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#### Settler colonialism is driven by the logic of elimination – the primal drive to expansion that materializes native land dispossession, displacement, and genocide – it cannot be contingent – settler societies establish the structure of invasion through the will-to-possession and structural occupation of indigenous land

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If nineteenth-century American literary studies tends to focus on the ways Indians enter the narrative frame and the kinds of meanings and associa- tions they bear, recent attempts to theorize settler colonialism have sought to shift attention from its effects on Indigenous subjects to its implications for nonnative political attachments, forms of inhabitance, and modes of being, illuminating and tracking the pervasive operation of settlement as a system. In Settler Colonialism and the Transformation of Anthropology, Patrick Wolfe argues, “Settler colonies were (are) premised on the elimination of native societies. The split tensing reflects a determinate feature of settler colonization. The colonizers come to stay—invasion is a structure not an event” (2).6 He suggests that a “logic of elimination” drives settler governance and sociality, describing “the settler-colonial will” as “a historical force that ultimately derives from the primal drive to expansion that is generally glossed as capitalism” (167), and in “Settler Colonialism and the Elimination of the Native,” he observes that “elimination is an organizing principle of settler-colonial society rather than a one-off (and superceded) occurrence” (388). Rather than being superseded after an initial moment/ period of conquest, colonization persists since “the logic of elimination marks a return whereby the native repressed continues to structure settler- colonial society” (390). In Aileen Moreton-Robinson’s work, whiteness functions as the central way of understanding the domination and displacement of Indigenous peoples by nonnatives.7 In “Writing Off Indigenous Sover- eignty,” she argues, “As a regime of power, patriarchal white sovereignty operates ideologically, materially and discursively to reproduce and main- tain its investment in the nation as a white possession” (88), and in “Writ- ing Off Treaties,” she suggests, “At an ontological level the structure of subjective possession occurs through the imposition of one’s will-to-be on the thing which is perceived to lack will, thus it is open to being possessed,” such that “possession . . . forms part of the ontological structure of white subjectivity” (83–84). For Jodi Byrd, the deployment of Indianness as a mobile figure works as the principal mode of U.S. settler colonialism. She observes that “colonization and racialization . . . have often been conflated,” in ways that “tend to be sited along the axis of inclusion/exclusion” and that “misdirect and cloud attention from the underlying structures of settler colonialism” (xxiii, xvii). She argues that settlement works through the translation of indigeneity as Indianness, casting place-based political collectivities as (racialized) populations subject to U.S. jurisdiction and manage- ment: “the Indian is left nowhere and everywhere within the ontological premises through which U.S. empire orients, imagines, and critiques itself ”; “ideas of Indians and Indianness have served as the ontological ground through which U.S. settler colonialism enacts itself ” (xix).

#### Settler colonialism is an ongoing political project that serves to seize land, resources, and cultural practices – settler colonial research practices only codify settlerism as a normalized colonial practice manifested through mimicry of expert knowledge that precludes effective modes of learning.

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The United States, in addition to many other places such as Australia, Canada, and Israel, is ongoing project of settler colonialism (Byrd 2011; A. Smith 2010; Wolfe 1991). Rather than a single event, settler colonialism is a continuous process and logic with three mutually dependent components (Tuck and Yang 2012), all of which work in tandem and rely on each other to maintain the structure of colonialism. The first practice is to seize the land, resources, cultural practices, and goods of a desired location. Beginning with land grabs in the 14th century and continuing through contemporary times, the United States was founded on the practice of outsiders claiming land and resources. However, in settler colonialism, there can never be enough land to satisfy the thirst of a few. The logic of physical invasions and opportunistic treaties with Native peoples echo in contemporary times with private takeover of public, potentially collective, spaces (Martusewicz, Edmondson, and Lupinacci 2011). In education, this is most notable through the dismantling of public education (Fine and Fabricant 2012) for the proliferation of privatized venture philanthropy in education and teacher education, leveraged through educational metrics measuring teacher, school, and pupil performance (Kumashiro 2010). As one of the last public spaces in the United States, education has experienced a surge of privatization that acts in keeping with a genealogy of land grabs. What were once public schools, with names like Washington Elementary School or Paul J. Robeson High School, are increasingly renamed and claimed for private interests, with many locations simultaneously claimed and linked through private ownership, under the names of Harlem Children’s Zone, Kipp Academy, and MATCH (e.g. http://www.matcheducation.org/). Au and Ferrare’s (2014) network analysis reveals the small number of educational reformers who leverage disproportionately large symbolic and material sponsorship to establish private-like charters and claim those lands. But to sustain this land grab, the peoples already residing there must be eliminated for settlers to replace them, whereby state-sanctioned violence occurs as a second conjoining practice of settler colonialism. As Smith (2012) put it, “This logic holds that indigenous peoples must disappear. In fact, they must always be disappearing, in order to enable non-indigenous peoples’ rightful claim to land. Through this logic of genocide, non-Native peoples then become the rightful inheritors of all that was indigenous—land, resources, indigenous spirituality, and culture.” A key trope through which settler colonialism operates is erasing to replace. The land grabs relied on, and continue to rely on, codified blood quantum laws to ensure the gradual diminishment of Native peoples. This logic is present in the land grabs of public schooling spaces that use the law and metrics of achievement as codified strategies to claim property, specifically through the marginalizing and eroding of histories and place-based knowledges of communities (Fenwick 2013). K–12 schools are also connected to the tertiary education and the forms of knowledge and knowledge production sanctioned therein. Higher education, as key companion pillar with the church and state in the establishment of this settler colony as a nation (Wilder 2013), further reflects these move of settling, including erasing to replace. The settler colonial project first constructed colleges as places for ministerial education for wealthy men, with strict focus on Greek, Latin, geometry, ancient history, logic, ethics and rhetoric, with few discussions, or as Freire (1970) termed, a banking approach to education wherein students, even the privileged male students allowed to enjoy this property, were seen as vessels in which the culture of the colony should be sown. For White men, though, this planting of knowledge was with home codes and perspectives. For Indigenous communities, this banking approach erased their lived experiences with Eurocentric epistemologies, which can never be made home because of the dispossession it is premised upon (Anzaldua 1999). This project of erasure is ´ found throughout many of the historical manifestations of IHEs’ curricula, a logic that grounded Indian boarding schools in the philosophy of “kill the Indian to save the man” (Pratt 1892, 214). Contemporary manifestations of this logic include the maintained and protected use of euro-centric curricula and pedagogy as common core to a solidified banking approach to higher education (Spring 2010). As Wilder points out in his historical analysis of the roles elite institutions of higher education played in supporting, exploiting, and perpetuating slavery in the United States, studies that unproblematically investigate how to best and most efficiently teach academic standardized English to nonnative speakers are complicit in this erase to replace colonial trajectory. It is important to note here that the deepest investment of settler colonialism is to erase Indigenous peoples. The erasure of culture and language of minoritized peoples, such as migrants, works in tandem with replacing Indigenous peoples with others, such as migrant workers, but not as landowners. The erasure of Indigeneity is also apparent in the knowledge production more specifically located in educational research that names White, Black, and Latino populations, sometimes Asian, but rarely Indigenous peoples in statistics of schoolbased achievement. Although the White center of achievement gap studies problematically reifies Whiteness as normal and desirable (Leonardo 2009), the failure to name Indigenous peoples acts echoes this need to erase. Even though the recent US federal policy of No Child Left Behind (NCLB 2002), prompted states and districts to disaggregate achievement data according to racial groups, including Indigenous students, the prevailing trope in educational research, particularly wellfunded educational research, is the achievement gap between White and Asian to that of Black and Latino students. This binary leverages a linked achievement rate of glossed-over statistics of various Asian Americans’ achievement to standards of White achievement to fundamentally locate deficit within Black and Latino populations while also erasing Indigenous peoples. Additionally, the US federal policies of NCLB and its follower, Race to the Top ([RTTP] 2001) demand identification to punish so-identified delinquent populations, rather than to redress a system based on colonial stratification (Leonardo 2009). By organizing research around these policies and pursuing their funding streams, not only has federally sanctioned educational research contributed to this construction of Whiteness, it has also supported the almost constant conflation between test scores and learning, an abrogation of responsibility to which I return in the conclusion of the article. A third necessary practice of settler colonialism, and one that conjoins tightly with White supremacy in the United States, is to import slave labor in chains and render human beings as chattel. In this process, humanity is immediately put in tension with, and ultimately subjugated to, property. African slaves became chattel long before the transporting ships reached their destinations, with bodily treatment of the captured Africans becoming the first in an ongoing stripping away of humanity (Spillers 1987). Continuing through the contemporary prison industrial complex and the low-wage locations of forced migrants (Ngai 2005), slave labor is necessary to become chattel, harvest the resources of the land and, through economic stratification and sequestering, ensure that land and property rights are reserved for a much smaller group of settlers. Higher education is, like other social fields in capitalist-anchored settler colonies, predicated on individuals holding differential status so that many are competing for the limited resources of higher status, reflected in salary and reputation. Within that field, publications and grant procurement (Daza, 2012, 2013a) represent the forms of capital most readily translated into higher status. By reflecting rather interrupting hierarchies based on competition and status, the academy has sustained problematic relationships with vulnerabilized communities (Tuck 2009). Part of this has transpired through scholarship that has worked from and validated racist premises of societal difference (Wilder 2013), as well as the relationships between researcher and researched (Tuck and Guishard 2013). For applied fields, such as educational research, these patterns manifest themselves in who is researched and what theoretical frames drive the data gathering, analysis, and implications.

