# 1NC Round 3 Meadows

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#### Settlerism is an everyday process shaped by affective investments in institutions that claim jurisdiction over native land – using the WTO as an actor for the 1AC justifies this process.

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In Walden (1854), Henry David Thoreau offers a vision of personhood divorced from the state, characterizing his experience of “Nature” during his time at Walden Pond as providing him with a sense of his own autonomous embodiment and a related set of ethical resources that enable him to reject the demands of contemporary political economy.1 The invocation of “Nature” appears to bracket the question of jurisdiction, opening into a different conceptual and phenomenological register that displaces the problem of locating oneself in relation to the boundaries of the state. However, the very feeling that one has moved beyond geopolitics, that one has entered a kind of space that suspends questions of sovereignty or renders them moot, depends on the presence of an encompassing sovereignty that licenses one’s access to that space. If the idea of “Nature” holds at bay the question of jurisdiction so as to envision a kind of place for cultivating a selfhood that can oppose state logics/politics, it also effaces the ways that experience/vision of personhood itself may arise out of the legal subjectivities put in play by the jurisdictional claiming/clearing of that space as against geopolitical claims by other polities, specifically Native peoples. Thoreau offers an example of how settlement – the exertion of control by non-Natives over Native peoples and lands – gives rise to modes of feeling, generating kinds of affect through which the terms of law and policy become imbued with a sensation of everyday certainty. This affective experience productively can be characterized as an instantiation of what more broadly may be characterized as settler common sense. The phrase suggests the ways the legal and political structures that enable non-Native access to Indigenous territories come to be lived as given, as simply the unmarked, generic conditions of possibility for occupancy, association, history, and personhood. Addressing whiteness in Australia, Fiona Nicoll argues that “rather than analysing and evaluating Indigenous sovereignty claims…, we have a political and intellectual responsibility to analyse and evaluate the innumerable ways in which White sovereignty circumscribes and mitigates the exercise of Indigenous sovereignty”, and she suggests that “we move towards a less coercive stance of reconciliation with when we fall from perspective into an embodied recognition that we already exist within Indigenous sovereignty”. 2 Addressing the question of how settlement as a system of coercive incorporation and expropriation comes to be lived as quotidian forms of non-Native being and potential, though, may require tactically shifting the analytical focus such that Indigenous sovereignties are not at the center of critical attention, even as they remain crucial in animating the study of settler colonialism and form its ethical horizon. “An embodied recognition” of the enduring presence of settler sovereignty, as well as of quotidian non-Native implication in the dispossession, effacement, and management of indigeneity, needs to attend to everyday experiences of non-relation, of a perceptual engagement with place, various institutions, and other people that takes shape around the policies and legalities of settlement but that do not specifically refer to them as such or their effects on Indigenous peoples. In order to conceptualize the mundane dynamics of settler colonialism, the quotidian feelings and tendencies through which it is continually reconstituted and experienced as the horizon of everyday potentiality, we may need to shift from an explicit attention to articulations of Native sovereignty and toward an exploration of the processes through which settler geographies are lived as ordinary, non-reflexive conditions of possibility. In Marxism and Literature, Raymond Williams argues for the necessity of approaching “relations of domination and subordination” as “practical consciousness” that saturat[es] … the whole substance of lived identities and relationships, to such a depth that the pressures and limits of what can ultimately be seen as a specific economic, political, and cultural system seem to most of us the pressures and limits of simple experience and common sense.3 Understanding settlement as, in Williams’s terms, such a “structure of feeling” entails asking how emotions, sensations, psychic life take part in the (ongoing) process of realizing the exertion of non-Native authority over Indigenous peoples, governance, and territoriality in ways that saturate quotidian life but are not necessarily present to settlers as a set of political propositions or as a specifically imperial project of dispossession. In the current scholarly efforts to characterize settler colonialism, the contours of settlement often appear analytically as clear and coherent from the start, as a virtual totality, and in this way, the ongoing processes by which settler dominance actively is reconstituted as a set of actions, occupations, deferrals, and potentials slide from view. We need to ask how the regularities of settler colonialism are materialized in and through quotidian non-Native sensations, inclinations, and trajectories. Moreover, administrative initiatives and legalities become part of everyday normalizations of state aims and mappings but in ways that also allow for an exceeding of state interests that potentially can be turned back against the state, giving rise to oppositional projects still given shape and momentum by the framings that emerge out of the ongoing work of settler occupation – such as in Walden. The essay will close with a brief reading of Thoreau’s text that illustrates how its ethical framing emerges out of, and indexes, everyday forms of settler feeling shaped by state policy but not directly continuous with it. 1. The figure of the vanishing Indian still remains prominent within US popular and scholarly discourses, both explicitly and implicitly. Within this narrative, Native peoples may have had prior claims to the land, but they, perhaps tragically, were removed from the area, or died out, or ceased to be “really” Indian, or simply disappeared at some point between the appearance of the “last” one and the current moment, whenever that may be.4 As against this tendency, scholars who seek to track the workings of settler colonialism face an entrenched inattention to the ways non-Native conceptions and articulations of personhood, place, property, and political belonging coalesce around and through the dispossession of Native peoples and normalization of (the) settler (-state’s) presence on Native lands. Insistence on the systemic quality of such settler seizures, displacements, identifications responds to this relative absence of acknowledgment by emphasizing its centrality and regularity, arguing that the claiming of a naturalized right to Indigenous place lies at the heart of non-Native modes of governance, association, and identity. However, such figurations of the pervasive and enduring quality of settler colonialism may shorthand its workings, producing accounts in which it appears as a fully integrated whole operating in smooth, consistent, and intentional ways across the socio-spatial terrain it encompasses. Doing so, particularly in considering the exchange between the domains of formal policy and of everyday life, may displace how settlement’s histories, brutalities, effacements, and interests become quotidian and common-sensical. Looking at three different models, I want to sketch varied efforts to systemize settler colonialism, highlighting some questions that emerge when they are read in light of issues of process and affect. In Settler Colonialism and the Transformation of Anthropology, Patrick Wolfe argues, “Settler colonies were (are) premised on the elimination of native societies. The split tensing reflects a determinate feature of settler colonization. The colonizers come to stay – invasion is a structure not an event.” 5 Offering perhaps the most prominent definition of settler colonialism, Wolfe’s formulation emphasizes the fact that it cannot be localized within a specific period of removal or extermination and that it persists as a determinative feature of national territoriality and identity. He argues that a “logic of elimination” drives settler governance and sociality, describing “the settler-colonial will” as “a historical force that ultimately derives from the primal drive to expansion that is generally glossed as capitalism” (167), and in “Settler Colonialism and the Elimination of the Native,” he observes that “elimination is an organizing principle of settler-colonial society rather than a one-off (and superceded) occurrence”, adding, “Settler colonialism destroys to replace.” 6 Rather than being superseded after an initial moment/period of conquest, however, colonization persists since “the logic of elimination marks a return whereby the native repressed continues to structure settler-colonial society” (390), and “the process of replacement maintains the refractory imprint of the native counter-claim” (389). Yet, when and how do projects of elimination and replacement become geographies of everyday non-Native occupancy that do not understand themselves as predicated on colonial occupation or on a history of settler-Indigenous relation (even though they are), and what are the contours and effects of such experiences of inhabitance and belonging? In characterizing settlement as a “structure”, “logic”, and a “will”, Wolfe seeks to integrate the multivalent aspects of ongoing processes of non-Native expropriation and superintendence, but doing so potentially sidesteps the question of how official governmental initiatives and framings become normalized as the setting for everyday non-Native being and action in ways that cannot be captured solely by reference to “the murderous activities of the frontier rabble” (392–3).

