## 1

#### Interpretation: The affirmative should defend the WTO reducing IPP on medicines

Violation – they defend the EU

#### WTO member nations are the following countries NOT THE EU

**WTO no date – see the list in the doc** https://www.wto.org/english/thewto\_e/whatis\_e/tif\_e/org6\_e.htm#collapseI

\*\*NOTE: This list is taken from the WTO’s website linked above

Members Afghanistan Albania Angola Antigua and Barbuda Argentina Armenia Australia Austria Bahrain, Kingdom of Bangladesh Barbados Belgium Belize Benin Bolivia, Plurinational State of Botswana Brazil Brunei Darussalam Bulgaria Burkina Faso Burundi Cabo Verde Cambodia Cameroon Canada Central African Republic Chad Chile China Colombia Congo Costa Rica Côte d’Ivoire Croatia Cuba Cyprus Czech Republic Democratic Republic of the Congo Denmark Djibouti Dominica Dominican Republic Ecuador Egypt El Salvador Estonia Eswatini European Union (formerly EC) Fiji Finland France Gabon Gambia Georgia Germany Ghana Greece Grenada Guatemala Guinea Guinea-Bissau Guyana Haiti Honduras Hong Kong, China Hungary Iceland India Indonesia Ireland Israel Italy Jamaica Japan Jordan Kazakhstan Kenya Korea, Republic of Kuwait, the State of Kyrgyz Republic Lao People’s Democratic Republic Latvia Lesotho Liberia Liechtenstein Lithuania Luxembourg Macao, China Madagascar Malawi Malaysia Maldives Mali Malta Mauritania Mauritius Mexico Moldova, Republic of Mongolia Montenegro Morocco Mozambique Myanmar Namibia Nepal Netherlands New Zealand Nicaragua Niger Nigeria North Macedonia Norway Oman Pakistan Panama Papua New Guinea Paraguay Peru Philippines Poland Portugal Qatar Romania Russian Federation Rwanda Saint Kitts and Nevis Saint Lucia Saint Vincent and the Grenadines Samoa Saudi Arabia, Kingdom of Senegal Seychelles Sierra Leone Singapore Slovak Republic Slovenia Solomon Islands South Africa Spain Sri Lanka Suriname Sweden Switzerland Chinese Taipei Tajikistan Tanzania Thailand Togo Tonga Trinidad and Tobago Tunisia Turkey Uganda Ukraine United Arab Emirates United Kingdom United States Uruguay Vanuatu Venezuela, Bolivarian Republic of Viet Nam Yemen Zambia Zimbabwe

#### Standards:

#### 1] Competitive equity – 2 warrants:

#### A] Limits: Its about you model in aprticular that we are critizing not your specific aff because if you defend a subset of actors its impossible for us to prep out infinite numbers

#### B] Fairness is an impact – [1] it’s an intrinsic good – some level of competitive equity is necessary to sustain the [2] probability – your ballot can’t solve their impacts but it can solve mine – debate can’t alter subjectivity, but can rectify [3] comes before substance – deciding any other argument in this debate cannot be disentangled from our inability to prepare for it – any argument you think they’re winning is a link, not a reason to vote for them, 2

#### 2] topical version of the aff solves – they can still have all their advantages under TVA – their Chidi card and everything about IP bad is literally a TVA for them to use that they actively chose not to use.

#### 3] Vote negative – A] this procedurally evaluates whether their model is good, which is a prior question B] they can’t get offense: we don’t exclude them, only persuade you that our methodology is best. Every debate requires a winner and loser, so voting negative doesn’t reject them from debate, it just says they should make a better argument next time.

#### 3] Skills

#### A] Argument Refinement and research – forcing them to defend the resolution makes them have to cut new positions every two months and forces them to explore the depths of the literature as opposed to just recycling the same set of non T affs over and over that lead repetitive and stale debates – they reject argument innovation and force every non t debate into either k vs t or k v k.