#### Reliance on rational economic calculus and competition has fluidly infiltrated social spaces, reifying economism as an objective mode of governance.

Jessop 15 – Prof of Sociology at Lancaster University [Bob Jessop, The course, contradictions, and consequences of extending competition as a mode of (meta-)governance: towards a sociology of competition and its limits, Distinktion: Journal of Social Theory Volume 16, 2015 - Issue 2: A sociology of competition, https://www.tandfonline.com/doi/full/10.1080/1600910X.2015.1028418]

The governance of competition This section adds two further perspectives. One is the regulation or governance of competition from the idealized viewpoint of its role as a public good. Suspending judgement for the moment on whether perfect competition is really possible, this approach does have a rational kernel, namely, the interest of capital in general, as opposed to particular capitals, in securing a level playing field. The realities of differential accumulation suggest that the competition policies and their effects merit at the very least a sceptical interrogation. The other perspective involves a radical ideological critique of discourses about competition and competitiveness as direct principles of governance. This is because competition is so heterogeneous and complex a process that most, if not all, efforts to make it a principle of governance must rest on serious cognitive and normative simplification, if not fetishism and ideological mystification. Two useful entry-points here are the competition state and competition law. Although ‘competition’ figures in both, its respective connotations illustrate the polyvalence of the concept and the complexities of its referent. Whereas competition (or anti-trust) law attempts to regulate competition, the competition state attempts to promote competitiveness. Competition law draws mainly on orthodox analyses of (perfect) competition and/or on institutional analyses of contestable markets (e.g. in the law and economics movement). It prioritizes micro-economic competition and may be supplemented by efforts to remove or control tariff and non-tariff barriers to trade (extending into questions of new constitutionalism, and so on). In contrast, the competition state draws on ‘the other canon’, i.e. heterodox analyses of competition that justify strategies and policies to promote competitiveness at various scales from micro- through meso- and macro- to meta-competitiveness. Paradoxically perhaps, many policies pursued by competition states (e.g. in the field of industrial policy) might well be ruled illegal according to the principles of competition law. The two aspects can be linked to the extent that states promote competition law for the sake of enhancing national or regional competitiveness (on the case of the European Union's ‘competition for competitiveness strategy’ in this regard, see Wigger 2008). Competition law I examine this from three aspects. One is the complexities of its object. If these are neglected, regulatory failure is likely to be blamed on the design of competition law rather than the inherent ungovernability of its object. This poses interesting questions for competition law that are also reflected in the contrasting traditions of US anti-trust law (now weakened by the growing influence of the Chicagoan ‘law and economics’ movement) and the Continental European tradition, which still owes something to Ordoliberalism despite the growing integration of the world market in the shadow of neo-liberalism (for evidence of a partial convergence within the EU towards the US model with, however, continuing US–EU differences regarding global competition policy more generally, see Wigger 2008; and Buch-Hansen and Wigger 2010). For example, first, should competition law aim to govern competitive behaviour in dynamic markets or to secure the conditions for perfect competition? And how has the balance between these goals changed as competition and anti-trust law have changed over the years? A second aspect is the place of competition law as one among several means through which economic and political forces seek to design modes of regulation to promote the accumulation of some capitals at the expense of others. The third aspect concerns the problems of governing competition alongside boosting competitiveness in an increasingly integrated world market. Traditionally, competition law seeks to regulate micro-economic competitiveness, i.e. competition in the structure and behaviour of firms. This is often measured in terms of market share, profits, and growth rates. An extensive managerial and industrial economics literature argues that ‘firm-specific advantages’ (factors that are unavailable in the short term to competing firms) are crucial to such competitiveness and, indeed, underpin monopolistic competition. They might originate in factors of production (patent rights, know-how, R&D capacity) or marketing capacity (design, image, knowledge of likely demand, sales networks). They can also derive from extra-legal or illegal activities (e.g. predatory pricing, political deals, mafia-like conduct). This is the primary site of the conflict between individual capitals’ search for super-profits at the expense of other firms and the interest of capital in general in conditions that create an average profit rate, an average rate of interest, and so on. Competition law tends to operate with a relatively static notion of competition centred on the formation of market prices. But, as an actual rather than idealized process, competition is inherently disequilibrating and, in Schumpeterian guise, creatively destructive. The latter matters especially in periods when a previously dominant productive technology and/or associated forms of finance and enterprise are displaced by another technology and its accompaniments (cf. Perez 2002). Such transitions tend to disrupt competition law, which lags behind changes in products, processes, marketing, sourcing, and corporate organization. Whereas a particular system of competition law can weather relatively minor disruptions and crises, ruptural transitions between long waves of development tend to trigger a search for a new regulatory system. World market integration has its own effects. It is reflected in the growing transnationalization of competition law (Gerber 2010) and the growth of new, state-centred structures of ‘global competition law’ (Dowdle 2013). These include transnational networks among national competition agencies; treaties affecting state-level responsibilities for implementing competition policy; and inter-state arrangements for transnational enforcement of national competition law. Efforts to regulate competition are further complicated by the many bases for competitiveness considered as a set of real capacities/powers. In this regard there is typically a specific hierarchy of forms of competition and competitive players, and, as this alters, the dynamics of competition also change. Among relevant changes are: (1) the relative importance of different markets in setting the parameters of competition; (2) the relative super- and subordination of forms of competition; and (3) the types of firm associated with advantage in given fields of competition. Not all of the factors shaping these hierarchies can be regulated by competition law. In addition to market relations, for example, competitive advantages are pursued to boost profits of enterprise within corporations. Such actions exemplify ‘dynamic allocative efficiency’, a form of competition that is hard to regulate through competition law (cf. Graham and Smith 2004).4 Moreover, not only does competition occur between economic actors (for example, firms, strategic alliances, networks) but also between political entities representing specific spaces and places (for example, cities, regions, nations, triads). The expanding world market and plurality of states create further regulatory problems, regarding, for example, the role of international private law, how to handle conflicts of laws, and the reach of extraterritoriality. Competition and competitiveness also depend on extra-economic as well as economic conditions, capacities, and competencies. Thus, if competition is hard to regulate through law, how can it govern the factors making for the ‘competitiveness’? At best, regulators can identify a subset of interactions among profit-oriented economic agents, isolate them as an object of regulation or governance, and seek to govern them through the development of appropriate rules, regulations, agencies, mechanisms, and institutions (all steps being contested). But many sources of competitive and anti-competitive behaviour remain beyond the reach of competition law. This is one of the sources of market and regulatory failure. The competition state Definitions and discourses of competition and competitiveness date back centuries and have different implications for state action. Mercantilist notions from the seventeenth century tied to state policies to control trade and increase financial reserves can be contrasted with 1890s imperialism oriented to state enclosure of territory for military-political as well as geo-economic goals. With the transition to a more liberal post-war order (in the shadow of US hegemony), competition focused more on domestic growth and multinational foreign investment, leading to conflicts between techno-nationalism and techno-globalism (Ostry and Nelson 1995). Likewise, with the rise of the current neo-liberal transnational financial order and with the theoretical and policy interest in a globalizing knowledge-based economy, competition has refocused on innovation (including in finance and securitization) and in how best to link extra-economic factors to the ‘demands' of economic competition. Different framings of competition and competitiveness involve different forms of action with uneven impacts on the positioning of firms, sectors, regions, nations, and continents, as well as on the balance of economic and political forces in and beyond the state system. Moreover, many leading firms and banks are transnational in operation, with complex internal divisions of labour and complex forms of embedding into global production chains and financial flows that may nonetheless be regarded as important for national or bloc competitiveness, especially where they have significant bases in a national state (contrast the USA and European Union). Once competitiveness is accepted as a real phenomenon that varies across scales of economic (and extra-economic) organization and affects capacities to compete in a world market characterized by a stratified terrain of competition, uneven development, centre-periphery relations, and so on, it can become the target of strategies and policies to enhance, neutralize, or weaken competitive capacities. This is reflected in the developmental state (oriented to catch-up competitiveness) and the more general form of the competition state. Broadly defined, the latter is a state that aims to secure growth within its borders and/or to secure competitive advantages for capitals based in its borders, even where they operate abroad, by promoting the economic and extra-economic conditions currently deemed vital for success in economic competition with economic actors and spaces located in other states. Paradoxically, offshore, more peripheral national economies also become an element in competition, in so far as they can be sponsored (or tolerated) by states to secure competitive advantages for domestic or international capitals based in their own territories (such as via transnational supply chains) (Palan 1998; Urry 2014). As such the competition state prioritizes strategies to create, restructure, or reinforce – as far as this is economically and politically feasible – the competitive advantages of its territory, population, built environment, social institutions, and economic agents. The same idea is sometimes expressed in the notion of ‘entrepreneurial state’, which is more closely associated with Schumpeterian views on competitive advantage, promoting ‘sunrise’ technologies, industries, and other cutting-edge innovations. This has been extended to support for financial innovation (including, tacitly, ‘criminnovation’) to secure competitive advantage – sometimes linked to a regulatory race to the bottom (which London has won vis-à-vis New York). Just as there are different forms of competition, so too are there different forms of developmental, competition, or entrepreneurial state (for the second, these include neo-liberal, dirigiste, and social democratic competition states: see Cerny 1997; Jessop 2002). Although developmental and competition states have been studied primarily at the national level, this is not justified by the historical and contemporary record. Since the fifteenth century, catch-up competitiveness has been pursued at different scales from the city through regions and provinces to national states and international or supranational blocs (imperial blocs, the capitalist and communist camps, the European Union, etc.). In turn, these state strategies to develop ‘laggard’ economies have met resistance by more advanced states that seek to maintain their advantages by promoting free trade (Reinert 2008). In short, although the ‘developmental’, ‘competition', and ‘entrepreneurial state’ are new concepts, significant historical analogues have guided state policy at different scales for almost 600 years. Unsurprisingly, a wide range of factors has been identified in different economic imaginaries, theoretical and policy paradigms, and at different times as relevant to competitiveness. In the 1980s, for example, the OECD listed these factors: ‘the size of domestic markets, the structure of domestic production, relationships between different sectors and industries … the distribution and market power of supplier firms … the characteristics and size distribution of buyers, and the efficiency of non-market relations between firms and production units’. Other factors included: ‘no exaggerated conflict in the field of income distribution, price stability, flexibility, and the adaptability of all participants in the market … a balanced economic structure based on small, medium-sized, and big companies … the acceptance of new technology, favourable scientific and technological infrastructure and realistic requirements for risk containment and environmental protection’ (OECD 1986, 91–2; cf. Esser et al. 1998; Pedersen 2011; and Campbell and Pedersen 2007). Because of the importance attached to structural, systemic, institutional, or societal competitiveness, economic competition expands to become a virtual competition between social worlds. This increases pressures to valorize a wide range of institutions and social relations that were previously regarded as extra-economic. One consequence is that hard economic calculation increasingly rests on the mobilization of soft social resources that are both irreducible to the economic and resistant to such calculation. Recent examples include ‘social capital’, ‘social trust’, ‘collective learning’, ‘institutional thickness’, ‘untraded interdependencies’, ‘local amenities’, the knowledge base, the ‘triple helix’ of business-university-local state interactions, and even ‘culture’. Such discourses are linked to rapid growth in (competing!) benchmarking exercises and in associated commercial services to construct league tables and recommend how to enhance or manipulate scores. Although state strategies may target specific places, spaces, and scales and even be directed against particular competitors, these efforts are always mediated through the operation and audit of the world market as a whole. This extends the importance of the three main forms of capitalist competition: reducing socially necessary labour time, socially necessary turnover time, and the naturally necessary (re)production times of nature (e.g. plants, animals, raw materials), both as a source of wealth and, if commodified, source of surplus value. It also extends the importance of extra-economic factors bearing on competitiveness and profitability: in addition to those illustrated above, we can add tax competition, regulatory arbitrage, offshoring, and so on. Moreover, following Weber's account of political capitalism, we could also include measures to promote competition through force and domination, unusual deals with political authority, lobbying for favourable, anti-competitive legislation, ‘de-supervision’, and de-criminalization (on the two last-mentioned, see Black 2005, 2011). 