

## FOREWORD

# CIVIL RIGHTS IN TIMES OF UNCERTAINTY (THE ANTHROPOCENE)

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Although there have been significant civil rights gains made in recent decades, the United States is now experiencing a resurgence of many of the societal ills that have plagued the country for decades. From an insurrection that was seemingly inspired by white supremacist ideology to ongoing examples of police brutality against Black people,<sup>1</sup> anti-Asian violence,<sup>2</sup> anti-LGBTQ violence,<sup>3</sup> and recurring islamophobia,<sup>4</sup> the country sits at an apparent crossroads. There is an urgent need to advance a civil rights agenda that addresses the impact of these societal ills on the affected communities. At the same time, however, we are confronting these ills during a point in history that urges us to think both within and beyond our national borders and boundaries.

For many citizens across the globe, similar societal ills exist and are coupled with the challenges presented by our warming planet. Moreover, since the spring of 2020, these dilemmas have been embedded within the throes of an ostensibly unending global pandemic. Indeed, the COVID-19 virus has, in many ways, exacerbated our societal ills and amplified existing inequalities. For instance, more privileged global populations have priority access to life-saving vaccines.<sup>5</sup> Meanwhile, the risks presented by climate disruption are also

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1. See Tim Arango & Giulia Heyward, *Despite Uproar over Floyd's Death, the Number of Fatal Encounters with Police Hasn't Changed*, N.Y. TIMES (Dec. 27, 2021), <https://www.nytimes.com/2021/12/24/us/police-killings-accountability.html> [perma.cc/LC52-94TQ].

2. See Mary Harris, *Asian Americans Still Feel Under Attack*, SLATE (Mar. 14, 2022, 2:15 PM), <https://slate.com/news-and-politics/2022/03/anti-asian-violence-hate-crimes-new-york-city.html> [perma.cc/Q927-VUCU].

3. See, e.g., *Fatal Violence Against the Transgender and Gender Non-Conforming Community in 2021*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/fatal-violence-against-the-transgender-and-gender-non-conforming-community-in-2021> [perma.cc/S6CM-9FTU].

4. See Khaled A. Beydoun, *Acting Muslim*, 53 HARV. C.R.-C.L. L. REV. 1 (2018).

5. See generally William Fisher, Ruth Okediji & Padmashree Gehl Sampath, *Fostering Production of Pharmaceutical Products in Developing Countries*, 43 MICH. J. INT'L L. 1 (2022) (arguing that since most pharmaceutical products consumed in developing countries are imported, the production of such pharmaceuticals by those countries is necessary to mitigate global public health risks).

unevenly distributed, with such risks being mitigated more by economic comfort than by geography or preparedness.<sup>6</sup>

As if these challenges were not enough, online disinformation is a growing concern in this era of COVID-19 and climate disruption.<sup>7</sup> The spread of misleading or patently false information about both the pandemic and global warming poses significant threats to alleviating the harms of each. By creating collective uncertainty about the pandemic, climate change, and a host of other societal issues, disinformation undermines public trust in governmental institutions and, in many cases, adversely affects the already frayed relationship these institutions have with vulnerable populations. Moreover, in a world where communication increasingly happens online, digital disinformation challenges the meaning of truth and breathes life into the extremist ideas that often proliferate on social media.<sup>8</sup> Yet attempting to curb the harms of online disinformation implicates concerns over free speech and free association in cyberspace, which in turn implicates broader concerns over digital rights.

Along with climate change, both of these emergent themes—COVID-19 and online disinformation—represent the uncertainty of our changing times and, because they often disproportionately or adversely impact vulnerable populations, pose new challenges for civil rights and democracy. Each of these themes also links two different but interconnected affairs: one that focuses on the civil rights issues of our local and national communities, and the other that focuses on the related wellness of our global neighbors and larger concerns over planetary life.

Connecting local civil rights-based issues to similar global matters is of increasing importance because it coincides with the emergence of the Anthropocene: the “catch-all description of the overwhelming impact of human activity on the planet.”<sup>9</sup> While often viewed through the lens of climate change, the Anthropocene is also a theoretical tool for contesting the deep-rooted political and socioeconomic inequalities of the present.<sup>10</sup> Social scientists have

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6. *Climate Change Inequality: The Unequal Impact of Extreme Weather*, CLIENTEARTH (Oct. 14, 2021), <https://www.clientearth.org/latest/latest-updates/stories/climate-change-inequality-the-unequal-impact-of-extreme-weather> [perma.cc/S4N8-KVC9].