#### The 1AC is a micro reform of patent policy without changing the large sub structure of patents and IPR that’s founded within nation states – they only deal with medicine IPR meaning Indigenous people armed via larger patent system like tech and ag are ignored, and their suffering is justified

#### The aff sanitizes and obscures the broader system of coloniality – stating that governments have an “obligation” is a settler move to innocence

Ndlovu-Gatsheni, 13 – University of South Africa Archie Mafeje Research Institute head and professor

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The articles constituting this volume of Africanus are diverse but they all emphasize the need for decoloniality as another perspective from which development could be interrogated and understood as discourse. What the majority of authors argue for is decolonization of the discourse of development through indigenization of the concept. An un-decolonized discourse of development presents Africans as objects rather than subjects of development. African people feature in development discourse as a problem to be solved. A humanitarian perspective has always permeated development discourse in the process hiding the structural causes of lack of development in Africa. A decolonial perspective is grounded in world-systems approach. It maintains that the modern world system that emerged in 1492 has remained racially hierarchized, Euro-American-centric, sexist, hetero-normative, Christiancentric, Western-centric, capitalist and colonial in orientation (Grosfoguel 2007). Africa and other parts of the Global South have remained peripheral and subaltern. This is why decolonial thinkers understand development as involving the decolonization of the modern world system. Decoloniality cascades from the context in which the humanity of black people is doubted and their subjectivity is articulated in terms of lacks and deficits (Ndlovu-Gatsheni 2013a; Ndlovu-Gatsheni 2013b). Lacking development is constitutive of a Western articulation of African subjectivity. This point is well articulated by Ramon Grosfoguel, a leading Latin American thinker and theorist who understood the articulation on subjectivity of non-Western people as unfolding in this way: We went from the sixteenth century characterization of ‘people without writing’ to the eighteenth and nineteenth century characterization of ‘people without history,’ to the twentieth century characterization of ‘people without development’ and more recently, to the early twenty first century of ‘people without democracy’ (Grosfoguel 2007: 214). During the same period, those in the ‘Zone of Being’ were systematically gaining more and more fruits of modernity ‘from sixteenth century ‘rights of people,’ to ‘eighteenth century ‘rights of man,’ and to the ‘late twentieth century human rights’ (Grosfoguel 2007: 214). Decoloniality is against all vestiges of colonialism and realities of coloniality. It is a redemptive epistemology which inaugurates and legitimates the telling the story of the modern world from the experiences of colonial difference. Decoloniality materialized at the very moment in which imperialism and colonialism arrived in Africa. Decoloniality ‘struggles to bring into intervening existence an-other interpretation that bring forward, on the one hand, a silenced view of the event and, on the other, shows the limits of imperial ideology disguised as the true (total) interpretation of the events’ in the making of the modern world (Mignolo 1995: 33). Decoloniality is both an epistemic and a political project seeking liberation and freedom for those people who experienced colonialism and who are today subsisting and living under the boulder of global coloniality. Development is linked to liberation and freedom from domination and exploitation. This is why decoloniality is distinguished from the imperial version of history through its push for shifting of a geography of reason from the West as the epistemic locale from which the ‘world is described, conceptualized and ranked’ to the ex-colonised epistemic sites as legitimate points of departure in describing the construction of the modern world order (Mignolo 1995: 35). Decoloniality identifies coloniality as a key hindrance to development in Africa. Nelson Maldonado-Torres, a leading philosopher in decolonial thought, grapples with the meaning of coloniality and this is how he defined it: Coloniality is different from colonialism. Colonialism denotes a political and economic relation in which the sovereignty of a nation or a people rests on the power of another nation, which makes such a nation an empire. **Coloniality**, instead, **refers to** long-standing **patterns of power** thatemerged **as a result of colonialism**, but **that define culture, labour, intersubjectivity relations, and knowledge production well beyond the strict limits of colonial administrations.** Thus, coloniality survives colonialism. It is maintained alive in books, in the criteria for academic performance, in cultural patterns, in common sense, in the self-image of peoples, in aspirations of self, and so many other aspects of our modern experience. In a way, as modern subjects we breathe coloniality all the time and every day (Maldonado- Torres 2007: 243). Decolonial thinkers understand the Global South as that epistemic site that received the negatives of modernity. **Coloniality is a** name for the ‘darker side’ of modernity that needs to be unmasked because it exists as ‘an embedded **logic that enforces control, domination, and exploitation** disguised **in the language of** salvation, **progress**, modernization, **and being good for everyone’** (Mignolo 1995: 6). Walter D. Mignolo argued that ‘Coloniality names the experiences and views of the world and history of those whom Fanon called les damnes de la terre (“the wretched of the earth,” those who have been, and continue to be, subjected to the standard of modernity)’ (Mignolo 1995: 8). He elaborated on the meaning of the wretched of the earth in this way: The wretched are defined by the colonial wound, and the colonial wound, physical and/or psychological, is a consequence of racism, the hegemonic discourse that questions the humanity of all those who do not belong to the locus of enunciation (and the geo-politics of knowledge) of those who assign the standard of classification and assign to themselves the right to classify (Mignolo 1995: 8). Unlike coloniality, decoloniality names a cocktail of insurrectionist-liberatory projects and critical thoughts emerging from the ex-colonised sites such as Latin America, Caribbean, Asia, Middle East, and Africa. It seeks to make sense of the position of ex-colonised peoples within the Euro- America-centric, Christian-centric, patriarchal, capitalist, hetero-normative, racially hierarchized, and modern world-system that came into being in the fifteenth century (Mignolo 2000; Grosfoguel 2007). Decoloniality seeks to unmask, unveil, and reveal coloniality as an underside of modernity that coexisted with the rhetoric of progress, equality, fraternity, and liberty. It is a particular kind of critical intellectual theory as well as political project that seeks to disentangle ex-colonised parts of the world from global coloniality (Mignolo 2011). What distinguishes decoloniality from other existing critical social theories is its locus of enunciations and its genealogy – which is outside Europe. Decoloniality can be best understood as a pluriversal epistemology of the future – a redemptive and liberatory epistemology that seeks to delink from the tyranny of abstract universals (Mignolo 2007: 159). Decoloniality informs the ongoing struggles against inhumanity of the Cartesian subject, ‘the irrationality of the rational, the despotic residues of modernity’ (Mignolo 2011: 93). As a critical social theory, decoloniality is constituted by three main concepts. The first is coloniality of power. It is a useful concept, which delves deeper into the roots of the present asymmetrical global power relations and how the present modern world order was constituted. It boldly enables a correct naming of the current ‘global political present’ as a racially hierarchized, Euro-American-centric, Christian-centric, patriarchal, sexist, capitalist, hetero-normative, hegemonic, and modern power structure that emerged in 1492. At the centre of the construction of this power structure was the bifurcation of the world into ‘Zone of Being’ and ‘Zone of None-Being’ maintained by invisible ‘abyssal lines’ (Gordon 2005; Santos 2007). The Portuguese sociologist and leading decolonial thinker had this to say about the making of the ‘Zone of Being’ and the ‘Zone of Non- Being’: Modern Western thinking is an abyssal thinking. It consists of a system of visible and invisible distinctions, the invisible ones being the foundation of the visible ones. The invisible distinctions are established through radical lines that divide social reality into two realms, the realm of “this side of the line” and the realm of “the other side of the line.” The division is such that the “other side of the line” vanishes as reality, becomes nonexistent, and is indeed produced as nonexistent. Nonexistent means not existing in any relevant or comprehensive way of being. Whatever is produced as nonexistent is radically excluded because it lies beyond the realm of what the accepted conception of inclusion considers to be its other. What most fundamentally characterizes abyssal thinking is thus the impossibility of the copresence of the two sides of the line (Santos 2007: 45). To the ‘Zone of Being’ (Euro-American world) modernity deposited its fruits of progress, civilization, modernization, industrialization, development, democracy and human rights while at the same time imposing the slave trade, imperialism, colonialism and apartheid into Africa (the Zone of None-Being). The second concept is that of coloniality of knowledge. Epistemology and methodology are inextricably intertwined with imperial power. This is why Claude Ake wrote about ‘social science as imperialism’ that enabled development in Europe and America while disabling development in Africa (Ake 1979). Research into development cannot ignore delving into epistemological issues, into the politics of knowledge generation, and the fundamental question of who generates which knowledge and for what purposes. How knowledge has been used to assist imperialism and colonialism and to inscribe Euro- American-centric epistemology that consistently appropriated what was considered progressive, and displacing what was considered repugnant aspects of endogenous and indigenous knowledges remains a fertile area of research. The same is true of the important question of relevance and irrelevance of knowledge, particularly how some knowledges disempowered communities and peoples, and how others empowered individuals and communities. The point that emerges poignantly from decoloniality is that current knowledges, epistemologies and methodologies are for equilibrium rather than transformation. They are for the status quo rather than for change. The fundamental challenge facing Africa is how knowledges, epistemologies and methodologies of equilibrium can be expected to enable development in Africa. Decoloniality speaks to this quandary. The third concept is that of coloniality of being, which was articulated by Nelson Maldonado-Torres (2007). This concepts enables us to delve deeper into the pertinent questions of the making of modern subjectivities, into issues of humanism, and into questions of the role played by philosophers such as Rene Descartes and the long-term implications of his motto, ‘Cogito ergo sum/I think, therefore, I am’) on conceptions of subjectivity. What is evident is that modernity endowed whiteness with ontological density far above blackness as identities. This happened as the notions of ‘I think, therefore, I am’ were mutating into ‘I conquer, therefore, I am’ and its production of ‘colonizer and colonized’ articulation of subjectivity and being (Ndlovu-Gatsheni 2013a). From these imperial and colonial articulations of African humanity, there was a permanent questioning of the humanity of black people and