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#### All capitalism is racial capitalism – racial capitalism uses the bodies of post-colonial subjects to prop up a new corporate empire of extraction. The flow of capital and information through Western notions of IP rights enables accumulation by dispossession from the Global South. The aff’s modification of the patent system merely enables disciplinary control by sanitizing the West’s imperial control over the knowledge economy. Racial and colonial logics undergird the IP system – piecemeal reforms like a one-and-done approach only serve to erase Western culpability in stealing Indigenous knowledge and unethical clinical trials.

Chaurey ‘19 [Keeyaa Chaurey; Master’s Degree from The London School of Economics and Political Science (in Human Rights, Healthcare and Capitalism); January 2019; “Pirates and Property: The Moralities of Branded and Generic Medicines”; http://eprints.lse.ac.uk/102949/1/Keeyaa\_pirates\_and\_property\_submitted.pdf; Accessed 08-28-2021] AK

Behaviours of Accumulation and Extraction

Primitive accumulation’s seizing of land for property has become more abstract during accumulation as dispossession. Here, the accumulation of intellectual property is simply one aspect of a larger project of neoliberalisation. In this section I will outline the behaviours of accumulation and expansion that are evident in the globalisation of the intellectual property regime. I have already argued that these behaviours are self-justified as working against ‘piracy’. The rhetoric of ‘piracy’ makes expansion a moral imperative and the processes of making this imperative come to life connect back to racial capitalism. This will be explored in the following section.

TRIPS as an agreement is about more than patents: it sets minimum standards in copyright, trade marks, geographical indications, industrial designs, and lay-out designs of integrated circuits. It was the first stage in ensuring that the morality of expansion reproduces globally as the intellectual property standards in TRIPS obligate all members of the WTO (Drahos and Braithwaite 2002, 10). For Big Pharma, TRIPS will ensure the enclosure of biotechnology through patents and trade secret law. It also functions as an important vehicle for accumulation by dispossession through the forcing open of world markets, exactly like India: a country labelled as a notorious ‘pirate’ for making generics a fundamental part of their national pharmaceutical industry. Indeed, as a combination of a market-opener and a globalisation of the morality of accumulation, TRIPS can be seen as a cog in the engine wheels of “the motor of accumulation” (Harvey 2003, 182).

TRIPS has been effective since 1995 and was negotiated during the Uruguay Round of the General Agreement on Tariffs and Trade (GATT). Those missing from the important negotiation meetings and tables are easily identifiable: African, Asian, South American countries were repeatedly denied entry into spheres in which they might have the power to object and derail TRIPS. Alongside this came a system of coercion and blindsiding in which Third World countries were threatened through trade sanctions, and were also unprepared for the level of capital that had been sunk into intellectual property lawyers and infrastructure. India was the last stand against TRIPS. When finally having to sign during the Final Act of Marrakesh in April 1994, a number of Indian parliamentarians and members of the judiciary delivered rousing speeches about the recolonisation of India (Drahos and Braithwaite 2002, 146). However, the Indian pharmaceutical industry, along with every other member of the WTO was now forced to play by intellectual property rules set in Washington and New York (Drahos and Braithwaite 2002). In the aptly named TRIPS Was Never Enough, Sell says, “Despite the fact that a TRIPS advocate triumphantly exclaimed, “we got 95% of what we wanted,” that 5% has always mattered, and 95% was never enough. While many countries believed that they were negotiating a ceiling on intellectual property rules, they quickly discovered they actually had negotiated only a floor.” (Sell 2011, 448). After TRIPS came TRIPS-plus, U.S.-plus, and ACTA-plus, making TRIPS look like a walk in the park in comparison to the stringency that these initiatives have brought (Sell 2011, 448). TRIPS-plus in particular targets the import of generic medicines and the logics of expansion and accumulation present themselves again.

A crucial aspect of primitive accumulation, accumulation by dispossession, and racial capitalism is extraction. Within the context of pharmaceutical intellectual property practice and TRIPS, three important kinds of extraction take place: the forcing open of markets through the obligation of building intellectual property infrastructure (Drahos and Braithwaite 2002); the theft from the collective knowledge of indigenous peoples (Olufunmilayo 2006; Drahos and Braithwaite 2002); and the outsourcing of clinical trials to the Third World while producing drugs for a Western market (Drahos and Braithwaite 2002; Fassin 2007; Lurie and Wolfe 1997; Angell 1997).

Minds and Bodies for Extraction

In the world of intellectual property, those who hold the webs of patents, patent lawyers, and the capital to keep it all spinning, are lords of the knowledge economy and thus, knowledge exporters. Those who are knowledge poor, like South Africa and other Third World countries, are also knowledge importers (Drahos and Braithwaite 2002). TRIPS ensures that not only will knowledge poor countries have to standardise themselves to Western intellectual property rights, but they will have to pay dearly for the privilege. The message of the discourse around piracy has been that governments of other countries are stealing from the minds of U.S. inventors by not following patent protection. This narrative is connected with larger processes of the world order. In the 1950s, pharmaceutical corporations, particularly Pfizer International, made sweeping overseas sales figures. Due to recently independent post-colonial nations trying to rebuild themselves politically and economically, national pharmaceutical industries were nascent or non-existent. Drugs had to be imported and Pfizer profited. Countries like India and China were at first long-term prospects of profit. As their national pharmaceutical industries grew, they quickly became dangers to an established global system of branded medicine, one rooted in colonialism and imperialism (Drahos and Braithwaite 2002). The avid extension and proliferation of the intellectual property regime, particularly in regards to pharmaceuticals, can thus be seen as a legal disciplinary mechanism for those countries daring to circumvent Big Pharma. By pouring resources into an infrastructure to support intellectual property rights, (Drahos and Braithwaite 2002) lower income countries (primarily post-colonies) are being pulled away from investing in basic human rights needs, such as access to medicines. Here we see Harvey’s accumulation by dispossession clearly.

