# 1AC -- Colonial Capitalism

#### The global intellectual property regime functions to preserve imperial hegemony and accumulative neoliberalism and sanctions the systematic theft of essential medical resources from non-Western nations -- this necessitates structural violence on an international scale.

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TRIPS Agreement and Access to Medicines Intellectual property rights (IPRs) are time-limited legal rights granted to inventors and creators. IPRs include copyrights, trademarks, patents, trade secrets, and geographical indications, while protected subject-matters include, but are not limited to, brands, inventions, designs, and biological materials. Importantly, IPRs overlap as a product may be covered by a series of rights. For example, a pharmaceutical medicine, defined by Britannica as a ‘substance used in the diagnosis, treatment, or prevention of disease’, is protected by patents, trademarks, and trade secrets. Patents are the most common form of IPR used for the protection of innovation in pharmaceuticals. Patents grant inventors limited market exclusivity for their inventions, and, in exchange, the inventor must disclose sufficient information such that competitors will be able to step into the market. This disclosure allows a competitor to make preparation to enter the market at the end of the monopoly period. Due to this legally-mandated exclusivity, patent owners – usually multinational corporations – have the right to prevent others from making, using, or selling a patented invention. The TRIPS Agreement, concluded as part of the Uruguay Round of multilateral trade negotiation and in force since 1995, provides a minimum of 20 years patent protection. The belief is that the duration allows corporations to recoup the expenses of developing, testing and upscaling an innovative pharmaceutical product. From the onset, the TRIPS IP regime created imbalance between innovation, market monopoly, and medicines access, because it failed to take into consideration the health burden, development needs and local conditions of the various countries that make up the WTO. This has led to several issues. First, the market monopoly of IP rights, which allows the corporation to set the market for drugs, has created a privileged societal class with access to lifesaving medication distinguishing them from those excluded from access to available medications. This phenomenon is vividly illustrated in the HIV/AIDS crisis of the 1990s and early 2000s. While HIV/AIDS patients in developed countries were able to afford antiretroviral (ARVs) treatments, which had been developed, approved and patented as early as 1987, many patients in Africa and other parts of the developing world could not afford the approximately USD 12,000 per annum treatment at that time. By 2001, approximately 2.4 million people in the region had died of AIDS. The South African government intervened to reduce the cost of ARVs by amending its domestic patent laws to allow the authorization of parallel imports of patented pharmaceuticals and to encourage the use of generic drugs, but it was sued by the US industry group Pharmaceutical Research and Manufacturers of America (PhRMA). Though the lawsuit was eventually dropped, it highlights the measures pharmaceutical corporations, backed by some national governments, are willing to take to protect their profits at the cost of human lives. Significantly, we see how law (or the threat of legal action) is used not only to protect and expand the profitability of a certain kind of property but, as Anjali Vats and Deidré Keller have taught us, also reveals IP law’s racial investments in whiteness and its continuing implications for racial (in)equality, particularly in the way it informs systems of ownership, circulation, and distribution of knowledge. Similarly, Natsu Saito takes up the analysis of IP, race and capitalism by theorizing some of the ways in which ‘value’ in IP law concentrated in the hands of large corporations is calculated in terms of its profitability rather than what it contributes to the well-being of society. However, the proverbial chickens have come home to roost as even rich countries are beginning to feel the bite of the dysfunctional IP system. The issue of excessive pricing for medicines is a growing problem in developed countries as well and has now become the single biggest category of healthcare spending in these states, particularly the US. An empirical report by I-MAK reveals how excessive pharmaceutical patenting is extending monopolies and driving up drug prices. The report, for example, notes that over half of the top twelve drugs in the US have more than 100 attempted patents per drug. Specifically, the report revealed that Humira® by AbbVie (used in the treatment of Crohn’s disease and the US’s highest grossing drug) has been issued 130 patents. The drug costs USD 44,000 annually and generated more than USD 19.2 billion for the company in 2019 alone. The Report also notes that the first patent filed for Herceptin® – used in the treatment for certain breast and stomach cancers – was in 1985 but currently has pending patent applications that could extend its market monopoly for 48 more years. Meanwhile, Celgene has over 105 patents for its oral cancer drug Revlimid® (used in the treatment of multiple myeloma) extending its monopoly until the end of 2036 – a patent lifespan of 40 years. In addition to excessive patenting and pricing, we have also come to understand the power of data in this context. Health inequity and inequalities in vaccine access are not unfortunate outcomes of the global IP regime; they are part of its central architecture. The system is functioning exactly as it is set up to do. Second, regulatory agencies worldwide require drugs to undergo safety and efficacy testing to ensure they are harmless before approval. These tests, known as clinical trials, involve human subjects and are costly because they can run up to three separate phases. The data collected during these clinical trials are the proprietary materials of the company conducting the tests. Because it is expensive and time-consuming, generic drug companies usually rely on the safety and efficacy data of brand name companies to seek regulatory approval as long as they can prove their generic version is chemically and biologically equivalent to the original. Relying on the test data of brand name companies reduces the production cost for generic medicines and allows for quicker market entry. However, recent years have seen a promotion of time-limited, legally mandated protection against the non-proprietary use of such data by generic companies. This is known as data exclusivity. Put differently, data exclusivity is a period when a generic company cannot use the clinical trial data of an innovator pharmaceutical company to receive regulatory approval for a generic medicine. In so doing, data exclusivity provides a layer of protection in addition to patent protection to further delay market entry of generic medicines. Data exclusivity periods vary depending on the jurisdiction. For example, it is twelve years in US and ten years in the EU. While the TRIPS Agreement does not create property rights over registration data, the US and the EU have continued to champion and export data exclusivity through free trade agreements, particularly for biologics. For example, the US Affordable Health Care for America Act in 2009 extended a 12-year exclusivity period for biologics. This US interpretation for registration data was also included in the United States-Mexico-Canada Agreement (USMCA), which sought a 10-year data exclusivity for new biologics. However, after intense negotiations, the data exclusivity protection was reduced to 5 years for new pharmaceuticals. In this instance, we see a crystallising of Euro-American ideas of property and a willingness to promote those property interests through the law, both domestic and international. In fact, certain scholars assert that this pursuit of higher TRIPS standards is driven, in part, by the US desire to achieve levels of protection it anticipated from the TRIPS Agreement but failed to secure. Given the influence of the industry and its representative group, PhRMA, in seeking stronger protection on a global scale, it is not surprising that the US’s post-TRIPS policies continue to rachet up standards in ways that undermine access to affordable medicines, and perpetuate social hierarchy and subordination. Third, patent practices in recent decades have seen pharmaceutical companies engaging in trivial and cosmetic tweaking of a drug whilst still reaping the benefit of 20 years of patent protection. This tweaking sometimes involves making minor changes to patented drugs, such as changes in mode of administration, new dosages, extended release, or change in color of the drug. These changes normally do not offer any significant therapeutic advantage even though pharmaceutical companies argue they provide improved health outcomes to patients. These additional patents on small changes to existing drugs, known as evergreening or patent thickets, block the early entry of competitive, generic medicines that drive medicine prices down. For example, while not mandated by TRIPS, many US led TRIPS-plus free trade agreements have expanded the scope for evergreening. These include the US-Jordan FTA (2000), US-Australia FTA (2004) as well as the US-Korea FTA (2007), which allow for the patenting of new forms, uses, or methods of using existing products. The development discourse often touted by developed nations to help countries in the Global South ‘catch up’ is empty when the essential medicines needed to stay alive are deliberately denied and weaponised. The cancer drug Gleevec®, owned by Novartis, is another example of how pharmaceutical companies often secure patents on new, more convenient versions with marginal therapeutic benefit to patients whilst blocking the entry of generic medicines. In 2013, Novartis’ patent application for Gleevec®– the β crystalline form of the salt imatinib mesylate – was rejected by the Indian Supreme Court because it lacked novelty. However, the company has secured patents for this product in other jurisdictions such as the US and has maintained a high price of Gleevec there. But in India the price of Gleevec® was reduced from approximately USD 2,200 to USD 88 for one month’s treatment in the generic drugs market as a result of the 2013 Indian Supreme Court judgement. Novartis is not the only culprit. The depression drug Effexor® by Pfizer was granted an evergreen patent when the company introduced an extended-release version, Efexor-XR®, even though there was no additional benefit to patients. Eventually, the patent was declared invalid, but by then it had already cost an estimated USD 209 million to Australian taxpayers and kept generic competition off the market for two and a half years. In another instance, Pfizer went on to secure an additional patent for the Pristiq®, which contained identical chemical compound as Efexor-XR®,and again with no added therapeutic benefit. These evergreening practices, of course, have material effects. Apart from delaying the entry of generic versions, they give brand-name pharmaceutical companies free reign in the market, which allows them to set the market price. Recent years have seen monopoly prices rise exorbitantly causing significant financial strain to patients, domestic healthcare services and even insurance companies in developed countries. A notorious example is Martin Shkreli, who in 2015 bought the rights to an anti-malarial drug, then raised the price by 5,000 per cent from a cost of USD 13.50 to USD 750. Similarly, a white paper by I-MAK shows how excessive patenting and related strategies are driving families to overspend on lifesaving medicines. Celgene, the makers of Revlimid® raised the price of the drug by more than 50 per cent since 2012 to over USD 125,000 per year of treatment. Using the example of Solvadi® by Gilead, which costs USD 84,000 per treatment, Feldman notes the drug would cost the US Department of Defense more than USD 12 billion to treat all hepatitis-infected patients in US Veterans Affairs. But the US is not alone. In Europe, expensive drugs have prompted a growing backlash against pharmaceutical corporations. Reacting to these price hikes, Dutch pharmacies are bypassing these exorbitant prices by preparing medicines in-house for individual patients. The broken IP system ranging from an extraordinarily low standard for granting patents to permissions of patent thickets around a single molecule has not only severely distorted the system of innovation, but they have also skewed access to life-saving drugs. As a result, prices for new and existing medicines are constantly rising, making essential medicines inaccessible for millions of people around the world.

