# Rawls Aff

## Framework: Difference Principle

#### A moral theory cannot disadvantage people due to their circumstances and cannot be guided by bias

(**Rawls ‘71** John Rawls. Professor at Harvard: A Theory of Justice, 1971.)

One should not be misled, then, by the somewhat unusual conditions which characterize the original position. The idea here is simply to make vivid to ourselves the restrictions that it seems reasonable to impose on arguments for principles of justice, and therefore on these principles themselves. Thus It seems reasonable and generally acceptable that **no one should be advantaged or disadvantaged by natural fortune or social circumstances in the choice of principles**. It also seems widely agreed that It should be impossible to tailor principles to the circumstances of one’s own case. We should insure Further that particular inclinations and aspirations, and persons’ conceptions of their good do not affect the principles adopted. The aim is to rule out those principles that it would be rational to propose for acceptance, however little the chance of success, only if one knew certain things that are irrelevant from the standpoint of justice. For example, If a man knew that he was wealthy, [they would not] might ﬁnd it rational to advance the principle that various taxes for welfare measures be counted unjust; if he knew that he was poor, [they] would most likely propose the contrary principle. To represent the desired restrictions one imagines a situation in which everyone is deprived of this sort of information. One excludes the knowledge of those contingencies that set men at odds and allow them to be guided by their prejudice.

#### The veil of ignorance is the only theory that can throw aside biases and determine the correctness of a moral theory from a purely objective perspective. The NC criterion collapses to the aff

**Von Platz 17**. Von Platz, Jeppe. "The Veil of Ignorance in Rawlsian Theory." In The SAGE Encyclopedia of Political Behavior, edited by Fathali M..Moghaddam, 889-92. Los Angeles, CA: Sage Reference., 2017. https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1137&context=philosophy-faculty-publications

The original position models our beliefs about justice for a democratic society by defining the knowledge and interests of the parties and by requiring that all candidate conceptions of justice satisfy the formal constraints of the concept of right. The veil of ignorance defines the knowledge of the parties; it shields them [parties] from knowledge of particular facts that they could use to favor particular members of society while at the same time allowing them knowledge of general facts that are helpful for thinking about justice in general. The veil of ignorance thus expresses a commitment to a sort of impartiality that is needed to ensure that the principles we select express our commitments to fairness and equal citizenship. To ensure this impartiality, the veil of ignorance shields the parties from knowledge about the people they represent: about their gender, race, religious beliefs, wealth, and similar facts. The parties are also ignorant of particular facts about the society those they represent live in, such as how religious beliefs are distributed, what natural resources their society has access to, and the distribution of wealth and opportunities. While the veil of ignorance shields the parties from knowledge that could lead them to propose unfair terms of social cooperation, it lets them know enough about the general conditions of democratic societies to rank candidate conceptions of justice. So the parties know that those they represent have a conception of the good (but not what it is); they know general facts about human needs and psychology; that they are in circumstances of justice (where social cooperation is both necessary and possible); they know theories of sociology and economics and that their society contains a plurality of philosophical, religious, political, and social doctrines. That the veil of ignorance leaves the parties without any knowledge about the interests of those they represent or even about the distribution of interests in society invites. the question of how they can rank conceptions of Justice-for what interests do they have that could lead them to have preferences between different candidate conceptions?

#### We believe in basic rights and liberties, and concern for the least well off; inequalities cannot be created unfairly and must benefit the least advantaged – this is the difference principle

(SEP 96. Sep 22, 1996. **Stanford** Encyclopedia of Philosophy, Distributive Justice. <https://plato.stanford.edu/entries/justice-distributive/#Difference>) (Card 1)

The wealth of an economy is not a fixed amount from one period to the next, but can be influenced by many factors relevant to economic growth. These include, for example, technological advancement or changes in policy that affect how much people are able to produce with their labour and resources. More wealth can be produced and indeed this has been the overwhelming feature of industrialized countries over the last couple of centuries. The dominant economic view is that wealth is most readily increased in systems where those who are more productive earn greater incomes. This economic view partly inspired the formulation of the Difference Principle. The most widely discussed theory of distributive justice in the past four decades has been that proposed by John Rawls in A Theory of Justice, (Rawls 1971), and Political Liberalism, (Rawls 1993). Rawls proposes the following two principles of justice: 1. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value. 2. Social and economic inequalities are to satisfy two conditions: (a) They are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and (b), they are to be to the greatest benefit of the least advantaged members of society. (Rawls 1993, pp. 5–6. The principles are numbered as they were in Rawls’ original A Theory of Justice.) Where the rules may conflict in practice, Rawls says that Principle (1) has lexical priority over Principle (2), and Principle (2a) has lexical priority over (2b). As a consequence of the priority rules, **Rawls’ principles do not permit sacrifices to basic liberties in order to generate greater equality of opportunity or a higher level of material goods, even for the worst off.** While it is possible to think of Principle (1) as governing the distribution of liberties, it is not commonly considered a principle of distributive justice given that it is not governing the distribution of economic goods per se. Equality of opportunity is discussed in the next section. In this section, the primary focus will be on (2b), known as the Difference Principle. **The main moral motivation for the Difference Principle is similar to that for strict equality: equal respect for persons.** Indeed, since the only material inequalities the Difference Principle permits are those that raise the level of the least advantaged in the society, it materially collapses to a form of strict equality under empirical conditions where differences in income have no effect on the work incentive of people (and hence, no tendency to increase growth). The overwhelming economic opinion though is that in the foreseeable future the possibility of earning greater income will bring forth greater productive effort. This will increas[ing] the total wealth of the economy and, under the Difference Principle, the wealth of the least advantaged. Opinion divides on the size of the inequalities which would, as a matter of empirical fact, be allowed by the Difference Principle, and on how much better off the least advantaged would be under the Difference Principle than under a strict equality principle. Rawls’ principle, however, gives fairly clear guidance on what type of arguments will count as justifications for inequality. Rawls is not opposed in principle to a system of strict equality per se; his concern is about the absolute position of the least advantaged group rather than their relative position. If a system of strict equality maximizes the absolute position of the least advantaged in society, then the Difference Principle advocates strict equality. If it is possible to raise the absolute position of the least advantaged further by having some inequalities of income and wealth, then the Difference Principle prescribes inequality up to that point where the absolute position of the least advantaged can no longer be raised.

#### The difference principle is the only one that satisfies the veil of ignorance; it is truly reciprocal (all societal gains benefit the least advantaged) and the “reciprocal” alternative – restricted utility – fails

(Freeman, Samuel, 2-27-19**96**, "Original Position (**Stanford** Encyclopedia of Philosophy)," No Publication, <https://plato.stanford.edu/entries/original-position/>) (Card 2)

What bearing does this have on choice in the original position? Even if the deeper reciprocity achieved by the difference principle seems morally appealing to us, the parties are not similarly motivated by moral intuitions of fairness. They must be moved to agree on the difference principle for rational considerations alone. So why should the parties in the original position care about the deeper reciprocity achieved by the difference principle? Why wouldn’t it be rational for them to agree to a more superficial reciprocity, as allowed by restricted utility, thereby taking a chance that they might be among the affluent in the capitalist welfare state? After all, if they end up among the least advantaged, they may only be moderately worse off than they would have been under the difference principle.

