**NECROPOLITICS AFF**

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#### Successful decolonization demands recognition of how dominant power hierarchies function, a necessity for all exploring any non-Western knowledge.

**Pratt et al 1** (Pratt, Yvonne Poitras, The University of Calgary. Dustin Louie, The University of Calgary. Aubrey Hanson, The University of Calgary. Jacqueline Ottmann, University of Saskatchewan./ “Indigenous Education and Decolonization.”/January 2018/ *Oxford Research Encyclopedia of Education*) (atang)

Colonizing is the physical and ideological domination of peoples in order to separate them from their culture and resources, while creating external and internalized assumptions of the supremacy of the colonizer. Conversely, the project of decolonizing challenges and disrupts assumptions of colonial superiority. For Smith (2012), **decolonization is the revitalization of the ways of being and knowing prior to colonization, while unearthing the manner in which colonization was achieved. It is not enough to simply reconnect with the past; in order to pursue decolonization, we must also untangle the complex web of internalized oppression created by colonization.** **Furthermore, decolonization requires the colonizers to recognize and challenge their own socialized presumptions of superiority.** We make a distinction between schooling and education. Schooling is institutionalized and systematically governed and legislated by provincial, state, or federal institutions. Historically, schooling is bounded within physical structures where the majority of learning is confined to specific temporal, legislative, and bureaucratic limitations. It could be argued that most Indigenous peoples did not have formal schooling experiences until it was forcibly and, in the majority of cases, violently introduced by colonizers. Yet it is also the case that schooling was welcomed by some Indigenous groups who foresaw its advantages for future generations (Glenn, 2011). Education for Indigenous peoples—both traditionally and as envisioned within decolonizing projects—could be described as a lifelong process that consists of an internal and external exploration of “coming to know” (Cajete, 1999, p. 78). Education in this sense is broader; it is embodied in all of the cultural lifeways of a community, including beliefs, relationships, cosmology, communications, stories, and land. Scholarly discussions of decolonization have focused largely on Indigenous education in postsecondary contexts; consequently, we work to extend the focus on schooling of children and youth. Indigenous education attends to understandings of education that are indigenous to particular lands and places, and “the path and process whereby individuals gain knowledge and meaning from their indigenous heritages” (Jacob, Cheng, & Porter, 2015, p. 3). There are as many unique approaches to Indigenous education as there are diverse Indigenous nations around the globe—yet a central aim is “holistically nurturing future leaders who will be able to speak and act on behalf of their people” (p. 2). In a contemporary context, it is a continuance of Indigenous Knowledges, yet also entails fostering ethical, reciprocal relations between Indigenous and other knowledge systems (Ermine, 2007). Returning to the epistemological and ontological systems of a country’s Indigenous peoples in order to shape educational systems or institutions in that place is a way of Indigenizing education. Indigenous educators also recognize that colonialism continues to shape contemporary schooling: colonial education can exist even when explicitly assimilative systems of formal education have been closed and condemned. **Colonial dynamics in contemporary schooling are often less visible because of how deeply and unknowingly educators can be entrenched in hegemonic assumptions, arising from colonial mentalities and further entrenched by dominant structural systems**. Indigenous Knowledges are bodies of knowledge that arise from the long-term occupancy of a specific place over time. Such knowledges include “traditional norms and social values [alongside] mental constructs that guide, organize, and regulate the people’s way of living and making sense of their world” (Dei, Hall, & Goldin Rosenberg, 2000, p. 6). Such knowledges arise from the collective experiences and understandings of a people.

#### [ROB] Thus, the Role of the Ballot is to endorse the better strategy against colonialist violence.

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### Necropolitics Advantage

#### The advantage is necropolitics.

#### Medicinal IP policy is a violent tool of the private sector, justifying distribution disparities in the name of economic benefit and future innovation to kick developing countries and marginalized communities to the curb.

