# 1NC

### 1

#### Interpretation: “intellectual property protections” is a generic bare plural. The aff may not defend WTO member nations reducing a subset of intellectual property protections.

#### The upward entailment test and adverb test determine the genericity of a bare plural

Leslie and Lerner 16 [Sarah-Jane Leslie, Ph.D., Princeton, 2007. Dean of the Graduate School and Class of 1943 Professor of Philosophy. Served as the vice dean for faculty development in the Office of the Dean of the Faculty, director of the Program in Linguistics, and founding director of the Program in Cognitive Science at Princeton University. Adam Lerner, PhD Philosophy, Postgraduate Research Associate, Princeton 2018. From 2018, Assistant Professor/Faculty Fellow in the Center for Bioethics at New York University. Member of the [Princeton Social Neuroscience Lab](http://psnlab.princeton.edu/).] “Generic Generalizations.” Stanford Encyclopedia of Philosophy. April 24, 2016. <https://plato.stanford.edu/entries/generics/> TG

1. Generics and Logical Form

In English, generics can be expressed using a variety of syntactic forms: bare plurals (e.g., “tigers are striped”), indefinite singulars (e.g., “a tiger is striped”), and definite singulars (“the tiger is striped”). However, none of these syntactic forms is dedicated to expressing generic claims; each can also be used to express existential and/or specific claims. Further, some generics express what appear to be generalizations over individuals (e.g., “tigers are striped”), while others appear to predicate properties directly of the kind (e.g., “dodos are extinct”). These facts and others give rise to a number of questions concerning the logical forms of generic statements.

1.1 Isolating the Generic Interpretation

Consider the following pairs of sentences:

(1)a.Tigers are striped.

b.Tigers are on the front lawn.

(2)a.A tiger is striped.

b.A tiger is on the front lawn.

(3)a.The tiger is striped.

b.The tiger is on the front lawn.

The sentence pairs above are prima facie syntactically parallel—both are subject-predicate sentences whose subjects consist of the same common noun coupled with the same, or no, article. However, the interpretation of first sentence of each pair is intuitively quite different from the interpretation of the second sentence in the pair. In the second sentences, we are talking about some particular tigers: a group of tigers in ([1b](https://plato.stanford.edu/entries/generics/#ex1b)), some individual tiger in ([2b](https://plato.stanford.edu/entries/generics/#ex2b)), and some unique salient or familiar tiger in ([3b](https://plato.stanford.edu/entries/generics/#ex3b))—a beloved pet, perhaps. In the first sentences, however, we are saying something general. There is/are no particular tiger or tigers that we are talking about.

The second sentences of the pairs receive what is called an existential interpretation. The hallmark of the existential interpretation of a sentence containing a bare plural or an indefinite singular is that it may be paraphrased with “some” with little or no change in meaning; hence the terminology “existential reading”. The application of the term “existential interpretation” is perhaps less appropriate when applied to the definite singular, but it is intended there to cover interpretation of the definite singular as referring to a unique contextually salient/familiar particular individual, not to a kind.

There are some tests that are helpful in distinguishing these two readings. For example, the existential interpretation is upward entailing, meaning that the statement will always remain true if we replace the subject term with a more inclusive term. Consider our examples above. In ([1b](https://plato.stanford.edu/entries/generics/#ex1b)), we can replace “tiger” with “animal” salva veritate, but in ([1a](https://plato.stanford.edu/entries/generics/#ex1a)) we cannot. If “tigers are on the lawn” is true, then “animals are on the lawn” must be true. However, “tigers are striped” is true, yet “animals are striped” is false. ([1a](https://plato.stanford.edu/entries/generics/#ex1a)) does not entail that animals are striped, but ([1b](https://plato.stanford.edu/entries/generics/#ex1b)) entails that animals are on the front lawn (Lawler 1973; Laca 1990; Krifka et al. 1995).

Another test concerns whether we can insert an adverb of quantification with minimal change of meaning (Krifka et al. 1995). For example, inserting “usually” in the sentences in ([1a](https://plato.stanford.edu/entries/generics/#ex1a)) (e.g., “tigers are usually striped”) produces only a small change in meaning, while inserting “usually” in ([1b](https://plato.stanford.edu/entries/generics/#ex1b)) dramatically alters the meaning of the sentence (e.g., “tigers are usually on the front lawn”). (For generics such as “mosquitoes carry malaria”, the adverb “sometimes” is perhaps better used than “usually” to mark off the generic reading.)

#### It applies to “medicines” – 1] upward entailment test – “reduce intellectual property protections for medicines” doesn’t entail reducing protections for aids, because it doesn’t prove that we should derestrict other beneficial tech, 2] adverb test – member nations “ought to usually reduce intellectual property protections for medicines” doesn’t substantially change resolutional meaning, 3] predicate level – the rez is an individual level predicate not a stage level because moral obligations in ought statements are long-lasting as opposed to fleeting phases

#### **Violation – they only defend \_\_\_\_**

#### Vote neg:

#### 1] Limits – you can pick anything from patents to evergreening to random delay and there’s no universal disad since each one has a different function and implication for health, tech, and relations – explodes neg prep and leads to random medicine of the week affs which makes cutting stable neg links impossible. PICs don’t solve – it’s absurd to say neg potential abuse justifies the aff being flat out not T, which leads to a race towards abuse. Limits key to reciprocal engagement since they create a caselist for neg prep. TRIPS regulation doesn’t check bc the aff isn’t one of the 4 defined.

#### 2] TVA – read the aff as an advantage to a whole rez aff.

#### Voters:

#### Fairness and education are voters – debate’s a game that needs rules to evaluate it and education gives us portable skills for life like research and thinking.

#### Precision o/w – anything else justifies the aff arbitrarily jettisoning words in the resolution at their whim which decks negative ground and preparation because the aff is no longer bounded by the resolution.

#### Drop the debater – a) they have a 7-6 rebuttal advantage and the 2ar to make args I can’t respond to, b) it deters future abuse and sets a positive norm.

#### Use competing interps – a) reasonability invites arbitrary judge intervention since we don’t know your bs meter, b) collapses to competing interps – we justify 2 brightlines under an offense defense paradigm just like 2 interps.

#### No RVIs – a) illogical – you shouldn’t win for being fair – it’s a litmus test for engaging in substance, b) norming – I can’t concede the counterinterp if I realize I’m wrong which forces me to argue for bad norms, c) baiting – incentivizes good debaters to be abusive, bait theory, then collapse to the 1AR RVI, d) topic ed – prevents 1AR blipstorm scripts and allows us to get back to substance after resolving theory

#### Evaluate T before 1AR theory – a) norms – we only have a couple months to set T norms but can set 1AR theory norms anytime, b) magnitude – T affects a larger portion of the debate since the aff advocacy determines every speech after it

### 2

#### **Interp and Violation – affs must reduce intellectual property protections for medicines.**

#### Medicine is treatment for illness or injury

Cambridge Dictionary 21 [Cambridge Dictionary, 2021, <https://dictionary.cambridge.org/us/dictionary/english/medicine>] //Lex AKo

[treatment](https://dictionary.cambridge.org/us/dictionary/english/treatment) for [illness](https://dictionary.cambridge.org/us/dictionary/english/illness) or [injury](https://dictionary.cambridge.org/us/dictionary/english/injury), or the [study](https://dictionary.cambridge.org/us/dictionary/english/study) of this:

#### The aff is about data exclusvity which doesn’t apply -- Data exclusivity are not IPP for medicine.

Thrasher 21 Thrasher, Rachel. “How Data Exclusivity Laws Impact Drug Prices:” *Global Development Policy Center Chart of the Week How Data Exclusivity Laws Impact Drug Prices Comments*, 25 May 2021, [www.bu.edu/gdp/2021/05/25/chart-of-the-week-how-data](http://www.bu.edu/gdp/2021/05/25/chart-of-the-week-how-data)-exclusivity-laws-impact-drug-prices/. // Lex AKo

**Data exclusivity is a form of intellectual property protection that applies specifically to data from** pharmaceutical **clinical trials. While innovator firms run their own clinical trials to gain marketing approval, generic manufacturers typically rely on the innovator’s clinical trials for the same approval. Data exclusivity rules keep generic firms from relying on that data for 5 to 12 years, depending on the specific law.** Data exclusivity operates independently of patent protection and **can block generic manufacturers from gaining marketing approval even if the patent has expired or the original pharmaceutical product does not qualify for patent protection.** Although data exclusivity laws are matters of domestic legislation, the United States, the EU and others increasingly demand in their free trade agreement (FTA) negotiations that their trading partners protect clinical trial data in this way. **Data exclusivity is just one of a host of “TRIPS-plus” treaty provisions designed to raise the overall level of intellectual property protection for innovator firms**. Although the WTO’s Agreement on Trade-Related Intellectual Property Rights (TRIPS) does require Member states to protect clinical trial and other data from “unfair commercial use,” it does not require exclusivity rules that block the registration of generic products.

#### Clinical trials are a study for medicine to then get protected, but not medicine themselves

Review [Institutional Review, "Clinical Trials," <https://www.phrma.org/policy-issues/Research-Development/Clinical-Trials>] //Lex AKo

A clinical trial is a carefully designed study which tests the benefits and risks of a specific medical treatment or intervention, such as a new drug or a behavior change (e.g., diet). Once researchers have completed a rigorous screening and preclinical testing process, the company files an Investigational New Drug (IND) application with the U.S. Food and Drug Administration (FDA). This application allows the investigational medicine to be tested in human volunteers in clinical trials.

#### Negate:

#### 1] Limits – explodes the topic to anything from random trade secrets to trademark pictures and symbols to copyrights which destroys core generics like innovation that obviously don’t link to trademarks – core of the topic is about proprietary rights to ideas and innovations, not random trade secrets for a company’s marketing strategies or customer lists. A big case list with no unifying generics destroys neg prep – disincentivizes in depth topic research and leaves the neg behind.

#### 2] Precision o/w – anything else justifies the aff arbitrarily jettisoning words in the resolution at their whim which decks negative ground and preparation because the aff is no longer bounded by the resolution.

### 3

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

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

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

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

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

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

Copyright Case Study: The Cameron Case

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

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

Patent Case Study: The Igloolik Case

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

Trademark Case: The Snumeymux Case

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

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

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

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

Case Studies Summary

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

Gnaritas Nullius (Nobody’s Knowledge)

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

#### The aff definitely necessitates gnaritas nulliuseven if the plan doesn’t – entire ac relies oon copying being good etc and wing kwnoege

#### The project of environmentalism is epistemologically bound in structures of Western science and settler law – the 1AC’s understanding of ecological destruction is the active erasure of indigeneity from the land.

Bacon 18 [JM Bacon is an interdisciplinary scholar with a Ph.D. in Environmental Sciences, Studies and Policy from the University of Oregon. His research projects consider the relationship between identity, culture, and environmental values and practices. He is currently a Visiting Assistant Professor in the Sociology Department at Grinnell College.] “Settler colonialism as eco-social structure and the production of colonial ecological violence.” Environmental Sociology, 5:1, 59-69. <https://www.tandfonline.com/doi/abs/10.1080/23251042.2018.1474725> TG

Even deeply committed environmentalists with a stated commitment to place often have difficulty when it comes to questions that touch upon the settler-colonial structuring of those very places they are committed to. This results not only from widespread erasure but also from the settler-colonial roots of US environmentalism. These roots and their lasting impacts are important if sociology wishes to have a better understanding of the way settler colonialism structures eco-social relations. Thinking of eco-social disruption as purely the product of aggressive extraction, or capitalist expansion is not sufficient.

Mainstream environmental movements – particularly those with wilderness, conservation, preservation, and reform frameworks – are epistemologically bound up with settler colonialism. They rely on Western science and law as their foundation for identifying and addressing environmental concerns, and in general exhibit no explicit concern for social justice, nor any acknowledgment of Indigenous peoples as contemporary members of the world, but rather frame their arguments around generalized human mismanagement of the Earth’s natural resources. Thankfully this is changing, albeit slowly. Yet, consider this type of phrasing, common across a wide range of environmental discourses, which lays the blame for environmental crisis indiscriminately on all humans: “Few problems are less recognized, but more important than, the accelerating disappearance of the Earth’s biological resources. In pushing other species to extinction, humanity is busy sawing off the limb on which it is perched” (Miller and Spoolman 2012, 48). Or, “[T]hus human beings are now carrying out a large scale geophysical experiment of a kind that could not have happened in the past nor be reproduced in the future. Within a few centuries we are returning to the atmosphere and oceans the concentrated organic carbon stored in sedimentary rocks over hundreds of millions of years.” (McKibben [1989] 2006)

#### Extinction impacts are fabricated by the logic of elimination - settlers have a psychological investment in imagining the end of the world to create a sense of white vulnerability at the expense of enacting decolonization.

Dalley 16

(Hamish Dalley received his Ph.D. from the Australian National University in 2013, and is now an Assistant Professor of English at Daemen College, Amherst, New York, where he is responsible for teaching in World and Postcolonial Literatures., (2016): The deaths of settler colonialism: extinction as a metaphor of decolonization in contemporary settler literature, Settler Colonial Studies, DOI: 10.1080/2201473X.2016.1238160, JKS)

