# 1NC

## 1NC -- T -- Reduce

#### Reduce excludes eliminate.

**Words and Phrases** 20**02** (vol 36B, p. 80)

Mass. 1905.  Rev.Laws, c.203, § 9, provides that, if two or more cases are tried together in the superior court, the presiding judge may “reduce” the witness fees and other costs, but “not less than the ordinary witness fees, and other costs recoverable in one of the cases” which are so tried together shall be allowed.  Held that, in reducing the costs, the amount in all the cases together is to be considered and reduced, providing that there must be left in the aggregate an amount not less than the largest sum recoverable in any of the cases.  The word “reduce,” in its ordinary signification, does not mean to cancel, destroy, or bring to naught, but to diminish, lower, or bring to an inferior state.—Green v. Sklar, 74 N.E. 595,

#### Reduce doesn’t mean eliminate

Michigan District Court 2011 “SAGINAW OFFICE SERVICE, INC., Plaintiff, v. BANK OF AMERICA, N.A., Defendant. Civil Action No. 09-CV-13889 UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION,” Lexis

In determining whether the words "reduce" and "adjust" are ambiguous, the Court is directed to consider the ordinary meanings of the words, Rory, 703 N.W.2d at 28, and to harmonize [\*11] the disputed terms with other parts of the contract, Royal, 706 N.W.2d at 432 ("construction should be avoided that would render any part of the contract surplusage or nugatory"). "When determining the common, ordinary meaning of a word or phrase, consulting a dictionary is appropriate." Stanton v. City of Battle Creek, 466 Mich. 611, 647 N.W.2d 508 (Mich. 2002). The Court finds that the plain meanings of these terms do not unambiguously support the Bank's position. The dictionary definition of "adjust" is to "adapt" or "to bring to a more satisfactory state." Webster's Third New Int'l Dictionary 27 (2002) ("Webster's"). This is a fairly broad definition, which may be subject to, alternatively, narrower or more expansive scope. To say that the complete elimination of a schedule brings it to a more satisfactory state is undoubtedly an expansive viewof adjustment. It is the Court's duty to determine the intent of the contracting parties from the language of the contract itself, Rory, 703 N.W.2d at 30 ("the intent of the contracting parties is best discerned by the language actually used in the contract"), and in this case, it cannot unambiguously be said that the sense in which the parties used these [\*12] terms embraces the Bank's more expansive definition. Likewise, "reduce" means "to diminish in size, amount, extent, or number," Webster's, at 1905, but the term does not, in the context of the TSA, unambiguously embody an expansive scope that views complete deletion as a subset of diminution.

#### Prefer our interp –

#### 1] Precision – Our definition is most precise which is the biggest internal link to predictability - anything else justifies the aff arbitrarily jettisoning words in the resolution which is the only stasis point we know before the round.

#### 2] Predictable limits - their interp includes affs that abolish intellectual property rather than reform it which enables them to access an unreasonably large amount of critical scholarship as advantage areas that the neg has no way to predict – this is the key internal link to well-prepared argumentation and idea testing

#### 3] Ground – their interp steals core negative offense for the aff which skews equitable division of ground and destroys our ability to effectively debate the aff – we lose arguments like abolition Ks or CPs and foreclose substantive debates over the merits of reform vs abolition which is key to critical idea testing

#### TVA solves all your offense – read your advantage cards with a plan text of reduction – there’s no reason why abolition is uniquely key

#### Paradigm Issues –

#### 1] T is DTD – A] their abusive advocacy skewed the debate from the start B] DTA is incoherent because we indict their advocacy

#### 2] Comes before 1AR theory -- A] If we had to be abusive it’s because it was impossible to engage their aff B] T outweighs on scope because their abuse affected every speech that came after the 1AC C] Topic norms outweigh on urgency – we only have a few months to set them

#### 3] Use competing interps on T – A] topicality is a yes/no question, you can’t be reasonably topical B] only our interp sets norms -- reasonability is arbitrary and invites judge intervention C] reasonability causes a race to the bottom of questionable argumentation

#### 4] No RVIs – A] Forcing the 1NC to go all in on the shell kills substance education and neg strat B] discourages checking real abuse C] Encourages baiting – outweighs because if the shell is frivolous, they can beat it quickly

## 1NC -- K -- Colonial Capitalism

#### The aff’s assumption that knowledge belongs to the public is incompatible with indigenous autonomy. Shifting medicine from intellectual property to the public domain reconfigures the Western system of IPR and stands in direct contradiction with native sovereignty.

Younging 10 “Intergovernmental Committee On Intellectual Property And Genetic Resources Traditional Knowledge And Folklore” Seventeenth Session Geneva, December 6-10, 2010 Wipo Indigenous Panel On The Role Of The Public Domain Concept: Experiences In The Fields Of Genetic Resources, Traditional Knowledge And Traditional Cultural Expressions: Experiences From Canada Document prepared by Mr. Gregory Younging [Creative Rights Alliance, Kelowna, Canada, Opaskwayak Cree Nation-Canada] <https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_17/wipo_grtkf_ic_17_inf_5_a.pdf> SM

Under the IPR system, knowledge and creative ideas that are not “protected” are in the Public

Domain (i.e. accessible by the public). Generally, Indigenous peoples have not used IPRs to protect their knowledge; and so TK is often treated as if it is in the Public Domain – without regard for Customary Laws. Another key problem for TK is that the IPR system’s concept of the Public Domain is based on the premise that the author/creator deserves recognition and compensation for his/her work because it is the product of his/her genius; but that all of society must eventually be able to benefit from that genius. Therefore, according to this aspect of IPR theory, all knowledge and creative ideas must eventually enter the Public Domain. Under IPR theory, this is the reasoning behind the time period limitations associated with copyright, patents and trademarks.

The precept that all Intellectual Property, including TK, is intended to eventually enter the Public Domain is a problem for Indigenous peoples because Customary Law dictates that certain aspects of TK are not intended for external access and use in any form. As a response to this, there have been circumstances where indigenous people have argued that some knowledge should be withdrawn from circulation and that for specific kinds of knowledge, protection should be granted in perpetuity. 29 Examples of this include, sacred ceremonial masks, songs and dances, various forms of shamanic art, sacred stories, prayers, songs, ceremonies, art objects with strong spiritual significance such as scrolls, petroglyphs, and decorated staffs, rattles, blankets, medicine bundles and clothing adornments, and various sacred symbols, designs, crests, medicines and motifs. However, the present reality is that TK is, or will be, in the Public Domain (i.e., the IPR system overrides Customary Law.)

Certain aspects of TK should not enter the public domain (as deemed under Customary Law) and should remain protected as such into perpetuity, which could be expressed as a form of “Indigenous private domain.” (Younging 2007). Indigenous peoples’ historical exclusion from the broad category of ‘public’ feeds part of the differences in objectives. Indigenous peoples also present different perceptions of knowledge, the cultural and political contexts from which knowledge emerges, and the availability, or perceived benefits of the availability, of all kinds of cultural knowledge. 30

Copyright Case Study: The Cameron Case

In 1985 the Euro-Canadian author Anne Cameron began publishing a series of children’s books though Harbour Publications based on Westcoast Indigenous traditional stories. These books include: The Raven, Raven and Snipe, Keeper of the River, How the Loon Lost Her Voice, Orca’s Song, Raven Returns the Water, Spider Woman, Lazy Boy and Raven Goes Berrypicking. Cameron had been told the traditional stories by Indigenous storytellers and/or had been present at occasions where the stories were recited. The original printing of the books granted Anne Cameron sole authorship, copyright and royalty beneficiary, and gave no credit to the Indigenous origins of the stories. As the discourse around Indigenous cultural appropriation emerged in the 1990s, Cameron’s books came under severe Indigenous criticism; not only on the grounds of cultural appropriation, but the Indigenous TK holders asserted that some of the stories and aspects of the stories were incorrect.

