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### 1

**The 1AC is invested in a death drive to perfection that inevitably comes out of the gratuitous violence of Indigenous people. The state operates through a drive of eradicating the otherness of the other, which is constitutive of Native genocide.**

**Young 17** (Bryanne Huston, Doctoral Student at the University of North Carolina, Chapel Hill "Killing the Indian in the Child: Materialities of Death and Political Formations of Life in the Canadian Indian Residential School System," pp. 48-55) NIJ//recut anop

Whiteness, the Child, and the Logics of Futurity Against the politicized topographies and temporalities of indigeneity and race, I now move into a consideration of the contributions of psychoanalytic theory to the questions of politics and time presented thus far. ***The kinds of questions psychoanalysis is interested in asking, the registers upon which it performs analysis, and its unique emphasis on temporality, language, and difference provide an excellent conceptual apparatus through which we might begin to trouble/problematize stable, taken-for-granted oppositions between psychic and social, personal and political, self and other***. Freud’s interest in time is evident in his work on the uncanny, and in his inaugural work on what we might now call trauma studies and conditions we now call post-traumatic stress disorder (PTSD). For Freud, this theory of hysteria introduces a provocative temporality in which traumatic events reoccur, flashing up in perfect replication of themselves, as though happening again and again. In his diagnosis of so-called shell-shocked soldiers returning from World War I, Freud was keenly aware that time did not always progress along an even plane. Though Freud’s analysis of trauma is captivating and critically rich, it is not within my purview here to take on the full extent of this scholarship. Instead, what is most salient to my analysis are the capacities of psychoanalytic theory to move critique outside and beyond prevailing notions of time and narratives of progress that only mean moving forward. This chapter writes from a stance that views it as imperative that scholarship reaches beyond, and thinks outside, the paradigms that invented it. ***Psychoanalytic theory***, with its idiosyncratic temporal logics—particularly in conjunction with Foucauldian theory—***offers a productive and robust way to critique the continuing primacy of normative disciplines whose chronologics have historically warranted a politics that kills in the name of life***. Such an approach allows us to hold in productive tension any definition of “the political” as stable and finite, with—as in the case of liberal political philosophy—the legally constructed “person” as its primary epistemological unit. ***This conceptual capacity of psychoanalysis, in turn, allows us to politicize a form of life and modality of corporeal personhood hitherto constructed as what,*** in Bataillean parlance, ***we might call colonialism’s accursed share—colonialism’s pure waste***. Additionally, psychoanalytic notions of the ***death drive***, whose proper movement is explicitly circular, ***allows us to begin to locate the child within logics of futurity, onto which is laminated a kind of indelible whiteness. For the purpose of my analysis I engage Lacanian psychoanalysis, limiting myself to a consideration of the structure of the drives and to a Lacanian conceptualization of language, and its role in the formation of self and the suturing of the psyche to sociality***. Freud, as Teresa De Lauretis (2008) emphasizes, elaborated the death drive between the First and Second World Wars, in a Europe living “under the shadow of death and the threat of biological and cultural genocide” (1). Situating her analysis of the death drive in the contemporary moment, De Lauretis points to this contextual, historical darkening, writing: “I wonder whether our epistemologies can sustain the impact of the real … If I return to Freud’s notion of an unconscious death drive, it is because it conveys the sense and the force of something in human reality that resists discursive articulation as well as political diplomacy, an otherness that haunts the dream of a common world” (9). Using psychoanalysis as reading practice, Freud’s suspicion that human life, both individual and social, is compromised from the beginning by something that undermines it, works against it, is (darkly?) generative. ***The death drive indicates a tension bordering psychic and libidinal relations, which marks Freud’s radical break with Cartesian rationality and points to a negativity that counteracts the optimistic affirmations of human perfectability. This dimension of radical negativity cannot be reduced to an expression of alienated social conditions, nor is it entirely something the body does on its own. Theorized as the destruction drive, the antagonism drive, or sometimes, simply “the drive,” it is impossible to escape. In psychoanalytic theory, therefore, particularly in the clinical setting, the objective is not to overcome the drive, but rather to come to terms with it, in what Slovenian Lacanian psychoanalytic theorist Slavoj Žižek (1989) calls “its terrifying dimension” (4). It is a fundamental axiom of Lacanian psychoanalytic theory that attempts to abolish the drive antagonism are precisely the source of totalitarian temptation. Žižek writes: “The greatest mass murders and holocausts have always been perpetrated in the name of man as harmonious being, of a New Man without antagonistic tension” (5). So it is that one of Canada’s greatest atrocities— the genocide of its First Peoples—took place in the name of Canada itself, that sought progress and unification as a single body politic with claims on a shared futurity. The fulfillment of this destiny relied upon the negation of the other, the bad race, the dangerous race, the race that stood outside the purview of the norm and had no share in its time-zone, the ones called to live in the between space—as nobody. As the relatively more benign civilization policies failed to convert Aboriginal forms of life into separate but civilized, Christian communities on reserves, the federal government intensified its tactics. Policies became more aggressive. As these more aggressive policies (such as enfranchisement) also failed, the federal government intensified its tactics once again, escalating the stakes and the strategies towards the horizon of assimilation. This ‘doubling down’ in the face of failure is a primary trace effect of the death drive, and indeed, it is not unreasonable to argue that the federal government Indian policy has, since confederation, been death driven. Because the aim of fully eradicating the otherness of the other can only fail—in Freudian parlance, it cannot be mastered—the trajectory of the aiming turns in a circularity, orbiting around that which can never be had: perfection. Caught in death drive circularity, the aiming towards the objective (i.e. a unified body politic) authorizes, and indeed recruits, escalating violence in the interest of—finally—closing the open***. For Žižek, ***this compulsive ‘doubling-down’ in the face of failure to arrive at the impossible horizon of perfection tips towards totalitarian temptation, which, he tells us, is implicated in the drive to unify a singular body politic, a new man without antagonistic tension. The drive aims for the return to a moment of unity before the intrusion of language and the entrance of the subject into what Lacan calls the Symbolic—the universe of symbols in which all human subjects share.*** Because this economy of signifiers operates through a modality of difference by association, on the premise that language does not reflect or carry within it universal a priori meaning, spirit, or Truth, ***signifiers are always and already sliding along a chain of signification that is never truly fixed.*** Rather, for Lacan, meaning is constructed through quilting points, durable concepts that affix ideas to their signifiers and which, in their durability, structure entire fields of meaning. For Lacan, subjects are formed by their entrance into this system of sliding difference from a pre-linguistic state retroactively constructed through nostalgic affective associations with unity, perfection, and completion. ***The loss or lack occurs in the imaginary, the order of presence and absence, and is formalized in the symbolic.*** This is experienced by the subject as a loss of that to which she/he can never again return, but for which she/he perpetually yearns, and toward which she/he perpetually moves. The circularity of movement toward this impossible horizon is precisely the movement of the drive. ***It is my argument that the concept of “the Indian” is a quilting point through which the field of politics in Canada is sutured into signification, a durable concept that organizes the meaning of nation, citizen, sovereignty, and subjecthood.*** Further, the ***hypoxic vision of national unity and a harmonious white(ned) citizenry is a movement propelled by the drive, a circularity impelled by the belief that what is lacking in the present can be made good in the future—an imaginary that activates/harnesses a kind of libidinal energy that is, by its very nature, inexhaustible***. It matters, in the instance of the Canadian Indian Residential Schools and their mandate, that before child subjects enter into the structuration of language/the Symbolic, their bodies are already marked as disprized, abject, inscribed into the signification for, and, I argue, as, loss itself. As I have argued above, ***reading through psychoanalytic theory facilitates a conceptualization of subject-formation that includes the role of signification in the contouring of subject/ivities***. This analytic rubric is importantly brought to bear in my analysis of “the child” the Canadian Indian Residential School System announces into presence: a child fundamentally and constitutively tied to a death whose temporal structure is always deferred, always impartial, always unfolding, and yet always still to be. Indeed, even in circumstances in which her/his mode of being in the world is not a deliberate practice of making- spectral***, “the child” remains a notoriously ambivalent, slippery signifier. This plasticity—differently stated, this over-abundant availability of “the child” as concept—takes on an interesting significance within political thought, functioning not as that which is politicized, but as the signifier in whose name the political mobilizes itself. In this way, the child functions as the absolute outside to political thought and the logics of its temporality, functioning instead to condition its possibilities and organize, from beyond its borders, its spatial and temporal limits***. An example of this conceptualization of the child as signifier—and certainly one of the more provocative articulations of this phenomena in the contemporary neoliberal moment—is the polemic Lee develops in his monograph No Future: Queer Theory and the Death Drive. For Edelman, the Child—in its conflation with the kind of futurity toward which the teleology of (neo)liberal discourse is mobilized—is not simply important to contemporary politics, but is that which “serves to regulate political discourse [itself]” (ii). Indeed, as Edelman points out, “the figural Child alone embodies the citizen as ideal, entitled to claim full rights to its future share in the nation’s good, though always at the cost of limiting the rights ‘real’ citizens are allowed. For the social exists to preserve for this universalized subject, this fantasmatic Child, a national freedom more highly valued than the actuality of freedom itself” (ii). In Edelman’s polemic, it goes without saying that the figural child is a white child and that ***children of colour, children of mixed heritage, Indian children—within the Ideological State Apparatus of the Indian Residential Schools—far from carrying the over-abundant significance Edelman so adeptly parses, signify on only the most spectral of registers. This child***, I argue, as a kind of spectral(ized) partial subject, ***instantiates a subjectivity simultaneously over-exposed to the political and over-determined by the word of the law, while barely accorded even the status of bare life. This is a subject that is hailed into a circularity of misrecognition in a relationship with death that is virtually inescapable***. This relationship with death is the suture that connects this subject to the social. Edelman’s argument does not address racialized formations of self-hood, but is no less relevant to the argument I seek to develop here. Indeed, it is perhaps all the keener in what it omits—which is the child of color. ***This omission points to the level of signification and the way in which the whitened child is effortlessly lifted from the problematically raced body—the body whose racialized status is found problematic. This fantasy of purification through signification speaks, in ways that are eloquent and disturbing in equal measure, precisely the fantasy of the Canadian Indian Residential School System: that the body of the Indian could be left behind in a transcendent movement away from the vexatious quagmire posed by the Indian body toward the realm of what Kantian philosophy calls pure spirit, the realm of whiteness, purity, and hypoxic visions of what Edelman calls, “a national freedom more highly valued than the actuality of freedom itself”*** (ii). This fantasy of corporeal abandonment points to the latent desire of Western philosophical thought that seeks, through the disavowal of bodily finitude and a fetishization of the logos, access to purity of form, a fantasy that relegates, leaves trapped, the sometimes racialized, sometimes feminized other, mired in flesh and finitude from which it is allowed no escape. ***The Indigenous person***, we remember from Hegel’s Lectures on the Philosophy of World History, is ***imagined as always already outside the teleology of history, already extinct. This way of understanding difference, through the rubric of historical progress, remains central to liberal and neoliberal political thought, economic practices, and policies in the current moment***. Prising the child away from the Indian, meanwhile, continues to have important implications in the way we imagine colonial forms, not only of life, but also of death.