#### Intellectual property is rooted in the universal exportation of the Western liberal philosophical tradition that idealizes private property arrangements – patent law is an extension of cultural imperialism invested in the preservation of whiteness at the expense of the global South.

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In this article, I am interested in exploring the legal doctrine of copyright from the standpoint of a postcolonial critic. According to Shelley Wright, there is a ‘deep and continuing grip of colonial thinking on all systems currently in place, from the personal and local to the global.’1 And the law of copyright is no exception. Like other areas of intellectual property, copyright as a Western philosophical idea, is deeply imbued with the values of the European Enlightenment, liberalism, and a society founded on a print-based culture. As Wright suggests, copyright continues to be one of ‘the quintessential representations of the modern, public world of bourgeois expansion, male dominance and European colonial infl uence in the creation of political and economic systems in Europe and the colonies.’2 Indeed, the Western history of copyright is inextricably tied to the Western history of colonialism. A major argument in this article is that copyright (like other forms of intellectual property) is not a natural right, but instead embodies a particular set of values and assumptions – such as the need to commodify ideas, and also the expression of those ideas. As a product of the European Enlightenment, the concept of copyright has been infused with the ideals of the liberal legal tradition, and these ideals – such as ‘private property’, ‘authorship’ and ‘possessive individualism’ – are not universal principles of property law, but instead are Western ones. Consequently, the supposedly universally-shared view of copyright law embodied in international agreements such as the Berne Convention and the TRIPS Agreement are not simply ‘agreements’, but rather are multifaceted projects (or dominant narratives) which are laden with values stemming from particular cultural traditions, and which have evolved from particular historical moments in Western history. However, while these values have been packaged and exported around the globe based on their apparent universality, it is signifi cant to note that copyright remains a foreign concept in many cultures. Indeed, a number of societies take a radically different view as to ‘what constitutes property or what may rightfully be the subject of private ownership.’3 Several cultures also consider ‘copying’ or sharing ideas within a community as a sign of respect and recognition – not as piracy, or a violation of private property rights.4 Before moving on to explore the concept of copyright law in more detail, I should outline my reasons for wishing to scrutinise the laws in this area using a postcolonial lens. Copyright is a multi-billion dollar global industry, which has increasingly become an enormous source of revenue for countries of the North.5 From a postcolonial perspective, the export of copyright products raises particular concerns as these items are not simply just another trade commodity, but emblematise the exporting cultures’ values and traditions. In other words, Disney movies and MTV songs are not simply just another product because they represent the cultural signs and symbols of the dominant narrative.6 Due to the enormous volume and dominant position of Western popular culture on a global scale, critics have labeled this essentially one-way traffi c as a form of ‘cultural imperialism’ in this postcolonial era. As Fredric Jameson suggests, the export of American culture around the globe has had a far deeper impact than earlier forms of colonisation, imperialism or simple tourism, as these cultural goods (along with agribusiness and weapons) constitute the principal economic exports for the US.7 Moreover, the current imbalance in global information fl ows is in many ways merely an extension of the exploitative colonial past. For this reason, Philip Altbach asserts that ‘[c]opyright must not be seen in isolation from issues of access to knowledge, the needs of Third World nations, and the broad history of colonialism and exploitation.’8 I also wish to examine the concept of copyright law in more detail in order to partially fi ll the gap in understanding of the negative impact of an overly prescriptive international copyright regime. This is important, as most of the opposition in the late 1990s to the international intellectual property regime primarily focused on the dire effects of patents for countries in the South.9 This article will begin by exploring the concept of copyright law as essentially a Western idea, and then move on to discuss copyright and the colonial process, the Berne Convention and the TRIPS Agreement as colonial (and postcolonial) constructs, and the role of international copyright law in continually othering the South in the global publishing and software industries. The Western liberal idea of intellectual property law has now been globalised through the Agreement on Trade-Related Aspects of Intellectual Property Rights or TRIPS.78 The TRIPS Agreement was established as part of the World Trade Organization (WTO) regime that came into operation on 1 January 1995. TRIPS is one of the number of agreements which make up the WTO, and links intellectual property rights to WTO obligations. This international legally binding agreement establishes minimum standards for intellectual property rights, which members of the WTO must implement through national legislation. Under TRIPS, the 151 members of the WTO (at 27 July 2007) are required to give effect to a set of basic minimum principles and rules covering copyright, trademarks, patents, layout-designs of integrated circuits, geographical indications, industrial designs, and protection of undisclosed information. There are also uniform remedies available for the enforcement of these rights. In many cases, nations are applying higher standards than were previously applied in their domestic law. For example, longer terms of protection, fewer exceptions to the scope of rights, and sometimes new rights. While the Agreement has only been in force for thirteen years, it has been heavily criticised by Southern nations as essentially a neocolonial instrument – privileging the colonial view over the postcolonial ambitions of the Other.79 Copyright protection is provided for in Articles 9–14 of the TRIPS Agreement. These provisions are discussed briefl y below.