this attitude and practice culminated in processes of ‘objectification’ / ‘thingification’ / ‘commodification’ of Africans as slaves (Ndlovu-Gatsheni 2013b). Therefore, the response to the question of why decoloniality in the 21stcentury, the answer is simply **that coloniality is still operative and active and needs to be decolonized**. The post-1945 juridical decolonization did not succeed to decolonize the modern world order that was formed since 1492. This is why Sabelo J. Ndlovu-Gatsheni argued that: What Africans must be vigilant against is the trap of ending up normalizing and universalizing coloniality as a natural state of the world. It must be unmasked, resisted and destroyed because it produced a world order that can only be sustained through a combination of violence, deceit, hypocrisy and lies (Ndlovu- Gatsheni 2013b: 10). It is a question that Ramon Grosfoguel gave a more comprehensive response: One of **the most powerful myth**s of the twentieth century was the notion that the elimination of colonial administrations amounted to the decolonization of the world. This led to the myth of a “postcolonial” world. The heterogeneous and multiple global structures put in place over a period of 450 years did not evaporate with the juridical-political decolonization of the periphery over the past 50 years. We continue to **live under the same “colonial power matrix**.” With juridical-political decolonization we moved from a period of ‘global **colonialism’** to the current period of “global **coloniality**.” Although “colonial administrations” have been almost entirely eradicated and the majority of the periphery is politically organized into independent states, non-European people are still living under crude European/Euro- American exploitation and domination. The old colonial hierarchies of European versus non-Europeans remain in place and are entangled with the “international division of labour” and accumulation of capital at a world-scale (Grosfoguel 2007: 219). The celebration of ‘juridical-political’ decolonization obscures the continuities between the colonial past and coloniality – it leads to illusions of possibilities of enjoyment of ‘independence’ and ‘freedom’, ‘national sovereignty’ and ‘national identity’, as well as ‘national development’ and ‘progress’. Decoloniality pushes for transcendence over narrow conceptions of being decolonized and consistently gestures towards liberation from coloniality as a complex matrix of knowledge, power, and being. Decoloniality consistently reminds decolonial thinkers of ‘the unfinished and incomplete twentieth century dream of decolonization’ (Grosfoguel 2007: 221). Decoloniality announces the ‘the decolonial turn’ as a long existing ‘turn’ standing in opposition to the ‘colonizing turn’ underpinning Western thought (Maldonado-Torres 2011: 1). Decoloniality announces the broad ‘decolonial turn’ that involves the ‘task of the very decolonization of knowledge, power and being, including institutions such as the university’ (Maldonado-Torres 2011: 1). Maldonado-Torres elaborated on the essence of ‘decolonial turn’: The decolonial turn (different from the linguistic or the pragmatic turns) refers to the decisive recognition and propagation of decolonization as an ethical, political, and epistemic project in the twentieth century. The project reflects changes in historical consciousness, agency, and knowledge, and it also involves a method or series of methods that facilitate the task of decolonization at the material and epistemic levels (Maldonado-Torres 2006: 114). For Maldonado, ‘By decoloniality it is meant here the dismantling of relations of power and conceptions of knowledge that foment the reproduction of racial, gender, and geo-political hierarchies that came into being or found new and more powerful forms of expression in the modern/colonial world’ (Maldonado-Torres 2006: 117). Like all critical social theories of society, the decolonial epistemic perspective aims to critique and possibly overcome the epistemological injustices put in place by imperial global designs, and questions and challenges the longstanding claims of Euro-American epistemology to be universal, neutral, objective, disembodied, as well as being the only mode of knowing. It is ‘an-other thought’ that seeks to inaugurate ‘an-other logic,’ ‘an-other language,’ and ‘an-other thinking’ that has the potential to liberate ex-colonised people’s minds from Euro-American hegemony (Mignolo 2005: 56). Decoloniality helps in unveiling epistemic silences, conspiracies, and epistemic violence hidden within Euro-American epistemology and affirms the epistemic rights of the African people that enable them to transcend global imperial designs. **Decoloniality is re-emerging during the current** age of ‘**epistemic break’**. The term ‘epistemic break’ is drawn from the French theorist Michel Foucault. It refers to **a ‘historical rupture which occurs when one epistemic system breaks down and another** begins **to take its place’** (Mills 1997: 145). It is a very relevant concept that captures the epistemic crisis haunting the modern world order today and encapsulates the enormity of the crisis of Euro-American epistemologies unleashed on the world by modernity. This epistemic rupture is well captured by Immanuel Wallerstein who argued that: It is quite normal for scholars and scientists to rethink issues. When important new evidence undermines old theories and predictions do not hold, we are pressed to rethink our premises. In that sense, much of nineteenth-century social science, in the form of specific hypotheses, is constantly being rethought. But, in addition to rethinking, which is “normal,” I believe we need to “unthink” nineteenth-century social science, because many of its presumptions—which, in my view, are misleading and constrictive – still have far too strong a hold on our mentalities. These presumptions, once considered liberating of the spirit, serve today as the central intellectual barrier to useful analysis of the social world (Wallerstein 1991: 1). The key point is that Euro-American epistemologies predicated on fundamentalist rationalism are in a deep crisis. In his recent book titled The end of conceit: western rationality after postcolonialism, Patrick Chabal admitted that whenever Europeans try to make sense of the current problems facing Europe it becomes clear that ‘the instruments we use are no longer fit for the job. The instruments – that is, the social sciences we employ to explain what is happening domestically and overseas – are both historically and conceptually out of date’ (Chabal 2012: viii). **The whole world is at an epistemological crossroads** characterised by the end of Euro-American conceit that created some form of epistemological certainty. As argued by Chabal (2012: 3), ‘**Western societies are no longer sure of how to see themselves.’ This uncertainty opens the way for projection of decoloniality** as the first humanistic-oriented philosophy of liberation gesturing towards another world that is pluriversal, another logic that is freed from racism and the birth of a new humanism. This volume of Africanus is inspired by this new utopic-decolonial momentum gesturing towards deeper structural decolonization and pluriversalism freed from racial hierarchization of human beings. The first article is by the language specialist Finex Ndhlovu and is focused on the important question of African regional integration and pan-African unity. He deploys decoloniality to argue the crossborder languages that have been promoted as vehicles for African economic and political integration are actually carrying dominant ideologies of Westphalian statism and the Berlin consensus that are not easily amenable to regional integration. He challenges the conventional view of the African Academy of Languages (Acalan) of projecting vehicular cross-border languages as a means by which such problems as disunity could be resolved. Ndhlovu argues that ‘One of the biggest challenges that come with these developments is that of cultivating intercultural communication, cross-linguistic understanding and social cohesion among the hitherto linguistically and culturally multiverse peoples of the African continent.’ He goes further to note that vehicular cross-border languages (those languages that are common to two or more states and domains straddling various usages) suffer from the same limitations as those currently besetting national languages because they are ‘conceived as isomorphic, monolithic and countable entities that do not accommodate other language forms’ and their ‘cross-border status is defined in terms of existing nation-state boundaries that they purport to transcend’. Ndhlovu’s intervention begins to reveal coloniality hidden in some of the celebrated mechanism chosen as levers for achieving regional integration and pan-African unity. This critical thinking is very important as it enable Africans to avoid another false start that is not informed by genuine decoloniality. What epistemologies and knowledges underpin mainstream development discourse? This question is directly addressed by Seth Opong from Ghana who argues for indigenizing knowledges as the first step towards attainment of endogenous development. He defines endogenous knowledge ‘as knowledge about the people, by the people and for the people’. This definition is important as it distinguishes those knowledges imposed on Africa from outside those knowledges generated by Africans. Opong’s contribution proposes that ‘the African scholar should adopt a problem-oriented approach in conducting research as opposed to the current method-oriented approach that prevent the African from examining pertinent African problems’. Opong correctly notes that ‘contextually relevant knowledge is the basis for national development’. His article is therefore a most relevant intervention on the level of epistemology, pedagogy and methodology as they impinge on the question of development in Africa. Morgan Ndlovu’s article on the pertinent theme of production and consumption of cultural villages in South Africa addresses the question of coloniality that is hidden within the tourism industry. He begins with questioning whether those who fought against colonialism really understood the complexity of the structure of power they were fighting against and the character of the modern world system that enabled colonialism. This becomes a pertinent question when one considers that today decolonization exists as myth and an illusion. The reality is that of coloniality on a global scale. His core argument is the concept of cultural villages in South Africa cannot be understood outside the broader global experiences of ‘museumification’ of identity and ‘culturalization’ of politics’. Morgan Ndlovu’s article takes us to the tourist industry as a component of development in Africa and consistently reveals how staging culture is shot through by coloniality, which makes it impossible for Africans to reap any tangible developmental dividends. This is why he concludes that ‘The manner in which the establishment of cultural village is produced and consumed in South Africa microcosmically represents the general picture of how cultural identity and the political economy are hierarchical ordered in the non-existent post-apartheid dispensation.’ Sarah Chiumbu’s contribution targets the media as another domain of coloniality that needs decolonization. When decolonial thinkers use the term decolonization they do not confine it to decolonial issues of juridical-political independence. They extend it to issues of power, knowledge and being. This is why Chiumbu’s specific focus is no media reform in southern Africa that continues to generate animated debates between agents of neo-liberalism and those of African liberation is very important. Coloniality of power is causing a lot of confusion in the debates on media reform and democracy, with the neo-liberal paradigm continuing to work towards obscuring the workings of power and disguising its ideological underpinnings. Chiumbu correctly notes that ‘This masking does not leave room to problematize global structures directing knowledge production and media policy reforms.’