This led to a major confrontation with Indigenous women authors at a women writer’s conference in Montreal in 1990. At the end of the confrontation Cameron agreed not to publish any more Indigenous stories in the series: however, she did not keep her word and the books continued to be reprinted and new books in the series continued to be published (Armstrong and Maracle1992). Some minor concessions have been made in subsequent reprints of books in the series and new additions. Reprints of the books that were produced after around 1993/94 contained the disclaimer: “When I was growing up on Vancouver Island I met a woman who was a storyteller. She shared many stories with me and later gave me permission to share them with others… the woman’s name was Klopimum.” However, Cameron continued to maintain sole author credit, copyright and royalties payments. In a further concession, the 1998 new addition to the series T’aal: the One Who Takes Bad Children is co-authored by Anne Cameron and the Indigenous Elder/storyteller Sue Pielle who also shares copyright and royalties.

Patent Case Study: The Igloolik Case

An example of the failure of the Patent Act In Canada to respond to Inuit designs is the Igloolik Floe Edge Boat Case.31 A floe edge boat is a traditional Inuit boat used to retrieve seals shot at the floe edge (the edge of the ice floe), to set fishing nets in summer, to protect possessions on sled when travelling by snowmobile or wet spring ice, and to store hunting or fishing equipment. In the late 1980’s the Canadian government sponsored the Eastern Arctic Scientific Research Center to initiate a project to develop a floe edge boat that combined the traditional design with modern materials and technologies. In 1988 the Igloolik Business Association (IBA) sought to obtain a patent for the boats. The IBA thought that manufactured boats using the floe edge design would have great potential in the outdoor recreation market. To assist the IBA with its patent application the agency, the Canadian Patents and Developments Limited (CPDL) initiated a pre-project patent search that found patents were already held by a non-Inuit company for boats with similar structures. The CPDL letter to the IBA concluded that it was difficult for the CPDL to inventively distinguish the design from previous patents and, therefore, the IBA patent would not be granted. The option of challenging the pre-existing patent was considered by the IBA, however, it was decided that it would not likely be successful due to the high financial cost and risk involved in litigation.

Trademark Case: The Snumeymux Case

As most Indigenous communities are far behind in terms of establishing businesses most trademarking of TK involves a non-Indigenous corporation trademarking an Indigenous symbol, design or name. Again, many cases could have been examined in this section but only two have been chosen: one case involving the Snumeymux Band trade marking petroglyphs through the Canadian Patent Office, and one involving an international corporation’s patent licence being the subject of an intense international Indigenous lobbying effort.

The Snumeymux people have several ancient petroglyphs located off their reserve lands near False Narrows on Gabriola Island, BC. In the early 1990s non-Indigenous residents of Gabriola Island began using some of the petroglyph images in coffee shops and various other business logos. In the mid-1990s the Island’s music festival named itself after what had become the local name of the most well known petroglyph image, the dancing man. The Dancing Man Music Festival then adopted the image of the dancing man as the festival logo and used it on brochures, posters, advertisements and T-shirts.

The Snuneymux Band first made unsuccessful appeals to the festival, buisnesses and the Gabriola community to stop using the petroglyph symbols. In 1998 the Snuneymux Band hired Murry Brown as legal counsel to seek protection of the petroglyphs (Manson-2003). At a 1998 meeting with Brown, Snuneymux Elders and community members on the matter, The Dancing Man Festival and Gabriola business’ and community representatives were still defiant that they had a right to use the images from the petroglyphs (Brown-2003).

On the advice of Murry Brown, The Snuneymux Band filed for a Section 91(n) Public Authority Trademark for eight petroglyphs and was awarded the trademark in October of 1998 (Brown2003). The trademark protects the petrogylphs from “all uses” by non-Snuneymux people and, therefore the Dancing Man Festival and Gabriola Island business and community representatives were forced to stop using images derived from the petroglyphs. In the Snuneymux case the petroglyphs were trademarked for “defensive” purposes. The Snuneymux case represents an innovative use of the IPR system that negotiated within the systems limitations and found a way to make it work to protect TK.

Case Studies Summary

The case studies have shown that serious conflicts exist between the IPR and TK systems and lead to the conclusion that it constitutes a major problem which Indigenous peoples must work out with the modern states they are within and the international community. In contrast to Eurocentric thought, almost all Indigenous thought asserts that property is a sacred ecological order and manifestations of that order should not be treated as commodities.32 It is clear that there are pressing problems in the regulation of TK. It is also clear that IPR system and other Eurocentric concepts do not offer a solution to some of the problems. There have been cases of Indigenous people using the IPR system to protect their TK. However, the reality is that there are many more cases of non-Indigenous people using the IPR system to take ownership over TK using copyright, trademark, patents and the Public Domain. In many such cases this had created a ridiculous situation whereby Indigenous peoples cannot legally access their own knowledge. A study undertaken on behalf of the Intellectual Property Policy Directorate (IPPD) of Industry Canada and the Canadian Working Group on Article 8(j) concluded: “There is little in the cases found to suggest that the IP system has adapted very much to the unique aspects of Indigenous knowledge or heritage. Rather, Indigenous peoples have been required to conform to the legislation that was designed for other contexts and purposes, namely western practices and circumstances. At the same time, there is little evidence that these changes have been promoted within the system, i.e., from failed efforts to use it that have been challenged” (IPPD-2002). Such conclusions, along with other conclusions being drawn in other countries and international forums, and the case study examples discussed, appear to support the argument that new systems of protection need to be developed. Sui Generis models based on and/or incorporating Customary Laws have been proposed and developed in many countries and are being discussed in the WIPO IGC.

Gnaritas Nullius (Nobody’s Knowledge)

Just as Indigenous territories were declared as Terra Nullius in the colonization process, so too has TK been treated as Gnaritas Nullius (Nobody’s Knowledge) by the IPR system and consequently flowed into the public domain along with Western knowledge. This has occurred despite widespread Indigenous claims of ownership and breech of Customary Law. The problem is that advocates for the public domain seem to see knowledge as the same concept across cultures, and impose the liberal ideals of freedom and equality to Indigenous peoples knowledge systems. Not all knowledge has the same role and significance within diverse epistemologies, nor do diverse worldviews all necessarily incorporate a principle that knowledge can be universally accessed. Neither can all knowledge fit into a Western paradigms and legal regimes. A central dimension of Indigenous knowledge systems is that knowledge is shared according to developed rules and expectations for behavior within frameworks that have been developed and practiced over centuries and millennium. Arguments for a public domain of Indigenous knowledge again reduces the capacity for Indigenous control and decision making (Anderson 2010) and can not be reasonably made outside the problematic frameworks of the colonization of TK and Gnaritas Nullius.

#### International law finds its origins in the domination of white colonial elites over colonized countries – the 1AC’s discourse cannot escape the perpetuation of neocolial hierarchies inherent to the current world order

**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

#### The politics of recognition require an asymmetrical relation of violence, that puts the colonized in the position of appealing to their colonizers – this simply produces the colonial subject of modernity, who must endure the suffering of colonial recognition itself and thus internalize the superiority of the colonizer. Attempts to manage power through colonial regimes recognition only perpetuates this violence.