#### Legal agreements such as TRIPS are grounded in the construction of intellectual property regulations as enlightened safeguards against the primitive savagery of indigenous conceptualizations of property – international legal frameworks are an ethically bankrupt starting point for change.

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The problems that the establishment of an international legal framework for world trade could pose for developing countries had been noticed right from the beginning. In 1964, the United Nations Conference on Trade and Development (UNCTAD) was founded because it was felt by developing countries that the pattern of world trade disproportionately favoured the industrialised nations (Blakeney, 1996, p. 26; Zamora, 1995, pp. 512, 518). In the course of the negotiations leading to the Agreement Establishing the World Trade Organisation (WTO Agreement), a convergence in the positions of the industrialised and the developing countries has repeatedly been attempted, with some success (Blakeney, 1996, p. 6). When the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) ended with the Final Act on the results of the Uruguay Round and the Agreement establishing the WTO in Marrakesh on April 15, 1995, the creation of the WTO as a specialised agency of the UN realised the hope (reaching back to the time of the creation of the UN itself) of an international organisation with responsibility for world trade (Blakeney, 1996, pp. 29, 36; Zamora, 1995, pp. 503, 506; Jackson, 1998, pp. 24-9); thus in theory, the promotion of world trade should benefit each Member, developed or developing alike. The preamble to the WTO Agreement states expressly in the second paragraph that especially the least developed countries should be secured “a share in the growth of international trade commensurate with the needs of their economic development”. This overriding principle also applies to TRIPs (Appendix 1C to the WTO Agreement), and the preamble to TRIPs expressly recognises (in paragraph 6) the special needs of the least-developed countries as far as the required domestic implementation of laws and regulations is concerned, “in order to enable them to create a sound and viable technological base ...”. These aims indicate the intention to create the implementation of a benign system of universal common standards of intellectual property rights for the mutual benefit of all nations. However, it is well known that originally the principal objective of what was to become TRIPs was actually the fight against piracy of Western intellectual property rights in developing countries. In the 1970s, the realisation of the adverse effect which the increase of sales of counterfeited trade-marked goods had on trade income prompted industrialised countries to reach an “Agreement on Measures to Discourage the Importation of Counterfeit Goods”, whereby the United States took the lead.8 It was also the United States which pushed for a recognition of legislative measures for the protection of intellectual property rights as to be considered within the jurisdiction of GATT, and not of WIPO only, as developing countries, especially Brazil and India, had argued (Blakeney, 1996, pp. 2-3; Zamora, 1995, p. 529). This was the starting point for the present situation of TRIPs being within the WTO framework (Drahos with Braithwaite, 2002, p. 109).9 The “anti-counterfeit” origin of TRIPs does not appear in its final preamble (Blakeney, 1996, p. 9), but the preamble makes clear that the objective of TRIPs is “the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems”, which obviously encompasses measures against counterfeited goods. Thus TRIPs grew out of the endeavours by the Western industrialised world to safeguard and enforce their own Western intellectual property rights, based on Western concepts, in the non-Western, and typically developing, countries.10 Theoretically, this could have been achieved without any reciprocity, because what really matters to Western interests is that Western rights are respected in a nonWestern context and culture, especially by way of an effective combat against piracy. Thus bilateral agreements could have been reached ensuring that, say, a US patent will be duly protected and enforced in developing country X, without the requirement that a patent granted in X will be enforced in the US, or indeed, without X even being required to maintain a national patent law which could enable X to grant patents itself; hence there would be no (theoretically) enforceable right in a country outside X. Such a measure would be openly colonial in its approach, but politically unsustainable in the late twentieth century or today, because the developing countries have achieved sufficient political counterbalance against Western interests during the period of decolonialisation that allows them to counteract such strategies at a large scale.11 TRIPs wishes to represent a compromise, which may have been honestly conceived as such in that it leaves some flexibility for developing countries (Correa, 2002, p. 52), but, as it is modelled on Western intellectual property legislation, it is nevertheless in effect slanted in favour of Western interests (Drahos with Braithwaite, 2002, pp. 11-6, 143-6; Correa, 2000, p. 3; Robbani, 2005, pp. 565, 571). The “provision of effective and appropriate means for the enforcement of trade-related intellectual property rights” (preamble, pt. c) is obtained through an introduction of minimum standards of intellectual property protection (Article 1 (1) TRIPs). These minimum standards are determined by TRIPs itself, which is remarkably detailed for an international instrument in respect of the substantive law of the respective intellectual property rights,12 and by broad reference to the central international intellectual property conventions, especially the Paris Convention for the Protection of Industrial Property 1883 (Paris Convention) and the Berne Convention for the Protection of Literary and Artistic Works 1886 (Berne Convention).13 The principle of minimum standards as a basis of mutual recognition and protection of intellectual property rights is reinforced by the national treatment rule (Article 3) which echoes the existing intellectual property conventions in this respect.14 As a result, non-Western countries are required to introduce comprehensively the Western regime of intellectual property rights, irrespective of whether this regime is necessarily compatible with, and useful to, their own cultures and economies,15 otherwise they would not be able to conform to the protection obligation of Western intellectual property rights in their own territory. Non-Western countries are also expected to undergo an industrialisation process according to the model of Western industrialised nations to create a context in which Western intellectual property rights would then become meaningful (Ngenda, 2005; Gana, 1996, p. 738). In return for the protection of their own rights, Western countries could generously agree to recognise Westerntype intellectual property rights originating from developing countries, because these rights were unlikely to arise often and would not pose a real competitive threat.16 This is a good example of the liberal ideal of two equal contracting parties that [ignores] the real imbalance created by political and economic realities. It could also be seen as a modern version of constructed savagery of the non-developed world which will be overcome by the gift of intellectual property rights from the developed and civilised nations.17 How Western in nature TRIPs effectively is, can be shown by the fact that Western national legal systems have had to adapt little to TRIPs,18 while, for example, Latin American and Carribean states had to make significant changes in their intellectual property laws to implement the minimum standards (Correa, 2000, pp. 101, 111).19 More recently, TRIPs also serves as a bottom line for further extension of IP protection which the developed world continues to push for in bilateral “TRIPsPlus” agreements with countries of the developing world (Drahos, 2001, p. 805). Such “friendly nudges” towards adaptation of international standards are obviously not a development of the postcolonial era. The national treatment provision of the Paris Convention in Article 2 intended to compel Paris Union members to provide mutually adequate industrial property laws. It contributed to Switzerland’s decision to introduce a patent law (which it did not have when it joined the Paris Union) in order to be able to give effect to this obligation towards nationals of the Paris Union (Oddi, 1987, p. 869). The Netherlands also enacted patent laws which it had abolished some time before (Bender, 2000, p. 54; Drahos with Braithwaite, 2002, p. 36). The Paris Convention, and later the Berne Convention, had the then industrialised Western countries of the 1880s as relevant potential members to the Paris/Berne Union in mind; the non-Western world (where it did not have the status of a colony anyway and was therefore part of the Paris/Berne Union, see Drahos, 2002a, pp. 766-7; Drahos with Braithwaite, 2002, p. 75) was not perceived as a significant candidate for such conventions, and conflicts with indigenous cultures as a result of this transplantation of rights were then unlikely to be noticed as a potential problem. Sensitivity in relation to one-sided technology transfer and possible lack of economic equality was also less developed in the nineteenth century, despite an otherwise generally far greater tendency to arrogant nationalism among the European nations. An example is the awkward British standard gauge of railways of 561 /2 inches (1,435 mm) that can be found in much of Continental Europe (which adopted the metric system far earlier) because George Stevenson’s first locomotives delivered from England were produced with this gauge. The legal protection of such technological innovations usually follows suit and that may help explaining why it was possible at all to agree on a modest legal standardisation through the Paris and Berne Conventions in the much more belligerent atmosphere of the nineteenth century.

