

ARTICLES

KNOWLEDGE ANTI-IMPERIALISM IN A PROPERTIED WORLD

Anjali Vats and Sheila I. Vélez Martínez

ISSN 0041-9915 (print) 1942-8405 (online) • DOI 10.5195/lawreview.2024.1060
<http://lawreview.law.pitt.edu>



This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 United States License.

Pitt | Open
Library
Publishing

This journal is published by [Pitt Open Library Publishing](http://pittopenlibrarypublishing.com).

ARTICLES

KNOWLEDGE ANTI-IMPERIALISM IN A PROPERTIED WORLD

Anjali Vats* and Sheila I. Vélez Martínez**

ABSTRACT

In 2023, the University of Pittsburgh School of Law hosted the fourth Race + IP conference, with a theme of the Imperial Scholar Revisited. The most well attended Race + IP conference yet, Race +IP welcomed more than 300 registrants in person or via Zoom to consider race, colonialism, and nationalism as organizing architectures in intellectual property rights regimes in the United States and globally. This introduction situates the phrase “imperial scholar,” as coined by Professor Richard Delgado, and illustrates how it serves as a generative starting point for considering how intellectual properties, e.g., copyrights, patents, trademarks, rights of publicity, and trade secrets, are structured in domination and subordination. By foregrounding Critical Race Theory’s articulations, contemporary and historical, of “antisubordination” and “antidomination” principles alongside a vision of “abolitionist intellectual property,” it offers possible paths to imagining more liberatory forms of intellectual property and lays the conceptual groundwork for Race + IP ’25 : Abolitionist Futures.

* Professor Anjali Vats is Associate Professor of Law at the University of Pittsburgh School of Law with a secondary appointment in the Communication Department at the University of Pittsburgh..

** Professor Sheila I. Vélez Martínez is the Jack and Lovell Olender Professor of Asylum Refugee and Immigration Law at the University of Pittsburgh School of Law. She is also the Director of Clinical Programs and the Immigration Law Clinic. Her academic publications and academic interests include issues related to immigrant women, Puerto Rican migration, Caribbean migration, remittances, legal pedagogy and OutCrit theory.

INTRODUCTION

In 2023, the University of Pittsburgh School of Law hosted the fourth Race + IP conference, with a theme of *The Imperial Scholar Revisited*.¹ The most well attended Race + IP conference yet, Race + IP '23 welcomed more than three hundred registrants in person or via Zoom to consider race, colonialism, and nationalism as organizing architectures in intellectual property rights regimes in the United States and globally.² As anti-intellectual and pro-fascist sentiments threaten the very foundations of higher education in the nation,³ engaging the intersections of power, knowledge, and justice is more important than ever. The conference, which featured a plenary address by Critical Race Theory (CRT) scholars Professor Richard Delgado and Professor Jean Stefancic, focused on how knowledge economies managed through intellectual property law, including the copyrights, patents, trademarks, trade secrets, rights of publicity, and unfair competition, replicate imperial habits through the narrow universalization of Euro-American frameworks of ownership.⁴ When Professor Delgado describes “imperial scholarship,” he is pointing to the tendencies of intellectual power to replicate itself, of the propertied whiteness that organizes citational politics in the (legal) academy to reproduce itself through networks of familiarity and obligation, not merit and creativity.⁵

In our view, *The Imperial Scholar* is a critique not only of power in the academy but of whiteness itself as intellectual property. It names the performative and intellectual practices that lead white professors to only see, value, and cite white professors as knowledge makers, even on issues of race—what Sarah Bannerman might describe as “platform imperialism,”⁶ perpetuated by academic algorithmic

¹ The conference perhaps ought to have been called “The Imperial Scholar Re-Revisited” because Professor Delgado wrote a follow-up to his piece *The Imperial Scholar Revisited*, itself a sequel to *The Imperial Scholar*. See Richard Delgado, *The Imperial Scholar Revisited: How to Marginalize Outsider Writing, Ten Years Later*, 140 U. PA. L. REV. 1349 (1992) [hereinafter Delgado, *Revisited*]; Richard Delgado, Commentary, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984) [hereinafter Delgado, *Imperial Scholar*].

² *Race + IP '23 About*, RACE + IP, <https://raceipconference.org/2023/about/> (last visited Aug. 22, 2024).

³ See, e.g., Jason Stanley, *Fascism and the University*, CHRON. OF HIGHER EDUC. (Sept. 2, 2018), <https://www.chronicle.com/article/fascism-and-the-university/>.

⁴ *Welcome to Race + IP '23, The Imperial Scholar Revisited*, RACE + IP, <https://raceipconference.org/2023> (last visited Aug. 22, 2024).

⁵ Delgado, *Imperial Scholar*, *supra* note 1, at 561–66.

⁶ Sara Bannerman, *Platform Imperialism, Communications Law and Relational Sovereignty*, 26 NEW MEDIA & SOC'Y 1816, 1817 (2024) (defining “platform imperialism” as “the ways that digital platforms,

thinking that leaves little space for innovation. It is an indictment of the knowledge structures that reproduce instead of innovate and entrench rather than open. This is a choice, not an accident; it is a replicatory engagement that necessarily shapes knowledge and its ownership vis-à-vis the production of reputational capital. Not only do scholars tend to cite the people in their networks,⁷ they cite those whose work will demonstrate their knowledge of the field, that will produce their own success. That raises important questions, some of which we will address in this Article. What obligations do we have to cite those scholars who came before us, even if their work is ethically and politically troublesome? How do we produce new intellectual worlds if we are mired in the old ones founded on elitist hierarchies? How do we read those who choose not to invest in “canonical” scholarship? How do certain scholars come to “own” certain fields? What can radical scholars do about scholarly imperialism? And how might coalitional politics help?

However, these are not the only questions that Race + IP raised. The conference introduction, nodding to the collaboration with the University of Pittsburgh School of Law’s Center for Civil Rights and Racial Justice, framed the project of Critical Race Intellectual Property, the interdisciplinary movement that has emerged around race, colonialism, nationalism, and intellectual property over roughly the past three decades,⁸ as a project of *civil rights*. The contention of the introduction to the conference was this: civil rights, typically understood to include voting rights, mass incarceration, desegregation policies, equal education, and egalitarian rights, have *always already included intellectual property rights*. Not only is each of those topics increasingly entangled with questions of knowledge ownership and management, including bounded information, weaponized laws, and proprietary technologies, but the propertizing and objectifying impulses that Cheryl Harris so wisely showed us bind whiteness to a set of privileges in this nation also bind whiteness to knowledge.⁹ This prevents many white scholars from seeing their own architectures of self and their own investments in structural oppression even as they hold themselves out as experts in civil rights.

While a considerable amount of scholarship has sought to frame intellectual property rights as *human rights* (e.g., access to knowledge, access to medicines, and

and the legal operating systems that they are built upon, are built within and on historical international power structures.”).

⁷ Delgado, *Imperial Scholar*, *supra* note 1, at 564–66.

⁸ Anjali Vats & Deidré A. Keller, *Critical Race IP*, 36 CARDOZO ARTS & ENT. L.J. 735, 737–40 (2018).

⁹ Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1715–45 (1993).

more, as articulated in the United Nations' Universal Declaration of Human Rights¹⁰), rarely have they been interrogated through a civil rights lens, in relation to those histories understood as the civil rights movement. The work of Keith Aoki, Margaret Chon, and Natsu Taylor Saito, who have considered intellectual property as a civil rights issue, offers notable exceptions to this statement.¹¹ Chon's pathbreaking articulation of "intellectual property equality"¹² makes a case for why the two concepts can and ought to be held together, a claim made more compelling by technology's encroachments on criminal justice guarantees in the U.S. Constitution.¹³ In the United States, with its constitutional democracy, civil rights take on profound meaning, as central to the realization of an equitable multiracial state in which shared power must be the ultimate goal. Particularly in this moment of populist backlash,¹⁴ intellectual property rights work is civil rights work of the highest order, necessary to protect life, liberty, property, and privacy. That raises another set of important questions. How do race and intellectual property intersect with civil rights? How does technology affect the need to think through them together? What good is the concept of civil rights when it has been repeatedly undermined and co-opted by conservative forces? What is the relationship between civil rights and racial justice? How do scholars and activists do civil rights and racial justice work that refuses to recenter whiteness? How do joy and transformation fit with civil rights and racial justice? How do race and intellectual property fit with racial justice movements in and out of the legal academy?

