# 1AC

### Overview

1. **I get 1AR theory to check infinite NC abuse – outweighs on magnitude**
2. **Racial others need subjectivity before we can form normative ethics. If I win that legal notions of personhood force people into either whiteness or non-humanity, then destroying those legal notions of personhood is a prerequisite to ethics.**
   1. **Ethics presupposes subjectivity – people must be considered human before they have moral obligations**
   2. **Their framework is inherently violent if it can’t consider everyone human – solving in-round violence comes before any ethical justification**
   3. **Knowledge cannot be reliable if it only comes from a white perspective – diverse viewpoints are key to sound epistemology**
3. **I can weigh case and cross-apply it on any flow**
   1. **Anything else incentivizes disengaging from the case flow – that kills topic education and is especially bad because we’d ignore race issues**
   2. **Timeskew – anything else moots the aff so they have a 13-7 advantage**
4. **Permissibility and presumption affirm**
   1. **You instinctively assume things are good or true – people are innocent until proven guilty and you believe my name is Noam**
   2. **I debated better if it’s a tie because I dealt with a 7-4-6-3 time skew and you had reactivity advantage**
5. **Interpretation: Debaters must check their theory interpretations in cross-examination before reading them. To clarify, debaters must ask if their opponent wants to engage in a theory debate or strike the violating arguments from the flow.**

**Violation: It’s pre-emptive, but you violate if you read a shell without asking**

**Standard:**

**Substance education – checking in CX means we avoid theory debates that neither debater want, so we can spend more time on substance. Substance education is a voter and comes 1st because it’s the most exportable benefit of debate – we can always apply knowledge of the world around us.**

### Framework

#### Legal recognition of rights and personhood exclude those outside legal definitions of humanity and erase those who become human. Just as limited and genocidal court recognition of indigenous sovereignty justified the Dred Scott decision, legal rights recreate violence against vulnerable flesh and divide the oppressed into distinct groups. Legal personhood is constructed in relation to “Man,” a white, male, propertied, liberal subject.

Weheliye 14

Weheliye, Alexander. “Habeas Viscus.” Pg. 57-58. Duke University Press, 2014. I don’t have a link but I can send you the pdf.

Alexander Ghedi Weheliye is professor of African American Studies at Northwestern University where he teaches black literature and culture, critical theory, social technologies, and popular culture. He is the author of Phonographies: Grooves in Sonic Afro-Modernity (Duke UP, 2005), which was awarded The Modern Language Association’s William Sanders Scarborough Prize for Outstanding Scholarly Study of Black American Literature or Culture and Habeas Viscus: Racializing Assemblages, Biopolitics, and Black Feminist Theories of the Human (Duke UP, 2014). // Park City NL