#### DTD to deter future abuse and no RVIs because chilling effects and you don’t get to win for doing the bare minimum

## 2

#### Intellectual property has been one of many strategies for 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.

#### AND has always been mishandled and is a form of pushing Natives into an asterisk especially in the cases of traditional knowledge and culture.

**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.

#### Settlers in the name of economic profit have stolen the methods of Natives in medicinal fields. This is in mirror image to many of the ways of living, land, and culture that the settler nation have taken for its own.

**Guest 95** Richard A. Guest, Intellectual Property Rights and Native American Tribes, 20 Am. Indian L. Rev. 111 (1995), <https://digitalcommons.law.ou.edu/ailr/vol20/iss1/4> (1-9)

In recent years, several Native American tribes have begun a journey into the unfamiliar terrain of intellectual property rights as a means to assert their self-determination, secure economic independence, and protect their cultural identities. Although "ideas about property have played a central role in shaping the American legal order,"2 in the prevailing legal literature of intellectual property law in the United States, the protection of Native American intellectual property rights is rarely an issue of consideration. Suzan Shown Harjo, in her article, Native Peoples' Cultural and Human Rights: An Unfinished Agenda, writes: "The cultural and intellectual property rights of Native Peoples are worthy of being addressed during this time of increased appropriation of Native national names, religious symbology, and cultural images."3 In contrast, within the realm of international law, the topic of intellectual property is a high priority, uniting the concerns for self-determination and economic independence. For example, the International Alliance of the Indigenous-Tribal Peoples of the Tropical Forests set out in the articles of its Charter demands for respect of the right to self-determination of indigenous peoples and guaranteed rights their intellectual property.4 The most comprehensive recognition for protection of the intellectual property of indigenous peoples is the Draft Universal Declaration on the Rights of Indigenous Peoples which states: "Indigenous peoples have the right to special measures for protection, as intellectual property, of their traditional cultural manifestations, such as their literature, designs, visual and performing arts, cultigens, medicines, and knowledge of the useful properties of fauna and flora."' Thus, in the United States, Native American tribal councils and communities are beginning to ask the question as to whether their intellectual property, as they perceive their intellectual property to exist, can be protected. This article seeks to explore the issue of whether Native American tribes can protect themselves from the increased appropriation of their intellectual property under existing U.S. law.6 Part 1[ introduces the reader to the intriguing world of intellectual property and the distinction between Native American intellectual versus cultural property. Part II focuses on existing patent, copyright, and trademark law in the United States and whether Native American tribes can utilize those laws to protect their intellectual property: Section A summarizes existing patent law and examines the lack of protection for Native traditional seeds and folk crop varieties; Section B summarizes copyright law and illustrates the lack of protection for Native cultural images and expressions. Section C summarizes trademark law and analyzes whether Native American tribal names can be protected. Part I highlights the Indian Arts and Crafts Act (IACA) as a potential source of protection of Native American intellectual property and explores the potential application of the IACA to each of the Native American intellectual property issues discussed in Part II. As mentioned above, intellectual property is not really property, but rights to do certain things and to prohibit others from doing certain things. Thus, for Native American tribes, examples of intellectual property would include the rights to the knowledge of medicinal qualities inherent in indigenous fauna and flora; the embodiment of oral traditions and religious ceremonies; the expression of native art and designs; the use of tribal names and symbols; and most importantly, the right to prohibit their use by others. Although existing patent, copyright, and trademark law in the United States offers significant protection and economic benefit for individuals and companies, it fails to recognize and protect the unique nature of Native American intellectual property. One current area of increasing controversy is the protection of plant genetic resources as intellectual property. Plant genetic resources are developed by scientists in the laboratory for companies who then exclusively market the improved seeds and products they yield. Early in the history of the United States, Thomas Jefferson recognized that "the greatest service which can be rendered any country is to add a useful plant to its culture."' At present, a full range of intellectual property protection is applied to plants.' Unfortunately, indigenous farmers whose traditional knowledge and labor developed and preserved genetic resources over the centuries in the form of traditional seeds, crop varieties and medicinal plants receive no protection and little compensation for their contribution. For those who question the contribution of indigenous farmers, consider these facts: the international seed industry alone accounts for over $15 billion per year, much of which derived its original organic materials from traditional crop varieties; the annual world market value of medicines derived from medicinal plants acquired from indigenous peoples is $43 billion; and the projected sales of natural products such as natural insecticides, fragrances, dyes, etc., derived from plant genetic materials acquired from indigenous peoples, will exceed all other food and medicinal products combined.