Though Harvey is less particular about the racial aspect of the extraction, Alexander, Legassick and Hemson, Tutu, and even Mbeki make very clear that there is a power imbalance between extractors and those extracted from. Drahos and Braithwaite (2002) point to the ways in which racist narratives of the ‘East’ were mobilised for the movement of the U.S. government to put in place sanctions against Asian countries who did not yet follow patent protection laws in the 1980s and 1990s, forcing them to behave. Indeed, this example of a racial and imperial attitude seems to form a stubborn undercurrent not just through TRIPS but through Big Pharma’s more specific practices in the Third World. For example, Western intellectual property rights did not recognise the rights of indigenous peoples. By the time evidence proved individual pharmaceutical corporations were stealing indigenous peoples’ collective knowledge, TRIPS had been set into stone (Drahos and Braithwaite 2002, 71). Unethical clinical trials are another striking example. Lurie and Wolfe (1997) describe the deaths of hundreds of infants in the Third World who were needlessly unethically infected in trials of interventions to reduce perinatal transmission of HIV. Even trials that are ‘ethical’, however, are often conducted within vulnerable populations in Third World countries, creating a cheap clinical trial pool for pharmaceutical corporations to test drugs on (Fassin 2007; Lurie and Wolfe 1997; Angell 1997). Informant C, a doctor, tells me they feel that there have been so many conspiracy theories about the HIV/AIDS crisis in South Africa that they feel almost reluctant saying what they think out loud. Yet when I ask about their opinion of Big Pharma’s role in Africa, they tell me with a sigh:

South Africa and Africa is like, what’s the word? a testing ground. I hate saying that but I sometimes do feel. I hate saying that because it’s putting the conspiracy theories, the cynicism into something. I guess, that it’s my feeling: it’s subjective rather than objective. When I say conspiracy theory, I mean it’s something that you don’t want to believe is happening but you know that there is probably truth in it.

Their hesitation comes with high stakes: the only reason their partner is able to get treatment for skin cancer is due to access to a clinical trial. Otherwise, the treatment costs R95, 000 every three weeks for two years. “They are doing some good work out there,” they tell me. Big Pharma’s moral location in South Africa is nebulous and uneven, as is the ‘global apartheid’ of neoliberalism. Indeed, their practices follow the same logic of racial capitalism: the bodies of colonial subjects that propped up the Empire have become the bodies of post-colonial subjects who prop up a much more diffuse, abstract corporate Empire. The lines between conspiracy and controversy are just as thin across the world as they are in South Africa.

#### The 1AC’s fetishism of the public domain, is a form of neocolonial domination that papers over inequalities and information feudalism. The public domain is a structure of white supremacy that erases the 1AC’s complicity.

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3. The Public Domain

Critical Race IP scholarship, like intellectual property scholarship generally, is concerned with the public domain. However, unlike their law and economics counterparts, Race IP Crits are concerned with the racial and social justice dimensions of the management of the public domain, especially in ways that refuse to recognize property rights in existing traditional knowledge and hinder access to knowledge. Recent cases such as Eldred v. Ashcroft206 and Golan v. Holder207 have extended the term and scope of intellectual property rights, posing considerable problems for marginalized groups, particularly with respect to A2K. Unsurprisingly, as per claims of the rise of information feudalism, such transfers of information often unfold along (neo)colonial axes, with the developing world paying the price for the privatization and increasing scope of copyright, patent, and trademark law.208 Intellectual property maximalism in copyright and patent results in a “shrinking” public domain by restricting access to knowledge along distinctly racial lines.209 James Boyle210 and Michael Brown211 offer in- depth accounts of this process, while Sunder and Chander highlight the need to read the public domain as not simply the opposite of intellectual property but also as a space for (neo)colonial ownership claims to traditional knowledge.212 “The romance of the public domain” refers to the fetishistic desire to embrace the public domain as an alternative to intellectual property maximalism without adequate consideration of its underlying inequalities.213 Meanwhile, as the expansion of trademark law threatened and threatens to make the brand all-powerful, both as a legal and cultural form, it too erodes equal access to the public domain, particularly for those who were racially stereotyped. Jane Gaines and Rosemary Coombe trace this process, demonstrating the increasing value and significance of ownership of the brand as well as resistance to that ownership, particularly when racial symbols are invoked.214

As information feudalism has grown more intense in the 2000s, calls for equal access have become more commonplace. Chon, for instance, argues for wide access to educational materials,215 one which was borne out in the Delhi University copyright case in which the Indian Supreme Court determined that the policy interest in access to knowledge outweighed the monopoly afforded to publishers.216 In contexts such as access to copyrighted materials or access to pharmaceuticals, the public domain is not a universal concept but one that must be situationally redefined to account for the states of development and growth trajectories of nations in the Global South.217 While we take up some of these examples in the sections that follow, we observe generally that the public domain is not an unqualified good, nor is its designation as the opposite of property without complications. It is instead a social construction which often erases intellectual property law’s protection of white supremacy and denies A2K to the world’s most vulnerable populations. The regulation of the public domain and the scope of its contents, therefore, remain important questions for scholars of race and intellectual property.

#### The 1AC’s project of reforming IP rights is a racially neutral construct that uses the law to perpetuate anti-Blackness by divesting Black inventors of their patents. Merely modifying the IP system is the perfection of racial capitalism.

