# 1

**Liberal philosophy and ideal theory’s attempt to establish a single normative account of the world is bound by settler colonial power structures. Under the guise of objectivity, the white settler subject inserts itself as the norm; the ideal model of a purely rational subject intrinsically deems redness as savagery—thus we criticize the structural foundations your theory finds coherence that means (a) your framing is another link and (b) even if your theory is true our criticism is a perquisite to accessing its truth.**

**Kincheloe 99** {Joe L; Research chair at Faculty of Education at McGill University; “The Struggle to Define and Reinvent Whiteness: A Pedagogical Analysis”; College Literature 26 (Fall 1999): 162-; 1999; <http://www.virginia.edu/woodson/courses/aas102%20(spring%2001)/articles/kincheloe.html>; accessed 9/22/16} MK

While no one knows exactly what constitutes whiteness, we can historicize the concept and offer some general statements about the dynamics it signifies. Even this process is difficult, as **whiteness** as a socio-historical construct **is constantly shifting in light of new circumstances and changing interactions with various manifestations of power**. With these qualifications in mind we believe that a dominant impulse of **whiteness took shape around the European Enlightenment’s notion of rationality with its privileged construction of a transcendental white, male, rational subject who operated at the recesses of power while concurrently giving every indication that he escaped the confines of time and space.** In this context **whiteness was naturalized as a universal entity** that operated as more than a mere ethnic positionalityemerging from a particular time, the late seventeenth and eighteenth centuries, and a particular space, Western Europe. Reason in this historical configuration is whitened and **human nature itself is grounded upon this reasoning capacity. Lost** in the defining process **is the socially constructed nature of reason itself**, not to mention **its emergence as a signifier of whiteness**.Thus**, in its rationalistic womb whiteness begins to establish itself as a norm that represents a**n authoritative, delimited, and **hierarchical mode of thought**. **In the emerging colonial contexts** in which Whites would increasingly find themselves in the decades and centuries **following the Enlightenment**, **the encounter with non-Whiteness would be framed in rationalistic terms - whiteness representing orderliness, rationality, and self-control and non-whiteness as chaos, irrationality, violence, and the breakdown of self-regulation**. **Rationality emerged as the conceptual base around which civilization and savagery could be delineated** (Giroux 1992; Alcoff 1995; Keating 1995). This rationalistic modernist whiteness is shaped and confirmed by its close association with science. As a scientific construct **whiteness privileges mind over body, intellectual over experiential ways of knowing, mental abstractions over passion, bodily sensations, and tactile understanding** (Semali and Kincheloe 1999; Kincheloe, Steinberg, and Hinchey 1999). In the study of multicultural education such epistemological tendencies take on dramatic importance. In educators’ efforts to understand the forces that drive the curriculum and the purposes of Western education, modernist whiteness is a central player. The insight it provides into the social construction of schooling, intelligence, and the disciplines of psychology and educational psychology in general opens a gateway into white consciousness and its reactions to the world around it. Objectivity and dominant articulations of masculinity as signs of stability and the highest expression of white achievement still work to construct everyday life and social relations a Black Studies presents a global critique of Western modernity and Western modes of knowledge production, while constructing alternative modes of thought and working for abolishing the West’s conception of Man. t the end of the twentieth century. Because such dynamics have been naturalized and universalized, **whiteness assumes an invisible power unlike previous forms of domination in human history. Such an invisible power can be deployed by those individuals and groups who are able to identify themselves within the boundaries of reason and to project irrationality, sensuality, and spontaneity on to the other.** Thus, European ethnic groups such as the Irish in nineteenth-century industrializing America were able to differentiate themselves from passionate ethnic groups who were supposedly unable to regulate their own emotional predispositions and gain a rational and objective view of the world. Such **peoples** **- who were being colonized**, exploited, enslaved, and eliminated **by Europeans during their Enlightenment and post-Enlightenment eras - were viewed as irrational and, thus, inferior in their status as human beings**. As inferior beings, they had no claim to the same rights as Europeans - hence, white **racism and colonialism were morally justified around the conflation of whiteness and reason**. In order for whiteness to place itself in the privileged seat of rationality and superiority, it would have to construct pervasive portraits of non-Whites, Africans in particular, as irrational, disorderly, and prone to uncivilized behavior (Nakayama and Krizek 1995; Stowe 1996; Alcoff 1995; Haymes 1996). As rock of rationality in a sea of chaos and disorder, whiteness presented itself as a non-colored, non-blemished pure category. Even a mere drop of non-white blood was enough historically to relegate a person to the category of "colored." Being white, thus, meant possessing the privilege of being uncontaminated by any other bloodline. A mixed race child in this context has often been rejected by the white side of his or her heritage - the rhetorical construct of race purity demands that the mixed race individual be identified by allusion to the non-white group, for example, she’s half Latina or half Chinese. Individuals are rarely half-white. As Michel Foucault often argued, reason is a form of disciplinary power. Around Foucault’s axiom, critical multiculturalists contend that reason can never be separated from power. Those without reason defined in the Western scientific way are excluded from power and are relegated to the position of unreasonable other. Whites in their racial purity understood the dictates of the "White Man’s Burden" and became the beneficent teachers of the barbarians. **To Western eyes the contrast between white and non-white culture was stark: reason as opposed to ignorance; scientific knowledge instead of indigenous knowledge; philosophies of mind versus folk psychologies; religious truth in lieu of primitive superstition; and professional history as opposed to oral mythologies**. Thus, **rationality was inscribed in a variety of hierarchical relations between European colonizers and their colonies** early on, and between Western multinationals and their "underdeveloped" markets in later days. Such **power relations** **were erased by the white claim of** cultural **neutrality** around the transhistorical norm of reason -in this construction rationality was not assumed to be the intellectual commodity of any specific culture. Indeed, colonial hierarchies immersed in exploitation were justified around the interplay of pure whiteness, impure non-whiteness, and neutral reason. Traditional **colonialism was grounded on colonialized people’s deviation from the norm of rationality**, thus making colonization a rational response to **inequality**. In the twentieth century thiswhite norm of rationality was extended to the economic sphere where the philosophy of the free market and exchange values were universalized into signifiers of civilization. Once all the nations on earth are drawn into the white reason of the market economy, then all land can be subdivided into real estate, all human beings’ worth can be monetarily calculated, values of abstract individualism and financial success can be embraced by every community in every country, and education can be reformulated around the cultivation of human capital.When these dynamics come to pass, the white millennium will have commenced - white power will have been consolidated around land and money. The Western ability to regulate diverse peoples through their inclusion in data banks filled with information about their credit histories, institutional affiliations, psychological "health," academic credentials, work experiences, and family backgrounds will reach unprecedented levels. **The accomplishment of this ultimate global colonial task will mark the end of white history in the familiar end-of-history parlance.** **This does not mean that white supremacy ends, but that it has produced a hegemony so seamless that the need for further structural or ideological change becomes unnecessary. The science, reason, and technology of white culture will have achieved their inevitable triumph** (MacCannell 1992; Nakayama and Krizek 1995; Alcoff 1995; Giroux 1992). Whatever the complexity of the concept, whiteness, at least one feature is discernible - **whiteness cannot escape the materiality of its history, its effects on the everyday lives of those who fall outside its conceptual net as well as on white people themselves.** Critical scholarship on whiteness should focus attention on the documentation of such effects.Whiteness study in a critical multiculturalist context should delineate the various ways such material effects shape cultural and institutional pedagogies and position individuals in relation to the power of white reason. Understanding these dynamics is central to the curriculums of black studies, Chicano studies, postcolonialism, indigenous studies, not to mention educational reform movements in elementary, secondary, and higher education. The history of the world’s diverse peoples in general as well as minority groups in Western societies in particular has often been told from a white historiographical perspective. Such accounts erased the values, epistemologies, and belief systems that grounded the cultural practices of diverse peoples. Without such cultural grounding students have often been unable to appreciate the manifestations of brilliance displayed by non-white cultural groups. Caught in the white interpretive filter they were unable to make sense of diverse historical and contemporary cultural productions as anything other than proof of white historical success. The fact that one of the most important themes of the last half of the twentieth century - the revolt of the "irrationals" against white historical domination - has not been presented as a salient part of the white (or non-white) story is revealing, a testimony to the continuing power of whiteness and its concurrent fragility (Banfield 1991; Frankenberg 1993; Stowe 1996; Vattimo 1992).

#### Virtue ethics presumes a notion of moral perfection that is constructed by dominant epistemes – their framework is a project to reproduce whiteness.