Settlers love to contemplate the possibility of their own extinction; to read many contemporary literary representations of settler colonialism is to find settlers strangely satisfied in dreaming of ends that never come. This tendency is widely prevalent in English-language representations of settler colonialism produced since the 1980s: the possibility of an ending – the likelihood that the settler race will one day die out – is a common theme in literary and pop culture considerations of colonialism’s future. Yet it has barely been remarked how surprising it is that this theme is so present. For settlers, of all people, to obsessively ruminate on their own finitude is counterintuitive, for few modern social formations have been more resistant to change than settler colonialism. With a few excep- tions (French Algeria being the largest), the settler societies established in the last 300 years in the Americas, Australasia, and Southern Africa have all retained the basic features that define them as settler states – namely, the structural privileging of settlers at the expense of indigenous peoples, and the normalization of whiteness as the marker of pol- itical agency and rights – and they have done so notwithstanding the sustained resistance¶ that has been mounted whenever such an order has been built. Settlers think all the time that they might one day end, even though (perhaps because) that ending seems unlikely ever to happen. The significance of this paradox for settler-colonial literature is the subject of this article.¶ Considering the problem of futurity offers a useful foil to traditional analyses of settler- colonial narrative, which typically examine settlers’ attitudes towards history in order to highlight a constitutive anxiety about the past – about origins. Settler colonialism, the argument goes, has a problem with historical narration that arises from a contradiction in its founding mythology. In Stephen Turner’s formulation, the settler subject is by definition one who comes from elsewhere but who strives to make this place home. The settlement narrative must explain how this gap – which is at once geographical, historical, and existential – has been bridged, and the settler transformed from outsider into indigene. Yet the transformation must remain constitutively incomplete, because the desire to be at home necessarily invokes the spectre of the native, whose existence (which cannot be disavowed completely because it is needed to define the settler’s difference, superior- ity, and hence claim to the land) inscribes the settler’s foreignness, thus reinstating the gap between settler and colony that the narrative was meant to efface.1 Settler-colonial narrative is thus shaped around its need to erase and evoke the native, to make the indigene both invisible and present in a contradictory pattern that prevents settlers from ever moving on from the moment of colonization.2 As evidence of this constitutive contradiction, critics have identified in settler-colonial discourse symptoms of psychic distress such as disavowal, inversion, and repression.3 Indeed, the frozen temporality of settler-colonial narrative, fixated on the moment of the frontier, recalls nothing so much as Freud’s description of the ‘repetition compulsion’ attending trauma.4 As Lorenzo Veracini puts it, because:¶ ‘settler society’ can thus be seen as a fantasy where a perception of a constant struggle is juxtaposed against an ideal of ‘peace’ that can never be reached, settler projects embrace and reject violence at the same time. The settler colonial situation is thus a circumstance where the tension between contradictory impulses produces long-lasting psychic conflicts and a number of associated psychopathologies.5¶ Current scholarship has thus focused primarily on settler-colonial narrative’s view of the past, asking how such a contradictory and troubled relationship to history might affect present-day ideological formations. Critics have rarely considered what such narratological tensions might produce when the settler gaze is turned to the future. Few social formations are more stubbornly resistant to change than settlement, suggesting that a future beyond settler colonialism might be simply unthinkable. Veracini, indeed, suggests that settler-colonial narrative can never contemplate an ending: that settler decolonization is inconceivable because settlers lack the metaphorical tools to imagine their own demise.6 This article outlines why I partly disagree with that view. I argue that the narratological paradox that defines settler-colonial narrative does make the future a problematic object of contemplation. But that does not make settler decolonization unthinkable per se; as I will show, settlers do often try to imagine their demise – but they do so in a way that reasserts the paradoxes of their founding ideology, with the result that the radical potentiality of decolonization is undone even as it is invoked.¶ I argue that, notwithstanding Veracini’s analysis, there is a metaphor via which the end of settler colonialism unspools – the quasi-biological concept of extinction, which, when deployed as a narrative trope, offers settlers a chance to consider and disavow their demise, just as they consider and then disavow the violence of their origins. This article traces the importance of the trope of extinction for contemporary settler-colonial litera- ture, with a focus on South Africa, Canada, and Australia. It explores variations in how the death of settler colonialism is conceptualized, drawing a distinction between his- torio-civilizational narratives of the rise and fall of empires, and a species-oriented notion of extinction that draws force from public anxiety about climate change – an invocation that adds another level of ambivalence by drawing on ‘rational’ fears for the future (because climate change may well render the planet uninhabitable to humans) in order to narrativize a form of social death that, strictly speaking, belongs to a different order of knowledge altogether. As such, my analysis is intended to draw the attention of settler- colonial studies toward futurity and the ambivalence of settler paranoia, while highlighting a potential point of cross-fertilization between settler-colonial and eco-critical approaches to contemporary literature.¶ That ‘extinction’ should be a key word in the settler-colonial lexicon is no surprise. In Patrick Wolfe’s phrase,7 settler colonialism is predicated on a ‘logic of elimination’ that tends towards the extermination – by one means or another – of indigenous peoples.8 This logic is apparent in archetypal settler narratives like James Fenimore Cooper’s The Last of the Mohicans (1826), a historical novel whose very title blends the melancholia and triumph that demarcate settlers’ affective responses to the supposed inevitability of indigenous extinction. Concepts like ‘stadial development’ – by which societies progress through stages, progressively eliminating earlier social forms – and ‘fatal impact’ – which names the biological inevitability of strong peoples supplanting weak – all contribute to the notion that settler colonialism is a kind of ‘ecological process’ that necessitates the extinction of inferior races. What is surprising, though, is how often the trope of extinction also appears with reference to settlers themselves; it makes sense for settlers to narrate how their presence entails others’ destruction, but it is less clear why their attempts to imagine futures should presume extinction to be their own logical end as well.¶ The idea appears repeatedly in English-language literary treatments of settler colonial- ism. Consider, for instance, the following rumination on the future of South African settler society, from Olive Schreiner’s 1883 Story of an African Farm:¶ It was one of them, one of those wild old Bushmen, that painted those pictures there. He did not know why he painted but he wanted to make something, so he made these. [...] Now the Boers have shot them all, so that we never see a yellow face peeping out among the stones. [...] And the wild bucks have gone, and those days, and we are here. But we will be gone soon, and only the stones will lie on, looking at everything like they look now.10¶ In this example, the narrating settler character, Waldo, recognizes prior indigenous inha- bitation but his knowledge comes freighted with an expected sense of biological super- iority, made apparent by his description of the ‘Bushman’s’ ‘yellow face’, and lack of mental self-awareness. What is not clear is why Waldo’s contemplation of colonial geno- cide should turn immediately to the assumption that a similar fate awaits his people as well. A similar presumption of racial vulnerability permeates other late nineteenth- century novels from the imperial metropole, such as Dracula and War of the Worlds,¶ which are plotted around the prospect of invasions that would see the extinction of British imperialism, and, in the process, the human species.¶ Such anxieties draw energy from a pattern of settler defensiveness that can be observed across numerous settler-colonial contexts. Marilyn Lake’s and Henry Reynold’s account of the emergence of transnational ‘whiteness’ highlights the paradoxical fact that while white male settlers have been arguably the most privileged class in history, they have routinely perceived themselves to be ‘under siege’, threatened with destruction to the extent that their very identity of ‘whiteness was born in the apprehension of immi- nent loss’.11 The fear of looming annihilation serves a powerful ideological function in settler communities, working to foster racial solidarity, suppress dissent, and legitimate violence against indigenous populations who, by any objective measure, are far more at risk of extermination than the settlers who fear them. Ann Curthoys and Dirk Moses have traced this pattern in Australia and Israel-Palestine, respectively.12 This scholarship suggests that narratives of settler extinction are acts of ideological mystification, obscuring the brutal inequalities of the frontier behind a mask of white vulnerability – an argument with which I sympathize. However, this article shows how there is more to settler-colonial extinction narratives than bad faith. I argue that we need a more nuanced understanding of how they encode a specifically settler-colonial framework for imagining the future, one that has implications for how we understand contemporary literatures from settler societies, and which allows us to see extinction as a genuine, if flawed, attempt to envisage social change.¶ In the remainder of this paper I consider extinction’s function as a metaphor of decolonization. I use this phrase to invoke, without completely endorsing, Tuck and Yang’s argu- ment that to treat decolonization figuratively, as I argue extinction narratives do, is necessarily to preclude radical change, creating opportunities for settler ‘moves to innocence’ that re-legitimate racial inequality.13 The counterview to this pessimistic perspec- tive is offered by Veracini, who suggests that progressive change to settler-colonial relationships will only happen if narratives can be found that make decolonization think- able.14 This article enters the debate between these two perspectives by asking what it means for settler writers to imagine the future via the trope of extinction. Does extinction offer a meaningful way to think about ending settler colonialism, or does it re-activate settler-colonial patterns of thought that allow exclusionary social structures to persist?¶ I explore this question with reference to examples of contemporary literary treatments of extinction from select English-speaking settler-colonial contexts: South Africa, Australia, and Canada.15 The next section of this article traces key elements of extinction narrative in a range of settler-colonial texts, while the section that follows offers a detailed reading of one of the best examples of a sustained literary exploration of human finitude, Margaret Atwood’s Maddaddam trilogy (2003–2013). I advance four specific arguments. First, extinction narratives take at least two forms depending on whether the ‘end’ of settler society is framed primarily in historical-civilizational terms or in a stronger, biological sense; the key question is whether the ‘thing’ that is going extinct is a society or a species. Second, biologically oriented extinction narratives rely on a more or less conscious slippage between ‘the settler’ and ‘the human’. Third, this slippage is ideologically ambivalent: on the one hand, it contains a radical charge that invokes environmentalist discourse and climate-change anxiety to imagine social forms that re-write settler-colonial dynamics; on the other, it replicates a core aspect of imperialist ideology by normalizing whiteness as¶ equivalent to humanity. Fourth, these ideological effects are mediated by gender, insofar as extinction narratives invoke issues of biological reproduction, community protection, and violence that function to differentiate and reify masculine and feminine roles in the putative de-colonial future. Overall, my central claim is that extinction is a core trope through which settler futurity emerges, one with crucial narrative and ideological effects that shape much of the contemporary literature emerging from white colonial settings.