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**As others have acknowledged, what extant theories of recognition, and the theories and practices of the politics of recognition largely lack is an account of power.**28 As James Tully emphasises, struggles over recognition are not ‘conflicts between “diversity” and “equality” but among groups with tremendous inequalities in power and resources’.29 **In the absence of an adequate account of power, however, mainstream recognition theory has struggled to offer a compelling treatment of these inequalities.** **Where power does make an appearance in mainstream theoretical literature on recognition, it is predominantly a quasi-Hobbesian take on power, where individual, autonomous (yet interdependent) actors struggle against each other to achieve their goals, albeit with a horizon of self-realisation rather than Hobbesian self-interest.**30 **In orthodox accounts, power becomes something that is diminished over time as the history of human relationality moves towards institutional and cultural configurations (for Honneth, of modernity) where mutual recognition is enabled.** Taylor, as well as Honneth and Fraser, advocate a dialogical model of deliberation among members of a community to assess recognition claims in ways that mitigate against power-as-struggle.31 Neither Taylor nor Fraser wish to see power corrupt dialogical exchanges over recognition and recognise this risk, and indeed Fraser’s work on recognition emphasises the importance of establishing both objective (material) and intersubjective conditions to ward against such an effect.32 Yet, even Fraser’s account presupposes the possibility of sufficiently managing power, despite the problematic foundations of settler polities. What these dominant recognition theorists present us with is a vision of a possible social and political world in which power asymmetries in dialogical contexts might be sufficiently managed. Accordingly, power will, at least theoretically, cease to have intolerable effects on the terms and effects of recognition, so that it might function as intended, with the imagined emancipatory end. **Such a field of recognition – where power is a pathology that might be overcome – occupies a paradoxical position in their theories, as both the end and means of the accomplishment of mutuality in recognition relationships.** Elizabeth Povinelli, in an important precursor to the work of Coulthard and Simpson, critiques the imposition of state-based recognition regimes on Indigenous peoples in ways that also draw attention to its depoliticising impulse. The ‘cunning of recognition’, she argues, is ‘its intercalation of the politics of culture with the culture of capital’. **Couched in the optimism and proclaimed good intentions of liberal multiculturalism, recognition demands performances of ‘authentic’ difference, but difference within limits –‘convulsive competition purged of real conflict, social difference without social consequences’.**33 What Povinelli also draws attention to here is the strange alliance between liberalism – with its emphasis on the individual free of social bonds – and recognition – an inherently relational concept. The pairing of the two is not obvious, as indeed the liberal mainstream recognition theorists are also aware, but as Povinelli demonstrates liberalism unexpectedly puts recognition to work to neutralise the potential disruption posed by indigenous presence, culture and territorial claims. In doing so, she starts to point us in the direction of recognition’s slippery potential in contemporary postcolonial politics. The full potential of this strange alliance is laid bare by Coulthard. ‘Recognition’, he clearly puts it, ‘is a field of power through which colonial relations get (re)produced and maintained’.34 Drawing on Fanon’s seminal anticolonial scholarship, Coulthard offers a radical reworking of Marx’s account of primitive accumulation, locating the dispossession of land and territory at the heart of the settler colonial project.35 In the absence of explicit coercive force, colonialism is perpetuated through the production of colonised subjects by recognising them in certain ways. Mapping the shift within North America from overt genocidal violence to colonial governmentality, Coulthard argues convincingly for seeing policies of recognition and accommodation as the means through which that colonial subjectivity is produced. **Crucial here – and again, Fanon is instructive for Coulthard – is that the forms of recognition granted to (or imposed upon) indigenous people by the settler state are deeply hierarchical and asymmetrical.** For Hegelians, intersubjectivity is either emancipatory – when mutual recognition is achieved – or fatal. **A decolonial theorisation of recognition and power unpacks the suffering associated with mis- or non-recognition, but also the suffering associated with recognition as subordinate.** **In both these cases, it is not victory or death, but endurance and suffering. The colonised subject is not he who struggled till death, Coulthard and Fanon argue, but he who internalised an inferiority and subordinate attitude to the master.** In theorizing colonial governmentality in this way, Coulthard’s focus is the specificity of settler colonialism, but his drawing on Fanon invites us to make connections between settler and non-settler contexts. Writing in the nominally postcolonial context of Latin America, with its own ambiguities around settlement, Anibal Quijano offers the idea of the ‘coloniality of power’ as a means of identifying the pervasive reverberations of colonialism through the present.36 **The coloniality of power is a system in which race serves as the most basic criterion for the social and economic classification of peoples, and the consequent hierarchies serve the expansion of western capitalism, and entrench the subordination of people of colour through unjust divisions of labour.** It is a system aligned with other hierarchies, in particular of gender and sexuality. It is a system that serves to sustain the subordination, domination and exploitation of some people (mainly peoples of Africa and Latin America, but we could also add parts of Asia and the Pacific, and indigenous people in settler societies) for the benefit of others (‘Western’ European dominators and their Euro-North American Descendants). **The system is constituted and upheld by economic, social, political and intersubjective practices, such as the global division of labour, the concentration of the world’s economic resources in the global North, racism, sexism, and forms of cultural production and dissemination.**

#### The appropriation of decolonization by social justice frameworks is a move to innocence that brackets out the incommensurable aims of indigenous self-determination movements and naturalizes settler futurity within decolonial futures – links to the aff and forecloses a permutation.

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For the past several years we have been working, in our writing and teaching, to bring attention to how settler colonialism has shaped schooling and educational research in the United States and other settler colonial nation-states. These are two distinct but overlapping tasks, the first concerned with how the invisibilized dynamics of settler colonialism mark the organization, governance, curricula, and assessment of compulsory learning, the other concerned with how settler perspectives and worldviews get to count as knowledge and research and how these perspectives - repackaged as data and findings - are activated in order to rationalize and maintain unfair social structures. We are doing this work alongside many others who - somewhat relentlessly, in writings, meetings, courses, and activism - don’t allow the real and symbolic violences of settler colonialism to be overlooked. Alongside this work, we have been thinking about what decolonization means, what it wants and requires. One trend we have noticed, with growing apprehension, is the ease with which the language of decolonization has been superficially adopted into education and other social sciences, supplanting prior ways of talking about social justice, critical methodologies, or approaches which decenter settler perspectives. Decolonization, which we assert is a distinct project from other civil and human rights-based social justice projects, is far too often subsumed into the directives of these projects, with no regard for how decolonization wants something different than those forms of justice. Settler scholars swap out prior civil and human rights based terms, seemingly to signal both an awareness of the significance of Indigenous and decolonizing theorizations of schooling and educational research, and to include Indigenous peoples on the list of considerations - as an additional special (ethnic) group or class. At a conference on educational research, it is not uncommon to hear speakers refer, almost casually, to the need to “decolonize our schools,” or use “decolonizing methods,” or “decolonize student thinking.” Yet, we have observed a startling number of these discussions make no mention of Indigenous peoples, our/their1 struggles for the recognition of our/their sovereignty, or the contributions of Indigenous intellectuals and activists to theories and frameworks of decolonization. Further, there is often little recognition given to the immediate context of settler colonialism on the North American lands where many of these conferences take place. Of course, dressing up in the language of decolonization is not as offensive as “Navajo print” underwear sold at a clothing chain store (Gaynor, 2012) and other appropriations of Indigenous cultures and materials that occur so frequently. Yet, this kind of inclusion is a form of enclosure, dangerous in how it domesticates decolonization. It is also a foreclosure, limiting in how it recapitulates dominant theories of social change. On the occasion of the inaugural issue of Decolonization: Indigeneity, Education, & Society, we want to be sure to clarify that decolonization is not a metaphor. When metaphor invades decolonization, it kills the very possibility of decolonization; it recenters whiteness, it resettles theory, it extends innocence to the settler, it entertains a settler future. Decolonize (a verb) and decolonization (a noun) cannot easily be grafted onto pre-existing discourses/frameworks, even if they are critical, even if they are anti-racist, even if they are justice frameworks. The easy absorption, adoption, and transposing of decolonization is yet another form of settler appropriation. When we write about decolonization, we are not offering it as a metaphor; it is not an approximation of other experiences of oppression. Decolonization is not a swappable term for other things we want to do to improve our societies and schools. Decolonization doesn’t have a synonym. Our goal in this essay is to remind readers what is unsettling about decolonization - what is unsettling and what should be unsettling. Clearly, we are advocates for the analysis of settler colonialism within education and education research and we position the work of Indigenous thinkers as central in unlocking the confounding aspects of public schooling. We, at least in part, want others to join us in these efforts, so that settler colonial structuring and Indigenous critiques of that structuring are no longer rendered invisible. Yet, this joining cannot be too easy, too open, too settled. Solidarity is an uneasy, reserved, and unsettled matter that neither reconciles present grievances nor forecloses future conflict. There are parts of the decolonization project that are not easily absorbed by human rights or civil rights based approaches to educational equity. In this essay, we think about what decolonization wants. There is a long and bumbled history of non-Indigenous peoples making moves to alleviate the impacts of colonization. The too-easy adoption of decolonizing discourse (making decolonization a metaphor) is just one part of that history and it taps into pre-existing tropes that get in the way of more meaningful potential alliances. We think of the enactment of these tropes as a series of moves to innocence (Malwhinney, 1998), which problematically attempt to reconcile settler guilt and complicity, and rescue settler futurity. Here, to explain why decolonization is and requires more than a metaphor, we discuss some of these moves to innocence: 1 As an Indigenous scholar and a settler/trespasser/scholar writing together, we have used forward slashes to reflect our discrepant positionings in our pronouns throughout this essay. 4 E. Tuck & K.W. Yang i. Settler nativism ii. Fantasizing adoption iii. Colonial equivocation iv. Conscientization v. At risk-ing / Asterisk-ing Indigenous peoples vi. Re-occupation and urban homesteading Such moves ultimately represent settler fantasies of easier paths to reconciliation. Actually, we argue, attending to what is irreconcilable within settler colonial relations and what is incommensurable between decolonizing projects and other social justice projects will help to reduce the frustration of attempts at solidarity; but the attention won’t get anyone off the hook from the hard, unsettling work of decolonization. Thus, we also include a discussion of interruptions that unsettle innocence and recognize incommensurability.

