the discovery of new uses of known substances (Cool;27 Levy;28 Banbury and Mitchell29). Th e problem that confronted researchers working in the area of incremental innovation was that traditional patent law refused to recognize the discovery of new advantages of an old product as being novel. Lionel Bently and Brad Sherman conceptualize this problem in the following example. Assume someone discovered and patented aspirin as a drug useful in curing headaches. Later someone else found out that the consumption of aspirin also thinned the blood and was thus useful in preventing blood clots. Th e second use would be not patentable due to the fact that aspirin is already patented as a drug for curing headaches (Bently and Sherman30). Th e reason for this is that traditional patent law in many countries treated a claim to a ‘product for a particular use’ as a claim to the product per se; consequently the product would lack novelty even if it had previously been employed in a different use.

### 1NC – AT: Innovation

#### Pharma innovation high now – monetary incentive is the biggest factor.

**Swagel 21** Phillip L. Swagel, Director of the Congressional budget office 4-xx-2021, "Research and Development in the Pharmaceutical Industry," Congressional Budget Office, <https://www.cbo.goc/publication/57126#_idTextAnchor020> SJ//DA

**Every year, the U.S. pharmaceutical industry develops a variety of new drugs that provide valuable medical benefits. Many of those drugs are expensive and contribute to rising health care costs for the private sector and the federal government. Policymakers have considered policies that would lower drug prices and reduce federal drug expenditures. Such policies would probably reduce the industry’s incentive to develop new drugs.** In this report, the Congressional Budget Office assesses trends in spending for drug research and development (R&D) and the introduction of new drugs. CBO also examines factors that determine how much drug companies spend on R&D: expected global revenues from a new drug; cost to develop a new drug; and federal policies that affect the demand for drug therapies, the supply of new drugs, or both. What Are Recent Trends in Pharmaceutical R&D and New Drug Approvals? T**he pharmaceutical industry devoted $83 billion to R&D expenditures in 2019. Those expenditures covered a variety of activities, including discovering and testing new drugs, developing incremental innovations such as product extensions, and clinical testing for safety-monitoring or marketing purposes. That amount is about 10 times what the industry spent per year in the 1980s, after adjusting for the effects of inflation.** The share of revenues that drug companies devote to R&D has also grown: **On average, pharmaceutical companies spent about one-quarter of their revenues (net of expenses and buyer rebates) on R&D expenses** in 2019, which is **almost twice as large a share of revenues as they spent in 2000.** That revenue share is larger than that for other knowledge-based industries, such as semiconductors, technology hardware, and software. The number of new drugs approved each year has also grown over the past decade. On averace, the Food and Drug Administration (FDA) approved 38 new drugs per year from 2010 through 2019 (with a peak of 59 in 2018), which is 60 percent more than the yearly average over the previous decade. **Many of the drugs that have been approved in recent years are “specialty drugs.” Specialty drugs generally treat chronic, complex, or rare conditions, and they may also require special handling or monitoring of patients**. Many specialty drugs are biologics (large-molecule drugs based on living cell lines), **which are costly to develop, hard to imitate, and frequently have high prices.** Previously, most drugs were small-molecule drugs based on chemical compounds. Even while they were under patent, those drugs had lower prices than recent specialty drugs have. Information about the kinds of drugs in current clinical trials indicates that much of the industry’s innovative activity is focused on specialty drugs that would provide new cancer therapies and treatments for nervous-system disorders, such as Alzheimer’s disease and Parkinson’s disease. **What Factors Influence Spending for R&D?** Drug companies’ R&D spending decisions depend on three main factors: Anticipated lifetime global revenues from a new drug, **Expected costs to develop a new drug**, and Policies and programs that influence the supply of and demand for prescription drugs. Various considerations inform companies’ expectations about a drug’s revenue stream, including the anticipated prices it could command in different markets around the world and the expected global sales volume at those prices (given the number of people who might use the drug). The prices and sales volumes of existing drugs provide information about consumers’ and insurance plans’ willingness to pay for drug treatments. Importantly, when drug companies set the prices of a new drug, they do so to maximize future revenues net of manufacturing and distribution costs. A drug’s sunk R&D costs—that is, the costs already incurred in developing that drug—do not influence its price. **Developing new drugs is a costly and uncertain process, and many potential drugs never make it to market. Only about 12 percent of drugs entering clinical trials are