¹⁰ G.A. Res. 217 A (III), Universal Declaration of Human Rights, at 76 (Dec. 10, 1948).

¹¹ For a discussion of the *longue durée* of interconnections between civil rights and intellectual properties, see, e.g., Keith Aoki, *Space Invaders: Critical Geography, the Third World in International Law and Critical Race Theory*, 45 VILL. L. REV. 913 (2000); Margaret Chon, *Intellectual Property Equality*, 9 SEATTLE J. SOC. JUST. 259 (Fall/Winter 2010); Natsu Taylor Saito, *From Slavery and Seminoles to AIDS in South Africa: An Essay on Race and Property in International Law*, 45 VILL. L. REV. 1135 (2000).

¹² Chon, *supra* note 11, at 272 (stating that "[b]oth fields, like most areas of law, are rife with legal fictions, social constructions, and historical accidents carrying with them material consequences to real people within imagined communities. They have different discourses and epistemic pedigrees. Nonetheless, I have come to view these separate scholarly inquiries as one, in what I now call *intellectual property equality*").

¹³ Rebecca Wexler, *Life, Liberty, and Trade Secrets: Intellectual Property in the Criminal Justice System*, 70 STAN. L. REV. 1343 (May 2018) (illustrating how trade secrets impede criminal justice).

¹⁴ See, e.g., Jason Willick, Opinion, *Two Crises Have Driven Republican Populism in the 2020s*, WASH. POST (Aug. 25, 2023), <https://www.washingtonpost.com/opinions/2023/08/25/two-crises-stoked-american-populism>.

These sets of questions frame our introduction to this symposium issue of the *University of Pittsburgh Law Review*. Professor Delgado is, we suggest, speaking about an underlying entitlement when he points out that courts and law professors cite white scholars, a sense of earned privilege about who to cite and when.¹⁵ This sense of entitlement not only continues today; it extends far beyond academic spaces into political and cultural ones.¹⁶ Imperial scholarship is an exemplar of how epistemological privilege, the control that those in power exercise to center certain viewpoints over others, keeps us collectively stuck in frameworks that valorize whiteness and denigrate color. A recent *Stanford Law Review* article showed the persistence of the argument that *The Imperial Scholar* makes. The authors' conclusion, put succinctly, is that the myth of meritocracy in academia is just that: a myth. Instead, "[h]ierarchy, race, and gender matter to a legal academic's success; they matter to the acceptance of her ideas; they matter to her own experience."¹⁷ By mapping the acknowledgments in law review articles, based on a data set that Professor Michael Madison of the University of Pittsburgh had a hand in creating,¹⁸ the authors produce what Giles Deleuze and Felix Guattari might refer to as "lines of flight" that make visible the movements of power through interpersonal relationships across areas of law.¹⁹ In essence, the work they do makes visible the intractable networks that facilitate the replication of (raced and gendered) power across domains and disciplines. Delgado notes that such lines of flight also structure civil rights law, by embracing the epistemological imperialism that follows from the "perpetrator perspective" that civil rights law all too often embraces.²⁰ Honest

¹⁵ See Delgado, *Imperial Scholar*, *supra* note 1, at 566–73.

¹⁶ See, e.g., Ella Alexander, *Understanding White Privilege: 20 Everyday Examples*, HARPER'S BAZAAR (Jan. 7, 2021), <https://www.harpersbazaar.com/uk/culture/a32752175/white-privilege-everyday-examples>.

¹⁷ Keerthana Nunna, W. Nicholson Price II & Jonathan Tietz, *Hierarchy, Race, and Gender in Legal Scholarly Networks*, 75 STAN. L. REV. 71, 73 (2023).

¹⁸ See *id.* at 102 (citing *Law, Technology & Society Researchers*, MICHAEL MADISON, <https://perma.cc/K9BR-3XC3>).

¹⁹ GILLES DELEUZE & FÉLIX GUATTARI, A THOUSAND PLATEAUS: CAPITALISM AND SCHIZOPHRENIA 9–10 (Brian Massumi trans., Continuum 2004) (1980) ("All multiplicities are flat, in the sense that they fill or occupy all of their dimensions . . . Multiplicities are defined by the outside: by the abstract line, the line of flight or deterritorialization according to which they change in nature and connect with other multiplicities.").

²⁰ Delgado, *Imperial Scholar*, *supra* note 1, at 571; see, e.g., Alan David Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049, 1053 (1978) ("The perpetrator perspective sees racial discrimination not as conditions, but as actions, or series of actions, inflicted on the victim by the perpetrator" thus frequently absolving

assessments of the limitations of neoliberal rights-based concepts and strategies, including scholarly merit and civil rights, can open space for radical equity, particularly if they successfully decenter epistemologies of whiteness and masculinity. This is, of course, no small feat.

As we reflect on Race + IP '23, we are thoughtful about how to speak truth to these forms of power while honoring the diverse range of views in this space and collaborating with the many marginalized communities with investments in these politics. We aim to ultimately embrace critical race studies' most radical visions of antiracist and anticolonial liberation. More specifically, we write today as two women of color opposed to domination and subordination as relational strategies, with an interest in dismantling both in intellectual property spaces. We use the terms antidomination and antisubordination centered by the Critical (Legal) Collective ("CLC"), legal scholars who represent "some of the many legal formations affiliated with critical legal theory—including, Critical Race Theory, Asian American Legal Scholarship, ClassCrits, Critical Legal Studies, Feminist Legal Theory, eCRT, Indigenous Law and Policy, Jurisprudence of Distribution, LatCrit, Law & Political Economy, Third World Approaches to International Law, and more" throughout the Article to speak of nonhierarchical and nonoppressive movement politics.²¹ The vision we lay out here is an aspirational one that contemplates how Race + IP might advocate for dismantling intellectual property law's deep investments in unequal systems of property rights in alignment with racial justice movements.

With these starting points in mind, Part I of this introduction explores critiques of imperial scholarship and civil rights; Part II traces the development of Critical Race Theory and locates critical race intellectual property, as well as Race + IP, in its histories; and Part III offers thoughts on sustaining radical movements for knowledge justice. Finally, the conclusion situates the essays in this collection in joyful activism and transformative justice frameworks. Liberation, we believe, must include equitable and respectful freedom to create, own, and access knowledge, sometimes contra legal institutions and regulatory regimes, which often silo and

individuals of accountability for racial injustices while leaving exploitative structures in place because discrimination cannot be "proven").

²¹ CRITICAL LEGAL COLLECTIVE, <https://www.criticallegalcollective.org> (last visited Aug. 23, 2024).

enclose information, keeping it from those who need it most,²² via capitalist and carceral systems.²³

I. KNOWLEDGE IMPERIALISMS

In his book, *Knowledge Capitalism*, Nico Stehr writes that “[t]he legal encoding of knowledge through national and international law is the lever that enables the transformation of the knowledge society into knowledge capitalism.”²⁴ The knowledge society that Enlightenment philosophers imagined evolved to a system wherein “[k]nowledge, although intangible and reproduced with marginal costs of almost zero, is being transformed thanks to political arrangements such as patent law, into something tradeable and profitable.”²⁵ The reduction of knowledge into a tradable commodity, whether through patents or other forms of intellectual property, a practice that Stehr observes is happening at an accelerating rate,²⁶ is a phenomenon evident in the topics of this Article, namely imperial scholarship and civil rights. The imperial scholarship that Delgado identifies provides one example of how knowledge—in the form of expertise about civil rights—translates into power and wealth in the legal academy.²⁷ In highlighting these two topics as examples of knowledge capitalism facilitated by intellectual property law, we seek to demonstrate that neither academic scholarship nor civil rights easily realize racial justice in their current forms. Instead, they must be disentangled from capitalism, as well as whiteness itself, and make clear ethical commitments. This Part, then, briefly identifies and describes the imperialism that historically and presently structures knowledge economies and civil rights in order to lay the groundwork for discussing

²² See generally LARISA KINGSTON MANN, RUDE CITIZENSHIP: JAMAICAN POPULAR MUSIC, COPYRIGHT, AND THE REVERBERATIONS OF COLONIAL POWER 180 (2022) (arguing that Jamaican musical practice “provides evidence of how people oppressed by racial and class inequality in a country disadvantaged in the global system, develop strategies for relating to the state . . . without being wholly dependent on structures of power that have served to disadvantage them”).

