## 1NC -- K -- Colonial Capitalism

#### Ideal theory is a form of abstraction away from the material violence of scolonialism – their view from nowhere is not only useless but actively props up settlerism.

Nichols 13 Nichols, R. (2013). Indigeneity and the Settler Contract today. Philosophy & Social Criticism, 39(2), 165–186. doi:10.1177/0191453712470359 SM

Throughout the 20th century, of course, these ‘high theories’ of human development have come under considerable attack. Although anti-imperial leaders and thinkers from those subject to European colonization had always offered trenchant critiques of the European discourse of progress, and counter-narratives were always available from within European thought, it was not until the 20th century that this counter-discourse began to take hold within Europe itself in any significant way. For instance, one of the first demands of the former colonies in the United Nations was to insist on the removal of references from UN documents to members in terms of ‘civilized’ versus ‘uncivilized’. The reason they gave was that this discourse was a prevailing justification for western imperialism in both its colonial and neo-colonial forms and, by the end of the two world wars – themselves major blows to European pretensions to be the standard of civilization – thousands of people in the West were reading these criticisms and taking them more seriously. And so, combined with various other factors (including the rise of Anglo-American analytic philosophy generally), the historical-anthropology language has largely been displaced by other modes of philosophical reflection – namely, more ‘ideal’ theory. As we also all know, in the early 1970s a particular variant of this formal or ideal theory came to predominate in the western academy. The publication of John Rawls’ A Theory of Justice (1971) and Robert Nozick’s Anarchy, State and Utopia (1974) revived and reactivated the intellectual tradition of social contract theory.3 Political 166 Philosophy and Social Criticism 39(2) Downloaded from psc.sagepub.com at NORTH CAROLINA STATE UNIV on March 18, 2015 philosophers after Rawls and Nozick have been generally reluctant to engage in the grand, complex historical and anthropological narratives that characterized the work of, for instance, Hegel and Marx. Instead, they argued that guiding principles for the organization of a just society (and a just relationship between societies) can be generated by abstracting away from the specific historical and cultural conditions of the present. By imagining oneself in (to use Rawls’ parlance) an ‘original position’, behind a ‘veil of ignorance’ (i.e. without knowledge of one’s race, gender, culture, social location, etc.), it is possible to determine what first principles would be generally acceptable to all (regardless of the above qualifiers). The notion of an original ‘contract’ between such individuals is thus used as a device of representation to generate a normative theory which can then be used to critically examine actually existing practices. This tradition and mode of philosophical reflection have come to replace the 19th-century historical-anthropological discourse as the prevailing manner in which philosophers and political theorists in the western academy (but especially in Anglo-American countries) analyse the possibility of a just relationship to non-western societies. The purpose of this article is to reflect not only upon the limitations, but more importantly upon the political function of this approach, particularly when it is deployed as a resource for reflection on the political struggles and normative claims of the indigenous peoples in the settler-colonial societies of the Anglo-American world (e.g. Australia, Canada, New Zealand, the United States). In so doing, I hope to present a small slice of a much larger project comprising a genealogy of what I will refer to here asthe ‘Settler Contract’.4 In usingthe term ‘Settler Contract’ I am deliberately playing off of previous work by philosophers and political theorists who have been concerned to show the historical function and development of social contract theory in relation to specific axes of oppression and domination. Two of the most important contributions to this literature are Carole Pateman’s The Sexual Contract and CharlesMills’TheRacialContract.In Pateman’s 1988 work, she rereadthe canon of western social contract theory in an attempt to demonstrate that the presumptively neutral and ideal accounts of the origins of civil society as presented in the works of, for instance, Hobbes, Locke and Rousseau, were in fact always (implicitly or explicitly) sexual-patriarchal narratives that legitimized the subordination of women. In 1995, Charles Mills deliberately borrowed from Pateman in his project of unmasking the racial (or, more precisely, whitesupremacist) nature of the contract. There, Mills defined the ‘Racial Contract’ as ... that set of formal or informal agreements or meta-agreements ... between the members of one subset of humans, henceforth designated by (shifting) ‘racial’ (phenotypical/genealogical/cultural) criteria C1, C2, C3 ... as ‘white,’ and coextensive (making due allowance for gender differentiation) with the class of full persons, to categorize the remaining subset of humans as ‘nonwhite’ and of a different and inferior moral status, subpersons, so that they have a subordinate civil standing in the white or white-ruled polities the whites either already inhabit or establish or in transactions as aligns with these polities, and the moral and juridical rules normally regulating the behaviour of whites in their dealings with one another either do not apply at all in dealings with nonwhites or apply only in a qualified form.5 Although they have not necessarily used the specific term of art ‘Settler Contract’, for some time now various thinkers have attempted to contribute to an expansion on these Nichols 167 Downloaded from psc.sagepub.com at NORTH CAROLINA STATE UNIV on March 18, 2015 themes by demonstrating the ways in which social contract theory has served as a primary justificatory device for the establishment of another axis of oppression and domination: an expropriation and usurpation contract whereby the constitution of the ideal civil society is premised upon the extermination of indigenous peoples and/or the displacement of them from their lands. I will use the term ‘Settler Contract’ to refer to the strategic use of the fiction of a society as the product of a ‘contract’ between its founding members when it is employed in these historical moments to displace the question of that society’s actual formation in acts of conquest, genocide and land appropriation.6 The Settler Contract’s reactivation is used not to deny the content of specific indigenous peoples’ claims, but rather to shift the register of argumentation to a highly abstract and counter-factual level, relieving the burden of proof from colonial states. In such a case, the original contract between white colonial settlers thus ‘simultaneously presupposes, extinguishes, and replaces a state of nature. A settled colony simultaneously presupposes and extinguishes a terra nullius.’ 7 The Settler Contract then refers to the dual legitimating function of the philosophical and historical-narrative device of the ‘original contract’ as the origins of societal order: first, by presupposing no previous indigenous societies and second, by legitimizing the violence required to turn this fiction into reality. Although the Settler Contract has obvious similarities and points of overlap with the Racial Contract, and is constituted in gendered and sexualized practices, it is analysable as a distinct axis since it pertains more to issues related to land appropriation and the subordination of previously sovereign polities and societies. My specific contribution here is twofold. First, I am interested in expanding the scope of these critical genealogies to include the mode of argumentation or style of reasoning endemic to social contract theory. In order to explain what I mean by this it is helpful to look to a point of difference between Pateman and Mills. Although Charles Mills sees the actual historical instantiation of contract theory as implicated in white supremacy, he nevertheless argues that the form or model of reasoning it represents can be ‘modified and used for emancipatory purposes’.8 Mills argues that the language of an ideal contract that constitutes society ‘serves a useful heuristic purpose – it’s a way of dramatizing the original social contract idea of humans choosing the principles that would regulate a just society’.9 This is why Mills described his work as a contribution to that long struggle to ‘close the gap between the ideal of the social contract and the reality of the Racial Contract’.10 Carole Pateman, on the other hand, has argued that the theoretical device of an appeal to the ‘ideal’ contract is itself inherently problematic. This is because Pateman, unlike Mills, sees contract theory as requiring the ‘fiction’ of property in the person. This theoretical presupposition is, according to Pateman, necessarily enabling of domination and oppression. She writes: Property in the person cannot be contracted out in the absence of the owner. If the worker’s services (property) are to be ‘employed’ in the manner required by the employer, the worker has to go with them. The property is useful to the employer only if the worker acts as the employer demands and, therefore, entry into the contract means that the work becomes a subordinate. The consequence of voluntary entry into a contract is not freedom but superiority and subordination.11 168 Philosophy and Social Criticism 39(2) Downloaded from psc.sagepub.com at NORTH CAROLINA STATE UNIV on March 18, 2015 Although Pateman’s more radical and comprehensive