# R3 Grapevine

### 1AC – Advantage

#### The status quo ensures vaccine imperialism. Intellectual property law is the lynchpin of North-South health inequality and has empirically resulted in disparate life outcomes, accelerating disease spread.

Vanni 21 – Dr. Amaka Vanni is Lecturer in Law at the University of Leeds. ("On Intellectual Property Rights, Access to Medicines and Vaccine Imperialism," 3-23-2021, <https://twailr.com/on-intellectual-property-rights-access-to-medicines-and-vaccine-imperialism/>) julian

While the response to COVID-19 has shown what can be accomplished when the world works together, it has also underscored three interrelated points. First, the neoliberal framework – including the critical role intellectual property (IP) law plays in constituting this form of civilisation – is an unsuitable model for delivering the goods needed to respond to global health emergencies. The current economic/market system does not allow for equitable responses to infectious diseases, particularly access to sufficient medical and health resources. This inequity was obvious in the early days of the pandemic when test kits, PPEs, and ventilation machines were being distributed on the basis of who could pay the most rather than who needed them the most. Second, the beggar-thy-neighbor response currently adopted by developed countries hurts everyone because failing to stop the spread of the virus globally allows more mutations, which makes existing vaccines less effective. As COVID-19 has shown, no one is safe until everyone is safe. Yet, despite this warning, the hoarding of vaccines by developed countries continues unabated and speaks to the wider racist capitalist system we live in. If anything, this crude accumulation of vaccines reinforces North-South economic and political dominance and marks, as Onur Ince observes, the conceptual locus of political violence operative in the global genealogy of capitalism.

Third, while COVID-19 may endanger us all, it is far more costly to some than others. Numerous reports have shown how black and brown people are most impacted by the pandemic. In the United States, for example, indigenous Americans have the highest COVID-19 mortality rates nationwide while African American communities have COVID-19 mortality that is 2.3 times higher than the rate for Asians and Latinxs, and 2.6 times higher than the rate for Whites. Similar data is also emerging in the UK where people from black and minority ethnic groups are at greater risk of dying from coronavirus. This means those groups suffer higher loss of life compared to other racial groups due to inequities in healthcare access as well as higher rate of pre-existing conditions. In other parts of the world, the most vulnerable and the economically marginalized such as those working in the informal sector and living in shanty towns are feeling the effects of the pandemic the most. In Latin America and the Caribbean, 70 per cent of domestic workers have been affected by the pandemic where most have stopped receiving income. In Ghana, residents of slums at Old Fadama – a suburb in Accra – were made homeless when the government demolished their homes. The ensuing homelessness means there is little to no space of observing social distancing rules, access to running water and access to other resources to practice basic hygiene. Meanwhile in India, the pandemic has unsurprisingly hit the country along caste lines where the Dalits are most impacted because many are poor and have limited access to healthcare.

As Kimberlé Williams Crenshaw reminds us, the high number of minority deaths is not new. Rather, this crisis simply amplified racism and other forms of structural inequality as a pre-existing condition – an intersectional issue – where those disproportionately hurt are those who are already structurally marginalized. Thus, while recognising a broken global IP regime that triggered the scramble for vaccines, the racialized impact of the pandemic cannot be ignored, and it points to the entangled roots of race and capitalism.

The rest of this analysis takes a close look at some of the legal, political and economic forces that have animated IP rights and access to COVID-19 vaccine. It will focus on how the entanglement of corporate capture of global IP regime, state complicity and vaccine imperialism have come together to shape public health responses to the pandemic. It underscores how the law, in this case international IP law, consistently shelters capital and operates as an expression to further corporate pharmaceutical interests. If there is a lesson to be gleaned from this pandemic, it is that intellectual property is not failing us but is functioning the way it is set up to do. As the history of IP globalization has shown, the World Trade Organization’s (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) is a transplant of the Euro-American model of property, driven by multinational corporations who used their respective national governments to underwrite and export their domestic IP claims. Therefore, it is unsurprising that this international legal regime employed to advance the interests of particular classes, nations and regions at the expense of others continues to reproduce extreme inequality with human costs.