**Hull 21** (Gordon, Professor in the Department of Philosophy @ UNC charlotte, Director of the [Center for Professional and Applied Ethic](http://ethics.uncc.edu/)s, focuses on moral and political philosophy, problems that emerge at the intersection of philosophy, law, and technology in the area of intellectual property and/or privacy./ “THE NECROPOLITICS OF INTELLECTUAL PROPERTY”/APRIL 28 2021/NEWAPPS/ACCESSED 7-8-21) (<https://www.newappsblog.com/2021/04/the-necropolitics-of-intellectual-propert.html>) (SPHS, AL)

**In my** [**Biopolitics of Intellectual Property**](https://doi.org/10.1017/9781108687232)**, I argue that IP policy has shifted from what I call a “public biopolitics” model to a neoliberal version. In its briefest form: the public version treats IP as a necessary but limited monopoly to promote public goods, and the neoliberal version focuses on private wealth gain through proprietization (I summarize the argument** [**here**](https://www.newappsblog.com/2020/01/the-biopolitics-of-intellectual-property.html)**).** Something that I don’t particularly talk about in the book, but that one knows from Foucault, is that biopolitics comes with its inverse, necropolitics: if biopolitics is about promoting life and health for the “population,” it is also about who is allowed to die. As Foucault puts it, “the ancient right to *take* life or *let* live was replaced by a power to *foster* life or *disallow* it to the point of death [au vieux droit de *faire* mourir ou de *laisser* vivre s'est substitué un pouvoir de *faire* vivre ou de *rejeter* dans la mort]” (*History of Sexuality* I, 138). **Governmental power goes from the right to kill to the power to cause people to live; death becomes something into which one is literally “thrown back.”** The leading examples of necropolitics are political, as for example Foucault’s discussion of state racism (of which Nazism is the apotheosis) in *Society must be Defended*. Achille Mbembe’s “Necropolitics” [article](https://muse.jhu.edu/article/39984) spends time on how post-colonial African states have dismantled populations, which are “disaggregated into rebels, child soldiers, victims or refugees, or civilians incapacitated by mutilation or simply massacred on the model of ancient sacrifices” (34). Building on these, Ege Selin Islekel’s [brilliant treatment](https://www.academia.edu/37622740/Nightmare-Knowledges_Necropolitical_Epistemologies_of_Disappearance) of the disappeared in Turkey notes that in necropolitical spaces, “the entire content and the fact of living, constituted by the ethical, political, and epistemological conditions of life, are subsumed under death.” **However, as Ute Tellman has** [**recently demonstrated**](https://cup.columbia.edu/book/life-and-money/9780231182263)**, the political treatment of biopolitics needs to take seriously how it is co-configured with the economy. On Tellman’s account, the notion of economic scarcity first appears in Malthus (it was missing in Smith!) as a way to police the behavior of the poor (and “savages” in the colonies) by training them to think in terms of futurity. For Malthus, the poor have to be trained not to eat and procreate their way into oblivion by forcing them to think in terms of economic rationality. This brings us to the neoliberal justification of IP, which is partly underpinned by the Schumpeterian thesis that innovation is to be pursued at all costs, because the gains of future innovation (“dynamic efficiency”) are more important than whatever short-term distribution problems (“static inefficiencies”) they entail.** Thus, more or less, is Harold Demsetz’s reply to Kenneth Arrow. It also subtends the argument being given for why IP rights around Covid vaccines shouldn’t be licensed to the poor in India (side note: Malthus served as professor at the [East India Company College](https://en.wikipedia.org/wiki/East_India_Company_College)). Developing countries have proposed a waiver of related IP rights to ensure the rapid production of generic Covid vaccines, and Pharma has responded with an [army of lobbyists](https://theintercept.com/2021/04/23/covid-vaccine-ip-waiver-lobbying/) to explain that no, IP can’t possibly be the problem with Covid vaccine distribution, and it would be much better for philanthropies to purchase lots of drugs and then distribute them. Other unrelated IP industries [have followed](https://theintercept.com/2021/04/27/covid-vaccine-copyright-hollywood-lobbyists/) with their own lobbyists. **Whatever *other* difficulties exist in getting vaccinations to people in developing countries, it seems hard to deny that insisting on IP rights and thereby limiting production of the drugs isn’t one of them.** Allowing generics – especially in India and Brazil – increases capacity. **Western countries have a long history of** [**taking advantage**](https://yalebooks.yale.edu/book/9780300146714/goods-good-life) **of developing countries with IP laws and their singular focus on economic growth and “innovation” as its own end, especially during public health emergencies, and this is no exception (it is worth noting that the current focus on IP** [**developed**](https://books.google.com/books/about/Private_Power_Public_Law.html?id=B81qmONSs9cC) **out of a group of pharma executives who decided to maximize their IP profits by convincing Congress that IP is good for trade policy).**  The basic move behind the theoretical neoliberlization of IP [is accomplished](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=855244) by making any sense of public good invisible, or (more precisely) declaring that it should be available for private internalization.  **If the neighbors are going to enjoy the music you’re playing in your backyard, that ought to be monetizable in the form of a public performance license!