The reasons that speak in favor of the parties’ rational choice of the difference principle are their higher-order interest in developing their capacities for justice, their concern for their self-respect, their concern for stability, and the strains of commitment. Compare the difference principle with the principle of restricted utility: Once the social minimum is met, restricted utility does not guarantee that the worse off will benefit in any way from further gains to those better off. Quite the contrary, further gains to more advantaged may even disadvantage the less advantaged—for example, a falling minimal wage rate in the face of an increased supply of labor results in a greater share going to capital, which may benefit owners and middle class consumers but not the less advantaged workers. With restricted utility there is no consistent and continuing tendency toward reciprocity of benefits, for once the social minimum is satisfied the less advantaged are as likely to gain nothing as to benefit from further gains to those better off.

Rawls’s conjecture is that in the capitalist welfare state structured by restricted utility, the less advantaged are likely to become dispirited, resentful, and frustrated with their situation, for they know that their well-being is neglected and often intentionally sacrificed so that the majority of citizens may prosper. While stability is maintained among the less advantaged as a modus vivendi, still they are likely to withdraw from active participation in politics and public life; for they justifiably feel left behind by society and no longer see themselves as having a stake in increasing social prosperity or as enjoying a respected position in public life. This all-too-familiar phenomenon in the modern capitalist welfare-state is evident from the striking lack of political participation by the poorest members of our society. It may be that welfare-state capitalism is stable, but it is the stability of indifference or hopelessness among the less advantaged, not stability for the right reasons, which is grounded in equal citizens’ affirmation of social institutions out of their sense of justice (PL xlii, 391). Due to their lack of self-respect, and the excessive demands the capitalist welfare-state places on their moral sensibilities and capacities for justice, the least advantaged are unable to willingly affirm the organizing principles of society on grounds of their sense of justice. The principle of restricted utility then places excessive strains of commitment on the worse off, and undermines their sense of self-respect, causing them to be resentful of their situation. Moreover, restricted utility invites continuing disagreement over the size of the social minimum, since there is no criterion other than citizens’ differing views regarding what is needed to satisfy the basic needs of the least advantaged. So, as is characteristic of the capitalist welfare state, there will be continual disagreement on a decent minimum and continual efforts by the more advantaged to reduce the social minimum. The difference principle by contrast provides a definite standard for determining the social minimum. Finally, citizens’ higher-order interest in the full development and effective exercise of their capacities for a sense of justice are not well served by restricted utility, since it fails to achieve economic reciprocity and the social bases of self-respect to a significant degree for all citizens. Because of their interests in fully exercising their moral and rational capacities, their sense of self-respect, and their concern for stability, the parties in the original position cannot in good faith rationally affirm restricted utility and the capitalist welfare state when they have the alternative of choosing the difference principle (cf. JF, 128–129). This seems to be Rawls’s main argument for the difference principle from the original position.

## Contention 1: Vaccine Inequality

### Subpoint A: Links

#### IP protections cement global vaccine inequality – wealthy nations hoard vaccines while blocking access for the rest of the world

#### Meredith 4/21

Sam Meredith is an international politics correspondent for CNBC – London, April 22, 2021. “Rich countries are refusing to waive the rights on Covid vaccines as global cases hit record levels”, https://www.cnbc.com/2021/04/22/covid-rich-countries-are-refusing-to-waive-ip-rights-on-vaccines.html, accessed 9-10-21 // mk

The U.S., Canada and U.K. are among some of the high-income countries actively blocking a patent-waiver proposal designed to boost the global production of Covid-19 vaccines. It comes as coronavirus cases worldwide surge to their highest level so far and the World Health Organization has repeatedly admonished a “shocking imbalance” in the distribution of vaccines amid the pandemic. Members of the World Trade Organization will meet virtually in Geneva, Switzerland on Thursday to hold informal talks on whether to temporarily waive intellectual property and patent rights on Covid vaccines and treatments. The landmark proposal, which was jointly submitted by India and South Africa in October, has been backed by more than 100 mostly developing countries. It aims to facilitate the manufacture of treatments locally and boost the global vaccination campaign. Six months on, the proposal continues to be stonewalled by a small number of governments — including the U.S., EU, U.K., Switzerland, Japan, Norway, Canada, Australia and Brazil. “In this Covid-19 pandemic, we are once again faced with issues of scarcity, which can be addressed through diversification of manufacturing and supply capacity and ensuring the temporary waiver of relevant intellectual property,” Dr. Maria Guevara, international medical secretary at Medecins Sans Frontieres, said in a statement on Wednesday. “It is about saving lives at the end, not protecting systems.” The urgency and importance of waiving certain intellectual property rights amid the pandemic have been underscored by the WHO, health experts, civil society groups, trade unions, former world leaders, international medical charities, Nobel laureates and human rights organizations. Why does it matter? The waiver, if adopted at the General Council, the WTO’s highest-level decision-making body, could help countries around the world overcome legal barriers preventing them from producing their own Covid vaccines and treatments. Advocates of the proposal have conceded the waiver is not a “silver bullet,” but argue that removing barriers toward the development, production and approval of vaccines is vital in the fight to prevent, treat and contain the coronavirus. Conversely, pharmaceutical industry trade associations are against the waiver. In a statement published late last year, Thomas Cueni, director-general of the International Federation of Pharmaceutical Manufacturers & Associations, argued that diluting national and international intellectual property frameworks would be “dangerous and counterproductive.” Instead, he argued the focus should be on science and innovation rather than “undoing the very system that supports it.” To date, an average of one-in-four people in high-income nations has received a Covid vaccine, compared to one-in-over-500 for people in low-income countries. At the current rate, the bulk of the adult population in advanced economies is expected to have been vaccinated against the virus by the middle of next year, whereas the timeline for poorer economies is likely to stretch to 2024 — if it happens at all. ‘A scandal that affects us all’ The world leaders opposed to the policy are coming under intensifying pressure to change course. In one possible shift in tone, U.S. Trade Representative Katherine Tai said last week that “significant inequities we are seeing in access to vaccines between developed and developing countries are completely unacceptable.” Tai added that mistakes that had resulted in “unnecessary deaths and suffering” during the HIV/AIDS epidemic must not be repeated. However, the U.S. is yet to clarify whether it has changed its position on the waiver. The European Commission has previously said waiving patents will not solve production capacity problems, reportedly claiming instead that policymakers need to find measures “to preserve the incentives to innovate.” A spokesperson was not immediately available when contacted by CNBC on Thursday. Andrew Stroehlein, European media director of Human Rights Watch, said via Twitter on Thursday the fact that high-income countries were “throttling vaccine production globally by blocking the TRIPS waiver — a proposal at the WTO to temporarily waive some intellectual property rules for medical products — is a scandal that affects us all.” His comments come shortly after The People’s Vaccine Alliance found that two-thirds of epidemiologists surveyed at some of the world’s leading academic institutions warned Covid mutations could render current vaccines ineffective in a year or less. The survey, published on March 30, interviewed 77 epidemiologists from 28 countries. “It’s galling to hear pharma (companies) moan that a temporary waiver would ‘disincentivize’ them from making future vaccines. Apart from bordering on extortion, it’s ahistorical. What incentivized them last time was our taxes. Our governments poured billions into developing vaccines,” Stroehlein said. “They could be thus incentivized again in future, obviously.”

