# Meadows R2 AC

#### Global health and trade policy surrounding intellectual property protections is usually rooted in normative theories of international relations. Every policy that is presented in these spaces is grounded in some sort of theory - Is this theorization grounded in liberalism? Realism? A Hobbesian view? A Keynesian view? A Lockean view? A specific theory of legalism?

#### Obviously, most teams read these types of normative theories that uphold their imagination of the resolution without questioning these types of theories. Debate is infested with colonizing power that sets norms that only serve to uphold a format that is wildly inaccessible to many.

#### Instead of using a normative theory to imagine the resolution passing, we should understand how foreign policy is indebted to settler colonialism. Indigenous peoples are erased in traditional views of the international through being cast as domestic, primitive, and landless. Normative foundational assumptions are complicit in the destruction of Native life and governance.

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(Hayden King, Gchi'mnissing Anishinaabe writer and educator based in the Faculty of Arts at Ryerson University in Toronto., 7-31-17, The erasure of Indigenous thought in foreign policy, https://www.opencanada.org/features/erasure-indigenous-thought-foreign-policy/, JKS)

This type of arrangement between Indigenous and non-Indigenous Canadians might be conceptualized as politics, indeed effective diplomatic practice in an imperfect world. But for the scholars and practitioners in the field of foreign policy it is invisible. Likewise with the more provocative type of Indigenous diplomacy: the countless blockades to protect the land and water, land and treaty claims, the Idle No More movement, and so on. In the discipline of International Relations (IR), too, Indigenous philosophy and politics has been excused, marginalized and categorized as domestic, at best. Indeed, the centuries of colonization that have subjugated Indigenous political communities are the foundation on which contemporary thinking about ‘the global’ has revolved. In this sense, foreign policy and IR are implicated in both spawning and sustaining settler colonialism in Canada. As a result, there is a need to chart the links between these processes and consider the shape and content of long-neglected Indigenous philosophies of the international. For as long as settler colonialism defines the limits of what is possible for foreign policy, the relationship (or, the politics) between Indigenous peoples and non-Indigenous will continue to be characterized by conflict. Foreign policy, but in whose national interest? For those studying and working in foreign policy, there are certainly debates over what constitutes the definition of the field. In Canada, there are debates about what counts as foreign policy (defence, security, trade, peacekeeping) and also how to approach those subjects (from liberal frameworks, realist, even some critical lenses). In his textbook on foreign policy Kim Nossal notes that the field is inherently divisive, emerging from “the interplay of conflicting interests, divergent objectives, contending perceptions, and different prescriptions about the most appropriate course of action.” Yet despite these divisive debates, there is near universal acceptance of two core assumptions: the legitimacy of the Canadian state itself as the primary actor in foreign policy and the concept of the national interest, which the field of foreign policy strives to serve. This is no surprise, really, considering these assumptions are underwritten and supported by every domestic institution — from Canada’s constitutional sources, to the cultural organizations that currently promulgate the fantasy of Canada as 150 years of glowing hearts, or decisions of the Supreme Court that reflect on the “assertion of Crown sovereignty” without ever explaining how that sovereignty was obtained. But for critical Indigenous scholars, these assumptions are myths that form not a legitimate state in the community of nations, but rather a violent settler colony. Flower break Indigenous Between 1921 and 1923, after many years of resistance to the young countries, Canada and the United States were steadily encroaching into Haudenosaunee territory and governance. Cayuga Chief Deskaheh, also known as Levi General, travelled to London, England, to appeal to King George on the matter. (He wasn’t the first or last to appeal to a King or Queen; Anishinaabe leader Shingwaukonse actively attempted to, post-War of 1812, and Chief Theresa Spence did so in 2013, among many others). But when King George refused him, Deskaheh turned to the Geneva-based League of Nations, seeking a seat for the Haudenosaunee. With his efforts undermined by English officials there too, he returned home but was stopped at the U.S.-Canada border and turned away by Canadian border guards. He spent his final days in Rochester, New York. Before his death he made one last plea to ordinary Canadians and Americans for justice: “Do you believe — really believe — that all peoples are entitled to equal protection of international law now that you are so strong? Do you believe — really believe — that treaty pledges should be kept? Think these questions over and answer them to yourselves…We have little territory left — just enough to live and die on [because] the governments of Washington and Ottawa have a silent partnership of policy. It is aimed to break up every tribe of red men so as to dominate every acre of their territory.” (His plea is documented in Rick Monture’s We Share Our Matters.) The last two sentences of this quote are an apt description of modern settler colonialism, nearly 100 years before scholars identified the process. For anthropologist Patrick Wolfe, there is a distinction between colonialism, which eventually ends when the invaders leave, and settler colonialism, where they don’t. While in the former formulation the Indigenous population is often transformed to labour for colonial extraction, in the latter, the settler colony attempts to liquidate all remnants of the previous (Indigenous) societies to legitimize its permanent presence. Deskaheh was speaking in the North American context, Wolfe in the Australian, but the phenomenon can be seen elsewhere, from Aotearoa/New Zealand to Palestine/Israel. Common strategies in this liquidation are as follows: physical extermination; oppressive Indian legislation designed to contain; the creation of reserves/reservations/settlements, residential or boarding schools; discrimination aimed specifically at women; and eventually legal absorption into state apparatuses and assimilation. While the genocidal nature of settler colonialism may not appear as physical violence today (though we do still have plenty of that), the underlying motivation to expunge threats to settler sovereignty endures. But where the specific harms of the field of foreign policy come into greater focus are in crafting a common sense around what counts as a legitimate politics of the international. Consider the core concepts of the field, or at least the discipline of IR that foregrounds foreign policy. I think its fair to say most traditional perspectives view the international system as an anarchic environment where self-interested and (mostly) rational states compete against each other for power. Or, in contrast, they may cooperate. For foundational IR scholar Hedley Bull, this simple formulation is “the supreme normative principal of the political organization of mankind.” I don’t need to elaborate on these concepts for this audience. But, what about political communities that do not resemble a state, that eschew coercive notions of exclusive sovereignty, that are bound by obligations and responsibilities to the land and thus do not recognize an anarchic world, political communities that do not start and end with men? The discipline of IR, as well as practice of foreign policy, effectively casts Indigenous peoples as primitive (or at least inferior), sanctions the theft of their lands, and then forecloses the possibility of resurgent political communities. At a fundamental level the perpetuation of this conceptual galaxy denies opportunities for Indigenous expressions of liberation — whether the case is the Six Nations of the Grand River, whose demands for a seat at the League of Nations in 1922 were rejected, or the current Canadian government demands that the articulation of international Indigenous rights not challenge territorial integrity or state sovereignty (this is true generally but seen clearly with the United Nation’s Declaration on the Rights of Indigenous Peoples). Such a denial is also expressed in the the unequivocal support of the state of Israel at the expense of Palestinian existence, or the collaboration with a Honduran government that suppresses Indigenous communities and murders activists like Berta Cáceres. I am talking about more than denying liberation. By continuing to enforce the view of humanity as a set of political states, with Europe at the centre of the planet – as Chickasaw lawyer James Youngblood Henderson once pointed out in his deconstruction of the familiar Mercator world map – foreign policy actively contributes to the erasure of Indigenous political difference conceptually as well as Indigenous bodies physically. (Not to mention non-Indigenous but racialized political communities and bodies, too.) Thus, Canadian foreign policy is a foreign policy that normalizes and affirms sett