#### International law and colonialism are linked and exercises of international law always have colonialist undertones

Knox 14. [Robert, thesis submitted to the Department of Law of the London School of Economics for the degree of Doctor of Philosophy, London, April 2014, Dissertation, “A Critical Examination of the Concept of Imperialism in Marxist and Third World Approaches to International Law” http://etheses.lse.ac.uk/1030/1/Knox\_A\_Critical\_Examination\_of\_the\_Concept\_of\_Imperialism.pdf]//NH.

It is this intellectual legacy that TWAIL scholarship has inherited. The task seems clear. Postcolonialism responds to a real historical, political and theoretical urge to understand imperialism, yet it does so by discarding the materialist method that had animated earlier accounts of imperialism. One can reclaim the insights of postcolonial theory by setting it within a material context which does not reduce ‘race’ or ‘culture’ to epiphenomena of capitalism, but understands them as social forms coextensive with and necessary to the accumulation of capital, which therefore come to assume a vital and structuring role within the imperialist system. 274 Fanon’s emphasis on the changing forms of racialisation provides a bridge in this respect. The relationship he describes between transformations in the process of capital accumulation and transformations in forms of racialisation would also – on the reading outlined above – be reflected in international law. As will be recalled, an analysis similar to this was one of the pivots around which Marxist-influenced Third Worldist legal scholarship has turned. As was argued in Chapter 2, Bedjaoui, Umozurike and Chimni all sought to trace the way in which transformations in the nature of imperialism were reflected in different international legal regimes. They understood the initial ‘encounter’ between Europe and the ‘new world’ to be one rooted in early capitalist expansion. This was an unsystematic process of primitive accumulation, which was achieved through trade and ‘looting’. Consequently, it did not require wholesale transformations of the internal life of peripheral territories. International law, therefore, was unsystematic and characterised largely by a silence about colonies. Often non-European sovereigns were recognised so as to facilitate trade and others such as the ‘Indians’ were compelled to engage in trade, or their resources were subject to European appropriation. As capitalism stabilised and grew within Europe, there was a stronger imperative to expand outwards. This expansion could no longer be simply concerned with the extraction of wealth; now societies would have to be transformed wholesale. This was because they were to be the markets for European goods and the direct sites for the export and accumulation of capital. European states would therefore often require a greater deal of control in order to carry out these transformations. For this reason, direct political control in the form of colonisation became more and more necessary. This was buttressed by the competition between European powers, which could better secure profits through the creation of tariff territory. International law mediated this through the standard of civilisation, which justified colonisation, mediated other European dealings with the non-European world and provided an external compulsion for non- or pre- capitalist states and empires to open themselves up to the logics of capital accumulation. Such a situation was unstable, however, both because of the resistance of colonised peoples to colonialism and because of the costs associated with direct colonial control. 275 International law served the role of channelling anti-colonial struggles within the colonies in such a way as to remain compatible with imperialism: both in terms of maintaining these struggles within the nation-state, and also by neutering the Third World’s demands for nationalisation. What this meant was that – given the continued existence of imperialism – international law mediated neo-colonial relations. With the collapse of even those marginal oppositional movements and the slow implosion of the USSR, there was even less restraint upon the capitalists in the advanced capitalist core. This, combined with stagnating conditions at home, led to a renewed round of capital accumulation under the auspices of neoliberalism and globalisation, which was facilitated by international institutions such as the World Bank and IMF. As a part and parcel of this process there has been a wave of military interventions, which were legitimised through an international law which both posited peripheral territories as open for military violence. It is this account which must be ‘reclaimed’ and built within Marxist and TWAIL scholarship. Following Fanon, we can see that these changing forms of capital accumulation are also changing forms of racialisation. The above story can be seen of international law casting the peripheries in different racialised roles in order to facilitate the continued process of capital accumulation. Over time his has shifted from a language based directly on ‘civilisation’, to one which draws on subtler tropes of ‘chaos’, ‘disorder’ and rogue states. It has also (as outlined in Chapter 3, Section 3.3.) been shaped by the resurgence of inter-imperialist rivalries. Thus, this racialisation plays out in different forms in different periods, but nonetheless forms the real ‘dynamic of difference’ which fundamentally structures international law. Crucially, therefore, we are able to combine the insights of the Marxist and postcolonial wings of TWAIL scholarship. This is not achieved by throwing them arbitrarily tying them together, but rather by understanding their common ‘ancestry’ in the stretched Marxist tradition of the radical anti-colonial and Third Worldist movements.

