# Newman Smith R2 – 1NC v Strake OZ

## 1

#### The medical industry is colonial and biocapitalist in its structure – any attempt to reform the system misses the root cause

Chaudhuri et al 7/8/21 (Monica Mitra Chaudhuri, Orillia Soldiers' Memorial Hospital in Ontario, Canada. Laura Mkumba, Science Facilitation in North Carolina, Yadurshini Raveendran, Clinical Operations, FHI Clinical Inc, Robert D Smith Department of Anthropology and Sociology, Graduate Institute of International and Development Studies), “Decolonising global health: beyond ‘reformative’ roadmaps and towards decolonial thought”, BMJ Global Health, http://dx.doi.org/10.1136/bmjgh-2021-006371, <https://gh.bmj.com/content/6/7/e006371.full> NT

It is important to explicitly address white supremacy, racism, sexism, capitalism and other oppressive ideologies in the process of decolonisation. These concepts exist(ed) as rationalising centres in the formation of colonial epistemologies. **Scholars have noted how the global health industry’s predecessors, tropical medicine and international health, existed as tools to extract resources for capitalist agendas.** The industry was grounded on the premise of protecting colonisers from rampant, tropical illnesses as they pillaged land and resources around the globe. For example, the Gorgas campaign to eradicate yellow fever in Cuba in the early 1900s was concerned more with the health of foreign white Americans than the indigenous population. Many of whom were immune and did not consider it to be a priority health issue. Although such campaigns may have been successful in eradicating disease, they tended to be unwanted and enforced by military authority.5 The global health industry continues to be colonial in its structure, and this power dynamic is even more pronounced in the field now than in the past. The ongoing oppression and exploitation of racialised people, particularly black and indigenous have constructed modern medicine and public health and contributed to the economic gain of colonial powers. **In addition, enslaved and colonised people were used as test subjects for medical experimentation and medical and scientific advancement.** This is evidenced by J. Marion Sims, the ‘father of modern gynaecology,’ who experimented on unanesthetised, enslaved black women without their consent.6 Scholars have theorised how today we have entered an era of ‘biocapitalism;’ specifically, before health equity can be discussed, **the health of a body must first be made available to capitalism** as an object of intervention for monetary extraction.7 Today, the global health industry’s priorities are determined by and for the richest and most powerful nations. This has been demonstrated by the current COVID-19 pandemic and the inequities in the production and distribution of vaccines. Pharmaceutical monopolies and intellectual property restrictions have caused significant shortages and restrictions. A waiver of such intellectual property restrictions has been opposed by large pharmaceutical companies and rich nations. At the time of writing, the vast majority of vaccine doses have been purchased by wealthy nations, while poorer countries have been forced to wait their turn; or, depend on the ‘benevolence’ and ‘generosity’ of richer countries as they donate unused doses.8 The COVID-19 pandemic has again illustrated how white supremacy, racism, sexism and capitalism still remain tied as central, rationalising logics for the global health industry. For example, ‘lower-ranking’ healthcare workers such as custodial staff and nurses, who tend to be women of colour, have been disproportionately affected by the disease. While these workers have been essential in the medical response to the pandemic, they often received less institutional protection by not being provided adequate personal protection equipment.9 Examples of the contemporary global health industry indicate that colonial power was not merely a one-off event, but has persisted in a continuum that has reallocated these dimensions of power to new forms of health administration. This also indicates that, while the contours of capitalism are blatantly clear in some examples of COVID-19, they also become hidden within further structures such as **philanthro-capitalism**. At present, the Institute of Health Metrics and Evaluation (IHME)—largely funded by the Bill & Melinda Gates Foundation as well as pharmaceutical companies and the oil industry—has become a trusted source of global health data, eclipsing governments and the WHO.10 The IHME produces data that is based on complex modelling that cannot be replicated or adequately peer-reviewed due to a lack of transparency and the large capacity required to do so.11 Further, the Gates Foundation intervened in Oxford’s COVID-19 vaccine trial funding to mandate a commercial patent and at the time of writing continues to oppose intellectual property waivers.12 The concepts of white supremacy, racism, sexism and capitalism were not addressed in Khan et al’s commentary; yet, we believe these should be the centre of the discussion. Equity and justice were not, and currently are not, the aim of global health; despite the wide ranging utopic brandings of health equity programmes within the global health industry, **the underlying determinants produced by the conditions of possibility of white supremacy, racism, sexism and capitalism are still ever present, creating a power which forecloses the ability to realise health equity.** To realise a decolonised global health, if ever, we suggest these are the concepts to address. Now, we turn to Khan et al’s roadmap to review what this roadmap can and cannot do to the coloniality of the global health industry. Deconstructing the decolonising global health roadmap Khan et al propose a three-step roadmap which calls to (1) ‘identify specific ways in which organisations active in global health play interlinked roles in perpetuating inequity,’ (2) ‘publish a clear list of reforms required to decolonise global health practice’ and (3) ‘develop metrics to track the progress of organisations.’ To analyse this roadmap, we will work backwards from the third recommendation to analyse first what this may do to the practice of global health, and later to the distribution of power within global health. Our aim is to provide a grounded perspective that more thoroughly recognises the possibilities and limitations of these tools. Historically, the global health industry has prioritised the importance of health metrics since they were appropriated to ‘colonial health programmes that gave birth to statistics practices’.13 Because metrics work to create a ‘wide range of phenomena (that) are pushed inside and outside of visibility,‘ metrics become ‘a form of politics in their own right.’ As evidenced by the example of the IHME above, the definition of metrics can remain malleable to the ‘administrative and worldly aspirations’ of the coloniality of the global health industry to this day. Therefore, the colonial logics of capital are immediately inscribed into the epistemology and analysis of global health metrics. With capitalism providing the outlines of metrical logic, metrics become a paradoxical and inherently flawed tool to address the concept of coloniality. While we acknowledge that there is a role for metrics, **we worry that such quantification risks being coopted to preserve power structures in the name of decoloniality.** More so, we firmly believe that colonial histories and their intersections within the contemporary global health industry cannot be quantified and as such metrics cannot fully lead to a process of decolonisation.

#### Any attempt to work with the WTO ensures a revitalization of capitalism and prevents effective revolution against the state – they’ve misunderstood the root cause of their impacts.