#### TRIPS was created to strangle the global south of its livelihood

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However, unlike in the colonial era, the most important property rights, which fulfil this role in the twenty-first century, are intellectual property rights. This is because intellectual property rights do not attach to objects of physical substance, like land, raw material or plant and machinery, but are abstract legal concepts of unlimited flexibility as regards extent and time. The fairly recent implementation of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs is one major device which drives economic neo-colonialism forward, and the process of the making of TRIPs also demonstrates instructively this development. The history and “colonising” effects of TRIPs on developing countries will be discussed below under Section Two. As TRIPs is the central international intellectual property instrument today, there is no need to discuss additionally the relevant treaties of the World Intellectual Property Organisation (WIPO)6 in the following, but what will be said with regard to TRIPs, generally also applies to these. In contrast to the international intellectual property regime of TRIPs modelled on Western laws, a seemingly anti-proprietarian approach (Drahos, 1996, p. 210-12) to indigenous resources seeks to introduce a cultural resource protection regime.7, such as the concept of indirect rule, and invites segregationist legislation. But this idea of a protection of traditional cultural expressions is, in so far it covers artistic expressions in a broad sense, an equally neo-colonial measure, perhaps an even more insidious one. This will be discussed under Section Three. 2 TRIPs and other International Intellectual Property Conventions and their colonising Impact on the Non-Western World Andreas Rahmatian: The Neo-colonial Aspects of Global Intellectual Property Protection 4 a) Introduction of Western Minimum Standards The problems that the establishment of an international legal framework for world trade could pose for developing countries had been noticed right from the beginning. In 1964, the United Nations Conference on Trade and Development (UNCTAD) was founded because it was felt by developing countries that the pattern of world trade disproportionately favoured the industrialised nations (Blakeney, 1996, p. 26; Zamora, 1995, pp. 512, 518). In the course of the negotiations leading to the Agreement Establishing the World Trade Organisation (WTO Agreement), a convergence in the positions of the industrialised and the developing countries has repeatedly been attempted, with some success (Blakeney, 1996, p. 6). When the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) ended with the Final Act on the results of the Uruguay Round and the Agreement establishing the WTO in Marrakesh on April 15, 1995, the creation of the WTO as a specialised agency of the UN realised the hope (reaching back to the time of the creation of the UN itself) of an international organisation with responsibility for world trade (Blakeney, 1996, pp. 29, 36; Zamora, 1995, pp. 503, 506; Jackson, 1998, pp. 24-9); thus in theory, the promotion of world trade should benefit each Member, developed or developing alike. The preamble to the WTO Agreement states expressly in the second paragraph that especially the least developed countries should be secured “a share in the growth of international trade commensurate with the needs of their economic development”. This overriding principle also applies to TRIPs (Appendix 1C to the WTO Agreement), and the preamble to TRIPs expressly recognises (in paragraph 6) the special needs of the least-developed countries as far as the required domestic implementation of laws and regulations is concerned, “in order to enable them to create a sound and viable technological base ...”. These aims indicate the intention to create the implementation of a benign system of universal common standards of intellectual property rights for the mutual benefit of all nations. However, it is well known that originally the principal objective of what was to become TRIPs was actually the fight against piracy of Western intellectual property rights in developing countries. In the 1970s, the realisation of the adverse effect which the increase of sales of counterfeited trade-marked goods had on trade income prompted industrialised countries to reach an “Agreement on Measures to Discourage the Importation of Counterfeit Goods”, whereby the United States took the lead.8 It was also the United States which pushed for a recognition of legislative measures for the protection of intellectual property rights as to be considered within the jurisdiction of GATT, and not of WIPO only, as developing countries, especially Brazil and India, had argued (Blakeney, 1996, pp. 2-3; Zamora, 1995, p. 529). This was the starting point for the present situation of TRIPs being within the WTO Andreas Rahmatian: The Neo-colonial Aspects of Global Intellectual Property Protection 5 framework (Drahos with Braithwaite, 2002, p. 109).9 The “anti-counterfeit” origin of TRIPs does not appear in its final preamble (Blakeney, 1996, p. 9), but the preamble makes clear that the objective of TRIPs is “the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems”, which obviously encompasses measures against counterfeited goods. Thus TRIPs grew out of the endeavours by the Western industrialised world to safeguard and enforce their own Western intellectual property rights, based on Western concepts, in the non-Western, and typically developing, countries.10 Theoretically, this could have been achieved without any reciprocity, because what really matters to Western interests is that Western rights are respected in a nonWestern context and culture, especially by way of an effective combat against piracy. Thus bilateral agreements could have been reached ensuring that, say, a US patent will be duly protected and enforced in developing country X, without the requirement that a patent granted in X will be enforced in the US, or indeed, without X even being required to maintain a national patent law which could enable X to grant patents itself; hence there would be no (theoretically) enforceable right in a country outside X. Such a measure would be openly colonial in its approach, but politically unsustainable in the late twentieth century or today, because the developing countries have achieved sufficient political counterbalance against Western interests during the period of decolonialisation that allows them to counteract such strategies at a large scale.11 TRIPs wishes to represent a compromise, which may have been honestly conceived as such in that it leaves some flexibility for developing countries (Correa, 2002, p. 52), but, as it is modelled on Western intellectual property legislation, it is nevertheless in effect slanted in favour of Western interests (Drahos with Braithwaite, 2002, pp. 11-6, 143-6; Correa, 2000, p. 3; Robbani, 2005, pp. 565, 571). The “provision of effective and appropriate means for the enforcement of trade-related intellectual property rights” (preamble, pt. c) is obtained through an introduction of minimum standards of intellectual property protection (Article 1 (1) TRIPs). These minimum standards are determined by TRIPs itself, which is remarkably detailed for an international instrument in respect of the substantive law of the respective intellectual property rights,12 and by broad reference to the central international intellectual property conventions, especially the Paris Convention for the Protection of Industrial Property 1883 (Paris Convention) and the Berne Convention for the Protection of Literary and Artistic Works 1886 (Berne Convention).13 The principle of minimum standards as a basis of mutual recognition and protection of intellectual property rights is reinforced by the national treatment rule (Article 3) which echoes the existing intellectual property conventions in this respect. 14 As a result, non- Andreas Rahmatian: The Neo-colonial Aspects of Global Intellectual Property Protection 6 Western countries are required to introduce comprehensively the Western regime of [IP] intellectual property rights, irrespective of whether this regime is necessarily compatible with, and useful to, their own cultures and economies,15 otherwise they would not be able to conform to the protection obligation of Western intellectual property rights in their own territory. Non-Western countries are also expected to undergo an industrialisation process according to the model of Western industrialised nations to create a context in which Western intellectual property rights would then become meaningful (Ngenda, 2005; Gana, 1996, p. 738). In return for the protection of their own rights, Western countries could generously agree to recognize [IP] western type intellectual property rights originating from developing countries, because these rights were unlikely to arise often and would not pose a real competitive threat.16 This is a good example of the liberal ideal of two equal contracting parties that is blind to the real imbalance created by political and economic realities. It could also be seen as a modern version of constructed savagery of the non-developed world which will be overcome by the gift of intellectual property rights from the developed and civilised nations.17 How Western in nature TRIPs effectively is, can be shown by the fact that Western national legal systems have had to adapt little to TRIPs, while, for example, Latin American and Carribean states had to make significant changes in their intellectual property laws to implement the minimum standards (Correa, 2000, pp. 101, 111).19 More recently, TRIPs also serves as a bottom line for further extension of IP protection which the developed world continues to push for in bilateral “TRIPsPlus” agreements with countries of the developing world (Drahos, 2001, p. 805). Such “friendly nudges” towards adaptation of international standards are obviously not a development of the postcolonial era. The national treatment provision of the Paris Convention in Article 2 intended to compel Paris Union members to provide mutually adequate industrial property laws. It contributed to Switzerland’s decision to introduce a patent law (which it did not have when it joined the Paris Union) in order to be able to give effect to this obligation towards nationals of the Paris Union (Oddi, 1987, p. 869). The Netherlands also enacted patent laws which it had abolished some time before (Bender, 2000, p. 54; Drahos with Braithwaite, 2002, p. 36). The Paris Convention, and later the Berne Convention, had the then industrialised Western countries of the 1880s as relevant potential members to the Paris/Berne Union in mind; the non-Western world (where it did not have the status of a colony anyway and was therefore part of the Paris/Berne Union, see Drahos, 2002a, pp. 766-7; Drahos with Braithwaite, 2002, p. 75) was not perceived as a significant candidate for such conventions, and conflicts with indigenous cultures as a result of this transplantation of rights were then unlikely to be noticed as a potential problem. Sensitivity in relation to one-sided technology transfer and possible lack of economic equality was also less developed in the nineteenth century, despite an otherwise generally far greater tendency to arrogant nationalism among the European nations. An example is the awkward British standard gauge of railways of 561 /2 inches (1,435 mm) that can be found in much of Continental Europe (which adopted the metric system far earlier) because George Stevenson’s first locomotives delivered from England were produced with this gauge. The legal protection of such technological innovations usually follows suit and that may help explaining why it was possible at all to agree on a modest legal standardisation through the Paris and Berne Conventions in the much more belligerent atmosphere of the nineteenth century. Western laws are often declared as the best developed rational legal solution, but an economically powerful Western country does not necessarily have to agree readily to them. What real bargaining power can achieve is shown by the example of the United States. For instance, the United States did not sign up to the Madrid Agreement Concerning the International Registration of Marks 1891 (Madrid Agreement),20 the international convention for the international registration of trade marks through a single application which, unlike TRIPs, contains no substantive provisions on trade mark protection. The United States objected to the “central attack mechanism” in Article 6, according to which the invalidation of a home country registration within the first five years of registration leads to the invalidation of all international registrations, because under US trade mark law trade marks can be attacked on more grounds than in other countries, so the Madrid regime would have put US trade marks at a disadvantage. The United States also opposed the fee structure which did not reflect the true costs of a full official examination, and the fact that French was the only official language which would have required the US Patent office to translate documents into French at a significant cost (Samuels and Samuels, 1993-94, pp. 443-4; Klein, 2001). Many other Western nations also found the Madrid Agreement unattractive and never joined (e.g. UK, Ireland, Denmark, Greece). The fact that principal industrialised countries, some of which also members of the European Union, found the Madrid Agreement too unattractive to join, led to endeavours by the Madrid Union Assembly (the governing body of the Madrid Agreement) and WIPO to reach a compromise which would be acceptable to these nations. The result of these negotiations was the adoption of the Protocol relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol) in 1989, according to its title an addendum to the Madrid Agreement, but in fact a new treaty (Cornish, 2007, p. 612), which provided a significant moderation of the central attack rule,21 a revised fee structure and the introduction of English as the second official language (Klein, 2001, pp. 486-7). Accordingly, both the United States and the UK found themselves able to accede to the Madrid Protocol, which has currently 72 members.22 The powerful position of the United States can also be shown in the surrounding circumstances of its decision to join the Berne Convention in 1989 after over a hundred years of hesitation (Hatch, 1989, pp. 171-2).23 The main reasons for that were initially the reluctance to give copyright protection to works by foreign authors,24 later the incompatibility of the “manufacturing clause”25 with the prohibition of formalities for copyright protection in the Berne Convention, and, after the Rome Revision of the Berne Convention in 1928, the reservation against the recognition of moral rights in Article 6bis (Hatch, 1989, pp. 173-175). The eventual accession of the United States was probably decisive in turning the Berne Convention into the principal international copyright convention as opposed to the Universal Copyright Convention (UCC),26 and accordingly, TRIPs incorporates the Berne Convention,27 but does not mention the UCC. However, the UCC was initiated mainly by the United States as an alternative international copyright protection measure under the auspices of UNESCO which would not conflict with existing US copyright law and compensate for the United States’ absence from the Berne Convention (Hatch, 1989, p. 176).28 When the United States withdrew from UNESCO in 1983, the utility of UNESCO for promoting US interests through the UCC diminished exceedingly, as well as US-American influence on international copyright law in general. This triggered a renewed interest of the United States to join Berne (Drahos with Braithwaite, 2002, p. 130; Bettig, 1996, pp. 221-3), coupled with the need to get a better grip on increasing piracy of US copyright material. At the same time the US sought to preserve existing national copyright law to the greatest extent possible, in that it decided to adopt a minimalist approach to compliance with the requirements of the Berne Convention (Hatch, 1989, pp. 178, 189). The Berne Convention Implementation Act of 1988 therefore abolished the obligation for foreign authors to register their copyright as a prerequisite for an infringement action, but preserved it for United States authors (Hatch, 1989, p. 194). Furthermore, it did not enact moral rights, and the United States maintained that existing statutes and common law fulfilled Article 6bis, including remedies based on the Copyright Act,29 the Lanham Act,30 and common law remedies under contract, defamation and unfair competition laws (Hatch, 1989, p. 182). Article 6bis (3) perhaps indicates the acceptability of such an interpretation. But the UK, which initially took the same approach to moral rights as the US, eventually felt obliged to enact specific moral rights in the Copyright Act 1988 in order to comply with Article 6bis, 31 and the same happened more recently in Australia.32 It was in fact not entirely clear whether the United States copyright regime really conformed to the moral rights obligations under Berne, but the US Andreas Rahmatian: declared unilaterally that it did conform, and the US Congress stated that the implementing bill would neither expand nor reduce the scope of existing US copyright law. As an additional precaution, the US Congress made clear that the Berne Convention and its moral right provisions would not become self-executing upon ratification (Hatch, 1989, pp. 189-90). Given the political and economic position of the United States, a challenge as to the accuracy of these statements is probably confined to academic discussion; a political impact is unlikely. Any possible political pressure from other countries on the United States to adopt a more expansive moral rights regime, which would obviously conflict with the interests of the large US copyright industries, would realistically have no effect. The position of the United States on moral rights also left traces in TRIPs: the Berne Convention has been made part of TRIPs to a large extent, but its moral rights provisions under Article 6bis have been excluded,33 in part as a result of the successful opposition by the US film industry (Macmillan, 2002, p. 491; Drahos with Braithwaite, 2002, p. 176). Theoretically, however, if existing law of the United States had indeed been compliant with Article 6bis, the inclusion of the moral rights provisions in TRIPs should have been unproblematic. The fact that the Western world, particularly the United States, can dictate the terms of international legal rules by virtue of their obvious economic superiority, and can at the same time interpret these rules in a form suitable to their own interests without any realistic challenge, indicates a legal framework on which an “informal empire” is being built. Would a country like Togo or Oman be able to produce similar effects on the making of international trade conventions? In the future, however, especially China could have a very substantial influence.