7. Drawing from media studies scholar David Nemer, this Foreword defines “disinformation” as the spread of false information with the intent to deceive or mislead. “Misinformation” refers to information that may be false or inaccurate but is not generally intended to mislead. And “fake news” is thus an umbrella term that includes both disinformation and misinformation. See DAVID NEMER, *TECHNOLOGY OF THE OPPRESSED* (2022).

8. Brandy Zadrozny, ‘Carol’s Journey’: What Facebook Knew About How It Radicalized Users, NBC NEWS (Oct. 26, 2021, 12:50 PM), <https://www.nbcnews.com/tech/tech-news/facebook-knew-radicalized-users-rcna3581> [perma.cc/HUG4-F69U].

9. Liana Chua & Hannah Fair, *Anthropocene*, CAMBRIDGE ENCYCLOPEDIA OF ANTHROPOLOGY (Jan. 8, 2019), <https://www.anthroencyclopedia.com/entry/anthropocene> [perma.cc/YNG2-DWTP].

10. *Id.*

employed this theory to examine such socioeconomic and governmental issues arising from systematic inequalities and injustices on a global scale.<sup>11</sup> This Foreword therefore highlights how recent transnational debates regarding issues presented by COVID-19 and online disinformation implicate broader civil and human rights concerns. It argues that being mindful of these pervasive issues—which affect the local, the global, and the planetary—is paramount to the ethos of civil rights and democracy in the uncertain times of the Anthropocene. As the Articles in this Colloquium reveal, promoting civil rights at home is an ongoing, multi-dimensional project. This Foreword advocates a broader view of that project as encompassing the range of issues that define our current struggle with planetary and global justice.

### I. VACCINES AND COVID-19

The Anthropocene suggests that we alter our relationship with the planet and each other as a complex form of interconnectivity.<sup>12</sup> One example of our interconnectedness is illustrated through the effects of the COVID-19 pandemic. Because COVID-19 is spread through air particles,<sup>13</sup> it has affected personal interactions and shifted norms in vast realms of social and professional life, including communications, travel, business, trade, and economics. In many ways, the brunt of these shifting norms has been borne by those most vulnerable: the poor, the disenfranchised, racial minorities, and the politically powerless. For instance, at both local and global levels, the pandemic has brought racial injustice and socioeconomic inequity to the forefront of public health.<sup>14</sup> Because many racial and ethnic minority groups face a greater risk of illness from COVID-19, it has underscored domestic and global health inequities.<sup>15</sup> The extent of these inequities is shown through issues related to COVID-19 vaccines.

During the summer of 2021, many citizens in the Western world publicly debated their rights regarding the legitimacy of potential COVID-19 vaccine mandates.<sup>16</sup> In other parts of the world, however, the debate focused on ineq-

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11. *Id.*

12. *Id.*

13. *Coronavirus Disease (COVID-19): How Is It Transmitted?*, WORLD HEALTH ORG. (Dec. 23, 2021), <https://www.who.int/news-room/q-a-detail/coronavirus-disease-covid-19-how-is-it-transmitted> [perma.cc/9L74-CMXB].

14. *E.g.*, *Health Equity Considerations and Racial and Ethnic Minority Groups*, CDC (Jan. 25, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html> [perma.cc/NC8Z-X98S]; Ian Sample, *UK Health Inequalities Made Worse by COVID Crisis, Study Suggests*, GUARDIAN (June 14, 2021, 1:00 AM), <https://www.theguardian.com/world/2021/jun/14/uk-health-inequalities-made-worse-by-covid-crisis-study-suggests> [perma.cc/36NQ-GFK3].

15. *Health Equity Considerations and Racial and Ethnic Minority Groups*, *supra* note 14.