ler colonialism. This is the primary national interest. And so, foreign policy is itself a manifestation of settler colonialism.

#### Foreign policy is a tool of settler colonialism that perpetuates further drives towards erasing the Native. It structures violence in such an insidious way where people use tools of legalism to wash away the Native, impacts that stem from settler colonialism, and people’s personal experience.

#### Settler colonialism structures violence as a necessary aspect of life— impacts like climate change, disease, and war are caused by the settler state

Maldonado-Torres ‘8 [Nelson, Associate Prof of CompLit @ Rutgers U, Against War: Views from the Underside of Modernity, p. 217-21]

Dussel, Quijano, and Wynter lead us to the understanding that what happened in the Americas was a transformation and **naturalization of the non-ethics of war**—which represented a sort of exception to the ethics that regulate normal conduct in Christian countries—into a more **stable and long-standing reality of damnation**, and that this epistemic and material shift occurred in the colony**. Damnation, life in hell, is colonialism**: a reality characterized by the naturalization of war by means of the naturalization of slavery, now justified in relation to the very constitution of people and no longer solely or principally to their faith or belief. That human beings become slaves when they are vanquished in a war translates in the Americas into **the suspicion that the conquered people, and then non-European peoples in general, are constitutively inferior** and that therefore they should assume a position of slavery and serfdom. Later on, this idea would be solidified with respect to the slavery of African peoples, achieving stability up to the present with the tragic reality of different forms of racism. Through this process, what looked like a "state of exception" in the colonies became the rule in the modern world. However, deviating from Giorgio Agarnben's diagnosis, one must say that the colony--long before the concentration camp and the Nazi politics of extermination--served as the testing ground for the limits and possibilities of modernity, thereby revealing its darkest secrets." It is race, the **coloniality of powe**r, and its concomitant Eurocentrism (and not only national socialisms or forms of fascism) that **allow** the "state of exception" to continue to define ordinary relations in this, our so-called postmodern world. Race emerges within **a permanent state of exception where** forms of behavior that are legitimate in **war become a natural part of the ordinary way of life**. In that world, an otherwise extraordinary affair becomes the norm and living in it requires extraordinary effort." In the racial/ colonial world, the "**hell" of war becomes** a condition that defines the **reality** of racialized selves, which Fanon referred to as the damnes de la terre (condemned of the earth). The damne (condemned) is a subject who exists in a permanent "hell," and as such, this figure serves as the main referent or liminal other that guarantees the continued affirmation of modernity as a paradigm of war. The hell of the condemned is not defined by the alienation of colonized productive forces, but rather signals the dispensability of racialized subjects, that is, the idea that the world would be fundamentally better without them. The racialized subject is ultimately a dispensable source of value, and exploitation is conceived in this context as due torture, and not solely as the extraction of surplus value. Moreover, it is this very same conception that gives rise to the particular erotic dynamics that characterize the relation between the master and its slaves or racialized workers. **The condemned, in short, inhabit a context in which the confrontation with death and murder is ordinary**. Their "hell" is not simply "other people," as Sartre would have put it-at least at one point - but rather racist perceptions that are responsible for the suspension of ethical behavior toward peoples at the bottom of the color line. Through racial conceptions that became central to the modern self, modernity and coloniality produced a permanent state of war that racialized and colonized subjects cannot evade or escape. The modern function of race and the coloniality of power, I am suggesting here, can be understood as **a radicalization and naturalization of the non-ethics of war** in colonialism." This non-ethics included the practices of eliminating and enslaving certain subjects-for example, indigenous and black-as part of the enterprise of colonization. From here one could as well refer to them as the **death ethics of war. War,** however, is not only about killing or enslaving; it **also includes a particular treatment of sexuality and femininity: rape.** **Coloniality is an order of things that places people of color within the murderous and rapist view of a vigilant ego, and the primary targets of this rape are women.** But men of color are also seen through these lenses and feminized, to become fundamentally penetrable subjects for the ego conquiro. Racial- ization functions through gender and sex, and the ego conquiro is thereby constitutively a phallic ego as well." Dussel. who presents this thesis of the phallic character of the ego cogito, also makes links, albeit indirectly, with the reality of war. And thus, in the beginning of modernity, before Descartes discovered ... a terrifying anthropological dualism in Europe, the Spanish conquistadors arrived in America. The phallic conception of the European-medieval world is now added to the forms of submission of the vanquished Indians. "Males," Bartolome de las Casas writes, are reduced through "the hardest, most horrible, and harshest serfdom"; but this only occurs with those who have remained alive, because many of them have died; however, "in war typically they only leave alive young men (mozos) and women.""5 The indigenous people who survive the massacre or are left alive have to contend with a world that considers them to be dispensable. And since their bodies have been conceived of as inherently inferior or violent, they must be constantly subdued or civilized, which requires renewed acts of conquest and colonization. The survivors continue to live in a world defined by war, and this situation is peculiar in the case of women. AsT. Denean Sharpley-Whiting and Renee T, White put it in the preface to their anthology Spoils oJ War: Women oJ Color, Cultures, and Revolutions: A sexist and/or racist patriarchal culture and order posts and attempts to maintain, through violent acts of force if necessary, the subjugation and inferiority of women of color. As Joy James notes, "its explicit, general premise constructs a conceptual framework of male [and/or white] as normative in order to enforce a politicaljracial, economic, cultural. sexual] and intellectual mandate of male [and/or white] as superior." The warfront has always been a "feminized" and "colored" space for women of color. Their experiences and perceptions of war, conA ict, resistance, and struggle emerge from their specific racial-ethnic and gendered locations ... Inter arma silent leges: in time of war the law is silent," Walzer notes. Thus, this volume operates from the premise that war has been and is presently in our midst.” The links between **war, conquest, and the exploitation of women's bodies** are hardly accidental. In his study of war and gender, Joshua Goldstein argues that conquest usually proceeds through an extension of the rape and exploitation of women in wartime." He argues that to understand conquest, one needs to examine: I) male sexuality as a cause of aggression; 2) the feminization of enemies as symbolic domination; and 3) dependence on the exploitation of women's labor-including reproduction." My argument is, first, that these three elements came together in a powerful way in the idea of race that began to emerge in the conquest and colonization of the Americas. My second point is that through the idea of race, these **elements exceed the activity of conquest and come to define what from that point on passes as the idea of a "normal" world**. As a result, **the phenomenology of a racial context resembles, if it is not fundamentally i**dentical to, the phenomenology of war and conquest. Racism posits its targets as racialized and sexualized subjects that, once vanquished, are said to be inherently servile and whose bodies come to form part of an economy of sexual abuse, exploitation, and control. The coloniality of power cannot be fully understood without reference to the transformation and naturalization of war and conquest in modern times. **Hellish existence** in the colonial world carries with it both the racial and the gendered aspects of the naturalization of the non-ethics of war. **"Killability" and "rapeability" are inscribed into the images of colonial bodies and deeply mark their ordinary existence.** Lacking real authority, colonized men are permanently feminized and simultaneously represent a constant threat for whom any amount of authority, any visible trace of the phallus is multiplied in a symbolic hysteria that knows no lirnits.?" Mythical depiction of the black man's penis is a case in point: the black man is depicted as an aggressive sexual beast who desires to rape women, particularly white women. The black woman, in turn, is seen as always already sexually available to the rapist gaze of the white, and as fundamentally promiscuous. In short, the black woman is seen as a highly erotic being whose primary function is fulfilling sexual desire and reproduction. To be sure, any amount of "penis" in either one represents a threat, but in his most familiar and typical forms the black man represents the act of rape- "raping" -while the black woman is seen as the most legitimate victim of rape- "being raped." In an antiblack world black women appear as subjects who deserve to be raped and to suffer the consequences-in terms of a lack of protection from the legal system, sexual abuse, and lack of financial assistance to sustain themselves and their families-just as black men deserve to be penalized for raping, even without having committed the act. Both "raping" and "being raped" are attached to blackness as if they form part of the essence of black folk, who are seen as a dispensable population. Black bodies are seen as excessively violent and erotic, as well as being the legitimate recipients of excessive violence, erotic and otherwise." "Killability" and "rapeability" are part of their essence, understood in a phenomenological way. The "essence" of blackness in a colonial anti-black world is part of a larger context of meaning in which the death ethics of war gradually becomes a constitutive part of an allegedly normal world. In its modern racial and colonial connotations and uses, blackness is the invention and the projection of a social body oriented by the death ethics of war." This murderous and raping social body projects the features that define it onto sub-Others in order to be able to legitimate the same behavior that is allegedly descriptive of them. The same ideas that inspire perverted acts in war--particularly slavery, murder, and rape--are legitimized in modernity through the idea of race and gradually come to be seen as more or less normal thanks to the alleged obviousness and non-problematic character of black slavery and anti-black racism. To be sure, those who suffer the consequences of such a system are primarily blacks and indigenous peoples, but it also deeply affects all of those who appear as colored or close to darkness. In short, this system of symbolic representations, the material conditions that in part produce and continue to legitimate it, and the existential dynamics that occur therein (which are also at the same time derivative and constitutive of such a context) are part of a process that naturalizes the non-ethics or death ethics of war. Sub-ontological difference is the result of such naturalization and is legitimized through the idea of race. In such a world, ontology collapses into a Manicheanism, as Fanon suggested."