Bachand 20. Remi Bachand is Professor of International Law at the University of Quebec. “What’s Behind the WTO Crisis? A Marxist Analysis” European Journal of International Law, Volume 31, Issue 3, August 2020, Pages 857–882, https://doi.org/10.1093/ejil/chaa054//vg

To offer our own explanation, we must recall two aspects of our theoretical framework. The first is Robert Cox’s claim113 that the function of international organizations is to ensure the creation and reproduction of hegemony. To be more accurate, they serve, if we follow his argument, to defend and to expand the ‘mode of production’ (we elected to substitute this term for the concept of ‘regime of accumulation’ that appears to be more appropriate for our means) of the dominant social classes of the dominant state. Joining this idea with the école de la régulation and social structure of accumulation theory writing114 according to which a regime of accumulation needs some regulation institutions to help resolve its contradictions (and ensure profits and capital accumulation to dominant social classes), we can conclude that the Geneva organization’s function in the US hegemonic order is to make sure that neoliberalism works well enough to provide a satisfying rate of profit for US capitalists. Going in that direction, Kristen Hopewell shows that the WTO’s creation participated in a shift in global governance from ‘embedded liberalism’ to neoliberalism115 and was slated to be an important part of that governance. Using the conceptual framework developed earlier, we can infer that the WTO was thus given a regulation function that was to ensure the operationalization of counteracting factors to the fall of the rate of profit for US capitalists. Now, as we have seen, the US rate of profit has been extremely unstable in the last two decades and Chinese expansion (and that of other ‘emerging countries’) allows one to predict that the situation could easily worsen in the future. Consequently, it should come as no surprise that the crisis that has been striking neoliberalism for the last 20 years may also result in a crisis of the organizations that are supposed to manage its contradictions, especially the WTO. Concretely, this organization seems unable to fulfil its regulatory function anymore, which is to ensure US capitalists a good rate of profit and opportunities to operationalize enough counteracting factors to negate its fall. To go further, we now need to return to Stephen Gill’s claim that the function of an international organization is to limit political and economic possibilities. It is to exclude, in other words, options that are incompatible with the social order promoted by the hegemon from what is possible and achievable.116 Effectively, the WTO was created to play such a role. Indeed, promoting liberalization of goods and services, protecting (notably intellectual) property rights and attacking subsidies (in non-agriculture sectors), just to give a few examples, all serve to severely reduce state interventions into the economy and to circumscribe or at least to strongly impede the turn towards an alternative model to neoliberalism. In conformity with this, when China adhered to the WTO in 2001, there was a strong hope from other Members that it would adopt important economic reforms. A single example should be enough to show this optimism. Since other WTO Members feared that the Chinese economic structure gave it advantages in the short term, its protocol of accession included some particular ways to determine price comparability under anti-dumping rules,117 as well as to identify and determine the subsidy benefit under the Agreement on subsidies and countervailing measures.118 Interestingly though, these provisions were expected to end the moment China could establish itself as a market economy or, ‘[i]n any event […] 15 years after the date of accession’.119 After that delay, China was expected to have sufficiently changed its economy so that such a rule would not be needed any more. Yet, and unfortunately for these other Members, the changes were not what they expected. To quote Andrew Lang: the expectation of its most important trading partners was evidently that its economic system would evolve in the direction of marketization, perhaps at an accelerated rate. However, economic reform in China has in fact taken place in an experimental and unexpected manner, with the result that the emergent form of market capitalism appears to Western eyes as an unfamiliar hybrid, often termed ‘State Capitalism’.120 Actually, their discontent comes not only from the objective and observable fact that the WTO has been unable to force China to radically change its regime of accumulation the way it wanted; it is also related to some (controversial) AB rulings concerning the implication between state and economy.

#### Best studies prove capitalism causes war, violence, decreased value to life, environmental destruction and extinction – it’s the greatest threat to society and is an a priori impact under any framework.

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The COVID19 pandemic has exposed a strange anomaly in the global economy. If it doesn’t keep growing endlessly, it just breaks. Grow, or die. But there’s a deeper problem. New scientific research confirms that capitalism’s structural obsession with endless growth is destroying the very conditions for human survival on planet Earth. A landmark study in the journal Nature Communications, “Scientists’ warning on affluence” — by scientists in Australia, Switzerland and the UK — concludes that the most fundamental driver of environmental destruction is the overconsumption of the super-rich. This factor lies over and above other factors like fossil fuel consumption, industrial agriculture and deforestation: because it is overconsumption by the super-rich which is the chief driver of these other factors breaching key planetary boundaries. The paper notes that the richest 10 percent of people are responsible for up to 43 percent of destructive global environmental impacts. In contrast, the poorest 10 percent in the world are responsible just around 5 percent of these environmental impacts: The new paper is authored by Thomas Wiedmann of UNSW Sydney’s School of Civil and Environmental Engineering, Manfred Lenzen of the University of Sydney’s School of Physics, Lorenz T. Keysser of ETH Zürich’s Department of Environmental Systems Science, and Julia K. Steinberger of Leeds University’s School of Earth and Environment. It confirms that global structural inequalities in the distribution of wealth are intimately related to an escalating environmental crisis threatening the very existence of human societies. Synthesising knowledge from across the scientific community, the paper identifies capitalism as the main cause behind “alarming trends of environmental degradation” which now pose “existential threats to natural systems, economies and societies.” The paper concludes: “It is clear that prevailing capitalist, growth-driven economic systems have not only increased affluence since World War II, but have led to enormous increases in inequality, financial instability, resource consumption and environmental pressures on vital earth support systems.” Capitalism and the pandemic Thanks to the way capitalism works, the paper shows, the super-rich are incentivised to keep getting richer — at the expense of the health of our societies and the planet overall. The research provides an important scientific context for how we can understand many earlier scientific studies revealing that industrial expansion has hugely increased the risks of new disease outbreaks. Just last April, a paper in Landscape Ecology found that deforestation driven by increased demand for consumption of agricultural commodities or beef have increased the probability of ‘zoonotic’ diseases (exotic diseases circulating amongst animals) jumping to humans. This is because industrial expansion, driven by capitalist pressures, has intensified the encroachment of human activities on wildlife and natural ecosystems. Two years ago, another study in Frontiers of Microbiology concluded presciently that accelerating deforestation due to “demographic growth” and the associated expansion of “farming, logging, and hunting”, is dangerously transforming rural environments. More bat species carrying exotic viruses have ended up next to human dwellings, the study said. This is increasing “the risk of transmission of viruses through direct contact, domestic animal infection, or contamination by urine or faeces.” It is difficult to avoid the conclusion that the COVID19 pandemic thus emerged directly from these rapidly growing impacts of human activities. As the new paper in Nature Communications confirms, these impacts have accelerated in the context of the fundamental operations of industrial capitalism. Eroding the ‘safe operating space’ The result is that capitalism is causing human societies to increasingly breach key planetary boundaries, such as land-use change, biosphere integrity and climate change. Remaining within these boundaries is essential to maintain what scientists describe as a “safe operating space” for human civilization. If those key ecosystems are disrupted, that “safe operating space” will begin to erode. The global impacts of the COVID19 pandemic are yet another clear indication that this process of erosion has already begun. “The evidence is clear,” write Weidmann and his co-authors. “Long-term and concurrent human and planetary wellbeing will not be achieved in the Anthropocene if affluent overconsumption continues, spurred by economic systems that exploit nature and humans. We find that, to a large extent, the affluent lifestyles of the world’s rich determine and drive global environmental and social impact. Moreover, international trade mechanisms allow the rich world to displace its impact to the global poor.” The new scientific research thus confirms that the normal functioning of capitalism is eroding the ‘safe space’ by which human civilisation is able to survive. The structures The paper also sets out how this is happening in some detail. The super-rich basically end up driving this destructive system forward in three key ways. Firstly, they are directly responsible for “biophysical resource use… through high consumption.” Secondly, they are “members of powerful factions of the capitalist class.” Thirdly, due to that positioning, they end up “driving consumption norms across the population.” But perhaps the most important insight of the paper is not that this is purely because the super-rich are especially evil or terrible compared to the rest of the population — but because of the systemic pressures produced by capitalist structures. The authors point out that: “Growth imperatives are active at multiple levels, making the pursuit of economic growth (net investment, i.e. investment above depreciation) a necessity for different actors and leading to social and economic instability in the absence of it.” At the core of capitalism, the paper observes, is a fundamental social relationship defining the way working people are systemically marginalised from access to the productive resources of the earth, along with the mechanisms used to extract these resources and produce goods and services. This means that to survive economically in this system, certain behavioural patterns become not just normalised, but seemingly entirely rational — at least from a limited perspective that ignores wider societal and environmental consequences. In the words of the authors: “In capitalism, workers are separated from the means of production, implying that they must compete in labour markets to sell their labour power to capitalists in order to earn a living.” Meanwhile, firms which own and control these means of production “need to compete in the market, leading to a necessity to reinvest profits into more efficient production processes to minimise costs (e.g. through replacing human labour power with machines and positive returns to scale), innovation of new products and/or advertising to convince consumers to buy more.” If a firm fails to remain competitive through such behaviours, “it either goes bankrupt or is taken over by a more successful business. Under normal economic conditions, this capitalist competition is expected to lead to aggregate growth dynamics.” The irony is that, as the paper also shows, the “affluence” accumulated by the super-rich isn’t correlated with happiness or well-being. Restructure The “hegemonic” dominance of global capitalism, then, is the principal obstacle to the systemic transformation needed to reduce overconsumption. So it’s not enough to simply try to “green” current consumption through technologies like renewable energy — we need to actually reduce our environmental impacts by changing our behaviours with a focus on cutting back our use of planetary resources: “Not only can a sufficient decoupling of environmental and detrimental social impacts from economic growth not be achieved by technological innovation alone, but also the profit-driven mechanism of prevailing economic systems prevents the necessary reduction of impacts and resource utilisation per se.” The good news is that it doesn’t have to be this way. The paper reviews a range of “bottom-up studies” showing that dramatic reductions in our material footprint are perfectly possible while still maintaining good material living standards. In India, Brazil and South Africa, “decent living standards” can be supported “with around 90 percent less per-capita energy use than currently consumed in affluent countries.” Similar possible reductions are feasible for modern industrial economies such as Australia and the US. By becoming aware of how the wider economic system incentivises behaviour that is destructive of human societies and planetary ecosystems critical for human survival, both ordinary workers and more wealthy sectors — including the super-rich — can work toward rewriting the global economic operating system. This can be done by restructuring ownership in firms, equalising relations with workers, and intentionally reorganising the way decisions are made about investment priorities. The paper points out that citizens and communities have a crucial role to play in getting organised, upgrading efforts for public education about these key issues, and experimenting with new ways to work together in bringing about “social tipping points” — points at which social action can catalyse mass change. While a sense of doom and apathy about the prospects for such change is understandable, mounting evidence based on systems science suggests that global capitalism as we know it is in a state of protracted crisis and collapse that began some decades ago. This research strongly supports the view that as industrial civilization reaches the last stages of its systemic life-cycle, there is unprecedented and increasing opportunity for small-scale actions and efforts to have large system-wide impacts. The new paper shows that the need for joined-up action is paramount: structural racism, environmental crisis, global inequalities are not really separate crises — but different facets of human civilization’s broken relationship with nature. Yet, of course, the biggest takeaway is that those who bear most responsibility for environmental destruction — those who hold the most wealth in our societies — urgently need to wake up to how their narrow models of life are, quite literally, destroying the foundations for human survival over the coming decades.