Suffering, especially when caused by political violence, has long functioned as the hallmark of both humane sentience and of inhuman brutality. Frequently, suffering becomes the defining feature of those subjects excluded from the law, the national community, humanity, and so on due to the political violence inflicted upon them even as it, paradoxically, grants them access to inclusion and equality. In western human rights discourse, for instance, the physical and psychic residues of political violence enable victims to be recognized as belonging to the “brotherhood of Man.” Too often, this tendency not only leaves intact hegemonic ideas of humanity as indistinguishable from western Man but demands comparing different forms of subjugation in order to adjudicate who warrants recognition and belonging. As W. E. B. Du Bois asked in 1944, if the Universal Declaration of Human Rights did not offer provisions for ending world colonialism or legal segregation in the United States, “Why then call it the Declaration of Human Rights?”2 Wendy Brown maintains, “politicized identity” operates “only by entrenching, restating, dramatizing, and inscribing its pain in politics; it can hold out no future...that triumphs over this pain.”3 Brown suggests replacing the identitarian declaration “I am,” which merely confirms and solidifies what already exists, with the desiring proclamation “I want,” which offers a Nietzschean politics of overcoming pain instead of clinging to suffering as an immutable feature of identity politics. While I recognize Brown's effort to formulate a form of minority politics not beholden to the aura of wounded attachments and fixated almost fetishistically on the state as the site of change, we do well to recall that many of the political agendas based on identity (the suffragette movement, the movement for the equality of same-sex marriages, or the various movements for the full civil rights of racialized minority subjects, for instance) are less concerned with claiming their suffering per se (I am) than they are with using wounding as a stepping stone in the quest (I want) for rights equal to those of full citizens. Liberal governing bodies, whether in the form of nation-states or supranational entities such as the United Nations or the International Criminal Court make particular forms of wounding the precondition for entry into the hallowed halls of full personhood, only acknowledging certain types of physical violence. For instance, while the United Nations High Commissioner for Refugees passed a resolution in 2008 that includes rape and other forms of sexual violence in the category of war crimes, there are many forms of sexual violence that do not fall into this purview, and thus bar victims from claiming legal injury and/or personhood.4Even more generally, the acknowledgment and granting of full personhood of those excluded from its precincts requires the overcoming of physical violence, while epistemic and economic brutalities remain outside the scope of the law. Congruently, much of the politics constructed around the effects of political violence, especially within the context of international human rights but also with regard to minority politics in the United States, is constructed from the shaky foundation of surmounting or desiring to leave behind physical suffering so as to take on the ghostly semblance of possessing one's personhood. Then and only then will previously minoritized subjects be granted their humanity as a legal status. Hence, the glitch Brown diagnoses in identity politics is less a product of the minority subject's desire to desperately cling to his or her pain but a consequence of the state's dogged insistence on suffering as the only price of entry to proper personhood, what Samera Esmeir has referred to as a “juridical humanity” that bestows and rescinds humanity as an individualized legal status in the vein of property.5 **Apportioning personhood** in this way **maintains the world of Man and its** attendant **racializing assemblages**, which means in essence that **the entry fee for legal recognition is the acceptance of categories based on white supremacy and colonialism, as well as normative genders and sexualities.** We need only to consult the history of habeas corpus, the “great” writ of liberty, which is anchored in the U.S. Constitution (Article 1, Section 9), to see that this type of reasoning leads to reducing inclusion and personhood to ownership.6 The Latin phrase habeas corpus means “You shall have the body,” and a writ thereof requires the government to present prisoners before a judge so as to provide a lawful justification for their continued imprisonment. This writ has been considered a pivotal safeguard against the misuse of political power in the modern west. Even though the Military Commissions Act of 2006, which denied habeas corpus to “unlawful enemy combatants” imprisoned in Guantanamo Bay, remains noteworthy and alarming, habeas corpus has been used both by and frequently against racialized groups throughout U.S. history, as was the case when habeas corpus was suspended during World War II, allowing for the internment of Japanese Americans. The writ has also led to gains for minoritized subjects as, for instance, in the well-known Amistad case (1839), in which abolitionists used a habeas corpus petition to free the “illegally” captured Africans who had staged