#### International institutions such as the WTO find their origins in the domination of Western imperial states and corporations – the resolution itself is indebted to the perpetuation of racialized global hierarches through the exportation of finance capitalism.

**Valdes & Cho 11** (Francisco, Law Prof @ U of Miami, and Sumi, Law Prof @ DePaul, July 2011, “COMMENTARY: CRITICAL RACE THEORY: A COMMEMORATION: RESPONSE: Critical Race Materialism: Theorizing Justice in the Wake of Global Neoliberalism”, Connecticut Law Review 43 Conn. L. Rev. 1513)

2. Blinded Identities: Race and Racism Under Racialized Globalized Neoliberalism As we mentioned above, experience suggests that the market-state overtakes the nation-state both from within and without. Most recently in historical terms, the widespread establishment of multinational corporations, and the intensifying virulence of top-down corporate globalization, have put new and morphing pressures on this uncertain [\*1565] relationship between law and justice in the material, political and constitutional context of the modern liberal democracy. n163 Whereas both laws and corporations are, formally, creatures and creations of the modern nation-state, both laws and corporations seem operationally to have decisively outgrown the limits of their creators. n164 Perhaps, therefore, this newly complicated interplay olaws, corporations and nation-states now threatens the very viability of the traditional world order based on traditional rule-of-law notions because the efficacy of foundational concepts and premises-borders, territoriality, jurisdiction and the like-seem increasingly antiquated or impotent in the face of challenges and trajectories during this still- young century. n165 Much of law, as we already noted, is devoted both directly and indirectly to the maintenance and administration of the nation-state, the so-called free market, and the myriad actors that operate within and across each. n166 Yet, today, under this rule of law, all three-the nation-state, the free market, and law itself-are said to be in existential crises. n167 Indeed, the decline or the collapse of the racialized neocolonial nation-state is said to be impending, even as the nation-state continues to be a key pivot point in everything, both sub and supra-national. Under this forecast, nation-states will become increasingly irrelevant because they will become progressively less able to deliver on the traditional goods that justify and undergird their existence. Under this kind of analysis, the nation-state increasingly will become unable to protect itself and its people from increasingly globalized social, economic, and environmental problems, or from increasingly proliferating weapons of mass destruction, or from increasingly Borg-like assimilation of culture and market in the form of corporate globalization. Under this type of account, the nation-state will give way to the market-state, which will be devoted mainly to sustaining the conditions necessary for fundamentalist market capitalism to operate [\*1566] much as we know it today, except even more so. n168 Under this sort of scenario, moreover, traditional identities like race or ethnicity "naturally" tend to become irrelevant; so do relative or diverse cultural and political normativities; all that matters is "the market," in which colorblinded multiculturalism will occur, if at all, organically, as it should, of course. The market-state, however, will be not only colorblind, but identity blind: blind, for example, to the increasingly documented exploitation of traditionally subordinated identity groups-women, indigenous people, children, poor communities, oftentimes of color-throughout the entire planet by the agro-industrial complex owned and controlled by traditionally elite groups. n169 Consequently, under this account the colorblind market-state will help to usher in a new and normalized post- racial sensibility that mirrors the equivalent sensibility being propagated domestically. Under this account, the only color said to count either domestically or transnationally is the color of merit and money-as if the neocolonial color of merit and money can ever be disconnected from the cultural and material stratification of life emplaced through identity-based colonialism and imperialism. Under this account, in effect, neoliberal globalization and corporate capitalism are a done deal for the world's masses. Our fate is set: "free-market fundamentalism" is the new (colorblind, post-racial) normativity, if one exists at all. n170 If this prognostication is correct, the traditional nation-state increasingly will become (mainly/merely?) a shell for advancing corporate activity-a condition some might say is already the case, and perhaps has been all along. n171 This predicted (or ongoing) transition from the nation-state to the market-state no doubt will depend in great measure on the management of law-both internal and international, both as written and as applied. Already, however, we can see (again) at the international or transnational level the replication of contradiction, corruption, complexity, and the makings of crisis. The same racialized and identity- inflected dynamics that historically gave shape to law's structural dissonance and systemic dysfunction at the national/domestic level are today giving shape to [\*1567] internationalized or transnationalized law. n172 In short, the identitarian frame misalignments that CRT confronted within the nation-state during the past twenty years now await critical race interrogation across the world system of nation-states caught in the riptides of globalized neoliberalism. 3. Law, Nation-State, and Racialization: From Colonialism to Imperialism to Global Neoliberalism Historically, the dominant narrative of international law is that it is the result of practical and political arrangements devised pragmatically by dominant sovereigns on the basis of the nation-state system. This dominant narrative is a colorblind fiction because the origins of international law-like the origins of law generally-are found in the more specific need of the ruler to rule the ruled. International law, like domestic law, is the product of local and national elites constructed through race and gender politics reproducing at the trans-national level the same arrangements imposed at the national and sub-national levels: relationships of domination and subordination in the name of goals and values like justice, equality, and dignity. Thus, the origins of internationalized law are found in the structural need of (white) colonial elites to control and exploit their (non-white) colonies. It is found in the need of dominant nation-states in the North and West of the globe during the fifteenth through nineteenth centuries to promote their own sense of security, and their self-serving systems of exploitative commerce. n173 More recently, after World War II, as we noted above, we see the emergent and consolidating system of international law take on a tripartite agenda that crystallizes during the twentieth century these original and historical imperatives. The racial and racializing continuities that stretch from colonialism to imperialism and, now, neoliberal globalization underscore the continuities of "domestic" racisms within the nation-state and those that travel and replicate transnationally across the face of this Earth. Not too surprisingly, the first item on this modern and re-racialized agenda remains the management of former colonies-now denominated as a "third world"-in a manner that still preserves "traditional" neocolonial privilege. n174 Not unconnected to this aim is the second agenda item: [\*1568] orchestrating the management of Cold War politics at a global level to ensure again the triumph of the (white-controlled) North and West nation-states, and their political or economic preferences, in the "new" world order under construction after the Second World War. n175 And the third item of this modern agenda for internationalized law has been the promotion of economic "globalization" as a process that systematically buttresses neocolonial hierarchies and related socioeconomic arrangements through the care and feeding of mega multinational monsters. n176 These three modern-day and continuing pursuits effectively crystallize the historical racial imperatives and "traditional" political utilities of international law based on colonial, national, imperial and, now, globalized systems of law and power. Of course, since World War II, international law also has been increasingly influenced by the mobilization of mass social movements, initially organized around national and class interests but more recently organized around other categories of identity such as race, sex, sexual orientation, religion, and other axes of identification and regulation. n177 Thus, the emergence of "civil society" at both the national and transnational levels has added additional actors to the historical makers of international law. n178 More importantly, the emergence of social movements in this increasingly globalized political setting has created an opening for the articulation of antisubordination principles within the making of international law. n179 Nonetheless, the contemporary transnational status quo engendered by this complex of forces slowly but surely has led to a "neoliberal" conception of globalization and internationalization that effectively demands a normative, political and legal preference for profit over people, especially "surplus" people. As many observers have noted, this neoliberalization of internationalized legal arrangements has promoted human rights mostly for corporations. n180 Despite protest, critique and resistance, neoliberalism, in practice, has amounted to corporate globalization. This legacy, most recently and ironically, is being consolidated by the [\*1569] "neoconservative" construction of globalization under internationalized law. Some observers say this neoconservative approach to law, transnationalism and globalization aims to construct an imperial sovereign, or an "imperial sovereignty," to push for a nationalist international law. n181 Either way, then, the structural and material bottom line once again remains constant: neoconservatism, like neoliberalism, is perfectly content with a racialized yet colorblinded transnational system of law designed to freeze tops and bottoms in the current global order precisely in their traditional, neocolonial and subordinated/privileged places. Thus, as it was in the beginning, international law today continues to be a racial and material project of the (white-identified) Global North and West in which the (colored) Global South is the object of material control and political rule. International law, like domestic law, thereby protects the identitarian interests and material legacies of colonialism and imperialism in the name of democracy and human rights. International law, like domestic law, consequently is a project freighted with contradiction, corruption, and complexity. Like domestic law, international law is a recipe for brewing crisis for very similar reasons: both are constructed and controlled by ruling neocolonial elites and their agents to proclaim one thing but to do quite another. In material and more concrete terms, internationalized law is being used to produce a global identity-based economic space, much like domestic law was used to produce a national identity-based economic space; much like domestic law has been deployed to produce and prop up a national racial-capitalist class hierarchy, international law is being used to produce and prop up a transnational racial- capitalist class hierarchy. At both levels, legalized injustice is a key hallmark of these socio-legal regimes, which relentlessly commodify both the human species and its habitats in the avowed name of "liberty" but in the actual interest of those racialized, neo-colonial elites who profit most directly from today's version of "free" market fundamentalism. Thus, contemporary international law typically protects the interests of capital over labor, of the corporation over the environment or the community, of exploitation over sustainability. Like traditional forms of domestic law, it thereby effectively and structurally elevates the interests of identity-based elites over similarly identity-based masses. The non-stop chatter about human rights for humans in peril oftentimes remains mostly just that: chatter. No wonder, then, that international law now is increasingly characterized by the same dynamics of identitarian contradiction under the rule of law that gave shape to domestic law in centuries past. Both levels [\*1570] of law are based on noble and inspiring specified values but applied by judicial appointees and other legal actors in direct or indirect repudiation or subversion of them; both are characterized by an overt commitment to justice coupled with a covert sabotaging of that commitment. Like domestic law, international law ensures racialized (and gendered) instability, exploitation, violence, and inequality-all in the name of colorblind development, security, freedom and justice. Like domestic law, international law is driven more by raw power and "traditional" neocolonial identity politics than by principled or colorblind justice. n182