#### Prior to re-theorization, international relations look like Columbus – only nations coined as ‘developed or civilized’ have access to institutions like the UN – formations like Turtle Island have no recognition at all. Even when they are recognized, it’s always double-faced and used as a mask to excuse other ongoing acts of violence they commit. Countries that aren’t white get destroyed with no accountability, treaties fail – the international is broken because of the system it’s been built on.

#### Intellectual property has been one of many strategies of forced assimilation that erases the Native.

**Chidi ‘08** Oguamanam Chidi (2008) "Patents and Traditional Medicine: Digital Capture, Creative Legal Interventions and the Dialectics of Knowledge Transformation," Indiana Journal of Global Legal Studies: Vol. 15 : Iss. 2 , Article 3.

Intellectual property, particularly the patent regime, is an important factor in the privileging of Western medicine over traditional medical systems." However, methods of medical treatment are excluded from virtually all national patent regimes." Consequently, the impact of intellectual property on medical care delivery turns mainly on pharmaceutical innovations, including access to drugs, related products, and various other medical technological innovations other than methods of treatment. In traditional medicine, the pharmacological process involves mainly the exploitation of natural products such as plants, animals, and minerals in accordance with underlying theories of health and healing. 2 In most cases, the holistic nature of traditional medicine means the fusion of the therapeutic with the pharmacological.

#### IPPs lead to extinction of plants critical for native medicines AND destroys Indigenous knowledge in process, acting as another source of colonial genocide.