a mutiny against their abductors. Likewise, when Ponca tribal leader Standing Bear was jailed as a result of protesting the forcible removal of his people to Indian Territory in 1879, the writ of habeas corpus affected his release from incarceration as well as the judge's recognition that, as a general rule, Indians were persons before U.S. law, even though Native Americans were not considered full U.S. citizens until 1924.7Nevertheless, the benefits accrued through the **juridical acknowledgment** of racialized subjects **as** fully **human** often exacts a steep entry price, because inclusion **hinges on accepting the codification of personhood as property**, which is, in turn, **based on** the comparative **distinction between groups**, as in one of the best-known court cases in U.S. history: the Dred Scott case. In 1857, the Supreme Court invalidated Dred Scott's habeas corpus, since, as an escaped slave, Scott could not be a legal person. According to Chief Justice Taney: “Dred Scott is not a citizen of the State of Missouri, as alleged in his declaration, because he is a ~~negro~~ [black] of African descent; his ancestors were of pure African blood, and were brought into this country and sold as negro slaves.”8 In order to justify withdrawing Dred Scott's legal right to ownership of self, Chief Justice Taney's opinion in the decision contrasts the status of black subjects with the legal position of Native Americans vis-à-vis the possibility of U.S. citizenship and personhood: “The situation of [the ~~negro~~ {black} ] population was altogether unlike that of the Indian race. These Indian Governments were regarded and treated as foreign Governments.... [Indians] may, without doubt, like the subjects of any other foreign Government, be naturalized...and become citizens of a State, and of the United States; and if an individual should leave his nation or tribe, and take up his abode among the white population, he would be entitled to all the rights and privileges which would belong to an emigrant from any other foreign people.”9 While slaves were not accorded the status of being humans that belonged to a different nation, Indians could theoretically overcome their lawful foreignness, but only if they renounced previous forms of personhood and citizenship. Hence, the tabula rasa of **whiteness**—which all groups but blacks can access—**serves as the prerequisite for the law's** magical **transubstantiation** **of a thing** to be possessed **into a** property-owning **subject**.10The judge's comparison underscores the dangers of ceding definitions of personhood to the law and of comparing different forms of political subjugation, since **hypothetical** ~~Indian~~ **[indigenous] personhood in the law rests on attaining whiteness and the violent denial of said status to black subjects.** Additionally, while the court conceded limited capabilities of personhood to indigenous subjects if they chose to convert to whiteness, it did not prevent the U.S. government from instituting various genocidal measures to ensure that American Indians would become white and therefore no longer exist as Indians. In other words, the legal conception of personhood comes with a steep price, as in this instance where being seemingly granted rights laid the groundwork for the U.S. government's genocidal policies against Native Americans, since the “racialization of indigenous peoples, especially through the use of blood quantum classification, in particular follows...‘genocidal logic,’ rather than simply a logic of subordination or discrimination,” and as a result “**whiteness constitutes a project of disappearance for Native peoples** rather than signifying privilege.”11 Beginning in the nineteenth century the U.S. government instituted a program in which Native American children were forcibly removed from their families and placed in Christian day and boarding schools, and which sought to civilize children by “killing the Indian to save the man,” representing one of the most significant examples of the violent and legal enforced assimilation of Native Americans into U.S. whiteness.12 Though there is no clear causal relationship between Taney's arguments in the Scott decision and the boarding school initiative, both establish that **legal personhood is available to indigenous subjects only if the Indian can be killed**—either literally or figuratively—**in order to save the world of Man** (in this case settler colonialism and white supremacy). Furthermore, the denial of personhood qua whiteness to African American subjects does not stand in opposition to the genocidal wages of whiteness bequeathed to indigenous subjects but rather represents different properties of the same racializing juridical assemblage that differentially produces both black and native subjects as aberrations from Man and thus not-quite-human. The writ of **habeas corpus**—**and the law** more generally—anoints those individualized subjects who are deemed deserving with bodies even while this assemblage continually enlists new and/or different groups to exclude, banish, or exterminate from the world of Man. In the end, the law, whether bound by national borders or spanning the globe, **establish**es **an international division of humanity, which grants previously excluded subjects limited access to personhood as property at the same time as it fortifies the supremacy of Man**.13