#### The TRIPS IP regime is still at the heart of that imbalance. It creates a privileged class of elites with access to medicine and locks in data exclusivity and evergreening practices that delay the entrance of generic medicines into the market, which would decrease prices.

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Intellectual property rights (IPRs) are time-limited legal rights granted to inventors and creators. IPRs include copyrights, trademarks, patents, trade secrets, and geographical indications, while protected subject-matters include, but are not limited to, brands, inventions, designs, and biological materials. Importantly, IPRs overlap as a product may be covered by a series of rights. For example, a pharmaceutical medicine, defined by Britannica as a ‘substance used in the diagnosis, treatment, or prevention of disease’, is protected by patents, trademarks, and trade secrets. Patents are the most common form of IPR used for the protection of innovation in pharmaceuticals. Patents grant inventors limited market exclusivity for their inventions, and, in exchange, the inventor must disclose sufficient information such that competitors will be able to step into the market. This disclosure allows a competitor to make preparation to enter the market at the end of the monopoly period. Due to this legally-mandated exclusivity, patent owners – usually multinational corporations – have the right to prevent others from making, using, or selling a patented invention. The TRIPS Agreement, concluded as part of the Uruguay Round of multilateral trade negotiation and in force since 1995, provides a minimum of 20 years patent protection. The belief is that the duration allows corporations to recoup the expenses of developing, testing and upscaling an innovative pharmaceutical product.

From the onset, the TRIPS IP regime created imbalance between innovation, market monopoly, and medicines access, because it failed to take into consideration the health burden, development needs and local conditions of the various countries that make up the WTO. This has led to several issues. First, the market monopoly of IP rights, which allows the corporation to set the market for drugs, has created a privileged societal class with access to lifesaving medication distinguishing them from those excluded from access to available medications. This phenomenon is vividly illustrated in the HIV/AIDS crisis of the 1990s and early 2000s. While HIV/AIDS patients in developed countries were able to afford antiretroviral (ARVs) treatments, which had been developed, approved and patented as early as 1987, many patients in Africa and other parts of the developing world could not afford the approximately USD 12,000 per annum treatment at that time. By 2001, approximately 2.4 million people in the region had died of AIDS. The South African government intervened to reduce the cost of ARVs by amending its domestic patent laws to allow the authorization of parallel imports of patented pharmaceuticals and to encourage the use of generic drugs, but it was sued by the US industry group Pharmaceutical Research and Manufacturers of America (PhRMA). Though the lawsuit was eventually dropped, it highlights the measures pharmaceutical corporations, backed by some national governments, are willing to take to protect their profits at the cost of human lives. Significantly, we see how law (or the threat of legal action) is used not only to protect and expand the profitability of a certain kind of property but, as Anjali Vats and Deidré Keller have taught us, also reveals IP law’s racial investments in whiteness and its continuing implications for racial (in)equality, particularly in the way it informs systems of ownership, circulation, and distribution of knowledge. Similarly, Natsu Saito takes up the analysis of IP, race and capitalism by theorizing some of the ways in which ‘value’ in IP law concentrated in the hands of large corporations is calculated in terms of its profitability rather than what it contributes to the well-being of society. However, the proverbial chickens have come home to roost as even rich countries are beginning to feel the bite of the dysfunctional IP system.

