### Contention 1: Pandemics

#### We got lucky with COVID – future pandemics will be much worse and existing provisions in TRIPs are not used --- the status quo can’t solve.

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A proponent of IP protections may insist TRIPS already includes built-in exceptions adequate to the task. Article 31 grants governments rights to issue licenses for using a patent during the patent term without a patent holder’s consent. This exception was used 144 times between 2001 and 2016 to create flexibilities for 89 countries.29 In 2017, it was extended to allow licensed countries to export products to countries that lack production capacity. Isn’t that enough?

In reply, Article 31 will not take us very far. While useful for some applications, it is cumbersome. For example, for pharmaceutical products, after applying for an exception, exporting countries must prove products go only to destination nations, are readily identifiable based on variations of colour or shape, and include only product necessary to meet requirements of an eligible country; importing nations must notify the TRIPS

council of receipt. Fulfilling these requirements would needlessly delay the vital task of vaccinating the world.

Finally, critics might point to the case of Moderna, which voluntarily pledged (in October 2020) not to enforce its patents during the pandemic. Since companies have not lined up to produce Moderna’s vaccine, doesn’t that show the ineptitude of temporary waivers? In reply, a single pledge by a single company is a start, but insufficient to catalyse the global changes needed. In conclusion, loosening the grip of IP protections is not a miracle fix, and there are many other barriers to a safer world. This paper filled a gap in current debates about IP protections for COVID-19 vaccines by focusing on ethics. In the final analysis, a temporary waiver of IP protections is the world’s best bet.

#### Developing countries need assistance – it’s time for the U.S. to step up to the plate and do its job

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A few months ago India was doing relatively well and the U.S. was getting crushed by a devastating second Covid-19 wave. Now it’s the reverse. Public health measures were implemented too sporadically (U.S.) and reversed too quickly (both), with predictable results. While the U.S. is beginning to focus attention on the growing catastrophe in India, not enough attention is being given to other areas in the region. Countries like Bangladesh, Nepal, Pakistan, Laos and others in the region may soon be matching the explosive growth of Covid in India. Nepal is one of the poorest countries. Although it has a population of 30 million people, there are only 1595 ICU beds and 480 ventilators throughout the entire country. (This is not much less than in India, at ~1 ICU bed/19,000, but the US has ~1/3800). There are only 80 physicians per 100,000 people, compared to 93 per 100,000 in India or 259 per 100,000 in the US. With a 50% positivity rate for Covid testing, how long do you think those few beds and limited healthcare will last before being completely overwhelmed. Cases in Nepal have increased by 1,645% in the past month. Thailand had a similar rate of increase, with most of their cases being the U.K. variant B.1.1.7, which is known to be more transmissible. Part of the problem in Nepal is that its Prime Minister, Oli, like India’s PM Modi, and Donald Trump had allowed religious festivals and large political gatherings to continue as politically expedient, at the expense of public health and safety. Heavily reliant on tourism to support its economy, Mount Everest has been opened to climbers; there have been outbreaks reported from the base camp although the government has denied this. And much as our former president recommended injecting bleach, PM Oli has reportedly suggested gargling with guava leaves, which is at least less immediately hazardous, although still as useless as treatment. This uncontrolled pandemic will endanger us all by increasing the likelihood of further mutations emerging and spreading globally. India has a new “variant of interest,” called B.1.617⁠, which is also spread more rapidly. The South African variant, B.1.351, is also circulating in India, along with the UK’s B.1.1.7⁠. This—and the huge number of cases—are what prompted the US to ban travel from India. One of the problems in the region is that India’s Serum Institute was to supply much of the area with vaccines. Instead, India is desperate, unable to meet its own country’s needs, and has banned the export of vaccines. Nepal has instead turned to China and Russia, who are engaging in vaccine diplomacy who are donating supplies while the US has been sitting on the sidelines.

#### It’s not too late---COVID will continue across the developing worlds for years to come. Plus, the plan helps for black swan future pandemics.

