# 1NC

## 1NC -- K -- Settler Colonialism

#### 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.

#### Ideal theory is a form of abstraction away from the material violence of settler colonialism – their view from nowhere and belief in the existence of a neutral plane for deliberation 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.

#### 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.

#### Their fantasies of extinction scenarios infinitely defer a meaningful reckoning with settler colonialism

Dalley, 18—Assistant Professor of English at Daemen College (Hamish, “The deaths of settler colonialism: extinction as a metaphor of decolonization in contemporary settler literature,” Settler Colonial Studies, 8:1, 30-46, dml)

In this way, these settler-colonial narratives of extinction begin as a contemplation of endings and end as a way for settlers to persist. As in the classical solution to the settler-colonial paradox of origins, the native must be invoked and disavowed, and ultimately absorbed into the settler-colonial body as a means of accessing true belonging and the possibility of an authentic future in place. Veracini’s description of the settler-colonial historical imagination thus applies, in modified but no less appropriate form, to visions of futurity haunted by the possibility of death: Settler colonial themes include the perception of an impending catastrophe that prompts permanent displacement, the tension between tradition and adaptation and between sedentarism and nomadism, the transformative permanent shift to a new locale, the prospect of a safe ‘new land’, and the familial reproductive unit that moves as one and finally settles an arcadia that is conveniently empty.67 And yet that parallel means that it is not entirely true to say that settlers cannot contemplate a future without themselves, or that they lack the metaphorical resources to imagine their own demise. It is in fact characteristic of settler consciousness to continually imagine the end. But it does so through a paradox that echoes the ambivalence of Freud’s death drive: it is a fantasy of extinction that tips over into its opposite and becomes a method of symbolic preservation, a technique for delaying the end, for living on in the contemplation of death.68 The settler desire for death conceals that wish – the hope that, between the thought of the end and the act, someone will intervene, something will happen to show that it is not really necessary, that the settlers can stay, that they have value and can go on living. In this way, they make their own redemption, an extinction that is an act of self-preservation, deferring the hard reckoning we know we lack the courage to face, and avoid making the real changes – material, political, constitutional, practical – that might alter our condition of being and set us on the path to a real home in the world. We dream instead of ends, imagining worlds without us, thinking of what it would be like not to be. But at every moment we know that that the dream is nothing but a dream; we know we will awake and still be here, unchanged, unchanging, living on, forever. Thus settlers persist even beyond the moment of extinction they thought they wanted to arrive.

#### 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.

#### 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.

## 1NC – Case

### 1NC -- Offense

#### Entrepreneurial innovation’ shores up ideological support for neoliberal hegemony---causes securitized militarism and inevitable economic collapse

Ampuja 16 – Marko Ampuja, Lecturer in Media and Communication Studies in the Department of Social Research, University of Helsinki, “The New Spirit of Capitalism, Innovation Fetishism and New Information and Communication Technologies”, Javnost - The Public Journal of the European Institute for Communication and Culture, Vol. 23, No. 1, p. 19-20

Introduction

From the viewpoint of critical social theory, one of the most intriguing questions today concerns the legitimacy of neoliberal capitalism since the beginning of the global economic crisis in 2007. Historically, capitalism, whatever its national or regional varieties, has never been stable. It has been characterised by oscillations between periods of economic booms and busts, the latter of which have at times developed into more serious economic and political crises that have threatened the whole capitalist social order. Yet it can be argued that the current crisis is more serious than ever, “spreading more widely and rapidly through an interconnected global economy” (Streeck 2014, 35). This condition has obviously weakened the neoliberal doctrines of self-correcting markets. However, neoliberalism still remains the globally dominant political practice and economic philosophy among elites, seeking justification from increasingly zombie-like ideas that refuse to die even when they have been exposed as fallacies (Quiggin 2010).

Neoliberalism is by no means a coherent system of economic principles. Instead, it is riven with internal contradictions that spring, for example, from its uneasy mixture of free market rhetoric and actual state interventionism, or its simultaneous promotion of individual freedoms and an authoritarian submission to the commands of the market (Harvey 2005, 67–81). In addition, neoliberalism has changed over the decades, each time reconstituting itself in light of different political conditions (Candeias 2013, 10). In the recent conjuncture, its advocates have responded to the global economic crisis by turning towards more authoritarian directions (Bruff 2014), combining economic austerity with coercive policies of war on terror, border control, surveillance and other forms of “security” as responses to growing social discontent.

