

*Author Meets Readers:  
Robert Nichols in Conversation with Kelly  
Aguirre, Phil Henderson, Cressida J. Heyes,  
Alana Lentin, and Corey Snelgrove*

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NICHOLS, ROBERT, *Theft Is Property! Dispossession and Critical Theory* (Duke University Press, 2020).  
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*Kelly Aguirre, Phil Henderson, Cressida J. Heyes, Alana Lentin, and Corey Snelgrove engage with different aspects of Robert Nichols' Theft is Property! Dispossession and Critical Theory. Henderson focuses on possible spaces for maneuver, agency, contradiction, or failure in subject formation available to individuals and communities interpellated through diremptive processes. Heyes homes in on the ritual of antiwill called "consent" that systematically conceals the operation of power. Aguirre foregrounds tensions in projects of critical theory scholarship that aim for dialogue and solidarity with Indigenous decolonial struggles. Lentin draws attention to the role of race in undergirding the logic of Anglo-settler colonial domination that operates through dispossession, while Snelgrove emphasizes the link between alienation, capital, and colonialism. In his reply to his interlocutors, Nichols clarifies aspects of his "recursive logics" of dispossession, a dispossession or theft through which the right to property is generated.*

**Key words:** dispossession; theft; diremption; Indigenous lands; consent; treaty; race; recursive logics of dispossession

**Diremption's Demons are in the Details:  
A Commentary on Robert Nichols' *Theft is Property!***

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In *Theft is Property! Dispossession and Critical Theory*, Robert Nichols has given us an evocatively written, powerfully argued, and concisely presented treatment of the political and theoretical problem of dispossession. What's more, he's done so in a manner that strives to be attentive to many of the distinct—though, as he notes, related—ways in which dispossession is mobilized both as a descriptor of historic and ongoing processes and as a normatively charged accusation. In this review I begin by offering a brief and largely thematic summary of Nichols' text, emphasizing in particular the ways in which the text is structured to bring four seemingly disparate literatures and intellectual traditions into productive conversation with one another. I then provide a commentary on the methodology of *Theft is Property!* with a particular emphasis on questions that emerged during my reading around the appropriate scope for comparative analyses of processes of dispossession.

In his introduction, Nichols positions this text as an effort to respond to a paradox or conceptual ambiguity about dispossession that tends to be overplayed by those who are opposed to or are skeptical about Indigenous nations' assertions of their sovereignties. That supposed paradox, says Nichols, is articulated through the tired, reactionary trope that assumes that Indigenous peoples' claims to having been dispossessed of their territories through the processes of colonization are antithetical to the simultaneous critiques that many Indigenous peoples make

against the very concept of a proprietary and possessive relationship to the Earth as such.<sup>1</sup> Put in its most reactionary articulation, this amounts to an assertion that the claim to having been dispossessed cannot be meaningful because of the supposed absence of proprietary social relations prior to the act of dispossession itself. Often the question is begged as such: how can Indigenous peoples claim to have been *dis*possessed of their territories while many also simultaneously claim that prior to colonization they did not organize their nations on principles of possession/ownership?

In texts like Aileen Moreton-Robinson's *The White Possessive* (2015), Susan Hill's *The Clay We are Made Of* (2017), and Allan Greer's *Property and Dispossession* (2017)—alongside many others—numerous authors have tackled this supposed paradox head-on. Their scholarship makes clear that these criticisms against Indigenous peoples are premised largely on logics of white supremacy that seek to erase the multiple, highly sophisticated, and capacious systems by which Indigenous peoples collectively govern with, and in, their territories. These are well-established, though conveniently forgotten facts for those who cling to the (false) paradox. Not only have Indigenous peoples consistently maintained that they have self-determining relationships with their territories, the material facts of these relationships were also frequently noted in the journals of many early colonizers, who often made a habit of commenting on the sophistication of Indigenous land tenure systems.<sup>2</sup> Moreover, Indigenous-led resistance to continued colonial invasions of their territories today—such as at Standing Rock, Mauna Kea, or the Wet'suwet'en yintah—evidences the ongoing reality of their governance systems. Any good-faith interpretation of international law must accept, under the force of these arguments and the historical evidence, that Indigenous peoples' relationships to their territories constitutes a *de facto* exercise of sovereignty, regardless of the ways in which that sovereignty may or may not manifest systems of proprietorship that follow European, bourgeois models.

In *Theft is Property!*, however, Nichols approaches this supposed paradox from a different—more immanent—angle. Nichols strives in particular to highlight what he describes as the *recursive logics of dispossession*—that is, to highlight the ways in which dispossession in colonial contexts is “effectively a form of property-generating theft” (Nichols 2020: 9). Put differently, the recursivity of this act is found in the fact that the creation of a (and here I'll add to Nichols by insisting on the adjectival usage of) *colonial* right of property is generated in and through the instance of theft. Theft makes property, where before there was supposedly none to be seen by colonizing eyes, but a specific type of property only legible through its negation/surrender. When seen through these recursive movements, *theft quite literally is the process of making colonial property*.

It might reasonably be asked why one would go to all the trouble of building such a sophisticated theoretical apparatus in order to provide an immanent critique of schools of thought that are unlikely to be receptive or inclined towards dialogue in good faith. For many of those who insist upon the relevance of this supposed paradox, it is the anti-Indigenous conclusions that are, in fact, primary, rather than any supposed commitments to rigorous logical consistency. In actuality, however, Nichols strives to show how these same logics of opposition to Indigenous sovereignty emerge in the theory and practice of many critical and radical traditions, and not only in overtly anti-Indigenous perspectives; he writes that at its “most general level, the project is concerned to explore the very form and function of critical theory” (Nichols 2020: 146). For many in these traditions, recourse to the charge of dispossession, as a normative organizing principle, has been resisted out of a fear that it may reinscribe the moral and political weight of possession itself. This is to say that many have hedged away from a full-throated criticism of actually existing processes of dispossession precisely because they fear they will become normatively ensnared in the logics of (bourgeois) proprietorship.

*Theft is Property!* is, therefore, a text primarily interested in an immanent critique of the politics of “the Left”—most notably of anarchist, Marxist, and other radical traditions that often hang their political projects on the “restoration of the global commons.”<sup>3</sup> Recently, Nandita

Sharma has put this sort of sentiment most acutely in *Home Rule* (2020), in which she treats the experience of dispossession as a flatly universal experience, rather than one that is experienced historically and by various communities from/within particular geopolitical and sociological locations. In his generous responses to this canon of thought, Nichols attempts to show that via their general inattentiveness to traditions of thought outside of the white, western canon (and even its counter-canon), these critical traditions not only continue to reinscribe many of the very logics of colonialism and white supremacy that they claim to oppose, but they consequently remain unable or unwilling to grapple with some of the most generative theory available to them. Critically, when understood in the context of his own methodological insistence that concept-work and theory must be conducted within the context of the struggles of which it was/is a part, Nichols has laid a profound charge at the feet of critical theorists: that their aversion to discussing dispossession as such is the consequence of idealist thinking in spite of their own claims to materialism. In this sense, *Theft is Property!* stands well alongside such seminal texts as Amy Allen's *The End of Progress* (2016), Jodi Byrd's *Transit of Empire* (2011), George Ciccariello-Maher's *Decolonizing Dialectics* (2017), Nick Estes' *Our History is the Future* (2019), and Joanne Barker's *Sovereignty Matters* (2008) in terms of the reckoning that it seeks to bring to western critical theories. And the text is well structured to achieve this end.

Shouldered by a brief introduction and conclusion, Nichols' text is primarily divided across four chapters, each of which grapples with a distinct intellectual tradition: anarchism, Marxism, Indigenous structural critique, and the Black radical tradition (as he says, broadly conceived, but with particular and warranted attention to Black feminisms). And while "dispossession" is the through-line tying together his approach, Nichols strives to maintain the heterogeneity, debates, and ambiguities across and within each tradition of thought. Conceptually, it may help the reader to think of each chapter as tackling a matter of primary concern to the tradition that guides the discussion, those being: *the state*, identified within anarchist critique as the technology through which dispossession is regularized and given a patina of legality; *the market*, which Marxists identify as the animating force behind the processes of so-called primitive accumulation that transform the world into commodities; *land/territory*, as the irreducible relationship over which Indigenous struggles and Indigenous structural critique are organized in their opposition to imperial and colonial power; and *the body*, as the site over which the European (counter-)canon presumes its subjects hold an original possession, a claim that the Black radical tradition profoundly unsettles by revealing the implicit whiteness of such property as it is derived from ongoing histories in which racialization is an axis through which the body is commodified and treated as the property of another. Additionally, however, when understood conceptually, a certain degree of call (or more accurately cry for help) and response emerges between chapters one and three and between chapters two and four, wherein the traditions of Indigenous structural critique and the Black radical tradition are shown not as *supplements* to anarchism and/or Marxism, but as fulsome traditions of thought *in their own right*. The result is that *Theft is Property!* emerges as a text that is genuinely impressive in both the breadth and depth of its thought—a fact that is only born out further by engaging with the rich citations that Nichols provides.

In really good theory-work, many of a text's strongest contributions are also generative of further questions, and *Theft is Property!* is surely such a text. In the rest of this paper, I strive to highlight a number of questions that are emergent from Nichols' important contributions, places where the depth and breadth of his thinking can be taken further in the work that follows this text. Noting the tendency of western critical theory to focus on alienated labor power under capitalism as the primary axis of political struggle, against this reductive account Nichols proposes that "dispossession might be helpfully conceived as a historical process of *diremption* within systemic *alienation*" (Nichols 2020: 92, emphasis mine). While the priority here is still given to alienation—a conceptual ordering that may be in tension with Cedric Robinson's paradigm-setting account of racial capitalism in *Black Marxism* (1983)—Nichols provides a pressing case through which to

understand this formulation. He argues that “the more we frame the problem of capitalism or anthropogenic climate change, for example, as one of impersonal domination of humanity by its own constructions [i.e., alienation], the greater the temptation to obscure the simultaneous splitting of humanity into constitutively antagonistic and hierarchically ordered categories [i.e., diremption]” (Nichols 2020: 96). By presenting alienation from the Earth as an uncomplicatedly universal experience, and downplaying or failing to see the centrality of diremption in processes of dispossession—as I’ve alluded to already with Sharma’s answer to the question of the commons, but as has also been repeated throughout much of the literature on the so-called Anthropocene—prominent thinkers to this day continue obscuring questions of colonization, racialization, gendering regimes, etc. in their calls for a “return of the global commons.”

In reference to the literatures that Nichols engages in his text, one is tempted to read, at least implicitly, the seminal importance that diremption, through racializing and gendering processes, plays in his understanding of how colonial dispossession unfolds and how it is reproduced. Interestingly, while the text is primarily focused on the philosophically “negative term” *dispossession* (Nichols 2020: 5–6), Nichols’ discussion of diremption seems well placed to account for logics of *possessiveness* that underpin the production of both whiteness and masculinity. Although *Theft is Property!* does not take up these questions directly—preferring to keep itself in conversation with those who experience dispossession, rather than (de)constructing the possessive subject—it seems to have many deep resonances with works like Moreton-Robinson’s *The White Possessive* (2015), Brenna Bhandar’s *Colonial Lives of Property* (2018), and Silvia Federici’s classic *Caliban and the Witch* (2004). It is in part because his focus is elsewhere, however, that *Theft is Property!* remains somewhat unclear on how deterministically Nichols views the relationships between the “constitutively antagonistic” categories produced through processes of diremption. When viewed through the lived realities of people or communities interpellated through diremptive processes, what is the space for maneuver, agency, contradiction, or failure in subject formation?

This line of thought is, at least in part, spurred by my own concerns around some of the overdetermined accounts that have arisen in the field of Settler Colonial Studies recently. For instance, in a recent *Antipode* article, Sai Englert (2020) has asserted that within settler colonial contexts, meaningful alliances between organized labor and Indigenous peoples are all but impossible. In Englert’s account, there exists no meaningful space for political coalitions or realignment, as even the constitutive antagonism between labor and capital is sutured by the colonial dichotomy between settlers and Indigenous peoples.<sup>4</sup> Crucially here, Englert also presumes that organized labor was, is, and will always be settler-dominated, a presumption that is in stark contradiction to such efforts as IWW Local 526—an all-Indigenous union. While it’s not explicit in the text, one is left to assume that insofar as Nichols feels it even worth staging a conversation between Marxists, anarchists, and Indigenous and Black radical traditions—inasmuch as it pertains to the possibility of solidarity between labor and anticolonial struggles—he is likely also to dissent from overly deterministic accounts of diremption such as Englert’s.

Along a slightly different line of thought, the account that *Theft is Property!* provides of how dispossession occurred/occurs at times occludes some of the more granular and ambiguous formations that processes of diremption produce in colonial contexts. Here, I’m particularly interested—following a conversation about the text between Mike Gouldhawke and David Parent—in considering how Nichols’ account of recursive dispossession squares with the diremptive regimes applied by the Canadian state to the Métis nation. Because Canadian law has long constructed “metis” to mean “racially mixed,” and has variously extended or withheld rights for Indigenous peoples classified as such, the Métis nation—a post-contact Indigenous nation—has very often been treated by the state as an exception to the general patterns of colonization and, in particular, the process of what Nichols describes as recursive dispossession. As Parent notes, it’s unclear how well Nichols’ account of recursive dispossession maps onto the history of scrip,

the legal regime whereby individual Métis and “metis” people became invested with both the right to personal property and land itself through their divesting themselves of their collective, sovereign rights to their territories.<sup>5</sup> Rather than the recursivity of a right to property that exists only in its own denunciation, the history of scrip seems to evidence a type of property that the colonial state allows to persist only through transformation into (petite) bourgeois forms of ownership.

Accounting for these sorts of major divergences and granularities within the general trajectory of diremptive processes seems critical in resisting accounts of settler colonialism that hew overly close to a sharp Wolfean dichotomy in which Indigenous peoples are always and only subjected to eliminatory processes and contrasted to racialized, non-Indigenous populations who are said to endure exploitation rather than elimination.<sup>6</sup> Many scholars like J. Kēhaulani Kauanui (2016) and Robin DG Kelley (2017) have criticized Wolfe’s reductive approach,<sup>7</sup> and a detailed accounting of the processes of diremption at work in various colonial contexts and across different time periods feels like an appropriate way in which to approach their concerns, without reifying the very categories produced through colonization.

*Theft is Property!* delineates its scope as constrained largely to the so-called anglosphere. We come to understand, over the course of the text, “the anglosphere” as comprised of the four white settler colonies: America, Australia, Canada, and New Zealand. While this is an increasingly standard comparative method, and one that’s not without its merits, there are also some serious pitfalls that attend it—especially as pertains to analyses that are as interested in pre-twenty-first century histories, as is *Theft is Property!* Chief amongst these pitfalls is the concern over the anachronistic methodological nationalism that might be at work here. From the perspective of the early twenty-first century, there’s good sense in comparing these four contexts as clear instantiations of anglosphere settler colonies today; however, that clarity is distorted if we look—as *Theft is Property!* primarily does—to the nineteenth and even twentieth centuries.