6. Competition as a mode of governance According to Polanyi, the ‘economistic fallacy’ describes all economies in terms of categories that are actually unique to the (capitalist) market economy and explains all economic activities in terms of maximizing behaviour. This fallacy is seen in the neo-classical theoretical tendency to strip commodities (and fictitious commodities) of their specific properties and assume that they can all be organized in the same way along competitive lines to produce efficient market outcomes (Alam 2014). It is also seen in the liberal and neo-liberal tendency to focus on the exchange-value rather than use-value aspects of commodities and fictitious commodities. For example, the wage is seen as a cost of production rather than source of demand, and capital is seen as a sum of (credit-)money for investment in any asset anywhere rather than as a stock of assets to be valorized in a particular time-space (for further examples, see Jessop 2010). This tends in turn to produce such powerful tensions and crisis tendencies in capitalist market economies that, as Polanyi observes, ‘society’ eventually fights back against their environmentally and socially destructive effects. Neglecting this set of problems is the basis for extending market and competitive principles into the operations of the state and civil society where they cannot be privatized. Different principles of governance seem more or less well-suited to different stages and forms of capitalism. These may have distinctive economic and political imaginaries and institutional attractors (or centres of gravity) around which regulatory or governance principles oscillate. This is reflected in successive generations of the comparative capitalism literature from the German historical school to recent work on varieties of capitalism. A key issue here is whether changes in governance practices reflect economic and political imaginaries more than structural complementarities or result from their interaction in a dialectics of path-shaping and path-dependency. A recent test case for exploring this issue is the crisis of finance-dominated accumulation and the switch from the celebration of ‘more market, less state’ to quite exceptional and unprecedented forms of state intervention to restore the momentum of neo-liberal reforms and to rescue failed finance-dominated accumulation regimes. Exchange based on the anarchy of the market or quasi-market arrangements is one of the four principal modes of governance in complex societies. The others are: command based on hierarchy; heterarchic networks and partnerships; and solidarity based on unconditional commitments. Hybrid forms also exist. Historically all four have coexisted, albeit with varying weight across different social fields and across space-time. Neo-liberalism privileges the market and, above all, (capitalist) market competition as a principle of governance even more than liberalism. It advocates liberalization, deregulation, and privatization and introduces market proxies in those social areas, in the state, public sphere, and ‘civil society’, where profit-oriented, market-mediated principles based on the commodity form, price form, and money form are absent and, in addition, deemed inappropriate. This prompts the neo-liberal search for functional equivalents to these principles and their associated forms. Whereas the 1960s and 1970s saw the high-point in advanced capitalism of the discourses and practices of planning and productivity, the 1980s marked a turn towards markets and flexibility. Driven by neo-liberal regime shifts (with New Zealand being the most radical exemplar), increasing emphasis was placed on counteracting state failure by redrawing the boundaries between government and market and, for the residual public sector, engaging in ‘administrative recommodification’ (Offe 1984). This was expressed in the development of market governance (where the state designs, creates, monitors, and polices a market to fulfil a public purpose – for example, though the issue of vouchers to be spent in a competitive market) and the rise of ‘new public management’ and, in the USA, a movement for ‘reinventing government’ (cf. Donahue and Nye 2002; Osborne and Gaebler 1992; Peters 2001). Pollitt and Bouckaert (2011) identify a common trend in this regard in advanced capitalist economies. In broad terms, this posits that the public sector can be improved by importing business concepts, techniques, and values. More specifically, it comprises a ‘bundle of specific concepts and practices’. These include: (1) greater emphasis on ‘performance’, especially through the measurement of outputs; (2) a preference for lean, flat, small, specialized (disaggregated) organizational forms over large, multi-functional forms; (3) substitution of contracts for hierarchical relations as the main co-ordinating device; (4) a widespread injection of market-type mechanisms including competitive tendering, public sector league tables, and performance-related pay; and (5) an emphasis on treating service users as ‘customers’ and on the application of generic quality improvement techniques such as total quality management. These authors also note that this bundle of specific concepts and practices has two variants: a ‘hard’ form that relies on rational systems of control based on measurement, rewards, and penalties to ‘make managers manage’; and a ‘soft’ form that ‘lets managers manage’ by enabling creative leadership, entrepreneurship, and cultural change oriented to customer service. In both cases, this approach tends to fail. For, as Offe noted over 20 years earlier, whereas capitalist enterprises have a clear formal maximand that is easily measured in monetary terms (profit maximization), governments have confused, often inconsistent, and sometimes clearly contradictory substantive goals that are politically contested and hard to quantify, sometimes deliberately so (Offe 1975). In addition, the one-sided neo-liberal focus on the exchange-value and value aspects of economic calculation leads to neglect of the substantive use-value aspects that are equally necessary to capital accumulation (see above). Attempts to address the use-value aspects of private, public, and third-sector goods and services have been made through developing multidimensional, substantive mission-oriented targets, performance prisms, ‘balanced scorecards’, and the like (cf. Niven 2010). In the private sector, these measures were often used as leading indicators of future financial performance (thereby reinforcing the logic of profit-oriented, market-mediated accumulation) (Pidd 2012). In the public sector, they are constrained by budget cuts, demands for regular ‘efficiency gains’, and a shift towards enduring austerity and fiscal consolidation. This tends to undermine the balanced approach. The high-point of neo-liberalism and new public management occurred in the early 1990s as neo-liberal regime shifts were being consolidated and before the limits of ‘more market, less state’ become glaringly evident. This led to recognition that the formula of ‘disaggregation + competition + incentivization’ (Dunleavy et al. 2006) was leading to fragmented, incoherent outcomes conducted by too many arms-length and unaccountable agencies in the private, public, and third sectors that needed to be reconnected through ‘joined up government’ or ‘governance in the shadow of hierarchy’ (Scharpf 1994; Bouckaert, Peters, and Verhoest 2010; Meuleman 2008; Pollitt and Bouckaert 2011). In terms of administrative theory and practice this prompted interest in ‘meta-governance’, that is, the governance of governance. Substantively, it stimulated interest in ‘Third Way’ efforts to create flanking and supporting mechanisms to soften the impact of neo-liberalism and enhance its legitimacy while sustaining its transformative momentum. As evidence has mounted in the last two decades that each form of governance has its own forms of governance failure, attention has turned theoretically and practically from concern with specific forms of governance to efforts at meta-governance. This involves the judicious mixing of market, hierarchy, networks, and solidarity to achieve the best possible outcomes from the viewpoint of those engaged in meta-governance (Dunsire 1996; Jessop 1998; Kooiman 1993; Scott 2006). Governments have a key role to play here, but even this kind of ‘meta-governance’ is fallible. The emerging system is a complex, multi-scalar, hybrid, and tangled system of meta-governance. Yet the very complexity of the interweaving of forms of governance and government on different scales means that the resulting system is more complex than any state, or political or social entity, can understand, and its overall evolution lies beyond the control of a state or its society. This is evident, as indicated above, in the actions of the competition state and the limits of competition law. It also means that, compared to more traditional forms of state organization, based on constitutional law and public accountability, meta-governance, even when conducted in the shadow of hierarchy, is ineffably ungraspable and intransparent and, as such, inherently unaccountable. A post-bureaucratic and post-democratic political system in which competition becomes the governing principle and market completion on a world scale is the ultimate goal is a dystopian future. 7. Conclusions General Stanley McChrystal, commenting about an offensive to retake territory controlled by the Taliban in southern Afghanistan, declared, hubristically: We've got a government in a box, ready to roll in.5 For some 20 years we have been experiencing and witnessing the consequences of the naïve neo-liberal belief that ‘we've got competition in a box, ready to roll out’. In both cases, these consequences can be described in terms of ‘blowback’ (Johnson 2004). This article has addressed the effects of the fetishization of competition as a principle of societal organization and its role in subordinating society to the logic of profit-oriented, market-mediated accumulation. It began by noting the polyvalence of the ‘market economy’ (commercial economy, market economy, capitalist economy, financialized economy, finance-dominated economy) and the extent to which this could be exploited in efforts to legitimate neo-liberal financialization and the drive towards a finance-dominated accumulation regime that extends markets and capitalist (and even financialized) market proxies into areas where they tend to be far more creatively destructive than destructively creative. For competition has a formal, procedural rationality suitable for supplying standardized private goods and services (and even then is prone to unplanned disruption through Schumpeterian innovations) and is less rational, even in its own economistic terms, when dealing with customized commodities (where competition has not yet established socially necessary labour and turnover times) and/or where goods and services have strong elements of common pool resources or public goods. Competition is even less suited to the production and reproduction of the four categories of fictitious commodities and the supply of goods and services that advance human flourishing. It was also argued that simple governance solutions to complex problems do not work and are especially inappropriate where there are multiple substantive goals that are hard to specify consistently, let alone measure in terms of a single metric. In this context, the rolling out of competition as a principle of regulation and governance has actually been just one in a repeated succession of attempts to overcome government and governance failure by turning to another mode of governance – which is equally doomed to fail, albeit in its own distinctive ways. The growing unaccountability of capitalist market forces and their tendency to generalize and intensify the contradictions and crisis tendencies inherent in the capital relation make it imperative – but also increasingly hard – to reclaim some measure of democratic accountability in material provisioning and the care economy by limiting markets to areas where the invisible hand works well, and restricting and regulating it where it produces substantively irrational results for humankind and the planet.