**Timmermans ’03** (Karin Timmermans, “Intellectual Property Rights and Traditional Medicine, Policy Dilemmas at the Interface.” Social Science and Medicine. 2003. Accessible Online at: file:///C:/Users/midni/Downloads/s0277-9536%252802%252900425-2.pdf)

In many developing countries, a large part of the population, especially in rural areas, depends mainly on traditional medicine for their primary health care. For example, 65% of the Indian population only has access to traditional systems of medicine, and in Africa 80% of the people use traditional medicines. In most Asian countries, though allopathic medicine is available, traditional medicine is still very popular, including in highly developed countries like Japan (WHO, 2002). In other industrialized countries the use of ‘alternative medicine’ is increasing; in 1993, a survey found that one in three adults in the United States (US) used alternative medicine (Eisenberg et al., 1993). As a result, the world market for herbal medicines has been estimated at 60 billion US dollars (WHO, 2000). But while herbal medicines represent an alternative, an option, for people in industrialized countries, they often are the only alternative for people in developing countries. Piracy and conservation Recently, the exploitation and appropriation, under western IPR, by unauthorized parties, of biological and genetic resources and/or associated traditional medicinal knowledge, without the approval or consent of their holders, and without adequate compensation (sometimes called ‘biopiracy’) has raised significant concerns, particularly in developing countries with a long tradition in traditional medicine (Correa, 2002; Mashelkar, 2001). An example is the turmeric patent which was granted in the United States in March 1995, for ‘use of turmeric in wound healing’. However, in India, the wound-healing properties of turmeric powder are well known, and have ‘‘been applied to the scrapes and cuts of generations of children’’ (Agarwal & Narain, 1996). While, following a challenge by the Council of Scientific and Industrial Research of India, this particular patent was, eventually, invalidated for lack of novelty, such a challenge is expensive; moreover, developing countries may find it difficult to monitor for ‘biopiracy-patents’ (Government of India, 2000; Sampat, 1998; Wiser & Downes, 1999). Researchers or companies may also claim intellectual property rights over biological resources and/or traditional knowledge, after slightly modifying them. Examples of this include patents issued related to the neem tree, kava, barbasco and endod (Posey & Dutfield, 1996; RAFI, 1998). These and other, similar cases have raised concerns and questions in developing countries, notably with regard to the options to protect their traditional knowledge and/or to prevent such piracy, and with regard to equitable sharing of benefits derived from this knowledge (Kuanpoth, 2001). It has equally highlighted the need to clarify ownership of biological resources and associated knowledge. Pharmaceutical companies have shown an interest in acquiring and developing traditional medicines, since ‘promising species’ can provide important leads for the discovery of new drugs. In some cases, companies have obtained considerable benefits by exploiting traditional medicine; an example is the development of the anticancer drugs vincristine and vinblastine from Madagascar’s rosy periwinkle plant (Kadidal, 1993; Mugabe, 1998; Newman, 1994). The potential to patent derived products provides an important incentive for pharmaceutical companies’ interest in traditional medicines, since it creates the possibility for benefits to accrue— and, thus, ultimately, for sharing such benefits. Governments of biodiversity-rich countries can deal with bioprospecting/biopiracy in one of two ways: prevent it or organize it. The latter requires considerable. efforts and investments in order to regulate and facilitate access and to negotiate credible agreements, in return for uncertain future benefits. The principal strategy for the alternative option—prevention of biopiracy—is publication of traditional knowledge. Nonetheless, since ‘biopiracy’ is usually understood as encompassing unauthorized use as well as misappropriation of biological resources and/or associated knowledge, it is worth noting that publication may prevent misappropriation of such knowledge, but cannot prevent—and, in fact, may even facilitate—unauthorized use. It should also be noted that many medicinal plants face extinction. Overexploitation of such plants in order to satisfy industrial and/or export demands can aggravate this risk (Newman, 1994; WHO, 2002). Hence, trade in medicinal plants should be regulated, **preferably within a broader policy framework dealing with conservation and sustainable use of biological resources** (Correa, 2002). Yet, while industrial or commercial access/use is likely to have an impact on conservation efforts, there also is a—different—link between traditional access/use and conservation:in order for traditional communities and individual healers to continue preserving biodiversity, it is important that they be allowed to continue to access and use (medicinal) plants;1 failure to ensure this will ultimately lead to erosion of their knowledge. Once this knowledge has vanished, plants lose value, and the risk of extinction may be even higher (Gupta, 1998). Thus, apart from complexities related to the trade-off between the public health interest of ensuring access to traditional medicines and the potential economic benefits from their (industrial) development, traditional medicine intersects with biodiversity conservation and indigenous peoples’ rights. Furthermore, the issue should be considered in the context of two major, pertinent international agreements:the TRIPS Agreement and the Convention on Biological Diversity.

#### So, what should we do? While our governments aren’t doing much now to prevent the rampant exploitation of native plants and the biopiracy of Indigenous knowledge, this doesn’t mean that we shouldn’t imagine a post-world where they do – this can help progress *our* counter-hegemonic movement of decolonization. It is important to imagine the hypothetical implementation of the resolution through a theorization of decolonization. Rather than focusing solely on the material implications, we need to understand how theorization is tied to every policy. It is clear that: The member nations of the WTO ought to reduce intellectual property protections for traditional medicines.

#### Imagining this plan solves - settlers are not innocent in debate. The space we occupy retheorizing international relations translate to real-world action, like ones of decolonization.