O’Connell 14 Journal of Moral Theology, Vol. 3, No. 1 (2014): 83-104 After White Supremacy? The Viability of Virtue Ethics for Racial Justice Maureen H. O’Connell [Chair and Associate Professor of Religion and Theology at La Salle University] <https://www.academia.edu/36606270/After_White_Supremacy_The_Viability_of_Virtue_Ethics_for_Racial_Justice>

AFTER WHITE SUPREMACY—VIRTUE ETHICS AND RACIAL JUSTICE In light of all of this, there are several reasons why critical race theorists would be hesitant to employ a virtue ethics approach, particularly within a Catholic framework, to engage the three scenarios that sparked this essay. Primary among them is the fact that virtue theory is largely if not thoroughly a Euro-American preserve whose pervasive whiteness renders it susceptible to participating in that which it seeks to upend when it comes to racial justice. This anthropological heritage is evident in virtue theory writ large: an individualistic focus on personal agency, an emphasis on choice and linear progress or development, a reliance on an intellectual rationality to identify the mean within the givens of a particular social context or moral situation, a binary worldview, an association of the good with 38 Mary Elizabeth Hobgood, Dismantling Privilege: An Ethics of Accountability (Cleveland: Pilgrim Press, 2000). 39 Hobgood, Dismantling Privilege, 48. 40 Yancy, Black Bodies, White Gazes, 228. 41 Jennings, Christian Imagination, 8 and 4. Viability of Virtue Ethics for Racial Justice 93 excellence or perfection, and an approach to others as instrumental in orienting the autonomous self in her striving for perfection. While others have examined theological underpinnings of the historical and contemporary racing of the world’s peoples42 or the inherent whiteness in Euro-American theological anthropologies43 or even in academic discourse in which it is engaged,44 De La Torre has been most forthright when it comes to the limits whiteness places on virtue ethics. “Virtues, whether beneficial or detrimental to the disenfranchised communities, are in the final analysis a construct of what the dominant culture deems good or evil,” he notes. “By constructing virtues and employing objectivity, that culture legitimizes and normalizes injustices within society.”45 I offer four dimensions of that inherent whiteness in virtue ethics itself which present significant limitations when it comes to bringing a virtue approach to upending the dominant culture of whiteness, which as we have seen, must be the central task of racial justice work. Narrative In an attempt to answer his now classic ethical question as to the types of practices conducive to human flourishing which sparked the renaissance of virtue ethics, Alasdair MacIntyre points toward the centrality of stories in communicating and inculcating virtues that shape individual and collective identity as well as a sense of the good toward which we are to strive. Stanley Hauerwas deepens the social significance of narrative for Christian virtue ethics by claiming that the central ethical question of contemporary disciples is to figure out “what kind of community the church must be to be faithful to the narratives central to Christian convictions” and to allow those convictions to give shape to a community of characters with character or to virtues that are intelligibly Christian.46 Narratives and practices of storytelling and listening, however, provide a central vehicle for the transmission of white supremacy and bolster the way it functions to reinforce assumptions of superiority and inferiority and access to social goods based on these assumptions. First, Bonilla-Silva highlights the ideological power of story42 See J. Kameron Carter, Race: A Theological Account (New York: Oxford University Press, 2008), 4 and Jennings, Christian Imagination. 43 M. Shawn Copeland, “Disturbing Ethics of Race,” Journal of Catholic Social Thought, 3.1 (2006): 17-27. 44 Jennings describes the posture of academic theology with its “cultivated capacities to clarify, categorize, define, explain, interpret” realities typical of colonizers rather than more fluid capacities for adaptability and reformation demanded of the colonized in The Christian Imagination, 8. 45 De La Torre, Latino/a Social Ethics, 29. 46 Stanley Hauerwas, A Community of Character: Toward a Constructive Christian Ethic (South Bend: University of Notre Dame Press, 1981), 12-3. 94 Maureen H. O’Connell telling noting, “stories seem to lie in the realm of the given, in the matter-of-fact world. Hence stories help us make sense of the world but in ways that reinforce the status quo, serving particular interests without appearing to do so.”47 If the content of narratives and practices of storytelling tend to be controlled by the dominant culture, we need to interrogate the pervasive whiteness of our formative narratives so that the virtues that emerge are not intelligible by their whiteness. Moreover, Hauerwas’ observation that “to be a person of virtue, therefore, involves acquiring the linguistic, emotional, and rational skills that give us the strength to make our decisions and our life our own”48 creates further problems. He points to the relationship between narrative and language when it comes to shaping character or developing virtue. This linguistic connection between narrative and identity is not without peril for persons and communities of color. Rebecca Chopp notes the exclusionary practices of narrative discourse itself that both insist on working with “present signifiers” and also assign moral worth, validity, or goodness to particular kinds of linguistic expression, particularly in civic spaces where justice is mediated.49 Chopp notes that the practices of hegemonic discourse preclude basic ethical capabilities such as compassion, memories, and imagination—all of which virtue theorists identify as central contributions the tradition might make in light of its narrative character—and relegate to the margins of public discourse individuals and communities for whom these are central forms of narrative and motivations for storytelling. These practices of narrative exclusion were evident in the confusion around the semantics of the testimony of Rachel Jeantel, Trayvon Martin’s childhood friend and the last person to speak to him while he was alive, in the trial of George Zimmerman, as well as in the public assessment of her character.50 47 Bonilla-Silva, Racism without Racists, 75. He goes on to describe two forms of storytelling, both of which “‘make’ whites, but also help them navigate the turbulent waters of contemporary public discussions on race”—story lines (“provide ‘evidence’ to solidify their viewpoints” and “serve as legitimate conduits for expressing anger, animosity, and resentment toward racial minorities”) and testimonies (serve to promote a nonracial “self-presentation” particularly for whites “totally submerged in whiteness”), 98-9. 48 Hauerwas, Community of Character, 115, emphasis mine. 49 See “Reimagining Public Discourse,” in The Journal of Theology for Southern Africa 103 (March 1999), 33-8. 50 For discussion of African American Vernacular in the Martin case, listen to NPR’s program, Here and Now, on 28 June 2013: “Language on Trial: Rachel Jeantel,” where linguist John Rickford notes that “African American Vernacular English is testament to existence of difference.