** In the case of Covid vaccines, this is not only immoral, it is bad economics. First, public health is a classic public good, which means that it’s non-rivalrous (we can all share it) and non-excludable (we can’t stop others from benefiting). Every person who is waiting for vaccination rates to drive down Covid transmission understands this point intuitively: when fewer people get sick from Covid, the benefits [spillover](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=898881) to all of us. Public goods are poorly served by markets, because there is no obvious way to capture the value of someone not getting sick. Even if you can sell me a vaccine, if my vaccination stops what otherwise would have been a chain of Covid transmission (because I didn’t get sick when exposed, and so didn’t transmit it to my family or friends), there is no way to monetize that benefit. This point is even clearer if the vaccination rate causes new variants not to develop, since the damage those would cause is unknown (and yes, virologists are deeply concerned that Covid’s running amok in India and elsewhere is breeding new variants that could be more contagious or more virulent or even evade vaccines). Avoiding those is of incalculable benefit, but that benefit doesn’t translate into the profits of a vaccine maker. This situation is part of why the world doesn’t have more vaccines in the first place – they are cheap treatments that prevent bad things from happening. **As I argue in the book, numerous scholars have shown that strong IP rights** [**tend to push**](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=894162) **drug development in the direction of diseases that primarily affect citizens of rich countries, towards treatments for expensive chronic conditions rather than less remunerative drugs like antibiotics and vaccines, and towards “me too” drugs that offer different treatments for conditions whose treatment generates lots of revenue (so think the multiple drugs to treat erectile dysfunction) rather than to genuinely novel drug development.** Even worse, excessive proprietization of everything tends to [divert](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(04)17066-9/fulltext) public policy and other resources away from proven-successes like water sanitation systems and into sexy, expensive drugs like genomics. All of these are “static inefficiencies” generated by being willing to absorb near-term harm for long-term gain in the form of innovation; they reflect the Malthusian bargain. But what about the more basic question of present consumption versus the future? An especially serious problem in this context is what economists call “deadweight loss.” Basically, in a free market, the price of something would be driven down by competition to marginal cost. Patents create an artificial monopoly, which means that the patent owner will charge above-market prices for their product if they can. Public image has helped here for some vaccines: why is the AstraZeneca/Oxford vaccine so important to developing countries? It’s not just that it’s cheap to make and stores in an ordinary fridge; it’s also that the company has promised to [sell it at cost in perpetuity](https://www.theguardian.com/global-development/2020/nov/23/oxford-astrazeneca-results-covid-vaccine-developing-countries). J&J is also committed to [not-for-profit](https://qz.com/1999082/jj-sold-100-million-worth-of-covid-19-vaccine-shots/) distribution of its vaccine, at least for the duration of the pandemic. But Pfizer and Moderna are making money, [including from future booster shots](https://qz.com/1997697/will-pfizer-and-moderna-profit-from-the-covid-19-booster-shot/). Those of us in the U.S. are getting our Pfizer and Moderna shots for free, but that’s because the government is paying. The IP advocates want philanthropy to pay to distribute the vaccines elsewhere. We can debate whether all this paying this is good policy in general. On the one hand, like literally [all other drugs](https://www.pnas.org/content/115/10/2329), these vaccines were made on the back of considerable public investment. One the other hand, the outcome was definitely serious innovation: the mRNA vaccines do appear to be proof of concept for a platform generating new drugs that could defeat not only Covid but potentially a [load of other diseases](https://www.theatlantic.com/ideas/archive/2021/03/how-mrna-technology-could-change-world/618431/), including many cancers. And companies like Moderna started their work into mRNA with venture capital long before Covid; that’s part of why the platform could turn around the vaccines so quickly. Moreover, the empirical questions about pharma incentives are deeply murky, and there are also [other ways to fund](https://digitalcommons.law.yale.edu/fss_papers/4694/) what is now IP, and good economic reasons why they might be better. All of that is a subject for another day. **For now, notice that places that don’t have that luxury of a rich government that can deficit spend at will, i.e., whose governments can’t afford the price, are suffering from deadweight loss.** This measures the gap between what demand for a product would be, if it were priced at marginal cost, and what it actually is, given the monopoly price. To understand this, go in your wayback machine to before streaming took over the music industry, and imagine that I own the rights to a song. Some folks are willing and able to pay the $2 I’m charging to license its use to your MP3 player. Other folks don’t have that money, or sort of enjoy the song but would rather spend the money on something else. Maybe they’d be willing to pay $1, or $.01 instead. That set of folks represents deadweight loss – unmet social demand. In the case of MP3s, maybe not such a big deal. **But when those folks need a vaccine that they cannot afford, then they risk dying: they are thrown back into death. This is the necropolitics of IP.** It is really important to recognize that there is nothing in nature or even economic laws that requires this! It is not just that the complaint that economic scarcity needs to determine our political decisions was an invention of Malthus, or that the bioeconomy has been built, as [Melinda Cooper argued](https://uwapress.uw.edu/book/9780295987910/life-as-surplus/), on a promise of an endlessly bountiful future and a permanent solution to the problem of scarcity (paid for, she adds, by an unsustainable debt load in the present, with environmental and other bills that will likely come due before the bountiful future actually arrives). **It is that the decision to treat public health as a private good for the purposes of vaccine distribution, and the unwillingness of the state to compel companies to allow production of vaccines at cost, are both *political decisions*.** IP theory was not always this way. The idea that the present should always be sacrificed at the altar of future innovation, and that this should guide IP, dates roughly to the 1960s. These decisions can be made differently, and in this case there is really no downside. Deadweight loss, recall, measures unmet social demand: the people who are going to die because they can’t buy the vaccine (or because there isn’t enough manufacturing capacity to get it to them). That describes the status quo, which means that getting these folks vaccine faster than they would in the status quo is not only a net social gain; it’s not a loss to Pharma, because *they weren’t going to buy the vaccine in the status quo*. **In this case, the need for present consumption outweighs speculation about the future. This is not a hard call, and that Pharma is dispatching armies of Malthusian lobbyists to deflect from it says everything you need to know.**