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Here, the decolonial is about creating something beyond the dialectic of modernity and coloniality, a framework that can radically embrace and center Otherness. His work is instructive here, as it offers us space for conceiving of how the decolonial accesses the problems of racism and (neo)coloniality in structures of knowledge production. In the remainder of the section, we unpack how delinking might look, as a set of scholarly and activist perspectives, guided by an ethic of decolonial love, that reorients us toward hearing the voices of the Global South so that we might begin disrupting what we know and how we come to know those things, but not necessarily in ways that are accountable or attempt to answer to the West.315 Anderson, who spoke on this at Race + IP 2017, dreams of “decolonial futures” in the context of intellectual property law.316 While she predominantly focuses on indigenous knowledge, her work asks us to consider how and why decolonial theory might inform attempts to reimagine intellectual property law. For Anderson, decolonizing indigenous knowledge, at least in part, includes the creation of a new system of labels and licenses whereby indigenous peoples have control over how information and objects are managed.317 One functional outcome of such licensing projects—as well as the attendant pushes to leverage human rights as a means of protecting traditional knowledge318—is to revalue knowledge that has been consistently marginalized, in part by highlighting the right of its creators to dictate how and when it is used. Scholars such as Boateng and Basole also examine ways of addressing the devaluation of traditional knowledge. Both scholars suggest even the terms “traditional knowledge” and “indigenous knowledge” are problematic because they create categories of information within intellectual property regimes.319 Identifying traditional knowledge or indigenous knowledge frequently involves differentiating it from information produced in Western contexts in ways which are legible to international intellectually property regimes. However, as Okediji and Coombe point out, such intellectual property regimes were built on a foundation of coloniality which refused to categorize information produced by the colonized as knowledge.320 These critiques operate as delinking moves, which question the narratives that modernity has laid out for non-European knowledge. They also exemplify the type of critical practice that might aid in reimagining intellectual property law.Delinking decoloniality in the context of intellectual property requires the rejection of narratives which categorize Other knowledge as secondary or inferior to that of Westerners, whether implicitly or explicitly. Terms such as “traditional knowledge,” “indigenous knowledge,” and “folklore” are dangerous precisely because they create a bifurcation between that knowledge produced informally, often by non-Westerners, and “real” knowledge. Resisting such narratives, for instance by advancing narratives of bio-piratical theft from the nonWestern world and reclaiming memories that might otherwise be erased from the canon, are important first steps in remaking the laws of information. The step, which follows pulling back the curtain on the implications of the modernity/coloniality binary for intellectual property law, however, is a more complicated one. Decolonization requires reconstituting universality in a manner, which, instead of substituting the European for the totality, creates space for the embrace of multiple perspectives, in a manner, which is both democratic and cosmopolitan. While we do not offer a model to supplant that of modernity/coloniality, we note that several nations, such as India,321 Ghana,322 and South Africa,323 are remaking intellectual properties through the embrace of digital databases, local models of intellectual property protection, and rejection of international intellectual property regimes. Moreover, decolonizing practices can unfold at the individual level as well, through resistive performative practices, such as discursive interventions and arts. Our goal in highlighting both the undoing of narratives of modernity/coloniality in intellectual property and practices which supplant Western intellectual property law is to point to further avenues of research for Critical Race IP scholars. Existing scholarship in these areas suggests that attending to decoloniality as a means of interrogating the intersections of race and intellectual property is likely to be a fruitful avenue for further research. CONCLUSION This article endeavors to name and provisionally map the field of Critical Race IP, an area of study which describes that scholarship concerned with the intersections of race and intellectual property law. In doing so, it situates Critical Race IP in a larger socio-cultural context, in which racial capitalism is a constant but evolving feature of the historical landscape. We contend that the emergence of the Information Economy, after the era of Fordism, resulted in a repackaging of familiar racial projects in and through intellectual properties and pushes for intellectual property maximalism. Critical Race IP represents a relatively new and rapidly growing direction in CRT scholarship, it is an exemplar of the ways the latter must constantly evolve to accommodate changing economic and cultural conditions and racial formations. In articulating Critical Race IP as an area of study, our goal is not necessarily to suggest particular methodologies or even fixed unifying questions that define the interdisciplinary movement. Rather, we are concerned with naming and describing prevalent themes and core tenets in a set of scholarly works that interrogate the inequalities which emerge at the intersections of intellectual property and intersectional racial identities. We hope that project can be a generative move for scholars who wish to research, write, and practice in this area. In setting forth a history of post-Fordism and the rise of Critical Race IP, we show that, as a product of modernity/coloniality, intellectual property law is always already invested in whiteness and racial inequality in ways which necessitate both examination and undoing. Scholars in a variety of disciplines have started to undertake such examinations, with their works engaging a set of themes which we have highlighted here. Continuing to examine questions related to defining (intellectual) property, understanding intellectual property’s stories, the public domain, framing and reframing “piracy” and “counterfeiting,” distributive justice, access to knowledge, managing traditional knowledge, and contemplating intellectual properties is an important task, one which we urge scholars to continue to take up in new and innovative ways. We also highlight the significance of personal relationships and public feelings in developing this area of study. One way to facilitate dialogue and scholarship in Critical Race IP is to invest in community building and intimacy making, cornerstones of the growth and development of CRT, both of which play a valuable role in cultivating generative interpersonal connections and structures of feeling through which new ideas can flourish. Conferences and workshops as well as collaborative projects which bring together senior and junior scholars play a significant role in cultivating and retaining Critical Race IP scholars. Finally, in concluding with a discussion of the decolonial turn, we offer a framework for moving beyond the radically unequal systems produced from the vantage point of law and economics, which has been historically complicit in intellectual property law’s theoretical and practical centering of whiteness. Decolonization, a process that began to unfold after World War II, is not only a physical process but an epistemological one, which requires addressing intellectual property’s embeddedness within practices and ideologies of modernity/coloniality as well as the connections between the latter and racism and neocolonialism. Here, we offer decolonization as a means of beginning to contemplate the remaking of intellectual property law, in ways that not only radically embrace Otherness but make space for non-European ways of thinking, making, and owning knowledge. As we imagine it, Critical Race IP is a space for creating models for the politics of reparation—not simply equal rights or distributive justice—through which oppressed groups can heal the wounds of racism and colonialism.

#### Decolonization by nature is re-understanding our relationship to each other and realizing that we and the Earth are all connected and sacred.

**Walia 12** (Harsha Walia, “Colours of Resistance Archive.” Home - Colours of Resistance Archive. 2012. <http://www.coloursofresistance.org/769/moving-beyond-a-politics-of-solidarity-towards-a-practice-of-decolonization/>)