#### The alternative is incommensurability – decolonization is a project that requires the repatriation of indigenous lands, the abolition of slavery and property, and the dismantling of the imperial metropole.

Tuck & Yang 12 [Eve Tuck is Associate Professor of Critical Race and Indigenous Studies at the Ontario Institute for Studies in Education (OISE), University of Toronto. She is Canada Research Chair of Indigenous Methodologies with Youth and Communities. K. Wayne Yang writes about decolonization and everyday epic organizing, particularly from underneath ghetto colonialism, often with his frequent collaborator, Eve Tuck. Currently, they are convening The Land Relationships Super Collective, editing the book series, Indigenous and Decolonizing Studies in Education, and editing the journal, Critical Ethnic Studies. He is interested in the complex role of cities in global affairs: cities as sites of settler colonialism, as stages for empire, as places of resettlement and gentrification, and as always-already on Indigenous lands. \*Sometimes he writes as la paperson, an avatar that irregularly calls.“Decolonization is not a metaphor,” *Decolonization: Indigeneity, Education & Society* Vol 1 No 1 (2012) //tjb]

**Having elaborated on settler moves to innocence, we give a synopsis of the imbrication of settler colonialism with transnationalist, abolitionist, and critical pedagogy movements - efforts that are often thought of as exempt from Indigenous decolonizing analyses - as a synthesis of how decolonization as material, not metaphor, unsettles the innocence of these movements.** **These are interruptions which destabilize, un-balance, and repatriate the very terms and assumptions of some of the most radical efforts to reimagine human power relations. We argue that the opportunities for solidarity lie in what is incommensurable rather than what is common across these efforts.** **We offer these perspectives on unsettling innocence because they are examples of what we might call an ethic of incommensurability, which recognizes what is distinct, what is sovereign for project(s) of decolonization in relation to human and civil rights based social justice projects.** There are portions of these projects that simply cannot speak to one another, cannot be aligned or allied. **We make these notations to highlight opportunities for what can only ever be strategic and contingent collaborations, and to indicate the reasons that lasting solidarities may be elusive, even undesirable.** Below we point to unsettling themes that challenge the coalescence of social justice endeavors broadly assembled into three areas: Transnational or Third World decolonizations, Abolition, and Critical Space-Place Pedagogies. For each of these areas, we offer entry points into the literature - beginning a sort of bibliography of incommensurability. Third world decolonizations **The anti-colonial turn towards the transnational can sometimes involve ignoring the settler colonial context where one resides and how that inhabitation is implicated in settler colonialism, in order to establish “global” solidarities that presumably suffer fewer complicities and complications.** This deliberate not-seeing is morally convenient but avoids an important feature of the aforementioned selective collapsibility of settler colonial-nations states. Expressions such as “the Global South within the Global North” and “the Third World in the First World” neglect the Four Directions via a Flat Earth perspective and ambiguate First Nations with Third World migrants. **For people writing on Third World decolonizations, but who do so upon Native land, we invite you to consider the permanent settler war as the theater for all imperial wars**: ● the Orientalism of Indigenous Americans (Berger, 2004; Marez, 2007) ● discovery, invasion, occupation, and Commons as the claims of settler sovereignty (Ford, 2010) ● heteropatriarchy as the imposition of settler sexuality (Morgensen, 2011) ● citizenship as coercive and forced assimilation into the white settler normative (Bruyneel, 2004; Somerville, 2010) ● religion as covenant for settler nation-state (A.J. Barker, 2009; Maldonado-Torres, 2008) ● the frontier as the first and always the site of invasion and war (Byrd, 2011), ● U.S. imperialism as the expansion of settler colonialism (ibid) ● Asian settler colonialism (Fujikane, 2012; Fujikane, & Okamura, 2008, Saranillio, 2010a, 2010b) ● the frontier as the language of ‘progress’ and discovery (Maldonado-Torres, 2008) ● rape as settler colonial structure (Deer, 2009; 2010) ● the discourse of terrorism as the terror of Native retribution (Tuck & Ree, forthcoming) ● Native Feminisms as incommensurable with other feminisms (Arvin, Tuck, Morrill, forthcoming; Goeman & Denetdale, 2009). Abolition **The abolition of slavery often presumes the expansion of settlers who own Native land and life via inclusion of emancipated slaves and prisoners into the settler nation-state.** As we have noted, it is no accident that the U.S. government promised 40 acres of Indian land as reparations for plantation slavery. Likewise, indentured European laborers were often awarded tracts of ‘unsettled’ Indigenous land as payment at the end of their service (McCoy, forthcoming). **Communal ownership of land has figured centrally in various movements for autonomous, self-determined communities. “The land belongs to those who work it,” disturbingly parrots Lockean justifications for seizing Native land as property, ‘earned’ through one’s labor in clearing and cultivating ‘virgin’ land.** For writers on the prison industrial complex, il/legality, and other forms of slavery, we urge you to consider how enslavement is a twofold procedure: removal from land and the creation of property (land and bodies). **Thus, abolition is likewise twofold, requiring the repatriation of land and the abolition of property (land and bodies).** Abolition means self-possession but not object-possession, repatriation but not reparation: ● “The animals of the world exist for their own reasons. They were not made for humans any more than black people were made for white, or women created for men” (Alice Walker, describing the work of Marjorie Spiegel, in the in the preface to Spigel’s 1988 book, The Dreaded Comparison). ● Enslavement/removal of Native Americans (Gallay, 2009) ● Slaves who become slave-owners, savagery as enslavability, chattel slavery as a sign of civilization (Gallay, 2009) ● Black fugitivity, undercommons, and radical dispossession (Moten, 2008; Moten & Harney, 2004; Moten & Harney, 2010) ● Incarceration as a settler colonialism strategy of land dispossession (Ross, 1998; Watson, 2007) ● Native land and Native people as co-constituitive (Meyer, 2008; Kawagley, 2010) Critical pedagogies The many critical pedagogies that engage emancipatory education, place based education, environmental education, critical multiculturalism, and urban education often position land as public Commons or seek