#### The alternative is to embrace non-reformist reform and undermine the colonial, capitalist logics of global health industry

Chaudhuri et al 7/8/21 (Monica Mitra Chaudhuri, Orillia Soldiers' Memorial Hospital in Ontario, Canada. Laura Mkumba, Science Facilitation in North Carolina, Yadurshini Raveendran, Clinical Operations, FHI Clinical Inc, Robert D Smith Department of Anthropology and Sociology, Graduate Institute of International and Development Studies), “Decolonising global health: beyond ‘reformative’ roadmaps and towards decolonial thought”, BMJ Global Health, http://dx.doi.org/10.1136/bmjgh-2021-006371, <https://gh.bmj.com/content/6/7/e006371.full> NT

In this final section, we suggest different conceptual frames for decolonisation. Thus far in the decolonising global health literature, decolonisation often appears to insinuate white supremacist, racist, sexist and capitalist structures of oppressive power. If this is the case, in addition to Fanon, it may be helpful to engage other social theorists in their attempts to analyse oppression and power. However, we caution that our explanation of these theories in this commentary is simplified; to fully comprehend and make use of these theories within the global health industry would require time spent carefully reading, and processes of institutional and self-introspection alongside this theory. First, Michel Foucault’s analyses of power may be useful to think with to understand how power functions within the global health industry. Specifically, Foucault speaks of the emergence of ‘biopower’ in the ability of governments—national or otherwise —to make worthy populations live and let unworthy populations die.14 Further, Achille Mbembe speaks of necropower, in the ability of governments to kill unworthy populations while making worthy populations live.15 Calling on these theories, with the analytical lens of the aforementioned concepts of white supremacy, racism, sexism and capitalism, organisations must comprehend where they exist within these structures of power, and how they contribute to them. As opposed to a selective or industry wide check-list, this would push for a necessary analysis of power embedded within individuals and organisations. Analysing the intersections of power within particular organisations may provide more scope for ‘reform.’ However, it is essential to avoid reconstructing existing systems of power and as such failing to remove colonial power. Instead, it would be more useful to **embrace concepts such as ‘non-reformist reform.**’ As defined by Gorz, these are reforms that aim ‘**to break it up, to restrict it, to create counter-powers** which, instead of creating new equilibrium, **undermine its very foundations**.’16 To put non-reformist reforms into practice Paulo Freire’s The Pedagogy of the Oppressed suggests environments of radical openness to alterity, whereby a diverse group of individuals are engaged in decision making processes and voices are provided with equal merit and consideration regardless of the form of presentation.17 Through this lens, the Global Health industry must open up further spaces for voice, and shift away from the Eurocentric cultures insisting on ‘professional’ dress, presentation of speech, modes of argumentation and ‘correct’ formats and literature to be used when disseminating ideas. To create such environments of radical openness, representation must be brought forth through reparations, repatriation of indigenous land, abolition of oppressive systems and more. The conceptual frameworks of (post)colonial theory, power and oppression must be incorporated into discussions about decolonising global health if the movement is serious about its aims. Each of the frameworks detailed here can begin to guide the global health industry in undergoing the process of decolonisation to realise Fanon’s moment of colonial departure. Fanon’s reference to the ‘thing,’ today perhaps best recognised in the global health industry’s ‘beneficiary,’ can be analysed through the concepts of biopower and necropower that detail how a population comes to be seen as (un)worthy. Using Fanon’s language, ‘to completely call into question the colonial situation,’ dismantling the colonial logics of the global health industry may be productively thought of by ‘undermining its very foundations’ in Gorz’s non-reformist reform. Finally, to ‘transform spectators into privileged actors’ as Fanon calls for, the Global Health industry can think with Freire to create environments of radical openness to alterity. **The danger of not being responsive to these theories is that ‘reform’ will remain confined to the epistemologically familiar—more often than not in the form of the reappropriation of violent colonial technologies.** Nonetheless, even when calling on these theories, we still urge for a form of continuous reflection of the intersections of power. What may succeed in reducing oppression somewhere may further it elsewhere, and must be continuously reflected on throughout any attempted decolonial process. With the haste of hopeful optimism, we might also begin to imagine that a fully decolonised global health is when there is no global health industry at all—perhaps this could be the ‘moment’ of departure.