… Language is a profound mark of education and work, and you can beat up on this rather than on other aspects without being criticized. [Rachel] is being put on trial by the defense attorney and all of America.” http://hereandnow.wbur.org/2013/06/28/n-word-language. See Rickford’s 10 July Viability of Virtue Ethics for Racial Justice 95 Finally, De La Torre implicitly points to the “slippery” nature of whiteness in the ability for whites to opt out of familial, communal and national narratives of white supremacy, which then allows the power of these narratives to go unchallenged and as such to continue to inculcate the habits of whiteness.51 In a similar way, Bryan Massingale and James Cone note the theological academy’s readiness to engage the narrative of Martin Luther King, but not necessarily those of Malcolm X or of lynchings.52 At the conclusion of a litany of evidence of raced-based social injustices invoked to support his claim in his 2013 Presidential Address to the Society of Christian Ethics that “you can lynch people by more than hanging them on a tree,” James Cone directly asked the predominately white audience: “If you’re not talking about this, then what are you talking about?”53 Moral goodness A distinctive feature of virtue ethics, particularly in a Catholic framework, is its orientation toward the good as it is discerned and experienced by individuals in response to the invitation to participate in the love of God in order to become the moral person we are capable of being. This stands in sharp contrast to a focus on more socially constructed and externally-motivated notions of the right.54 The very point of virtue ethics is to strive continually for the good, which in and of itself can critically examine “the rightness of whiteness” at the core of white supremacy. However, what if the good—no matter how self-reflective and discerning the individual who seeks it or how embedded it might be in the narrative of a community or thick it might be with multicultural understandings—was not immune to the ideology of the white racial frame but actually an expression of it? We can find evidence of white notions of goodness in the emphasis in virtue ethics on individual character development and personal perfection, the goal of linear or forward progress, its confidence in the inherent moral goodness of individuals, and perhaps false notions of innocence in light of its limited consideration of sin both individual and collective. Moreover, what if certain goods that whites associ2013 blog post on this subject on Language Log: http://languagelog.ldc.- upenn.edu/nll/?p=5161. See also MSNBC’s Melissa Harris-Perry’s 1 July 2013 program on this topic. Trymaine Lee notes “in this case a whole group of people were criminalized by [Rachel’s] diction and her grammar.” http://video.msnbc.msn.com/-mhp/52355909#52355909. 51 De La Torre, Latino/a Social Ethics, 27. 52 See Bryan Massingale, “Vox Victimarum Vox Dei: Malcolm X as Neglected ‘Classic’ for Catholic Theological Reflection,” CTSA Proceedings 65 (2010): 63-88 and James H. Cone, The Cross and the Lynching Tree (Maryknoll, NY: Orbis Books, 2011). 53 James H. Cone, address to the Society of Christian Ethics, 5 January 2013. 54 See for example, James F. Keenan, SJ, Goodness and Rightness in Thomas Aquinas’s Summa Theologiae (Washington, D.C.: Georgetown University Press, 1992). 96 Maureen H. O’Connell ate with racial justice and toward which we strive—equality, diversity, inclusivity, civility, and unity—were actually impediments for justice so long as these goods operate within the white racial frame, where they actually cultivate the vices of white supremacy: equality is equated with merit, diversity functions as tokenism, inclusivity reinforces the power of whites as gate-keepers to the social goods of community, civility amounts to little more than superficial political correctness, and unity evokes weak commitments to standing with those offended in racial encounters but not necessarily standing up to our own racist dispositions or those of our family members, friends, or colleagues. In addition, what if, in fact, a focus on moral goodness of whites actually engaged in the work of racial justice only served as means of evading those same persons’ individual and collective complicity with systemic racism or as a means of justifying weak commitments to building inclusive communities? These are Barbara Applebaum’s concerns in her examination of the “white complicity claim” or the persistence of whites to either claim our own moral goodness and innocence when it comes to racial justice or to confess our complicity in an attempt to prove that goodness. Both short circuit the difficult work of dismantling white supremacy by re-inscribing it. She notes, “since the white complicity claim presumes that racism is often perpetuated by well-intended white people, being morally good may not facilitate and may even frustrate the recognition of such a responsibility.”55 What’s more, unreflective confessions of badness, in this case the badness of participating in systemic racism, are equally as problematic. “To put it simply,” says Applebaum, “if we admit to being bad, then we show that we are good.”56 So can virtue ethics, with its orientation toward the good, effectively illuminate a culture of white supremacy by also illuminating that individual whites are not good given our deep complicity in the habitus of whiteness? Can it reveal that our collective understanding of what the good demands in racial justice work is actually bad in its ineffectiveness to motivate the difficult work of dismantling the white racial frame? Can it make evident that striving for the good in and of itself is a way of perpetuating our voluntary and therefore culpable ignorance because such striving protects us from the shame 55 Applebaum, Being White Being Good, 3. 56 Applebaum, Being White Being Good, 55. She explains it this way: “What I refer to as the ‘white complicity claim’ maintains that white people, through the practices of whiteness and by benefiting from white privilege, contribute to the maintenance of systemic racial injustice. However, the claim also implies responsibility in its assumption that the failure to acknowledge such complicity will thwart whites in their efforts to dismantle unjust racial systems and, more specifically, will contribute to the perpetuation of racial injustice.” Viability of Virtue Ethics for Racial Justice 97 of our individual and collective complicity in racing ourselves and others? Fit In addition to an insistence on an internally-motivated desire for the good, virtue ethics is rightly heralded for encouraging moral agents to seek out the “appropriate” or “fitting” response to situations in which they find themselves. Aristotle’s notion of the mean, the middle path between extreme options presented by the situation as well as extreme tendencies abiding within the moral agent, functions to both preclude both rash reactions and invite moral agents to lean into the growing edge of their own moral capabilities and emerging identities. Act in a way that seems most fitting in light of the vision of who you are trying to become, advises the virtue ethicist, rather than in an unreflective way or with a distanced and impersonal moral calculus that fails to acknowledge the effects of your actions on you—your character and your body. Aside from the fact that the epistemology and habitus of whiteness obfuscate the ability of whites to discern the mean in racial encounters, an emphasis on fitting or appropriate action may itself be an expression of white supremacy. Feagin identifies an attuned sense of social appropriateness as a well-developed capability that allows whites to navigate the contradictions in the performance of white racial identity in the front and backstages of their lives. That white actors are so adept at “tailor[ing] one of their several selves to fit the requirements of a certain situation”57 gives whiteness its “slippery” qualities, making its appeals to appropriateness the very source of its invisibility to most whites. Sara Ahmed suggests that an emphasis on fit gives rise to a “kinship logic” that perpetuates white culture particularly when “fit” becomes associated with an exclusive sense of belonging. Under these conditions, the virtuous mean can easily become a “reproduction of likeness,” both in terms of similarity and affinity, that keeps certain kinds of social structures in place and persons of color in their proper social places.58 When whites seek the fitting response, the middle way between extremes in the situation and within ourselves, are we simply replicating whiteness? All of this is to say that without critical examination of its inherent whiteness, virtue ethics will have limited capacities in undoing the dominant culture of whiteness and constructing an alternative to Feagin’s white racial frame so long as socially formative narratives, moral goodness, and the fittingness of actions are determined and controlled by the dominant culture. De La Torre draws connections 57 Picca and Feagin, Two-Faced Racism, 46. 58 Sara Ahmed, On Being Included: Racism and Diversity in Institutional Life (Durham, NC: Duke University Press Books, 2012), 38. 98 Maureen H. O’Connell between colonial “virtuous ways of conduct that ignore[d] the ‘virtuous’ complicity with the structures of empire” and contemporary “middle class” desires for politeness, acceptability or likeability, and respectability which serve to cultivate today’s “complicity with empire.”59 It is with an eye for the dispositions, habits, and frameworks of whiteness that I concur with him in “raising concerns about uncritically adopting Eurocentric methodologies for conducting ethical analysis, especially when those methodologies are complicit with the prevailing social power structures.”60