#### Economic redistribution through antitrust as burnishes the logic of *terra nullius*---the evacuation and clearing of Indigenous presence from the land to enable genocidal plunder---it turns the AFF.

Arruda 16 – Master’s Thesis for a degree in Environmental Studies @ York University-Toronto [James, “Settler Colonialism and Mainstream Economics” <http://fes.yorku.ca/files/documents/research/outstanding_papers/Arruda_J.pdf>]

A particular tragedy and contradiction in mainstream economics is its manufactured background story. The presuppositions underlying the narrative of the discipline generally mirror a biased worldview; in general, that of an isolated individual performing rational (optimizing) decisions within a closed system (Pratten, 2007; 2004). Feminist economists argue that this model individual is also white, colonial, male11 (Grappard, 1995). The story of individuals constantly taking selfish and rational decisions within a closed world informs the methodology used by economists. With a narrow experience of life, the constructed nature of existence (ontology) inscribed within mainstream economics generates unreliable knowledge production tools (epistemology) about the economy—a complex system in which collectives of individuals live and exchange with each other. Furthermore, mainstream economics epistemology employs mathematical and deductivist tools. Critical realism12 argues that economics’ deductivist methodology is only appropriate to study a ‘small-closed-world’ system (Pratten, 1996; Spash, 2012). All in all, economic event regularities are deduced from an unreasonable and unrealistic ontology. For the Cambridge Journal of Economics co-editor Stephen Pratten (2007), the only path beyond mainstream economics is through the abandonment of the deductivist framework. This is a call for a complete epistemological revolution! I believe that to delegitimize institutions, their stories have to be delegitimized. If mathematical-deduction uses prior beliefs/stories to explain the past and predict the future, then a critical reformulation of economics ontology is absolutely required as well, but not sufficient. My ontological investigation of the discipline is inspired and drawn from revolutionary Indigenous feminist theorists. For instance, in I am Woman, Lee Maracle (1996) of the Sto:Loh nation pointedly argues that (mainstream) economics and mathematics are products of white (European) settler male worldviews. As a matter of fact, the latter character’s beliefs and experiences of the world are also at the root of mainstream economics ontology, and a catalyst for its form of knowledge production. My analytical focus is also informed by my Settler space of birth occupying Kanien’kehá:ka territory. It is also informed by my present space and (white settler male) character occupying the land protected by and shared between the Anishinaabe, Mississauga, and Haudenosaunee people, as per the Dish With One Spoon treaty. In this paper, I argue that the definitions of land13, wealth and economics in Canadian mainstream economics textbooks depict a Settler colonial ontology. Thesis Land. Wealth. Economics. These three interdependent words connect how we see and act in the world. In my opinion, land is loving, abundant, intelligent, and always remembers. Land encompasses a long list of wealth; life, resources, knowledge, stories. Land is wealth. Logically and ethically, an appropriate system of wealth exchange (an economy) can only be prosperous if it respectfully relies on land. An appropriate study of economics interlaces our material relationships with each other, with more-than-humans14 and with life all together. Yet, it is not sufficient to build a better economic way to relate to the land, while Settler institutions occupy Indigenous land and territories. Different forces of power are at play within the Settler colonial complex. In general, there are three ‘structures of invasion’: spaces, systems and stories. In Settler Identity and Colonialism in 21st Century Canada, Barker and Lowman (2015) refer to these structures as they delve into the construction of Settlers in Canada. They elaborate on the types of Settler colonial invasions performed in Canada, which reinforce Settler power and authority over the land. In all instances, the spaces we15 take, the systems we build, and the stories we tell “are [ultimately] focused on the land” (Barker & Lowman, 2015, p. 31). First of all, ‘spaces’ as a structure of invasion is defined as the Settler colonial spaces that displace and replace Indigenous places (Barker et al., 2015). For example, the city of Toronto is a Settler colonial space since it intentionally covers and displaces Anishnaabe spaces. Second of all, ‘systems’ are constructed so that Settler colonialism can assert and develop itself (Barker & Lowman, 2015). The Indian Residential School system was a system that severed the ties of young Indigenous children from the land. Thirdly, the ‘stories’ created by Settlers to legitimize occupation, such as the ‘Peacemaker Myth’ and ‘Terra Nullius’, displaces Indigenous stories of land connection (Barker & Lowman, 2015). In the case of mainstream economics, the most relevant structures of invasion are the stories and systems it creates. Economic stories and systems that dismiss and replace Indigenous relations to land thus intentionally participate in the displacement and erasure of Indigenous spaces, systems and stories. Canadian economics textbooks regard land as given for free by nature (to Settlers) and (initially) without any agency16 to generate wealth, until Settlers improve and value the land. In other words, economics students assume that before the European arrival on (what is now commonly known as) North America, nature gave the land to the European Settlers—metaphorically understood, of course. All of nature’s contents was devoid of agency, and thus free for the new visitors (Settlers) to claim, to own. Completely ignoring wealth accumulation from land, the theoretical framework in Canadian economics textbooks does not question wealth distribution and mostly focuses on wealth production (see Green, 2013). Of course, wealth distribution and production occurs on land. Canadian economists nonetheless assume that all economic activities—in this case, production and distribution of wealth—begin on free and unoccupied land, transforming their respective spaces/locations (land) into improvable and privatized assets, ready for the (free) market. A Canadian definition of economics that does not encompass its socio-political (colonial) context is a structure that legitimizes Settler colonial invasion, against Indigenous peoples and their land. As such, young students who read, learn and interpret the world from Canadian economics textbooks do not face their complicity within Settler colonialism. Rather, they confidently reproduce their economic knowledge on unceded/stolen land. All in all, the underlying thesis of this chapter is that the constructed paradigm within Canadian standard economics textbooks derives from the imagination of a privileged and ahistorical Settler position of ‘objectivism’ and ‘authority’, camouflaged by Whiteness, by an empty ontology, and by storytelling derived from the dominant White Settler Male view.