16. *See, e.g.*, Mychael Schnell, *9 Arrested in Violent Clashes Between Paris Police, Anti-Vaccine Protesters*, HILL (July 25, 2021, 12:48 PM), <https://thehill.com/policy/international/564735-9-arrested-in-violent-clashes-between-paris-police-anti-vaccine> [perma.cc/JG5Y-4VNX]; Vassilis

uitable access and the (un)availability of the vaccines to less privileged populations.<sup>17</sup> Such vaccines, which were so readily available to citizens in the West, were not widely available to citizens in many countries in the Global South. For example, as of August 18, 2021, 54 percent of France's sixty-seven million people—more than half of their population—were fully vaccinated.<sup>18</sup> Meanwhile, in South Africa—a country in the Global South experiencing acute social and political unrest<sup>19</sup>—data from the same time frame show that only 7.5 percent of its sixty million inhabitants were fully vaccinated.<sup>20</sup> For citizens in the West, the question was whether vaccine mandates infringe upon their civil liberties, such as the right to bodily autonomy. For citizens in the developing world, the question was whether there is an individual right to receive the vaccine, as most of their neighbors in the Western world already had access.

In addition to debates over vaccine mandates and accessibility, a related concern is the dichotomy between vaccine access and intellectual property (IP) rights. Since most developing countries import their pharmaceutical products,<sup>21</sup> the emergence of COVID-19 and the potential for subsequent infectious diseases highlight the risk these nations now face. Should developing countries have the right to produce their own vaccines during a global pandemic? And should IP protection for vaccines be waived, which could potentially reduce barriers to access for citizens of developing nations?<sup>22</sup> Although global powers such as the United States, Russia, and China support these types of IP waivers, such proposals have yet to gain the support of the pharmaceutical industry.<sup>23</sup>

By placing the various interests of nation-states, the IP interests of pharmaceutical companies, and the civil and human rights interests of global citizens in a heightened state of conflict, the issue of vaccine distribution in developing nations is highly complex. Additionally, the transnational issues presented by vaccines and their accessibility illustrate how the COVID-19 era

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Triandafyllou, Angeliki Koutantou & Edmund Blair, *Greek Police Clash with Protesters in Rally Against Vaccinations*, REUTERS (July 24, 2021, 3:49 PM), <https://www.reuters.com/world/europe/greek-police-clash-with-protesters-rally-against-mandatory-vaccinations-2021-07-24> [perma.cc/K4S7-A3Z2].

17. Hannah Ritchie et al., *Coronavirus (COVID-19) Vaccinations*, OUR WORLD IN DATA, <https://ourworldindata.org/covid-vaccinations> [perma.cc/TSS5-YGXQ]. To view the vaccination rates referenced in this Section, select “France” and “South Africa” from the set of available countries and then drag the data slider at the bottom of the graphic to “Aug. 18, 2021.”

18. *Id.*

19. Ishaan Tharoor, *South Africa's Riots Are a Warning to the World*, WASH. POST (July 19, 2021, 12:00 AM), <https://www.washingtonpost.com/world/2021/07/19/south-africa-riots-warning> [perma.cc/D863-W7DF] (noting that the unrest was caused by a combination of extreme inequality and coronavirus lockdowns that exacerbated existing problems with hunger and food shortages).

20. See Ritchie et al., *supra* note 17.

21. Fisher et al., *supra* note 5.

22. *Id.* at 19–25.

23. Editorial, *A Patent Waiver on COVID Vaccines Is Right and Fair*, NATURE (Feb. 10, 2022), <https://www.nature.com/articles/d41586-021-01242-1> [perma.cc/T7WE-P27N].

has exacerbated economic disparities and posed new challenges to civil and human rights activists across the globe. The ongoing spread of online disinformation amplifies these concerns.