While neoliberalism keeps reinventing itself, it continues to draw strength from its long-standing ideological assumptions, according to which the market and the private are superior to the state and the public. Consequently, elite opinion and much of the mainstream media in advanced capitalist countries have accepted free capital mobility, privatisation of public enterprises and the removal of welfare benefits as economic policies to which there are no alternatives. Yet the hegemony of neoliberalism is not based on such “tough” economic prescriptions alone. They have been accompanied by positive claims according to which in the past 30 years or so we have moved into a new form of capitalism that signifies fun, creativity and innovation, often associated with new information and communication technologies (ICT) and the information society. These discourses have served as the “happy face” of neoliberal capitalism, offering motivations that have constructed its distinctive moral ethos. This ethos can be defined as “the new spirit of capitalism”, which “justifies people’s commitment to capitalism, and…makes this commitment attractive” (Boltanski and Chiapello 2005; Chiapello and Fairclough 2002, 186) in the neoliberal era.

This spirit has not only motivated corporate leaders, management consultants and politicians; it has been actively communicated to the general public, with the purpose of re-working their everyday understandings. A crucial aspect of this hegemonic work has been an attack against the “nanny state”, which is said to make people passive (Barfuss 2008). This proposition is linked to a general condemnation of the “paternalism” of Keynesian welfare states. By contrast, advocates of the “free market” have offered neoliberal policies as progressive forces, which signal a move from the supposedly rigid and bureaucratic social structures of earlier state-directed capitalism to more open and decentralised market structures. One of the key characters of this new phase of capitalism has been the innovative ICT entrepreneur, many of whom have achieved massive media fame (e.g. the late Steve Jobs). At the same time, new ICT products and innovations (e.g. PCs, mobile phones, smart phones, the Internet and social networking services) have symbolised all that is dynamic in capitalism and assumed to generate beneficial effects across society.

I argue that the mainstream intellectual and media discourses surrounding technological innovations, especially those regarding new ICT and ICT entrepreneurs, have been vital constituents of neoliberal ideology in its different stages. While technological innovations and the impact of new ICT have, of course, been studied much in and across different disciplines, their role in the construction and maintenance of neoliberal hegemony has not received enough attention. The aim of this article is to clarify the importance of mainstream ideas concerning technological innovations and especially new ICT for neoliberal hegemony and to call such mainstream ideas into question.

#### Fetishizing innovation results in austerity measures and wealth consolidation that hollow out the basis for entrepreneurship and only result in destructive speculative ventures---only the alt allows productive innovation

Ampuja 16 – Marko Ampuja, Lecturer in Media and Communication Studies in the Department of Social Research, University of Helsinki, “The New Spirit of Capitalism, Innovation Fetishism and New Information and Communication Technologies”, Javnost - The Public Journal of the European Institute for Communication and Culture, Vol. 23, No. 1, p. 31-33

Conclusion: The New Spirit of Capitalism and the Crisis of Neoliberalism

The severity of the post-2007 global economic crisis prompts the following question: are we moving towards a new hegemonic moment, quite distinctive from the previous one (the heyday of neoliberal settlement from the 1970s to 2007)? The new conjuncture marked by the crisis does not yet have a common label, as its consequences will continue to unfold in the years to come. Nonetheless, it represents a major challenge to the neoliberal hegemony and its different ideological articulations. Although the elite consensus supporting this model still remains in place, the disruptions caused by the global economic crisis are so severe that they havemade it necessary to construct newkinds of political–economic solutions and ideological defences of capitalism (Wolff and Resnick 2012, 341ff.; Demirovic 2009, 56). It is quite possible that the crisis will lead to more directly authoritarian or even military forms of power. Yet the crisis also has the potential to energise counter-hegemonic movements. So far the growing contestation of neoliberalism has not resulted in a broad shift in more democratic–socialist political directions. Instead, the current historical conjuncture can best be described as an “interregnum”, a situation in which the “old is dying and the new cannot be born” and where “a great variety of morbid symptoms appear” (Gramsci 1971, 276). The new spirit of capitalism and the liberal fetishisms of innovation have played a key role in constituting the neoliberal hegemony in previous times. What kind of status do they have now, in times of a more turbulent neoliberal “interregnum”?

On one hand, the media are filled with legitimisation discourses that continue to decry the welfare state as a composite of bureaucratic structures which stand in the way of the entrepreneurial spirit of innovation. On the other, it seems that such liberal discourses are increasingly difficult to maintain in the current crisis conjuncture. This is due, in particular, to policies of austerity have been central to how western neoliberal governments have responded to the crisis, insistent on rolling back the welfare state and the public sector, while doing little to counter the increasing concentration of wealth and income inequality (Schäfer and Streeck 2013). These policies pose threats to the capacity to develop new technological innovations in leading capitalist countries. Streeck (2014, 57–58) points out that “inequality depresses growth” and invites “speculative rather than productive investment”, for the “concentration of income at the top must detract from effective demand and make capital owners look for speculative profit opportunities outside the ‘real economy’”. This is certainly not a recipe for fostering healthy “innovation systems”, save perhaps the creation of new, more destabilising financial innovations. Furthermore, austerity policies lead to reductions in public spending on education and research, which has been, as noted, crucial for the capacity to innovate new technologies in the past. Perhaps not coincidentally, there has recently been much discussion within mainstream US economic commentary about “innovation pessimism”; namely, the suggestion that leading capitalist countries are increasingly lacking the ability to develop new technologies that would generate economic growth (for example, Gordon 2012; The Economist, 12 January 2013).