The issue of excessive pricing for medicines is a growing problem in developed countries as well and has now become the single biggest category of healthcare spending in these states, particularly the US. An empirical report by I-MAK reveals how excessive pharmaceutical patenting is extending monopolies and driving up drug prices. The report, for example, notes that over half of the top twelve drugs in the US have more than 100 attempted patents per drug. Specifically, the report revealed that Humira® by AbbVie (used in the treatment of Crohn’s disease and the US’s highest grossing drug) has been issued 130 patents. The drug costs USD 44,000 annually and generated more than USD 19.2 billion for the company in 2019 alone. The Report also notes that the first patent filed for Herceptin® – used in the treatment for certain breast and stomach cancers – was in 1985 but currently has pending patent applications that could extend its market monopoly for 48 more years. Meanwhile, Celgene has over 105 patents for its oral cancer drug Revlimid® (used in the treatment of multiple myeloma) extending its monopoly until the end of 2036 – a patent lifespan of 40 years. In addition to excessive patenting and pricing, we have also come to understand the power of data in this context.

Second, regulatory agencies worldwide require drugs to undergo safety and efficacy testing to ensure they are harmless before approval. These tests, known as clinical trials, involve human subjects and are costly because they can run up to three separate phases. The data collected during these clinical trials are the proprietary materials of the company conducting the tests. Because it is expensive and time-consuming, generic drug companies usually rely on the safety and efficacy data of brand name companies to seek regulatory approval as long as they can prove their generic version is chemically and biologically equivalent to the original. Relying on the test data of brand name companies reduces the production cost for generic medicines and allows for quicker market entry. However, recent years have seen a promotion of time-limited, legally mandated protection against the non-proprietary use of such data by generic companies. This is known as data exclusivity. Put differently, data exclusivity is a period when a generic company cannot use the clinical trial data of an innovator pharmaceutical company to receive regulatory approval for a generic medicine. In so doing, data exclusivity provides a layer of protection in addition to patent protection to further delay market entry of generic medicines.

Data exclusivity periods vary depending on the jurisdiction. For example, it is twelve years in US and ten years in the EU. While the TRIPS Agreement does not create property rights over registration data, the US and the EU have continued to champion and export data exclusivity through free trade agreements, particularly for biologics. For example, the US Affordable Health Care for America Act in 2009 extended a 12-year exclusivity period for biologics. This US interpretation for registration data was also included in the United States-Mexico-Canada Agreement (USMCA), which sought a 10-year data exclusivity for new biologics. However, after intense negotiations, the data exclusivity protection was reduced to 5 years for new pharmaceuticals. In this instance, we see a crystallising of Euro-American ideas of property and a willingness to promote those property interests through the law, both domestic and international. In fact, certain scholars assert that this pursuit of higher TRIPS standards is driven, in part, by the US desire to achieve levels of protection it anticipated from the TRIPS Agreement but failed to secure. Given the influence of the industry and its representative group, PhRMA, in seeking stronger protection on a global scale, it is not surprising that the US’s post-TRIPS policies continue to rachet up standards in ways that undermine access to affordable medicines, and perpetuate social hierarchy and subordination.

Third, patent practices in recent decades have seen pharmaceutical companies engaging in trivial and cosmetic tweaking of a drug whilst still reaping the benefit of 20 years of patent protection. This tweaking sometimes involves making minor changes to patented drugs, such as changes in mode of administration, new dosages, extended release, or change in color of the drug. These changes normally do not offer any significant therapeutic advantage even though pharmaceutical companies argue they provide improved health outcomes to patients. These additional patents on small changes to existing drugs, known as evergreening or patent thickets, block the early entry of competitive, generic medicines that drive medicine prices down. For example, while not mandated by TRIPS, many US led TRIPS-plus free trade agreements have expanded the scope for evergreening. These include the US-Jordan FTA (2000), US-Australia FTA (2004) as well as the US-Korea FTA (2007), which allow for the patenting of new forms, uses, or methods of using existing products.

The cancer drug Gleevec®, owned by Novartis, is another example of how pharmaceutical companies often secure patents on new, more convenient versions with marginal therapeutic benefit to patients whilst blocking the entry of generic medicines. In 2013, Novartis’ patent application for Gleevec®– the β crystalline form of the salt imatinib mesylate – was rejected by the Indian Supreme Court because it lacked novelty. However, the company has secured patents for this product in other jurisdictions such as the US and has maintained a high price of Gleevec there. But in India the price of Gleevec® was reduced from approximately USD 2,200 to USD 88 for one month’s treatment in the generic drugs market as a result of the 2013 Indian Supreme Court judgement. Novartis is not the only culprit. The depression drug Effexor® by Pfizer was granted an evergreen patent when the company introduced an extended-release version, Efexor-XR®, even though there was no additional benefit to patients. Eventually, the patent was declared invalid, but by then it had already cost an estimated USD 209 million to Australian taxpayers and kept generic competition off the market for two and a half years. In another instance, Pfizer went on to secure an additional patent for the Pristiq®, which contained identical chemical compound as Efexor-XR®,and again with no added therapeutic benefit.

These evergreening practices, of course, have material effects. Apart from delaying the entry of generic versions, they give brand-name pharmaceutical companies free reign in the market, which allows them to set the market price. Recent years have seen monopoly prices rise exorbitantly causing significant financial strain to patients, domestic healthcare services and even insurance companies in developed countries. A notorious example is Martin Shkreli, who in 2015 bought the rights to an anti-malarial drug, then raised the price by 5,000 per cent from a cost of USD 13.50 to USD 750. Similarly, a white paper by I-MAK shows how excessive patenting and related strategies are driving families to overspend on lifesaving medicines. Celgene, the makers of Revlimid® raised the price of the drug by more than 50 per cent since 2012 to over USD 125,000 per year of treatment. Using the example of Solvadi® by Gilead, which costs USD 84,000 per treatment, Feldman notes the drug would cost the US Department of Defense more than USD 12 billion to treat all hepatitis-infected patients in US Veterans Affairs. But the US is not alone. In Europe, expensive drugs have prompted a growing backlash against pharmaceutical corporations. Reacting to these price hikes, Dutch pharmacies are bypassing these exorbitant prices by preparing medicines in-house for individual patients. The broken IP system ranging from an extraordinarily low standard for granting patents to permissions of patent thickets around a single molecule has not only severely distorted the system of innovation, but they have also skewed access to life-saving drugs. As a result, prices for new and existing medicines are constantly rising, making essential medicines inaccessible for millions of people around the world.

#### Status quo vaccine nationalism and contingent distribution results in disparities between nations. That results in colonial hierarchies of health.