## II. DISINFORMATION AND DIGITAL RIGHTS

While COVID-19 connects us intangibly through air particles, online disinformation connects us via the telecommunications cables of the internet.<sup>24</sup> Indeed, because of the endless spread of online disinformation related to, and fueled by, the COVID-19 pandemic, a rights-based discourse of emergent concern has taken shape in the arena of digital rights, or what some scholars term “cyber civil rights.”<sup>25</sup> Digital rights implicate a broad array of online communication issues that relate to (1) the right to internet access, (2) online speech, expression, and association, and (3) data privacy concerns.<sup>26</sup> Because of the increasing global reliance on the internet and digital technology, each area of the digital rights debate is of considerable salience. As it relates to internet access, for instance, the U.S. Supreme Court recently considered the fundamental nature of access to internet platforms for promoting the ideals of free speech and democratic culture.<sup>27</sup> Moreover, while scholars continue to debate whether access to such online platforms should be deemed a human right,<sup>28</sup> countries like Brazil have enacted laws that codify a civil right to internet access.<sup>29</sup> With a global internet penetration rate of 59.5 percent,<sup>30</sup> much of the world remains offline, a fact that is likely to stir continued debates regarding the right of internet access for underprivileged populations.

Given the threats that online propaganda poses to democratic regimes worldwide, proponents of free speech norms in cyberspace are now being confronted with how to address problems of disinformation, misinformation, and other so-called “fake news.”<sup>31</sup> Shifting media habits, coupled with the rise of

24. See Alix Johnson, *The Mechanics of Sovereignty: Autonomy and Interdependence Across Three Cables to Iceland*, 123 AM. ANTHROPOLOGIST 578 (2021) (arguing that the transcontinental telecommunications cables of the internet are sites where individual sovereignty is exercised through connection).

25. Danielle Keats Citron, *Cyber Civil Rights*, 89 B.U. L. REV. 61, 117 (2009).

26. See LAURA DENARDIS, *PROTOCOL POLITICS* 20 (William J. Drake & Ernest J. Wilson III eds., 2009).

27. *Packingham v. North Carolina*, 137 S. Ct. 1730 (2017) (holding that a state statute prohibiting registered sex offenders from using social media websites was an unconstitutional violation of the First Amendment).

28. See, e.g., Vinton G. Cerf, Opinion, *Internet Access Is Not a Human Right*, N.Y. TIMES (Jan. 4, 2012), <https://www.nytimes.com/2012/01/05/opinion/internet-access-is-not-a-human-right.html> [perma.cc/Q3VN-7G6D].

29. Jeffrey Omari, *Digital Access Amongst the Marginalized: Democracy and Internet Governance in Rio de Janeiro*, 41 POLAR 277 (2018).

30. Joseph Johnson, *Global Digital Population as of January 2021*, STATISTA (Sept. 10, 2021), <https://www.statista.com/statistics/617136/digital-population-worldwide> [perma.cc/YUK7-6QG3].

31. NEMER, *supra* note 7, at 152 (cleaned up).

smartphones, apps, and social media platforms, have also fueled a significant increase in the related problem of online extremism. Indeed, recent scholarship suggests that online, right-wing extremism originating in the United States and Europe frequently results in racially and religiously motivated physical, offline violence.<sup>32</sup> Similar studies in Brazil posit that right-wing disinformation campaigns have targeted vulnerable populations to influence voting outcomes.<sup>33</sup> As scholars continue to examine why these ideologies proliferate in digital spaces,<sup>34</sup> concerns over the free speech and free association rights of extremists persist. The tendency to treat online disinformation and extremism as a content moderation issue poses an ongoing challenge for lawyers and activists seeking to advance digital rights. For instance, should internet platforms be the sole arbiters of the content posted to their platforms?<sup>35</sup> Who determines if or when this arbitration furthers free speech or is merely unwarranted censorship? And will content moderation alone curb the hate speech and extremism that exist on many online platforms?<sup>36</sup>

A final point of contention in debates over digital rights is data privacy. Control of internet users' data and the related privacy rights to such data are ongoing issues for governments, lawyers, and privacy advocates. For example, in the healthcare context, under what circumstances should mental health concerns override an internet users' data privacy?<sup>37</sup> Similarly, does data profiling during a public health crisis, such as COVID-19, outweigh the data privacy interests that users may have in online spaces?<sup>38</sup> These concerns exist

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32. Daniel Karell, *Online Extremism and Offline Harm*, SOC. SCI. RSCH. COUNCIL (June 1, 2021), <https://items.ssrc.org/extremism-online/online-extremism-and-offline-harm> [perma.cc/Fx9H-9E2A].

