# NDT Round 1 Wiki

## 1NC

### T

#### Our interpretation is that the affirmative must demonstrate the desirability of the resolution either in totality or in a particular instance to meet the necessary win condition of being topical.

#### United States federal government means the three branches of government

USA.gov 13 "USA.gov is the U.S. government's official web portal" http://www.usa.gov/Agencies/federal.shtml

U.S. Federal Government - The three branches of U.S. government—legislative, judicial, and executive—carry out governmental power and functions.

#### Increase means to make greater.

Merriam-Webster ND

“increase,” Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/increase

transitive verb

1: to make greater : AUGMENT

2obsolete : ENRICH

#### Interpretation: The core antitrust laws are only sections 1 and 2 of the Sherman Act and section 7 of the Clayton Act.

The Antitrust Division 07 – Law enforcement agency that enforces the U.S. antitrust laws

“Antitrust Division Statement Regarding the Release of the Antitrust Modernization Commission Report,” The Antitrust Division, Department of Justice, April 2007, https://www.justice.gov/archive/atr/public/press\_releases/2007/222344.htm

The AMC has made many specific recommendations in its report, and the Division is in the process of reviewing all of them. The Division commends the AMC for its three primary conclusions:

Free-market competition should remain the touchstone of United States' economic policy. The Commission's conclusion in this regard is a fundamental starting point for policy makers. Over a century of experience has shown that robust competition among businesses, each striving to be increasingly successful, leads to better quality products and services, lower prices, and higher levels of innovation.

The core antitrust laws—Sherman Act sections 1 and 2 and Clayton Act section 7—and their application by the courts and federal enforcement agencies are sound and appropriately safeguard the competitiveness of the U.S. economy.

New or different rules are not needed for industries in which innovation, intellectual property, and technological innovation are central features. Unlike some other areas of the law, the core antitrust laws are general in nature and have been applied to many different industries to protect free-market competition successfully over a long period of time despite changes in the economy and the increasing pace of technological advancement. One of the great benefits of the Sherman and Clayton Acts is their adaptability to new economic conditions without sacrificing their ability to protect competition.

#### “business practices” are a repeated pattern of conduct

Lucas 88 – Judge, California Supreme Court

Malcolm Millar Lucas, Cal. ex rel. Van De Kamp v. Texaco, 46 Cal. 3d 1147, Supreme Court of California, October 1988, LexisNexis

\*\* Italics in original.

The statute defines "unfair competition" to mean, as relevant here, "unlawful, unfair or fraudulent *business practice* . . . ." ( Bus. & Prof. Code, § 17200, italics added.) In so doing it effectively requires what the court variously described in the leading case of Barquis v. Merchants Collection Assn. (1972) 7 Cal.3d 94 [101 Cal.Rptr. 745, 496 P.2d 817], as "a 'pattern' . . . of conduct" ( id. at p. 108), "ongoing . . . conduct" ( id. at p. 111), "a pattern of behavior" ( id. at p. 113), and, "a course of conduct" (ibid.).

#### Prohibit means Affirmative teams must completely ban a type of anticompetitive business practices – they don’t

Feldman 86 – Member of Procopio's Native American Law practice

Glenn M. Feldman, On Appeal from the United States Court of Appeals for the Ninth Circuit, California v. Cabazon Band of Mission Indians, 1986 U.S. S. Ct. Briefs LEXIS 1221, Supreme Court of the United States, 1986, LexisNexis

In arguing that California's bingo laws are prohibitory rat ther than regulatory, the appeallants have simply misunderstood the fundamental distinction between "prohibition" and "regulation" of conduct. As succinctly put by the Supreme Court of Washington more than 50 years ago, after noting that the prohibition and regulation of the sale of liquor are entirely different things: "To prohibit the liquor traffic implies the putting a stop to its sale as a beverage, to end it fully, completely, and indefinitely." In contrast, regulation "implies that the sale of intoxicating liquor shall go on within the bounds of certain prescribed rules, restrictions, and limitations." Ajax v. Gregory, 32 P.2d 560, 563 (Wash. 1934). Because regulation of conduct involves prescribing limitations, regulation, by definition, necessarily involves some degree of prohibition. Blumenthal v. City of Cheyenne, 186 P.2d 556, 566 (Wyo. 1947). The two concepts, however, are analytically distinct. Therefore, when courts have been faced with statutory schemes similar to California's bingo laws, they have consistently held them to be regulatory and not prohibitory.

#### We have three impacts

#### Fairness – The resolution is the only predictable stasis point to determine both affirmative and negative ground, severing the affirmative requirement to defend it denigrates the distribution of burdens that structure the way debate function, making impossible this activity we all seem to enjoy in the first place.

#### Research – forcing teams to defend and negate the resolution creates incentives for in depth research into the scope and content of antitrust. This both makes debaters more reflexive about their assumptions, allows them to better understand a topic that’s core to how our economy functions, and gives debaters valuable skills in understanding and grasping complex topics

#### That outweighs --- we’re cognitively biased to cling to preexisting beliefs, which breeds epistemic arrogance that culminates in Trumpism --- only submitting beliefs for reexamination by others and taking a risk of being wrong cultivates scrutiny.

Resnick 19

Brian Resnick, Science Writer for Vox, “Intellectual humility: the importance of knowing you might be wrong,” Vox. January 4, 2019. <https://www.vox.com/science-and-health/2019/1/4/17989224/intellectual-humility-explained-psychology-replication>

\*\*\*Modified with a strikethrough – Raffi

It’s been fascinating to watch scientists struggle to make their institutions more humble. And I believe there’s an important and underappreciated virtue embedded in this process.

For the past few months, I’ve been talking to many scholars about intellectual humility, the characteristic that allows for admission of wrongness.

I’ve come to appreciate what a crucial tool it is for learning, especially in an increasingly interconnected and complicated world. As technology makes it easier [**to lie**](https://www.vox.com/science-and-health/2018/4/20/17109764/deepfake-ai-false-memory-psychology-mandela-effect) and spread false information [incredibly quickly](https://www.vox.com/science-and-health/2018/3/8/17085928/fake-news-study-mit-science), we need intellectually humble, curious people.

I’ve also realized how difficult it is to foster intellectual humility. In my reporting on this, I’ve learned there are three main challenges on the path to humility:

In order for us to acquire more intellectual humility, we all, even the smartest among us, need to better appreciate our cognitive ~~blind~~ [limitations] spots. Our minds are more imperfect and imprecise than we’d often like to admit. Our ignorance can be invisible.

Even when we overcome that immense challenge and figure out our errors, we need to remember we won’t necessarily be punished for saying, “I was wrong.” And we need to be braver about saying it. We need a culture that celebrates those words.

We’ll never achieve perfect intellectual humility. So we need to choose our convictions thoughtfully.

This is all to say: Intellectual humility isn’t easy. But damn, it’s a virtue worth striving for, and failing for, in this new year.

Intellectual humility is simply “the recognition that the things you believe in might in fact be wrong,” as [Mark Leary](http://people.duke.edu/~leary/), a social and personality psychologist at Duke University, tells me.

But don’t confuse it with overall humility or bashfulness. It’s not about being a pushover; it’s not about lacking confidence, or self-esteem. The intellectually humble don’t cave every time their thoughts are challenged.

Instead, it’s a method of thinking. It’s about entertaining the possibility that you may be wrong and being open to learning from the experience of others. Intellectual humility is about being actively curious about your blind spots. One illustration is in the ideal of the scientific method, where a scientist actively works against her own hypothesis, attempting to rule out any other alternative explanations for a phenomenon before settling on a conclusion. It’s about asking: What am I missing here?

It doesn’t require a high IQ or a particular skill set. It does, however, require making a habit of thinking about your limits, which can be painful. “It’s a process of monitoring your own confidence,” Leary says.

This idea is older than social psychology. Philosophers from the earliest days have [grappled](https://philosophynow.org/issues/53/Socratic_Humility) with the limits of human knowledge. Michel de Montaigne, the 16th-century French philosopher credited with inventing the essay, wrote that “the plague of man is boasting of his knowledge.”

Social psychologists have learned that humility is associated with other valuable character traits: People who score higher on intellectual humility questionnaires are more open to [hearing opposing views](https://www.tandfonline.com/doi/abs/10.1080/15298868.2017.1361861). They more readily seek out information that conflicts with their worldview. They pay [**more attention to evidence**](https://www.templeton.org/wp-content/uploads/2018/11/Intellectual-Humility-Leary-FullLength-Final.pdf) and have a stronger self-awareness when they answer a question incorrectly.

When you ask the intellectually arrogant if they’ve heard of bogus historical events like “Hamrick’s Rebellion,” they’ll say, “Sure.” The intellectually humble are less likely to do so. Studies have found that cognitive reflection — i.e., analytic thinking — is [correlated](https://static1.squarespace.com/static/51ed234ae4b0867e2385d879/t/5b43b48b03ce6471753c78ba/1531163796071/2018+Pennycook+Rand+-+Cognition.pdf) with being better able to discern fake news stories from real ones. These studies haven’t looked at intellectual humility per se, but it’s plausible there’s an overlap.

Most important of all, the intellectually humble are more likely to admit it when they are wrong. When we admit we’re wrong, we can grow closer to the truth.

One reason I’ve been thinking about the virtue of humility recently is because our president, Donald Trump, is one of the least humble people on the planet.

It was Trump who said on the night of his nomination, “I alone can fix it,” with the “it” being our entire political system. It was Trump who once said, “[I have one of the great memories of all time](http://digg.com/2017/trump-great-memories-of-all-time).” More recently, Trump told the Associated Press, “I have a natural instinct for science,” in [dodging](http://nymag.com/intelligencer/2018/10/trump-i-have-a-natural-instinct-for-science.html) a question on climate change.

A frustration I feel about Trump and the era of history he represents is that his pride and his success — he is among the most powerful people on earth — seem to be related. He exemplifies how our society rewards confidence and bluster, not truthfulness.

Yet we’ve also seen some very high-profile examples lately of how overconfident leadership can be ruinous for companies. Look at what happened to Theranos, a company that promised to change the way blood samples are drawn. It was all hype, all bluster, and it collapsed. Or consider Enron’s overconfident executives, who were often hailed for [their intellectual brilliance](https://awealthofcommonsense.com/2018/05/when-intelligence-fails-miserably/) — they ran the company into the ground with risky, suspect financial decisions.

The problem with arrogance is that the truth always catches up. Trump may be president and confident in his denials of climate change, but the changes to our environment will still ruin so many things in the future.

As I’ve been reading the psychological research on intellectual humility and the character traits it correlates with, I can’t help but fume: Why can’t more people be like this?

We need more intellectual humility for two reasons. One is that our culture promotes and rewards overconfidence and arrogance (think Trump and Theranos, or the advice your career counselor gave you when going into job interviews). At the same time, when we are wrong — out of ignorance or error — and realize it, our culture doesn’t make it easy to admit it. Humbling moments too easily can turn into moments of humiliation.

So how can we promote intellectual humility for both of these conditions?

In asking that question of researchers and scholars, I’ve learned to appreciate how hard a challenge it is to foster intellectual humility.

First off, I think it’s helpful to remember how flawed the human brain can be and how prone we all are to intellectual blind spots. When you learn about how the brain actually works, how it actually perceives the world, it’s hard not to be a bit horrified, and a bit humbled.

We often can’t see — or even sense — what we don’t know. It helps to realize that it’s normal and human to be wrong.

It’s rare that a viral meme also provides a surprisingly deep lesson on the imperfect nature of the human mind. But believe it or not, the great [“Yanny or Laurel” debate](https://www.vox.com/2018/5/16/17358774/yanny-laurel-explained) of 2018 fits the bill.

For the very few of you who didn’t catch it — I hope you’re recovering nicely from that coma — here’s what happened.

An audio clip (you can hear it below) says the name “Laurel” in a robotic voice. Or does it? Some people hear the clip and immediately hear “Yanny.” And both sets of people — Team Yanny and Team Laurel — are indeed hearing the

Hearing, the perception of sound, ought to be a simple thing for our brains to do. That so many people can listen to the same clip and hear such different things should give us humbling pause. Hearing “Yanny” or “Laurel” in any given moment ultimately depends on a whole host of factors: the quality of the speakers you’re using, whether you have hearing loss, your expectations.

Here’s the deep lesson to draw from all of this: Much as we might tell ourselves our experience of the world is the truth, our reality will always be an interpretation. Light enters our eyes, sound waves enter our ears, chemicals waft into our noses, and it’s up to our brains to make a guess about what it all is.

“THE FIRST RULE OF THE DUNNING-KRUGER CLUB IS YOU DON’T KNOW YOU’RE A MEMBER OF THE DUNNING-KRUGER CLUB”

Perceptual tricks like this ([“the dress”](https://www.vox.com/2015/2/27/8119901/explain-color-dress) is another one) reveal that our perceptions are not the absolute truth, that the physical phenomena of the universe are indifferent to whether our feeble sensory organs can perceive them correctly. We’re just guessing. Yet these phenomena leave us indignant: How could it be that our perception of the world isn’t the only one?

That sense of indignation is called naive realism: the feeling that our perception of the world is the truth. “I think we sometimes confuse effortlessness with accuracy,” [Chris Chabris](http://www.chabris.com/), a psychological researcher who co-authored a book on the [challenges of human perception, tells me](https://go.redirectingat.com/?id=66960X1516588&xs=1&url=https%3A%2F%2Fwww.amazon.com%2FInvisible-Gorilla-How-Intuitions-Deceive%2Fdp%2F0307459667%2Fref%3Dsr_1_1%3Fie%3DUTF8%26qid%3D1545250306%26sr%3D8-1%26keywords%3Dinvisible%2Bgorilla%2Bbook). When something is so immediate and effortless to us — hearing the sound of “Yanny” — it just [feels true](https://www.vox.com/science-and-health/2017/10/5/16410912/illusory-truth-fake-news-las-vegas-google-facebook). (Similarly, psychologists find when a lie is repeated, it’s more likely to be [misremembered as being true](https://www.vox.com/science-and-health/2017/10/5/16410912/illusory-truth-fake-news-las-vegas-google-facebook), and for a similar reason: When you’re hearing something for the second or third time, your brain becomes faster to respond to it. And that fluency is confused with truth.)

Our interpretations of reality are often arbitrary, but we’re still [**stubborn**](https://jov.arvojournals.org/article.aspx?articleid=2613309) about them. Nonetheless, the same observations can lead to wildly different conclusions.

For every sense and every component of human judgment, there are illusions and ambiguities we interpret arbitrarily.

Some are gravely serious. White people often perceive black men to be bigger, taller, and more muscular (and therefore [more threatening](https://www.vox.com/science-and-health/2018/4/19/17251752/philadelphia-starbucks-arrest-racial-bias-training)) than they really are. That’s racial bias — but it’s also a socially constructed illusion. When we’re taught or learn to fear other people, our brains distort their potential threat. They seem more menacing, and we want to build walls around them. When we learn or are taught that other people [are less than human](https://www.vox.com/science-and-health/2017/3/7/14456154/dehumanization-psychology-explained), we’re less likely to look upon them kindly and more likely to be okay when violence is committed against them.

Not only are our interpretations of the world often arbitrary, but we’re often overconfident in them. “Our ignorance is invisible to us,” David Dunning, an expert on human blind spots, says.

You might recognize his name as half of the psychological phenomenon that bears his name: the Dunning-Kruger effect. That’s where people of low ability — let’s say, those who fail to understand logic puzzles — tend to unduly overestimate their abilities. Inexperience masquerades as expertise.

An irony of the Dunning-Kruger effect is that so many people misinterpret it, are overconfident in their understanding of it, [and get it wrong.](https://www.talyarkoni.org/blog/2010/07/07/what-the-dunning-kruger-effect-is-and-isnt/)

When people talk or write about the Dunning-Kruger effect, it’s almost always in reference to other people. “The fact is this is a phenomenon that visits all of us sooner or later,” Dunning says. We’re all overconfident in our ignorance from time to time. (Perhaps related: Some 65 percent of Americans [believe](https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0200103) they’re more intelligent than average, which is wishful thinking.)

Similarly, we’re overconfident in our ability to remember. Human memory is extremely malleable, prone to small changes. When we remember, we don’t wind back our minds to a certain time and relive that exact moment, yet many [of us think](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3149610/) our memories work like a videotape.

Dunning hopes his work helps people understand that “not knowing the scope of your own ignorance is part of the human condition,” he says. “But the problem with it is we see it in other people, and we don’t see it in ourselves. The first rule of the Dunning-Kruger club is you don’t know you’re a member of the Dunning-Kruger club.”

In 2012, psychologist Will Gervais scored an honor any PhD science student would covet: a [co-authored paper](http://science.sciencemag.org/content/336/6080/493) in the journal Science, one of the top interdisciplinary scientific journals in the world. Publishing in Science doesn’t just help a researcher rise up in academic circles; it often gets them a lot of media attention too.

One of the experiments in the paper tried to see if getting people to think more rationally would make them less willing to report religious beliefs. They had people look at a picture of Rodin’s [The Thinker](https://en.wikipedia.org/wiki/The_Thinker) or another statue. They thought The Thinker would nudge people to think harder, more analytically. In this more rational frame of mind, then, the participants would be less likely to endorse believing in something as faith-based and invisible as religion, and that’s what the study found. It was [catnip](https://www.scientificamerican.com/article/how-critical-thinkers-lose-faith-god/) for science journalists: one small trick to change the way we think.

“HOW WOULD I KNOW IF I WAS WRONG?” IS ACTUALLY A REALLY, REALLY HARD QUESTION TO ANSWER

But it was a tiny, small-sample study, the exact type that is prone to yielding false positives. Several years later, another lab attempted to replicate the findings with a [much larger sample size](https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0172636), and failed to find any evidence for the effect.

And while Gervais knew that the original study wasn’t rigorous, he couldn’t help but feel a twinge of discomfort.

“Intellectually, I could say the original data weren’t strong,” he says. “That’s very different from the human, personal reaction to it. Which is like, ‘Oh, shit, there’s going to be a published failure to replicate my most cited finding that’s gotten the most [media attention](https://www.scientificamerican.com/article/losing-your-religion-analytic-thinking-can-undermine-belief/).’ You start worrying about stuff like, ‘Are there going to be career repercussions? Are people going to think less of my other work and stuff I’ve done?’”

Gervais’s story is familiar: Many of us fear we’ll be seen as less competent, less trustworthy, if we admit wrongness. Even when we can see our own errors — which, as outlined above, is not easy to do — we’re hesitant to admit it.

But turns out this assumption is [false](https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0143723). As [Adam Fetterman](https://www.utep.edu/liberalarts/psychology/people/adam-k-fetterman.html), a social psychologist at the University of Texas El Paso, has found in a [few](https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0143723) [studies](https://www.sciencedirect.com/science/article/pii/S0191886918305336), wrongness admission isn’t usually judged harshly. “When we do see someone admit that they are wrong, the wrongness admitter is seen as more communal, more friendly,” he says. It’s almost never the case, in his studies, “that when you admit you’re wrong, people think you are less competent.”

Sure, there might be some people who will troll you for your mistakes. There might be [a mob on Twitter that converges in order to shame you](https://www.vox.com/2016/2/29/11133822/internet-outrage-explained). Some moments of humility could be humiliating. But this fear must be vanquished if we are to become less intellectually arrogant and more intellectually humble.

Humility can’t just come from within — we need environments where it can thrive

But even if you’re motivated to be more intellectually humble, our culture doesn’t always reward it.

The field of psychology, overall, has been reckoning with a “[replication crisis](https://www.vox.com/science-and-health/2018/8/27/17761466/psychology-replication-crisis-nature-social-science)” where many classic findings in the science don’t hold up under rigorous scrutiny. Incredibly influential textbook findings in psychology — like the “[ego depletion”](https://www.vox.com/2016/3/14/11219446/psychology-replication-crisis) theory of willpower or the “[marshmallow test](https://www.vox.com/science-and-health/2018/6/6/17413000/marshmallow-test-replication-mischel-psychology)” — have been bending or breaking.

I’ve found it fascinating to watch the field of psychology deal with this. For some researchers, the reckoning has been personally unsettling. “I’m in a dark place,” Michael Inzlicht, a University of Toronto psychologist, [wrote](http://michaelinzlicht.com/getting-better/2016/2/29/reckoning-with-the-past) in a 2016 blog post after seeing the theory of ego depletion crumble before his eyes. “Have I been chasing puffs of smoke for all these years?”

“IT’S BAD TO THINK OF PROBLEMS LIKE THIS LIKE A RUBIK’S CUBE: A PUZZLE THAT HAS A NEAT AND SATISFYING SOLUTION THAT YOU CAN PUT ON YOUR DESK”

What I’ve learned from reporting on the “replication crisis” is that intellectual humility requires support from peers and institutions. And that environment is hard to build.

“What we teach undergrads is that scientists want to prove themselves wrong,” says [Simine Vazire](https://www.simine.com/), a psychologist and journal editor who often writes and speaks about replication issues. “But, ‘How would I know if I was wrong?’ is actually a really, really hard question to answer. It involves things like having critics yell at you and telling you that you did things wrong and reanalyze your data.”

And that’s not fun. Again: Even among scientists — people who ought to question everything — intellectual humility is hard. In some cases, researchers have refused to concede their original conclusions despite the [unveiling of new evidence](https://www.vox.com/science-and-health/2018/6/28/17509470/stanford-prison-experiment-zimbardo-interview). (One famous psychologist under fire recently told me [angrily](https://www.vox.com/science-and-health/2018/6/28/17509470/stanford-prison-experiment-zimbardo-interview), “I will stand by that conclusion for the rest of my life, no matter what anyone says.”)

Psychologists are human. When they reach a conclusion, it becomes hard to see things another way. Plus, the incentives for a successful career in science push researchers to publish as many positive findings as possible.

There are two solutions — among many — to make psychological science more humble, and I think we can learn from them.

One is that humility needs to be built into the standard practices of the science. And that happens through transparency. It’s becoming more commonplace for scientists to preregister — i.e., commit to — a study design before even embarking on an experiment. That way, it’s harder for them to deviate from the plan and cherry-pick results. It also makes sure all data is open and accessible to anyone who wants to conduct a reanalysis.

That “sort of builds humility into the structure of the scientific enterprise,” Chabris says. “We’re not all-knowing and all-seeing and perfect at our jobs, so we put [the data] out there for other people to check out, to improve upon it, come up with new ideas from and so on.” To be more intellectually humble, we need to be more transparent about our knowledge. We need to show others what we know and what we don’t.

And two, there needs to be more celebration of failure, and a culture that accepts it. That includes building safe places for people to admit they were wrong, like the [Loss of Confidence Project](https://lossofconfidence.com/).

But it’s clear this cultural change won’t come easily.