ultimately approved for introduction by the FDA. In recent studies, estimates of the average R&D cost per new drug range from less than $1 billion to more than $2 billion per drug**. Those estimates include the costs of both laboratory research and clinical trials of successful new drugs as well as expenditures on drugs that do not make it past the laboratory-development stage, that enter clinical trials but fail in those trials or are withdrawn by the drugmaker for business reasons, or that are not approved by the FDA. Those estimates also include the company’s capital costs—the value of other forgone investments—incurred during the R&D process. Such costs can make up a substantial share of the average total cost of developing a new drug. The development process often takes a decade or more, and during that time the company does not receive a financial return on its investment in developing that drug. The federal government affects R&D decisions in three ways. First, it increases demand for prescription drugs, which encourages new drug development, by fully or partially subsidizing the purchase of prescription drugs through a variety of federal programs (including Medicare and Medicaid) and by providing tax preferences for employment-based health insurance. Second, the federal government increases the supply of new drugs. It funds basic biomedical research that provides a scientific foundation for the development of new drugs by private industry. Additionally, tax credits—both those available to all types of companies and those available to drug companies for developing treatmentscof uncommon diseases—provide incentives to invest in R&D. Similarly, deductions for R&D investment can be used to reduce tax liabilities immediately rather than over the life of that investment. Finally, the patent system and certain statutory provisions that delay FDA approval of generic drugs provide pharmaceutical companies with a period of market exclusivity, when competition is legally restricted. During that time, they can maintain higher prices on a patented product than they otherwise could, which makes new drugs more profitable and thereby increases drug companies’ incentives to invest in R&D. Third, some federal policies affect the number of new drugs by influencing both demand and supply. For example, federal recommendations for specific vaccines increase the demand for those vaccines and provide an incentive for drug companies to develop new ones. Additionally, federal regulatory policies that influence returns on drug R&D can bring about increases or decreases in both the supply of and demand for new drugs. Trends in R&D Spending and New Drug Development Private spending on pharmaceutical R&D and the approval of new drugs have both increased markedly in recent years, resuming a decades-long trend that was interrupted in 2008 as generic versions of some top-selling drugs became available and as the 2007–2009 recession occurred. **In particular, spending on drug R&D increased by nearly 50 percent between 2015 and 2019.** Many of the drugs approved in recent years are high-priced specialty drugs for relatively small numbers of potential patients. By contrast, the top-selling drugs of the 1990s were lower-cost drugs with large patient populations. R&D Spending R&D spending in the pharmaceutical industry covers a variety of activities, including the following: Invention, or research and discovery of new drugs; Development, or clinical testing, preparation and submission of applications for FDA approval, and design of production processes for new drugs; Incremental innovation, including the development of new dosages and delivery mechanisms for existing drugs and the testing of those drugs for additional indications; Product differentiation, or the clinical testing of a new drug against an existing rival drug to show that the new drug is superior; and Safety monitoring, or clinical trials (conducted after a drug has reached the market) that the FDA may require to detect side effects that may not have been observed in shorter trials when the drug was in development. In real terms**, private investment in drug R&D among member firms of the Pharmaceutical Research and Manufacturers of America (PhRMA), an industry trade association, was about $83 billion in 2019, up from about $5 billion in 1980 and $38 billion in 2000**.1 Although those spending totals do not include spending by many smaller drug companies that do not belong to PhRMA, the trend is broadly representative of R&D spending by the industry as a whole.2 A survey of all U.S. pharmaceutical R&D spending (including that of smaller firms) by the National Science Foundation (NSF) reveals similar trends.3 Although total R&D spending by all drug companies has trended upward, small and large firms generally focus on different R&D activities. **Small companies not in PhRMA devote a greater share of their research to developing and testing new drugs,** many of which are ultimately sold to larger firms (see Box 1). By contrast, a greater portion of the R&D spending of larger drug companies (including those in PhRMA) is devoted to conducting clinical trials, developing incremental “line extension” improvements (such as new dosages or delivery systems, or new combinations of two or more existing drugs), and conducting postapproval testing for safety-monitoring or marketing purposes.