33. NEMER, *supra* note 7.

34. See, e.g., Bharath Ganesh, *Platform Racism: How Minimizing Racism Privileges Far Right Extremism*, SOC. SCI. RSCH. COUNCIL (Mar. 16, 2021), <https://items.ssrc.org/extremism-online/platform-racism-how-minimizing-racism-privileges-far-right-extremism> [perma.cc/T6Fh-VENX].

35. See Kate Klonick, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 131 HARV. L. REV. 1598 (2018).

36. See, e.g., Deana A. Rohlinger, *We Cannot Just Moderate Extremism Away*, SOC. SCI. RSCH. COUNCIL (Mar. 9, 2021), <https://items.ssrc.org/extremism-online/we-cannot-just-moderate-extremism-away> [perma.cc/Y4HV-662H]; Fenwick McKelvey, *Toward Contextualizing Not Just Containing Right-Wing Extremisms on Social Media: The Limits of Walled Strategies*, SOC. SCI. RSCH. COUNCIL (July 13, 2021), <https://items.ssrc.org/extremism-online/toward-contextualizing-not-just-containing-right-wing-extremisms-on-social-media-the-limits-of-walled-strategies> [perma.cc/BW2D-TE6R].

37. See Mason Marks, *Artificial Intelligence-Based Suicide Prediction*, 21 YALE J.L. & TECH. (SPECIAL ISSUE) 98 (2019).

38. See Mason Marks, *Emergent Medical Data: Health Information Inferred by Artificial Intelligence*, 11 U.C. IRVINE L. REV. 995 (2021).

alongside related claims that privacy breaches and the misappropriation of internet user data often exacerbate the harms posed by online extremists.<sup>39</sup> Because of these concerns, governments have recently taken steps to combat online privacy harms. In the last five years, for instance, the European Union has taken on this issue by implementing its General Data Protection Regulation,<sup>40</sup> Brazil has addressed these concerns through its *Lei Geral de Proteção de Dados Pessoais*,<sup>41</sup> and, in the United States, states like California have advanced their own privacy laws by enacting statutes such as the California Consumer Privacy Act.<sup>42</sup>

Because the internet is inherently open and transcends international boundaries,<sup>43</sup> its regulation and accompanying digital rights issues represent emerging opportunities for legal practitioners and scholars working at the intersection of civil and human rights. Furthermore, by facilitating online speech as well as disinformation and extremism, digital rights issues continue to transform, and often amplify, the global uncertainties presented in the age of the Anthropocene.

### III. CIVIL RIGHTS AND THE ANTHROPOCENE

Our current epoch of climate change and its corresponding environmental uncertainties elicit what geologists refer to as the Anthropocene:<sup>44</sup> an idea that may, theoretically, appear outside the realm of law or civil rights-based discourse. But since the turn of the century, the Anthropocene has received sweeping interdisciplinary attention because of its applicability to a wide range of scholarly discourses.<sup>45</sup> Through its examination of inequalities and injustices, the Anthropocene imbricates both the political and the ethical,<sup>46</sup> and thus provides an ideal analytical tool for connecting civil rights-based concerns from local, to global, to planetary.

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39. See Matthew Rosenberg, Nicholas Confessore & Carole Cadwalladr, *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. TIMES (Mar. 17, 2018), <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html> [perma.cc/H93N-Q65B] (alleging that Cambridge Analytica harvested the personal data of fifty million Facebook users without their permission and employed that data to influence the users' voting behavior).

40. See Meg Leta Jones & Margot E. Kaminski, *An American's Guide to the GDPR*, 98 DENV. L. REV. 93 (2021).

41. See Aaron K. Tantleff, Stephanie Pierce & Steven Millendorf, *Brazilian Government Makes the LGPD Effective Imminently*, NAT'L L. REV. (Sept. 10, 2020), <https://www.natlawreview.com/article/brazilian-government-makes-lgpd-effective-imminently> [perma.cc/23MM-QCNL].

42. See Eric Goldman, *An Introduction to the California Consumer Privacy Act (CCPA)*, (Santa Clara Univ. Legal Studies Research Paper 2020), <http://doi.org/10.2139/ssrn.3211013>.

43. See, e.g., LAWRENCE LESSIG, CODE: AND OTHER LAWS OF CYBERSPACE (1999); LAURA DENARDIS, THE GLOBAL WAR FOR INTERNET GOVERNANCE (2014).