Greene ‘8 [Kevin J. Greene; an American lawyer and professor of contract music law and entertainment law at Southwestern Law School; “Intellectual Property at the Intersection of Race and Gender: Lady Sings the Blues”; Journal of Gender, Social Policy & the Law, Vol. 16, Iss. 3 [2008], Art. 2; https://digitalcommons.wcl.american.edu/jgspl/vol16/iss3/2/; Accessed 08-28-2021] AK

A. Intellectual Property, Innovation, and African-Americans

CRT analysis has “provided important insights into the ways in which anti-discrimination law has not only failed to address, but [has] further entrenched, ideological and thus material forms of discrimination.”20 An insight that CRT offers to IP law is that its use in society and legal scholarship, like antidiscrimination law, also may have served to entrench material forms of discrimination. While individual black artists without question have benefited from the IP system, the economic effects of IP deprivation on the black community have been devastating. Intellectual property today is perhaps the preeminent business asset.21 Analysts recognize that blacks and other minorities in a market economy “cannot participate as equals unless they too can deploy the private power generated by ownership and control substantial business assets.”22

The three core protections of intellectual property at the federal level are copyright, patent, and trademark law.23 Copyright law protects creative output of authors, such as music composers, writers, and choreographers, by granting limited property rights in their creations. Patent law provides legal protection to inventors of useful inventions. Trademark law prohibits the use of a valid trademark by third parties where the unauthorized use is likely to cause consumer confusion in the marketplace.

In the past, few legal scholars examined race or gender in the context of IP. It is only in recent years that scholarship exploring IP has examined it in the context of social and historical inequality. Only recently have scholars, such as Professor Sunder, recognized that IP serves not merely as a legal doctrine allocating rights, but “as a legal vehicle for facilitating (or thwarting) recognition of diverse contributors to social discourse.”24 IP scholars such as Keith Aoki and Shubha Ghosh are now validating the phenomena of the similar divestment of patent protection for black inventors.25 My scholarship was among the first to show how the structure of copyright law, and the phenomena of racial segregation and discrimination, impacted the cultural production of African-Americans, and how the racially neutral construct of IP has adversely impacted African-American artists.26

The long omission of an analysis of race in the IP context is glaring given the tremendous innovative contributions of black authors and inventors to society, and the salience of race “branding” in trademark law. The treatment of blacks in the IP system has been characterized by two dynamics that have import for racial and distributive justice. First, black authors and inventors have found their works routinely appropriated and divested. Second, appropriated and distorted creative works protected by copyright, and trade symbols and imagery protected by trademark, have promoted derogatory racial stereotypes that facilitate racial subordination.

B. Blacks and Copyright Law

At its core, IP in America “is understood almost exclusively as being about incentives.”27 The history of blacks in the arts is one of unparalleled innovation and creativity, especially in the realm of music and dance. There has always been “an overwhelming prevalence of black innovators in jazz,”28 as well as blues, ragtime, rock-and-roll, and today’s hip-hop music. The history of black artists within U.S. IP law, however, has been one of appropriation, degradation, and devaluation beginning with the creation of the nation until the 1950s and ’60s. In the arena of music, there is no need to assume mass appropriation and disparate treatment of black composers and performers. Time after time, foundational artists who developed ragtime, blues, and jazz found their copyrights divested, and through inequitable contracts, their earnings pilfered.29 I argued elsewhere that for a long period of U.S. history, the work of black blues artists was essentially dedicated to the public domain.30 The public domain “can most broadly be defined as ‘material that is unprotected by intellectual property rights, either as a whole or in a particular context, and is thus “free” for all to use.’”31

Similarly, it has been argued that with respect to black artists “copyright law . . . was created without deference to the interests of large segments of society,” including women and minorities.32 Indeed, my previous work demonstrates that five copyright structures disadvantaged black cultural production.

First, the idea/expression dichotomy of copyright law prohibits copyright protection for raw ideas, and protects only expression of ideas. I contend that this standard provided less protection to innovative black composers, whose ground-breaking work was imitated so widely that it became the “idea” and thus impossible to protect.

Second, copyright’s fixation standard provides that copyright protection extends only to a work that is “fixed” in a tangible medium of expression.33 However, a key component of black cultural production is improvisation. As a result, fixation deeply disadvantages African-American modes of cultural production, which are derived from an oral tradition and communal standards.34

Third, copyright law sets forth a minimal standard of originality, which does not protect innovation, and in fact encourages imitation. Fourth, copyright formalities, until 1976, put copyright protection out of reach of the illiterate or semi-literate creators of the blues.35 Finally, there is a general absence of moral rights protection, which protects against harms to authorial dignity. The fact that black artists continued to create and innovate, even in the face of diminished economic incentives, poses a challenge to copyright policy, which dictates that copyright “is fundamentally about providing a balance of incentives for authors.”36 This phenomenon surely gives weight to the notion that economic incentives alone are not the sole motivator of creative output.