²³ Tressie MacMillan Cottom uses the phrase “predatory inclusion” to describe the extractive capitalism that accompanies purported “inclusion” via digital platforms. This concept of predatory inclusion also frequently describes the integration of people of color into intellectual property spaces. Tressie MacMillan Cottom, *Where Platform Capitalism and Racial Capitalism Meet*, 6 SOCIOLOGY OF RACE AND ETHNICITY 441 (2020).

²⁴ NICO STEHR, KNOWLEDGE CAPITALISM, at x (2022).

²⁵ Claus Offe, praise for Nico Stehr, in STEHR, *supra* note 24, at ii.

²⁶ STEHR, *supra* note 24, at 79–82, 216. This phenomenon is, of course, not new, only happening more rapidly.

²⁷ See Delgado, *Imperial Scholar*, *supra* note 1, at 573.

possible transitions to more radical approaches to the extractive systems that scholars and activists increasingly find themselves in.

The argument we make requires a definition of imperialism that shows how it operates in the contexts of scholarship and epistemology. Imperialism, according to Edward Said's canonical *Culture and Imperialism*, is "thinking about, settling on, controlling land that you do not possess, that is distant, that is lived on and owned by others."²⁸ In our reading, "land" is a placeholder for any property, tangible or intangible, that can be controlled, especially to the exclusion of others. Liu Yinliang, for instance, takes a broader approach to the term "imperialism" in the context of intellectual property, retaining Said's conceptions of settlement and control (i.e., dominion) but emphasizing political and economic mechanisms for doing so.²⁹ For him, the United States has built an intangible "commercial empire" that naturally flows from the nation's longstanding desire for soft power.³⁰ In his historical reading, "commerce was the vehicle for American advancement in civilization and enlargement of its empire."³¹ The framework of commercial empire serves as an effective throughline between Stehr's concept of knowledge capitalism and Delgado's concept of imperial scholarship. It also highlights why theories of political economy, including "racial capitalism," can be helpful in naming inequity. Citations, references to a form of intellectual property, function as scholarly and reputational capital that professors, particularly those who are white and male, trade in, intentionally or unintentionally, for professional gain. In speaking about the lack of representation of scholars of color in the space of civil rights in particular, Delgado speculates: "I think the explanation lies at the level of unconscious action and choice. It may be that the explanation lies in a need to remain in *control*, to make sure that legal change occurs, but not too fast."³² He goes on to suggest that white professors, who may be invested in incrementalism, have abandoned their careers in writing about civil rights and racial justice, presumable in search of greener pastures.³³

²⁸ EDWARD SAID, *CULTURE AND IMPERIALISM* 7 (First Vintage Books 1994) (1993).

²⁹ Liu Yinliang, *An American Intangible Empire of Intellectual Property Rights and its Dilemmas*, 2 PEKING U. L.J. 227, 229–33 (2014).

³⁰ *Id.* at 228.

³¹ *Id.* at 229.

³² Delgado, *Imperial Scholar*, *supra* note 1, at 574 (footnote omitted).

³³ *Id.* at 575–76 (speaking to the incremental nature of white scholarship); Delgado, *Revisited*, *supra* note 1, at 1353 ("Most civil rights writing published in the top law reviews these days is written by women and minorities.").

Imperialism in scholarship is thus evident in methods of control, structure of content, pacing of change, and access to publication, among other manifestations. While the latter is a statement worth discussing at length, for the purposes of this Article, it underscores the reality that scholarship about civil rights and racial justice is monetized in a system of knowledge *capitalism*.

Delgado's argument points to a specific legal area in which knowledge capitalism operates: civil rights. If civil rights discourse is dominated by lawyers and professors whose work has tangible impacts,³⁴ then it is worth considering when and how imaginaries of *freedom* are shaped by imperialism. One example that illustrates the constraints that imperialism places on imaginaries of freedom is that of Dr. Martin Luther King, Jr.'s monetized legacy. In a recent article on King and the posthumous use of copyrighted materials he produced, Joseph Coppola begins: "The Reverend Dr. Martin Luther King, Jr. has recently taken up a new career: corporate pitchman. Multinational corporations regularly use King's intellectual property (his image, likeness, speeches, and voice) to promote various commercial products, including ice cream (the 'Dream Cone') and soft drinks (Coca-Cola)."³⁵ Coppola goes on to explore the afterlife of the radical real-life Dr. King in licensed intellectual property fantasies.³⁶ For him, "the deradicalization of King is representative of a much larger pattern of neoliberalism whereby figures and movements are incorporated within the systems they are critiquing to neutralize their radical critiques."³⁷ The exploitation of King's legacy forces us to ask what remains of radical conceptions of civil rights and if and how they might be salvaged. In our reading, intellectual property rights and civil rights often conspire to entrench whiteness, allowing those who perpetrated oppression to coopt resistance to it.

Katherine McKittrick, in her work on Black feminist geographies, illustrates how and why epistemological imperialism does violence to those who are not seen or heard, why and how imperialist relationalities ignore the physical subterranean networks—we mean to allude to the Underground Railroad here—and embodied human experiences through which actual knowledge was materially inscribed on the lives of some through oppression.³⁸ Behind real and metaphorical citations that produce epistemic imperialism are the enfolded realities of people of color, the

³⁴ Delgado, *Imperial Scholar*, *supra* note 1, at 573.

³⁵ Joseph Coppola, *The Commodification of Dr. King, or What Intellectual Property Rights Did to Civil Rights*, 75 AM. Q. 103, 103 (2023).

³⁶ *Id.* at 110–18.

³⁷ *Id.* at 104–05.

³⁸ KATHERINE MCKITTRICK, *DEMONIC GROUNDS: BLACK WOMEN AND THE CARTOGRAPHIES OF STRUGGLE*, at ix–xii (2006).

atrocities that were committed upon Black and Brown people only to be forcibly rewritten via intellectual erasure. Imperial scholarship and epistemological imperialism do active harm to people of color past and present because they are ethically and practically nonaligned with racial justice. They act upon people of color, objectifying them, extracting instead of collaborating. If we are not mindful in the work that we do, we risk doing the same: seeking power over marginalized communities instead of building together with them. Humility and grace are important parts of the latter; they remind us of the need to listen to those who are most affected by oppressive systems. So too is intimacy, a form of warm and reciprocal relationality that keeps communities connected in affirming ways.

II. CRITICAL RACE HISTORIES

Beginning in the 1990s, the term “free trade” became a common one in the American, indeed global, political and cultural lexicon.³⁹ From Most Favored Nation Status to the North American Free Trade Agreement, moving goods and services, as well as industries, across borders, often at the expense of those in the Global South, became a priority for those in the Global North.⁴⁰ In 1999, Seattle became a site for building conflict over these agreements, as protests about the creation and operation of the World Trade Organization (WTO) came to a head.⁴¹ These protests became landmarks in the history of CRTIP,⁴² “the interdisciplinary movement of scholars connected by their focus on the racial and colonial non-neutrality of the laws of

³⁹ See Lael Brainard, *Trade Policy in the 1990s*, BROOKINGS INST. (June 29, 2001), <https://www.brookings.edu/articles/trade-policy-in-the-1990s>. For a discussion of the history and impacts of the WTO and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

⁴⁰ See generally Carmen G. Gonzalez, *Beyond Eco-Imperialism: An Environmental Justice Critique of Free Trade*, 78 DENV. U. L. REV. 979 (2001) (arguing that free trade agreements help wealthy countries achieve economic prosperity by shifting environmental degradation to the global commons and developing world); John Cruzatti, *Free Trade and Subnational Development: Economic Activity and Human Welfare*, WORLD BANK ECON. REV. (2024) (according to an analysis of subnational relationship between free trade agreements (FTAs) and human development worldwide; unequal and more vulnerable regions grapple with declining human development indicators); Ashley A. Elsasser, *Migration from Mexico to the US: The Impacts of NAFTA on Mexico and the United States and What to Do Going Forward*, INT’L REV. BUS. & ECON. (2018) (since agreeing to virtually total free trade, the United States has been able to take advantage of Mexico in such a way that has created further deterioration of the state).