#### Judicial Legitimacy is predicated on colonial negation of natives—the ability of decisions to dictate what is politically meaningful within the “overriding sovereignty” of the US grounds exceptionalist violence

Rifkin 9 – Professor of English at UNC Greensboro (Mark, “Indigenizing Agamben: Rethinking Sovereignty in Light of the "Peculiar" Status of Native Peoples,” Cultural Critique, No. 73 (Fall, 2009), University of Minnesota Press)//AD

What does "sovereignty" mean in the context of U.S. Indian policy? Looking at the statements above, all from U.S. Supreme Court decisions focused on the status of Native peoples, sovereignty at least touches on questions of jurisdiction, the drawing of national boundaries, and control over the legal status of persons and entities within those boundaries.1 While one could characterize the concept of sovereignty as a shorthand for the set of legal practices and principles that allow one to determine the rightful scope of U.S. authority, it seems to function in the decisions less as a way of designating a specific set of powers than as a negative presence, as what Native peoples categorically lack, or at the least only have in some radically diminished fashion managed by the United States. Further, the decisions cited seem less to extend existing legal categories and precedents than to indicate the absence of an appropriate legal framework in which to consider the political issues and dynamics at hand. Native peoples appear as a gap within U.S. legal discourse. These passages suggest that the available logics of U.S. jurisdiction are unable to incorporate Native peoples comfortably, and that continued Native presence pushes against the presumed coherence of the U.S. territorial and jurisdictional imaginary. While the decisions seem to be grasping to find language adequate to the disturbing legal limbo in which Native nations appear to sit, they also insist unequivocally that such peoples fall within the bounds of U.S. sovereignty, and the oddity attributed to U.S. Indian policy is offered as confirmation of that fact. Typifying "the relations of the Indians to the United States" as "peculiar" and "anomalous," while also consistently presenting Native peoples as unlike all other political entities in U.S. law and policy, indexes the failure of U.S. discourses to encompass them while speaking as if they were incorporated via their incommensurability. In Homo Sacer: Sovereign Power and Bare Life, Giorgio Agamben has described this kind of dialectic as the "state of exception," suggesting that it is at the core of what it means for a state to exert "sovereignty."2 He argues, "the sovereign decision on the exception is the originary juridico-political structure on the basis of which what is included in the juridical order and what is excluded from it acquire their meaning" (19), and "[i]n this sense, the exception is the originary form of law" (26). What appears as an exception from the regular regime of law actually exposes the rooting of the law itself in "sovereign" will that can decide where, how, and to what the formal "juridical order" will apply. The narration of Native peoples as an exception from the regular categories of U.S. law, then, can be seen as, in Agamben's terms, a form of "sovereign violence" that "opens a zone of indistinction between law and nature, outside and inside, violence and law" (64).3 The language of exception, of inclusive exclusion, discursively brings Native peoples into the fold of sovereignty, implicitly offering an explanation for why Native peoples do not fit existing legal concepts (they are different) while assuming that they should be placed within the context of U.S. law (its conceptual field is the obvious comparative framework).4 In using Agamben's work to address U.S. Indian policy, though, it needs to be reworked. In particular, his emphasis on biopolitics tends to come at the expense of a discussion of geopolitics, the production of race supplanting the production of space as a way of envisioning the work of the sovereignty he critiques, and while his concept of the exception has been immensely influential in contemporary scholar ship and cultural criticism, such accounts largely have left aside discussion of Indigenous peoples. Attending to Native peoples' position within settler-state sovereignties requires investigating and adjusting three aspects of Agamben's thinking: the persistent inside/outside tropology he uses to address the exception, specifically the ways it serves as a metaphor divorced from territoriality; the notion of "bare life" as the basis of the exception, especially the individualizing ways that he uses that concept; and the implicit depiction of sovereignty as a self-confident exercise of authority free from anxiety over the legitimacy of state actions.5 Such revision allows for a reconsideration of the "zone of indistinction" produced by and within sovereignty, opening up analysis of the ways settler-states regulate not only proper kinds of embodiment ("bare life") but also legitimate modes of collectivity and occupancy—what I will call bare habitance. If the "overriding sovereignty" of the United States is predicated on the creation of a state of exception, then the struggle for sovereignty by Native peoples can be envisioned as less about control of particular policy domains than of metapolitical authority—the ability to define the content and scope of "law" and "politics." Such a shift draws attention away from critiques of the particular rhetorics used to justify the state's plenary power and toward a macrological effort to contest the "overriding" assertion of a right to exert control over Native polities. My argument, then, explores the limits of forms of analysis organized around the critique of the settler-state's employment of racialized discourses of savagery and the emphasis on cultural distinctions between Euramerican and Indigenous modes of governance. Both of these strategies within Indigenous political theory treat sovereignty as a particular kind of political content that can be juxtaposed with a substantively different—more Native-friendly or Indigenous-centered—content, but by contrast, I suggest that discourses of racial difference and equality as well as of cultural recognition are deployed by the state in ways that reaffirm its geopolitical self-evidence and its authority to determine what issues, processes, and statuses will count as meaningful within the political system. While arguments about Euramerican racism and the disjunctions between Native traditions and imposed structures of governance can be quite powerful in challenging aspects of settler-state policy, they cannot account for the structuring violence performed by the figure of sovereignty. Drawing on Agamben, I will argue that "sovereignty" functions as a placeholder that has no determinate content.6 The state has been described as an entity that exercises a monopoly on the legitimate exercise of violence, and what I am suggesting is that the state of exception produced through Indian policy creates a monopoly on the legitimate exercise of legitimacy, an exclusive uncontestable right to define what will count as a viable legal or political form(ul)ation. That fundamentally circular and self-validating, as well as anxious and fraught, performance grounds the legitimacy of state rule on nothing more than the axiomatic negation of Native peoples' authority to determine or adjudicate for themselves the normative principles by which they will be governed. Through Agamben's theory of the exception, then, I will explore how the supposedly underlying sovereignty of the U.S. settler-state is a retrospective projection generated by, and dependent on, the "peculiar"-ization of Native peoples.

#### The alternative is a pedagogy of the land that reverses the settler tactic of deterritorialization as a direct hit to the exoskeleton of colonial power. Scholarship guides settler violence – each disruption destroys the fulcrum that upholds settler society.

Ballantyne 14 – Dechinta Bush U, Dechinta Bush University: Mobilizing a knowledge economy of reciprocity, resurgence and decolonization [Erin Freeland; *Decolonization: Indigeneity, Education & Society* Vol. 3, No. 3; 2014; pg 67-85] ku - mads \*pronoun change denoted by brackets

As the conversation of Dechinta grew, the ugly politics of education on a broad political scale quickly surfaced. It became clear that education is a domain of power and privilege that is fiercely protected. Questions relating to control over its content, production and process were, apparently, not open for discussion. Curricula were deeply homogenized, deterritorialized and standardized. Post-secondary in the territory was overtly geared toward training people for industry and the endless promise of mining, pipeline and oil and gas booms (and busts). People were either emphatically supportive of the notion of ‘Elders as professors’ being recognized as equals and collaborating with university professors, or incensed by its disruption of typical academic power. The creation of Dechinta was polarizing, and reactions were telling of the deeply embedded sense of entitlement and power that the state, and existing institutions, had over determining what did and did not count as ‘education’. Rather than support spaces where academic and Indigenous knowledge would overlap, Indigenous knowledge was viewed as curriculum that should be relegated to ‘culture camps’. That processes like hunting and moose-hide tanning could draw parallels, or even inform governance, consensus building and self-determination, continue to elude most mainstream reporters, critics and institutions. Coming back to the land is a battle. ‘Education’ on the land is a direct hit to the exoskeleton of continued colonial power. By specifically disrupting education as a domain of settler colonial control to be deconstructed and re-imagined, Dechinta has challenged the most comprehensive, yet skilfully cloaked machine of settler colonial capitalism - the prescriptive education process, which produces more settler colonial bodies, thinkers, and believers. Building strong relationships of reciprocity with the land results in the crumbling of settler capitalism because it fundamentally shifts the relationships people experience and what they believe about who they [people] are, how they are in relation to and with land, and what they believe to be true. Being together on the land, learning with the land, and having a strong relationship with the land is antithetical to settler capitalism itself. The power of settler colonization relies on the total deterritorialization of people’s relationship with land. Deleuze and Guattari’s (1972) work on deterritorialization, ‘the process whereby colonization leads not just to the loss of territory but also to the destruction of the ontological conditions of the colonized culture’s territoriality,’ is a fitting philosophical conjecture to Dene expressions of how they are dislocated from their relationships with land due to process of nation-building and capitalism, and how this deterritorialization separates people from practices with the land that keeps them healthy, even if they still live on the land (Deleuze and Guattari, 1987, p. 192; Hipwell, 2004, p. 304). As Said (1993) has stated: land, in the final instance, is what empire is about. In this way, our relationships with land are central to the great unsettling. Reconnection, and the exchange of skills, knowledge and practice with land, thus directly threaten the settler colonial project. It removes bodies from the forces designed to encode the body as capital. The foremost space of enclosure, of encoding, is the ‘school’. The ongoing trend in Indigenous and Northern settler education since its earliest colonial intrusion has been to train Indigenous bodies to serve the needs of industry. Education has happened in Denendeh since time immemorial. It has been the settler prerogative to dismantle Indigenous ways of knowing and being, of education. Returning learning to an intergenerational exchange, on the land - which has at its very core the fundamental teachings that, if we take care of the land, the land takes care of us - will shake the foundation of settler colonization by breaking the dependency that has been created on capitalism through deterritorialization. Transformational learning supports intergenerational learners and teachers to think critically and re-imagine what the purpose of learning is. Learning on the land is healing and being in community on the land is challenging, pulling our attention to the hard work of decolonization. The year after our initial gathering, Dechinta launched a pilot semester with three courses nested within an interdisciplinary approach. Student evaluations of the program indicated it was profoundly ‘transformative’, and was for some the first ‘safe space’ of education that they had encountered (Luig et al, 2011). Interdisciplinary and collaborative, the pilot set the stage for the following four years. Dechinta now has 8 original courses, and a two semester-long program growing into a full degree that operates from -50 winters to the steamy height of summer. The challenges have been substantial. Conflict between academics and Indigenous students have made real the tensions of working on decolonization in concert, even with those who identify, or who are identified as allies. Solving conflict and difficulties through shared governance circles, while combating ingrained reactions of lateral violence and other social expressions codified in settler colonization are truly challenging, but deeply rewarding. Through the building of relationships we have a growing cohort of faculty dedicated to not just teaching but sharing in the creation of safe spaces, where the hard mental work of decolonizing in theory is met with the even harder work of decolonizing as practice. When students and faculty create a community where their relationships are ordered through their relationships with land, the work of decolonization move from a discussion in theory to practice of being and becoming a source of decolonial power. At Dechinta we debate this, and experiment with its meaning in tangible ways. Here, skills categorized as ‘subsistence’ or ‘arts and crafts’ are fundamental in forming and understanding theory. Such practices are themselves theory in action.