commonalities between struggles. Although we believe that “we must be fluent” in each other’s stories and struggles (paraphrasing Alexander, 2002, p.91), we detect precisely this lack of fluency in land and Indigenous sovereignty. Yupiaq scholar, Oscar Kawagley’s assertion, “We know that Mother Nature has a culture, and it is a Native culture” (2010, p. xiii), directs us to think through land as “more than a site upon which humans make history or as a location that accumulates history” (Goeman, 2008, p.24). The forthcoming special issue in Environmental Education Research, “Land Education: Indigenous, postcolonial, and decolonizing perspectives on place and environmental education research” might be a good starting point to consider the incommensurability of place-based, environmentalist, urban pedagogies with land education. ● The urban as Indigenous (Bang, 2009; Belin, 1999; Friedel, 2011; Goeman, 2008; Intertribal Friendship House & Lobo, 2002) ● Indigenous storied land as disrupting settler maps (Goeman, 2008) ● Novels, poetry, and essays by Greg Sarris, Craig Womack, Joy Harjo, Gerald Vizenor ● To Remain an Indian (Lomawaima & McCarty, 2006) ● Shadow Curriculum (Richardson, 2011) ● Red Pedagogy (Grande, 2004) ● Land Education (McCoy, Tuck, McKenzie, forthcoming) More on incommensurability Incommensurability is an acknowledgement that decolonization will require a change in the order of the world (Fanon, 1963). This is not to say that Indigenous peoples or Black and brown peoples take positions of dominance over white settlers; the goal is not for everyone to merely swap spots on the settler-colonial triad, to take another turn on the merry-go-round. The goal is to break the relentless structuring of the triad - a break and not a compromise (Memmi, 1991). Breaking the settler colonial triad, in direct terms, means repatriating land to sovereign Native tribes and nations, abolition of slavery in its contemporary forms, and the dismantling of the imperial metropole. **Decolonization “here” is intimately connected to anti-imperialism elsewhere. However, decolonial struggles here/there are not parallel, not shared equally, nor do they bring neat closure to the concerns of all involved - particularly not for settlers.** Decolonization is not equivocal to other anti-colonial struggles. It is incommensurable. **There is so much that is incommensurable, so many overlaps that can’t be figured, that cannot be resolved.** **Settler colonialism fuels imperialism all around the globe.** Oil is the motor and motive for war and so was salt, so will be water. Settler sovereignty over these very pieces of earth, air, and water is what makes possible these imperialisms. The same yellow pollen in the water of the Laguna Pueblo reservation in New Mexico, Leslie Marmon Silko reminds us, is the same uranium that annihilated over 200,000 strangers in 2 flashes. The same yellow pollen that poisons the land from where it came. Used in the same war that took a generation of young Pueblo men. Through the voice of her character Betonie, Silko writes, “Thirty thousand years ago they were not strangers. You saw what the evil had done; you saw the witchery ranging as wide as the world" (Silko, 1982, p. 174). In Tucson, Arizona, where Silko lives, her books are now banned in schools. Only curricular materials affirming the settler innocence, ingenuity, and right to America may be taught. In “No”, her response to the 2003 United States invasion of Iraq, Mvskoke/Creek poet Joy Harjo (2004) writes, “Yes, that was me you saw shaking with bravery, with a government issued rifle on my back. I’m sorry I could not greet you, as you deserved, my relative.” Don’t Native Americans participate in greater rates in the military? asks the young-ish man from Viet Nam. **“Indian Country” was/is the term used in Viet Nam, Afghanistan, Iraq by the U.S. military for ‘enemy territory’.** The first Black American President said without blinking, “There was a point before folks had left, before we had gotten everybody back on the helicopter and were flying back to base, where they said Geronimo has been killed, and Geronimo was the code name for bin Laden.” Elmer Pratt, Black Panther leader, falsely imprisoned for 27 years, was a Vietnam Veteran, was nicknamed ‘Geronimo’. Geronimo is settler nickname for the Bedonkohe Apache warrior who fought Mexican and then U.S. expansion into Apache tribal lands. The Colt .45 was perfected to kill Indigenous people during the ‘liberation’ of what became the Philippines, but it was first invented for the ‘Indian Wars’ in North America alongside The Hotchkiss Canon- a gattling gun that shot canonballs. **The technologies of the permanent settler war are reserviced for foreign wars, including boarding schools, colonial schools, urban schools run by military personnel.** It is properly called Indian Country. Ideologies of US settler colonialism directly informed Australian settler colonialism. South African apartheid townships, the kill-zones in what became the Philippine colony, then nation-state, the checkerboarding of Palestinian land with checkpoints, were modeled after U.S. seizures of land and containments of Indian bodies to reservations. The racial science developed in the U.S. (a settler colonial racial science) informed Hitler’s designs on racial purity (“This book is my bible” he said of Madison Grant’s The Passing of the Great Race). The admiration is sometimes mutual, the doctors and administrators of forced sterilizations of black, Native, disabled, poor, and mostly female people - The Sterilization Act accompanied the Racial Integrity Act and the Pocohontas Exception - praised the Nazi eugenics program. Forced sterilizations became illegal in California in 1964.

#### Our praxis is incompatible with politically centered methodologies – the 1AC’s 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).

#### The role of debate is to disrupt settler logics that reproduce epistemic and material violence – we are winning the uniqueness debate as academic institutions are embedded in anti-indigenous sentimentality now – decolonization is the only ethical demand your ballot should be oriented towards – our ROB comes prior to theirs – tuck and yang indicate that theorizing decolonization as particular and distinct from other forms of antiracist resistance is uniquely key to prevent the footnoting of indigenous concerns.

## 1NC -- Case

### 1NC -- No Solvency

#### Eliminating IP protections can’t solve – vaccine supply chains and lack of technological infrastructure constrain efficacy and cumbersome negotiations detract from pandemic control efforts.

De Bolle and Obstfeld ’21 -- Senior Fellows at PIIE (Monica de Bolle and Maurice Obstfeld, 5-12-2021, "Waiving patent and intellectual property protections is not a panacea for global vaccine distribution," PIIE, <https://www.piie.com/blogs/realtime-economic-issues-watch/waiving-patent-and-intellectual-property-protections-not>, accessed 9-3-2021) //nikki