⁴¹ Gene Johnson, *WTO Protests in Seattle 20 Years Ago Helped Change Progressive Politics*, L.A. TIMES (Nov. 19, 2019), <https://www.latimes.com/world-nation/story/2019-11-29/wto-protests-in-seattle-20-years-ago>.

⁴² See Ruth Gordon, *Critical Race Theory and International Law: Convergence and Divergence*, 45 VILL. L. REV. 827, 835 n.31 (connecting CRT and Westernization to the WTO protests in Seattle, WA in 1999).

copyright, patent, trademark, right of publicity, trade secret, and unfair competition using principles informed by CRT.”⁴³ Drawing on writings and activism in critical race studies, ethnic studies, area studies, and cultural studies, scholars interested in the intersections of racial justice and intellectual property pushed back against economic liberalization as it manifested in the 1990s and 2000s.⁴⁴ Now, twenty-five years later, the conversations about race, colonialism, nationalism, and equity in intellectual property are more important and lively than ever, with their stakes growing every day. It is in this historical context that Race + IP emerged. Race + IP ’17, the inaugural event hosted at Boston College, sought to bring together those invested in applying CRT specifically, and critical race studies broadly, for collaborative conversations about intellectual property, with an eye to building a supportive community of knowledge justice stakeholders.⁴⁵

Race + IP ’23, the fourth iteration of the biennial conference, was a watershed event because it explicitly brought intellectual property scholars together around civil rights frameworks in ways that the previous three conferences had not done. While pioneering scholars such as Kevin J. Greene, Keith Aoki, and Caroline Picart have long applied CRT to intellectual property in music and dance,⁴⁶ Race Crits have been largely focused on traditional civil rights issues, such as education and policing.⁴⁷ Now, because the latter issues are increasingly shaped by artificial intelligence, proprietary software, and algorithmic cultures,⁴⁸ centering intellectual

⁴³ Vats & Keller, *supra* note 8, at 740. This essay traces a modern history of intellectual property while also noting that scholars have long argued that intellectual property operated in imperial settings to reinforce hierarchies of race and gender. See, e.g., Anne McClintock, *Soft-Soaping Empire: Commodity Racism and Imperial Advertising*, in *THE BODY* 271 (Mariam Fraser & Monica Greco eds., 2005).

⁴⁴ See, e.g., Keith Aoki, *Considering Multiple and Overlapping Sovereignties: Liberalism, Libertarianism, National Sovereignty, “Global” Intellectual Property, and the Internet*, 5 *IND. J. GLOB. LEGAL STUD.* 443, 456–58 (1998).

⁴⁵ RACE + IP, <https://www.raceipconference.org/2017> (last visited Aug. 23, 2024).

⁴⁶ See K.J. Greene, “Copynorms,” *Black Cultural Production, and the Debate Over African-American Reparations*, 25 *CARDOZO ARTS & ENT. L.J.* 1179 (2008); K.J. Greene, *Copyright, Culture & Black Music: A Legacy of Unequal Protection*, 21 *HASTINGS COMM’NS & ENT. L.J.* 339 (1998) [hereinafter Greene, *Copyright*]; CAROLINE JOAN S. PICART, *CRITICAL RACE THEORY AND COPYRIGHT IN AMERICAN DANCE: WHITENESS AS STATUS PROPERTY* (2013).

⁴⁷ Randall Kennedy, *State, Criminal Law, and Racial Discrimination: A Comment*, 107 *HARV. L. REV.* 1255 (Apr. 1994).

⁴⁸ See, e.g., Sareeta Amrute, *Bored Techies Being Casually Racist: Race as Algorithm*, 45 *SCL., TECH., & HUM. VALUES* 903 (2020); Amanda Levendowski, *How Copyright Law Can Fix Artificial Intelligence’s Implicit Bias Problem*, 93 *WASH. L. REV.* 579 (2018).

property is a necessity in civil rights conversations. That said, while this introduction situates knowledge justice as a civil rights issue, the connection between these articulations of oppression has been clear to many of us who write in this area for many years, albeit perhaps less clearly than is stated here. In the first section, we trace how CRT emerged as a necessary intervention in the post-civil rights era but also how, partly due to its defensive posture against an epistemically white liberal rights regime, it has evolved to exceed white liberal visions of civil rights. In the second section, we locate CRTIP in the conversation about CRT, offering a framework for understanding past conferences and the community building that they have done.

A. *Critical Race Theory as Post-Civil Rights Intervention*

Critical Legal Studies (CLS) emerged in the late 1970s as a progressive intervention in American legal academia.⁴⁹ Initially, CLS scholars aimed to incorporate diverse theoretical perspectives into legal scholarship to expose how law perpetuates class divisions and human alienation.⁵⁰ Their critique of American liberalism challenged the transformative potential of liberal rights,⁵¹ questioned the indeterminacy of law, and scrutinized claims of judicial impartiality.⁵² While CLS scholars made important critiques of the operation of power in U.S. legal regimes, according to the emerging group of CRT scholars, their perspectives elided race.⁵³ Through the vocal interventions of a first generation of legal scholars of color, including Derrick Bell, Charles Lawrence III, Mari Matsuda, Lani Guinier, Richard Delgado, Kimberlé Crenshaw, and others, CRT emerged as a coherent racial justice

⁴⁹ CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT, at xvii–xviii (Kimberlé Crenshaw, Neil Gotanda, Gary Peller & Kendall Thomas eds., 1995) [hereinafter CRITICAL RACE THEORY].

⁵⁰ See, e.g., Francisco Valdes, *Theorizing “OutCrit” Theories: Coalitional Method and Comparative Jurisprudential Experience—RaceCrits, QueerCrits and LatCrits*, 53 U. MIA. L. REV. 1265, 1299 (1999) (explaining the origins of LatCrit, “an intervention designed to highlight Latina/o concerns and voices in legal discourse and social policy”).

⁵¹ See Margaret E. Montoya & Francisco Valdes, “*Latinas/os*” and *Latina/o Legal Studies: A Critical and Self-Critical Review of LatCrit Theory and Legal Models of Knowledge Production*, 4 FIU L. REV. 187, 196–97 (2008).

⁵² See generally Roberto Mangabeira Unger, *The Critical Legal Studies Movement*, 96 HARV. L. REV. 561 (1983).

⁵³ See, e.g., Berta E. Hernandez-Truyol, Angela Harris & Francisco Valdés, *Beyond the First Decade: A Forward-Looking History of LatCrit Theory, Community and Praxis*, 17 BERKELEY LA RAZA L.J. 169, 178 (2006).

movement.⁵⁴ CRT developed a set of central tenets through critiques of rollbacks of antidiscrimination laws that addressed practical implementation (e.g., stringent requirements for busing) and doctrinal standards (e.g., application of scrutiny to racially remedial statutes),⁵⁵ CRT scholars and activists sought to examine how racial injustice persists in the United States; recognize the intersectional oppression that people of color face in their communities and subcommunities; and develop theories and practices for dismantling racially discriminatory power structures.⁵⁶

CRT scholars and activists initially centered their work on identifying and critiquing civil rights rollbacks in the areas of desegregation⁵⁷ and employment.⁵⁸ However, CRT quickly expanded to cover a multitude of topics and struggles, from historical reevaluation of civil rights narratives⁵⁹ to recontextualization of property rights vis-à-vis race⁶⁰ as well as structural inequities in policing.⁶¹ Consistent with the collaborative talk that we gave at Race + IP '23, we are interested in drawing on recent turns in CRT toward imagining how CRTIP scholars have and can continue to interface with larger racial justice movements, including developing transformative justice pedagogies. While Derrick Bell's incisive critique of "interest

⁵⁴ See Cornel West, foreword, in *CRITICAL RACE THEORY*, *supra* note 49, at xi; see generally *CRITICAL RACE THEORY*, *supra* note 49 (featuring essays by each of the enumerated scholars).