**The aff’s analysis of health overlooks structures of white supremacy and settler colonialism dictating healtb conditions for indigenous people which turns the case.**

**Kashyap 20** [Monika Batra Kashyap is a Visiting Assistant Professor at Seattle University School of Law, Ronald A. Peterson Law Clinic. J.D., University of California Berkeley School of Law. November 2020 California Law Review “U.S. Settler Colonialism, White Supremacy, and the Racially Disparate Impacts of COVID-19” <https://www.californialawreview.org/settler-colonialism-white-supremacy-covid-19/>] //aaditg

***A settler colonialism framework recognizes that the United States is a present-day settler colonial society whose laws, institutions, and systems of governance continue to enact an ongoing “structure of invasion” that persists to this day.[5][5]*** ... Scholars across multiple disciplines have turned towards using a settler colonialism framework in their analyses to broaden understandings of how systems of subordination are structured in the United States.[6][6] ... A framework of settler colonialism understands that the three foundational processes upon which the United States was built—Indigenous elimination, anti-Black racism, and immigrant exploitation—are ongoing processes that continue to shape present-day systemic inequities.[7][7] In other words, a ***settler colonialism framework acknowledges the endurance of three ongoing “strategies of colonization” that continue to maintain settler colonialism’s structure of invasion: 1) strategies of elimination targeting Indigenous peoples; 2) strategies of subjugation targeting Black people (anti-Black racism); and 3) strategies of exploitation and exclusion targeting immigrants of color.[***8][8] ... Moreover, a settler colonialism framework acknowledges that the ongoing strategies of colonization continue to be fueled, enabled and bolstered by an elaborate set of racial logics that Andrea Smith describes as the “logics of White supremacy.”[9][9] ... Smith argues that White supremacy in the U.S. context is enacted through three primary interrelated logics: 1) the view of Indigenous people as necessarily disappearing;[10][10] ... 2) the view of Black people as enslavable;[11][11] ... and 3) the view of immigrants of color as inferior and permanent “threats to the empire” who must either be exploited or excluded.[12][12] ... While the manifestations of these White supremacist logics may change over time, “they remain as persistently present today as they were five hundred years ago.”[13][13] This Essay will connect the persistent strategies, logics, and identities created by settler colonialism to the disparate health impacts of COVID-19 in Indigenous, Black, and immigrant of color communities in the United States. By offering a framework that uncovers the root causes of ongoing patterns of systemic oppression, this Essay hopes to inspire reform efforts that seek to alter such patterns by advancing reform efforts that are grounded in truth, justice, and reconciliation. I. Strategies of Indigenous Elimination: The Impacts of COVID-19 on Indigenous Communities ***Settler colonialism has eliminated Indigenous peoples in the United States through a host of strategies meant to obtain and maintain territorial control of the settler state.[14][14]*** As historian Patrick Wolfe explains, settler colonialism “requires the elimination of the owners of that territory, but not in any particular way.”[15][15] ***Elimination strategies employed by settler colonialism include genocidal violence, biological warfare through the introduction of infectious diseases, forced removal and relocation, confinement to reservations, child abduction, religious conversion, forced resocialization in residential boarding schools, and intricate biological and cultural assimilation programs that strip Indigenous people of their culture and replace it with settler culture.[16][16]*** White supremacist logics support the idea that Indigenous people are “nonhuman wild savages unsuited for civilization” who must therefore be eliminated, rendered expendable, or made invisible in order to justify dispossessing them of their lands.[17][17] ... These logics continue to underpin the removal of Indigenous people from settler spaces in both literal and conceptual ways.[18][18] ... For example, despite the fact that Indigenous peoples are killed in police encounters at a higher rate than any other racial or ethnic group, these deaths rarely gain the national spotlight, and are instead rendered invisible.[19][19] ... ***Moreover, contemporary popular narratives that designate European settlers as the “founding fathers” and refer to the United States as a “nation of immigrants” erase the existence of Indigenous peoples and render them invisible***.[20][20] ... ***Another significant way in which settler colonialism’s ongoing strategy of Indigenous elimination manifests today is through devastating health disparities in Indigenous communities, which result in higher death rates for Indigenous peoples.[***21][21] ... Important medical research implicates settler colonialism in contributing to poor health outcomes and high mortality rates in Indigenous communities in the United States.[22][22] ... This research highlights the devastating health impacts resulting from the brutal dispossession of traditional lands, the forced relocation to unproductive and polluted lands contaminated by heavy metals and industrial waste, the introduction of infectious settler diseases, and the introduction of harmful substances such as tobacco and alcohol.[23][23] ... This research also affirms a report previously published by the World Health Organization finding that Indigenous health is significantly affected by factors related to loss of language and connection to the land, environmental deprivation, and spiritual, emotional, and mental disconnectedness resulting from the loss of Indigenous traditions, culture, and identity.[24][24] ... The research concludes that these “oppressive factors” caused by colonialism perpetuate “severe inequalities in Indigenous health status, unsatisfactory disease and vital statistics, impaired emotional and social wellbeing, and poor prospects for future generations.”[25][25] Indigenous Health Part 1, supra note 22, at 66. ***The devastating health impacts resulting from settler colonialism’s strategy of Indigenous elimination have led to disproportionately high rates of pre-existing health conditions such as asthma, diabetes, hypertension and heart disease[***26][26] ... that put Indigenous peoples at a higher risk of death by COVID-19.[27][27] ... And historical and structural inequities in federal funding—such as lack of support for municipal plumbing systems—have further exacerbated the health disparities that put Indigenous peoples at higher-risk in the COVID-19 crisis.[28][28] ... ***For example, 40 percent of Navajo households do not have access to running water, making it difficult to comply with handwashing recommendations.[29][29]*** ... As a result, ***Indigenous communities who were previously decimated by the imposition of settler diseases such as measles, whooping cough, small-pox, influenza, and tuberculosis continue to be eliminated by health disparities that make them disproportionately vulnerable to a new disease: COVID-19***.[30][30] ... Today, Indigenous peoples in the United States are dying 3.2 times the rate of White people as a result of COVID-19.[31][31]