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Although focusing on these immediate constraints is vital, we cannot confine our attention to the short term. First of all, the COVID-19 pandemic is far from over. Although Americans can now see the light at the end of the tunnel thanks to the rapid rollout of vaccines, most of the world isn’t so lucky. The virus is [currently raging in India and throughout South America](https://www.nytimes.com/interactive/2021/world/covid-cases.html), overwhelming health care systems and inflicting suffering and loss on a horrific scale. And consider the fact that Australia, which has been successful in suppressing the virus, recently announced it was sticking to plans to keep its borders closed until mid-2022. Criticisms of the TRIPS waiver that focus only on the next few months are therefore short-sighted: this pandemic could well drag on long enough for elimination of patent restrictions to enable new vaccine producers to make a positive difference.

Furthermore, and probably even more important, this is almost certainly not the last pandemic we will face. Urbanization, the spread of factory-farming methods, and globalization all combine to increase the odds that a new virus will make the jump from animals to humans and then spread rapidly around the world. Prior to the current pandemic, the 21st century already saw outbreaks of SARS, H1N1, MERS, and Ebola. Everything we do and learn in the current crisis should be viewed from the perspective of getting ready for next time.

#### A temporary waiver is sufficient---it creates momentum for America to repeat against harsher future pandemics which spills over

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The extraordinary circumstances of a global pandemic demand more than minimal or even moderate social responsibility. Everyone in a position to help must show the high degree of social responsibility the moment calls for. Governments, especially in wealthy nations, should stand up to influence peddling by pharmaceutical companies,26 and should do their part, beginning with WTO members voting for a temporary waiver to IP protections for COVID-19 vaccines.

Against our proposal it might be claimed a temporary waiver is not enough. Manufacturing COVID-19 vaccines requires technical know-how, technology, raw materials and equipment, which are lacking in many LMICs. Pfizer, for example, says its vaccine requires 280 components from 86 suppliers in 19 countries, along with specialised equipment and trained personnel.27 Since it takes more than simply waiving IP to vaccinate the world, what good is a temporary waiver?

In response, we agree temporarily losing the right to exclude companies from manufacturing vaccines is not enough. However, it can help break the logjam, creating a climate favourable to investment, since it removes the threat of being sued or prosecuted. Expedient investment strategies should focus on developing and repurposing existing capacities; Guzman notes that some middle-income countries are already producing COVID-19 vaccines, and some manufacturers in LMICs are already able to manufacture viral vector vaccines, such as AstraZeneca’s, and to contribute to the fill-and-finish stage of vaccine production.28

#### Future pandemics are 10x more deadly – absent a solution we’re all going to die

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Somewhere, sometime in late 2019, a coronavirus from a wild species, perhaps a bat or a pangolin, infected a human in China. This could have been an obscure event, lost without trace in the annals of history, as it is very likely this has occurred many times in the last centuries. But this particular event was somehow different. The coronavirus became an epidemic first and a pandemic later. Covid-19 became the worst pandemic since the Spanish flu in 1918. The horrific human suffering it has caused, and its economic, social and political impacts, are still unraveling.

The reason Covid-19 and more than forty other very dangerous viruses, such as Lassa fever, HIV and Ebola, have jumped from wild animals to humans in the last four decades is the destruction of natural environments and the trafficking and consumption of wild animals.

The wildlife trade is to satisfy the insatiable and extravagant demand for these species in the Asian market, in countries such as China, Vietnam and Indonesia. The illegal wildlife trade is a gigantic business. It is as lucrative as the drug trade, but without the legal implications. The immense appetite of China and other Asian societies for exotic animals has promoted exponential growth in trade and profits. Wild and domestic animals sold in “wet markets” are kept in unsanitary and unethical conditions. There, feces, urine and food waste from cages at the top spill into cages at the bottom, creating the perfect conditions for viruses to leap from wild animals to domestic animals and humans. Thousands of wildlife species or their products are traded annually.

Wildlife trade is one of several human impacts, including habitat loss and fragmentation, pollution, toxification and invasive species, that have caused the extinction of thousands of species and threaten many more. Indeed, most people are unaware that the current extinction crisis is unprecedented in human history. Extinction occurs when the last individual of a species dies. The UN recently estimated that one million species, such as the panda, the orangutan and the Sumatran rhino, are at risk of extinction.