#### The only ethical response to settlerism is one of decolonization.

Tuck and Yang 12

(Eve Tuck, Unangax, State University of New York at New Paltz K. Wayne Yang University of California, San Diego, Decolonization is not a metaphor, Decolonization: Indigeneity, Education & Society Vol. 1, No. 1, 2012, pp. 1-40, JKS)

An ethic of incommensurability, which guides moves that unsettle innocence, stands in contrast to aims of reconciliation, which motivate settler moves to innocence. Reconciliation is about rescuing settler normalcy, about rescuing a settler future. Reconciliation is concerned with questions of what will decolonization look like? What will happen after abolition? What will be the consequences of decolonization for the settler? Incommensurability acknowledges that these questions need not, and perhaps cannot, be answered in order for decolonization to exist as a framework.

We want to say, first, that decolonization is not obliged to answer those questions - decolonization is not accountable to settlers, or settler futurity. Decolonization is accountable to Indigenous sovereignty and futurity. Still, we acknowledge the questions of those wary participants in Occupy Oakland and other settlers who want to know what decolonization will require of them. The answers are not fully in view and can’t be as long as decolonization remains punctuated by metaphor. The answers will not emerge from friendly understanding, and indeed require a dangerous understanding of uncommonality that un-coalesces coalition politics - moves that may feel very unfriendly. But we will find out the answers as we get there, “in the exact measure that we can discern the movements which give [decolonization] historical form and content” (Fanon, 1963, p. 36).

To fully enact an ethic of incommensurability means relinquishing settler futurity, abandoning the hope that settlers may one day be commensurable to Native peoples. It means removing the asterisks, periods, commas, apostrophes, the whereas’s, buts, and conditional clauses that punctuate decolonization and underwrite settler innocence. The Native futures, the lives to be lived once the settler nation is gone - these are the unwritten possibilities made possible by an ethic of incommensurability.

*when you take away the punctuation*

*he says of*

*lines lifted from the documents about military-occupied land*

*its acreage and location*

*you take away its finality*

*opening the possibility of other futures*

-Craig Santos Perez, Chamoru scholar and poet (as quoted by Voeltz, 2012)

Decolonization offers a different perspective to human and civil rights based approaches to justice, an unsettling one, rather than a complementary one. Decolonization is not an “and”. It is an elsewhere.

#### Representations and epistemology perpetuate settler practices – the way we understand and discuss the structures around us overdetermines our praxis – that answers Mukuka

Seawright 14 Gardner Seawright is a doctoral candidate in the Education, Culture, and Society department at the University of Utah. “Settler Traditions of Place: Making Explicit the Epistemological Legacy of White Supremacy and Settler Colonialism for Place-Based Education.” EDUCATIONAL STUDIES, 50: 554–572, 2014, American Educational Studies Association. JJN

Situating Settler Traditions Settler traditions of place are an epistemic genealogy—the ethics, logics, and ideologies foundational to a knowledge system that have been passed down across generations, a knowledge framework that establishes what is known (the socially constructed commonsense of a culture), how things come to be known (the process of attaining new knowledge), how the world is to be interpreted according to what is known (the social construction of reality), and how the self is known in relation to perceived reality (the politics of self). Tradition is used as a conceptual tool allowing for domination to be empha- sized as an on-going historical process, while also allowing for epistemology as tradition to simultaneously be evolutionary and a cherished cultural artifact. As a cultural product, settler traditions of place are transmitted across generations through discipline, teaching, modeling and other forms of direct and subtle so- cial communication resulting in normalized habits, beliefs, values, and practices. In speaking about “western cultural traditions,” Val Plumood (2002) argues that there are “epistemic and moral limitations” embedded in these traditions—these normalized habits—that perpetuate hierarchized notions of the world that privi- lege white-hetero-landowning males (99). As Martusewicz et al. (2011) explain, these subtle discourses manifest as taken-for-granted cultural assumptions that are rooted in racism, sexism, classism that intertwine with and reflect the cultivation of violent relationships with the more-than-human world and natural systems that we depend on for life (119). The tradition in question here is the social air that penetrates the Western world, interacting with human beings whether they want it to or not. Using tradition as a metaphor for epistemology allows me to emphasize the way epistemology can im- pact every aspect of life while remaining removed from a deterministic position. Embedded in discourse, tradition appears as ever-present; despite this, individual social actors have the agency to break tradition. Consequently, in the same way that an individual breaks from familial, cultural, or religious tradition and faces the ramifications for transgressing, epistemic transgression can also incur social fallout and cause friction. When an individual epistemically transgresses, they employ an epistemic praxis (the operationalization of an alternative or critical epistemology) that goes against the grain and is counter to the tradition that defines the social environment. For conversations concerning the cultivation of criticality (like the one herein) this break in tradition is absolutely desirable and can inspire what Jose ́ Medina (2013) calls epistemic friction. Epistemic friction is contained in those uncomfortable moments in which our taken-for-granted assumptions about the world begin to crack. These moments can be transformative and cat- alyze critical consciousness to imagine and hopefully actualize an alternative epistemology.