**The specter of extinction is a product of antiqueer, settler anxieties that arise not only from settlerism’s guilt for destroying the planet’s ability to sustain itself, but also from the settler’s need to strengthen solidarity and defer confrontation with native genocide**

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**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, superiority, 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.** 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 literature, 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 historio-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’ 9 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 colonialism. 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 inhabitation but his knowledge comes freighted with an expected sense of biological superiority, 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 genocide 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 imminent 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 argument 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 perspective is offered by Veracini, who suggests that progressive change to settler-colonial relationships will only happen if narratives can be found that make decolonization thinkable.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.**

**The alternative is to refuse the affirmative’s endorsement of settler political selfhood. This isn’t “reject the aff”—it’s a micro-political process that destabilizes the settler psyche by breaking down the coherence of settler colonialism built through repetition. Debate is an ethical affirmation of a certain ideology. Voting neg forces a confrontation of the genocidal settlement, destabilizing the settler subject—that comes prior to evaluating the settler truth claims of the aff.**

**Henderson 15** Henderson, Phil. (2015). Imagoed communities: the psychosocial space of settler colonialism. Settler Colonial Studies, 7(1), 40–56. doi:10.1080/2201473x.2015.1092194 // JPark//recut anop

At a distance, the duplicity here is quite strange. Lines are drowned, forests are cut, nets are stolen, because **settlers know reflexively that they have a right – duty even – to shape the vacant land according to their collective and individual needs.** Yet, the very things which they seek to remove should prove the falsity of terra nullius, as they evidence indigenous presence. **The settler subject is able to gloss the violence of his actions so easily, however, because he is ultimately the product of, and dependent upon, a series of power relations that actively disappear indigenous peoples as active sovereign bodies. Within the psychosocial order of settler sovereignty, supported by the settler imago, these acts are understood as progressive or represent an adherence to the law, and become *unreadable to the settler for what they are*: the latest in a series of dispossessive acts.** Destabilizing a dispossessive subject Not only does the concept of the spatial imago allow us to interrogate the formation of the settler as a subject, it also provides a powerful analytical tool to explain the extreme vitriolic reactions that indigenous peoples constantly face from settlers. Many point to racism as 10 P. HENDERSON Downloaded by [New York University] at 15:35 26 February 2016 the source of such reactions, and this is not without cause, as settlers have long imbibed a sense of racial and cultural superiority – particularly toward indigenous peoples. Despite these prejudices, however, Wolfe notes that the ‘primary motive’ of settler colonialism’s domination ‘is not race’ but ‘access to territory’. 63 **Thus, inasmuch as the settler colonial imago validates access to territory by occluding indigenous sovereignty, the ongoing presences on and claims to the land by indigenous peoples trouble the settler imago and induce panic in settler subjects. Facing assertive indigenous presences within settler colonial spaces, settlers must answer the legitimate charge that their daily life – in all its banality – is predicated upon the privileges produced by ongoing genocide. The jarring nature of such charges offers an irreconcilable challenge to settlers qua settlers.**64 **Should these charges become impossible to ignore, they threaten to explode the imago of settler colonialism, *which had hitherto operated within the settler psyche in a relatively smooth and benign manner*. This explosion is potentiated by the revelation of even a portion of the violence that is required to make settler life possible. If, for example, settlers are forced to see ‘their’ beach as a site of murder and ongoing colonization, it becomes more difficult to sustain it within the imaginary as a site of frivolity**.65 As Brown writes, in the ‘loss of horizons, order, and identity’ **the subject experiences a sense of enormous vulnerability**.66 Threatened with this ‘loss of containment’, the settler subject embarks down the road to psychosis.67 Thus, to parlay Brown’s thesis to the settler colonial context, the uncontrollable rage that indigenous presences induce within the settler is not evidence of the strength of settlers, but rather of a subject lashing out on the brink of its own dissolution. This panic – this rabid and insatiable anger – is always already at the core of the settler as a subject. As Lorenzo Veracini observes, the settler necessarily remains in a disposition of aggression ‘even after indigenous alterities have ceased to be threatening’. 68 **This disposition results from the precarity inherent in the maintenance of settler colonialism’s imago, wherein any and all indigenous presences threaten subjective dissolution of the settler as such**. Trapped in a Gordian Knot, the very thing that provides a balm to the settler subject – further development and entrenchment of the settler colonial imago – is also what panics the subject when it is inevitably contravened.69 **We might think of this as a process of hardening that leaves the imago brittle and more susceptible to breakage. Their desire to produce a firm imago means that settlers are also always already in a psychically defensive position – that is, the settler’s offensive position on occupied land is sustained through a defensive posture. For while settlers desire the total erasure of indigenous populations, the attendant desire to disappear their own identity as settlers necessitates the suppression of both desires, if the subject’s reliance on settler colonial power structure is to be psychically naturalized**. Settlers’ reactions to indigenous peoples fit, almost universally, with the two ego defense responses that Sigmund Freud observed. The first of these defenses is to attempt a complete conversion of the suppressed desire into a new idea. In settler colonial contexts, this requires averting attention from the violence of dispossession; as such, **settlers** often suggest that they **aim to create a ‘city on the hill’.** 70 Freud noted that the conversion defense mechanism does **suppress the anxiety-inducing desire**, but it also leads to ‘periodic hysterical outbursts’. Such is the case when settlers’ utopic visions are forced to confront the reality that the gentile community they imagine is founded in and perpetuates irredeemable suffering. A second type of defense is to channel the original desire’s energy into an obsession or a phobia. The effects of this defense are seen in the preoccupation that settler colonialism has with purity of blood or of community.71 As we have already seen, this obsession at once solidifies the power of the settler state, thereby naturalizing the settler and simultaneously perpetuating the processes of erasing indigenous peoples. **Psychic defenses are intended to secure the subject from pain, and whether that pain originates inside or outside the psyche is inconsequential.** Because of the threat that indigeneity presents to the phantasmatic wholeness of settler colonialism, settlers must always remain suspended in a state of arrested development between these defensive positions. **Despite any pretensions to the contrary, the settler is necessarily a parochial subject who continuously coils, reacts, disavows, and lashes out, when confronted with his dependency on indigenous peoples and their territory.** This psychic precarity exists at the core of the settler subject because of the unending fear of its own dissolution, should indigenous sovereignty be recognized.72 Goeman writes as an explicit challenge to other indigenous peoples, but this holds true to settler-allies as well, that **decolonization must include an analysis of the dominant ‘self-disciplining colonial subject’**. 73 However, as this discussion of subjective precarity demonstrates, the degree of to which these disciplinary or phenomenological processes are complete should not be overstated. For settler-allies must also examine and cultivate the ways in which settler subjects fail to be totally disciplined. Evidence of this incompletion is apparent in the subject’s arrested state of development. Discovering the instability at the core of the settler subject, indeed of all subjects, is the central conceit of psychoanalysis. This exception of at least partial failure to fully subjectivize the settler is also what sets my account apart from Rifkin’s. His phenomenology falls into the trap that Jacqueline Rose observes within many sociological accounts of the subject: that of assuming a successful internalization of norms. From the psychoanalytical perspective, the ‘unconscious constantly reveals the “failure”’ of internalization.74 As we have seen, **within settler subjects this can be expressed as an irrational anxiety that expresses itself whenever a settler is confronted with the facts regarding their colonizing status**. Under conditions of total subjectification, such charges ought to be unintelligible to the settler. Thus, the process of subject formation is always in slippage and never totalized as others might suggest.75 Because of this precarity, **the settler subject is prone to violence and lashing out; but the subject in slippage also provides an avenue by which the process of settler colonialism can be subverted – creating cracks in a phantasmatic wholeness which can be opened wider. Breakages of this sort offer an opportunity to pursue what Paulette Regan calls a ‘restorying’ of settler colonial history and culture, to decanter settler mythologies built upon and within the dispossession of indigenous peoples.76 The cultivation of these cracks is a necessary part of decolonizing work, as it continues to panic and thus to destabilize settler subjects. Resistance to settler colonialism** does not occur only in highly visible moments like the famous conflict at Kanesatake and Kahnawake,77 it also **occurs in reiterative and disruptive practices, presences, and speech acts. Goeman correctly observes that the ‘repetitive practices of everyday life’ are what give settler spaces their meaning, as they provide a degree of naturalness to the settler imago and its psychic investments.**78 As such, **to disrupt the ease of these repetitions is at once to striate radically the otherwise smooth spaces of settler colonialism and also to disrupt the easy (re)production of the settler subject.** Goeman calls these subversive acts the ‘**micro-politics of resistance’**, which historically 12 P. HENDERSON Downloaded by [New York University] at 15:35 26 February 2016 took the form of ‘moving fences, not cooperating with census enumerators, sometimes disrupting survey parties’ amongst other process.79 **These acts panic the subject that is disciplined as a product of settler colonial power, by forcing encounters with the sovereign indigenous peoples that were imagined to be gone. This reveals to the settler, if only fleetingly, the violence that founds and sustains the settler colonial relationship. While such practices may not overthrow the settler colonial system, they do subvert its logics by insistently drawing attention to the ongoing presence of indigenous peoples who refuse erasure. Today, we can draw similar inspiration from the variety of tactics used in movements like Idle No More. From flash mobs in major malls, to round dances that block city streets, and even projects to rename Toronto locations, Idle No More is engaged in a series of micro-political projects across Turtle Island**.80 The micro-politics of the movement strengthen indigenous subjects and their spatialities, while leaving an indelible imprint in the settler psyche. Predictably, rage and resentment were provoked in some settlers;81 however, **Idle No More also drew thousands of settler-allies into the streets and renewed conversations about the necessity of nation-to-nation relationships**. With settler colonial spaces disrupted and a relationship of domination made impossible to ignore, in the tradition of centuries of indigenous resistance, **Idle No More put the settler subject into serious flux once more.**

