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# Decolonial Futures and the Law: Reflections on Mitigating Projects of Coloniality

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DECOLONIAL FUTURES AND THE LAW:  
REFLECTIONS ON MITIGATING PROJECTS OF COLONIALITY  
A Thesis Presented to the Graduate Division of  
Educational Policy Studies and Research  
College of Education  
DePaul University  
In Partial Fulfillment of the  
Requirements for the Degree of  
Master of Arts

by

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## Abstract

### **Decolonial Futures and the Law: Reflections on Mitigating Projects of Coloniality**

**Lauren Lystrup**

This paper examines the codified logics of coloniality operating to exterminate, incorporate and make dependent the colonized. I bring Maldonado-Torres' (2007) conceptions the 'ontological colonial difference,' an elaboration on Fanon's (1968) 'coloniality of being,' and Mignolo's (2010) ideas on the 'modern/ colonial design' into a reading of the law in order to demonstrate the persistence of colonial logics in the interrelated areas of knowledge production, international policy, and political dissent. I understand coloniality as dialectical in order to situate decoloniality as a relational and universalized process, rather than one that is particular, hyper-localized, and chronologically illogical, as is often conceived. I begin by outlining the meaning and material consequences of coloniality as a system rooted the exploitation of disposable bodies and lands for the progress, development, and well-being of the European marked as ultimate beacon of humanity and civilization. Next, three laws and policies are examined at length: STEM education, intellectual property rights in international trade agreements, and the Hawaiian Homes Commission Act (1921). Though seemingly disparate, I argue each are related in their ambitions as modern/ colonial projects and connection to colonial concepts of land/ property, removal/ extermination, incorporation/ expansion, and dependency. Lastly, I end on a consideration of the possibilities and limits for decolonial futures and the law using Fanon's (1968) discussions on reparation to examine the CARICOM lawsuit against their former colonizers, as well as his ideas on self-becoming and Mignolo's (2010) ideas on delinking. I find that as a dialectal process, decoloniality will always mitigate the violence of coloniality as the two are antithetical projects.

Keywords: Coloniality, Decoloniality, Development, International Law, Modernity

## Introduction

“They talk to me about progress, about ‘achievements,’ diseases cured, improved standards of living. *I am talking* about societies drained of their essence, cultures trampled underfoot, institutions undermined, lands confiscated, religions smashed, magnificent artistic creations destroyed, extraordinary *possibilities* wiped out.”  
 -Aime Cesaire in *Discourse on Colonialism*

This thesis could have been called “Coloniality Matters<sup>1</sup>,” or “Why Decoloniality in the 21<sup>st</sup> Century<sup>2</sup>,” but those titles have already been taken in part or in full. What I have intended to signal here, though, is that coloniality still matters, and that decoloniality or decolonialities in the plural (as I will explain later), is a necessary and viable project. Building on the work of decolonial scholars such as Fanon, Quijano, Maldonado-Torres, and Mignolo, I find it is necessary to examine the violence of modernity and capitalist development through its historical rootedness in coloniality, or what Mignolo (2010) has termed the modern/ colonial order. I intend to demonstrate the inherent death facilitating processes of modern/ colonial development, which make evident the extraordinary and urgent need to break (delink) from the project of coloniality in all forms (materially, epistemically, and ontologically). Death is not symptom or consequence of coloniality but intrinsic and foundational to its nature. Sanctioned political dissent through channels accepted as appropriate means of expressing disagreement to these everyday and atrocities serve primarily to maintain and expand colonial authority, forced under the terms of negotiation set by the colonist.

Modern/ colonial (Mignolo, 2000) relations are historically compounded and codified into the law in a totalizing effect that facilitates death (extermination), incorporation, and

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<sup>1</sup> Alluding to Cornel West’s seminal work in *Race Matters*, connecting the materiality and everyday lived experience of coloniality with the historically compounded logics that sustain its order.

<sup>2</sup> An article by Sabelo J Ndlovu-Gatsheni (2010) published in the Pan-African magazine, *The Thinker*, focused primarily on a call to rethink colonial logics toward another world knowledge system born out of the colonial encounter.

dependency as inherent to their projects of development and expansion to which the acts of self-becoming and delinking are necessary to assert a thriving decolonial future. Further, given that the production of excess or redundant populations and death are integral to modern/ colonial development, I look toward political mechanisms of decoloniality that can hold colonization, whiteness, and capitalism accountable. I find the reasonable political desires of decoloniality, in accordance with Fanon (1955, 1967) and Maldonado-Torres (2007), will be taken and not granted, and will continuously mitigate the violence of coloniality as the two are antithetical projects where the existence of one denies the existence of the other. I intend to dispel the notions that turning to the histories of marginalized and colonized peoples represents a romanticized, or nostalgic return to the past, or that decolonization has already occurred. These are overwhelmingly the stories representing indigenous peoples, particularly in the United States, and the stories warning against dissent to modern/ colonial design. The telling of history is a process infused with the power assign value, name, and to know in order address current conditions with future “horizons of promise” (Quijano, 2002, p. 78). It is, therefore, a future oriented task tied to geopolitics and its perhaps less frequently discussed but parallel function, chronopolitics, or the politics of time. I explore these claims through analysis of development projects and discourse by integrating insights from Critical Race Theory, dialectical materialism, and dependency theory through a larger decolonial framework.

This thesis is grounded in the assertion of anti-colonial political leader Amiclar Cabral’s (1979) speech emboldening the idea of theory as a weapon and specifically in his statement:

For us the basis of national liberation, whatever the formulas adopted in international law, is the inalienable right of every people to have their own history; and the aim of

national liberation is to regain this right usurped by imperialism, that is to free the process of development of the national productive forces. (Cabral, 1979, p. 130)

Decoloniality recognizes the urgency and right to have a history that is not simply about rewriting textbooks, but looking toward histories to understand and alter present relations.

While one might read Cabral's statement as a dismissal of international law, I have chosen here to use it as an entry point for examining the law and the political mechanisms of a peoples right their own his/herstory. Cabral brings together two important contentions: an epistemological/ontological concern for accessing one's history, inextricably tied to a political project reconciling the material disparities resulting from imperial domination. Cabral views history and knowledge-of-self as linked directly to understandings of being, place, social order, political and economic relations.

Law itself becomes a codification of memory, cyclically reified through its enforcement. Imperialism and colonization make normal and necessary the violence of war, imprisonment, removal, exploitation, and extractive relationships through racialized narratives rooted in white superiority. Remembering and misremembering is always already a political process and project. Today, nearly all materiality and wealth within a modernized industrial society can be traced to histories and present forms of slavery and colonization (Rodney, 1972). The lines of relation, however, are systematically obfuscated through a pathological, Lady Macbethian-style delusion of obsessive compulsive sanitization, to wash one's hands clean from the marks of death that facilitate the usurpation of power.

Colonial logics represent a concerted, historically compounded denial of humanity and possibility outside constructions of Western ontology and epistemology. These processes of



dehumanization have been referred to by Aime Cesaire's (1995) as *thingification*, making bodies into object or animal to be used as productive tool for industry, and by Frantz Fanon as *le damne* (Fanon, 1961; Maldonado-Torres, 2007), those without capacity to give because everything has been taken away, and who represent a kinship with death and hell in itself. Death as a singular option or reality for oppressed peoples is not only in the physical sense such as genocide, state sanctioned murder of black and brown peoples, or the mass atrocities caused by the many consequences of global warming. Each of these urgent physical and material consequences are manifestations of a Western epistemology where Europe is the loci of enunciation defining what is inside and outside Man as Human (Mignolo, 2011, Wynter, 2003), and therefore what and how life exists. This recognition begs the question: If a society necessitates death in order to develop and progress, as is the situation of settler colonies and empires, what are the possibilities and rights to delink (Zhang, 2013; Mignolo, 2010)?

### **Overview**

The first part will elaborate on the logics of coloniality as dependency, extermination and incorporation (operationalized throughout the following chapters) and the juridical and administrative mechanisms that rationalize and perpetuate modern/ colonial orders. Beyond the economic logics and fallacies of development, modern/colonial designs are perpetuated through fear, insecurity, and, at best, lack of imagination. Even when the colonial designs fail to be economically productive for the owning class, their ordering of knowledge, power and being continue to hold anything outside the imaginary of western modernity as outside humanity or reason and therefore positioned as either a threat or irrelevance to humanities future.

The second, third, and fourth chapters examine policy and legislation grounded in development discourse tied to land or territory in order to provide empirical evidence to the foundations of coloniality as an ongoing process of extermination, incorporation and dependency. Creating and securing private property is a historically and politically infused process that forms the nucleus of material colonial designs (Harris, 1993). Each example demonstrates the simultaneous reification of nation-state formations as ultimate sovereign authority and expansion of empire. The examples are organized as 1) Knowledge of development: STEM education from the space race to Race to the Top, 2) Modes of development: intellectual property law and the incorporation of indigeneity, 3) Sanctioned Dissent to modern/ colonial development: Hawaiian Homes Commission Act and the codification of race. Each of the chapters will examine the relations between whiteness, coloniality and decoloniality with the hope of envisaging a productive, actionable move toward decoloniality by demonstrating the incapacity for colonial thought and design to offer adequate blueprints to urgent global problems.

The second chapter focuses on STEM education as knowledge of development rooted in military and national security priorities that normalize and sanitize war. It locates STEM education historically within the Cold War Era as the United States' top national security concern, and intellectually in the Enlightenment/ Colonial era grounded in a privileging of science and technology to relieve all the problems of development, and which relies on the production of fear of the Other to perpetuate itself (Lawson, 2007).

The third chapter is a reflection on the limits of international law and examines intellectual property law (IP) as a mode of development in international trade agreements,

particularly in relation to poor and indigenous peoples knowledge systems. I ask, if the right to exclude is the nucleus of whiteness and property as noted by Cheryl Harris (1993), what does this mean for the expansion of intellectual property law globally? I also question what is productive and from whom to integrate intellectual property law within trade as a human right, and find that IP represents incorporationist strategies that confuse the problems of poverty and global warming.

The fourth chapter will examine blood quantum logics and policies, specifically through the 1921 Hawaiian Homes commission Act. This act represents attempts to redress coloniality through the law and colonial logics of dependency and difference that are produced within sanctioned or legitimized avenues of consent. The act serves as a point to further dispossess Native Hawaiians, effectively codifying Native Hawaiian as a racial category rather than a political sovereign power.

The fifth and final chapter maps the meanings, necessity and possibilities of decolonialities as autonomy, de-linking, and self-becoming that disrupt exploitive practices and create tangible new relationships to land, economies, and knowledge production. Elaborating on Mignolo's (2000) concept of delinking, and Ranceire's (1999) ideas on politics and dissent, I find delinking and autonomy as abolition and departure from modern/ colonial designs. Furthermore, I use Fanon's (1952, 1968) language of self-discovery and self-becoming to understand a process of being and future that has been denied by coloniality.

While I work toward furthering the concept and necessity of decoloniality, I also recognize the historical enunciation of this concept as grounded in Latin American thinkers concern with the Occident, and which is primarily concerned with indigenous peoples in the

Americas to the point of possible romanticization of indigeneity to the exclusion of black experience in Africa and the Americas. To this, I recognize Mignolo's (2000) call for a politics of pluriversality, where decoloniality finds common thread from the local to the global, but which is always articulated and determined from the bottom-up, by the local historical and political context. Rather than the local existing as disparate entities, though, collective decolonialities in the plural or decolonial options, offer points of global power and solidarity against a global modern/ colonial design.

The purpose of the final chapter and of the thesis overall is not to develop a definition of decoloniality, or decolonial policy per se. It will not serve as a "how to" book for decolonization and decoloniality as such a presumptive move would be entirely disrespectful and insulting to the hundreds of years and ongoing work of activists, educators, organizers, lawyers, healers, and cultural workers struggling against coloniality by diverse tactics and strategy. My point is not to envision for somewhere else what decoloniality might look like, from universalized position that disregards context. While the aim of this project is large and wide sweeping, my hope is that it can work towards the denaturalization of codified Eurocentric knowledges to demonstrate their illegitimacy, and through the lens of decoloniality, continue to build upon a relational praxis. I will reiterate that because colonial logics have distinct relationships to the places where they have forced encounter and erased local ways of knowing and being to create relationships of dependency, delinking from coloniality will also be local and specific (though not particular and without global consequences), and an ongoing process.

It is important to also make clear the position from which I am writing as a student in the United States, queer, Japanese and white woman with an ethnically and racially mixed family, concerned with the projects of decoloniality and bringing the colonial design down to size. It is from this position that the contradictions of the modern/ colonial project have been made clear, politicized through the stories from family, peers, elders and young people and through reflection on my social location and responsibilities. While my ideas present throughout this thesis capture some of my thinking to this point, I understand this project itself as always in process or in flux, never fully complete, but something which has constantly opened more questions to think through. As such, it is not offered as absolute truth, but a point from which I hope to enter into understanding with those who may find affinity along similar political, epistemic, and existential projects, as well as with those who disagree.

### **Literature Review**

#### *Self-Determination Against Europe as the Loci of Enunciation: Politics of Relation and Recognition*

Much has been written with regard to decentering Europe as the locus of enunciation, from which all legitimized, rational thought and social organization emanates, and through which all other forms of life are read and recognized through. This thesis works to amplify some of these assertions, particularly feminist theories of positionality (Moraga & Anzaldúa, 1983, Crenshaw, 1991, Harraway, 1988), border epistemology or the colonial wound (Moraga & Anzaldúa, 1983; Mignolo, 2005) Western representation and the colonial gaze (Spivak, 1988, Said, 1979), European universalism (Wallerstein, 2006), modernity / coloniality (Mignolo, 2011; Dussel, 1996), and cultural domination (Cabral, 1979, Fanon, 1968 ).

In response to white women's feminist agendas that dominated academia and political organizing, and which privileged race and class under the guise of a unified sisterhood, third wave feminism spoke back to shed light on the ways women of color, and those whose identities do not otherwise allow one to claim a category of privilege by which to access power, were made marginal or invisible. In their ground-breaking anthology, *This Bridge Called My Back*, Gloria Anzaldua and Cherrie Moraga (1983) recognize the importance of speaking from one's own social location in order to generate social and political theory from lived experience, rather than making universal claims to struggle based on singular categories of analysis, like race or gender, which reinforce oppositional binaries. Donna Harraway (1988) calls this "situated knowledges" whereby the God's-eye trick of Western science's claim to objectivity was rendered entirely false, as well as unproductive to any project seeking truth. Instead, Harraway (1988) advocates for standpoint epistemologies, grounded in the histories of marginalized peoples most adept to articulating and navigating the social and political ills of modern society. Furthermore, Kimberle Crenshaw (1991) demonstrates both the need for an intersectional approach of race, class, gender and sexuality, particularly within the law, to understanding the ways real structural violence is rooted in epistemic violence that marginalizes entire peoples, or makes them visible only by way of dominant narratives enunciated from outside looking in. In other words, only those who are able to claim a line of privilege through race, class, sexuality or nationality gain affirmation, recognition and progress. Critical race theorists and feminist jurisprudence share commonalities in this approach to center the narratives of marginalized peoples, taking root in political mechanisms through trial testimony or academic publication. This is what Walter Mignolo (2000, 2007, 2007a, 2010)

terms geo-politics of knowledge production and, in some ways, what Freire argues for in working toward pedagogies of the oppressed, reflected and theorized from one's social location to map one's life in context of larger political and economic phenomenon.

Most thoroughly developed in *Local Histories/ Global Designs*, and echoing throughout Mignolo's (2000) work, is the theoretical practice of border thinking or speaking from the "colonial wound" as a decolonial epistemic project (Mignolo, 2005, p. 106). Border epistemology grows out of Fanon's concepts of the Manichean order and is in conversation with Anibal Quijano's (2007) concept of 'coloniality of power' and Enrique Dussel's (1996) 'transmodernity' as part of a decolonial process in resistance to global designs and colonial legacies. It is also an extension of Gloria Anzaldúa's (2009) 'new mestizo consciousness', theorizing from the violent borders, the wound where the "Third World grates against the First World and bleeds" (p.25), and where the myths and contradictions of the First World are unmasked. Border thinking is in conversation with DuBois's (1968) 'double consciousness' where the imaging, re-storying, and re-creating decolonial knowledges and spaces. Whereas multicultural frameworks would simply have black and brown histories incorporated into the already white structure as celebratory achievements (Grant, 2011), a decolonial position calls for history as told from the underside, similar to Mehen's (1995) contention for a complete overhaul of the education system, against incorporating bits and pieces of colonized peoples histories, toward a complete revamping of the system centered on the histories and perspectives of formerly colonized peoples (Grant, 2011). I enter into the discussion in attempt to operationalize the theories of decoloniality as an analytical framework, questioning how decoloniality has been denied, particularly in law and policy, what decoloniality envisions, what

it desires, and how it might be achieved.

*Dependency Theory and Dialectical and Historical Materialism*

Dependency theory emerged out of post WWII debates in Latin America, by the *dententistas* who “produced a knowledge that criticized Eurocentric assumptions of the *cepalists*” (Grosfoguel, 2000, p. 347) and has been considered “the foremost ‘revolutionary’ alternative to the hegemonic ideology of Eurocentrism best expressed by modernisation theory” (Gulalp, 1998, p. 951). Dependency theory describes the economic relationships that create the very idea of underdeveloped countries (Escobar, 2012; Mignolo, 2005). Raw resources and labor from the periphery or underdeveloped states are extracted, through exploitative practices, to the core industrial metropolises. The economies of underdeveloped states, the peripheries or semi-peripheries, are made dependent on the economies and industrial forces of the core. Dependency theory, however, largely remained limited to economic analysis, and rooted in a evolutionary or mechanistic Marxist economic analysis (Grosfoguel, 2000; Gulalp, 1998; Rodney, 1972). Rodney (1972) criticizes theorists of underdevelopment for continuing to represent a “capitalist or bourgeois world” (p. 23). He charges them with creating a dichotomous and simplified analysis of international relations divided between industrialized and non-industrialized nations favoring the former and “so that the terms capitalist and socialist never enter the discussion” (p. 23). However, Rodney (1972) develops his own analysis to the underdevelopment of Africa, which provide the historical framework for how economies became tied to exploitative relationships with European capitalism.



Dependency theory remains relevant to articulating the dialectical material relationship between the core and peripheries, or between colonial and formerly colonized places, and when analyzing development projects and their economic, material, epistemic and ontological consequences. Although dependency theory has fallen out of favor in the academy, it can provide insights to present international relations historicized from the perspectives of colonial wound (Gulalp, 1998; Mignolo, 2011). Saldana-Portillo (2003) criticizes the historical reinterpretation of dependency theorists as emerging in a North-South binary opposition. While acknowledging the work of dependentistas to delegitimize colonial powers, she contends that it was a South-South conversation seeking to build power among the peripheral regions. However, she recognizes the ways colonial logics of patriarchy and of the premodern native continued to inform development strategies of even the most prominent of revolutionary leaders such as Che Guevara, Malcom X, and the Zapatistas. Walter Mignolo (2011) has also acknowledged the shortcomings of dependency theory, but takes up the same language to explicate a global relationship of dependency on European logics and rationality, not as a natural reality but as a historical construction and consequence of coloniality. Appropriating the economic tenants of the theory to epistemological and ontological concerns can reveal the ways in which production and dissemination of knowledge, political recognition, and imagined possibilities continue to be dependent upon European logics rooted in colonial and imperial histories (Ranceire, 1999; Mignolo, 2012). Central to this framework is the understanding that coloniality controls systems of recognition and becomes both the law and the authority to become the exception to the law.

Development discourse signals the contradictions in the logics of progress along racial lines where the Other has consistently been imagined within white consciousness as literally evolutionarily retarded, contrasted by the white, Western European Man as the marker of ultimate psychological and biological evolutionary achievement (Fanon, 1952; Mignolo, 2011). Development also signals a progressive and linear continuum toward greater evolutionary achievement where non-whites are exterminated both physically and epistemically, and incorporated into a modern/colonial order (Mignolo, 2011). Development is chronopolitically future oriented with single-side and colonial visions of history (Mitchell, 19991; Said, 1979). It assumes poverty and social problems can be addressed only or most effectively through economic structural adjustment programs, greater scientific discovery, technological innovation and improved efficiency of capitalist and capitalist friendly structures.