For starters, taking these four states as the containers for a comparative study projects a degree of coherence onto the history of these settler colonies that they did not necessarily have at the time. For instance, the processes of dispossession at work in the territories that are presently known as Canada differ radically depending on the pre-Confederation colony on which one focuses—despite the fact that these territories are presently part of a single state that is desperately attempting to create a unified legal theory of its sovereignty out of this incoherence. While the Crown used treaty-making as a duplicitous method of “legalizing” dispossession throughout much of what became Canada, territories controlled by colonies that became the province of British Columbia are more often treated as terra nullius, and very little, if any, history of treaty-making occurs. Which, in the terms Nichols lays out, may mean that there’s very little recursivity attached to the processes of dispossession in such contexts. Sticking with this concern about projecting an anachronistic coherence onto anglo-settler colonies also raises questions regarding how an account of recursive dispossession would have to shift to accommodate particular regimes of dispossession that originate outside the project and logics of the anglosphere itself, and only become (uneasily) folded into the anglosphere after the fact. In particular, I was struck by trying to think through Britain’s (and later Canada’s) appropriation of New France, and the processes of dispossession that this engenders in the province of Quebec, which, while having affinities with the de facto assertion of terra nullius in British Columbia, cannot be fully reduced to that experience either, because of the existence of a history of treaty-making that is even more deeply submerged in Canada’s contemporary Aboriginal law project than are the post-Royal Proclamation (1763) treaties.

Similarly, this particular comparative model not only risks reducing the multiple processes of dispossession *within* settler colonies to singular logics, it also narrows the cases *among* colonies that are deemed pertinent to comparative study. Put plainly, it confines our study of the *history* of dispossession to the contexts in which it appears most persistent and (seemingly) stable *today*. Most clearly, the apartheid regimes of both Rhodesia and South Africa are important examples of

defeated anglo-settler colonies and may serve not only in the study of the (differentiated) logics of dispossession, but also in the study and praxis of anticolonial struggles. Moreover, these questions about scope also seem to ask that we explore in deeper and broader ways how our account of dispossession—and particularly of its diremptive processes—would have to shift if we were to deconstruct the so-called postcolonial world order. What needs to shift in our thinking on dispossession to properly bridge conversations about ongoing—and often accelerating—processes of dispossession across contexts like Belize, Jamaica, Kenya, South Africa, Sri Lanka, and other postcolonial states? *Wretched of the Earth* (1963) famously critiqued the rising hegemony of already nascent national bourgeoisies within newly liberated African states following the defeat of settler/imperial rule. Since then, many critics with views more favorable towards Indigenous peoples' sovereignties than Fanon's have similarly criticized how purportedly decolonized states reproduce regimes of dispossession.<sup>8</sup>

The current dominance of the four anglo-settler colonies comparative model may prove increasingly to be a hinderance to seeing the similarities and co-constituting regimes of power that exercise themselves across these more varied contexts. But this is a problem of the field as a whole, far more than of any particular text. While well warranted as part of scholarly and activist efforts to make the ongoing reality of colonialism legible to settler populations, the heuristic that marks *settler* colonialism as radically distinct from other forms of colonization may now be overdetermined to the point that it is precluding consideration of the circuits of imperialism that are always already co-constituting settler colonies in relation to other colonial contexts. By focusing on dispossession itself, *Theft is Property!* has modelled an approach to the study of empire that, properly developed, has the potential to facilitate these sorts of analyses. What Robert Nichols has offered here is a timely and theoretically robust text; the “labor of collective struggle” will surely benefit from the work that he has pursued (Nichols 2020: 159). It deserves to be read widely, its many merits considered carefully, and brought into deliberate conversations with contexts beyond the scope of the text itself.

<sup>1</sup> See, for example: Thomas Flanagan, *First Nations? Second Thoughts*, Second Edition (Montreal: McGill-Queen's University Press, 2008); Frances Widdowson, and Albert Howard, *Disrobing the Aboriginal Industry: The Deception Behind Indigenous Cultural Preservation* (Montreal: McGill-Queen's University Press, 2008).

<sup>2</sup> See, for example: the Jesuit Relations, 1632–1673; also, Michael Asch, *On Being Here to Stay: Treaties and Aboriginal Rights in Canada* (Toronto: University of Toronto Press, 2014); Allan Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern North America* (Cambridge: Cambridge University Press, 2017); Peter H. Russell, *Canada's Odyssey: A Country Based on Incomplete Conquests* (Toronto: University of Toronto Press, 2018).

<sup>3</sup> See, for example: Antonio Negri and Michael Hardt, *Commonwealth* (Cambridge: Harvard University Press, 2009); Peter Linebaugh, *The Magna Carta Manifesto: Liberties and Commons for All* (Los Angeles: University of California Press, 2008).

<sup>4</sup> Sai Englert, “Settlers, Workers, and the Logic of Accumulation by Dispossession,” *Antipode* 52, no. 6 (2020): 1647–66.

<sup>5</sup> David Parent, Twitter Post, October 15, 2020. <https://twitter.com/davidnbparent/status/1316768771533500417> (last accessed on December 1, 2021)

<sup>6</sup> Patrick Wolfe, “Settler Colonialism and the Elimination of the Native,” *Journal of Genocide Research* 8, no. 4 (2006): 387–409.

<sup>7</sup> J. Kēhaulani Kauanui, “‘A Structure, Not an Event’: Settler Colonialism and Enduring Indigeneity,” *Lateral: Journal of the Cultural Studies Association* 5, no. 1 (2016) (<https://csalateral.org/issue/5-1/forum-alt-humanities-settler-colonialism-enduring-indigeneity-kauanui/>); last accessed on December 1, 2021); Robin D.G. Kelley, “The Rest of Us: Rethinking Settler and Native,” *American Quarterly* 69, no. 2 (June 2017): 267–76.

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- <sup>8</sup> See, for example: Joel Ngugi, “The Decolonization-Modernization Interface and the Plight of Indigenous Peoples in Post-Colonial Development Discourse in Africa,” *Wisconsin International Law Journal* 20, no. 2 (2001–2002): 297–352; Ngūgī wa Thiong’o, *Decolonizing the Mind: The Politics of Language in African Literature* (Portsmouth: Heinemann, 1981); Yvonne Vera, *Why Don’t You Carve Other Animals* (Toronto: TSAR Publications, 1992); Yvonne Vera, *Nebanda, A Novel* (Toronto: TSAR Publications, 1994).

**Rituals of Antiwill: Recursive Logic and Consent in Robert Nichols’  
*Theft is Property! Dispossession and Critical Theory***

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There is a peculiar kind of “gotcha” moment in contemporary settler colonial politics on Turtle Island, where the claim that land has been stolen from Indigenous peoples meets with a gleeful retort that as the original inhabitants of the territory never believed that land could be owned, the claim that they have been robbed of it is contradictory. Because land is not, ontologically speaking, property in any Indigenous worldview, and only something owned can be stolen, whatever wrong has been done through historical “dispossession” (even the term risks being question-begging) cannot consistently be represented as theft. It is, as Robert Nichols puts it, at best “potentially contradictory and self-defeating” (Nichols 2020: 6). White settlers, who have no such qualms, are thus enabled in their arguments (such as they are) that they own territory legitimately—or, at least, the claims of Indigenous peoples are *disabled*. As Nichols indicates, although the conservative right articulates this position bluntly, distorted echoes of it are found among more radical critics, who point out that the language of property and rights found in talk of original ownership of land is politically limiting as well as inauthentic. In other words, “critics wish to catch Indigenous peoples and their allies on the horns of a dilemma: either one claims prior possession of the land in a recognizable propertied form—thus universalizing and backdating a general possessive logic as the appropriate normative benchmark—or one disavows possession as such, apparently undercutting the force of a subsequent claim of dispossession” (Nichols 2020: 8).

With its caustic reversal of Proudhon’s famous dictum, Nichols’ book *Theft is Property! Dispossession and Critical Theory* unpicks this position through careful scholarship that is simultaneously historical and normative. Nichols situates the emergence of dispossession as a political harm through two long historical processes: first, the transformation of European land tenure that marks the transition from feudalism to capitalist private property in real estate, and second, the project of British settler colonial expansion to the “new world”—the territory we now know as Canada, the US, Australia, and New Zealand. Rather than characterizing dispossession as a prior wrong, and settler colonialism as an example of it, Nichols insists that the concepts of dispossession and expropriation in political thought gain their meaning through this history. His focus is historical, but with Indigenous peoples in Canada being the ongoing targets of settler violence and police repression and collusion for their efforts to assert sovereignty over unceded land, or to protect legally upheld treaty rights, we can hardly characterize the issues it raises as “in the past.” For example, a recent discussion of the book alluded to events in Canada in 2020, when the Wet’suwet’en First Nation and their supporters demonstrated and blockaded to prevent the expansion of the TransMountain pipeline through their unceded territory in British Columbia, or when Mi’kmaq fishers in Nova Scotia were threatened and saw a storage facility for lobster burned to the ground in an arson attack by white fishers who have persistently challenged their treaty right to fish for a “moderate livelihood.”<sup>1</sup>

In elaborating and defending his central claim, Nichols develops both a distinctive method in critical theory and identifies a particular historical and conceptual process by which dispossession reinforces its own logics. This method represents a challenge to existing intellectual traditions by reconsidering the relation between historical-descriptive and normative-conceptual approaches. Nichols works in the history of ideas, but, on the one hand, he is not only tracing the emergence of particular ways of understanding property and dispossession; he is clearly also articulating a normative critique of settler colonial self-understandings and the ways they undercut Indigenous land claims. On the other hand, he argues that concepts cannot be understood outside their historical emergence: “Despite near continuous invocations of historicity or the social

embeddedness of thought, much critical theory today advances in a decidedly presentist, ahistorical, analytic mode. Meaning is assigned to terminology rather than reconstructed from the history of its uses.” This matters, according to Nichols, because “although frequently posturing as political, this work often turns out to be meretricious: insofar as it fails to historicize the terms of present conflicts, it further tethers us to them” (Nichols 2020: 146).

The nature of this “tethering” is important, and provides perhaps the most shrewd and novel contribution of the book. Nichols describes how the process of generating proprietary relations always already assumes that those relations will be negated. That is, ownership of the land is generated and, in the same breath and by the same logic, transferred away. Property does not precede theft, in other words, but rather theft is the condition of having property. This is both a conceptual and a temporal claim. The form that right of ownership in territory takes, Nichols argues, requires that right to be given away, while the construction of the owner of land is retroactive—coming after (ontologically and historically) that owner has already been divested of their property.

“Dispossession [...] produces what it presupposes” (Nichols 2020: 9). This is not only a backwards logic, familiar perhaps from other moments in radical political thought, but, on Nichols’ interpretation, a self-reinforcing one. He describes this logic as “recursive,” echoing a term used in mathematics, and describes its workings thus:

Rather than a completely closed circuit, in which one part of a procedure refers directly back to its starting point, recursive procedures loop back upon themselves in a “bootstrapping” manner such that each iteration is not simply a repetition of the last but builds upon or augments its original postulate. Recursion therefore combines self-reference with positive feedback effects. This feature is occluded by the language of “structures,” which cannot account for dynamism within endurance. (Nichols 2020: 9)

The argument is also therefore a critique of the many radical theories that tacitly present institutions as relatively static (if oppressive), or at least lack a language for describing the processes by which social injustice not only persists but entrenches itself.

The individual chapters take up this project via the various archives in which it plays out. These include eighteenth- and nineteenth-century political theories of challenge to feudal political economy of land, as well as nineteenth-century Indigenous critiques of settler colonization; Marx and his interpreters on primitive accumulation; the history of Indigenous resistance to dispossession; an interpretation and comparison of Black radical thinkers on ownership of the person, and the kind of dispossession of one’s body that was a part of slavery; and finally, a concluding reflection on the law and the status of land, and Indigenous attempts to recast features of the extra-human natural world as having legal personality. I note that a lot of “critical” work in political theory, especially in the history of political thought, assumes the centrality of the European liberal tradition, and puts it into conversation—supportive or hostile—with a contemporary but more marginal challenger discourse (Marxism, feminism, anarchism, and so on). This work has been valuable in pluralizing political theory, but it often tacitly continues to center liberal traditions, triangulating all intellectual conversation through its influence and importance. *Theft is Property!* models resistance to that style of theorizing, by allowing extra-liberal thinkers to talk to each other—both literally, in ways that may require historical research to discover, or conceptually, in ways that can be reconstructed. Nichols’ discussion of how Indigenous anticolonization arguments resonate and are in tension with the Black radical tradition, in particular, is thereby important not only for its own intellectual and political lessons, but as an important methodological move in political theory towards undermining the overwhelming Eurocentrism and white privilege that structure the field.

This generative book is, as Nichols himself has said, narrow in scope but broad in implication. My own areas of interest also include the interplay between subject formation and institutional history, or, to be more specific (and more methodological), how critical phenomenology can be practiced at the same time as genealogy (Heyes 2020).<sup>2</sup> Nichols' book raises the general question: how is the constitution of subjectivity mutually informed by the constitution of objects—in this case, by the subjectivity of ownership and the object of property? Central to his argument is the claim that the discourse of property creates its own objects—both land and slaves—rather than those objects preceding and then being identified by it. For example, in his discussion of the early twentieth-century Oneida thinker Laura Kellogg, Nichols shows how in her thinking about pan-Indigeneity, “dispossession is partially constitutive of the modes of subjectivity and forms of group identification (e.g., ‘settler,’ ‘native’) it engenders, but it is not determinative. (As she puts it, Indigenous peoples have more in common than their shared oppression, but they do have that)” (Nichols 2020: 108). If Indigenous politics is most centrally concerned with land, Black radical thought has been preoccupied with bodies, for the obvious reason of the historical fact of chattel slavery in the African diaspora and its enduring legacy of anti-Black racism, especially in the country now called the United States of America. The discourse of property in the person, Nichols shows, plays a complex role in Black valuation and skepticism about self-ownership as a progressive ideal. As he points out, this is a central concept in much liberal political theory, the historical complexities of which are very often neglected in favor of an abstracted defense of treating one's self, and especially one's body, as one's property.

This is especially so in feminist political theory that liberally deploys the idea that *I own my body* as central to the defense of the right to abortion, to characterizing the wrongs of sexual violence, or more broadly in the articulation of sexual autonomy and freedom. For example, Nichols briefly cites Anne Phillips' book *Our Bodies, Whose Property?* in discussion of the vexed question of whether the treatment of white women as property-like (as for example in marriage contracts) implies that claiming ownership of one's body is an effective anti-patriarchal strategy (Nichols 2020: 123–4; Phillips 2013).<sup>3</sup> This literature engages with critical questions about whether owning one's body means one can give away or sell parts of it or services it enables, but it typically does so without consideration of the historical legacies of racialized slavery, and the fact that the bodies of Black women have, historically, been property of a far more literal kind. If Nichols is right about the constitutive role played by colonial history in the concept of dispossession, this is an important omission. To quote him putting it bluntly:

Insofar as these (white) thinkers do not trouble the basic distinctions between whiteness and Blackness on which the relation between property and personhood has historically been structured, their projects appear less as radical challenges to an unjust status quo and seem instead aimed at recovering or restoring the expectations of racial privilege that have been partially thwarted by the inequities of patriarchy or waged-labor exploitation. (Nichols 2020: 128)

Nichols' analysis here cuts deeper than merely pointing out the organization of liberatory claims around a tacitly white woman subject. Certain concepts, he is arguing, are built on historical and institutional injustices in ways that are not easily remedied by conceptual renovation of the kind analytic political philosophers purvey. Another, related part of his thinking also relates to feminist theorizing, and carries a similar burden—namely, his discussion of what he calls in chapter four “rituals of antiwill.” If property can only be claimed in the moment of its relinquishment, consenting to be a property-holder—solely in order to have that consent lead to the negation of the status—is a fundamentally contradictory act. Indeed, here “consent” becomes a distinctively disempowering act; the normative ideal of consent, so important to the free agent of contract in the western legal and political theoretical traditions, is inextricably tangled with self-abnegation. As

Nichols dryly puts it, “proprietary interests are ascribed to racialized and colonized subjects in such a way as to limit their actualization to moments of negation: voluntary servitude, self-alienation, or self-extinguishment. It has, accordingly, become harder for us to know what to make of the promise of possession” (Nichols 2020: 142). I would add: it has also become harder for us to know what to make of the promise of consent, across the political contexts where it is deployed. Consent is an act by an agent entering into an agreement with another party, and in the familiar imagined move from the state of nature to a social contract, the rational choice of persons to give up certain notional freedoms in favor of collectively organized, if voluntarily constrained, governance requires it. What this consent can be, given historical realities of inequality and exclusion, has been a persistent issue in western political theory, with Carole Pateman’s famous charge that the sexual contract runs in parallel to the social contract but without its consensual aspect, followed by Charles Mills’ argument that there is likewise a racial contract founded on violence rather than agreement.