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The current global distribution of COVID-19 vaccines is largely dictated by power disparities and inequities in financial and other resources, with predominantly high-income countries contracting bilaterally with individual pharmaceutical companies (many in their own countries) for specific vaccines, leaving countries from the Global South facing inequitable vaccine access. Bilateral deals between states and pharmaceutical companies, whether completed by Global North or Global South states, significantly compromise the effectiveness and equity of the COVAX initiative, limited as it already is by the coercive influence, vested interests and participation of pharmaceutical companies and their host nations. The African Union, for example, endorsed the TRIPS waiver to relax WTO rules so that LMICs could create their own COVID-19 vaccines, but this collective effort across African countries faced resistance from Global North countries and pharmaceutical companies.

The IP system appears to have pushed countries in the Global South that may prefer not to be dependent on the charitable model of the COVAX scheme to join high-income countries in engaging directly with manufacturers to purchase COVID-19 vaccines. This has included African countries, despite the African Union’s criticism of the inequities resulting from IP law protections. This process has reproduced colonially entrenched power dynamics, in which poorer countries lack the bargaining power to obtain competitive rates and, consequently, typically end up paying far more than the wealthier, developed countries. More broadly, countries in the Global South are pressured into participating in global systems of trade that result in the exploitation of their own populations by unjust global economic systems and IP laws.39 The high cost of vaccines for countries from the Global South constitutes a large proportion of their health expenditure, and this comes at the expense of other health priorities.

In many cases, the only way in which Global South countries can purchase vaccines is to move themselves further into debt. Given the detrimental neocolonial implications of debt, with a long history of loan conditionalities through structural adjustment programmes, increasing debt to service health needs contributes to the worsening of inequalities between the Global North and Global South.40 These programmes may increase debt and undermine development in ways that limit the realisation of the right to health.41 The World Bank has set aside US$12 billion and has already disbursed loans of US$500 million for vaccines in low-income and middle-income nations;42 poorer nations, instead of servicing already depleted health systems, are forced to divert additional funds to servicing debt.

#### It also results in inequalities within nations. Politicians create a hierarchy of access, which feeds racism, classism, and corruption.

Seklala et al 21 – Sharifah Sekalala, Warwick Law School, University of Warwick, Coventry, UK; Lisa Forman, Dalla Lana School of Public Health, University of Toronto, Toronto, Ontario, Canada; Timothy Hodgson, International Commission of Jurists, Johannesburg, South Africa; Moses Mulumba, Center for Health, Human Rights and Development, Kampala, Uganda; Hadijah Namyalo-Ganafa, School of Law, Makerere University, Kampala, Uganda; Benjamin Mason Meier, Department of Public Policy, University of North Carolina at Chapel Hill, Chapel Hill, North Carolina, USA (“Decolonising human rights: how intellectual property laws result in unequal access to the COVID-19 vaccine,” 2021, pg. 4-5) julian

The high costs of vaccines also propagate inequalities within nations, as desperate countries try to recoup some of the costs by charging their people for vaccine access or using complex arrangements that prioritise some people over others. Egypt, for instance, is charging for the COVID-19 vaccine, which is likely to exclude the poorest people, who have already been severely affected by the crisis.43 In reality, it also means that wealthier individuals are prioritised, as they usually find it easier to pay for access. Those able to access vaccines in these countries, very often a small economic and political elite, are often in positions of power precisely along the lines of existing global inequalities and often to the prejudice of groups marginalised on the basis of gender, race and other grounds of discrimination prohibited under international human rights law.

Facilitating vaccine access for more affluent members of society reinforces power structures at the expense of marginalised populations. In South Africa, conservative non-governmental organisations aligned closely with the interests of the white minority and elite corporate interests launched a court challenge in order to procure private supplies of vaccines, bypassing the nationwide mechanisms set up by the government to ensure equitable vaccine access. However, having faced opposition from human rights activists and the South African government, this litigation was ultimately withdrawn. (For more information on this litigation see ref 44 45.) Kenya has also prioritised diplomats for COVID-19 vaccination at the expense of health workers, and Indonesia has suggested that the ‘more productive’ members of society be vaccinated first.46 47 In other countries, such as Peru, political elites and their families and friends were secretly vaccinated before the broader populations. (See as examples ref 48 49.)

An important issue at the boundary of national and international concerns is the potential use of ‘vaccine passports’.50 Free movement of goods is integral to one of the core objectives of the IHR, and yet many governments are proposing the use of COVID-19 vaccination passports as a mechanism for reopening their economies, which would discriminate against those who have not been vaccinated. The EU introduced vaccine passports in the summer of 2021 for entry into the eurozone and excluded vaccines that were made from the Serum Institute in India which is responsible for the majority of vaccines provided in the Global South.51 Vaccination disparities both within and between countries mean that many people in LMICs are unlikely to be vaccinated until 2023; therefore, vaccine passports would only further exacerbate both national and global inequalities and disproportionately restrict the rights of large swathes of the global population from exercising their right to freedom of movement on an equal basis.

#### This means COVID and future pandemics will reproduce untenable working conditions and racialized and classed life outcomes.

Sell 20 – Susan K. Sell is a Professor of Political Science and International Affairs at George Washington University. (“What COVID‑19 Reveals About Twenty‑First Century Capitalism: Adversity and Opportunity,” pg. 152-153) julian

The COVID-19 pandemic has revealed the lethal consequences of the sharp rise in economic inequality, the concentration of wealth in fewer and fewer hands and the increasing precarity of labour. For example, as COVID-19 slammed Manhattan, members of the top 1% flocked to their beach retreats in the Hamptons to ride out the contagion (Sellinger 2020). Meanwhile, ‘essential workers’ at the bottom of the contemporary economic hierarchy had no options but to continue to show up for work and face exposure to the deadly virus. First responders, bus drivers, nursing home workers, janitors, postal workers, grocery stockers, agricultural workers, Wal-Mart employees, Amazon warehouse workers, delivery drivers, and meat packers—many earning minimum wage and most without employer-subsidized health insurance or other benefits—had to keep working. As Bertha Bradley, a food service worker in North Carolina stated, ‘I don’t get health benefits, I don’t get sick time, I don’t get paid vacations, I don’t get a living wage’ (Jaffe and Chen 2020: 126). Katie Pine and Kate Henne refer to them as ‘new risk workers’, many of whom are given mandates for minimizing risk but few resources to implement them (Pine and Henne 2020). For example, in the John H. Stroger Hospital in Chicago, nurses were being told to reuse N95 masks, ‘sometimes up to forty-five days’ (Jaffe and Chen 2020: 138). By contrast, knowledge workers could work from the safety of their own homes and reduce their risks of becoming infected.

COVID-19 has disproportionately attacked communities of colour, compounding economic inequality and systemic racism. It is clear that ‘race matters for the way that markets have been built historically and function today’ (McNamara and Newman 2020: 6). As Presidential candidate Joe Biden pointed out during the presidential debate in September 2020, 1 out of every one-thousand African Americans in the US has died from COVID-19. In Chicago about 70% of the COVID deaths were African Americans (Jaffe and Chen 2020: 140). The UN Secretary-General António Guterres pointed out that COVID-19 ‘is exposing fallacies and falsehoods everywhere … the delusion that we live in a post-racist world, the myth that we are all in the same boat’ (Guterres 2020). In September, Citigroup released a report that systemic racism, discrimination against African Americans, has cost the economy $16 trillion (Akala 2020).