#### The role of the judge is to refuse settler colonial research practices. Refusal is always particular and operates as a mode and framework for desire-based research in both academic and non-academic spaces. Rather than consuming white narratives of economic saviorism, which consolidate settler innocence and the objectification of Native suffering, refusal instead turns settler colonialism into an object of research, de-naturalizing its totalizing western structure.

Tuck & Yang 14 [Eve (Uangax), and Y. Wayne, “R-Words: Refusing Research,” Humanizing Research (2014): <https://faculty.newpaltz.edu/evetuck/files/2013/12/Tuck-and-Yang-R-Words_Refusing-Research.pdf>] DH

The Erased Lynching series yields another context in which we might consider what a social scientist’s refusal stance might comprise. Though indeed centering on the erasure of the former object, refusal need not be thought of as a subtractive methodology. Refusal prompts analysis of the festive spectators regularly backgrounded in favor of wounded bodies, strange fruit, interesting scars. Refusal shifts the gaze from the violated body to the violating instruments—in this case, the lynch mob, which does not disappear when the lynching is over, but continues to live, accumulating land and wealth through the extermination and subordination of the Other. Thus, refusal helps move us from thinking of violence as an event and toward an analysis of it as a structure. Gonzales-Day might have decided to reproduce and redistribute the images as postcards, which, by way of showing up in mundane spaces, might have effectively inspired reflection on the spectacle of violence and media of terror. However, in removing the body and the ropes, he installed limits on what the audience can access, and redirected our gaze to the bodies of those who were there to see a murder take place, and to the empty space beneath the branches. Gonzales-Day introduced a new representational territory, one that refuses to play by the rules of the settler colonial gaze, and one that refuses to satisfy the morbid curiosity derived from settler colonialism’s preoccupation with pain. Refusals are needed for narratives and images arising in social science research that rehumiliate when circulated, but also when, in Simpson’s words, “the representation would bite all of us and compromise the representational territory that we have gained for ourselves in the past 100 years” (p. 78). As researcher-narrator, Simpson tells us, “I reached my own limit when the data would not contribute to our sovereignty or complicate the deeply simplified, atrophied representations of Iroquois and other Indigenous peoples that they have been mired within anthropologically” (p. 78). Here Simpson makes clear the ways in which research is not the intervention that is needed—that is, the interventions of furthering sovereignty or countering misrepresentations of Native people as anthropological objects. Considering Erased Lynchings dialogically with On Ethnographic Refusal, we can see how refusal is not a prohibition but a generative form. First, refusal turns the gaze back upon power, specifically the colonial modalities of knowing persons as bodies to be differentially counted, violated, saved, and put to work. It makes transparent the metanarrative of knowledge production—its spectatorship for pain and its preoccupation for documenting and ruling over racial difference. Thus, refusal to be made meaningful first and foremost is grounded in a critique of settler colonialism, its construction of Whiteness, and its regimes of representation. Second, refusal generates, expands, champions representational territories that colonial knowledge endeavors to settle, enclose, domesticate. Simpson complicates the portrayals of Iroquois, without resorting to reportrayals of anthropological Indians. Gonzales-Day portrays the violations without reportraying the victimizations. Third, refusal is a critical intervention into research and its circular self-defining ethics. The ethical justification for research is defensive and self-encircling—its apparent self-criticism serves to expand its own rights to know, and to defend its violations in the name of “good science.” Refusal challenges the individualizing discourse of IRB consent and “good science” by highlighting the problems of collective harm, of representational harm, and of knowledge colonization. Fourth, refusal itself could be developed into both method and theory. Simpson presents refusal on the part of the researcher as a type of calculus ethnography. Gonzales-Day deploys refusal as a mode of representation. Simpson theorizes refusal by the Kahnawake Nation as anticolonial, and rooted in the desire for possibilities outside of colonial logics, not as a reactive stance. This final point about refusal connects our conversation back to desire as a counterlogic to settler colonial knowledge. Desire is compellingly depicted in Simpson’s description of a moment in an interview, in which the alternative logics about a “feeling citizenship” are referenced. The interviewee states, Citizenship is, as I said, you live there, you grew up there, that is the life that you know—that is who you are. Membership is more of a legislative enactment designed to keep people from obtaining the various benefits that Aboriginals can receive. (p. 76) Simpson describes this counterlogic as “the logic of the present,” one that is witnessed, lived, suffered through, and enjoyed (p. 76). Out of the predicaments, it innovates “tolerance and exceptions and affections” (p. 76). Simpson writes (regarding the Indian Act, or blood quantum), “‘Feeling citizenships’ . . . are structured in the present space of intra-community recognition, affection and care, outside of the logics of colonial and imperial rule” (p. 76). Simpson’s logic of the present dovetails with our discussion on the logics of desire. Collectively, Kahnawake refusals decenter damage narratives; they unsettle the settler colonial logics of blood and rights; they center desire. By theorizing through desire, Simpson thus theorizes with and as Kahnawake Mohawk. It is important to point out that Simpson does not deploy her tribal identity as a badge of authentic voice, but rather highlights the ethical predicaments that result from speaking as oneself, as simultaneously part of a collective with internal disputes, vis-à-vis negotiations of various settler colonial logics. Simpson thoughtfully differentiates between the Native researcher philosophically as a kind of privileged position of authenticity, and the Native researcher realistically as one who is beholden to multiple ethical considerations. What is tricky about this position is not only theorizing with, rather than theorizing about, but also theorizing as. To theorize with and as at the same time is a difficult yet fecund positionality—one that rubs against the ethnographic limit at the outset. Theorizing with (and in some of our cases, as) repositions Indigenous people and otherwise researched Others as intellectual subjects rather than anthropological subjects. Thus desire is an “epistemological shift,” not just a methodological shift (Tuck, 2009, p. 419). CULMINATION At this juncture, we don’t intend to offer a general framework for refusal, because all refusal is particular, meaning refusal is always grounded in historical analysis and present conditions. Any discussion of Simpson’s article would need to attend to the significance of real and representational sovereignty in her analysis and theorizing of refusal. The particularities of Kahnawake sovereignty throb at the center of each of the three dimensions of refusal described above. We caution readers against expropriating Indigenous notions of sovereignty into other contexts, or metaphorizing sovereignty in a way that permits one to forget that struggles to have sovereignty recognized are very real and very lived. Yet from Simpson’s example, we are able to see ways in which a researcher might make transparent the coloniality of academic knowledge in order to find its ethical limits, expand the limits of sovereign knowledge, and expand decolonial representational territories. This is in addition to questions her work helpfully raises about who the researcher is, who the researched are, and how the historical/ representational context for research matters. One way to think about refusal is how desire can be a framework, mode, and space for refusal. As a framework, desire is a counterlogic to the logics of settler colonialism. Rooted in possibilities gone but not foreclosed, “the not yet, and at times, the not anymore” (Tuck, 2010, p. 417), desire refuses the master narrative that colonization was inevitable and has a monopoly on the future. By refusing the teleos of colonial future, desire expands possible futures. As a mode of refusal, desire is a “no” and a “yes.” Another way to think about refusal is to consider using strategies of social science research to further expose the complicity of social science disciplines and research in the project of settler colonialism. There is much need to employ social science to turn back upon itself as settler colonial knowledge, as opposed to universal, liberal, or neutral knowledge without horizon. This form of refusal might include bringing attention to the mechanisms of knowledge legitimation, like the Good Labkeeping Seal of Approval (discussed under Axiom III); contesting appropriation, like the collection of pain narratives; and publicly renouncing the diminishing of Indigenous or local narratives with blood narratives in the name of science, such as in the Havasupai case discussed under Axiom II. As long as the objects of research are presumably damaged communities in need of intervention, the metanarrative of social science research remains unchallenged: which is that research at worst is simply an expansion of common knowledge (and therefore harmless), and that research at best is problem solving (and therefore beneficial). This metanarrative justifies a host of interventions into communities, and treats communities as frontiers to civilize, regardless of the specific conclusions of individual research projects. Consider, for example, wellintended research on achievement gaps that fuels NCLB and testing; the documentation of youth violence that provides the rationales for gang injunctions and the expansion of the prison industrial complex; the documentation of diabetes as justification for unauthorized genomic studies and the expansion of antiIndigenous theories. Instead, by making the settler colonial metanarrative the object of social science research, researchers may bring to a halt or at least slow down the machinery that allows knowledge to facilitate interdictions on Indigenous and Black life. Thus, this form of refusal might also involve tracking the relationships between social science research and expansions of state and corporate violence against communities. Social science researchers might design their work to call attention to or interrogate power, rather than allowing their work to serve as yet another advertisement for power. Further, this form of refusal might aim to leverage the resources of the academy to expand the representational territories fought for by communities working to thwart settler colonialism. We close this chapter with much left unsaid. This is both because there is so much to say, and also because, as we have noted, all refusal is particular. Refusal understands the wisdom in a story, as well as the wisdom in not passing that story on. Refusal in research makes way for other r-words—for resistance, reclaiming, recovery, reciprocity, repatriation, regeneration. Though understandings of refusal are still emergent, though so much is still coming into view, we want to consolidate a summary of take-away points for our readers. A parting gift, of sorts, as each of us takes our leave to map our next steps as researchers, as community members, within and without academe. We think of this list as a tear-away sheet, something to cut out and carry in your pocket, sew into a prayer flag, or paste into your field notebooks.