“In the end,” Rohrer says, after getting a lot of positive feedback on the project, “we ended up with just a handful of statements.”

We need a balance between convictions and humility

There’s a personal cost to an intellectually humble outlook. For me, at least, it’s anxiety.

When I open myself up to the vastness of my own ignorance, I can’t help but feel a sudden suffocating feeling. I have just one small mind, a tiny, leaky boat upon which to go exploring knowledge in a vast and knotty sea of which I carry no clear map.

Why is it that some people never seem to wrestle with those waters? That they stand on the shore, squint their eyes, and transform that sea into a puddle in their minds and then get awarded for their false certainty? “I don’t know if I can tell you that humility will get you farther than arrogance,” says [Tenelle Porter,](https://greatergood.berkeley.edu/profile/tenelle_porter) a University of California Davis psychologist who has [studied](https://www.tandfonline.com/doi/abs/10.1080/15298868.2017.1361861) intellectual humility.

Of course, following humility to an extreme end isn’t enough. You don’t need to be humble about your belief that the world is round. I just think more humility, sprinkled here and there, would be quite nice.

“It’s bad to think of problems like this like a Rubik’s cube: a puzzle that has a neat and satisfying solution that you can put on your desk,” says [Michael Lynch](https://michael-lynch.philosophy.uconn.edu/), a University of Connecticut philosophy professor. Instead, it’s a problem “you can make progress at a moment in time, and make things better. And that we can do — that we can definitely do.”

For a democracy to flourish, Lynch argues, we need a balance between convictions — our firmly held beliefs — and humility. We need convictions, because “an apathetic electorate is no electorate at all,” he says. And we need humility because we need to listen to one another. Those two things will always be in tension.

The Trump presidency suggests there’s too much conviction and not enough humility in our current culture.

“The personal question, the existential question that faces you and I and every thinking human being, is, ‘How do you maintain an open mind toward others and yet, at the same time, keep your strong moral convictions?’” Lynch says. “That’s an issue for all of us.”

To be intellectually humble doesn’t mean giving up on the ideas we love and believe in. It just means we need to be thoughtful in choosing our convictions, be open to adjusting them, seek out their flaws, and never stop being curious about why we believe what we believe.

### K

#### Settler colonialism is structured by the dispossession of land due to capitalist profit incentives – their focus on the epistemic underpinnings of conquest and settlement deny the material conditions underpinning indigenous genocide

Camfield 19 – Professor of labor studies and sociology at the University of Manitoba. He has a PhD in Social and Political Thought from York University.

David Camfield, “Settler Colonialism and Labour Studies in Canada: A Preliminary Exploration,” *Labour/Le Travail*, vol. 83, Spring 2019, pp. 152-154

In light of these problems, a conceptualization of settler colonialism adequate for the purposes of this paper can be developed by drawing the best work on the topic into a reconstructed historical materialism, one that fuses the best ideas of Marx and later historical materialists with intellectual breakthroughs generated outside that tradition by theorizing associated with struggles against oppression.22 This approach is in some ways similar to Glen Sean Coulthard’s proposal that “rendering Marx’s theoretical frame relevant to a comprehensive understanding of settler colonialism and Indigenous resistance requires that it be transformed in conversation with the critical thought and practices of Indigenous peoples themselves.”23

We can follow Coulthard, then, in defining settler colonialism as a social relation of domination that “has been structured into a relatively secure or sedimented set of hierarchical social relations that continue to facilitate the dispossession of Indigenous people of their lands and self-determining authority.”24 Audra Simpson’s emphasis is essential: “When we speak of dispossession we are speaking of the materiality of land. The land that Indigenous peoples own, care for, are related to and are moved from, by force or by fiat for settlement.”25 Here land, as Emma Battell Lowman and Adam J. Barker helpfully clarify, “refers to something akin to ‘place’: territories imbued with social meaning that form the basis of social life, sustaining political economies and informing cultural and community practices.” Indigenous peoples have “a relationship with the land” while settler-colonial societies have “a relationship to the land.”26 Similarly, dispossession should be understood “in more complex terms than just land loss,” argues Leanne Betasamosake Simpson: it is a “gendered removal of our bodies and minds from our nation and place-based grounded normativities,” the latter being Coulthard’s term for “ethical frameworks generated by … place-based practices and associated knowledges.”27

Dispossession is often partial but is no less real on that account. Similarly, settler colonialism rarely achieves the total elimination (physical and/or cultural) of Indigenous peoples. In socio-spatial terms it can be thought of as a mesh. This mesh is composed of nets of settler-colonial practices that “tighten or slacken as they stretch across space and time” and “is prone to snags and tears,” as Andrew Woolford puts it.28 In the societies where it is present, settler colonialism exists as part of an interlocking or mutually mediating (internally related) matrix of social relations including those of class, gender, sexuality, and race. Settler colonialism has always been imposed on Indigenous peoples by societies organized by patriarchal gender relations. Although today settler colonialism is everywhere inner-related with capitalism, only in England was capitalism dominant when European settler colonialism first began to take shape in northern North America. Nor were European settler-colonial societies in North America capitalist from their inception. However, the influence of English capitalism was soon apparent and the process of primitive accumulation began to put its stamp on England’s colonies before capitalist industry took off in the mid-1800s.29 Given the character of settler colonialism as a social relation, it is logical to follow Taiaiake Alfred in concluding that “the most basic changes” that would be required to uproot this form of oppression would be “the return of unceded lands, reforms to state constitutions to reflect the principle of indigenous nationhood and to bring into effect a nation-to-nation relationship between indigenous peoples and Settler society, and restitution.”30

#### Theorizing settler colonialism through the relationship between land and the political economy is key – their theory of conquest as an ongoing process of genocide rather than a historically situated relationship of land dispossession fractures indigenous resistance

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Antonio Ioris, “Indigeneity and Political Economy: Class and Ethnicity of the Guarani-Kaiowa,” *Capital and Class*, 21 September 2020, pp. 3-8, https://journals.sagepub.com/doi/full/10.1177/0309816820959828

A Political Economy of Labour, Land and Ethnicity

We are here concerned with the participation of indigenous peoples in politico-economic relations of production and reproduction and, more specifically, with the pressures to turn them into a regular workforce. Indigenous groups have certainly been incorporated in the world system of capitalism through brutal processes of land theft, resource grabbing and labour exploitation (Simon 2011), but they have also managed to retain a distinctive politico-spatial agency and may even be empowered by new economic trends where these preserve a meaningful community life (Bunten 2011). An increasing number of studies have handled the intersection between the political economy of land rights and the politics of indigeneity, as well as the related mobilisation for recognition and redistribution (Goodale 2016). Nonetheless, there is still a need to theorise the ‘racial dynamics’ of capitalism (Dorries et al. 2020) and recognise the agency and creativity of indigenous groups even in the most adverse situations (Ioris 2020). Indigenous peoples are involved, and help to produce, unique politico-economic processes that cannot be boxed into inflexible rationalisations. The political economy of indigeneity does not merely comply with pre-conceived categories such as kinship, spirituality and territoriality, just as it is not dissociated from capitalist expansionist and exploitative tendencies. Indigeneity is as a relational category with deep historical, institutional and power-inflicted ontologies (Radcliffe 2017) that is affected by and plays a very important role in the production of place and space (Ioris 2019). A critical account of indigeneity is less about authenticity and purism, and more about the forms of power and economic activity that produce indigeneity in a constant relationship with non-indigenous subjects, statehood, policy-making and academia (Radcliffe 2017).

Therefore, our challenge is twofold: first, to recognise the specific politico-economic features of indigenous groups amidst the fragmenting and normalising driving forces of capitalism without resorting to exoticising or pre-capitalist categories. Whilst according to the United Nations indigenous people are distinct because of their existential references to the precolonisation past and segregation from wider society, the appropriation of indigenous land and the exploitation of indigenous labour (normally achieved through severe violence and, in many cases, the physical elimination of those who refused to submit) put them at the centre of capitalist institutions, production processes and socio-ecological trends. Politico-economic processes produce localised experiences of the general that make the trajectories of indigenous groups both unique and paradoxically familiar. As observed by Descola (2005), the reversal of the ontological dualisms of Western science should not lead to absolute relativism: it is possible to appreciate the diversity of the world without being seduced by the singular or making a return to obsolete ideas. The second challenge is to connect the idiosyncratic politico-economic experience of indigenous groups with power relations and the struggle to gain political recognition. Indigenous groups have been marginalised and systematically excluded, but as Harvey (1996: 103) observes, the “margin [of the dominant socio-economic order] is not simply a metaphor but an imaginary that has real underpinnings”, which needs to be connected with the broader politico-economic context. Likewise, a proper regard for the politicised interactions between indigenous and non-indigenous (which are not only material, but also include intersubjectivities and interpersonal interactions) is helpful in understanding the specific trajectories and multiple contestations of capitalist relations of production and reproduction. This should be inspired by the claim made by ethnographers and historians in recent decadesii that the agency of indigenous groups and their ability to handle hostile land invaders have been often underestimated because of simplistic narratives of interaction and extermination (Monteiro 2001), while in effect their interaction with outsiders retains important continuities and revitalises old strategies adopted during earlier experiences of war and peacemaking (Roller 2018).

It is possible to start with a brief review of the transformation of indigenous territories into private property, objects of dispossession, speculation and private wealth creation, which is certainly one of the oldest and most central politico-economic processes of settler colonialism. Although Wolfe (2001: 868) has claimed that colonialism seeks to replace the natives on the land rather than extract surplus value – according to the author, “the primary logic of setter colonialism can be characterized as one of elimination” – what happens in practice is a site- specific combination of violent displacement, physical control of labour and the gradual imposition of land as private property.iii From the indigenous perspective, the engagement with land is hard to reconcile with production for the market (beyond a circumstantial subsumption to market relations) because life is inconceivable without it. Land (which is also a surrogate of nature) is an extension of humanity itself for indigenous groups, woven into their past, their current existence and the viability of a future. This is demonstrated through strong bounds to the natural environment and specific forms of territorialisation (Grillini 2011), although in recent years and due to institutional pressures there is increasing conversion of collectivised land into agriculture production units (see below). Unlike the objectivism of Western knowledge, based on desubjectification, the indigenous understanding requires personification, personify in order to know, which means that humans are nature and nature is also human. Indigenous peoples know that it is possible not only to communicate with other beings, but also to become one of them (changing bodies), occupy their perspective in the world and share modes of perspectival being (Reddekop 2014). According to Viveiros de Castro (2018: 54), “where everything is human, the human is ‘an entirely different thing”. There are other humans in the Amazon who have the same perspective, but different bodies and different worlds. Not all humans share the same existential status, for instance there are ‘human-Homo sapiens’ and also ‘human-jaguars’, who share the same culture in a diversity of bodies. ‘Culture’ here is the expression of what is universal and ‘nature’ (the individual beings) a manifestation of what is particular (Viveiros de Castro 2018).

This identification of the indigenous person with their land happens through the application of labour to transform and interact with the world (refuting the distinction made by Howitt 1993, between the appropriation of labour and ‘geography’). Instead of monetised labour relations, in non-capitalist situations the indigenous individual does not work to live (pressured by the alienation of the means of production and the impossibility of survival without paid work), but they live to work, that is, to have a collective and individual intervention in a reality that is itself the result of previous socio-natural interactions. In these situations, the labour of an indigenous worker is predicated upon the possibility of meaningfully interrelating with land that has symbolic and material value for the whole group. It means that their work is not an external imposition, but rather a social, existential and organic necessity. Non-commodified labour is more than just economic production, but comprises all the activities that creatively transform nature (and in that way transform humans themselves). For Marx (1976: 283), “labour is, first of all, a process between man and nature” which “mediates, regulates and controls the metabolism between himself and nature.” Likewise, “labour as mere performance of services for the satisfaction of immediate needs has nothing whatever to do with capital. (…) Labour is the living, form-giving fire; it is the transitoriness of things, their temporality, as their formation of living time” (Marx 1973: 272, 361). Nevertheless, the advance of capitalist relations not only desubjectivises land (nature), but it also erodes the social, co-operative character of labour in favour of its alienation for the development of capital (personified by the success of the capitalist).

Conventional scholarship has evidently recognised the politico-economic pressures forcing indigenous peoples into a trajectory that is analogous to that of other rural and urban groups. The recruitment and exploitation of indigenous labourers and the grabbing of indigenous lands are obviously similar to the class-based experiences of other social groups. However, it needs to be further emphasised that labour and land-based relations imposed upon groups that are not fully subsumed still retain a level of specificity that has both affected past relationships and set in motion those of the present. It means that the condition of these groups is equivalent, but also contingent upon the ethnicity that underpins the peasantification or proletarianisation of indigenous communities. For Godelier (2010: 106), ethnicity is the coming together of groups that identify a common origin and that share languages, values, social organisation rules and representations of social and cosmic orders. Weber’s classic definition highlights the subjectivism of ethnic groups, but it is more important to realise that being-indigenous – the conscious and active condition of indigenous-being – derives from specific material and symbolic relationships with times and spaces that are ontologically different because of such idiosyncratic attachments. Ethnicity is not inherent in the individual members of the social group, but immanent to politico-economic relations which ultimately produce socio-spatial settings that reflect these interactions in particular places (Figure 1 summarises this key point). A non-essentialist account of ethnicity is predicated upon forms of subjectivity and alterity expressed in peculiar politico-economic engagements with land and in a distinctive understanding of what constitutes labour.

Consequently, indigenous ethnicity is the result of both unique land attachments and socio-spatial labour practices, and it is also what makes those connections unique when sociospace is subject to politico-economic transformations.iv Brubaker (2004) argues that ethnicity is a perspective on the world, a way to interpret and represent social realities. Indigenous ethnicity in the contemporary, capitalist world is, thus, a perspective on the imposed transformation of socio-spatial practices and on the increasing appropriation of indigenous land and labour. More relevant than treating land or labour in isolation is to realise that politico-economic relations are systematically reinforced by ethnicity associated with deeply politicised socio-spatial practices. In the emblematic words of Menchú (2009: 195):

“I remember that when we said the root of our problems was the land, that we were exploited, I felt that being an Indian was an extra dimension because I suffered discrimination as well as suffering exploitation. It was an additional reason for fighting with such enthusiasm.”

On the other hand, the ethnicity used to justify additional layers of discrimination and mistreatment also reinforces the conscience and the immanence of political action/reaction. The rich ontological perspective of indigenous groups has been mobilised and applied to devise alternative directions based on the rethinking of the universals of Western development (Radcliffe 2017). Indigenous groups cope with the homogenising forces of capitalist modernity not in spite of but in function of an ethnic background that permeates a lived geography of violence, expropriation and segregation. The subjectification of the indigenous person – the qualitative shift from the ‘Indian-bon sauvage’ (in a pre- or post-political condition) to the ‘Indian-political’ – depends on interplay between a common human condition and a unique association with other groups and classes. Indigenous identities are multiple and the self is decentred, but dislocated selves “are not endlessly fragmented but constituted in relation to biography, history, culture and, most importantly, place” (Radcliffe and Westwood 1996: 2). For instance, Guarani families on the border between Argentina and Bolivia have infused national and local identities with ethnicity and, despite all adversity, “refuse to accept their present urban misery and have returned to claim the only home they know” (Gordillo 2011: 879). This situation has parallels with the trajectory of the Mapuche in Argentina and Chile, where the advance of colonisation produced a significant social reorganisation and true ethnogenesis (especially in the period that preceded the genocidal War of the Desert of 1879), which impacted other indigenous peoples and still has political repercussions in the region today (Boccara 1999). According to Badiou (1982), the subject is the real presence of change in a given situation (the subject is nothing but enforced change), and subjectification happens as a constructive process rather than mere destruction. Effective transformation is the moment when political force interrupts the order of places, while the continuation of the disruption that began with subjectification is the subject process.

#### The alternative is to affirm a scholarly praxis of decolonization – the alt explicitly aligns with indigenous demands to give back the land

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Robert Joshua Michael, “Chapter Two,” *Articulating a Decolonial Materialist Rhetoric*, Master’s Thesis, May 2019, pp. 45-48, https://baylor-ir.tdl.org/bitstream/handle/2104/10708/MICHAEL-THESIS-2019.pdf?sequence=1

Central to the political project of decolonization is the rematriation of land to Indigenous communities. Smith first articulated decolonization as “a process which engages with imperialism and colonialism at multiple levels. For researchers, one of those levels is concerned with having a more critical understanding of the underlying assumptions, motivations and values which inform research practices.”82 This interpretation surely encompasses Kelly and Black’s scholarship, providing cover for a variety of disciplines to contribute to Indigenous resistance strategies. However, the “big tent” model of scholarship was challenged by Native intellectuals concerned with the question, “Who…will define the presence of sovereign Native nations in the landscape of twenty-first-century America as the First Nations struggle toward sovereignty?”83 Indigenous Studies and Native intellectuals responded by imbuing the term with characteristics and goals indicative of Native protest movements. Elizabeth Cook-Lynn asserted “decolonization, then, or resistance to coloniality, is not merely a process of opposition to dominance.”84 Instead, it is akin to Sandy Grande’s interpretation, decolonization “is about doing.”85 The call for material action has resulted in various political projects, but the defining characteristic of decolonizing movements rests upon “the rematriation of Indigenous land and life.”86 I believe that alongside the developing nature of Indigenous politics, rhetoricians should shift their understanding of decolonization, filtering their analysis through Native understandings of resistance.

Adopting a view of decolonization that orients research toward the reclamation of territorial sovereignty by Native populations transforms the manner by which rhetoricians conduct research. First, it ruptures temporal conceptions of decolonization, expanding the historical durability of particular decolonizing tactics. Too often, analysis of decolonizing tactics assume a narrow window of efficacy, deeming them a success or failure based on their immediate results. In his examination of Native resistance tactics throughout the 1830s, Black concludes, “the Choctaw, Creek, Chickasaw, and Seminole nations decolonized the Indian Removal Act.”87 The finality with which Black describes decolonization not only ignores the physical removal of the Five Civilized Tribes, but also belies the transcendent nature of decolonizing struggles as “‘neither achievable nor definable, rendering it ephemeral as a goal, but perpetual as a process.’”88

Reconceptualizing decolonization as an enduring project premised on land return broadens the rhetorician’s horizon with regard to which resistance tactics deserve analysis. Historically, an overwhelming majority of rhetorical scholarship dedicated to Native communities has privileged resistance movements prior to the 1980s, focusing on the Jacksonian era, the Ghost Dance Movement, and the Red Power era. These historical eras persist as alluring areas of study for rhetoricians because of the ease with which textual fragments from these eras can be verified. Yet, scholars remain ignorant of the political manifestations that suture atemporal resistance. While analyzing the historical connections between the Ghost Dance Movement and the Reoccupation of Wounded Knee, Morris and Wander point to the form of resistive rhetoric as proof of the movements’ similarity. They miss, however, the most obvious connection; the resistance movements were generated and sustained by the same traditional Lakota Sioux lands. While they focus on the rhetorical nuances of reclaiming sovereignty, they fail to grasp how the prior reclamation of territory serves as a precursor, a well from which this discourse springs forth. In essence, land becomes the generating force responsible for resistive discourse. Contemporary movements demonstrate the existence of struggles rhetoricians should explore moving forward. Exclusively analyzing resistance movements of past generations concretizes the impression that Native communities have simply accepted the United States’ decimation of Native sovereignty; this view is obviously mistaken.

In 2014, the federal government approved a permit, allowing Dakota Access to construct a “1,172 mile, 3.78-billion-dollar,” oil pipeline.89 By 2016, the Sioux Standing Rock Reservation was the focus of national media attention as Indigenous water protectors worked in tandem to prevent construction of the pipeline. The impetus for this pan-Indigenous grassroots movement was the energy project’s redirection “to cross the Missouri River near the Standing Rock Indian Reservation…citing the original location,”90 of Bismarck, North Dakota “as a ‘high consequence area.’”91 Once again, activists located at Standing Rock adopted rhetorics of resistance rooted in the space they sought to defend. While specific images of the Ghost Dance were not invoked, several tactics relied on attempts to draw parallels between the present moment and earlier conflicts. When criticizing the United States’ militaristic response, Native intellectual Kim Tallbear remarked, “‘they did that in the 19th century, they did that in the 16th century…This is not new…The contemporary tactics used against Indigenous people might look a little bit more complex or savvy, but to me, I can read it all as part of a longstanding colonial project.’”92 Central to the water proctors’ demands was not simply a call for the United States’ recognition of Native rhetoric, but a broader desire for land return and the restoration of sovereignty. Current-day Native protest movements demand the attention of rhetoricians. Rather than replay tired criticisms of movements long expired, rhetoricians should struggle to understand and extend the influences of Native movements that strive for the betterment of their communities today. I will return to this subject throughout Chapter 4 for further analysis.

### Case

#### The aff is not radical. Refusal does not produce the material changes that ameliorate social problems.

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Jerry Lee, “Unrepresentable Justice: Looking for a Postqualitative Theory of Social Change.” *Qualitative Inquiry*, 1–6. https://doi.org/10.1177/1077800420922263

Abstract

I believe posthumanist philosophy promises the possibility of a more robustly ethical and political practice of social inquiry. I do not, however, believe analytic and rhetorical tools have been developed that deliver amply on that promise. This is less a reflection on the quality of efforts to do so, than it is on the scope of the challenge before us. Since this is an essay about what “postqualitative means to me,” I speak from within the desire to see that promise more fully realized and the belief that there is much work yet to be done. Simply stating that concern directly and describing the grounds for it, however, would involve a performative contradiction. It would presume the challenge is an epistemic one that yields to better information and clearer representation. The challenge, however, lies within the limitations of representation itself and the way convention compels us to address our scholarship to a humanist spectator subject, as opposed to seeking to transform the subject of address. This essay, therefore, departs from standard prose conventions in an effort to both do and describe what needs to be done.

But today, the Rock cries out to us, clearly, forcefully, Come, you may stand upon my

Back and face your distant destiny,

But seek no haven in my shadow.

I will give you no more hiding place down here.

Maya Angelou, 1993

On the Pulse of the Morning

Whoever says You does not have something for his object. For wherever there is something, there is also another something; every It borders on other Its; It is only by virtue of bordering on others. But when You is said there is no something. You has no borders.

Whoever says You does not have something: he has nothing. But he stands in relation.

Martin Buber, 1970 I and Thou, p. 55

You are a researcher, but you no longer know what research means—or even what “meaning” means. You have spent enough time reading in the post theories—poststructural- ism, postmodernism, postcolonialism, posthumanism, postqualitative research—that the objects of your inquiries have dissolved in your hands in response to your effort to grasp them. The idea that research will reveal the world to you, will tell the “truth” about things and that “truth” will make the world better, is in ruins as Elizabeth St. Pierre and Wanda Pillow (2002) say.