critique of social contract theory is instructive here, my contribution is different still. While I agree in general with Pateman’s assessment of the inherently problematic nature of contract theory, my aim is to bring to light another facet of this, one specifically related to colonization. As I will discuss in more length below, I am concerned to show how the appeal to an ‘ideal’ original contract, even as a heuristic device for the generating of ‘first principles’, serves to displace questions of the historical instantiation of actual political societies and domains of sovereignty and, as such, has served and continues to serve the function of justifying ongoing occupation of settler societies in indigenous territory. To do this, I draw upon a Foucaultian distinction between historico-political vs philosophico-juridical discourses of sovereignty and right as a means of complementing and augmenting previous work on the Settler Contract. Furthermore, I argue that the philosophico-juridical discourse of the Settler Contract has its origins – both in historical time and as an event repeated in contemporaneous time – at the moment in which the weight of the past cannot be borne. Contract theory can therefore be studied not merely in terms of the content of its claims (i.e. true or false depictions of indigenous peoples), but in terms of its strategic function in relieving the burden of the historical inheritance of conquest. When read in light of this function, I argue, contract theory emerges as an inherently problematic framework for the adjudication of indigenous claims and, moreover, for the establishment of a non-colonial relationship between indigenous peoples and settler-colonial societies. This also means, however, that unlike Pateman and Mills, I am less interested in the specific content of, for instance, the racist and demeaning depictions of indigenous peoples as pre-political ‘savages’ in the works of contract theorists since it is my claim that even independent of any specifically negative portrayal of indigenous peoples within such work, social contract theory is still a vehicle for the displacement of such peoples, conceptually and in actual historical fact. In fact, I want to argue, it is in those places where contract theory is at its most abstract (purportedly neutral and non-evaluative) that it often functions most effectively as a strategy of settler-colonial domination. The second contribution to this discussion I would like to make is to demonstrate how this form of theory continues to function today with respect to the claims of indigenous peoples. Thus, I am also less concerned here with the historical figures of Hobbes, Locke, Rousseau and Kant than Pateman or Mills, and more interested in those contemporary thinkers who explicitly work in this tradition – philosophers such as John Rawls, Robert Nozick and, the focus of this article, Jeremy Waldron. A few caveats before I proceed. First, it is not my claim that contemporary thinkers such as Rawls, Nozick, or Waldron necessarily intend to facilitate the logic of the Settler Contract (though I do not rule out this possibility either). I am not primarily interested in what specific authors intend to do with their arguments, but rather with how a specific rhetorical structure or style of argumentation shapes the discursive space such that certain outcomes appear as the logical or necessary conclusion to an argument when, in fact, the debate has been skewed in this direction by the point of departure itself. Second, I acknowledge that my selection of authors is non-comprehensive. I have chosen here to focus on Jeremy Waldron’s recent application of the social contract tradition to the claims of indigenous peoples. This is in part because (as I said at the outset) this particular article is merely one small slice of a much larger genealogy. But it is also in Nichols 169 Downloaded from psc.sagepub.com at NORTH CAROLINA STATE UNIV on March 18, 2015 part because Waldron represents a kind of ‘exemplary figure’ here. One of the difficulties in examining contemporary analytic contract philosophy as it relates to indigenous claims is that, overwhelmingly, philosophers working within this tradition do not consider such questions at all. Jeremy Waldron is a major exception to this rule. Since Waldron explicitly locates his work within the tradition descending from Hobbes and Locke, through Kant to Rawls and Nozick, and because Waldron’s influential and prominent role as legal scholar enmeshes his work closely with the juridical apparatus that actually adjudicates indigenous claims in Anglo-settler societies, and finally, because Waldron (a New Zealander of European descent) takes up the question of ‘indigeneity’ so directly and seriously, it seems appropriate to take him as an exemplar of the attempt to reformulate some modified version of analytic contract theory in relation to indigenous peoples.