Dialectical and historical materialism offer important insights to systemic economic and social political relationships, and to consciousness and revolution, but depending on their articulation, have lacked a critical analysis of race. Development is articulated as falling in line with Darwinian evolutionary logics, where all societies progress along a continuum from communism to feudalism, capitalism and finally socialism, dependent on their ability to develop tools and harness labor to manipulate the material base. As Walter Mignolo (2012) has articulated, this rationality is problematic in that it pre-supposes modernity and offers a mechanic analysis with limited imagination of social relations. More problematic, within this logic, slavery has been understood as an inevitable consequence of economic expansion. What is important to note, however, is that dialectical and historical materialism explicate a relation of the base to the superstructure and understand that ideologies emerge from social

relationship. For, “ruling ideas are nothing more than the ideal expression of the dominant material relationships grasped as ideas” (Marx, 1972, pp. 136-137). In taking up a decolonial reading of development projects, through insights of critical race theory, dependency theory and dialectical materialism, relationships are made the unit of measure in this analysis, rather than the individual, nation-state, or even isolated collective. This thesis will depart from determinist ideologies of Marxist dialectical and historical materialism, which have continued to universalize European ideologies of progress and development that deny agency and self-determination.

## **Methodology**

### *Decoloniality*

Decoloniality offers an intersectional analysis (Couthard, 2014) that addresses white supremacy, patriarchy, heterosexism, global division of labor and economic exploitation, and eco-logical destruction. According to Santos (2014) as cited in Sithole (2014), a decolonial critical analysis is:

a method that emphasizes the knowledge that is existential and experiential and also both resilient and flexible. In its application, it aims to disrupt, question, displace, rattle and unsettle the guardian of the status quo—that is, qualitative, quantitative and triangulation methodologies...[it] will not deploy any of the popular methodological interventions that are conventional in the Euro-North American simply because they are alien to the lived experience of the African subject, its subjectivity and they ratify

subjection. It is in these methodologies that the African subject becomes the object of study. (Sithole, 2014, p. 38)

Importantly, a decolonial method interrogates the colonial logics and discourse that justify and normalize these relations to which all other possibilities are exterminated and incorporated. Decoloniality is both a way of thinking and a way of being (Mignolo, 2010; Maldonado-Torres, 2007). It is therefore, an actionable concept (Tlostanova & Mignolo, 2012; Maldonado-Torres 2007) and praxis for analyzing and acting upon social, cultural, economic and political phenomenon. It is the unabashed articulation of an overt, unmasked, political project grounded in sound theoretical analysis. The project of decoloniality is not homogenous or uncontested since (as a future oriented projected) it is also constantly reflective and rearticulated given specificities of time and place. However, it is a radical project that envisages change outside the limiting, Manichean formations of liberal/ conservative, capitalism/ socialism (Tlostanova & Mignolo, 2012; Fanon 1952, 1961). Therefore, there are some concrete differences that can be articulated to differentiate decoloniality as a method.

In *Learning to Unlearn*, Madina V. Tlostanova and Walter Mignolo (2012) work towards a productive understanding of decoloniality by differentiating it from the projects of postcoloniality, post-structuralism, and post-modernity. This is an important discussion in building the concept and methodological framework of decoloniality and understanding its distinct position that rests on epistemic principles and geo-political locations different from postmodern and postcolonial thinkers. The first distinction of decoloniality as a method lies in its historical location. In contrast to post-coloniality and post-modernity, decoloniality understands modernity as emergent from European imperialism and colonization with power

relations rooted in the histories of the Atlantic, which mapped racial hierarchical configurations globally in the first colonial imaginary. It's historical framework, therefore, is drawn back to the fifteenth century, 1492, rather than being located in the decolonization movements of the 1950's-1970's, which saw the removal of the formal administrative structures of colonization, or interpreted primarily through experiences of British colonialism. Postcoloniality begins primarily "from the version of history that places the British Empire (or sometimes, the French Empire) at the center of modern/ colonial history," while decoloniality begins from "Modern. Colonial history originated in the Atlantic, in the complexity of European imperial formations...and would be empires...in the dismantling of Tawantinsuyu and Anahuac and the massive capture and exploitation of enslaved Africans" (p. 32). The historical formations upon which decoloniality and postcoloniality are grounded relate fundamentally to their epistemic principles and frameworks. According to Tlostanova and Mignolo (2012), "postcolonial studies and theories are connected to the splendors and miseries of French poststructuralism," "postcoloniality presuppose postmodernity," and is "in need of the epistemic frame of Eurocentric modernity" (p. 33, 35). Ideas are derived from imperial and colonial histories which are always already tied to concerns over land and labor inextricably linked to race and knowledge production. Finally, for Tlostanova and Mignolo (2012),

In building our arguments, we may or may not use some of their concepts for convenience, but not the epistemic principles on which those concepts are grounded and the historical foundation of post-structural arguments. Our subjectivities, experiences, languages, histories, desires, frustrations, and angers are different from the ones expressed by Foucault, Lacan, or Derrida. Theirs is a different history; their

problems are not our problems; and we surmise that our problems are not necessarily theirs. For this reason alone, geo- and body politics of knowledge is of essence. This is what we meant when we made a distinction between focusing on objects and focusing on problems. (Tlostanova and Mignolo, 2012, p. 34)

To focus on the known object rather than interrogate the notions of knowing subjects and the material linkages has already fallen into the European colonial logic. As evidenced, the problem for decoloniality is rooted in the compounding histories of more than 5 centuries of European logic, which create excess and landscapes of death out of colonial subjects and land.

Post-coloniality and decoloniality share commonality in their concern with colonial histories, but post-coloniality remains primarily concerned with politics of representation and visibility and is grounded in European epistemic frameworks. Evidence to this claim is Spivak's (1981) highly influential essay concerned with her titular question: *Can the Subaltern Speak?* Here, decoloniality and post-coloniality share the project of de-centering Europe as the locus of knowledge production and asking whose political acts are recognized as being articulated and practiced by reasoned, knowing-subjects without needing interpretation or intervention of higher authority. She charges Foucault and Deleuze with confessing in order to, or at least with the effect of, reasserting their positions as European intellectuals, conflating the experiences of the worker to a homogenous subject, and ignoring the global division of labor and knowledge production/ amplification. Spivak's (1988) epistemic principles and foundations themselves, however, re-center Europe as the locus of enunciation through her grounding in Derrida's methods of deconstruction as a way out of Foucault and Deleuze's entanglements, and in Marx's assertion of the worker as heterogenous, constituted by differential associations/ relationships

to the superstructure. The point here is not that Marx and Derrida are not useful, but that decoloniality is not grounded primarily within their ideas, and also that decoloniality takes different political concerns to which theories exclusive to Europe become limiting to colonial situations.

Decoloniality is distinct in its historical location and its epistemic framework and enunciation from the colonial wound, borderland, and those exiled as the negation of humanity (Anzaldúa, 1987; Fanon, 1952; Césaire, 2001). While decoloniality is concerned with knowledge production, its purpose is not in the service of the academy or the furthering of a particular discipline but first in the realization of the political projects traced back to the 15<sup>th</sup> century. Similar to Edward Said's (1979) discussion of canonizing knowledge, and therefore abstracting it from its point of enunciation to be interpreted by higher authorities through an Otherizing gaze (for Said, the occident, or the West), decoloniality does not propose a speaking-for to be incorporated into the exclusive space of high theory.

Decoloniality differs again in that it is a project of epistemically, ontologically and materially de-linking from the colonial order, which necessitates tangibly different relationships to land and to labor. In the inaugural edition of the online, open sourced journal, *Decolonization: Indigeneity, Education and Society*, Eve Tuck and Kevin Yang (2012) published the important essay, "Decolonization is not a Metaphor." In this essay, the two critique the ways in which decolonization has been taken up in many social justice circles, particularly within education, and appropriated from its original political project into what they term as a "settler move to innocence" (p. 2). They distinguish between three forms of colonialism, external, internal, and settler, which are important to understand in the context from which I am writing

within—the United States as a settler colony. Settler colonialism is the convergence of external colonialism and internal colonialism because metropole and colony are one in the same (p. 5).

For reference, their definitions of the external and internal colonialism are quoted here at length:

External Colonialism: denotes the expropriation of fragments of Indigenous worlds, animals, plants and human beings, extracting them in order to transport them to - and build the wealth, the privilege, or feed the appetites of - the colonizers, who get marked as the first world. External colonialism often requires a subset of activities properly called military colonialism - the creation of war fronts/frontiers against enemies to be conquered, and the enlistment of foreign land, resources, and people into military operations. In external colonialism, all things Native become recast as 'natural resources' - bodies and earth for war, bodies and earth for chattel.

Internal Colonialism: the biopolitical and geopolitical management of people, land, flora and fauna within the "domestic" borders of the imperial nation. This involves the use of particularized modes of control - prisons, ghettos, minoritizing, schooling, policing - to ensure the ascendancy of a nation and its white elite. These modes of control, imprisonment, and involuntary transport of the human beings across borders - ghettos, their policing, their economic divestiture, and their dislocatability - are at work to authorize the metropole and conscribe her periphery. Strategies of internal colonialism, such as segregation, divestment, surveillance, and criminalization, are both structural and interpersonal. (Tuck and Yang, 2012, pp. 4-5)

Land, encompassing all ecological formations including water, air, and earth, which become



property and “natural resource” in colonial contexts, is of primary importance to settler colonialism (p.5). Settler colonialism also needs excess labor to build wealth, which comes in the form of chattel slavery, where the humanity of the slave is the excess to be discarded. Finally, Tuck and Yang (2012) contend that in a settler colonial context, settlers are not immigrants for immigrants are responsible to the “laws and epistemologies of the lands they migrate to” whereas “settlers become the law” (p. 7). Racial formations in the United States cannot fully be understood without regard to this idea. These points will be further addressed in the first chapter. Significant to the discussion of decoloniality as a methodology is the inextricable connection between land, labor, and knowledge production that legitimize whiteness as property against the dispossession of everything else. Furthermore, the mechanisms of control which sustain the colonial order which must be interrogated in connection to historical, future-oriented projects which are always already political and pedagogical projects.

### *Critical Race Theory*

Critical race theory has made important interventions in legal scholarship, pointing to the ways in which race, and particularly white supremacy (and its intersections with gender, sex, sexuality, nationality and class) is codified within the law, as well as how this manifests into normative ideologies and practices that inform day-to-day relations (Bell, 1987). For the purposes of this study, I will be primarily be utilizing critical race theory’s ideas on whiteness as property (Harris, 1993), rights (Williams, 1991), and on the compounding nature of institutionalized racism and oppression codified into legal systems in the US and globally.

Patricia Williams (1991, 2000) has written extensively on race and rights, and in 2000 published “Reconstructing Ideals from Deconstructed Rights” which warns against critical legal scholars move to do away with rights altogether, seeing rights as “overlaid with capital-oppression, universalized alienation of the self, and excessive power of an external and distancing sort” (p. 85). Williams (2000) contends that rights are fundamentally about the facilitation of trust between peoples and the state, and that the move to throw rights out the window altogether ignores the histories of black peoples in the United States. For whites, a trusting relationship is already secured between the state and within social relations.

Williams (2000) uses the example of searching for housing in New York along with her white colleague, both law professors to explicate her understanding of race and rights. Her colleague, not wanting to initiate any feelings from the landlord that he might be a pompous lawyer and wanting to initiate a trusting relationship with the landlord, did not ask to sign any contracts when securing an apartment. He put down a large lump sum of money for rent and deposit, and showed up on moving day to pick up the key. Williams, in contrast, despite being an accomplished lawyer and professor, understood her position as black woman and the need to initiate a trusting relationship by signing a contract to prove she was a reliable tenant (pp. 84- 85). Williams understands rights in the histories of black experience, particularly in the experiences “of anonymity, the estrangement of being without a name...of living in the oblivion of society’s inverse, beyond the dimension of any consideration at all” (p. 85). She asserts:

For blacks, therefore, the battle is not deconstructing rights, in a world of no rights; nor of constructing statements of need in a world of abundantly apparent need. Rather, the goal is to find a political mechanism that can confront the *denial* of need. The argument

that rights are disutile, even harmful, trivializes this aspect of black experience specifically as well as that of any person or group whose genuine vulnerability has been protected by that measure of actual entitlement which rights provide. (Williams, p. 85, emphasis in original)

Taking this into consideration, it is the aim of this study finds affinity to the goal of finding political mechanisms grounded in decolonial logics that can confront denial of need, as understanding the false solutions and the ideologies by which they are fueled.

When taken up through the transnationalizing lens of decoloniality, critical race theory becomes ever more potent in the critique of systemic racial oppression told through power of personal and historical narrative or allegory. Critical race theory has predominantly grounded critique and analysis within the context of racial histories in the United States. There is little work on critical race theory from a transnational or international perspective (Richardson, 2000; Lewis, 2000; Andrews, 2000; Saito, 1999). For Lewis (2000), "Critical Race Theory must engage international law and politics because racism itself is international and domestic, global and local" (p. 1076). For Saito (1999) critical race scholars must develop "clear analysis of the relationships between race and class, between political influence and economic power, between the repression of domestic [US] minorities and the exploitation of the 'Third World' by U.S. interests" (p. 228). Given histories of racial formations inscribed through colonialism (Fanon, 1952; Mignolo, 1995, 2000, 2011) and international legal systems that "protects the accumulation of wealth and power in the hands of a few, and uses racial divisions and discrimination to do so" (Saito, 2000, p. 228), CRT is highly relevant to decoloniality and a reading of international development projects and laws.

## Chapter 1: Logics of Coloniality: Dependency, Extermination and Incorporation

In building the concept of coloniality of being and trans-ontology, Nelson Maldonado-Torres (2007) defines coloniality in contrast to colonialism in order to highlight the ongoing importance of a decolonial conceptual framework.

Colonialism denotes a political and economic relation in which the sovereignty of a nation or a people rests on the power of another nation, which makes such nation an empire. Coloniality, instead, refers to long-standing patterns of power that emerged as a result of colonialism, but that define culture, labor, intersubjective relations, and knowledge production well beyond the strict limits of colonial administrations...

Coloniality refers, first and foremost, to the two axes of power that became operative and defined the spatio-temporal matrix of what was called America. (Maldonado-Torres, 2007, p. 243).

The two axes of power referred to are the codification of the idea of race and its relations of domination, and the imposition of economic control over labor and resources through slavery, which forms the basis of global capitalism. Maldonado-Torres (2007) distinguishes between coloniality of power, knowledge and being. Coloniality of power refers to Anibal Quijano's (2000) conception of the colonial matrix of power, which is grounded in racial difference through struggle for control over economics and the global market, authority, gender and sexuality—particularly with regard to regulating economic practices, and control over knowledge and subjectivity (Tlostanova and Mignolo, 2012). Through the racial distinction, coloniality makes those marked by colonial difference killable and rape-able, naturalizing war. Coloniality of knowledge, as taken up by Maldonado-Torres (2007) refers to Walter Mignolo's

(2000, 2011) conceptions of epistemic colonial practices through Western social sciences and humanities which control the production and dissemination of knowledge, and therefore regulates ideologies of normative subjectivities. Coloniality of being, “refers to the question of the effects of coloniality in lived experience and not only in the mind” (Maldonado-Torres 2007, p. 243). Maldonado-Torres (2007) connects this with Fanon’s idea of the *damne’*, those without anything to give because everything has been taken away, to understand coloniality as relational and as an ontological denial of the *damne’*. This centers decoloniality as a political project concerned with the ecological and symbiotic or destructive relationships between peoples, as well as land. Relationship as a unit of measures affirms an interconnectedness of the assertions to autonomy and self-determination, rather than seeing these claims as isolationist.

Coloniality normalizes ideas of non-Western peoples as backwards, a-historical, and incapable of sophisticated societal organization to take care of their own basic needs. Subjugation of non-white bodies becomes the very marker of white evolutionary superiority. The existence of free, non-whites, is made threatening to the existence of whiteness itself and initiates anxieties, remedied through compulsive rationalizations of inequality to justify the illusion of natural (inherent) or scientific white superiority and false paternalistic gestures to remedy situations of violence which only maintain and perpetuate the modern/ colonial order.

While histories and racial formations have distinct and varying relationships to whiteness, imperialism, and colonization which are local and specific, each are characterized by a relationship based on myth that necessitates intervention, domination, and control (Said, 1979; Rodney, 1972; Escobar, 2012). This myth denies the dialectical material relationship of

Europe's dependency on the colonies to sustain an illegitimate supreme power and economic structure that confers wealth to those invested in whiteness. It normalizes white relationship *with* and *right to* land and property. Imperial relationship to land designated *terra nullus*, empty or unproductive and thus in need of industrialized Europe to maximize its potential, can be paralleled with imperial relationship to non-white consciousness seen as empty, void, lacking rationality and logic (Shiva, 1997; Ranceire, 1999). Development discourse is fundamentally and historically grounded in the history and logics of coloniality (Escobar, 2012; Mignolo, 2011; Maldonado-Torres, 2007). It can be traced back to Plato's notions of logos in the origins and foundations of democracy; those marked as being without logos, or the capacity of rational speech were included into democracy on the basis of their exclusion, lacking in reasoning abilities to make decisions toward the social good and spoken for by the philosopher kings mitigating the disconnect between the demos and the aristocracy without altering the social order (Ranceire, 1999).

Coloniality and decoloniality are related fundamentally to matters of land, labor, political and social order, and knowledge production. The compartmentalization (or departmentalization) of knowledge within Universities has taken up these components as separate, privileged on over the other in research and analysis, reflected in non-intersectional political organizing and the professionalization of poverty and oppression, i.e. the non-profit industrial complex (Crenshaw, 1991; INCITE, 2004). The relationships between land, labor, and knowledge are interlocking and cannot fully be understood without interrogating their relationship. Colonial logics are both codified and made into property for further reification and investment. Modern/ colonial development projects and their theoretical underpinnings

rationalize, normalize, and institutionalize dispossession under the guise of progress and modernity whose prized achievements remain an intangible mirage to the marginalized and oppressed.

### **Aesthetics of Coloniality: Landscapes of Conquest, Death and Modernity**

Take a drive down Michigan Avenue or Congress Parkway in Chicago, Illinois and you will notice large bronze statues of *The Bowman and The Spearman*, commonly referred to as *The Indians*, men on horses with no clothing other than a headdress and despite their titles and stance, both are missing their weapons. The sculptures were made by Croatian artists Ivan Mestrovic and installed in 1928. They occupy a highly visible location downtown and as the entrance to Congress Parkway. While the lack of weapons is said to be for the purpose of “leaving it up to the viewers imagination” (Chicago Parks Website, n.d.), it also signals an idea of the native as without technological advancement, and as animal, uncivilized and nonhuman. It reinforces the ideals of development through capturing the imagination of the colonizer’s view of the colonized placed squarely in the heart of the urban metropolis. They are intricately juxtaposed representing the pre-modern against the aesthetics of the modern city skyline. It is a sacrificial image of what has passed in order to make way for modern futures, a romanticization of native noble savage conquered by European settlers.

Absent from the aesthetics of the city are the memorialized bodies of those who continue to be conquered in order to capitalism and the modern/ colonial order to persist through mass incarceration, police shootings and deportations which target poor communities of color, though community activists are working to have this changed. Community organizers in Chicago are now calling for a form of reparation to victims of police killings through an

ordinance named the Chicago Torture Justice Memorials (CTJM), which establishes a \$5.5 million fund for reparations to victims of police torture and brutality, along with social service assistance to victims such as free city college tuition and job placement assistance. The campaign for CTJM began with the conviction of Chicago Police Department Commander Jon Burge on counts of perjury and obstruction of justice related to his practice which encouraged police officers to torture predominantly black men through tactics like repeated shocks to their testicles and holding an unloaded gun inside their mouth, firing each time the victim refused confession (Stafford, 2015). Government support from Mayor Rahm Emmanuel's office came and the critical conjuncture of the mayoral elections, heightened media attention to police brutality through the Black Lives Matter Campaign and highly publicized incidents of police killings of unarmed black men, women and children. The fund goes further to address the need for public visibility and education through the creation of a memorial and implementation of the history of Burge's torture campaign in eighth and tenth grades in Chicago Public Schools. Visibility and aesthetics remain integral to the memory and knowledge production of space as it signals how bodies are made to exist in the present and future. A memorial to victims of police brutality, juxtaposed with the noble savages and Chicago's skyline paint perhaps a truer portrait of colonial/ modernity where the most visible incorporation of black and brown bodies is by their conquest. However, that which remains absent from the scene memorializing the dead and tortured is the actor, a spectacle of coloniality that would make visible the need for whiteness to continuously assert superiority through manipulation of life in order to secure a future for himself.



Rhetoric and imaging are powerful pedagogical tools in constructing narratives that access or erase histories of international relations. Richard Pratt's slogan "kill the Indian, save the man," along with the US federal government's Americanization policies realized through boarding schools exemplifies the colonial logic and practice of extermination and incorporation. The campaign beginning in 1887 to eliminate indigenous ways of knowing and being shares commonality with Imperial education practices throughout US territories including the Philippines and Puerto Rico. The iconic cartoons, "White Man's Burden," are visual artifact depictions testifying to this point. Victor Gillam's (1889) cartoon entitled, "The White Man's Burden (Apologies to Kipling)," portrays Uncle Sam and John Bull endeavoring to carry nations racially characterized as child-like men of Samoa, the Philippines, Africa, Hawaii, Cuba, India and China over boulders etched with the words "barbarism, ignorance, oppression, superstition, cruelty, vice and slavery" to the beaming golden statue of "civilization." Ignorance appears on two boulders and is the only repeating word, indicating the position of Europe toward the rest of the world as being empty and devoid of knowledge or development, based on cosmologies that differ from Western values.