#### The ROTJ is to break down neoliberal systems of power. Debate should be a pedagogical space in which to produce emancipatory education and nurture radical agency—our framing is a pre-requisite to ethical political engagement, necessary for anti-capitalist solidarity, and determines whether the project of the 1AC is a good idea.

**Giroux 20.** [Henry Armand Giroux is an American and Canadian scholar and cultural critic. One of the founding theorists of critical pedagogy in the United States, he is best known for his pioneering work in public pedagogy, cultural studies, youth studies, higher education, media studies, and critical theory. 6-19-2020. Accessed 12/30/2020. “Racist Violence Can’t Be Separated from the Violence of Neoliberal Capitalism” <https://socialistproject.ca/2020/06/racist-violence-neoliberal-capitalism//vg>

It should be clear that questions of economic and social justice cannot be addressed by a neoliberal pedagogy that enshrines self-interest and privatization while converting every social problem into individualized market solutions or regressive matters of personal responsibility. Under neoliberalism’s disimagination machine, individual responsibility is coupled with an ethos of greed, avarice, and personal gain. One consequence is the tearing up of social solidarities, public values, and an almost pathological disdain for democracy. This radical form of privatization is also a powerful force for the rise of fascist politics because it depoliticizes individuals, immerses them in the logic of social Darwinism, and makes them susceptible to the dehumanization of those considered a threat or disposable. Just as the spread of the pandemic virus in the United States was not an innocent act of nature, neither is the rise and pervasive grip of inequality. What is clear is that neoliberal support for unbridled individualism has weakened democratic pressures and eroded democracy and equality as governing principles. Moreover, as a mode of public pedagogy, it has undercut social provisions, the social contract, and support for public goods such as education, public health, essential infrastructure, public transportation, and the most basic elements of the welfare state. As a form of pedagogical practice, neoliberalism has morphed into a form of pandemic pedagogy that sacrifices social needs and human life in the name of an economic rationality that values reviving economic growth over human rights. As a lived system of meaning and values, self-reliance and rugged individualism are the only categories available for shaping how individuals view themselves, and their relationship to others and to the planet. The individualization of everyone and the reduction of social problems to private troubles is paralleled by sanctioning a world marked by borders, walls, racism, hate, and a rejection of government intervention in the interest of the common good. Most importantly, neoliberal individualization personalizes power, creating a depoliticized subject whose only obligation as a citizen is defined by consuming and living in a world free from ethical and social responsibilities. In many ways, it does not just empty politics of any substance, it destroys its emancipatory prospects. The neoliberal strategists use education not only to mask their abuses and the effects of their criminogenic policies, they also – in a time of crisis, when dissatisfaction of the masses might lead to chaos, revolts, and dangerous levels of resistance – move dangerously close to creating the conditions for a fascist politics. The noted theologian Frei Betto is right in stating that under such conditions, “…they cover up the causes of social ills and cover up their effects with ideologies that, by obscuring causes, fuel mood in the face of the effects. That’s why neoliberalism is now showing its authoritarian face – building walls that divide countries and ethnic groups, executive power over legislature and judiciary, disinformation about digital networks, the cult of the homeland, the brazen offensive against human rights.” Neoliberalism and its regressive notion of individualism and individual responsibility has undermined the belief that human beings both make the world and can change it. The pandemic has ushered in a crisis that undermines that belief and opens the door for rethinking what kind of society and notion of politics will be faithful to the creation of a socialist democracy that speaks to the core values of justice, equality, and solidarity. Under such circumstances, private resistance must give way to collective resistance, and personal and political rights must include economic rights. If inequality is to be defeated, the social state must replace the corporate state, and social rights must be guaranteed for all. There can be no adequate struggle for economic justice and social equality unless economic inequality on a global level is addressed along with a movement for climate justice, the elimination of systemic racism, and a halt to the spiraling militarism that has resulted in endless wars. **This can only take place if the anti-democratic ideology of neoliberalism, with its collapse of the public into the private and its institutional structures of domination, are fully addressed and discredited.** Étienne Balibar is right in stating that the triumph of neoliberalism has resulted in the “death zones of humanity.” Following Balibar, what must be made clear is that neoliberal capitalism is itself a pandemic and a dangerous harbinger of an updated fascist politics. Overcoming Pandemic Pedagogy The kinds of societies that will emerge after the pandemic is up for grabs. In some cases, the crisis will give way to authoritarian regimes such as Chile, Hungary, and Turkey, all of which have used the urgency of COVID-19 as an excuse to impose more state control and surveillance, squelch dissent, eliminate civil liberties, and concentrate power in the hands of an authoritarian political class. As is well documented, history in a time of crisis also has the potential to change dominant ideologies, rethink the meaning of governance, and enlarge the sphere of justice and equality through a vision that fights for a more generous and inclusive politics. It is crucial to rethink the project of politics in order to imagine forms of resistance that are collective, inclusive and global, and capable of producing new democratic arrangements for social life, more radical values, and a “global economy which will no longer be at the mercy of market mechanisms.” This is a politics that must move beyond siloed identities and fractured political factions in order to build transnational solidarities in the service of an alternative radically democratic society. Making the pedagogical more political means challenging those forms of pandemic pedagogy that turn politics into theater, a favorite tactic of Trump. In this case, the performance works to suspend disbelief, hold power accountable, and unravel one’s sense of critical agency. Pandemic pedagogy does more than undermine critical thinking and informed judgments; it dissolves the line between the truth and lies, fantasy and reality, and in doing so, destroys the foundation for understanding, engaging, and promoting that social and economic justice. The endgame under the rubric of a pandemic pedagogy is not simply the destruction of the truth, but the elimination of democracy itself. Central to developing an alternative democratic vision is development of a language that refuses to look away and be commodified. Such a language should be able to break through the continuity and consensus of common sense and appeal to the natural order of things. At stake here is the need to reclaim both critical and redemptive elements of a radical democracy in order to address the full spectrum of violence that structures institutions and everyday life in the United States. This is a language connected to the acquisition of civic literacy, and it demands a different regime of desires and identifications to enable us to move from “shock and stunned silence toward a coherent visceral speech, one as strong as the force that is charging at us.” Of course, there is more at stake here than a struggle over meaning; there is also the struggle over power, over the need to create a formative culture that will **produce informed critical agents who will fight for and contribute to a broad social movement that will translate meaning into a fierce struggle for economic, political, and social justice**. Agency in this sense must be connected to a notion of possibility and education in the service of radical change. **Reimagining the future only becomes meaningful when it is rooted in a fierce struggle against the horrors and totalitarian practices of a pandemic pedagogy that falsely claims that it exists outside of history.** Václav Havel, the late Czech political dissident-turned-politician, once argued that politics follows culture, by which he meant that changing consciousness is the first step toward building mass movements of resistance. What is crucial here in the age of multiple crises is a thorough grasp of the notion that critical and engaged forms of agency are a product of emancipatory education. Moreover, at the heart of any viable notion of politics is the recognition that politics begins with attempts to change the way people think, act, and feel with respect to both how they view themselves and their relations to others. There is more to agency than the neoliberal emphasis on the “empire of the self,” with its unchecked belief in the virtues of a form of self-interest that despises the bonds of sociality, solidarity, and community. The US is in the midst of a political and pedagogical crisis. This is a crisis defined not only by a brutalizing racism and massive inequality, but also by a constitutional crisis produced by a growing authoritarianism that has been in the making for some time. The recent attacks by the police on journalists, peaceful protesters, and even elderly people marching for racial justice, echoes the violence of the Brownshirts in the 1930s. Let’s stop the futile debate about whether or not the US is in the midst of a fascist state and shift the register to the more serious question of how to resist it and restore a semblance of real democracy. Under such circumstances, education should be viewed as central to politics, and it plays a crucial role in producing informed judgments, actions, morality, and social responsibility at the forefront not only of agency, but politics itself. In this scenario, truth and politics mutually inform each other to erupt in a pedagogical awakening at the moment when the rules are broken. Taking risks becomes a necessity, self-reflection narrates its capacity for critically engaged agency, and thinking the impossible is not an option, but a necessity. Without an informed and educated citizenry, democracy can lead to tyranny, even fascism. Trump represents the malignant presence of a fascism that never dies and is ready to re-emerge at different times in different context in sometimes not-so-recognizable forms. The COVID-19 crisis and the pandemic of inequality and racism have revealed elements of a fascist politics that are more than abstractions. The struggle against a fascist politics is now visible in the rebellions taking place across the United States. While there are no political guarantees for a victory, there is a new sense that the future can be changed in the image of a just and sustainable society. There is a new energy for reform taking place in the aftermath of the killing of George Floyd. Massive protests for racial, economic, and social justice are emerging all over the globe. As I have argued in The Terror of the Unforeseen, at stake here is the need for these protests to transition from a pedagogical moment and collective outburst of moral anger to a progressive international movement that is well organized and unified. Such a movement must build solidarity among different groups, imagine new forms of social life, make the impossible possible, and produce a revolutionary project in defense of equality, social justice, and popular sovereignty. The racial, class, ecological, and public health crisis facing the globe can only be understood as part of a comprehensive crisis of the totality. **Immediate solutions such as defunding the police and improving community services are important, but they do not deal with the larger issue of eliminating a neoliberal system structured in massive racial and economic inequalities**. David Harvey is right in arguing that the “immediate task is nothing more nor less than the self-conscious construction of a **new political framework for approaching the question of inequality**, through a deep and profound critique of our economic and social system.” This is a crisis in which different threads of oppression must be understood as part of the general crisis of capitalism. The various protests now evolving internationally at the popular level offer the promise of new global anti-fascist and anti-capitalist movements. In the current moment, democracy may be under a severe threat and appear frighteningly vulnerable, but with young people and others rising up across the globe – inspired, energized and marching in the streets – the future of a radical democracy is waiting to breathe again. •