#### Settler colonialism is deeply engrained in Western culture and reflects in the universalist logic of ideal theory – their philosophy gets appropriated to justify extermination of Indigenous peoples.

Hinkinson 12 [John Hinkinson – Editor at Arena, an Australian maganzine. “Why Settler Colonialism?” Arena. 2012. <https://arena.org.au/why-settler-colonialism/>] // bracketed for ableist language

Settler colonialism as a practice is a subset of colonial history, one where the colonial relationship converts into a very specific cultural practice. It is where the ‘settler culture’ seeks a permanent place in the colonial setting and, as such, enters an unrelenting cultural logic of misrecognition and [ignorance] towards the cultural other, issuing in acts of objective cruelty and cultural destruction. Because this relationship is based in cultures, which are prior to the individual (while simultaneously forming the individual), it is a relationship that is especially difficult to put aside. Empirically speaking, there are many such examples in history, many arising in the period of Western Empire associated with modernity and expansionism in the New World. Settler colonialism as a field illuminates the history of these myriad examples while bridging into accounts of contemporary expressions of the settler phenomenon, from the continued cultural suppression arising out of nineteenth-century Empire (in Africa, the Americas, Australia and New Zealand, for example) to twentieth-century expressions in Palestine. If settler colonialism is to develop as a field of critical study it needs to include but go far beyond empirical accounts simply framed by an ethic of cultural justice. To do this it is necessary to develop a theory and account of how settler colonialism as a practice is based culturally. And this will require a broader frame of reference than the specific localities of settler-colonial practice, a broader frame that shows how this phenomenon is an effect of power based in attitudes to other cultures more generally. For it is arguable that the settler-colonial attitude derives from a widespread cultural politics set within a larger frame, one which the world today assumes, rather than reflexively knows or seeks to reform. This is to speak of a continuing imperialist attitude expressed in a view of other cultures that has little respect for those cultures’ core assumptions. There are crude expressions of this lack of cultural empathy, but there are also ‘high’ expressions, such as those embodied in the universalist philosophy of the West. For high universalism, the emancipatory principle is argued to be beyond all specific cultures and, as such, superior to all of them. Recent US adventures in the Middle East come to mind, where the invocation of ‘freedom’ has become a sign of disrespect for the complex cultures of the region. Imposed ‘freedom’ has devastating effects.

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

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

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

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

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

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

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

#### The alternative is to decolonize intellectual property – a critical examination of colonial knowledge production that disrupts the dominance of Eurocentric political literature within academia – this is a prerequisite to legal change.

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

#### The role of debate is to disrupt settler logics that produce epistemic and material violence. We control the uniqueness debate as academic institutions are saturated with anti-indigenous sentimentality now – decolonization is the only ethical demand your ballot should be oriented towards.

## 1NC -- Case

### 1NC -- Framework (Kant)

**Focus on apriori reason treats the human condition as universal which obscures race.**

Arnold **Farr 4** “Whiteness Visible: Enlightenment Racism and the structure of Racialized Consciousness” From What Whiteness Looks Like? Edited by George Yancy. 2004