#### The affs wholesale attack on secondary patents ruins innovation---prefer contingencies that solve evergreening.

Holman 18 [Christopher; 9/21/18; Professor at the University of Missouri-Kansas City School of Law, where his primary research focus lies at the intersection of intellectual property and biotechnology; “*Why Follow-On Pharmaceutical Innovations Should Be Eligible For Patent Protection*,” Intellectual property watch, <https://www.ip-watch.org/2018/09/21/follow-pharmaceutical-innovations-eligible-patent-protection/>] Justin

Why Protect Follow-On Innovation? The attack on secondary pharmaceutical patents is based in part on the flawed premise that follow-on innovation is of marginal value at best, and thus less deserving of protection than the primary inventive act of identifying and validating a new drug active ingredient. In fact, follow-on innovation can play a critical role in transforming an interesting drug candidate into a safe and effective treatment option for patients. A good example can be seen in the case of AZT (zidovudine), a drug ironically described in the Guidelines as the “first breakthrough in AIDS therapy.” AZT began its life as a failed attempt at a cancer drug, and it was only years later that its potential application in the fight against AIDS was realized. Follow-on research resulted in a method-of-use patent directed towards the use of AZT in the treatment of AIDS, and it was this patent that incentivized the investment necessary to bridge the gap between a promising drug candidate and a safe, effective, and FDA-approved pharmaceutical. Significantly, because of the long lag time between the first public disclosure of AZT and the discovery of its use in the treatment of AIDS, patent protection for the molecule per se was unavailable. In a world where follow-on innovation is unpatentable, there would have been no patent incentive to invest in the development of the drug, and without that incentive AZT might have languished on the shelf as simply one more failed drug candidate. Other examples of important drugs that likely never would have been made available to patients without the availability of a “secondary” patent include Evista (raloxifene, used in the treatment of osteoporosis and to reduce the risk of invasive breast cancer), Zyprexa (olanzapine, used in the treatment of schizophrenia), and an orally-administrable formulation of the antibiotic cefuroxime. Pharmaceutical development is prolonged and unpredictable, and frequently a safe and effective drug occurs only as a result of follow-on innovation occurring long after the initial synthesis and characterization of a pharmaceutically interesting chemical compound. The inventions protected by secondary patents can be just as critical to the development of drugs as a patent on the active ingredient itself. The Benefits of Follow-On Innovation The criticism of patents on follow-on pharmaceutical innovation rests on an assumption that follow-on innovation provides little if any benefit to patients, and merely serves as a pretense for extending patent protection on an existing drug. In fact, there are many examples of follow-on products that represent significant improvements in the safety-efficacy profile. For example, the original formulation of Lumigan (used to treat glaucoma) had an unfortunate tendency to cause severe hyperemia (i.e., redeye), and this adverse event often lead patients to stop using the drug, at times resulting in blindness. Subsequent research led to a new formulation which largely alleviated the problem of hyperemia, an example of the type of follow-on innovation that significantly benefits patients but that which would be discouraged by a patent regime that does not reward follow-on innovation. Follow-on