#### **The reason as to why developing countries or specific Native communities had and are having a difficult time with acquiring the COVID vaccine is because settlers have taken the medical field and privatized it. The reason why COVID 19 vaccines are so expensive is because it relies on a model of settler profit.**

**Mineo 20** Liz Mineo, may 2020 The impact of COVID-19 on Native American communities," Harvard Gazette, https://news.harvard.edu/gazette/story/2020/05/the-impact-of-covid-19-on-native-american-communities/

The economic impact does not stop with the tribes, as many states and regions benefit from the jobs and tax revenues brought in by their casinos and other operations. In 2019, tribal gaming enterprises alone generated $17.7 billion in taxes to federal, state, and local governments. Of the 574 federally recognized tribes, a little more than 40 percent, or 245, operate casinos. And before COVID-19, tribal businesses and governments supported 1.1 million jobs, 915,000 of them held by non-Native Americans. In some regions, tribal enterprises have been the economic anchors and dominant employers. On April 10, Kalt and three research colleagues wrote a [memo](https://ash.harvard.edu/files/ash/files/hpaied_covid_letter_to_treasury_04-10-20_vsignedvfinv02.pdf) to Treasury secretary Steve Mnuchin explaining the economic effects the pandemic was having on Native American communities, and urging him to extend federal help quickly. Under the $2 trillion Coronavirus, Aid, Relief, and Economic Security (CARES) Act, tribal governments are set to receive $8 billion to respond to the public health crisis. Tribes have imposed stay-at-home orders, curfews, and checkpoints to prevent the virus from spreading, and have distributed posters and materials about COVID-19 produced by the [John Hopkins Center for American Indian Health](http://caih.jhu.edu/about/our-mission/). According to [Indian Health Services](https://www.ihs.gov/coronavirus/), there are more than 3,607 confirmed cases of the coronavirus among Native American tribes, with more than 2,000 of them on the Navajo reservation, which stretches across parts of Arizona, New Mexico, and Utah and is home to 250,000 people. As of April 30, the Navajo nation had the third-highest per capita rate of COVID-19 in the country, after New Jersey and New York. Worsening the situation, Native Americans appear to have a higher risk of serious complications because they are likelier to suffer from diabetes, heart disease, and other conditions.

#### Humanitarian intervention is just colonialism in disguise. Humanitarianism maintains white superiority. Colonial states are never benevolent – the aff’s intervention is just another manifestation of settler power.