#### Recognizing citizenship as humanity allows whiteness to insert itself in legally defined color lines based on phenotypical difference – leads to non-white and legally non-human bodies existing in oppressive liminal spaces.

Wynter 03

Sylvia Wynter—2003 “Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the Human, After Man, Its Overrepresentation--An Argument,” CR: The New Centennial Review, Volume 3, Number 3,257-337

The Argument proposes that **the** new master code of the bourgeoisie and of its ethnoclass **conception of the human** - that is, the code of selected by Evolution/dysselected by Evolution- **was** now to be mapped and **anchored on** the only available "objective set of facts" that remained. This was the set of environmentally, climatically determined **phenotypical differences** between human hereditary variations as these had developed in the wake of the human diaspora both across and out of the continent of Africa; that is**, as a set of** (so to speak) **totemic differences, which were now harnessed to the task of projecting the Color Line drawn institutionally and discursively between whites/nonwhites** - and at its most extreme between the Caucasoid physiognomy (as symbolic life, the name of what is good, the idea that some humans can be selected by Evolution) and the Negroid phys- iognomy (as symbolic death, the "name of what is evil," the idea that some humans can be dysselected by Evolution)- as the new extrahuman line, or projection of genetic nonhomogeneity that would now be made to function, analogically, as the status-ordering principle based upon ostensibly differential degrees of evolutionary selectedness/eugenicity and/or dysselected- ness/dysgenicity. Differential degrees, as between the classes (middle and lower and, by extrapolation, between capital and labor) as well as between men and women, and between the heterosexual and homosexual erotic preference - and, even more centrally, as between Breadwinner (job- holding middle and working classes) and the jobless and criminalized Poor, with this rearticulated at the global level as between Sartre's "Men" and Natives (see his guide-quote), before the end of politico-military colonial- ism, then postcolonially as between the "developed" First World, on the one hand, and the "underdeveloped" Third and Fourth Worlds on the other. **The Color Line was** now **projected as the new "space of Otherness" principle of nonhomogeneity**, made to reoccupy the earlier places of the motion-filled heavens/non-moving Earth, rational humans/irrational animal lines, and **to recode in new terms their ostensible extrahumanly determined differences of ontological substance.** While, if the earlier two had been indispensable to the production and reproduction of their respective genres of being human, of their descriptive statements (i.e., as Christian and as Mam), and of the overall order in whose field of interrelationships, social hierarchies, system of role allocations, and divisions of labors each such genre of the human could alone realize itself- and with each such descriptive state- ment therefore being rigorously conserved by the "learning system" and order of knowledge as articulated in the institutional structure of each order - this was to be no less the case with respect to the projected "space of Otherness" of the Color Line. With respect, that is, to its indispensability to the production and reproduction of our present genre of the human Man, together with the overall global/national bourgeois order of things and its specific mode of economic production, alone able to provide the material conditions of existence for the production and reproduction of the ethnoclass or Western-bourgeois answer that we now give to the question of the who and what we are.

#### Pursuing recognition in liberal institutions focuses incompletely on one form of subjugation – attempts for legal inclusion only define the included as “Men” in contrast to those considered subhuman. This reifies continued violence against those not recognized as fully human by the state.

Weheliye 14

Weheliye, Alexander. “Habeas Viscus.” Pg. 59-60. Duke University Press, 2014. I don’t have a link but I can send you the pdf.

Alexander Ghedi Weheliye is professor of African American Studies at Northwestern University where he teaches black literature and culture, critical theory, social technologies, and popular culture. He is the author of Phonographies: Grooves in Sonic Afro-Modernity (Duke UP, 2005), which was awarded The Modern Language Association’s William Sanders Scarborough Prize for Outstanding Scholarly Study of Black American Literature or Culture and Habeas Viscus: Racializing Assemblages, Biopolitics, and Black Feminist Theories of the Human (Duke UP, 2014). // Park City NL