#### Thus the alternative is one of refusal, a reshifting of posthumanist discource to interrupt settler communicative spheres like debate

King 2017 (Tiffany, Assistant Professor of Women’s and Gender Studies at the Georgia State University “Humans Involved: Lurking in the Lines of Posthumanist Flight” *Critical Ethnic Studies* 3, No. 1, pp. 163-170)

Native feminist politics of decolonial refusal and Black feminist abolitionist politics of skepticism informed by a misandry and misanthropic distrust of and animus toward the (over)representation of man/men as the human diverge from the polite, communicative acts of the public sphere, much like the politics of the “feminist killjoy.”4 [INSERT FOOTNOTE: I use “misandry” (hatred of men) and “misanthropic” (distrust or deep skepticism about humankind or humanity) to illustrate how Sylvia Wynter and other Black scholars attend to the ways that the human— and **investments in the human—and its revised forms or genres of the human as woman/feminist still reproduce violent exclusions that make the death of Black and Native people viable and in-evitable**. In other words, **neither men nor women (as humans) can absorb Black females/males/children/LGBT and trans people into their collective folds. Both the hatred of “misandry” and the distrust and pessimism of “misanthropy” are appropriate methods to describe the inflection of the critique levied by Wynter and the other Black scholars examined in this article**. END FOOTNOTE] Throughout this article, I deploy the term “feminist” both ambivalently and strategically to mark and distinguish the scholarly tradition created by Black and Native women, queer, trans, and other people marginalized within these respective communities and their anticolonial and abolitionist movements.5 [INSERT FOOTNOTE: See Sylvia Wynter’s afterword, “Beyond Miranda’s Meanings: Un/silencing the ‘Demonic Ground’ of Caliban’s ‘Woman,’” in Out of the Kumbla: Caribbean Women and Literature, ed. Carole Boyce Davies (Chicago, Ill.: Africa World Press, 1990) 355– 72. Wynter warns Black women in the United States and the Caribbean that they need not uncritically embrace womanism as a political position, which can effectively oppose the elisions, racism, and false universalism of white feminism. “Feminism” as well as “womanism” are bounded and exclusive terms that do not effectively throw the category of the human into continual flux. END FOOTENOTE], Until a more useful and legible term emerges, I will use “feminist” to mark the practices of refusal and skepticism (misandry/misanthropy) as ones that largely exist outside more masculinist traditions within Indigenous/Native studies and Black studies**. “Decolonial refusal” and “abolitionist skepticism” depart from the kinds of masculinist anticolonial traditions that attempt to reason Native/ Black man to White Man within humanist logic in at least two significant ways**. First, **neither participate in the communicative acts of the humanist public sphere from within the terms of the debate**. Further, they do not play by the rules.6 [INSERT FOOTNOTE: See the critiques of the anticolonial tradition within Caribbean philosophy articulated by Shona Jackson in her book Creole Indigeneity (Minneapolis: University of Minnesota Press, 2012). Jackson argues that **anticolonial Caribbean masculinist philosophy tends to argue from inside the logic of Western philosophy in order to counter it.** For instance, in a valorization of the laborer as human and inheritor of the nation-state, Caribbean philosophy tends to reproduce the Hegelian telos of labor as a humanizing agent for the slave, which inadvertently makes the slave a subordinate human and effectively erases the ostensibly “nonlaboring” humanity of Indigenous peoples in the Anglophone Caribbean. END FOOTENOTE] Specifically, the Native and Black “feminist” politics discussed throughout launch a critique of both the logic of the discussion about the human and identity as well as the mode of communication. In fact, **practices of refusal and skepticism interrupt and flout codes of civil and collegial discursive protocol to focus on and illumine the violence that structures the posthumanist discourse.** Attending to the comportment, tone, and intensity of an engagement is just as important as focusing on its content. **The** particular **manner in which Black and Native feminists push back against violence is important**. **The force**, break with decorum, and style **in which Black and Native feminists confront discursive violence can change the nature of future encounters**. Given that Black women who confront the logics of “nonrepresentational theory” are really confronting genocide and the white, whimsical disavowal of Black and Native negation on the way to subjectlessness, it is understandable that there is an equally discordant response. **Refusal and skepticism are modes of engagement that are uncooperative and force an impasse in a discursive exchange.** This article tracks how traditions of “**decolonial refusal**” and “abolitionist skepticism” that emerge from Native/Indigenous and Black studies **expose the limits and violence of contemporary nonidentitarian and nonrepresentational impulses within white “critical” theory.** Further, this article asks whether Western forms of nonrepresentational (subjectless and nonidentitarian) theory can truly transcend the human through self- critique, self-abnegation, and masochism alone. External pressure, specifically the kind of pressure that “decolonial **refusal**” and “abolitionist skepticism” as forms of resistance that **enact outright rejection of or view “posthumanist” attempts with a “hermeneutics of suspicion,**”7 [INSERT FOOTNOTE: See the work of Black feminists such as Susana M. Morris, author of Close Kin and Distant Relatives: The Paradox of Respectability in Black Women’s Literature (Charlottesville: University of Virginia Press, 2014), as well as womanist theologians who appropriate the phrase “hermeneutics of suspicion” as coined by Paul Ricoeur to describe the reading and interpretive practices of Black woman who are distrustful of traditional tropes about heteronormativity or conventional ways of thinking about what is natural and normal. Further, in Morris’s case, as well as within the tradition of Black women of faith and theologians, canonical and biblical texts are interpreted through a lens that acknowledges white supremacy and misogyny, and critically challenges racism and sexism (or kyriarchy in Morris’s case). Within Black feminist and womanist traditions, it is a position that can recognize the limitations of text and that refuses to accept the doctrine, theories, or message of an ideology wholesale. END FOOTENOTE**] is needed in order to truly address the recurrent problem of the violence of the human in continental theory.** While this article does not directly stake a claim in embracing or rejecting identity per se, it does take up the category of the human. **Because the category of the human is modified by identity in ways that position certain people** (white, male, able- bodied) within greater or lesser proximity to humanness, **identity is already taken up in this discussion**. Conversations about the human are very much tethered to conversations about identity. In the final section, the article will explore how Black and Native/Indigenous absorption into the category of the human would disfigure the category of the human beyond recognition. **Engaging how forms of Native decolonization and Black abolition scrutinize the violently exclusive means in which the human has been written and conceived is generative because it sets some workable terms of engagement for interrogating Western and mainstream claims to and disavowals of identity**. Rather than answer how Native decolonization and Black abolition construe the human or identity, the article examines how Native and Black feminists use refusal and misandry to question the very systems, institutions, and order of knowledge that secure humanity as an exclusive experience and bound identity in violent ways. I consider the practices and postures of refusal assumed by Native/Indigenous scholars such as Audra Simpson, Eve Tuck, Jodi Byrd, and Linda Tuhiwai Smith to be particularly instructive for exposing the violence of ostensibly nonrepresentational Deleuzoguattarian rhizomes and lines of flight. While reparative readings and “working with what is productive” about Gilles Deleuze and Félix Guattari’s work is certainly a part of the Native feminist scholarly tradition, this article focuses on the underexamined ways that Native feminists refuse to entertain certain logics and foundations that actually structure Deleuzoguattarian thought.8 [I thank one of the reviewers, who reminded me that Native feminist thought’s engagement with continental theory, specifically the work of Deleuze and Guattari, can be likened more to “constellations” as it takes up Deleuzoguattarian thought rather than a single point that always departs from a place of refusal. END FOOTENOTE] Further, I discuss **“decolonial refusal**” in relation to how Black scholars like Sylvia Wynter, Zakiyyah Iman Jackson, and Amber Jamilla Musser work within a Black feminist tradition animated **by a kind of skepticism or suspicion capable of ferreting out the trace of the white liberal human within (self-)professed subjectless, futureless, and nonrepresentational white theoretical traditions.** In other words, in the work of Sylvia Wynter**, one senses a general suspicion and deep distrust of the ability of Western theory— specifically its attempt at self- critique and self- correction in the name of justice for humanity— to revise its cognitive orders to work itself out of its current “closed system,” which reproduces exclusion and structural oppositions based on the negation of the other**.9 [INSERT FOOTENOTE: See Katherine McKittrick, “Diachronic Loops/Deadweight Tonnage/Bad Made Measure,” Cultural Geographies 23, no. 1 (2016): 3– 18, doi:10.1177/14744740156 12716, for an exemplary explication of how Sylvia Wynter uses the decolonial scholarship of an “autopoiesis.” END FOOTENOTE] Wynter’s study of decolonial theory and its elaboration of autopoiesis informs her understanding of how the human and its overrepresentation as man emerges. Recognizing that humans (of various genres) write themselves through a “self- perpetuating and self- referencing closed belief system” that often prevents them from seeing or noticing “the process of recursion,” Wynter works to expose these blind spots.10 [INSERT FOOTNOTE: See McKittrick, “Diachronic Loops,” in which the author cites the importance of the work of H. Maturana and F. Varela, Autopoiesis and Cognition: The Realization of the Living (London: D. Reidel, 1972), for the study of the human’s process of self- writing. END FOOTNOTE] Wynter understands that **one of the limitations of Western liberal thought is that it cannot see itself in the process of writing itself.