#### It’s here to stay – wealthy nations are now prioritizing boosters for their own population over global health

#### Paton 9/3

(James Paton is a health, pharma and COVID-19 reporter for Bloomberg. September 3, 2021. “Rich Countries Hog Vaccines. Is There a Solution?”, https://www.bloomberg.com/news/articles/2021-09-03/rich-countries-hog-vaccines-is-there-a-solution-quicktake, accessed 9-10-21 // mk)

Wealthy countries have hogged Covid-19 vaccines, providing a glaring illustration of how unfair the world can be. While 57% of people in high-income countries had received at least one dose of vaccine by Aug. 30, the figure in low-income countries was just 2%, according to the United Nations. Health advocates worry that the imbalance will be aggravated by plans in wealthy countries to provide booster shots to fully inoculated people to combat the super-contagious delta variant of the coronavirus. The uneven distribution -- which many scientists say will likely prolong the global health crisis -- has prompted proposals to expand production of Covid shots, reallocate rich countries’ excess doses, and ensure vaccines are deployed more equitably in future pandemics. 1. Why were some countries first in line? As inoculations were being developed, a number of affluent countries signed advance contracts with a variety of companies, securing the lion’s share of initial doses. The U.S., as part of its multibillion-dollar program hastening the development of Covid vaccines, also used wartime powers to require manufacturers to fill massive U.S. government orders first. The U.S., U.K. and European countries had the added advantage that companies with local manufacturing plants were the first to deliver vaccines with proven efficacy; China and Russia also rolled out vaccines early, before final trial results were in. 2. Where did this leave other nations? A number of middle-income countries, such as Turkey, Malaysia, Serbia and El Salvador, have now managed to procure enough supply to inoculate significant portions of their populations. But the poorest nations are still waiting for anything beyond a trickle of the life-saving doses. Because many lack the financial clout to secure contracts for Covid vaccines on their own, they depend for supplies largely on Covax, an initiative backed by groups including the World Health Organization that was designed to provide fair access to the shots for every country. And Covax has fallen short of its goals. 3. What happened with Covax? Covax uses funding provided by governments and donors such as the Bill & Melinda Gates Foundation to make its own contracts with vaccine manufacturers. But it has struggled to get hold of doses, especially after India -- home to the Serum Institute, the world’s biggest vaccine manufacturer -- pared back exports to supply the domestic market following a new wave of infections there in March. The original aim of Covax was to distribute at least 2 billion doses, two-thirds of them to lower-income nations, by the end of 2021. By Aug. 30, it had shipped just 11% of that. China and Russia were early to export vaccines as a tool of diplomacy, and in August China pledged to dramatically expand exports to 2 billion doses this year. In June, leaders of the Group of Seven nations upped their commitments so that in all they’ve promised to provide 2.3 billion shots to developing nations by next year. So far the actual contributions have been paltry. Health advocates say that billions more doses are needed and stressed that the speed of donations is as important as the quantity. They also worried that the flow of supply to the neediest countries would be interrupted by decisions in high-income nations to offer booster shots to people who’ve already been fully inoculated and to younger children. 4. Will countries with ample supplies share them? China and Russia were early to export vaccines as a tool of diplomacy, and in August China pledged to dramatically expand exports to 2 billion doses this year. In June, leaders of the Group of Seven nations upped their commitments so that in all they’ve promised to provide 2.3 billion shots to developing nations by next year. So far the actual contributions have been paltry. Health advocates say that billions more doses are needed and stressed that the speed of donations is as important as the quantity. They also worried that the flow of supply to the neediest countries would be interrupted by decisions in high-income nations to offer booster shots to people who’ve already been fully inoculated and to younger children. 5. What’s at stake? The coronavirus has flourished in some places where vaccines have been scarce. In addition to causing misery locally, that increases the risk of the emergence of additional, worrisome variants, which will inevitably make their way elsewhere and may not be neutralized by existing shots. Many countries short of vaccines are relying on continued lockdowns to suppress the virus, stifling economic activity, while wealthier countries have been opening up. It’s possible that sub-Saharan Africa, where doses are in shortest supply, will be spared the worst effects. Researchers noted in a paper published in July that Covid’s impact has been significantly lower in the region than elsewhere and argued that the main factors are the relative youth of the population and the low numbers of elderly living in long-term care facilities. Still, many African countries are struggling to combat Covid on top of a string of other health threats. And there’s no guarantee the next pandemic won’t target the young, making future vaccine rollouts a concern for African health specialists.

#### Empirics from the AIDs epidemic prove that IP protections are what prevent access to vaccines in the poorest countries – when they’re removed, things improve

(James M. **Lindsay**, 1-29-20**21**, "The Folly of Hoarding Knowledge in the COVID-19 Age," Foreign Affairs, <https://www.foreignaffairs.com/articles/world/2021-01-29/folly-hoarding-knowledge-covid-19-age?utm_medium=promo_email&utm_source=lo_flows&utm_campaign=registered_user_welcome&utm_term=email_1&utm_content=20210912>, Accessed 9/12/2021) (Card 1)

To oppose the proposal before the WTO, wealthy countries draw on the same arguments and claims they used to set up the current international intellectual property regime. In October, the[British government](https://www.gov.uk/government/news/uk-statement-to-the-trips-council-item-15) argued that intellectual property protections won’t actually prevent access to vaccines, treatments, or related technologies. But that is demonstrably false: these rules have invariably driven up prices of important medications and put them out of reach of the world’s poorest. When the HIV/AIDS epidemic was reaching its peak in the 1990s, millions of people died in the developing world in part because the necessary drugs cost an astronomical $10,000 per person per year. Nearly a decade later—and after weathering lawsuits from [39 pharmaceutical companies](https://www.nytimes.com/2001/04/20/world/drug-makers-drop-south-africa-suit-over-aids-medicine.html)—hard-hit South Africa was able to remove some patent barriers. Prices for antiretroviral drugs dropped significantly, and many more people received treatment.