In 1999 the US based Feminist Majority organized a campaign to address the plight of women in Afghanistan suffering under the Taliban regime. The image of the burqa-clad woman, covered entirely from head to toe, was circulated as the image representing the oppressed Afghan woman, mobilized by fear and anxiety of Islamic Fundamentalism. Aside from the preoccupation with Afghan's oppression from wearing Western style dress, was a focus on the lack of education and employment. While the feminist majority remained concerned with issues of dress, employment and education, women in Afghanistan including the Revolutionary

Association of the Women of Afghanistan (RAWA) were campaigning to halt US bombs in order for food aid to be delivered (Hirschkind & Mahmood, 2002, p. 4). The approach taken by the Feminist Majority and its supporters erases the history of US military presence in Afghanistan during the 1980's through Cold War policies to block the Soviet Union from the Middle East— funneling more than \$3 billion to Afghan insurgency groups and arguably giving rise to the Taliban (Hirschkind & Mahmood, 2002). In 2011 the Feminist Majority endorsed President Obama's decision to escalate the war in Afghanistan to prevent the return of the Taliban regime, while the RAWA staunchly opposed any increase in US military presence (Dean, 2009). The image of the oppressed woman becomes justification for what Guyatri Spivak (1988) calls, "White men saving brown women from brown men" (p. 297).

Ways of knowing and living outside ideological borders designated as American are dehumanized to justify intervention through mass killing and incorporation (which is not itself an inclusion into full sense of the colonial notion of humanity but inclusion based on upon exclusion or, the perpetual Other, particular). In 2001, the language of *homeland* entered into everyday lexicon as though it were commonplace. President Bush employed the term addressing the nation on September 20, 2001 and was the first president to use the term during a period of crisis (Kaplan, 2002). Soon after, the entire Department of Homeland Security was established to monitor against terrorist threat. The term homeland security itself in fact presents a profound sense of insecurity, where homeland is perceived as constantly under threat of attack, to which its borders must be secured both physically and ideologically. Homeland is a rhetorical device which serves to instill notions and sentiments of patriotism rallied around a claim to land and homogenous identity. Who gets to claim the United States as

homeland? For a president to use the terms signals a white settler birthright to the land and homogenization of the homeland's peoples, which extinguish and ignore the existence of indigenous histories and knowledge systems. Policing the borders of the homeland is as much about cultural and ideological boundaries as it is about physical borders.

Speaking, writing, and image making against the totalizing colonial narratives serve as space and possibility toward self-determination and new conceptions of the role of ownership and creativity. As a counternarrative and counterimaging campaign, the Beehive Design Collective based in the United States creates massive and intricate images generated from stories shared with the collective by peoples from Canada to Central and South America. Their work focuses primarily on the impact of imperial and neoliberal policies throughout the Americas, rooted in histories of colonization. Their major work includes, "Plan Colombia," "Mesoamerica Resiste," "The True Cost of Coal," and "Free Trade of the Americas." Each is copyright free. "Mesoamerica Resiste" is a double-sided poster that opens up into a three-fold panel. It took nine years to complete (Beehive Collective, 2014). The front of the graph depicts the colonial view of the world, as top down, with a view of the Americas mapped for extraction and profit through exploitation and nature and peoples living in the Global South. A scroll at the top of the poster reads "Plan Mesoamerica: Progress, Competitiveness, Capitalism, Everytime history repeats itself, the price goes up." The Chiquita Banana woman and Starbucks siren sit at a roulette table decorate the map, along with monopoly characters sitting in a meeting and several more corporate characters. The four corners of the map are distinguished by caricatures of the World Bank (a headless businessman with a bloated vault for a stomach, slot machines for arms, racking in poker chips), International Monetary Fund (a headless businessman, doctor,

and scientist with central America on a surgical table being cut apart and stitched together), Inter-American Development Bank (a headless Spanish conquistador with a cash register stomach churning the letters N/C-A-F-T-A, with bulldozers for arms), and World Trade Organization (a headless judge weighing scales of injustice, with a gavel playing 'whack-a-mole' with anti-globalization protestors). The Americas are paved with roadways symbolizing Proyecto Mesoamerica, formerly Plan Puebla Panama, a multi-billion dollar development plan aimed at economic and social integration of the Americas. Each piece on the poster tells an intricate history, illustrated through the stories of peoples most severely impacted by colonial, neoliberal and globalization policies. It speaks back to the rhetoric, imaging and framing of the colonial design. It flips the gaze back onto the colonial project in order to understand its violent and deadly realities that are premised upon expansion, development, and humanitarian aims.

What might a history of globalization and education look like as told from the perspective of the colonized, the subaltern? As the poster opens up into the three-fold panel, it reveals a scene of invasion and resistance, using non-human life as metaphor. Tourist resorts and attractions sit at the outer edge of the design, with cardboard cut outs of Mayan Temples, Dragons, and Mickey Mouse separating the tourists from scenes of exploitation, political organizing, and daily activities. Indeed, in many cases, these histories are criminalized, attacked, and framed as terrorist and oppressive. The kidnapping and mass murder of 43 teacher education students in Iguala, Mexico, part of Escuela Normal Rural de Ayotzinapa, is evidence. The teacher-school is known for their indigenous pedagogies, teaching in Spanish and in Nahuatl and working toward liberation through critical, relevant and integrated curriculum. Kidnapped by the Mexican police after protesting unfair teacher pay and hiring practices, the

students were handed over to a Mexican drug gang and murdered (Cadena, 2014). To critically examine current contexts, and claim identities intended by the colonial project to be dead is framed as an act of terror. To access historical narrative and languages meant to be forgotten poses a legitimate threat to the authority of the nation-state.

### **A Colonial Humanity and Citizenship**

While an entire history of coloniality is wholly unpractical for the purposes of this project, I situate my analysis in colonial histories which have codified ideas of European man as the standard of humanity imbued with the authority, indeed the duty and responsibility, to manage and control life. A close examination of history finds the current global discourse on human rights, humanitarianism, and natural rights of man can be traced to the sixteenth century in the Spanish encounter in what was to be named the Caribbean and the Americas (Wallerstein, 2006). In the 1550 Valladolid debates between Juan Gines de Sepúlveda and Bartolomé de las Casas the Spanish Monarchy ruled on the question of the humanity of indigenous peoples of the Americas, ultimately to find them barbaric by their lack of Christian religion and therefore justifying invasion. In these debates, Las Casas argued against universalized humanitarian efforts based on the ethics and values of particular peoples forced upon another. Sepúlveda, on the other hand, argued for a holy war against barbarism (and therefore against indigenous ways of life as they were understood) on the basis of natural right and humanitarianism as just cause (Brunstetter & Zartner, 2011). Spain intervened *on behalf of* indigenous peoples in a Christianizing mission. The paradox at once treats indigenous peoples as less than human, while simultaneously necessitating their humanity in order to intervene. Wallerstein (2006) traces the foundation of Western democracy and human rights as

universalized ideas to the Valladolid debates. The central question, “who has the right to intervene?” shapes the framework of his analysis and demonstrates that the West has continuously assumed authority over intervention in order to impose its own political (version of democratic) and economic (capitalist) systems. “The concepts of human rights and democracy, the superiority of Western civilization because it is based on universal values and truths, and the inescapability of the submission to the ‘market’ are all offered to us self-evident ideas” (Wallerstein, 2006, p. xv). The right to intervene on humanitarian grounds was conflated with the right to establish economic and political order under the structure and management of Europe. Furthermore, colonized territories were labeled *terra nullis*, Latin for, “land belonging to no one” (De, 1998), determined to empty, bare or uncultivated as defined through a European perspective (Shiva, 1997). Indigenous peoples were constructed as being unproductive, not making use of the land by generating excess to be sold through capitalist markets. The extermination of indigenous peoples and dispossession of their land has been historicized in dominant discourse (sanitized curriculum) as what Brustetter and Zartner (2011) termed in the title of their essay “just war against barbarians,” a rationalization of mass killing and the deaths resulting from disease and forced migration as afterthought or necessity to the forward movement of European modernity.

In the 18<sup>th</sup> century religious cosmopolitanism based on the rights of the people was supplanted with national cosmopolitanism based on rights of man and of citizen. A European enlightenment notion of citizenship subjected citizen to the law of the State, a mono-national state. National identity replaced religious identity as a primary mode of organizing peoples into political order. The homogenous citizen belonging to the same ethno-class developed the

nation-state. The man whose rights were to be protected was understood through racial lens of white superiority against the colonial difference of African Blacks, Asians, and Indians, and through a Christian lens against the difference of Muslims and Jews. Christianity is conflated with race. Those outside this definition of man and citizen are made to be without history and without knowledge or reason or logos, therefore incapable of political participation (lacking Latin languages and thereby the written word as interpreted by missionaries and colonial scholars). The European Renaissance and European Enlightened man is posited as the inventor and beholder of philosophy; anything outside the European order is made to be a threat to humanity itself.

In the third stage of colonial expansion, characterized by technologies of communication and understood as globalization, the first two phases of colonizing thought, language and cultural heritage are further and more subversively entrenched. While the forms of coloniality have changed shape, mobilizing different rhetorical strategies, the system of European Universalism persists— from the sixteenth century's project to convert barbarians by bestowing Christianity, in the 19th century give civilization to the world, and in the 20th and 21st century to spread democracy and human rights to spaces whose cultures or society are deemed backward, barbarian and oppressive.

Colonial logics of linear progress and development, purity, and objectivity provide justification for extermination and incorporation of all else outside the European concept of Self. Ways of knowing and being, indeed the epistemic, ontological, social and political options are made dependent Western structure, even as this dependence brings about death. Modernity values and orders lives in relation to their market value. Reform in this system

restricts rhetoric to that of the productive citizen-subject. For example, recent anti-deportation campaigns take the rhetoric of productive laborers or innocent subjects who either provide cheap labor, conform to nuclear family structure and so raise productive citizens, or strive for self-improvement to contribute to society (Puar, 2007). Those who do not fit the narrative of the productive citizen continue to be rendered as that which the colonial system seeks to purge. Existence is tied predominantly to the singular market economy because the State exists primarily to regulate the flow of goods and services, of wealth and private property.

Universal human rights create a paradox of inclusion based on the framework of violence and exclusion, limiting possibilities for self-determination and pluriversal realities. The Universal Declaration of Human Rights (1947), for example, is designed out of European experience of the Holocaust, or, as referred to by Aime Cesaire (2000), “the imperial chickens coming home to roost” (p. 24). Cesaire connects Hitler with Western humanitarian and capitalist projects rooted in histories of colonization; “it would be worthwhile to study clinically, in detail, the steps taken by Hitler and Hitlerism and to reveal the very distinguished, very humanistic, very Christian bourgeois of the twentieth century that without his being aware of it he has Hitler inside him...” (p. 36). Definitions of who is allowed to be human, on what grounds, and secured by which mechanisms are produced in hegemonic fashion through the colonial gaze, and disallow peoples from enacting their own legal, economic and educational systems as they are forced to be dependent on the colonial concept of human which is always out of reach or precariously positioned. Described by Glenn (1993),

insisting on the necessarily universal character of rights, however, is seen and will continue to be seen as a modern form of imperialism, using the same old private means.



Universal rights are simply another form of universalizing the truths of a particular tradition. It is being illiberal at all being liberal, forcing people to be free. (Glen, 1993, p. 13)

The last line here juxtaposes two seemingly contradictory realities, forcing and freedom, which are conflated into one within campaigns for universal human rights and Western democracy (as an end in itself, rather than means toward justice). The logics of coloniality operate differently across time and space, with different rhetoric, mechanisms and technologies. However, the underlying principles create a foundation and framework for modern/ colonial projects. As such, they also serve as points of solidarity in organizing against the logics and mechanisms designed to destroy or exploit.

It is significant to note that the adoption of the Universal Declaration of Human Rights trumped the Atlantic Charter and eliminated the language and aims of right to self-determination. The right to self-determination was supported by black thinkers and political actors such as W.E.B. Dubois as a necessary condition to redress white supremacy in the US and globally. Anti-colonial leaders similarly pushed for the inclusion of the rhetoric of self-determination in the UN declaration of human rights, but the individualized and depoliticized language trumped the collective and political nature of self-determination. Consider, for example, the options lobbied for by industrial first world nations to bring third world nations out of poverty. Rooted in the histories of the Cold War and the fall of the Soviet Union, capitalism has purported to bring freedom and democracy to the world so that goods of the market might be enjoyed more widely. Even if nations were to follow suit, one needs only to

look at the levels of inequality, health disparities and the conditions of minorities within these countries to understand that the option confers wealth upon few while the overwhelming majorities have become more akin the *le damne*. Furthermore, the individualized rhetoric of capitalism will continue to compound wealth and privilege upon the already wealthy, and grant or lease wealth to individuals in the minority who incorporate into the framework. Collective liberation is entirely guarded against and so whole populations or nations can never hope to achieve emancipation from their conditions of poverty and dispossession when relying on this framework.

Logics of dependency operate by emptying subjects of intellectual capacity, universalizing progress toward linear market development, and erasing pluriversal ways of knowing and being toward a linear, monoculture existence. Political resistance is restricted to the language and epistemologies of the modern-colonial state, which maintain a social order based on inequality. Politics within the logics of dependency posit subjectivities in the deficit, lacking in some intrinsic way, which can only be remedied by the dominant political system. The relationship of dependency, different from interdependency, is a one-sided relationship where subjects are made dependent on a power outside themselves to make decisions and mediate basic needs of survival including land (food, shelter, home/ belonging), water, safety and healthcare. In what political philosopher, or anti-philosopher, Jacques Ranciere (1999) describes as the police order, subjects exist only in relation to the police State that desires only to protect the interests of capital and under whose terms subjects must negotiate the parameters of their existence.

### **Autonomy and Self-Determination**

The Declaration on the Rights of Indigenous Peoples is most comprehensive international declaration on the rights of indigenous peoples. It establishes self-determination as a norm to indigenous peoples. Adopted in 2007 after more than 25 years of negotiations, the Declaration sets forth agreements between nation-states and indigenous peoples primarily in terms of distinct cultural and political status, as well as relationship to historical land and territory aimed at eliminating human rights violations. The Declaration was voted on September 13, 2007, with 144 countries in favor, and four against—Australia, Canada, New Zealand, United States (Tsosie, 2012). Each country has informally endorsed the declaration, but with no legally binding responsibilities. Notably, all four member states that voted against are developed white settler colonialist states whose origins are founded upon the removal and relocation of indigenous peoples.

The history of the Declaration can be traced back to the International Labor Organization (ILO) who in 1957 presented a convention to trigger international consensus on rights of indigenous peoples (ibid). The rapid industrialization and development of nation-states prompted involvement of the ILO due to exploitation of indigenous peoples land and labor. ILO 107 presented in 1957 differed significantly from ILO 169 in 1989 on the point of how indigenous peoples are constituted as “peoples” (p. 927). ILO 107 presented indigenous peoples as distinct cultural groups who “should enjoy full protection for their cultural distinctiveness to the extent that this was not incompatible with national goals” (p. 927). However, as in the case of Australia, Canada, New Zealand and the United States as just four examples, the very existence and culture of indigenous peoples can be seen as incompatible with national goals. ILO 169 makes this important distinction,

all peoples are entitled to a right of 'self-determination' or autonomous self-government, which may, in some instances entitle the group to secede from a nation-state that suppresses this right of self-government under conditions of extreme injustice. Secession is an extraordinary remedy, but is justifiable in particular cases. (ILO 169).

Tsotie describes succession as being in fact quite ordinary a proposition for peoples who have endured the colonial Christianizing and humanitarian project for centuries. Notably, under ILO 169 "conditions of extreme injustice" would themselves also have to be defined and interpreted through the law for this distinction to stick. In a hegemonic system, conditions of extreme injustice can be reframed as logical and necessary for security and progress. What would it mean "to confront the denial of need" as stated by Williams (2011) if the need, even as basic as the need for life, is in direct conflict with the foundation, goals and identity of the nation-state? The following chapters will demonstrate that Western modern/ colonial hegemony continues to persist in part by codifying its logics to the destruction or marginalization of all other ways of knowing and living, and to which delinking is violent only toward this structure which needs death in order to exist.

## **Chapter 2 : Development and Knowledge: STEM Education from the Space Race to Race to the**

### **Top**

The current investment in (STEM) education both in the US and globally represents a recycling of Enlightenment values rooted in the ideas that science and technology will solve the world's problems. STEM education historically has served US economic and military agendas

that deeply entrench violence and inequality under the guise of progress. Neoliberal reform in STEM education is engineering a new future of citizenship geared toward increasing technologies that will extract the most value out of the ever expanding reaches of the market, and secure cultural hegemony with militaristic allegiance to the nation-state. STEM education represents the universalization and abstraction of knowledge made to seem necessary by induced political-economic crisis. STEM generates profound insecurities over the safety and national cultural image of the US and simultaneously creates fixed notions of place and border, which necessitate militarized society. Furthermore, over-privileging and over-investing in STEM education understands knowledge to be legible strictly as quantifiable data, de-privileging humanities and the arts and eroding possibility for critically engaged learning tied to questions of power and inequality. Policy analysts under the Obama Administration, for example, favor graduates' earnings in determining the worth of college programs and majors. The highest earning majors are petroleum engineering, pharmacy sciences/ administration, mathematics and computer science, followed by a slew of engineering majors (Chow, 2013). The lowest earning majors are in the arts, social services, and education. These lower ranked majors are often those first on the chopping block during budget cuts. Critical and creative thinking is severely limited, reduced to necessities of the market. The rigidity and narrow focus on STEM education posits that all social, economic and indeed, ecological problems will be solved through market-based solutions and new technologies and that creative energies need to be harnessed towards this end. Furthermore, it entrenches a technocratic approach to education based on isolating variables and developing technologies that deal with the symptoms of modern/ colonial development.

STEM as a neutral curriculum ignores historical and social realities of unequal power distribution that has caused economic, social and environment problems. Those who control the technologies dictate ontological possibilities, and historically map global designs from local, specified vantage points (Mignolo, 2005). The future is in the hands of scientist experts to engineer solutions to the world's problems. Colonized, or formerly colonized, peoples continue to experience and endure Western science and technology that reproduce poverty and displacement under the guise of progress and development, often becoming martyrs to the cause of scientific progress<sup>3</sup>. Possibilities for social democracy and public control of land and labor are severely limited, if not altogether eliminated in part by STEM curriculum. To be clear, my aim is not to dismiss STEM altogether. To do so would be to reinvest in colonial logics that posit non-western peoples as pre-modern, intuitive vs. rational beings, witchdoctors, or entirely without advanced and complex scientific systems. This logic will of course stand out to some as rather ironic given the scientific and technological achievements and contributions of non-European societies, which have continuously been destroyed, disregarded, and appropriated. Instead, the purpose here is to interrogate what happens when STEM education eclipses other ways of thinking, knowing, and being, and is itself narrowly defined as a means of achieving modernity.

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<sup>3</sup> I am thinking here of the atomic bomb, of Hiroshima and Nagasaki, where the burning of peoples was justified not only as a means for ending the war, but as an unfortunate but necessary process of scientific advancement in military power and technology. I am thinking of the drones that "mistakenly" murdered peoples in the Middle East during weddings, even funerals, whose casualties have been brushed aside as necessary effects of tinkering with new models of more effective killing machines. I am thinking of the polluted lands of Vietnam from Agent Orange, of the polluted lands globally from Monsanto and other corporation's pesticides which have been linked to cancer, but whose victims are made the consequence of building a more efficient agricultural system. I am thinking of the continued military occupation and colonization of Hawaii and other pacific islands whose lands continue to be used as testing grounds for military technology. I am thinking of the people for whom it is said, that is sad, but now we know.

## STEM and the Nation-State

The push for STEM education reifies the legitimacy of the nation-state and its borders and depoliticizes knowledge production. According to Daniel Bowen (2010) in an American Enterprise Institute for Public Policy report, “Obama administration's education legacy could hinge on the success of the Race to the Top (RTT) program” (p. 1). RTT is heavily based in STEM education, favoring federal education grants to programs that incorporate STEM as a main facet of instruction. National investment in science education historically is linked to military and economic security in Cold War policy, which has remained the paradigm. It is tied with specific renderings of land and place in need of protection from terrorist threat or invasion, and constricts labor and civic duty toward this end.