**The counterinterpretation is that you should evaluate the 1AC as an object of study**

**[a] Sociogeny – debate may not spill over to political change but it has the potential to reproduce affirmations and negations that trigger neurohcmeical responses via reward and punishment mechanisms privilege certain research methods as valuable in the way debaters view the world.**

**[b] Objectivity – consequence based plan focus shifts the focus of debate from our investments in settler colonialism to a plan text, which is incoherent because debate is a communicative activity and their inter sidesteps discussions of genocide.**

## Case

### AT – AFC

Ci – the neg may context the framework if its util

[a] thei interp teaches Temporality – the affs models teaches violence can be wished away through administrative tinkering propogating desires within debate to play as activits without reimagnign the social structures that cause violence in the first place. Viewing the ballot as an mechanism to restore ethicality fails – they still dogmatically adhere to these protocols even though they know debate doesn’t caus emateiral change. That creates an process where nativeness is confined to death as their promise of a fiated political horizon relies on a politics of futurity.

Off clash –

Q of what time of clash the 1NC has impact turned scenario analysis

Off strat skew

[a] nonuq- every arg skews your strat – make them prove why this one is worse

[b] their warrants are in the context of phil not kritiks which means it doens tapply

### AT – method

Off Matthew

[a] the aff doesn’t solve thos practices it overlooks how health is unequivocally diff against legal indifference

[b] we hv made args for why settlement is different from JUST racial discrminatiion when the structures of civil society are founded on dispossession

Off Shelton

[a] proves the Kashyap link – their claims abt debating health good DO NOT MATTER when they ignore the genocide thye are complicit

[b] make them prove how the ff spills over to chang at community levels

Off Epstein

[a] c/a young it takes it out

[b] not in the context of SETTLER VIOLENCE make them read an argument DISPROVIGN WHY A STRUCTURAL OPPOSITON to indigneity doesn’t exost Our arguments are that gratuitous violence and semiotics control this oppositon

[b] state is a collective group of people so desires

[c] IT doesn’t disproive psychoanalysis

[d] our arg is abt predicting desires

**[b] The foundational antagonism of settler colonialism remains**

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**Today**, **the characters and details of** the **stories that animate this landscape have changed**, **but *the settler and the Indigenous remain* locked in a grim dance.** In the coming months, **TransCanada Corporation will make a final investment decision on the Keystone** XL **pipeline**, expedited by the Trump administration. If completed, **the project will pump** as much as **830,000 barrels of butiminous sands** or “tar sands” **through Oceti Sakowin territory**, passing just south of the Cheyenne River Sioux reservation in present-day South Dakota, violating the same Fort Laramie treaties in question with Dakota Access. In November **Keystone 1**, a sister project of Keystone XL, **leaked more than *9,700 barrels of oil onto lands*** just **west of the Sisseton Wahpeton Oyate’s reservation in** present-day **South Dakota.** Days later, in a split decision, the Nebraska Public Service Commission approved an alternate route for Keystone XL. In the weeks and months since, more than 17,000 people signed a “Promise to Protect,” committing to take non-violent direct action in the path of the pipeline in solidarity with Indigenous peoples if construction begins, likely spring 2019.

### t/l

1AR theory is a new link- their appeals to fairness are grounded in settlerist logics bc it’s a q of fairnesss and they cannot solve structural fairness

[a] they do not have a recent piece of inherency ev any neg ev postdating aff ev is sufficient to take out their scenario

[b] none of the 1AC is reverse casual -even if they read ev abt stopping evergreening there is no ev abt how that solves drug prices or innovation

### AT – Innovation

**Innovation high and evergreening is false – postdates your ev and we have stats**

**Ezell 20.** Stephen Ezell, July 2020, “Ensuring U.S. Biopharmaceutical Competitiveness,” Information Technology and Innovation Foundation, <http://www2.itif.org/2020-biopharma-competitiveness.pdf> sean!

Medicines are critical to health. Since 2000, the FDA has approved more than 500 new medicines. 2 As of 2020, biopharmaceutical companies in the United States have more than 3,400 drugs under clinical development, accounting for almost half of the estimated 8,000 medicines under development globally (1,100 of which are being developed to treat various forms of cancers).3 And while some have asserted that biotechnology companies focus too often on “me-too” drugs that compete with other treatments already on the market, the reality is that most of the drugs currently under development seek to tackle some of the world’s most intractable diseases, including Alzheimer’s, cancer, and communicable diseases. This includes 130 coronavirus vaccines under development globally as well as 144 active trials of coronavirus therapeutic agents, and another 457 development programs for new therapeutic agents, which the FDA is tracking through its Coronavirus Treatment Acceleration Program.4 Moreover, such arguments miss that many of the drugs developed in recent years have in fact been first of their kind. For instance, in 2014, the FDA’s Center for Drug Evaluation and Research (CDER) approved 41 new medicines (the most since 1996 at that point), many of which were first-in-class medicines, meaning they represent a possible new pharmacological class for treating a medical condition.5 In that year, 28 of the 41 drugs approved were considered biologic or specialty agents, and 41 percent of medicines approved were intended to treat rare diseases. In 2018, CDER approved a record 59 novel drugs, and in 2019, 48 novel drugs, making 2019 the third-largest approval class in the past 25 years.6 As of 2020, 74 percent of medicines in clinical development in the United States are potentially first-in-class medicines, including 86 percent for Alzheimer’s, 70 percent for various forms of cancer, and 73 percent for cardiovascular diseases

#### Evergreening is a myth – this card ends the debate.

Lietzan 20 [Erika; Professor of Law, University of Missouri School of Law, Research interests in Pharmaceutical Regulation, Device Regulation, Intellectual Property; “The Evergreening Myth Claims that drug innovators extend their patents obscure a radical policy‐​making goal.,” Cato Institute; Fall 2020; <https://www.cato.org/regulation/fall-2020/evergreening-myth>/] Justin

In recent years, U.S. policymakers have considered proposals intended to prevent — or at least reduce — “evergreening” by pharmaceutical companies. Some proposals would change the antitrust enforcement landscape, others the intellectual property landscape, and still others the regulatory framework that governs new medicines. Some proposals — such as those creating new causes of action under the antitrust laws or limiting the availability of patents for discoveries — are profound and their proponents cite a body of academic and policy literature that decries supposed “evergreening” by companies to justify their ideas.