The critiques that brought you to this place have been narrated as liberations, a new practice of freedom, a throw- ing off the chains of a false foundationalism, waking from the dream that our efforts to know the world are innocent. Gender is a discursive contrivance (Butler, 2011; Halberstam, 2011). Mental health is a construct (Davis, 2016; Foucault, 2003). Race is a fiction around which brutal material systems of oppression are organized (Gilroy, 1998, 2000; Hall, 1996). Colonization has infiltrated the very pos- sibility of thought and so the subaltern cannot speak (Spivak, 1988). Materiality returns, but this time with agency (Barad, 2007). You get it. You need to be freed from the taken-for-grantedness of concept, referent, and identity, their always already present status, if you are to have a chance at contributing to real social change.

And yet—and yet—in this postqualitative moment that allegedly “enables something else to be thought and to hap- pen” (St. Pierre, 2014, p. 4), relatively little that contributes materially to social amelioration seems to be happening (King, 2017; Latour, 2004; Tuck, 2010; Weheliye, 2014). Yes, perhaps some of us are less bound by rigid constructs of gender identity and foundationalist justifications for rac- ist attitudes. But those are negative accomplishments of a cosmopolitan freedom. Movements away from things. Meanwhile, these social ills seem to persist, even thrive, under conditions of critical anti-foundationalism. The movement toward something, the embrace of new effective/ affective solidarities have been less forthcoming.

The pronouncements of the new possibilities to come, the justice to come, if you can just shed this or that encum- brance, proliferate. As if there is a will to good works just waiting to be unleashed, if only we can find the keys to the mental lock around our heart and hands. But the inquiries that deliver on that promise, that could inform acts of ame- lioration on a scale that feel satisfactory, are difficult to iden- tify. You are not sure such a will to good works exists premade. If it were, wouldn’t it have found a means of enact- ment by now? It seems to you as if solidarities that can bring amelioration need to be built, not just by clearing out barri- ers with critique, but by fostering affective affirmations and ethical commitments. After the posts you frequently feel further away from such actions. If the postqualitative cri- tique of research is a liberation, you feel it is a strange one; one with significant, almost intolerable, costs.

Justice Requires More Than Revelation

Your discomfort is not nostalgia for a reality you can name. Well . . . maybe a little. But not for a retrograde gender essentialism. Not for a simplistic reduction of materiality to economics. Not for an identity politics that denies the salience of intersectionality or glosses the violence of reify- ing inherited identity categories. You remain persuaded by the anti-foundationalist and anti-humanist critiques of natu- ralized social binaries. You understand that the violence being done in the world is a consequence, at least in part, of the circulation of cultural tropes that your research risks cir- culating further. Every word, every keystroke feels to you like a presumption and a risk.

You see how the aspiration to describe authoritatively the work that needs to get done presumes an imperial per- spective, what Donna Haraway (1988) calls a “God trick of seeing everything from nowhere” (p. 581). And this god’s eye view is part of a difficult recursive problem. It is a man- ufactured confidence that does violence, erases what it fails to affirm. Every certainty and solidarity is built on exclu- sion, despite emancipatory intentions, as queer theorists have made clear repeatedly (Butler, 2011; Halberstam, 2011). The rhetoric of revealed truth often works against inclusiveness and underwrites the authority of empire. Appreciating the limits of the idea that simply describing injustice will lead to good ends feels like escaping from something big, from a trap of immense almost mystical proportions.

But escape into what? The primary theory of social change operating in the West for centuries—the one Universities and social movements are most often orga- nized around—is left behind in this escape. To change the world, you first reveal what is wrong with it. You make people see the problems, expose the contradictions, describe alternatives, so they can do things differently. The truth pre- cedes the good—Socrates and Plato’s legacy. This pre- sumption animates positivist research, critical scholarship, even the logic of protest marches organized by activists. The goal is to inform and educate so action can be made possible. This is why you enrolled in graduate studies—to speak the truth to power. And as naïve as that now feels, some part of you still wants the leverage of truth in your struggle to do some good.

Finding yourself on the other side of some crossing that it is difficult to see a way back from, it is no longer clear what research or knowledge is supposed to do. You look around and you see things that need doing—whether it is teaching children to read, preparing doctors and nurses to better care for people, promoting fair housing policy in your community. Or perhaps you think on a larger scale, about resisting the global tides of class stratification, misogyny, resurgent racism, anti-immigrant hysteria, backlash against modest efforts to advance gender and sexuality freedom, the corrosive ongoing effects of settler colonialism, the encroachment of technology on our inner lives. All these things are materially real in their effects and urgently in need of address, but frustratingly difficult to definitively represent.

#### Antitrust focus is good – economics is interrelated with racialized violence, which makes antitrust a key lens to address it

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Jeremie Greer and Solana Rice, “Anti-Monopoly Activism: Reclaiming Power Through Racial Justice,” *Liberation in a Generation*, March 2021, pp. 3-14, https://www.liberationinageneration.org/wp-content/uploads/2021/03/Anti-Monopoly-Activism\_032021.pdf.

In spite of this suffering and sacrifice, the future for predominantly white corporate monopolists has never been brighter. Excessive and unrestrained capitalism has enriched a small group of wealthy elite corporations and individuals by concentrating the nation’s economic and political power under their control—a mutually reinforcing, vicious cycle. Between March 18 (the unofficial beginning of the pandemic in the US) and November 24, 2020, 644 billionaires increased their combined wealth by $931 billion dollars (from $2.95 trillion to $3.88 trillion, or a rise of 31.6 percent).2 This occurred even as poverty deepened and the October unemployment rate hit nearly double its pre-pandemic low. Some in this elite class of corporations and individuals have used their accumulated power to concentrate markets that are fundamental to human thriving (e.g., technology, agriculture, financial services, and health care) by forming massive corporate monopolies.

Corporate monopoly is bad for workers, consumers, and for our democracy. Our nation’s founders were keenly aware of the danger of monopoly. In fact, the US revolution was sparked by anger directed at the monopolistic power of the British Crown. Though popularly taught as being about unjust taxation, the Boston Tea Party was actually a rebellion ignited by rage directed at the East Indian Trading Company, a monopoly chartered by the British monarchy.3 Additionally, in 1787, Thomas Jefferson wrote to James Madison that the proposed US Constitution should include a Bill of Rights that explicitly excluded monopolies.4 Though the language did not make it into the final Constitution, this letter demonstrates that the distrust of monopoly is justified and runs deep in our nation’s ethos.

Efforts to rein in the “robber barons” of the Gilded Age (i.e., Andrew Carnegie, J.D. Rockfeller, Cornielius Vanderbelt, and J.P. Morgan) are monumental in the history of anti-monopoly government action in the US. Victories following this period include government action to break up several large monopolies in the railroad and oil and gas industries. Additionally, this period normalized many worker protections that we take for granted today, such as a 40-hour workweek and overtime pay.

Unfortunately, though the start of the 20th century saw robust anti-monopoly government action, the government rapidly retreated from anti-monopoly enforcement in the second half of the century. Since, the federal government and the federal courts have aided—not prevented—the exponential growth in monopoly power in nearly every sector of our economy, including technology, telecommunications, food supply chains, banking, and health care. In 2015, for example, the US saw a record number of corporate mergers, totalling $3.8 trillion in merger and acquisition activity.5 Mergers that year involved massive companies, such as Time Warner Cable, AnheuserBusch, and Berkshire Hathaway, becoming more massive. In 2020, T-Mobile—the third-largest wireless carrier in the US— acquired Sprint,6 and Morgan Stanely acquired online stock trading company E-Trade.7

The economic problems created by monopoly power have been widely studied, and many solutions to curtail it have been developed by experts. Unfortunately, like so many large-scale and so-called “race-neutral” policy efforts, anti-monopoly policy ideation and implementation have left people of color behind. In researching this paper we found limited research or policy ideation on the impact of monopoly power on people of color. We believe that the absence of grassroots leaders of color in anti-monopoly policy conversations can be attributed to this disconnect.

It is critical that grassroots leaders of color are positioned to lead on anti-monopoly policy, as they are uniquely positioned to understand its impact on people of color at the household, community, and societal levels. This gives them a unique perspective in policy ideation efforts that should be valued and validated. These leaders also possess the unique skills to mobilize the people and public power that are necessary to force the government to reclaim its historic role of reining in runaway corporate monopoly power.

We at Liberation in a Generation believe that the power to change our economic systems rests with the organizers of color who are building the political strength of communities of color. Anti-monopoly research and advocacy need to better quantify, center, and reflect what people of color are experiencing and the ways that they are being harmed by monopoly power’s reach. These efforts should also better connect anti-monopoly policy and advocacy as tools to advance the existing priorities of leaders of color, such as the Green New Deal, Medicare for All, closing the racial wealth gap, and a Homes Guarantee. This paper aims to contribute a major step in the long journey of bridging the divide between anti-monopoly researchers and policy advocates and grassroots leaders of color. The first step on that journey is knowledge.

Recognizing that anti-monopoly work is a new policy issue to many grassroots leaders of color, this paper will serve as a primer to 1) educate grassroots leaders on the issue of corporate concentration, 2) connect the issue to racial justice, and 3) recommend a path forward for grassroots leaders as well as the researchers and advocates who need to embrace them. Our hope is that this paper provides a foundation of knowledge that grassroots leaders of color can use to build race-conscious solutions and mobilize for action to rein in runaway corporate monopoly power. To that end, the paper is organized into six sections.

SECTION 1 Monopoly Power Is Corporate Power Magnified and Maximized

In 1975, millions flooded theaters to see the blockbuster thriller Jaws. The story follows a police chief in a small resort town as he risks his life to protect beachgoers from a monstrous man-eating great white shark.

Monopolies are a lot like the shark in Jaws. While enormous, ruthless, dangerous, and scary, the movie’s monster is just a shark, and the police chief uses tools and community to defeat it. Comparatively, while also enormous, ruthless, dangerous, and even scary, monopolies are just corporations, and we, together, can confront them. Their massive power controls the wages we earn, the prices we pay, and the actions of the politicians who are supposed to represent us in DC, the statehouse, and city hall. In a representative democracy, we the people are at the top of the food chain, and it is within our power to make these monopolies fear us— and end their existence in the first place.

Grassroots leaders of color are highly experienced and uniquely skilled at challenging corporate power, and these capacities can and should be used to curb monopoly power. For example,8 the Athena Coalition has successfully leveraged grassroots power to challenge the monopoly power of Amazon, and Color of Change9 has effectively used grassroots digital organizing to challenge the monopoly power of social media platforms such as Facebook. Putting monopolies in the crosshairs of organizers is critical because they best understand the real human and structural devastation caused by monopoly power, which is otherwise all too easily neglected.

Though we believe that grassroots leaders of color have the experience and expertise necessary to challenge monopoly power, the question remains: Why should they lead this fight? Grassroots leaders of color are already engaged in high-stakes battles with the forces of corporate power on fundamental issues, including environmental justice, worker justice, housing justice, prison and police abolition, and voter and democratic justice. We believe that these efforts can be bolstered if anti-monopoly policy development and advocacy were incorporated into these existing efforts but then followed the lead of organizers. For example, the primary opponents of prison and police abolition are private prison monopolies, such as GEO Group and CoreCivic, which profit from the arrest and incarceration of Black and brown people. Opponents of the Green New Deal include energy monopolies BP and ExxonMobile, whose profits are derived from polluting Black and brown communities.10 Finally, opponents of the Homes Guarantee, and its call for creating 12 million units of social housing outside of the for-profit housing market, include big banks that profit from the commodification of affordable and low-income housing. Challenging these opponents by diminishing their monopoly power could prove to be a powerful weapon in the fight to dismantle unchecked corporate power and its real-life economic impact on people of color.

How Corporate Monopolies Show Up in Today’s World

The distinguishing features of monopolies, when compared to your run of the mill corporation (large or small), are the reach and intensity of the corporate power that they wield. Monopoly power turbocharges the ills of corporate power and creates a wider impact of the overlapping consequences for people. In many ways, monopolies are created when corporate power becomes governing power.11 Their sheer size and market dominance allow them to govern markets, and their expansive wealth gives them the power to manipulate prices, crush workers, and steamroll governments. Ultimately, monopolies’ extreme economic power—which they use to gain outsized political power and then more economic power—undermines the collective power of workers, consumers, small businesses, local communities, and governments.

It has become difficult, and inadequate, to rely on legal definitions to identify monopolies. The legal definition of monopolization is highly technical and complicated by centuries of conflicting jurisprudence. It's been narrowed to exclusively focus on the negative impact that anticompetitive actions have on consumers.12 This narrower focus intentionally shielded monopolies from any accountability for anticompetitive harm inflicted on workers, the environment, local communities, government, and democracy. Federal enforcement of monopoly power is confined to the highly specialized legal practice of antitrust law enforcement.13 However, centuries of political power wielded by corporate monopolies and their acolytes (e.g., universities, think tanks, trade associations, and major law firms) have rendered much of antitrust law enforcement toothless.14

In the late 19th and early 20th century, the definition of monopoly was much wider and comprehensive. In this paper, we will expand the definition as well. Recognizing that this definitional work is in many ways a work in progress, we offer our definition as a point of discussion and debate for the larger field of anti-monopoly advocates.

In this paper, we define monopoly as a corporate entity (a single corporation or a group of corporations) whose sheer size and anticompetitive behavior grant it disproportionate economic power and governing influence. This negatively affects the well-being of workers, consumers, markets, local communities, democratic governance, and the planet.

Below are a few major industries that reveal how corporate concentration and monopolistic industries harm the economic lives of workers, consumers, and communities of color.

Big Tech

Four corporations comprise what has come to be known as “Big Tech”: Amazon, Apple, Facebook, and Alphabet (the parent company of Google). Each of these technology firms dominate an enormous share of their respective technology markets. Google, for example, controls 90 percent of the internet search market, and it controls the largest video sharing platform on the internet through its ownership of YouTube. Apple controls 50 percent of the cellphone market,15 and Amazon controls 50 percent of all ecommerce. Facebook and its many subsidiaries (such as WhatsApp and Instagram) dominate the social media and online advertising marketplace.16 Other technology firms, including Uber, Lyft, Microsoft, and Netflix, also demonstrate monopolistic, anticompetitive behavior in their respective markets. In many ways, these companies, and the people who control them, are the “robber barons” of our time.

Big Pharma

The world's largest pharmaceutical corporations, including Johnson & Johnson, Pfizer, Merck, Gilead, Amgen, and AbbVie, together comprise “Big Pharma.” These monopolies build their profits by controlling the prices of critical life-saving pharmaceuticals (e.g., insulin, drugs that regulate blood pressure, and critical antibiotics) and life-altering medical devices (e.g., heart stents and joint replacement devices). Between 2000 and 2018, a disproportionately small number of pharmaceutical companies made a combined $11 trillion in revenue and $8.6 trillion in gross profits.17 In 2014, the top 10 pharmaceutical companies had 38 percent of the industry’s total sales revenue.18 Much of these profits were gained driving up the price of critical drugs , extorting research and development (R&D) funding from the government, and leveraging Big Pharma’s political influence to weaken government oversight of the industry.19

Big Agriculture

Big Agriculture, or “Big Ag,” refers to monopolies that control major aspects of the global food supply chain. This includes companies such as Cargill, Archer Daniels Midland Company (ADM), Bayer, and John Deere. Though once a diffuse network of small farmers and supply chain companies, recent mergers have created a system comprising a small number of corporations that are crowding out smaller, family-run companies including small farms. Similar to Big Pharma, government subsidies are a massive component of the obscene profits made by Big Ag. Further, as often the largest employer in many small rural towns, these corporations often ruthlessly wield their monopoly power to drive down wages and benefits to workers, skirt government safety regulations, and bully (and even buy out) small farmers.

Big Banks

Known as the “Big Five,” five banks control almost half of the industry’s nearly $15 trillion in financial assets: JPMorgan Chase, Bank of America, Wells Fargo, Citigroup, and US Bancorp. Their collective importance to the nation’s financial system has led some to consider them “too big to fail.”20 In fact, in response to the financial crisis of 2008, the federal government provided trillions of dollars in relief to ensure that they did not collapse under the weight of the crisis.21 The Big Five have an incredible influence over the flow of money throughout our economy. They finance critical goods and services, such as housing, higher education, infrastructure, and renewable energy. They also finance extractive elements of our economy, such as fossil fuels and private prisons. But, most importantly, they set the rules for who can and cannot access loan capital, and their exclusionary practices have been widely linked to the growth of racial wealth inequality (as described in Section 3).

These are just four examples of industries that have been taken over by monopolies, but they are in no way exclusive. Many other critical industries in our economy have been corrupted by monopolies, including the energy, health insurance, hospital, for-profit college, and delivery service industries.

One note of caution on monopolies: While all corporate monopolies are harmful, some government monopolies can be critical to providing essential programs and services. Examples of government monopolies include public K–12 schools, publicly owned utilities, and the United States Postal Service (USPS). In fact, the USPS is codified in the US constitution to ensure that all people—even those in remote rural areas—can send and receive mail. Today, the USPS is an important employer to people of color, particularly Black people, in providing competitive wages and quality health and retirement benefits.

The predation of corporate monopolies creates racial wealth inequality. Low-wage employers that employ people of color, such as Walmart—the nation’s largest private employer—often set the wage floor for local communities and the nation.22 Agribusinesses and pharmaceutical monopolies set prices at a “poverty premium” where people of color pay more for food and life saving drugs. Also, bank monopolies set the prices that people of color pay for basic financial services, and they provide capital to predatory lenders, including payday and car title lenders.

#### Their structural reading relies on pessimistic “traps” – those are diametrically opposed to Indigenous agency and efforts to reassert nationhood both here and abroad

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Sheryl, “The Pessimism Traps of Indigenous Resurgence,” Chapter 10 in *Pessimism in International Relations*, Eds. Stevens, T., & Michelsen, N., Palgrave)

Despite all of these activities designed to re-write the relationship between states and Indigenous peoples, some high-profle critical Indigenous political theorists reject all state overtures towards reconciliation and take extremely pessimistic approaches towards future Indigenous-state relations. They advocate that Indigenous resurgence through a return to Indigenous land-based forms of governance is the only path to decolonisation. I argue that while resurgence school theorists are strong advocates for Indigenous nations and bring focus and clarity to a set of issues about power structures and dynamics, they are all caught in the same set of three ‘pessimism traps’ that unnecessarily limit their capacity to contribute to improved Indigenous-state relationships. These pessimism traps emanate from a reliance on Fanonian revolutionary thought and a problematic application of Fanonian theory from French-colonised North Africa to an entirely different context in the English-speaking settler states. Finally, I argue, these pessimism traps are diametrically opposed to the work and vision of Indigenous organisations who have been working on the ground for decades to assert Indigenous nationhood both domestically and internationally, in ways that often assertively and creatively challenge and shift the existing system of sovereign states. In sum, because the resurgence school remains trapped in a pessimism box of its own making, it remains signifcantly out of step with Indigenous movements and actually risks harming their efforts to advance Indigenous self-determination in creative and innovative ways.

Pessimism Trap 1: A Clear Demarcation of Indigenous Individuals into Only Two Categories, ‘Authentic’ and ‘Co-Opted’

For Indigenous resurgence theorists, these two categories are the only possibilities, and there is no grey area in-between. In their view, Indigenous peoples are co-opted if they hold elected offce, make land claims or economic development agreements with governments or industry, or even sign treaties. Furthermore, co-opted Indigenous peoples are so co-opted, that they do not even recognise how they are being used and colonised by the state and its private-sector partners. On the other hand, authentic Indigenous peoples live on their traditional lands, speak their Native languages, practice their culture and govern themselves in traditional fashion. They are the only ones that have successfully resisted the overwhelming forces of colonisation and its powers of cooptation, and the only ones with the power to do so into the future.

In his 2005 book, Wasáse: Indigenous Pathways of Action and Freedom, Taiaiake Alfred calls on the original people, what he calls Onkwehonwe in the Mohawk language, to unify in resisting the colonial structures that continue to oppress them.5 Relying on warrior imagery in the Mohawk tradition, Alfred confronts Indigenous people to recognise Western domination in our communities and resist it. He argues forcefully that Indigenous peoples have become overly complacent on, and even dependent upon, Western social, economic and political structures. He calls for a resurgence in Indigenous spirituality and political structures in Indigenous communities. As he sees it, a strong Indigenous warrior is not one that necessarily engages in war and violent resistance but, rather, is one that shows real courage by living a daily life grounded in the spiritual teachings and practices of our ancestors. The decolonising revolution he calls for is rooted within the peaceful resurgence of traditional spirituality and governance. As he writes, ‘There are people in all communities who understand that a true decolonization movement can emerge only when we shift our politics from articulating grievances to pursuing an organized and political battle for the cause of our freedom. These new warriors understand the need to refuse any further disconnection from their heritage and the need to reconnect with the spiritual bases of their existences’.6 While at frst glance, this book represents a powerful and compelling call to action by Indigenous communities and leaders, a closer examination reveals all three pessimism traps in play throughout the text .

Alfred draws a sharp line between authentic Indigenous approaches and co-opted ones. As he puts it, ‘Not all of us have been conquered. There are still strong Onkwehonwe who persevere in their struggle for an authentic existence and who are capable of redefning, regenerating, and reimagining our collective existences’.7 Yet, he warns, ‘The colonizers stand on guard for their ill-gotten privileges using highly advanced techniques, mainly co-optation, division and when required, physical repression’ and ‘with its massive resources, the state can co-opt leadership and movement successes’.8

Furthermore, Alfred notes, the authentic Indigenous peoples and leaders are no longer the majority, as the co-opted ones seem to occupy most of the leadership roles in organisations and communities. Lamenting the constant temptations for co-optation on offer, from land claims agreements, to casino capitalism, to chief and council salaries, Alfred writes, ‘Working for a cause that has indigenous integrity means sacrifce. …This is the reality of an authentic indigenous existence in political terms. And, evidently, in our communities today, there are only a few people who are convinced that taking on the psychological and fnancial burden of being really indigenous is worth the fght’.9

Similar patterns appear in Alfred’s follow-up 2009 book, Peace, Power, Righteousness: An Indigenous Manifesto. 10 In this work, Alfred walks the reader through Indigenous values, weaving a thesis that a new kind of Indigenous leadership, characterised by the resurgence of Indigenous forms of self-determination, is the only way to resist colonialism and preserve what still exists of Indigenous culture and lifeways today. In a Fanonian spirit, he challenges Indigenous peoples, and particularly leaders, professionals and academics, to be aware of how colonialism has impacted them and their communities on every level, including and especially, psychologically. He challenges Indigenous leadership and communities to recognise these multiple layers of colonialism in current contemporary practice, and to resist them.