**Neoliberal capitalism will produce extinction – the system reproduces crises that depoliticize the left, undermine futural thought, and postpone its demise – the impacts are environmental collapse, endless war, and the rise of fascism**

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The problem may be summarized as follows. Capitalism has indeed created the conditions for general prosperity and therefore for its own supersession. But it has also blocked, and continues to block, any hope of realizing this transformation. We cannot wait for capitalism to transform on its own, but we also cannot hope to progress by appealing to some radical Outside or by fashioning ourselves as militants faithful to some “event” that (as Badiou has it) would mark a radical and complete break with the given “situation” of capitalism. Accelerationism rather demands a movement against and outside capitalism—but on the basis of tendencies and technologies that are intrinsic to capitalism. Audre Lord famously argued that “the master’s tools will never dismantle the master’s house.” But what if the master’s tools are the only ones available? Accelerationism grapples with this dilemma. What is the appeal of accelerationism today? It can be understood as a response to the particular social and political situation in which we currently seem to be trapped: that of a long-term, slow-motion catastrophe**. Global warming, and environmental pollution and degradation, threaten to undermine our whole mode of life.** And this mode of life is itself increasingly stressful and precarious, due to the depredations of neoliberal capitalism. As Fredric Jameson puts it, the world today is characterized by “heightened polarization, increasing unemployment, [and] the ever more desperate search for new investments and new markets.” These are all general features of capitalism identified by Marx, but in neoliberal society we encounter them in a particularly pure and virulent form. I want to be as specific as possible in my use of the term “neoliberalism” in order to describe this situation. I define neoliberalism as a specific mode of capitalist production (Marx), and form of governmentality (Foucault), that is characterized by the following specific factors: 1. The dominating influence of financial institutions, which facilitate transfers of wealth from everybody else to the already extremely wealthy (the “One Percent” or even the top one hundredth of one percent). 2. The privatization and commodification of what used to be common or public goods (resources like water and green space, as well as public services like education, communication, sewage and garbage disposal, and transportation). 3. The extraction, by banks and other large corporations, of a surplus from all social activities: not only from production (as in the classical Marxist model of capitalism) but from circulation and consumption as well. Capital accumulation proceeds not only by direct exploitation but also by rent-seeking, by debt collection, and by outright expropriation (“primitive accumulation”). 4. The subjection of all aspects of life to the so-called discipline of the market. This is equivalent, in more traditional Marxist terms, to the “real subsumption” by capital of all aspects of life: leisure as well as labor. Even our sleep is now organized in accordance with the imperatives of production and capital accumulation. 5. The redefinition of human beings as private owners of their own “human capital.” Each person is thereby, as Michel Foucault puts it, forced to become “an entrepreneur of himself.” In such circumstances, we are continually obliged to market ourselves, to “brand” ourselves, to maximize the return on our “investment” in ourselves. There is never enough: like the Red Queen, we always need to keep running, just to stay in the same place. Precarity is the fundamental condition of our lives. All of these processes work on a global scale; they extend far beyond the level of immediate individual experience. My life is precarious, at every moment, but I cannot apprehend the forces that make it so. I know how little money is left from my last paycheck, but I cannot grasp, in concrete terms, how “the economy” works. I directly experience the daily weather, but I do not directly experience the climate. Global warming and worldwide financial networks are examples of what the ecological theorist Timothy Morton calls hyperobjects. They are phenomena that actually exist but that “stretch our ideas of time and space, since they far outlast most human time scales, or they’re massively distributed in terrestrial space and so are unavailable to immediate experience.” Hyperobjects affect everything that we do, but we cannot point to them in specific instances. The chains of causality are far too complicated and intermeshed for us to follow. In order to make sense of our condition, we are forced to deal with difficult abstractions. We have to rely upon data that are gathered in massive quantities by scientific instruments and then collated through mathematical and statistical formulas but that are not directly accessible to our senses. We find ourselves, as Mark Hansen puts it, entangled “within networks of media technologies that operate predominantly, if not almost entirely, outside the scope of human modes of awareness (consciousness, attention, sense perception, etc.).” We cannot imagine such circumstances in any direct or naturalistic way, but only through the extrapolating lens of science fiction. Subject to these conditions, we live under relentless environmental and financial assault. We continually find ourselves in what might well be called a state of crisis. However, this involves a paradox. A crisis—whether economic, ecological, or political—is a turning point, a sudden rupture, a sharp and immediate moment of reckoning. But for us today, crisis has become a chronic and seemingly permanent condition. We live, oxymoronically, in a state of perpetual, but never resolved, convulsion and contradiction. Crises never come to a culmination; instead, they are endlessly and indefinitely deferred. For instance, after the economic collapse of 2008, the big banks were bailed out by the United States government. This allowed them to resume the very practices—the creation of arcane financial instruments, in order to enable relentless rent-seeking—**that led to the breakdown of the economic system in the first place.** The functioning of the system is restored, but only in such a way as to guarantee the renewal of the same crisis, on a greater scale, further down the road. Marx rightly noted that crises are endemic to capitalism. But far from threatening the system as Marx hoped, today these crises actually help it to renew itself. As David Harvey puts it, it is precisely “through the destruction of the achievements of preceding eras by way of war, the devaluation of assets, the degradation of productive capacity, abandonment and other forms of ‘creative destruction’” that capitalism creates “a new basis for profit-making and surplus absorption.” What lurks behind this analysis is the frustrating sense of an impasse. Among its other accomplishments, neoliberal capitalism has also robbed us of the future. For it turns everything into an eternal present. The highest values of our society—as preached in the business schools—are novelty, innovation, and creativity. And yet these always only result in more of the same. How often have we been told that a minor software update “changes everything”? Our society seems to function, as Ernst Bloch once put it, in a state of “sheer aimless infinity and incessant changeability; where everything ought to be constantly new, everything remains just as it was.” This is because, in our current state of affairs, the future exists only in order to be colonized and made into an investment opportunity. John Maynard Keynes sought to distinguish between risk and genuine uncertainty. Risk is calculable in terms of probability, but genuine uncertainty is not. Uncertain events are irreducible to probabilistic analysis, because “there is no scientific basis on which to form any calculable probability whatever.” Keynes’s discussion of uncertainty has strong affinities with Quentin Meillassoux’s account of hyperchaos. For Meillassoux, there is no “totality of cases,” no closed set of all possible states of the universe. Therefore, there is no way to assign fixed probabilities to these states. This is not just an empirical matter of insufficient information; uncertainty exists in principle. For Meillassoux and Keynes alike, there comes a point where “we simply do not know.” But today, Keynes’s distinction is entirely ignored. The Black-Scholes Formula and the Efficient Market Hypothesis both conceive the future entirely in probabilistic terms. In these theories, as in the actual financial trading that is guided by them (or at least rationalized by them), the genuine unknowability of the future is transformed into a matter of calculable, manageable risk. True novelty is excluded, because all possible outcomes have already been calculated and paid for in terms of the present. While this belief in the calculability of the future is delusional, it nonetheless determines the way that financial markets actually work. We might therefore say that speculative finance is the inverse—and the complement—of the “affirmative speculation” that takes place in science fiction. Financial speculation seeks to capture, and shut down, the very same extreme potentialities that science fiction explores. Science fiction is the narration of open, unaccountable futures; derivatives trading claims to have accounted for, and discounted, all these futures already. The “market”—nearly deified in neoliberal doctrine—thus works preemptively, as a global practice of what Richard Grusin calls premediation. It seeks to deplete the future in advance. Its relentless functioning makes it nearly impossible for us to conceive of any alternative to the global capitalist world order. Such is the condition that Mark Fisher calls capitalist realism. As Fisher puts it, channeling both Jameson and Žižek, “it’s easier to imagine the end of the world than the end of capitalism.”