#### These laws exist as a way to construct a racial hierarchy and assert white supremacy

**Vats 13** (Anjali, dissertation for doctor of phil “CREATED DIFFERENCES: RHETORICS OF RACE AND RESISTANCE IN INTELLECTUAL PROPERTY LAW”/2013/UWASH/Accessed 7-8-21) (<https://digital.lib.washington.edu/researchworks/bitstream/handle/1773/23464/Vats_washington_0250E_11939.pdf?isAllowed=y&sequence=1>) (SPHS, AL)

**This is not to say that racialization does not occur within in the context of discussions of trademarks, patents, and copyrights individually. In fact, quite the contrary is the case.** Rosemary Coombe, for example, argues that **federal trademark laws actually created the means by which marketing firms were able to construct the American consumer. Trademarks became the texts through which American identity and racial hierarchy were articulated. 42 Indeed, trademarks operate as much more than markers of brand identity, as they “provide symbolic resources for the construction of identity and community, subaltern appropriations, parodic interventions, and counterhegemonic narratives.”43 Trademark law developed, in part, as a means of creating an American identity, particularly one that normalized the superiority of whiteness and the inferiority of non-white Others. Images of Aunt Jemima, Uncle Ben, Black Sambo, and the Washington Redskins emerged as ways to both sell products and affirm the social significance of racial difference.44 Moreover, trademark infringers are commonly described as parasites, feeding off of the reputations of well-known trademarks.45 Kevin J. Greene reads copyrights as a means of excluding marginalized groups from access to the literal marketplaces of ideas, ensuring that only certain individuals, generally white, heterosexual males, are afforded access to the means of officially producing and protecting intellectual properties.** For Greene, the very terms of trademark law are non-neutral, a “marketplace of racial norms” in which intellectual properties are protected along racial lines.46 Copyright infringers are labeled as pirates and criminals, condemned for their anti-social behaviors.47 Often they are represented as Asians who are represented as being unable to create, only steal. 48 Jonathan Kahn addresses the naturalization of race in the patent context, demonstrating persistent links between the scientific study of genetic differences, particularly with respect to disease etiologies, and the belief in race as a biologically and not socially constituted category. Race-specific patents for drugs speciously suggest that racial identities can be reliably identified and medically treated.49 Moreover, patent infringers, like copyright infringers, are identified as imitators incapable of their own independent thoughts, calling upon Orientalist visions of China and India.50**These examples, particularly when read in light of contemporary political rhetorics on trademarks, copyrights, and patents suggest that there is a commonality in the type of person that commits “IP crime”—the intellectual property infringer is associated with a constellation of negative characteristics, including laziness, dishonesty, immorality, and disregard for human life. Moreover, intellectual property functions structurally and through representations to create a presumption of race-neutrality that erases histories of race. Just as the grouping of intellectual property into one category has a strategic utility in the context of policy decisions—most often to justify increasingly draconian penalties for infringement—it has significant cultural implications for racialization and the perpetuation of racial stereotypes.** Specifically, the homogenization of “IP Crime” erases the individual relationships between copyrights, trademarks, and patents and race. **As a result of this erasure, trademarks, copyrights, and patents receive the protection of a veil of race-neutrality, facilitating appeals to neoliberal economic principles of efficiency and profit maximization to judge the success of a policy proposal. 51 Not only does this promote unjust distributions of access to information but also understandings of race.**