As in his earlier work, Alfred divides Indigenous peoples, communities and leadership into two stark categories: authentic and co-opted. Indigenous leaders, he says, either actively resist, or they co-operate with the state. When they co-operate with the state, they ‘rationalize and participate actively in their own subordination and the maintenance of the Other’s superiority’ and therefore become co-opted.11

Further, he sees that as states have moved away from overt violent control of Indigenous communities, co-option has become the preferred method of control and subordination:

The fact is that neither the state-sponsored modifcations to the colonial-municipal model …nor the corporate or public-government systems recently negotiated in the North constitute indigenous governments at all. Potentially representing the final solution to the white society’s ‘Indian Problem,’ they use the co-operation of Native leaders in the design and implementation of such systems to legitimize the state’s longstanding assimilationist goals for indigenous nations and lands.12

One of the deepest problems, according to Alfred, is that co-opted communities, leaders and professionals do not often even realise that they are, in fact, co-opted. Co-option, he says, ‘is a subtle, insidious, undeniable fact, and it has resulted in a collective loss of ability to confront the daily injustices, both petty and profound, of Native life’.13 As a case in point, Alfred engages in a substantial discussion of how the concept of sovereignty itself is Western in focus and therefore, when Indigenous leaders advocate for it, on behalf of their nations and communities, they are unwittingly engaging in a politics of co-optation. ‘Shallow-minded politicians’, Alfred writes, ‘are unable to grasp that asserting a right to sovereignty has signifcant implications’. When they assert a claim to sovereignty but not to resist the state itself, ‘they are making a choice to accept the state as their model and to allow indigenous political goals to be framed and evaluated according to a “statist” pattern’.14 Another prominent member of the Indigenous resurgence school, Glen Coulthard (Yellowknives Dene), was mentored by Taiaiake Alfred and their common philosophy is immediately apparent. As Alfred writes in his foreword to Coulthard’s 2014 book, Red Skin, White Masks: Rejecting the Colonial Politics of Recognition, ‘Coulthard is talking about rising up, …about resurgence and the politics of self-affrmation. This is a call to combat contemporary colonialism’s objectifcation and alienation and manipulation of our true selves’.15

Coulthard critiques the current Canadian policy atmosphere of reconciliation as contemporary colonialism, ultimately the same as the old colonialism, but with a new mask. He argues the structure of the settler colonial invasion continues to dispossess and oppress Indigenous peoples, as it always has, but it now has a new face: the disingenuous liberal politics of recognition—which includes such current policy initiatives as the delegation of self-determination, economic development and the settlement of land claims. He begins by noting that over the past forty years or so, there has been an ‘unprecedented degree of recognition for Aboriginal “cultural” rights within the legal and political framework of the Canadian state’.16 Coulthard acknowledges that the increase in recognition demands coming from Indigenous intellectual and community leaders are largely responsible for these changes to the structure of the Indigenous-state relationship in Canada. Yet, Coulthard’s goal in this work is to challenge the notion that ‘the colonial relationship between Indigenous peoples and the Canadian state can be adequately transformed via such a politics of recognition’.17 Rather than ushering in a new relationship, he argues, the ‘politics of recognition in its contemporary liberal form promises to reproduce the very confgurations of colonialist, racist, patriarchal state power that Indigenous peoples’ demands for recognition have historically sought to transcend’.18

In other words, all of the work and struggle by Indigenous leaders and advocates in the past four decades to advance self-government, recognition of Aboriginal rights and title and economic development for their communities has not only been futile, but damaging to what would or should have been an ‘authentic’ struggle for Indigenous self-determination. Further, all of these advocates and leaders do not even realise how co-opted they have become in the ongoing structures of colonialism. Citing Alfred, and echoing Fanon, Coulthard notes that the dominance of the recognition approach over an extended period of time has produced a class of ‘Aboriginal “citizens”’ who have come to defne themselves in terms of the colonial state and its institutions rather than the culture and political traditions of their own Indigenous nations. He identifes a similar process with capitalist economic development initiatives that have created an ‘emergent Aboriginal bourgeoisie whose thirst for proft has come to outweigh their ancestral obligations to the land and to others’.19 Unfortunately, Coulthard pessimistically views Indigenous rights advancement as ‘bleak’, since ‘so much of what Indigenous peoples have sought over the last forty years to secure their freedom has in practice cunningly assured its opposite’.20

In a 2007 article, Cherokee political scientist Jeff Corntassel takes the co-option argument to the international level.21 Corntassel acknowledges that UN fora do provide opportunities for strategising and diplomacy among Indigenous actors from diverse parts of the world, especially important in storytelling, information sharing and building solidarity. Corntassel also acknowledges that there were a handful of instances in the First UN Indigenous Decade (1995–2004) where Indigenous peoples were able to successfully challenge UN protocols and procedures and insert themselves into the UN ‘on their own terms’. However, despite these acknowledgements, Corntassel concludes that the UN system, being made up of states, aims to co-opt Indigenous peoples into the norms and mores of the state, thereby distracting them from their proper focus on advancing their own nationhood. Like Alfred and Coulthard, Corntassel falls into the first pessimism trap which demarcates Indigenous political leadership into ‘authentic’ and ‘co-opted’ categories.

Pessimism Trap 2: The State is Unified, Deliberate and Unchanging in Its Desire to Dispossess Indigenous Peoples and Gain Unfettered Access to Indigenous Lands and Resources

In other words, colonialism by settler states is a constant, not a variable, in both outcome and intent. Further, the state is not only intentionally colonial, but it is also unifed in its desire to co-opt Indigenous peoples as a method and means of control.

In 2005’s Wasase, Alfred presents the state as unitary, intentional and unchanging in its desire to colonise and oppress Indigenous peoples noting, ‘I think that the only thing that has changed since our ancestors frst declared war on the invaders is that some of us have lost heart’.22 Referring to current state policies as a ‘self-termination movement’, Alfred states, ‘It is senseless to advocate for an accord with imperialism while there is a steady and intense ongoing attack by the Settler society on everything meaningful to us: our cultures, our communities, and our deep attachments to land’.23

Alfred’s Peace, Power, Righteousness (2009) also argues that the state is deliberate and unchanging, stating quite plainly that ‘it is still the objective of the Canadian and US governments to remove Indians, or, failing that, to prevent them from beneftting, from their ancestral territories’.24 Contemporary states do this, he argues, not through outright violent control but ‘by insidiously promoting a form of neo-colonial self-government in our communities and forcing our integration into the legal mainstream’.25 According to Alfred, the state ‘relegates indigenous peoples’ rights to the past, and constrains the development of their societies by allowing only those activities that support its own necessary illusion: that indigenous peoples today do not present a serious challenge to its legitimacy’.26

Linking back to the aim of co-option, Alfred argues that while the state’s desire to control Indigenous peoples and lands has never changed, the techniques for doing so have become subtler over time. ‘Recognizing the power of the indigenous challenge and unable to deny it a voice’, due to successful Indigenous resistance over the years, ‘the state has (now) attempted to pull indigenous people closer to it’.27 According to Alfred, the state has outwitted Indigenous leaders and ‘encouraged them to reframe and moderate their nationhood demands to accept the fait accompli of colonization, (and) to collaborate in the development of a “solution” that does not challenge the fundamental imperial lie’.28

In a similar vein, Coulthard’s central argument is centred on his understanding of the dual structure of colonialism. Drawing directly from Fanon, Coulthard fnds that colonialism relies on both objective and subjective elements. The objective components involve domination through the political, economic and legal structures of the colonial state. The subjective elements of colonialism involve the creation of ‘colonized subjects’, including a process of internalisation by which colonised subjects come to not only accept the limited forms of ‘misrecognition’ granted through the state but can even come to identify with it.29 Through this dual structure, colonial power now works through the inclusion of Indigenous peoples, actively shaping their perspectives in line with state discourses, rather than merely excluding them, as in years past. Therefore, any attempt to seek ‘the reconciliation of Indigenous nationhood with state sovereignty is still colonial insofar as it remains structurally committed to the dispossession of Indigenous peoples of our lands and self-determining authority’.30

Concerning the state in relation to Indigenous peoples on the international level, Corntassel argues that states and global organisations, for years, have been consistently framing Indigenous peoples’ self-determination claims in ways that ‘jeopardize the futures of indigenous communities’.31 He claims that states frst compartmentalise Indigenous self-determination by separating lands and resources from political and legal recognition of a limited autonomy. Second, he notes, states sometimes deny the existence of Indigenous peoples living within their borders. Thirdly, a political and legal entitlement framing by states deemphasises other responsibilities. Finally, he claims that states, through the rights discourse, limit the frameworks through which Indigenous peoples can seek self-determination. Like Alfred and Coulthard, Corntassel has concluded that states are deliberate and never changing in their behaviour. With this move, Corntassel limits and actually demeans Indigenous agency, overlooking the reality that Indigenous organisations themselves chose the human rights framework and rights discourse as a target sphere of action precisely because, as was evident in earlier struggles like slavery, civil rights or women’s rights, these were tools available to them that had a proven track record of opening up new possibilities and shifting previous state positions and behaviour. Indigenous advocates also cleverly realised, by the 1970s, that the anti-discrimination and decolonisation frames could be used together against states. States did, in no way, nefariously impose a rights framework on Indigenous peoples. Rather, Indigenous organisations and savvy Indigenous political actors deliberately chose to frame their self-determination struggles within the human rights framework in order to bring states into a double bind where they could not credibly claim to adhere to human rights and claim that they uphold equality while simultaneously denying Indigenous peoples’ human rights and leaving them with a diminished and unequal right of self-determination. But, because he is caught in the pessimism trap of seeing the state only as unifed, deliberate and unchanging, Corntassel overlooks and diminishes the clear story of Indigenous agency and the potential for positive change in advancing self-determination in a multitude of ways.

Pessimism Trap 3: Engagement with the Settler State is Futile, if Not Counter-Productive

Since the state always intends to maintain, if not expand, colonial control, and is seeking to co-opt as many Indigenous peoples as possible in order to maintain or expand its dispossession and control, it is therefore futile, at best, and actually dangerous to Indigenous existence to engage with the state. Furthermore, all patterns of engagement will lead to co-optation as the state is cunning and unrelenting in its desire to co-opt Indigenous leaders, academics and professionals in order to gain or maintain control of Indigenous peoples.

Alfred argues, in both his 2005 and 2009 books, that any Indigenous engagement with the state, including agreements and negotiations, is not only futile but fundamentally dangerous, as such pathways do not directly challenge the existing colonial structure and ‘to argue on behalf of indigenous nationhood within the dominant Western paradigm is self-defeating’.32 Alfred states that a ‘notion of nationhood or self-government rooted in state institutions and framed within the context of state sovereignty can never satisfy the imperatives of Native American political traditions’33 because the possibility for a true expression of Indigenous self-determination is ‘precluded by the state’s insistence on dominion and its exclusionary notion of sovereignty’.34 Worst of all, according to Alfred, when Indigenous communities frame their struggles in terms of asserting Aboriginal rights and title, but do so within a state framework, rather than resisting the state itself, it ‘represents the culmination of white society’s efforts to assimilate indigenous peoples’.35

Because it is impossible to advance Indigenous self-determination through any sort of engagement with the state, Coulthard also advocates for an Indigenous resurgence paradigm that follows both his mentor Taiaiake Alfred but also Anishinaabe feminist theorist Leanne Simpson.36 As Coulthard writes, ‘both Alfred and Simpson start from a position that calls on Indigenous peoples and communities to “turn away” from the assimilative reformism of the liberal recognition approach and to instead build our national liberation efforts on the revitalization of “traditional” political values and practices’.37 Drawing upon the prescriptive approach of these theorists, Coulthard proposes, in his concluding chapter, fve theses from his analysis that are intended to build and solidify Indigenous resurgence into the future:

1. On the necessity of direct action, meaning that physical forms of Indigenous resistance, like protest and blockades, are very important not only as a reaction to the state but also as a means of protecting the lands that are central to Indigenous peoples’ existence;

2. Capitalism, No More!, meaning the rejection of capitalist forms of economic development in Indigenous communities in favour of land-based Indigenous political-economic alternative approaches;

3. Dispossession and Indigenous Sovereignty in the City, meaning the need for Indigenous resurgence movements ‘to address the interrelated systems of dispossession that shape Indigenous peoples’ experiences in both urban and land-based settings’38;

4. Gender Justice and Decolonisation, meaning that decolonisation must also include a shift away from patriarchy and an embrace of gender relations that are non-violent and refective of the centrality of women in traditional forms of Indigenous governance and society; and

5. Beyond the Nation-State. While Coulthard denies that he advocates complete rejection of engagement with the state’s political and legal system, he does assert that ‘our efforts to engage these discursive and institutional spaces to secure recognition of our rights have not only failed, but have instead served to subtly reproduce the forms of racist, sexist, economic, and political confgurations of power that we initially sought…to challenge’.39 He therefore advocates expressly for ‘critical self-refection, skepticism, and caution’ in a ‘resurgent politics of recognition that seeks to practice decolonial, gender-emancipatory, and economically nonexploitative alternative structures of law and sovereign authority grounded on a critical refashioning of the best of Indigenous legal and political traditions’.40

Corntassel also demonstrates the third pessimism trap, that all engagement with the state is ultimately futile. For the most part, however, Corntassel’s observation is that the UN system operates like a reverse Keck and Sikkink ‘boomerang model’ and ‘channels the energies of transnational Indigenous networks into the institutional fefdoms of member countries’, by which an ‘illusion of inclusion’ is created.41 He argues that, in order to be included or their views listened to, Indigenous delegates at the UN must mimic the strategies, language, norms and modes of behaviour of member states and international institutions. Corntassel fnds that ‘what results is a cadre of professionalized Indigenous delegates who demonstrate more allegiance to the UN system than to their own communities’.42 In his fnal analysis, he charges that the co-optation of international Indigenous political actors is highly ‘effective in challenging the unity of the global Indigenous rights movement and hindering genuine dialogue regarding Indigenous self-determination and justice’.43

Finding that states deliberately co-opt and provide ‘illusions of inclusion’ to Indigenous political actors in UN settings, Corntassel comes to the same conclusion as Alfred concerning the futility of engagement, arguing that because transnational Indigenous networks are ‘channeled’ and ‘blunted’ by colonial state actors, ‘it is a critical time for Indigenous peoples to rethink their approaches to bringing Indigenous rights concerns to global forums’.44

Imagining a Post-Colonial Future: Pessimistic ‘Resurgence’ Versus the Optimism and Tenacity of Indigenous Movements on the Ground

All of these writers advocate Indigenous resurgence, through a combination of rejecting the current reconciliation politics of settler colonial states, coupled with a return to land-based Indigenous expressions of governance as the only viable, ‘authentic’ and legitimate path to a better future for Indigenous peoples, which they refer to as decolonisation. While inherently critical in their orientation, these three approaches do make some positive and productive contributions to Indigenous movements. They help shed light on the various and subtle ways that Indigenous leaders and communities can become co-opted into a colonial system. They help us to hold leadership accountable. They also help us keep a strong focus on our traditional, cultural and spiritual values as well as our traditional forms of governance which then also helps us imagine future possibilities.

As I have pointed out here, however, all three theorists are also caught in the same three pessimism traps: authenticity versus co-option; a vision of the state as unified, deliberate and never changing in its desire to colonise and control; and a view of engagement with the state as futile, if not dangerous, to Indigenous sovereignty and existence. When combined, these three pessimism traps aim to inhibit Indigenous peoples’ engagement with the state in any process that could potentially re-imagine and re-formulate their current relationship into one that could be transformative and post-colonial, as envisioned by the UN Declaration on the Rights of Indigenous Peoples. The pessimism traps together work to foreclose any possibility that there could be credible openings of opportunity to negotiate a fairer and just relationship of co-existence with even the most progressive state government.

This pessimistic approach is not innocuous. By overemphasising structure and granting the state an enormous degree of agency as a unitary actor, this pessimistic approach does a remarkable disservice to Indigenous resistance movements by proscribing, from academia, an extremely narrow view of what Indigenous self-determination can and should mean in practice. By overlooking and/or discounting Indigenous agency and not even considering the possibility that Indigenous peoples could themselves be calculating, strategic political actors in their own right, and vis-à-vis states, the pessimistic lens of the resurgence school unnecessarily, unproductively and unjustly limits the feld of possibility for Indigenous peoples’ decision-making, thus actually countering and inhibiting expressions of Indigenous self-determination. By condemning—writ large—all Indigenous peoples and organisations that wish to seek peaceful co-existence with the state, negotiate mutually benefcial agreements with the state, and/or who have advocated on the international level for a set of standards that can provide a positive guiding framework for Indigenous-state relations, the pessimistic lens of resurgence forecloses much potential for new and improved relations, in any form, and is very likely to lead to deeper conficts between states and Indigenous peoples, and potentially, even violent action, which Fanon indicated was the necessary outcome. The pessimism traps of the resurgence school are therefore, likely self-defeating for all but the most remote and isolated Indigenous communities. Further, this approach is quite out of step with the actions and vision of many Indigenous resistance movements on the ground who have been working for decades to advance Indigenous self-determination, both domestically and globally, in ways that transform the colonial state into something more just and may eventually present creative alternatives to the Westphalian state form in ways that could respect and accommodate Indigenous nations. Rather, it aims to shame and blame those who wish to explore creative and innovative post-colonial resolutions to the colonial condition.

The UN Declaration on the Rights of Indigenous Peoples (the Declaration or UN Declaration) was adopted by the General Assembly in 2007 after 25 years of development. The Declaration is ground-breaking, given the key leadership roles Indigenous peoples played in negotiating and achieving this agreement.45 Additionally, for the frst time in UN history, the rights holders, Indigenous peoples, worked with states to develop an instrument that would serve to promote, protect and affirm Indigenous rights, both globally and in individual domestic contexts.46

Many Indigenous organisations and movements, from dozens of countries around the world, were involved in drafting and negotiating the UN Declaration and are now advocating for its full implementation, both internationally and in domestic and regional contexts. In Canada, some of the key organisational players—the Grand Council of the Crees (Eeyou Istchee), the Assembly of First Nations, and the Union of British Columbia Indian Chiefs, or their predecessor organisations—were involved in the drafting and lengthy negotiations of the UN Declaration during the 1980s, 1990s and 2000s. In the United States, organisations like the American Indian Law Alliance and the Native American Rights Fund have been involved as well as the Navajo Nation and the Haudenosaunee Confederacy, who represent themselves as Indigenous peoples’ governing institutions. From Scandinavia, the Saami Council and the Sami Parliaments all play a key role in advancing Indigenous rights. In Latin America, organisations like the Confederación de Nationalidades Indígenas del Ecuador (CONAIE) and the Consejo Indio de Sud America (CISA) advocate for implementation of the UN Declaration. The three, major transnational Indigenous organisations— the World Council of Indigenous Peoples, the International Indian Treaty Council and the Inuit Circumpolar Council—were all key members of the drafting and negotiating team for the UN Declaration, and the latter two, which are still in existence, continue their strong advocacy for its full implementation.

Implementation of the UN Declaration on the Rights of Indigenous Peoples requires fundamental and significant change, on both the international and domestic levels. Because implementation of Indigenous rights essentially calls for a complete and fundamental restructuring of Indigenous-state relationships, it expects states to enact and implement a significant body of legal, constitutional, legislative and policy changes that can accommodate such things as Indigenous land rights, free, prior and informed consent, redress and a variety of self-government, autonomy and other such arrangements. States are not going to implement this multifaceted and complex set of changes on their own, however. They will require significant political and moral pressure to hold them accountable to the rhetorical commitments they have made to support this level of change. They will also require ongoing conversation and negotiation with Indigenous peoples along the way, lest the process becomes problematically one-sided. Such processes ultimately require sustained political will, commitment and engagement over the long term, to reach the end result of radical systemic change and Indigenous state relationships grounded in mutual respect, co-existence and reciprocity. This type of fundamental change requires creative thinking, careful diplomacy, tenacity, and above all, optimistic vision, on the part of Indigenous peoples. The pessimistic approaches of the resurgence school are ultimately of little use in these efforts, other than as a cautionary tale against state power, of which the organisational players are already keenly aware. Further, by dismissing and discouraging all efforts at engagement with states, and especially with the blanket accusations that all who engage in such efforts are ‘co-opted’ and not ‘authentically’ Indigenous, the resurgence school actually creates unnecessary negative feelings and divisions amongst Indigenous movements who should be pooling limited resources and working together towards better futures.

#### Alt forecloses best opportunity to transform Indigenous-state relations – state-based rights claims are transformational, but legal/policy engagement is key

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Sheryl Lightfoot, “8: The transformative potential of Indigenous rights,” *Global Indigenous Politics*, Routledge 2016, pp. 206-211, https://sci-hub.se/https://doi.org/10.4324/9781315670669.

Implementation of Indigenous rights

Implementation of Indigenous rights, as articulated in the Declaration, necessitates change – significant change – on both international and domestic levels. Because Indigenous rights essentially calls for a restructuring of Indigenous– state relationships, it expects states to enact and implement a significant body of legal, constitutional, legislative, and policy changes that can accommodate such things as Indigenous land rights, free, prior, and informed consent, redress, and a variety of self- government, autonomy, and other such arrangements. Several possible implementation tools present themselves, which may be considered as being situated along two paths: institutional remedies and active deployment, giving effect to the Declaration’s dual legal and political character.

Institutional remedies, or the legal path

Implementing the Declaration through institutional remedies involves utilizing existing systems and structures, on both international and domestic levels, to enhance rights protections for Indigenous peoples. Each of these remedies offers a particular advancement in Indigenous rights protections, but, it must be noted, each also comes with a set of attendant limitations that must be carefully considered, especially in light of creative, and constantly evolving, state resistance to Indigenous rights.

First, some Indigenous organizations seek enhanced international instruments to support Indigenous rights, especially in light of the non- binding, aspirational, and legally unenforceable nature of the UN Declaration. In the early days of the UN Working Group on Indigenous Popluations (WGIP), conversations were held about eventually working toward an international treaty or convention as a follow- up to the Declaration. This issue re- emerged after the Declaration was passed in 2007, when some Indigenous rights organizations noted state emphasis on the Declaration’s non- binding character and state misuse of that non- binding character as the freedom to ignore and dismiss it. Thus, some Indigenous organizations felt the need to develop a mechanism to monitor and coordinate implementation of the Declaration, as well as to help interpret it in international law. In response, in 2012, the United Nations Permanent Forum on Indigenous Issues (UNPFII) launched a special study on an optional protocol to the Declaration, to examine the potential for such a mechanism. Consideration of an optional protocol was an unusual step, since an optional protocol is normally attached as a supplementary agreement to a human rights treaty, “which may either provide for procedures with regard to the treaty or address a substantive area related to the treaty”; optional protocols are not typically used as a follow- up to a human rights declaration (United Nations Entity for Gender Equality and the Empowerment of Women). Optional protocols are binding under international law and often contain terms that are more strict than the treaty itself. They are, as the name suggests, optional – a state may sign a treaty and then may or may not sign an optional protocol attached to that treaty.