The term “evergreening” is a metaphor, meant to remind audiences of evergreen trees, which have green foliage year‐​round. It implies that something has been extended, and users of the metaphor view this extension as improper or undesirable. When offering descriptions and examples of evergreening, they focus on drug companies continuing to innovate after first introducing a new molecule, and on the broader marketplace for medicines after subsequent innovations have been introduced to the market. But proponents are frustratingly inconsistent and unclear about what, exactly, has been “extended” in these situations. A close look at the regulatory landscape in which continuing pharmaceutical innovation occurs shows that arguments for reform are grounded in myths, such as the myth that pharmaceutical companies continuing to innovate somehow “extend” their patents.

Once the myths of “evergreening” are laid bare, it becomes apparent that proponents of these proposals really want for the government to limit medical innovators to one medical product in the marketplace for each useful new molecule discovered. They are arguing that an innovator should not enjoy an exclusive market — and the resulting advantageous pricing — for innovations that, though discrete and independently satisfying the standard for a patent under U.S. law, stem in some fashion from an earlier innovation for which that innovator separately enjoyed exclusivity and the resulting pricing advantages. Or, at least, that drug innovators should not. This is a radical proposal that merits careful reflection and discussion, and it is not ripe for action. Understanding that this is the true policymaking objective requires unpacking the regulatory landscape and market more carefully, and paying closer attention to word choice, than proponents of reform often do. The Evergreening Allegation In the United States, every new medicinal product requires premarket approval from the Food and Drug Administration. The drug statute refers to approval of a “new drug,” and ambiguity in the term “drug” provides fertile ground for confusion and rhetorical mischief, as discussed later in this article. A firm that wants to market a new drug must prove to the FDA that the drug is safe and effective. Generating this information takes years, beginning with work in the laboratory and on animals, and progressing through several rounds of “clinical” testing in humans. For new molecules, the clinical portion of this research and development program averages six years. The process is also expensive: the Tufts Center for the Study of Drug Development now estimates the average cost of developing a new molecular entity at $2.6 billion. That figure includes average out‐​of‐​pocket costs of $1.4 billion and reflects the cost of unsuccessful projects. Most research and development programs fail. When new drugs are first launched by innovators, they tend to be sold under brand names and protected by patents as well as statutory rights in the data that supported FDA approval (known as “data exclusivity”). Although the pricing of these products may reflect competitive pressure from other branded products, it also reflects the fact that patent rights and statutory data exclusivity delay the launch of cheaper copies. But no more than five years later, and often earlier, the innovator’s competitors may file applications seeking approval of their own products based on the innovator’s research, rather than performing their own. They file what are known as “abbreviated applications” — abbreviated because they omit some, or all, of the research needed to prove safety and effectiveness. Abbreviated applications are much less expensive and time‐​consuming to assemble, and the competitors’ drugs correspondingly much less expensive than the original drugs they copy. When a competitor seeks to market an exact copy through an abbreviated application, we call its drug a “generic” drug. Pharmacists usually dispense generic copies even when doctors prescribe the corresponding branded products by name. Some people use the “evergreening” label when an innovator holds more than one patent protecting its product, especially if some patents expire later than others. More often, though, these people use the label when an innovator introduces a newer version of its own product that is already on the market. These newer products tend to be sold under brand names and protected by their own patents and statutory data exclusivity. Sometimes the innovator also stops selling its older product. If purchasers shift to the innovator’s newer product rather than purchasing cheap copies of the innovator’s older product, some say the innovator has engaged in evergreening. Although the term “evergreening” is a metaphor and signifies an extension of something, proponents of reform proposals do not agree on the particulars of the term’s use. Some say the company has evergreened its invention, its drug, or its product. Others say the company has evergreened the drug’s patent or patent life, or its exclusivity. Some say it has extended the drug’s patents, or the drug’s patent coverage or patent life, or the drug’s exclusivity period. Some say the company has evergreened the drug’s price, or its own profits or monopoly, or the company has extended its market power. Many argue that through evergreening — whatever the term means — the innovator has improperly blocked other firms from competing with it. On this basis, they seek government intervention. For instance, one recent proposal would allow the Federal Trade Commission to bring antitrust actions against innovators who introduced newer products to replace their older products. Three Myths of Evergreening The circumstances that trigger the “evergreening” label occur at the intersection of several complex bodies of law: the federal framework requiring premarket approval of new medicines and their copies, federal intellectual property laws, federal and state laws governing promotion of medicines, and federal laws and practices and state laws relating to prescribing and dispensing medicines. Many who propose aggressive government intervention because of evergreening give short shrift to this landscape, which allows the perpetuation of three myths that distort policymaking discussions. Before reviewing the myths, it will help to understand two points about the framework in which innovators compete with the companies that submit abbreviated applications. First, the FDA approves products, not active ingredients. And second, patents protect inventions, not products. Federal law states that every “new drug” requires an approved application. But at the FDA the term “drug” has more than one meaning. It includes a medicine’s active ingredient, to be sure. But it also includes drug products. A drug product is a medicine in its finished form, meaning the form that will be sold in the market and administered to patients. And the FDA approves a particular product described in a particular application — the specific combination of active and inactive ingredients (often called a drug’s “formulation”), in a particular dosage form (such as capsule or tablet), for a particular route of administration (such as oral or topical), at a particular strength, for particular medical uses (also known as the product’s “indications”), manufactured as described in the application, and accompanied by labeling written for prescribers based on the data in the application. Federal law allows a patent to issue for any new, useful, non‐​obvious invention, including a process, a composition of matter, and an improvement to an existing process or composition of matter. The patent usually expires 20 years after its application date. For any particular drug product approved by the FDA, the innovator might own patents on various types of inventions. The innovator usually owns a patent claiming the product’s active ingredient, and because the innovator generally files this patent before starting clinical trials, it is usually the first to expire. Other inventions protected by patent might include the product’s formulation or a dosage form and dosage of the active ingredient (or formulation). These inventions may emerge later in the premarket development process. If the resulting patent applications refer to the active ingredient patent, the patents will expire when the active ingredient patent expires, but otherwise they will expire later. The innovator may also own other patents claiming inventions embodied in the product, such as a patent claiming methods of using or administering the product, a patent claiming the manufacturing process, or a patent claiming a metabolite of the active ingredient. These, too, could expire later than the first patent — sometimes much later. These two points work together. A single active ingredient associated with a single brand name might be the subject of a half dozen, dozen, or more discrete products. Suppose an active ingredient was formulated into tablets and the innovator sold six strengths. Suppose the innovator also formulated an injectable version, which it sold in two strengths. Suppose it also developed a disintegrating tablet for oral administration, which it sold in four strengths. This innovator would sell 12 discrete products with the same active ingredient and probably (though not necessarily) the same brand name. And because a single product might incorporate many discrete inventions, the patents relevant to one product might differ from the patents relevant to another. Failure to realize this — and its regulatory significance — leads to three myths, as follows.

Myth of evergreening patents / The first myth is that innovators extend their patents. This is legally impossible. In the United States, a patent expires 20 years after its application date.