** I observe a similar kind of cynicism about the way the academic left invokes “post humanism” in the work of Jackson and Musser. Musser in particular questions the capacity of queer theories to turn to sensations like masochism within the field of affect studies to overcome the subject. Further, Jackson’s and Musser’s work is skeptical that white transcendence can happen on its own terms or rely solely on its own processes of self-critique and self- correction. I read Jackson’s and Musser’s work as distrustful of the ability for “posthumanism” to be accountable to Black and Indigenous peoples or for affect theory on its own to not replicate and reinforce the subjugation of the other as it moves toward self- annihilation. Both the human and the post human are causes for suspicion within Black studies. Like Wynter, the field of Black studies has consistently made the liberal human an object of study and scrutiny, particularly the nefarious manner in which it violently produces Black existence as other than and at times nonhuman. Wynter’s empirical method of tracking the internal epistemic crises and revolutions of Europe from the outside has functioned as a model for one way that Black studies can unfurl a critique of the human as well as Western modes of thought. I use the terms “misanthropy” and “misandry” in this article to evoke how Black studies has remained attentive to, wary about, and deeply distrustful of the human condition, humankind, and the humanas-man/men in the case of Black “feminists.” Both Black studies’ distrust of the “human” and Black feminism’s distrust of humanism in its version as man/men (which at times seeks to incorporate Black men) relentlessly scrutinize how the category of the human and in this case the “posthuman” reproduce Black death. I link misandry (skepticism of humankind-as-man) to the kind of skepticism and “hermeneutics of suspicion” that Black feminist scholars like Wynter, Jackson, and Musser at times apply to their reading and engagement with revisions to or expansions of the category of the human, posthuman discourses, and nonrepresentational theory In this article, I connect discursive performance of skepticism to embodied and affective responses I have witnessed in the academy that challenge the sanctioned modes of protocol, politesse, and decorum in the university. For example, Wynter assumes a critically disinterested posture as she gazes empirically on and examines intra-European epistemic shifts over time. Paget Henry has described Wynter as an anthropologist of the Occident, as Europe becomes an object of study rather than the center of thought and humanity.11 [INSERT FOOTNOTE: Paget Henry, Caliban’s Reason: Introducing Afro-Caribbean Philosophy (New York: Routledge, 2002), 19. END FOOTENOTE] Throughout the body of Wynter’s work, she seems to be more interested in drawing our attention to the capacity of European orders of knowledge to shift over time— or their fragility— than in celebrating the progress that European systems of knowledge have claimed to make. Wynter’s tracking is just a tracking and not a celebration of the progress narrative that Western civilization tells about itself and its capacity to define, refine, and recognize new kinds of humanity over time. This comportment of critical disinterest is often read as an affront to the codes and customs of scholarly discourse and dialogue in the academic community, particularly when it is in response to the white thinkers of the Western cannon. **Decolonial refusal and abolitionist skepticism respond to how perverse and reprehensible it is to ask Indigenous and Black people who cannot seem to escape death to move beyond the human or the desire to be human**. In fact, Black and **Indigenous people have never been fully folded into the category of the human**. As Zakiyyah Iman Jackson has argued**, It has largely gone unnoticed by posthumanists that their queries into ontology often find their homologous (even anticipatory) appearance in decolonial philosophies that confront slavery and colonialism’s inextricability from the Enlightenment humanism they are trying to displace. Perhaps this foresight on the part of decolonial theory is rather unsurprising considering that exigencies of race have crucially anticipated and shaped discourses governing the non- human** (animal, technology, object, and plant).12 [Zakkiyah Iman Jackson, “Review: Animal: New Directions in the Theorization of Race and Posthumanism,” Feminist Studies 39, no. 3 (2013): 681. END FOOTENOTE] A crucial point that Jackson emphasizes is that Black and Indigenous studies, particularly decolonial studies, has already grappled with and anticipated the late twentieth century impulses inspired by Leo Bersani and Lee Edelman to annihilate the self and jettison the future. **Indigenous and Black “sex**” (as activity, reproduction, pleasure, world-building, and not-human sexuality) **are already subsumed by death**. For some reason, white critical theory cannot seem to fathom that self- annihilation is something white people need to figure out by themselves. In other words, “they can have that.”13 [INSERT FOOTNOTE: This is a colloquialism or form of vernacular often used by Blacks and People of Color to express that they disagree with something and more specifically reject an idea and will leave that to the people whom it concerns to deal with. END FOOTNOTE] Within Native feminist theorizing, ethnographic refusal can be traced to Audra Simpson’s 2007 article, “On Ethnographic Refusal.” In this seminal work, Simpson reflects on and gains inspiration from the tradition of refusal practiced by the people of Kahnawake.14 [INSERT FOOTNOTE: Simpson’s ethnographic work specifically focuses on the Kahnawake Mohawk who reside in a reservation in the territory is now referred to as southwest Quebec. END FOOTNOTE] **Simpson shares that** **Kahnawake refusals are at the core and spirit of her own ethnographic and ethical practices of refusal.** I was interested in the larger picture, in the discursive, material and moral territory that was simultaneously historical and contemporary (this “national” space) and the ways in which Kahnawakero:non, **the “people of Kahnawake,” had refused the authority of the state at almost every turn.** The ways in which their formation of the initial membership code (now replaced by a lineage code and board of elders to implement the code and determine cases) was refused; the ways in which their interactions with border guards at the international boundary line were predicated upon a refusal; how refusal worked in everyday encounters to enunciate repeatedly to ourselves and to outsiders that “this is who we are, this is who you are, these are my rights.”15 [INSERT FOOTNOTE: Audra Simpson, “On Ethnographic Refusal: Indigeneity, ‘Voice’ and Colonial Citizenship,” Junctures: The Journal for Thematic Dialogue, no. 9 (December 2007): 73. END FOOTNOTE] Because Simpson was concerned with applying the political and everyday modes of Kahnawake refusal, she attended to the “collective limit” established by her and her Kahnawake participants. 16 [INSERT FOOTNOTE: Ibid., 77. END FOOTNOTE] The collective limit was relationally and ethically determined by what was shared but more importantly by what was not shared. Simpson’s ability to discern the collective limit could only be achieved through a form of relational knowledge production that regards and cares for the other. Simpson recounts how one of her participants forced her to recognize a collective limit. Approaching and then arriving at the limit, Simpson experiences the following: And although I pushed him, hoping that there might be something explicit said from the space of his exclusion— or more explicit than he gave me— it was enough that he said what he said. “Enough” is certainly enough. “Enough,” I realised, was when I reached the limit of my own return and our collective arrival. Can I do this and still come home; what am I revealing here and why? Where will this get us? Who benefits from this and why? And “enough” was when they shut down (or told me to turn off the recorder), or told me outright funny things like “nobody seems to know”— when everybody does know and talks about it all the time. Dominion then has to be exercised over these representations, and that was determined when enough was said. The ethnographic limit then, was reached not just when it would cause harm (or extreme discomfort)— the limit was arrived at when the representation would bite all of us and compromise the representational territory that we have gained for ourselves in the past 100 years.17 [INSERT FOOTNOTE: Ibid., 78. END FOOTNOTE] Extending her discussion of ethnographic refusal beyond the bounds of ethnographic concerns, Simpson also ponders whether this enactment of refusal can be applied to theoretical work. Simpson outright poses a question: “What is theoretically generative about these refusals?”18 [INSERT FOOTNOTE: Ibid. END FOOTNOTE] The question that Simpson asks in 2007 is clarified by Eve Tuck and K. Wayne Yang in the 2014 essay “R- Words: Refusing Research.” **Arguing that modes of refusal extended into the theoretical and methodological terrains of knowledge production are productive and necessary,** Tuck and Yang state: For the purposes of our discussion, the most important insight to draw from Simpson’s article is her emphasis that **refusals are not subtractive, but are theoretically generative, expansive. Refusal is not just a “no,” but a redirection to ideas otherwise unacknowledged or unquestioned.** Unlike a settler colonial configuration of knowledge that is petulantly exasperated and resentful of limits, **a methodology of refusal regards limits on knowledge as productive, as indeed a good thing**.19 [INSERT FOOTNOTE: Eve Tuck and K. Wayne Yang, “R- Words: Refusing Research,” in Humanizing Research: Decolonizing Qualitative Inquiry with Youth and Communities (Thousand Oaks, Calif.: SAGE, 2014), 239. END FOOTNOTE] In line with Simpson’s intervention, Tuck and Yang posit that “refusal itself could be developed into both method and theory.”20 [INSERT FOOTNOTE: Ibid., 242. END FOOTNOTE] For Tuck and Yang, a generative practice of refusal and a decolonial and abolitionist tradition is making Western thought “turn back upon itself as settler colonial knowledge, as opposed to universal, liberal, or neutral knowledge without horizon.”21 [INSERT FOOTNOTE: Ibid., 243. END FOOTNOTE] In fact, the coauthors suggest “making the settler colonial metanarrative the object of . . . research.”22 [INSERT FOOTNOTE: Ibid., 244. END FOOTNOTE] What this move effectively does is question the uninterrogated assumptions and exposes the violent particularities of the metanarrative. **Scrutiny as a practice of refusal also slows down or perhaps halts the momentum of the machinery that allows, as Tuck and Yang argue, “knowledge to facilitate interdictions on Indigenous and Black life**.”23 [INSERT FOOTNOTE: Ibid., 244. END FOOTNOTE] Taking a cue from Simpson and Tuck and Yang, I turn to Tuck’s 2010 critique of Deleuze’s notion of “desire” as an example of the theoretical practice of refusal, which Simpson wonders about and which Tuck and Yang elaborated on in 2014. Eve Tuck’s 2010 article “Breaking Up with Deleuze” refuses Deleuze’s understanding and imposition of his definition of desire for Native studies and Native resurgence in particular. Tuck refuses the Deleuzoguattarian nomadic due to its totalizing moves and specifically its evasion and refusal of Native and alternative notions of refusal that emerge from Native struggles for survival.24 [INSERT FOOTNOTE: Eve Tuck, “Breaking Up with Deleuze: Desire and Valuing the Irreconcilable,” International Journal of Qualitative Studies in Education 23, no. 5 (2010): 635– 50. END FOOTNOTE] For Tuck, paying attention to “the continuity of ancestors,” or genealogies, in Native and in all modes of knowledge production is imperative. For Indigenous and Native studies, it reverses the erasure enacted by continental European and settler-colonial theory, which uses a tradition of ongoing genocide to annihilate Native thinkers and subsequently their epistemologies and theories. Prior to Byrd’s indictment of Deleuzoguattarian laudatory accounts of America’s terrain of “Indians without Ancestry,” Tuck reroutes us back to ancestral and genealogical thinking as a way of asserting Indigenous presence and its epistemological systems and traditions, devoid of Cartesian boundary- making impulses and desires. Tuck’s work also prepares us in 2010 for the critique that Byrd levies in 2011, which exposes the traditions, roots, and genealogies of Western poststructuralist theory. Such theory created the conditions of possibility and emergence for Deleuzoguattarian genocidal forms of rhizomatic and nonrepresentational thought. Black Caribbean feminist Michelle V. Rowley argues we need to especially attend to a theory’s “politics and conditions of emergence.”25 [INSERT FOOTNOTE: See Michelle V. Rowley, “The Idea of Ancestry: Of Feminist Genealogies and Many Other Things,” in Feminist Theory Reader: Local and Global Perspectives, 3rd ed., ed. Carole R. McCann and Syeung Kyung Kim (New York: Routledge, 2013), 810– 81, where Rowley argues that transnational feminisms need to attend to how the white feminist wave as a metaphor and theory emerges, disciplines are thought, and more importantly how “its wins” are gained through the exploitation and suffering of women from the Global South. Rowley describes this work as attending to the “politics and conditions of emergence” of feminist metaphors and theories. END FOOTNOTE] In other words, we need to consider on whose backs or through whose blood a theory developed and then circulated while hiding its own violence.