The UNPFII released the study report on the optional protocol in 2014, recommending that such a mechanism should be voluntary, confined to only a handful of critical issues, and negotiated between states and Indigenous peoples (United Nations Permanent Forum on Indigenous Issues 2014). The report highlighted the need for enhanced implementation efforts, particularly since the “non- binding” nature of the Declaration could be interpreted by states to mean that they could ignore it. On the contrary, the report noted, human rights declarations carry significant normative weight for all countries, since they reflect international commitments attained through global consensus. After substantial discussion on this topic during the 2014 session of the UNPFII, the Global Indigenous Caucus issued its call for complete withdrawal of the proposal – its concerns rested on lack of historical precedent, and the voluntary character of an optional protocol. Because states could opt in or opt out of such an enforcement mechanism, the normative weight of the Declaration could be seriously undermined by the very mechanism intended to enhance it (Global Indigenous Caucus 2014).

Another implementation strategy is to use and cite the Declaration in domestic and international legal actions. This was first done in the Belize Supreme Court almost immediately after the Declaration passed the General Assembly. Ruling in favor of Mayan land rights, the Court cited the Declaration specifically, in addition to national law. Belize is a former British colony, and a common law country. The potential significance of a Belize court applying the Declaration domestically is that the court’s decision might be persuasive and exert some precedential weight on judges in other common law jurisdictions. However, as Lumbee scholar David Wilkins (1997) has demonstrated, domestic court rulings, even Supreme Court rulings, can be easily undermined by subsequent legislation or executive action. In fact, this has been the case in Belize.

Some Indigenous peoples pursue constitutional change to support Indigenous rights in domestic contexts. Canada was the first to do so in 1982, when it included Section 35 in the repatriated Constitution in response to a massive campaign by Aboriginal organizations and activists who advocated for recognition of their rights and title in the new Constitution. Section 35 states specifically: “the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed” (Canada 1982). Section 35 does not define Aboriginal rights and limits them to those that were already in existence in 1982. Since the Declaration in 2007, an increasing number of countries, such as Bolivia and Ecuador, have recognized Indigenous peoples and rights in their constitutions; others, like Kenya and Australia, are engaged in active discussions toward that end. This constitutional recognition of Indigenous peoples and rights is sometimes quite weak, like a non- binding instrument that merely recognizes the existence of Indigenous peoples within a state, while at other times it takes a much stronger constitutional form and entrenches treaty rights, land rights self-government.

Even the strongest constitutional protections, however, come with limitations. For example, strong constitutional protections or even enshrinement of the Declaration into national law, including the provision for free, prior, and informed consent, did not prevent resource extraction projects in Bolivia and Ecuador from proceeding without the consent of the Indigenous communities directly impacted by the projects. Further, as Dene political theorist Glen Coulthard argues in his 2007 article “Subjects of Empire,” liberal states increasingly engage in policies and practices that “recognize” Indigenous cultural rights, rights to self- determination, and treaty rights, but such recognition is highly problematic at its core. Coulthard writes,

one need not expend much effort to elicit the countless ways in which the liberal discourse of recognition has been limited and constrained by the state, the courts, corporate interests, and policy makers so as to help preserve the colonial status quo.

In his 1974 book Behind the Trail of Broken Treaties, Vine Deloria, Jr. presented concrete suggestions for a full- scale redesign of the USA–Indian relationship, including: (1) giving First Nations international protectorate status, meaning that tribal nations would be small nations under the protectorate status of the USA, but with full international status. The government would externally protect these tribal nations, but would have no right to interfere or intervene in their affairs; (2) USA surrender of its right to extinguish Aboriginal land title; (3) elimination of the USA claim to “first- purchase rights of tribal lands” so that no further sales of tribal lands would be permitted; (4) shifting the trust relationship between the USA government and tribal nations to a passive, rather than an active, trust; and (5) restore the treaty relationship. Decades later, neither the USA nor any other country has moved forward with any of these proposals.

Each of these institutional remedies certainly advance or protect Indigenous rights in some way. However, each of these strategies operates within norm plane A, the existing international order. As Cherokee political scientist Jeff Corntassel (2012) notes, Indigenous rights struggles that are premised on existing structures, discourses, and institutions have serious shortcomings and can only be taken so far. Such rights are conditional and risk “mimicking state functions.” According to Corntassel, such Indigenous rights mobilization “will not lead to a sustainable self- determination process that restores and regenerates Indigenous nations.” While such efforts can be a valuable start toward achieving Indigenous rights, they must all be considered carefully, with measured optimism and acknowledgement of their risks and limitations.

Active deployment, or the political path

The Indigenous Rights Declaration is increasingly invoked and deployed discursively and politically in a multitude of international and domestic contexts. The active deployment path is where the real potential lies to move along the transformational norm vector to a higher stage of Indigenous rights implementation. Indigenous rights may thus only be implemented to their full transformational potential when they are used as political and moral tools by Indigenous movements, often in alliance with other non- Indigenous groups, such as environmental and human rights movements.

Active deployment means invoking Indigenous rights principles in domestic and transnational political and social movements as well as in political and social discourses. A recent example is the Idle No More movement that sprang up in Canada in the winter of 2012/2013 in response to a series of parliamentary bills intended to erode Indigenous sovereignty, and land and water rights. It quickly became one of the largest Indigenous mass movements in history, characterized by teach- ins, protests, and rallies across Canada and then extending globally. But Idle No More was not an isolated or discrete movement. Rather, it was one flashpoint of a long and underlying Indigenous resistance to colonialism – a larger resistance that is non- violently assertive and operates from the same grassroots principles that form the core of the Declaration.

Furthermore, the discourse of Indigenous rights may be invoked in other contexts and in allied movements in a manner that, over time, becomes regularized and normalized, thus creating expectations of implementation through a process of repeated iteration. For example, in 2015, in Canada alone, the Declaration enjoyed widespread, repeated, and diverse deployment. In May’s provincial elections in Alberta, the New Democratic Party won a surprise victory, explicitly promising to implement the Declaration in Alberta, a province with a number of ridings where the Indigenous vote can swing elections (Anonymous 2015). In June, the Truth and Reconciliation Commission released the summary of its final report along with ninety- four recommendations for government action, including a specific set of recommendations to fully implement the Declaration (Truth and Reconciliation Commission of Canada 2015). The Declaration also sprang up in the federal election launched in late July, with all major parties, except for the Conservatives, pledging to implement the Declaration directly, or by promising to implement the TRC recommendations, which then includes implementation of the Declaration. Indigenous voices in the campaign called for greater political party attention to Indigenous issues, including implementation of the UN Declaration (Innes 2015). In September, Treaty 6 Grand Chief Tony Alexis and Treaty 8 Grand Chief Steve Courtoreille held a press conference in Edmonton, Alberta to draw attention to how the police practice of “carding,” or stopping individuals to ask them for identification, was inequitably impacting Aboriginal people in Edmonton (Huncar 2015). The grand chiefs specifically cited this practice as a violation of the UN Declaration. In the same week, a coalition of Canadian authors, artists, national leaders, and activists announced a declaration called the Leap Manifesto, which lays out a bold vision to transition the country off of fossil fuels. The Leap Manifesto portrays climate change not only as an existential crisis but an opportunity, or more of an imperative, to re- create political and economic systems that are more just and fair. The manifesto is also centered specifically on implementation of the Indigenous Rights Declaration. It states:

This leap must begin by respecting the inherent rights and title of the original caretakers of this land. Indigenous communities have been at the forefront of protecting rivers, coasts, forests and lands from out- of-control industrial activity. We can bolster this role, and reset our relationship, by fully implementing the United Nations Declaration on the Rights of Indigenous Peoples. (The Leap Manifesto)

Global Indigenous politics, which involves Indigenous rights and the political movements to implement those rights, challenges states and the international system to complete the post- colonial project, reclaim moral legitimacy, and restructure themselves along lines that promote justice, fairness, and human dignity for all. States are not going to implement this multifaceted and complex set of changes on their own. They will require significant political and moral pressure to hold them accountable to the rhetorical commitments they have made. The repeated assertion of Indigenous rights will lead to wider transformative processes that will require sustained political will and commitment over the very long term, but the inevitable end result of this enhanced decolonization project will be radical systemic change. Walter Echo- Hawk (2013) argues that the Declaration is “planting the seeds of change.” He writes,

This harbinger of change asks every nation to restore the human rights of Native peoples that fell by the wayside during the colonial era. If that call is answered, the Declaration will someday be seen as the Magna Carta for the world’s indigenous peoples. If implemented, those measures will change the world and fundamentally alter the way that humanity views some 350 million indigenous peoples who reside in over 70 nations.

These transformative processes will encounter many challenges along the way, and some of the answers to thorny problems will not be easy. But, ultimately, the UN Declaration on the Rights of Indigenous Peoples helps point the way toward a new and infinitely more fair, just, and hopeful global future.

#### Their arguments that the settler state has never and can never do anything good in this context is reductive and obscures the possibilities for effective resistance

Shit is complex, historically contingent, and not homogeneous

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(Lisa, with Tim Rowse, *Between Indigenous and Settler Governance*, introduction. https://www.taylorfrancis.com/books/9780203085028)

In 2007, Australia, Canada, New Zealand and the United States underscored their peculiar historical, legal and political interconnections. Despite the fact that they constitute the archetype of settler colonialism, the CANZUS states alone voted against the United Nations Declaration on the Rights of Indigenous Peoples. All four countries had relented and signed the document by 2010. Nevertheless, their 2007 objections are revealing. They argued that indigenous rights to selfdetermination and control of national resources fell within domestic rather than international jurisdiction; such rights were contingent on local democratic processes conducted under the legitimate authority of national settler sovereignties. Their dissent from the Declaration did not reﬂect a history of distinct severity in the treatment of indigenous peoples. On the contrary, the CANZUS states had long provided conditions that were conducive to the growth of a global movement for indigenous rights and their indigenous peoples, though still poor and oppressed, have fared much better than their counterparts in other parts of the world (Merlan 2009: 306-12). Rather, this paradox draws our attention to a key historical and legal continuity between North America and Australasian settler colonialism; indigenous recovery in these interconnected polities has taken place in the gaps and ﬁssures of setter sovereignties – spaces that are historically emergent, ﬂuid and contested. This volume examines the history, current development and future of ‘indigenous self-determination’ in the CANZUS states. Though we deal only with Anglophone settler polities here, we note that ‘indigenous’ has become a global category, and that its boundaries are sometimes stretched by the politics of self-ascription, and at other times narrowed by rules of tribal membership (Gover 2010). By ‘self-determination’ we comprehend a broad range of indigenous collective action. Not only do we use ‘self-determination’ to describe independent, territorial sovereignty, we use it to refer to informal practices of corporate consultation and assertion, and to more formal treaty-or constitution-based recognition of tempered indigenous sovereignty or jurisdiction within settler states (Pitty and Smith 2011; Muehlebach 2003). The work gathered here focuses chieﬂy on the period when technologies of settler governance intruded on indigenous life with new intimacy and persistence, from the middle of the nineteenth century until the present. Our authors ﬁnd that, even at their most racist and self-serving, settler states in Australasia and North America were complex institutions; their claims to jurisdiction, their eﬀorts at dispossession, even their establishment of formal bureaucratic tyrannies over indigenous people were both presumptuous and unconsummated. This volume recovers some of the many diﬀerent ways in which indigenous individuals and collectivities have crafted claims to equality, citizenship, diﬀerence, political autonomy and redress in the shadow of North American and Australasian settler sovereignties. Our historical chapters ﬁnd persistent pluralisms, where indigenous aspirations, collectivities and laws have continued and even structured the interaction of indigenous peoples with settler governments. Each suggests, in its way, that settler words like ‘conversion,’ ‘guardianship,’ ‘protection’ and ‘assimilation’ have obscured the breadth and resilience of modes of indigenous self-governance on missions, in reserves and in urban indigenous communities. Together they show that long after settler courts and parliaments deﬁned and diminished indigenous jurisdictions, unexpected spaces remained open for some old and some very new modes of indigenous collective assertion. Some of these historical pluralisms are unsurprising: our contributors have recovered rich ediﬁces of indigenous governance that set the rules of encounter on the trading frontiers of Canada, marshaled pan-Indian support in post-removal Indian Country in the United States and informed contemporary Ma-ori-state engagements in New Zealand. Other modes of pluralism are unexpected: whether it be the enormously creative interaction between Christian conversion and indigenous resistance in nineteenthcentury New Zealand and early twentieth-century Natal or the persistence of sorcery in contemporary Aboriginal communities. Other chapters remind us that relationships between settler and indigenous governance are historically emergent – constantly reshaped both by historical context and by their ongoing interactions. Legal historians have clearly described the moment in the second quarter of the nineteenth century when CANZUS states predicated their sovereignty on exercises of jurisdiction over indigenous people in territory, markedly attenuating indigenous rights to govern themselves according to their own law (Ford 2010; Kercher 1995: 1-12; McHugh 2004). But some of our contributors suggest that this story is altogether too tidy. Settler states indulged in many moments of self-articulation. Before the nineteenth century, Vattel’s Law of Nations convinced many that indigenous rights had no place in the law of nations. Other constitutive moments came later; for example, when British settler colonies were given legislative power over indigenous aﬀairs, between the 1850s and 1890s. Indeed, settler state making is still a work in progress. The exercise of settler jurisdiction over indigenous people remains patchy, and evolving deﬁnitions of indigenous governance and indigenous land rights by settler courts constantly redeﬁne the relationship among sovereignty, territory and jurisdiction. The contemporary relationship of indigenous rights to land (dominium) and to autonomy or sovereignty (imperium) has yet to be resolved by philosophers and lawyers (McHugh 2011: 240-43). Their uncertain relationship is evident in shifting Supreme Court deﬁnitions of the province of federal, state and Indian jurisdiction in the United States that have increasingly attenuated the capacity of longestablished indigenous governments to govern Indian reservations. Meanwhile, the growing value of indigenous land claims in remote parts of Australia and Canada has proved even more challenging. On the one hand, indigenous land claims before settler courts have been predicated on ancient association, sacralized possession and corporate identity; even at their weakest, they subtly aﬃrm indigenous corporate autonomy. On the other hand, mining booms and the ecological turn have transformed economic ‘wastelands’ into important sources of revenue, material bases that could be used to support much stronger institutions of governance among indigenous communities. Canadian and Australian courts in particular have yet to reconcile common law notions of ‘property’ with claims by Aborigines that they should be able to ‘speak for country’, regulate visitors, or negotiate with mining companies about access to mineral rights which have mostly been reserved to the Crown. Nor is law the only mechanism through which indigenous collectivities have succeeded in altering the practices of settler statehood. Post-1960s reckonings with indigenous activism have resulted in the attenuation of executive and legislative policies of dispossession and assimilation in North America and Australasia. Since the 1960s, CANZUS states have all dabbled in self-determination, the recognition of their special duties to indigenous peoples and the return of tempered property rights to a lucky few indigenous communities. However, these ameliorative measures have always been ambivalent (Cronin 2007; Foley 2007; Kowal 2008) and in some ways have served to reaﬃrm settler sovereignties over indigenous peoples (McHugh 2011: 101). In recent decades, indigenous claims have slowly pushed CANZUS polities into a paradigm of negotiation which assumes the political or legal authority of indigenous collectivities to represent their members and to control resources. The neoliberal withdrawal of government has, arguably, made space for indigenous collective assertion by fostering mediated (if unequal) negotiations between indigenous peoples and mining corporations, even where indigenous peoples lack hard legal rights to the resources in play (Gover and Baird 2002; MacDonald and Muldoon 2006). More challenging, perhaps, is this volume’s engagement with the impact of the colonial encounter on indigenous people. Drawing on a rich, pan-colonial historiography stretching from Africa (Cooper 2005) to Australia (Attwood 1989), many chapters in this volume insist that, like their settler oppressors, indigenous peoples are themselves historically emergent as individuals and collectivities. There is no eternal indigene and, as Tim Rowse argues, perhaps it is time to stop weighing indigenous articulations of selfhood and collective rights against ahistorical categories of authenticity. Contact with Europeans changed indigenous life and indigenous people – not just in the realm of ideas, but in the material details of life. Indigenous peoples have crafted new subjectivities in the context of their Christian conversion which facilitated new collective assertions. Some indigenous people have adopted Western forms of government which have both strengthened indigenous capacities for contemporary self-governance and goaded settler institutions into acts of further oppression. Settler contact opened new avenues for political discourse; as Bain Attwood pointed out some years ago, indigenous claims against settler states have probably always been hybrid discourses mediated through settler networks of people and of thought (Attwood 2003: xiii). Indeed, key indigenous intellectuals have accepted Western categories of thought about modernization, racial citizenship and assimilation and deployed them against settler oppression. Contemporary indigenous communities struggle to articulate their indigeneity through settler citizenship or, even more importantly, against rapidly changing economic structures that have reduced many indigenous people to welfare dependence, chronic illness and material want. At the same time, holders of the growing indigenous estate contend with each other about how to use, manage and dispose of their interests in land as conservators, culturebearers and capitalists. The problem of reconciling this cacophony of indigenous subjectivities – capitalist, citizen, minority, Christian, pagan, hunter-gatherer, historical victim, repository of pre-contact culture andmember of a semi-autonomous ﬁrst people – forms one of the greatest problems of settler political theory and of contemporary indigenous politics (Anaya 2004; Anaya 1999; Kuper 2003; Rowse 1994; Waldron 1992; Waldron 2003). The historical remaking of indigenous peoples shapes and constrains their claims in dynamic interaction with the rich detritus of settler and indigenous custom, law and policy. Every essay in this collection explores the messy array of gaps and perversities in settler regimes for indigenous governance. Together they illuminate the limitations and the possibilities of indigenous recovery historically, and in the face of ongoing dispossession and oppression. Some describe the emergence of new collectivities, new discourses and new practices that frame indigenous claimsmaking and self-determination to this day. Others have located and described those places in the margins of settler colonialism where the complexity of human interactions left space for indigenous peoples to express and adapt their corporate will and aspirations. These are tempered, circumscribed and problematic spaces. The most exciting essays here, it seems to me, explore how indigenous self-governance came to terms with settler sovereignty. They narrate histories of indigenous cultural and religious engagement, focus on past and present meeting points between laws, or ﬁnd changing norms in the complexity of settler and indigenous practice that have created new places outside law for the expression of indigenous corporate ambitions. Indigenous collectivities have navigated multiple regimes of colonialism and bureaucratic management since 1800. Their successes and failures show that there are no inevitable or predetermined outcomes in the gap between settler and indigenous governance.

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#### This research is inherently valuable, it makes grassroot activism effective and leads to more effective resistance to corporate dominance

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Jeremie Greer and Solana Rice, “Anti-Monopoly Activism: Reclaiming Power Through Racial Justice,” *Liberation in a Generation*, March 2021, pp. 3-13, https://www.liberationinageneration.org/wp-content/uploads/2021/03/Anti-Monopoly-Activism\_032021.pdf.

The year 2020 was painful and demanding for almost everyone, and it brought distinct darkness and despair to people of color.1 A global pandemic, which has killed us at an alarmingly higher rate, forced “essential workers” of color to risk illness and death to keep the gears of a sputtering economy churning.

In spite of this suffering and sacrifice, the future for predominantly white corporate monopolists has never been brighter. Excessive and unrestrained capitalism has enriched a small group of wealthy elite corporations and individuals by concentrating the nation’s economic and political power under their control—a mutually reinforcing, vicious cycle. Between March 18 (the unofficial beginning of the pandemic in the US) and November 24, 2020, 644 billionaires increased their combined wealth by $931 billion dollars (from $2.95 trillion to $3.88 trillion, or a rise of 31.6 percent).2 This occurred even as poverty deepened and the October unemployment rate hit nearly double its pre-pandemic low. Some in this elite class of corporations and individuals have used their accumulated power to concentrate markets that are fundamental to human thriving (e.g., technology, agriculture, financial services, and health care) by forming massive corporate monopolies.

Corporate monopoly is bad for workers, consumers, and for our democracy. Our nation’s founders were keenly aware of the danger of monopoly. In fact, the US revolution was sparked by anger directed at the monopolistic power of the British Crown. Though popularly taught as being about unjust taxation, the Boston Tea Party was actually a rebellion ignited by rage directed at the East Indian Trading Company, a monopoly chartered by the British monarchy.3 Additionally, in 1787, Thomas Jefferson wrote to James Madison that the proposed US Constitution should include a Bill of Rights that explicitly excluded monopolies.4 Though the language did not make it into the final Constitution, this letter demonstrates that the distrust of monopoly is justified and runs deep in our nation’s ethos.

Efforts to rein in the “robber barons” of the Gilded Age (i.e., Andrew Carnegie, J.D. Rockfeller, Cornielius Vanderbelt, and J.P. Morgan) are monumental in the history of anti-monopoly government action in the US. Victories following this period include government action to break up several large monopolies in the railroad and oil and gas industries. Additionally, this period normalized many worker protections that we take for granted today, such as a 40-hour workweek and overtime pay.

Unfortunately, though the start of the 20th century saw robust anti-monopoly government action, the government rapidly retreated from anti-monopoly enforcement in the second half of the century. Since, the federal government and the federal courts have aided—not prevented—the exponential growth in monopoly power in nearly every sector of our economy, including technology, telecommunications, food supply chains, banking, and health care. In 2015, for example, the US saw a record number of corporate mergers, totalling $3.8 trillion in merger and acquisition activity.5 Mergers that year involved massive companies, such as Time Warner Cable, AnheuserBusch, and Berkshire Hathaway, becoming more massive. In 2020, T-Mobile—the third-largest wireless carrier in the US— acquired Sprint,6 and Morgan Stanely acquired online stock trading company E-Trade.7

The economic problems created by monopoly power have been widely studied, and many solutions to curtail it have been developed by experts. Unfortunately, like so many large-scale and so-called “race-neutral” policy efforts, anti-monopoly policy ideation and implementation have left people of color behind. In researching this paper we found limited research or policy ideation on the impact of monopoly power on people of color. We believe that the absence of grassroots leaders of color in anti-monopoly policy conversations can be attributed to this disconnect.

It is critical that grassroots leaders of color are positioned to lead on anti-monopoly policy, as they are uniquely positioned to understand its impact on people of color at the household, community, and societal levels. This gives them a unique perspective in policy ideation efforts that should be valued and validated. These leaders also possess the unique skills to mobilize the people and public power that are necessary to force the government to reclaim its historic role of reining in runaway corporate monopoly power.