To dive a little deeper into a more specific example, progressive responses to sexual violence, including many feminist responses, have long stressed the importance of consent to sexual activity as definitive of the line between “sex” and “sexual assault,” and indeed this is a key element of criminal law. Education and awareness campaigns stress the importance of assenting to sex in an active, autonomous, or “enthusiastic” voice, and these speech acts are a critical component of what marks the line between sex (whether good or bad) and an offence against the person. Feminist thinkers have pointed to the limits of the “affirmative consent” model of sexual violence, so popular in the 1990s and early 2000s, with a growing sense of urgency. It tends to make sexual contact either a matter of a fully planned, enjoyable experience, or an assault, covering over the grey area that constitutes “bad sex” that is neither verbally encouraged nor pleasant, but also does not (and probably should not) meet a legal standard for sexual assault (Garvey 2005; Cahill 2014).<sup>4</sup> This grey area is rhetorically vulnerable, both to the cynical charge that people (women) change their minds about sex after the fact to reinterpret bad sex as rape, and (from the other direction), to the point that bad sex deserves analysis and action, rather than being left undistinguished from the enthusiastic affirmations of consent fantasies (Fischel 2019: 4).<sup>5</sup> The language of consent participates even more explicitly in hetero-patriarchal norms: it is almost always used of women in sexual encounters with men (e.g., “she did not consent to sexual intercourse with him”). The ubiquity of this rendering in legal cases and popular representations of sexual violence—even if it does not actually capture the full range of cases in real life—entrenches a cultural understanding of sex as something that men initiate and inflict upon women, and women acquiesce to (or refuse). Although the Canadian Supreme Court has stressed that consent should be ongoing, it is still the case that agreements to have sex early in the process prove difficult to renege on. Rape myths about women who cock-tease introduce an element of resistance to sex to spice things up, or who really want to engage in particular sexual acts even if they don’t express these desires aloud.

Thus the problem with centering consent as the *sine qua non* of sex-that-is-not-assault is that it makes it easier for gestures of consent that occur somewhere along the track of an initially willing sexual encounter to be used against a victim when that encounter turns into sexual violence. Given that most sexual assaults occur in the context of dates or established relationships, this is an incredibly common phenomenon—indeed, the large majority of instances of sexual violence have this narrative structure. In other words, the demand to make a gesture of consent has become a crucial move in the rituals of antiwill that structure heteropatriarchal sexual encounters. As Nichols points out, just as the formerly enslaved were invited to claim ownership over their bodies (and their bodies’ labor) for the simultaneous and express purpose of then reselling it in an exploitative market, so formal consent is solicited precisely in the context of its relinquishment, and within a structure that has made it possible for this positive gesture, represented as empowerment, to be turned against its agent.

Lest this be seen as an unnecessarily cynical view, consider that among the ill-intentioned and legally savvy, seeking some kind of formal consent in advance to sex may even serve as a protection against later charges of sexual assault. For example, in the 2020 sci-fi TV show “Upload,” we see the young woman protagonist vlogging into her phone, communicating with a consent app that records her verbal agreement to the sexual encounter she’s about to have with the guy she has brought back to her apartment. He follows suit. Perhaps the show’s writers thought that this was futuristic fantasy, but consent apps have already come and gone. They had a brief window of popularity, with the first one patented in 2014, and a peak of media interest in 2016–2018, before the phenomenon faded away. Consent apps operate in a variety of ways, but the basic principle is that the app invites both prospective parties to a sexual encounter to record their responses to prompts about what they are consenting to, before sexual activity begins. In academic and popular analysis of the consent app, one consistent objection emerges: although ostensibly designed to improve sexual communication and prevent sexual violations, one likely use of the apps is as a defense against charges of sexual assault (Danaher 2018, esp. 153–6; see also Alptraum 2016; Lou 2017; Petrow 2018).<sup>6</sup> If someone accused of sexual assault can produce a digital record of the other party consenting to have sex at some point, then no matter how legally shaky this evidence is, given existing rape myths it is rather likely that a judge or jury will consider it as a point in favor of the defendant, just as decisions like agreeing to have another drink, or going home with one’s date, or saying “I’ll only have sex with a condom” are also taken as gestures of agreement to whatever chain of events may follow. The point of this example is to show that consent apps are a kind of *reductio ad absurdum* of the functioning of consent in sexual assault cases: it is quite possible that the act of consenting to sex—intended as the very speech act that would indemnify what comes after as sex rather than assault—is at once the act that functions to enable sexual violence without consequence.

The modest conclusion we might draw from this example is that given the larger contexts of heteropatriarchy, consent to sex can also sometimes function as a ritual of antiwill. The larger conclusion—which I cannot defend here, but which Nichols’ book has provoked me to consider more seriously—is that, in the tradition of meta-critical work on the social contract and the limits of contract thinking for social justice, we might see the ritual of antiwill called “consent” not just as failing for immanent reasons, but as a more systematic device for concealing the operation of power. Any agreement to participate—whether in a sexual encounter or a negotiation over land—ratchets inexorably toward concession, as Nichols has put it. In this vein, Mohawk anthropologist Audra Simpson writes that consent is a “ruse,” used to obscure the contexts in which it gains meaning by stressing a moment of affirmation:

The practices and techniques of institutional ‘recognition,’ of bringing peoples presumed alterity into the ambit of the state through the devices of treaty, of contract, later of citizenship itself, the mechanisms of rights appear to offer fairness, protection a form of justice. All of these techniques also require concession to the authority of foreign and dispossessing political will but also serve to diminish the authority and sovereignty (even when recognized, ever so slightly), of robust Indigenous political orders. These varying accounts have demonstrated state’s effort to enclose life for land and sometimes their failure at this, but also in broad strokes, a kind of cunning practice of recognition and governance. In this, I mean [...] steal while making those who you steal from, the criminal. This is the ruse of consent, they did not consent to this fully, they know this, it is the liberal move again and again to pretend as if this ruse of consent signals freedom and the free will to consent to this. (A. Simpson 2017: 29)<sup>7</sup>

Nichols' discussion of rituals of antiwill invites a broader consideration of the immensely consequential claim that the concept of consent functions in western legal and political thought primarily as a ruse of this kind, operating to obscure the recursive logic of the processes it governs, and that this conclusion extends far beyond Indigenous dispossession.

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- 1     References to discussion of the book are to a symposium held on October 27, 2020, hosted by the Department of Political Science at the University of Alberta. I am grateful to Robert Nichols as well as my co-commentators Isabel Altamirano-Jimenez and Jakeet Singh for a helpful dialogue on the book and its implications.
  - 2     Cressida J. Heyes, *Anaesthetics of Existence: Essays on Experience at the Edge* (Durham, NC: Duke University Press, 2020).
  - 3     Anne Phillips, *Our Bodies, Whose Property?* (Princeton: Princeton University Press, 2013).
  - 4     Nicola Gavey, *Just Sex? The Cultural Scaffolding of Rape* (New York: Routledge, 2005); Ann Cahill, "Recognition, Desire, and Unjust Sex," *Hypatia* 29, no 2 (2014): 303–19.
  - 5     Joseph J. Fischel, *Screw Consent: A Better Politics of Sexual Justice* (Oakland, CA: University of California Press, 2019).
  - 6     John Danaher, "Could There Ever Be an App for That? Consent Apps and the Problem of Sexual Assault," *Criminal Law and Philosophy* 12, (2018): 143–65; Lux Alptraum, "The Problem with Sexual Consent Apps," *Vice*, September 16, 2016 (<https://www.vice.com/en/article/yp359j/the-problem-with-sexual-consent-apps>; last accessed on December 1, 2021); Lily Lou, "Are Consent Apps a Good Thing?" *Lifehacker*, June 30, 2017 (<https://lifehacker.com/are-consent-apps-a-good-thing-1796457302>; last accessed on December 1, 2021); Steven Petrow, "People are Talking About Sexual Consent: Would an App Help?" *USA Today*, February 20, 2018. (<https://www.usatoday.com/story/tech/columnist/2018/02/20/sexual-consent-apps-set-rules-intimacy-come-their-own-risks/328635002/>; last accessed on December 1, 2021).
  - 7     Audra Simpson, "The Ruse of Consent and the Anatomy of 'Refusal': Cases from Indigenous North America and Australia," *Postcolonial Studies* 20, no. 1 (2017): 18–33 (DOI: 10.1080/13688790.2017.1334283; last accessed on December 1, 2021).

### Apprehending Indigenous Decolonial Movements: Questions on Recursivity in Critical Theory Scholarship

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I will focus my commentary on the book's provocations to consider tensions in undertaking projects of critical theory scholarship aimed to dialogue or interface intellectually with Indigenous decolonial movements. These are tensions theorists interested in mobilizing solidarity such as Nichols and myself (I contend) must grapple with. Specifically, there are resonances and questions that emerged from my reading around avoiding or addressing epistemic and discursive forms of coloniality in this interface and aspiration. To this, I will consider a hopefully generative redeployment of Nichols' conception of the "recursivity" of dispossession. I have chosen to speak to this more tangential contribution, rather than unpack the intricacies of his discussion of the structures and processes of dispossession in its historical materialist detail, such as land-tenure systems and territorial expansionism, or the specific capitalist-imperialist imaginaries they are entangled with. Such an undertaking is best left to those with greater capacity to speak to its subtleties and contours.

Nichols touches on concerns that theorists might reify or present as monolithic a particular definition of what are actually "polysemic" concepts that can be understood and mobilized in many ways (including at cross purposes). One such concept is *dispossession*, which he describes more as a porous frame of meaning, approachable as a Foucaultian "space of problematization" (Nichols 2020: 5–6). Dispossession presented as such overlaps with a concept that I have traced in my own work, *colonial apprehension* or *apprehensiveness* (Aguirre 2018).<sup>1</sup> Apprehension is a phrase I use for a similarly multivalent conception of the capture of Indigenous knowledges and meanings (e.g., the meaning of particular political practices or actions) through various modes of explanation, description, or disclosure and classificatory understanding. It describes intentioned moves to and indirect effects of rendering these knowledges and meanings externally intelligible, comprehensible, or discernable in particular ways and thus *possessable*. Colonial possession predicated on domination and control requires containing, neutralizing, and arresting the vitality of Indigenous subjectivities and assertions of self-determination. The range of critiques on the imperatives to engage in attempts at the "apprehension of the Indigenous," which may be colonizing by intent or not, are aligned with those around recognition politics and its refusals offered by Glen Coulthard and others. Colonial *apprehensiveness* as a term also cues the anxieties around imperatives for this apprehension felt by both colonizer and colonized. We need to assert understanding of Indigeneity and its attributes to possess it and make claims based on it. So, I think of apprehensiveness as an epistemic and affective accompaniment to the settler-colonial drive to dispossession and replacement or appropriation of Indigenous lands/territories and legal-political authorities.

I employ the concept of apprehension as scaffolding for questions on the positioning of Indigenous peoples in a "deeply unequal scene of articulation" (A. Simpson 2016: 328) and public appearance or scrutiny that functions in ways precisely fashioned to capture and contain, in order to dispossess.<sup>2</sup> There are a range of double binds placed on Indigenous peoples' presentation of political subjecthood and "claims-making," how these can be enunciated and understood, to then be recognized (as legitimate, rational, *political*) in ways that undercut that subjecthood and those same claims, i.e., to land. The imposition of a new regime of possession, as Nichols lays out, is mirrored or accompanied by the imposition of a new regime of *sense*, that is, the *sensorial* and a political *sensibility* or rationality in which, as soon as Indigenous peoples become known, they are captured and disavowed (for instance, as incapable of self-determination or possessing land).

With the concept of *apprehension* aligned to Nichols' *dispossession*, it could be said I am also interested in a logic of proprietary possessiveness (explored by Aileen Moreton-Robinson, among others) around "knowledge of Indigenous peoples" in terms of both knowledge *about* and also *held by* Indigenous peoples (I will revisit the latter).<sup>3</sup> So, particularly significant for me is Nichols' discussion of the historically situated, material and structural processes of dispossession in an infernal recursion with ongoing patterns in the discursive and epistemic realms—wherein processes of claims-making reshape the subjectivities of those engaged in them in co-constitutive ways, as outlined in chapter three on Indigenous Structural Critique—particularly the formation of classificatory hierarchies of differentiation that work to fragment and compartmentalize, a function of or in concert with, encompassing processes of systemic alienation. This includes the production of the Native/Colonized and Settler/Colonizer identities for example.

I tend to return again and again to the opening lines of Jean-Paul Sartre's preface to Fanon's *Les Damnés de la Terre*: "Not long ago the Earth numbered 2 billion inhabitants, i.e., 500 million men and 1.5 billion 'natives.' The first possessed the Word, the others borrowed it" (Sartre 2014: xliii).<sup>4</sup> While taken from the communist hymn "L'Internationale," the incisiveness of Fanon's description of the colonized Native as *les damnés*, the damned of the colonizer's Earth or New World at Encounter (see Quijano 2008; Wynter 1995) is not done justice by the popular English translation of "wretched."<sup>5</sup> Colonial subjectification or subjection makes Indigenous peoples particularly the *damned* of the earth—dispossessed at the moment of re-formation as colonized Natives, that is, in the violent processes Nichols calls transference, transformation, and retroactive attribution (Nichols 2020: 34, 146). The colonized Native's identification as such is contingent on their dispossession; they can never go back to possession of some essential precolonial Indigeneity and so also, land, the earth with which they are bound up. It is a stillbirth or incomplete death in a kind of purgatory, as others like Nelson Maldonado-Torres have characterized it (Maldonado-Torres 2007).<sup>6</sup> The contemporary Indigenous person or community coming to grips with their colonial subjection or re-formation in articulation of their claims to, for example, sovereign territoriality can never be "real Indians," an identity retroactively created at a mythical Contact event and on which claims to land ostensibly rest. Damnation is also a form of epistemic and discursive dependency impossible to overcome.

I wish to acknowledge Nichols for I think clarifying and naming a source of the problem of colonial apprehension as processes of recursive dispossession and what he references partly as a dilemma of vocabulary constraints, the need to act within a framework of domination and subordination that has "set the own terms of its critique" (Nichols 2020: 9, 145). Issues of using the languages of property, sovereignty, and nationhood (and so too the ownership of languages) have long been of particular concern to Indigenous political thinkers (see for example, Barker 2005 and Turner 2006)—and in ways similar to the dilemmas of Third World nationalisms and debates around seeming discursive foreclosures or aporias of authenticity and derivativeness, for example in South Asian contexts, within which those including Partha Chatterjee, Ashis Nandy, Dipesh Chakrabarty, Gayatri C. Spivak, and others have engaged.<sup>7</sup> Yet honing diagnostic terms to the particularities of settler-colonial contexts is an important undertaking. Of course, Indigenous peoples have always also retained alterNative spaces of intelligibility, practices of knowing and telling—including within our own languages—and we are faced with a range of concerns around their opacity, protection, and reproduction, for reasons of survivance and decolonial change. And this is where I would like to turn to methodology and Nichols' conception and approaches to the project of the book itself, expanding on implications of his central argument around recursion and critical theory's "form and function," as he put it in the conclusion (Nichols 2020: 146).