## 1NC – Case

### 1NC---Turn

#### The plan denotes per se illegality---that triggers criminal prosecution.

Kovacic 21, \*Global Competition Professor of Law and Policy, George Washington University Law School; Visiting Professor, Dickson Poon School of Law, King’s College London; Non-Executive Director, United Kingdom Competition and Markets Authority (William, “THE FUTURE ADAPTATION OF THE PER SE RULE OF ILLEGALITY IN U.S. ANTITRUST LAW,” Columbia Business Law Review, Lexis)

In a significant number of cases, judicial interpretation of § 1 of the Sherman Act1 has prohibited certain forms of conduct with rules of per se illegality.

Start FN 2

The Supreme Court first used this terminology in United States v. Socony-Vacuum Oil Co., when it held: “Under the Sherman Act, a combination formed for the purpose and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity in interstate or foreign commerce is illegal per se.” 310 U.S. 150, 223 (1940). In a footnote, the Court added an important qualification: Under this indictment proof that prices in the MidWestern area were raised as a result of the activities of the combination was essential, since sales of gasoline by respondents at the increased prices in that area were necessary in order to establish jurisdiction . . . . But that does not mean that both a purpose and a power to fix prices are necessary for the establishment of a conspiracy under § 1 of the Sherman Act. Id. at 224 n.59. By this observation, the Court indicated that the bell of illegality rings at the moment the actors form an illicit agreement, without regard to its actual market impact.

End FN 2

Per se illegality has powerful consequences in the U.S. antitrust regime. Per se rules underpin the criminal prosecution program of the Department of Justice, Antitrust Division (DOJ)3 and often give decisive advantages to plaintiffs in civil antitrust matters.4

#### The aff is greenwashing that coopts socialist critiques of environmental extraction to vastly expand the punitive dragnet.

Mazurek et al. 20, \*Jordan E., doctoral student in the School of Social Policy, Sociology and Social Research (SSPSSR) at the University of Kent in Canterbury. \*\*Justin Piché, Associate Professor in the Department of Criminology and Director of the Carceral Studies Research Collective at the University of Ottawa in Ottawa, Ontario. \*\*\*Judah Schept, Associate Professor in the School of Justice Studies in the College of Justice and Safety at Eastern Kentucky University. (“’Greening’ Injustice: Penal reform, carceral expansion and greenwashing”, *Routledge International Handbook of Green Criminology*, pg. 260, Routledge)

As imprisonment remains a dominant social practice and political expression of neoliberal states, progressive reformers and abolitionists must ask themselves whether new ‘green’ jails and prisons contribute to the betterment of prisoners and the environment in which such facilities are located, or if such projects are instances of ‘greenwashing’ that co-opt discourses of ecological justice movements (Brisman and South 2014) as a means of caging more human beings, while normalising the idea that both carceral and neoliberal relations are necessary and can be made sustainable. Put differently, Graham and White (2015: 860) argue that the movement towards ‘greening justice’ holds considerable potential to contribute to veritable penal reform, whereby ‘true sustainability hinges upon the impetus to decarcerate, diminish in size and de-commission, restricting the use of confinement as a genuine last resort’. They also warn, however, that there is potential that this could also result in ‘justifying penal expansionism’ (Graham and White 2015: 860).

In what follows, we take up the call issued by Jewkes and Moran (2015: 466) ‘to address the paradox at the heart of the green prison … that rather than challenging the hegemony of incarceration, advocates of green prisons are arguably perpetuating and legitimising the expanding penal estate’. We do so by exploring the emergence of ‘green’ jail and prison infrastructure projects in Canada and the United States. More specifically, we examine how claims concerning the sustainability of facility construction and operations have contributed to the establishment of new and bigger institutions designed to deprive people of their liberty. In addition, by examining the marketing materials of the agencies promoting green initiatives in ‘criminal justice’, we demonstrate that, at least in some cases, neither sustainability nor prison reform are primary or even normative goals. Rather, the ‘green’ components of these initiatives are driven by their ability to cut state or municipal costs. In so doing, we argue that—at least in the cases we have explored—future claims with respect to ‘greening justice’ should be met with great scepticism given their role in legitimating carceral expansion and emerging penal reforms that fail to challenge the persistence of human caging. Importantly, we explore an understudied dimension of the literature, engaging critically with the emergence of ‘green imprisonment’ by turning our attention to organisers that are taking the fight to those who seek to build new jails and prisons, in part through the campaigns that point to the social and ecological toxicity of such facilities. Before doing so, however, we begin the chapter with a review of some of the key claims found in the emerging literature on ‘greening justice’, which we subsequently challenge. Our ultimate point is rather simple: there is no greener approach to incarceration than not having jails and prisons in the first place.

#### Carceral systems subject their targets to punitive psychological warfare, bodily invasion, and neglect, anchored in a history of enslavement that can’t be recuperated for progressive ends.

Rodríguez 10, Professor at the University of California, Riverside. (Dylan, Summer 2010, “The Disorientation of the Teaching Act: Abolition as Pedagogical Position”, *The Radical Teacher*, No. 88, pg. 7-8, https://www.jstor.org/stable/10.5406/radicalteacher.1.88.0007)

The global U.S. prison regime has no precedent or peer and has become a primary condition of schooling, education, and pedagogy in every possible site. Aside from its sheer accumulation of captive bodies (more than 2.5 million, if one includes children, military captives, undocumented migrants, and the mentally ill/disordered),1 the prison has become central to the (re)production and (re)invention of a robust and historically dynamic white supremacist state: at its farthest institutional reaches, the prison has developed a capacity to organize and disrupt the most taken-for-granted features of everyday social life, including “family,” “community,” “school,” and individual social identities. Students, teachers, and administrators of all kinds have come to conceptualize “freedom,” “safety,” and “peace” as a relatively direct outcome of state-conducted domestic war (wars on crime, drugs, gangs, immigrants, terror, etc.), legitimated police violence, and large-scale, punitive imprisonment.

In what follows, I attempt to offer the outlines of a critical analysis and schematic social theory that might be useful to two overlapping, urgent tasks of the radical teacher: 1) to better understand how the prison, along with the relations of power and normalized state violence that the prison inhabits/produces, form the everyday condition of possibility for the teaching act; and 2) to engage a historically situated abolitionist praxis that is, in this moment, primarily pedagogical.

A working conception of the “prison regime” offers a useful tool of critical social analysis as well as a theoretical framework for contextualizing critical, radical, and perhaps abolitionist pedagogies. In subtle distinction from the criminological, social scientific, and common sense understandings of “criminal justice,” “prisons/ jails,” and the “correctional system,” the notion of a prison regime focuses on three interrelated technologies and processes that are dynamically produced at the site of imprisonment: first, the prison regime encompasses the material arrangements of institutional power that create informal (and often nominally illegal) routines and protocols of militarized physiological domination over human beings held captive by the state. This domination privileges a historical anti-black state violence that is particularly traceable to the latter stages of continental racial chattel slavery and its immediate epochal aftermath in “post-emancipation” white supremacy and juridical racial segregation/apartheid—a privileging that is directly reflected in the actual demography of the imprisoned population, composed of a Black majority. The institutional elaborations of this white supremacist and anti-black carceral state create an overarching system of physiological domination that subsumes differently racialized subjects (including whites) into institutional routines (strip searching and regular bodily invasion, legally sanctioned torture, ad hoc assassination, routinized medical neglect) that revise while sustaining the everyday practices of genocidal racial slavery. While there are multiple variations on this regime of physiological dominance—including (Latino/a, Muslim, and Arab) immigrant detention, extra-territorial military prisons, and asylums—it is crucial to recognize that the genealogy of the prison’s systemic violence is anchored in the normalized Black genocide of U.S. and New World nation-building.2

### 1NC---Circumvention

#### Circumvention:

#### 1---courts will interpret “living organisms” in the plantext as excluding seeds

Carrie P. Smith 2k , COMMENT: Patenting Life: The Potential and the Pitfalls of Using the WTO to Globalize Intellectual Property Rights, 26 N.C.J. Int'l L. & Com. Reg. 143, Fall, 2000, Lexis, accessed online via KU libraries, date accessed 11/7/21

In addition to differing on the general applicability of IPRs, developed and developing nations clash over the appropriateness of creating private property protection in sensitive subject areas such as biotechnology. 23 Biotechnology involves both living organisms and non-living biological material. 24 [[BEGIN FOOTNOTE 24]] See World Intellectual Prop. Org., Introduction to Intellectual Prop. Theory and Practice P 33.20 (1997). "Living organisms" refers to plants, animals, and microorganisms. Id. Non-living biological material refers to seeds, cells, enzymes, and plasmids. Id. [[END FOOTNOTE 24]] Biotechnological innovations also encompass the development of processes which create or modify living organisms or biological material, the products of those processes, or the subsequent use of those products. 25 Despite the widespread use of biotechnology in medicine, energy, and agriculture, there is substantial international variation in the protection afforded these innovations. 26 These [\*147] differences stem primarily from perceptions of this type of innovation as either a scientific discovery or an invention. 27 Additionally, commentators have debated whether biotechnological innovations meet the standard patentability requirements of novelty 28 and non-obviousness 29 and the common registration requirements 30 of describability and reproducability. 31 Thus, differences between nations on IPR issues encompass cultural, economic, and administrative concerns not easily harmonized through one international agreement. 32