#### Vaccine colonialism is the latest iteration of this systemic dysfunction – intellectual property regulations are a channel of imperialism that have enabled hegemonic global powers to control vaccine access, leaving developing nations at the mercy of the pandemic.

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COVID-19, Intellectual Property and Vaccine Imperialism This brings us to the present and how this dysfunction continues to be normalised in the current pandemic. Moderna, for example, has filed over 100 patents for the mRNA technology used in its vaccine, despite receiving funds from the US government with its IP partly owned by the US National Institutes of Health. Pfizer/BioNTech have also filed multiple patents on not only their COVID-19 vaccine product, but also on the manufacturing process, method of use and related technologies even though BioNtech was given $450 million by the German government to speed up vaccine work and expand production capacity in Germany. It has become increasingly plain that IP makes private rights out of public funds while benefitting particular corporate interests. In fact, reports show the US government under Operation Warp Speed led by the US Department of Health also funded other vaccines developed in 2020 by several pharmaceutical corporations including Johnson and Johnson, Regeneron, Novavax, Sanofi and GlaxoSmithKline, AstraZeneca, and others. In spite of this boost from public funds, and with many governments wholly taking on the risks for potential vaccine side effects, drug manufacturers fully own the patents and related IP rights and so can decide how and where the vaccines get manufactured and how much they cost. As a result, taxpayers are paying twice for the same shot: first for its development, then again for the finished product. Meanwhile, a New York Times report has revealed that in some of the agreements between pharmaceutical companies and states, governments are prohibited from donating or reselling doses. This prohibition helps explain the price disparity in vaccine purchases among countries where poor countries are paying more. For example, Uganda is paying USD 8.50 per dose of the AstraZeneca vaccine while the EU is paying only USD 3.50 per dose. By prioritizing monopoly rights of a few western corporations, IP dysfunction not only continues to reproduce old inequities and inequality in health access, but helps frame our understanding about the creation and management of knowledge. And perhaps we begin to see the refusal of drug makers to share knowledge needed to boost global vaccine supply for what it truly is: an extension in capitalist bifurcation of who is imagined as a legitimate intellectual property owner and who is envisioned as a threat to the (intellectual) propertied order. Supporters and opponents of a TRIPS waiver for the COVID-19 vaccines (February 2021) Despite calls to make COVID-19 vaccines and related technologies a global public good, western pharmaceutical companies have declined to loosen or temporarily suspend IP protections and transfer technology to generic manufacturers. Such transfer would enable the scale-up of production and supply of lifesaving COVID-19 medical tools across the world. Furthermore, these countries are also blocking the TRIPS waiver proposal put forward by South Africa and India at the WTO despite being supported by 57 mostly developing countries. The waiver proposal seeks to temporarily postpone certain provisions of the TRIPS Agreement for treating, containing and preventing the coronavirus, but only until widespread vaccination and immunity are achieved. This means that countries will not be required to provide any form of IP protection on all COVID-19 related therapeutics, diagnostics and other technologies for the duration of the pandemic. It is important to reiterate the waiver proposal is time-limited and is different from TRIPS flexibilities, which are safeguards within the Agreement to mitigate the negative impact of patents such as high price of patented medicines. These safeguards include compulsory licenses and parallel importation. However, because of the onerous process of initiating these flexibilities as well as the threat of possible trade penalties by the US through the United States Trade Representative (USTR) “Special 301” Report targeting countries even in the absence of illegality, many developing countries are reluctant to invoke TRIPS flexibilities for public health purposes. For example, in the past, countries such as Colombia, India, Thailand and recently Malaysia have all featured in the Special 301 Report for using compulsory licenses to increase access to cancer medications. It is these challenges that the TRIPS waiver seeks to alleviate and, if approved, would also provide countries the space, without fear of retaliation from developed countries, to collaborate with competent developers in the R&D, manufacturing, scaling-up, and supply of COVID-19 tools. However, because this waiver is being opposed by a group of developed countries, we are grappling with the problem of artificially-created vaccine scarcity. The effect of this scarcity will further prolong and deepen the financial impact of this pandemic currently estimated to cost USD 9.2 trillion, half of which will be borne by advanced economies. Thus, in opposing the TRIPS waiver with the hopes of reaping huge financial rewards, developed countries are worsening pandemic woes in the long term. Perhaps it is time to reorient our sight and call the ongoing practices of buying up global supply of vaccine what it truly is – vaccine imperialism. Another kind of scarcity caused by vaccine nationalism has also reduced equitable access. Vaccine nationalism is a phenomenon where rich countries buy up global supply of vaccines through advance purchase agreements (APA) with pharmaceutical companies for their own populations at the expense of other countries. But perhaps it is time to reorient our sight and call the ongoing practices of buying up global supply of vaccine what it truly is – vaccine imperialism. If we take seriously the argument put forward by Antony Anghie on the colonial origins of international law, particularly how these origins create a set of structures that continually repeat themselves at various stages, we will begin to see COVID-19 vaccine accumulation not only as political, but also as imperial continuities manifesting in the present. Take, for instance, the report released by the Duke Global Health Innovation Center that shows that high-income countries have already purchased nearly 3.8 billion COVID-19 vaccine doses. Specifically, the United States has secured 400 million doses of the Pfizer-BioNTech and Moderna vaccines, and has APAs for more than 1 billion doses from four other companies yet to secure US regulatory approval. The European Union has similarly negotiated nearly 2.3 billion doses under contract and is negotiating for about 300 million more. With these purchases, these countries will be able to vaccinate their populations twice over, while many developing states, especially in Africa, are left behind. In hoarding vaccines whilst protecting the IP interests of their pharmaceutical multinational corporations, the afterlife of imperialism is playing out in this pandemic. Moreover, these bilateral deals are hampering initiatives such as the COVID-19 Vaccine Global Access Facility (COVAX) – a pooled procurement mechanism for COVID-19 vaccine – aimed at equitable and science-led global vaccine distribution. By engaging in bilateral deals, wealthy countries impede the possibility of effective mass-inoculation campaigns. While the usefulness of the COVAX initiative cannot be denied, it is not enough. It will cover only the most vulnerable 20 per cent of a country’s population, it is severely underfunded and there are lingering questions regarding the contractual obligations of pharmaceutical companies involved in the initiative. For instance, it is not clear whether the COVAX contract includes IP-related clauses such as sharing of technological know-how. Still, even with all its faults, without a global ramping-up of production, distribution and vaccination campaigns via COVAX, the world will not be able to combat the COVID-19 pandemic and its growing variants. Health inequity and inequalities in vaccine access are not unfortunate outcomes of the global IP regime; they are part of its central architecture. The system is functioning exactly as it is set up to do.