There are only two ways a patent’s expiration date can shift later in time: (1) When it issues a patent, the U.S. Patent and Trademark Office (PTO) adjusts the expiry date later to compensate for routine delays at the PTO. And (2), if the marketing application proposed a new active ingredient, then if the company asks the PTO for a patent term extension within 60 days of FDA approval, the PTO will use a statutory formula to extend one patent claiming the product to compensate partially for the lapse of patent life during premarket testing and regulatory review. There is no other mechanism by which a patent might be extended. In particular, a patent on one invention — no matter when it expires — does not extend the patent on another invention.

Myth of blocked competitors / The second myth is that when an innovator holds patents that expire after its active ingredient patent, or when it introduces newer products to market, it can prevent its competitors from bringing their copies to market. Instead, once the initial patent and (if applicable) statutory exclusivity on the innovator’s active ingredient have expired, its competitors have substantial freedom to operate. This freedom reflects two facts that are often overlooked.

First, the innovator’s competitor does not have to propose an exact copy. Federal law permits the competitor to rely on the innovator’s research but propose competing products that are not identical. To be sure, a competitor may submit an ANDA for a product that essentially duplicates the innovator’s product — that is, a generic. Ordinarily, the company shows in the ANDA that its product has the same active ingredient, route of administration, dosage form, strength, and labeling as the innovator’s product. The generic must also be “bioequivalent” to the original drug that it references, meaning that its active ingredient must reach the site of action in the body to the same extent and at the same rate as the active ingredient of the referenced product. But even a generic can be a little different. For example, it usually does not need the same inactive ingredients in the same quantities. And the generic competitor need not use the same manufacturing process.

If a competitor wants to offer a different route of administration, dosage form, or strength — for instance, to avoid infringing a patent — it may still be able to use the generic drug approval pathway. It simply files a “suitability petition” asking the FDA’s permission. The agency will approve the petition unless more data are needed to establish the proposed product’s safety and effectiveness. And at this point, the competitor may file an ANDA. More significantly, though, a competitor can always use a different abbreviated application pathway: a “505(b)(2)” application for a product that differs more substantially from the innovator’s product. Although the changes proposed in this hybrid application must be supported by new data, the competitor otherwise relies on the innovator’s data, avoiding the expensive and time‐​consuming research and development process the innovator went through. In addition to using this mechanism to propose modifications that avoid a patent, a competitor might use the mechanism to propose innovations that will offer an advantage in the market — such as changes to the active ingredient and new medical uses.

Second, an abbreviated application cites a specific innovative product, not the active ingredient or brand writ large. The competitor selects one innovative product as the reference product on which it relies — for instance, one of the 12 products in the hypothetical above. Its regulatory burden is tied to that specific product alone. The requirement to show sameness and bioequivalence (for an ANDA) and, critically, the obligation to contend with patents and wait for statutory exclusivity to expire are linked to the one specific product, alone. (In rare circumstances, when filing a hybrid application, a competitor might cite two innovative products, but the same point applies.)

To be sure, the patents associated with the cited innovative product affect when the FDA may approve the abbreviated application. Whether it files an ANDA or a hybrid application, a competitor must address the unexpired patents listed in the FDA’s “Orange Book” for the specific innovative product it has chosen to cite. For each listed patent, it has two choices, and its selection dictates the timing of FDA approval as far as that patent is concerned. The competitor may state the date on which the patent will expire, signaling that it does not plan to market its product until expiry. This precludes final approval of its product until patent expiry. Or it may assert that the patent is invalid or will not be infringed by its product, notifying the innovator of this position. If the innovator sues within 45 days, the drug statute stays final approval of its abbreviated application for 30 months. Under changes to the law made in 2003, though, unless the competitor changes its position on a patent after filing its abbreviated application, approval of its application is stayed only once. At the end of the 30 months, the FDA must approve the abbreviated application if the approval standard is met, even if there is ongoing patent litigation.

Although a competitor using the abbreviated application pathway must contend with the innovator’s patents and approval of its product may be delayed because of those patents, this is true of only the patents associated with the specific product that it references. The competitor does not have to contend with patents associated with other products that happen to contain the same active ingredient or bear the same brand name. Similarly, the competing applicant grapples with only the statutory exclusivity associated with the product it references. The drug statute provides five years of exclusivity in the data supporting new chemical entities and three years of exclusivity for most new products that are not new chemical entities. Separately, if an innovator introduces what the FDA calls a new “condition of approval” — such as a new strength or dosage form — the drug statute may provide three years of exclusivity. This delays approval of abbreviated applications proposing products with the same active ingredient for the same condition of approval. But a competitor that proposed a different strength or dosage form — or that cited a product with a different strength or dosage form (such as the innovator’s original product) — would not need to grapple with that exclusivity.

This debunks the myth that an innovator with later‐​expiring patents and an innovator that introduces newer products can prevent its competitors from bringing copies to market. Instead, competitors have several options. For instance, empirical studies show that competitors file abbreviated applications as early as the law permits them to do so, arguing that the innovator’s patents are invalid or, if applicable, not infringed by the new drug. They tend to lose these arguments when the active ingredient patent is at issue, but they tend to win if a formulation patent is at issue. If a competitor believed it would infringe a patent or feared it would lose the patent infringement suit brought by the innovator, it could seek a license. Settlements of patent litigation between innovators and competitors seeking to market generic copies usually include a license allowing the competitor to bring its product to market earlier than the date of patent expiry. There are also other options.

Once the patent on the active ingredient expires, a competitor can use the ingredient in its own product and file an abbreviated application, relying on the research performed and submitted by the innovator. Even in an ANDA, a true generic application, only the active ingredient must be the same. A competitor may be able to design around patents claiming other aspects of the innovator’s product (such as its strength and route of administration) and still file a true generic application. The competitor would simply file a suitability petition and, upon approval of that petition, a generic application proposing the difference that allowed it to avoid patent infringement. Then it would assert non‐​infringement in its application. If it could not file a generic application (for instance, because the FDA requested data to support the changes made), it could always file a hybrid application. It would still rely on the innovator’s research and it would similarly assert non‐​infringement in its application. In either case, the innovator might not sue if the competitor clearly avoided its patents.

It is thus misleading for advocates of intervention to complain about the number of “patents” associated with a “drug.” A competitor filing an abbreviated application does not copy a “drug” in the broad sense of the term. Accurately describing a company’s freedom to operate in the market would require focusing on discrete products that can serve as references for abbreviated applications and on the number, scope, and breadth of the patent claims held by the innovator for those products. This would tell policymakers more about the market effects of a firm’s innovation and patenting practices than the number of patents associated with a particular brand name or the number of patents associated with the many finished products containing a particular active ingredient.

#### Campanella is not in the context of the aff – its about people who have ALREADY died from disease – not the untrue prescriptive claims their ev makes abt the ppl who will die

#### Feldman [\*\*and Wang\*\*] is a joke.

Risch 17 [Michael; “Data for the Evergreening Debate,” Written Description; 11/21/17; <https://writtendescription.blogspot.com/2017/11/data-for-evergreening-debate.html>] Justin

**Feldman and Wang** argue that the Orange Book has been used by companies to "evergreen" their drugs - that is, to extend exclusivity beyond patent expiration. The paper is on SSRN and the abstract is here:

Why do drug prices remain so high? Even in sub-optimally competitive markets such as health care, one might expect to see some measure of competition, at least in certain circumstances. Although anecdotal evidence has identified instances of evergreening, which can be defined as artificially extending the protection cliff, just how pervasive is such behavior? Is it simply a matter of certain bad actors, to whom everyone points repeatedly, or is the problem endemic to the industry?

This study examines all drugs on the market between 2005 and 2015, identifying and analyzing every instance in which the company added new patents or exclusivities. The results show a startling departure from the classic conceptualization of intellectual property protection for pharmaceuticals. Key results include: 1) Rather than creating new medicines, pharmaceutical companies are recycling and repurposing old ones. Every year, at least 74% of the drugs associated with new patents in the FDA’s records were not new drugs coming on the market, but existing drugs; 2) Adding new patents and exclusivities to extend the protection cliff is particularly pronounced among blockbuster drugs. Of the roughly 100 best-selling drugs, almost 80% extended their protection at least once, with almost 50% extending the protection cliff more than once; 3) Once a company starts down this road, there is a tendency to keep returning to the well. Looking at the full group, 80% of those who added protections added more than one, with some becoming serial offenders; 4) The problem is growing across time.