After the launch of Sputnik I, President Eisenhower's 1958 State of the Union Address called for a fivefold increase in funding for education activities of the National Science Foundation and increased funding for science courses in elementary and high schools. He found that the most important Cold War problem was educating more scientists and engineers to match the output of Soviet schools stating,

We live in one of the great ages in the story of mankind...For millions of people science has removed the burden of backbreaking toil...Recent studies of the educational standards of the Soviet Union show that this gain in quantity can no longer be considered offset by lack of quality. This trend is disturbing. Indeed, according to my scientific advisers, this is for the American people the most critical problem of all...We should, among other things, have a system of nation-wide testing of high school

students; a system of incentives for high aptitude students to pursue scientific or professional studies; a program to stimulate good-quality teaching of mathematics and science; provision of more laboratory facilities; and measures, including fellowships, to increase the output of qualified teachers. The biggest part of the task is in the hands of you, as citizens. (Eisenhower, 1957)

In this televised speech, Eisenhower conflates democracy with capitalism and anti-communism, and posits scientific progress as a means of achieving capitalist standards of living (consumption) globally by combatting the Soviet Union not only in terms of military power but first and foremost through scientific education. Joel Spring (2006) refers to Cold War education policy as the “educational security state” where the government attempts to manage and control schooling through science education for economic and military purposes (p. 3). He observes, “The educational security state places science and math along with the teaching of economic and religious ideologies at the center of the school curriculum because of their importance for industrialization, militarization, national patriotism, and cultural cohesion” (p.3). Science education toward this purpose creates specific understandings of place, nation and progress which rallies teachers and students under nationalistic agendas rooted in fear. The race to be the most technologically advanced is also the race to have mastery over the organization of life itself—to be the most civilized society. To master science and technology, indeed the technologies that manage and regulate life itself, places one in a position to regulate and control Land and Labor through ideologies made to appear as the natural order. Furthermore, mastery of science education is part of an economic and national security project mobilized by the constructed Other who is threatening to political and economic security (from



the Soviet Union and Communism to Islam and terrorism). The mobilization of science and technology as necessary responses against threats of terrorism and invasion, or more to the point, threats to hegemonic national identity creates a subdued and fearful citizenry accepting of (in some cases advocating for) the militarization of everyday life (pp. 163-165).

The post-9/11 landscape of US education policy with overinvestment in STEM education and neoliberal reforms that facilitate corporate control over education is congruent with Spring's analysis of the educational security state. In President Obama's speech inaugurating the policy Educate to Innovate he states,

Whether it's improving our health or harnessing clean energy, protecting our security or succeeding in the global economy, our future depends on reaffirming America's role as the world's engine of scientific discovery and technological innovation. And that leadership tomorrow depends on how we educate our students today, especially in math, science, technology, and engineering. But despite the importance of education in these subjects, we have to admit we are right now being outpaced by our competitors. So make no mistake: Our future is on the line. The nation that out-educates us today is going to out-compete us tomorrow. (Obama, 2010)

President Obama uses the same rhetorical strategies as President Eisenhower to push for investment in STEM education through mobilizing fear over the threat to US economic and political hegemony, and which allude to or directly address US job loss. The Cold War rhetoric of educating more scientists and engineers for economic and military security of the nation is consistent with President Obama's push to increase STEM education through the American

Recovery and Reinvestment Act and Race to the Top. Under these policies, \$650 million of \$4.35 billion of the Race to the Top are designated for STEM education development, and \$300 million of the \$1 billion allocated for K-8 education in the Recovery Act is committed to increasing STEM education (Pierce, 2013, p. 37). Race to the Top is one of the Obama Administration's policies to address the failures of public schools and compete nationally with countries like China and India whose economies threaten to surpass the United States. It is the race to "out-educate" China, India and the rest of the world for dominant global standing. Fear and anxiety over job loss and inadequate job preparation of US students has become public concern with the popular belief being that students from China and India are better equipped for jobs in the 21<sup>st</sup> century due to their countries' investment in STEM education. The rhetoric of fulfilling labor demands makes government and corporate partnerships appear necessary to develop human capital through education. As Kenneth Saltman (2012) states in *The Failure of Corporate School Reform*, "The dominant justification for corporate school reform is for the United States to develop its labor capacity in the high-technology arena toward the end of winning the global economic competition" (p. 11). What is left out of neoliberal rhetoric is the fact that future job growth is predicted to increase for generalized and low-skilled jobs and decrease for high-skilled and specialized positions. The consequence is low-paid, high-skilled, replaceable workers more willing to work in unjust conditions for fear of job security.

Spring's analysis of the education security state and Cold War education policy can be linked with Clayton Pierce's (2013) scrutiny of what he terms the neo-*Sputnik* era in education, characterized by a neoliberal reform and reinvestment in STEM education that facilitates

biocapitalist<sup>4</sup> interests in schooling and retools a biocitizenship toward corporate and military priorities. As outlined by Pierce in *Education in the Age of Biocapitalism* (2013), “the productive project taking place is effectively an ontological rendering of life through neo-*Sputnik* reform based on investments in STEM forms of human capital” (p. 37). STEM represents the turn to “new market positivism” (Saltman, 2012) characterized by education reform which recognizes and rewards only data driven, quantifiable and abstracted bits of knowledge. For example, Race to the Top requires “value added” measurements for schools to qualify for federal funding. Students’ test scores are analyzed each year for improvement to see how much “value” teachers have added from the previous year. Value-added assessment techniques require complex technologies and software to perform data analysis. It determines teacher’s impact on student’s learning through complex algorithms that seek to isolate “variables” which impede success in high stakes testing. It is an entirely decontextualized way of approaching education. Pierce traces ‘value added’ measurements to its historical rootedness in the logics of cliometrics, where the legacy of slavery was retold by Chicago economists Fogel and Engerman through a neoliberal vision of slavery as system of positive capitalist progress and market-based education *from which slaves benefited*.

The value-added model...retains a similar need to cleanse historical and cultural “variables” such as race, gender, sexuality, and class inequities from educational life by turning them into external factors to the self-valorization process embedded in

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<sup>4</sup> Biocapital refers to the idea that new markets can be created from the retooling of existing forms of life, and simultaneously that value is added to life to improve its capacity to contribute to the market (Pierce, 2013).

neoliberal educational strategies which understands individuals as a series of human capital investments. (Saltman, 2012, p. 67)

The biocapitalist investment in education renders life itself to be a controllable variable to be manipulated in order to serve market priorities (i.e. high stakes testing). Value added measurements are part of modern/colonial logics that view nature and certain bodies as extractable resources to be used toward economic pursuits. It views culture as impediment to progress and development. It quells dissent as a matter of cultural difference and lack of understanding as to vision, possibility, and need of technological advancements like the Keystone XL pipeline or the Plan Puebla Panama.

In “Science Education” published in *Knowledge & Power in the Global Economy: The Effects of School Reform in a Neoliberal/ Neoconservative Age* (2008), Dewy I. Dysktra details the nuanced focus in science standardized testing mandated by No Child Left Behind (NCLB) and links this with neoliberal agendas to privatize and narrowly define scientific knowledge. Testing mandates did not require testing in science until 2007 where states were required to test annually in science to meet NCLB act requirements. The neoliberal agenda of science education is seen clearly in Dysktra’s citation of *A Nation at Risk: The Imperative for Educational Reform* (National Commission for Excellence in Education [NCEE], 1983) which recommended more science and math teachers, and recommended paying them more than social studies or language arts teachers. NCLB’s investment in science and math education is directly tied to economic concerns as Dkystra observes, “[t]he report weaves a message of the importance of intellectual capital and concern over decline in industrial productivity” (p. 307). However, as

previously noted, the projected growth in jobs is not predicted to be within high-skilled, but low-skilled positions. Science education is the unquestioned commonsense response to job creation in the 21<sup>st</sup> century. What is actually going on is a narrow investment and privileging of knowledge that makes life extractable for the private market. It represents a further attack on critical thinking and erasure of forms of knowledge, culture, and ways of being dating back over hundreds of years through modern/ colonial hegemony.

Furthermore, test scores are being used in part to compare national rankings in education, with a particular focus in STEM education, as discussed in *Race to the Top's* social and political impacts. Comparison of national data works to reinforce the nation-state and tie education policy to the security of the nation-state. In "World Bank, IMF, Possibilities of Critical Education" Roger Dale and Susan Robertson (2009) describe two current paradigms of education policy analysis as "methodological nationalism" and "spatial fetishism" (p. 26). Methodological nationalism assumes society is defined through the nation-state to which policy analysis examines and produces policies circulated by the nation-state. Second, "spatial fetishism" describes a process where the spatial is made ahistorical and a-temporal, naturalizing the processes of globalization and fixing nation-state centered epistemological frameworks (p. 28). Education policy reifies nation-state and its conceptions of citizenship. Processes of globalization that continue to exacerbate unequal power distribution are further entrenched as natural processes of linear progress, and policies to ensure economic and physical security of the nation-state made necessary. STEM creates fixed relationships of object to be known and manipulated (also owned) and subject with authority to dominate, which ignores historical and political context. It further perpetuates the myth of the dichotomy

between nature/culture as written about extensively by technoscientific feminists such as Donna Haraway and Karen Barad who have contended that there is no nature outside culture, because everything known to man is already infused with power relationships and cultural values of seeing and knowing. Furthermore, STEM education creates fixed notions of border, space and home. Citizenship responsibility to the imagined homeland is to be the most scientifically and technologically advanced in order to sustain a collective national identity and continue to control labor and resources.

Global education agendas such as Education for All and the Millennium Development Goals favor development funds toward the implementation of STEM education, and within the last 10 years have increasingly focused on the role of girls and women in STEM as the key to economic development. The globalization of the STEM agenda has exported not only the Enlightenment notions of development through increased scientific and technological advancement, and neoliberal framework whereby the answer to poverty is increased market efficiency and expansion of the market. It is also exporting Western ideologies of patriarchy and represents, again, Spivak's adage of the "white men saving brown women from brown men" (Spivak, 1988, p. 297). In *Education and the Reverse Gender Divide in the Gulf States: Embracing the Global, Ignoring the Local* international education policy analyst Natasha Ridge (2014) examines the impact of STEM global education policies on the Gulf States to find an imposed Western gender analysis that creates a false narrative of underserved women and girls in STEM education and employment. As the Gulf States moved from an era where industry was based on pearls and women, to the oil boom in the 1930's, the social and political landscape of the region was transformed and modernization quickly moved from the establishment of

infrastructure, to a focus on education initiatives. Education is intimately tied to market production and global national identification, which becomes important for corporate investment, and to economic measures like GDP. The push for Gulf States to be perceived as modern in order to sustain knowledge-based economies coincided with the emergence of international assessments such as PISA (Program for International Student Assessment) and TIMSS (Trends in International Mathematics and Science Study), as well as global education agendas Education for All (EFA) and Millennium Development Goals. The lack of capacity to achieve these goals led to GCC countries partnering with international education management and consultant firms, further draining education resources and relying on outside experts with little knowledge of the region.

The narrative of an oppressive and patriarchal gulf male, and oppressed gulf female, structures global policy. Western notions of feminism, particular white and Christian notions of feminism, construct a female gulf subject in need of saving from the traps of a repressive culture, whether or not this is actually the case. Ridge (2014) observes,

[T]he marriage of human rights discourse on education for marginalized populations, such as women and girls, to the economic rationale expressed by human capital theory, and the view that women are valuable economic agents require attention, makes for an enduring policy focus, even when it has become irrelevant. (Ridge, 2014, p. 63)

Women in education become the measurement of progress and symbol of modernization. Gendered discourse is present global policy documents even when it is absent from national discourse. In the Gulf States, women outperform their male counterparts at every grade level

(p. 84), yet remain the target of the discourse on global policy, economic, and social development which continue to erode local autonomy and divert attention from locally named and addressed social and political issues. The global push for STEM has continued to demonstrate an abstraction and depoliticization of knowledge, which favors a modern/ colonial order of Western capitalist development, or perhaps more realistically, forces encounter with Western capitalist development through which nation-states must negotiate their future.

### **New Markets and the Corporate Sanitization of Knowledge**

While communities of color often experience technologies through security apparatus positing black and brown bodies as inherently criminal (Means, 2013), white and middle class communities experience technology through new classroom innovations preparing students to manage and control the 21<sup>st</sup> century—further entrenching borders of race and class. Indeed, indigenous communities, black and migrant communities all have distinct and violent relationships to Western science and technological expansions used to enact genocide, sterilize, and cage as *intended* consequences to control Land and Labor under ideologies of white supremacy—and facilitate rapid ecological degradation and forced migration as perhaps “unintended” consequences (Smith 2009). The current agenda of education is made congruent with the agenda of business and large corporations with the same inequalities of race and class more deeply entrenched and encoded from the past 500 years under white and heteropatriachal property law and citizenship.

Demonstrating the sanitization of colonial logics, Kenneth Saltman and Robin Truth Goodman deconstruct the prepackaged BPAmco curriculum in “Rivers of Fire” (2010) to



understand the curriculum's political-economic and ideological functions serving a neoliberal agenda. Beyond curriculum being privatized and teacher's autonomy undermined, they find the curriculum creates a "corporate-friendly worldview" that works to conflate youth identity and citizenship with consumption and nationality with corporate interest.

BPAmoco's curriculum produces ideologies of consumerism that bolster its global corporate agenda, and it does so under the guise of disinterested scientific knowledge, benevolent technology, and innocent entertainment. Separating the pedagogical from the political, BPAmoco's curriculum conceals how this corporation undermines democratic institutions such as public schooling and participates in the hindering of democracy and perpetration of human rights abuses and environmental destruction abroad. (Goodman and Stalman, 2002, p. 37)

Government policies engender for-profit companies to promote pre-packed science curriculum that both normalize processes of globalization and allow students to participate in the process through an un-problematized and neutralized lens of scientific inquiry. Science education is posited outside the realm of ethics and politics serving a neoliberal agenda to expand markets and extract natural resources from the Global South, as Saltman and Goodman detail in BPAmoco's extraction of oil from Colombia coupled with military policy which mystifies and reorients the framework of this problematic relationship through the 'war on drugs.' To put rather simply, the Global South is invented as an extractable resource in need of proper management against either barbaric or absent inhabitants. Neoliberal policies, then, cannot be read outside of the colonial matrix of power which has continued to structure relationships of

power between the Global North and Global south for the past 500 years. While it is important to delineate specific moments, current relationships of power and exploitation must also be tied to their historical roots particularly as coloniality continues to structure relationships to land and labor, between and within nations.

### **Eurocentric Technologies and the Colonial Matrix of Power**

Globalization and the power relations produced through its policies that create disposable bodies (Giroux 2013), erase traditional values and knowledge systems of relating to the Earth and all life (Shiva 2008), center European and Western epistemologies (Mignolo 2000), and construct borders violent to migrant populations but permeable by multinational corporations (Goodman & Saltman 2002), must be linked historically with the processes of colonialism on which the system is founded upon (De Lissovoy 2010). Growing scholarship continues to link Western imperialism and modernity with logics of colonialism. Where modernity and globalization are invoked so to must coloniality in order to signal the deep cultural, historical, and epistemological relationships of power. We are not living in a postcolonial society as ontological possibilities, and relationships of land and labor continue to be structured by colonial logics. The modern world is founded upon Western imperial/ colonial logics. Coloniality is maintained epistemologically and is alive in cultural patterns that appear as common sense or natural by universalized abstract notions of modernity and progress. It is seen in books, in school systems, media, law, labor, and the subtle relations of everyday interaction. It is not simply a historical event, coloniality structures relationships of violence and exploitation between the Global North and Global South reflecting the same logics of domination traced to the fifteenth century.

Coloniality continues to operate through narratives of modernity and progress as mobilized by the push for STEM education to compete for dominant global standing and 21<sup>st</sup> century jobs. Modernity as a response to the problem of inequality, violence and oppression, climate change, ecological destruction – problems power relations have created— proposes not to overcome *coloniality* but tradition and inefficiency through new expanding new technologies. Western science and technology continue to support and proliferate what Andrea Smith (2009) terms “the three pillars of white supremacy” namely: 1) Slavery/ Capitalism 2) Genocide/Colonialism 3) Orientalism/War. The Obama Administration’s investment in STEM education and the biocapital investment in schooling reflect the four spheres in the colonial matrix of power, namely to dominate and control ontological possibilities for capital and military expansion.<sup>5</sup> Coloniality works in specific ways through science and technology, law, spatial relation, economic policy, knowledge and cultural production. However, understood not a single historical political and social structure, coloniality as a paradigm through which policies like the overinvestment in STEM education operate lead to decoloniality as the possibility for uprooting and shifting the paradigm. Overinvestment in STEM education does not only mean that the humanities and social sciences must be given equal weight. Rather, the entire structure must be re-worked in order that knowledge is not made abstracted and extractable, but

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<sup>5</sup> The colonial matrix of power, first written about by Peruvian sociologist Aníbal Quijano (1997) and further elaborated by Walter D. Mignolo, is described by Mignolo (2012) as: The struggle for the economic control oriented to produce commodities for the global market. The struggle for the control of authority. The control of gender and sexuality—among other ways, through the nuclear family (Christian or bourgeois), and the enforcing of normative sexuality and the naturalization of gender roles in relation to the system of authority and principles regulating economic practices. The control of knowledge and subjectivity through education and colonizing the existing knowledges, which is the key and fundamental sphere of control that makes domination possible.

directly relevant to people's everyday lives in a way that brings about sustainable relationship with Land and with Labor.

### **Chapter 3: Modes of Modern/ Colonial Development: Intellectual Property Law**

This chapter examines intellectual property rights in international trade agreements and declarations of indigenous peoples through a discursive analysis using conceptual frameworks of dependency theory, decoloniality and critical race theory. The scope of this chapter covers two multilateral agreements which ushered in a global era of intellectual property law, 1) North American Free Trade Agreement, Chapter 17 (1994) and 2) Trade Related Aspects of Intellectual Property in the Uruguay Round of the General Agreement on Trade and Tariff (1994), the Declaration on Rights of Indigenous Peoples (2007), three select tribal declarations, and a joint publication by the World Intellectual Property Organization and the Office of the United Nations (1998). Attention in each document is paid to the described purpose and aims of intellectual property law, the assertion of Intellectual Property (IP) as human right, the geopolitics and chronopolitics of IP, and what this means for the future of indigenous and historically marginalized peoples.

What makes an examination of intellectual property law urgent and important in considering issues of coloniality? As I look around, nearly all of the materiality and images I am surrounded by are tied to intellectual property rights. IP overlaps across seemingly disparate concerns such as healthcare and medicine, cultural production, climate change, food security, culture and tradition, and scientific and technological development. It raises concerns that are directly related with urgencies of life and death (i.e. affordable access to life saving medicines,

access to seeds for farming, access to technology, etc.). While intellectual property law is often conceptualized as individual right, it is fundamentally linked to global relations of power. Intellectual property law in international trade agreements codifies and globalizes particular values with regard to knowledge production, property, and profit (Gana, 1996; Shiva, 1997). Additionally, in the late 1990's a groundbreaking decision was passed to allow patents on genes, and now anything but a fully developed human can be legally patented in the United States, making intellectual property an ever more urgent and pressing issue with realities of famine, global warming, and disease (Shiva, 1997). The focus within this study makes urgent the assessment of intellectual property law's impact on global divisions of labor, and global divisions of power, wealth and poverty.

IP is significant both economically (materially) and epistemologically (symbolically) to constructing and maintaining global relations of power as they map European legal frameworks globally. Intellectual Property rights have been conflated with right to culture and production through the Universal Declaration of Human Rights, Article 27<sup>6</sup>, Declaration on Rights of Indigenous Peoples Article 31<sup>7</sup> and the International Covenant on Economic, Social and Cultural Rights Article 15<sup>8</sup>. In 1994, the first multilateral international trade agreements related to IP,

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<sup>6</sup> "(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits; (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."

<sup>7</sup> "Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions."

<sup>8</sup> 1. The States Parties to the present Covenant recognize the right of everyone:

NAFTA and TRIPS were enacted, setting in motion a globalized system of IP ushered in under the auspices of trade regulation. Historically, IP emerged out of particular Western ideologies to address economic desires of capital accumulation by turning ideas and creativity into property and granting power over their production and dissemination (WIPO, 1998). A main point of contention within intellectual property law is that it remains grounded in Western ideologies of development, continues to extract resources from historically exploited nations and peoples, restricts access to resources needed for survival (medicines and food), and restricts access to technology and literatures that facilitate economic participation in global capitalism (Gana, 1996; Shiva, 1997).