We at Liberation in a Generation believe that the power to change our economic systems rests with the organizers of color who are building the political strength of communities of color. Anti-monopoly research and advocacy need to better quantify, center, and reflect what people of color are experiencing and the ways that they are being harmed by monopoly power’s reach. These efforts should also better connect anti-monopoly policy and advocacy as tools to advance the existing priorities of leaders of color, such as the Green New Deal, Medicare for All, closing the racial wealth gap, and a Homes Guarantee. This paper aims to contribute a major step in the long journey of bridging the divide between anti-monopoly researchers and policy advocates and grassroots leaders of color. The first step on that journey is knowledge.

Recognizing that anti-monopoly work is a new policy issue to many grassroots leaders of color, this paper will serve as a primer to 1) educate grassroots leaders on the issue of corporate concentration, 2) connect the issue to racial justice, and 3) recommend a path forward for grassroots leaders as well as the researchers and advocates who need to embrace them. Our hope is that this paper provides a foundation of knowledge that grassroots leaders of color can use to build race-conscious solutions and mobilize for action to rein in runaway corporate monopoly power. To that end, the paper is organized into six sections.

SECTION 1 Monopoly Power Is Corporate Power Magnified and Maximized

In 1975, millions flooded theaters to see the blockbuster thriller Jaws. The story follows a police chief in a small resort town as he risks his life to protect beachgoers from a monstrous man-eating great white shark.

Monopolies are a lot like the shark in Jaws. While enormous, ruthless, dangerous, and scary, the movie’s monster is just a shark, and the police chief uses tools and community to defeat it. Comparatively, while also enormous, ruthless, dangerous, and even scary, monopolies are just corporations, and we, together, can confront them. Their massive power controls the wages we earn, the prices we pay, and the actions of the politicians who are supposed to represent us in DC, the statehouse, and city hall. In a representative democracy, we the people are at the top of the food chain, and it is within our power to make these monopolies fear us— and end their existence in the first place.

Grassroots leaders of color are highly experienced and uniquely skilled at challenging corporate power, and these capacities can and should be used to curb monopoly power. For example, the Athena Coalition8 has successfully leveraged grassroots power to challenge the monopoly power of Amazon, and Color of Change9 has effectively used grassroots digital organizing to challenge the monopoly power of social media platforms such as Facebook. Putting monopolies in the crosshairs of organizers is critical because they best understand the real human and structural devastation caused by monopoly power, which is otherwise all too easily neglected.

Though we believe that grassroots leaders of color have the experience and expertise necessary to challenge monopoly power, the question remains: Why should they lead this fight? Grassroots leaders of color are already engaged in high-stakes battles with the forces of corporate power on fundamental issues, including environmental justice, worker justice, housing justice, prison and police abolition, and voter and democratic justice. We believe that these efforts can be bolstered if anti-monopoly policy development and advocacy were incorporated into these existing efforts but then followed the lead of organizers. For example, the primary opponents of prison and police abolition are private prison monopolies, such as GEO Group and CoreCivic, which profit from the arrest and incarceration of Black and brown people. Opponents of the Green New Deal include energy monopolies BP and ExxonMobile, whose profits are derived from polluting Black and brown communities.10 Finally, opponents of the Homes Guarantee, and its call for creating 12 million units of social housing outside of the for-profit housing market, include big banks that profit from the commodification of affordable and low-income housing. Challenging these opponents by diminishing their monopoly power could prove to be a powerful weapon in the fight to dismantle unchecked corporate power and its real-life economic impact on people of color.

How Corporate Monopolies Show Up in Today’s World

The distinguishing features of monopolies, when compared to your run of the mill corporation (large or small), are the reach and intensity of the corporate power that they wield. Monopoly power turbocharges the ills of corporate power and creates a wider impact of the overlapping consequences for people. In many ways, monopolies are created when corporate power becomes governing power.11 Their sheer size and market dominance allow them to govern markets, and their expansive wealth gives them the power to manipulate prices, crush workers, and steamroll governments. Ultimately, monopolies’ extreme economic power—which they use to gain outsized political power and then more economic power—undermines the collective power of workers, consumers, small businesses, local communities, and governments.

It has become difficult, and inadequate, to rely on legal definitions to identify monopolies. The legal definition of monopolization is highly technical and complicated by centuries of conflicting jurisprudence. It's been narrowed to exclusively focus on the negative impact that anticompetitive actions have on consumers.12 This narrower focus intentionally shielded monopolies from any accountability for anticompetitive harm inflicted on workers, the environment, local communities, government, and democracy. Federal enforcement of monopoly power is confined to the highly specialized legal practice of antitrust law enforcement.13 However, centuries of political power wielded by corporate monopolies and their acolytes (e.g., universities, think tanks, trade associations, and major law firms) have rendered much of antitrust law enforcement toothless.14

In the late 19th and early 20th century, the definition of monopoly was much wider and comprehensive. In this paper, we will expand the definition as well. Recognizing that this definitional work is in many ways a work in progress, we offer our definition as a point of discussion and debate for the larger field of anti-monopoly advocates.

In this paper, we define monopoly as a corporate entity (a single corporation or a group of corporations) whose sheer size and anticompetitive behavior grant it disproportionate economic power and governing influence. This negatively affects the well-being of workers, consumers, markets, local communities, democratic governance, and the planet.

Below are a few major industries that reveal how corporate concentration and monopolistic industries harm the economic lives of workers, consumers, and communities of color.

Big Tech

Four corporations comprise what has come to be known as “Big Tech”: Amazon, Apple, Facebook, and Alphabet (the parent company of Google). Each of these technology firms dominate an enormous share of their respective technology markets. Google, for example, controls 90 percent of the internet search market, and it controls the largest video sharing platform on the internet through its ownership of YouTube. Apple controls 50 percent of the cellphone market,15 and Amazon controls 50 percent of all ecommerce. Facebook and its many subsidiaries (such as WhatsApp and Instagram) dominate the social media and online advertising marketplace.16 Other technology firms, including Uber, Lyft, Microsoft, and Netflix, also demonstrate monopolistic, anticompetitive behavior in their respective markets. In many ways, these companies, and the people who control them, are the “robber barons” of our time.

Big Pharma

The world's largest pharmaceutical corporations, including Johnson & Johnson, Pfizer, Merck, Gilead, Amgen, and AbbVie, together comprise “Big Pharma.” These monopolies build their profits by controlling the prices of critical life-saving pharmaceuticals (e.g., insulin, drugs that regulate blood pressure, and critical antibiotics) and life-altering medical devices (e.g., heart stents and joint replacement devices). Between 2000 and 2018, a disproportionately small number of pharmaceutical companies made a combined $11 trillion in revenue and $8.6 trillion in gross profits.17 In 2014, the top 10 pharmaceutical companies had 38 percent of the industry’s total sales revenue.18 Much of these profits were gained driving up the price of critical drugs , extorting research and development (R&D) funding from the government, and leveraging Big Pharma’s political influence to weaken government oversight of the industry.19

Big Agriculture

Big Agriculture, or “Big Ag,” refers to monopolies that control major aspects of the global food supply chain. This includes companies such as Cargill, Archer Daniels Midland Company (ADM), Bayer, and John Deere. Though once a diffuse network of small farmers and supply chain companies, recent mergers have created a system comprising a small number of corporations that are crowding out smaller, family-run companies including small farms. Similar to Big Pharma, government subsidies are a massive component of the obscene profits made by Big Ag. Further, as often the largest employer in many small rural towns, these corporations often ruthlessly wield their monopoly power to drive down wages and benefits to workers, skirt government safety regulations, and bully (and even buy out) small farmers.

Big Banks

Known as the “Big Five,” five banks control almost half of the industry’s nearly $15 trillion in financial assets: JPMorgan Chase, Bank of America, Wells Fargo, Citigroup, and US Bancorp. Their collective importance to the nation’s financial system has led some to consider them “too big to fail.”20 In fact, in response to the financial crisis of 2008, the federal government provided trillions of dollars in relief to ensure that they did not collapse under the weight of the crisis.21 The Big Five have an incredible influence over the flow of money throughout our economy. They finance critical goods and services, such as housing, higher education, infrastructure, and renewable energy. They also finance extractive elements of our economy, such as fossil fuels and private prisons. But, most importantly, they set the rules for who can and cannot access loan capital, and their exclusionary practices have been widely linked to the growth of racial wealth inequality (as described in Section 3).

#### That’s especially true for understanding how debate replicates academia and excludes native experiences – antitrust provides a valuable huertstic to analyze the way racism in education functions and how to combat that

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Erika K. Wilson, “Monopolizing Whiteness,” *Harvard Law Review*, vol. 134, no. 1, May 2021, pp. 2414-2423, https://harvardlawreview.org/wp-content/uploads/2021/05/134-Harv.-L.-Rev.-2382-1.pdf.

II. AN ALTERNATIVE FRAMEWORK: USING ANTITRUST TO RESPOND TO WHITE-STUDENT SEGREGATION AND MONOPOLIZATION

Racial segregation in public schools is often situated as a public problem that must be addressed with public law frameworks. Yet as the preceding sections demonstrate, in modern times, racial segregation in schools is the result of private decisionmaking regarding residence, particularly the school district in which one decides to reside. Because public law frameworks like equal protection do not reach outcomes that are caused by private decisionmaking, this Part suggests that there is merit in looking to private law frameworks for guidance. It looks to antitrust's Sherman Act 196 to consider how one might articulate and regulate the monopolization harms wrought by second-order social closure that enables white-student segregation.

A. The Efficacy of an Antitrust Analogy

The purpose of the Sherman Act is to protect the competitive process that spurs economic growth. 197 It protects only the competitive process, not individual competitors. 198 "It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of . . . economic resources . . . while at the same time providing an environment conducive to the preservation of . . . democratic political and social institutions." 199

Unlike equal protection doctrine, the Sherman Act does not require exacting intent requirements to sustain a violation of the Act. Instead, it prohibits conduct that unreasonably restrains trade or results in the acquisition or maintenance of monopoly power. 200 Acquiring or maintaining a monopoly is not in and of itself unlawful. 201 Instead, it is only unlawful if the monopoly is acquired or maintained through anticompetitive or exclusionary conduct. 202 Courts find that conduct is exclusionary or anticompetitive when it "harm[s] the competitive process and thereby harm[s] consumers" 203 or has a deleterious effect on a rival's ability to engage in the competitive process. 204 The primary focus of the anticompetitive conduct analysis under the Sherman Act is the impact of the defendant's actions on competition within the market, not the defendant's subjective intent.

Just as the Sherman Act recognizes that competition is vital to a strong economy, political theorists have long recognized the importance of a well-educated and informed citizenry to a well-functioning democracy. 205 An important part of the analysis that is often missed regarding the harms of racial segregation in schools is the extent to which racially segregated schools, particularly predominantly white schools, undermine democracy. 206 They do so by allowing a subset of the population to either hoard or be deprived of the kinds of educational opportunities that allow for social mobility, better life outcomes, and the ability to participate equally in the social and economic life of the democracy. 207 They also do so by facilitating forms of social isolation that deny white students the ability to gain the skills they need to function in a racially diverse country. 208 The net result of those two things is to undermine the economic and social stability of the democracy.

To capture the broader democracy-related harms caused by white-student segregation in public schools, it is imperative that new ways of thinking and new frameworks are introduced to examine the problem. Antitrust doctrine provides an apt analytical lens through which to critically analyze the monopolization harms caused by white-student racial segregation. In effectuating the analogy, fair access to racially integrated high-quality public schools is to a well-functioning democracy as competition is to a well-functioning economy. Thus, the analogy set forth in the sections that follow uses antitrust language and frameworks to elucidate the harms caused by white-student racial segregation and to think about how to remedy those harms.

#### The reticence by individuals to engage with antitrust has allowed it to be coopted by the corporate elite to dominate the economy and society. Reclaiming the research around antitrust is essential to orient our economy to more equal ends

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Sandeep Vaheesan, “The Twilight of the Technocrats’ Monopoly on Antitrust?” *The Yale Law Journal Forum*, 4 June 2018, pp. 985-994, <https://www.yalelawjournal.org/pdf/Vaheesan_ir9dchg8.pdf>.

II. ANTITRUST IS NOT AND CANNOT BE “APOLITICAL”

Antitrust law is unavoidably political. Of course, the enforcement of antitrust law should not be political in the popular sense: the President and the heads of the Department of Justice Antitrust Division and Federal Trade Commission should not employ the antitrust laws to reward their friends and punish their enemies.22 Rather, antitrust is political in its content. In designing a body of law, Congress, federal agencies, and the courts must answer the basic questions of whom the law benefits and to what end. Answering these questions inherently requires moral and political judgments. These fundamental questions do not have a single “correct” answer and cannot be resolved through “neutral” methods or decided with an “apolitical” answer.23

Antitrust regulates state-enabled markets, which cannot be separated from politics. The history of antitrust law shows competing visions of both the law’s aims and its methods, suggesting there is no “apolitical,” universal concept of antitrust. Rather than aspire for an impossible utopia of “apolitical” antitrust, we must decide who should determine the political content of the field—democratically-elected representatives or unelected executive branch officials and judges.

A. Markets Cannot Be Divorced from Politics

A market economy is the product of extensive state action and so is inevitably political. The conception of the market as a “spontaneous order” is a useful construct for defenders of the status quo because it lends legitimacy to the current order and suggests that intervention is futile.24 This model, however, is a myth and bears no correspondence to actual markets. Most fundamentally, state action supports a market economy through the creation and protection of property rights25 and the enforcement of contracts.26 As sociologist Greta Krippner writes, “there can be no such excavation of politics from the economy, as this is the substratum on which all market activity—even ‘free’ markets—rests.”27 In addition to property and contract law, examples of state action necessary for the contemporary U.S. economy to function include corporate and tort law (typically established and enforced by state governments), intellectual property, protection of interstate commerce, banking regulation, and monetary policy (generally conducted at the federal level).

Antitrust law, therefore, is a governmental action that shapes the power of state-chartered corporations and the scope of their state-enforced property and contractual rights. This regulation of state-enabled markets makes antitrust inherently political. Moreover, in formulating antitrust rules, lawmakers must determine whom the law seeks to protect. Antitrust law could conceivably protect consumers, small businesses, retailers, producers, citizens, or large businesses. But even identifying the protected group or groups does not fully resolve the question. For instance, if consumers are antitrust law’s sole protected group, how should the law protect consumers? Antitrust could protect consumers’ short term interest in low prices or their long-term interests in product innovation or product variety, just to name a few possibilities.28

Given the foundational role of state action—and therefore politics—in a market economy, the choice of objective in antitrust law is not between intervention and nonintervention. Rather, antitrust law must choose between different configurations of state action and different sets of beneficiaries.29 More concretely, we must decide, openly or otherwise, whose interests antitrust law should protect.

B. The History of Antitrust Law Reveals the Unavoidability of Politics

The history of antitrust law further demonstrates the political nature of the field. Although Congress has not modified the antitrust statutes significantly since 1950,30 the content of antitrust has changed dramatically since then. Even the consumer welfare model has not banished political values from the field. While the range of debate within the community of antitrust specialists is narrow, the continuing disagreement over the interpretation of consumer welfare reveals the inescapability of political judgment.

Antitrust law today is qualitatively different from antitrust law fifty years ago. In the 1950s and 1960s, the courts and agencies interpreted antitrust law to advance a variety of objectives. The Supreme Court held that the antitrust laws promoted consumers’ interest in competitively-priced goods,31 freedom for small proprietors,32 and dispersal of private power.33 The Court held that business conduct injurious to competitors could give rise to antitrust violations, irrespective of the effects on consumers.34 It also interpreted congressional intent to be that a decentralized industrial structure should override possible economies of scale gained from greater consolidation of economic power.35 Recognizing this goal of decentralization, the federal judiciary adopted strict limits on business conduct with anticompetitive potential, including mergers36 and exclusionary practices.37

Since the late 1970s, however, the Supreme Court, along with the Department of Justice and Federal Trade Commission, has reduced the scope of the antitrust laws. With a rightward shift in the composition of the Supreme Court under the Nixon Administration and in the leadership at the federal antitrust agencies under the Reagan Administration,38 these institutions curtailed the reach of antitrust law, scaling back its objectives39 and rewriting legal doctrine to preserve the autonomy of powerful businesses—all in the name of protecting consumers.40

Even the adoption of the consumer welfare model has not somehow banished politics from antitrust. Instead, it has underscored the unavoidability of politics in the field. Despite being the prevailing goal of antitrust for nearly four decades now, the meaning of consumer welfare is still not settled. The two primary schools of thought on consumer welfare disagree on a fundamental question—who are the beneficiaries of antitrust law? One holds that actual consumers, as understood in the popular sense, should be the principal beneficiaries of antitrust law.41 The rival camp holds that both consumers and businesses should be the beneficiaries of antitrust law, and that whether a dollar of economic surplus goes to a consumer or a monopolistic business should be of no concern to the federal antitrust agencies and courts.42

C. Who Should Decide the Political Content of Antitrust?

Because the objective of antitrust law is thus bound up with political judgments and values, seeking an “apolitical” antitrust jurisprudence is futile at best and a cynical effort to conceal political choices at worst. The choice is not between “apolitical” antitrust and “political” antitrust; rather, lawmakers must decide between different political objectives. Once the inevitably political valence of antitrust law has been acknowledged, we can turn to the key question of whether unelected officials at the antitrust agencies and federal judges (collectively “the technocrats”) or democratically-elected members of Congress should decide this political content.43

Over the past forty years, technocrats have dominated antitrust law.44 Leadership at the Department of Justice and Federal Trade Commission as well as Supreme Court Justices have rewritten much of antitrust law.45 They have ignored or distorted the legislative histories of the antitrust laws and have even overridden Congress’s legislative judgments.46 By restricting private antitrust enforcement, the Supreme Court has also limited the ability of ordinary Americans to influence the content of antitrust law.47

While the antitrust technocrats have been on the march, Congress has been dormant. Its antitrust activities have been confined to secondary issues.48 This combination of technocratic hyperactivism and legislative lethargy has created, in the words of Harry First and Spencer Waller, “an antitrust system captured by lawyers and economists advancing their own self-referential goals, free of political control and economic accountability.”49 Although proponents of technocratic antitrust may characterize it as “pure” or “scientific,” the reality is quite different as big business interests and their representatives dominate debate within this cloistered enterprise.50

This congressional indifference to antitrust is not inevitable. Despite prolonged quietude, Congress could become an active player in antitrust again. Some members of Congress are showing a renewed awareness of the field and an interest in reasserting control over the content of the antitrust statutes. 51 The most democratically accountable branch of the federal government may be poised to take the lead on antitrust in the coming years, reclaiming authority over a technocracy that has not answered to the public in decades.

#### Regardless of if you want to or not, corporate monopolies create fundamental barriers to progress in society and progressive organizing must engage with antitrust to gain any morsal of progress

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Jeremie Greer and Solana Rice, “Anti-Monopoly Activism: Reclaiming Power Through Racial Justice,” *Liberation in a Generation*, March 2021, pp. 18-26, https://www.liberationinageneration.org/wp-content/uploads/2021/03/Anti-Monopoly-Activism\_032021.pdf.

Though we believe that grassroots leaders of color have the experience and expertise necessary to challenge monopoly power, the question remains: Why should they lead this fight? Grassroots leaders of color are already engaged in high-stakes battles with the forces of corporate power on fundamental issues, including environmental justice, worker justice, housing justice, prison and police abolition, and voter and democratic justice. We believe that these efforts can be bolstered if anti-monopoly policy development and advocacy were incorporated into these existing efforts but then followed the lead of organizers. For example, the primary opponents of prison and police abolition are private prison monopolies, such as GEO Group and CoreCivic, which profit from the arrest and incarceration of Black and brown people. Opponents of the Green New Deal include energy monopolies BP and ExxonMobile, whose profits are derived from polluting Black and brown communities. Finally, opponents of the Homes Guarantee, 10 and its call for creating 12 million units of social housing outside of the for-profit housing market, include big banks that profit from the commodification of affordable and low-income housing. Challenging these opponents by diminishing their monopoly power could prove to be a powerful weapon in the fight to dismantle unchecked corporate power and its real-life economic impact on people of color.