#### The alternative is Black Marxism. Their opposition to IP protections fails because it starts at the wrong place. This radical Black tradition disrupts the terms of ownership and turns Marxism inside out. The alt generates Black kinship and social life outside of the university, rebuilding the IP system from the ground up to solve the aff.

Moten ‘13 (Fred Moten, Moten is professor of performance studies at New York University and has taught previously at University of California, Riverside, Duke University, Brown University, and the University of Iowa, 3 July 2013, “The Subprime and the beautiful”, African Identities Volume 11, 2013 - Issue 2, <https://www.tandfonline.com/doi/abs/10.1080/14725843.2013.797289>) \\EGott

In a recent review of Fredric Jameson’s Valences of the Dialectic, Kunkel (2010) writes: It’s tempting to propose a period ...stretching from about 1983 (when Thatcher, having won a war, and Reagan, having survived a recession, consolidated their popularity) to 2008 (when the neoliberal programme launched by Reagan and Thatcher was set back by the worst economic crisis since the Depression). During this period of neoliberal ascendancy – an era of deregulation, financialization, industrial decline, demoralization of the working class, the collapse of Communism and so on – it often seemed easier to spot the contradictions of Marxism than the more famous contradictions of capitalism ... (p. 12) The year that marks the beginning of the period Kunkel proposes – which is characterized by ‘the peculiar condition of an economic theory that had turned out to flourish above all as a mode of cultural analysis, a mass movement that had become the province of an academic “elite,” and an intellectual tradition that had arrived at some sort of culmination right at the point of apparent extinction’ – is also the year of the publication of Cedric Robinson’s Black Marxism: The Making of the Black Radical Tradition, a book that could be said to have announced the impasse Kunkel describes precisely in its fugitive refusal of it (Kunkel 2010, p. 12; Robinson 2000). If the culmination of the Marxian intellectual tradition coincides with the moment in which Jameson begins magisterially to gather and direct all of its resources toward the description and theorization of what most clear-eyed folks agree is the deflated, defeated spirit of the present age, Robinson’s project has been to alert us to the radical resources that lie before that tradition, where ‘before’ indicates both what precedes and what awaits, animating our times with fierce urgency. One of the fundamental contradictions of capitalism is that it establishes conditions for its own critique (which anticipates a collapse whose increasing imminence increasingly seems to take the form of endless deferral); that those very conditions seem to render that critique incomplete insofar as it will have always failed to consider capitalism’s racial determination is, in turn, a contradiction fundamental to Marxism. While Black Marxism emphatically exposes these contradictions, it is not reducible to such exposure. Rather, in elucidating an already given investigation of the specificities of Marxism’s founding, antifoundational embarrassment, which bears the massive internal threat of critique becoming an end in itself while operating in the service of the renovation, rather than the overturning, of already existing social and intellectual structures, Robinson understands the Marxian tradition as part of the ongoing history of racial capitalism. This is not dismissal; indeed, it echoes the deepest and richest sounds of Marx’s own blackness. It does, however, sanction the question in which I am interested today: what made Robinson’s critique – and, more importantly, that which, in Robinson’s work (and in Marx’s), exceeds critique – possible? The answer, or at least the possibility for a more precise rendering of the question, is also to be found in Black Marxism, in which critique is interrupted by its own eruptive condition of possibility roughly at the book’s rich, dense, but simultaneously, open and capacious center, a chapter called ‘The Nature of the Black Radical Tradition’. Robinson’s critical discovery of racial capitalism depends upon and extends the preservation of what he calls ‘the ontological totality’. In describing this integrated totality’s character, Robinson notes how preservation impossibly proceeds within the confines of ‘a metaphysical system that had never allowed for property in either the physical, philosophical, temporal, legal, social or psychic senses’. It’s motive force is ‘the renunciation of actual being for historical being’, out of which emerges a ‘revolutionary consciousness’ that is structured by but underived from ‘the social formations of capitalist slavery, or the relations of production of colonialism’ (Robinson 2000, pp. 243–244, 246). It is not just that absolutist formulations of a kind of being-fabricated are here understood themselves to be fabrications; it is also that renunciation will have ultimately only become intelligible as a general disruption of ownership and of the proper when the ontological totality that black people claim and preserve is understood to be given only in this more general giving. The emergence and preservation of blackness, as the ontological totality, the revolutionary consciousness that black people hold and pass, is possible only by way of the renunciation of actual being and the ongoing conferral of historical being – the gift of historicity as claimed, performed dispossession. Blackness, which is to say, black radicalism, is not the property of black people. All that we have (and are) is what we hold in our outstretched hands. This open collective being is blackness – (racial) difference mobilized against the racist determination it calls into existence in every moment of the ongoing endangerment of ‘actual