Paradoxically, the particular biological material in question remains the property, at least nominally, of all humanity and is not proper to Moore the individual person: “Lymphokines, unlike a name or a face, have the same molecular structure in every human being and the same, important functions in every human being's immune system. Moreover, the particular genetic material which is responsible for the natural production of lymphokines, and which defendants use to manufacture lymphokines in the laboratory, is also the same in every person; it is no more unique to Moore than the number of vertebrae in the spine or the chemical formula of hemoglobin.”20 So, while the court grants personhood to human subjects in an individualized fashion that is based on comparatively distinguishing between different humans, when biological material clashes with the interests of capital, the court appeals to the indivisible biological sameness of the Homo sapiens species. Since the court's ruling does not place this slice of human flesh in the commons for all humans to share, it tacitly grants corporations the capability of legally possessing this material with the express aim of generating monetary profit. Considering that corporations enjoy the benefits of limited personhood and the ability to live forever under U.S. law, corporate entities are entrusted with securing the immortal life of biological matter, while human persons are denied ownership of their supposed essence.21 My interest here lies not in claiming inalienable ownership rights for cells derived from human bodies such as Lacks's and Moore's but to draw attention to how thoroughly the very core of pure biological matter is framed by neoliberal market logics and by liberal ideas of personhood as property. We are in dire need of alternatives to the legal conception of personhood that dominates our world, and, in addition, to not lose sight of what remains outside the law, what the law cannot capture, what it cannot magically transform into the fantastic form of property ownership. Writing about the connections between transgender politics and other forms of identity-based activism that respond to structural inequalities, legal scholar Dean Spade shows how **the focus on** inclusion, **recognition**, and equality **based on a** narrow **legal framework** (especially as it pertains to antidiscrimination and hate crime laws) not only **hinders the eradication of violence against** trans people and other **vulnerable populations** but actually creates the condition of possibility for the continued unequal “distribution of life chances.”22 If demanding recognition and **inclusion** remains at the center of minority **politics**, it **will lead only to** a delimited notion of **personhood as property that zeroes in comparatively on only one form of subjugation at the expense of others, thus allowing for the continued existence of hierarchical differences between full humans, not-quite-humans, and nonhumans.** **This can be gleaned from the “successes” of** the **mainstream** feminist, **civil rights**, and lesbian-gay rights **movements**, **which facilitate the incorporation of a privileged minority into the ethnoclass of Man at the cost of the** still and/or newly criminalized and **disposable populations** (women of color, the black poor, trans people, the incarcerated, etc.).23 **To make claims for inclusion and humanity via the U.S. juridical assemblage removes from view that the law itself has been thoroughly violent** in its endorsement of racial slavery, indigenous genocide, Jim Crow, the prison-industrial complex, domestic and international warfare, and so on, **and** that it **continues to be one of the chief instruments in creating and maintaining the racializing assemblages in the world of Man**. Instead of appealing to legal recognition, Julia Oparah suggests counteracting the “racialized (trans)gender entrapment” within the prison-industrial complex and beyond with practices of “maroon abolition” (in reference to the long history of escaped slave contraband settlements in the Americas) to “foreground the ways in which often overlooked African diasporic cultural and political legacies inform and undergird anti-prison work,” while also providing strategies and life worlds not exclusively centered on reforming the law.24 Relatedly, Spade calls for a radical politics articulated from the “ ‘impossible’ worldview of trans political existence,” which redefines “the insistence of government agencies, social service providers, media, and many nontrans activists and nonprofiteers that the existence of trans people is impossible.”25 A relational maroon abolitionism beholden to the practices of black radicalism and that arises from the incompatibility of black trans existence with the world of Man serves as one example of how putatively abject modes of being need not be redeployed within hegemonic frameworks but can be operationalized as variable liminal territories or articulated assemblages in movements to abolish the grounds upon which all forms of subjugation are administered.

#### The path forward is to embrace habeas viscus, a definition of humanity based on the flesh rather than constructs of the subject defined in relation to the law and whiteness. Habeas viscus opens avenues for guerrilla warfare as it removes politics from the realm of the Man, instead opting for a collective consciousness of the oppressed. Thus, the role of the ballot is to embrace habeas viscus. This requires a disconnection from legal recognition of personhood.

Weheliye 14

Weheliye, Alexander. “Habeas Viscus.” Pg. 95-96. Duke University Press, 2014. I don’t have a link but I can send you the pdf.

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**The** poetics and **politics** that I have been discussing under the heading **of habeas viscus** or the flesh **are concerned** not **with** inclusion in reigning precincts of the status quo but, in Cedric Robinson's apt phrasing, “**the** continuing **development of a collective consciousness informed by the historical struggles for liberation and motivated by the shared sense of obligation to preserve [and** I would add also to **reimagine] the collective being**, the ontological totality.”31 Though the laws of Man place the flesh outside the ferocious and ravenous perimeters of the legal body, habeas viscus defies domestication both on the basis of particularized personhood as a result of suffering, as in human rights discourse, and on the grounds of the universalized version of western Man. Rather, **habeas viscus points to the terrain of humanity as a relational assemblage exterior to the jurisdiction of law** given **that** the law can bequeath or rescind ownership of the body so that it becomes the property of proper persons but **does not possess the authority to nullify the politics and poetics of the flesh found in the traditions of the oppressed**. As a way of conceptualizing politics, then, habeas viscus diverges from the discourses and institutions that yoke the flesh to political violence in the modus of deviance. Instead, it translates the hieroglyphics of the flesh into a potentiality in any and all things, an originating leap in the imagining of future anterior freedoms and new genres of humanity. To envisage habeas viscus as a forceful assemblage of humanity entails leaving behind the world of Man and some of its attendant humanist pieties. As opposed to depositing the flesh outside politics, the normal, the human, and so on, we need a better understanding of its varied workings in order to disrobe the cloak of Man, which gives the human a long-overdue extreme makeover; or, in the words of Sylvia Wynter, “the struggle of our new millennium will be one between the ongoing imperative of securing the well-being of our present ethnoclass (i.e. western bourgeois) conception of the human, Man, which overrepresents itself as if it were the human itself, and that of securing the well-being, and therefore the full cognitive and behavioral autonomy of the human species itself/ourselves.”32 Claiming and **dwelling in the** monstrosity of **the flesh present** some of the **weapons in** the **guerrilla warfare to “secure the full** cognitive and behavioral **autonomy of the human species,” since these liberate from captivity assemblages of life, thought, and politics from the tradition of the oppressed and, as a result, disfigure the centrality of Man as the sign for the human.** As an assemblage of humanity, **habeas viscus** animates the elsewheres of Man and **emancipates the true potentiality that rests in those subjects who live behind the veil of the permanent state of exception**: freedom**; assemblages of freedom** that **sway to the** temporality of new syncopated **beginnings for the human beyond the world** and continent **of Man.**