pharmaceutical innovation can come in the form of an extended-release formulation that permits the drug to be administered at less frequent intervals than the original formulation. Critics of secondary patents downplay the significance of extended-release formulations, claiming that they represent nothing more than a ploy to extend patent protection without providing any real benefit to patients. In fact, the availability of a drug that can be taken once a day has been shown to improve patient compliance, a significant issue with many drugs, particularly in the case of drugs taken by patients with dementia or other cognitive impairments. Extended-release formulations can also provide a more consistent dosing throughout the day, avoiding the peaks and valleys in blood levels experienced by patients forced to take an immediate-release drug multiple times a day. Other examples of improved formulations that provide real benefits to patients are orally administrable formulations of drugs that could previously only be administered by more invasive intravenous or intramuscular injection, combination products that combine two or more active pharmaceutical agents in a single formulation (resulting in improved patient compliance), and a heat-stable formulation of a lifesaving drug used to treat HIV infection and AIDS (an important characteristic for use in developing countries with a hot climate). “Evergreening” – an Incoherent Concept Drug innovators are often accused of using secondary patents to “evergreen” the patent protection of existing drugs, based on an assumption that a secondary patent somehow extends the patent protection of a drug after the primary patent on the active ingredient is expired. As a general matter, this is a false assumption — a patent on an improved formulation, for example, is limited to that improvement and does not extend patent protection for the original formulation. Once the patents covering the original formulation have expired, generic companies are free to market a generic version of the original product, and patients willing to forgo the benefits of the improved formulation can choose to purchase the generic product, free of any constraints imposed by the patent on the improvement. Of course, drug innovators hope that doctors and their patients will see the benefits of the improved formulation and be willing to pay a premium for it, but it is important to bear in mind that ultimately it is patients, doctors, and third-party payers who determine whether the value of the improvement justifies the costs. Of course, this assumes a reasonably well-functioning pharmaceutical market. If that market breaks down in a manner that forces patients to pay higher prices for a patented new version of a drug that provides little real improvement over the original formulation, then it is the deficiency in the market which should be addressed, rather than the patent system itself. For example, if a drug company is found to have engaged in some anticompetitive activity to block generic competition in the market for the original product once it has gone off patent, then antitrust and competition laws should be invoked to address that problem. If doctors are prescribing an expensive new formulation of a drug that provides little benefit compared to a cheaper, unpatented original product, then that is a deficiency in the market that should be addressed directly, rather than through a broadside attack on follow-on innovation. In short, if is found that secondary patents are being used in a manner that creates an unwarranted extension of patent protection, it is that misuse of the patent system which should be addressed directly, rather than through what amounts to an attack on the patent system itself.