**Edmonds & Johnston 16** Penny Edmonds, Associate Professor and ARC Future Fellow, University of Tasmania. Anna Johnston is an ARC Future Fellow and Deputy Director of the Institute for Advanced Studies in the Humanities, and Associate Professor in English Literature in the School of Communication and Arts. “Empire, Humanitarianism and Violence in the Colonies.” Journal of Colonialism and Colonial History. Volume 17, Number 1, Spring 2016. || OES-SW

The simultaneous rise of humanitarianism and imperialism in the modern period has been noted by a number of scholars, including Joel Quirk, who delineates the ways that colonialism and antislavery were viewed as compatible in the nineteenth century.14 Quirk argues that the antislavery campaigns marked an important moment in the development of paternalistic colonialism, and abolitionism was less concerned with human equality than with “colonial priorities,” with legal abolition thus enabling other forms of unfree and exploitative labour worldwide. 15 Indeed, the other “colonial priorities” of the period were the expansion of empire in the Pacific and Indian Ocean regions in sites of British settlement such as North America, Australia, New Zealand, and South Africa. It was in these colonies of settlement that the entwined projects of liberal humanitarianism and empire took on a particular and potent character. An apparent paradox saw the rise of British humanitarianism in the 1830s amidst these aggressively expanding colonies marked by intense violence against Indigenous peoples; Lester and Dussart begin their new book by articulating this conceptual riddle.16 After the abolition of the slave trade (1807) and later of slavery in the British settlements (1833), abolitionist humanitarians began to turn their attention to the fate of Indigenous peoples in the colonies of settlement, and questions of moral empire and the possibility of humanitarian governance grew to prominence.17 By this time humanitarian precepts had gained influence throughout the British colonies, resulting in the establishment of the Aborigines Protection Society in 1837. In both metropolitan and colonial governing circles, humanitarians generally did not oppose colonisation, but increasingly promoted a benevolent or “Christian colonisation,” a civilising mission of moral enlightenment. 18 In the southeastern Australian colonies, while humanitarians emphasised the moral imperatives of a humane colonisation, pastoralists and agriculturalists insisted on access to cheap labour and land. Many expatriate Britons challenged the model of a humane or Christian colonisation through an emerging assertion of “settler” rights and entitlements. A strong doctrine of supercessionism—that settlers should rightly replace Indigenes—was promoted, based on claims of British moral and racial superiority, and Lockean principles of civilisation, property and the imperative to cultivate land.19 Colonial governors could articulate broad humanitarian precepts, yet condone violence both retributive and disciplinary and effectively outsource it to settlers, militia and other groups. So too the amelioration of violence could be left to partly formed and messy plural legal codes, government missionaries and other humanitarians entirely independent of the state. In colonial New South Wales, for example, as settlers crossed the Blue Mountains onto the Bathurst Plains they faced resistance from Wiradjuri warriors who killed or wounded both stock and their keepers. Martial law was proclaimed by Governor Thomas Brisbane (1822–25) on the Bathurst Plains on 14 August 1824 following the killing of seven stockmen by Aborigines in the ranges north of Bathurst, and the murder of Aboriginal women and children by settler-vigilantes in what the Sydney Gazette on 14 October 1824 called “an exterminating war.”20 Brisbane also established a mounted police force whose first frontier deployment to “pacify” Aboriginal peoples was in the upper Hunter Valley in 1826.21 Despite popular and permissive claims that the frontier was a place of lawlessness, instead, as Julie Evans has argued, the declaration of martial law served to formalise the frontier as a legal space of violence and was thereby crucial to the furtherance of the settler project.22 Within a year Governor Brisbane granted 10,000 acres (4047 ha) to the London Missionary Society for an Aboriginal reserve at Lake Macquarie.23 The resident missionary, the Reverend Lancelot Threlkeld, used his privileged position to witness and publicise settler violence against Aborigines in graphic terms.24 