**Prefer Additionally:**

1. **Stable Subjectivity is not only a racist construct, it’s an incorrect theory. My experiences and relationships mean I am not the same person as you and I am not like my old self. I am affected by people and things around me, so I am constantly changing. This takes out frameworks like Kant that rely on a consistently reasonable or self-interested agent.**
2. **Habeas viscus is historically best for fighting oppression. Movements that use extra-legal definitions of humanity to create communities of the oppressed, like the Zapatistas, Black Panther Party, and American Indian Movement have won major victories.**

### Advocacy

**I affirm that the member nations of the World Trade Organization ought to abolish intellectual property protections for medicines.**

**It’s topical – Merriam Webster’s dictionary defines reduce as “to diminish in size, amount, extent, or number,” and 0 protections is less than some protections.**

**And, PICs don’t negate because an exception to a moral statement doesn’t disprove it, just as penguins don’t disprove that birds fly.**

#### Intellectual property law is inherently intertwined with racial concepts of citizenship and creatorship. WTO protections attempt to include creators in the liberal order of knowledge, but end up incorporating some innovators into the category of Man while further repressing the rest. IP laws can only perceive western subjects, others cannot be creators. Combatting racist IP protections challenges racist and colonial knowledge production and creates hope for a human beyond the world of Man. Inquiry into IP racism is uniquely key to interrogating racism as a whole.

Vats 20

Vats, Anjali. “The Color of Creatorship.” 29 September 2020. Stanford University Press. <https://www.sup.org/books/extra/?id=27831&i=Excerpt%20from%20Introduction.html>

