# 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 – they are not getting out of a link to this after literally claiming that private property and free market competition is good.

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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.

#### The settler colonial project requires the disappearance or assimilation of the Native, who produces Settler anxieties that confound national belonging – this is an ongoing genocide that also exists in premature moves to reconciliation and the desire to not have to deal with the Indian problem anymore.

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

Recently in a symposium on the significance of Liberal Arts education in the United States, Eve presented an argument that **Liberal** **Arts education has historically excluded any attention to or analysis of settler colonialism.** **This, Eve posited, makes Liberal Arts education complicit in the project of settler colonialism and, more so, has rendered the truer project of Liberal Arts education something like trying to make the settler indigenous to the land he occupies.** The attendees were titillated by this idea, nodding and murmuring in approval and it was then that Eve realized that she was trying to say something incommensurable with what they expected her to say. She was completely misunderstood. **Many in the audience heard this observation: that the work of Liberal Arts education is in part to teach settlers to be indigenous, as something admirable, worthwhile, something wholesome, not as a problematic point of evidence about the reach of the settler colonial erasure.** Philip Deloria (1998) explores how and why the settler wants to be made indigenous, even if only through disguise, or other forms of playing Indian. Playing Indian is a powerful U.S. pastime, from the Boston Tea Party, to fraternal organizations, to new age trends, to even those aforementioned Native print underwear. Deloria maintains that, “From the colonial period to the present, the Indian has skulked in and out of the most important stories various Americans have told about themselves” (p. 5). The indeterminacy of American identities stems, in part, from the nation’s inability to deal with Indian people. Americans wanted to feel a natural affinity with the continent, and it was Indians who could teach them such aboriginal closeness. Yet, in order to control the landscape they had to destroy the original inhabitants. (Deloria, 1998, p.5) L. Frank Baum (author of The Wizard of Oz) famously asserted in 1890 that the safety of white settlers was only guaranteed by the “total annihilation of the few remaining Indians” (as quoted in Hastings, 2007). D.H. Lawrence, reading James Fenimore Cooper (discussed at length later in this article), Nathaniel Hawthorne, Hector St. John de Crevecoeur, Henry David Thoreau, Herman Melville, Walt Whitman and others for his Studies in Classic American Literature (1924), describes Americans’ fascination with Indigeneity as one of simultaneous desire and repulsion (Deloria, 1998). **“No place,” Lawrence observed, “exerts its full influence upon a newcomer until the old inhabitant is dead or absorbed.”** Lawrence argued that in order to meet the “demon of the continent” head on and this finalize the “unexpressed spirit of America,” white Americans needed either to destroy Indians of assimilate them into a white American world...both aimed at making Indians vanish from the landscape. (Lawrence, as quoted in Deloria, 1998, p. 4). Everything within a settler colonial society strains to destroy or assimilate the Native in order to disappear them from the land - this is how a society can have multiple simultaneous and conflicting messages about Indigenous peoples, such as all Indians are dead, located in faraway reservations, that contemporary Indigenous people are less indigenous than prior generations, and that all Americans are a “little bit Indian.” These desires to erase - to let time do its thing and wait for the older form of living to die out, or to even help speed things along (euthanize) because the death of pre-modern ways of life is thought to be inevitable - these are all desires for another kind of resolve to the colonial situation, resolved through the absolute and total destruction or assimilation of original inhabitants. Numerous scholars have observed that **Indigeneity prompts multiple forms of settler anxiety, even if only because the presence of Indigenous peoples - who make a priori claims to land and ways of being - is a constant reminder that the settler colonial project is incomplete** (Fanon, 1963; Vine Deloria, 1988; Grande, 2004; Bruyneel, 2007). The easy adoption of decolonization as a metaphor (and nothing else) is a form of this anxiety, because it is a premature attempt at reconciliation. The absorption of decolonization by settler social justice frameworks is one way the settler, disturbed by her own settler status, tries to escape or contain the unbearable searchlight of complicity, of having harmed others just by being one’s self. The desire to reconcile is just as relentless as the desire to disappear the Native; it is a desire to not have to deal with this (Indian) problem anymore.

#### The alternative is an incommensurable project of decolonization that necessitates the repatriation of indigenous lands, the abolition of slavery and property, and the dismantling of the global imperial metropole – this is a complete disavowal of settler futurity that refuses to be punctuated by narratives of reconciliation.

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

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

#### The role of debate is to disrupt settler logics that produce epistemic or materil violence – we control the question of uniqueness as academic institutions are currently saturated with anti-indigenous sentimentality – decolonization is the only ethical demand your ballot should be oriented towards

## 1NC -- Extra T

#### Interpretation- the affirmative must not garner offense from anything except for the member nations of the WTO reducing IP protections for medicines

#### Violation – they defend all intellectual property protections being conceptually bad, this is exacerbated by the fact that they literally didn’t include a plan text in the doc which means my only basis for determining their scope of offense is their cards

#### 1. First is clash – having an agreed-upon stasis point is critical for left on left debates, key to creating an accessible point of clash to evaluate the efficacy of radical political engagement—predictable ground and clash are key to evaluating whether the method of the affirmative is good– the ability to defend a position against a knowledgeable opponent is key to export politics ---

#### 2. Predictable limits – they remove all topic limits by justifying any expansion of the topic beyond the resolutional wording, this is impossible for me to predict and desroys all semblance of in depth debate

#### 3. TVA – read evidence purely about medical intellectual property and defend that the resolutional mandate is in line with practical reason

#### 4. SSD solves all of their offense

#### 4. Fairness – a predictable limit is the only way to give the NEG a chance to win – radical AFF choice shifts the grounds for the debate and puts the AFF far ahead – anything other than a topical plan structurally favors the affirmative. And, fairness is an intrinsic good ­– debate is a game and requires effective competition - controls the internal link all their education claims.

#### Drop the Debater on T – they foreclose the ability to generate neg offense so they should lose

#### Vote on competing interps over reasonability:

#### a. no brightline for reasonability – forces judge intervention

#### b. incentivizes a race to the bottom –

#### No impact turns or RVIs – A~ Perfcon – if T’s bad and you vote for them on that arg, you’re voting on T. B~ Substance – if T’s bad then we should try debating on substance – impact turns force me to go for T since I need to defend my position. C~ Dead end – strategy guides debates so they’ll desire that people read T to beat them on the impact turn – that proves their strategy is reactive and can’t solve since they rely on the structures they critique.

## 1NC -- Case

### 1NC -- Framework

#### 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**.

#### Threshold objection—universal law ignores that a maxim’s morality sometimes depends on how many act upon it.

Parfit 11 Derek, philosopher with great hair. “On What Matters” 2011. IB

Whether it is wrong to act on some maxim sometimes depends on how many people act upon it. There are some maxims on which it is permissible or good for some people to act, though it would be very bad if everyone acted on them. Two examples are the maxims ‘Consume food without producing any,’ and ‘Have no children, so as to devote my life to philosophy’. Most of us could not rationally will it to be true that everyone acts on these maxims, so Kant’s Law of Nature Formula condemns such acts even when they are not wrong. This objection is partly answered by the fact that most people’s maxims implicitly take into account what other people are doing. For a complete answer, we must revise Kant’s formula.