#### Settlerism is an everyday process shaped by affective investments in institutions that claim jurisdiction over native land.

Mark Rifkin, PhD, Director of the Women's and Gender Studies Program and Professor of English at the University of North Carolina, Greensboro. “Settler common sense.” Settler Colonial Studies, 2013 Vol. 3, Nos. 3–4, 322–340, http://dx.doi.org/10.1080/2201473X.2013.810702. JJN

In Walden (1854), Henry David Thoreau offers a vision of personhood divorced from the state, characterizing his experience of “Nature” during his time at Walden Pond as providing him with a sense of his own autonomous embodiment and a related set of ethical resources that enable him to reject the demands of contemporary political economy.1 The invocation of “Nature” appears to bracket the question of jurisdiction, opening into a different conceptual and phenomenological register that displaces the problem of locating oneself in relation to the boundaries of the state. However, the very feeling that one has moved beyond geopolitics, that one has entered a kind of space that suspends questions of sovereignty or renders them moot, depends on the presence of an encompassing sovereignty that licenses one’s access to that space. If the idea of “Nature” holds at bay the question of jurisdiction so as to envision a kind of place for cultivating a selfhood that can oppose state logics/politics, it also effaces the ways that experience/vision of personhood itself may arise out of the legal subjectivities put in play by the jurisdictional claiming/clearing of that space as against geopolitical claims by other polities, specifically Native peoples. Thoreau offers an example of how settlement – the exertion of control by non-Natives over Native peoples and lands – gives rise to modes of feeling, generating kinds of affect through which the terms of law and policy become imbued with a sensation of everyday certainty. This affective experience productively can be characterized as an instantiation of what more broadly may be characterized as settler common sense. The phrase suggests the ways the legal and political structures that enable non-Native access to Indigenous territories come to be lived as given, as simply the unmarked, generic conditions of possibility for occupancy, association, history, and personhood. Addressing whiteness in Australia, Fiona Nicoll argues that “rather than analysing and evaluating Indigenous sovereignty claims…, we have a political and intellectual responsibility to analyse and evaluate the innumerable ways in which White sovereignty circumscribes and mitigates the exercise of Indigenous sovereignty”, and she suggests that “we move towards a less coercive stance of reconciliation with when we fall from perspective into an embodied recognition that we already exist within Indigenous sovereignty”. 2 Addressing the question of how settlement as a system of coercive incorporation and expropriation comes to be lived as quotidian forms of non-Native being and potential, though, may require tactically shifting the analytical focus such that Indigenous sovereignties are not at the center of critical attention, even as they remain crucial in animating the study of settler colonialism and form its ethical horizon. “An embodied recognition” of the enduring presence of settler sovereignty, as well as of quotidian non-Native implication in the dispossession, effacement, and management of indigeneity, needs to attend to everyday experiences of non-relation, of a perceptual engagement with place, various institutions, and other people that takes shape around the policies and legalities of settlement but that do not specifically refer to them as such or their effects on Indigenous peoples. In order to conceptualize the mundane dynamics of settler colonialism, the quotidian feelings and tendencies through which it is continually reconstituted and experienced as the horizon of everyday potentiality, we may need to shift from an explicit attention to articulations of Native sovereignty and toward an exploration of the processes through which settler geographies are lived as ordinary, non-reflexive conditions of possibility. In Marxism and Literature, Raymond Williams argues for the necessity of approaching “relations of domination and subordination” as “practical consciousness” that saturat[es] … the whole substance of lived identities and relationships, to such a depth that the pressures and limits of what can ultimately be seen as a specific economic, political, and cultural system seem to most of us the pressures and limits of simple experience and common sense.3 Understanding settlement as, in Williams’s terms, such a “structure of feeling” entails asking how emotions, sensations, psychic life take part in the (ongoing) process of realizing the exertion of non-Native authority over Indigenous peoples, governance, and territoriality in ways that saturate quotidian life but are not necessarily present to settlers as a set of political propositions or as a specifically imperial project of dispossession. In the current scholarly efforts to characterize settler colonialism, the contours of settlement often appear analytically as clear and coherent from the start, as a virtual totality, and in this way, the ongoing processes by which settler dominance actively is reconstituted as a set of actions, occupations, deferrals, and potentials slide from view. We need to ask how the regularities of settler colonialism are materialized in and through quotidian non-Native sensations, inclinations, and trajectories. Moreover, administrative initiatives and legalities become part of everyday normalizations of state aims and mappings but in ways that also allow for an exceeding of state interests that potentially can be turned back against the state, giving rise to oppositional projects still given shape and momentum by the framings that emerge out of the ongoing work of settler occupation – such as in Walden. The essay will close with a brief reading of Thoreau’s text that illustrates how its ethical framing emerges out of, and indexes, everyday forms of settler feeling shaped by state policy but not directly continuous with it. 1. The figure of the vanishing Indian still remains prominent within US popular and scholarly discourses, both explicitly and implicitly. Within this narrative, Native peoples may have had prior claims to the land, but they, perhaps tragically, were removed from the area, or died out, or ceased to be “really” Indian, or simply disappeared at some point between the appearance of the “last” one and the current moment, whenever that may be.4 As against this tendency, scholars who seek to track the workings of settler colonialism face an entrenched inattention to the ways non-Native conceptions and articulations of personhood, place, property, and political belonging coalesce around and through the dispossession of Native peoples and normalization of (the) settler (-state’s) presence on Native lands. Insistence on the systemic quality of such settler seizures, displacements, identifications responds to this relative absence of acknowledgment by emphasizing its centrality and regularity, arguing that the claiming of a naturalized right to Indigenous place lies at the heart of non-Native modes of governance, association, and identity. However, such figurations of the pervasive and enduring quality of settler colonialism may shorthand its workings, producing accounts in which it appears as a fully integrated whole operating in smooth, consistent, and intentional ways across the socio-spatial terrain it encompasses. Doing so, particularly in considering the exchange between the domains of formal policy and of everyday life, may displace how settlement’s histories, brutalities, effacements, and interests become quotidian and common-sensical. Looking at three different models, I want to sketch varied efforts to systemize settler colonialism, highlighting some questions that emerge when they are read in light of issues of process and affect. In Settler Colonialism and the Transformation of Anthropology, Patrick Wolfe argues, “Settler colonies were (are) premised on the elimination of native societies. The split tensing reflects a determinate feature of settler colonization. The colonizers come to stay – invasion is a structure not an event.” 5 Offering perhaps the most prominent definition of settler colonialism, Wolfe’s formulation emphasizes the fact that it cannot be localized within a specific period of removal or extermination and that it persists as a determinative feature of national territoriality and identity. He argues that a “logic of elimination” drives settler governance and sociality, describing “the settler-colonial will” as “a historical force that ultimately derives from the primal drive to expansion that is generally glossed as capitalism” (167), and in “Settler Colonialism and the Elimination of the Native,” he observes that “elimination is an organizing principle of settler-colonial society rather than a one-off (and superceded) occurrence”, adding, “Settler colonialism destroys to replace.” 6 Rather than being superseded after an initial moment/period of conquest, however, colonization persists since “the logic of elimination marks a return whereby the native repressed continues to structure settler-colonial society” (390), and “the process of replacement maintains the refractory imprint of the native counter-claim” (389). Yet, when and how do projects of elimination and replacement become geographies of everyday non-Native occupancy that do not understand themselves as predicated on colonial occupation or on a history of settler-Indigenous relation (even though they are), and what are the contours and effects of such experiences of inhabitance and belonging? In characterizing settlement as a “structure”, “logic”, and a “will”, Wolfe seeks to integrate the multivalent aspects of ongoing processes of non-Native expropriation and superintendence, but doing so potentially sidesteps the question of how official governmental initiatives and framings become normalized as the setting for everyday non-Native being and action in ways that cannot be captured solely by reference to “the murderous activities of the frontier rabble” (392–3).