## 1NR

### Case

#### 2AC’s distinction between conquest and settler colonialism is insufficient for them to “No link” the cards on case

-reason I asked about this so much is because their Ks of SCT as a theory are nonresponsive to the warrants in this evidence, which is that it’s bad to think of the positionality of black and native people as locked in place thru a process of dispossestion and native genocide

-This is a central premise the 1ac relies on, so winning that it is BAD to theorize this way is a sufficient condition to vote neg – for instance, King says that SCT’s land focus is bad, but the alternative theory that the Brough evidence presents is quote:

genocide as a modality continues to position not just Native peoples but the extent to which it is a structural principle of modernity

#### Proven by the King evidence – definitely supports a theory of society as monolithic/unchanging

King 19 (Tiffany Lethabo King, Assistant Professor of Women's, Gender and Sexuality Studies at Georgia State University, “The Black Shoals: The Offshore Formation of Black and Native Studies”, <https://read-dukeupress-edu.ezp-prod1.hul.harvard.edu/books/book/2617/The-Black-ShoalsOffshore-Formations-of-Black-and//af>)

In addition to rethinking Black epistemologies and conceptual ecologies, I also use the shoal as a way of moving Black diaspora studies to reconceptualizing Indigenous people as also connected to water and the oceanic. Vincente Diaz, a scholar of Pacific Island communities that constitute Oceania, works within seafaring epistemologies (ocean travel, chant, moving islands) to honor the ways that “land, sea and humans are mutually constitutive of one another.”35 Taking into consideration the “very long history of geo and oceanographic dispersal” and travel, Diaz’s work, as well as other Pacific Islander Indigenous scholars, challenge notions of Indigenous “rootedness” in static time and space.36 Thinking with Indigenous mobilities, migrations, and relationships to the sea, I hope to engage an important proposition that Seneca scholar Mishuana Goeman poses. More specifically, Goeman asks, what might “forms of analysis or action” that center “indigenous conceptions of land as connected, rather than land as disaggregate parcels at various European-conceived scales” of accumulation look like?37 Colonial European scales disaggregate space into reservations, nation-states, continents, hemispheres, and water. Goeman offers that we “position land and water as always connected.”38 Goeman asks, “what if we think of waterways in the way my Pacific Islander colleagues, particularly Vincente Diaz and Alice Te Punga Somerville, have positioned waters as connected with the currents rather than water as that which divides continents, islands, and land?”39 For Goeman, Somerville, and Diaz, “the binding of land and water to the political, cultural and social life of indigenous peoples requires an ethics of care and responsibility.”40The Black Shoals is a site where Black studies connects land and water. **The shoals also represent an analytical and geographical site where Black studies attempts to engage Native studies on ethical terms that unfold in new spaces**. This project tracks where and how Blackness interrupted the linear and smooth flow of modern and postmodern thought on the questions of slavery and genocide. Ultimately, this book asks, What changes does the Black shoal require of normative routes and knowledge systems that consider the ways that Black presence in the Americas casts a shadow on and informs the projects of genocide, settlement, and the remaking of “the human” under ongoing relations of conquest? As an accumulation of Black thought, aesthetics, and politics, the shoals of this project halt the all too smooth logics of White settler colonial studies. More specifically, **The Black Shoals arrests settler colonialism’s tendency to resuscitate older liberal humanist modes of thought to create new poststructural and postmodern forms of violent humanisms that feed off Indigenous genocide and Black social death.** The shoals as the analytical, theoretical, and methodological sandbars in this book place White settler colonial studies, as well as certain tendencies within Indigenous/Native studies (and Black studies) that align with White humanist thought, under stress. The Black Shoals forces a tarrying within hemispheric Black studies’ discourse of conquest and its traditions of interrogating the terms on which the human comes into formation through Black and Indigenous death in the Western hemisphere. At this contemporary juncture, many Black and Indigenous people in this hemisphere experience the current political moment as one marked by mass carnage. Everyday life is marked by grotesque interludes with Black and Indigenous death in the streets or in the plains. Even as Black and Indigenous people and the world bear live witness—on the street, Twitter, Instagram, and Facebook—to the real-time murder of their kin and relations, liberal political commentary, the academy, and the White left continue to use a form of speech that refuses to name the quotidian spectacle of death as conquest. The way that shoals slow the movement and momentum of vessels acts as the organizing metaphor that structures the theoretical frame of the book. **The Black shoal functions as a critique of normative discourses within colonial, settler colonial, and postcolonial studies that narrowly posit land and labor as the primary frames from which to theorize coloniality, antiIndigenism, and anti-Black racism.** The Black Shoals introduces an alternative reading practice and an analytical suture or thoroughfare that reveals the ways that Blackness mediates the relations of conquest in the Western Hemisphere. The Black Shoals works to disrupt the movement of modern thought, time, and space to enable something else to form, coalesce, and emerge. An essential analytical move that shapes the theoretical contributions of The Black Shoals is how the book uses a hemispheric approach that exceeds conventional Black diasporic analytics and spaces. Throughout the book, the space of the hemisphere, which includes the westernmost coast of Africa and the Americas, functions as the landscape in which the practice of enslaving Black people and making them fungible and accumulable symbols of spatial expansion happens alongside and in relationship to Indigenous genocide. Very much as Brathwaite’s “tidalectics” as performed in Caribbean and Black diaspora literature moved between the experiences of dispersal and landing, the analytical approach of this book traces the relationship and dialogic traffic between Black and Indigenous thought in the hemisphere.41 Brathwaite’s tidalectics, which lap up against Glissant’s archipelagic thought and poetics of landscape, produce what McKittrick identifies as “different sets of geographic tools . . . which are anchored, primarily in nonlinearity, contradictory histories, dispossession, and an infinite variety of landscapes.”42 Tidalectics as a mediation between the sea and land tends to privilege geographies and analytical sites such as the dock, stelling, and liminal spaces that are an intermediary location between ocean and shore. It is also an analytical location that forecloses settlement and permanent landing on its always shifting and dissolving terrains. Rather than read these ruptures, dissolving and ephemeral spaces suspiciously, I encourage the reader to engage the nontraditional geographies (visible, uncharted, and invisible) that connect Indigenous and Black diasporic thought reparatively.43 The theoretical frame of the book gathers, much like shoals gather, disparate granules of sand, rock, and coral to make new and varied theoretical formations within Black diaspora studies. While some of the theoretical pairings may seem disparate and sound dissonant, their placement in conversation with one another produces a generative friction. More important, the scholarly voices that I have curated for this project all ask important questions about how the human—or its apex, Man—is defined in relationship to Black and Indigenous people. In the theoretical formation that is the Black shoals, readers will recognize the sand mounds and coral patterns of Wynter, Spillers, and McKittrick, as well as Saidiya Hartman, Frank Wilderson, and Denise Ferreira da Silva. Their bodies of work contribute to a lineage and legacy of scholarship that arrests the normative epistemic flow and the violence of the narrativity of humanist (or what Wynter calls “monohumanist”) thought. While the book recognizes that the authors and the respective traditions from which they are a part and help form (Caribbean studies, Black and African diaspora studies, U.S. Black studies, Black Canadian studies, Afro–Latin American and Brazilian studies) address specific and unique challenges that arise at the level of the nation-state and supranational regions, the book refuses to silo or treat the intellectual traditions as bounded. Black studies in its Caribbean, Canadian, U.S, Brazilian, North American, and Latin American iterations all shift and respond to one another (albeit unequally) like living shoals that are connected to one another like an archipelago. **Rather than conflate distinct intellectual formations**, traditions, and practices of study, **I trace the nerves of a** gathering or **shoaling** (however fleeting and temporary that it may be) **of a Black diasporic and hemispheric conversation about** middle passages, geographies, rootless relations to nation-states, and **encounters with Indigenous peoples amid the violence of New World modernity**. I attend to the violence of conquest in Anglo imperial regimes and nation-states that connect Black people in the Western Hemisphere. I also attend to the ways that Black people who are subject to the legacy of this violence have always been trying to communicate with Indigenous people. Each tradition and practice of Black study has its own approach to configuring and enfleshing the spaces and cracks where Black and Indigenous life caress each other. In the Anglo North American academy, Black Canadian studies—which continues to demand institutional resources and recognition—has sustained the most explicit and intentional exchange with Indigenous people, genocide, and the discourse of settler colonialism as evidenced by their scholarly imprint. Canadian racial discourses prioritize the settler-Indigenous binary and subordinate—erase—the nation’s own history of slavery and anti-Black racism through a Canadian project of multiculturalism that focuses on assimilating (Black) immigrants into its national project.44 Because of the way that the Canadian nation-state organizes and narrates its racial conflict and reconciliation along settler and Indigenous lines, Black Canadian studies has a long and established record of theorizing racial violence and through a triadic European-Native-Black frame. Further, the influence of Black diaspora studies, particularly a practice inflected by Anglo-Caribbean Studies in Toronto, privileges an Afrodiasporic tradition with a long history of studying and critiquing coloniality. The influence of Caribbean philosopher Wynter is evident in the work of Black Canadian scholars like Rinaldo Walcott, whose essay “The Problem of the Human: Black Ontologies and ‘the Coloniality of Our Being’” (2014) limns the limits of a settler colonial critique in the face of anti-Black racism. In “The Problem of the Human,” Walcott draws on the Wynterian tradition of studying the violent enclosures of the human in order to elaborate the ways that the Canadian nation-state’s project of multiculturalism expands to incorporate modes of Indigenous representation into its notion of the human/Man at the expense of Black subjects in Canada.45 In comparison, U.S. Black studies’ engagement with Native studies and Indigenous sovereignty as a political and intellectual project, while longer, has been less even and consistent. U.S. racial discourse tends to be organized by a White-Black paradigmatic frame that often erases Indigenous peoples. When U.S. Black studies has engaged Indigenous thought and politics, the field has been less likely to articulate Black-Indigenous relations through a discourse of settler colonial relations until recent, twenty-firstcentury scholarship.46 Tracking the history of Black popular and scholarly treatments of the subject of Native America, scholar Arika Easley-Houser has discovered an antebellum African American print culture in which Native Americans figured centrally in the nineteenth-century African American imagination.47 These print cultures ranged from those that sought to explore alliances with Native peoples to comparative projects that tried to prove African American superiority to Native peoples, as well as those that investigated Native practices of enslavement.48 Shortly after founding the Association for the Study of African American Life and History (asalh) in 1915, Carter G. Woodson published his article “The Relations of Negroes and Indians in Massachusetts” in the Journal of Negro History in 1920. During the late 1960s and early 1970s, the first Black studies programs producing scholarship at the nexus of Black activism and the development of academic departments created fertile ground for conversations between Black and Native scholars and activists. With the establishment of Black studies departments, a noticeable uptick in scholarship by Black scholars on Black and Native American relations emerged after Powhatan-Renape scholar Jack D. Forbes’s Africans and Native Americans: The Language of Race and the Evolution of Red-Black Peoples was published in 1993. In the first decades of the twenty-first century, scholars began to pay particular attention to the practice of slavery among the Five Civilized Tribes. In 2006, Tiya Miles and Sharon Holland coedited the anthology Crossing Waters, Crossing Worlds: The African Diaspora in Indian Country. The contributors to the collection used a variety of interdisciplinary methods and rooted their work in primary sources, archival records, and Black and Native literary traditions that told stories of Black and Native relations in North America. In the wake of Miles and Holland’s Crossing Waters, Crossing Worlds, Frank B. Wilderson authored one of the first interdisciplinary Black studies texts that introduced a theoretical frame for elaborating the complex structural and ontological—political economic and libidinal—positions of Black and Native people in the United States. Caribbean and Latin American studies’ attention to complicated processes of racialization and identity formation like creolization and mestizaje refract Blackness and Indigeneity differently from Black North American racial frameworks. Blackness and Indigeneity do not function as frequently as bounded ancestries, identities, or ontological positions. However, Anglo-Caribbean scholars such as Shona Jackson and Melanie Newton have noted that in the Anglo Caribbean, anticolonial and postcolonial national origin stories often erase Amerindian presence through a Calibanesque tradition that indigenizes African-descended people.49 However, Black and African diaspora scholarship that emerges from the Caribbean and from Central and South America directly engages questions of coloniality from theoretical and experiential perspectives. For example, Sylvia Wynter’s body of work, which traces the “epistemic revolutions” of Western humanism, attends to the ways that Black (Niggers) and Indigenous (Indios) identities are made and remade as a perpetual limit point or outside to the boundaries of Man across various colonial formations. Wynter’s critique of humanism and its systems of overrepresentation has functioned as a crucial pivot point in Black studies that has enabled the emergence of a shared critique to emerge between Black and Native Studies. A Black studies reading practice that attends to African diaspora studies as they unfold in the Caribbean and South America has the conceptual space to acknowledge philosophical, literary, and historical traditions that can attend to histories of both enslavement and colonialism. Despite these different and, at times, divergent tendencies in each respective Black tradition of study, factions within each tradition have sustained unique and meaningful conversations with Indigenous peoples and Indigenous/ Native studies on their own terms. As a way of eroding (while attending to specificities of) nation-bound approaches for tracking Black and Indigenous dialogue, I turn to Black diasporic methods. More specifically, I rely on Gilroy’s analytic of the Black Atlantic as a way to track mobile and shifting diasporic thought, activism, and aesthetics that engage Indigenous people.50 At times, the diasporic movement will travel with and identify Black and Indigenous dialogue at the level of the nation, the region, the hemisphere, or imagined spaces that exceed all of these geographical scales. Diasporic itineraries and thought act as methods and practices of study that present other frames for attending to Black diaspora people’s engagement with Indigenous people.

#### We’re impact-turning this type of structuring logic – theory asserts that all interactions are shaped by conquest and the process of genocide – that shuts down anti-colonial action because it frames conquest as a structure that cannot be overcome – gives whites an excuse to distance themselves from anti-colonial action bc conquest is seen as inevitable, AND destroys black/native agency by framing them only as victims

#### Means that our case args are specifically a K of Urefusal – rejecting reconciliation perpetuates Eurocentric binaries and shuts down world-making both within and without the academy

Borrows and Tully 18 – John Borrows is the Canada Research Chair in Indigenous Law at the University of Victoria. He is Anishinaabe/Ojibway and a member of the Chippewa of the Nawash First Nation in Ontario, Canada. James Tully is emeritus distinguished professor of Political Science, Law, Indigenous Governance, and Philosophy at the University of Victoria.

John Borrows and James Tully, “Introduction,” *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings*, Eds. Michael Asch, John Borrows, and James Tully, University of Toronto Press 2018, Epub (email [arg5180@gmail.com](mailto:arg5180@gmail.com) for relevant text).

At times the difference between “separate resurgence” and resurgence and reconciliation (or “resurgence-reconciliation”) has been polarized. Disagreements among practitioners can be divisive in both theory and practice. This volume identifies diverse paths that attempt to move beyond this polarization and the disempowering divisions it generates. We accept critiques and refusals of so-called reconciliation models that threaten to reconcile Indigenous peoples to the unjust status quo. We also acknowledge and accept critiques and refusals of certain types of “recognition” that place the state or its imperial networks at the centre of social, political, and economic affairs. Recognition can be a Trojan horse–like gift; state action often operates to overpower or deflect Indigenous resurgence. Indeed, the contributors to this volume have co-developed these critiques and refusals with others. In turning from critique to construction, we distinguish between two forms and meanings of reconciliation and resurgence. The first are those that perpetuate unjust relationships of dispossession, domination, exploitation, and patriarchy. These reconcile Indigenous people and settlers to the status quo, and we strongly reject them. The second are those that have the potential to transform these unjust relationships; these are the kinds of ideas we seek to advance in this book. These are relationships of “transformative” reconciliation. To be transformative they must be empowered by robust practices of resurgence. Robust resurgence infuses reciprocal practices of reconciliation in self-determining, self-sustaining, and intergenerational ways. These unique forms of reconciliation and resurgence coexist in a relationship of gift-reciprocity, as many contributors argue. For example, the creation of resurgent Indigenous Studies programs often (though not invariably) grew from reconciliation efforts with settler partners in university settings. These programs, run by Indigenous scholars, have transformed curricula and teaching in their disciplines over the last twenty years – not only for their resurgent units but also for their partners whose reconciliation efforts were vital to their development. Unfortunately, despite the significant growth of resurgence-reconciliation networks and frameworks, all is not well in the field. Polarizing debates have developed through misunderstandings and/or misuses of the different meanings of resurgence and reconciliation. This volume seeks to clarify this entangled semantic field. Contributors in this book seek to move beyond the polarizing dichotomy of rejectionist resurgence and non-transformative reconciliation to renew the collaborative search for practices of robust resurgence and transformative reconciliation in their work.

From a resurgence-reconciliation perspective, a major cause of recent divisions arose through the adoption of a dialectic drawn from another colonial context. The binary of Third World decolonization and master-slave dialectics of the 1950s and 1960s was pulled into some Indigenous studies circles in ways that reject reconciliation in broad terms. While great value was derived from much of this decolonization literature, in our view, some of the claims made in its name were over-broad and thus were applied in inappropriate ways. Dichotomies and binaries were advanced in a manner that did not always distinguish between contemporary North America, and those of colonial Africa, Asia, and Latin America in the 1960s. Differences in temporal, spatial, and socioeconomic circumstances were flattened and universalized. Ideas were essentialized, and deficiencies in Third World decolonization were often overlooked. Thus, positions rejecting all forms of reconciliation entered the field. This flowed from a binary framing that insisted the decolonizing resurgence of the colonized had to take place in separation from the colonizer. Some followers of this field argued that no good relationship or dialogue with the colonizer was possible, because such encounters were simply thinly disguised struggles over power between hegemons and subalterns. Those who thought otherwise were dismissed as being misguided, even colonized, by “the system.” This criticism spread to critiquing the majority of Indigenous people as being co-opted. Some held that even the participation in workshops of Indigenous and settler participants, such as ours, was to be colonized.4 Entanglement was rejected, and interdependence was discarded by those who took this position. The colonizer/colonized binary grew in different places and was cloaked in many different guises. It was used to justify the “rejection and separatist resurgence” strategy. This generated divisions among Indigenous people (between those accused of being colonized and those who claim to see through the co-optation), among settlers (between those who accept and reject separationist resurgence), and between Indigenous people and settlers, at almost every site of potentially coordinate action in which it is invoked.

The defenders of this colonization/decolonization and friend-enemy vision argue that it provides a deeper critique of the global and local system than the language of resurgence and reconciliation can provide. Thus, they say it has to be embraced by Indigenous people to effect revolutionary resurgence. However, in our view these claims lack nuance. Simple binaries such as these can fatally conceal and obscure a complex intersectional field. Approaches to “reconciliation and resurgence” advanced by the authors in this book largely avoid the essentializing, a priori, absolutist, universalizing terms of separatist resurgence. They recognize that separation may sometimes be needed but that this is only one option among many in the practice of resurgent, transformative reconciliation. Separation, while powerful and sometimes necessary, must be applied with care to the context in which it is inserted. While measured separation may be very appropriate in some settings, it cannot be regarded as a comprehensive strategy that is healthy in all circumstances.

The idea we are advancing of “reconciliation and resurgence” acknowledges our situatedness in overlapping regimes of knowledge, power, and subjectification. It is attentive to situated freedom. This approach claims that we are all differently situated and governed, in both constraining and enabling ways, in relationships of division, patriarchy, imperialism, racism, capitalism, ecological devastation, and poverty. In our view, the failure to illuminate broader and more complex intersectional fields of power was one reason why the colonization/ decolonization binary did not lead the way to Third World liberation. It might even be said that such dichotomies led to deeper forms of neocolonialism, dependency, inequality, and patriarchy in Third World settings. Global neoliberalism has thrived in such settings.5 It is for these and other reasons, which will be explained throughout this book, that there has been a turn to new and renewed ways of conceiving and enacting resurgence and reconciliation in the twenty-first-century world.6

As will be developed in these pages, Indigenous people do not generally accede to the binary world view that spawns separation resurgence.7 This approach does not coincide with many traditional ways of knowing and being. For example, Indigenous contributors to this volume cautiously argue that reconciliation and resurgence are more appropriate English terms for the unique, place-based, kin-centric, and relational ways Indigenous people conceive and enact transformative change, at least in comparison to Western theories of colonization/ decolonization. Their view of transformative resurgence and reconciliation is grounded in Indigenous traditions of regenerating healthy and sustainable, gift-reciprocity relationships. These cycles of interdependent thought and action acknowledge that our connections are both fragile and resilient. They require careful attention to cultivate the positive and root out the negative in the totality of our relationships, with each other, Mother Earth, and our settler neighbours. From within these world views the problem with the simplifying and separating framework of rejection insurgency is that it constrains its adherents. It obscures the interdependent relationships in which they are already situated and from which they derive support. Again, we must stress that not all relationships should be sustained and that there is significant room in our approach for refusing, rejecting, challenging, breaking, or transforming particular connections. We strongly support action that rejects oppressive state and imperial ideas, practices, and frameworks. Yet, seen through the eyes of this book’s authors, it is clear that many of our relationships can be enhanced through robust resurgence and transformative reconciliation frameworks.

The authors in this book envision the combination of robust resurgence and transformative reconciliation as a continuation and renewal of what many of their ancestors have pursued for centuries. The Two Row Wampum Treaty relationship (Kaswentha) combines both self-rule and shared rule; the Royal Proclamation of 1763 (when understood in light of the Treaty of Niagara in 1764) further recognizes independence and interdependence in Indigenous–settler relationships. Many Indigenous understandings of self-determination are often internally related to declarations of interdependence, in contrast to Third World declarations of self-determination as disconnection and independence.8 As we see throughout this volume, this complementary vision of independence and interdependence also includes the interdependence of human partners on the ecological, gift-reciprocity relationships of the living earth that sustain all life.9 With this long and continuous history in mind, we argue that “separate resurgents” must be careful not to misrepresent recent and current protests as exclusive examples of their project. Resurgence has often been combined with demands for transformative reconciliation in contemporary political life through nation-to-nation negotiations, Idle No More activities, anti-pipeline protests, environmental activism, alliances such as Standing with Standing Rock, and so on.

In practice, independence and interdependence have characterized Indigenous–settler relationships for centuries, for good and ill.10 The attempt to improve these relationships by pursuing “resurgence and reconciliation” is not a linear process. Mistakes are often made, and setbacks are legion. Trial and error accompanies any process that recognizes the messiness of political life. When universal answers and approaches are taken off the table, we are left to muddle our way through with less than perfect information and frameworks. In these circumstances we must variously rely upon and resist one another since God, philosopher kings, and grand theories cannot be counted on to deliver us from ourselves. Contestation, agreement, rejection, and reformulation are constantly before us. These are best deployed when they draw upon robust resurgence and transformative reconciliatory practices.

Since we cannot depend upon a fusion of horizons, we are left to engage in endless forms of talking, non-violent contention, and working with good and bad neighbours en passant, as difficult and challenging as this has always been. Since this volume is assembled on the northwest coast, it is worth noting that this is precisely what a formidable coalition of First Nations and allied settlers, assembled in Kam-loops on 25 August 1910, recommended in their submission to Prime Minister Laurier in what is now known as “The Laurier Memorial.”11 This advice has been followed and forgotten through the years, yet we argue that it must once again be resurrected to help guide practices of resurgent reconciliation outlined in this book.12 The questions that follow from this analysis are: What are genuinely self-determining practices of resurgence and transformative forms of reconciliation today, and how are they distinguished from non-robust and non-transformative practices and relationships? This is not only a theoretical question, but a practical one that can be answered only through intergenerational trial-and-error and apprenticeship: that is, through practice and examples. The contributors to this volume respond to this general question through various examples and from various perspectives.

As we mentioned above, the first task is to clarify the various meanings of resurgence and reconciliation in the contexts in which they are being used. As should be clear, we do not pose simple solutions. This is a complex field, and we do not identify a single way of robust resurgence and transformative reconciliation. Nor do we identify a single definition of these terms. Rather, we see an intricate field of overlapping practices and corresponding meanings of reconciliation and resurgence; some are good, and some are harmful. Others are recent, and some are ancient, woven together in complex ways in language, thought, and practice.

Accordingly, the skill required to understand our way around this field is akin to the complex intricacies of cedar basket-weaving and braiding sweetgrass. It requires attentiveness and attunement and must move beyond the simplistic models and metaphors standardly used to misdescribe and dominate the field from one perspective or another (even the metaphors of weaving and braiding have their limits). Yet the kinship we are describing should not be surprising or discouraging. Weaving and braiding are always more than physical activities. Good apprenticeships must focus on both art and craft. Good teachers and wise students see their engagements as moving beyond the materials that lie before them. Relationships are horizontal, vertical, twisted, and three-dimensional. Layers of meaning and ambiguity reside in any system of instruction and practice, and they embrace the social as well as the physical activity of construction. For ancient braiders and weavers, this predominately female apprenticeship relationship took practitioners deep into the entanglements of community life. It engaged the various meanings, organizations, and structures at play in the material and social world. Working with roots, branches, fibres, and filaments was always a creative enterprise, requiring improvisation and a deep knowledge of patterns, impressions, prototypes, and conventions – in the human and natural world. Applying these skills to baskets and to life was a constant work in progress. Knowing how to best construct vessels to effectively transport water, seeds, soil, or life is ultimately a human activity. This requires that we acknowledge both the conservatism and innovativeness that mark our species.13

How, then, do we, as participants within this complex field, come to understand the practical meanings of reconciliation and resurgence as they are used in various practices, relationships, ways, and contexts? The answer of the contributors to this volume involves abandoning the illusion that it is possible to stand above the field and, from this transcendental view from nowhere, define the essence of these terms – the necessary and sufficient conditions of their application in every case. Rather, like learning any complex vocabulary, it is a matter of finding one’s way in the dense forest of uses and the activities into which they are woven. This consists in listening carefully, asking questions, using the terms oneself, always listening and speaking truthfully, making mistakes, and learning from them. Then, through practice, gradually learning to use the terms as others use them, but also to enter into contests over different uses with others in a self-critical way, and to advance proposals for their refinement, revision, or transformation that are understandable and responsive to others.