#### The ROJ is to center indigenous knowledge production -- Our epistemology is a pre-requisite – they don’t get to weigh the case or their framing if we win their starting point is flawed

Ballantyne 14 [Erin Freeland, Dechinta Bush U, *Dechinta Bush University: Mobilizing a knowledge economy of reciprocity, resurgence and decolonization*, Decolonization: Indigeneity, Education & Society Vol. 3, No. 3, 2014, pgs 67-85,]

As the conversation of Dechinta grew, the ugly politics of education on a broad political scale quickly surfaced. It became clear that education is a domain of power and privilege that is fiercely protected. Questions relating to control over its content, production and process were, apparently, not open for discussion. Curricula were deeply homogenized, deterritorialized and standardized. Post-secondary in the territory was overtly geared toward training people for industry and the endless promise of mining, pipeline and oil and gas booms (and busts). People were either emphatically supportive of the notion of ‘Elders as professors’ being recognized as equals and collaborating with university professors, or incensed by its disruption of typical academic power. The creation of Dechinta was polarizing, and reactions were telling of the deeply embedded sense of entitlement and power that the state, and existing institutions, had over determining what did and did not count as ‘education’. Rather than support spaces where academic and Indigenous knowledge would overlap, Indigenous knowledge was viewed as curriculum that should be relegated to ‘culture camps’. That processes like hunting and moose-hide tanning could draw parallels, or even inform governance, consensus building and self-determination, continue to elude most mainstream reporters, critics and institutions. Coming back to the land is a battle. ‘Education’ on the land is a direct hit to the exoskeleton of continued colonial power. By specifically disrupting education as a domain of settler colonial control to be deconstructed and re-imagined, Dechinta has challenged the most comprehensive, yet skilfully cloaked machine of settler colonial capitalism - the prescriptive education process, which produces more settler colonial bodies, thinkers, and believers. Building strong relationships of reciprocity with the land results in the crumbling of settler capitalism because it fundamentally shifts the relationships people experience and what they believe about who they|||people||| are, how they are in relation to and with land, and what they believe to be true. Being together on the land, learning with the land, and having a strong relationship with the land is antithetical to settler capitalism itself. The power of settler colonization relies on the total deterritorialization of people’s relationship with land. Deleuze and Guattari’s (1972) work on deterritorialization, ‘the process whereby colonization leads not just to the loss of territory but also to the destruction of the ontological conditions of the colonized culture’s territoriality,’ is a fitting philosophical conjecture to Dene expressions of how they are dislocated from their relationships with land due to process of nation-building and capitalism, and how this deterritorialization separates people from practices with the land that keeps them healthy, even if they still live on the land (Deleuze and Guattari, 1987, p. 192; Hipwell, 2004, p. 304). As Said (1993) has stated: land, in the final instance, is what empire is about. In this way, our relationships with land are central to the great unsettling. Reconnection, and the exchange of skills, knowledge and practice with land, thus directly threaten the settler colonial project. It removes bodies from the forces designed to encode the body as capital. The foremost space of enclosure, of encoding, is the ‘school’. The ongoing trend in Indigenous and Northern settler education since its earliest colonial intrusion has been to train Indigenous bodies to serve the needs of industry. Education has happened in Denendeh since time immemorial. It has been the settler prerogative to dismantle Indigenous ways of knowing and being, of education. Returning learning to an intergenerational exchange, on the land - which has at its very core the fundamental teachings that, if we take care of the land, the land takes care of us - will shake the foundation of settler colonization by breaking the dependency that has been created on capitalism through deterritorialization. Transformational learning supports intergenerational learners and teachers to think critically and re-imagine what the purpose of learning is. Learning on the land is healing and being in community on the land is challenging, pulling our attention to the hard work of decolonization. The year after our initial gathering, Dechinta launched a pilot semester with three courses nested within an interdisciplinary approach. Student evaluations of the program indicated it was profoundly ‘transformative’, and was for some the first ‘safe space’ of education that they had encountered (Luig et al, 2011). Interdisciplinary and collaborative, the pilot set the stage for the following four years. Dechinta now has 8 original courses, and a two semester-long program growing into a full degree that operates from -50 winters to the steamy height of summer. The challenges have been substantial. Conflict between academics and Indigenous students have made real the tensions of working on decolonization in concert, even with those who identify, or who are identified as allies. Solving conflict and difficulties through shared governance circles, while combating ingrained reactions of lateral violence and other social expressions codified in settler colonization are truly challenging, but deeply rewarding. Through the building of relationships we have a growing cohort of faculty dedicated to not just teaching but sharing in the creation of safe spaces, where the hard mental work of decolonizing in theory is met with the even harder work of decolonizing as practice. When students and faculty create a community where their relationships are ordered through their relationships with land, the work of decolonization move from a discussion in theory to practice of being and becoming a source of decolonial power. At Dechinta we debate this, and experiment with its meaning in tangible ways. Here, skills categorized as ‘subsistence’ or ‘arts and crafts’ are fundamental in forming and understanding theory. Such practices are themselves theory in action.

#### Their ROJ starts from a flawed starting point assuming legal system are key and is biased towards– my ROJ solves & they can read their offense under it

## Case

#### 1] Companies don’t publicly say the source of their knowledge is stolen from indigenous people. They will maintain patents by distancing themselves from indigenous knowledge and claiming it for themselves and there is no way to verify what is or isn’t indigenous knowledge

#### 2] Even small changes make pharma companies fear patent reform

**Asgari et al. 21** [Nikou Asgari, markets reporter for the Financial Times, Donato Paolo Mancini, FT's pharma reporter, and Hannah Kuchler, FT’s global pharmaceutical correspondent, 05-06-2021, "Pharma industry fears Biden’s patent move sets precedent," FT, https://amp.ft.com/content/f54bf71b-87be-4290-9c95-4d110eec7a90]/Kankee

Profits in the pharmaceutical industry are protected by a **fortress of patents** that **guarantee** drugmakers a stream of income until they expire. On Wednesday, Joe Biden broke with decades of US orthodoxy and made a crack in the wall. His administration’s decision to support a temporary waiver of Covid-19 vaccine patents prompted **instant outrage** in the pharmaceutical sector, which argues that the move rides roughshod over their intellectual property rights and will discourage US innovation while sending jobs abroad. “Intellectual property is the **lifeblood** of biotech, it’s like oxygen to our industry,” said Brad Loncar, a biotech investor. “If you take it away, you don’t have a biotech sector.” Biden’s top trade adviser Katherine Tai said that while the US government still “believes strongly” in intellectual property protections, it supported waiving patents for Covid-19 vaccines to help boost global production of jabs. The move comes as some countries, including India, struggle to tackle further waves of the virus even as others have rolled out successful vaccination campaigns that are driving down infections, hospitalisations and deaths. The waiver proposal was put forward at the World Trade Organization in October and has since been supported by more than 60 countries who say worldwide vaccine production must increase dramatically. Washington’s support marks a pivotal step in making the proposal a reality and Tai said the US would engage in negotiations to hammer out the details at the WTO. Tedros Adhanom Ghebreyesus, the WHO’s director-general, told the Financial Times the decision was a “**monumental moment**” in the fight against Covid-19. “I am not surprised by this announcement. This is what I expected from the administration of President Biden.” However, the pharma industry did not expect it; the US has tended to **fiercely protect** domestic companies’ intellectual property rights in trade disputes. Industry leaders described the decision as a heavy blow for innovation that would do little to boost global production because there is a shortage of manufacturing facilities and skilled employees. In an earnings call Thursday, Stéphane Bancel, chief executive of Moderna, said a patent waiver “will not help supply more mRNA vaccines to the world any faster in 2021 and 2022, which is the most critical time of the pandemic”. “There is no idle mRNA manufacturing capacity in the world,” he said. “The administration’s steps here are very unnecessary and damaging,” said Jeremy Levin, chair of biotech trade association Bio. “Securing vaccines rapidly will not be the result, and worse yet, it sets a principle that companies who invested in new tech will stand the risk of having that taken away.” Shares in the big makers of Covid-19 vaccines were hit by the announcement. Frankfurt-listed shares in BioNTech closed down 12 per cent on Thursday while Moderna and Novavax pared losses after tanking on Wednesday in New York, trading 2.4 per cent lower and 1 per cent lower, respectively. CanSino Biologics, a Chinese private company that developed a single-shot adenovirus-vectored vaccine with Chinese military researchers, fell 14 per cent on Thursday. Fosun Pharma, which has a deal to supply BioNTech vaccines in China, lost 9 per cent. Sven Borho, a managing partner at OrbiMed Advisors, a healthcare investment company, said pharma executives **feared** the administration’s move set a **precedent** that would make it easier to suspend patents in the future. “They are **worried** in the long term that this is a **foot in the door** — ‘OK, we did it with Covid-19, let’s do it with the next crisis, and the next one’,” he said. “And then suddenly it’s a cancer drug patent that needs to be invalidated. They fear it is a mechanism that sets the stage for actions in the future.” Peter Bach, director of Memorial Sloan Kettering’s Center for Health Policy and Outcomes, said there was a potential trade-off that pitted the imminent need to contain the pandemic against the risk that drugmakers would be more cautious when investing in pioneering therapies in the future.