The second finding is that population extinctions, which are the prelude to species extinctions, are occurring at very fast rates (Ceballos et al., 2017). Around 32 percent of a sample of 27,000 species have declining populations and have experienced massive geographic range contractions. Population extinctions are a very severe and widespread environmental problem which we have called “Biological Annihilation”.

Finally, our third finding indicates that the magnitude of the extinction crisis is underestimated because there are thousands of species on the brink of extinction (Ceballos et al., 2020). Those species will likely become extinct in the near future unless a massive conservation effort is launched soon.

Many times, people have asked me why we should care about the loss of a species. There are ethical, moral, philosophical, religious and other reasons to be concerned. But perhaps the one that is most tangible for most people is the loss of ecosystem services, which are the benefits that humans derive from the proper function of nature. Ecosystem services include the proper mix of gases in the atmosphere that support life on Earth, the quantity and quality of water, pollination of wild crops and plants, fertilization of the soil, and protection against emerging pests and diseases, among many others. Every time a species is lost, ecosystem services are likely to erode and human well-being is reduced.

The loss of so many ecosystems and species is pushing us towards the point of collapse of civilization. The good news is that there is still time to reduce the current extinction crisis. The species and ecosystems that we manage to save in the next 10 – 15 years will define the future of biodiversity and civilization. What it is at stake is the future of mankind.

### Solvency/Plan

#### The patent system for pandemic-related drugs is currently out of balance---there’s spurious over-patenting under the guise of innovation, which paradoxically hurts innovation by juicing profits. A temporary waiver in the U.S. for pandemics rebalance the system.

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When we take the longer view, we can see a fundamental mismatch between the policy design of intellectual property protection and the policy requirements of effective pandemic response. Although patent law, properly restrained, constitutes one important element of a well-designed national innovation system, the way it goes about encouraging technological progress is singularly ill-suited to the emergency conditions of a pandemic or other public health crisis. Securing a TRIPS waiver for COVID-19 vaccines and treatments would thus establish a salutary precedent that, in emergencies of this kind, governments should employ other, more direct means to incentivize the development of new drugs. Here is the basic bargain offered by patent law: encourage the creation of useful new ideas for the long run by slowing the diffusion of useful new ideas in the short run. The second half of the bargain, the half that imposes costs on society, comes from the temporary exclusive rights, or monopoly privileges, that a patent holder enjoys. Under U.S. patent law, for a period of 20 years nobody else can manufacture or sell the patented product without the permission of the patent holder. This allows the patent holder to block competitors from the market, or extract licensing fees before allowing them to enter, and consequently charge above-market prices to its customers. Patent rights thus slow the diffusion of a new invention by restricting output and raising prices.The imposition of these short-run costs, however, can bring net long-term benefits by sharpening the incentives to invent new products. In the absence of patent protection, the prospect of easy imitation by later market entrants can deter would-be innovators from incurring the up-front fixed costs of research and development. But with a guaranteed period of market exclusivity, inventors can proceed with greater confidence that they will be able to recoup their investment.For the tradeoff between costs and benefits to come out positive on net, patent law must strike the right balance. Exclusive rights should be valuable enough to encourage greater innovation, but not so easily granted or extensive in scope or term that this encouragement is outweighed by output restrictions on the patented product and discouragement of downstream innovations dependent on access to the patented technology.Unfortunately, the U.S. patent system at present is out of balance. Over the past few decades, the expansion of patentability to include software and business methods as well as a general relaxation of patenting requirements have led to wildly excessive growth in these temporary monopolies: the number of patents granted annually has [skyrocketed roughly fivefold](https://www.uspto.gov/web/offices/ac/ido/oeip/taf/us_stat.htm) since the early 1980s. One unfortunate result has been the rise of “non-practicing entities,” better known as patent trolls: firms that make nothing themselves but buy up patent portfolios and monetize them through aggressive litigation. As a result, a law that is supposed to encourage innovation has turned into a [legal minefield](https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=4620&context=clr) for many would-be innovators. In the pharmaceutical industry, firms have abused the law by piling up patents for trivial, therapeutically irrelevant “innovations” that allow them to [extend their monopolies](https://www.i-mak.org/wp-content/uploads/2018/08/I-MAK-Overpatented-Overpriced-Report.pdf) and keep raising prices long beyond the statutorily contemplated 20 years. Patent law is creating these unintended consequences because policymakers have been caught in an ideological fog that [conflates “intellectual property” with actual property rights](https://www.niskanencenter.org/wp-content/uploads/2019/09/LT_IPMisnomer-2-1.pdf) over physical objects. Enveloped in that fog, they regard any attempts to put limits on patent monopolies as attacks on private property and view ongoing expansions of patent privileges as necessary to keep innovation from grinding to a halt. In fact, patent law is a tool of regulatory policy with the usual tradeoffs between costs and benefits; like all tools, it can be misused, and as with all tools there are some jobs for which other tools are better suited. A well-designed patent system, in which benefits are maximized and costs kept to a minimum, is just one of various policy options that governments can employ to stimulate technological advance—including tax credits for R&D, prizes for targeted inventions, and direct government support.