### Subpoint B: Impacts

#### New COVID doomsday variants are coming now that will plunge the world back into crisis and cause millions of deaths – vaccines are the key internal link to preventing this

#### Freedman 8/4

David Freedman is a contributing editor for Inc. Magazine, and has written on science, business, and technology for The Atlantic, The New York Times, The Harvard Business Review, Fast Company, Science, Wired, and many other publications, August 4, 2021. “A Doomsday COVID Variant Worse Than Delta and Lambda May Be Coming, Scientists Say”, https://www.newsweek.com/2021/08/13/doomsday-covid-variant-worse-delta-lambda-may-coming-scientists-say-1615874.html, accessed 9-10-21 // mk

All told, the chances that a virus in the population will produce a much more dangerous variant in the course of a year would normally be extremely low. But when billions of people are infected with billions of copies of a virus, all bets are off. Thanks to Delta's infectiousness, and the huge number of people whose refusal or inability to get vaccinated leaves them primed to become living COVID-19 mutation labs, the conditions are ripe to produce yet more, potentially more dangerous, variants in the coming months. "It's going to be very difficult to stop it from happening with masks and social distancing at this point," says Preeti Malani, a physician and infectious disease researcher and chief health officer at the University of Michigan. "Vaccines are the key, and vaccine hesitancy is the obstacle." The growing number of people with natural immunity, from having recovered from COVID-19, won't save the day either, says Eric Vail, director of molecular pathology at Cedars-Sinai Medical Center. "At best it's now a third of the U.S. population with natural immunity, and that may be an overestimation," he says. "It won't be enough to guarantee that Delta will be the last big variant." Can It Beat the Vaccine? The most likely way a new variant will plague us is the same way the U.K. variant did earlier this year, and Delta is now: by being more transmissible. At first glance, that seems a tall order, given that Delta is already one of the most transmissible viruses ever encountered, falling short only of the measles. Then again, notes Osterholm, scientists thought the original COVID-19 virus was a shockingly adept spreader, only to be surprised by how much more easily the U.K. variant spread, just to be caught off guard yet again with the rise of Delta, which is about five times more transmissible than the original. There's no reason to assume Delta represents any sort of ceiling in infectiousness. "I wouldn't be incredibly surprised if something else came along that's even more transmissible," says Vail. Such a super-spreading virus might burn through the unvaccinated, non-previously infected population so fast that hospitals couldn't come close to coping. Making that possibility more likely is the fact that sheer transmissibility, more than any other characteristic a virus might acquire through mutation, confers the greatest advantage on a variant when it comes to outcompeting other versions. "If a mutation comes up anywhere that's more transmissible, it will be selected out to propagate," says Green. That means a single ultra-transmissible mutation popping up anywhere in the world in a single infected person could be enough to unleash a fresh round of heightened global misery. Might a new variant get around the vaccine? Delta appears to be able to infect the vaccinated more readily than previous variants, reducing the major vaccines' effectiveness at preventing infection from about 95 percent to around 90 percent. (A recent Israeli study claimed the Pfizer vaccine's effectiveness plunges to 39 percent, but experts caution that the finding is an outlier that may not hold up.) Most of the COVID-19 vaccines work by getting human antibodies to target the spike proteins on the virus. But because mutations can slightly change the shape of the spike protein, they can potentially disguise it from some of those antibodies, thus weakening the vaccine's effectiveness. The different variants have different combinations of mutations in the spike protein, and while so far none of those combinations seem to do a great job of disguising the spike protein enough to get around the vaccine, some seem able to chip away at its effectiveness. Delta has three mutations that together seem especially good at keeping the spikes under the antibodies' radar, leading to the breakthrough infections. Still, the vaccines remain highly effective in preventing Delta from causing severe illness leading to hospitalization or death, to judge by the fact that 99 percent of the patients struggling with COVID-19 in U.S. intensive-care units are unvaccinated. COVID-19 may well continue to evolve into new, widely spreading variants, but there's reason to think that none of them are likely to routinely blow past the immune defenses conferred by vaccine, and even the lesser natural-immunity defenses. One reason, notes Vail, is that the vast majority of COVID-19 virus in circulation is in unvaccinated people who weren't previously infected, and mutations that can avoid immunity have no real advantage in that environment. An immune-evading variant would be more likely to thrive in a population of vaccinated or recovered people, where such a mutation would allow it to outcompete non-mutated viruses—but there just isn't enough virus circulating in that population to allow for rapid mutation. That's how Delta emerged, notes Vail. "There were four variants that arose in India, and three of them had some ability to evade immunity," he says. "The fourth one was Delta, which didn't have as strong an evading mutation, and that's the one that spread." Green points out a second reason being immune-evasive will be a huge challenge to COVID-19: The human immune system, once it's activated by vaccination or infection, is more resilient and effective than even most studies indicate. That's because studies tend to focus on how the virus fares against antibodies specifically developed by the body to fight the virus, as observed in test tubes. In real life, the body rolls out other weapons, including innate antibodies that target a broader array of pathogens, and T-cells that only kick in when an infection starts to take hold—both of which most lab studies can't easily measure. More thorough studies are underway, says Green, and the results should aid in the development of booster shots that will help block Delta and possible future variants. The mechanics of mutation also work in our favor when it comes to dodging future variants that cause more severe illness. It's not that such mutations can't or won't spring up in the coming months. Rather, it's that causing the infected to be extremely ill takes them out of circulation, so they can't spread the more-sickening variant. That means the variant would be at a disadvantage to competing forms of the virus that leave most of the infected feeling well enough to walk around and transmit the infection. A particularly dangerous scenario would be a variant that left people feeling well for a long time, and then lowered the boom later with severe illness. But few viruses—HIV being one exception—master that trick, and so far that doesn't seem to be a threat from COVID-19, either. Eisen warns that such delayed-illness scenarios can't be ruled out, either. There are ways new variants could inflict worse damage without compromising their ability to spread. For example, a new variant might attack the brain, heart or other organs in more subtle, slower ways that leave victims walking around but that eventually take a large toll. "We've already seen that different variants have differing abilities to enter some types of cells, and that might have an effect on the nervous system or lung function," says Eisen. "It's very concerning." Malani notes that there's anecdotal evidence that more young people are getting severely ill with Delta than has been the case with previous variants. That uptick may just be due to higher numbers of young people getting infected, or it may indicate a troubling shift toward greater vulnerability among the younger. That wouldn't be a first: The 1918 flu pandemic preferentially killed younger adults. It's not yet clear whether or not Delta is hitting the younger harder. "It's a mystery right now," Malani says. "Infected young people might walk around for days or even weeks even though they're feeling very poorly, so it's hard to judge." But even if Delta isn't targeting the younger, a spin-off variant might. While increased infectiousness is the most likely path for a fierce post-Delta variant versus getting past vaccines or causing more severe illness, there's a catch: Such traits aren't mutually exclusive. Simply as a matter of chance, a mutation that confers increased transmissibility might also cause more damage to health or give the virus a better chance at slipping past the defenses conferred by a vaccine. Although these latter traits aren't likely to be selected on their own, they could ride the coattails of a transmissibility-boosting mutation. "There's nothing to stop them from happening at the same time," says Eisen. Fortunately, there's a built-in impediment to what might otherwise be a potentially endless march toward ever-more-dangerous variants: The virus will at some point run out of ways to become nastier, thanks to the relatively simple structure of the spike protein, which can only be mutated in a few hundred different ways, most of which won't make the virus more harmful. "There are only so many changes that can be made to the spike protein without making it non-functional," says Vail. "I'd be cautious about saying that it can keep mutating indefinitely." Another big break: Unlike the flu virus, SARS-CoV-2 doesn't have a structure that lends itself to mixing and matching genetic material between different variants. That "recombination" capability is what helps make the flu a moving target each year for vaccines. Like the flu, COVID-19 is probably going to be with us for the foreseeable future. But a big pickup in vaccination rates would at least put the age of the most dangerous variants behind us. At that point, says Green, we can focus on occasional new vaccines or booster shots that make the virus a relatively tame threat. "I don't think eradication is on the table," she says. "But I think we could come up with something that's better than what we have now for the flu." On the other hand, notes Green, the flu kills as many as 60,000 people a year. If COVID-19 keeps mutating away from vaccine effectiveness and natural immunity, and a large portion of the population continues to neglect vaccinations, then we'll indeed end up permanently haunted by the virus. In that case, we'd be lucky if COVID-19 "only" kills tens of thousands every year. Thanks to the ongoing threats of variants, we might be in for a lot worse.