While centring and honouring Indigenous voices and leadership, the obligation for decolonization does rest on all of us. As written by Nora Burke in Building a Canadian Decolonization Movement: Fighting the Occupation at Home, “**A decolonisation movement cannot be comprised solely of solidarity** and support **for Indigenous peoples’ sovereignty** and self-determination. If we are in support of self-determination, **we too need to be self-determining**. It is time to cut the state out of this relationship, **and** to **replace it with a new relationship**, one which is mutually negotiated, and **premised** on a core **respect for autonomy and freedom.**” **Being responsible for decolonization** often **requires us to locate ourselves within the context of colonization** in complicated ways – often as simultaneously oppressed and complicit. This is true, for example, for racialized migrants in Canada. Within the anti-colonial migrant justice movement of No One Is Illegal, **we go beyond demanding** citizenship **rights for racialized migrants as that would lend false legitimacy to a settler state.** We challenge the official state discourse of multiculturalism that undermines the autonomy of Indigenous communities by granting and mediating rights through the imposed structures of the state and seeks to assimilate diversities into a singular Canadian identity. Indigenous feminist Andrea Smith reminds us that “**All non-Native peoples are promised the ability to join in the** colonial **project of settling indigenous lands…** In all of these cases, we would **check our aspirations against** the aspirations of **other communities to ensure** that **our model of liberation does not become the model of oppression for others.”** In B.C., immigrants and refugees have participated in several delegations to Indigenous blockades, while Indigenous communities have offered protection and refuge for migrants facing deportation. Decolonization is the process whereby we intend the conditions we want to live and the social relations we wish to have. **We have to supplant the colonial logic of the state itself.** German philosopher Gustav Landauer wrote almost a hundred years ago that “**the State is a condition, a** certain **relationship between human beings**, a mode of behaviour; **we destroy it by contracting other relationships.**” **Decolonization requires us to exercise our sovereignties** differently and **to reconfigure** our **communities based on shared experiences,** ideals, **and visions.** Almost all **Indigenous formulations of sovereignty** – such as the Two Row Wampum agreement of peace, friendship, and respect between the Haudenosaunee nations and settlers – **are premised on** revolutionary **notions of respectful coexistence and stewardship of the land, which goes far beyond any Western liberal democratic ideal.** I have been encouraged to think of human interconnectedness and kinship in building alliances with Indigenous communities. Black/Cherokee writer Zainab Amadahy uses the term “Relationship Framework” to describe how **our activism should be grounded**: “Understanding the world **through a Relationship Framework, where we don’t see** ourselves, **our communities, or** our **species as** inherently **superior to any other, but rather see our roles and responsibilities** to each other **as inherent to enjoying** our **life** experiences.” Striving toward **decolonization** and walking together toward transformation **requires us to challenge a dehumanizing social organization that perpetuates** our **isolation** from each other **and normalizes a lack of responsibility to one another and the Earth.**

#### Decolonization understands the world from there not being any protections or gatekeeping of the Earth. By focusing on traditional medicine, we’re accepting Indigenous ideals and how natives view medicines which is a crucial first step since these medicines are all comprised of the Earth we’ve colonized. Giving back control and rethinking our land is part of the process. The only way for me to view medicine as medicine is if I imagine this resolution which means it's key to forwarding a decolonizing project.

#### Debate is specific – Natives have been pushed to fringes in terms of our discussions surrounding IPP.

**Shabalala ‘17** Shabalala, Dalindyebo Bafana (2017) "Intellectual Property, Traditional Knowledge, and Traditional Cultural Expressions in Native American Tribal Codes," Akron Law Review: Vol. 51 : Iss. 4 , Article 5. Available at: http://ideaexchange.uakron.edu/akronlawreview/vol51/iss4/5

On Friday, September 8, 2017, pharmaceutical company Allergan transferred ownership of all federal U.S. patents for its Restasis drug to the Saint Regis Mohawk tribe; the tribe then licensed them back to the company.1 The aim was to shield the patents from the United States Patent and Trademark Office (USPTO) administrative inter partes review (IPR)2 process by having the tribe claim sovereign immunity from the process. This action represents a new assertion and participation of Native American tribes in the United States federal system for protection of intellectual property (IP). This is in contrast to what has been the traditional experience of Native American tribe’s experience with the way U.S. federal law has dealt with their intellectual and cultural property (i.e., enabling its misappropriation by non-tribal citizens).3 This misappropriation has occurred either through use of the IP system where non-tribal citizens make patent, copyright, or trademark claims over tribal intellectual and cultural property,4 or through claims that Native American intellectual cultural property is part of the public domain and free for all to use.5 In either case, the common experience of Native American tribes has been one of victimization rather than active participation in the federal IP system. The St. Regis deal and others like it draw attention to the core demand that Native American tribes make, in concert with indigenous peoples and nations worldwide, for the protection of their intellectual and cultural property, especially their traditional knowledge (TK) and traditional cultural expressions (TCEs). In particular, the deal raises two questions which, despite the long-standing demand for protection, have not received full attention. First, what are Native American tribes themselves doing to provide such protection to their citizens on their territory, in the exercise of whatever scope of authority that they have as dependent sovereign entities6 within the United States? This determination seems like a necessary precursor to making claims for protection under broader U.S. law as a means of giving notice of what the claim to protection entails. It is also a precursor to ensuring that Native American participation in the federal IP system, such as that of the St. Regis tribe, is consistent with tribal legislation. This, of course, also leads to the second question: what are the exact contours of the protection that U.S. law provides to Native American intellectual and cultural property? More specifically, what are the existing laws, what is the gap between the scope and nature of protection provided in tribal law versus what the federal government applies, and what is the gap between the protection that is being sought and what is actually being provided? In particular, this Article seeks to answer the question of whether any of the extant federal legislation acts can be seen to act as a means of providing protection for Native American intellectual and cultural property. This Article is divided in two major sections. The first section conducts a survey of Native American tribal codes to describe and outline the scope and nature of protection for IP in the universe of tribal codes in the United States. The second section carries out an examination of specific laws addressed to Native American intellectual and cultural property and examines the legislative history to determine the extent of protection that they provide. The results of my analysis form a first step in a broader research agenda that is outlined in the conclusion to this Article, which will hopefully progress with a somewhat stronger descriptive basis for deciding which research paths and questions to follow.

#### The debate space is colonized through the theorizations that undergirds the discussion and by creating polities that are determined by settler frameworks to validate the current structure.

#### Specifically, the point of LD is to engage in a values or theory debate but every time someone reads a different value the space is so opposed. We tend to focus on extinction scenarios without realizing the effects on Native bodies and ignoring rooted claims of settler futurity.