44. Chua & Fair, *supra* note 9.

45. *Id.*

46. *Id.*

In the Anthropocene, planetary concerns often elicit the environmental issues raised by climate change. During the last decade, for instance, a growing number of lawsuits have been filed against governments and fossil fuel companies for their respective culpability regarding the global climate crisis.<sup>47</sup> After decades of inaction from policymakers, such lawsuits are part of a recent shift that seeks retribution for climate harm through the courts.<sup>48</sup> In the United States, however, legislators are finally starting to act on climate change. But because of shifting administrations and bureaucracy at the federal level, state and local governments are now taking action to mitigate the harms of climate change on a local level.<sup>49</sup> “[C]limate federalism” will therefore play an important role in mitigating the harms of climate change at both local and national levels.<sup>50</sup>

In the vein of climate change, scholarship often analyzes the global inequalities that caused the Anthropocene and how exposure to its impact is unequally distributed, with vulnerable populations unfairly suffering the brunt of its harms.<sup>51</sup> Reimagining civil rights within the context of the Anthropocene thus provides an opportunity to bridge struggles and connect progressive movements in response to the collective environmental and public health threats presented by this age of uncertainty. Recent legal theory has indeed argued for such a reimagining of rights. For example, scholars have suggested that the urgency of the Anthropocene calls for a unified framework of rights.<sup>52</sup> Such a framework would regard civil, political, environmental, and public health rights on equal footing and therefore essential to the vast environmental and public health threats presented in the Anthropocene.<sup>53</sup> Other legal scholars have argued for “a human right to security from climate disruption.”<sup>54</sup> Because the United States is arguably ground zero for the political and economic activities involved in climate disruption, scholars argue that this

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47. Karen C. Sokol, *Seeking (Some) Climate Justice in State Tort Law*, 95 WASH. L. REV. 1383 (2020).

48. *Id.*

49. See, e.g., Sarah J. Fox, *Why Localizing Climate Federalism Matters (Even) During a Biden Administration*, 99 TEX. L. REV. ONLINE 122 (2021) [hereinafter Fox, *Why Localizing Climate Federalism Matters*]; Sarah Fox, *Localizing Environmental Federalism*, 54 U.C. DAVIS L. REV. 133 (2020).

50. Fox, *Why Localizing Climate Federalism Matters*, *supra* note 49, at 123 (“[C]limate federalism—meaning the allocation of responsibility for climate change policy among the federal, state, and local governments—is likely to remain important throughout the Biden Administration.”).

51. Chua & Fair, *supra* note 9.

52. Karen C. Sokol, *Rethinking Rights in the Age of the “Anthropocene”: The Potential of a Ghandian-Informed Jurisprudence for Forging Robust Environmental and Public Health Protections*, in THE GLOBAL COMMUNITY YEARBOOK OF INTERNATIONAL LAW & JURISPRUDENCE 2016, at 133 (Giuliana Ziccardi Capaldo ed., 2017).

53. *Id.* at 141.

54. Amy Sinden, *A Human Rights Framework for the Anthropocene*, in RESEARCH HANDBOOK ON GLOBAL CLIMATE CONSTITUTIONALISM 132, 132 (Jordi Jaria-Manzano & Susana Borràs eds., 2019).

right to security should be based upon the perspective of the United States legal system and grounded in a civil rights framework.<sup>55</sup>

Since the Anthropocene represents our current state of political and planetary uncertainty,<sup>56</sup> it urges us to reconsider the connection between the shared encounters of our local neighbors and communities and those of our broader global environment. Civil rights, in turn, may be viewed as a means to maintain individual liberties and autonomy or as a method of preserving the integrity of democracy.<sup>57</sup> Viewing civil rights through the context of the Anthropocene, then, provides an opportunity to broaden our democratic worldview in response to the unprecedented challenges and uncertainties of the times. Moreover, by connecting citizens across the globe, the emergent planetary uncertainties presented by COVID-19 and the spread of online disinformation expose the challenges of such connectivity when thinking about the future of civil rights in the Anthropocene.

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55. *Id.* at 134.

56. Chua & Fair, *supra* note 9.

57. *See* Sinden, *supra* note 54.