#### The role of the ballot is to center indigenous scholarship and research. Indigenous theories must come before settler frameworks. We need to hold colonizers accountable to open the space up for new narratives and disrupt colonial institutions.

Carlson ‘16 [Elizabeth Carlson, Oct 21 2016, Anti-colonial methodologies and practices for settler colonial studies, Settler Colonial Studies, 7:4, 496-517, DOI: 10.1080/2201473X.2016.1241213] [SS]

Macoun and Strakosch contend that ‘most settlers who use [settler colonial theory] are concerned to disturb rather than re-enact colonial hierarchies, and seek to contribute to Indigenous political struggles’.40 The particular research project out of which this article arises, focuses on the ways experienced white settler anti-colonial, decolonial, or solidarity activists have worked to disrupt and subvert settler colonialism within themselves, their organizations, their relationships, their pedagogies, their connections with land, their com- munities, and sometimes also in the Canadian government, with a goal of inspiring others to engage in or deepen such work, and of contributing to social change. As has been noted, **in subverting settler colonialism, the role of white settler academics is at the periphery, making space for Indigenous resurgence and knowledges, and pushing back against colonial institutions,** structures, practices, mentalities, and land theft. In order to do this, anti-colonial settler scholars can sit on departmental and university committees, supporting anti-colonial and anti-oppressive ethical choices to push for changes in Euro- centric and colonial curricula, narratives, policies, and structures**. We can seek to disrupt rather than enact colonial values and practices, and engage in anti-colonial actions within the academy.** This also applies to our writing: Settler scholars seeking to challenge colonial power relations should be doubly attentive to the operation of [colonial] narratives, and the way that we as individual scholars perform and deploy academic authority. For us, this has involved the need to interrogate our work – along with other settler cultural productions.41 **When settler scholars subvert colonialism in the academy, the ethics of their work are improved, and potentially more space is made for Indigenous scholars who wish to main- tain their own values in the academy.** Arlo Kempf says that ‘where anticolonialism is a tool used to invoke resistance for the colo- nized, it is a tool used to invoke accountability for the colonizer’.**42 Relational accountability should be a cornerstone of settler colonial studies.** I believe settler colonial studies and scholars should ethically and overtly place themselves in relationship to the centuries of Indigenous oral, and later academic scholarship that conceptualizes and resists settler colonialism without necessarily using the term: SCT may be revelatory to many settler scholars, but Indigenous people have been speaking for a long time about colonial continuities based on their lived experiences. Some SCTs have sought to connect with these discussions and to foreground Indigenous resistance, survival and agency. Others, however, seem to use SCT as a pathway to explain the colonial encounter without engaging with Indigenous people and experiences – either on the grounds that this structural analysis already conceptually explains Indigenous experience, or because Indigen- ous resistance is rendered invisible.43 Ethical settler colonial theory (SCT) would recognize the foundational role Indigenous scholarship has in critiques of settler colonialism. It would acknowledge the limitations of settler scholars in articulating settler colonialism without dialogue with Indigenous peoples, and take as its norm making this dialogue evident. In my view, **it is critical that we not view settler colonial studies as a new or unique field being established, which would enact a discovery narrative and contribute to Indigenous  erasure, but rather take a longer and broader view**. Indigenous oral and academic scholars are indeed the originators of this work. This space is not empty. Of course, powerful forces of socialization and discipline impact scholars in the academy. **There is much pressure to claim unique space**, to establish a name for ourselves, and to make academic discoveries. I am suggesting that **settler colonial studies and anti-colonial scholars resist these hegemo- nic pressures and maintain a higher anti-colonial ethic.** As has been argued, ‘**the theory itself places ethical demands on us as settlers, including the demand that we actively refuse its potential to re-empower our own academic voices and to marginalize Indigen- ous resistance’**.44 As settler scholars, we can reposition our work relationally and contextually with humi- lity and accountability. **We can centre Indigenous resistance, knowledges, and scholarship in our work, and contextualize our work in Indigenous sovereignty.** We can view oral Indi- genous scholarship as legitimate scholarly sources. We can acknowledge explicitly and often the Indigenous traditions of resistance and scholarship that have taught us and pro- vided the foundations for our work. **If our work has no foundation of Indigenous scholar- ship and mentorship, I believe our contributions to settler colonial studies are even more deeply problematic.** I embody the principle of relational and epistemic accountability by acknowledging here that my interest in the larger study out of which the anti-colonial research method- ology is based was inspired by a lifetime of influences. In particular, my work in this area has been influenced by years of guidance from a number of Indigenous and African-Amer- ican mentors including Nicholas Cooper-Lewter, Nii Gaani Aki Inini (Dave Courchene Jr), Zoongigaabowitmiskoakikwe, and my late brother Byron Matwewinin.45 I entered into dis- cussions with Indigenous scholars, friends, and Elders (in particular, Zoongigaabowitmis- koakikwe, Michael Hart, Leona Star-Manoakeesick, and Gladys Rowe),46 observing their protocols of gifts and offerings for the feedback I was requesting, depending on the context. In addition, my reading of Indigenous scholarship located the study as a response to a call by Indigenous scholars that settler peoples engage in decolonization processes and work. Throughout the research and writing process I made it a point to attend Indi- genous-led community events and gatherings to stay connected to community and con- tinue to learn. When I met with Leona Star-Manoakeesick, we discussed how Ownership, Control, Access, Possession research principles might relate to my research.47 Leona challenged me to think about who constitutes the community that relates to my research as a begin- ning step, and shared that accountability to Indigenous peoples would also mean account- ability to the land. Her input greatly influenced the methodology principles and practices. As I achieved greater clarity about the study, I engaged in formal consultations with a number of other Indigenous scholars, knowledge keepers, and/or activists. Chickadee Richard, Belinda Vandenbroek, Don Robinson, Aimée Craft, Louis Sorin, and Manito Mukwa (Troy Fontaine),48 provided guidance, input, and encouragement regarding the initial research design and process, much of which shifted and strengthened my initial thoughts and was readily integrated into the research. I was gifted key insights and values on which to build the research, and meaningful ideas for interview questions and interview participants. During the initial phases of the research, I was inspired by scho- larship that urges settler peoples on Indigenous lands who wish to identify themselves in the context of Indigenous sovereignty to learn and use words that local Indigenous peoples use for them.49 A number of individuals helped me in my quest to learn about Anishinaabemowin conceptions of white people – Nii Gaani Aki Inini (Dave Courchene), Rose Roulette, Niizhosake (Sherry Copenace), Daabaasanaquwat ‘Lowcloud’ (Peter Atkin- son), Byron Matwewinin, and Pebaamibines.50 **I further sought to embody relational accountability by centring Indigenous scholarship and literatures in my research proposal and literature review.** Aspects of the data analysis process were shared with a smaller group of Indigenous scholars (Leona Star-Manoakeesick, Aimée Craft, and Dawnis Kennedy),51 who provided feedback which shaped the analysis and the writing of the research report. Towards the end of the research process, I organized a research feast, which is described further below. **Relational accountability was embodied by sharing the research with the community and receiving feedback from it.**

# 2

#### Counterplan Text: [“The member nations of the World Trade Organization ought to reduce intellectual property protections for medicines”] but replace the term intellectual property with “copyrights”, “patents”, “trademarks” or “trade secrets” as appropriate.

#### The term “intellectual property” is imprecise, and conjures up imagery of corporations righteously defending their property, which works to undermine the argument of the 1AC and instead leads to endlessly expanding patent and copyright regimes.

Chopra 18, Samir. “The Idea of Intellectual Property Is Nonsensical and Pernicious: Aeon Essays.” Aeon, Aeon Magazine, 12 Nov. 2018, aeon.co/essays/the-idea-of-intellectual-property-is-nonsensical-and-pernicious. Samir Choprais professor of philosophy at Brooklyn College of the City University of New York. He is the author of several books, including A Legal Theory for Autonomous Artificial Agents (2011), co-authored with Laurence White.//sid