**The assumption that philosophers can engage in a color-blind in- vestigation of the human condition can be made intelligible only by ignoring the human condition**. The inquiring gaze of the philosopher must turn upon the philosopher and examine the ways in which our questions are driven by our social location. **This social location affects the process whereby we include certain questions in our philosophical inquiry, while excluding others.** By and large, **white philosophers have failed to subject themselves to the inquiring gaze they have turned on others**. This failure to examine the position from which one speaks and the ways in which that position is related to others does not make whiteness invisible, but **it does reveal the blindness of the philosopher**.¶ **The experience of African-Americans as victims of the color line puts us in a social place different from that of white philosophers. The white philosopher has the luxury of experiencing himself as a human being and not as a raced being** or race category. The white philosopher is not reminded of his racial identity on a daily basis. The white phi- losopher is not forced to question his humanity because of his race. Such luxury allows the white philosopher to think that his questions and concerns are not related to his position as a raced being. We have stumbled into a circle here. **The luxury of being able to establish one- self as a human being and not as a raced being is from the beginning the product of racialization.** To the extent that the human condition in America is such that black philosophers are not allowed this luxury, the whiteness of philosophy becomes visible. **It becomes clear that there is a certain feature of the human condition that traditional philosophy has omitted**.¶ The desire to make universal claims about the human condition has produced and supported racialized consciousness in two ways. **First, philosophers of European descent have been too quick to reduce all humanity to their theoretical framework without first seriously challenging this framework.** **These philosophers develop their “universal” principle in conversation with themselves and then assume that such principles or values are adequate to describe the experience of non-European peoples**. As in the case of Hegel, the degree to which non-European peoples do not reflect back to Europeans European values and ways of being is the degree to which they are considered subhuman. **Second,** contempo- rary philosophers of **European** descent continue to labor in a **theoretical framework** that **has never been seriously tested by non-European philosophers**.¶ The difference between historical figures like Kant and Hegel and contemporary philosophers of European descent is that Kant and Hegel attempted to include race in their philosophical systems by con- structing a hierarchy of races that placed Africans and their descen- dants at the bottom**. Contemporary Euro/Anglo philosophers attempt to exclude race from their philosophical systems, arguing that race is not relevant.** However, the problem is that **hundreds of years of white male conquest of non-European peoples has produced a situation that has created significant inequalities among whites and Africana people**. This social reality does affect the life prospects of the disadvantaged social group. **The task of Africana philosophy is to challenge the pre- mature closure of Euro/Anglo philosophical systems**. The theoretical framework of Euro/Anglo philosophy has benefited whites while ignoring the struggles of people of African descent. **Hence, philosophy embodies a certain degree of whiteness which must be interrogated.** European Enlightenment thinkers defined themselves and their place in history against the backdrop of blackness, an Africanist presence. The construction of whiteness was an unconscious result of the con- struction of blackness and its alleged negative qualities.¶ A critique of whiteness and the whiteness of philosophy does not imply that the questions raised by white philosophers are not legiti- mate or important. It would be a huge mistake for Africana philoso- phers to attempt to sideline traditional philosophy. The questions raised by Plato, Aristotle, Kant, Hegel, Descartes, Quine, and others are very important questions. However, **if the object of study for the phi- losopher is the human condition, such study must acknowledge that we are constituted as raced beings and that race membership does af- fect one’s opportunities and the ways in which self-consciousness de- velops.** The task before us is to make philosophical theories truly universal and comprehensive by recognizing the ways in which we are situated as philosophers. The discourse that we call philosophy must not be reduced to any one locality but expanded so as to account for¶ all localities.

#### Non-consequentialist theories are paradoxical—if agency is so important, we shouldn’t make the world worse—default to intuitive implausibility.

**Alexander and Moore 12**, Larry Alexander [serves on the editorial boards of the journals Law & Philosophy, Ethics, Criminal Law and Philosophy, and the Ohio State Journal of Criminal Law] and Michael Moore [Illinois – Co-Director, Program in Law and Philosophy, One of the country's most prominent authorities on the intersection of law and philosophy], "Deontological Ethics", The Stanford Encyclopedia of Philosophy (Winter 2012 Edition), Edward N. Zalta (ed.), BE

-abiding by deont would result in more freedom violations, intuitively seems contradictory

On the other hand, deontological theories have their own weak spots. **The most glaring** one **is the seeming irrationality of our having duties or permissions to make the world morally worse.** Deontologists need their own, non-consequentialist model of rationality, one that is a viable alternative to the intuitively plausible, “act-to-produce-the-best-consequences” model of rationality that motivates consequentialist theories. Until this is done, **deontology will always be paradoxical.** Patient-centered versions of deontology cannot easily escape this problem, as we have shown. **It is not even clear that they have the conceptual resources to make agency important enough to escape this moral paradox. Yet even agent-centered versions face this paradox; having the conceptual resources** (of agency and agent-relative reasons) **is not the same as making it plausible just how a secular, objective morality can allow each person's agency to be so uniquely crucial to that person**.