Many of the precariat are people of colour, recent immigrants and undocumented workers. By May 2020 slaughterhouses around the world became virus hot spots and exposed multiple layers of dysfunction. The meat processing industry is highly consolidated, dominated by global multinational corporations including Cargill, JBS, Smithfield and Tyson. Since the 1980s this industry has pursued the financialized model of consolidation and vertical integration, ‘aimed at increasing profits through efficiency and low wages’ (van der Zee et al. 2020). Many migrant workers in these plants live in communal housing; crowded working conditions, large plants and cramped housing, and lack of paid sick leave all exacerbate the spread of coronavirus in these environments. Indeed, Tyson was even offering workers $500 bonuses to keep working in the midst of plant outbreaks (van der Zee et al. 2020). Workers are shouldering all of the risk as slaughterhouse companies get the rewards. Structures of the global economy, including financialization and monopoly capitalism have amplified the dangers of the pandemic and pushed people further ‘into unequal groups that are not only divided by money but by matters of life and death’ (McNamara and Newman 2020: 11; Sell and Williams 2019).

#### The plan reverse casually ensures the reduction of vaccine imperialism.

Vanni 3 – Dr. Amaka Vanni is Lecturer in Law at the University of Leeds. ("On Intellectual Property Rights, Access to Medicines and Vaccine Imperialism," 3-23-2021, <https://twailr.com/on-intellectual-property-rights-access-to-medicines-and-vaccine-imperialism/>) julian

This brings us to the present and how this dysfunction continues to be normalised in the current pandemic. Moderna, for example, has filed over 100 patents for the mRNA technology used in its vaccine, despite receiving funds from the US government with its IP partly owned by the US National Institutes of Health. Pfizer/BioNTech have also filed multiple patents on not only their COVID-19 vaccine product, but also on the manufacturing process, method of use and related technologies even though BioNtech was given $450 million by the German government to speed up vaccine work and expand production capacity in Germany. It has become increasingly plain that IP makes private rights out of public funds while benefitting particular corporate interests. In fact, reports show the US government under Operation Warp Speed led by the US Department of Health also funded other vaccines developed in 2020 by several pharmaceutical corporations including Johnson and Johnson, Regeneron, Novavax, Sanofi and GlaxoSmithKline, AstraZeneca, and others. In spite of this boost from public funds, and with many governments wholly taking on the risks for potential vaccine side effects, drug manufacturers fully own the patents and related IP rights and so can decide how and where the vaccines get manufactured and how much they cost. As a result, taxpayers are paying twice for the same shot: first for its development, then again for the finished product. Meanwhile, a New York Times report has revealed that in some of the agreements between pharmaceutical companies and states, governments are prohibited from donating or reselling doses. This prohibition helps explain the price disparity in vaccine purchases among countries where poor countries are paying more. For example, Uganda is paying USD 8.50 per dose of the AstraZeneca vaccine while the EU is paying only USD 3.50 per dose. By prioritizing monopoly rights of a few western corporations, IP dysfunction not only continues to reproduce old inequities and inequality in health access, but helps frame our understanding about the creation and management of knowledge. And perhaps we begin to see the refusal of drug makers to share knowledge needed to boost global vaccine supply for what it truly is: an extension in capitalist bifurcation of who is imagined as a legitimate intellectual property owner and who is envisioned as a threat to the (intellectual) propertied order.

Despite calls to make COVID-19 vaccines and related technologies a global public good, western pharmaceutical companies have declined to loosen or temporarily suspend IP protections and transfer technology to generic manufacturers. Such transfer would enable the scale-up of production and supply of lifesaving COVID-19 medical tools across the world. Furthermore, these countries are also blocking the TRIPS waiver proposal put forward by South Africa and India at the WTO despite being supported by 57 mostly developing countries. The waiver proposal seeks to temporarily postpone certain provisions of the TRIPS Agreement for treating, containing and preventing the coronavirus, but only until widespread vaccination and immunity are achieved. This means that countries will not be required to provide any form of IP protection on all COVID-19 related therapeutics, diagnostics and other technologies for the duration of the pandemic. It is important to reiterate the waiver proposal is time-limited and is different from TRIPS flexibilities, which are safeguards within the Agreement to mitigate the negative impact of patents such as high price of patented medicines. These safeguards include compulsory licenses and parallel importation. However, because of the onerous process of initiating these flexibilities as well as the threat of possible trade penalties by the US through the United States Trade Representative (USTR) “Special 301” Report targeting countries even in the absence of illegality, many developing countries are reluctant to invoke TRIPS flexibilities for public health purposes. For example, in the past, countries such as Colombia, India, Thailand and recently Malaysia have all featured in the Special 301 Report for using compulsory licenses to increase access to cancer medications. It is these challenges that the TRIPS waiver seeks to alleviate and, if approved, would also provide countries the space, without fear of retaliation from developed countries, to collaborate with competent developers in the R&D, manufacturing, scaling-up, and supply of COVID-19 tools. However, because this waiver is being opposed by a group of developed countries, we are grappling with the problem of artificially-created vaccine scarcity. The effect of this scarcity will further prolong and deepen the financial impact of this pandemic currently estimated to cost USD 9.2 trillion, half of which will be borne by advanced economies. Thus, in opposing the TRIPS waiver with the hopes of reaping huge financial rewards, developed countries are worsening pandemic woes in the long term.

Another kind of scarcity caused by vaccine nationalism has also reduced equitable access. Vaccine nationalism is a phenomenon where rich countries buy up global supply of vaccines through advance purchase agreements (APA) with pharmaceutical companies for their own populations at the expense of other countries. But perhaps it is time to reorient our sight and call the ongoing practices of buying up global supply of vaccine what it truly is – vaccine imperialism. If we take seriously the argument put forward by Antony Anghie on the colonial origins of international law, particularly how these origins create a set of structures that continually repeat themselves at various stages, we will begin to see COVID-19 vaccine accumulation not only as political, but also as imperial continuities manifesting in the present. Take, for instance, the report released by the Duke Global Health Innovation Center that shows that high-income countries have already purchased nearly 3.8 billion COVID-19 vaccine doses. Specifically, the United States has secured 400 million doses of the Pfizer-BioNTech and Moderna vaccines, and has APAs for more than 1 billion doses from four other companies yet to secure US regulatory approval. The European Union has similarly negotiated nearly 2.3 billion doses under contract and is negotiating for about 300 million more. With these purchases, these countries will be able to vaccinate their populations twice over, while many developing states, especially in Africa, are left behind. In hoarding vaccines whilst protecting the IP interests of their pharmaceutical multinational corporations, the afterlife of imperialism is playing out in this pandemic.

Moreover, these bilateral deals are hampering initiatives such as the COVID-19 Vaccine Global Access Facility (COVAX) – a pooled procurement mechanism for COVID-19 vaccine – aimed at equitable and science-led global vaccine distribution. By engaging in bilateral deals, wealthy countries impede the possibility of effective mass-inoculation campaigns. While the usefulness of the COVAX initiative cannot be denied, it is not enough. It will cover only the most vulnerable 20 per cent of a country’s population, it is severely underfunded and there are lingering questions regarding the contractual obligations of pharmaceutical companies involved in the initiative. For instance, it is not clear whether the COVAX contract includes IP-related clauses such as sharing of technological know-how. Still, even with all its faults, without a global ramping-up of production, distribution and vaccination campaigns via COVAX, the world will not be able to combat the COVID-19 pandemic and its growing variants. Health inequity and inequalities in vaccine access are not unfortunate outcomes of the global IP regime; they are part of its central architecture. The system is functioning exactly as it is set up to do.