#### The alternative operates on two levels – first, the only ethical response to settlerism is one of decolonization.

Tuck and Yang 12

(Eve Tuck, Unangax, State University of New York at New Paltz K. Wayne Yang University of California, San Diego, Decolonization is not a metaphor, Decolonization: Indigeneity, Education & Society Vol. 1, No. 1, 2012, pp. 1-40, JKS)

An ethic of incommensurability, which guides moves that unsettle innocence, stands in contrast to aims of reconciliation, which motivate settler moves to innocence. Reconciliation is about rescuing settler normalcy, about rescuing a settler future. Reconciliation is concerned with questions of what will decolonization look like? What will happen after abolition? What will be the consequences of decolonization for the settler? Incommensurability acknowledges that these questions need not, and perhaps cannot, be answered in order for decolonization to exist as a framework.

We want to say, first, that decolonization is not obliged to answer those questions - decolonization is not accountable to settlers, or settler futurity. Decolonization is accountable to Indigenous sovereignty and futurity. Still, we acknowledge the questions of those wary participants in Occupy Oakland and other settlers who want to know what decolonization will require of them. The answers are not fully in view and can’t be as long as decolonization remains punctuated by metaphor. The answers will not emerge from friendly understanding, and indeed require a dangerous understanding of uncommonality that un-coalesces coalition politics - moves that may feel very unfriendly. But we will find out the answers as we get there, “in the exact measure that we can discern the movements which give [decolonization] historical form and content” (Fanon, 1963, p. 36).

To fully enact an ethic of incommensurability means relinquishing settler futurity, abandoning the hope that settlers may one day be commensurable to Native peoples. It means removing the asterisks, periods, commas, apostrophes, the whereas’s, buts, and conditional clauses that punctuate decolonization and underwrite settler innocence. The Native futures, the lives to be lived once the settler nation is gone - these are the unwritten possibilities made possible by an ethic of incommensurability.

*when you take away the punctuation*

*he says of*

*lines lifted from the documents about military-occupied land*

*its acreage and location*

*you take away its finality*

*opening the possibility of other futures*

-Craig Santos Perez, Chamoru scholar and poet (as quoted by Voeltz, 2012)

Decolonization offers a different perspective to human and civil rights based approaches to justice, an unsettling one, rather than a complementary one. Decolonization is not an “and”. It is an elsewhere.

#### Second, the aff’s understanding of public knowledge requires an alternative – vote negative for a sui generis moral rights framework that emphasizing guardianship over ownership. The link turn assumes a settler notion of personhood which proves our argument.

Vézina 20 “Ensuring Respect for Indigenous Cultures A Moral Rights Approach” Brigitte Vézina [fellow at the Canadian think tank Centre for International Governance Innovation. She holds a bachelor’s degree in law from the Université de Montréal and a master’s in law from Georgetown University], Centre for International Governance Innovation Papers No. 243 — May 2020, <https://www.cigionline.org/static/documents/documents/vezina-paper_1.pdf> SM

Features of a Sui Generis Moral Rights-type Framework

Subject Matter and Beneficiaries

TCEs that maintain a current and significant relationship with the Indigenous peoples who hold them would be protected. As long as a community, as a whole and by virtue of its own internal cultural rules, identifies with a specific form of expression and can establish a particular relationship with it, it can claim protection over it. As Susy Frankel points out, the key rationale in favour of protecting TCEs is the guardianship relationship, from which proportionate moral rights flow.155 Guardianship is to be contrasted with ownership, which is the concept buttressing most IP law systems, with the notable exception of moral rights. To wit, the Waitangi Tribunal did not recommend that TCEs be treated as owned, lest that would amount to building a legal wall around TCEs and end up choking culture.156 At any rate, cultural boundaries are porous and fluid, and it follows that blending, intermixing, hybridization or even “contamination” of cultures can be promoted.157

Obviously, cultures are seldom unique to a people. TCEs might be shared among different Indigenous groups that all identify and hold a guardianship relationship with them. In such cases, procedures should be in place to facilitate cooperation and settlement of disputes. What is more, no people are monolithic, a reality that is rendered in one illustrative phrase: “The Sámi people are one, but multiple.”158 Some communities might have distinct TCEs that have been part of their culture for a long time, with little or no outside influence. Others might have experienced contact with other cultures and incorporated various elements over the generations that have substantially modified previous iterations. For example, in the case of Mixe huipil at stake in the Isabel Marant case, some were quick to point out that the embroideries had, in the upshot of the Spanish conquest, incorporated European elements.159 Hence, when considering a relationship between a TCE and its holder, one should not exact uniqueness or exclusiveness, but embrace the fact that a group can identify with TCEs that are dynamic and kaleidoscopic, all the while remaining authentic.

Beneficiaries of protection should be TCE holding Indigenous communities as a whole, such that moral rights would be afforded to the entire community as group rights. Recognition of beneficiaries as well as determination of the authority to exercise the rights would have to be done from within the community, by way of application of customary law160 or be captured under the legal constructs of trusts, associations, or other legal entities holding the rights.161 Indigenous communities need to have the autonomy to exercise control over and make their own decisions regarding the management of their moral rights in their TCEs.162

Scope of Protection

At first glance, it is difficult to reconcile the notion of personhood, the cornerstone of moral rights, with the pluralistic conception of a community, by definition made up of several persons with their own individual personalities. In response, some scholars have wrought the concept of “peoplehood” to encapsulate the personality of a people in its entirety and provide a justification for granting a personality right to a group.163 As mentioned, TCEs often encompass cultural elements that are integral to Indigenous peoples’ sense of identity, that bear the distinct mark of their holders and, indeed, that reflect their peoplehood. Moral rights can therefore fulfill the duty, arising out of human rights law, to protect the identity of Indigenous peoples.164

Forasmuch as TCEs are collectively and communally held, so too must the moral rights of Indigenous peoples be communal.165 In fact, even conventional moral rights are not purely individualistic, and there has been a recognition of a “socially-informed view of the author” and “the social gestation of authorship... the social womb from which authors brought forth their works.”166 This strand of moral rights theory might be more congruent to accepting a group right for a community than the classic individual theory underpinning moral rights.167

Moral rights would only regulate the relationship between the community and the outside world; use in a traditional and customary context would not be affected. Just as moral rights vest automatically in the author (without any need for registration or any other form of assertion), so too would sui generis moral rights vest in the community.