One contribution of this book is to me very timely in regard to the aim of bringing non-Indigenous or "whitestream" critical theory into conversation with Indigenous thinkers and also

engaging Indigenous enactive or “structural” critiques of colonialism more on their own terms, as well as stimulating connections to Black radical thought. On this score, Nichols references the tendency of theorists including Judith Butler not to engage these beyond fairly cursory references, the somewhat objectifying deployment of Indigenous peoples as examples rather than as interlocutors, whatever the intent (Nichols 2020: 162, note 11). I am interested in hearing more of Nichols’ thoughts in two areas: first, the reluctance of such critical theorists to engage with Indigenous thinkers from their specific locations, including Indigenous theorists working outside genres and styles or modes of inquiry most recognizable to them as forms of theorizing or expressions of critique (here I am thinking of for example storywork; see Million 2014; Maracle 2015; L. Simpson 2014; Smith 2012).<sup>8</sup> I welcome this work as a methodological intervention to help probe this reluctance and consider what modeling a praxis of *thinking with* Indigenous theory could look like in this “allied” scholarship. Second, I am interested in reflections on the risks in such engagement in terms of the task of critical theory that Nichols identifies with Iris Marion Young in upholding a need for description and explanation while forwarding normative evaluations of social and political phenomena, with emancipatory aims (Young, quoted in Nichols 2020: 10–1).

Many Indigenous scholars concerned with insidious forms of appropriation have intervened against the drive to describe and explain “Indigenous ways” of being, doing, acting, etc. The rejection of recognition has been extended to the *refusal* of a Settler right to know (Coulthard 2014; Tuck and Yang 2014a and 2014b) and performance within a settler-colonial “theatre of apprehension,” in Audra Simpson’s evocative and for me influential turn of phrase (A. Simpson 2014: 24).<sup>9</sup> I find the arguments around refusal very compelling, especially in regard to narrativizing Indigenous political life and decolonial movement/s within critical theory scholarship—scholarship that can be deemed to operate apprehensively when it comes to Indigeneity. Is there a distinction between critical theory’s drive to describe and explain processes of domination and dispossession for purposes of critique, and doing so of the ways Indigenous peoples resist or evade these processes? The latter includes immanent, embodied, enacted, or structural forms that must be identified and elucidated, translated/transliterated, or otherwise rendered legible or intelligible *as such* by the theorist. What are the risks when theorists read resistance and seek to reveal meanings in patterns discerned linking diversely experienced phenomena, events, actions, etc. and then also draw out of these examinations resources not just for negative critique but broader emancipatory aims within positive (that is, substantive and affirmative) theories of transformation?

This for me prompts questions on the terms of engagement between theorists and possible Indigenous or Other interlocutors as models for critique or normative alterNatives. Indigenous refusals to decode, disclose, or make available to scrutiny storied practices of freedom and resurgence or their animating philosophies may be perceived as reactionary or deferring to some concept of intellectual property. Yet such refusal seems a requisite response made manifest due to recursive dispossession—that simultaneously creates property and territory to allow its theft—one in which Indigenous thinkers and activists who question the sharing of their “resources,” intellectual or otherwise, can be painted as ungenerous “bad Indians.” This is a designation for those deemed to hoard their “traditional wisdom” (when seen to still exist) as much as those who possess and deploy the “borrowed power” of the colonizers’ language and intellectual tools (Aguirre 2018: 372–3). Both reveal a colonizer’s apprehensiveness of Native insurgence.

Here I often think of two interviews Leanne Betasamosake Simpson did with Naomi Klein in 2013, during the height of the Idle No More movement/s, regarding the desiring, extractive, and accumulative exigencies of settler-colonialism, including commodifications of “traditional ecological knowledge” (TEEK), even by well-meaning environmentalists, justified in the rhetoric that

“Indigenous knowledges have something to offer everyone.” L. Simpson outlined the road paved from “resourcing” Indigenous “possessions” to theft:

Colonialism and capitalism are based on extracting and assimilating. My land is seen as a resource. My relatives in the plant and animal worlds are seen as resources. My culture and knowledge is a resource. My body is a resource and my children are a resource because they are the potential to grow, maintain, and uphold the extraction-assimilation system. The act of extraction removes all of the relationships that give whatever is being extracted meaning. Extracting is taking. Actually, extracting is stealing—it is taking without consent, without thought, care or even knowledge of the impacts that extraction has on the other living things in that environment [...]. (L. Simpson, quoted in Klein 2013)<sup>10</sup>

Questioning universal distribution and publicity of any or all Indigenous knowledges sometimes confronts accusations of anti-humanist and so anti-humanitarian sentiments (Tuck and Yang 2014b). I uphold the prerogative to refuse or object, though it ethically and methodologically challenges not only the most clearly implicated researches with or concerning Indigenous peoples, but the undertaking of projects in critical theory.

Yet critical theorists are also compelled to give accounts, if we agree with Young that our role is to describe and explain phenomena toward emancipation—whether this emancipation is particular or universal, such as the making of a “new humanism,” to evoke Fanon again. There are certainly many contributions that might be made to what Nichols gestures to as “counter-dispossession” by engaging with the persistent decolonial realities and potentialities of and in Indigenous lifeways and worlds and with the thinkers emergent from them. I like others am interested in moving beyond anticolonial dialectics, inversions, or reactivity. There are many imperatives for theorizing and re-theorizing negations like dispossession and its resistance, but also what has perhaps escaped efforts at totalization by such cycles. I endeavor to *think with* Nichols on strategies to block or break circuits of dispossession structurally-materially as well as epistemically and discursively. This includes blocking or breaking circuits in which critical theory itself might dispossess, such as through ultimately self-referential modes of redescribing Indigenous or Others’ stories to formalize or validate them within its vernaculars of critique (i.e., defining them as resistance).

Nichols characterizes Indigenous struggles as involving “expressive insurgency,” involving the reconfiguration of forms of political articulation in what I understand is itself a kind of recursive mechanism. The naming favored by many Indigenous thinkers in the last decade is not incidentally *resurgence*, the *re* signaling the regenerative dynamics of transformative activity not solely in a negating struggle, though unfolding in an asymmetrical scene. I have long been preoccupied with how theory scholarship might give accounts of Indigenous resurgence—the refiguration of alternative lifeways and worlds—in ways that reflect and *contribute* to its (aspirational?) decolonial recursivity, the creation of its own conditions of possibility and positive feedback effects. *Theft is Property!* prompts for me a variation on this line of inquiry that attends to the asymmetries of power in many scholarly spaces of knowledge production: how might a critical theory committed to deep yet ethical engagement with Indigenous stories and thinkers itself become expressively insurgent, modelling the “substantive content of its claims and ends” in method and mode of articulation (Nichols 2020: 146–7)? For instance, we might give accounts of patterns and significance in events and practices of Indigenous political movement/s so theirs and critical theory’s decolonial recursive possibilities are amplified, but in ways that also refuse colonial apprehension. Like many of my questions, this is perhaps but a variation on another posed by my mentor Jim Tully that has long impelled me: “In what ways does political theory act as an obstacle by contributing to the colonization of Indigenous peoples, and what

resources exist in political theory for supporting the struggles of Indigenous peoples for freedom?” (Tully 2008: 257).<sup>11</sup> In *Theft is Property!* Nichols’ has continued and furthered this opening to dialogue.

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- 1 Kelly Aguirre, “Re-Storying Political Theory: Indigenous Resurgence, Idle No More and Colonial Apprehension” (PhD Diss., University of Victoria, 2018).
- 2 Audra Simpson, “Consent’s Revenge,” *Cultural Anthropology* 31, no. 3 (2016): 326–33.
- 3 Aileen Moreton-Robinson, *The White Possessive: Property, Power and Indigenous Sovereignty* (Minneapolis: University of Minnesota Press, 2015).
- 4 Jean-Paul Sartre, “Preface” in Frantz Fanon, *The Wretched of the Earth*, trans. Richard Philcox (New York: Grove Press, 2004 [1961/1963]), xliii–lxii.
- 5 Anibal Quijano, “Coloniality of Power, Eurocentrism and Social Classification,” in *Coloniality at Large: Latin America and the Postcolonial Debate*, ed. Mabel Moraño, Enrique Dussel & Carlos A. Jáuregui (Durham: Duke University Press, 2008), 181–224; Sylvia Wynter, “1492: A New World View,” in *Race, Discourse, and the Origin of the Americas: A New World View*, ed. Vera Lawrence Hyatt and Rex Nettleford (Washington: Smithsonian Institution Press, 1995), 5–57.
- 6 Nelson Maldonado-Torres, “On the Coloniality of Being,” *Cultural Studies* 21, nos. 2–3 (2007): 240–70.
- 7 ed. Joanne Barker, *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination* (Lincoln: University of Nebraska Press, 2005); Dale Turner, *This Is Not a Peace Pipe: Towards a Critical Indigenous Philosophy* (Toronto: University of Toronto Press, 2006).
- 8 Dian Million, “There is a River in Me: Theory from Life,” in *Theorizing Native Studies*, ed. Audra Simpson and Andrea Smith (Durham, NC: Duke University Press, 2014), 31–42; Lee Maracle, *Memory Serves: Oratories*, ed. Smaro Kamboureli (Edmonton: NeWest Press, 2015); Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*, Second Edition (London: Zed Books, 2012); Leanne Betasamosake Simpson, “Land as Pedagogy: Nishnaabeg Intelligence and Rebellious Transformation,” *Decolonization: Indigeneity, Education & Society* 3, no. 3 (2014): 1–25.
- 9 Glen Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014); Eve Tuck, and Wayne K. Yang. “Unbecoming Claims: Pedagogies of Refusal in Qualitative Research,” *Qualitative Inquiry* 20, no. 6 (2014a): 811–8; Eve Tuck, and Wayne K Yang, “R-Words: Refusing Research,” *Humanizing Research: Decolonizing Qualitative Inquiry with Youth and Communities*, ed. Django Paris and Maisha T. Winn (Sage Publishing, 2014), 223–48.
- 10 Naomi Klein, “Dancing the World into Being: A Conversation with Idle No More’s Leanne Simpson,” *YES! Magazine*. March 5, 2013. <http://www.yesmagazine.org/peace-justice/dancing-the-world-into-being-a-conversation-with-idle-no-more-leanne-simpson> (last accessed December 1, 2021).
- 11 James Tully, “The Struggles of Indigenous Peoples For and of Freedom,” in *Public Philosophy in a New Key: Volume 1* (Cambridge: Cambridge University Press, 2008), 257–88.

### Race Recurs: A Comment on *Theft is Property!*

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Jews had a claim, I've never denied that, of course they have. But is it a claim that can tell a Palestinian, "well, you better leave this house because I got it three thousand years ago. I mean, it's true I come from Brooklyn or from Poland but I have a bigger right to this house than you do, so get out." I'm sorry, I disagree with that.  
Edward Said<sup>1</sup>

As I finish Robert Nichols' *Theft is Property!* sitting in the fortress that "Australia" has become ever more apparently under COVID-19, residents of the Silwan neighborhood of Jerusalem are demolishing their own homes to avoid the USD 6,000 fine imposed by the municipality if they did not do so in advance of the deadline set by an Israeli court.<sup>2</sup> The calculated perversity of the primacy placed by European settler rule on the possessive is laid bare (Moreton-Robinson 2015).<sup>3</sup> As in Sheikh Jarrah, Lyd, Haifa, and elsewhere around colonized Palestine, Palestinians' claims to occupancy are rejected by the enforcement of a prior claim bearing no more legitimacy than the fact that it is wielded by a burlier party, the Israeli state, backed by its strong-arm allies. Recalling this allows me to do two things: first, to note straight away the applicability of Nichols' highly detailed and meticulously historicized account of dispossession, as both an analytical tool for growing our understanding of Anglo-settler colonialism and for conceptualizing Indigenous practices of "expressive insurgency" (Nichols 2020: 159). Second, it permits me to place myself in relation to these discussions.

#### §

I did not think at an earlier time that I would become a settler again. Brought up in Catholic Ireland in the 1970s and '80s, my parents having returned from a failed attempt to live in Tel Aviv, where I was born, in 2012 my family and I moved to so-called Australia, settling on Gadigal land. The move brought home to me the extent to which "Aboriginal people and perspectives are excluded within antiracism" (Lawrence and Dua 2005: 120).<sup>4</sup> The European antiracist movements and scholarly conversations I had been involved in about how best to challenge racism and dismantle racial logics and processes of rule rarely gave consideration to questions of Indigeneity or sovereignty as a mode of resistance. This is in part due to the acceptance of the world as postcolonial rather than still colonial, as seen in the repressiveness of the border regime of the Global North (El-Enany 2020).<sup>5</sup> One of the facilities of race as a mode of thought, as well as a technique of governance, is its perpetual will to rupture. This goes as well for the concepts we use as for the fragility of the solidarities we can or cannot build in the face of the ever-adaptive structures of race. This is how we lose from sight the threads of connection that link the different practices and processes the racial-colonial project entails despite its myriad instances and effects. It is the losing from sight of the patterning of race that triggers the antiracist cycles that appear to be eternally starting from zero.

The second time I became a settler was a choice, then. But not one that was fully informed about what this really meant until, over the ensuing years, it spoke back to the partial story about race I had at my disposal. The confrontation with the dailiness of settler colonialism puts me in relation to what it means to have come from dispossession, yet to colonize, twice. My forebears fled Romania and Lithuania respectively. My maternal grandmother's family left behind property and businesses in Bucovina (Northern Romania) to land in a small apartment in Tel Aviv, signaling that colonization need neither be a positive choice nor a personally enriching one. Nandita Sharma

has objected to the tendency she sees of the “*expansion* of the term colonizer” to encompass migrants (Sharma 2020: 8).<sup>6</sup> However, in our case, the real “fear of persecution” (Sharma 2020: 28) sits uncomfortably with the fact that Jewish existence in Palestine has not only long surpassed meeting the need created by European antisemitism but was predicated long before this on a Zionist project emulating and embellishing Euro-racial coloniality (R. Lentin 2018).<sup>7</sup> The illegalization of Palestinian homes in Silwan that we watch from our lockdown couch has nothing to do, to be blunt, with the *Sboah*.

I am making these reflections rapidly, and inadequately, but nevertheless I hope they demonstrate that none of us come to our reading of processes that we are not disinterested observers of innocently, to loosely paraphrase Césaire (Césaire 2000 [1955]).<sup>8</sup> At the same time, I do not find that Nichols’ book—nor the extensive litany of Indigenous scholars whose work he engages, or that I am familiar with—causes us to fall into fatalism about the possibility of non-Indigenous-Indigenous coalition. On the contrary, in what follows, I hope to show that what *Theft is Property!* does, among many other things that I cannot cover here, is to sharpen thought, not only on the precise conceptual and practical unrolling of dispossession as a key tool of Anglo-settler colonial domination, but also on race more broadly as its undergirding logic. This then has crucial ramifications for how, contra the opposition that is often established between Indigenous, migrant, or Black freedom dreams, we can all benefit from the relational and interactive methodology that Nichols develops for thinking collectively about how to envision a decolonial world. These dreams are not new. How different could the society my grandparents fled to have looked if the Palestinian politician Jamal al-Husseini had been successful in his appeal to Jewish Arabs?