⁵⁵ See Derrick A. Bell, Jr., Comment, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980); Freeman, *supra* note 20, at 1049–1119.

⁵⁶ See, e.g., Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 140 (illustrating that "Black women are sometimes excluded from feminist theory and antiracist policy discourse"); Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1335 (1988) (demonstrating that even as "the neoconservative interpretation of antidiscrimination law reveals assumptions about racism and society that can no more transcend politics than can the civil rights vision," CLS critics' "attack on civil rights . . . undermines the utility of their critique in analyzing the oppression of Black people").

⁵⁷ See, e.g., Bell, *supra* note 55.

⁵⁸ See, e.g., Lani Guinier, *Reframing the Affirmative Action Debate*, 86 KY. L.J. 505 (1998).

⁵⁹ See Mary L. Dudziak, *Desegregation as a Cold War Imperative*, 41 STAN. L. REV. 61 (1988).

⁶⁰ See Harris, *supra* note 9.

⁶¹ See, e.g. Randall Kennedy, *State, Criminal Law, and Racial Discrimination*, 107 HARV. L. REV. 1255, 1256 (Apr. 1994) (observing that "What such critiques ignore or minimize is that the main problem confronting black communities in the United States is . . . a failure of the state to provide black communities with equal protection of the laws). While Kennedy disagrees with mainstream abolitionist scholars and activists about the racist impacts of policing, he reasons from core CRT principles about the racial non-neutrality of the law.

convergence” explains why civil rights progress appeared to be met with consistent pushback despite claims by white people that they are invested in racial equity,⁶² Cheryl I. Harris’s groundbreaking *Whiteness as Property* showcases how white domination and subordination are embedded in systems of property that first have to be dismantled and reimaged in order to produce an egalitarian society.⁶³ Indeed, Cornel West’s introduction to *Critical Race Theory: The Key Writings That Formed the Movement* highlights this in observing that CRT’s goal must be to “examine[] the entire edifice [sic] of contemporary legal thought and doctrine from the viewpoint of law’s role in the construction and maintenance of social domination and subordination.”⁶⁴ Antidomination and antisubordination are anchoring concepts not only in CRT but in teaching what Jennifer Hill, Francisco Valdez, and Steven Bender have called “critical justice” in theorizing legal racial pedagogy.⁶⁵ Undoing domination and subordination is no small feat, even in progressive spaces. For example, in advocating for antidomination and antisubordination in embodied performances of Black masculinity, Athena Mutua highlights how patriarchy impacts people of color invested in doing racial justice work, writing: “The project of progressive blackness centers on the edification and empowerment of black people as part of a larger antiracist struggle and part of a still larger antidomination or antisubordination project.”⁶⁶

The emergence of LatCrit was partly attributable to the desire to address domination and subordination in CRT spaces, particularly along the lines of gender.⁶⁷ “Shifting bottoms and rotating centers,” a now familiar phrase for CRT scholars, refers in part to the need to confront domination and subordination even when they manifest in progressive spaces, as well as to emphasize that oppression affects different groups in different moments.⁶⁸ Now almost cliché, phrases like

⁶² See Bell, *supra* note 55, at 522–28.

⁶³ Harris, *supra* note 9, at 1714–15.

⁶⁴ West, *supra* note 54, at xi.

⁶⁵ FRANCISCO VALDES, STEVEN W. BENDER & JENNIFER J. HILL, *CRITICAL JUSTICE: SYSTEMIC ADVOCACY IN LAW AND SOCIETY* (2021).

⁶⁶ Athena D. Mutua, *Theorizing Progressive Black Masculinities*, in *PROGRESSIVE BLACK MASCULINITIES 5* (Athena D. Mutua ed., 2006).

⁶⁷ See Angela Harris & Zeus Leonardo, *Intersectionality, Race-Gender Subordination, and Education*, 42 *REV. RSCH. EDUC.* 1, 5 (2018).

⁶⁸ See Athena D. Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 *U. MIA. L. REV.* 1177, 1216, 1216 n.173 (1999).

“none of us are free until all of us are free” underscore these principles, highlighting the need for relentless commitment to equal humanity. Approaching law from the vantage points of antidomination and antisubordination requires adopting the epistemological position that all people are equally deserving and valuable and making policies that remedy past discriminatory harms across identities. It also requires maintaining constant vigilance and self-reflexivity against domination and subordination when they do appear in our movements and our political spaces.⁶⁹ In this sense, collective worldmaking requires investing in a collaboratively imagined common good that dismantles domination and subordination.⁷⁰ As we show in the next Part, while Caroline Picart did important work in bringing intellectual property in LatCrit conversations,⁷¹ there is more work to be done in exploring their intersections.

B. Race + IP as Critical Race Intellectual Property Anchor

Though the first Race + IP conference happened in 2017, contemporary theorizations of race, coloniality, globalization, and intellectual property began long before that, as a then-relatively small and innovative group of scholars, including Keith Aoki, Margaret Chon, Kevin J. Greene, and Madhavi Sunder, began considering the intersections of globalization, development, race, colonialism, and nation on the landscape of equity in intellectual property law.⁷² In the early 2000s, as Bill Clinton’s free trade-forward presidency faded into national memory and George W. Bush led the country in the War on Terror, it became clear that the end of racism was in a distant imagined future that did not yet exist. During a 2005 telethon for Hurricane Katrina, Kanye West, presumably breaking script given the startled reaction of co-host Mike Myers, declared “George Bush doesn’t care about Black people.”⁷³ Mainstream journalistic images suggested as much, as Black

⁶⁹ See, e.g., Marc Tizoc Gonzalez, Saru Matambanadzo & Sheila I. Vélez Martínez, *Latina and Latino Critical Legal Theory: LatCrit Theory, Praxis and Community*, 12 REV. DIREITO E PRÁX. 1316 (2021).

⁷⁰ See generally MICHAEL J. SANDEL, THE TYRANNY OF MERIT: WHAT’S BECOME OF THE COMMON GOOD? 29 (2020) (arguing that the common good should not be “understood mainly in economic terms” as it is today but “about cultivating solidarity or deepening the bonds of citizenship”).

⁷¹ Caroline J. Picart, *Rethinking Resistance: Reflections on the Cultural Lives of Property, Collective Identity, and Intellectual Property*, 47 J. MARSHALL L. REV. 1349 (2014).

⁷² See Keith Aoki, *Neocolonialism, Anticommons Property, and Biopiracy in the (Not-so-Brave) New World Order of International Intellectual Property Protection*, 6 IND. J. GLOB. LEGAL STUD. 11 (1998); Margaret Chon, *Intellectual Property and the Development Divide*, 27 CARDOZO L. REV. 2821 (2006); Greene, *Copyright*, *supra* note 46; Madhavi Sunder, *IP*³, 59 STAN. L. REV. 257 (2006).