#### COVID hurts the least well off – the pandemic has fueled the largest rise in extreme poverty in decades – and the impact may be cyclical

**World Bank 20**

World Bank, “COVID-19 to Add as Many as 150 Million Extreme Poor by 2021”, <https://www.worldbank.org/en/news/press-release/2020/10/07/covid-19-to-add-as-many-as-150-million-extreme-poor-by-2021>, accessed 9-11-21 // mk

Global extreme poverty is expected to rise in 2020 for the first time in over 20 years as the disruption of the COVID-19 pandemic compounds the forces of conflict and climate change, which were already slowing poverty reduction progress, the World Bank said today. The COVID-19 pandemic is estimated to push an additional 88 million to 115 million people into extreme poverty this year, with the total rising to as many as 150 million by 2021, depending on the severity of the economic contraction. Extreme poverty, defined as living on less than $1.90 a day, is likely to affect between 9.1% and 9.4% of the world’s population in 2020, according to the biennial Poverty and Shared Prosperity Report. This would represent a regression to the rate of 9.2% in 2017. Had the pandemic not convulsed the globe, the poverty rate was expected to drop to 7.9% in 2020. “The pandemic and global recession may cause over 1.4% of the world’s population to fall into extreme poverty,” said World Bank Group President David Malpass. “In order to reverse this serious setback to development progress and poverty reduction, countries will need to prepare for a different economy post-COVID, by allowing capital, labor, skills, and innovation to move into new businesses and sectors. World Bank Group support—across IBRD, IDA, IFC and MIGA—will help developing countries resume growth and respond to the health, social, and economic impacts of COVID-19 as they work toward a sustainable and inclusive recovery.” The report also finds that many of the new poor will be in countries that already have high poverty rates. A number of middle-income countries will see significant numbers of people slip below the extreme poverty line. About 82% of the total will be in middle-income countries, the report estimates. The convergence of the COVID-19 pandemic with the pressures of conflict and climate change will put the goal of ending poverty by 2030 beyond reach without swift, significant and substantial policy action, the World Bank said. By 2030, the global poverty rate could be about 7%. Increasing numbers of urban dwellers are expected to fall into extreme poverty, which has traditionally affected people in rural areas. Progress was slowing even before the COVID-19 crisis. New global poverty data for 2017 show that 52 million people rose out of poverty between 2015 and 2017. Yet despite this progress, the rate of reduction slowed to less than half a percentage point per year between 2015 and 2017. Global poverty had dropped at the rate of around 1 percentage point per year between 1990 and 2015. In addition to the $1.90-per-day international poverty line, the World Bank measures poverty lines of $3.20 and $5.50, reflecting national poverty lines in lower-middle-income and upper-middle-income countries. The report further measures poverty across a multidimensional spectrum that includes access to education and basic infrastructure. While less than a tenth of the world’s population lives on less than $1.90 a day, close to a quarter of the world’s population lives below the $3.20 line and more than 40% of the world’s population – almost 3.3 billion people – live below the $5.50 line. The COVID-19 crisis has also diminished shared prosperity – defined as the growth in the income of the poorest 40 percent of a country’s population. Average global shared prosperity is estimated to stagnate or even contract over 2019-2021 due to the reduced growth in average incomes. The deceleration in economic activity intensified by the pandemic is likely to hit the poorest people especially hard, and this could lead to even lower shared prosperity indicators in coming years. The prospect of less inclusive growth is a clear reversal from previous trends. Shared prosperity increased in 74 of 91 economies for which data was available in the period 2012-2017, meaning that growth was inclusive and the incomes of the poorest 40 percent of the population grew. In 53 of those countries, growth benefited the poorest more than the entire population. Average global shared prosperity (growth in the incomes of the bottom 40 percent) was 2.3 percent for 2012-2017. This suggests that without policy actions, the COVID-19 crisis may trigger cycles of higher income inequality, lower social mobility among the vulnerable, and lower resilience to future shocks. The report calls for collective action to ensure years of progress in poverty reduction are not erased, and that efforts to confront poverty caused by COVID-19 also face threats that disproportionally impact the world’s poor at the same time, particularly conflict and climate change.

### Subpoint C: Solvency

#### Poor countries ARE capable of developing vaccines – empirically proven and rich nations also have supply shortfalls so there is no excuse for this disparity

(James M. **Lindsay**, 1-29-20**21**, "The Folly of Hoarding Knowledge in the COVID-19 Age," Foreign Affairs, <https://www.foreignaffairs.com/articles/world/2021-01-29/folly-hoarding-knowledge-covid-19-age?utm_medium=promo_email&utm_source=lo_flows&utm_campaign=registered_user_welcome&utm_term=email_1&utm_content=20210912>, Accessed 9/12/2021) (Card 2)

There should be many more of these sorts of arrangements, since poor countries have the capacity to ramp up production. At least 40 other potential manufacturers in 14 developing countries already form a [network](https://www.dcvmn.org/) that makes around 3.5 billion doses per year of various types of vaccines. But last May, [Pfizer’s CEO](https://www.statnews.com/pharmalot/2020/05/28/who-voluntary-pool-patents-pfizer/) dismissed as “nonsense” and “dangerous” the WHO’s efforts to encourage companies to voluntarily share their technology and intellectual property in the interest of making more broadly available vaccines, treatments, and other necessary products in the fight against COVID-19. No major pharmaceutical company has yet offered any contribution to the so-called technology access pool that the WHO set up to combat the pandemic.

This unfortunate dynamic compelled India and South Africa—backed by Eswatini, Kenya, Mozambique, and Pakistan—to cosponsor a [proposal](https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W669.pdf&Open=True) in October asking the World Trade Organization (WTO) to waive, for the duration of the pandemic, the trade body’s treaty on protecting intellectual property. The proposal won the further support of around 100 mostly low-or middle-income countries.

The WTO’s [Agreement on Trade-Related Aspects of Intellectual Property Rights](https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm), also known as TRIPS, requires the organization’s 164 member states to enforce most intellectual property protections for vaccines, trade secrets, diagnostic kits, ventilators, and other medical equipment. Supporters of the proposal argued that waiving these protections would allow manufacturers all over the world to more rapidly meet global demand for vaccines. If wealthy countries consented to the waiver, poor countries would probably not have to wait until 2023 or 2024 to inoculate the majority of their populations. The waiver would also help ensure that the world has a reserve supply of effective doses if some vaccine candidates prove to be ineffective, as is likely.

The clash between wealthy countries and poor ones over the right to scientific knowledge is not new.