I think the data the authors have gathered is extremely important, and I think that their study sheds important light on what happens in the pharmaceutical industry. That said, as I explain below, my takeaways from this paper are much different from theirs.

My concerns are fourfold. First, even assuming that every one of the efforts listed by the the study were an attempt to evergreen, I have no sense for whether evergreening actually happened. This study doesn't provide any data about generic entry or pricing. For example, the study describes 13 listings for OxyContin, but I'd bet dollars to donuts that there was plenty of generic oxycodone available. Similarly, many of the new listings are changes from Drug 1.0 to "new and improved!" Drug 2.0. This, of course, has been criticized as anti-competitive (since generics rely on auto-substitution laws), but the study presents no data about whether insurers refuse to pay for Drug 2.0 and instead require the generic, nor does it explain why generics can't do their own advertisements to get doctors to prescribe Drug 1.0.

Second, many of these listings and the new patents that go with them are for advances, like extended release and dissolvables. These can be critically important advances, and they are preferred by consumers. Thus, one person's "evergreening" is another person's innovation. I take extended release drugs (and expensive generic) to avoid side effects and I gave my son dissolvable Prevacid when he wouldn't stop crying with GERD (and was glad for it). Without consumer data or patent data, it is impossible to tell just how much evergreening is going on (or how harmful it is). Now, if these patents are obvious because making them dissolvable or extended is easy, I'm all for stripping protection - but that's a different issue.

Third, the article speaks of orphan drug approvals as if they are a bad thing. This made me bristle, quite frankly. My mother has an extremely rare autoimmune disease that is very painful. I often wondered, isn't there some incentive to develop drugs to treat it? Turns out there is, and though she got no relief, apparently a bunch of other rare diseases did, and that's the whole point behind orphan drug exclusivity. Concern about this exclusivity seems misguided anyway. If it turns out that drug companies are gaming it and nobody actually needs the drug, then the the loss is not too large, because it's a small population and nobody needs the generic anyway. And if it turns out that they do need it, the Orange Book only limits labeling, and doctors are free to prescribe a generic for off-label use. Without evidence that doctors refuse to do so, there's no real evidence that Orphan exclusivity does much harm. In another personal story, my wife was prescribed a generic drug in a different formulation than the patented tablet for off-label use.

Fourth, and most generally, the article speaks of new patents as if there is no innovation. New use discoveries are important. Many of our most important drugs are not for their original uses. As far as I know, generics are not barred from finding new uses and patenting them, either, though admittedly their hands are tied for patient use. So, where the authors see evergreening, I see innovation. Maybe. Maybe it's obvious. But we can't tell that from this high level, and I'm not ready to write it all off as evergreening. It is telling that I was able to provide four personal stories about how supposed evergreening efforts benefited, would have benefited, or did not increase costs for my family or me (and thankfully none of them involved oxycodone).

**Pharma innovation is doing great now – answers all your warrants.**

Lisa Jarvis, 1-17-2020, "The new drugs of 2019," Chemical &amp; Engineering News, <https://cen.acs.org/pharmaceuticals/drug-development/new-drugs-2019/98/i3> //Jay

Although pharmaceutical companies last year were unable to top the record-shattering [59 new drugs approved in the US in 2018](https://cen.acs.org/pharmaceuticals/drug-development/new-drugs-2018/97/i3), they were still on a roll. In 2019, the Food and Drug Administration green-lighted 48 medicines, a crop that includes myriad modalities and many new treatments for long-neglected diseases. Taken together, the past 3 years of approvals represent drug companies’ most productive period in more than 2 decades. Still, some analysts caution that the steady flow of new medicines could mask troubling indications about the health of the industry. The year brought several notable trends. The first was an uptick in the number of novel mechanisms on display in the new drugs. Roughly 42% of the medicines were first in class, meaning they had new mechanisms of action; this is a jump over the prior 4 years, when that portion ranged between 32 and 36%. Another trend was the influx of newer modalities. While small molecules continue to account for the lion’s share of new molecular entities (NMEs), making up 67% of overall approvals in 2019, the list also includes several antibody-drug conjugates, an antisense oligonucleotide therapy, and a therapy based on RNA interference (RNAi). Yet another encouraging trend was the influx of innovative therapies for underserved diseases. Standout approvals include two new drugs for sickle cell anemia (Global Blood Therapeutics’ Oxbryta and Novartis’s Adakveo), an antibiotic for treatment-resistant tuberculosis (Global Alliance for TB Drug Development’s pretomanid), and a therapy for women experiencing postpartum depression (Sage Therapeutics’ Zulresso). “The quality of the drugs over the last decade or so has steadily improved since the depths of the innovation crisis 10–12 years ago,” says Bernard Munos, a senior fellow at FasterCures, a drug research think tank. “We’re seeing stuff that frankly would have looked like science fiction back then.” Those futuristic new therapies include [Novartis’s Zolgensma](https://cen.acs.org/articles/97/i22/FDA-approves-second-gene-therapy.html), a gene therapy for spinal muscular atrophy; Alnylam Pharmaceuticals’ Givlaari, the company’s second marketed RNAi-based therapy; and several critical vaccines for infectious diseases, including Ebola, smallpox, and dengue fever. Not all those edgy therapies appear in C&EN’s list. We track approvals granted through the FDA’s main drug approval arm, the Center for Drug Evaluation and Research; drugs like vaccines and gene therapies are generally reviewed through the agency’s Center for Biologics Evaluation and Research. The new-approvals list also doesn’t include several therapies that made their way to patients for the first time, even though the FDA doesn’t consider them new drugs. For example, the agency gave its green light to Johnson & Johnson’s Spravato, making it the first new treatment option for people with major depressive disorder in more than 50 years. The drug is the S enantiomer of ketamine, an N-methyl-D-aspartate receptor antagonist that had been long approved as an anesthetic, gained notoriety as a club drug, and was used for years off label to treat severe depression ([see page 18](https://cen.acs.org/biological-chemistry/neuroscience/Ketamine-revolutionizing-antidepressant-research-still/98/i3)). Also notable in 2019 was a slight dip in the number of cancer drugs, which in recent years typically made up more than a quarter of all new medicines. Last year’s 11 cancer treatments accounted for roughly 23% of approvals.

#### NAS is terrible – a] the card doesn’t mention pharma once b] just says there is potential application for hiw it COULD help which is NOT a spill over argument

**Risk of transmission is overstated—conventional checks solve**

**Smith 17**—former R&D director at MicroPhage and SomaLogic (Drew, “Can A Superbug Cause A Global Pandemic?,” <https://www.forbes.com/sites/quora/2017/02/10/can-a-superbug-cause-a-global-pandemic/#3cb04e2c59aa>, dml)

Death rates from bacterial infections dropped over 90% from historic levels before the introduction of penicillin. Sanitation and vaccines are ***far more effective methods*** to control bacterial infections than antibiotics ever were or ever will be. ***Boring old soap*** and ***water***, ***filtration***, ***bleach***, and ***alcohol*** kill superbugs ***just fine***. ***None*** of these things are in ***short supply***.

The acquisition of multiple drug resistances generally (but not always) causes bacteria to become a ***bit less fit*** and ***unable*** to infect otherwise healthy adults. The victim of this particular superbug was in her seventies and had been in and out of hospitals for over a year. This is a fairly typical profile for victims of multi-drug resistant bacteria.

The ***worst-case scenario***, if we continue to abuse and overuse antibiotics in feedlots and hospitals, is that these bugs will pick up ***compensatory mutations*** and become more virulent. Many fairly routine procedures - chemotherapy, thoracic and orthopedic surgery - will become much more risky.

But the risk will still be ***largely confined*** to ***hospitalized patients***. MDR bacteria are ***extremely unlikely*** to cause a ***global pandemic*** on the scale of the 1919 influenza or AIDS epidemics, so long as we continue to provide clean food and water to the public.