**Dalley 16** Hamish Dalley (2016): The deaths of settler colonialism: extinction as a metaphor of decolonization in contemporary settler literature, Settler Colonial Studies, DOI: 10.1080/2201473X.2016.1238160

**Settlers love to contemplate the possibility of their own extinction; to read many contemporary literary representations of settler colonialism is to find settlers strangely satisfied in dreaming of ends that never come.** This tendency is widely prevalent in English-language representations of settler colonialism produced since the 1980s: the possibility of an ending – the likelihood that the settler race will one day die out – is a common theme in literary and pop culture considerations of colonialism’s future. Yet it has barely been remarked how surprising it is that this theme is so present. **For settlers, of all people, to obsessively ruminate on their own finitude is counterintuitive, for few modern social formations have been more resistant to change than settler colonialism.** With a few exceptions (French Algeria being the largest), the settler societies established in the last 300 years in the Americas, Australasia, and Southern Africa have all retained the basic features that define them as settler states – **namely, the structural privileging of settlers at the expense of indigenous peoples, and the normalization of whiteness as the marker of political agency and rights – and they have done so notwithstanding the sustained resistance that has been mounted whenever such an order has been built. Settlers think all the time that they might one day end, even though (perhaps because) that ending seems unlikely ever to happen.** The significance of this paradox for settler-colonial literature is the subject of this article. **Considering the problem of futurity offers a useful foil to traditional analyses of settlercolonial narrative, which typically examine settlers’ attitudes towards history in order to highlight a constitutive anxiety about the past – about origins. Settler colonialism, the argument goes, has a problem with historical narration that arises from a contradiction in its founding mythology.** In Stephen Turner’s formulation, the settler subject is by definition one who comes from elsewhere but who strives to make this place home. The settlement narrative must explain how this gap – which is at once geographical, historical, and existential – has been bridged, and the settler transformed from outsider into indigene. **Yet the transformation must remain constitutively incomplete, because the desire to be at home necessarily invokes the spectre of the native, whose existence (which cannot be disavowed completely because it is needed to define the settler’s difference, superiority, and hence claim to the land) inscribes the settler’s foreignness, thus reinstating the gap between settler and colony that the narrative was meant to efface.**1 Settler-colonial narrative is thus shaped around its need to erase and evoke the native, to make the indigene both invisible and present in a contradictory pattern that prevents settlers from ever moving on from the moment of colonization.2 **As evidence of this constitutive contradiction, critics have identified in settler-colonial discourse symptoms of psychic distress such as disavowal, inversion, and repression**.3 Indeed, **the frozen temporality of settler-colonial narrative, fixated on the moment of the frontier, recalls nothing so much as Freud’s description of the ‘repetition compulsion’ attending trauma**.4 As Lorenzo Veracini puts it, because: **‘settler society’ can thus be seen as a fantasy where a perception of a constant struggle is juxtaposed against an ideal of ‘peace’ that can never be reached, settler projects embrace and reject violence at the same time**. The settler colonial situation is thus a circumstance where the tension between contradictory impulses produces long-lasting psychic conflicts and a number of associated psychopathologies.5 Current scholarship has thus focused primarily on settler-colonial narrative’s view of the past, asking how such a contradictory and troubled relationship to history might affect present-day ideological formations. Critics have rarely considered what such narratological tensions might produce when the settler gaze is turned to the future. Few social formations are more stubbornly resistant to change than settlement, suggesting that a future beyond settler colonialism might be simply unthinkable. Veracini, indeed, suggests that settler-colonial narrative can never contemplate an ending: that settler decolonization is inconceivable because settlers lack the metaphorical tools to imagine their own demise.6 This article outlines why I partly disagree with that view. I argue that **the narratological paradox that defines settler-colonial narrative does make the future a problematic object of contemplation. But that does not make settler decolonization unthinkable per se; as I will show, settlers do often try to imagine their demise – but they do so in a way that reasserts the paradoxes of their founding ideology, with the result that the radical potentiality of decolonization is undone even as it is invoked.** I argue that, notwithstanding Veracini’s analysis, **there is a metaphor via which the end of settler colonialism unspools – the quasi-biological concept of extinction, which, when deployed as a narrative trope, offers settlers a chance to consider and disavow their demise, just as they consider and then disavow the violence of their origins.** This article traces the importance of the trope of extinction for contemporary settler-colonial literature, with a focus on South Africa, Canada, and Australia. It explores variations in how the death of settler colonialism is conceptualized, drawing a distinction between historio-civilizational narratives of the rise and fall of empires, and a species-oriented notion of extinction that draws force from public anxiety about climate change – an invocation that adds another level of ambivalence by drawing on ‘rational’ fears for the future (because climate change may well render the planet uninhabitable to humans) in order to narrativize a form of social death that, strictly speaking, belongs to a different order of knowledge altogether. As such, my analysis is intended to draw the attention of settler colonial studies toward futurity and the ambivalence of settler paranoia, while highlighting a potential point of cross-fertilization between settler-colonial and eco-critical approaches to contemporary literature. That ‘extinction’ should be a key word in the settler-colonial lexicon is no surprise. In Patrick Wolfe’s phrase,7 settler colonialism is predicated on a ‘logic of elimination’ that tends towards the extermination – by one means or another – of indigenous peoples.8 This logic is apparent in archetypal settler narratives like James Fenimore Cooper’s The Last of the Mohicans (1826), a historical novel whose very title blends the melancholia and triumph that demarcate settlers’ affective responses to the supposed inevitability of indigenous extinction. Concepts like ‘stadial development’ – by which societies progress through stages, progressively eliminating earlier social forms – and ‘fatal impact’ – which names the biological inevitability of strong peoples supplanting weak – all contribute to the notion that settler colonialism is a kind of ‘ecological process’ 9 that necessitates the extinction of inferior races. What is surprising, though, is how often the trope of extinction also appears with reference to settlers themselves; it makes sense for settlers to narrate how their presence entails others’ destruction, but it is less clear why their attempts to imagine futures should presume extinction to be their own logical end as well. The idea appears repeatedly in English-language literary treatments of settler colonialism. Consider, for instance, the following rumination on the future of South African settler society, from Olive Schreiner’s 1883 Story of an African Farm: It was one of them, one of those wild old Bushmen, that painted those pictures there. He did not know why he painted but he wanted to make something, so he made these. […] Now the Boers have shot them all, so that we never see a yellow face peeping out among the stones. […] And the wild bucks have gone, and those days, and we are here. But we will be gone soon, and only the stones will lie on, looking at everything like they look now.10

#### Our retheorization allows us to engage in the world through a deeper understanding as a settler on stolen land. To be clear t**he aff is not anti-thetical to poilcy making. Policy making is not obsolete however we are critiquing the current modalities approaching the world.**