#### The plan seamlessly shifts to a direct support model during pandemics, which allows pharma companies to profit and innovate while speeding up the process---that solves but avoids the innovation DA.

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**PUBLIC HEALTH EMERGENCIES AND DIRECT GOVERNMENT SUPPORT**

For pandemics and other public health emergencies, patents’ mix of costs and benefits is misaligned with what is needed for an effective policy response. The basic patent bargain, even when well struck, is to pay for more innovation down the road with slower diffusion of innovation today. In the context of a pandemic, that bargain is a bad one and should be rejected entirely. Here the imperative is to accelerate the diffusion of vaccines and other treatments, not slow it down. Giving drug companies the power to hold things up by blocking competitors and raising prices pushes in the completely wrong direction.

What approach to encouraging innovation should we take instead? How do we incentivize drug makers to undertake the hefty R&D costs to develop new vaccines without giving them exclusive rights over their production and sale? The most effective approach during a public health crisis is direct government support: public funding of R&D, advance purchase commitments by the government to buy large numbers of doses at set prices, and other, related payouts. And when we pay drug makers, we should not hesitate to pay generously, even extravagantly: we want to offer drug companies big profits so that they prioritize this work above everything else, and so that they are ready and eager to come to the rescue again the next time there’s a crisis.

It was direct support via Operation Warp Speed that made possible the astonishingly rapid development of COVID-19 vaccines and then facilitated a relatively rapid rollout of vaccine distribution (relative, that is, to most of the rest of the world). And it’s worth noting that a major reason for the faster rollout here and in the United Kingdom compared to the European Union was the latter’s [misguided penny-pinching](https://www.nytimes.com/2021/05/17/opinion/europe-vaccines-commission.html?smid=tw-share). The EU bargained hard with firms to keep vaccine prices low, and as a result their citizens ended up in the back of the queue as various supply line kinks were being ironed out. This is particularly ironic since the Pfizer-BioNTech vaccine was developed in Germany. As this fact underscores, the chief advantage of direct support isn’t to “get tough” with drug firms and keep a lid on their profits. Instead, it is to accelerate the end of the public health emergency by making sure drug makers profit handsomely from doing the right thing.

Patent law and direct support should be seen not as either-or alternatives but as complements that apply different incentives to different circumstances and time horizons. Patent law provides a decentralized system for encouraging innovation. The government doesn’t presume to tell the industry which new drugs are needed; it simply incentivizes the development of whatever new drugs that pharmaceutical firms can come up with by offering them a temporary monopoly. It is important to note that patent law’s incentives offer no commercial guarantees. Yes, you can block other competitors for a number of years, but that still doesn’t ensure enough consumer demand for the new product to make it profitable. DIRECT SUPPORT MAKES PATENTS REDUNDANT The situation is different in a pandemic. Here the government knows exactly what it wants to incentivize: the creation of vaccines to prevent the spread of a specific virus and other drugs to treat that virus. Under these circumstances, the decentralized approach isn’t good enough. There is no time to sit back and let drug makers take the initiative on their own timeline. Instead, the government needs to be more involved to incentivize specific innovations now. As recompense for letting it call the shots (pardon the pun), the government sweetens the deal for drug companies by insulating them from commercial risk. If pharmaceutical firms develop effective vaccines and therapies, the government will buy large, predetermined quantities at prices set high enough to guarantee a healthy return.