#### Reformism is not emancipatory but instead contributes to the iterative perfection of colonial capitalism – the transformative potential of legal change is circumscribed by hegemonic power structures that are embedded in international political systems.

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These events – the corporate capture of the global pharmaceutical IP regime, state complicity and vaccine imperialism – are not new. Recall Article 7 of TRIPS, which states that the objective of the Agreement is the ‘protection and enforcement of intellectual property rights [to] contribute to the promotion of technological innovation and to the transfer and dissemination of technology’. In similar vein, Article 66(2) of TRIPS further calls on developed countries to ‘provide incentives to enterprises and institutions within their territories to promote and encourage technology transfer to least-developed country’. While the language of ‘transfer of technology’ might seem beneficial or benign, in actuality it is not. As I discussed in my book, and as Carmen Gonzalez has also shown, when development objectives are incorporated into international legal instruments and institutions, they become embedded in structures that may constrain their transformative potential and reproduce North-South power imbalances. This is because these development objectives are circumscribed by capitalist imperialist structures, adapted to justify colonial practices and mobilized through racial differences. These structures are the essence of international law and its institutions even in the twenty-first century. They continue to animate broader socio-economic engagement with the global economy even in the present as well as in the legal and regulatory codes that support them. Thus, it is not surprising that even in current global health crisis, calls for this same transfer of technology in the form of a TRIPS waiver to scale up global vaccine production is being thwarted by the hegemony of developed states inevitably influenced by their respective pharmaceutical companies. The ‘emancipatory potential’ of TRIPS cannot be achieved if it was not created to be emancipatory in the first place. It also makes obvious the ways international IP law is not only unsuited to promote structural reform to enable the self-sufficiency and self-determination of the countries in the global south, but also produces asymmetries that perpetuate inequalities. Concluding Remarks What this pandemic makes clear is that the development discourse often touted by developed nations to help countries in the Global South ‘catch up’ is empty when the essential medicines needed to stay alive are deliberately denied and weaponised. Like the free-market reforms designed to produce ‘development’, IP deployed to incentivise innovation is yet another tool in the service of private profits. As this pandemic has shown, the reality of contemporary capitalism – including the IP regime that underpins it – is competition among corporate giants driven by profit and not by human need. The needs of the poor weigh much less than the profits of big business and their home states. However, it is not all doom and gloom. Countries such as India, China and Russia have stepped up in the distribution of vaccines or what many call ‘vaccine diplomacy.’ Further, Cuba’s vaccine candidate Soberana 02, which is currently in final clinical trial stages and does not require extra refrigeration, promises to be a suitable option for many countries in the global South with infrastructural and logistical challenges. Importantly, Cuba’s history of medical diplomacy in other global South countries raises hope that the country will be willing to share the know-how with other manufactures in various non-western countries, which could help address artificial supply problems and control over distribution. In sum, this pandemic provides an opportune moment to overhaul this dysfunctional global IP system. We need not wait for the next crisis to learn the lessons from this crisis.

#### Thus we affirm the decolonization of intellectual property -- the 1AC is a critical intervention into the archives of the resolution that highlights and deconstructs the asymmetrical power relations inherent to neoliberal colonialism.

#### Pedagogical decolonization is uniquely key – our interrogation of colonial knowledge production disrupts the dominance of Eurocentric political literature within academia – this is a prerequisite to legal change.