To our Jewish compatriots, who have understood the goals of the Zionist movement and the damage it will cause, we open our arms to them today and call: Come to us! We are your friends! [...] You have the same rights in Palestine as we do, the same duties as we do because we and you share the same homeland, whether the Zionists like it or not. (Aderet 2017)<sup>9</sup>

## §

I have been thinking about race for over two decades now, at least if we want to use “thought” to mean academic work, study. But as hinted at before, my thinking was framed by it long before I understood that “thought” could be presumptuously aligned with a job. The denial of the significance of race to sociality has been my overriding concern: I want to know why and how race is structurally elided, or to use David Goldberg’s terminology, “buried alive,” only for its formations to be prolonged in practice (Goldberg 2006).<sup>10</sup> One of the difficulties in asking these questions is the ambivalence with which we must approach race itself. Race is, of course, a fiction, as Barbara and Karen Fields note (Fields and Fields 2012),<sup>11</sup> but it is also a fact (M’Charek 2013).<sup>12</sup> “The facticity of race,” I have written, “relies on the fictional narratives that are woven around it to fix it in place” (Lentin 2020: 35). However, this duality is hard to seize, especially given the failure to treat race as something that continues to structure “the life of the postimperial polity,” as the current moral panic about critical race theory attests (Gilroy 2005: 12).<sup>13</sup> One of the prevailing contentions is that any attempt to mobilize race, even analytically, results in the naturalization of the categorizations of humanity it establishes, to devastating effect. The predominant response, which I have repeatedly made among many others in the tradition of race critical theory, is that due to racism’s role in the “production and exploitation of group-differentiated vulnerability to premature death” (Gilmore 2006: 28), it is not yet time to jettison race.<sup>14</sup> As Goenpul woman of the Quandamooka nation and leading critical Indigenous and race scholar, Aileen Moreton-Robinson, has asked, “how effective is it to applaud a non-racial future,

how would this clapping change the racialized power relations in which we are enmeshed?” (Moreton-Robinson 2011: 419).<sup>15</sup>

However, it is not a simple thing to continue to use race as an analytical tool *in order* to unmask the paradox of its fictive factness. Nichols signals a similar, and I think interrelated problem, when he notes the “paradoxical conjunction” of the idea of “Indigenous property” ushered in by “settler colonial capitalism” (Nichols 2020: 33). Indigenous people *both* do not conceptualize their relationship to land as one of property *and* they are the original owners of the land. In part, his book speaks back to critics on both the right and the left who “wish to catch Indigenous people and their allies on the horns of a dilemma” (Nichols 2020: 8). The argument then is that dispossession, which has become so key to how Indigenous people express their injury and seek redress, is moot. Nichols’ response, worked through in detail throughout the book, is that rather than being obfuscating, the paradox at the core of dispossession clarifies both what Anglo-settler colonialism did to Indigenous peoples and lands, and why sovereign claims are liberatory.

The paradox is created at the moment when Indigenous people were recognized through a variety of legal and political mechanisms, as well as through violence, as having ownership. However, this ownership was bestowed rather than being an Indigenous demand. The non-proprietary relations Indigenous people had with the land were transformed into proprietary ones for the sole reason of enabling Indigenous people to divest themselves of this land, “systematically transferring control and title of this (newly formed) property” (Nichols 2020: 8). Nichols introduces the concept of “recursive dispossession” to theorize this process. And it is this notion of recursivity which is of great utility for explaining why race, to my mind, remains a useful framework.

Nichols’ idea of recursivity explains the book’s title, inverting the anarchist phrase “property is theft.” In the case of settler colonialism, it is the act of stealing the land from Indigenous people that generates property. Put another way, the structures established by settler-colonial capitalism create the requirement of the recognition of Indigenous ownership where it was simply not needed before. Similarly, this gives meaning to the often uncontextualized idea of race as a social construct. As several scholars have noted (Hesse 2011; Antrosio 2012; Wolfe 2016), it is an idea of little use unless we explain exactly how, why, and in which circumstances race as “sociogeny” came to have such force (Fanon 1967).<sup>16</sup> Just like the idea of dispossession, it is also easily manipulable by conservative critics and class-first leftists alike. For those making the attack on the critical study and teaching of race a crusade of the post-Trump era, if race is a social construct, then racist effects are mere inventions, construction and invention having been made synonymous. Of course, this can be picked apart given that many of these same anti-antiracists believe strongly in bio-racialism in matters of crime, poverty, or intelligence. However, the contradictory nature of this situation is not always easy to communicate given the lack of racial literacy, by which I mean the tools to parse the precise and variegated ways in which forms of racial rule were constituted under Euromodernity (Guinier 2004).<sup>17</sup>

My argument, learning from Nichols, is that recursivity could be helpful for understanding both the work done by race itself and the difficulty in communicating its complexity. Nichols explains recursion to mean a looping procedure, one part of which “refers directly back to its starting point” but in which “each iteration is not only different from the last but builds on or augments its original postulate” (Nichols 2020: 9). In a similar way to dispossession, race also “produces what it presupposes” (Nichols 2020: 9). White Europeans who imposed the badge of race (Du Bois 1940)<sup>18</sup> onto those they conceived of as other than human produced the idea that race is primordial, so that it has to be repeatedly denaturalized. To flesh this out with regards dispossession, in chapter two Nichols engages in a “slightly stretched” discussion of Marxist interpretations of primitive accumulation to think about the recursive relation “between historical processes and the conceptual categories used to describe and critique them” (Nichols 2020: 54). This is strengthened in chapter three by an engagement with “Indigenous resistance to

dispossession as an enacted and embodied mode of structural critique” (Nichols 2020: 85). Structural accounts of “the overall effect of a set of historical processes” are often challenged on the grounds of the need to be attentive to “both continuity and change over time” (Nichols 2020: 86). However, what structure brings to understanding is the systemic nature of these cumulative processes. Similarly, to speak of race structurally is to understand that it too acts recursively, borrowing from and building on and looping back to an “assemblage” of “discourses, practices, desires, infrastructures, languages, technologies, sciences, economies, dreams, and cultural artifacts” (Weheliye 2014: 3).<sup>19</sup> So, to understand how race comes to stand for a set of diverse functions for managing human difference for the purposes of maintaining and reproducing white supremacy (Lentin 2020), we must see how it is impossible to isolate any one of these to the negligence of another.<sup>20</sup> This is why explanations that abstract race as a “social construct” without filling in the details of that historical construction largely fall short. In explaining race as the social construction of the idea of “biological racial hierarchy” (Hesse 2012), this account obscures how the biological iteration of race itself built on previous discourses that were religious, geographical, cultural, etc. before they were amalgamated into pseudoscientific “theory.”<sup>21</sup> The later assertion of a “new cultural racism” in Europe in the 1980s itself omitted the recursive move in which race’s various iterations, to follow Nichols, constantly return to but adapt or embellish those of the past. It is this which explains both the shakiness of race as an idea in constant search of reassurance (Wolfe 2016) and its tenacity due to its ability to slide, constantly adaptive (Hall 2017).<sup>22</sup> This polar pull is what Nichols signals as the feature of dispossession sometimes missed in the emphasis on structure. Recursivity, he explains, refers to the “dynamic” and “amplificatory” processes that essentially make dispossession happen (Nichols 2020: 91) in ways that are very similar to race, the name we use for a set of dehumanizing, exploitative, and, following Moreton-Robinson, “white possessive” practices (Moreton-Robinson 2015).

By mobilizing a broad range of Indigenous critical thought from scholars such as Leanne Betasamosake Simpson, Glenn Coulthard, Jodi Byrd, J. Kēhaulani Kauanui, or Joanne Barker, Nichols shows how one of the key functions of dispossession is to create human categories, in this case “Indigenous people.” This is where the discussion of race and dispossession comes together most clearly, for example in Moreton-Robinson’s recognition that racial-colonialism brings forth the Aboriginal—“a racialized concept”—that was nonetheless “forged through the struggle against colonisation” (Moreton-Robinson 2011: 414). But, as Nichols powerfully insists, Indigeneity—as it has come to be commonly understood by peoples with a diverse range of experiences and from many highly variable contexts—is not only defined through negative resistance *against* but also through positive struggle *for*, drawing “resources from their own intellectual, spiritual, and political traditions” (Nichols 2020: 112). Hence, aligning with anticolonial theorizations of race and those in the Black radical tradition, Nichols insists that rather than asserting Indigenous critique as an identity category, it is best thought of as “an oppositional praxis” that brings into relief the fact that “if dispossession is already a negation, then Indigenous critique is a negation of a negation” (Nichols 2020: 115).

This conversation between critical Indigenous and Black radical thought which completes the book underlines how important serious engagement with Indigenous historicization and theorization of settler colonialism and its dispossessive effects is for antiracist resistance more broadly. The most incisive critical race theory has sought to redress the evasion of Indigenous struggle by antiracism that Lawrence and Dua and others decry. The authors whose work Nichols ends with, Cheryl Harris and Patricia Williams most prominently, have each sought in their own way to center the question of property as core to race as a regime enacted on the individual and collective body. Being attentive to these critiques also allows us to extend the thread to other practices of racialization, such as that which concerns me personally, that of European Jews. Jewish emancipation in eighteenth-century France, as Enzo Traverso has noted, was a “revolution from above” (Traverso 1996), unasked for by the Jews living separate but autonomous lives until they were included in the nation by decree (a tactic also used to divide Algerian Jews from their Muslim

neighbors with the 1861 Crémieux decree).<sup>23</sup> In a similar vein, the various stages of emancipation from enslavement entailed a retrenchment of practice of racialized discipline in other ways, most notably through the criminalization of Black people. For many Indigenous people, accommodations with the state in the form of recognition, reconciliation, and even treaties are deeply ambivalent in that they erase as much as they promise on paper.

The crescendo of Nichols' argument allows us to see the points in common between experiences of subjugation and negation across difference. Property plays a central role, either in the denial of self-ownership or in the "rendering of something into a property form [which] is frequently the first step to losing it" (Nichols 2020: 142). To return to my starting point, Edward Said recalled that historically Jews had only lived in Palestine for some two centuries, before and after which a whole host of peoples settled and moved on, the longest being the Palestinians.<sup>24</sup> The Zionist decision to claim ownership with the help of the British, whose Anglo-settler societies dominated "9.89 million square miles of land" over the course of the nineteenth century (Nichols 2020: 88), arbitrarily assigned property to a dispossessed people and created the dispossession of another. As a consequence, today Zionists effectively ally with the European far-right to deny that Jews have a rightful place in any other land, Israel being our only legitimate "homeland," an antisemitic stance. Increasingly, the language of "indigeneity" is instrumentalized to make these claims in a perversion of everything that Indigenous attachment to land means. For myself, I deny having roots in a particular place, but that is not to say I cannot have attachments. I *can* learn from Mohawk legal scholar Patricia Monture-Angus's definition of sovereignty as "my right to be responsible" and employ this as a basis for doing something meaningful with it (cited in Nichols 2020: 29).

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## On Robert Nichols, *Theft is Property! Dispossession and Critical Theory*

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*Theft is Property!* is an exciting and innovative piece of political theory.<sup>1</sup> In it, Nichols explores the “problem-space” of dispossession by attending to Indigenous critiques and the history of settler colonialism rather than reconstructing an ideal normative theory of the concept. It is a great example of “decolonizing” and “comparative” political theory: one characterized by an attention to power, and one that models an impressive dialogue across what are heterogeneous, historically constituted, and therefore live traditions and ideas towards the ends of decolonization specifically and emancipation more generally. For myself, the book illuminated what was previously hazy, while encouraging and energizing me to think. My commentary here reflects this by focusing on what Nichols’ various arguments do for our understanding of settler colonialism today, pointing to further applications or extensions of them, alongside three themes that seek further clarification: the relationship between the micro- and macro-level processes of dispossession, the relationship between capital and colonialism, and the normativity of dispossession and counter-dispossession.

### 1

Indigenous critiques of the process of settler colonialism reference stolen land while insisting land cannot be owned. This appears to be paradoxical as theft presupposes prior ownership. Now one could separate these two claims—either focusing on “stolen land” or that “land cannot be owned.” The problem with this approach is that the former naturalizes property relations and the commodification of land—a concern shared with critical theory (Nichols 2020: 6, 26, 28, 121)—while the latter loses a grip on the experience and normative problem of settler colonialism—which tends to be naturalized, sidelined, if not ridiculed by critical theory (Nichols 2020: 13, 28, 30). The object of concern here is colonial apologists, environmentalists, Marxists, and radical defenses of “the commons” (Nichols 2020: 154). As Aileen Moreton-Robinson puts it, if Indigenous peoples “did not have a concept of ownership [...] there was no theft, no war, and no need to have a treaty” (quoted on Nichols 2020: 7). And as Nichols elaborates, this time targeting those on the left, emphasizing the latter without the former “reduce[s] processes of colonial dispossession to that of capitalist commodification and enclosure, obviating the need for a robust examination of the specificity of settler expansion and Indigenous resistance on and through land” (Nichols 2020: 97). Indeed, “generalized concerns with the commodification of land tend to ignore the extent to which this process has been subtended by systematic transfer, loss, and group differentiation” (Nichols 2020: 97–8).

For Nichols, the paradox of the claim is not attributed to a sloppy use of concepts (hence the choice against an ideal normative theory of dispossession) nor simply pragmatics, but expresses a “paradoxical fact” or real contradiction that emerges in settler colonial contexts (Nichols 2020: 30, 33). Thus, the settler colonial context is not simply “an *example* to which the original concepts” of dispossession and expropriation apply as they were formulated in Europe but “a *context* out of which a proximate yet distinct vocabulary may arise” (Nichols 2020: 53). In settler colonial contexts, dispossession combined commodification and theft into a single moment, where the dispossessed become “owners” only retroactively (Nichols 2020: 8). Dispossession involves “not (only) the *transfer of property* but the *transformation into property*” (Nichols 2020: 31). Hence dispossession in these contexts “refer[s] to a process in which new proprietary relations are generated but under structural conditions that demand their simultaneous negation. In effect, the dispossessed come to ‘have’ something they cannot use, except by alienating it to another” (Nichols 2020: 8). Nichols refers to this as recursive dispossession: “a form of property-generating

theft” (Nichols 2020: 9). This is a process of diremption within alienation: for it is through alienation from land that humanity is also separated into constitutively antagonistic categories such as colonizer and colonized. This ascription of a “truncated property right” then is also one way in which colonial-racial subjects are produced. But recursion “is not simple tautology”; it “combines self-reference with positive feedback effects,” where “each iteration is not only different from the last but builds upon or augments its original postulate” (Nichols 2020: 9, 91–2). This allows us to understand dispossession consequentially as well.

## 2

This idea of recursive dispossession is one of the central contributions of Nichols’ argument and one that is clarifying in its attention to the various uses of dispossession as a critical concept as well as the production of colonial and racial subjectivity. It is also helpful in contemporary arguments about treaty and its history.