#### 2---right-wing judges will find a way to gut the case.

Newman 19, University of Miami School of Law professor and a former attorney with the U.S. Department of Justice Antitrust Division. (John, 4-5-2019, "What Democratic Contenders Are Missing in the Race to Revive Antitrust", *Atlantic*, <https://www.theatlantic.com/ideas/archive/2019/04/what-2020-democratic-candidates-miss-about-antitrust/586135/>)

But the federal courts represent a massive stumbling block for any progressive antitrust movement. Reformers have identified two paths forward; both lead eventually to the court system. The first is relatively moderate: appoint regulators who will actually enforce the laws already on the books. Warren’s plan rests in part on this straightforward idea. The second, more audacious path requires congressional action to amend and strengthen our current laws. Warren’s call for a new ban on technology companies’ buying and selling via their own platforms falls into this category. Klobuchar has also proposed new antitrust legislation that would make it easier to block harmful mergers and acquisitions. But no matter its content, enforcing a law requires persuading a judge. When it comes to U.S. antitrust laws, federal judges—not Congress, and not regulatory agencies—are the ultimate arbiters. The Department of Justice Antitrust Division, one of our two public enforcement agencies, files all its cases in federal courts. And although the Federal Trade Commission (the other) can decide cases internally, the inevitable appeals eventually end up in court as well. No matter how strongly worded a law may be, ideologically driven judges can usually find a way around enforcing it. The cyclical history of U.S. antitrust law is proof that judges wield nearly limitless institutional power in this area. Soon after Congress passed the Sherman Act in 1890, a conservative Supreme Court began to chip away at its effectiveness. Congress reacted in 1914 with the Clayton Act, which sought to ban anticompetitive mergers. In 1936, at the height of the New Deal era, Congress passed the Robinson-Patman Act, which prohibits price discrimination (charging different prices to different buyers for the same product). These laws were actively enforced for decades. But starting in the late 1970s, conservative judges began to erode the Clayton Act. Today, megamergers among competitors such as Bayer and Monsanto barely raise eyebrows. So-called vertical mergers, which combine suppliers and their customers, are now all but immune from antitrust enforcement—see the DOJ’s failed challenge to AT&T and Time Warner’s recent tie-up. Under the business-friendly Roberts Court, the Robinson-Patman Act has similarly been eviscerated. By the 2000s, the ideas of the conservative Chicago School had become mainstream in antitrust circles. Robinson-Patman, a law intended to protect small businesses, was an easy target for Chicago School critics narrowly focused on efficiency and low consumer prices. Their attacks found a receptive audience in the federal judiciary. Among insiders, Robinson-Patman is now known as “zombie law.” It remains on the books, but regulators no longer bother trying to enforce it. If Democrats want to change antitrust law, they will first and foremost need to change the judges who apply it. Yet none of the 2020 contenders championing antitrust reform have even mentioned the possibility of appointing progressive antitrust thinkers to the bench. Conservatives, on the other hand, have long recognized the centrality of antitrust to broader questions about the apportionment of power in society. In his seminal work, The Antitrust Paradox, Robert Bork called antitrust a “microcosm in which larger movements of our society are reflected.” Battles fought in this arena, Bork wrote, “are likely to affect the outcome of parallel struggles in others.” Strong antitrust enforcement keeps powerful monopolies in check. Toothless antitrust allows the unlimited accumulation of corporate power. Recognizing the high stakes, the Republican Party has gone to great lengths to appoint conservative antitrust experts to the federal judiciary. Bork was an antitrust professor at Yale Law School before becoming an appellate judge in 1982.\* Frank Easterbrook practiced and taught antitrust before donning the black robe in 1985. Douglas Ginsburg served as the head of the Justice Department’s Antitrust Division before he became a federal judge in 1986. None of the three managed to join the Supreme Court, but not for lack of trying. Reagan nominated both Bork and Ginsburg to serve as justices, though Ginsburg withdrew and Bork was famously rejected after a contentious Senate hearing. And whom did the GOP select as its very first U.S. Supreme Court nominee during the Trump Administration? None other than Neil Gorsuch, who practiced antitrust law for more than a decade before joining the Tenth Circuit. Even as a judge, Gorsuch continued to teach a law-school course on antitrust until his confirmation to the Supreme Court in 2017. Once upon a time, progressives demonstrated similar concern about judicial treatment of antitrust laws. Justice Stephen Breyer, for example, served as special assistant to the head of the DOJ Antitrust Division before his judicial appointment by President Jimmy Carter. Earlier still, Justice John Paul Stevens was an antitrust lawyer, scholar, and professor before his appointment to the bench. Today’s Democratic 2020 hopefuls seem to have forgotten the lessons of history. Their antitrust proposals focus exclusively on appointing the right regulators and amending our current statutes. These are right-minded ideas, but they overlook the central role judges play in our political system. There is an old saying in the legal community: “Hard cases make bad law.” That may be true, but it is just as often the case that bad judges make bad law. Real antitrust reform will require more than regulatory and legislative tweaks; it will require the right judges.

### 1NC – Veracini

#### **Semi-sovereign corporate land grabs by establishing the need for Western influence to counteract economic insecurity---it turns the AFF**

Veracini 15 – associate prof @ The Swinburne Institute (Lorenzo, *The Settler Colonial Present*, pp. electronic copy)

The return of terra nullius Gott and Mamdani were not the only scholars calling for an analysis of the ways in which settler colonial relationships inform present dispensations. In a recent paper Scott Morgensen has also noted that settler colonialism is not merely a phenomenon that is to be observed in the settler societies. On the contrary, he convincingly contended that settler colonial phenomena are globally constitutive of ‘liberal modernity’ and current ‘international governance’ practices. He then noted: ‘If settler colonialism is not theorised in accounts of these formations, then its power remains naturalised in the world that we engage and in the theoretical apparatuses with which we attempt to explain it.’48 Indeed, global trends interpreted in this context confirm settler colonialism’s ongoing relevance. ‘Land grabs’, for example, a growing international occurrence in Africa and elsewhere in developing countries, where foreign governments and corporations acquire semi-sovereign rights over extensive tracts with the purpose of ensuring ‘food security’ and speculating on agricultural commodities, alert us that settler colonialism is indeed everywhere.49 Land grabs are premised on terra nullius, but terra nullius is also a powerful globalising construction, because to think of terra nullius one has to think about terra alicuius first, land that is somebody’s, and by that time, one has already thought of the whole world. Terra nullius was a fundamental category in globalisation processes and still is. But terra nullius is also fundamental to settler colonialism. Sovereign and hedge funds (and other speculators) acquired in Africa in 2009 an area as big as France.50 These somewhat secretive acquisitions are premised, like the land ‘rushes’ of the nineteenth century, on false representations of ‘empty’ lands, on the perception of a metropole that is fundamentally endangered and in need to obtain a land base elsewhere, on fraudulent dealings with authorities whose entitlement to sell remains questionable, on a rhetoric of ‘higher use’, on a fundamental disavowal of the presence and needs of indigenous peoples, and, most importantly, on a general determination to use as little local labour as possible. This often requires a demand that local people be transferred elsewhere.51 The literature on land grabs typically sees them as a neo-colonial form, but they should also be seen as a settler colonial phenomenon. Charles Geisler recently offered a typology of the discursive tropes that are generally used in a variety of contexts to justify land grabbing. His analysis outlined a comprehensive rehearsal of terra nullius as a doctrine and its revitalisation in an international legal context. According to Geisler, land grabs are premised on narratives that focus on security concerns, in this case, anxiety about food and energy security that are underpinned by the prospect of war and natural disasters, and treat ‘African land and resources as global commons awaiting legitimate and benevolent enclosure’.52 While the settler colonial decision to displace is routinely premised on imaginings of future upheaval, underpopulation, that is, relative underpopulation, is (and was) a fundamental cornerstone of terra nullius doctrines: Low population density is a keystone in enclosure logics in Africa and elsewhere. But because few arable places attractive to investors are uninhabited, the demographic construct has shifted to relative rather than absolute population conditions. Where Africa is concerned, the case for food security in the north is explained by the north’s greater population (e.g., China, Germany, or South Korea) and/or in terms of relative purchasing power. Even the Gulf States with low population densities (e.g., Saudi Arabia) make the case that Africa is relatively empty and could profitably serve as their ‘plantation’.53 This relativisation can only be performed through the fundamental foreclosure of indigenous presences. There is no terra nullius without that prior negation. Another discursive construction outlined by Geisler refers to the ostensible underutilisation of land and labour: A second narrative, overlapping with the first, is the ascription of under-utilized African land and labor. This attribution assumes several forms. One is the broad-brush use of ‘wilderness’ as fact and metaphor to describe Africa. For some, if not many, food security advocates, wilderness is a suspect land use category […]. Wilderness protection, in this narrative, is a luxury the hungry world cannot afford. In other words, ‘Africa’s land is abundant but “fallow” for reasons of mismanagement, corruption, ethnic conflict, indifferent elites, failed land reforms, and a plague of social problems’.54 Again, the present looks like the past, and representations of ‘inefficient’ use of land and labour were always a crucial element of the terra nullius arguments historically offered by settlers and their advocates. If it is a Lockean notion that property follows the mixing of the two, underutilisation results in a property regime that is seen as fundamentally defective. That is how a terra nullius ready for settler colonial enclosure could be brought into existence in the first place.