#### Strong IP protection are the only incentive for drug innovation.

Stevens and Ezell 20 Philip Stevens and Stephen Ezell 2-3-2020 "Delinkage Debunked: Why Replacing Patents With Prizes for Drug Development Won’t Work" <https://itif.org/publications/2020/02/03/delinkage-debunked-why-replacing-patents-prizes-drug-development-wont-work> (Philip founded Geneva Network in 2015. His main research interests are the intersection of intellectual property, trade, and health policy. Formerly he was an official at the World Intellectual Property Organization (WIPO) in Geneva, where he worked in its Global Challenges Division on a range of IP and health issues. Prior to his time with WIPO, Philip worked as director of policy for International Policy Network, a UK-based think tank, as well as holding research positions with the Adam Smith Institute and Reform, both in London. He has also worked as a political risk consultant and a management consultant. He is a regular columnist in a wide range of international newspapers and has published a number of academic studies. He holds degrees from the London School of Economics and Durham University (UK).)//Elmer

The **Current System** Has **Produced a Tremendous Amount of Life-Sciences Innovation** The frontier for biomedical innovation is seemingly limitless, and the challenges remain numerous—whether it comes to diseases that afflict millions, such as cancer or malaria, or the estimated 7,000 rare diseases that afflict fewer than 200,000 patients.24 And while certainly citizens in developed and developing nations confront differing health challenges, those challenges are increasingly converging. For instance, as of this year, analysts expect that **noncommunicable** diseases such as cardiovascular disease and diabetes will account for 70 percent of natural fatalities **in developing countries**.25 Citizens of low- and middle-income countries bear 80 percent of the world’s death burden from cardiovascular disease.26 Forty-six percent of Africans over 25 suffer from hypertension, more than anywhere else in the world. Similarly, 85 percent of the disease burden of cervical cancer is borne by individuals living in low- and middle-income countries.27 To develop treatments or cures for these conditions, novel biomedical innovation **will be needed from everywhere**. Yet tremendous progress has been made in recent decades. To tackle these challenges, the global pharmaceutical industry invested over **$1.36 trillion in R&D** in the decade from 2007 to 2016—and it’s expected that annual R&D investment by the global pharmaceutical industry will reach $181 billion by 2022.28 In no small part due to that investment, **943 new active substances have been introduced** globally over the prior 25 years.29 The U.S. Food and Drug Administration (FDA) has approved more than **500 new medicines since 2000** alone. And these medicines are getting to more individuals: Global medicine use **in 2020 will reach 4.5 trillion doses**, up 24 percent from 2015.30 Moreover, there are an estimated 7,000 new medicines under development globally (about half of them in the United States), with 74 percent being potentially first in class, meaning they use a new and unique mechanism of action for treating a medical condition.31 In the United States, over 85 percent of all drugs sold are generics (only 10 percent of U.S. prescriptions are filled by brand-name drugs).32 And while some assert that biotechnology companies focus too often on “me-too” drugs that compete with other treatments already on the market, the reality is many drugs currently under development are meant to tackle some of the **world’s most intractable diseases**, **including cancer and Alzheimer’s**.33 Moreover, such arguments miss that many of the drugs developed in recent years have in fact been first of their kind. For instance, in 2014, the FDA approved **41 new medicines** (at that point, the most since 1996) many of which were first-in-class medicines.34 In that year, 28 of the 41 drugs approved were considered biologic or specialty agents, and 41 percent of medicines approved were intended to treat rare diseases.35 Yet even when a new drug isn’t first of its kind, it can still produce benefits for patients, both through **enhanced clinical efficacy** (for instance, taking the treatment as a pill rather than an injection, with a superior dosing regimen, **or better treatment** for some individuals who don’t respond well to the original drug) and by generating competition that exerts downward price pressures. For example, a patient needing a cholesterol drug has a host of statins from which to choose, which is important because some statins produce harmful side effects for some patients. Similarly, patients with osteoporosis can choose from Actonel, Boniva, or Fosomax. Or take for example Hepatitis C, which until recently was an incurable disease eventually requiring a liver transplant for many patients. In 2013, a revolutionary new treatment called Solvadi was released that boosted cure rates to 90 percent. This was followed in 2014 by an improved treatment called Harvoni, which cures the Hepatitis C variant left untouched by Solvadi. Since then, an astonishing six new treatments for the disease have received FDA approval, opening up a wide range of treatment options that take into account patients’ liver and kidney status, co-infections, potential drug interactions, previous treatment failures, and the genotype of HCV virus.36 “If you have to have Hepatitis C, now is the time to have it,” as Douglas Dieterich, a liver specialist at the Icahn School of Medicine at Mount Sinai Hospital in New York, told the Financial Times. “We have these marvellous drugs we can treat you with right now, without side effects,” he added. “And this time next year, we’ll have another round of drugs available.”37 Moreover, the financial potential of this new product category has led to multiple competing