## 2

#### Healthcare counterfeiting are on the rise, but national regulations in the status quo combat the problem for the WTO – IP is the goldilocks enabler for sustained cooperation.

**Bentley 21**, (“The insidious problem of counterfeiting in healthcare," Raconteur, <https://www.raconteur.net/legal/intellectual-property/counterfeiting-healthcare/>) KD

**Criminal activity in healthcare has also intensified with the coronavirus pandemic**. Under Interpol’s Operation Pangea XIII, conducted last March, police, customs and **health authorities in 90 countries seized counterfeit** face masks, self-testing kits, anti-viral medication and other products worth more than $14 million, leading to 121 arrests and the closure of 2,500 weblinks and websites. National and regional regulation, and the **work of healthcare producers and law enforcement agencies** including the police and customs officials, all **provide the front-line defence against healthcare counterfeiting**. Healthcare producers use a plethora of measures to combat the problem, notably barcodes, holograms and anti-tampering devices as well as a range of fieldwork. In addition to mandatory features required by regulators for packaging, including serialisation, **pharmaceuticals giant Novartis uses overt and covert security features so country verifiers can identify falsified products**. Mobile laboratories are used by its forensic teams to analyse suspected samples in the field. A new cloud-based, mobile-enabled solution, which will accelerate the testing, detecting and reporting of false medicines to national authorities and WHO, is now being piloted. **Technology is a critical enabler in the fight against pharmaceutical crime**, says Stanislas Barro, Novartis global head of anti-counterfeiting. “Detecting falsified medicines requires state-of-the-art technology to test packaging and products in the field. We use online monitoring, like webcrawlers with customised parameters, to monitor the internet 24/7 to detect illicit sales of suspected falsified medicines using our brands,” he says. The company has also built a data analytics and visualisation dashboard to support its risk-analysis effort, he adds. **Although counterfeiters are prosecuted by law enforcement agencies, the actions of IP holders remain vital.** “We file trademarks to clearly identify our products and record our IP rights with customs authorities globally to empower them to identify suspected falsified goods,” says Myrtha Hurtado Rivas, Novartis global head of legal brand protection. “But companies like ours cannot fully shift responsibility to reduce patient risk to national law enforcers. Taking action based on IP rights is necessary, for instance to ensure rogue online pharmacies are taken down swiftly. In the majority of legal actions, **having an IP right increases the chances of success against counterfeiters**.” Legitimate pharmaceutical companies also have a duty to report confirmed incidents of falsified versions of their products to local health authorities, Novartis points out, and it has voluntarily committed to reporting these to WHO within seven days of discovery following WHO’s recommendations.

#### IP is the key tool to prevent the spread of counterfeit medicines – the 1AC removes insurance measures for companies to have the necessary standards for developing high-quality medications.

**FIFARMA 21**, Latin American Federation of Pharma Industry, represent 16 research-based biopharmaceutical companies and 11 local associations dedicated to discovering and developing innovative, quality and safe health products and services that improve the lives of patients in Latin America and the Caribbean and advocate for patient-centric, sustainable health systems characterized by high regulatory standards and ethical principles ("This is how we fight counterfeit medicines with Intellectual Property," https://fifarma.org/en/this-is-how-we-fight-counterfeit-medicines-with-intellectual-property/) KD

**The role of IP** In addition to functioning as a tool to maintain constant innovation in the industry, **IP helps reducing counterfeit medicines because medicines have better technologies and ingredients are more difficult to copy**. This means that, **through market incentives**, **the industry manages to have high quality infrastructure**, new technology and trained personnel, to **create specialized and specific medicines** and therapies, which is why they are difficult to replicate. On the other hand, political will functions as another important axis, as it must prosecute those who are making counterfeit medicines. This is achieved through a constant conversation between industry and governments. Therefore, it will be absolutely clear how to identify the authenticity of medicines. In short, **IP** **allows quality standards to be clearer and stricter, and regulators to have greater knowledge and traceability of each product that enters the market.** Through IP, you can establish a record of all products globally, which makes it easier to find possible counterfeit medicines. Consequently, the **best way to fight counterfeit medicines is through accessing the best quality medicines** and for this to happen, an ecosystem between countries, regulators and industry is needed. This ecosystem shall take into account the structural deficiencies of each country and addresses them in a holistic manner, to provide the best quality medicines. In the end, with the Intellectual Property associated with the creation of the product, there are also associated standards of transparency and detailed information that every regulatory agency can access. Moreover, the value chains will receive all this information in order to be aware of the appearance of products that are not registered with the standards of a product protected by IP. Also, **IP helps to combat counterfeit medicines internationally, since there are laws that cover all member countries of the United Nations and punish more severely those who commit this crime.** Likewise, these laws provide countries with the necessary mechanisms to take concrete action once a counterfeit medicine is discovered. This, of course, must go hand in hand with the political will of each country, because only with collaboration between different actors will it be possible to prosecute the entire chain of counterfeit medicines.