being’, of subjects who are supposed to know and own. It makes a claim upon us even as it is that upon which we all can make a claim, precisely because it – and its origins – are not originary. That claim, which is not just one among others because it is always one þ more among others, however much it is made under the most extreme modes of duress, in an enabling exhaustion that is, in Stanley Cavell’s word, unowned, takes the form, in Edouard Glissant’s word, of consent (Cavell 1995, p. 101; Glissant & Diawara, 2011, p. 5). ‘To consent not to be a single being’, which is the anoriginal, anoriginary constitution of blackness as radical force – as historical, paraontological totality – is, for Robinson, the existential and logical necessity that turns the history of racial capitalism, which is also to say the Marxist tradition, inside out. What cannot be understood within, or as a function of, the deprivation that is the context of its genesis, can only be understood as the ongoing present of a common refusal.1 This oldnew kind of transcendental aesthetic, off and out in its immanence as the scientific productivity of such immanence projects, is the unowned, differential, and differentiated thing itself that we hold out to one another, in the bottom, under our skin, for the general kin, at the rendezvous of victory. To say that we have something (only insofar as we relinquish it) is to say that we come from somewhere (only insofar as we leave that place behind). Genesis is dispersion; somewhere is everywhere and nowhere as the radical dislocation we enact, where we stay and keep on going, before the beginning, before every beginning, and all belonging, in undercommon variance, in arrivance and propulsion, in the flexed load of an evangelical bridge, passed on this surrepetitious vamp, here. If you need some, come on, get some. We come from nothing, which is something misunderstood. It’s not that blackness is not statelessness; it’s just that statelessness is an open set of social lives whose animaterialized exhaustion remains as irreducible chance. Statelessness is our terribly beautiful open secret, the unnatural habitat, and habitus of analytic engines with synthetic capacities. Preservation is conditional branching, undone computation (tuned, forked, tongued), improvisation and, what it forges, digital speculation beyond the analogical or representational or calculative reserve. Critique – for example, the deciphering of the fundamental discursive structures that (de)form Western civilization – is part of its repertoire but it must always be kept in mind that cryptanalytic assertion has a cryptographic condition of possibility. Robinson’s movement within and elucidation of the open secret has been a kind of open secret all its own. For a long time, before its republication in 2000, Black Marxism circulated underground, as a recurrent seismic event on the edge or over the edge of the university, for those of us who valorized being on or over that edge even if we had been relegated to it. There, at least, we could get together and talk about the bomb that had gone off in our heads. Otherwise we carried around its out, dispersive potenza as contraband, buried under the goods that legitimate parties to exchange can value, until we could get it to the black market, where (the) license has no weight, and hand it around out of a suitcase or over a kitchen table or from behind a makeshift counter. Like Pryor (1994) said: ‘I got some shit, too ... you respect my shit and I’ll respect yours’. Maybe there is some shit in the back of our cars that we don’t even know about. Certainly, this smuggled cargo would be cause for optimism, even against the grain of our constant, clear-eyed vigilance, even against the general interdiction – the intellectual state of emergency – enforced when we emphysemically authorize ourselves to speak of the spirit of the age. That spirit marks the scene in which the etiolation of black studies in the name of critique is carried out by way of our serial flirtation with forgetting our own animation, the collective being that is more precisely understood as being-in-collection insofar as the latter term denotes a debt that is not only incalculable but also subprime. Therefore, by way of the brilliant black light in Frank B. Wilderson’s Afro-pessimistic sound – which materializes, in an investigation of black being, the most rigorous instance of this fatal but necessary proximity to oblivion – I’d like to consider what it is (again and again) to lose a home. This is Wilderson (2007): Slavery is the great leveler of the black subject’s positionality. The black American subject does not generate historical categories of entitlement, sovereignty, and immigration for the record. We are ‘off the map’ with respect to the cartography that charts civil society’s semiotics; we have a past but not a heritage. To the data-generating demands of the Historical Axis, we present a virtual blank, much like that which the Khosian presented to the Anthropological Axis. This places us in a structurally impossible position, one that is outside the articulations of hegemony. However, it also places hegemony in a structurally impossible position because – and this is key – our presence works back on the grammar of hegemony and threatens it with incoherence. If every subject – even the most massacred among them, Indians – is required to have analogs within the nation’s structuring narrative, and the experience of one subject on whom the nation’s order of wealth was built is without analog, then that subject’s presence destabilizes all other analogs (p. 31).

#### The ROJ is to engage in a project of mapping property. Both property and rhetorical spaces like debate perpetuate IP as whiteness, sustaining racial capitalism and reinforcing an exclusionary praxis. Only the K engages in strategies to fight racial capitalism inside and outside debate.