Over the past twenty years, one can notice a “treaty turn” within non-Indigenous Canadian political and social thought. On one hand, this is a positive development in that Canadian political thought is finally listening to Indigenous peoples’ visions for a decolonial relationship, joining Indigenous peoples’ “expressivist politics of resignification” (Nichols 2020: 158) that seeks to alter the terms and frameworks of political and social life. But on the other hand, there are some who approach this in a rather ahistorical and depoliticized way by seeking to recover moments and figures in history where non-Indigenous elites understood the importance of treaty. However, this historical recovery often overlooks differences in interpretation of what treaty means between Indigenous and non-Indigenous interlocutors. It also emphasizes words over deeds or intentions over consequences, and this heightens the risk of an expressivist politics of resignification becoming *an ideological* politics of resignification. Here Nichols’ account is helpful in two ways. First, it helps us see the “settler treaty tradition” as a recognition of what Vine Deloria, Jr. referred to as the “right to sell.” With this, it is perhaps no longer surprising to find instances within the settler colonial tradition of colonial elites defending or invoking treaty, and nor does it follow that these instances are emancipatory in and for the present. This suggests a need for greater attention to context and consequence—what Nichols refers to in chapter three as Indigenous Structural Critique that attends to the macrohistorical process of settler colonialism (Nichols 2020: 89–90; see also Wolfe 2012 and Taylor 2018: 4).<sup>2</sup>

The second way in which Nichols’ argument is helpful is in its attention to political economy. If in the US case, settlers were a mechanism to convert frontier land from “external wilderness to a fiscal resource and national asset,” in British North America, settlement was a means to displace Indigenous peoples, prevent US annexation, and, we might add, establish a national market and thereby a national economy (Nichols 2020: 43–4). For this, colonial administrators “needed more than treaties between sovereigns; they needed property” (Nichols 2020: 44). If treaty for some was a means to square aspiration for land and a commitment to the rule of law while avoiding war, property worked as a both a “*legal mechanism* to anchor Crown title materially” and an “*economic incentive* to motivate (re)settlement” (Nichols 2020: 44). The subsequent demographic shift that followed in turn effects legal interpretation: as Indigenous peoples’ rights come “into conflict with public and private law of Anglo settlers, they were increasingly hollowed out and subordinated to settler interests” (Nichols 2020: 45). Dispossession occurs through “microlevel practices that worked to dismantle one infrastructure of life and replace it with another,” and that “[b]eneath and beyond the lofty agreements encoded in the treaties, Canadian administrators worked to destroy the economic foundation of Indigenous societies, using starvation to drive them into submission” (Nichols 2020: 45).

## 3

This historical recovery also inflates the control of colonial elites, which expresses a questionable social theory of colonization and political theory of decolonization. In chapter three, Nichols argues that dispossession is “a historical process of *diremption* within systems of *alienation*” (Nichols 2020: 92). Settler colonialism produces the dispossession of Indigenous peoples *through* general social alienation. While dispossession was “constructed and guided by colonial elites” it “was not ‘controlled’ by them” (Nichols 2020: 98). One way to see this is to attend to the settlement process in Canada. Yes, this was constructed and guided by colonial elites who “chose” to adopt a similar land policy as in the US. But they did not control this. For one, they faced external pressure from threats of US annexation; for another, the construction of a national economy that could compete within a world market required the establishment of a national market. Settlement addressed these pressures *and* displaced Indigenous peoples. Some colonial elites thought Indigenous peoples could be included in this vision through treaty, understood as a contract of dispossession. Indigenous peoples’ resistance to this coerced inclusion, plus the demographic shift of the displaced and impoverished of western Europe, gave rise to conflicts between Indigenous rights and public and private law. With the consolidation of a white settler identity behind and within the state as well as capital (see Du Bois 1935; Evans 2019; Olson 2004), and where the former was already dependent on the latter, this vision of reconciliation—one that still demanded Indigenous dispossession—was undermined.<sup>3</sup> Fast forward to the present, the construction of a natural gas pipeline through Indigenous territory—in order to supply cheapened energy to emerging markets in Asia, which supply cheap goods produced by cheapened labor—is pursued by companies chasing market signals that suggest profit, provincial and Indigenous governments chasing revenue, individuals chasing a wage to access the means of subsistence, while the infrastructures of everyday life depend on and reproduce this process too. This argument is important both theoretically and politically.

Contemporary discussions of impersonal domination—such as the Anthropocene but also value-form Marxist theory—tend to privilege alienation *over* diremption (Nichols 2020: 96–7). Why does this matter? For thinking about the Anthropocene, combining alienation and diremption would allow one to incorporate critiques of the concept for flattening power relations. Though certain forms of value-form Marxist theory emphasize to great effect impersonal domination (Postone 1993), they have been criticized for downplaying class and other forms of anti-capitalist struggles (Bonefeld 2004) and have struggled to incorporate considerations of racial and gendered domination (for exceptions, see Chen 2014; De’Ath 2018).<sup>4</sup> To restore thinking of diremption within alienation is a generative way forward.

However, the argument that dispossession is “a historical process of diremption within systems of alienation” might raise concerns that this attention to general alienation represents a move to innocence (Tuck and Yang 2012) and a disavowal of responsibility.<sup>5</sup> Nichols’ discussion of dispossession occurring through micro-level practices in chapter one should give pause to this accusation. Still, though, the relationship between these micro-level practices and macro-historical processes covered in chapter three appear a bit underspecified, in part because their presentation occurs separately in two, nonconsecutive chapters. Are these micro-level practices of dispossession already taking place in a situation of general social alienation that ultimately compounds that alienation? Does this formulation have normative as well as explanatory importance? I’ll return to this in the conclusion.

## 4

Another central contribution of Nichols’ argument is the disaggregation of primitive accumulation. In Marx, primitive accumulation refers to four tightly related processes, all underwritten by

violence: dispossession, proletarianization, market formation, and geospatial organization (Nichols 2020: 60). Marx and Marxists tend to focus on proletarianization, market formation, and geospatial organization, where dispossession is *instrumental* to these processes and where the normative concern is primarily *consequential*: dispossession *leads* to exploitation (Nichols 2020: 73). Disaggregating primitive accumulation is essentially an argument for loosening the association between these processes. This allows us to take on dispossession as an intrinsic normative concern, but also to conceptualize the various relationships between these processes across space and time. Another upshot of this move is how it enables a more complex understanding of settler colonial processes. Whereas settler colonialism is often distinguished from other forms of colonialism as one defined by a focus on Indigenous land, *not* labor, disaggregating primitive accumulation can recognize that exploiting Indigenous labor might follow dispossession—land *and* labor—in some settler colonial contexts versus others, in some historical periods, not others. Where I’m writing from, on the territory of the Musqueam, Squamish, and Tsleil-Waututh Nations, Indigenous women and children’s labor were central to canneries and crucial to the development of the fishing industry and British Columbia more generally, only to become expelled later (Georgeson and Hallenbeck 2018).<sup>6</sup> Hence, the experience of settler colonialism as one that is focused on land, *not* labor, is itself contingent—and, in Canada at least, we can see tendencies in the present towards a shift not only *to* labor but also to land *for* labor as benefit agreements exchange territorial access for jobs which are necessary in light of the way ecological degradation and the effects of extractive wastes combine with austerity to heighten dispossession’s tendency towards market dependence and proletarianization.<sup>7</sup> Understanding the contingent articulation between these processes does not require subordinating the normative concern of dispossession to exploitation, however.

What is also important about Nichols’ account here is that while he understands dispossession to be an *intrinsic* problem because it involves the violent transformation of Indigenous forms of life, he also understands it to be a *consequential* problem because of the form of life it gives rise to. To get at this consequential concern, Nichols shifts from primitive accumulation to Marx’s “dialectical” understanding of land, which allows for an account of dispossession that is superior to competing intra-European conceptions and more in line with Indigenous theory and political struggles. For Marx, land is not “an object that stands wholly outside human social relations but grasped dialectically as a mediating category between ‘humanity’ and ‘nature’ but situated within a multisided composite ‘form of life’” (Nichols 2020: 77). The dispossession of land then names a “dual-sided dissolution/appropriation”: a dissolution of one form of life and emergence of another characterized by the “appropriation and monopolization of the productive powers of the natural world” (Nichols 2020: 83). When we foreground this broad conception of land, Nichols argues that “dispossession comes to name a distinct logic of capitalist development grounded in the appropriation and monopolization of the productive powers of the natural world in a manner that *orders* (but does not directly determine) social pathologies related to colonization, dislocation, and class stratification and/or exploitation, while simultaneously converting the planet into a homogenous and universal means of production” (Nichols 2020: 83–4).

This is a clarifying and convincing argument that diagnoses and disrupts the linear, teleological, and consequential model of the relationship between exploitation and expropriation, that simultaneously recognizes the intrinsic and consequential normative concern of dispossession. But I also find myself wanting to hear more about how the relationship between exploitation and dispossession, of surplus value and dispossession, of capital and colonialism is conceptualized. At one point, Nichols describes capitalism as “a historical form of life that colonizes and consumes actually existing alternatives” (Nichols 2020: 80), and I agree with this as a historical description, but I’m curious as to the social theory for this. I ask this in part too because this work is excellent at bringing the concerns and insights of Indigenous critique *to* critical theory. This is clear in the intention of “conceptual translation” to “draw attention to the potential connections and imbrications of these distinct theoretical languages” (Nichols 2020: 12) as they concern land

(Nichols 2020: 77) and diremption within alienation (Nichols 2020: 92–9). I am left wondering what this translation between critical theoretical traditions might offer Indigenous theory and political struggles? I ask this because while certainly better than both an inflated sense of importance—*one must read Marx!*—and foreclosed vision—*where one only reads Marx*—I also think there are resources *before* Part Eight of *Capital* to conceptualize settler colonialism and the different forms or experiences of general social alienation that dispossession works through and the possibilities of solidarity that they give rise to. For instance, the domination by abstract social labor speaks to the necessity of having one’s labor validated, and hence internal divisions within communities over certain development projects. The rising organic composition of capital might *explain* the pursuit of land, not labor; value or abstract social labor as the measure of wealth points to the “treadmill of production”—where use-values increase, while value stays the same—which goes some way in explaining the insatiable thirst for resources, as well as the dispossession and ecological consequences of that (Postone 1993). What’s more, Marx’s critique of value as the measure of social wealth in capitalism can be put into productive dialogue with Leanne Simpson’s argument about how in Nishnaabeg economies, life and relationships are the measure of social wealth (L. Simpson 2017).<sup>8</sup> Attending to the social form of capitalism historicizes it, while illuminating and politicizing its normative constraints. This provides a bit more determinative social content to the idea of social alienation and why Indigenous-settler relations are constitutively antagonistic and demand transformation, not reform. For instance, attending to the social form of capitalism shows how “human ends furthering the (inhuman) end of capital accumulation, and conceptions of the good of the community furthering the good of capital accumulation are systematically advantaged over time,” while “those that do not, tend to be pushed to the margins of social life, or eradicated altogether” (Smith 2018: 116, 118).<sup>9</sup> Understanding capitalism becomes all the more important in the emerging discourse of economic reconciliation, whose premise is essentially that the market is neutral, and so equalizing market participation through the restoration of property rights is a means to decolonization: that participating in the market is an expression and means of self-determination rather than impersonal domination, and that the market may represent an infringement on Indigenous self-determination and freedom, not its realization.

## 5

I want to conclude with one last comment that ties together these reflections. In many ways, Nichols’ argument about the formation of property in settler colonial societies—whereby Indigenous peoples have a negative right to property—compliments what Gina Starblanket refers to as the “transactional interpretation of treaties” (Starblanket 2019).<sup>10</sup> Indeed, both Nichols and Starblanket turn to the 1888 *St. Catherines Milling* case as an example. What I’m curious about, especially given Nichols’ observation about how domination works *through* consent, is the concept of treaty. Perhaps this pulls Nichols away from the concern over dominion to one over imperium, but I cannot help think of treaty too as a language of dispossession and counter-dispossession—a distinction that Starblanket refers to as the “transactional” versus “transformative” interpretation of treaty—alongside recent interpretations of Marx as a social republican (Roberts 2016).<sup>11</sup>

I ask this too because I agree with Nichols’ understanding of Indigenous critique as expressing both particular *and* general concerns and that this follows the critique of alienation and diremption (Nichols 2020: 99). As Nichols notes in the conclusion, these general concerns relate to one’s alienation *from* the earth and the importance of care, responsibility, and stewardship (Nichols 2020: 151). But I think there is another, perhaps equally foundational, general concern: freedom. This connects back to my earlier questions about the normative importance of the explanatory formulation of diremption through alienation and the relationship between capital and colonialism. If settler colonialism produces diremption through alienation—where Indigenous peoples are dispossessed through general social alienation—then Indigenous peoples’ struggles for

self-determination necessitate not the extension but the expansion and transformation of non-Indigenous conceptions of freedom and self-determination into social freedom for all *and*, in true dialectical fashion, the negation of a circumscribed vision of capitalist freedom tied to white settler self-determination.

Might this also be what is at play in the language of implication invoked in protest movements? As Michael Rothberg (2019) helps clarify, to be implicated is to be involved in something, indirectly.<sup>12</sup> It points to an effect on something or someone, but also a lack of transparency or control of one's actions that have that effect. To have one's implication named is a demand of one to be responsible *to* another and *for* something. In this it can disclose both a particular injustice called out by another and a more general situation of social domination—one in which the actions of those named proceed naturally or automatically, not subject to reflection or control, (re)producing injustice in the process. The use of implication in protests against settler colonialism discloses a particular injustice called out by another and a situation of impersonal domination. It is at once explanatory—*how settler colonialism works through alienation*—normative—*illuminating multiple forms of domination and their interaction*—and political—*constructing the grounds for solidarity*.

Returning to the question of treaty and the limits of historical recovery that I began with, might this be what the transformative conception of treaty, understood as a framework for living together where both sides remain responsible to one another and the earth rather than whiteness or capital, suggests? A movement from a form of social interdependence characterized by diremption within alienation to a free, decolonial form of social interdependence? And where colonizers who refuse look sideways to non-western forms of life (Nichols 2020: 157), *and* those movements arising within but against a settler capitalist form of life, rather than backwards to a questionable settler treaty tradition? This is what Nichols' excellent book that brings together Indigenous studies, critical theory, and Marxism in its formulation of diremption and alienation has helped me see.

<sup>1</sup> I initially wrote these comments for Robert Nichols' presentation to the University of Calgary's Political Science Speaker Series alongside Gina Starblanket and Ryan Crosschild. Thanks to Gina for the invitation to be a part of the event, which encouraged me to slow down and spend time with the book. Thanks too to Robert for writing the book and for his response at that event.

<sup>2</sup> Patrick Wolfe, "Against the Intentional Fallacy: Legocentrism and Continuity in the Rhetoric of Indian Dispossession," *American Indian Culture and Research Journal* 36, no. 1 (2012): 1–46; Christopher Taylor, *Empire of Neglect: The West Indies in the Wake of British Liberalism* (Durham: Duke University Press, 2018).

<sup>3</sup> W.E.B. Du Bois, *Black Reconstruction in America* (Oxford: Oxford University Press, 2007 [1935]); Jessica Evans, "Colonialism, Racism, and the Transition to Capitalism in Canada," in *Case Studies in the Origins of Capitalism*, (2019), 191–213; Joel Olson, *The Abolition of White Democracy* (Minneapolis: University of Minnesota Press, 2004).

<sup>4</sup> Moishe Postone, *Time, Labor, and Social Domination: A Reinterpretation of Marx's Critical Theory* (Cambridge: Cambridge University Press, 1993); Werner Bonefeld, "On Postone's Courageous but Unsuccessful Attempt to Banish the Class Antagonism from the Critique of Political Economy," *Historical Materialism* 12, no. 3 (2004): 103–24; Christopher Chen, "The Limit Point of Capitalist Equality," *Endnotes* 3, 2014 (<https://endnotes.org.uk/issues/3/en/chris-chen-the-limit-point-of-capitalist-equality>; last accessed on December 1, 2021); Amy De'Ath, "Gender and Social Reproduction," in *The SAGE Handbook of Frankfurt School Critical Theory*, ed. Beverley Best, Werner Bonefeld, and Chris O'Kane (Sage Publications, 2018), 1534–50. .