#### The pharma industry will fight with the best lobbying that exists

**Huetteman 20** [Emmarie Huetteman, former NYT Congressional correspondent with an MA in public affairs reporting from Northwestern University’s Medill School, 2-26-2019, "Senators Who Led Pharma-Friendly Patent Reform Also Prime Targets For Pharma Cash," Kaiser Health News, https://khn.org/news/senators-who-led-pharma-friendly-patent-reform-also-prime-targets-for-pharma-cash/]/Kankee

Early last year, as lawmakers vowed to curb rising drug prices, Sen. Thom Tillis was named chairman of the Senate Judiciary Committee’s subcommittee on intellectual property rights, a committee that had not met since 2007. As the new gatekeeper for laws and oversight of the nation’s patent system, the North Carolina Republican signaled he was determined to make it easier for American businesses to benefit from it — a welcome message to the drugmakers who already leverage patents to block competitors and keep prices high. Less than three weeks after introducing a bill that would make it harder for generic drugmakers to compete with patent-holding drugmakers, Tillis opened the subcommittee’s first meeting on Feb. 26, 2019, with his own vow. “From the United States Patent and Trademark Office to the State Department’s Office of Intellectual Property Enforcement, no department or bureau is too big or too small for this subcommittee to take interest,” he said. “And we will.” In the months that followed, tens of thousands of dollars flowed from pharmaceutical companies toward his campaign, as well as to the campaigns of other subcommittee members — including some who promised to stop drugmakers from playing money-making games with the patent system, like Sen. John Cornyn (R-Texas). Tillis received more than $156,000 from political action committees tied to drug manufacturers in 2019, more than any other member of Congress, a new analysis of KHN’s Pharma Cash to Congress database shows. Sen. Chris Coons (D-Del.), the top Democrat on the subcommittee who worked side by side with Tillis, received more than $124,000 in drugmaker contributions last year, making him the No. 3 recipient in Congress. No. 2 was Sen. Mitch McConnell (R-Ky.), who took in about $139,000. As the Senate majority leader, he controls what legislation gets voted on by the Senate. Neither Tillis nor Coons sits on the Senate committees that introduced legislation last year to lower drug prices through methods like capping price increases to the rate of inflation. Of the four senators who drafted those bills, none received more than $76,000 from drug manufacturers in 2019. Tillis and Coons spent much of last year working on significant legislation that would expand the range of items eligible to be patented — a change that some experts say would make it easier for companies developing medical tests and treatments to own things that aren’t traditionally inventions, like genetic code. They have not yet officially introduced a bill. As obscure as patents might seem in an era of public outrage over drug prices, the fact that drugmakers gave most to the lawmakers working to change the patent system belies how important securing the exclusive right to market a drug, and keep competitors at bay, is to their bottom line. “**Pharma will fight to the death to preserve patent rights**,” said Robin Feldman, a professor at the UC Hastings College of the Law in San Francisco who is an expert in intellectual property rights and drug pricing. “Strong patent rights are **central** to the games drug companies play to extend their **monopolies** and keep prices high.” Campaign contributions, closely tracked by the Federal Election Commission, are among the few windows into how much money flows from the political groups of drugmakers and other companies to the lawmakers and their campaigns. Private companies generally give money to members of Congress to encourage them to listen to the companies, typically through lobbyists, whose activities are difficult to track. They may also communicate through so-called dark money groups, which are not required to report who gives them money. Over the past 10 years, the pharmaceutical industry has spent about $**233 million per year** on lobbying, according to a new study published in JAMA Internal Medicine. That is more than **any other industry**, including the oil and gas industry. Why Patents Matter Developing and testing a new drug, and gaining approval from the Food and Drug Administration, can take years and cost hundreds of millions of dollars. Drugmakers are generally granted a six- or seven-year exclusivity period to recoup their investments. But drugmakers have found ways to extend that period of exclusivity, sometimes accumulating hundreds of patents on the same drug and blocking competition for decades. One method is to patent many inventions beyond a drug’s active ingredient, such as patenting the injection device that administers the drug. Keeping that arrangement intact, or expanding what can be patented, is where lawmakers come in. Lawmakers Dig In Tillis’ home state of North Carolina is also home to three major research universities and, not coincidentally, multiple drugmakers’ headquarters, factories and other facilities. From his swearing-in in 2015 to the end of 2018, Tillis received about $160,000 from drugmakers based there or beyond. He almost matched that four-year total in 2019 alone, in the midst of a difficult reelection campaign to be decided this fall. He has raised nearly $10 million for his campaign, with lobbyists among his biggest contributors, according to OpenSecrets. Daniel Keylin, a spokesperson for Tillis, said Tillis and Coons, the subcommittee’s top Democrat, are working to overhaul the country’s “antiquated intellectual property laws.” Keylin said the bipartisan effort protects the development and access to affordable, lifesaving medication for patients,” adding: “No contribution has any impact on how [Tillis] votes or legislates.” Tillis signaled his openness to the drug industry early on. The day before being named chairman, he reintroduced a bill that would limit the options generic drugmakers have to challenge allegedly invalid patents, effectively helping brand-name drugmakers protect their monopolies. Former Sen. Orrin Hatch (R-Utah), whose warm relationship with the drug industry was well-known, had introduced the legislation, the Hatch-Waxman Integrity Act, just days before his retirement in 2018. At his subcommittee’s first hearing, Tillis said the members would rely on testimony from private businesses to guide them. He promised to hold hearings on patent eligibility standards and “reforms to the Patent Trial and Appeal Board.” In practice, the Hatch-Waxman Integrity Act would require generics makers challenging another drugmaker’s patent to either take their claim to the Patent Trial and Appeal Board, which acts as a sort of cheaper, faster quality check to catch bad patents, or file a lawsuit. A study released last year found that, since Congress created the Patent Trial and Appeal Board in 2011, it has narrowed or overturned about 51% of the drugmaker patents that generics makers have challenged. Feldman said the drug industry “went berserk” over the number of patents the board changed and has been eager to limit use of the board as much as possible. Patent reviewers are often stretched thin and sometimes make mistakes, said Aaron Kesselheim, a Harvard Medical School professor who is an expert in intellectual property rights and drug development. Limiting the ways to challenge patents, as Tillis’ bill would, does not strengthen the patent system, he said. “You want overlapping oversight for a system that is as important and fundamental as this system is,” he said. As promised, Tillis and Coons also spent much of the year working on so-called Section 101 reform regarding what is eligible to be patented — “a very major change” that “would overturn more than a century of Supreme Court law,” Feldman said. Sean Coit, Coons’ spokesperson, said lowering drug prices is one of the senator’s top priorities and pointed to Coon’s support for legislation the pharmaceutical industry opposes. “One of the reasons Senator Coons is leading efforts in Congress to fix our broken patent system is so that life-saving medicines can actually be developed and produced at affordable prices for every American,” Coit wrote in an email, adding that “his work on Section 101 reform has brought together advocates from across the spectrum, including academics and health experts.” In August, when much of Capitol Hill had emptied for summer recess, Tillis and Coons held closed-door meetings to preview their legislation to stakeholders, including the Pharmaceutical Research and Manufacturers of America, or PhRMA, the brand-name drug industry’s lobbying group. “We regularly engage with members of Congress in both parties to advance practical policy solutions that will lower medicine costs for patients,” said Holly Campbell, a PhRMA spokesperson. Neither proposal has received a public hearing. In the 30 days before Tillis and Coons were named leaders of the revived subcommittee, drug manufacturers gave them $21,000 from their political action committees. In the 30 days following that first hearing, Tillis and Coons received $60,000. Among their donors were PhRMA; the Biotechnology Innovation Organization, the biotech lobbying group; and five of the seven drugmakers whose executives — as Tillis laid out a pharma-friendly agenda for his new subcommittee — were getting chewed out by senators in a different hearing room over patent abuse. Cornyn Goes After Patent Abuse Richard Gonzalez, chief executive of AbbVie Inc., the company known for its top-selling drug, Humira, had spent the morning sitting stone-faced before the Senate Finance Committee as, one after another, senators excoriated him and six other executives of brand-name drug manufacturers over how they price their products. Cornyn brought up AbbVie’s more than 130 patents on Humira. Hadn’t the company blocked its competition? Cornyn asked Gonzalez, who carefully explained how AbbVie’s lawsuit against a generics competitor and subsequent licensing deal was not what he would describe as anti-competitive behavior. “I realize it may not be popular,” Gonzalez said. “But I think it is a reasonable balance.” A minute later, Cornyn turned to Sen. Chuck Grassley (R-Iowa), who, like Cornyn, was also a member of the revived intellectual property subcommittee. This is worth looking into with “our Judiciary Committee authorities as well,” Cornyn said, effectively threatening legislation on patent abuse. The next day, Mylan, one of the largest producers of generic drugs, gave Cornyn $5,000, FEC records show. The company had not donated to Cornyn in years. By midsummer, every drug company that sent an executive to that hearing had given money to Cornyn, including AbbVie. Cornyn, who faces perhaps the most difficult reelection fight of his career this fall, ranks No. 6 among members of Congress in drugmaker PAC contributions last year, KHN’s analysis shows. He received about $104,000. Cornyn has received about $708,500 from drugmakers since 2007, KHN’s database shows. According to OpenSecrets, he has raised more than $17 million for this year’s reelection campaign. Cornyn’s office declined to comment. On May 9, Cornyn and Sen. Richard Blumenthal (D-Conn.) introduced the Affordable Prescriptions for Patients Act, which proposed to define two tactics used by drug companies to make it easier for the Federal Trade Commission to prosecute them: “product-hopping,” when drugmakers withdraw older versions of their drugs from the market to push patients toward newer, more expensive ones, and “patent-thicketing,” when drugmakers amass a series of patents to drag out their exclusivity and slow rival generics makers, who must challenge those patents to enter the market once the initial exclusivity ends. PhRMA opposed the bill. The next day, it gave Cornyn $1,000. Cornyn and Blumenthal’s bill would have been “very tough on the techniques that pharmaceutical companies use to extend patent protections and to keep prices high,” Feldman said. “The pharmaceutical industry lobbied **tooth and nail** against it,” she said. “And when the bill finally came out of committee, the strongest provisions — the patent-thicketing provisions — had been **stripped**.” In the months after the bill cleared committee and waited to be taken up by the Senate, Cornyn blamed Senate Democrats for blocking the bill while trying to secure votes on legislation with more direct controls on drug prices. The Senate has not voted on the bill.