Instituting a legal mechanism for granting ideas and creative enterprise the authority, privilege and protection of property has the potential to address histories of appropriation and extermination of indigenous ways of knowing and living, or ethnocide—the deliberate destruction of the culture of an ethnic group (Shiva, 1997). However, turning to a European system to address issues of European colonization necessitates recognition and material redress of coloniality as a modern reality and therefore runs counter to dominant logics of modernity as linear and progressive (Mignolo, 2011), and of colonial powers as the exception to the rule of law (Agamben, 2005). Race and culture present a complex paradox within rights

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(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

discourse in general, and intellectual property rights specifically (Harris, 1987; Sunder, 2012). Historically, law has served as a colonial tool to legitimize imperial expansion and confer wealth and privilege upon whites (Bell, 1993; Harris, 1993). The prospect of redressing marginality within the law is certainly quite sticky and contentious: Is it possible to address the needs of marginalized populations within the very system that has created their marginality?

It has been argued that intellectual property rights can address global poverty and marginalization of indigenous peoples by patenting traditional knowledge, thereby allowing economic growth through commodification of that patent (Brush & Stabinsky, 1996). In addition, intellectual property rights have been argued to be a site through which the pirating and appropriation of traditional cultural knowledge might be addressed (Sunder, 2002). The fundamental concern of IP law as addressing needs of peoples through the market however, signals a grounding in neoliberal ideology, which I have demonstrated is traced to histories and logics of imperialism and colonization under rhetoric of development. The concept of development and of the market is fundamentally tied to logics of capitalism and is not related to need for goods and services, as commonly presumed, but to profit motive geared toward inducing crises of scarcity that is primarily “concerned with *people’s ability to pay* rather than their need for commodities” (Rodney 1972, p. 10, emphasis my own). Privatization, deregulation and eliminating barriers to trade and the flow of goods characterize neoliberal policies like NAFTA and TRIPS. Given the history of private property and its connection to capitalism, imperialism, slavery, and colonization, it is impossible to divorce the ideas of property from its ideological connections to race and gender.

The origins of modern Intellectual Property Law can be traced back to 18<sup>th</sup> century Europe and rapid industrialization, which generated a need for legal protection of innovation within a capitalist economy. The concept entered into countries outside Europe only as a result of colonization (Brinkhof, 2002). As recently as the 1950s, Intellectual Property Law has been explored as a means to protect traditional knowledge systems and cultural expressions from exploitation and appropriation (Shiva, 1997). The use of IP to address the needs of Indigenous peoples and the Global South has not been agreed upon but is taken up by critical race theorists, Indigenous and environmental activists. Liberals and conservatives have promoted Intellectual Property law as a necessary condition for fostering creativity and innovation, and therefore growth within a capitalist system. Without the security of protecting an idea, it is argued that people will be less likely to be motivated to invent, and therefore economic and social development will be hindered. Interestingly, western financial advisors as well as ecologists and environmentalists have supported the patenting of indigenous knowledge in order to combat global warming assuming indigenous practices to be ecologically sustainable. This would purportedly allow indigenous peoples to profit from their knowledge systems as well as provide solutions to the problems of global warming.

Ecologists and anthropologist Stephen Brush and Doreen Stabinsky (1996) open their collection of essays, *Valuing Knowledge* stating that, "Intellectual property enables individuals to gain financially from sharing unique and useful knowledge. Compensating indigenous people for sharing their knowledge and resources might both validate and be an equitable reward for indigenous knowledge of biological resources" (p. 1). This mode of thinking represents incorporationist or assimilationist attitudes toward indigenous peoples into the economic



structures that have historically exploited, even extinguished indigenous life. It invites indigenous peoples to be heard/ recognized within the frameworks established by colonial systems, but does not present a model or political mechanism for recognizing and redressing centuries of imperialism, colonization, and continued settler colonialism that disposes/ed indigenous peoples in the first place.

Vandana Shiva, prominent environmental activist and scholar, would view incorporating indigenous knowledge into the framework of IP in order to alleviate poverty and solve the problems created by environmental degradation as an ironic gesture of inclusion based on the historical terms of exclusion, genocide, and exploitation. According to Vandana Shiva (1997)

If we recognize that the dominant economic system is at the root of the ecological crisis because it has failed to address the ecological value of natural resources, expanding the same economic system will not protect indigenous knowledge or biodiversity. (p. 77)

Vandana Shiva (1997) strongly advocates for an opening of the commons and abolition of Intellectual Property Rights, which she sees a system legalizing pirating of indigenous knowledge for corporate profit. In *Biopiracy* Shiva (1997) describes the ways in which corporations profit from the privatization of indigenous knowledge and life itself, selling back the same idea at exponentially higher rates and exacerbating poverty. The same economic relationship characterized imperialism and colonization, where the colonies supplied the raw material to be manufactured by industrial factories in Europe, and sold back to the colonies at knavish rates (Rodney, 1972). Shiva (1997) traces the formation Trade Related Aspects of Intellectual Property Law to major corporations to demonstrate the direct connection between

IP and corporate interest and dispel the idea of law as democratically constructed with the needs of the people in highest consideration. “TRIPs...is not the result of democratic negotiations between the larger public and commercial interests or between industrialized countries and the Third World. It is the imposition of values and interests by Western transnational corporations on the diverse societies and cultures of the world” (p. 81). It was conceived, shaped and negotiated by three organizations representing the United States, Japan and Europe—the Intellectual Property Committee (IPC), Keidanren, and the Union of Industrial and Employees Confederations (UNICE). Intellectual Property Committee is comprised of 12 major U.S. corporations including: Hewlett Packard, IBM, Johnson & Johnson, Merck, Monsanto, Pfizer, Rockwell, and Warner. Keidanren represents a federation of economic interests in Japan. Union of Industrial and Employees Confederation is the officially recognized spokesperson for European Business and industry (*ibid.*). Industries with greatest interests in IP are related to technology, medicine, and food/ agriculture. Medicine and agriculture are most obviously and most literally connected to questions of life and death. Technology, perhaps less obviously, is tied to questions of national economy and participation in a globalized economy, and therefore to sovereignty (Gana, 1996).

The viability of IP to address indigenous peoples’ needs by incorporation into the market presents the problem of corporations “pirating” what has traditionally existed as public knowledge and resource. The often-cited example of the *neem* tree evidences these claims. The *neem* tree in India has traditionally been used as a natural fungicide for farmers. When a corporation attempted to patent properties of the *neem* tree, their patent was denied on the grounds of lacking novelty only because research on the *neem* tree already existed within

scientific literature (Brinkhof, 2002). Had it not existed within scientific research, the patent legally could have passed in the United States, no matter that traditional historical knowledge and memory in India recognizes the *neem* as public and as medicine. However, thousands more patents on life and traditional knowledge systems pass without such contestation (Shiva, 1997). This, in part, accounts for the call of Vandana Shiva (1997) and other critical scholars to abolish intellectual property law in favor of the commons.

Attorneys and critical race theorists Madhavi Sunder and Anupam Chander (2004) complicate the dichotomy between commons and private, and the liberal, even radical contention to open the commons in response to privatization and corporate greed. They argue that an opening of the commons represents a romanticized ideal, which not only cannot be realized at our historical moment, but also would potentially exacerbate inequality (p. 1354). The commons, as discussed by Shiva, produces the assumption that “each person can reap the riches found in the commons...the belief that because a resource is open to all by force of law, it will indeed be equally exploited by all” (p. 1332). This romance is discredited by the fact that simply opening the commons does not address power and privilege, which would continue to structure access to the commons. For example, access to clean air, environmentally safe public recreation spaces, and water—all part of the commons, are impacted by environmental racism and the profit of industries like gas and coal. While these natural resources are open to public consumption without profit, income level often dictates the level of access one has to safe natural resources and essentially, to health and life. The commons, therefore, is not a pristine space escaping the oppressive nature of privatization and therefore the response to privatization may not necessarily or solely be its opposite, in a clean public/ private dichotomy.

Furthermore, while intellectual property law is traced directly to Europe and is a Western legal concept, peoples outside Western traditions have varying concepts of property and rights. It would be a mistake to posit all Indigenous cultures within a framework of the commons, which itself also originates in Europe, England specifically.

Recall Williams (2000) contention for law “to find a political mechanism that can confront the *denial* of need” (p. 85). While Intellectual Property Law may reflect certain needs, it is important to understand how those needs are defined, and how they are protected or mitigated. In other words, one must understand how the need seeking to be redressed is being framed. For example, if the need were framed as alleviating poverty, a liberal and capitalist response would be capitalist development, to which the incorporation model would be relevant. This is the same logic by which scholars like Brush and Stabinsky (1996) argue for using intellectual property law as a means to protect indigenous knowledge systems, address climate change, and compensate indigenous peoples for their knowledge with the hopes to potentially address disparities in wealth for indigenous peoples as well as peoples of the Global South. Furthermore, if the need is framed as combating cultural appropriation, IP might appear as a viable option. Madhavi Sunder (2002) complicates the appeal to Intellectual Property Rights as a means of cultural protection or dissent. For her, Intellectual Property Rights are a dangerous space for culture to enter into because it risks making culture static and uncontested. Sunder uses the example of the Indian film *Fire*, which depicts two Indian women who become romantically involved with each other. The film was banned in India after protests from Hindi groups claiming that the film is against the religious principles of Hinduism, and that homosexuality is a western concept that does not belong in India. She uses this example to

understand the danger in using IP law to define culture. Who, for example, can define and codify how culture is understood within the law? While critical legal scholars may advocate the use of IP for marginalized peoples to combat forms of cultural exploitation, it would be idealistic to assume that this could not further oppress and marginalize peoples by strictly and definitively trademarking culture. Would it be possible to trademark a uniquely American culture, for example? What might this risk in terms of the types of subjectivities made visible by this representation? These questions complicate a simplistic application of IP in response to cultural exploitation. Furthermore, they point to larger issues within the very nature of rights discourse broadly, and intellectual property law specifically.

While intellectual property law can be read as benefitting individuals or corporations specifically, it has broader implications connected to development and wealth of nation-states and national economies. According to Michel (1974) as quoted by Ruth Gana (1996), "[p]atent systems are not created in the interest of the inventor but in the interest of national economy. The rules and regulations of the patent system are not governed by civil or common law but by political economy" (Michel 1974, p. 91). A Marxist analysis understands development to be dependent upon a society's capacity to deal with the environment. Walter Rodney (1972) explains that societies develop economically "dependent on the extent to which they understand the laws of nature (science), on the extent to which they put that understanding into practice by devising tools (technology), and on the manner in which work is organized" (p. 4). Development, however, is not exclusively and economic process within Marxist terms, but a social one as well since the harnessing and changing of the material base relates to the creation of the superstructure which manages and legitimizes relations to the base; "as human beings

battled with the material environment, they created forms of social relations, forms of government, patterns of behavior, and systems of belief which together constituted the superstructure” (p. 9). While the limits of this logic must be understood also in the ways it also invests in colonial logics of premodern and precivilized indigenous societies, it is also important to understand whose interests IP serve through their creating, implementation and naturalization. Intellectual property law represents an element of the capitalist superstructure that is grounded in the fundamental ideologies of private property and wealth and serving exclusively a bourgeois elite (to use Marxist terminology) by creating an owner and designating the owner to have exclusive rights controlling the means of production. It has been theorized that law would erode with the development of a classless society (Stone, 1985), though the possibilities of this within a globalized system are questionable and have not been realized on a large-scale. Intellectual property law is inherently connected to capitalism, and for Marxist and decolonial, and critical legal scholars, is connected to Western notions of development and modernity which continue to underdevelop countries or regions who have been forced into contact with industrial capitalist economies (Rodney, 1972; Gana, 1996).

In “The Myth of Development, The progress of Rights: Human Rights to Intellectual Property and Development” Ruth Gana (1996) discusses the impact of intellectual property law as a human right with specific attention to the right to development and self-determination. Gana (1996) focuses her analysis in the context of African countries and the relationship between technology, intellectual property right, and development. She finds that intellectual property rights grounded in Western values continue to hold African countries in a state of underdevelopment by controlling access to technologies upon which development is premised,

creating the conditions of more deeply entrenched technological dependency. Similar to Rodney's (1972) analysis, Gana traces the relationship of dependency to global divisions of labor where Western European countries and the United States, with large-scale industrialized economies, manufacture goods from the raw materials supplied by then sold back to the peripheral regions of the world—Asia, Africa and the Americas. Today, the relationship of the global division of labor is characterized by technology and access to information. Technological dependency was explicated and perhaps foreshadowed by Rodney (1972) who states; "This lopsided nature of the present international economy is strikingly brought home by the fact that the underdeveloped countries must in turn recruit foreign experts at fantastic cost" (p. 18). Wealth, therefore, is funneled outside the country as the project of modernity places formerly colonized and peripheral countries in economic dependency on Western industrial nations. With intellectual property rights, nations are further entrenched in relationships of dependency given the overwhelming privilege accorded to Western political economies in privatizing technology, and setting the agendas for the privatization of medicines and seeds.

The viability of Intellectual Property Rights in addressing the needs of marginalized peoples is unsettled, but finds that intellectual property law predominantly benefits Western nations. Some advocate incorporation, others abolition, and others understand that there is no easy mutual exclusion of private property versus public domain. Here, I have attempted to contribute to the discussions on IP through the lens of coloniality and decoloniality in order to understand the futures it imagines for indigenous and formerly colonized peoples.

### **Global Codification of Intellectual Property**

In this chapter I use discursive analysis and theoretical frameworks of Critical Race Theory (CRT) and decoloniality. Discursive analysis “deconstructs common sense textual meanings; identifies meanings that undergird normative ways of conceptualizing and discussing phenomena” (Brantlinger, et al, 2005, pp. 197). This is the overarching approach taken up within this study in order to understand the ideologies (re)produced through IP, and their material and symbolic consequences.

As stated, international agreements related to intellectual property rights will be analyzed as the framework and foundation that define the scope, purpose and meaning of intellectual property within trade. Two agreements including North American Free Trade Agreement (NAFTA) (1994), which has served as the foundation for similar agreements in Central America and the Caribbean, and Trade Related Aspects of Intellectual Property Rights (TRIPS) (1994) will be analyzed. Chapter 17 of NAFTA introduced the first international, multilateral agreement on intellectual property rights related to trade, followed shortly after by TRIPS. NAFTA encompasses Canada, the United States and Mexico. TRIPS applies to the 75 member nation-states of the World Trade Organization. Only the provisions related to intellectual property rights will be selected from each of the agreements. I also analyze the language in the Declaration on Rights of Indigenous Peoples and three select tribal declarations from Declaration of Belem, July 1988, Kari-Oca Declaration and Indigenous Peoples Earth Charter, May 1992, and Kimberley Declaration, August, 2002. Finally, I analyze the language in a public relations document from the World Intellectual Property Organization and the United Nations, from a discussion commemorating the 50<sup>th</sup> anniversary of the Universal Declaration of Human Rights on November 9, 1998 entitles “Intellectual Property and Human Rights.” The



World Intellectual Property Organization was created in 1970 and became a specialized agency of the UN in 1974. As legal documents and publications of international organizations, these data serve as “official perspectives” and define the limits and possibilities of intellectual property (Bogdan & Biklan, 2003, pp. 128).

### **Progress and Development**

The theme of progress and development was the most prevalent within the 215-page World Intellectual Property Organization’s public relations document and is used to address the need for intellectual property, and the possibilities of intellectual property law as a humanitarian project (solving social and environmental ills of global poverty, climate change, food scarcity, etc.). This revealed the ways in which intellectual property law, on a global scale, is deeply steeped in development discourse and the promise of developing nations through technological progress, guided by industrialized Western Nations. For example, a word search of the document revealed the following frequency of terms: Property: 944 (this can serve as a marker for interpreting word frequency), Development: 424, Advancement: 75, Progress: 52, Market: 79, Poverty: 3, Poor: 10, Indigenous: 229, West/ern: 0, United States: 1, Europe, 0. It is interesting that while there is a major concern with intellectual property law and development, poverty and poor people are infrequently addressed. When poverty and poor people are addressed, it is often recognized that intellectual property laws do not benefit poor people (primarily in the ways in which they restrict access to information, food, and medicines, and create conditions of poverty for farmers through the patenting of seeds) and yet, the rhetoric on development is maintained.

The West, or that intellectual property law emerges out of a Western perspective, is not mentioned once in the document, while indigenous is mentioned 229 times. This reflects the mechanisms of the colonial gaze (Said, 1975; Spivak, 1981; Harraway, 1998), where the colonized are made hyper-visual and problematized and where Western remedies seeks solutions, which fail to address the West's complicit and active role in creating conditions of poverty, violence and marginality. The West is made the locus of enunciation to which all other chronological and spatial realities are interpreted through, and therefore the West becomes blind to themselves, lacking in self-awareness as the norm and standard bearers (Said, 1975; Spivak, 1981).

The World Intellectual Property Organization itself originated out of development projects. It was established in 1970, and becoming a specialized branch of the United Nations in 1974. Article 1 of the Agreement between the United Nations and the World Intellectual Property Organization, which defines the role of the WIPO as a development entity states:

The United Nations recognizes the World Intellectual Property Organization (hereinafter called the " Organization ") as a specialized agency and as being responsible for taking appropriate action in accordance with its basic instrument, treaties and agreements administered by it, inter *alia*, for promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development, subject to the competence and responsibilities of the United Nations and its organs, particularly the United Nations Conference on Trade and Development, the United Nations

Development Programme and the United Nations Industrial Development Organization, as well as of the United Nations Educational, Scientific and Cultural Organization and of other agencies within the United Nations system.

Historically, this agreement can be situated within the decolonization and national liberation movements of the 1960's and 1970's. In the period of 1970-1974 alone, Fiji, Tonga, Bahrain, Qatar, Oman, Bangladesh, the Bahamas, Grenada, and Guinea all gained independence. In post WWII global divisions of labor rooted in imperial histories, the United States and Western Europe, with industrialized economies, manufactured the raw goods from the colonies, only to be sold back to the colonies at higher rates. This same global division of labor continued after the Cold War and changes in global political alliances (Gana, 1996, p. 316). With the independence of colonies, a new global economic order was set into motion making formerly colonized countries dependent upon industrialized nations for access to goods, resources and technologies (Escobar, 2012). The concern for the transfer of technology to less-developed nations disregards local and historical contexts of those nations, and represent Eurocentric models of reform.

Finally, there was an overall assumption that these countries would "develop" in the same way that Western countries did and that the same conditions that facilitated the success of Western intellectual property laws would be duplicated in developing countries. This school of thought fails to consider that the development of technology is a historical process shaped by economic and cultural dictates that include forms of social organization, the needs of the society at a given time, and a political structure

that coordinates all these factors into a cohesive and viable national policy. (Gana, 1996, p. 331)

Gana's (1996) quote emphasizes the local specificity of intellectual property law as rooted in European histories and logics. Taking into account the theories of dialectical and historical materialism, it is important to note that IP emerges from specific relationships and historical processes, which do not occur in the same way globally. To impose the law globally assumes all places will or should follow a similar trajectory, and therefore impedes local autonomies and processes of collective self-determination making places dependent on European ways of organizing society.

Furthermore, asserting intellectual property rights as *human right* universalizes the ideals of intellectual property law, which themselves are rooted in specific, local European histories of Enlightenment. It reflects the European colonial logic, which finds political mechanisms to map the values and ontological possibilities of Europe onto the rest of the world. Intellectual property law as a human right reflects the notion that intellectual property law is necessary for development and civilization. It continues to usher in the notion that Europe is the beacon and marker of all things civilized, outside of which no other legitimized forms of organizing life are legitimized. Intellectual property laws "are designed, in their present form, to meet the needs of countries which are exporters of intellectual works" (Olian 1974, p. 95 as quoted by Gana, p. 330). Furthermore, instead of creating economic independence and "proving to be of benefit to developing countries... [are] having a negative effect on their development" (Vaitsos 1976: 85, quoting UNCTAD, 1975). Ultimately, under the

rhetoric of development and progress, to be garnered through universalized ideals of property and ownership, intellectual property laws represent European modern/ colonial values that continue to exploit nations and peoples while claiming good faith and humanitarian aims.

In an attempt to incorporate cultural property, with the aim of securing cultural dignity and respect, UNESCO adopted the 1966 Declaration of the Principles of International Cultural Co-operation (p. 21). The primary aim was to allow non-Western peoples to contribute to modernity, to incorporate cultural policies into development strategy rather than be left out of creating the modern project. Article 1 of the Declaration designates cultural heritage as, “architectural works, works of monumental sculpture and painting, elements or structures with archeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history art or science” (p. 21). Article 2 defines natural heritage as “natural features consisting of physical and biological formations or groups of such formations which are of outstanding universal value from the aesthetic or scientific point of view...” (p.21). The value of culture is defined with regard to the value it holds from a western perspective, with claim to objective universality and toward a western project of modernity. Notions of development, progress, civilization and citizenship, therefore, cannot be understood outside a geopolitical and racial historical narrative.