<sup>5</sup> Eve Tuck, and Wayne K. Yang, "Decolonization is not a Metaphor," *Decolonization: Indigeneity, Education, and Society* 1, no. 1 (2012): 1–40.

<sup>6</sup> Rosemary Georgeson, and Jessica Hallenbeck, "We Have Stories: Five Generations of Indigenous Women in Water," *Decolonization: Indigeneity, Education & Society* 7, no. 1 (2018): 20–38.

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- <sup>7</sup> This relates to another concern that has been expressed with settler colonial studies' focus on white settler colonies. Robin D.G. Kelley (2017) has argued that it is the focus on white settler colonies that licenses the claim that settler colonialism is about land, not labor, but if we expanded our focus to include other settler colonies, specifically South Africa, then we would have to acknowledge that settler colonialism encompasses both: "They wanted the land and the labor, but not the *people*—that is to say, they sought to eliminate stable communities and their cultures of resistance" (269). Integrating this concern with the organic composition of capital might explain why settler colonialism in some countries focus more on land over labor. Might the focus on land over labor be reflective too of the mechanization of production, itself a product of the high cost of labor, and these countries' place in the global economy? These are white settler colonial empires, after all. Robin D.G. Kelley, "The Rest of Us: Rethinking Settler and Native," *American Quarterly* 69, no. 2 (2017): 267–76.
- <sup>8</sup> Leanne Simpson, *As We Have Always Done: Indigenous Freedom Through Radical Resistance* (Minneapolis: University of Minnesota Press, 2017).
- <sup>9</sup> Tony Smith, *Beyond Liberal Egalitarianism: Marx and Normative Social Theory in the Twenty-First Century* (Chicago: Haymarket Books, 2018).
- <sup>10</sup> Gina Starblanket, "Constitutionalizing (In)justice: Treaty Interpretation and the Containment of Indigenous Governance," *Constitutional Forum*. 28, no. 2 (2019): 13–24.
- <sup>11</sup> William Roberts, *Marx's Inferno: The Political Theory of Capital* (Princeton: Princeton University Press, 2016).
- <sup>12</sup> Michael Rothberg, *The Implicated Subject: Beyond Victims and Perpetrators* (Stanford: Stanford University Press, 2019).

## Reply to My Interlocutors

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I would like to begin by expressing my appreciation to Kelly Aguire, Phil Henderson, Cressida Heyes, Alana Lentin, and Corey Snelgrove for this series of astute, critical exchanges. Many thanks are owed as well to Monika Kirloskar-Steinbach for convening and guiding this conversation into *The Journal of World Philosophies*. It is a great honor to have one's work engaged with in a sustained way, in public, by such a group of scholars. Their various responses push the research undertaken in *Theft is Property!*<sup>1</sup> in new and exciting directions. Indeed, it is precisely because my interlocutors raise a wide range of important questions and topics that I will not be able to do justice to all of them. Accordingly, rather than address each of the various points in turn, I thought it would be more illuminating to select one or two aspects of each essay that seemed to me most pertinent relative to our shared project of apprehending and critiquing dispossession, historically and in the present.

### 1 Phil Henderson

Phil Henderson has composed a rich and complex essay, one that raises a number of important challenges to the argument developed in *Theft*. Perhaps the most important of these concerns the parameters of my analysis. First, Henderson queries whether my account can take into account the experience of Indigenous communities who have not faced dispossession in the manner highlighted by the book (e.g., the imposition of a scrip system onto Métis communities by the Canadian state). Second, he raises the topic of alternative forms of colonialism both within the Anglosphere and beyond it. Henderson rightly reminds us that, in many places in the world, colonialism did not proceed through the specific kind of recursive private property mechanisms foregrounded in *Theft*. He moreover worries that by focusing on those places where recursive dispossession was relatively more successful and stable, we impose an anachronistic perspective onto the study of colonialism. These are important questions that present me an opportunity to clarify potential ambiguities in my original formulation.

The primary object of study in *Theft* is a peculiar kind of argument. Recall that the book begins with the 2016 conflict at Standing Rock. I observe that Indigenous resistance to the Dakota Access Pipeline was largely informed and motivated by a deeply held, capacious normative vision of the earth as something to be cared for and protected. I moreover note, however, that the movement was also informed by the language of dispossession, expropriation, eminent domain, and land theft. These two grammars of critique seem *prima facie* to pull in different directions. While one is concerned with non-proprietary relations of care and moral duties to living things, the latter seemed invested in exclusionary ownership claims. Moreover, this duality seems not exclusive to the Standing Rock uprising but symptomatic of a wide range of social movements organized around the defense of land. My intuition is that, while these two sides of the movement appear to stand in some tension with one another, they can be shown to comprise two sides of the same coin if we better understand the peculiarities of the historical process against which they were situated. So, my primary object of concern is this kind of argument, which appears to hold that the earth is not property at all and yet has been stolen from its original owners.

The seeming contradiction inherent in the above argument can be sidestepped in a number of ways. Most obviously, one could simply drop one or the other of the two main claims. One might assert that the Indigenous community in question has perfectly ordinary property claims to the land, which has been unjustly stolen from them. Or one might assert that the earth is not rightly thought of as property at all and thereby shift the locus of concern entirely away from

questions of theft, expropriation, or dispossession. These two strategies might raise new questions or concerns, but at the very least they would appear to avoid the problem of holding two contradictory claims at once. These two other strategies will be more or less valid depending on the empirical context of the cases. Their success will minimally depend on the accuracy of the descriptive premise, namely, whether the Indigenous community in question actually views their relationship to the land as a straightforward case of property or an entirely non-proprietary relationship. However, assuming these are empirically accurate descriptions of the cases at hand, these may be perfectly valid, viable alternative arguments.

Some communities will continue to advance perfectly ordinary property claims; others will repudiate such a proprietary model altogether. My aim in *Theft* was not to preclude such possibilities. Rather, it was to provide a third alternative. My argument is, first, that it is *in principle* possible to hold both claims simultaneously without contradiction under certain empirical conditions. It would be possible to hold both claims together in a scenario in which extra-legal force is used to convert non-proprietary relations into proprietary ones while simultaneously divesting control and ownership over the newly created property from one party to another. Under those conditions, I contend, it is possible to object to both aspects of the process such that one can effectively say the earth is rightly not property and it has been stolen. The next step of such an argument is to demonstrate that it is not merely a thought experiment or a counterfactual case, but has actually existed in practice. So, I needed to demonstrate that there are in fact places on the earth where a process of this sort has taken place. My claim in this regard is that a “recursive dispossession” process of this sort has been important to the development of landed property in the extra-European Anglophone world since at least the early nineteenth century.

To summarize then, the parameters of the historical reconstructive dimension of the book were therefore established with this specific problem in mind. In *Theft*, I have deliberately and intentionally focused on Indigenous peoples who have experienced recursive dispossession of this sort, noticed it, and raised objections to it in ways that have been accused of contradiction (mistakenly, in my view). In other words, *Theft* does not attempt an exhaustive study of Indigenous politics, settler colonialism, or property relations in general but only those aspects of them that produced the dilemma of dispossession as it manifests in the late modern and contemporary world.

Let me further clarify my argument by differentiating it from other closely related claims with which it might plausibly be conflated. Making the above argument does not entail claiming any of the following: (a) Indigeneity was *only* connected to the experience of dispossession; there were no other important factors in the formation of the notion of Indigeneity. (b) *All* Indigenous peoples in the Anglo-settler world experienced this form of dispossession at all times and in all places in their historic interaction with Anglo-settler colonialism. (c) *Only* Indigenous peoples in the Anglo-settler world of the nineteenth and twentieth century have experienced this form of dispossession.

Each of the above claims is closely related to my argument, but they are not my view. In *Theft*, I was neither trying to generate a general or universal “theory of dispossession,” which would enumerate the necessary and sufficient conditions for its use as a concept in all cases, nor a similarly grand “theory of Indigeneity.” Rather, my aim was to understand better one particular conjuncture between these two, albeit a nontrivial and historically important one. This hopefully explains the book’s focus on a particular kind of argument and the decision to focus on those Indigenous communities who advance it.

This hopefully clarifies another issue raised by Henderson, which he calls the problem of “anachronistic methodological nationalism.” As I understand it, the point here is that the focus on the Anglo-settler societies of CANZUS evinces a kind of case selection bias. I have focused on places in the world where the specific kind of recursive dispossession described in the book has been most effective in establishing the institutional structure of landed property and, relatedly, a moral and political vocabulary of (private) ownership over the earth. Accordingly, the book “confines our study of the *history* of dispossession to the contexts in which it appears most

persistent and (seemingly) stable *today*.” It is by now hopefully clearer why this description of the parameters of the book is accurate and, indeed, the methodological choices behind it intentional. The object of investigation is precisely the bootstrapping normalization process that produces dispossession as if it were a seemingly stable feature of certain societies, so much so that its norms and features creep into the language of critique used to denounce the process itself. I don’t see this as anachronistic—if by that we mean an uncritical or unreflective imposition of standards from the present onto the past—but it is certainly informed by contemporary concerns. With this in mind, I acknowledge that there are many cases of colonialism (even Anglo-settler colonialism) that do not conform to the specific logic of recursive dispossession, instances of recursive dispossession that sputtered out or were defeated, and many forms of Indigenous resistance that do not adopt the counterargument explored in the book. *Theft* is not a history of colonialism and property relations in all their complexity; it is a genealogy of a specific argument that one encounters today in the Anglo-settler world.

## 2 Cressida Heyes

Cressida Heyes’ clear and illuminating essay draws out connections between my work and important recent developments in feminist theory and politics. The bridge between the two is the concept of “consent.” As Heyes rightly points out, consent has become a fraught terrain of struggle in a range of contemporary political movements, but perhaps most importantly in feminist movements. One reason for this is that consent has emerged as a core normative ideal regulating a wide range of social and political relations in contemporary liberal societies. It is invoked in a relatively abstract form in high constitutional theory where, for instance, we might speak of the legitimacy of governing institutions as ultimately resting upon “the consent of the governed.” But it plays an equally important role in the sphere of intimate, interpersonal relations, including everything from sexual practices to quotidian norms regulating professional conduct between coworkers or physical contact with strangers in public space.

Precisely because consent serves such an important role in normatively validating certain relationships and practices above others, it is also a repository of intense political struggle to determine the parameters of its actualization. As Heyes puts it, it has “become harder for us to know what to make of the promise of consent, across the political contexts where it is deployed.” This observation is evidenced by the fact that certain legal and even technological mechanisms meant to register and record practices of consent-giving themselves function to reinscribe troublingly familiar forms of hetero-patriarchal domination. In these cases, asymmetrical power relations not only stubbornly remain, they are reinforced by devices that effectively manufacture consent. In extreme cases, consent may be legible only as a process of giving assent to one’s own subjugation, thereby practically stabilizing and deepening the reach of domination. In *Theft*, I followed Patricia Williams in calling such instances of consenting to be dominated “rituals of anti-will,” since they weaponize the normative force of consent towards self-abnegation.

How then can we identify and critique this weaponization of consent? What guiding principles can we draw upon to differentiate rituals of anti-will from more emancipatory, egalitarian, or just forms? Following Heyes’ lead—and feminist theory more generally—I would provisionally suggest two useful guides, both of which are drawn from extensive feminist research into the field.<sup>2</sup>

The first concerns power asymmetries. One way of determining whether consent has been registered in a relatively “free” or “authentic” manner is to consider the context of power within which consent-giving practices operate. As feminists have long argued, in contexts of extreme power asymmetries, we have good reason to question the relative validity of consent-giving acts. This is part of why, for instance, we may question the legitimacy of consent to sexual relations when they take place between an employer and a direct subordinate, even if both are mature adults.

The principle here is that the quality of the consent-giving act is compromised by the fact that one party is beholden to the other. A second basic principle states that it must be in principle possible to withhold or withdraw consent. If a person agrees to something with a clear, positive affirmation, we would tend to read that as giving consent. But if we were to discover later that it was not really possible for them to have registered a negative response, we would have legitimate reasons to question whether consent was truly given. It is a simple point, but one with important social and political ramifications: a person must be able to say “no” for us to accept their “yes” as an instance of giving full consent.<sup>3</sup>

If this is a faithful interpretation of some lines of feminist inquiry into the nature of consent over the past decades, let me turn back again to the primary object of concern in my book, namely, the process and practice of Indigenous consent to land transfer. I submit that the above criteria are useful in identifying how rituals of anti-will continue to structure Indigenous title claims up to and including the present. Consider the following example. In Canada today, negotiations between the Canadian state and various Indigenous nations over underlying title to the land take two forms: specific and the comprehensive land claims processes. Specific claims arise as a result of grievances over previously existing agreements, most notably formal treaties. By contrast, the comprehensive land claims process is meant to secure new agreements between the Canadian state and Indigenous communities who have never previously extinguished or ceded title to their lands. The primary aim of the Canadian state in these negotiations is to get the Indigenous nations in question to extinguish their underlying title, or otherwise recognize Canada’s supposedly superior claim. As a matter of general principle, Indigenous nations must consent to this; they must extinguish their own title claim freely and voluntarily.

Is the comprehensive land claims process a case of the distorted use of the principle of consent? Have practices of giving consent been organized in such a way that they can only be effectively actualized in a form of self-abnegation? To answer these questions, we need to consider how modern treaty negotiations operate in practice. It is clear, first, that the two major parties are vastly unequal in power and resources before entering into the negotiations. In partial recognition of this vastly uneven playing field, the Canadian state frequently agrees to lend the Indigenous nation in question vast sums of money to pay for their legal support. As deliberation drags on, the community becomes increasingly indebted to the very opposing party with whom they are negotiating. The process moves forward animated by the promise that, once the Indigenous community extinguishes their claim to the land and transfers title to the Canadian state, they will receive a significant monetary payout, which can then be applied retroactively to cover the costs of the legal negotiation itself. A corollary of this debt-trapping process is that, once the subordinate party enters into negotiations, they rarely can extricate themselves from it. The longer negotiations drag on, the more imperative it becomes for the indebted party to extinguish their rights, since extinguishment is the only way to extricate themselves from the crippling debt incurred during the negotiation process itself. In this context then, Indigenous nations frequently find that they cannot definitively refuse the terms of the negotiation. Every instance in which the community in question rejects the claims process functions simply as a deferral of the inevitable. From the standpoint of the Canadian state, Indigenous peoples cannot fully and completely refuse the comprehensive land claims processes as a whole, since rejecting the terms of any particular moment in the negotiation process is understood to simply delay the process until a later date. In this context, “no” means “not yet.”

In conclusion, drawing upon principles already identified by feminist theorists, I would characterize the contemporary comprehensive land claims process as a ritual of anti-will. Since the process operates in a vastly asymmetrical power, and the subordinate party cannot ultimately refuse or have their negative response accepted as definitive, Indigenous consent is legible only as self-abnegation, in this case, more specifically the self-extinguishment of landed title.

### 3 Kelly Aguirre

Kelly Aguirre offers a rich response essay with multiple points of contact with my own work. Two topics stand out in particular. First, Aguirre raises questions pertaining to the risks inherent in the kind of comparative critical-theoretical exchange I sought to build in *Theft*. Second, she invites me to say more about what she calls “political sensibility,” which I interpret to mean the domain of affect and the unconscious. Let me address these in turn.