Some scholars have described Brisbane’s policy towards Aboriginal people as ambivalent, on the one hand imposing martial law and on the other seeking to compensate lost Aboriginal land through humanitarian measures. Yet this seeming ambivalence rather reflected the growing tensions of colonisation, where retaliatory and offensive state-sanctioned violence sat alongside an emergent humanitarianism that sought to conciliate, civilise, compensate and protect Aboriginal peoples.25 By the mid-nineteenth century, the rise of self-governing settler states often permitted and enabled new forms of organised legal violence (martial law, native police corps, and child removal) against Indigenous peoples deemed non-sovereign in their own lands. Since settlers came to stay, questions of universalism versus difference had to be worked out on the ground in highly specific ways, and differently from those of other colonies. Settler colonial dynamics would come to exhibit a civilising mission at the heart of which was an organising grammar that represented invasion in terms of benevolence and White civility.26 The Whig humanitarian promise of liberal empire in the Age of Reform offered a sacred covenant, Pax Britannica, a conciliatory agreement or settlement which proffered civilisation and uplift for Indigenous people, as they in turn exchanged their sovereignty in the bargain. Yet liberal universalism’s high tenets, including ideas of the brotherhood of man, would manifest in these settler colonies through a thoroughly hierarchised and brutal means of operation.27Despite self-representations, then, the benevolence of many colonial states is seriously contestable. Careful interrogation of self-interested settler claims to morality and justifications of violence (both physical and representational) renders progressivist (and presentist) arguments about the inherent civility of the (now) liberal democratic “post”colonial state less than compelling, despite their continued articulation.32 So too it is important to recognise the ambivalence of benevolence and sympathy in colonial contexts. As Asad argues, humanitarianism could use “violence to subdue violence” and benevolent ideas often played out in deeply paradoxical ways. In his view, we need to consider the complexities and internal contradictions of enlightenment thought in which “compassion and benevolence are intertwined with violence and cruelty, an intertwining that is not merely a co-existence of the two but a mutual dependence of each on the other.”33 In the colonies outright physical violence and humanitarian modes of action could constitute complementary modes of colonial governance. Comparisons across differing colonial contexts are revealing. While the settler colonies powerfully galvanised humanitarians, India did not inspire the same fervour in metropolitan activists, Jordanna Bailkin argues.34 Despite early and vigorous missionary efforts—across denominations, and against the strenuous resistance of the East India Company—external humanitarian interest in India was limited, even if discrete issues such as sati attracted widespread metropolitan outrage. 35 Thus the South Asian colonial executive assumed much of the responsibility for humanitarian effort, producing a contradictory and limited sphere of action but also avoiding much of the rancour that characterised other colonial contact zones. This circumstance did not mean that violent interactions between Indians and Britons went unremarked. Indeed, in her study of how and when Europeans could be held culpable for murder, Bailkin demonstrates that governors developed detailed strategies to manage White violence, while the colonial judiciary effectively downgraded such violence into lesser categories than murder. Indian and British sources depict White violence quite differently—the former as an endemic feature of colonial rule, the latter as actions of rogue individuals, often off-duty soldiers—but intriguingly the official archive on interracial violence expanded in scope even as (White) culpability for that violence was diminished through defensive court procedures that rationalized the vulnerability of Indian bodies.36 Interracial violence deeply troubled the humanitarian precepts of manly behaviour that fuelled the modern scientific theories of British leaders such as Lord Curzon, yet Bailkin notes that such leaders were pilloried by the vernacular press for bigotry: for Curzon, she concludes, the prosecution of White criminality was a way of “preserving the doctrine of racial superiority via humanitarianism.”37