While its form has changed shape, mobilizing different rhetorical strategies, the system of European Universalism persists— from first instance in the sixteenth century, to convert barbarians to Christianity, in the 19th century to civilize, and in the 20th and 21st century to spread democracy and human rights to spaces whose cultures or society are deemed backward, barbarian and oppressive (Mignolo, 2010, Wallerstein, 2006). Colonial logics of linear progress

and development, purity, and objectivity provide justification for extermination and incorporation of all else outside the European concept of Self. Ways of knowing and being, indeed the epistemic, ontological, social and political options are made dependent Western structure, even as this dependence brings about death.

Universal human rights, property rights, and intellectual property rights create a paradox of inclusion based on the framework of violence and exclusion, limiting possibilities for self-determination and pluriversal realities.

### **Chronopolitics of the Colonized**

The attention to indigenous peoples in the WIPO document (1998) signals the growing concern over the impact of IP on indigenous knowledges and ways of living however, this concern is taken up contrastingly between the WIPO and indigenous peoples. The WIPO framing of indigeneity creates a separatist, and isolationist notion of indigenous peoples in the rhetoric around preservation.

They want property to function in a way that allows them to control the use of cultural information which in some deep sense is part of them, to which they are attached, cultural information they do not necessarily want to become the subject of global processes of commodification and appropriation. For them, intellectual property should first and foremost function to preserve their way of life. (p. 30)

Indigenous peoples are framed as separate from, and in some ways in contrast to European modernity. It is the marker of a historic relic to serve as a reminder of European progress and

European good faith—offering a seat at the table for indigenous peoples to incorporate their knowledge systems.

In juxtaposition to the ultimate lack of recognition of the West or Western values within the World Intellectual Property Organization (1998) document, the multiple treaties by indigenous peoples explicitly refer to intellectual property as Western law. The ways in which the political project and aims of indigenous peoples with regard to IP are discussed, and the ways in which indigenous treaties discuss IP are markedly different as well. For the WIPO, the aims of indigenous peoples with regard to IP are interpreted primarily as a preservationist. For indigenous peoples, as articulated by the five treaties analyzed in the studies, their aims seem to be to recognize the Western nature of intellectual property law and if it is taken up, to use it as a mechanism against appropriation and ethnocide. Furthermore, indigenous treaties recognize indigenous knowledge not as static, but as constantly living and regenerating.

The Declaration of Belem (1988) ratified in Brazil makes important distinctions that interrupt the normative development and dependency discourses. It declares indigenous peoples to be stewards of earth's biological diversity, and recognizes, "that economic, agricultural, and health conditions of people are dependent on these resources" (Proclamation) and so calls for development funds to be "devoted to efforts aimed at ethnobiological inventory, conservation, and management programs" (Statement 1), and that "mechanism be established by which indigenous specialists are recognized as proper authorities and are consulted in all programs affecting them, their resources, and their environment" (Statement 2). It also declares, "ethnobiologists make available the results of their research to the native

peoples with whom they have worked, especially including dissemination in the native language” (Statement 7). Indigenous peoples are presented here as active, innovative and expert, and call for a type of reparation from knowledges stolen from them from outside experts who used indigenous peoples for their own research.

The Kari-Oca Declaration and Indigenous Peoples Earth Charter (May 1992) ratified by Indigenous peoples from the Americas, Asia, Africa, Australia, Europe and the Pacific is an extensive document covering human rights and international law, lands and territories, biodiversity and conservation, development strategies, and culture, science and intellectual property in 109 statements. Significant to the statements on development, the Declaration directly addresses the colonial logic of indigenous peoples as pre-modern, and development projects aimed purportedly at addressing their development. It asserts:

62. Our development and life strategies are obstructed by the interests of the governments and big companies and by the neo-liberal policies. Our strategies have, as fundamental condition, the existence of international relationships based on justice, equity and solidarity between the human beings and the nations. (66) The concept of development has meant the destruction of our lands. We reject *the current definition of development* as being useful to our peoples. Our cultures are not static and we keep our identity through a permanent recreation of our life conditions; but all of this is obstructed in the name of so called developments. (74) Non-Indigenous Peoples have come to our lands and resources to benefit themselves. And to the impoverishment of our peoples. Indigenous Peoples are victims of development. In many cases Indigenous



Peoples are exterminated in the name of a development program. There are numerous examples of such occurrences. (77) The eurocentric notion of ownership is destroying our peoples. We must return to our own view of the world, of the land and of development. The issue cannot be separated from Indigenous People's rights. (Kari-Oca Declaration, Article 62, 1992, emphasis my own)

The Declaration makes visible the locally specific epistemic perspectives of intellectual property law as rooted in European ideologies and histories. With regard to intellectual property law, the Declaration frames crime in a much different manner than is framed by NAFTA and TRIPS which attribute economic and criminal sanctions to the infringement on intellectual property. Instead, crime is framed through a lens redressing ethnocide and appropriation:

99. The usurping of traditional medicines and knowledge from Indigenous Peoples should be considered a crime against peoples. 103. We should list the suspect museums and institutions that have misused our cultural and intellectual properties. (Kari-Oca Declaration, 1992, Article 99 & 103)

This Declaration envisions new definitions for criminality, which is not just an offense to the party whom the crime was perpetrated against, but a crime against all peoples and therefore one that becomes a collective responsibility to address. The issue of institutions profiting from, and appropriating indigenous knowledges and practices is also addressed. Where current intellectual property law would require indigenous peoples to incorporate their knowledge in order to seek any reparation against appropriation, this Declaration offers a different chronopolitical perspective where museums and institutions might be retroactively made

responsible for what has been stolen from indigenous peoples. Also, rather than offering a symbolic gesture through formal apology, and beyond simply returning stolen cultural artifacts, making these practices criminal *within* an intellectual property schema might require monetary compensation as well.

Finally, with regard to intellectual property law specifically, the Declaration reaffirms indigenous peoples as producers of knowledge who have given and shared this knowledge with humanity:

102. As creators and carriers of civilizations which have given and continue to share knowledge, experience and values with humanity, we require that our right to intellectual and cultural properties be guaranteed and that the mechanism for each implementation be in favour of our peoples, and studied in depth and implemented.

(Kari-Oca Declaration, 1992, Article 102)

By positing indigenous peoples as in need of preservation assumes they have nothing to give or to offer humanity in modern times. Or, by positing indigenous peoples as holding the answers to global warming, if only their knowledges would be shared with the scientific community represents indigenous peoples again as the final frontier, the solution to problems inherent in Western colonial/ modernity.

The Kimberly Declaration (August, 2002) emerged from the International Indigenous Peoples Summit on Sustainable Development Khoi-San Territory in South Africa. The very first line in the declaration proclaims indigenous peoples as future oriented, and grounded in historical experience: “We, the Indigenous Peoples, walk to the future in the footprints of our

ancestors” (Preamble). The language of declaration is grounded in recognition of relationship, intergenerational relationship, relationship to land, solidarity with indigenous peoples, calling for relationship of recognition and good faith with international governing bodies, and recognizing exploitive or one-sided relationship of international governing bodies. It states:

Transnational corporations and industrialized countries impose their global agenda on the negotiations and agreements of the United Nations system, the World Bank, the International Monetary Fund, the World Trade Organization and other bodies which reduce the rights enshrined in national constitutions and in international conventions and agreements. Unsustainable extraction, harvesting, production and consumption patterns lead to climate change, widespread pollution and environmental destruction, evicting us from our lands and creating immense levels of poverty and disease.

(Kimberly Declaration, 2002, Preamble)

With regard to intellectual property law the Declaration states:

Our traditional knowledge systems must be respected, promoted and protected; our collective intellectual property rights must be guaranteed and ensured. Our traditional knowledge is not in the public domain; it is collective, cultural and intellectual property protected under our customary law. Unauthorized use and misappropriation of traditional knowledge is theft. (Kimberly Declaration, 2002, Preamble)

This point is interesting in juxtaposition with Vandana Shiva’s (1997) contention for an opening of the commons. This declaration instead recognizes that traditional knowledge is not part of a

commons or public domain, but is collective and managed under customary law—often overlooked by federal government and international law.

The Declaration on the Rights of Indigenous Peoples (2007) resulted from 20 years of international negotiations. Originally, it was signed by a majority of the UN member states with four members vetoing the Declaration: United States, Australia, Canada, and New Zealand—each whit settler colonial nation-states or empires with tense relationships between the State and indigenous peoples over territory and land use. The main reasons cited for not signing the treaty were the lack of legal definition for indigenous peoples and concern over parts of the Declaration, which affirm indigenous peoples' rights to sovereignty, self-determination and indigenous peoples' customary legal systems and Articles 26 and 28, which recognize indigenous peoples' right to land, and territory. While the declaration represented an important moment for indigenous' rights internationally, the language of the document also in some regards promotes a isolationist ideology absent of relationship to global humanity, and misrecognizing or ignoring histories of coloniality.

With regard to intellectual property, the Declaration states:

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their

intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions. (Declaration on the Rights of Indigenous Peoples, 2007, Article 31)

In contrast to the three declarations previously discussed, the UN Declaration on the Rights of Indigenous Peoples lacks the same comprehensive scope and historical analysis, though it is the most authoritative document on Indigenous Rights.

### **Social Values: Market and Life**

Intellectual property laws became globalized and universalized through trade agreements, a move spearheaded by US-based pharmaceutical company Pfizer (Gana, 1996). Incorporating intellectual property laws into international trade agreements would force countries to comply with standards of intellectual property law set by the agreement, rather than maintaining sovereign authority over matters relating to intellectual property. TRIPS is a particularly powerful binding agreement since its ratification is a requirement for countries to join the World Trade Organization.

While the actual language of NAFTA and TRIPS is flexible in considerations valuing life, this is in fact one of the only places where flexibility in the law occurs. In NAFTA in particular, interpretive language appears only in the sections, which talk about the protection of life and consideration of morality. Interpretive language indicates imprecise wording and flexibility, subject to the social and moral norms of those following and enforcing the policy. Trade Related Aspects of Intellectual Property law reflects similar flexible language with regard to right to life clauses. For example, Article 1709.2 and 1709.3 of NAFTA indicates:

A Party may exclude from patentability inventions if preventing in its territory the commercial exploitation of the inventions is necessary to protect public order or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to nature or the environment, provided that the exclusion is not based solely on the ground that the Party prohibits commercial exploitation in its territory of the subject matter of the patent. A Party may also exclude from patentability: (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;(b) plants and animals other than microorganisms; and (c) essentially biological processes for the production of plants or animals, other than non-biological and microbiological processes for such production. Notwithstanding subparagraph (b), each Party shall provide for the protection of plant varieties through patents, an effective scheme of *sui generis* protection, or both. (NAFTA, 1994, Article 1709.2-1709.3)

This is one of the most relaxed parts of the agreement where the provisions are entirely left up to the *sui generis* of each participating country to decide. Where most every other Article indicated a Party *shall*, the interpretive and relaxed language reveals the values codified into this agreement become arbitrary with regard to life and morality.

Evident in Chapter 17 of NAFTA was the prioritization and valuing of industry and market competition. For example, in the same article as mentioned above with regard to patents, paragraph one states:

[E]ach Party shall make patents available for any inventions whether products or processes, in all fields of technology, provided that such inventions are new, result from

an inventive step and are capable of industrial application. (NAFTA, 1994, Article 1709.1.)

While these clauses are perhaps alarmingly relaxed, they have allowed for countries like Thailand and Brazil to include provisions in their national laws which privilege life over profit from medical industry, attempting to guarantee lifesaving medicines be made affordable and accessible through denying evergreening patents, shortening patent life of medicines, and ensuring generic drugs are available. It is difficult, however, for nations whose economies and livelihoods are tied to the United States, Europe and China to determine their own national laws and *sui generis* (specific, special) systems for protecting life or certain ways of living (Sunder, 2012).

### **Burden of Proof**

Intellectual property law in TRIPS and NAFTA do not include provisions for resources to seek out “original creators” but provides a mechanism through which one can turn an idea into property for their own control. Madhavi Sunder (2012) has speculated that peoples in peripheral and semi-peripheral nations are in fact losing million from the misappropriation of their inventions, knowledge systems and creativity. Intellectual property law is based in the idea that knowledge or creative products can be owned if the creator demonstrates novelty and industrial applicability or usefulness. Both TRIPS and NAFTA state in the main body of the articles that “industrial applicability” must be demonstrated, but include as a footnote that the definition for industrial applicability can be interpreted as usefulness.

The political and juridical process through which novelty is demonstrated is quite suspect. If an idea cannot be found within scientific publication, it may be deemed novel (Shiva, 1997). A common known case cited with regard to this issue is quinoa, which has traditionally been a grain harvested and consumed by indigenous peoples of what is now Peru, Bolivia and Ecuador. Now a popular health food item sold at inflated prices (i.e. \$28.49 for a 64 oz. bag on Amazon.com), quinoa is becoming inaccessible to peoples who have traditionally harvested and consumed the grain. In 1997 Colorado State researchers Duane Johnson and Sarah Ward filed patent US Patent No. 5,304,718 on the grounds that they had created a hybrid variety and therefore should be accorded exclusive control over its production and dissemination. The patent, however, would extend beyond the singular variety, and be difficult to detect in nature which variety was property under the patent and what was not. Although the two dropped the patent after much protest and controversy, similar patents have been granted on the grounds that scientific discovery and novelty was made with no conflicting scientific data to contest the grounds of the patent (Shiva, 1997). In other words, if knowledge is not translated to a Western scientific community, it can be easily appropriated.

Intellectual Property Law also reifies European cultural values of artistic production and contribution. Modern intellectual property law can be traced back to 19<sup>th</sup> century Europe as a tool to spread culture and facilitate trade. Culture here referred to a late 18<sup>th</sup> century notion of culture conflated with the idea of civilization to mean a higher culture of science, reason, religion, law and fine art. Europe was set apart as the center and standard bearer of civilization, culture, reason and logic, against the rest of the world seen as primitive and barbarian (Brinkhof & Grosheide, 2002, p. 3). "Civilization taken in that sense – one may add—was a purely



European phenomenon, a remarkable fruit of crossing human rights and capitalism, a mixture of the norms and values represented by Apollo and Hermes” (p. 5). Today, culture continues to be defined through Western values. Upon first conception, intellectual property law covered only that which consisted of novel convention, excluding what would be considered communal cultural property. In an attempt to incorporate cultural property, with the aim of securing cultural dignity and respect, UNESCO adopted the 1966 Declaration of the Principles of International Cultural Co-operation (p. 21). The primary aim was to allow non-Western peoples to contribute to modernity, to incorporate cultural policies into development strategy rather than be left out of creating the modern project. Article 1 of the Declaration designates cultural heritage as, “architectural works, works of monumental sculpture and painting, elements or structures with archeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history art or science” (p. 21). Article 2 defines natural heritage as “natural features consisting of physical and biological formations or groups of such formations which are of outstanding universal value from the aesthetic or scientific point of view...” (p.21). The value of culture is defined with regard to the value it holds from a western perspective, with claim to objective universality and toward a western project of modernity. Notions of development, progress, civilization and citizenship, therefore, cannot be understood outside a geopolitical a racial historical narrative.

### **Sell or Starve: Paradox of Indigenous Rights**

In 1876, after the Battle at Little Bighorn and after decades of broken treaties between the United States and the Lakota, the United States initiated what the Lakota refer to as “Sell or

Starve,” or the Indian Appropriations Act of 1876. The act effectively cut off all rations to the Sioux until they signed and ceded the Black Hills to the United States, and ended all hostilities (Huey, 2010). Black Hills was believed to possess gold, understood as *terra nullis* with gold left un-mined. Months later, the Agreement of 1877 was ratified and officially took away Sioux land, creating the first Sioux reservation, then called a Prisoner of War Camp, which exists today though under a different name. In fact, it was these very camps and policies of genocide through forced migration that Hitler admired and modeled the Nazi concentration camps after (Toland, 1976). Today, “unemployment on the reservation fluctuates between 85 and 90%... at least 60% of homes are infested with black mold, more than 90% of the population lives below the poverty line...the infant mortality rate is the highest on this continent... the school drop out rate is up to 70%, teacher turnover is more than 8x’s higher than anywhere else in the nation” (Huey, 2010). The same “Sell or Starve” mentality continues to displace and starve indigenous communities, left to let die on the borders of marginality within the “homeland.” This is the same proposition opened to peoples of the Global South, to sell traditional knowledge or buy into multinational patents on life stolen and sold back at exorbitant rates.

I find global intellectual property law is grounded in logics of colonial/ modernity that normalize and facilitate capitalist development. Global intellectual property law posits indigenous ways of knowing and living in the past, recognized only in need of preservation, as a relic standing against the progress of modernity, or returned to only to be incorporated into Western value systems, and to solve crisis of Western modernity (climate change) which in itself reflects Western romanticization of indigenous cultures. It continues to both exploit the knowledge systems and innovations of indigenous peoples and poor peoples, while also

restricting access to basic needs for life by the exorbitant prices placed on medicines and seeds. Madhavi Sunder (2012) reminds us, however, that it is difficult to advocate the abolition of intellectual property rights in favor of the opening of the commons, since the commons or the public is also a violent space for historically marginalized peoples, and since, as she estimates, poor nations lose millions, possibly billions of dollars through appropriation and biopiracy. Customary law (enunciated and directed by those who have traditionally been the targets and subjects rather than agents of development) offers possibility for dealing with the paradox of guarding against the violence of coloniality without reinforcing the same logics and values and reproducing these forms of violence and exclusion.

#### **Chapter 4: Sanctioned Dissent: Racialization and Politics of Recognition**

The Hawaiian Homes Commission Act (HHCA), a government-sponsored homestead program, operates out of the Department of Hawaiian Home Lands (DHHL) under the Office of Hawaiian Affairs (OHA) as a form of reparation and remedy to the ongoing plight of the Native Hawaiian people, a population representative of approximately 13% of the state population (U.S. Census Bureau, 2013; Stanton, 1998). The Act, implemented in 1921, emerged from longstanding debates of Hawaiian sovereignty and land rights involving the interests of Native Hawaiians, sugar and fruit plantation owners, and the United States Federal Government. It represents the culmination of these debates into a singular policy, and demonstrates the effects of working through legislation to materially recognize and redress the illegal overthrow of the Hawaiian Kingdom by the United States in collusion with corporate landowners. The

HHCA attempts at reconciliation conflict with the increasingly mobilizing native Hawaiian and non-Hawaiians in solidarity with sovereignty movements.

This chapter seeks to address through the example of the HHCA what happens when decoloniality is sought through sanctioned and legalized avenues and will demonstrate that decoloniality on the colonists terms only reifies colonial relations. While there are several historical and contemporary examples to take up, and I do not claim the HHCA to be particular in a way that is decontextualized from the broader history of coloniality, I have narrowed on this as it exemplifies the racialized relations of coloniality and dispossession and the conflation of capitalism, coloniality, and the nation-state. The political trajectory of Hawai'i involves an interplay and "revolving-door" of businessmen and state actors. Concepts from King and Smith (2005) regarding racial order and white supremacy provide a critical lens to these approaches for a deeper analysis to the significance of racialized and colonial subjects in conversation with decolonial theorists. Finally, this chapter also understands a class-based approach, or Marxist critique of capitalism, cannot be read outside the power of race, and so the decolonial analysis with attention to race, land, labor, power, knowledge is most relevant (Pierson, 1996).

On November 23, 1993 President Clinton signed an "Apology Resolution" to the Hawaiian people, which:

Acknowledged that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished to the United States their claims to their inherent sovereignty as a people over their national lands, either through the

Kingdom of Hawaii or through a plebiscite or referendum."

(U.S. Public Law 103-150 (107 Stat. 1510)).

While this formal apology offers symbolic reconciliation, it has not been met with any material economic or political attachments to shift the sovereign powers from the US. The sovereign overthrow of the Hawaiian government on January 17, 1893 resulted from a U.S. Naval invasion, led and supported by American capitalists, which violated existing treaties between the United States and the Hawaiian Kingdom (Liliuokalani, 1898). The Tyler Doctrine of 1842 and the Reciprocity Treaty of 1887 benefited American businessmen in its allowance of tax-free sugar transport, which contributed to a profitable power base subsequently influencing the economic and political conditions of the nation. These same actors, in the overthrow of the Kingdom (primarily elite, white, business owners), established the Republic of Hawaii and declared sovereign domain over the Hawaiian Crown and Government lands. Stanford Dole, a Hawaiian born American politician and businessman, became the president of the provisional government prior to the 1898 Treaty of Annexation less than a decade after the overthrow.