In *Theft*, I sought to stage something of a comparative analysis of dispossession from a range of distinct intellectual and political traditions. This included some important thinkers from within the so-called “western” canon of critical theory (especially Marx and his interpreters), but also those working out of the Black radical tradition and, perhaps most notably, those who constitute a tradition of Indigenous syncretism. In her response essay, Aguirre raises concerns with the risks associated with this comparative method. As I understand her, the apprehension here centers around a logic of cultural or intellectual appropriation. Since Indigenous peoples and institutionalized academia in the west stand in an asymmetrical power relation, in which the latter has more access to power and resources than the former, we have good reason to be concerned with the possibility of an abuse of power. Academics who seek initially to render Indigenous intellectual traditions more central to supposedly “mainstream” research (or even that which is considered “critical” in a certain context) risk distorting and misrepresenting those traditions. Even when we succeed in representing Indigenous forms of life accurately and faithfully, Aguirre suggests, the very act of rendering them more transparent to power makes Indigenous forms of life more open to cooptation, manipulation, and appropriation by the powerful. Extending the insights of Glen Coulthard and Audra Simpson, Aguirre intimates that Indigenous peoples may be better off adopting a posture of refusal, even relative to the supposedly emancipatory projects of critical theory.<sup>4</sup>

This is clearly a real concern, with high stakes. I think, however, it is important to affirm the validity of the concern without falling into an equally problematic alternative position. It cannot be the case that avoiding the risk of cooptation necessarily entails a de facto isolationist stance on the part of Indigenous peoples. Such a position would be untenable on both philosophical and political grounds. It does not hold up philosophically because such a position cannot be maintained consistently all the way down. If those in a position of subordination ought to turn away from those with relative power consistently and without exception, then the principle surely applies *within* Indigenous communities as much as between them and others. If so, we would find ourselves in an infinite regression downwards, each individual with relative weakness refusing to engage all those with relative privilege or power. This would thereby preclude the very possibility of acting together in concert with others. Indeed, it would undermine the very idea of anything like an “Indigenous” community or tradition, since that could itself only be the product of coordinated, cooperative activities of individuals with differential access to power, status, resources, and the like.

There is an important strand of contemporary Indigenous cultural and political theory—most notably the work of Glen Coulthard and Audra Simpson—that counsels the politics of refusal. This posture is motivated by many of the concerns that Aguirre raises. As I understand it, however, their position does not entail a *prima facie* rejection of comparative or cross-cultural theorizing, even across asymmetrical power relations. Rather, they are drawing attention to a very particular regime of governance. In what has come to be known as the “cultural recognition” paradigm, this regime of governance is anchored in state and market institutions that openly affirm the cultural distinctiveness of minority communities, and the value this creates for multicultural societies, but only in such a way as to differentiate “cultural” claims from political and economic concerns so as to defang and disarm deeper structural critiques of the dominant society, very often concealing the violent processes that produced some communities as “minorities” in the first place.

Against this particular configuration of power, Indigenous intellectual and activists have counseled (wisely, in my estimation) a position of total refusal based on their calculation that circumscribed, positive affirmation may be worse than no recognition at all. I do not understand this to be a generalizable mantra, however. It does not mean that Indigenous and western modes of critical theory should be kept isolated from one another. Rather, as Aguirre rightly points out, it means that we ought to attend to the institutional context within which comparative analysis takes place, as well as its overarching impact on the power asymmetries at stake in the engagement between traditions.

A second cluster of issues raised by Aguirre pertain to what she labels the “epistemic and discursive” dimensions of colonial dispossession. In this regard, she makes a number of interesting conceptual moves in her essay, which build out from *Theft* in novel ways. Specifically, Aguirre reminds us that “the imposition of a new regime of possession [...] is mirrored or accompanied by the imposition of a new regime of *sense*, that is the *sensorial* and a political *sensibility* or rationality.” In doing so, she draws our attention to the realm of affect and the unconscious. Building upon this, Aguirre then questions whether the tools of western critical theory are useful for working at this colonial sensibility. What if critical theory’s own “drive to describe and explain processes of domination and dispossession for purposes of critique” is not only inadequate to the task of dislodging a colonial regime of sense but, more pointedly, is itself another manifestation of the latter?

This language of sense, affect, and drives puts one in mind of the long and fraught relationship between critical theory and psychoanalysis. Many thinkers within western critical theory have raised concerns that echo those articulated by Aguirre here, which is part of what drove the project to bridge Freud and Marx by Frankfurt School luminaries such as Marcuse, or the deep suspicion of “high” Enlightenment rationalism found in Horkheimer and Adorno. In more recent times, there have been significant attempts to bridge psychoanalytic, affect theory, and postcolonial theory. In my view at least, these have met with varying degrees of success, since they naturally raise as many questions as they resolve with more supposedly “rationalist” or “cognitivist” approaches. There are risks here of mystifying sense and affect as a realm beyond all human comprehension, the effect of which may produce de facto conservative resignation to unconscious motivations and biases which cannot be fully known, let alone transformed. I cannot address these issues in a complete manner here. However, my initial instinct is to think that my approach to the study of colonial dispossession is distinct yet complementary to Aguirre’s own psychoanalytic and affective approach. This is because they work on the issue at different levels of analysis. Whereas the approach taken in *Theft* is structural and macro-historical, Aguirre’s attends to the psychological and individual. Since this distinction is also pertinent to issues raised by Alana Lentin, let me elaborate in the next section.

#### 4 Alana Lentin

Alana Lentin’s essay focuses on race and racial governance. She extends her own longstanding contribution to this field of study by questioning how race is frequently elided as a category of analysis. She moreover addresses herself to those who contend that simply by using racial categories we assist in naturalizing “race.” Finally, Lentin suggests that the concept of “recursivity” might be a useful tool in decoding the complex and circular relation between racial ideology and the material interests that it advances and anchors. Let me think with Lentin a bit here by picking up this last point and extending it through the concerns of *Theft*.

Decades of scholarship has worked to interrogate the relationship between *theories* of race and *practices* of governance. For the purposes of analytic treatment, we can construct two different approaches to grasping this relationship. The first understands theories of race to precede and

direct practices of governance. The second approach reverses the priority and directionality of the relationship: practices drive theories.

Consider two (admittedly simple and reductive) examples to illustrate the difference between these two approaches. On the first view, peoples of African descent were enslaved because they were “Black.” On the second view, they were designated as “Black” in order to justify enslaving them. Or, in the context of settler colonialism, Indigenous peoples were dispossessed of their lands because they were thought to be “savage.” Conversely, we might say that they were deemed to be “savage” precisely in order to justify dispossessing them of their lands. In the former case, colonizers are thought to have a primary fidelity to their racial ideology. They hold these views prior to and independent of their policy implications. What they believe drives how they behave. On the second view, colonizers are thought to have a primary fidelity to the acquisition of power and material resources. They concoct racial theories *a posteriori* in order to explain and justify practices of acquisition and accumulation.

My approach in *Theft* falls more squarely in the latter camp than the former. I think it makes more sense to analyze political-economic relations as generative of theories of racial or civilizational hierarchy. However, my approach in this regard is a function of the kind of macro-historical, structural analysis undertaken by the book and therefore not exhaustive or exclusive of all possible approaches, including some kinds of “ideology-first” analysis of racial theories. To explain, consider a possible criticism of the above claim (i.e., that colonizers have a primary fidelity to the acquisition of power and that they concoct *a posteriori* racial theories to justify whatever practices are necessary for that acquisition). A critic might contest the generalizability of this claim. She could point out that surely *some* colonizers are driven by deeply held racist views, for instance, believing that “savages” are an inferior class of human beings not worthy of respect, dignity, basic rights, and the like. These colonizers at least have a primary fidelity to their racist worldview; they will hew to it regardless of the cost or consequences. So, there must be some room for an “ideology-first” approach.

My response to this objection is to acknowledge the counterexample but suggest that the existence of such ideologically committed racists does not change the general tenor of my argument because mine is a political and social theory, not a psychological one. This is part of what I mean by referring to my analysis in *Theft* as a “structural account.” In such an account, we are not attempting to generalize about the psychological motivations of all individual colonizers. Instead, we are attempting to understand how social, political, and economic institutions are reproduced over time. A structural account can concede that some colonizers will be willing to sacrifice their own wealth, power, and security for the sake of their racial ideology. Those people will continue to treat non-whites as inferior regardless of whether it is in their own self-interest to do so. And as part of a psychological account of individual behavior, this is surely possible, even plausible in some cases. But it cannot function as the primary explanatory device in a socio-political analysis of colonization for the simple fact that colonizers who fail to acquire power and accumulate resources don’t stay colonizers for long. The *enduring structural location* of “colonizer” is defined by its position of dominance over subordinate parties and, insofar as *that* is what we are trying to explain, we need some account of how institutions of power function in any particular context. This will be different than analyzing the psychological mindset of “colonizer,” which might exist even independent of a position of dominance. Returning back to Lentin’s own work in this field, this is why she is right (in my view) to insist that a socio-political analysis of white supremacy is different from a psychological analysis of, say, anti-Black bias on the part of (some) whites.<sup>5</sup>

## 5 Corey Snelgrove

There are dangers and limitations inherent in any mode of analysis, including the structural account sketched above and deployed in the book. Corey Snelgrove raises some of these concerns in his

essay, which picks up where Lentin leaves off. Snelgrove worries about the normative implications of structural analysis, specifically, that it is exculpatory. If the object of critique in *Theft* is a structure, process, or set of institutions that implicate all actors within it, then Snelgrove is concerned that this may facilitate a “move to innocence and disavowal of responsibility” on the part of those who are most advantaged by the system in question (i.e., white settlers). This is an important concern, in part because the question of responsibility raises the political stakes of the matter. We are not concerned merely with how best to describe the agent/structure relation in an abstract, theoretical way, but also with concrete matters pertaining to the distribution of accountability in the long arc of decolonization. It is for precisely these reasons, however, that I think a structural analysis remains necessary.<sup>6</sup>

To begin thinking the question of responsibility, I find it helpful to first differentiate individuals from their social roles. This distinction is central to social theory in general, where the literature on it is vast and complex. However, it is also central to the rhetoric of a number of contemporary, popular social movements. When, for instance, supporters of the Movement for Black Lives assert that policing in North America is “structurally white supremacist,” they do not mean that all (or even most) individual police officers are racist. Rather, they are critiquing the *role* of police officer in a particular institutional context. Of course, this does not preclude the possibility that a subset of individual police officers may also be racist in either the conscious ideological or unconscious bias sense mentioned above in the discussion of psychological modes of analysis. It does mean, however, that the primary object of structural critique is the institution and the roles that individuals inhabit within.

This is what I sought to develop in *Theft* with regard to institutions of landed property and the roles (such as “homesteader” or “Indian”) that attend them. I think it plausible to assert that the institutions themselves are “constitutively” or “structurally” problematic because they facilitate the dispossession of Indigenous peoples in a manner that is “semi-autonomous” of the individuals who embody those institutions at any given moment. In describing institutions of landed property as *semi-autonomous*, I mean to highlight the fact that these institutions shape, channel, and delimit the possible range of actions available to actors within them such that it is practically impossible for any individual actor or group of actors to change the institutions entirely and immediately. Institutions have a certain durability and inertia, which is difficult to overcome. In saying that they are *semi-autonomous*, however, I am merely pointing out that these institutions do not exist without people to reproduce them; if there were no human agents, they would not exist.

If this is descriptively accurate regarding how institutions function, then we can build a dual-pronged critique of these structures. They can be normatively objectionable in two ways at once. They may be problematic for everyone in virtue of their function in entrapping us in a circumscribed range of possibilities, over which we have little democratic control while, at the same time, being especially problematic for a subset of us in light of how they facilitate domination and exploitation of, say, a minority group.

Snelgrove suggests that the language of “implication” might be useful for getting at this multipronged critique. We are all “implicated” in systems of dispossession, albeit in uneven ways. While true, I find this language as yet too general and abstract to grasp as the lower and more granular level analysis that is needed to track how rights, resources, and responsibilities are distributed within a social and political system. More to the point, a person can be “implicated” within a system in more than one way simultaneously. It is entirely possible to be both a victim and a beneficiary, harmed and also harmful. Accordingly, I think it useful to separate out different ways in which we are implicated. We may, for instance, be implicated differently depending on the measure we are using to evaluate the institution. One way to evaluate an institution would be with respect to its distribution of agency. This pertains to *who controls* the system as a whole. A second measure would be its distribution of rewards and privileges. This pertains to *who benefits*. These are analytically distinct questions: a person can benefit in unfair ways from a system that they do not control. So if we say that a system of landed property disproportionately benefits one group of

people over another, it does not yet tell us how that system is reproduced over time, who has control over it or the capacity to change it.

It may be worth separating out matters of agency and benefit for political reasons as well. For it may be the case that a system originally designed by white settlers, and which continues to disproportionately distribute benefits in favor of white settlers, may no longer advantage them in the way that was imagined by a previous generation. Another way to put this is that benefit and advantage are relational concepts. They can only be measured relative to something or someone else. So, to choose a pertinent example, while white working-class settlers are, as a class, advantaged relative to their Indigenous counterparts, they are disadvantaged relative to white political and economic elites. Stronger still, white settlers may be relatively worse off today relative to some alternative social order yet to come. Indeed, this promise is arguably intrinsic to any universalist revolutionary political project that envisions more just future worlds. If not, then we have no case to make to the relatively well-off today as to why they ought to join the fight for a more just world, except to appeal to a relatively abstract idea of moral duty to others. However, if the privileged only have relative material advantage over other people on a dying planet, then they may have *two* reasons to criticize the situation and two motivations for changing it. They may come to see the situation as problematic because of the asymmetries it produces between parties as well as the shared threat it poses to us all.

In *Theft*, I tried to demonstrate that a significant strand of Indigenous thought has been organized around making precisely this kind of argument for some time now. When asked to explain why they object to treating the earth merely as an object of proprietary control, the Indigenous thinkers in question claim both (a) this is problematic for Indigenous peoples in particular (because, for instance, it distorts their particular worldview, is inconsistent with their culture, religious values, etc.) *and also* (b) this is problematic for all humans in general (even white settlers, who may acquire short-term, relative material benefit from it but at the cost of their own well-being and survival). To say that dispossession is also problematic for white settlers naturally raises concerns. It may sound exculpatory. But that is why we must keep both halves of the problem firmly in view, which I called in *Theft* questions of alienation and diremption. If a general system of impersonal domination through capitalist markets in landed property is problematic for us all, it does not follow from that claim that we are equal in terms of the benefit we derive from them, nor the responsibility we bear to change them.

## 6 Conclusion

Let me conclude by once again thanking all of my interlocutors for their thoughtful, challenging contributions to this dialogue. I have learned a great deal from the experience. The problems discussed here and in the response essays are large, complex, and at times seem intractable. Working in dialogue together with others renews my hope for a more just and sustainable future.

<sup>1</sup> Hereafter cited in text as *Theft*.

<sup>2</sup> For work that informs my own approach here, see Quill Kukla, “That’s What She Said: The Language of Sexual Negotiation,” *Ethics* 129, no. 9 (October 2018).

<sup>3</sup> For a clear articulation of this principle from an Indigenous feminist perspective, see Audra Simpson, “The Ruse of Consent and the Anatomy of ‘Refusal’: Cases from Indigenous North America and Australia,” *Postcolonial Studies* 20, no. 1 (2017): 18–33.

<sup>4</sup> See Glen Coulthard, *Red Skin, White Masks* (Minneapolis, MN: University of Minnesota Press, 2014); Audra Simpson, *Mohawk Interruptus* (Durham, NC: Duke University Press, 2014).

<sup>5</sup> See, in particular, Alana Lentin, *Why Race Still Matters* (Medford, MA: Polity, 2020).

<sup>6</sup> For a “structural account” that informs my own, see Iris Marion Young, *Responsibility for Justice* (Oxford: Oxford University Press, 2011), esp. chapter 2.

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