Communal moral rights would include, at a minimum, the right of attribution, including false attribution (to ensure proper recognition of the community as the source and to prevent others from falsely claiming a guardianship over a TCE) and integrity (to protect TCEs against inappropriate, derogatory, or culturally insensitive use). It could be considered to also include the rights of disclosure (to make, where desired, TCEs known to the world and to retain the power to keep TCEs out of “public” reach, for example, in the case of sacred or secret TCEs) and withdrawal (to allow TCE holders to remove from circulation the TCEs that they no longer wish to make publicly available).

In most national laws, moral rights are inalienable or non-transferable. In other words, they cannot be divested from the author — they cannot be assigned, licensed or given away. As mentioned, if an author transfers all their economic rights to a third party, the author retains their moral rights in the work.168 As such, sui generis moral rights in TCEs would be independent from any economic rights that might arise and be held and exercised separately, regardless of who might hold these economic rights (in cases, for example, where communities would commercialize their TCEs and grant licences) or who might have physical ownership of a TCE (such as a cultural institution). However, in some jurisdictions, such as Canada, the United States and the United Kingdom (but not Australia and France), moral rights can be waived, irreversibly, in whole or in part, explicitly, by contract, at the discretion of the author. In order to ensure flexible protection to TCEs, it could be envisaged that sui generis moral rights be made waivable.

When applying the right of integrity, the determination of what is offensive should not be narrowly prescribed but based on the facts at hand. Assessment should be done both subjectively, from the point of view of the community that claims violation, and objectively, by the court, within the framework of guidelines to be developed legislatively or through case law, as informed by Indigenous customary laws, practices and protocols. Reliance on particular facts may be difficult to reconcile with the need for certainty and predictability, but flexibility trumps these concerns, as no use should be considered offensive per se.

#### Alt solves the case – a Sui Generis conception of medicine requires communal and cultural guardianship but is incompatible appropriation and oppression – solves innovation and strain diversity because possession centered IPR is ended by the alt

#### Representations and epistemology perpetuate settler practices – the way we understand and discuss the structures around us overdetermines our praxis

Seawright 14 Gardner Seawright is a doctoral candidate in the Education, Culture, and Society department at the University of Utah. “Settler Traditions of Place: Making Explicit the Epistemological Legacy of White Supremacy and Settler Colonialism for Place-Based Education.” EDUCATIONAL STUDIES, 50: 554–572, 2014, American Educational Studies Association. JJN

Situating Settler Traditions Settler traditions of place are an epistemic genealogy—the ethics, logics, and ideologies foundational to a knowledge system that have been passed down across generations, a knowledge framework that establishes what is known (the socially constructed commonsense of a culture), how things come to be known (the process of attaining new knowledge), how the world is to be interpreted according to what is known (the social construction of reality), and how the self is known in relation to perceived reality (the politics of self). Tradition is used as a conceptual tool allowing for domination to be empha- sized as an on-going historical process, while also allowing for epistemology as tradition to simultaneously be evolutionary and a cherished cultural artifact. As a cultural product, settler traditions of place are transmitted across generations through discipline, teaching, modeling and other forms of direct and subtle so- cial communication resulting in normalized habits, beliefs, values, and practices. In speaking about “western cultural traditions,” Val Plumood (2002) argues that there are “epistemic and moral limitations” embedded in these traditions—these normalized habits—that perpetuate hierarchized notions of the world that privi- lege white-hetero-landowning males (99). As Martusewicz et al. (2011) explain, these subtle discourses manifest as taken-for-granted cultural assumptions that are rooted in racism, sexism, classism that intertwine with and reflect the cultivation of violent relationships with the more-than-human world and natural systems that we depend on for life (119). The tradition in question here is the social air that penetrates the Western world, interacting with human beings whether they want it to or not. Using tradition as a metaphor for epistemology allows me to emphasize the way epistemology can im- pact every aspect of life while remaining removed from a deterministic position. Embedded in discourse, tradition appears as ever-present; despite this, individual social actors have the agency to break tradition. Consequently, in the same way that an individual breaks from familial, cultural, or religious tradition and faces the ramifications for transgressing, epistemic transgression can also incur social fallout and cause friction. When an individual epistemically transgresses, they employ an epistemic praxis (the operationalization of an alternative or critical epistemology) that goes against the grain and is counter to the tradition that defines the social environment. For conversations concerning the cultivation of criticality (like the one herein) this break in tradition is absolutely desirable and can inspire what Jose ́ Medina (2013) calls epistemic friction. Epistemic friction is contained in those uncomfortable moments in which our taken-for-granted assumptions about the world begin to crack. These moments can be transformative and cat- alyze critical consciousness to imagine and hopefully actualize an alternative epistemology.

## FW

## Case

#### Contamination, poor-quality ingredients, falsified data, and lax FDA regulations abroad ensure generics are worse quality and even adverse effects – their authors are suspect because most experts consistently downplay valid public concerns.

(We aren’t biased against generics cuz most people WANT generics to work – it’s the only way they can afford medication)

Brown 2/10 [Harriet Brown, 2-10-2021, "My Generic Medications Failed Me. I’m Not Alone," No Publication, [https://www.vice.com/en/article/v7mnm3/my-generic-medication-gave-me-constant-nosebleeds-im-not-alone //](https://www.vice.com/en/article/v7mnm3/my-generic-medication-gave-me-constant-nosebleeds-im-not-alone%20//) belle]