#### Big pharma wins –Congress waters down the aff so de facto monopolies remain

**Florko and Facher 19** [Nicholas Florko, Stat News Washington correspondent, and Lev Facher, Stat News health and life sciences writer, 07-16-2019, “How pharma, under attack from all sides, keeps winning in Washington,” Stat News, https://www.statnews.com/2019/07/16/pharma-still-winning/]/Kankee

It does not seem to matter how angrily President Trump tweets, how pointedly House Speaker Nancy Pelosi lobs a critique, or how shrewdly health secretary Alex Azar drafts a regulatory change. The pharmaceutical industry is still winning in Washington. In the past month alone, drug makers and the **army of lobbyists** they employ **pressured** a Republican senator not to push forward a bill that would have limited some of their intellectual property rights, according to lobbyists and industry representatives. They managed to water down another before it was added to a legislative package aimed at lowering health care costs. Lobbyists also convinced yet another GOP lawmaker — once bombastically opposed to the industry’s patent tactics — to publicly commit to softening his own legislation on the topic, as STAT reported last month. Even off Capitol Hill, they found a way to block perhaps the Trump administration’s most substantial anti-industry accomplishment in the past two years: a rule that would have required drug companies to list their prices in television ads. To pick their way through the policy minefield, drug makers have successfully deployed dozens of lobbyists and devoted **record-breaking sums** to their federal advocacy efforts. But there is also a seemingly new strategy in play: industry CEOs have targeted their campaign donations this year on a pair of vulnerable Republican lawmakers — and then called on them not to upend the industry’s business model. In more than a dozen interviews by STAT with an array of industry employees, Capitol Hill staff, lobbyists, policy analysts, and advocates for lower drug prices, however, an unmistakable disconnect emerges. Even though Washington has stepped up its rhetorical attacks on the industry, and focused its policymaking efforts on reining in high drug prices, the pharmaceutical industry’s time-honored lobbying and advocacy strategies have kept both lawmakers and the Trump administration from landing any of their prescription-drug punches. “**Big Pharma has replaced Big Tobacco** as the most powerful brute in the ranks of Washington power brokers,” Sen. Dick Durbin (D-Ill.) said in a statement to STAT. Durbin, who recently saw the industry successfully oppose his proposal to curtail some of the industry’s patent maneuvering, added that, “Pharma’s billions allow them to continue to rip off American families and taxpayers.” The industry doesn’t get all the credit; it has also benefited from a fractured Congress and discord between President Trump’s most senior health care advisers. PhRMA, the drug industry’s largest lobbying group here, declined to comment for this article. But industry leaders have broadly argued against efforts to rein in the industry’s practices in terms of price hikes and patents, making the case that that could irreparably stifle medical innovation. The battle is far from over, and industry representatives and lobbyists are quick to hypothesize that the worst, for them, is yet to come. They point to several ongoing legislative initiatives, including in the Senate Finance Committee, that could take more concerted direct aim at their pricing strategies in Medicare. They’re waiting, too, to see if House Democrats can cut a drug pricing deal with the White House to empower Medicare to negotiate at least some drug prices. Another pending regulation, loathed by drug makers, might tie their pricing decisions in Medicare to an index of international prices. They’ve also bemoaned the Trump administration’s decision last week to abandon a policy change that would have ended drug rebates — which, the pharmaceutical industry has said, could have given drug makers more space to lower their prices voluntarily. “We’re getting killed!” one pharma lobbyist told STAT. Of course, the Trump administration’s supposedly devastating decision to abandon that proposal simply maintains the status quo. “Big Pharma has replaced Big Tobacco as the most powerful brute in the ranks of Washington power brokers.” n Valentine’s Day, Sen. Thom Tillis (R-N.C.) enjoyed a showering of love that is familiar in Washington: a flood of campaign contributions, many at the federal limit of $2,800 for a candidate or $5,000 for an affiliated political committee. One donation came from Pfizer’s CEO, Albert Bourla, who donated $5,000 to Tillis and another $10,000 to Sen. John Cornyn (R-Texas) and associated campaign committees. Another came from Kenneth Frazier, the top executive at Merck. The Tillis campaign committee eventually cashed checks from CEOs and other high-ranking executives at those companies as well as Amgen, Eli Lilly, Sanofi, and Bristol Myers-Squibb, plus two high-ranking officials at the advocacy group PhRMA. Six lobbyists at one firm that works with PhRMA, BGR, also combined to contribute $100,000 to a bevy of Republican lawmakers and the party’s campaign arms. Tillis raised an additional $64,500 from drug industry political action committees in the past quarter, according to disclosures released on Monday. A Pfizer spokeswoman declined to comment about Bourla’s contributions, and representatives for the other companies did not respond to STAT’s request for comment. Tills was one of few individual lawmakers — in many cases, the only one — to whom the executives had written personal checks during the current election cycle. While drug industry CEOs frequently contribute to political committees for congressional leadership, the breadth of executives who donated Tillis specifically is notable, particularly considering his outspoken role on pharmaceutical industry issues. While lobbyists pushed back on the notion that campaign contributions directly influence votes, the donations targeted so specifically to a particular candidate could be seen as a prime example of Washington’s system for rewarding loyalty and how industries protect their interests. The same PhRMA PAC that donated to Tillis has given generously in recent years: nearly $200,000 in the 2018 campaign cycle, roughly 58% of which was targeted toward Republicans. Drug industry PACs donated $10.3 million in total in that cycle, according to the Center for Responsive Politics. The figure two years before was even higher: a total of $12.2 million from industry-aligned PACs alone. It is no accident that the pharmaceutical industry has maintained its reputation among the nation’s **most powerful lobbies**, said Sheila Krumholz, the executive director of the Center for Responsive Politics, an organization that tracks political influence. “Their access and influence goes beyond this Congress or even the administration,” Krumholz said in an interview, adding that she “was **struggling** to think of evidence” it had waned. Pharma has a reputation here for winning on policy — often thanks to the lawmakers who are among the biggest recipients of the millions that drug corporations, employees, and the industry political arms donate each year. Even as the rhetoric has escalated, the industry has quietly worked to insulate itself from any major legislative changes. Take, for example, a recent about-face from Cornyn, the Texas Republican who took in some campaign cash alongside Tillis. As recently as February, Cornyn seemed to be positioning himself as a rare Republican figurehead for anti-pharma congressional wrath. At a widely publicized hearing before the Senate Finance Committee, he went head-to-head with AbbVie CEO Richard Gonzalez, pressing him to explain why the company had filed more than 100 patents on its blockbuster arthritis drug Humira. Cornyn introduced legislation soon after the skirmish to crack down on patent “thicketing,” a term for a drug company tactic to