⁷³ Jeremy Stahl, “*This Is Not Going Well*”: NBC Producers Look Back on the Concert for Katrina’s Kanye Moment, SLATE (Aug. 27, 2015, 11:33 AM), <https://slate.com/news-and-politics/2015/08/george-bush->

residents of New Orleans struggled through waist-deep waters and waved from rooftops amid cataclysm.⁷⁴ While the particulars of that national tragedy are beyond the scope of this Article, its optics are a reminder of the end of an era of racial naivete that preceded our own era of intense culture wars. Jokes about America's first saxophone-playing Arkansan Black president could not change the reality that Clinton was, for instance, complicit in the expansion of the prison-industrial complex,⁷⁵ a system that punished Black and Brown people disproportionately, as well as a litany of policies that made the world less equitable. His was the neoliberalism that undergirded globalization, with its claim to free and fair trade, and that entrenched the relentless exploitation of the Global South.⁷⁶

By the time the co-planners of the conference assembled in 2016, the jubilance of neoliberal prosperity had come to a screeching halt, interrupted by wars on terror, multiple economic downturns, rising racist violence, and a global climate emergency. The election of Donald Trump had extinguished any remaining Obama-era liberal optimism about the inexorable nature of the arc of justice, i.e., the notion that the clock could not be turned back on the progress of the last decades.⁷⁷ From 2014–2016, Vats found that teaching Bell's interest convergence was challenging at best because liberal and progressive students were frequently committed to their belief that change proceeds in a linear and upward trajectory.⁷⁸ They simply could not fathom a world in which affirmative action no longer existed, abortion rights would be curtailed, and their own freedoms could be abridged. The 2016 election, followed by the appointment of Brett Kavanaugh to the Supreme Court, left them

doesnt-care-about-black-people-how-kanye-west-s-katrina-moment-went-down-in-the-nbc-control-room.html.

⁷⁴ See, e.g., Coburn Dukehart, *The Legacy of Hurricane Katrina*, NPR: PICTURE SHOW (Aug. 24, 2010, 12:13 PM), <https://www.npr.org/sections/pictureshow/2010/08/24/129400381/telling-their-stories>.

⁷⁵ Toni Morrison, comment, *NEW YORKER* (Sept. 27, 1998), <https://www.newyorker.com/magazine/1998/10/05/comment-6543> (arguing that Clinton “displays almost every trope of blackness”); Lauren-Brooke Eisen, *The 1994 Crime Bill and Beyond: How Federal Funding Shapes the Criminal Justice System*, BRENNAN CTR. FOR JUST. (Sept. 9, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/1994-crime-bill-and-beyond-how-federal-funding-shapes-criminal-justice>.

⁷⁶ Eisen, *supra* note 75.

⁷⁷ See, e.g., Yascha Mounk, *We Still Need the Hopy-Changey Stuff*, *SLATE* (Oct. 24, 2017), <https://slate.com/news-and-politics/2017/10/a-new-obama-speech-should-remind-the-left-that-only-optimism-can-get-us-through-the-trump-years.html> (pondering whether Obama was right “to describe the last two centuries of American history as a story of two steps forward, one step back” or whether “we might be about to take 10 or 20 or 100 steps back”).

⁷⁸ Bell, *supra* note 55.

unmoored, estranged from their sense of hopefulness. Many students fell into the type of despair that Bell warned about,⁷⁹ while others found alternate paths to sustain them. This was the context in which new forms of scholarly and activist thought, originating from the radical socialists of the 1960s and 1970s, came to the fore, offering meaningful paths for transformative justice. Joy, adrienne maree brown reminds us, is a much more sustainable affect than melancholy.⁸⁰ And mutual aid, Alexis Pauline Gumbs counsels, is more durable than the neoliberalism that Democrats consistently espouse.⁸¹ “From mothering as an emergent strategy in massive dolphin super-pods to pantropical synchronized swimming as a model of being prepared for large-scale direct action, the dolphins,” Gumbs writes, “are educating us on how to squad, or pod up.”⁸²

The founders of Race + IP ’17 imagined the conference to be entering into a renewed conversation about CRT and intellectual property that took into account the many changes that had occurred since Bell began writing in the 1970s and 1980s. Focused on defining the terrain at the intersections of race and intellectual property, in part to determine whether there was a there there, the first conference contemplated the implications of terms such as “race” and directions for further study.⁸³ The law review article that followed the conference, *Critical Race IP*, provisionally mapped the scholarship of the previous decades as well as the major themes that had come to the fore in it.⁸⁴ The conferences that followed focused on settler colonial politics and intellectual property crises,⁸⁵ before turning to the theme of imperial scholarship revisited in 2023. Where the 2017 conference was organized around proof of concept, with an eye to hashing out what the attendees were all doing there and whether they should continue to assemble, the 2019 conference emphasized the settler colonial politics of intellectual property, in contexts such as data sovereignty and seed dispossession. Professors Jane Anderson, Minh-Ha Pham,

⁷⁹ See *id.* at 528 (noting a “legitimate fear” that “the purported entitlement of whites not to associate with blacks in public schools may yet eclipse the hope and the promise of” desegregation).

⁸⁰ See ADRIENNE MAREE BROWN, PLEASURE ACTIVISM: THE POLITICS OF FEELING GOOD 251 (2019) (arguing that “our misery only serves those who wish to control us” but pleasure “is one of the ways we know when we are free. That we are always free. That we always have the power to co-create the world.”).

⁸¹ ALEXIS PAULINE GUMBS, UNDROWNED: BLACK FEMINIST LESSONS FROM MARINE MAMMALS 28 (2020).

⁸² *Id.* at 28.

⁸³ RACE + IP, *supra* note 45.

⁸⁴ Vats & Keller, *supra* note 8.

⁸⁵ See *Race + IP Conference 2019*, RACE + IP, <https://www.raceipconference.org/2019> (last visited Aug. 25, 2024); *Race + IP 2021*, RACE + IP, <https://raceipconference.org/2021> (last visited Aug. 25, 2024).

and Lateef Mtima sharpened Race + IP's decolonial commitments by centering Indigenous epistemologies. We are doing a great disservice to many brilliant scholars that have been working in this area—helping to write definitions of traditional knowledge, develop frameworks for data sovereignty, produce agreements like the Nagoya Protocol, and so on—by not discussing their work in detail in the interest of brevity. However, we are grateful for the diversity and depth of the global scholarship and activism in this area and affirm its centrality to CRTIP.

The co-planners had always conceived of Race + IP as flowing from CRT antecedents, as well as the more radical politics that ethnic and area studies departments had enshrined in their curricula after the civil rights struggles of the 1960s and 1970s. Race + IP returned to CRT's foundational principles regarding law's investments in whiteness, as well as CRS's radical calls to imagine liberatory worlds. It also returned to CRTIP scholars' uptake of the principles of antidomination and antisubordination in their analyses of intellectual property equity. Over the years, the conference has evolved and matured, through the refinement of tenets and stakeholders, as well as sharpened purpose and vision. The 2023 conference took place at the University of Pittsburgh School of Law, the same law school that Derrick Bell once attended, in the Center for Race and Social Problems, with the co-sponsorship of the Center for Civil Rights and Racial Justice. These partnerships, as well as this introduction, demonstrate that intellectual property is no less at the heart of the scholarly and activist endeavor that is now under attack by the radical right than are education, property, and policing. Indeed, knowledge justice is racial justice. Without democratized access to the information that grounds histories, anchors cultures, and saves lives, there is no equity in any of those areas. Moreover, without connection to the joyful and transformative elements of the racial justice movement as well as reciprocal engagement from CRT communities, this project is in danger of falling into disrepair and despair. Civil rights and intellectual property are mutually reinforcing. They also both benefit from rootedness in larger social justice movements, such as those for transformation and abolition. In the last Part, we consider how Race + IP can further incorporate the lessons of CRT and racial justice in coming years, events, practices, and pedagogies, specifically their emphases on antidomination, antisubordination, joy, and transformation. We hope that doing so will build strong theoretical and interpersonal bridges between CRT and CRTIP communities, especially in this challenging political moment.