But the United Kingdom, the United States, and the member states of the European Union—countries that are incidentally hoarding COVID-19 vaccine supplies and technology—[opposed](https://www.devex.com/news/at-wto-a-battle-for-access-to-covid-19-vaccines-98787)the request, and [major pharmaceutical companies](https://www.nytimes.com/2020/12/10/opinion/coronavirus-vaccine-patents.html) also voiced objections. They claim that the waiver is too broad, that it does not acknowledge the potential lack of technical capacity or raw materials in poor countries, and that the WTO’s current intellectual property regime already provides sufficient flexibility in the case of public health emergencies. This resistance persists despite the fact that the European Union and the United Kingdom are now embroiled in a [dispute](https://www.ft.com/content/d814b2dc-a803-4680-b8c4-ffa2a4c370ad) over a shortfall in supplies of the AstraZeneca vaccine. WTO member states will meet again in early February to discuss the matter ahead of the general meeting of the trade body in March, when the proposal will likely be rejected or severely limited.

The clash between wealthy countries and poor ones over the right to scientific knowledge and technology is not new. In the early 1970s—a time when many new nation-states were emerging from disintegrating European empires—the UN General Assembly resolved to declare [a “New International Economic Order](http://www.un-documents.net/s6r3201.htm),” in which wealthy countries would help formerly colonized ones become more self-reliant through the transfer of technology. Proponents of the scheme imagined such transfers as a form of reparation for decades of imperial plunder. But the wealthy states never accepted or acted upon the resolution.

Instead, they did the opposite. Edmund Pratt, then CEO of Pfizer, feared that manufacturers in developing countries would compete with companies like his for these new markets. Along with other business leaders, he encouraged U.S. officials in the 1970s and early 1980s to integrate the defense of intellectual property into U.S trade policy. The Reagan administration then rallied the European and Japanese governments to this cause, helping to place intellectual property at the heart of the General Agreement on Tariffs and Trade. This agreement required member states to enforce intellectual property rights in the multilateral trading system for the first time, even when many developing countries didn’t maintain such requirements. Although this deal protected the investments that wealthy countries and their companies made in scientific, technological, and cultural goods, it also prevented low- and middle-income countries from competing on an even footing in the burgeoning knowledge economy. The deal became formalized as the TRIPS Agreement in 1995 when wealthy countries pushed it through the WTO over the objections of lower-income countries, which were eventually railroaded into signing. Since then—and at the behest of their private sectors—Japan, the United States, and European countries have also pursued bilateral free trade agreements with many developing countries to further strengthen intellectual property protections.

HOARDING KNOWLEDGE

To oppose the proposal before the WTO, wealthy countries draw on the same arguments and claims they used to set up the current international intellectual property regime. In October, the[British government](https://www.gov.uk/government/news/uk-statement-to-the-trips-council-item-15) argued that intellectual property protections won’t actually prevent access to vaccines, treatments, or related technologies. But that is demonstrably false: these rules have invariably driven up prices of important medications and put them out of reach of the world’s poorest. When the HIV/AIDS epidemic was reaching its peak in the 1990s, millions of people died in the developing world in part because the necessary drugs cost an astronomical $10,000 per person per year. Nearly a decade later—and after weathering lawsuits from [39 pharmaceutical companies](https://www.nytimes.com/2001/04/20/world/drug-makers-drop-south-africa-suit-over-aids-medicine.html)—hard-hit South Africa was able to remove some patent barriers. Prices for antiretroviral drugs dropped significantly, and many more people received treatment.

Proponents of the TRIPS Agreement restrictions, including governments, pharmaceutical companies, and even [the editorial board of The Wall Street Journal](https://www.wsj.com/articles/a-global-covid-vaccine-heist-11605829343), claim that the existing order is adaptable enough as it is. They point to flexibilities in the WTO rules that allow member states to override patents by issuing what is known as a “compulsory license” in the case of a public health emergency—permitting a manufacturer in the developing world, for instance, to produce a vaccine or treatment patented by a company in the West. But compulsory licenses, while useful, aren’t conducive to situations that demand swift action. The process for securing such a license is laborious: in the case of COVID-19 vaccines, for instance, manufacturers would first have to show they attempted to negotiate a voluntary license with the relevant pharmaceutical company, which has proven hard to accomplish in all but a few cases because the patent holders can simply refuse or delay the process. Even when such licenses are granted, they tend to limit the number of countries to which the generic manufacturer in a developing country can supply the product. Generic manufacturers also would have to secure a separate license for each product they sought to make. Developing countries are usually wary of issuing compulsory licenses because they fear that wealthy countries, pressured by their pharmaceutical companies, might levy trade sanctions in retaliation or lodge a case at the WTO Dispute Settlement Body claiming that the developing country has not correctly adhered to the rules of the TRIPS Agreement.

Intellectual property rules have invariably put important medications out of reach of the world’s poorest.

Those defending the current system also contend that low- and middle-income countries do not have the technical capacity to manufacture and distribute vaccines at scale, especially ones that depend on sophisticated mRNA (messenger RNA) technology, such as those from Moderna and Pfizer-BioNTech. But this argument rehearses a tired trope, the likes of which have been disproven in the past. In the 1980s, a Western firm refused to transfer vaccine technology to the Indian company Shantha Biotechnics, claiming that Shantha’s scientists would not be able to understand the required recombinant technology to produce the vaccines. Shantha subsequently went on to develop its own [recombinant vaccine for hepatitis B](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3110116/), which became available for $1 per dose and enabled UNICEF and other organizations to undertake low-cost mass vaccinations. Indeed, the Indian company [Gennova](https://www.business-standard.com/article/current-affairs/india-s-first-mrna-vaccine-for-covid-19-heads-for-human-trials-120121101210_1.html) has already entered into phase I/II clinical trials with its own mRNA COVID-19 vaccine. Alternative manufacturing capability for sophisticated COVID-19 vaccines very likely exists in the developing world.

The most familiar argument against the suspension of intellectual property rules is that such a dismissal of patent protections will kill private innovation and hurt future investment in new vaccines and technologies. But this claim, too, is unsound. [Taxpayer and nonprofit dollars](https://www.bbc.com/news/business-55170756) have significantly financed most of the leading COVID-19 vaccines, as well as the development of the [basic science](https://www.scientificamerican.com/article/for-billion-dollar-covid-vaccines-basic-government-funded-science-laid-the-groundwork/) underlying the mRNA platform. Pharmaceutical companies stepped up to the plate only after the public and nonprofit sectors had assumed the bulk of the risk. Now, Pfizer-BioNTech and Moderna are poised to rake in [$32 billion](https://www.cnn.com/2020/12/11/business/pfizer-vaccine-covid-moderna-revenue/index.html) in COVID-19 vaccine sales in 2021 alone—and much more if mRNA platforms become more prevalent in the future. Pfizer-BioNTech and Moderna may well be unwilling to enter into any technology transfer agreement precisely because they hope to cash in on mRNA technology. It would be a catastrophic moral failure—and a failure of market policy—to allow private interests to seek profits from publicly funded technology while millions perish.