The Biden administration's decision in early May 2021 to support temporary waivers of intellectual property rights (IPRs) on COVID-19 vaccines produced by the world's largest pharmaceutical companies is a welcome step intended to help countries with low access to vaccines. Unfortunately, however, the waivers by themselves will do little to aid global vaccination in the near term. In fact, these actions could be counterproductive if governments become complacent and fail to finance and organize vaccine supply chains worldwide, without which vaccines will not get to those who need them. As the pandemic has exploded in India and fears for Africa have intensified, the pressure on the United States, the European Union, and other advanced vaccine-producing countries to relax IP protections in World Trade Organization (WTO) agreements has intensified. Policymakers have also increasingly understood that no one is safe from COVID-19 until everyone is safe. Led by India and South Africa, the developing world has been arguing on moral and practical grounds that IP waivers are essential to accelerating vaccine distribution and containing the pandemic worldwide. Absent widespread vaccination in less prosperous countries, experts say, all countries, even those with high vaccination rates, would remain vulnerable. But IP waivers alone will not necessarily accomplish that goal. Among the obstacles to getting wide distribution of vaccines are bureaucratic hurdles within the WTO, the difficulty for many poor countries of producing vaccines even if they have the legal right to do so, and the fact that vaccine production depends on global supply chains that cannot quickly be mobilized to deliver shots to low- and middle-income countries. THREE KEY CHALLENGES Navigating the procedural obstacles to get WTO agreement on a streamlined mechanism for suspending IP protections is not as easy as it would seem. It is already possible to waive protections in the 1994 WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). But the WTO's track record suggests that roadblocks may lie ahead in expanding the scope of its waiver procedure. Since August 2003, the WTO has explicitly allowed emergency departures from the TRIPS agreement, enabling countries with manufacturing capacity to suspend IP protections to produce life-saving drugs and vaccines, not just for domestic use but also for export to countries that lack manufacturing capacity of their own. However, the process of negotiating the August 2003 decision—which created a temporary procedure for export waivers—took 14 months, and it was not until January 2017 that two-thirds of WTO members had ratified it as a formal amendment to the TRIPS agreement. Because of this painful negotiation process, the bureaucratic procedures for exercising IP flexibility are so cumbersome that there are very few instances of its use. The best known (though not very successful) example occurred with Canadian exports of an AIDS treatment to Rwanda in 2007. Complicating matters further has been the opposition of some major countries to revisiting the issue, as well as the likely need for WTO members to revise their domestic legal frameworks to accommodate patent waivers. These factors make it clear that renewed negotiations within the WTO are unlikely to yield results with the speed that the current health emergency demands or result in a meaningfully better framework. Recognizing the likely difficulty of negotiations, WTO Director-General Ngozi Okonjo-Iweala has suggested a December 3, 2021 deadline for completion—but like past initial deadlines in this space, this one could well prove overoptimistic. The second, and arguably more intractable, challenge is technical: Even if they overcome IP obstacles and get permission to produce vaccines, less prosperous countries lack the know-how, facilities, and trained personnel to produce them. Despite the abysmal decades-long record of vaccine distribution in those countries, existing TRIPS flexibilities have done nothing to improve the situation. A smoother IP waiver process might help, but only as a component of a broader effort. True, patent protection is the main obstacle to creation of generic small-molecule drugs, which chemists can synthesize. But other major obstacles exist for vaccines, which are biologics. For the latter category of drugs, an identical product requires an identical production technology, with most steps categorized as hard-to-replicate trade secrets rather than patentable innovations. Thus, Moderna announced in October 2020 that it would not enforce its COVID-19-related patents during the pandemic. But this step, however laudable, is of limited immediate help to would-be producers of a "generic" version of the Moderna vaccine. Without precisely replicating all steps of Moderna's production process, including the many quality controls, a generic version would have untested immunogenicity (the ability to induce the body to generate an immune response) and thus would require extensive clinical trials before release. Production glitches—such as those that afflicted the Janssen/Johnson & Johnson vaccine in the United States—could prompt widespread vaccine skepticism, damaging pandemic control efforts. The replication hurdle is especially high for the new and more sophisticated messenger ribonucleic acid (mRNA) vaccines, which have proven most effective against SARS-CoV-2 (the virus that causes COVID-19) and which are likely to provide the most adaptable platforms for the vaccines of the future. The genetic vaccines produced by Pfizer-BioNTech and Moderna require considerable technical knowledge and sophisticated techniques to generate a version of the viral spike protein that elicits a strong immune response.1 Therefore, from a biological standpoint, patent and IP waivers alone cannot resolve the existing lack of capacity in most countries to produce genetic vaccines at scale locally. A final challenge is that vaccine supply chains are intricate and global in scope. Different stages of vaccine manufacturing are spread across different parts of the globe, with various countries supplying key inputs and equipment. Patent and IP waivers cannot resolve export restrictions that these countries may decide to impose—and in fact have imposed—throughout the pandemic. Nor can poor countries with production waivers easily integrate into global supply chains. At the moment, current production capacity and quality standards continue to constrain global supply. SHORT- AND LONG-TERM PRIORITIES A streamlined mechanism for IP waivers can be useful, but the back and forth of waiver negotiations within the WTO will prove counterproductive if it distracts from necessary immediate and longer-term measures to contain the pandemic and prepare for future threats. In the short run, global vaccine production by existing producers should be ramped up with more global sharing, and at subsidized prices for poor countries. All countries can start by renouncing export restrictions that threaten global supply chains. Rich countries must also step up to provide financial support for vaccine purchases and immunization programs and also to directly share vaccine doses that are now in oversupply. Political leaders in the rich countries should explain to their citizens that aiding poor countries is in their own interest. That is because the pandemic is producing potentially more transmissible and deadlier variants that will inevitably spread worldwide. Over the long run, the global community needs to build a cooperative infrastructure to address the likelihood of the current pandemic lasting a long time, while preparing for future pandemics that could arrive with increasing frequency. In February 2021, the Group of Seven nations proposed a global health treaty that would help create a framework for more effective and coordinated pandemic response. Systematic worldwide genomic surveillance of current and potential pathogens is one aspect of such a treaty that would be imperative in order to inform public health policymakers and guide rapid vaccine development. Another useful step could be a vaccine investment and trade agreement, as suggested by Thomas J. Bollyky and Chad P. Bown, which would enable countries to coordinate vaccine development, supply chains, and production to eliminate beggar-thy-neighbor policies and speed vaccine development and deployment worldwide. The public-private partnerships underlying such an agreement might incorporate reform of the TRIPS patent and IP flexibilities acceptable to all parties. Unfortunately, finance ministers and central bank governors did little more than rehearse broad principles at their April 2021 Group of Twenty (G20) meeting, even as the COVID-19 outlook has deteriorated in India and elsewhere. Italy will host the next important international public health meeting on May 21, 2021 at a Global Health Summit in Rome. Participants may consider proposals by the High Level Independent Panel on Financing the Global Commons for Pandemic Preparedness and Response, which the G20 established in January 2021 and which Dr. Okonjo-Iweala co-chairs. International engagement over patents and other IP protections will be immensely more beneficial as a component of much broader commitments to speed vaccine deployment in the near term and build a robust cooperative framework for ongoing pandemic response. By the time of their October leaders' meeting, G20 countries should be well along in implementing an ambitious global public health framework rather than squabbling over the narrower issue of IP protections.

#### COVID-19 vaccine waiver is insufficient to narrow the structural supply gap between wealthy nations and their developing counterparts – cumbersome licensing measures and lack of technological transfer ensure failure.

Blenkinsop ’21 -- (Philip Blenkinsop, 5-20-2021, "Vaccine patent waiver will not be enough -WTO chief," Reuters, <https://www.reuters.com/business/healthcare-pharmaceuticals/vaccine-patent-waiver-will-not-be-enough-wto-chief-2021-05-20/>, accessed 9-3-2021) //nikki

BRUSSELS, May 20 (Reuters) - Waiving intellectual property rights for COVID-19 vaccines will not be enough to narrow the huge supply gap between rich and poor countries, the head of the World Trade Organization said on Thursday. South Africa and India have urged fellow WTO members to waive IP rights on vaccines to boost production. Poorer countries that make up half the world's population have received just 17% of doses, a situation the World Health Organization head has labelled "vaccine apartheid". U.S. President Joe Biden said last week he supported the waiver idea, but the European Union and other developed country opponents said it will not increase output. Speaking to the European Parliament on Thursday, WTO director-general Ngozi Okonjo-Iweala said it was clear that an IP waiver alone would not be enough. "To have solved the unacceptable problem of inequity of access to vaccines, we have to be holistic. It's not one or the other," she said, adding this could not drag out for years. World Trade Organisation (WTO) Director-General Ngozi Okonjo-Iweala attends an interview with Reuters at the WTO headquarters in Geneva, Switzerland, April 12, 2021. REUTERS/Denis Balibouse The European Commission outlined a plan on Wednesday it sees as a more effective way of boosting output, using existing WTO rules, rather than a waiver. It notes countries can grant licences to manufacturers to produce with or without the patent-holder's consent. Bolivia signed a deal last week with a Canadian company Biolyse Pharma Corp to produce the Johnson & Johnson vaccine, which would require Biolyse to secure authorisation from Johnson & Johnson or a "compulsory licence" from Canada. Okonjo-Iweala said developing countries had complained the licencing process was cumbersome and should be improved. Manufacturers should work to expand production, she said, pointing to idle capacity in Pakistan, Bangladesh, Indonesia, Thailand, Senegal, South Africa. There also needed to be a transfer of technology and know-how, with vaccines often harder to produce than drugs. "I'm convinced that we can agree a text that gives developing countries that kind of access and flexibility, whilst protecting research and innovation," she said.