#### This creates a space that moves away from racialized targeting and extermination – settler colonialism separates Natives into zones of legality and zones of death in order to justify free and ruthless use of force until Natives are appropriated into the Sovereign’s culture nativity is erased

**Lloyd** and **Wolfe** **16** (David, Distinguished Professor of English at the University of California, Riverside, works primarily on Irish culture and on postcolonial and cultural theory, and Patrick, a freelance historian who lives and works in Wurundjeri country near Healesville, Australia. He has written, taught, and lectured, in comparative vein, on colonialism, race, genocide, theories of imperialism, Aboriginal histories, and the history of anthropology, Settler colonial logics and the neoliberal regime, Settler Colonial Studies, 6:2, 109-118, DOI: 10.1080/2201473X.2015.1035361)

As Jesse Carr shows in detail in this volume, writing of the contemporary legacies of frontier violence, **state-sanctioned law and vigilante violence are intimately intertwined throughout US history**: **settler colonial violence is at once law-making, and therefore constitutive of a certain kind of sovereignty, and a ‘free and ruthless’ use of force. It at once obeys and constitutes** over and again **the line that demarcates the appropriation of land and resources** **and the division between those protected by law and sovereignty and those subject to their violence.** The corollary to **this perpetual reconstitution of law-making violence**, which does not allow the ‘forgetting’ of the law’s origins in appropriation**, is the persistence of a psychic ‘state of siege’: the representation of the world as a surround populated by uncivil peoples who pose what, in the language of neoconservatism** as of Zionism, **is understood as an ‘existential threat’ to civil subjects.** With the impeccable logic of the paranoid, **the ‘free and ruthless force’ inflicted on those evicted** ‘beyond the line’ is projected onto its objects. **This leads**, as Nadera Shalhoub-Kevorkian shows in her essay, **to the constitution of ‘death zones’ inhabited by beings whom the settler colonial state considers**, from before their births to even after their deaths, **as existential and demographic threats**. In the final pages of The Nomos of the Earth, Schmitt asks a question still pertinent to the current moment of globalization: ‘Has humanity today actually “appropriated” the earth as a unity, so that there is nothing more to be appropriated? Has appropriation really ceased?’ 20 It is clear, following Harvey, that **appropriation has not ceased, but it is equally clear that the fundamental act of demarcation, the distributions of legality and ruthless force which constitute a nomos, continues in new forms,** constituting new frontiers appropriate to the emergent mode of accumulation on a global scale. See reminds us of Rosa Luxemburg’s argument that capitalism ‘needs other races’: for her, those ‘races’ were the ‘outside’ of capital, ‘beyond the line’, in Schmitt’s terms. Now, **at a moment when the globe has been appropriated ‘as a unity**’, **the current crisis of capital may find no geographical ‘outside’** any more, **but is no less productive** **of forms of racialization that continue to correspond to nomothetic demarcations** but within an utterly different spatial ordering wherein, in Weizman’s phrase, ‘the periphery comes straight to the center’. Within this new spatial ordering, Weizman suggests, **‘acts of spatial exclusion creat[e] wedges that separate the habitat of a population marked as a political “outside” and perceived as a political threat’. 21 Such ‘wedges’ result in a quite different mapping of the spatial order of domination** that was designated by lines of longitude, a mapping with which any contemporary urban dweller is already intimate: **The contemporary city is exploding spatially, but in essence is fractalized into a collection of interlocking, internally homogeneous, and externally alienating synthetic environments. The separation between the affluent, established populations from [sic] the poorer immigrant populations can no longer be understood as a continuous line across the map.** Internal city borders will be further 114 D. Lloyd and P. Wolfe reinforced, forming local enclaves scattered across the city and its suburbs. Point based security systems fractalize borders and turn them from a defined object into a condition of heightened security whose presence is manifested in electronic or physical barriers at entry points to office buildings, shopping malls, or transport infrastructure – from midtown to suburbia.22 **The laboratories for both this ‘condition of heightened security’**, including the necessary surveillance technologies, and for the reorganization of social space **have been and continue to be the sites of colonial counter-insurgency**, from Northern Ireland to Palestine.23 **Settler colonialism**, specifically under conditions of what Israeli sociologist Baruch Kimmerling called ‘low frontierity’, 24 **furnished** both **the model by which populations** and spaces **are distributed between zones of legality and,** in Shalhoub-Kevorkian’s phrase, ‘**zones of death’**, and the historically normalized imaginary of the perpetual ‘state of siege’. The counter-insurgency campaigns of Israel and Northern Ireland stand as some reminder that **the settler colony has always also been a site of military occupation** and – as See also points out – **is extended extraterritorially by way of military occupation as a further modality of colonialism.** The settler colonial and the military imaginaries intertwine with great and familiar intimacy, from the stockades of the early colonists and forts of the frontier cavalry to the hilltop Israeli settlements in Palestine that double as military outposts, to the current military intervention into Aboriginal communities in Australia’s Northern Territory, or to the fortified police stations of Soweto or Belfast. But **military occupation, which Klein identifies as one model of the new modes of social control and spatial organization of neoliberal states, does also offer an alternative if intersecting model for colonial domination.** The military occupation of the Philippines entailed neither extensive Euro-American settlement nor incorporation into the state, though particularly in the Philippines the genocidal prosecution of the war from 1898 to 1913 explicitly learnt much from the recently completed frontier wars against Native Americans.25 Rather, **they offer paradigms for the kinds of colonial domination that operate through partial and segmented land-appropriation, secured through ruthless violence but maintained through the forced** (‘benevolent’) **pacification of the surviving population. In this respect, occupation combined with tutelage functions as an early instance of the nomothetic lines of legal or moral demarcation that characterize for the most part the framework of the neoliberal state and its racial order.**

#### Imagination is powerful. It is a possible world, but one that we can only strive for through imagining the plan. Rather than talking about big stick impacts that won’t happen, our hypothetical plan allows us to decolonize the space of debate. our imagination allows us to break down the spaces that we occupy. Let’s be honest with ourselves, what is truly portable about debates where reducing intellectual property protections leads to hotspot escalation and nuclear war? Have you ever seen someone truly justify why this conversation is more important than ours? Through imagining this plan, we can also imagine a space of debate that isn’t so insular. Debate as an activity has a lot of issues and only imagining a world post-plan are we able to understand how the colonialist state operates in debate.