### Advantage

#### American exceptionalism embedded in intellectual property negotiations enables circumvention – historical examples prove that WTO regulations are consistently restructured to favor American interests.

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The powerful position of the United States can also be shown in the surrounding circumstances of its decision to join the Berne Convention in 1989 after over a hundred years of hesitation (Hatch, 1989, pp. 171-2).23 The main reasons for that were initially the reluctance to give copyright protection to works by foreign authors,24 later the incompatibility of the “manufacturing clause”25 with the prohibition of formalities for copyright protection in the Berne Convention, and, after the Rome Revision of the Berne Convention in 1928, the reservation against the recognition of moral rights in Article 6bis (Hatch, 1989, pp. 173-175). The eventual accession of the United States was probably decisive in turning the Berne Convention into the principal international copyright convention as opposed to the Universal Copyright Convention (UCC),26 and accordingly, TRIPs incorporates the Berne Convention,27 but does not mention the UCC. However, the UCC was initiated mainly by the United States as an alternative international copyright protection measure under the auspices of UNESCO which would not conflict with existing US copyright law and compensate for the United States’ absence from the Berne Convention (Hatch, 1989, p. 176).28 When the United States withdrew from UNESCO in 1983, the utility of UNESCO for promoting US interests through the UCC diminished exceedingly, as well as US-American influence on international copyright law in general. This triggered a renewed interest of the United States to join Berne (Drahos with Braithwaite, 2002, p. 130; Bettig, 1996, pp. 221-3), coupled with the need to get a better grip on increasing piracy of US copyright material. At the same time the US sought to preserve existing national copyright law to the greatest extent possible, in that it decided to adopt a minimalist approach to compliance with the requirements of the Berne Convention (Hatch, 1989, pp. 178, 189). The Berne Convention Implementation Act of 1988 therefore abolished the obligation for foreign authors to register their copyright as a prerequisite for an infringement action, but preserved it for United States authors (Hatch, 1989, p. 194). Furthermore, it did not enact moral rights, and the United States maintained that existing statutes and common law fulfilled Article 6bis, including remedies based on the Copyright Act,29 the Lanham Act,30 and common law remedies under contract, defamation and unfair competition laws (Hatch, 1989, p. 182). Article 6bis (3) perhaps indicates the acceptability of such an interpretation. But the UK, which initially took the same approach to moral rights as the US, eventually felt obliged to enact specific moral rights in the Copyright Act 1988 in order to comply with Article 6bis, 31 and the same happened more recently in Australia.32 It was in fact not entirely clear whether the United States copyright regime really conformed to the moral rights obligations under Berne, but the US declared unilaterally that it did conform, and the US Congress stated that the implementing bill would neither expand nor reduce the scope of existing US copyright law. As an additional precaution, the US Congress made clear that the Berne Convention and its moral right provisions would not become self-executing upon ratification (Hatch, 1989, pp. 189-90). Given the political and economic position of the United States, a challenge as to the accuracy of these statements is probably confined to academic discussion; a political impact is unlikely. Any possible political pressure from other countries on the United States to adopt a more expansive moral rights regime, which would obviously conflict with the interests of the large US copyright industries, would realistically have no effect. The position of the United States on moral rights also left traces in TRIPs: the Berne Convention has been made part of TRIPs to a large extent, but its moral rights provisions under Article 6bis have been excluded,33 in part as a result of the successful opposition by the US film industry (Macmillan, 2002, p. 491; Drahos with Braithwaite, 2002, p. 176). Theoretically, however, if existing law of the United States had indeed been compliant with Article 6bis, the inclusion of the moral rights provisions in TRIPs should have been unproblematic. The fact that the Western world, particularly the United States, can dictate the terms of international legal rules by virtue of their obvious economic superiority, and can at the same time interpret these rules in a form suitable to their own interests without any realistic challenge, indicates a legal framework on which an “informal empire” is being built. Would a country like Togo or Oman be able to produce similar effects on the making of international trade conventions? In the future, however, especially China could have a very substantial influence.