Makoni ’17 -- Munyaradzi Makoni is a freelance science journalist from Zimbabwe. He was Canada’s International Development Research Centre-Research Africa science journalism fellow in 2012. His journalism work has appeared in various media organizations including Africa Renewal, Forskning & Framsteg, Intellectual Property Watch, IPS, SciDev.net, Thomson Reuters Foundation, and University World News among others. (Munyaradzi Makoni, 1-20-2017, "Urgent need to decolonise intellectual property curricula," University World News, <https://www.universityworldnews.com/post.php?story=20170119072916504>, accessed 8-29-2021) //nikki

There is an urgent need for decolonised intellectual property, or IP, law curricula in order for African states to build IP expertise that is Afrocentric and development oriented. A South African university is making progress in developing an appropriate model. Writing in the latest edition of the World Intellectual Property Organisation journal, Professor Caroline B Ncube of the department of commercial law at the University of Cape Town in South Africa, said: “For an African state, decolonising IP means placing the nation’s conditions and developmental aspirations centre-stage and for law schools seeking to teach decolonised IP law curricula, it means using methodologies and learning materials that disrupt Eurocentric hegemonies." In an article titled “Decolonising Intellectual Property Law in Pursuit of Africa’s Development”, Ncube writes that a model for what this might look like for African law schools has been developed by the Open AIR project and is currently being piloted at the University of Cape Town. The paper has been published in the context of renewed calls by students in South Africa over the past two years for the decolonisation of curricula in that country’s universities. In reference to the increased urgency of the calls, Ncube notes that: “The idea of decolonising IP is a notion that global South governments, some scholars and some sectors of civic society have had for a significant period of time. This is an important point to underscore in an environment that is perturbed and perplexed by the meaning of decolonisation and the perceived violence accompanying it.” Dearth of scholarship According to Ncube, there exists a significant body of scholarship on the teaching of IP law and focusing on decolonising legal education generally. “But there is virtually nothing on decolonising IP law curricula.” Ncube argues that while decolonisation, which is the overthrow of direct colonial rule over territories across the globe, ended a long time ago, vestiges of colonial influences remain in many countries’ legal systems, while neo-colonial interests have also been grafted onto them. Calls for decolonisation therefore remain valid. “Placing Africa at the centre of African education and endeavour through the continent’s advancement has gained much support in current decolonisation calls and IP can be tailored to advance this development dialogue,” she says. Ncube suggests that a starting point in the process of decolonisation of law could be an examination, through research processes and political practices, of current legal systems to determine to what extent they are influenced by colonial and neo-colonial interests. Decolonising methodologies “Such an examination would also entail a scrutiny of scholarship on those systems through ‘research process (and political practices) that seek to change the hegemonic ordering of knowledge production’. Such ‘decolonising methodologies’ are an essential tool in the deconstruction of ‘a canon that attributes truth only to the Western way of knowledge production’,” she writes. According to Ncube decolonising the curriculum requires deep reflection about what is taught, from which perspective (Eurocentric or Afrocentric) it is taught and by whom it is taught – all of which speak to the source and authorship of learning materials and its distribution models. “These are important considerations because they infuse the learning materials with a particular worldview and impact the accessibility of the material. The perspective adopted has far-reaching consequences because it schools a future generation in a particular way about IP law and this in turn will impact society generally when those schooled in these perspectives take up positions in government, industry and other areas in the future,” she writes. New IP model Developed by the Open AIR project, a long-term partnership of IP experts and researchers, the majority of whom are Africa-based, the 12-week postgraduate course at the University of Cape Town known as “IP Law, Development and Innovation” has modules on innovation, development and intellectual property rights; globalisation; patents; copyright; communal trademarks; traditional knowledge; intellectual property rights and agriculture; and Intellectual Property Rights from the Publicly Financed Research and Development Act 2008. According to Ncube, each module was informed by case studies undertaken during the second phase of the research project. Once the development of the model course is completed, an openly licensed course syllabus and the modules will be made accessible free of charge from the project website and other online platforms. Each institution offering the course will determine the formative and summative evaluation of the course in accordance with its own rules and procedures. The decision about who presents the course will be made at institutional level. Empirical research “The primary contribution of the model course is its provision of modules that are informed by empirical research undertaken on the continent by scholars and researchers who have a strong understanding and experience of the African context,” writes Ncube. Ncube says expertise gathered from the pilot will inform the final model course. “The student and external examiner evaluations of the course delivered by University of Cape Town lecturers have been very positive,” she writes, and with more funds the case study researchers and book chapter authors will be invited to personally or virtually lead some of the seminars in the future.

#### The 1AC is a radical reconfiguration of the terms of debate that calls into question modern understandings of property within academia – refusal to conform to the rules of the game is necessary to destabilize structures of control.

Walter Mignolo 13, William H. Wannamaker Professor of Literature and Romance Studies @ Duke, B.A. in philosophy @ Universidad Nacional de Cordoba, Ph.D. @ Ecole des Hautes Etudes, 2013, “Epistemic Disobedience, Independent Thought and De-Colonial Freedom,” *Theory, Culture and Society* Vol 26:(7-8), pg. 4-5, gender modified

The introduction of geo-historical and bio-graphical configurations in processes of knowing and understanding allows for a radical re-framing (e.g. de-colonization) of the original formal apparatus of enunciation.2 I have been supporting in the past those who maintain that it is not enough to change the content of the conversation, that it is of the essence to change the terms of the conversation. Changing the terms of the conversation implies going beyond disciplinary or interdisciplinary controversies and the conflict of interpretations. As far as controversies and interpretations remain within the same rules of the game (terms of the conversation), the control of knowledge is not called into question. And in order to call into question the modern/colonial foundation of the control of knowledge, it is necessary to focus on the knower rather than on the known. It means to go to the very assumptions that sustain locus enunciations. In what follows I revisit the formal apparatus of enunciation from the perspective of geo- and bio-graphic politics of knowledge. My revisiting is epistemic rather than linguistic, although focusing on the enunciation is unavoidable if we aim at changing the terms and not only the content of the conversation. The basic assumption is that the knower is always implicated, geo- and body-politically, in the known, although modern epistemology (e.g. the hubris of the zero point) managed to conceal both and created the figure of the detached observer, a neutral seeker of truth and objectivity who at the same time controls the disciplinary rules and puts ~~himself or herself~~ [themselves] in a privileged position to evaluate and dictate. The argument is structured as follows. Sections I and II lay out the ground for the politics of knowledge geo-historically and bio-graphically, contesting the hegemony of zero point epistemology. In Section III, I explore three cases in which geo- and body-politics of knowledge comes forcefully to the fore: one from Africa, one from India and the third from New Zealand. These three cases are complemented by a fourth from Latin America: my argument is here. It is not the report of a detached observer but the intervention of a de-colonial project that ‘comes’ from South America, the Caribbean and Latinidad in the US. Understanding the argument implies that the reader will shift its geography of reasoning and of evaluating arguments. In Section IV, I come back to geo- and body-politics of knowledge and their epistemic, ethical and political consequences. In Section V, I attempt to pull the strings together and weave my argument with the three cases explored, hoping that what I say will not be taken as the report of a detached observed but as the intervention of a de-colonial thinker.

#### The role of debate is to disrupt colonial logics that reproduce epistemic and material violence – centering critical indigenous scholarship is key to resist epistemic abstraction and erasure. We control the uniqueness debate as academic institutions are saturated with anti-indigenous sentimentality now – resistance is the only ethical demand your ballot should be oriented towards.