III. TOWARDS A SUSTAINABLE AND ANTI-IMPERIALIST CRTIP

Because it became apparent at the first conference that the analytic of "race" failed to accurately describe or engage domination and subordination in many parts of the world, Deidré Keller and Anjali Vats advocate for understanding the "race" in Race + IP broadly, as marker of intersectional commitments to radical transformation

and liberatory politics around multiple forms of difference, including racial categories, colonial histories, and national identities.⁸⁶ In this Article, we go one step further in considering what it might mean to center core values of CRT (i.e., antidomination and antisubordination) and racial justice (joy and transformation) as means of imagining sustainable movements focused on racial justice and intellectual property. Race + IP '23 proposed its own transformation into a liberatory space from which to imagine intellectual property beyond property and punishment, from the vantage points of joy and transformation. As we look toward the fifth biennial conference, we consider what it means to build, own, and steward knowledge with accountability, specifically to take collective responsibility for the presents and futures that we produce through our (intellectual) property laws. We propose that this requires situating Race + IP alongside a radical vision of civil rights and racial justice that redefines the former often liberalism-informed phrase in favor of a more expansive understanding of liberation. This includes ideological elements, such as considering when and how Race + IP can engage in coalitional politics in and out of law schools, as well as practical elements, such as developing strategies for teaching knowledge justice. This Part will turn to each, first by considering how Race + IP might align with other critical legal communities in and out of the academy, and second by proposing how scholars and activists might communicate this material to others. With respect to both, we look to the long history of CRT and racial justice in the United States and beyond.

As to the first topic, much of the work that CRTIP scholars have done suggests that—if implemented equitably or amended thoroughly—patent, copyright, trademark, right of publicity, unfair competition, and trade secret laws can achieve racial justice goals. Equity is frequently framed as equal success under neoliberal capitalism and governance regimes.⁸⁷ However, when understood through the lenses of antidomination and antisubordination that critical legal scholars frequently take up, capitalism—which many scholars of color have now concluded is definitionally *racial* capitalism⁸⁸—and existing intellectual property structures threaten to replicate extractive practices, especially against the most marginalized groups. Some go so far

⁸⁶ Vats & Keller, *supra* note 8, at 761–62.

⁸⁷ Martha Minow, *Equality vs. Equity*, 1 AM. J.L. & EQUAL. 167 (2021).

⁸⁸ Robin D.G. Kelley, *What Did Cedric Robinson Mean by Racial Capitalism?*, BOS. REV. (Jan. 12, 2017), <https://www.bostonreview.net/articles/robin-d-g-kelley-introduction-race-capitalism-justice> (“Capitalism was ‘racial’ not because of some conspiracy to divide workers or justify slavery and dispossession, but because racialism had already permeated Western feudal society.”); *see also* JAMES BOGGS, RACISM AND THE CLASS STRUGGLE: FURTHER PAGES FROM A BLACK WORKER’S NOTEBOOK 133 (2001).

as to critique intellectual property as mere landlordism, a practice of deriving profits from others for information that ought to be freely available.⁸⁹ Others emphasize the need for communal ownership.⁹⁰ Still others take abolitionist approaches to litigation that one might argue implicitly endorse the end of intellectual property.⁹¹ These examples of intellectual property resistance that seek more egalitarian regimes decoupled from property rights highlight how centering antidomination and antisubordination can aid in addressing inequalities.

While seeking rights and reparations is a necessary part of moving forward in intellectual property spaces, it is frequently insufficient to undo deeply ingrained power dynamics. As Race + IP continues, if the conference moves in the direction of aligning with larger racial justice struggles, we imagine that scholars and activists will benefit from considering how their values and actions align, particularly with respect to transformative justice as an alternative to carceral punishment. The CLC poses an important challenge applicable to intellectual property scholars:

Through creative and rigorous investigation, critical studies distill empowering insight and knowledge from the experiences of those who suffer persistent injustices and struggle to make the promises of democracy real through participation in intersecting justice movements regarding race, sex, gender, class, disability, sovereignty, immigration, and climate, among others across the hemisphere and globally.⁹²

This passage suggests that Race + IP specifically, and CRTIP scholars and activists generally, if they are invested in transformative change, must move beyond the confines of theory building and civil rights towards radical imaginaries of

⁸⁹ See, e.g., Brian L. Frye, *OK, Landlord: Copyright Profits Are Just Rent*, JURIST (Apr. 8, 2020, 6:41 PM), <https://www.jurist.org/commentary/2020/04/brian-frye-copyright-profits>.

⁹⁰ See, e.g., DEBORA J. HALBERT, *THE STATE OF COPYRIGHT: THE COMPLEX RELATIONSHIPS OF CULTURAL CREATION IN A GLOBALIZED WORLD* 184 (2014) (arguing that the industrial model of IP makes less and less sense in an age when “technology in the hands of the masses has made available software programs that can create music, documents, and art almost as well as expensive studios did in the past”).

⁹¹ Julia Choucair Vizoso & Chris Byrnes, *Abolitionist Creativity: How Intellectual Property Can Hack Digital Power*, TRANSNAT’L INST. (Feb. 9, 2023), <https://www.tni.org/en/article/abolitionist-creativity> (“What would happen if we occupied our IP assignment clauses? What if we organised collectively as IP producers and put conditions on our employers’ rights to our IP?”).

⁹² CRITICAL LEGAL COLLECTIVE, *supra* note 21.

community-engaged transformative racial justice. Intellectual property itself must become the sustained subject of intense epistemological scrutiny, from the vantage point of those who endure its abuses. Race + IP must also become a site for worldmaking practices, particularly those that are aligned with marginalized communities.⁹³ Asking how existing legal frameworks contribute to domination and subordination, and how whiteness operates as *intellectual* property, will be vital to this process. So too will be undoing investments in (intellectual) property itself.

The antisubordination principle, which has been debated for decades in civil rights and equal protection jurisprudence, highlights the need for strategies and policies that thoroughly grapple with how social, political, and cultural structures intentionally and inadvertently enforce second-class status on historically oppressed groups. The goal of those so-called OutsideCrit scholars who have come together under the banner of the CLC is to seek enduring intersectional social justice that achieves systemic and cultural transformation.⁹⁴ Because intellectual property increasingly begs for application of OutCrit Theories (e.g., Asian American Legal Scholarship, ClassCrit, Critical Legal Studies, Feminist Legal Theory, Indigenous Law and Policy, LatCrit, and Third World Approaches to International Law), CRTIP scholars and activists and Race + IP attendees and enthusiasts have much to gain by bringing themselves into alignment with larger racial justice movements in and out of the academy particularly by theorizing intellectual property inequality in terms of domination and subordination.⁹⁵ Moreover, as the post-Ferguson era has turned into a long *durée* filled with heartbreak and despair, community and intimacy are increasingly necessary both as mediators of public feelings and relational practices.⁹⁶ Racial justice movements increasingly turned to joy and transformation, as well as

⁹³ See, e.g., GRAHAM DUTFIELD, *THAT HIGH DESIGN OF PUREST GOLD: A CRITICAL HISTORY OF THE PHARMACEUTICAL INDUSTRY, 1880–2020*, at 328 (2020) (illustrating how in some instances of medical research “race, a sociological concept, is essentially used as a stratification marker”).

⁹⁴ See Sarudzayi M. Matambanadzo, Francisco Valdes & Sheila Velez, *Afterword: Kindling the Programmatic Production of Critical and Outsider Legal Scholarship, 1996–2016*, at 37 WHITTIER L. REV. 439, 439–440 (2016); Valdes, *supra* note 50, at 1267–68 (in the context of LatCrit scholarship).

⁹⁵ Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim’s Story*, 87 MICH. L. REV. 2320, 2323–24 (1989) (maintaining that “an outsider’s jurisprudence [is] growing and thriving alongside mainstream jurisprudence in American law schools”).

⁹⁶ See generally ANN CVETKOVICH, *AN ARCHIVE OF FEELINGS: TRAUMA, SEXUALITY, AND LESBIAN PUBLIC CULTURES* 11 (2003) (examining “the structures of affect that constitute cultural experience and serve as the foundation for public cultures” in a pre-Ferguson context); Vats & Keller, *supra* note 8, at 777–87.

the wisdom of movement elders from the 1960s and 1970s,⁹⁷ as keywords for shifting the public feelings around the work that they do. As Kamala Harris' presidential campaign illustrates, joy can be a vital part of transformation, a place of connection from which generative change can emerge.⁹⁸ Race + IP has, from the beginning, centered intimacy and care, as well as joy, as practices in organizing and gathering.⁹⁹ These will continue to be important in sustaining its conversations over time, particularly in encouraging those who are currently part of CRT and racial justice communities to invest their time and energies into CRTIP.