#### The plan requires the disclosure of trade secrets in order to enable effective transfer of technology to be effective – this decks solvency and increases likelihood of US circumvention.

Noonan ’21 -- Kevin E. Noonan is a partner with McDonnell Boehnen Hulbert & Berghoff LLP and serves as Chair of the firm’s Biotechnology & Pharmaceuticals Practice Group. (Kevin E. Noonan, "If the Devil of the WTO IP Waiver Is in the Details, What Are the Details?," Patent Docs, <https://www.patentdocs.org/2021/05/if-the-devil-of-the-wto-ip-waiver-is-in-the-details-what-are-the-details.html>, accessed 9-3-2021) //nikki

While the details of the WTO patent waiver have not been determined (or more properly negotiated), it is important to consider the structure of the international trade regime in which the waiver will operate and the consequences of any agreement defining exactly what will be waived. The GATT/TRIPS agreement is a treaty, which (of course) is an agreement between countries, and disputes and accommodations are between their governments. The extent to which a private company's patent or other IP rights are protected under the terms of these agreements depends on actions of these governments in enforcing them on the company's behalf. Thus, for protections like patents, a government can agree to "turn a blind eye" to infringement by companies in other countries (or other governments) by refusing to press the rightsholder's case before the WTO, to pressure the governments unilaterally (as in the Watch List and Special Watch List of the U.S. Trade Representative's Special 301 Report), or otherwise support a private company's private actions using an infringing country's legal system. Such "passive" actions (i.e., refusing to enforce rights in violating or "scofflaw" countries) requires very little affirmative action by a government. These are the types of de facto waivers that can be effective, for example, for patented drugs that can be produced by conventional drug production technology wherein description of an active pharmaceutical ingredient molecule. The details of COVID vaccine production have been set out in various news sources (see Neuberg et al., "Exploring the Supply Chain of the Pfizer/BioNTech and Moderna COVID-19 Vaccines"; Weiss et al., "A COVID-19 Vaccine Life Cycle: From DNA to Doses," USA Today, Feb. 7, 2021; King, "Why Manufacturing Covid Vaccine to at Scale Is Hard," Chemistry World, Mar. 23, 2021; Cott et al., "How Pfizer Makes Its Covid-19 Vaccine," New York Times, April 28, 2021). But these are certainly not disclosed in the detail necessary for commercial production, and the complexities of production are illustrated in graphics from the Times article, wherein the DNA is prepared in Chesterfield, MO and shipped to Andover, MA for mRNA production; then the mRNA shipped back to Chesterfield or Kalamazoo, MI for packaging into the vaccine nanoparticles; and then sent back to Andover for testing before release. While some of this complexity may be company-specific, it also represents the different technological requirements for preparing an effective vaccine. It is unlikely that most of the countries in favor of the waiver (except India and South Africa) have the technological infrastructure for producing the vaccine. And the company in India, the Serum Institute ("the largest vaccine maker in the world"), having the greatest likelihood of being able to reproduce the vaccine if the waiver is put in place recently was forced to "hand over its vaccines to the [Indian] government," according to an article in the New York Times (Schmall et al., "India and Its Vaccine Maker Stumble over Their Pandemic Promises," May 9, 2021). It is evident that, in the almost total absence of patents involved in COVID vaccine preparation, the disclosure needed to reproduce these vaccines (no matter how difficult that may be in practice) are protected by trade secrets. If the WTO imposes this waiver, the question will be whether the U.S. will compel disclosure of trade secret owned by U.S. companies, or have disclosed them to the extent such secrets are part of regulatory filings. Either action would constitute a "taking" under the Fifth Amendment ("Nor shall private property be taken for public use, without just compensation"); see Epstein et al., "The Fifth Amendment Takings Clause," Interactive Constitution: Common Interpretation. Seemingly simple and straightforward, almost every word in the clause is open to interpretation, none perhaps as much as determining what "just compensation" entails. It is likely that, should the government act peremptorily with regard to takings of trade secrets justified by any WTO waiver clause, the effect on trade secrets will carry the greatest consequences and be the cause of most controversy. Indeed, the prospects arising therefrom are likely some of the biggest impediments towards effectuating any waiver in a manner that could have any chance of achieving the stated goal of facilitating COVID vaccine production. This prospect also raises the issue of how any such waiver will be implemented in the U.S. Treaties are not necessarily "self-executing" and need to become enforceable through an Act of Congress. The distinguishing feature of such treaties are that "provisions in international agreements that would require the United States to exercise authority that the Constitution assigns to Congress exclusively must be deemed non-self-executing, and implementing legislation is required to give such provisions domestic legal effect." See Mulligan, "International Law and Agreements: Their Effect upon U.S. Law," Congressional Research Service 7-5700, Sep. 19, 2018. The necessity for Congress to act, although not having the heavy weight that entails approving treaties (i.e., a two-thirds majority vote in the Senate) nonetheless could be expected to face significant opposition should it be interpreted to permit the government to exercise a form of "eminent domain" over pharmaceutical companies' trade secrets. In this regard such an act could readily be characterized as "forced technology transfer" and even IP theft, should, for example, such trade secrets be capable of use to weaponize rather than immunize against viral infections. The administration's public position raises the likelihood of an infringement on private property unprecedented in the U.S. It also has implications for other aspects of foreign policy; for example, at least some of the trade secrets belong to BioNTech, a German company. Germany has not agreed to the waiver, and should the U.S disclose BioNTech's trade secrets, no doubt Germany would have cause to seek redress against America. This is but one of the possible legal consequences that the recent capitulation to the purported global "kumbaya" of the WTO waiver is likely to create. More complications will likely arise as the negotiations proceed. Provided the Administration is properly advised and the waiver properly limited (e.g., to patents) these and other deleterious consequences may be avoided. In view of the possibility of serious liability arising by improvident acquiescence to generally uninformed calls for a broad waiver, it might not be a bad idea for all those involved in innovation (universities, technology transfer offices, pharmaceutical companies, patent lawyers, and economists) counter these opinions with the facts and make their viewpoints known and voices heard.

### 1NC -- Generic Drugs Bad

#### Generic drugs send their worst quality drugs to LDCs where risk of inspection is the lowest – this is a form of medical colonialism that only the alt solves.