#### Falsified medicines impact global heath access and expands health inequalities by harming those that need medications the most.

Rahman et al 18, Researcher and Post-Doctoral Fellow at Kanazawa University ("The health consequences of falsified medicines‐ A study of the published literature," Wiley Online Library, <https://onlinelibrary.wiley.com/doi/full/10.1111/tmi.13161>) KD

It is clear from the results of this study that **falsified medicines impact both directly and indirectly on global public health and remain a serious problem**. **A wide range of medicines** has been falsified in a variety of ways, and our **findings may be helpful to identify particular causes for concern, such as deliberate or accidental contamination with ethylene glycol**. Although many of the reports identified in our study only provided seriously inadequate or even conflicting data, we believe this study of reported drug falsification incidents involving health damage will be useful to focus attention on the potential scale of the problem, and may provide a basis for further studies in the future. **Recognition of the problem, coordination of responses and active engagement of key stakeholders will be essential in combating transnational pharmaceutical crime,** **and reducing the human cost of falsified medicines.**

## 3

#### CP Text: The member nations of the World Trade Organization ought to establish public-private partnerships between pharmaceutical companies and governmental ministries.

#### Patent waivers are insufficient to solve unequal COVID vaccine distribution – public-private partnerships boost innovation to speed up vaccination – prefer my ev, it’s *comparative*

Rubin and Saidel 8/31/21 (Harvey Rubin M.D. Ph.D. is a Professor of Medicine and Computer Science at the University of Pennsylvania. Nicholas Saidel J.D. is the Associate Director for the Institute for Strategic Threat Analysis & Response (ISTAR) at the University of Pennsylvania), “Innovation beyond patent waivers: Achieving global vaccination goals through public-private partnerships”, Brookings Institution, Reimagining Modern-day Markets and Regulations, <https://www.brookings.edu/blog/up-front/2021/08/31/innovation-beyond-patent-waivers-achieving-global-vaccination-goals-through-public-private-partnerships/> NT

An optimal solution to the currently inequitable global distribution of COVID-19 vaccines requires more innovation than a temporary waiver of patents. **A process is needed whereby LMICs can take some level of ownership over the manufacturing and distribution of critical vaccines and medicines** without the bureaucratic red tape associated with compulsory licensing. **We suggest that PPPs between pharmaceutical companies and relevant governmental ministries that are well-funded** by access to the capital markets through impact **bonds is a comprehensive, sustainable solution to the problem of achieving global vaccination goals.** A PPP can be defined as: Co-operation of some sort of durability between specific public and private actors in which they jointly develop infrastructure, products, and services (including knowledge and dissemination of information) and share risks (financial and/or prestige), cost and resources, which are applied in the development and delivery process. This solution has three essential components: first, identifying the incentives for the private sector to participate in the partnership; second, inducing the public sector to transfer some of its mission and responsibilities to the partnership; and third, access to capital markets. As the current authors wrote in 2016: Private sector entities can profit from PPPs—especially with **LMICs that present a new or unsaturated market** for a wide range of a pharmaceutical company’s products. Increased brand recognition, increased market penetration, entry into new markets, preserving the existing customer base, gaining new customers, and garnering favorable status for introduction of new products are all attractive concepts for private sector partners. Relaxed barriers to market entry (e.g., tariffs and taxes) and access to LMIC raw data would also motivate a private sector entity to forge a relationship with public entities. The public sector can be incentivized to formalize a PPP for pharmaceutical and vaccine-related issues like supply chain management, data capture and analysis, quality control, and inventory optimization. **PPPs would assist in speeding up the scaling required to develop sufficient quantities of COVID-19 vaccines and medicines,** and LMICs would be better prepared for future pandemics. Access to the capital markets through “impact bonds” can provide a source of sustainable funds. Impact bonds work in a series of steps (see Figure 1. below): Investors purchase bonds and provide up-front risk capital to finance the program(s). Prior to issuance of the bonds, well-defined metrics leading to specific sets of outcomes for success of the partnership need to be negotiated. The progress toward fulfilling these outcomes will be monitored and rigorously measured by an independent organization at every stage. When the partnership demonstrates that it has met its goals, the outcome payers—who can be public sector entities (i.e., Ministries of Health or Finance), the private sector, development banks, or combinations of all three—are contractually and legally required to repay the investors. The key advantage of this approach is the **additional accountability** for outcomes that investment brings. **Investors’ interest in achieving measurable success provides a framework that incentivizes flexible and effective program implementation.** Risk is transferred to the investor, and the focus on rigorously measured outcomes ensures that scarce donor funding is only used for tangible, verifiable outcomes. The metrics, goals, and outcomes must be uniquely crafted for each country in which the impact bond is issued. **Ultimately, a successful PPP might lead to healthier populations, more robust and cost-effective national healthcare systems, and economic growth.** As Brookings Institution scholars wrote in a review of USAID’s PPPs: “On a conceptual level, public-private partnerships are a win-win, even a win-win-win, as they often involve three types of organizations: a public agency, a for-profit business, and a nonprofit entity. PPPs use public resources to leverage private resources and expertise to advance a public purpose. In turn, non-public sectors—both businesses and nongovernmental organizations (NGOs)—use their funds and expertise to leverage government resources, clout, and experience to advance their own objectives, consistent with a PPP’s overall public purpose. The data from the USAID data set confirm this conceptual mutual reinforcement of public and private goals.” A case study is further illustrative of how PPPs play an integral role in pandemic-related solutions. Established in 2003, The U.S. President’s Emergency Plan for AIDS Relief (PEPFAR) is a U.S. government foreign aid program focused on controlling the HIV/AIDS epidemic in more than 50 countries. PEPFAR has saved millions of lives; experts note that PPPs played a key role in this effort, strengthening logistics, supply chains, and HIV lab practices: PEPFAR’s Supply Chain Management System took advantage of private industry’s best practices in logistics, and a partnership with the medical technology company BD (Becton, Dickinson and Company) improved laboratory systems throughout sub-Saharan Africa. We found that setting ambitious goals, enlisting both global and local partners, cultivating a culture of collaboration, careful planning, continuous monitoring and evaluation, and measuring outcomes systematically led to the most effective programs. Other examples of successful PPPs in global health include the Global Alliance for Vaccines and Immunizations (GAVI); the Global Fund to Fight AIDS, TB and Malaria; Global Alliance for TB Drug Development, Drugs for Neglected Diseases initiative (DNDi); International AIDS Vaccine Initiative (IAVI); Medicines for Malaria Venture; Harnessing Non-State Actors for Better Health for the Poor; and PPPs for Universal Health Coverage. CONCLUSION **Patent waivers will not correct the lack of capacity in the majority of LMICs that is necessary to implement domestic production of vaccines.** Cold chain infrastructure, logistics and data systems, robust supply chains (including access to the raw materials needed for disease testing and vaccine/medicine production), and storage and administration need to be developed. Finally, there is a desperate need to train and maintain a skilled workforce to permanently meet not only the ongoing challenges of the current pandemic and any future pandemic but also to build capacity and jobs in the biomedical sectors. **Implementing an impact bond-funded PPP to fully develop, manage, and sustain a vaccine and critical medicine supply/cold chain is the most promising path forward to broaden access to COVID-19 vaccines and therapeutics in LMICs**. It’s an ambitious goal that requires cooperation among entities with disparate interests, but the current alternatives are not working. The patent waiver debate could yield fruit by perhaps streamlining TRIPS’ compulsory licensing process or by granting waivers to countries that have the capacity to make generics at lower cost. However, the core long-term problem for most LMICs will remain without engagement with the private sector’s expertise and access to capital markets. **PPPs are the best way** these countries will be able to strengthen their infrastructure, supply chain capacity, and technical expertise **sufficiently and permanently** in order **to respond to pandemics** effectively—a result that is required for global health security and equity.