There are four areas of US federal law linked under the rubric of ‘intellectual property’ that we ought to keep separate in our minds. In an essay published in The Politics of Law (2010), Keith Aoki defines each as follows. Copyright protects ‘original works such as books, music, sculpture, movies and aspects of computer programs’ that are ‘embodied or fixed in a tangible medium’. This protection does not require a work to be entirely novel and extends only to its ‘original aspects’, to ‘a particular expression … not the underlying ideas’, and not to ‘independently created or similar works’. Under the umbrella of copyright law are original, concrete expressions, not ideas – the same story and script idea can generate many distinct movies, for instance. Then there are patents, which cover ‘new and useful inventions, manufactures, compositions of matter and processes reduced to practice by inventors’ with ‘rigorous requirements of subject matter, novelty, utility and non-obviousness’. Patents protect realised inventions and ideas in gestation – eg, here is a new method for collecting rainwater, and this is a machine that does just that. Trademarks (and the related ‘trade dresses’) meanwhile protect consumers from ‘mistake, confusion and deception’ about the sources of commercial goods: the ‘G’ in Gucci, Apple’s apple, a distinctive packaging. Finally, there are trade secrets, or secret information that confers economic benefits on its holder and is subject to the holder’s reasonable efforts to maintain its secrecy. Each regime has a public-policy justification: copyright law incentivises the production of creative works, which populate the public domain of culture. Patent law lets inventors and users benefit from the original ideas disclosed in a patent filing, and aims to make research and development economically feasible by producing investment in new technologies and products. Trademark law protects customers by informing them that their preferred vendor – and not some counterfeiter making inferior goods – is the source of the goods they’re buying. Copyright- and patent-holders extract monopoly rent from protected subject matter, or its concrete expression, for a limited period. Such limited exclusivity is meant to encourage the further production of original expressions and inventions by providing raw materials for other creators and inventors to build on. In the United States, media and technology have been shaped by these laws, and indeed many artists and creators owe their livelihoods to such protections. But recently, in response to the new ways in which the digital era facilitates the creation and distribution of scientific and artistic products, the foundations of these protections have been questioned. Those calling for reform, such as the law professors Lawrence Lessig and James Boyle, free software advocates such as Richard Stallman, and law and economics scholars such as William Landes and Judge Richard Posner, ask: is ‘intellectual property’ the same kind of property as ‘tangible property’, and are legal protections for the latter appropriate for the former? And to that query, we can add: is ‘intellectual property’ an appropriate general term for the widely disparate areas of law it encompasses? The answer to all these questions is no. And answering the latter question will help to answer the former. Stallman is a computer hacker extraordinaire and the fieriest exponent of the free-software movement, which holds that computer users and programmers should be free to copy, share and distribute software source code. He has argued that the term ‘intellectual property’ be discarded in favour of the precise and directed use of ‘copyright’, ‘patents’, ‘trademarks’ or ‘trade secrets’ instead – and he’s right. This is not merely semantic quibbling. The language in which a political and cultural debate is conducted very often determines its outcome. Stallman notes that copyright, patent, trademark and trade secret law were motivated by widely differing considerations. Their intended purposes, the objects covered and the permissible constraints all vary. In fact, knowledge of one body of law rarely carries over to another. (A common confusion is to imagine that an object protected by one area of law is actually protected by another: ‘McDonald’s’ is protected by trademark law, not copyright law, as many consumers seem to think.) Such diversity renders most ‘general statements … using “intellectual property”… false,’ Stallman [writes](https://www.gnu.org/philosophy/not-ipr.en.html). Consider the common claim that intellectual property promotes innovation: this is actually true only of patent law. Novels are copyrighted even if they are formulaic, and copyright only incentivises the production of new works as public goods while allowing creators to make a living. These limited rights do not address innovations, which is also true of trademark and trade secret law. Crucially, ‘intellectual property’ is only partially concerned with rewarding creativity (that motivation is found in copyright law alone). Much more than creativity is ‘needed to make a patentable invention’, Stallman explains, while trademark and trade secret law are orthogonal to creativity or its encouragement. Clubbing these diversities under the term ‘intellectual property’ has induced a terrible intellectual error A general term is useful only if it subsumes related concepts in such a way that semantic value is added. If our comprehension is not increased by our chosen generalised term, then we shouldn’t use it. A common claim such as ‘they stole my intellectual property’ is singularly uninformative, since the general term ‘intellectual property’ obscures more than it illuminates. If copyright infringement is alleged, we try to identify the copyrightable concrete expression, the nature of the infringement and so on. If patent infringement is alleged, we check another set of conditions (does the ‘new’ invention replicate the design of the older one?), and so on for trademarks (does the offending symbol substantially and misleadingly resemble the protected trademark?) and trade secrets (did the enterprise attempt to keep supposedly protected information secret?) The use of the general term ‘intellectual property’ tells us precisely nothing. Furthermore, the extreme generality encouraged by ‘intellectual property’ obscures the specific areas of contention created by the varying legal regimes. Those debating copyright law wonder whether the copying of academic papers should be allowed; patent law is irrelevant here. Those debating patent law wonder whether pharmaceutical companies should have to issue compulsory licences for life-saving drugs to poor countries; copyright law is irrelevant here. ‘Fair use’ is contested in copyright litigation; there is no such notion in patent law. ‘Non-obviousness’ is contested in patent law; there is no such notion in copyright law. Clubbing these diversities under the term ‘intellectual property’ has induced a terrible intellectual error: facile and misleading overgeneralisation. Indiscriminate use of ‘intellectual property’ has unsurprisingly bred absurdity. Anything associated with a ‘creator’ – be it artistic or scientific – is often grouped under ‘intellectual property’, which doesn’t make much sense. And the widespread embrace of ‘intellectual property’ has led to historical amnesia. According to Stallman, many Americans have held that ‘the framers of the US Constitution had a principled, procompetitive attitude to intellectual property’. But Article 1, Section 8, Clause 8 of the US Constitution authorises only copyright and patent law. It does not mention trademark law or trade secret law. Why then does ‘intellectual property’ remain in use? Because it has polemical and rhetorical value. Its deployment, especially by a putative owner, is a powerful inducement to change one’s position in a policy argument. It is one thing to accuse someone of copyright infringement, and another to accuse of them of the theft of property. The former sounds like a legally resolvable technicality; the latter sounds like an unambiguously sinful act. Property is a legally constructed, historically contingent, social fact. It is founded on economic and social imperatives to distribute and manage material resources – and, thus, wealth and power. As the preface to a legal textbook puts it, legal systems of property ‘confer benefits and impose burdens’ on owners and nonowners respectively. Law definesproperty. It circumscribes the conditions under which legal subjects may acquire, and properly use and dispose of their property and that of others. It makes concrete the ‘natural right’ of holding property. Different sets of rules create systems with varying allocations of power for owners and others. Some grants of property rights lock in, preserve and reinforce existing relations of race, class or gender, stratifying society and creating new, entrenched, propertied classes. Law makes property part of our socially constructed reality, reconfigurable if social needs change. Property is made not by the act of mixing labour with fallow land, as John Locke had it in 1689, but by the scaffolding provided by the surrounding legal system. Possession and labour – the much-revered foundations of Anglo-American property law – are insufficient to secure property. Land was acquired from Native nations by treaty; the labour of slaves was stolen; women worked, and still do, for free at home, rearing children, cleaning and cooking; adverse possession law shows a tension between possession and use; in family settings, personal arrangements override formal titles. Legal systems of property are pragmatic and outcome-oriented. They bring about desired social ends through a historically contingent, evolving blend of rights and duties for owners. There is no ‘natural’ or ‘objective’ basis for property; we deem something property because better social outcomes are realised by doing so. If another, better social outcome presents itself, whatever the debate among contending social and political alliances that gave rise to such a notion, we revise our concept of property. The long history of private property usurped for public benefit – in times of war, say, or when building railroads – and the restrictions on the kinds of objects that can be bought and sold, offers adequate testimony for this claim. (The US Constitution’s Takings Clause requires that when such property is taken, rights-holders are adequately compensated.) Knowledge and creative works are nonrivalrous, nondepletable goods subject to network effects The US Patent Act of 1870 and Copyright Act of 1976 treat patents and copyrights as kinds of property, therefore suggesting that intellectual property rights should be akin to tangible property rights: that is, ‘perpetual and exclusive’. But legal protections offered to intellectual property assets are utilitarian grants – they are neither perpetual nor exclusive. (Tangible property is said to be perpetual because it is yours till you dispose of it.) Their terms are limited and amenable to nonexclusive use. Patent law offers exceptions for experimental use, and prior-use rights for business methods; copyright law for fair use; trademark law for nominative use; trade secrets for reverse engineering and independent discovery. Intellectual property rights are granted reluctantly: here is your limited property right with exceptions for nonexclusiveness, so that your knowledge can flow back into the public domain, there to be built upon by others. Intellectual property assets are interlinked and interdependent. Granting exclusivity rights increases transaction costs in those domains. Whatever kind of property ‘intellectual property’ is, then, it is not like ‘tangible property’, a fact recognised in these differential legal regimes. When Locke spoke of creating property by mixing our labour with the land, he had fallow land in mind. This is precisely not the nature of artistic and scientific creation, where the creator ‘mixes’ his ideas with those of others to create a new work. Think of the relationship between rock ’n’ roll and the blues, between Shakespeare’s Romeo and Juliet, and Baz Luhrmann’s, between older scientific theories and the newer ones that build on them. Knowledge and creative works are nonrivalrous, nondepletable goods subject to network effects. To control them like ‘tangible property’ is to reduce their social utility. The domain of the various bodies of law that make up ‘intellectual property’ is a very different kind of property, perhaps so different that it shouldn’t be understood as such. Legal protections appropriate for tangible objects – as the drafters of the US Constitution were well aware – are a disaster in the realm of culture, which relies on a richly populated, open-for-borrowing-and-reuse public domain. It is here, where our culture is born and grows and is reproduced, that the term ‘intellectual property’ holds sway and does considerable mischief. ‘Property’ is a legal term with overwhelming emotive, expressive and rhetorical impact. It is regarded as the foundation of a culture and as the foundation of an economic system. It pervades our moral sense, our normative order. It has ideological weight and propaganda value. To use the term ‘intellectual property’ is to partake of property’s expressive impact in an economic and political order constructed by property’s legal rights. It is to suggest that if property is at play, then it can be stolen, and therefore must be protected with the same zeal that the homeowner guards her home against invaders and thieves. Glib talk of ‘intellectual property rights’, then, concedes polemical ground to the monopoly rent-extractor by granting a certain perceived virtue to those who hold licences and rights. The rest of us are merely greedy and grasping grubbers for someone else’s property. But in so conceiving the domain of ‘intellectual property rights’, the notions of borrowing, reuse, reworking, remixing and constructive enhancement – all of which are needed for culture and science and art to grow – are lost in the semantic mire created by ‘property’. Things that are owned in the exclusionary way that the indiscriminate use of ‘intellectual property’ suggests cannot sustain art and science and culture. Disaster has followed. Copyrights, intended to be temporally limited, have grown nearly without limit. Congress drastically increased copyright terms in 1976, and again in 1998. The latter piece of legislation was the infamous Sonny Bono Copyright Term Extension Act, passed thanks in no small measure to the Disney Corporation lobbying to retain exclusive hold over its ‘property’, Mickey Mouse, and not to allow it to pass into the public domain. Elsewhere, users of ‘intellectual property’ suggest that protections be passed on to a so-called heir: so that the notion of inheritance has been carried over from real estate and now, ‘copyright trusts’ battle for the intellectual property rights of the long-dead original holder, placing onerous restrictions on those who would seek to make derivative works based on material that should long ago have passed into the public domain. But if that rights-holder is not present, then the original motivation for that legal protection – the encouragement of the further production of artistic works by the artist – is clearly not met. Intellectual property rights and tangible property rights were also explicitly connected in an amicus brief filed by law and economics scholars in the 2006 case eBay Inc vs MercExchange LLC in which it was argued that the patent of the online auction company MercExchange deserved the same protection as real estate because patent-infringement was analogous to trespass and land-encroachment. Such rhetoric encourages corporate research-and-development labs to stake out patent claims everywhere, and then to defend them aggressively. Those following in their footsteps end up spending more time applying for licences than standing on the shoulders of giants. Private property’s associated notion of exclusivity allows the owners of data-analysis algorithms (such as those that determine credit scores) to ask for, and receive, trade-secret protection, which influences our financial fates – but there is no question of examining them; they are ‘property’ and we cannot have access to them. Reformers don’t advocate that anyone should be able to take a copyrighted work, put their name on it, and sell it The resulting legal and economic landscape finds power concentrated in corporations with indefinitely extensible copyright terms, gigantic patent portfolios and politically influential trade secrets – each of which can trigger an endless series of litigious disputes in courts, and induce a chilling effect in the work of artists and innovators, and in the daily affairs of citizens. The indiscriminate use of ‘intellectual property’ has produced counterproductive legislation and policy bolstered by confused and misleading rhetoric directed at our cultural public domain, whose growth is discouraged by a new ‘enclosure movement’ that views culture as a domain of ownership and is keen to accommodate the rights of property owners. In this bargain, we, the users and future producers of culture, are compromised.