accumulate tens, if not hundreds, of patents to shield a drug from potential generic competition. Pharma sprung into action. They recruited congressional allies, including Tillis, to pressure Cornyn to significantly rework the bill, and they succeeded. The version of the bill that eventually cleared the Senate Judiciary Committee was stripped of language that would have empowered the Federal Trade Commission to go after patent thicketing. Instead, the bill limited how many patents a drug maker could assert in a patent lawsuit. The new version of the bill lost “a lot of teeth” and “solves a narrower problem in a narrow way,” advocates told STAT when the change was first introduced. It is far from the only example of the industry’s aggressive **interventions** to **water down** legislation. “In lots of ways they’re like the [National Rifle Association], because they have an **incredible power** to **squash** out any negative opinion, nor to feel any of the ill effects of those things,” said Pallavi Damani Kumar, an American University crisis communications professor who once worked in media relations for drug manufacturers. “It just speaks to how incredibly savvy they are.” Pharmaceutical industry lobbyists also successfully fought to keep another anti-drug industry patent proposal from Sen. Bill Cassidy (R-La.) and Dick Durbin (D-Ill.) out of a bipartisan drug pricing package moving through the Senate HELP Committee. The legislation would have allowed the FDA to approve cheaper versions of drugs, even when the more expensive product was protected by certain patents. Cassidy’s proposal never even made it into the HELP package. As the lobbyist who bemoaned the withdrawal of the rebate rule put it, Cassidy “simmered down” in the face of industry pressure. In recent weeks, the industry had targeted Cassidy in particular, in recent weeks, for fear he would break with many of his GOP colleagues to support a cap on some price hikes for drugs purchased under Medicare, a proposal so far pushed only by Democrats. “Sen. Cassidy doesn’t care what lobbyists think — he is going to do what’s best for patients,” said Ty Bofferding, a Cassidy spokesman. “Sen. Cassidy fought for the committee to include the REMEDY Act in the package, despite strong opposition from the pharmaceutical industry.” The committee eventually included half the bill’s provisions, he added, as well as four other pieces of legislation meant to prevent the industry from taking advantage of the patent system. The drug industry also notched a win by watering down another proposal in that package from Sen. Susan Collins (R-Maine) that would have blocked drug makers from suing over patents they didn’t disclose to the FDA. The version of the bill that actually made it into the package doesn’t block drug makers from suing, but instead directs the FDA to create a public list of companies that fail to disclose their patents. “This change is a big win for drug makers,” Michael Carrier, a Rutgers University professor and expert on patent gaming, told STAT. “Shaming is something drug makers don’t seem worried about.” Matthew Lane, the executive director of the Coalition Against Patent Abuse, likewise added that the altered bill “doesn’t seem to be doing much anymore.” Not all of the pharma-endorsed changes, however, are self-serving. Patent experts and federal regulators too had raised concerns with some of the bill being proposed. Cornyn’s patent bill was particularly controversial. “These provisions encourage ‘fishing expeditions’ by zealous bureaucrats, politically motivated by the popularity of efforts to reduce drug prices and garner the political benefits of being seen to be pursuing these ends,” Kevin Noonan, a patent lawyer at McDonnell Boehnen Hulbert & Berghoff wrote in a recent blog post, referring to the original Cornyn bill. Drug-pricing advocates said lobbyists have even managed to convince lawmakers to introduce some legislation they say has explicitly favored the drug industry, including intellectual property-focused legislation that would allow drug makers to patent human genes. That particular bill would “undo the bipartisan effort underway to fix pharma’s exploitation of the patent system,” said the Coalition Against Patent Abuse. And they were far from the only group raising concerns. The American Civil Liberties Union and more than 150 other groups wrote to lawmakers last month opposing the bill. Pharma’s **list of** policy **victories** goes on: Drug companies and allied patient groups forced the Trump administration to back off a proposal to make relatively minor changes to Medicare’s so-called protected classes policy. Currently, Medicare is required to cover all drugs for certain conditions, including depression and HIV. The Trump administration proposed in November that private Medicare plans should be able to remove certain drugs in those classes from their formularies, if the drugs were just new formulations of a cheaper, older version of the same drug, or when a drug spiked in price. But drug industry opposition helped convince the administration to spike that effort. A week ago, the industry struck its biggest blow yet. Three of the country’s largest pharmaceutical companies —Amgen, Eli Lilly, and Merck — prevailed in a lawsuit to strike down a Trump administration requirement that they disclose list prices in television advertisements. The lack of congressional action — despite the Democratic enthusiasm and bipartisan appetite — is still further evidence of industry’s ability to **stave off defeat**. As the dozens of Democrats running for president ramp up their anti-pharma rhetoric, both Trump and progressives have begun to fret that Washington’s efforts have proven to be **all bark and no bite**. With two weeks remaining before the August recess and an escalating 2020 campaign, some advocates fear that the window for bold action is closing quickly. “It’s appalling that we are six months into this Congress and we haven’t seen meaningful legislation passed on American’s number one issue for this congress,” said Peter Maybarduk, who leads drug-pricing initiatives for the advocacy group Public Citizen. “Congress needs to get its act together.”

#### Impacts

#### A] Cruel Optimism – suggest indigenous reforms that are intended to fail and will fail

#### B] Settler reconciliation through people believing this legislative action is “good enough” they delay meaningful change through watered down legislation that seems to help indigenous people but fails to.

#### C] They destroy possibility of decol – contingent policy benefits aren’t enough AND delay change ie patent reform is nowhere near enough for indigenous people but the 1AC itself attempts to reconstruct the settlerist system, delaying and preventing decol

#### 3] The plan IS NOT indigenous IR. It mimicks it and attempts to shape it as such to enact a move to innocence for the debaters within the round. We must acknowledge and promote indigenous aims for decol, rather than subverting their aims and redirecting that energy towards the 1AC

#### 4] On Progress

#### A] Its superficial – on Ecohawk & Drew that decision enabled settler reconciliation which enables continued US occupation of indigenous land. The decision itself was with the US supreme court, with indigenous people in a subservient position

#### B] This rate of progress makes true indigenous gains impossible – the aff can never result in decol and their piecemeal injection of indigenous knowledge isn’t helpful when juxtaposed against the alt – they are a micro legislative reform so reject the perm which waters down the alt

#### C] Held says

**Decolonization is a long-term process involving the bureaucratic, cultural, linguistic, and psychological divesting of colonial power** (Smith, 2012) **by undoing “the privileging of dominant Euro-centred cultural values and beliefs in education, scholarship, knowledge production,**

#### We cannot do that under their own framework for the debate, using Eurocentric models like legal system to enact reforms