Battiste Et Al. 2005 (Marie, Professor at the University of Saskatchewan, “THINKING PLACE: ANIMATING the INDIGENOUS HUMANITIES in EDUCATION”, published in the AUSTRALIAN JOURNAL of INDIGENOUS EDUCATION, Volume 34, 2005)

The privileging and policing of Western knowledge and its educational apparatus therefore necessitates that every institution claiming to be a thinking or teaching place be held to account for the presumptions and entitlements it too rarely questions, the exclusions and injustices it happily or unthinkingly practices in the name of objectivity, universality or excellence. Bodies of knowledge, seen through the lens of the Indigenous humanities, are produced by knowledgeable but limited human bodies in territory, bodies institutionally legitimated as disembodied, disinterested and transcendent but bodies that feed, fl ourish and fl ounder – just like the rest of us! But the Indigenous humanities are helping to dispel academic illusions and pretensions, making universities and schools objects of inquiry as well as prestigious sites of inquiry. These institutions are themselves places that need to be thought about and rethought, especially in their relations to Indigenous knowledge and heritage, and the place of “place” within both. Of course, they are not the only places where thinking occurs. The decolonising of education is not happening in a vacuum but in specifi c contexts within a process of changing places (or spaces) and the critical geographies such change has stimulated in the work, for instance, of Smith (2003) on the dependency of internal and external American imperialism on the “science” of geography, or Rogoff (2000) on the power, limitations and desires of geography’s “visual culture”. With the dismantling of European empires after World War II came a major redistribution of sovereignty and territory. But the uneven and incomplete restoration of physical lands to their “original” inhabitants did little to benefi t many Indigenous peoples, while at the same time it replaced colonial rule with First World economic hegemony, and, increasingly, the trumping of the local by the global, the rootedness of peoples by the cyber-routes of capital, place by space. The tying of their thinking, language and identity to place seemed to re-primitivise Indigenous peoples at the very moment the “real” action was moving to the cosmopolitan, the transnational, the post-territorial. Modernity seemed to be endlessly morphing while Indigenous peoples remained intent on regaining relationships with their traditional lands and hence fi xed in time. However, this was no more than a dangerous illusion that continues to threaten not only Indigenous peoples and their stewardship of their lands but the health of the planet we all share. New lies about Indigenous backwardness linked to new agendas for post-territorial domination must be exposed and replaced by collaborative critique in the Indigenous humanities and the creative powers of that Indigenous renaissance already underway all around us. Thinking place together with time and space can go a long way towards animating the Indigenous humanities in and as education. This will include producing remedies for what Tewa educator Cajete (2000) has called the split mind, pin geh heh, meaning a seemingly schizophrenic life of being an Indigenous person trying to live within a hostile Eurocentric society. Dubois (1969) spoke of “double consciousness” as the psychic fate of African Americans. In both cases, a disabling kind of doubleness is imposed or induced from the outside, the translation of colonial doubledealing into a dichotomous existence collectively and individually for those whose land, language, culture and very being are colonised. The internal contradictions of the oppressor must be projected into the interior places of the Indigene in a system of psychic and spiritual violence calling itself education. Such things need to be said – but also effectively supplemented or displaced in discursive and other shifts from anti-colonial critique to capacity-building. And of course Indigenous thinkers show the way by dramatising the productivity of double consciousness: to be at once inside and outside is to gain critical relation to dominant ways of doing and thinking. Likewise, the Indigenous humanities constantly implicate the Eurocentric humanities in understanding and documenting injustice, but they also bring back into effective circulation ways of learning, knowing and teaching whose lessons have grown more needed the more they have been repressed. Thus critique comes to share “its” space with Indigenous place and capacity.

#### Decolonial praxis is incompatible with politically centered methodologies – the injection of critical scholarship into policymaking is a move to colonial instrumentalization that dilutes and resignifies indigenous thought to bolster imperialism.

Bolton and Minor ’16 -- (Michael Bolton, Associate Professor of Political Science, Pace University, Elizabeth Minor, Visiting Research Scholar @ Jindal school of international affairs, “The Discursive Turn Arrives in Turtle Bay: The International Campaign to Abolish Nuclear Weapons’ Operationalization of Critical IR Theories,” https://onlinelibrary.wiley.com/doi/full/10.1111/1758-5899.12343)

Within the IR literature there is a perennial admonition to make theory more ‘relevant’ to policy makers, but this is usually cast in problem‐solving terms: producing knowledge that solves the problems faced by the existing political framework. (Lepgold, 1998; Eriksson and Sundelius, 2005; Walt, 2005). Many of those engaged in critical theorizing resist such demands to be ‘useful,’ suspicious of the operationalization of academic work in oppressive systems, and tend towards a position of ‘resistance’ to the system as a whole. Critical security studies scholar Anna Stavrianakis (2012, p. 233) for example, calls on disarmament activists to demand ‘transgressive change that fundamentally alters the social landscape as well as generates concrete improvements’ rather than calling for ‘incremental changes that leave the parameters of an issue untouched’. Given the centrality of discourse to critical theorizing, resistance is often framed not in terms of taking territory, mobilizing bodies, changing legislation, gaining votes or raising money. Rather it tends to focus on the critical deconstruction of oppressive discourse and disruption of existing norms (e.g. Hargreaves, 2012). As a result, many critical IR scholars see their academic work – undermining dominant discourses through their scholarship and teaching – as their primary form of resistance. (Said, 1996). An emerging generation of political actors were educated by post‐positivist and critical IR scholars and conceive of their work self‐consciously in discursive terms. That is, they frame their intervention in the political arena as a deliberate attempt to reshape the way society speaks about and gives meaning to a particular phenomenon, people, group or activity. Occupy Wall Street activists drew upon critical and discursive theories to strategize their symbolic disruption of the neo‐liberal order (Welty, 2013). LGBTQA activists and ‘third wave’ feminists are trying to change dominant discourses of gender and sexuality (e.g. St. Pierre, 2000). However, critical theory has had less impact on the realm of international military and security policy, which remains heavily influenced by realist thought (Cooper, 2006). As critical theorizing has begun to be used for solving definable political problems (e.g. Davies, 2012; Merlingen, 2013), what Brown (2013) calls ‘critical problem‐solving theory’, it has eroded Cox's (1981) boundary between ‘problem‐solving’ and critical theories. What happens when a theoretical paradigm that explicitly defines itself in critical opposition is instrumentalized and used in problem‐solving ways? This question, which we begin to explore in this article, is underexamined in the literature (see Weizman, 2012, pp. 185–220 for an important exception). According to the epistemic community literature (e.g. Haas 2004), the education of policy makers can shape their later actions (Eriksson and Sundelius, 2005). Most usefully for this article, it shows how at critical junctures policy makers will turn to experts. Policy makers tend to be less interested in meta‐theory or broad academic debates about an issue. Rather, they look for knowledge that can be used instrumentally to solve a particular policy problem (e.g. Hall, 1993). But moving theoretical ideas from academia, through the activist community, to the policy arena, dilutes the original ideas and reinterprets them in instrumental ways. To help understand this, we draw on postcolonial concepts of ‘translation’ and ‘creolization’ of different ‘knowledge systems’ pushed into contact (Shih and Lionet, 2011, p. 30). We find that some ICAN campaigners responsible for its current strategy have ‘translated’ IR discursive theory into the world of disarmament policy making. In doing so, they selected the aspects of critical security studies ‘to transpose and emphasize’ (cf. Tymoczko, 2000 p. 24) as befit their specific political goals. This creative application of critical theory in a new setting, in its translation of theory into political engagement, may necessarily involve rendering it less threatening to elite audiences, in the process of seeking policy changes (cf. Jeffrey, 2013, pp. 107–131).