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INTELLECTUAL PROPERTY LAW, the body of legal doctrine and practice that governs the ownership of information, is animated by a dichotomy of creatorship and infringement. In the most often repeated narratives of creatorship/infringement in the United States, the former produces a social and economic good while the latter works against the production of that social and economic good. Creators, those individuals whose work is deemed protectable under copyright, patent, trademark, trade secret, and unfair competition law, create valuable products that contribute to economic growth and public knowledge. Infringers, those individuals who use the work of creators without their permission, steal those valuable products and act as drains on economic growth and public knowledge. These narratives, while comforting, are frequently oversimplified in public cultural conversations, in ways that center and elevate Westernness and whiteness and obscure and replicate histories of race and (neo)colonialism. *The Color of Creatorship* is a book about the historical and continuing relationships between race and (neo)coloniality in intellectual property law. In it, I join a respected and growing group of scholars in contending that **intellectual property law is a set of rhetorics about citizenship**. However, unlike those who have previously written about the relationships between intellectual property and citizenship, I focus on the latter as a discourse **through which race and coloniality continue to structure** doctrinal **practices in copyright, patent, and trademark law. Citizenship** in the United States was and **continues to be a raced concept**. More specifically, it is a concept constructed by and through constantly evolving public cultural conceptions of Americanness, white masculinity, property, racial capitalism, and labor. I use the term “intellectual property citizenship” as an anchoring analytic for understanding how intellectual property and citizenship have evolved—and continue to evolve—in deeply intertwined and raced ways. Through a periodic analysis of American legal cases, political speeches, and cultural practices, this book shows that copyright, patent, and trademark regimes are imagined through always already racialized notions of citizenship that purport to be free of racial bias. Citizenship, while presumed to be race neutral, is frequently defined via shifting normative claims about race, gender, and class and implicit definitions of “good citizens.”1 This book is more specifically about the complex ways that whiteness and its attendant property interests structure intellectual property law, often in the guise of equality and race neutrality.2 Racial inequality is a continuing and persistent problem in intellectual property law, not because of legal happenstance, economic motive, or racial accident but because **copyright, patent, and trademark doctrines are fundamentally prefigured through raced conceptions of citizenship.** **Intellectual property citizenship**, then, **is** a “grid of intelligibility”3—**a framework for understanding how power is organized—that reveals the racializing and colonizing principles** around which familiar and repeated doctrinal standards in copyright, patent, and trademark law were and are structured. The **codified racial discrimination that made intellectual property law the purview of whites in the 1800s did not disappear.** **It persisted through** the continuing **racialized entanglements** **of** the principles of **Euro-American citizenship with** the principles of **Euro-American creatorship**. Because conceptions of Americanness were and are structured through a trenchant “racial episteme,”4 a frame that a priori constrains possibilities for treating people of color as full persons, let alone full creators, the discourse of citizenship operates as a container for importing race into intellectual property law, even when the law itself purports to be colorblind. The continuing practice of thinking about copyright, patent, and trademark law through romanticized imaginings of American citizenship constrains the manner in which knowledge production/protection can be understood, managed, and adjudicated with respect to race. I do not claim that such racial investments explain the outcome in *all* intellectual property cases. However, I contend that intellectual property law is organized through a racial episteme that consistently protects the (intellectual) property interests of white people and devalues the (intellectual) property interests of people of color. Tracing “racial scripts” is a tangible method for understanding America’s racial episteme and how it informs citizenship and creatorship/infringement as discursive formations. Racial scripts are historically grounded and flexible racist logics about racial groups that can be accessed at any time to exclude the original or other people of color.5 They operate as shorthand mechanisms for calling upon dominant American ideals of national identity, patriotism, political economy, and personhood without necessarily explicitly invoking racial categories or colonial logics. In this way, racial scripts can be baked into the seemingly colorblind ideals of American citizenship that, in turn, inform intellectual property law. Examining how intellectual property law operates as a space of racial formation in which the meaning of racial categories evolves over time is a prerequisite to undoing entrenched white privilege and democratizing knowledge production and ownership.6 **Intellectual property law** is also a “racial project,”7 that **reproduces** particular racial **orders, in which people of color are coded as lacking the capacity to create**. Unspoken longings, fears, anxieties, and prejudices wrapped in economic and legal language move us to prefer certain intellectual property narratives over others, predictably to the detriment of people of color. **When** anti-racist, anti-colonial **activists grapple with** the racial episteme that structures **intellectual property law, they can advocate for strategies that resist the underlying drivers of unjust copyright, patent, and trademark policies**. While such resistive strategies may ultimately still provide only precarious and fleeting relief, as Derrick Bell famously argues, **they confront the fears and anxieties that sustain racial and colonial knowledge hierarchies.8** This book contributes to a growing body of scholarship at the intersections of race and intellectual property law through its historically situated consideration of the links among race, coloniality, and knowledge governance.9 It traces evolutions in the racial rhetorics around copyrights, patents, and trademarks that unfolded in parallel with the economic and political turns of the nation. Such an **inquiry is useful in contextualizing** the increasingly important **legal regimes** governing knowledge **that mark some bodies as** not only inherently incapable of creatorship but also inherently **undeserving of citizenship**. As the racial rhetorics of intellectual property law have changed over time, in ways that are consistent with post–civil rights era colorblindness, they have come to exclude people of color in new and different ways. Accordingly, addressing intellectual property law’s structural inequalities requires thinking about how these racial evolutions persist in a nation that claims to value all people equally. When marginalized groups are considered to be “aberrations from the ethnoclass of Man”10 contra a white ideal, as Alexander Weheliye writes, they cannot fully occupy the space of creatorship or (intellectual) property ownership until the nation attends to the contours of inequality and exclusion. While Weheliye is commenting on anti-Blackness, his statement is true for all those people of color who are considered outside of the ethnoclass of Man. In the so-called information economy, intellectual property justice is racial justice. Working through key moments in intellectual property history in the period between 1790 and 2016 reveals that even as American understandings of creatorship/infringement have seemingly evolved, they have actually remained remarkably racially conservative and consistent over time. This book will not provide an exhaustive account of race, coloniality, and intellectual property law during that period. Such a project is neither possible nor desirable. Instead, it focuses on reading some of the most important and notable historical touchstones in copyright, patent, and trademark law as examples of the continuity of racial scripts and colonial relations of domination in the context of knowledge production.