#### Thus the plan: The United States of America ought to reduce intellectual property protections for the COVID-19 vaccine. The plan’s implemented through a TRIPS waiver for the U.S.

-- that’s Moderna, Pfizer-BioNTech, Johnson & Johnson/Janssen

#### The plan bolsters the number of vaccines---arguments about supply and logistics are empirically disproven.

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Since consequentialist justifications treat the value of IP as purely instrumental, they are also vulnerable to counterarguments showing that a sought-after goal is not the sole or most important end. During the COVID-19 pandemic, we submit that the vaccinating the world is an overriding goal. With existing IP protections intact, the world has fallen well short of this goal. Current forecasts show that at the current pace, there will not be enough vaccines to cover the world’s population until 2023 or 2024.15 IP protections further frustrate the goal of universal access to vaccines by limiting who can manufacturer them. The WHO reports that 80% of global sales for COVID-19 vaccines come from five large multinational corporations.16 Increasing the number of manufacturers globally would not only increase supply, but reduce prices, making vaccines more affordable to LMICs. It would stabilise supply, minimising disruptions of the kind that occurred when India halted vaccine exports amidst a surge of COVID-19 cases.

It might be objected that waiving IP protections will not increase supply, because it takes years to establish manufacturing capacity. However, since the pandemic began, we have learnt it takes less time. Repurposing facilities and vetting them for safety and quality can often happen in 6 or 7months, about half the time previously thought.17 Since COVID-19 will not be the last pandemic humanity faces, expanding manufacturing capacity is also necessary preparation for future pandemics. Nkengasong, Director of the African Centres for Disease Control and Prevention, put the point bluntly, ‘Can a continent of 1.2billion people—projected to be 2.4billion in 30 years, where one in four people in the world will be African—continue to import 99% of its vaccine?’18

### Fw

#### The standard is maximizing expected wellbeing.

#### Prefer it:

#### 1] Actor specificity:

#### A] Aggregation – every policy benefits some and harms others, which also means side constraints freeze action.

#### B] No act-omission distinction – choosing to omit is an act itself – governments decide not to act which means being presented with the aff creates a choice between two actions, neither of which is an omission

#### C] No intent-foresight distinction – If we foresee a consequence, then it becomes part of our deliberation which makes it intrinsic to our action since we intend it to happen

#### 2] Lexical pre-requisite: threats to bodily security preclude the ability for moral actors to effectively act upon other moral theories since they are in a constant state of crisis that inhibits the ideal moral conditions which other theories presuppose

#### 3] Only consequentialism explains degrees of wrongness—if I break a promise to meet up for lunch, that is not as bad as breaking a promise to take a dying person to the hospital. Only the consequences of breaking the promise explain why the second one is much worse than the first. Intuitions outweigh—they’re the foundational basis for any argument and theories that contradict our intuitions are most likely false even if we can’t deductively determine why.

#### 4] Phenomenal introspection --- it’s the most epistemically reliable --- historical moral disagreement over internal conceptions of morality such as questions of race, gender, class, religion, etc prove the fallibility of non-observational based ethics --- introspection means we value happiness because we can determine that we each value it --- just as I can observe a lemon’s yellowness, we can make those judgements about happiness.

#### 5] Substitutability—only consequentialism explains necessary enablers.

Sinnott-Armstrong 92 [Walter, professor of practical ethics. “An Argument for Consequentialism” Dartmouth College Philosophical Perspectives. 1992.]