#### Disease won’t cause extinction

Farquhar 17 – Sebastian Farquhar, Leader of the Global Priorities Project (GPP) at the Centre for Effective Altruism, et al., “Existential Risk: Diplomacy and Governance”, https://www.fhi.ox.ac.uk/wp-content/uploads/Existential-Risks-2017-01-23.pdf

1.1.3 Engineered pandemics

For most of human history, natural pandemics have posed the greatest risk of mass global fatalities.37 However, there are some reasons to believe that natural pandemics are very unlikely to cause human extinction. Analysis of the International Union for Conservation of Nature (IUCN) red list database has shown that of the 833 recorded plant and animal species extinctions known to have occurred since 1500, less than 4% (31 species) were ascribed to infectious disease.38 None of the mammals and amphibians on this list were globally dispersed, and other factors aside from infectious disease also contributed to their extinction. It therefore seems that our own species, which is very numerous, globally dispersed, and capable of a rational response to problems, is very unlikely to be killed off by a natural pandemic. One underlying explanation for this is that highly lethal pathogens can kill their hosts before they have a chance to spread, so there is a selective pressure for pathogens not to be highly lethal. Therefore, pathogens are likely to co-evolve with their hosts rather than kill all possible hosts.39

#### Securitizing disease is a means of threat projection on the Global South that causes the imposition of violent management mechanisms---it also turns the case by pushing responses away from civil society, causing the state to hoard treatment, and overfocusing on specific threats at the expense of general health

Balzacq 16 – Thierry Balzacq, Professor of Political Science and International Relations at Namur University, The Institute for Strategic Research, Sarah Léonard University of Dundee, and Jan Ruzicka, Aberystwyth University, “‘Securitization’ Revisited: Theory and Cases”, International Relations, Vol. 30(4), p. 512-513

Global health

Health issues have also received growing attention, notably as a result of the dramatic increase in the volume and density of global forms of mobility, which have affected global pandemics.142 Scholars have mainly focused on the normative and methodological dimensions of the securitization of health issues. The normative question has taken the following form: should health problems be securitized? The methodology-related enquiries have questioned what accounts for the success of securitizing moves concerning health issues. The answers provided to these questions have also had broader implications for securitization theory.

Elbe highlights, for instance, the normative dilemma inherent to the securitization of HIV/AIDS.143 On the one hand, securitization has the benefits of raising awareness, which enables a wider recognition of the deleterious effects of the issue and a more resolute commitment of resources in order to curb the pandemic. On the other hand, securitization also carries costs. One is that the securitization of HIV/AIDS could lead to a massive state involvement obscuring the role of other actors. For example, responses to the disease could be ‘pushed away from civil society toward military and intelligence organizations with the power to override the civil liberties of persons with HIV/AIDS’.144 Another negative feature of the securitization of HIV/AIDS is the activation of a ‘threat-defence logic’. Particularly in developing countries, armed forces would receive high priority for medical treatment. It can therefore be concluded that securitizing an issue should not be the a priori preferred option. Thus, one of the strengths of securitization theory is that it highlights the ‘normative choices that are always involved in framing issues as security issues and [… warns] of potential dangers inherent in doing so’.145

In addition, Youde argues that the disadvantages of securitizing health issues, in general, and the avian flu, in particular, ‘strongly outweigh the positives’.146 He builds his argument upon detailed empirical analysis of official statements and identifies three main costs of the securitization of avian flu. First, the securitization of avian flu can mobilize inappropriate responses, as it leads to health issues being addressed with traditional security means, such as armed forces. Second, securitization can prompt governments to devote a disproportionate amount of resources to counter a specific threat at the expense of tackling other issues.147 An extreme focus on a single disease can actually render a state particularly vulnerable to other threats, as its bureaucratic structures and human and financial assets all become focused on an ‘absolute priority’. Third, Youde argues that the securitization of avian flu has worsened the gap between Western states and the rest of the world. By often blaming the South for spreading the disease, Western states have imposed their anxieties, perception of the problem and specific management mechanisms upon the Third World.