#### It’s inextricable – IP is inherently racist, especially in the medical field – it prioritizes the Western rendition of ownership. IP laws enable western “inventors” to trample over traditional knowledge based in community history. Communities of habeas viscus are destroyed to make way for western profits.

#### Parthasarathy 20

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), 11-2-2020, "Racism is baked into patent systems," Nature.com, <https://www.nature.com/articles/d41586-020-03056-z>, //SLC West HZ recut by Park City NL

In July 1999, representatives of Amazonian Indigenous groups arrived at the headquarters of the US Patent and Trademark Office in Alexandria, Virginia, to challenge a patent on the ayahuasca vine. Indigenous peoples had cultivated ayahuasca for its medicinal and other properties for generations. How could someone in the United States have ‘invented’ it? This might seem like cultural miscommunication, or the past meeting the future. But this year’s wake-up call to the ravages of social injustice are a reminder that this was also about racism and power. Many people are trying to address systemic biases in science and technology through training, grants and better job pipelines for researchers from marginalized groups. But the tentacles of racism are institutional, embedded and endemic. 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 [are] 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. 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**. She cites a landmark case at the beginning of modern biotechnology. In 1980, Diamond v. Chakrabarty focused on the patentability of a genetically engineered bacterium capable of breaking down crude oil. Ultimately, the **Supreme Court decided that** the **micro-organism was patentable**, along with “anything under the sun made by man”. In Vats’s view, **the case validated Western ideas of both genius and human dominion over nature**. Ironically, it was an Indian immigrant — microbiologist Ananda Chakrabarty — who played the game and reaped the benefits, she points out. Meanwhile**, traditional knowledge systems that have cultivated nature** for centuries — from seedbanking to controlled burning — **have gone unrecognized** and unrewarded. Perhaps most perversely, **the medicinal potential of plants** such as neem (Azadirachta indica) or turmeric (Curcuma longa), or systems such as yoga or meditation, **are seen as** valuable and **protectable only when they are made legible to the white gaze. This involves crediting a single individual rather than a community and its history; certification by Western experts; and characterization in terms of papers produced rather than**, say, **lives changed**. There is growing resistance, which Vats discusses. This includes the transnational dispute over the patentability of leukaemia drug Glivec (imatinib). In 2013, the Indian Supreme Court ruled that the drug was neither innovative nor more effective than a previously patented form of its active ingredient, and so did not deserve a patent. This ensured greater access to the drug for India’s population. Vats says that the United States characterized the decision as “patent insolence”. Rather than understanding it as arising from different values or understandings about the relationship between patents and public health, the US government admonished the country as primitive and childlike, lacking knowledge about the benefits of patents for technological progress and a civilized and democratic society. Vats suggests that to become anti-racist, intellectual-property systems must make space for multiple forms of knowledge. I agree. But this requires more than rules that recognize epistemological diversity. We must rethink how intellectual property shapes high-tech industries and markets. After all, our ‘modern’ system privileges individual reward and recognition, private property and a nature–culture binary. Reading Vats’s book is an important step. So are efforts to empower Black and brown communities to protect their knowledge systems from Western commodification — for example, in the United Nations protocol for sharing access to and benefits of plant and animal material, which is up for reform next year. Scientists must approach experts from other knowledge systems humbly and as equals to learn about their innovations, rules, practices and values. Only then can we co-create a new generation of intellectual-property rights that can be truly respectful across communities and cultures.