In this way of learning one’s way around life’s labyrinth, participants listen carefully to what others are saying. They then ask questions such as, Who is speaking, and from what standpoint and perspective in the field of power and knowledge? For whom do they claim to speak, and on what grounds? What aspects of the field does their use of these terms reveal, and what aspects of the field does it conceal? What is the context in which this speaker’s usage makes sense, and what are its strength and weakness? What do others say in response? Are these responses respected by the speaker, and does she or he take them into account in revising their own usage? The talking stick is then passed to another participant and others tell their story of reconciliation and resurgence in their way and from their standpoint and world view. Questions are raised and responded to. The talking stick is passed to the next participant, and so on and on.14

By listening carefully and asking and answering questions truthfully in turn, participants learn or are reminded that it is illusory to presume that their views are the comprehensive view of the field. They are moved around to see the complex field they inhabit from the diverse perspectives of fellow inhabitants. Then, by means of exchanges of comparisons and contrasts, they begin to see the strengths and limits of the different meanings, as well as the extent to which various meanings share features. Engagement in these exchanges also exposes the limits of one’s own view and makes possible the self-critical task of accepting the epistemically humbling insight that we need each other’s perspectives in order to understand the complex world we co-inhabit. This difficult reciprocal transformation of how we understand ourselves and others enables participants to understand the meanings of reconciliation and resurgence. And this dawning reciprocal, mutual understanding of the forest of overlapping meanings enables participants to begin to propose, discuss, and negotiate what reconciliation and resurgence might mean in working and living together in peace and friendship.

When concrete situations are critically examined in this dialogical way within the complex field of unequal power and scales, the best strategy in specific circumstances often can be refusal. However, the question then arises as to the most appropriate ways and means of refusing, for the ways always deeply influence the end. Is it to refuse with anger, hatred, and violence, or with the courage of the peaceful warrior and her way of non-violent contention, embodying goodwill and oriented to peace and friendship? 15 So this whole way of being resurgent and reconciliatory in thought and action is carried on as the participants move forward and pass it on to the next generation.

Learning how to use the words reconciliation and resurgence in this intersubjective and interdependent dialogical way is akin to Indigenous storytelling. It is also said to be the way good treaty negotiations were begun in the early contact period. It was acknowledged in the Royal Proclamation of 1763 and exemplified in the Treaty of Niagara in 1764. Through lengthy exchanges of stories of where each other was coming from, how each partner saw the difference at issue, and how each saw the way of reconciliation, they came to be of one mind. “One mind” did not seem to refer to complete agreement, but to understanding each other, holding all views in tension. Then reconciliation negotiations began. So this form of dialogue can be seen as a pathway of and to reconciliation. As Asch characterizes it from a settler perspective in chapter 1, it consists in coming to enough of an understanding to take small steps forward in building relationships with those already here.

#### Clearly the relationship between black/indigenous people and the state is contingent and not captured solely within the frame of conquest

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(Lisa, with Tim Rowse, *Between Indigenous and Settler Governance*, introduction. https://www.taylorfrancis.com/books/9780203085028)

In 2007, Australia, Canada, New Zealand and the United States underscored their peculiar historical, legal and political interconnections. Despite the fact that they constitute the archetype of settler colonialism, the CANZUS states alone voted against the United Nations Declaration on the Rights of Indigenous Peoples. All four countries had relented and signed the document by 2010. Nevertheless, their 2007 objections are revealing. They argued that indigenous rights to selfdetermination and control of national resources fell within domestic rather than international jurisdiction; such rights were contingent on local democratic processes conducted under the legitimate authority of national settler sovereignties. Their dissent from the Declaration did not reﬂect a history of distinct severity in the treatment of indigenous peoples. On the contrary, the CANZUS states had long provided conditions that were conducive to the growth of a global movement for indigenous rights and their indigenous peoples, though still poor and oppressed, have fared much better than their counterparts in other parts of the world (Merlan 2009: 306-12). Rather, this paradox draws our attention to a key historical and legal continuity between North America and Australasian settler colonialism; indigenous recovery in these interconnected polities has taken place in the gaps and ﬁssures of setter sovereignties – spaces that are historically emergent, ﬂuid and contested. This volume examines the history, current development and future of ‘indigenous self-determination’ in the CANZUS states. Though we deal only with Anglophone settler polities here, we note that ‘indigenous’ has become a global category, and that its boundaries are sometimes stretched by the politics of self-ascription, and at other times narrowed by rules of tribal membership (Gover 2010). By ‘self-determination’ we comprehend a broad range of indigenous collective action. Not only do we use ‘self-determination’ to describe independent, territorial sovereignty, we use it to refer to informal practices of corporate consultation and assertion, and to more formal treaty-or constitution-based recognition of tempered indigenous sovereignty or jurisdiction within settler states (Pitty and Smith 2011; Muehlebach 2003). The work gathered here focuses chieﬂy on the period when technologies of settler governance intruded on indigenous life with new intimacy and persistence, from the middle of the nineteenth century until the present. Our authors ﬁnd that, even at their most racist and self-serving, settler states in Australasia and North America were complex institutions; their claims to jurisdiction, their eﬀorts at dispossession, even their establishment of formal bureaucratic tyrannies over indigenous people were both presumptuous and unconsummated. This volume recovers some of the many diﬀerent ways in which indigenous individuals and collectivities have crafted claims to equality, citizenship, diﬀerence, political autonomy and redress in the shadow of North American and Australasian settler sovereignties. Our historical chapters ﬁnd persistent pluralisms, where indigenous aspirations, collectivities and laws have continued and even structured the interaction of indigenous peoples with settler governments. Each suggests, in its way, that settler words like ‘conversion,’ ‘guardianship,’ ‘protection’ and ‘assimilation’ have obscured the breadth and resilience of modes of indigenous self-governance on missions, in reserves and in urban indigenous communities. Together they show that long after settler courts and parliaments deﬁned and diminished indigenous jurisdictions, unexpected spaces remained open for some old and some very new modes of indigenous collective assertion. Some of these historical pluralisms are unsurprising: our contributors have recovered rich ediﬁces of indigenous governance that set the rules of encounter on the trading frontiers of Canada, marshaled pan-Indian support in post-removal Indian Country in the United States and informed contemporary Ma-ori-state engagements in New Zealand. Other modes of pluralism are unexpected: whether it be the enormously creative interaction between Christian conversion and indigenous resistance in nineteenthcentury New Zealand and early twentieth-century Natal or the persistence of sorcery in contemporary Aboriginal communities. Other chapters remind us that relationships between settler and indigenous governance are historically emergent – constantly reshaped both by historical context and by their ongoing interactions. Legal historians have clearly described the moment in the second quarter of the nineteenth century when CANZUS states predicated their sovereignty on exercises of jurisdiction over indigenous people in territory, markedly attenuating indigenous rights to govern themselves according to their own law (Ford 2010; Kercher 1995: 1-12; McHugh 2004). But some of our contributors suggest that this story is altogether too tidy. Settler states indulged in many moments of self-articulation. Before the nineteenth century, Vattel’s Law of Nations convinced many that indigenous rights had no place in the law of nations. Other constitutive moments came later; for example, when British settler colonies were given legislative power over indigenous aﬀairs, between the 1850s and 1890s. Indeed, settler state making is still a work in progress. The exercise of settler jurisdiction over indigenous people remains patchy, and evolving deﬁnitions of indigenous governance and indigenous land rights by settler courts constantly redeﬁne the relationship among sovereignty, territory and jurisdiction. The contemporary relationship of indigenous rights to land (dominium) and to autonomy or sovereignty (imperium) has yet to be resolved by philosophers and lawyers (McHugh 2011: 240-43). Their uncertain relationship is evident in shifting Supreme Court deﬁnitions of the province of federal, state and Indian jurisdiction in the United States that have increasingly attenuated the capacity of longestablished indigenous governments to govern Indian reservations. Meanwhile, the growing value of indigenous land claims in remote parts of Australia and Canada has proved even more challenging. On the one hand, indigenous land claims before settler courts have been predicated on ancient association, sacralized possession and corporate identity; even at their weakest, they subtly aﬃrm indigenous corporate autonomy. On the other hand, mining booms and the ecological turn have transformed economic ‘wastelands’ into important sources of revenue, material bases that could be used to support much stronger institutions of governance among indigenous communities. Canadian and Australian courts in particular have yet to reconcile common law notions of ‘property’ with claims by Aborigines that they should be able to ‘speak for country’, regulate visitors, or negotiate with mining companies about access to mineral rights which have mostly been reserved to the Crown. Nor is law the only mechanism through which indigenous collectivities have succeeded in altering the practices of settler statehood. Post-1960s reckonings with indigenous activism have resulted in the attenuation of executive and legislative policies of dispossession and assimilation in North America and Australasia. Since the 1960s, CANZUS states have all dabbled in self-determination, the recognition of their special duties to indigenous peoples and the return of tempered property rights to a lucky few indigenous communities. However, these ameliorative measures have always been ambivalent (Cronin 2007; Foley 2007; Kowal 2008) and in some ways have served to reaﬃrm settler sovereignties over indigenous peoples (McHugh 2011: 101). In recent decades, indigenous claims have slowly pushed CANZUS polities into a paradigm of negotiation which assumes the political or legal authority of indigenous collectivities to represent their members and to control resources. The neoliberal withdrawal of government has, arguably, made space for indigenous collective assertion by fostering mediated (if unequal) negotiations between indigenous peoples and mining corporations, even where indigenous peoples lack hard legal rights to the resources in play (Gover and Baird 2002; MacDonald and Muldoon 2006). More challenging, perhaps, is this volume’s engagement with the impact of the colonial encounter on indigenous people. Drawing on a rich, pan-colonial historiography stretching from Africa (Cooper 2005) to Australia (Attwood 1989), many chapters in this volume insist that, like their settler oppressors, indigenous peoples are themselves historically emergent as individuals and collectivities. There is no eternal indigene and, as Tim Rowse argues, perhaps it is time to stop weighing indigenous articulations of selfhood and collective rights against ahistorical categories of authenticity. Contact with Europeans changed indigenous life and indigenous people – not just in the realm of ideas, but in the material details of life. Indigenous peoples have crafted new subjectivities in the context of their Christian conversion which facilitated new collective assertions. Some indigenous people have adopted Western forms of government which have both strengthened indigenous capacities for contemporary self-governance and goaded settler institutions into acts of further oppression. Settler contact opened new avenues for political discourse; as Bain Attwood pointed out some years ago, indigenous claims against settler states have probably always been hybrid discourses mediated through settler networks of people and of thought (Attwood 2003: xiii). Indeed, key indigenous intellectuals have accepted Western categories of thought about modernization, racial citizenship and assimilation and deployed them against settler oppression. Contemporary indigenous communities struggle to articulate their indigeneity through settler citizenship or, even more importantly, against rapidly changing economic structures that have reduced many indigenous people to welfare dependence, chronic illness and material want. At the same time, holders of the growing indigenous estate contend with each other about how to use, manage and dispose of their interests in land as conservators, culturebearers and capitalists. The problem of reconciling this cacophony of indigenous subjectivities – capitalist, citizen, minority, Christian, pagan, hunter-gatherer, historical victim, repository of pre-contact culture andmember of a semi-autonomous ﬁrst people – forms one of the greatest problems of settler political theory and of contemporary indigenous politics (Anaya 2004; Anaya 1999; Kuper 2003; Rowse 1994; Waldron 1992; Waldron 2003). The historical remaking of indigenous peoples shapes and constrains their claims in dynamic interaction with the rich detritus of settler and indigenous custom, law and policy. Every essay in this collection explores the messy array of gaps and perversities in settler regimes for indigenous governance. Together they illuminate the limitations and the possibilities of indigenous recovery historically, and in the face of ongoing dispossession and oppression. Some describe the emergence of new collectivities, new discourses and new practices that frame indigenous claimsmaking and self-determination to this day. Others have located and described those places in the margins of settler colonialism where the complexity of human interactions left space for indigenous peoples to express and adapt their corporate will and aspirations. These are tempered, circumscribed and problematic spaces. The most exciting essays here, it seems to me, explore how indigenous self-governance came to terms with settler sovereignty. They narrate histories of indigenous cultural and religious engagement, focus on past and present meeting points between laws, or ﬁnd changing norms in the complexity of settler and indigenous practice that have created new places outside law for the expression of indigenous corporate ambitions. Indigenous collectivities have navigated multiple regimes of colonialism and bureaucratic management since 1800. Their successes and failures show that there are no inevitable or predetermined outcomes in the gap between settler and indigenous governance.

#### You should read contingency rather than completeness as a defining feature – the alt flattens resistance and should not be the sole explanatory category – that’s both defense AND offense

Svirsky, lecturer in international studies at the School of Humanities and Social Inquiry, University of Wollongong, ‘16

(Marcelo, “Resistance is a structure not an event,” Settler Colonial Studies, March)

Undoubtedly, the question of positionality justly troubles choices and roles in the study of settler colonialism. Nonetheless, it is not only that, as Merlan pointed out, Wolfe escalates the ban on ‘speaking for’ into one of ‘speaking about’; it is just that it makes no sense to write in the settler context of inscription, to use Wolfe’s words, and pretend that indigenous knowledges, perceptions and experiences are not affected.19 Isn’t Wolfe’s own oeuvre, in itself, a form of intellectual activism that inescapably contributes to the anticolonial struggle? In other words, the politicisation of white complicities within theory does not answer the question of who should research what and why. Wolfe’s answer to this question amounts to a racial division of academic labour. He proposes a form of collaboration where indigenous scholarship emerge as the sole legitimate source of knowledge of indigenous strategies of resistance and survival, and white academics are left with one and only one untainted avenue of research to follow; that is, engaging in critical white autoethnographies.20 However, in the attempt to ‘recuperate empirical binarism’ in theory and politics, this division of labour runs the risk of echoing – rather than combatting – the segregative effects of the empirical divisions that exist. This racial division of academic labour also takes us directly into questions about the dimensions of the anti-colonial struggle, such as who is entitled to participate in the struggle, under what conditions, and in which actions. This stance may even lead us to doubt any political project that takes seriously the potentials for cultural transformation of settler subjectivities as part of the broader anti-colonial project. As Macoun and Strakosch observe, settler colonial studies ‘explains more of who we are than previous approaches, but it is not coincident with all that we are, and is not able to explain the entire encounter between Indigenous and settler peoples’. 21 I find an emphasis on the correspondence between identity-categories and the distribution of academic roles unhelpful.

I reject the entrenchment of subjectivity in identity as much as I reject the passivity of being chained to an epistemological and affective correspondence between subjectivity, the history of settler whiteness, and the accountancy of settler power. Away from the palsy of bad conscience and yet aware of our embeddedness in the structural and material advantages of colonial power and privilege, I chose here to follow Aboriginal Gangulu elder Lilla Watson who in the 1970s unambiguously stated, ‘If you have come to help me you are wasting your time. But if you come because your liberation is bound up with mine, then let us work together’. 22 As part of this liberation, I adopt the academic practice of studying resistance.

Wolfe’s position on the issue of resistance, I suspect, encompasses more preoccupations than how to respond to the white appropriation of indigenous discourses. According to Wolfe, ‘Indigenous resistance has been a constant feature of the entire settler-colonial era’, and therefore, ‘in generating its own resistance, settler-colonial power also contains it’. 23 Wolfe conceives resistance, it seems, in a Newtonian fashion, as a necessarily reactive force that is always responding to the constraints of power and is thus quickly re-appropriated. In adopting this conception, we risk conceiving no outside to settler colonial power. Thus, oppression and domination in all their forms and shapes are given explanatory monopoly replicating their omnipresence in the shaping and managing of life.

Yet, importantly, since Wolfe does not place an emphasis on the study of resistance, this position prompted a lively debate on the ways the strategies of resistance and survival of those subjected to settler colonial domination should be investigated. The implications this scholarly debate has for our understanding of reality in settler societies, and for potentially transformative political work, can hardly be overstated. As Macoun and Strakosch note, the critique of Wolfe’s paradigm centres on its ‘failure to take resistance seriously or to see subjects as sites of freedom and innovation’. 24 And as they add: ‘By emphasizing continuities in colonial relationships between the past and the present, SCT [settler colonial theory] can depict colonization as structurally inevitable, and can be deployed in ways that re-inscribe settler colonialism’.25 This line of critique is not new and in fact joins the scholarship that preceded Wolfe’s publications. In this regard, Wolfe construed works such as Henry Reynolds’s The Other Side of the Frontier (1981) as his theoretical-other, since, as Altenbernd and Young explain, Reynolds ‘decisively recast the Australian frontier as a site of settler conquest and indigenous resistance’, and in so doing ‘transformed the content and conclusions of Australian frontier historiography by recuperating the suppressed history of the violence that subtended settlement, and the indigenous agency expressed through various forms of resistance’. 26

#### Turns case – Only way to make their strategies of resistance effectivve

Macoun, Indigenous Studies Research Network, Queensland University of Technology, Brisbane, Australia, and Strakosch, Institute for Culture and Society, University of Western Sydney, ‘13

(Alissa and Elizabeth, “The Ethical Demands of Settler Colonial Theory,” Settler Colonial Studies, 3(3-4), pp. 426-443)

Despite these powerful contributions, we also identify some important issues associated with SCT in Australian academic debates about the NT intervention. The first is a direct consequence of one of SCT’s vital contributions, arising from the theory’s present tense iteration of settler colonialism. By emphasizing continuities in colonial relationships between the past and the present, SCT can depict colonization as structurally inevitable, and can be deployed in ways that reinscribe settler colonialism. We suggest that SCT’s struggle to narrate its own ending can be countered by approaching the theory as an account of settler desires which makes visible our own frames of reference. This in turn exposes a range of possibilities and political visions outside these frames. Such an approach is significant in countering potentially problematic misuses of SCT that erase its location as a settler discourse. Such erasures problematically empower academics to speak with neutral descriptive authority over both settler and Indigenous realities.

Firstly, by disturbing settler colonialism’s narratives of progress, SCT attributes a peculiar suspended temporality to the settler project. This can portray settler colonialism as an inevitable structure likely to exist across time – the fact that the past persists in the present implies that this past will also persist in the future. Foundational scholar Patrick Wolfe has been labelled ‘very much a structuralist stuck in a poststructuralist world’.63 As we have outlined, this structuralism is particularly useful in identifying the operation of political hierarchies. However, it can also excuse us from human political action in the present by presenting this action as futile or already determined.64 The role of political activists is to wait for the structurally determined future, and at most to prepare others for its arrival.

The particular challenge of SCT’s analysis is that it does not give an account of such a transformed future, or of the conditions for settler colonialism’s demise. This can lead to a theoretical and political impasse and result in a kind of colonial fatalism. Such fatalism can be deployed to imply a moral equivalence between different forms of settler political interaction with Indigenous people, and, at its worst, to deny the legitimacy of Indigenous resistances. Structuralist narratives are able to posit radical change, but only if this change is built into the structures they describe – for example because these structures are subject to internal contradictions or are inherently unstable. Settler colonial structures, however, appear as highly stable and ‘relatively impervious to regime change’.65 Therefore, at the same moment settler scholars finally see the depth and reach of settler colonialism in the present they feel unable to find ‘postsettler colonial passages’.66

This tendency is reinforced by SCT’s capacity to identify significant commonalities in the objectives of conservative and progressive policy approaches, as discussed above. It shows that traditional ‘decolonizing’ pathways such as treaty making, reconciliation and formal apologies may also serve colonial ends by absorbing and extinguishing Aboriginal political difference without disturbing the foundational structures of settler dominance. As Australian anthropologist Deborah Bird Rose notes, this makes it ‘difficult to offer a critique of the colonizing features without calling into question the whole decolonizing project’.67 If every settler action is framed as always already colonizing, then individuals are excused from anti‐colonial action in the present and Indigenous people are destined to be victims of an unstoppable colonizing state.68 As bell hooks argues in relation to US race relations, this is useful to those in a position of dominance: ‘so many White people are eager to believe racism cannot be changed because internalizing that assumption downplays the issue of accountability. No responsibility need be taken for not changing something if it is perceived as immutable.’69 Is it possible that settlers are particularly attracted to SCT precisely because it gives us a sense of being intellectually committed to the end of colonialism while simultaneously unable to act against our own privilege? As a recent article concluded about the prospects for decolonization:

I can only assess this with a degree of gloom. I am yet to be convinced that we can prevent indigenous disadvantage remaining structurally embedded in society and through the state even after any kind of ‘transition’ or ‘transformation’. At the same time, I fear decolonization. I am myself a settler, like several of my ancestors before me, and I have nowhere else to belong.70

SCT’s structuralism may serve these conflicted interests, in allowing us to feel we have done all we can while facing the ‘reality’ of an inevitable settler colonial future.

This structuralism gives many within settler colonial studies a particular orientation towards Indigenous resistance and scholarship. Australian scholar Tim Rowse argues that critical settler perspectives on colonialism can ‘reproduce that sorrowing form of attention in which defeat and marginality are highlighted at the expense of understanding the nature and limits of the Indigenous agency that circumstances afforded’.71 He and others suggest that this sort of analysis caricatures Indigenous responses, presenting a false binary between resistance/sovereignty and cooptation in the colonizing process.72 This, they suggest, leads scholars to position one sort of Indigenous response as more valid and authentic than others, reperforming the authority settlers have always claimed over definitions of Indigenous reality. Joanne Barker identifies a ‘troubled focus within settler colonial studies on structure to the erasure of Indigenous experiences and perspectives about colonialism even within analyses of the “logic of elimination” that fuels colonial processes of social formation.’73 SCT may be revelatory to many settler scholars, but Indigenous people have been speaking for a long time about colonial continuities based on their lived experiences.74 Some SCTs have sought to connect with these discussions and to foreground Indigenous resistance, survival and agency.75 Others, however, seem to use SCT as a pathway to explain the colonial encounter without engaging with Indigenous people and experiences – either on the grounds that this structural analysis already conceptually explains Indigenous experience, or because Indigenous resistance is rendered invisible.