I’m kneeling on my driveway, watching blood pour from my nose and stream toward the street. It’s my fourth big nosebleed in four days, and as my husband bundles me into the car, I’m thinking the worst. After a gauntlet of tests, all of which are negative, my doctor says she thinks the nosebleeds were triggered by my antidepressant—specifically by my switching from a generic version to the brand-name. A few months earlier, when the generic hadn’t diminished my panic attacks, she had suggested trying the brand-name, and I’d started it a few days earlier. “You’re suddenly getting a lot more of the active ingredient,” she explains now. “Which you were supposed to get before, on the generic, but clearly weren’t. That’s why you’re having nosebleeds. They’ll stop in a few days.” Most people think generic medications are identical to brand-name drugs; I certainly did. After all, that’s what pharmacists, insurance companies, and doctors tell us. But it’s not exactly true. For one thing, most generics are manufactured abroad, where lax standards, lack of regulation, and outright fraud compromise their quality. Those issues have gotten some well-deserved attention in recent years. For another, while generics are considered “bio-equivalent” to brand-name drugs—meaning they behave the same way in the body—they are not required by the Food and Drug Administration (FDA) to contain exactly the same amount of active ingredient or to deliver it at the same rate or in the same way. In fact, they can’t deliver it the same way, since patents on brand-name medications often include the delivery system. Most people think generic medications are identical to brand-name drugs; I certainly did. After all, that’s what pharmacists, insurance companies, and doctors tell us. But it’s not exactly true. While many people tolerate the differences between generic and brand-name formulations, some of us—as I learned the day I found myself bleeding in the driveway—do not. When I went looking into those differences, I found significant evidence to support this conclusion. Yet for the most part, western medicine insists it cannot be true. Ever since the 1984 Hatch-Waxman Act cleared the way for the wide-scale marketing of generic drugs in the U.S., the FDA has required that generic drugs have the same active ingredient, strength, and dosage form as brand names. “The generic manufacturer must prove its drug is the same (bioequivalent) as the brand-name drug,” said Sandy Walsh, an FDA press officer, in an email. Given that generics make up close to 90% of the U.S. drug supply, and that Americans spend around $300 billion a year on prescriptions, a lot is riding on this system working—about $117 billion a year. So it helps to understand the ways in which brand names and generics hit the market. Pharmaceutical companies that are developing a new (brand name) medication file a New Drug Application (NDA) with the FDA, showing that the drug is both safe and effective for humans. This is done by submitting meticulous documentation of animal and human studies, detailed records of the manufacturing process, analysis of dosage and inactive ingredients, and other evidence that the benefits of the new drug outweigh any risks. Putting together an NDA takes years and costs millions of dollars, much of it spent on research. The road to generic approval is a lot shorter. When the patent on a brand-name drug is about to run out, companies typically file an Abbreviated New Drug Application (ANDA), signaling their intent to produce a generic version of the drug. An ANDA requires no animal trials and very limited human trials. While a generic is supposed to be chemically similar to its brand-name counterpart, with the same active ingredient in roughly the same amount, it is allowed to vary in quantity by about 10% in either direction. Manufacturers need only test their generic against the brand name in a tiny group of healthy volunteers to show it is bioequivalent. They don’t have to show therapeutic equivalency—that is, they don’t have to prove that patients respond to the generic in the same way they respond to the brand name. It is instead assumed that the generic will produce the same effect because the active ingredient is supposed to be the same. Many ANDAs are aspirational, first filed before a manufacturer has figured out how exactly to produce a generic version of a brand-name drug. And since FDA approval can take as little as six months, an ANDA might be approved before a manufacturer has finalized a generic formulation. Many medical professionals believe this approval process is enough to protect patients and ensure consistency. Experts like Michel Berg, a neurologist who directs the University of Rochester’s Epilepsy Center, say that when people complain about generics not working the way brand names do, it’s usually because they didn’t take the medication correctly: They skipped or added a dose, took it at the wrong time of day, swallowed it with or without food, or in some other way violated what Berg calls good “medication hygiene.” The road to generic approval is a lot shorter. Richard Hansen, dean of Auburn University’s Harrison School of Pharmacy, points to another contributing factor: the nocebo effect. People expect generics to cause more side effects and be less effective, so that’s what they experience. Hansen calls this the public perception bias. “There’s actual clinical studies that show if you give 100 people the exact same thing but tell half of them that they received a generic, the half you told are going to have more adverse events and lower efficacy,” he said. His solution: education. Teach people that generics are just as good as brand-name drugs and their attitudes will change. But human error and the power of suggestion can’t possibly be the whole story. What about experiences like mine, in which switching to a brand-name drug from the generic caused the problem? Clearly that wasn’t the nocebo effect. And while I’m as fallible as anyone else, I’m certain that in this case I was taking the medication correctly. Many of the experts I talked to for this story dismissed or downplayed questions about generics. One researcher who didn’t is Jacinthe Leclerc, an assistant professor of nursing at the University of Québec at Trois-Rivieres. Leclerc and her colleagues noticed an interesting pattern when they studied cardiac drugs: When a new generic became available and patients switched, they saw many more adverse effects. “For example, switching from a brand name anti-hypertensive drug to a generic one, the patients got more swollen,” she explained. Leclerc and her team analyzed data for a number of widely prescribed cardiac medications and found that when new generics were introduced, and people switched to them, hospitalizations and emergency room visits went up. Leclerc says the nocebo effect can’t possibly explain this finding. In fact, there’s a counterargument to the nocebo premise, one Hansen and others don’t take into account: Most people want generics to work because that’s the only way they can afford their medication. (When asked if his team had considered this, Hansen said, “That’s not something we’ve looked at in particular.”) Erica Smith, a 50-year-old software designer in Oakland, California, found herself in this situation after her pharmacy switched her to a generic antidepressant made in India. Smith began having symptoms like brain “zaps” and extreme irritability, signs that she wasn’t getting as much of the active ingredient as she had before. She looked into getting the brand-name, which cost $400 for a month’s supply. “Insurance of course did not cover that, so of course I didn’t get it,” she recalled. Charlynn Schmiedt, a 36-year-old entrepreneur in San Dimas, California, was one of hundreds of patients who reported massive side effects and symptoms after switching from the brand-name Wellbutrin, a popular antidepressant, to Teva Pharmaceuticals’s generic extended-release, version, bupropion XL. Schmiedt’s doctor had given her a few weeks’ worth of brand-name samples, and as she took them her depression and anxiety began to subside. When the samples ran out, she filled a prescription and got the Teva generic. “It was a massive 180-degree shift,” she remembered. “It was horrible. I got really angry, I got agitated, I would cry at the drop of a hat. I was a wreck.” Schmiedt lasted three weeks on the generic before she quit. Like many patients, she couldn’t afford the brand-name, so she went through months of trial and error before finding another medication that helped her symptoms. In 2012, after years of complaints from patients like Schmiedt, the FDA more or less acknowledged that Teva’s generic was problematic by pulling it from sale, a step the agency almost never takes. Journalist Katherine Eban, author of the book Bottle of Lies: The Inside Story of the Generic Drug Boom, was surprised by the FDA’s reversal but not by Teva’s problems. The vast majority of generics—no one seems to know exactly what percentage—used in the U.S. are sourced or manufactured in India, China, and other countries. Eban spent 10 years investigating overseas manufacturers and found a jaw-dropping range of problems, including poor-quality ingredients, contamination, dangerous plant conditions, and outright fraud and deception. Pharmaceutical companies like Ranbaxy, a former Indian manufacturer, deliberately falsified data to fool regulators, lying to regulators about safety tests and results and then covering up those lies with more falsehoods. The reality is that the FDA simply doesn’t have the resources to monitor overseas drug makers the way they do U.S. manufacturers. The result, according to Eban, is that many of the medications we take today are ineffective or worse. “We need systematic surveillance testing of our drugs, which is not happening,” she told me. And that doesn’t apply just to medicine made overseas. No matter where they’re made, generics are subject to far less testing than original brand-name drugs. As the FDA’s Walsh explained, “Generic drug applications are termed ‘abbreviated’ because they are not required to include preclinical (animal) and clinical (human) data to establish safety and effectiveness. Instead, generic applicants must scientifically demonstrate that their product performs in the same manner as the innovator drug.” Pharmaceutical companies like Ranbaxy, a former Indian manufacturer, deliberately falsified data to fool regulators, lying to regulators about safety tests and results and then covering up those lies with more falsehoods. “We’ve got a lot of companies that lie, that manipulate data,” said Joe Graedon, a pharmacologist and co-founder of the pharmaceutical watchdog site People’s Pharmacy. “There’s examples of fraud left and right. Quality control