## Case

#### Be skeptical of 1AC solvency –

#### 1] c/a the counterplan as a solvency deficit to the aff – the patent waiver alone doesn’t solve the lack of capacity for manufacturing vaccines

#### 2] Patent waiver for vaccines is *temporary* – means the aff doesn’t solve any structural issues in the patent system

#### Voluntary licensing solves by facilitating global cooperation among vaccine manufacturers – squo proves

**Silverman 3/15**/21 (Rachel Silverman is a policy fellow at the Center for Global Development, where she leads policy-oriented research on global health financing and incentive structures. Silverman’s current research focuses on the practical application of results-based financing; global health transitions; efficient global health procurement; innovation models for global health; priority-setting for UHC; alignment and impact in international funding for family planning; and strategies to strengthen evidence and accountability. Before joining CGD in 2011 she worked with the National Democratic Institute to support democracy and governance strengthening programs in Kosovo. She holds a master’s of philosophy with distinction in public health from the University of Cambridge, which she attended as a Gates Cambridge Scholar. She also holds a BA with distinction in international relations and economics from Stanford University.), “Waiving vaccine patents won’t help inoculate poorer nations”, The Washington Post, <https://www.washingtonpost.com/outlook/2021/03/15/vaccine-coronavirus-patents-waive-global-equity/> NT

There are better options than broadly waiving IP rules — notably, encouraging (and pressuring) vaccine manufacturers to cooperate and share knowledge with partners across the globe. **Voluntary licensing is one route: It’s a common arrangement in which developers enter into binding contractual agreements with generic producers.** Generic manufacturers get permission, know-how and assistance from the patent-holder to produce the vaccine for sales in specified markets; in exchange, the patent-holder can ensure quality of the generic product and may receive royalties on its sales, usually representing less than 10 percent of sales value. These royalties may be lower than the profit margin on direct sales; for example, Pfizer expects a 25 to 30 percent profit on its vaccine sales, or roughly $5 for every $19.50 dose. (The U.S. government has agreed to buy 300 million doses at that price.) But voluntary licensing deals offer a new revenue stream that would otherwise be captured by competitors — not to mention good publicity. Already, voluntary licensing deals from AstraZeneca and Novavax are facilitating large-scale production in India, Japan and South Korea; many of the resulting vaccines are destined for lower-income countries through Covax. The best route to vaccine equity involves creating the conditions to facilitate more of these voluntary deals.

#### Turn – IP protections reward medical innovation and most essential medicines aren’t under patents, allowing companies to produce inexpensive generic versions

**Kilberg et al 16** (William J. Kilberg is the most senior partner in the Labor and Employment Law Practice Group at Gibson, Dunn & Crutcher LLP. He has served on the firm’s Executive Committee, five-member Management Committee, and as Partner-in-Charge of the Washington office. He has argued many significant matters before eight United States Courts of Appeals and the United States Supreme Court., James A. Paretti, Jr. is an experienced management-side employment and labor relations attorney with in-depth political and policy knowledge of labor, pension, healthcare and employment law, regulations and legislation. Jim is well versed in all aspects of legislative and political processes with demonstrated knowledge in the substance of federal labor and employment policy. He has over two decades of experience working with federal legislators and policymakers, including former Speaker of the U.S. House of Representatives, Chairmen of the U.S. House Committee on Education and the Workforce, and senior level administration officials., Marisa Maleck focuses on litigation, regulatory matters and public policy, with a focus on consumer products. As a former senior counsel at a bio-tech company and in private practice, Marisa has substantial experience with and is skilled in providing creative solutions in the face of uncertainty. Marisa represents clients in a variety of matters with a focus on FDA-regulated products like food, beverages, pharmaceuticals, medical devices, wellness products, cosmetics, tobacco and cannabis. As a former senior counsel at an FDA-regulated biotech company and as a former partner in King & Spalding’s Litigation and Global Disputes practice group, she handled hundreds of suits in a multi-district litigation, multiple agency inquiries, an FTC lawsuit and 10+ state Attorney Generals actions. ), “The United Nations' Misguided Approach to Healthcare Access”, 9-6-16, The Federalist Society, <https://fedsoc.org/commentary/fedsoc-blog/the-united-nations-misguided-approach-to-healthcare-access> NT

Intellectual property (IP) protections promote innovation and spur research and development into life-saving drugs and medical procedures. Indeed, the existence of robust systems of IP rights in Western industrialized nations is one reason the pharmaceutical industry and medical breakthroughs have flourished there. By contrast, drug companies have struggled in the developing world, where IP protections are either nascent or non-existent. One would think, therefore, that global policy advocates would encourage strong, uniform IP protections to help ensure the continued development of innovate treatments and broader access to health care in emerging markets. But instead of pursuing this sensible course, an obscure United Nations (UN) body called the High Level Panel on Access to Medicines is poised to release a report that is likely to recommend scaling back IP rights worldwide. This would be a tragedy for millions of ailing patients around the world. There is no doubt that a substantial need exists to improve access to medicines to the developing world. Approximately one in three patients in the developing world lack access to basic treatments. To solve this problem, the UN must focus on substantial barriers to access such as a lack of infrastructure and training.