#### IP is the key internal link to ending COVID – alternatives to a waiver have failed and access to materials is improved because access can’t be blocked

**Krishtel & Malpani 5/28**

Priti Krishtel is a health justice lawyer and co-founder of I-MAK, a non-profit building a more just and equitable medicines system. Rohit Malpani is Director of Policy and Analysis at Médecins Sans Frontières' (MSF) Access Campaign. “Suspend intellectual property rights for covid-19 vaccines”, <https://www.bmj.com/content/bmj/373/bmj.n1344.full.pdf>, published 5-28-21, accessed 9-11-21 // mk

The United States caught the world by surprise on 5 May 2021 when it announced its intention to support a World Trade Organization proposal that would temporarily waive intellectual property rights on covid-19 vaccines. While this move is encouraging, the Biden administration’s support is the first step of many required.1 Waiving intellectual property rights is essential to tackle serious inequity in the global distribution of covid-19 vaccines, whereby wealthy countries currently control the lion’s share of existing supplies. By the end of April, over 1.3 billion doses had been administered worldwide, but only 0.2% of vaccines had been given in low income countries.2 More than one year into the pandemic, the situation is at a low point globally. The average number of weekly deaths in April was over 36 000 in just India and Brazil,3 and variants are proliferating. Experts fear a devastating second wave across Asia and Africa.4 Voluntary action has not worked— whether timely sharing of doses with low and middle income countries or sharing knowledge through the World Health Organization. It’s time for mandatory rules and legal commitments that can help put an end to this pandemic. The proposed intellectual property waiver is appropriate as vaccine manufacturers have relied heavily on publicly funded research into coronaviruses.5 Together, companies holding intellectual property rights are estimated to have benefited from government funding of around €93bn (£80bn; $110bn).6 The Moderna vaccine was funded almost exclusively by the US government.7 A successfully negotiated intellectual property waiver would ensure manufacturers cannot block production or access to raw materials and finished products for covid-19 technologies worldwide. A waiver would also prevent companies from charging unaffordable prices while insulated from competition. Lack of competition in the vaccines market has a long history. Previously, the two companies with a duopoly for the human papillomavirus (HPV) vaccine8 held patents that prevented competition. According to one estimate, low income countries paid up to 10 times the estimated cost of production for these vaccines.9 Millions of girls globally are still unable to access this critical protection against cervical cancer. Similarly, Pfizer successfully enforced secondary patents on its pneumococcal vaccine through legal proceedings in India10 and South Korea,11 which delayed competition. Pneumonia remains the leading cause of death globally among children under 5 years old.12 Many middle income countries have low coverage because of the high price of the vaccine, often 5-10 times higher than the lowest price available globally.13 Inadequate access to essential vaccines is predictable in a system that prioritises monopolies—and this will repeat itself in the absence of an intellectual property waiver for covid-19 vaccines. Key features A successfully negotiated waiver would meet four important criteria. The waiver’s primary aim should be to save as many lives as possible. The Biden administration wants the waiver to focus on vaccines. This constraint should be removed. The original proposal applies to all medical technologies related to covid-19, including diagnostics, medicines, and ventilators. Many people are likely to become sick even if vaccination rates improve worldwide. Secondly, negotiations should be completed quickly. Governments shouldmake substantial progress ahead of the WTO meeting on 8 June 2021. Thirdly, any waiver should be straightforward, unambiguous, for a reasonable duration, and limit manufacturers’ ability to file legal challenges that impede access. Finally, negotiating texts should be fully disclosed, with negotiations transparent to ensure all countries negotiate as equals. In the past, powerful nations have used their leverage to extract concessions from less powerful countries behind closed doors.14 Opponents of a waiver question whether manufacturers in lower income countries have the required capabilities. This argument was also made in the 1980s when Merck and GSK dominated the market for complex recombinant hepatitis B vaccines. It was discredited in 1997, when Indian manufacturer Shantha Biotechnics launched a vaccine that reduced the cost of a dose from up to $23 to just $1. Many millions of people worldwide have since been successfully immunised.15 Manufacturers in low and middle income countries are already critical to overall immunisation efforts worldwide: in 2018, they provided over half of the 2.4 billion vaccine doses procured by Unicef.16 Suppliers worldwide are gearing up to meet this moment. New mRNA vaccines are under development in India17 and China,18 and several companies in middle income countries are already manufacturing covid-19 vaccines.19 20 WHO is establishing a technology transfer hub to support local production of mRNA vaccines.21 Although follow-on manufacturers can produce complex vaccines without support from holders of technology, sharing knowledge would save time and lives. As we enter into a new era of global pandemics, we must fundamentally rethink the global intellectual property system. The ability to respond swiftly to global crises cannot be left to a handful of private companies in a few wealthy countries. We need a more cooperative global response to this and future public health emergencies.

#### Medicinal IP is broken – existing practices harm innovation rather than promoting it – evergreening, product hopping, patent thickets, pay-for-delay

**Richards et al 20** [ Kevin T. Richards, Coordinator is a Legislative Attorney Kevin J. Hickey is a Legislative Attorney Erin H. Ward  is a Legislative Attorney Drug Pricing and Pharmaceutical Patenting

Practices [https://fas.org/sgp/crs/misc/R46221.pdf 2/11/2020](https://fas.org/sgp/crs/misc/R46221.pdf%202/11/2020) Congressional Research Service ] // aaditg // rct mk

Intellectual property (IP) rights in pharmaceuticals are typically justified as necessary to allow manufacturers to recoup their substantial investments in research, development, and regulatory approval. IP law provides exclusive rights in a particular invention or product for a certain time period, potentially enabling the rights holder (e.g., a brand-name drug manufacturer) to charge higher-than-competitive prices. If rights holders are able to charge such prices, they have an incentive to lengthen the period of exclusive rights as much as possible. Indeed, some commentators allege that pharmaceutical manufacturers have engaged in patenting practices that unduly extend the period of exclusivity. These critics argue that these patenting practices are used to keep drug prices high, without any benefit for consumers or innovation. Criticisms center on four such practices: • “Evergreening”: So-called patent “evergreening” is the practice of filing for new patents on secondary features of a particular product as earlier patents expire, thereby extending patent exclusivity past the original twenty-year term. Later-filed patents may delay or prevent entry by competitors, thereby allowing the brand-name drug manufacturer (the brand) to continue charging high prices. • “Product Hopping”: Generic drug manufacturers allege that as patents on a particular product expire, brand manufacturers may attempt to introduce and switch the market to a new, similar product covered by a later-expiring patent—a process known as “product hopping” or “product switching.” This practice takes two forms: a “hard switch,” where the older product is removed from the market, and a “soft switch,” where the older product is kept on the market with the new product. In either case, the brand will focus its marketing on the new product in order to limit the market for any generic versions of the old product. • “Patent Thickets”: Generic and biosimilar companies also allege that the brands create “patent thickets” by filing numerous patents on the same product. These thickets allegedly prevent generics from entering the market due to the risk of infringement and the high cost of patent litigation. • “Pay-for-Delay” Settlements: Litigation often results when a generic or biosimilar manufacturer attempts to enter the market with a less expensive version of a branded pharmaceutical. Core issues usually include whether the brand’s patents are valid, and whether the generic or biosimilar product infringes those patents. Rather than litigate these issues to judgment, however, the parties will often settle. Such settlements may involve the brand paying the generic or biosimilar to stay out of the market—referred to as “reverse payment” or “pay-for-delay” settlements. These settlements are allegedly anticompetitive because they allow the brand to continue to charge high prices without risking invalidation of its patent, thus unjustifiably benefiting the settling companies at the expense of the consumer.