Vats ‘19 [Anjali Vats, JD, PhD; Associate Professor of Law at the University of Pittsburgh School of Law with a secondary appointment in the Communication Department at the University of Pittsburgh; 10-02-2019; “Mapping property”; Quarterly Journal of Speech, Vol. 105, No. 4, 508–526; DOI: 10.1080/00335630.2019.1666347; Accessed 08-29-2021] AK

Rhetorically mapping property

The insights that the books that I have discussed here provide are important ones for thinking about future directions for rhetoric and rhetorical studies. For a field at a crossroads in terms of its investments in subjects and methods, the rich possibilities for studying (intellectual) property, particularly by way of the rhetorical strategies, cultural practices, and institutional structures that ensure its continued existence as a tool for normalizing racial orders and racial capitalism, can offer direction for scholars. Property implicitly structures the all too familiar “available means of persuasion,” in Aristotle’s words, in which individuals exist, often without notice. Returning to the notion of mapping property, then, can aid rhetorical scholars in thinking about how the field can contribute to studies of (intellectual) property, whether by breaking ground around new objects of study or deepening existing analyses around topics such as the ones that I have described. The property turn in the humanities, however, makes it clear that studying persuasion without an understanding of property as a set of rules for subject-subject relationalities that materially constrain rhetorical situations is ill-advised. Property provides nuanced explanations for material realities that other theories may not.

Bhandar, Karuka, Sunder Rajan, and Eng and Han highlight multiple, multimodal strategies through which property is incorporated, constructed, and decolonized. They show that discursive and material choices are pivotal in the outcome in property cases. In their canonical essay on the separate but equal doctrine, Marouf Hasian, Celeste Condit, and John Lucaites argue that law is dependent on rhetorical culture. They write that: “A rhetorical culture is ... power-in-action, and the meaning of the law necessarily derives from the forms available in rhetorical culture.”20 The books I have reviewed certainly showcase the complex relationships between law and rhetorical culture. However, they also demonstrate that studying rhetorical culture is impossible without sustained attention to political economy, institutional structures, and interpersonal dynamics, among other issues. Rhetoric without materiality simply misses the ways that property and power exist in multiple forms, including deeds, railroads, prescription drugs, and therapeutic exchanges, among others.

There is perhaps no more immediate example in the discipline of rhetoric through which to demonstrate the ubiquity and urgency of (intellectual) property problems than the controversy that erupted in the summer of 2019, when Dr. Martin Medhurst decided to pen an editorial for publication in Rhetoric & Public Affairs on the topic of the long-brewing controversy over the process for selecting the Distinguished Scholars of the National Communication Association. In less than a week, over 1,500 scholars mobilized to express their outrage at Dr. Medhurst’s sentiments – and those in a letter signed by nearly all the living Distinguished Scholars as well. Without belaboring the details or histories of the event, I want to very briefly note some of the ways that property, rhetorical and otherwise, came to the fore, particularly in forms that the authors here would presumably highlight as examples of property’s exclusions.

For instance, editorships, awards, and other markers of disciplinary prowess confer status property on particular individuals for “improving” the discipline. As in the examples that Bhandar highlights, that status property is deeply intertwined with narrow, Euro-American conceptions of (white) romantic scholarship, which I have written about at length elsewhere. Further, the infrastructures of the discipline are built to reinforce whiteness as (intellectual) property. Karuka’s argument is, fundamentally, one about the manner in which material infrastructures have operated through racialized labor to entrench white racial power, even through hegemonic struggle. In the discipline of rhetoric, graduate programs are the metaphorical infrastructure through which (racial) capitalism operates to destroy healthy modes of relationship, all too often replacing them with competitive, patronage-based ones. Additionally, the field is a site for the management of multiple, competing understandings of (rhetorical) knowledge. Sunder Rajan highlights how cultures, nations, and institutions conceptualize value differently, in his case in the context of human health. The emergence of the methodological distinction between close reading and critical rhetoric showcases how such disparate values emerge in spaces that are purportedly attempting to achieve the same ends. Finally, the underdevelopment of critical race studies within rhetoric highlights the exclusionary praxis of the field

. If #CommunicationSoWhite and #RhetoricSoWhite have demonstrated anything, it is that the disciplines of communication and rhetoric have, as of yet, not enacted the theory and praxis that can achieve stated goals of diversity, equity, and inclusion.21 More intersectional work remains to be done around race and property.

Indeed, CRT-Net and the Facebook Group “Communication Scholars for Transformation” have demonstrated that many white scholars have not hesitated to invoke the “cultural logics of white racial grievance”22 in order to protect whiteness as (intellectual) property. As scholars in rhetoric take up questions of (intellectual) property in this kairotic moment, they would be well served to begin by interrogating the spaces closest to them. Rhetoric itself is built on the edifices of the regimes that scholars such as Bhandar, Karuka, Sunder Rajan, Eng and Han describe. As with whiteness, the machinations of property frequently goes unnoticed, at considerable cost to those who do not benefit from them.23 Whiteness as (intellectual) property has been normalized for far too long in communication and rhetoric. Turning inward to consider how rhetoric, specifically, is mired in problems of (intellectual) property will not only aid the field in becoming more just but also in thinking with more depth about problems of property in the world.

## Case

#### TRIPS waiver requires the disclosure of trade secrets in order to enable effective transfer of technology to be effective – this decks solvency and increases likelihood of US circumvention.