A moral reason to do an act is consequential if and only if the reason depends only on the consequences of either doing the act or not doing the act. For example, a moral reason not to hit someone is that this will hurt her or him. A moral reason to turn your car to the left might be that, if you do not do so, you will run over and kill someone. A moral reason to feed a starving child is that the child will lose important mental or physical abilities if you do not feed it. All such reasons are consequential reasons. All other moral reasons are non-consequential. Thus, a moral reason to do an act is non-consequential if and only if the reason depends even partly on some property that the act has independently of its consequences. For example, an act can be a lie regardless of what happens as a result of the lie (since some lies are not believed), and some moral theories claim that that property of being a lie provides amoral reason not to tell a lie regardless of the consequences of this lie. Similarly, the fact that an act fulfills a promise is often seen as a moral reason to do the act, even though the act has that property of fulfilling a promise independently ofits consequences. All such moral reasons are non-consequential. In order to avoid so many negations, I will also call them 'deontological'. This distinction would not make sense if we did not restrict the notion of consequences. If I promise to mow the lawn, then one consequence of my mowing might seem to be that my promise is fulfilled. One way to avoid this problem is to specify that the consequences of an act must be distinct from the act itself. My act of fulfilling my promise and my act of mowing are not distinct, because they are done by the same bodily movements.10 Thus, my fulfilling my promise is not a consequence of my mowing. A consequence of an act need not be later in time than the act, since causation can be simultaneous, but the consequence must at least be different from the act. Even with this clarification, it is still hard to classify some moral reasons as consequential or deontological,11 but I will stick to examples that are clear. In accordance with this distinction between kinds of moral reasons, I can now distinguish different kinds of moral theories. I will say that a moral theory is consequentialist if and only if it implies that all basic moral reasons are consequential. A moral theory is then non-consequentialist or deontological if it includes any basic moral reasons which are not consequential. 5. Against Deontology So defined, the class of deontological moral theories is very large and diverse. This makes it hard to say anything in general about it. Nonetheless, I will argue that no deontological moral theory can explain why moral substitutability holds. My argument applies to all deontological theories because it depends only on what is common to them all, namely, the claim that some basic moral reasons are not consequential. Some deontological theories allow very many weighty moral reasons that are consequential, and these theories might be able to explain why moral substitutability holds for some of their moral reasons: the consequential ones. But even these theories cannot explain why moral substitutability holds for all moral reasons, including the non-consequential reasons that make the theory deontological. The failure of deontological moral theories to explain moral substitutability in the very cases that make them deontological is a reason to reject all deontological moral theories. I cannot discuss every deontological moral theory, so I will discuss only a few paradigm examples and show why they cannot explain moral substitutability. After this, I will argue that similar problems are bound to arise for all other deontological theories by their very nature. The simplest deontological theory is the pluralistic intuitionism of Prichard and Ross. Ross writes that, when someone promises to do something, 'This we consider obligatory in its own nature, just because it is a fulfillment of a promise, and not because of its consequences.'12 Such deontologists claim in effect that, if I promise to mow the grass, there is a moral reason for me to mow the grass, and this moral reason is constituted by the fact that mowing the grass fulfills my promise. This reason exists regardless of the consequences of mowing the grass, even though it might be overridden by certain bad consequences. However, if this is why I have a moral reason to mow the grass, then, even if I cannot mow the grass without starting my mower, and starting the mower would enable me to mow the grass, it still would not follow that I have any moral reason to start my mower, since I did not promise to start my mower, and starting my mower does not fulfill my promise. Thus, a moral theory cannot explain moral substitutability if it claims that properties like this provide moral reasons.

#### 6] Reject calc indicts and util triggers permissibility arguments:

#### A] Empirically denied—both individuals and policymakers carry out effective cost-benefit analysis which means even if decisions aren’t always perfect it’s still better than not acting at all

#### B] Theory—they’re functionally NIBs that everyone knows are silly but skew the aff and move the debate away from the topic and actual philosophical debate, killing valuable education

### Theory

#### 1AR theory – a) AFF gets it because otherwise the neg can engage in infinite abuse, making debate impossible, b) reject the debater – the 1AR is too short for theory and substance so ballot implications are key to check abuse, c) no RVIs – they can stick me with 6min of answers to a short arg and make the 2AR impossible, d) competing interps – 1AR interps aren’t bidirectional and the neg should have to defend their norm since they have more time, e) no 2NR theory – 2-to-1 time tradeoff makes it devastating for the 2AR, f) comes first – it’s a bigger percentage of the 1AR than 1NC which means there’s more abuse if I’m devoting a larger fraction of time and only the 2N has time to win multiple layers