#### Strong IP rights promote monopolies, stifling innovation

**Mercurio 14**

Bryan Mercurio is a Law Professor at The Chinese University of Hong Kong, “TRIPs, Patents, and Innovation: A Necessary Reappraisal?” <https://e15initiative.org/wp-content/uploads/2015/09/E15-Innovation-Mercurio-FINAL.pdf>, published 2014, accessed 9-24-21 // mk

Identifying the factors that stimulate innovation is difficult (Lemley 2000), and attention must be paid to the different kinds of innovation--cumulative innovation; horizontal (basic) innovation; and vertical (applied) innovation. The impact of patent protection can differ on each of these types of innovation. For instance, where cumulative innovation occurs--that is, where a single product may rely on inventions owned by a number of firms--“there is good reason to think that the patent system may discourage innovation overall rather than encouraging it” (Bessen and Maskin 2009; Chu et al. 2012). Shapiro (2001) finds that “with cumulative innovation and multiple blocking patents, stronger patent rights can have the perverse effect of stifling, not encouraging innovation.” In such a situation, multiple licences have to be purchased; uncertainty regarding the status of the technology persists; and the value of patent licensing is questioned (Heller 2008; Boldrin and Levine 2008). Lawsuits become the norm; costs rise as firms defend claims and play the game by defensively purchasing patents; and innovation suffers (Boldrin and Levine 2013; Bessen and Muerer 2008). One only needs to look at the present situation in the high-tech sector to see this cycle playing out, where as much as US$20 billion was spent in 2010-11 on patent litigation and purchases, and where a “patent tax” of up to 20 percent of R&D costs exists (Duhigg and Lohr 2012). That a limited monopoly can stifle innovation should not come as a surprise given that competition is generally seen as a positive force in a market economy. Competition is widely thought to provide incentives for the efficient use of resources; motivation for constant progress; and protection for consumers (Vickers 1995). To some, there is an inherent contradiction between innovation and patent protection, as the latter impedes diffusion and obviates potential gains to be made from collaboration and competition (Rothbard 1962; Mises 1966; Palmer 1989; Lemley 2000; Stiglitz 2008). Thus, while Shumpeter acknowledges that competition for innovation led to temporary monopolies and argues that these monopolies were in turn replaced when new firms further innovated (1976), Stiglitz demonstrates that the established monopolies became entrenched as costs and externalities reduced incentives for displacement (Stiglitz and Walsh 2005). In turn, insufficient diversity among patent holders (a lack of so-called “equilibrium diversity”) encourages them to focus R&D on improving existing technologies through incremental improvements, as opposed to investing in R&D to develop new technologies and products (Acemoglu 2011).In essence, this is what the European Commission alleged in its prosecution of Microsoft for anti-competitive behaviour. There, the Commission deemed Microsoft to be a dominant player, which used its near-monopoly power to reduce “talent and capital invested in innovation” in a manner that “limits the prospects for ... competitors to successfully market innovation and thereby discourages them from developing new products” (2004). The negative effect on innovation is exacerbated by a number of factors, including the growing problem of patent thickets. Owing to the“difficulty of determining the boundaries” of patent claims, there are often multiple and competing claims over one or more aspects of an invention- -situations which, Stiglitz states, “especially impede innovation” (2008). While patent thickets have existed for more than a hundred years (a patent thicket impeded the development and commercialization of the airplane), they have more recently become particularly widespread in the electronics industry (GAO 2013). Other factors, such as defensive patenting and the extortion-like practices of socalled patent trolls, have likewise substantially increased the risk of net welfare loss and less innovation (Bessen et al. 2011; Tucker 2011). Recent studies even find that patent pool arrangements result in reduced innovation by member-firms (Lampe and Moser 2010; Joshi and Nerkar 2011; Lampe and Moser 2012). Evidence also exists to show that stronger patent protection leads not to enhanced innovation or an improvement in overall welfare, but to firms protecting their interests by advocating even more protection (Landes and Posner 2003). In so doing, firms divert resources away from R&D, and into lobbyists and lawsuits. Boldrin and Levine (2013) refer to this as the political economy effect, where patent protection keeps increasing due to the lobbying efforts of entrenched firms, and without regard to the system as a whole. In their view, such behavior distorts the optimum range of protection and unbalances the entire system. In conclusion, while it is a certainty that patent protection increases patent applications and the number of patents granted, there is little to no solid evidence that it leads to increased innovation (Boldrin and Levine 2013; Scherer 2009; Lerner 2009; Gallini 2002; Jaffe 2000). Since the evidence suggests that “policy changes that strengthen patent protection … [do] not spur innovation” (Lerner 2002; UNCTAD 2011), it is unsurprising that “there is widespread unease that the costs of stronger patent protection may exceed the benefits” (Jaffe 2002). POTENTIAL RESPONSES To establish the economic significance and value of patents, it is necessary to weigh their social costs against their social benefits. Hall et al. (2012) explain, In principle a patent will function to increase fixed (and most likely sunk) costs of entry into a market where the invention protected by the patent is practiced. This will reduce entry and therefore competition. From a welfare perspective, this is the price society pays in order to encourage invention and innovation by the initial entrant. What results is a trade‐off between the interests of the incumbent holding the patent and the potential entrant excluded by it. In the case of patents, policy makers need to come to a view of how much protection to afford the patentee in order to create incentives for R&D. Given the trade-off between innovation and access, policy should be designed to reach the “optimal scope of IPRs protection”--that is, a “balance between the social benefit of innovation and the social cost of monopolistic distortion” (Nordhaus 1969). It is this balance that some believe is now lopsided. This section focuses on what can be done within the confines of the WTO to ensure that patent protection stimulates innovation and that the benefits are in balance with social costs. It goes beyond merely describing the available flexibilities offered by TRIPS to Members or analyzing the use of such tools. This work has been done (Mercurio 2013; Declaration on Patent Protection 2014), but does not go to the heart of the issue-- that of the link between IPRs and innovation. Moreover, given the definitional vagueness and uncertainty of the boundaries of patent claims and rights, countries have become risk averse and are unlikely to take action that may be viewed as inconsistent with the TRIPS Agreement. The discussion and debate must now move beyond the well-known but little used flexibilities to encompass the broader and more fundamental issue of whether IPRs--and correspondingly the TRIPS Agreement-- actually encourage innovation. In a sense, all the potential responses are radical in that they all require a shift from the status quo and amendment to the TRIPS Agreement. For this reason, none are likely to be feasible in the short, and perhaps even medium, term. This does not mean that potential responses should not be discussed. As the economic data and evidence against the current form and level of patent protection mounts, alternatives will become more realistic options. Radical proposals aimed at promoting innovation deserve to feature in the debate. The remainder of this section raises four alternatives to the status quo for discussion.