Noonan ’21 -- Kevin E. Noonan is a partner with McDonnell Boehnen Hulbert & Berghoff LLP and serves as Chair of the firm’s Biotechnology & Pharmaceuticals Practice Group. (Kevin E. Noonan, "If the Devil of the WTO IP Waiver Is in the Details, What Are the Details?," Patent Docs, <https://www.patentdocs.org/2021/05/if-the-devil-of-the-wto-ip-waiver-is-in-the-details-what-are-the-details.html>, accessed 9-3-2021) //nikki

While the details of the WTO patent waiver have not been determined (or more properly negotiated), it is important to consider the structure of the international trade regime in which the waiver will operate and the consequences of any agreement defining exactly what will be waived. The GATT/TRIPS agreement is a treaty, which (of course) is an agreement between countries, and disputes and accommodations are between their governments. The extent to which a private company's patent or other IP rights are protected under the terms of these agreements depends on actions of these governments in enforcing them on the company's behalf. Thus, for protections like patents, a government can agree to "turn a blind eye" to infringement by companies in other countries (or other governments) by refusing to press the rightsholder's case before the WTO, to pressure the governments unilaterally (as in the Watch List and Special Watch List of the U.S. Trade Representative's Special 301 Report), or otherwise support a private company's private actions using an infringing country's legal system. Such "passive" actions (i.e., refusing to enforce rights in violating or "scofflaw" countries) requires very little affirmative action by a government. These are the types of de facto waivers that can be effective, for example, for patented drugs that can be produced by conventional drug production technology wherein description of an active pharmaceutical ingredient molecule. The details of COVID vaccine production have been set out in various news sources (see Neuberg et al., "Exploring the Supply Chain of the Pfizer/BioNTech and Moderna COVID-19 Vaccines"; Weiss et al., "A COVID-19 Vaccine Life Cycle: From DNA to Doses," USA Today, Feb. 7, 2021; King, "Why Manufacturing Covid Vaccine to at Scale Is Hard," Chemistry World, Mar. 23, 2021; Cott et al., "How Pfizer Makes Its Covid-19 Vaccine," New York Times, April 28, 2021). But these are certainly not disclosed in the detail necessary for commercial production, and the complexities of production are illustrated in graphics from the Times article, wherein the DNA is prepared in Chesterfield, MO and shipped to Andover, MA for mRNA production; then the mRNA shipped back to Chesterfield or Kalamazoo, MI for packaging into the vaccine nanoparticles; and then sent back to Andover for testing before release. While some of this complexity may be company-specific, it also represents the different technological requirements for preparing an effective vaccine. It is unlikely that most of the countries in favor of the waiver (except India and South Africa) have the technological infrastructure for producing the vaccine.

And the company in India, the Serum Institute ("the largest vaccine maker in the world"), having the greatest likelihood of being able to reproduce the vaccine if the waiver is put in place recently was forced to "hand over its vaccines to the [Indian] government," according to an article in the New York Times (Schmall et al., "India and Its Vaccine Maker Stumble over Their Pandemic Promises," May 9, 2021). It is evident that, in the almost total absence of patents involved in COVID vaccine preparation, the disclosure needed to reproduce these vaccines (no matter how difficult that may be in practice) are protected by trade secrets. If the WTO imposes this waiver, the question will be whether the U.S. will compel disclosure of trade secret owned by U.S. companies, or have disclosed them to the extent such secrets are part of regulatory filings. Either action would constitute a "taking" under the Fifth Amendment ("Nor shall private property be taken for public use, without just compensation"); see Epstein et al., "The Fifth Amendment Takings Clause," Interactive Constitution: Common Interpretation. Seemingly simple and straightforward, almost every word in the clause is open to interpretation, none perhaps as much as determining what "just compensation" entails. It is likely that, should the government act peremptorily with regard to takings of trade secrets justified by any WTO waiver clause, the effect on trade secrets will carry the greatest consequences and be the cause of most controversy. Indeed, the prospects arising therefrom are likely some of the biggest impediments towards effectuating any waiver in a manner that could have any chance of achieving the stated goal of facilitating COVID vaccine production. This prospect also raises the issue of how any such waiver will be implemented in the U.S. Treaties are not necessarily "self-executing" and need to become enforceable through an Act of Congress. The distinguishing feature of such treaties are that "provisions in international agreements that would require the United States to exercise authority that the Constitution assigns to Congress exclusively must be deemed non-self-executing, and implementing legislation is required to give such provisions domestic legal effect." See Mulligan, "International Law and Agreements: Their Effect upon U.S. Law," Congressional Research Service 7-5700, Sep. 19, 2018. The necessity for Congress to act, although not having the heavy weight that entails approving treaties (i.e., a two-thirds majority vote in the Senate) nonetheless could be expected to face significant opposition should it be interpreted to permit the government to exercise a form of "eminent domain" over pharmaceutical companies' trade secrets. In this regard such an act could readily be characterized as "forced technology transfer" and even IP theft, should, for example, such trade secrets be capable of use to weaponize rather than immunize against viral infections. The administration's public position raises the likelihood of an infringement on private property unprecedented in the U.S. It also has implications for other aspects of foreign policy; for example, at least some of the trade secrets belong to BioNTech, a German company. Germany has not agreed to the waiver, and should the U.S disclose BioNTech's trade secrets, no doubt Germany would have cause to seek redress against America. This is but one of the possible legal consequences that the recent capitulation to the purported global "kumbaya" of the WTO waiver is likely to create. More complications will likely arise as the negotiations proceed. Provided the Administration is properly advised and the waiver properly limited (e.g., to patents) these and other deleterious consequences may be avoided. In view of the possibility of serious liability arising by improvident acquiescence to generally uninformed calls for a broad waiver, it might not be a bad idea for all those involved in innovation (universities, technology transfer offices, pharmaceutical companies, patent lawyers, and economists) counter these opinions with the facts and make their viewpoints known and voices heard.