products entering the market in quick succession, in turn placing downward pressure on prices.38 As Geoffrey Dusheiko and Charles Gore write in The Lancet, “The market has done its work for HCV treatments: after competing antiviral regimens entered the market, competition and innovative price negotiations have driven costs down from the initially high list prices in developed countries.”39 As noted previously, opponents of the current market- and IP-based system contend patents enable their holders to exploit a (temporary) market monopoly by inflating prices many multiples beyond the marginal cost of production. But rather than a conventional neoclassical analysis, an analysis based on “innovation economics” finds it is exactly this “distortion” that is required for innovation to progress. As William Baumol has pointed out, “Prices above marginal costs and price discrimination become the norm rather than the exception because … without such deviations from behaviour in the perfectly competitive model, innovation outlays and other unavoidable and repeated sunk outlays cannot be recouped.”40 Or, as the U.S. Congressional Office of Technology Assessment found, “Pharmaceutical R&D is a risky investment; therefore, high financial returns are necessary **to induce companies to invest** in researching new chemical entities.”41 This is also why, in 2018, the U.S. Congressional Budget Office estimated that because of high failure rates, biopharmaceutical **companies would need to earn a 61.8 percent rate of return on their successful new drug R&D projects in order to match a 4.8 percent after-tax rate of return on their investment**s.42 Indeed, **it’s the ability to recoup fixed costs, not just marginal** costs, through mechanisms such as patent protection that lies at the heart of all innovation-based industries and indeed all innovation and related economic progress. If companies could not find a way to pay for their R&D costs, and could only charge for the costs of producing the compound, **there would be no new drugs developed**, just as there would be no new products developed in any industry. Innovating in the life sciences remains expensive, risky, difficult, and uncertain. Just 1 in 5,000 drug candidates make it all the way from discovery to market.43 A 2018 study by the Deloitte Center for Health Solutions, “Unlocking R&D productivity: Measuring the return from pharmaceutical innovation 2018,” found that “the average cost to develop an asset [an innovative life-sciences drug] including the cost of failure, has increased in six out of eight years,” and that the average cost to create a new drug has risen to $2.8 billion.44 Related research has found the development of new drugs requires years of painstaking, risky, and expensive research that, for a new pharmaceutical compound, takes an average of 11.5 to 15 years of research, development, and clinical trials, at a cost of $1.7 billion to $**3.2 billion**.45 IP rights—including patents, copyrights, and data exclusivity protections—give innovators, whether in the life sciences or other sectors, the **confidence** to undertake the risky and expensive process of innovation, secure in the knowledge they’ll be able to capture a share of the gains from their efforts. And these gains are often only a small fraction of the true value created. For instance, Yale University economist William Nordhaus estimated inventors capture just 4 percent of the total social gains from their innovations; the rest spill over to other companies and society as a whole.46 Without adequate IP protection, private investors would never find it viable to fund advanced research because lower-cost copiers would be in a position to undercut the legitimate prices (and profits) of innovators, even while still generating substantial profits on their own.47 As the report “Wealth, Health and International Trade in the 21st Century” concludes, “Conferring robust intellectual property rights is, in the pharmaceutical and other technological-development contexts, **in the global public’s long-term interests.** Without adequate mechanisms for directly and indirectly securing the private and public funding of medicines and vaccines, research and development communities across the world will lose future benefits that would far outweigh the development costs involved.”48 Put simply, the current market- and IP-based life-sciences innovation system is producing life-changing biomedical innovation. As Jack Scannell, a senior fellow at Oxford University’s Center for the Advancement of Sustainable Medical Innovation has explained, “I would guess that one can buy today, at rock bottom generic prices, a set of small-molecule drugs that has greater medical utility than the entire set available to anyone, anywhere, at any price in 1995.” He continued, “Nearly all the generic medicine chest was created by firms who invested in R&D to win future profits that they tried pretty hard to maximize; short-term financial gain building a long-term common good.”49 For example, on September 14, 2017, the FDA approved Mvasi, the first biosimilar for Roche’s Avastin, a breakthrough anticancer drug when it came out in the mid-1990s for lung, cervical, and colorectal cancer.50 In other words, a medicine to treat forms of cancer that barely existed 20 years ago is now available as a generic drug today. It’s this dynamic that enables us to imagine a situation wherein drugs to treat diseases that aren’t available anywhere at any price today (for instance, treatments for Alzheimer’s or Parkinson’s) might be available as generics in 20 years. But that will only be the case if we preserve (and improve where possible) a life-sciences innovation system that is generally working. The current system does not require wholesale replacement by a prize-based system that—notwithstanding a meaningful success here or there—has produced nowhere near a similar level of novel biomedical innovation.