#### Pics definitely negate

1. Ground – if the aff can shift out of specific instances then they can shift out of all of our DAs which kills neg ground and leads to an auto aff win
2. Resolvability – no brightline for how many exceptions disprove the AC. All your cards only prove specific instances since they’re only specific to countries like the US
3. Education – PICs are key to in-round discourse which effects out of round mentalities – even if they win that they affirm semantically, we outweigh on education bc it’s the only real world impact

# 3

#### Debaters may not insert brackets containing their own language into evidence unless it is to remove gendered language.

#### Violation

we impl[ies] that

count[s]

"[g]aining the competitive

[A]ny

[and] altruism

[, and] civic virtue

#### Prefer

#### Academic Ethics – You’re changing the words of your authors and claiming it’s their wording, not yours. That allows debaters to change the entire meaning of what their author says and claim that the author says what they claim she does – ie you can bracket in the word “not” to turn a claim into something that is the exact opposite of what the author intended to say. This is an independent voter under education cuz a) none of the impacts of debate mean anything at all if we’re academically dishonest and have no morals or credibility, and b) the purpose of debate is to prepare debaters for the real world, and academic dishonesty is frowned upon and widely punished in the real world. Also outweighs/turns their virtue 2 point

#### Cognitive Bias – You bias the judge’s perception of your position by having them think that a credible expert is saying something that she really didn’t. The judge just assumes that your citation info is correct and that everything contained in the card was written by the author you cited. Key to fairness cuz the judge’s view on the round was skewed towards one debater, which makes having a fair round impossible.

NO RVIs – A) they chill theory – justifies infinite abuse to win on the RVI B) you don’t get to win for being fair C) lets us kick the shell if we realize that it’s a bad norm

DTD – , F, E, no RVI, CI

# Case

Don’t give them 1AR theory

1. It’s a bad norm because we have less speeches to have the theory debate – only three speeches
2. Leads to intervention since any counter interps or responses to the counter interps are new in the 2
3. Unfair since we only get one speech to respond so the 2ar can spin the shell and we can’t do anything about it
4. finite NC + AC spikes

OV – 1] what’s a virtue 2] greeks owned slaves 3] set col is a prereq 4] post fiat

#### **TURN - reducing IP protections chills future investment – even the perception of wavering commitment scares off companies.**

\*\*We don’t endorse the usage of the term intellectual property in this card, that’s why it’s not highlighted

Grabowski et al. ’15 (Harry; Professor Emeritus of Economics at Duke, and a specialist in the intersection of the pharmaceutical industry and government regulation of business; February 2015; “The Roles Of Patents And Research And Development Incentives In Biopharmaceutical Innovation”; Health Affairs; <https://www.healthaffairs.org/doi/10.1377/hlthaff.2014.1047>; Accessed: 8-31-2021; AU)

Patents and other forms of **intellectual property** **protection** play **essential roles** in encouraging innovation in biopharmaceuticals. As part of the “21st Century Cures” initiative, Congress is reviewing the policy mechanisms designed to accelerate the discovery, development, and delivery of new treatments. Debate continues about how best to balance patent and intellectual property incentives to encourage innovation, on the one hand, and generic utilization and price competition, on the other hand. We review the current framework for accomplishing these dual objectives and the important role of patents and regulatory exclusivity (together, the patent-based system), given the lengthy, costly, and risky biopharmaceutical research and development process. We summarize existing targeted incentives, such as for orphan drugs and neglected diseases, and we consider the pros and cons of proposed voluntary or mandatory alternatives to the patent-based system, such as prizes and government research and development contracting. We conclude that patents and regulatory exclusivity provisions are likely to remain the core approach to providing incentives for biopharmaceutical research and development. However, prizes and other voluntary supplements could play a useful role in addressing unmet needs and gaps in specific circumstances. Technological innovation is widely recognized as a key determinant of economic and public health progress. 1,2 Patents and other forms of intellectual property protection are generally thought to play essential roles in encouraging innovation in biopharmaceuticals. This is because the process of developing a new drug and bringing it to market is **long, costly, and risky**, and the costs of imitation are low. After a new drug has been approved and is being marketed, its **patents protect it** from competition from chemically identical entrants (or entrants infringing on other patents) for a period of time. **For firms** to have an **incentive** to **continue to invest** in innovative development efforts, they must have an **expectation** that they can **charge enough** during this period to **recoup** costs and make a profit. After a drug’s patent or patents expire, **generic rivals** can enter the market at **greatly reduced development cost** and prices, providing added consumer benefit but **eroding** the **innovator drug** company’s revenues. The Drug Price Competition and Patent Term Restoration Act of 1984 (commonly known as the Hatch-Waxman Act) was designed to balance innovation incentives and generic price competition for new drugs (generally small-molecule chemical drugs, with some large-molecule biologic exceptions) by extending the period of a drug’s marketing exclusivity while providing a regulatory framework for generic drug approval. This framework was later changed to encompass so-called biosimilars for large-molecule (biologic) drugs through the separate Biologics Price Competition and Innovation Act of 2009. Other measures have been enacted to provide research and development (R&D) incentives for antibiotics and drugs to treat orphan diseases and neglected tropical diseases. Discussion continues about whether current innovation incentives are optimal or even adequate, given evolving public health needs and scientific knowledge. For instance, the House Energy and Commerce Committee recently embarked on the “21st Century Cures” initiative, 3 following earlier recommendations by the President’s Council of Advisors on Science and Technology on responding to challenges in “propelling innovation in drug discovery, development, and evaluation.” 4 In this context, we discuss the importance of patents and other forms of intellectual property protection to biopharmaceutical innovation, given the unique economic characteristics of drug research and development. We also review the R&D incentives that complement patents in certain circumstances. Finally, we consider the pros and cons of selected voluntary (“opt-in”) or mandatory alternatives to the current patent- and regulatory exclusivity–based system (such as prizes or government-contracted drug development) and whether they could better achieve the dual goals of innovation incentives and price competition. The essential rationale for patent protection for biopharmaceuticals is that long-term benefits in the form of continued future innovation by pioneer or brand-name drug manufacturers outweigh the relatively short-term restrictions on imitative cost competition associated with market exclusivity. Regardless, the entry of other branded agents remains an important source of therapeutic competition during the patent term. Several economic characteristics make patents and intellectual property protection **particularly important** to **innovation incentives** for the biopharmaceutical industry. 5 The R&D process often takes more than a decade to complete, and according to a recent analysis by Joseph DiMasi and colleagues, per new drug approval (including failed attempts), it involves more than a **billion** dollars in out-of-pocket costs. 6 Only approximately one in eight drug candidates survive clinical testing. 6 As a result of the high risks of failure and the high costs, research and development must be funded by the **few successful, on-market products** (the top quintile of marketed products provide the dominant share of R&D returns). 7,8 Once a new drug’s patent term and any regulatory exclusivity provisions have expired, competing manufacturers are allowed to sell generic equivalents that require the investment of only several million dollars and that have a high likelihood of commercial success. **Absent intellectual property protections** that allow marketing exclusivity, innovative firms would be **unlikely** to make the costly and risky investments needed to bring a new drug to market. Patents confer the right to exclude competitors for a limited time within a given scope, as defined by patent claims. However, **they do not guarantee demand**, nor do they prevent competition from nonidentical drugs that treat the same diseases and fall outside the protection of the patents. New products may enter the same therapeutic class with common mechanisms of action but different molecular structures (for example, different statins) or with differing mechanisms of action (such as calcium channel blockers and angiotensin receptor blockers). 9 Joseph DiMasi and Laura Faden have found that the time between a first-in-class new drug and subsequent new drugs in the same therapeutic class has been dramatically reduced, from a median of 10.2 years in the 1970s to 2.5 years in the early 2000s. 10 Drugs in the same class compete through quality and price for preferred placement on drug formularies and physicians’ choices for patient treatment. Patents play an **essential role** in the economic “ecosystem” of **discovery and investment** that has developed since the 1980s. Hundreds of start-up firms, often backed by venture capital, have been launched, and a robust innovation market has emerged. 11 The value of these development-stage firms is largely determined by their proprietary technologies and the candidate drugs they have in development. As a result, the **strength of intellectual property protection** plays a **key role** in funding and partnership opportunities for such firms. Universities also play a key role in the R&D ecosystem because they conduct basic biomedical research supported by sponsored research grants from the National Institutes of Health (NIH) and the National Science Foundation (NSF). The Patent and Trademark Law Amendments Act of 1980 (commonly known as the Bayh-Dole Act) gave universities the right to retain title to patents and discoveries made through federally funded research. This change was designed to encourage technology transfer through industry licensing and the creation of start-up companies. Universities received only 390 patents for their discoveries in 1980, 12 compared to 4,296 in 2011, with biotechnology and pharmaceuticals being the top two technology areas (accounting for 36 percent of all university patent awards in 2012). 13

# 2N