#### The 1AC ignores race and capitalism as drivers of international conflict which makes their analysis useless.

Coughlin 2018 (Richard W. Coughlin received a Ph.D. in Political Science from Syracuse University and has taught at Drury University and Florida Gulf Coast University. At this latter institution he is currently an Associate Professor of Political Science. Coughlin has recently published articles in E-IR and the Journal of Political Science Education. “America-Abroad: Review” By Stephen Brooks and William Wohlforth New York: Oxford University Press, 2016 <https://www.e-ir.info/2018/08/23/review-america-abroad/> Aug 23, 2018) DR 18. thanks rooney!!

In sum, the costs of deep engagement are not prohibitive, its benefits are quite evident and the alternatives to it are notably worse. Brooks and Wohlforth make this argument on both empirical and theoretical grounds. The theoretical and empirical underpinnings of deep engagement or of any grand strategy comprise, in Brooks and Wohlforth’s terms, “a country’s bet on how the world works” (57). But there are questions that can be raised about their theoretical understanding of the state and the international system. In their account of deep engagement, the central actor is the United States. The United States is depicted as a unified bargaining agent acting on behalf of an undifferentiated national population. There is no discussion in Brooks and Wohlforth of domestic class structures, regional conflicts, or racial or ethnic divisions. Their conception of the domestic political order in the US (and elsewhere) is muted. As a bargaining agent, the state can secure optimal or suboptimal outcomes for its citizen clientele on the basis of its strategic interactions with other states. The international system is conceptualized as an arena of strategic interaction. What this view of the state excludes is any conception of state/society relations that drives foreign policy formation and shapes global politics**.** Consider, as an alternative view, Wolfgang Streeck’s (2016) **account of** state transformation rooted in capitalist class conflict. During the post-war period – the heyday of deep engagement – states within the OECD world functioned as tax states. They derived revenue from progressive tax structures and stabilized capitalist rule by means of servicing the accumulation and legitimation needs of capitalism.Responding to the crisis of accumulation during the 1970s, neoliberals cut taxes in order to increase the supply of investment**.** Rising federal deficits were the inevitable result of supply side economics. These deficits were financed by the willingness of bond markets, populated by the corporate and individual beneficiaries of tax cuts, to purchase government debt. Keeping the bond market happy entailed consolidating expenditures so that deficits and growing national debt burdens could be financed at acceptable rates of interest. There have been repeated rounds of tax cuts, growing deficits and calls of fiscal consolidation. Obama era sequestration was one recent outcome of fiscal consolidation. The latest tax cuts under the Trump are likely to produce new waves of consolidation that arelikely to generate intense levels of conflict. My point here is simply that these dynamics have some bearing on the development and maintenance of foreign policy grand strategy. The election of Trump, of course, stems from discontents of globalism and Trump’s political capacity to make nationalist sense to these discontents. As many analysts have remarked,we should focus not so much on Trump, but on the forces that produced him. Any account of these forces would have to take into consideration the transformations of the state under late capitalism. Withregard to Brooks and Wohlforth’s analysis,we need to hit the unmute button on domestic politics (and class conflict, in particular) in order to understand the social, political and economic dynamics that today areeviscerating the project of deep engagementand opening the door to a fundamentallymore chaotic and unstable future.