Dole paved the way for the future of public land policy premised on western Jeffersonian ideals of allocating parcels of land for family farming through homesteading. Hawaiian capitalists utilized cheap foreign labor to yield tremendous profits, and consequently impacting the "face" of Hawai'i through ongoing immigration from Puerto Rico, the Philippines, and Japan. In order to minimize opportunities for a rebellion of plantation workers, and speculating the future political base of a growing immigrant population, Dole initiated the Land Act of 1898, a homesteading program targeted at all nationalities including Hawaiians and non-

Hawaiians (Legislative Reference Bureau of Hawaii, 1965). However, the program ended when Hawai'i ceded to the United States during annexation causing the entire territory under the authorization and dominion of U.S. political governance. Hawai'i remained a territory for sixty years, allowing wealthy capitalist known as the "Big 5" to dictate the economic and political affairs until the 1959 Admissions Act when Hawai'i became the 50<sup>th</sup> state (Danninger, 2002). However, the firm grip of the capitalist US national owning class still reverberates throughout the Hawaiian Islands in terms of land rights and development where plantation profit tactics shifted to tourism profit tactics.

### **Racial Formations and the Geopolitics of Citizenship and Sovereignty**

Through the annexation of the Hawaiian Islands on August 12, 1898, the Republic ceded roughly 1.75 million acres to the United States. Later, the allocation of the Crown Lands was brought into question by territorial Senator John H. Wise in 1920 amid collective movements toward Hawaiian sovereignty arguing the lands be held in trust for the Hawaiian people, thus setting the stage for debate of who counts as "Hawaiian" (Kauanui, 1996). The following year, the United States Congress passed the Hawaiian Homes Commission Act (HHCA) granting land privileges based on a logic of blood quantum where Hawaiians that could prove having fifty percent "native blood" qualified for leases on public land originally acquired from annexation (Hawaii Revised Statutes § 10-2). Approximately 200,000 acres of the least agriculturally productive lands were relinquished for the HHCA, or a fraction of the 2 million Crown Land acres seized during the overthrow (Trask, 2000). The Act has since been ratified to include

subjects possessing a quarter blood quantum and continues to structure Hawaiian culture and politics in governmental reparations.

According to the 1921 HHCA, a “Hawaiian” is “any descendent of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii” (Hawaii Revised Statutes § 10-2). The Act introduced the first government definition of *Hawaiian*. Defining Hawaiians as a race rather than the formerly internationally recognized multiethnic nation undermines the ongoing claims to Hawaiian sovereignty for restoration and imposes biometric measures of indigeneity to establish legitimacy. Additionally, the HHCA positions “certified” Native Hawaiians as beneficiaries of the United States, a paternalistic gesture that erases political and economic conditions of illegal U.S. land allocation as thoroughly documented in Queen Liliuokalani’s memoir. Through this oppositional discourse the “native Hawaiian” must demonstrate a *need* for rehabilitation along with sufficient blood-quantum to be qualified for leases. The act creates a narrative of the disenfranchised native Hawaiian with cultural and biological deficiencies that prevent successful assimilation into modernity.

Cultural theorist, Kauanui (1999) opens an essay documenting the 1921 Hawaiian Homes Commission Act stating, “the bloody mess of who counts as Hawaiian is fraught with histories of dispossession,” (123). Contextualizing the 1921 HHCA within the history of colonization and U.S. imperialism, Kauanui links the act with capitalist endeavors to exploit Hawaiian land and labor for the production of sugar, as well as nation-building projects working to secure Hawai’i as a strategic military base in the Pacific Ocean. Her examination of U.S. diplomatic relations problematizes the annexation of Hawai’i with the illegality of land

allocation and distribution by exploring congressional debates on the formulation of the act to understand the ways Hawaiian dispossession was, and continues to be, mediated through notions of Hawaiian rehabilitation rather than inalienable claims.

In the early policy formulation stages congressional debates centered on land entitlements and trust obligations regarding the Crown Lands. The matter of entitlement was settled as the Lands in question were generally recognized by Congress to have ceded to the United States under the agreement they be used, “for the purpose of rehabilitating a race of people who, through circumstances perhaps beyond their control, are in danger of extermination” (House 1920, 162; Kauanui, 1999, 132). The enactment of the 1921 HHCA shifted an international plea of returning stolen land to the Hawaiian people to reinforcing the U.S. territorial relationship by returning the disenfranchised “native Hawaiians” to the land.

The act was first presented as the Hawaiian Rehabilitation Bill in an, “attempt to revive the part of the Hawaiian population that was suffering from poor living conditions in Honolulu tenement housing and persistently high mortality rates” (Kauanui, 1999, 127). Class stigmas attached to rehabilitation became crucial in developing racial distinctions that contributed in a discourse of U.S. assimilation where “native Hawaiians” with a particular blood-quantum did not have capacity to assimilate into industrialized urban spaces. Classification of Hawaiians as United States citizens provided a greater context for determining who counted as “native” in need of rehabilitation. According to Kauanui:

If Hawaiians were Americans, then they were said to be entitled to no more than white Americans residing in the territory. When racialized as natives, they were ‘entitled’ to



rehabilitation. If they were fully recognized as Americans then they were said to be in no need of rehabilitation because they already proved themselves as being industrious, prolific, intelligent, and educated, qualities seen as essential to American citizen subjects. (Kauanui, 1999, 129).

Furthermore, policy formulation was influenced by strong pressures from sugar lobbyists seeking to protect their cheap leases by supporting strict definitions of a racial Hawaiian in order to limit which Hawaiians could petition for leased public lands.

The HHCA disenfranchised Hawaiians and crippled movement towards sovereignty by protecting private property and privileging the interests of sugar corporations. The act was proposed around the same time leases held by sugar corporations were due to expire. Sugar growers, a powerful interest group with a strong stake in the political arena, advocated for additional provisions that would allow renewal of their land leases. Prior to implementation the act was refashioned by “allow[ing] public lands to be re-leased for indefinite periods and removed all restrictions on the size of the lease” (Kent, 1993: 76). This clause ensured the sugar corporations’ monopoly over the economy and continued to establish U.S. dominion over Hawai’i. In a disingenuous attempt at reparation, the HHCA circumscribes markers of identity that position Hawaiians as a race rather than a nation while complicating a political arena that continues to serve the interests of the owning class by determining access to land rights.

Huanani Kay-Trask (1996), Hawaiian sovereignty scholar/activist and cultural critic, challenges these constructions and moves away from the racialized Hawaiian identity and kinship (under the codified blood-quantum). She argues instead for an identity based on terms

of nation<sup>9</sup>, kinship to land, and genealogy. She asserts, “blood quantum is always about individualization of particular bodies (already said to be ‘diluted’), Hawaiian genealogical practices enlarge the collective and social (Trask, 1996, 138). The 1921 HHCA reconstruction of identity and notions of kinship that positions Hawaiians as a race rather than sovereign peoples with rights to governing land relations, and as beneficiaries of the U.S. has serious implications in the movement for Hawaiian sovereignty. While Trask, Young, and Kauanui differ slightly in their approaches to sovereignty, they agree on the need to abolish blood-quantum laws because they refuse to recognize the historical processes of racialization, which displaced and dispossessed Hawaiians from their land. The social, political, and economic contexts of scientific, logical, “truths” regarding race mobilized in legal discourses facilitate the expansion of empire onto marked bodies. It positions the racialized other under the governing powers of the United States, and erases the very histories of conquest and colonization which structure the context of the “native” or “immigrant” subject in need of intervention, rehabilitation and/or regulation.

In many ways, HHCA secured what King and Smith (2005) described as the preservation of racial order within white supremacy, what cultural theorist Lipsitz (1998) has termed possessive investment in whiteness, and what critical race theorist Harris (1993) describes as

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<sup>9</sup> It is important here to distinguish Hawaii’s National sovereignty movement from the discussion on the limitations of the Nation States. Hannum (1999) reminds us that combining nation *with* state conflates politics with identification, though colorblind and neoliberal politics claim neutrality otherwise. ‘Nation,’ etymologically identified from the Latin term *naci*, meaning birth, signals a sense of belonging and identity formation. Tying ‘State’ to this term signals the political, governmental management of birth, identification, being and belonging. Nation-state is the formation recognized by international governing bodies in order to be able to enter into claims of sovereignty and autonomy. Historically, Hawaii has been referred to as the Hawaiian Kingdom, and was recognized as such prior to its occupation and illegal overthrow. Undertaking the language of a Hawaiian Nation asserts claims to indigenous Hawaiian political sovereignty, similar to the terms of US Tribal Nations. The language of Nation also works to collectivize and universalize, rather than the particularizing language of a ‘peoples.’

whiteness as property itself by protecting property interests of white business owners to benefit U.S. capital. The outcomes of these processes racialize the native in opposition to “American citizen-subjects” under colonial definitions of kinship. Additional concepts and frameworks on coloniality provide a deeper and more complicated analysis of these political processes. Since indigenous land issues often compound with decolonization movements at the local and international level, an exploration of theoretical frameworks maintain relevance. However, colonial theories intersect with a grounding and useful class-based approach where capitalism can be interpreted as an extension of colonialism.

### **Future Implications**

The racial legacy of the Hawaiian Homes Commission Act continues today; Native Hawaiians can apply to the program on the Department of Hawaiian Home Lands website. However, only 8,000 out of the 200,000 residing eligible Hawaiians have received land under the Act since its authorization in 1921 where blood quantum provisions create bureaucratic hurdles for acquisition (Trask, 2000). In an article highlighting the detrimental implications of blood quantum indicators on future generations, many families fear losing their land and its symbolism if their children do not meet the qualifying blood quantum eligibility from an increasingly inter-ethnic society (Staton, 1998). The policy has been widely interpreted as divisive, a deterrence to unifying a concept of a singular Hawaiian people, and a strategic tactic of ongoing genocide where a matter of generations lead to the extermination of a “native” people and total acquisition of all lands under U.S. control. Thus, the HHCA fails to address essential land rights issues and claims to sovereignty as the voices of Hawaiian people assert

marginalization while the amplification of sovereignty movement groups push for radical goals of political self-determination.

The modern day sovereignty movements emerged out of land abuses and anti-eviction protests in the 1970s with a spark in mobilization after the “Apology Resolution” on the 100<sup>th</sup> anniversary of the overthrow. Over ten sovereignty groups including ALOHA, Ka Lahui, and Hawaiian Kingdom Government continue to be politically active as interest groups in governmental affairs with diverse agendas in concept of sovereignty (Pacheco, 2009). Public hearings and press continue to highlight their ongoing battle with increasing support among the larger people of Hawai’i including a state-within-a-state model like the American Indian tribes, a nation-within-a-nation like Israel-Palestine, or complete independence (Mackenzie, 2012). In order to continue mobilizing, sovereignty groups are beginning to form coalitions and alliances to enhance their cause and voice, particularly centering on the general idea of self-governance as duty for the United States to restore. However, greater cohesion and vision would be necessary to advance any future status change.

The United States has addressed this type of scenario before, on many levels, including the U.S. territorial Philippines and Puerto Rico. However, their outcomes vary or continue to be contested where independence marked one nation while an ongoing state of uncertainty regarding political status entangles the other. In the case of Hawai’i, the HHCA deflects international claims to sovereignty, perpetuates the poor conditions of the Native Hawaiians, and minimizes the extent of a Hawaiian people. As land rights issues on an increasingly populated archipelago meet the demands of the Hawaiian people’s plea for self-determination with the demands of capitalist developers to expand profitable projects, the HHCA provides a

harrowing analysis for future implications and possibilities the context of U.S. colonial modernity.

## **Chapter 5: Decoloniality: Self-Becoming, Delinking and Pluriversality**

### **Decolonial Futurity and the Law**

For Walter D. Mignolo (2011), it is not the law that needs to change, but the people. I would contend that the two cannot be separated because of the real and material violence that the legal system upholds, and forces people into contact with, continuing to open and expand the colonial wound. Recognizing that legal avenues seeking to redress coloniality risk reifying its structures, does decoloniality desire the abolition of law? Prominent critical race theorist Angela Harris has reflected on this issue stating,

[L]aw is in the end an "insider's tool," or one of the master's tools, as Audre Lorde would say. There are limits to what one can accomplish as a lawyer and de-colonization is probably the most difficult thing to try to accomplish through an inherently colonial tool such as the law. On the other hand, there are ways to use law toward that ultimate end also, whether that means working with groups such as indigenous peoples who have the legal right to some degree of sovereignty, or it means working as an ally with progressive groups whose aims are ultimately extralegal and perhaps revolutionary.

(Harris, 2014)

I would argue that decoloniality, in part, desires the abolition of coloniality, and again recall the words of Patricia Williams that consider the dangers of throwing rights out the window altogether. If coloniality denies humanity of those marked as less than man/ Human, and

therefore denying future and existence outside its parameters, what political mechanisms can redress these deeply rooted relationships in ways that do not reify colonial relationships of power and authority?

In 2013 Caribbean Heads of Government for 15 Caribbean nations, part of The Caribbean Community (CARICOM) set out to sue their former colonizers, forming the CARISOM Reparations Commission (CRC). The case seeks reparation for indigenous and African descendent communities claiming Crimes against Humanity (CAH) for the histories of slavery, genocide, and racial apartheid. The CARICOM Reparations Committee developed a 10-Point plan, which serves as the basis for negotiations. It calls for 1) Full formal apology, 2) Repatriation, 3) Indigenous peoples development program recognizing that “[g]enocide and land appropriation went hand in hand. A community of over 3,000,000 in 1700 has been reduced to less than 30,000 in 2000...[s]urvivors remain traumatized, landless,” 4) Cultural Institutions, 5) Responsibility to public health crisis among African descended population in the Caribbean, 6) Illiteracy Eradication, 7) African knowledge program recognizing “social alienation from identity and existential belonging...[d]enied the right in law to life, and divorced by space from the source of historic self,” 8) Psychological Rehabilitation, recognizing “For over 400 years Africans and their descendants were classified in law as non-human, chattel, property, and real estate. They were denied recognition as members of the human family by laws derived from the parliaments and palaces of Europe,” 9) Technology transfer, and 10) Debt Transfer.<sup>10</sup> While points three, six and nine are suspiciously within modernist and developmental frameworks, it is important to also consider the historical frameworks and place of enunciation

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<sup>10</sup> For a complete description of each point, as well as the introduction and contextual framing of the points, see <http://www.leighday.co.uk/News/2014/March-2014/CARICOM-nations-unanimously-approve-10-point-plan->

from which the claim is made. Point three in particular adopts the rhetoric of developing indigenous peoples, but focuses primarily on the experiences of dispossession and extermination endured by indigenous peoples. Recall point 66 of the Kari-Oca declaration which states, “[w]e reject *the current definition of development* as being useful to our peoples” (emphasis my own). Adopting the language of development in one sense may be inherently limiting given its historical formation, agenda and desires. Indeed, it signals a linear teleological formation that has an end point to look toward, from acorn to tree, or from infancy to adulthood. However, is it possible to enter through the language of which one may be audible, and shift the paradigm, and the terms of engagement? Similarly, while the language of psychological rehabilitation can be taken on the one hand as a form of eugenics discourse, colonized peoples are psychological inferior, the issue of trauma is reframed to recognize a perpetrator of violence within the European colonist who has instilled fear and terror through dehumanizing logics and strategy.

CARICOM hired London based law firm, Leigh Day, who recently won a reparations case for thousands of Kenyan Mau Mau veterans in the central Kenyan region against the British government for injuries sustained from British Army bomb testing and torture during the Mau Mau uprising in the 1950’s. In an unprecedented case,<sup>11</sup> Leigh Day will argue the ongoing relationship of slavery and colonization to the current context of poverty and underdevelopment in the region. CARICOM and attorney Martyn Day have made clear that the

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<sup>11</sup> While claims for reparation have been attempted in the US in the past, for example, the 400,000 acres of land marked for slaves at the end of the Civil War and the recent 2008 motion by members of Congress sponsoring legislation to establish a commission on slavery, each have been thrown out (the first by President Andrew Johnson and the second by President Obama) (Leonard and Tomlinson, 2013). This lawsuit represents the largest concerted effort across multiple nations to litigate against their former colonizers.

case is not about addressing the wrongdoings of 200 years ago, but rather the legacy that continues to resonate in the Caribbean where “there is a problem today that results from that era. It’s a current issue, not a historic one” (Day, 2014 as quoted by Shafy, 2014). Negotiations will attempt to settle outside the courtroom before appeal to the International Convention on the Elimination of All forms of Racial Discrimination, and eventually, if necessary, to the International Court of Justice. If CARICOM were to win the case, it would open the possibilities for further lawsuits requiring reparations from the legacies of slavery and colonialism.

The claims are not expected to hold primarily due to the issue of time. Although most of the countries being sued recognize the jurisdiction of the ICJ, excluding France, many signed with the stipulation that disputes cannot be retroactively recognized. For example, the U.K. does not recognize disputes before 1974 under the ICJ, and the Netherlands sets the date at 1921 (Brooks, 2014). In articles and commentaries describing the case, it is not uncommon to hear the argument that CARICOM cannot hope to seek redress for something that happened 200 years ago. The religious and conservative blog site Catholic Online published an online article in October of 2013 on the matter entitled, “Caribbean nations sue - Why reparations for slavery are an injustice to the living” arguing that the grandchildren of slave owners cannot be justly expected to pay the grandchildren of slaves or former slaves. It goes on to assert:

Instead of reparations, the people of the Caribbean must take responsibility for their condition and find ways to cooperate with the nations of the world to lift themselves from poverty. They must fight corruption within their governments, build trades and industries that the world wants, and take responsibility for resolving their own issues as nation-states. Likewise, the world does owe them cooperation in a spirit of



brotherhood. Where before masters ordered slaves, why not let the great grandchildren contract as equal partners? There is no better justice than that. (Catholic Online, 2013)

Caribbean nations are referred to in child-like terms, wondering when they will be able develop fully enough to take responsibility for themselves so that the rest of the world can stop looking after them or attempting to solve their problems. It wonders when they will be able to resolve their own issues so that they can come to the table to negotiate. The British Foreign and Commonwealth Office echo these sentiments in a statement on the matter to America Aljazeera on January 12, 2014 stating “We do not see reparations as the answer. Instead, we should concentrate on identifying ways forward with a focus on the shared global challenges that face our countries in the twenty-first century.” These statements represent a lack of politically recognized historical memory on behalf of the international community. Redressing coloniality is unimaginable under the terms set by coloniality itself. The chronopolitical logics of law set that disputes cannot be settled for past wrongdoings, where this case would represent a watershed moment opening the possibilities that would require all former colonizers to pay their colonies and by doing so materially change the historical record. To address these histories would require epistemic and material recognition of modern/ colonial relations, officially setting the time of coloniality in present day.

Importantly, as addressed by Sir Hilary Beckles, historian and author of *Britain's Black Debt: Reparations for Caribbean Slavery and Native Genocide* who chairs the reparations committee, the suit is not about the quantitative billions of dollars taken from the region but, “justice for the people who continue to suffer harm at so many levels of social life,” and, “to open up a dialogue with European states” (Beckles, 2014 as quoted by Pilkington, 2014). It is an

attempt to change the historical framework of international law in a way that is beyond economic terms which have yet to be addressed, beyond the formal juridical-administrative terms of decolonization from the era of the 1950's-1970's, and towards the recognition and redressing of colonial humanity which dictates relationships of power, political participation, and right to collective dignity.

Evident in the speech by Prime Minister of Saint Vincent Ralph Gonsalves addressing the United Nations introducing CARICOM's case are the logics of redressing coloniality as rooted in collective concern for humanity, globally denied by its histories. The speech takes place in September of 2014 as the UN reflected upon the Millinium Development Goals and looked toward a new set of goals and agenda. Prime Minister Gonzalves' rhetoric remains within the framework of development, but resituates the enunciation of priority within the formal and material recognition of genocide, slavery, and dispossession from histories of colonization, which continue to permeate relations within former colonies and across international bodies. He states, "your invitation to consider the future of the international development agenda requires us to first consider the ways in which our recent and long-ago steps and missteps shape our future developmental challenges and opportunities" (Gonsalves, 2014, p. 2). He continues by addressing the scope of the legacy of coloniality through language similarly adopted by Gloria Anzaldua (1987) and Walter Mignolo (2005), with an interesting distinction perhaps more audible to his audience. In speaking to the importance of the Caribbean's first Regional Conference on Reparations for Native Genocide and Slavery he calls it "the first step in the Caribbean's quest to address and redress a psychic, historical, socio-economic, and *developmental wound* that is, for CARICOM, 14 nations wide and 400 years deep" (ibid,

emphasis my own). While Mignolo (2010) has referred to the colonial wound, perhaps in reference to Anzaldúa's (2005) imagery of the borderlands as the space where the Third World grates against the First World and bleeds, Prime Minister Gonsalves refers here to the 'developmental wound' which again resituates coloniality within the language of development to assert its continued presence in modernity. Prime Minister Gonsalves calls reparations, "a defining issue for our Caribbean in this 21st century... a special pillar in the post-2015 Development Agenda," and as such is a global and relation issue to, "further ennoblement of our Caribbean, our indigenous populations, our African descendants, and indeed of Africa" and "make both Europe and the Caribbean more free, more human, more goodneighbourly" (ibid., p. 6).