has been clearly a huge problem both in China and India but many other countries as well, and the FDA is probably not monitoring many of these countries as well as it should.” Douglas Kamerow, a family doctor and medical researcher in Washington, D.C., put it this way in an article in The BMJ: “Full clinical trials are not required to approve generics—that’s why they are so inexpensive, after all—so true clinical equivalence is never tested.” But what about the Wellbutrin example? Presumably that wasn’t the result of fraud or low standards. How could something like this happen if, as the FDA insists, generics makers are required to prove that their products are bioequivalent? The problem in this case turned out to be the rate at which the extended-release generic was absorbed into the body. “[Levels of] the brand name peaked somewhere around five or six hours. The generic peaked around one or two hours,” said Graedon. So people who took the generic got a big dump of the active ingredient too quickly, and then it left their systems too soon. “That was what, in my estimation, led to all the complications people experienced,” he added. “They had a lot of side effects from the generic and they didn’t get the clinical benefit of this antidepressant.” (Teva did not respond to multiple requests for comment.) To visualize the process, Graedon asked me to imagine a spreadsheet tracking a city’s water usage over a 24-hour period, showing peaks and valleys depending on the time of day. For instance, a lot more water would be used at 7 a.m., when people are showering and cooking, than at 2 a.m., when most people are asleep. That, he says, is the kind of detailed data needed to follow exactly how a generic is absorbed. “You want to know how much was absorbed at half an hour, an hour, two hours, all the way through,” he said. The bupropion XL problems would have been obvious with this kind of tracking over time. According to Graedon, the FDA asks for this information from drug companies but doesn’t incorporate it in decisions about which generics are approved. Another reason generics sometimes don’t behave the way brand drugs do involves what’s known as inter-subject variability. William Ravis, a retired professor of drug discovery and development at Auburn University, spent four decades studying pharmacokinetics, or how drugs move through the body. He pointed out that certain drugs have a lot of variability in terms of how they metabolize and behave. “The majority of patients might not show a difference in exchanging one product for another,” he explained. “But if you handle the drug too much differently from somebody else or you’re taking other medications than somebody else, that may put you right on the edge where it’s toxic or you lose the therapeutic effects.” For example, Ravis said, it’s been well documented that switching from one thyroid medication to another, even if they’ve been shown to be bioequivalent, can cause problems. “There are things going on there in absorption, or body sensitivity to T4 or T3 products, or thyroid hormones, that is different in different patients,” he said. “Drugs produce their effects on receptors in the body and those all don’t respond the same way in every patient.” In fact, one member of his own family pays out of pocket for a brand-name thyroid drug that’s not covered by their insurance, because the generics don’t work for them. Neurologist Gregory Krauss of Johns Hopkins University actually filed Freedom of Information Act requests to get bioequivalence data from the FDA on five generic versions of the epilepsy drug carbamazepine, and learned that maximal concentrations—the peak amount of active ingredient—differed by as much as 40 percent. While many people tolerate those kinds of discrepancies, many don’t. And they might never realize that the problem is the generic version they’re taking rather than the medication itself. Finally, there’s the issue of what experts call the therapeutic index, meaning the margin between an effective dose and a toxic one. If that margin is large, manufacturing discrepancies don’t matter as much; a little more or less of the active ingredient will go unnoticed by most patients. But the smaller the margin—the narrower the therapeutic index—the more likely patients are to experience side effects and failures. While many people tolerate those kinds of discrepancies, many don’t. And they might never realize that the problem is the generic version they’re taking rather than the medication itself. Many psychiatric drugs fall into this category, which might explain why they’re among the most problematic. Studies of antidepressants like Effexor and Celexa, along with anti-psychotics like Risperdal, Clozaril, and Dogmatil, all highlight the fact that some patients do worse on the generic versions than on the brand-name medications. Research on other drugs with narrow therapeutic indexes, or NTIs, like cardiac drugs, immunosuppressants for transplant patients, and epilepsy drugs suggest similar discrepancies, though other studies on seizure medications showed no significant differences between brands and generics. “The narrow therapeutic index drug class, those are tricky,” agrees Jingjing Qian, an associate professor in health outcomes and research at Auburn University. “But in order to verify if that difference is perception or real difference—that needs more research. And there’s no incentive for industry to study generic drugs.” Which is unfortunate for those of us who take those drugs. One of my daughters had a terrifying experience after a change in her insurance forced her to switch from a brand-name antidepressant to a generic one. When her depression roared back following the switch, the psychiatrist upped her dose. A month later, the pharmacy switched her prescription from the Indian generic she had been taking to what’s called an authorized generic, meaning it’s the same exact drug made by the same company that produces the brand-name, but it’s marketed as a generic. And now something was clearly, scarily wrong. Even from a thousand miles away I could tell she was not in good shape. She was speaking so fast I could barely follow; what I did understand was that her anxiety was off the charts, her muscles were twitching and spasming, she hadn’t slept properly in days, and she was talking about suicide. Because I’ve had my own history with generics, I wondered about the medication change. Her symptoms were consistent with serotonin syndrome, a potentially fatal condition caused by a sudden overload of serotonin. Maybe her depression symptoms came back on the generic because it didn’t contain enough active ingredients; then, when the pharmacy switched her to the authorized generic, maybe she was suddenly getting way too much of the active ingredient. She cut back the dose, and thankfully her symptoms subsided. I now pay out of pocket for her to take the brand-name version. She’s had no further problems. Raising these kinds of questions about generics is deeply unpopular. And it’s understandable, in a way, because our healthcare system relies so heavily on generics. Michel Berg, who directs the University of Rochester’s Epilepsy Center, represents the views of many medical professionals when he says, “There’s no perfect here. I think mostly [generics are] pretty good. The cost savings of generics is just so great. I think the advantage of the generics by far in that sense outweighs what problems that might exist that I think are fairly infrequent.” Whether Berg is right or not, without generics, we’d be seeing much higher drug prices and even more drug shortages. Atorvastatin, a generic cholesterol medication, costs about $15 a month, while its brand-name equivalent, Lipitor, goes for between $450 and $500 a month. Abilify, an antipsychotic and antidepressant made by Bristol-Myers Squibb, costs between $700 and $900 a month; the generic version, aripiprazole, goes for around $8. And these aren’t even extreme examples. Cuprimine, a brand-name drug made by Bausch Health to treat rheumatoid arthritis, retails for $26,000 a month; the generic version, penicillamine, costs $7,000. Raising these kinds of questions about generics is deeply unpopular. And it’s understandable, in a way, because our healthcare system relies so heavily on generics. Last September, the Trump administration approved a plan to let states import cheaper medications from Canada and elsewhere, though it is still unclear how exactly this will affect consumers. Several years ago AARP, whose more than 38 million members take an average of 4.5 medications apiece, announced an initiative called Stop Rx Greed, inviting people to “tell Congress to stop Rx greed and cut drug prices now!” Media coverage about profit-hungry pharmaceutical companies like Mylan, the makers of EpiPen that infamously jacked up its price 400 percent, make it politically untenable to do anything that makes the situation worse for consumers. “There’s no plan B for our drug supply,” Eban told me. “We’re facing critical drug shortages, we are reliant on these medications, and there is no meaningful price regulation for brand-name drugs. There is a tremendous amount of political pressure for these low-cost generics.” In a recent story about Eban’s book, published in a trade magazine for biopharma executives, a reviewer commented, “The entire U.S. pharma industry is under attack for its pricing policies, so who wants to question the quality of generics . . . that keep drug costs down?” Who indeed. We’d much rather believe that patients who report issues with generics are biased or victims of misperception because if they’re not, if they’re right about these problems, the whole system is screwed. So where does that leave people like Erica Smith, Charlynn Schmiedt, and the rest of us who have struggled with generics? Awareness is key, starting with awareness of our own perceptions and behaviors. While reporting this story I bought a pill dispenser so I could, as Michel Berg suggested, practice better medication hygiene. But we also need to be aware that there are major manufacturing and safety concerns with some generics. If you think something’s wrong with any medication, generic or not, report it on the FDA’s MedWatch site so the agency can track complaints about it and, ideally, investigate. There is clear scientific evidence that some drugs do affect some people differently, no matter what doctors and pharmacists and insurance companies say. LeClerc of the University of Quebec thinks people need to learn to advocate for themselves when things don’t feel right, and medical professionals need to listen. “When we listen carefully to patients, they say there is something wrong once they switch [from a brand to a generic],” she said. “It cannot only be in their heads.”