These events – the corporate capture of the global pharmaceutical IP regime, state complicity and vaccine imperialism – are not new. Recall Article 7 of TRIPS, which states that the objective of the Agreement is the ‘protection and enforcement of intellectual property rights [to] contribute to the promotion of technological innovation and to the transfer and dissemination of technology’. In similar vein, Article 66(2) of TRIPS further calls on developed countries to ‘provide incentives to enterprises and institutions within their territories to promote and encourage technology transfer to least-developed country’. While the language of ‘transfer of technology’ might seem beneficial or benign, in actuality it is not. As I discussed in my book, and as Carmen Gonzalez has also shown, when development objectives are incorporated into international legal instruments and institutions, they become embedded in structures that may constrain their transformative potential and reproduce North-South power imbalances. This is because these development objectives are circumscribed by capitalist imperialist structures, adapted to justify colonial practices and mobilized through racial differences. These structures are the essence of international law and its institutions even in the twenty-first century. They continue to animate broader socio-economic engagement with the global economy even in the present as well as in the legal and regulatory codes that support them. Thus, it is not surprising that even in current global health crisis, calls for this same transfer of technology in the form of a TRIPS waiver to scale up global vaccine production is being thwarted by the hegemony of developed states inevitably influenced by their respective pharmaceutical companies. The ‘emancipatory potential’ of TRIPS cannot be achieved if it was not created to be emancipatory in the first place. It also makes obvious the ways international IP law is not only unsuited to promote structural reform to enable the self-sufficiency and self-determination of the countries in the global south, but also produces asymmetries that perpetuate inequalities.

### 1AC – Plan

#### Plan: The member of nations of the World Trade Organization ought to eliminate patent protections for medicines

Adler 21 – Paul Adler is assistant professor of 20th Century U.S. in the World History at Colorado College and author of "No Globalization Without Representation: U.S. Activists and World Inequality," with University of Pennsylvania Press. (“Activism is the key to getting vaccines to the world," 4-23-2021, <https://www.washingtonpost.com/outlook/2021/04/23/activism-is-key-getting-vaccines-world/>) julian

A major reason for the delay in rolling out vaccinations is that rules protecting intellectual property are slowing production. Vaccines such as those for the coronavirus typically require around 200 individual components, most of which are patented by various corporations. Globally, these patents and other intellectual property concerns fall under the protection of “TRIPS” — the Agreement on Trade Related Aspects of Intellectual Property Rights — which is overseen by the World Trade Organization (WTO).

The need to make more vaccines faster is clear. That is why a wide coalition — from the South African and Indian governments to nonprofits such as Oxfam, Public Citizen and ActionAid to 170 Nobel laureates and former heads of state — are demanding that the WTO issue a “TRIPS waiver.” This action would temporarily suspend WTO intellectual property protections, allowing more companies and countries to produce coronavirus vaccine components. So far, the idea has been met with, at best, ambivalence by representatives from key economic powers, including the European Union, Canada, Brazil and the United States. Meanwhile, major pharmaceutical companies and lobbies largely oppose a TRIPS waiver.

This coronavirus is a newer virus. But debates around corporate power, intellectual property, pharmaceuticals and global inequalities have long histories. For over four decades, activists have worked for a fairer global regime of medicine production and distribution. Today’s campaign for a TRIPS waiver marks a crucial moment in the long struggle by globally minded activists to forge systems of international governance that serve the interests of the world’s most impoverished and marginalized.

#### Status quo medical innovation results in inequality, which the aff corrects.

Parthasarathy 20 – Shobita Parthasarathy is Professor of Public Policy and Director of the Science, Technology, and Public Policy Program at University of Michigan. (“Innovation Policy, Structural Inequality, and COVID-19,” 2020, pg. 105-107) julian

The private sector then capitalizes on the results of this scientific curiosity to develop socially beneficial technologies, which are made available in the marketplace. Key to this is the modern patent system: the government incentivizes inventors by providing them with patent rights, to commercialize and profit from their new technologies exclusively and for a limited period of time (Parthasarathy 2017). The US Congress reinforced the links among government funding, university science, and the marketplace with the 1980 Bayh-Dole Act, which allowed universities to retain the rights to patents on inventions created through government-funded research (Popp Berman 2012). The more inventions were patented and made available to the private sector, the logic went, the more technology would be available to the public. Today, increasingly cash-strapped universities encourage their researchers to patent inventions, and license these patents to private companies who will develop and commercialize them (Kleinman 2003). As a result, there has been a sharp rise in US patents granted, and high-tech industries have blossomed. And countries across the world have adopted these innovation policies, seeking to replicate the US approach (Siepmann 2004).

But the COVID-19 crisis has shown us that these innovation policies do not serve citizens equally, in at least three ways:

(1) Minimal Funding for Health Disparities Research. The US approach to research funding has left us unprepared for and unable to manage the disproportionate health impacts of the virus among people of color, especially Black communities. The NIH, the world’s largest public funder of biomedical research, devotes little money to this subject. One analysis found that it spends 500 times more on genetics research as on structural racism and its impacts on health (Krieger 2005). This is not surprising in a system where scientists drive funding priorities, and where investigators from historically disadvantaged minority groups struggle to receive funding. The needs and concerns of disadvantaged minorities may seem less important or urgent to most scientists (Shavers et al. 2005). But this scarcity has left us without the evidence to understand why communities of color are disproportionately suffering and dying from COVID-19, or what steps to take to address this imbalance.

2) Uncoordinated Research and Development Creates Uneven Access to Diagnostic Testing. Absent the “rigid controls” that Bush dismissed, the US innovation system is highly decentralized and market-driven. So, diagnostic testing for SARS-CoV-2 (the virus that causes COVID-19) has been essentially impossible to coordinate. Traditionally, the Centers for Disease Control and Prevention and public laboratories funded by state and local governments lead infectious disease surveillance, but they have limited capacity (Crawford et al. 2010). The COVID-19 pandemic created demand that far outstripped what these laboratories could provide, but there was no systematic way to expand capacity. A variety of laboratories, including at universities, stepped up, but it remains difficult to connect supply and demand (Maxmen 2020). Different electronic records platforms cannot communicate. Some hospitals have exclusive partnerships with big commercial laboratories. And, even as testing has become more available, white and higher income communities gain access more easily (McMinn et al. 2020).

By contrast, South Korea has been widely praised for its SAR-CoV-2 testing strategy (Thompson 2020). Three weeks after the Chinese government shared the virus’s genome sequence on January 12, the South Korean government approved multiple diagnostic tests developed by its biotechnology sector (The Government of the Republic of Korea 2020). The country’s National Health Insurance Corporation purchased and distributed them. Ultimately, testing was plentiful and widespread, and the government implemented a companion contact-tracing program that minimized the number of COVID-19 cases and deaths.