### Plan

#### Thus, I affirm that the member nations of the World Trade Organization ought to eliminate intellectual property protections for medicines.

Racism is imbedded within intellectual property systems – creatorship has been seen as a form of whiteness since the time of slavery.

**Parthasarathy 20:** Parthasarathy, Shobita. [Shobita Parthasarathy is professor of public policy and director of the Science, Technology, and Public Policy programme at the University of Michigan in Ann Arbor and author of Patent Politics] “Racism is baked into patent systems” *Nature,* 2020. JP

**In The Color of Creatorship, law scholar Anjali Vats focuses on how racism has shaped intellectual-property systems. Patent, copyright and trademark laws and policies have, she argues, imagined whiteness and creatorship as synonymous while consistently devaluing the ingenuity of people of colour.** This is particularly pernicious because it is cloaked in technical legal language and in seemingly objective categories such as invention, novelty and infringement. So it goes unchallenged, and shapes our understanding of who can participate in science, technology and markets — and how. Vats’s powerful analysis draws mainly from laws and legal cases in the United States, moving roughly chronologically from the eighteenth century to the present. But her argument has international reach. **US law shapes global industries and markets, and many countries have adopted the US approach to intellectual property.** They see it as a model in stimulating innovation and economic growth. Most histories of US intellectual property emphasize that the idea was so central to the founding of the country that it appears in Article I, Section 8 of the Constitution: “To promote the Progress of Science and useful Arts, by securing for limited Times for Authors and Inventors the exclusive Right to their respective Writings and Discoveries”. They also often observe that the US system was intentionally more democratic than its European predecessors, with low barriers to participation. Portrait of Granville T. Woods Granville Woods held numerous patents for electrical and telecommunications technologies. They rarely mention that this access was limited to free persons. **Enslaved people created inventions, often in agricultural technology, but could not receive intellectual-property protection through patents.** After the abolition of slavery, many Black Americans held patents — including Lewis Latimer and Granville Woods, who worked on electricity and telegraphic communications. Yet, well into the twentieth century, racists used low rates of patenting to argue that people of colour lacked ingenuity and could not fully participate in the US project of technological progress. **The problem is not just one of systematic exclusion. Vats argues that it is one of fundamental orientation**. The rules and procedures of the patent system embody approaches to knowledge production that promote a “vision of inventorship as a process that unfolds in a laboratory, at the hands of expert scientists”. It has little truck with the creative fruits of the kitchen, forest, farm or workshop

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#### Interrogation and restructuring of the IP regime solves for the violent monopoly of pharmaceuticals

**Gopakumar 15** (K. M. , legal advisor and senior researcher with the Third World Network / “Twenty years of TRIPS agreement and access to medicine: a development perspective,”/2015/Indian Journal of International Law 55, 367–404) (<https://link.springer.com/article/10.1007%2Fs40901-016-0022-7>)