#### The impact is 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 Settler colonialism props up the logic of genocide—necessitating the elimination of the owners of territory through any means necessary

**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.**

#### Extinction is a settler fantasy. The aff’s spectacularized claims of extinction are an act of settler futurity that hide the ongoing violence of settler colonialism

**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

#### The alternative is total refusal. That means rejecting fantasies of institutional benevolence and quick-fix solutions

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Indigenous Refusal and the Twenty-First-Century Ghost Dance

As articulated by Indigenous scholars, Julian Brave NoiseCat and Anne Spice, “At Standing Rock, the audacious vision for an indigenous future, handed down from Wounded Knee and global in force, is alive and well.” In order for this “audacious vision” to be fully realized, it is up to all of us to see and work past the glimmer of spectacle, to resist the cult of the immediate, and to do the more deliberative work of history, earnestly connecting past with present. This requires a collective refusal to participate in the theater of cruelty and choose instead to dismantle the settler consciousness that enables it. Such efforts entail working beyond and below the surface, keeping an eye toward the process by which relations of mutuality are either abandoned or eroded by relations of capital – to in effect, decolonize. Within this struggle, Indigenous nations, peoples, and knowledge are crucial, not because they hold any magic or “ancient wisdom” but because they represent the most enduring and resilient entities that present a competing moral vision to the settler order. Despite myriad struggles, Native peoples have maintained their autonomy and political sovereignty for centuries, confounding the infamous Thatcherism, “There is No Alternative.” And insofar as current patterns of thinking and being have contributed to the existing political, economic, and environmental crises of our time, it is incumbent upon all of us to protect the complex ecologies that sustain Indigenous communities. That said, I want to be clear that by “protect” I do not mean appropriate, mimic, exploit, or put on display. I mean to create and sustain the conditions under which such communities continue to survive and thrive.

Settlers desiring to be accomplices in the decolonial project need to assume the stance of advocate (not spectator) for Indigenous rights and perhaps more importantly, for whitestream transformation. Within activist spaces this means demonstrating a willingness to stand on the front lines to help contain the metastasizing neoliberalism. As argued by Glen Coulthard (2014), “For Indigenous nations to live, capitalism must die” (p. 173). This also necessarily demands a prior rejection of liberalism. Particularly now, as pundits and scholars begin to dissect the “success” of #NoDAPL, it is important to register the long-understood failures of liberal politics and belief in reform – of the liberal subject, of capital, of the state – through “peaceful” action and “rational” discourse. Any movement that does not first recognize the irrationality and violence of the settler state and its envoys is by definition anti-Native.

It means recognizing that “the movement” is not (only) about the present but rather demands both history and a ground(ing) that is both literal and metaphoric. The guiding vision is not human centered or derived but rather comes from land and all that sustains it. The less quoted, second half of Coulthard’s (2014) assertion is, “for capitalism to die, we must actively participate in the construction of Indigenous alternatives to it” (p. 173). The Indigenous project is not defined by liberal or juridical notions of justice. Indeed, liberalism’s reliance on the fantasy of the benevolent state and its refusal to relinquish the idea of a “new social order, built in the shell of the old,” ultimately solidifies the settler state. The so-called progressive movements built on liberal ideas give rise to organizing strategies held captive to the “reign of the perpetual present.” Such politics were epitomized by the Occupy Wall movement – its never-ending process of agenda building, leaderless and lateral structure and non-prescriptive slogan, “What is Our One Demand?” – all suggest an allegiance to the liberal ideal of freedom as individual liberty.

In contrast, Indigenous struggle is built on history and ancestral knowledge. It is informed by original teachings and the responsibility to uphold relations of mutuality. Attention to these teachings requires resistance and refusal of the fast, quick, sleek, and spectacular in favor of the steady, tried, consistent, and intergenerational. It is the replacement of “to each his own” and “may the best man win” with “we are all related.” As Debord observes, the spectacle is “the reigning social organization of a paralyzed history, of a paralyzed memory, of an abandonment of any history founded in historical time” and, thus, “is a false consciousness of time” (158). We must refuse this false consciousness.

In the end, refracting liberal, social justice movements through an Indigenous lens compels us to be attentive to both the larger ontological and epistemic underpinnings of settler colonialism; to discern the relationship between our struggles and others; to disrupt complicity and ignite a refusal of the false promises of capitalism. This level of clarity removes the messy and participatory work of agenda setting that liberal movements insist upon, because, the agenda has already been set – a long time ago. It is about land and defense of land. Land is our collective past, our present, and our future. This is our one demand.

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