**SQ solves – experiments and action now mean the plan isn’t “key” – none of their uniqueness evidence is specific to antibioitics**

**Biochemical Society 17** (Biochemical Society, “How to solve a problem like antibiotic resistance”, March 3, 2017, ScienceDaily, https://www.sciencedaily.com/releases/2017/03/170303100429.htm)

There has been much recent talk about how to target the rising tide of antibiotic resistance across the world, one of the biggest threats to global health today. While there is no doubting the size of the problem facing scientists, healthcare professionals and the pharmaceutical industry, there are innovative ways we can target antibiotic resistance in the short term, which are discussed in three articles published in Essays in Biochemistry. With only a few antibiotics in development and a long drug development process (often 10-15 years), there is concern that what is being done to combat antibiotic resistance may be 'too little, too late'. "If bacteria continue developing resistance to multiple antibiotics at the present rate, at the same time as the antibiotic pipeline continues to dry up, there could be catastrophic costs to healthcare and society globally," said senior co-author on one of the articles, Dr Tony Velkov, an Australian National Health and Medical Research Council (NHMRC) Career Development Fellow from Monash University, Victoria, Australia. While any antimicrobial resistance is concerning, the increasing incidence of antibiotic-resistant Gram-negative bacteria has become a particular problem as strains resistant to multiple antibiotics are becoming common and no new drugs to treat these infections (eg, carbapenem-resistant Enterobacteriaceae) will be available in the near future. These Gram-negative bacteria are considered the most critical priority in the list of the 12 families of bacteria that pose the greatest threat to human health that was just released by the World Health Organization. The reasons for the high levels of antimicrobial resistance observed in these critical Gram-negative organisms are explained in another paper in the same issue written by the Guest Editor of the journal, Dr Rietie Venter, University of South Australia, Adelaide, and colleagues. According to the authors, one of the main contributing factors to the increased resistance observed in Gram-negative bacteria is the permeability barrier caused by their additional outer membrane. An innovative strategy that is gaining momentum is the synergistic use of antibiotics with FDA-approved non-antibiotics. Using this novel approach, an FDA-approved non-antibiotic drug is combined with a specific antibiotic that enables it to breach the outer membrane barrier and so restore the activity of an antibiotic. The Monash University authors discuss how combining antibiotics with other non-antibiotic drugs or compounds can boost their effectiveness against Gram-negative 'superbugs'. For example, loperamide, an anti-diarrheal medication sold in most pharmacies, enhances the effectiveness of eight different antibiotics (all in the tetracycline class). In particular, when added to the tetracycline antibiotic minocycline, along with the Parkinson's disease drug benserazide, it significantly increased antibiotic activity against multi-drug resistant Pseudomonas aeruginosa, a causative agent in hospital-acquired infections such as ventilator-associated pneumonia. Polymyxins are a type of antibiotics that target Gram-negative bacterial infections and have traditionally been used as a last resort to treat serious infections such as those caused by Gram-negative 'superbugs' Klebsiella pneumoniae, P. aeruginosa and Acinetobacter baumannii. Resistance to polymyxins is not common, but in late 2015 the first transferable resistance gene to colistin (polymyxin E) was discovered (plasmid-borne mcr-1 gene). This caused significant concerns, as once resistance to polymyxins is established, often no other treatments are available. A number of researchers, including the team based at Monash University, have been testing different combinations of drugs or compounds with polymyxins to try and improve their effectiveness against these bacterial 'superbugs'. "Without new antibiotics in the near future, we must explore innovative approaches to preserve the clinical utility of important last-line antibiotics such as the polymyxins." commented senior co-author on the paper, Professor Jian Li, Head of the Laboratory of Antimicrobial Systems Pharmacology from Monash University, Victoria, Australia. ***Some interesting findings have ensued, with a number of different combinations having a beneficial effect***. Some notable examples that increased antibiotic activity when combined with polymyxin B include: ivacaftor and lumacaftor, two new drugs used to treat cystic fibrosis; and closantel, a drug used to treat parasitic worm infections. Another interesting combination that has shown promise against methicillin-resistant Staphylococcus aureus (MRSA), according to Schneider and co-authors, is combining the antibiotics ampicillin or oxacillin with berberine. Berberine is extracted from the roots, stems and bark of plants such as barberry. In another paper in the same issue of Essays in Biochemistry, Dr Mark Blaskovich, Program Coordinator, Community for Open Antimicrobial Drug Discovery and colleagues from the University of Queensland, Brisbane, Australia, describe the key ways they believe antimicrobial resistance can be targeted. "In the short term, the greatest potential for reducing further development of antimicrobial resistance lies in developing a rapid test that can quickly tell whether or not you have a bacterial infection (as opposed to a viral cold or flu), and whether you really need an antibiotic," commented Blaskovich. "Even better if the test could say what type of bacteria, and what types of antibiotics it is resistant to. You could then treat an infection immediately with the appropriate antibiotic, rather than the trial and error method now used. These tests could be ready within the next 5 years, and would have a huge impact on reducing unnecessary antibiotic use, preserving our existing antibiotics and reducing the spread of antibiotic resistance." Regarding antibiotics in particular, Blaskovich and colleagues describe a number of possible strategies to pursue. The first of which is to improve existing antibiotics. For example, the authors recently created a modified version of the antibiotic vancomycin to increase its potency and reduce its toxic side effects. Another option is to rediscover 'old' antibiotics. In the 1950s and 60s many potential antibiotic drugs were described in the scientific literature, but due to so many choices being available at the time, only some were developed for human use. An example of this is octapeptins, which are newly rediscovered antibiotics that are now being developed to combat Gram-negative 'superbugs'. Repurposing drugs originally developed and approved for other uses has also had some success. In 2005, the Drugs for Neglected Diseases initiative identified fexinadole as a potential treatment for sleeping sickness and it is now undergoing a Phase III trial. This drug had been developed as an antimicrobial in the 1970s, but only reached pre-clinical development. In addition to the above, researchers are looking for new, untested sources of antimicrobial activity to try and develop new drugs. A recent success in this area was, teixobactin, a new antibiotic developed by NovoBiotic Pharmaceuticals, discovered by using an 'iChip' to culture and isolate soil bacteria in situ. A final option, mentioned by Blaskovich and colleagues, is crowdsourcing new antibiotics. Using this approach, the Community for Open Antimicrobial Drug Discovery, is searching for new chemical diversity by searching compounds sourced from academic chemists from around the world. "It's hard to predict which one of these methods will be the most successful in the future, but we really need to be trying all of them to have any chance of overcoming antibiotic resistance," said Blaskovich. "Non-antibiotic strategies are just as important, such as developing vaccines or probiotic therapies to prevent infections, as they can help to reduce the overuse of antibiotics. They will never completely replace antibiotics, but can help to preserve our existing antibiotics so they still work when needed." Overall, these articles and others in the new antimicrobial resistance themed issue of Essays in Biochemistry give us hope that ***there are viable solutions being developed to this seemingly unsurmountable global problem***. It is important that all possible avenues are considered, as some less obvious approaches may end up being sources of future success. Dr Derry Mercer, Principal Scientist at NovaBiotics Ltd, a company that specialises in developing new antimicrobials, commented: "Research and development into new antimicrobials remains a vitally important pursuit for combatting the problem of antibiotic resistance, but alternative approaches to this problem are also urgently needed." He added: "Such methods include those described in the papers in the latest issue of Essays in Biochemistry, as well as vaccine development and bacteriophage therapy, to name a few. Approaches that target microbial virulence, for example targeting biofilms and/or quorum sensing, rather than more traditional directly antimicrobial drugs should also be urgently examined."

### AT – Drug Prices

#### c/a evergreening false

alt causes – their arg is t/l ridiculous obviously evergreening IS NOT THE ROOT CAUSE OF drug prices being high, you should ask yourself how the aff causes drugs to go form 300 dolalrs to like 5 dollars

turn – aff increases counterfeit drugs cuz mor ephramra companies produce drugs since the big companies don’t have patents

disease seriousness, infrastructure to develop mediicnes, cost of development and research, and market manipulation are all alt causes are hih

the ahmed ev is not in the context of the aff – just bc they found an article that says decolonization and vaccine doesn’t mean they are sequencing strategy

its also abt how countries are LEVERAGING the covid vaccine not medicine in general and they hv not read any ev abt wealthy nations controlling most medicine