#### Secondary and Follow-on patents are key to innovation.

IP Watch 18 9-21-2018 "Inside Views: Why Follow-On Pharmaceutical Innovations Should Be Eligible For Patent Protection" <https://www.ip-watch.org/2018/09/21/follow-pharmaceutical-innovations-eligible-patent-protection/> (a non-profit independent news service that provides professional coverage of global policymaking on intellectual property and innovation.)//Elmer

Why Protect Follow-On Innovation? The **attack on secondary** pharmaceutical **patents is based** in part **on** the **flawed premise** that **follow-on innovation is of marginal value** at best, and thus less deserving of protection than the primary inventive act of identifying and validating a new drug active ingredient. In fact, **follow-on innovation** **can play** a **critical role in transforming** **an interesting drug candidate into a safe and effective treatment option** for patients. A good example can be seen in the case of **AZT** (zidovudine), a drug ironically described in the Guidelines as the “first breakthrough in AIDS therapy.” AZT **began** its life **as a** failed attempt at a **cancer drug**, and it was **only years later** that its potential **application in the fight against AIDS** was realized. Follow-on research resulted in a method-of-use patent directed towards the use of AZT in the treatment of AIDS, and it was this patent that incentivized the investment necessary to bridge the gap between a promising drug candidate and a safe, effective, and FDA-approved pharmaceutical. Significantly, because of the long lag time between the first public disclosure of AZT and the discovery of its use in the treatment of AIDS, patent protection for the molecule per se was unavailable. In a world where follow-on innovation is unpatentable, there would have been no patent incentive to invest in the development of the drug, and without that incentive AZT might have languished on the shelf as simply one more failed drug candidate. Other examples of important drugs that likely never would have been made available to patients without the availability of a “secondary” patent include **Evista** (raloxifene, used in the treatment of osteoporosis and to reduce the risk of invasive breast cancer), **Zyprexa** (olanzapine, used in the treatment of schizophrenia), and an orally-administrable formulation of the antibiotic cefuroxime. **Pharmaceutical development** **is prolonged and unpredictable**, and frequently **a safe and effective drug** **occurs only as a result of** **follow-on innovation** occurring **long** **after the initial synthesis** and characterization of a pharmaceutically interesting chemical compound. The inventions protected by secondary patents can be just as critical to the development of drugs as a patent on the active ingredient itself. The Benefits of Follow-On Innovation The criticism of patents on follow-on pharmaceutical innovation rests on an assumption that follow-on innovation provides little if any benefit to patients, and merely serves as a pretense for extending patent protection on an existing drug. In fact, there are many examples of follow-on products that represent significant improvements in the safety-efficacy profile. For example, the original formulation of Lumigan (used to treat glaucoma) had an unfortunate tendency to cause severe hyperemia (i.e., redeye), and this adverse event often lead patients to stop using the drug, at times resulting in blindness. Subsequent research led to a new formulation which largely alleviated the problem of hyperemia, an example of the type of follow-on innovation that significantly benefits patients but that which would be discouraged by a patent regime that does not reward follow-on innovation. Follow-on pharmaceutical innovation can come in the form of an extended-release formulation that permits the drug to be administered at less frequent intervals than the original formulation. Critics of secondary patents downplay the significance of extended-release formulations, claiming that they represent nothing more than a ploy to extend patent protection without providing any real benefit to patients. In fact, the availability of a drug that can be taken once a day has been shown to improve patient compliance, a significant issue with many drugs, particularly in the case of drugs taken by patients with dementia or other cognitive impairments. Extended-release formulations can also provide a more consistent dosing throughout the day, avoiding the peaks and valleys in blood levels experienced by patients forced to take an immediate-release drug multiple times a day. Other examples of improved formulations that provide real benefits to patients are orally administrable formulations of drugs that could previously only be administered by more invasive intravenous or intramuscular injection, combination products that combine two or more active pharmaceutical agents in a single formulation (resulting in improved patient compliance), and a heat-stable formulation of a lifesaving drug used to treat HIV infection and AIDS (an important characteristic for use in developing countries with a hot climate).