**The two decades of TRIPS show clearly that the compulsory product patent regime succeeded in increasing the monopoly of pharmaceutical TNCS in new medicine market**. The product patent regime has put curbs on the availability of generic versions of new medicines. The failure of patent system resulted in the call for fresh look at the role of patent and public policy. Two economists argue that ‘‘…public policy should aim to decrease patent monopolies gradually but surely, and ultimate goal should be the abolition of patents.’’107 Another academic notes: ‘‘Even pharmaceutical and biotech companies usually do not need more than about a decade of monopoly power to encourage their very large investments in new drugs.’’108 **There is an urgent need to interrogate the international IP regime in general and patent protection for pharmaceuticals in particular, which does not reflect the health and development needs of people, especially those living in developing countries**. The Declaration on Patent Protection: Regulatory Sovereignty under TRIPS released in 2014, an initiative of the Max Plank Institute for Innovation and Competition on the occasion of the 20th anniversary of the TRIPS notes four major developments that require accommodating the law to changed circumstances. First, the ‘historically unprecedented numbers of patents filings and grants’ create problems such as backlogs at patent offices, patent thickets, market entry barriers and increased litigation that ultimately generate impediments to research and commercialisation. The result is rising costs of monitoring patents and legal uncertainty, limiting the economic freedom of market participants, which in turn affects consumer welfare and distorts competition. Thus ‘the overall social benefits of innovation are reduced while an imbalance emerges between those able to cope with the resulting insecurities and related costs, such as multinational enterprises with their own patent departments, and those who cannot, such as small and medium sized enterprises or individual inventors.’109 Second, the new technologies like biotechnology, business methods and computer science as well as standard setting, strategic patenting and non-practising entities all affect the functioning of the patent system as a regulatory institution. Third, the role of patents in corporate management has undergone a change from a defensive means to protect research and development outcomes to become strategic assets to influence the conditions of competition. Fourth, the industrialised countries have tilted the balance in the patent regime towards right holders by reducing the burden for the patent applicants such as expanded scope of patentability, lower eligibility standards and reduced fees, as well as extending the rights of patent owners such as longer term of patent, harsher sanctions, strengthened ways for private and public enforcement. Therefore, the Declaration states: ‘the patent system faces increasing friction with ancillary public policy goals, such as protecting the environment, preserving biodiversity or ensuring affordable access to medicines.’110 Against this background there is an urgent need to review the TRIPS patent regime, especially the compulsory product patent protection. The Agreement itself contains provisions to review its implementation. Article 71.1 of the TRIPS Agreement provides mandatory review of the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65. Hence this review was to initiate in 2010. According to Art.71.1: The Council shall, having regard to the experience gained in its implementation, review it two years after that date, and at identical intervals thereafter. The Council may also undertake reviews in the light of any relevant new developments, which might warrant modification or amendment of this Agreement. There is a fear that the review may result in an opposite result if developed countries use the opportunity of review to push for TRIPS plus amendments using the second sentence of Article 71.1. However, Para 19 of the Doha Ministerial Declaration clearly defines the mandate of the review. It states, ‘‘The Council may also undertake reviews in the light of any relevant new developments, which might warrant modification or amendment of this Agreement.’’111 However, so far no WTO Member State submitted any proposal in this regard. It is important for developing countries to propose amendment of the compulsory product patent protection in the light of experiences under 20 years of TRIPS Patent Regime. **Echoing the same sentiment, the UNDP-appointed Global Commission on HIV and the Law observed the ‘TRIPS has failed to encourage and reward the kind of innovation that makes more effective pharmaceutical products available to the poor, including for neglected diseases.** Countries must, therefore, develop, agree and invest in new systems that genuinely serve this purpose, prioritising the most promising approaches including a new pharmaceutical R&D treaty and the promotion of open source discovery.’112 Further, the Commission recommended that: The UN Secretary-General must convene a neutral, high-level body to review and assess proposals and recommend a new intellectual property regime for pharmaceutical products. Such a regime should be consistent with international human rights law and public health requirements, while safeguarding the justifiable rights of inventors. Such a body should include representation from the High Commissioner on Human Rights, WHO, WTO, UNDP, UNAIDS and WIPO, as well as the Special Rapporteur on the Right to Health, key technical agencies and experts, and private sector and civil society representatives, including people living with HIV. This re-evaluation, based on human rights, should take into account and build on efforts underway at WHO, such as its Global Strategy and Plan of Action on Public Health, Innovation, and Intellectual Property and the work of its Consultative Expert Working Group. **Pending this review, the WTO Members *must suspend TRIPS* as it relates to essential pharmaceutical products for low- and middle-income countries**.113 As part of the implementation of the recommendation UN SecretaryGeneral has established a 16-member High Level Panel on Access to Medicines. This Panel is to review and assess various proposals and make recommendation to ‘‘remedy the policy incoherence between international human rights law and trade rules in the context of access and health technologies.’’114 It is expected to look at a new IP regime, which can ensure both access and innovation as recommended by the Global Commission on HIV/AIDS. **The incoherence between trade law and human rights law cannot be addressed by using flexibilities in the TRIPS Agreement.** As long as an international obligation to provide product patent protection for pharmaceutical inventions exists, the above-mentioned incoherence is also to exist. **Therefore, it is important to restructure the TRIPS and TRIPS plus IP regime, which not only prevent the access to affordable medicine, but also failed to deliver access to R&D needs of developing countries**. There is a need to provide enough policy space for countries to design their patent laws, especially to fulfill their human right obligations on right to health and right to science. Scrapping of the compulsory product patent protection under the TRIPS Agreement is critical to serve this purpo