**Eban 19** [Katherine Eban, an investigative journalist and the author of the New York Times bestseller Bottle of Lies: The Inside Story of the Generic Drug Boom, May 17 2019, “How Some Generic Drugs Could Do More Harm Than Good,” Time Magazine, <https://time.com/5590602/generic-drugs-quality-risk/> ]/Triumph Debate

For the 16 years that Dr. Brian Westerberg, a Canadian surgeon, worked volunteer missions at the Mulago National Referral Hospital in Kampala, Uganda, scarcity was the norm. The patients usually exceeded the 1,500 allotted beds. Running water was once cut off when the debt-ridden hospital was unable to pay its bills. On some of his early trips, Westerberg even brought over drugs from Canada in order to treat patients. But as low-cost generics made in India and China became widely available through Uganda’s government and international aid agencies in the early 2000s, it seemed at first like the supply issue had been solved. Then on February 7, 2013, Westerberg examined a feverish 13-year-old boy who had fluid oozing from an ear infection. He suspected bacterial meningitis, though he couldn’t confirm his diagnosis because the CT scanner had broken down. The boy was given intravenous ceftriaxone, a broad-spectrum antibiotic that Westerberg believed would cure him. But after four days of treatment, the ear had only gotten worse. As Westerberg prepared to operate, the boy had a seizure. With the CT scanner working again, Westerberg ordered an urgent scan, which revealed small abscesses in the boy’s skull, likely caused by the infection. When a hospital neurosurgeon looked at the images and confidently declared that surgery was unnecessary and the swelling and abscesses would abate with effective antibiotic treatment, Westerberg was confused. They had already treated the boy with intravenous ceftriaxone, which hadn’t worked. His confusion deepened when his colleague suggested that they switch the boy to a more expensive version of the drug. Why swap one ceftriaxone for another? Most people assume that a drug is a drug — that Lipitor, for example, or a generic version, is the same anywhere in the world, so long as it’s made by a reputable drug company that has been inspected and approved by regulators. That, at least, is the logic that has driven the global generic-drug revolution: that drug companies in countries like India and China can make low-cost, high-quality drugs for markets around the world. These companies have been hailed as public-health heroes and global equalizers, by making the same cures available to the wealthy and impoverished. PAID PARTNER CONTENT 6 Prepaid Funeral Plan Myths: Learn More BY DIGNITY MEMORIAL But many of the generic drug companies that Americans and Africans alike depend on, which I spent a decade investigating, hold a dark secret: they routinely adjust their manufacturing standards depending on the country buying their drugs, a practice that could endanger not just those who take the lower-quality medicine but the population at large. These companies send their highest-quality drugs to markets with the most vigilant regulators, such as the U.S. and the European Union. They send their worst drugs — made with lower-quality ingredients and less scrupulous testing — to countries with the weakest review. The U.S. drug supply is not immune to quality crises — over the last ten months, dozens of versions of the generic blood pressure drugs valsartan, losartan and irbesartan have been subject to sweeping recalls. The active ingredients in some, manufactured in China, contained a probable carcinogen once used in the production of liquid rocket fuel. But the patients who suffer most are those in so-called “R.O.W. markets” — the generic-drug industry’s shorthand for “Rest of World.” In swaths of Africa, Southeast Asia and other areas with developing markets, some generic drug companies have made a cold calculation: they can sell their cheapest drugs where they will be least likely to get caught. In Africa, for instance, pharmaceuticals used to come from more developed countries, through donations and small purchases. So when Indian drug reps offering cheap generics started arriving, the initial feeling was positive. But Africa soon became an avenue “to send anything at all,” said Kwabena Ofori-Kwakye, associate professor in the pharmaceutics department at the Kwame Nkrumah University of Science and Technology in Kumasi, Ghana. The poor quality has affected every type of medication, and the adverse impact on health has been “astronomical,” he told me. Multiple doctors I spoke to throughout the continent said they have adjusted their medical treatment in response, sometimes tripling recommended doses to produce a therapeutic effect. Dr. Gordon Donnir, former head of the psychiatry department at the Komfo Anokye teaching hospital in Kumasi, treats middle-class Ghanaians in his private practice and says that almost all the drugs his patients take are substandard, leading him to increase his patients’ doses significantly. While his European colleagues typically prescribe 2.5 milligrams of haloperidol (a generic form of Haldol) several times a day to treat psychosis, he’ll prescribe 10 milligrams, also several times a day, because he knows the 2.5 milligrams “won’t do anything.” Donnir once gave ten times the typical dose of generic Diazepam, an anti-anxiety drug, to a 15-year-old boy, an amount that should have knocked him out. The patient was “still smiling,” Donnir said. Many hospitals also keep a stash of what they call “fancy” drugs — either brand-name drugs or higher-quality generics — to treat patients who should have recovered after a round of treatment but didn’t. Confronted with the ailing boy at the Mulago hospital, Westerberg’s colleagues swapped in the more expensive version of ceftriaxone and added more drugs to the treatment plan. But it was too late. In the second week of his treatment, the boy was declared brain dead. Westerberg’s Ugandan colleagues were not surprised. Their patients frequently died when treated with drugs that should have saved them. And there were not enough “fancy” drugs to go around, making every day an exercise in pharmaceutical triage. It was also hard to keep track of which generics were safe and which were not to be trusted, said one doctor in Western Uganda: “It’s anesthesia today, ceftriaxone tomorrow, amoxicillin the next day.” Westerberg, shaken by his newfound knowledge, flew back to Canada and teamed up with a Canadian respiratory therapist, Jason Nickerson, who’d had similar experiences with bad medicine in Ghana. They decided to test the chemical properties of the generic ceftriaxone that had been implicated in the Ugandan boy’s death. Another of Westerberg’s colleagues brought him a vial from the Mulago hospital pharmacy. The drug had been made by a manufacturer in northern China, which also exported to the U.S. and other developed markets. But when they tested the ceftriaxone at Nickerson’s lab, it contained less than half the active drug ingredient stated on the label. At such low concentration, the drug was basically useless, Nickerson said. He and Westerberg published a case report in the CDC’s Morbidity and Mortality Weekly Report. Although they couldn’t say with certainty that the boy had died due to substandard ceftriaxone, their report offered compelling evidence that he had. Some companies claim that, while their drugs are all high-quality, there may be some variance in how they are produced because regulations differ from market to market. But Patrick H. Lukulay, former vice president of global health impact programs for USP (formerly U.S. Pharmacopeia), one of the world’s top pharmaceutical standard-setting organizations, calls that argument “totally garbage.” For any given drug, he says, “There’s only one standard, and that standard was set by the originator,” meaning the brand-name company that developed the product. It’s not just those in developing markets who should be alarmed. Often, substandard drugs do not contain enough active ingredient to effectively cure sick patients. But they do contain enough to kill off the weakest microbes while leaving the strongest intact. These surviving microbes go on to reproduce, creating a new generation of pathogens capable of resisting even fully potent, properly made medicine. In 2011, during an outbreak of drug-resistant malaria on the Thailand-Cambodia border, USP’s chief of party in Indonesia Christopher Raymond strongly suspected substandard drugs as a culprit. Treating patients with drugs that contain a little bit of active ingredient, as he put it, is like “putting out fire with gasoline.” USP is so concerned about this issue that in 2017 it launched a center called the Quality Institute, which funds research into the link between drug quality and resistance. In late 2018, Boston University biomedical engineering professor Muhammad Zaman studied a commonly used antibiotic called rifampicin that, if not manufactured properly, yields a chemical substance called rifampicin quinone when it degrades. When Zaman subjected bacteria to this substance, it developed mutations that helped it resist rifampicin and other similar drugs. Zaman concluded from his work that substandard drugs are an “independent pillar” in the global menace of drug resistance. The low cost of generic drugs makes them essential to global public health. But if those bargain drugs are of low quality, they do more harm than good. For years, politicians, regulators and aid workers have focused on ensuring access to these drugs. Going forward, they must place equal value on quality, through an exacting program of unannounced inspections, routine testing of drugs already on the market and strict legal enforcement against companies manufacturing subpar medicine. One model is the airline industry, which through international laws and treaties, has established clear global standards for aviation safety. Without something similar for safe and effective drugs, the twin forces of subpar medicine and growing drug resistance will be so destructive that developed countries won’t be able to ignore them. As Elizabeth Pisani, an epidemiologist who has studied drug quality in Indonesia, put it, “The fact is, pathogens know no borders.”