As to the second topic, Race + IP can emphasize pedagogical principles that the CLC advocates for in teaching racial justice. By reiterating that law—particularly intellectual property law—is a social and cultural practice, they can support attendees and enthusiasts of the conference in transforming understandings of legality itself.¹⁰⁰ CRTIP scholars would be well served to invest in “knowledge production and . . . its principled performance,” as they are “uniquely positioned” to develop institutional projects “that fuse theory and action.”¹⁰¹ Race + IP scholars have already done a great deal of work to reimagine intellectual property law teaching out of necessity, given the nature of their area of study. Intellectual property, perhaps more than many other areas of law, reveals itself to be a cultural object that interfaces with popular culture, technological innovation, and branded objects.¹⁰² Developing a formal framework for CRTIP pedagogy could be a productive means of shifting narratives around race and intellectual property. This framework might include the following elements, which reflect the work of CLC scholars: (1) emphasizing when and how intersectional racial justice issues manifest in intellectual property contexts;

⁹⁷ See Alvin B. Tillery, Jr., *From Civil Rights to Racial Justice: Understanding African-American Social Justice Movements*, U.S. DEP'T OF STATE: BRIEFINGS (Apr. 23, 2021), <https://www.state.gov/briefings-foreign-press-centers/from-civil-rights-to-racial-justice-understanding-african-american-social-justice-movements> (noting similarities between Black Lives Matter and “the classic Civil Rights Movement”).

⁹⁸ Emily Reynolds, *The Joy of Protest: How Modern Activists Are Beating Burnout*, HUCK (Aug. 13, 2019), <https://www.huckmag.com/article/joyful-resistance-emily-reynolds-extinction-rebellion-stansted-15>.

⁹⁹ Vats & Keller, *supra* note 8, at 781–87.

¹⁰⁰ See ROSEMARY J. COOMBE, *THE CULTURAL LIFE OF INTELLECTUAL PROPERTIES: AUTHORSHIP, APPROPRIATION, AND THE LAW* 7 (1998) (noting the “relatively paucity of scholarly literature exploring [the] social and political implications” of IP laws).

¹⁰¹ Sheila I. Vélez Martínez, *Towards an Outcrit Pedagogy of Anti-Subordination in the Classroom*, 90 CHI.-KENT L. REV. 585, 585–86 (2015).

¹⁰² COOMBE, *supra* note 100, at 6–7.

(2) identifying and challenging dominant ideologies of race, colonialism, and nationalism; (3) articulating and emphasizing racial justice principles and practices; (4) foregrounding community engagement and experiential knowledge as vital to racial justice; and (5) integrating interdisciplinary perspectives into teaching. These principles will not only aid in communicating the value of Race + IP and CRTIP, but they will also lay the groundwork for training racial justice-minded scholars and activists on knowledge stewardship issues.

In the near term, the organizers of Race + IP plan to create a collaborative set of curricula, resources, and workshops that can be used to train practitioners and students in the theories and skills that will be helpful in doing impactful intersectional racial justice work in the area of CRTIP. These materials, especially those centered on concepts such as human flourishing as a paradigm for understanding intellectual property law, can help to decenter the reflexive emphases on ownership and innovation as the metrics for successful intellectual property policy. Francisco Valdes, Steve Bender, and Jennifer Hill propose that critical justice pedagogy emphasizes dialectic engagement and antistatist praxis as tools for recovering invisible and hidden stories that ought to inform policymaking.¹⁰³ These practices help practitioners and students connect not only the past with the present but the personal and the structural; the social, political, and cultural with the legal; the general with the particular; and knowledge with practice—all of which are integral to ensuring that racial justice theories translate into real world actions.¹⁰⁴ We hope for a future in which CRTIP scholars will be able to easily share their scholarly and activist work with one another, scaffolding and building intersectional racial justice together. This will nurture “a more humble law that recognizes new voices, multi-dimensional identities, multi-perspectival political commitments, and interdisciplinary voices.”¹⁰⁵

CONCLUSION: TOWARDS ABOLITIONIST FUTURES

The theme of Race + IP '25 will be Abolitionist Futures. The fifth anniversary conference will honor the radical work done by scholars from Ruth Wilson Gilmore to Dean Spade in advocating for policies that ask us to move away from the carceral and disciplinary politics that we are enculturated into from a young age. While intellectual property scholars may fear that abolition means dismantling the laws that they are only now able to equitably access, we understand the concept to be a broad one, grounded in transformation and joy, an affirmation of identity and justice. The

¹⁰³ VALDES, BENDER & HILL, *supra* note 65, at 207.

¹⁰⁴ *Id.* at 55.

¹⁰⁵ Gonzalez, Matambanadzo & Vélez Martínez, *supra* note 69, at 1331.

pieces in this symposium issue set up that conversation by helping us to understand where and how current intellectual property regimes entrench marginalization, as well as how the non-reformist reforms that abolitionist scholars speak of might be productive. For instance, Jessica Kiser foregrounds Indigenous epistemologies by exploring trademark law's imperial functions. Meanwhile, Peter Yu reminds us that the dichotomy of the Global North and Global South is fast becoming obsolete as middle-income countries experience economic growth and prosperity. Kevin J. Greene makes a strident call for reparations for artists of color as a means of redistributing the massive wealth generated by the music industry. Jacqui Lipton offers a path to equity in the publishing industry. Finally, Chris Byrnes and Julia Choucair-Vizoso share a vision of abolitionist creativity. This peek into the conversations that unfolded at Race + IP '23 charts a path forward while also reminding us how much is left unsaid in these pages. For example, much remains to be elucidated about how patented algorithms operate as tools of racial injustice, whether in the context of medicine,¹⁰⁶ hiring,¹⁰⁷ advertising,¹⁰⁸ or surveillance.¹⁰⁹ Many more threads were left incomplete in the conversations at Race + IP '23, with the promise of eventual return at what we are imagining will be a groundbreaking next event centered on joy, transformation, and justice.

We are grateful to everyone who has helped transform Race + IP into a makeshift community, as well as the radical ideas that underpin it, with warmth and enthusiasm. To those who are new to this topic, welcome. We tell this story because law reviews, in addition to being spaces for rigorous legal thought, are places for storytelling. As our plenary speakers have so compellingly written over the years, oppositional storytelling and genealogies are important elements in antiracist thinking and practice.¹¹⁰ They are the practices through which we change our understandings of the world. Stories not only give us meaningful histories, but they create meaningful community, in which relationality and intimacy as well as scholarship can thrive. More than anything, building a community around racial

¹⁰⁶ Starre Vartan, *Racial Bias Found in a Major Health Care Risk Algorithm*, SCI. AM. (Oct. 24, 2019), <https://www.scientificamerican.com/article/racial-bias-found-in-a-major-health-care-risk-algorithm>.

¹⁰⁷ Ifeoma Ajunwa, *An Auditing Imperative for Automated Hiring Systems*, 34 HARV. J.L. & TECH. 621 (2021).

¹⁰⁸ Tiffany Nichols, *Patenting Bias: Algorithmic Race and Ethnicity Classifications, Proprietary Rights, and Public Data*, MIT CASE STUDS. SOC. & ETHICAL RESPS. COMPUTING, Summer 2022, <https://mit-serc.pubpub.org/pub/patenting-bias/release/3>.

¹⁰⁹ Ngozi Okidegbe, *When They Hear Us: Race, Algorithms and the Practice of Criminal Law*, 29 KAN. J.L. & PUB. POL'Y 329 (2020).

¹¹⁰ Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989).

justice and intellectual property has demonstrated that there are *hundreds* of scholars of color working in this area, whose work deserves to be celebrated and cited. Supporting their many visions of liberation is an important path to building the more egalitarian worlds that we are working towards.