Certainly, South Korea has learned from its experiences with previous coronaviruses, and benefits from a nationally coordinated healthcare system. But the rapid and straightforward development and distribution of diagnostic testing is also the result of a different approach to innovation policy than what the United States has taken up. Since the 1960s, South Korea’s government has played a major role in shaping research and development including in the industrial sector, by building capacity and setting priorities (Yim and Kim 2005). Government and industry have close professional ties and a sense of shared goals. In the years before COVID-19, for example, the South Korean government funded multiple companies developing viral diagnostic testing (The Government of the Republic of Korea 2020). With these relationships, technologies, and coordination with the healthcare system established, the government was able to immediately ask the private sector to develop SARS-CoV-2 tests. Three of the first five companies to receive emergency regulatory approval had received government funding for their diagnostics research. This proactive capacity building ensured that there was no need to ration testing, and therefore no inequality in access.

(3) Patent Policies Limit Access to Essential Technologies. While patents provide an incentive to innovate, the exclusive rights of commercialization they carry can make the most valuable technologies the most expensive. There is growing concern that COVID-19 treatments and vaccines will be priced out of reach for many, despite their importance for public health and economic recovery. Consider the case of remdesivir, a promising COVID-19 treatment developed with the help of US government and university scientists but which biotechnology company Gilead Sciences has patented and commercialized (Ardizzone 2020). Gilead has a long history of charging high prices for its patented drugs, including hepatitis C drug Sovaldi which costs $84,000 for a 12-week course of treatment (Senior 2014). The company must now balance pressure from its investors against its interpretation of civic duty as it determines pricing for this promising COVID-19 drug.

### 1AC – Framing

#### Externally, the specific role of debate means you should vote for the debater who identifies the best strategy for resisting racist oppression.

Medina 11 Medina, J. (2011). Toward a Foucaultian Epistemology of Resistance: Counter-Memory, Epistemic Friction, and Guerrilla Pluralism. Foucault Studies, 1(12), 9–35.

The central goal of this paper is to show the emancipatory potential of the epistemological framework underlying Foucault’s work. More specifically, I will try to show that the Foucaultian approach places practices of remembering and forgetting in the context of power relations in such a way that possibilities of resistance and subversion are brought to the fore. When our cultural practices of remembering and forgetting are interrogated as loci where multiple power relations and power struggles converge, the first thing to notice is the heterogeneity of differently situated perspectives and the multiplicity of trajectories that converge in the epistemic negotiations in which memories are formed or de-formed, maintained alive or killed. The discursive practices in which memory and oblivion are manufactured are not uniform and harmonious, but heterogeneous and full of conflicts and tensions. Foucault invites us to pay attention to the past and ongoing epistemic battles among competing power/knowledge frameworks that try to control a given field. Different fields—or domains of discursive interaction—contain particular discursive regimes with their particular ways of producing knowledge. In the battle among power/ knowledge frameworks, some come on top and become dominant while others are displaced and become subjugated. Foucault’s methodology offers a way of exploiting that vibrant plurality of epistemic perspectives which always contains some bodies of experiences and memories that are erased or hidden in the mainstream frameworks that become hegemonic after prevailing in sustained epistemic battles. What Foucault calls subjugated knowledges3 are forms of experiencing and remembering that are pushed to the margins and rendered unqualified and unworthy of epistemic respect by prevailing and hegemonic discourses. Subjugated knowledges remain invisible to mainstream perspectives; they have a precarious subterranean existence that renders them unnoticed by most people and impossible to detect by those whose perspective has already internalized certain epistemic exclusions. And with the invisibility of subjugated knowledges, certain possibilities for resistance and subversion go unnoticed. The critical and emancipatory potential of Foucaultian genealogy resides in challenging established practices of remembering and forgetting by excavating subjugated bodies of experiences and memories, bringing to the fore the perspectives that culturally hegemonic practices have foreclosed. The critical task of the scholar and the activist is to resurrect subjugated knowledges—that is, to revive hidden or forgotten bodies of experiences and memories—and to help produce insurrections of subjugated knowledges. 4 In order to be critical and to have transformative effects, genealogical investigations should aim at these insurrections, which are critical interventions that disrupt and interrogate epistemic hegemonies and mainstream perspectives (e.g. official histories, standard interpretations, ossified exclusionary meanings, etc). Such insurrections involve the difficult labor of mobilizing scattered, marginalized publics and of tapping into the critical potential of their dejected experiences and memories. An epistemic insurrection requires a collaborative relation between genealogical scholars/activists and the subjects whose experiences and memories have been subjugated: those subjects by themselves may not be able to destabilize the epistemic status quo until they are given a voice at the epistemic table (i.e. in the production of knowledge), that is, until room is made for their marginalized perspective to exert resistance, until past epistemic battles are reopened and established frameworks become open to contestation. On the other hand, the scholars and activists aiming to produce insurrectionary interventions could not get their critical activity off the ground if they did not draw on past and ongoing contestations, and the lived experiences and memo- ries of those whose marginalized lives have become the silent scars of forgotten struggles.

#### Prioritization of negation over any risk of progress authorizes ethical violence in the name of philosophical purity – writing off interim gains is violent and paternalistic

Delgado 09 Chair of Law at the University of Alabama Law School, J.D. from the University of California, Berkeley, his books have won eight national book prizes, including six Gustavus Myers awards for outstanding book on human rights in North America, the American Library Association’s Outstanding Academic Book, and a Pulitzer Prize nomination.  Professor Delgado’s teaching and writing focus on race, the legal profession, and social change, 2009, “Does Critical Legal Studies Have What Minorities Want, Arguing about Law”, p. 588-590

2. The CLS critique of piecemeal reform Critical scholars reject the idea of piecemeal reform. Incremental change, they argue, merely postpones the wholesale reformation that must occur to create a decent society. Even worse, an unfair social system survives by using piecemeal reform to disguise and legitimize oppression. Those who control the system weaken resistance by pointing to the occasional concession to, or periodic court victory of, a black plaintiff or worker as evidence that the system is fair and just. In fact, Crits believe that teaching the common law or using the case method in law school is a disguised means of preaching incrementalism and thereby maintaining the current power structure.“ To avoid this, CLS scholars urge law professors to abandon the case method, give up the effort to ﬁnd rationality and order in the case law, and teach in an unabashedly political fashion. The CLS critique of piecemeal reform is familiar, imperialistic and wrong. Minorities know from bitter experience that occasional court victories do not mean the Promised Land is at hand. The critique is imperialistic in that it tells minorities and other oppressed peoples how they should interpret events affecting them. A court order directing a housing authority to disburse funds for heating in subsidized housing may postpone the revolution, or it may not. In the meantime, the order keeps a number of poor families warm. This may mean more to them than it does to a comfortable academic working in a warm office. It smacks of paternalism to assert that the possibility of revolution later outweighs the certainty of heat now, unless there is evidence for that possibility. The Crits do not offer such evidence. Indeed, some incremental changes may bring revolutionary changes closer, not push them further away. Not all small reforms induce complacency; some may whet the appetite for further combat. The welfare family may hold a tenants’ union meeting in their heated living room. CLS scholars’ critique of piecemeal reform often misses these possibilities, and neglects the question of whether total change, when it comes, will be what we want.