Indeed, the strategy itself taken on by CARICOM, requesting reparation through sanctioned avenues), and some of their demands still remain within the framework of economic and developmentalist analysis. This risks reinforcing modern/ colonial relations even as it is attempting to redress these long histories. However, the lawsuit proposes to shift the terms rather than just the content of the conversation. The fact that their demands are unimaginable and absurd to those outside the colonial wound signals the possibility that this lawsuit is stepping outside the logic of coloniality. For it to make sense to colonial logics would be suspect. Instead, it opens the possibility of, and invites colonial powers to recognize their long histories of creating material and ontological conditions that deny life. With regard to reparation and recognition, Fanon (1968) states,

Such aid must be considered the final stage of a dual consciousness—the consciousness of the colonized that *it is their due* and the consciousness of the

capitalist powers that effectively *they must pay up*. If through lack of intelligence—not to mention ingratitude—the capitalist countries refused to pay up, then the unrelenting dialectic of their own system would see to it that they are asphyxiated. (p. 59)

Perhaps the legal mechanism seeking to redress coloniality will not arrive in an already recognizable form of litigation, easily dismissed by capitalist powers refusing to ‘pay up.’ One where Fanon’s vision of economic disobedience, the refusal of formerly colonized countries to engage in treatise with their colonizer, would actualize a process whereby the “industries of the West are rapidly deprived of their overseas outlets” and “[f]actory closures, layoffs, and unemployment force the European proletariat to engage in open struggle with the capitalist regime” (p. 60-61). Perhaps the CARICOM lawsuit represents one part of a larger, concerted effort. Decoloniality is not restricted to the separated and sanitized space of the courtroom, but is enacted ‘on the ground’ in ways seen and felt by the capitalist powers otherwise unaffected by the removed realities of those whom they oppress and exploit. This occurs by interrupting their regular flow of life and social order, by oppressed peoples not only *asking for* but enacting their rights.

### **Thinking through Land, Territory and the Nation-State**

Decoloniality is fundamentally about the reparation of land, but is not restricted to this definition by which decolonization, the transition from colonies to nation-states, or the formation of tribal nations might be said to have fully realized decolonial political desires. Rather, it is concerned with the terms on which territory and land are managed or brought into relation with peoples and society. Decoloniality is not territory in the sense of a nation-state,

which needs a national identity and sovereign territory to defend. However, it is not the absence of territory in favor of only an abstracted notion of emancipation, i.e. to decolonize the mind. Recalling Tuck and Yang (2012), decolonization cannot be abstracted or appropriated from its intention as the reparation of indigenous land and indigenous life. It is critical, though, that the two not be understood separately. Land cannot be understood as separate from social relations of power, just as social power is infused with histories of dispossession, capitalist accumulation of unlimited wealth, and the equation of whiteness as property and entitlement to be protected against at all cost. It is important to recall the histories of decolonization movements post-WWII conflated with formation of nation-state serving to facilitate US economic hegemony, as well as the histories of reservations in the US as a form of exile transferred over from prisoner of war camps. While a movement toward sovereignty may take on rhetorical and strategic tactics in the frameworks of coloniality in order to be heard, the limits that this produces should be questioned and cautioned against.

Senghor and Césaire have argued against the correlation of decolonization as tied to nation-state formations (Wilder, 2015) European political conceptions of nation-state homogenize and narrow the rightful, belonging citizen and includes peoples on the basis of inferior difference. A political project of decolonialities does not propose to find salvation or liberation through the structures of the state and their legislative bodies. It does however, recognize the material realities of violence that the state structures and so need to be mitigated. Decoloniality calls for an abolishment of state structures that are rooted in and propelled by the ideologies of coloniality where development and progress rely on the continuous production of the criminal, backwards, underdeveloped, or indolent. Delinking

implies a necessary departure from European political structures, and European epistemologies, but the two cannot be thought of separately.

In the aftermath of nationalist movements for decolonization, the national economy was made a central concern by whom Fanon (1961) calls the “national bourgeoisie,” with actors like United States and US-based corporations similarly concerned with their establishment of stable economies, and environments suitable for capital investment through infrastructure (factories), steady supply of labor, and suspension of labor regulations and trade tariffs (i.e. through free trade zones and free trade agreements). Fanon (1968) observes these economic development projects, with visions toward political autonomy, became a “cult for local products” and for “local crafts” turning decolonized spaces to “specialists of unfinished products” (pp. 98-99). Updating to today’s global market, these spaces also become highly specialized in arranging and assembling products from electronics to clothing in factories for which the deplorable conditions have been well publicized to a desensitized and apathetic consumer audience. Understanding the Greek etymology of economy to be *eco/ oikos/ house* and *nomy/ nemein/ management*, collectively meaning ‘household management,’ we see the concern for the development and emergence of a national economy is relevant to home, management of place and belonging. The development of national economies in emerging nation-states marks a concern for the continued extension of US and European home to the former colonies, comfortable to its own economic interest and the leisurely desires of their ambassador-tourists.

### **Subjects and Agents of Autonomy, Self-Discovery, and Self-Becoming**

Development programs sponsored by the World Bank, International Monetary Fund, and Western-based<sup>12</sup> NGO's focus efforts toward poverty relief and empowerment (a recent buzzword which has flattened its meaning) on the Third World subject. We are familiar with the discourse that problematizes these representations, particular in post-colonial studies. Instead, what I am interested in examining here is *relationship* as a frame of analysis. Utilizing Maldonado-Torres' (2007) "Fanonian meditations", on the concepts of Trans-ontological difference, the "difference between Being and what is beyond Being" and ontological colonial difference, the "difference between Being and what lies below Being or that which is negatively marked as dispensable as well as a target of rape and murder" (pp. 243-254) I ask: who are the subjects and agents of decoloniality? Secondly, thinking through Maldonado-Torres' reading of Fanon's *le damne* as those with nothing to give because everything has been taken away, I ask: what does it mean *to do* justice, as a verb, to *act upon* someone? The purpose is to understand the relational nature of coloniality and therefore understand what this means to the aims and desires of decoloniality. While Tuck and Yang (2012) understand decolonization as strictly the reparation of indigenous land and life, their specific attention to settler colonialism in the United States ignores the significance of anti-black racism to coloniality, and therefore to the projects of decoloniality (Gordon, 2006). By posing the stated question I am not seeking to redefine decoloniality but open the term and simultaneously universalize its subject by bringing to attention the relational and interconnected aspects of coloniality historically, and the relational and interconnected aspects of reality presently.

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<sup>12</sup> By Western-based, I mean not only in location but also in thought, logics, ethics and values.

Colonial logics produce the colonized as abject, that which the colonizer is both disgusted by and that which he depends upon to sustain existence as he is accustomed. Sectioned off and compartmentalized to the spaces where the colonized has made room for the abject to exist (slums, prisons, public housing, shelters) and where their movement is restricted in zoological-like conditions, the colonizer has studied the colonized and visits as he pleases to bestow what he has learned about them and to build paths toward the European beacon of civilization, progress, and development. In *A Nation Rising: Hawaiian Movements for Life, Land and Sovereignty*, Joan Conrow (2014) quotes a native Hawaiian homeless woman who observes, "They got to lock us up to help us" (p. 89). Colonial logics want to solve problems in formerly colonized places through hyper attention on the local level held statically in place, movement signaling instability, without pulling the lens back to account for its own continued historical legacies, and continuing to paint subjects outside the colonial image of man/human as a burden or impediment to progress. A white classmate who will remain anonymous once exclaimed, "I was driven by a native Hawaiian when I visited; he told me he is happy to have tourism because it brings money to the island!" This anecdotal reference is representative of the sentiments not only that tourism brings what *should be* desirable, but a double edge-sword that the native desires against their own interests. Freedom and emancipation are recognized by the (former) colonizer as promises betrayed while, simultaneously, the colonizer gawks and wonders at the spectacle of violence and struggle endured by the (formerly) colonized.

Saldana-Portillo (2003) understands agency and consciousness not as a moment of birth or revelation, but as an ongoing process in which everyone is engaged and invested. Moving away from the language of self-determination in which decolonization visions have been



articulated, and which can be limited in narrowly signaling a concern with political choices only, I look toward the Fanonian language of 'self-discovery' and 'self-becoming' to signal an ongoing and humanistic aspect of decoloniality. This recognizes not only the usurpation of political power, control, authority and European universal productions of knowledge grafted onto colonized spaces. It also recognizes coloniality's denial of self-inquiry, self-questioning and reflection, becoming and future in order to make room for its own. Self-discovery, which informs self-becoming, begins from a place of questioning and of openness to a truth that informs material reality. Rather than this process being directed by an outside actor the agent and subject is the self. It is a process continuously in movement, not only directed inwardly, but recognition of self in context. Becoming is never in a vacuum but always relational. Fanon (1968) says:

Decolonization never takes place unnoticed, for it influences individuals and modifies them fundamentally. It transforms spectators crushed with their inessentiality into privileged actors, with the grandiose glare of history's floodlights upon them...

Decolonization is the veritable creation of new men. But this creation owes nothing of its legitimacy to any supernatural power; the "thing" which has been colonized becomes man during the same process by which it frees itself. (pp. 36-37)

The process that Fanon describes will perhaps be felt most by the colonizer, contrary to the imagination and visions of development and charity projects seeking to do justice to their abjectified subjects, to whom they have given only death under the auspices of providing

opportunity and stability. Decoloniality for the colonizer will require a dramatic and radical change in existence as he knows and is accustomed.

For Ranciere (1991), emancipation occurs when “intelligence obeys only itself” (p. 13). Ranciere, In *Education, Truth, Emancipation* Ranciere elaborates on his idea laid out in *Ignorant School Master* explicating that the teacher indeed can teach what one is ignorant of and reify mechanisms of dependency. The student is made to be dependent on the truth outlined by the teacher or schoolmaster. Ranciere contends that processes of emancipation offered by anti-oppressive work (Socrates or Freire’s methods, for example) function at worst, to instill mistrust and dependency within students, and at best only re-posit the student in need of the master to ask the right question leading to conscientization. Emancipation cannot be fully realized in this model because it is always conceived within a dichotomous framework where the student must rely on what is outside themselves in order to emancipate themselves. It subtly continues to undermine individual and communal self-determination. The contradiction functions under the logic of equality that is always already presumed by the logic of inequality.

True politics, according to Ranciere (1999), only occurs when the logic of the order is disrupted and found to be false, requiring a new formation that is detached from these logics. The logic of dependency is a crippling model that operates by creating a one-sided historical narrative that not only legitimize a social ordering, but also make it appear as the only rational way of being. The techniques of this logic work to instill fear and mistrust personally and communally into submission and cooperation based on people’s lack of logos or rational thinking. Dissent is limited to incorporation negotiating in the terms of the police state, its history and language. Political actions that do not seek autonomy from the state and the

institutions of the state, or to disrupt their very foundations are incorporative and would not represent true politics for Ranciere (1991), as they do not disrupt the police order. Instead, they bolster the same systems that consistently reproduce inequality. Emancipation can occur when de-linked from dependency on the state as mediator of the good, when the singular legitimacy of the police state is rendered false. While dissent often functions as incorporation, the ability to be like the monoculture posited as most progressively advanced, options exist outside or de-linked from these systems.

Decoloniality is not a project simply to do with removing formal, military, juridical and administrative colonial structures. Decoloniality is representative of an interlocking and intersectional relationship where race, gender, and sexuality converge with land, labor and knowledge production. It is an ongoing project, which has yet to be fully addressed, particularly in ways that do not already reify colonial structures such as the nation-state as was the case for anti-colonial struggles. Decoloniality is not singular in form but akin to a language of pluralism where multiple decolonialities exist in an interconnected relationship concerned with how life can exist outside the all too well-known bounds of coloniality to form tangibly regenerative relations to land, labor, life, and knowledge.

### **Autonomy and Delinking**

Self-determination and autonomy within international legal structures hold territory and forming of a nation-state as its primary means of recognition (Hannum, 1990). This is undergirded by the privileging of global economies, which hold the nation-state as the primary unit of analysis. Conferring territory through nation-state to a group seeking autonomy is made, in a sense, the highest form of liberation, as seen for example in the granting of statehood to

Israel post-WWII and national liberation and decolonization movements. This idea is cited by settler colonial governments, like Canada and the US as a primary reason for initially refusing to sign the UN Declaration on the Rights of Indigenous Peoples, which could potentially recognize indigenous sovereignty and conferral of land. Furthermore, Native American and Native Hawaiian movements for sovereignty, autonomy and reparations demonstrate the paradox of seeking material recognition for US illegal usurpation of power and stealing of land through the US legal system.

It is important to dispel any notions of autonomy as being isolated or disconnected. This happens only under policies of containment and as a colonial tool that continues to set the terms of engagement and restrict life if it cannot directly dictate life altogether. Cuba and Tanzania are examples on the level of the nation-state. However, examples are abundant across all scales as these relationships work at attempting to destroy any form of delinking from coloniality. To threaten the order of coloniality either directly and antagonistically, or indirectly through breaking from its cycles and logics of dependency means to risk imprisonment, execution, or isolation, the result of which becomes the fault of the repressed for failure to engage on the terms of coloniality.

The Zapatista movement has garnered much attention in the past decade for their revolution against the North American Free Trade Agreement (NAFTA) and policies of globalization that sought to privatize and patent life, wipe out ingenious cultures and knowledge systems, and fix the Global South as a site of resource extraction. Walter Mignolo (2010) calls it the “Zapatista Theoretical Revolution,” signaling the shift in the geopolitical

enunciation of knowledge as connected to autonomy, dignity, and self-determination, reinserting the land and human in totality in modernity, delinked from the State and colonial formations. The Zapatistas provide an example for the ways that delinking from the state at several levels, including land, security, agriculture and education, has been actualized. Recently, the Zapatista's opened up a school, inviting people from across the globe to participate in a decolonial model of education creating economies de-linked from Western modernity/ coloniality. In August 2013 Escuelita Zapatista, the Little Zapatista School held its first class session. Escuelita Zapatista's curriculum is rooted in five fundamental lessons of the Zapatistas: 1) it is possible to defeat social counterinsurgency policies, 2) autonomy, 3) collective work, 4) creating new political culture, and 5) communities are double mirrors (reflections of themselves and of each other) (Zibechi 2013). Importantly, these are lessons learned through reflection on the struggle of the Zapatista's over the past decade for dignity and autonomy against Globalization and policies like NAFTA. Furthermore, they are lessons in the Zapatista's struggle to create autonomous and self-sustaining communities de-linked from the capitalist economy through *campesino* culture and direct democracy over health and school. As a transnational pedagogical movement hosting over 1700 students and bringing together many languages, Escuelita Zapatista sought from the beginning to form "a climate of fellowship (*hermanamiento*) among a plurality of subjects" (Zibech, 2013).

Escuelita Zapatista reflects movement towards new definitions of citizenship and agency shaped in resistance to neoliberal policies. Education in each aspect is directly related to political struggle that will transform illegitimate forms of power. The Zapatistas example is concerned with the privatization, patenting and capitalist control of both knowledge and life

itself. The Zapatista movement, however, is grounded in creating autonomous self-sustained communities intentionally de-linked from Western modern/ colonial ideology. Decolonial pedagogy offers the framework for a process of education committed to a restoration of economies, ecology and ecosystems managed from the bottom-up that moves toward action of politicized agency. Importantly, it is place and context specific and while their strategies may be abstracted and appropriated, it is important to understand the context out of which they emerge, and find strategy that is locally responsive. Local, then, is not an end in itself, but its own strategic political formation that cannot be appropriated simply to the terms of purchasing local, but is about responding to local and specific contexts that are not particular, but are unique in their own historical formations with specific actors and interests.

Delinking, literally speaking, is an act of breaking from a chain. Delinking from dependency is a process of removal from and disobedience towards modern/colonial logics. It calls for pluri-vistic knowledge productions (Mignolo 2007) where Eurocentric and Western discourse no longer dominates the educational and political paradigm, but where knowledge is produced from multiple sites occupying the colonial wound (Mignolo, 2000). Pluriversality is toward an ethical, political, and also philosophical end. Whereas the etymology of diversity signals primarily a distinction of difference, otherness, even oddness, pluriversality signals the existence of many social and political formations of knowledge opposed to monolithic *forms of power*. The language of pluriversality opens up the terms of diversity and reinserts the political to the forefront. Pluriversality brings the totalizing macronarrative of European political and ontological formations down to size. It is to see the one-ness and locality of a globally imposed design and to socially, politically and economically decolonize these designs by delinking from

the logics that sustain them. Delinking proposes a radical shifting of the geo-politics and body politics of knowledge formation. While nothing can be located completely outside or removed from implications of Western imperial power relations, de-linking from the logics of western imperialism is a project that has been taken up in multiple spaces since the fifteenth century. It is true that colonial designs limit the capacity to materially delink. Imagine, for example, if I were to be sentenced to time in prison and I objected stating that I opt to delink from the colonial apparatus of prisons. Clearly, people are forced and coerced into engagement and participation with modern/colonial designs. Choosing the decolonial option, choosing to delink, is a process fraught with precariousness. Delinking does not always mean the immediate abolition of coloniality, but rather the reality of multiple worlds existing in one world, as the Zapatistas have popularized. Therefore, even as decoloniality exists or persists, it is made to constantly negotiate the encroachment of coloniality constantly expanding its limits.

Although theoretically delinking and realizing a pluriversal global politics that is not driven by the colonial design opens up the possibilities for emancipation and therefore life, the material reality we must also remind ourselves of is that we live in one world that is not compartmentalized. Nuclear radiation from Fukushima's reactor meltdowns took little time to reach the ocean life and shores of California. Lead poisoning from the maquiladoras in Juarez, Mexico did not halt itself at the border so as not to infect the United States. Researchers seeking non-GMO corn looked confidently to the markets of Oaxaca only to find that pesticides and GMO strands had already invaded in the native corn. What do delinking and self-becoming, for example, have to offer communities in Vietnam who continue to suffer the effects of Agent Orange? Delinking economically, politically, and epistemically is a quite viable project that we

cannot disregard. However, it does not mean each places becomes concerned only with their hyper-local territory, with blinders on to the rest of the world. Again, the relational nature of being in a world with only artificial or imaginary borders ridicules the idea of containment and compartmentalization. The toxins of a colonial system need also be dealt with otherwise theirseepage will only continue to bring about death.

### **Looking Back, Moving Forward**

In chapter 1, we see the universalizing nature of coloniality as a parasitic relationship that expands through dispossession, extermination, and incorporation to create cycles of dependency, inscribed and defused through metanarratives of white superiority and reason. We see the ways this is codified into law through European man as the signifier of human and development, the end point, the tree to which the acorn grows into or the adult to which the child matures. We see the systematic construction of depoliticized and dehistoricized space that is at the same time a call to action for modern/ colonial development projects through the aesthetics of death, the conquered, and the saved. In chapter 2 we have examined the historical and political implications to the overinvestment in STEM education as a modern/ colonial global education agenda and policy, rooted in the historical context of the Cold War with a longer history embedded in the Enlightenment era that proposes to solve all problems through the advancement of science and technology, toward the betterment of society no matter the casualties as cost toward this goal. We also examined STEM education as related to the reinforcement of border security, mobilized through the rhetoric of fear of invasion. And, we see the ways in which Western histories are mapped globally through universal education



initiatives for STEM education. In chapter 3, we have looked at intellectual property law through the lens of decoloniality understood as a mode of development. We see that while it proposes to lift indigenous peoples out of poverty while simultaneously saving the world's environmental crisis, it is predominantly rooted in colonial logics of peoples outside European ancestry as backward and the antithesis to modernity who must be incorporated to present day through the structures created by Europe or be exposed to death, poverty, and disease. In chapter 4, we examine the codification of race and racialized dispossession through the attempt to redress illegal usurpation of land and power through the law itself, in the example of the Hawaiian Homes Commission Act.

Finally in this last chapter, we envision the larger possibilities, meanings, and limits of decoloniality within the law and as practice. I have stated from the outset that this will not provide a "how to" for what decoloniality will look like, how it will be enacted, or how it will be defined. This is not to evade responsibility or the question of what decoloniality desires, but to continue to write and understand it as an ongoing project with concrete desires but that must be articulated from each local place, and on a continuous basis, rather than written from above, held static in time, offered as a prescription that denies peoples their own future making process. At the same time, I find it necessary to locate political mechanisms that address the dehumanizing, dehistoricizing and depoliticizing project of modern coloniality, that denies life and to which the process of delinking is quite ordinarily the desire for life, the desire for future. This mechanism, though, will necessarily be dynamic and strategic, continuously reflecting on its limits while making visible the illegitimacy of the modern/ colonial design.

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