New discourses that expose the internal contradictions and disarticulate from current racially exclusionary norms of IP results in resistance of racialization and reconceptualization of “IP crime”.

**Vats 13** (Anjali, dissertation for doctor of phil “CREATED DIFFERENCES: RHETORICS OF RACE AND RESISTANCE IN INTELLECTUAL PROPERTY LAW”/2013/UWASH/Accessed 7-8-21) (<https://digital.lib.washington.edu/researchworks/bitstream/handle/1773/23464/Vats_washington_0250E_11939.pdf?isAllowed=y&sequence=1>) (SPHS, AL)

The association of infringement of intellectual properties with race occurs through the consistent articulation of trademark, patent, and copyright violations with identities and characteristics understood as linked to racial Otherness. **Resistance to racialization, then, requires disarticulating understandings of intellectual property infringement from those negatively racially-inflected traits and constructing new, racially emancipatory discourses around trademarks, copyrights, and patents. The process of disarticulation occurs through counterhegemonic practices which expose the internal contradictions within intellectual property’s linking of race and infringement and reconceptualize the unauthorized use of creative works.** While there are countless examples of moments of resistance occurring outside of that which intellectual property law deems legal, some of which Debora J. Halbert outlines in her book Resisting Intellectual Property, the examples I discuss unfold within existing legal structures, as legally protected, and even sanctioned, acts of protest.60 Though the distinction between inter-legal and extra-legal forms of resistance is arguably, as Foucault would suggest,61 a non-existent one when conceptualized in biopolitical terms, in the context of intellectual property, it is theoretically useful to distinguish between those acts that attempt to build alternatives to intellectual property structures and those which culturally negotiate existing legal structures. **The latter operate in the interstices of regimes of trademark, patent, and copyright, simultaneously using and deconstructing legal concepts to show the internal contradictions of intellectual property law. Examining inter-legal acts of resistance as an at least partially separable type of resistance offers a lens for closely scrutinizing and theorizing race and racial formation in the context of the laws of trademark, patent, and copyright.**62 Where Halbert urges that we “excavate the alternatives to intellectual property available to us” and “[reimagine] the extent to which copyright and patent law will govern creative and innovative work”,63 I focus on rhetorical resistance unfolding within the liminal spaces of intellectual property law, foregrounding rhetorical struggles over the meanings and histories of intellectual property law. The within here thus suggests a hegemonic struggle between groups who vie for control over the very meaning of the language, histories, and erasures of intellectual property. In the cases I consider, resistance often involves stepping outside of the language used by trademark, copyright, and patent law and “envisioning new ways to think and act to what we now call intellectual property.” 64 In other words, Warhol’s Mammy, Randall’s The Wind Done Gone, and India’s Traditional Knowledge Digital Library reshape the boundaries of intellectual property law through rhetorical practices which force acknowledgement of new meanings of the terms which undergird and define the boundaries of intellectual property law. Moreover, these case studies show how marginalized groups can reconstitute existing identity categories through their resistive acts, engaging in practices of “rhetorical revision” which alter the “very boundary” of intellectual property’s central figures, namely creators and infringers.65 By and through the exercise of rhetorical agency in the face of intellectual property’s lawmaking imperative, marginalized groups confront the legal regime’s interpellative processes, articulating their own resistive identities. Such a reading is intended to move beyond simplistic essentialist/antiessentialist social constructionist accounts of identity formation. . Instead, consistent with the work of Judith Butler, William Connoly, E. Patrick Johnson, and of course Muñoz, among others, “identity [is] produced at the point of contact between essential understandings of self (fixed dispositions) and socially constructed narratives of self.”66 **In this context, the remythologization of intellectual property’s racialization is a productive process through which new understandings of the interface between the legal regime and difference evolves and dominant narratives of identity are reconstituted.**