Yet the panel appears ready to ignore these barriers by myopically and mistakenly focusing on IP rights. Established last year by UN Secretary General Ban Ki-moon to improve global access to life-saving medications, the Panel was tasked with a mandate “to review and assess proposals and recommend solutions for remedying the policy incoherence between the justifiable rights of inventors, international human rights law, trade rules and public health in the context of health technologies.” Consistent with this charter, the sixteen-member Panel has reviewed proposals to address what it perceives to be a “misalignment” between inventors’ rights and “access to medicines, vaccines, diagnostics and health technologies.” The Panel is currently finalizing a report to the Secretary-General, which includes an analysis of the proposals and its recommendations. The Secretary-General, in turn, plans to make the report available to the General Assembly, and undertake unspecified further action. Many leaks from the group’s proceedings confirm its plan to emphasize perceived problems with IP rights rather than consider other issues that might hinder access to medicine. The rumors became so pervasive that, in June of this year, the Panel issued an “Official Statement on Speculative Media Reports.” The statement merely avers that the Panel is still working on the report, but it does not in any way deny that the group’s focus is on what it perceives to be a disconnect between access to healthcare and IP rights. The U.S. State Department has encouraged the Panel to shift its narrow focus on IP rights to tackle the real structural and economic problems that prevent access to health care in the developing world. The Panel should heed the State Department’s advice for one simple reason: There is no “policy incoherence” or “misalignment” between IP rights and access to health care. For starters, the vast majority of medicines that have been designated as essential by the World Health Organization (WHO)—350 of 375—are not even under patents. Rather, these medicines are currently available in **relatively inexpensive generic varieties.** In addition, many life-changing breakthroughs in drug research and development are made possible only because of America’s (and other countries’) extensive protections for IP. These protections grant companies a period of market exclusivity for original products, providing an incentive for companies and their investors to invest billions in research and development of the next generation of medications. Indeed, where countries have recently adopted more robust IP protections—such as India and China—pharmaceutical development and partnerships with Western drug companies have flourished and improved access to medicine. Furthermore, strong IP protections reduce the incentives for companies to develop fake or counterfeit drugs, thus helping to **ensure quality control** in the developing world. Ultimately, the Panel’s mandate to root out policy incoherence between IP rights and health care begs the critical question—do IP rights promote or hinder access to drugs and medical treatments in the developing world? The empirical evidence shows that IP rights improve access to health care in poorer countries. Therefore, the Panel should reconsider its marching orders and release a report that focuses on addressing the political, economic, and structural barriers to medicine in the developing world, rather than punishing companies that are responsible for putting life-saving products on the market.

#### Patents and IP protections prevent counterfeit drugs from being on the market while encouraging pharma companies to cooperate internationally

**Kilberg et al 16** (William J. Kilberg is the most senior partner in the Labor and Employment Law Practice Group at Gibson, Dunn & Crutcher LLP. He has served on the firm’s Executive Committee, five-member Management Committee, and as Partner-in-Charge of the Washington office. He has argued many significant matters before eight United States Courts of Appeals and the United States Supreme Court., James A. Paretti, Jr. is an experienced management-side employment and labor relations attorney with in-depth political and policy knowledge of labor, pension, healthcare and employment law, regulations and legislation. Jim is well versed in all aspects of legislative and political processes with demonstrated knowledge in the substance of federal labor and employment policy. He has over two decades of experience working with federal legislators and policymakers, including former Speaker of the U.S. House of Representatives, Chairmen of the U.S. House Committee on Education and the Workforce, and senior level administration officials., Marisa Maleck focuses on litigation, regulatory matters and public policy, with a focus on consumer products. As a former senior counsel at a bio-tech company and in private practice, Marisa has substantial experience with and is skilled in providing creative solutions in the face of uncertainty. Marisa represents clients in a variety of matters with a focus on FDA-regulated products like food, beverages, pharmaceuticals, medical devices, wellness products, cosmetics, tobacco and cannabis. As a former senior counsel at an FDA-regulated biotech company and as a former partner in King & Spalding’s Litigation and Global Disputes practice group, she handled hundreds of suits in a multi-district litigation, multiple agency inquiries, an FTC lawsuit and 10+ state Attorney Generals actions. ), “The United Nations' Misguided Approach to Healthcare Access”, 9-6-16, The Federalist Society, <https://fedsoc.org/commentary/fedsoc-blog/the-united-nations-misguided-approach-to-healthcare-access> NT

Intellectual Property Protections Promote Access to Health Care Far from preventing people from accessing the medicine they need, IP rights promote access to health care in two principal ways. First, IP rights provide scientists and researchers with the necessary incentives to spend time and money to develop life-saving drugs and devices. **Second, patents reduce the incentive to produce counterfeit drugs—a critical barrier to access to safe and effective medicine.** First, IP rights incentivize research and development. For health care companies, choosing whether to invest in developing and selling a particular medical product or treatment is an incredibly costly gamble. On average, an American company must spend over $2 billion and invest in a decade of scientific and legal research before regulators approve its product for the marketplace. The federal Food and Drug Administration as well as state agencies set out complex and demanding standards by which drugs and medical devices must be tested and developed. Companies must also invest time and money in determining whether their product or some part of their product already exists. And even after all that, only one in 12 health care products actually make it to the market—let alone turn a profit. IP rights therefore provide some **legal certainty** that a successful company would be able to protect this profit should it materialize.

Experts confirm that companies tend to invest and develop in countries with strong IP protections. As former U.S. Patent and Trademark Office Director David Kappos explained: “Far from being a roadblock, patents can be the currency of innovation that helps disseminate advanced technology in the developing world. Regardless of global destination, most high-tech goods are manufactured in a handful of countries which have functioning patent systems. Delivering innovative products to Africa, Southeast Asia, South America, or elsewhere thus requires legal rights in the manufacturing centers of the world. Patents enable business relationships that are otherwise difficult or impossible by encapsulating these legal rights into manageable assets.” Recent developments in India, China and Brazil prove Kappos’s observation. Since the mid-1990s, the World Trade Organization’s agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) has governed the international IP system. In 2005, India and China rewrote their domestic laws and became compliant with TRIPS. Prior to this development, Indian and Chinese pharmaceutical companies primarily manufactured generic versions of Western drugs. But since the adoption of TRIPs, with IP protections firmly in place, companies within the two countries have been extremely successful in developing their own products. Indian companies, for example, have developed vaccines for H1N1 influenza and rotavirus. And a Chinese company recently developed a medication for a type of lymph-node cancer. Stronger IP protections have also **fostered business relationships between Chinese and Indian companies and Western pharmaceutical companies.** Global research and development companies, including Bristol-Myers Squibb, Daiichi Sankyo, GlaxoSmithKline, and Sanofi-Aventis now all have partnerships with Indian companies. The same is true in China: Hutchison China MediTech is now working with AstraZeneca and Eli Lilly to research cancer drugs. Brazil has enjoyed similar successes. After it adopted product patent protections in 1996, numerous pharmaceutical companies began operating there. Experts also generally agree that patents promote access to medicine in developing countries, rather than hinder it. Health Issues India, an online joint initiative of various consultancy groups with an interest in Indian policy issues, recently commissioned a series of reports on access to healthcare. Health Issues India interviewed 28 public health officials, academics, and advocates in Brazil, Kenya, and Senegal. Of the 28, only one—a Brazilian AIDS activist—identified patents as part of the problem. By contrast, a number of these experts credited patents as indispensable to promoting access to healthcare. As detailed below, most experts agreed that problems such as a lack of infrastructure and education were the principal factors that created barriers to health-care access. Another study by Margaret Kyle and Yi Qian examined the effect of pharmaceutical patent protection on the speed of drug launch, price, and quantity in 60 countries from 2000 to 2013. The study concluded, among other things, **that stronger IP rights can increase the availability of new treatments to patient populations in developing countries**. In particular, these experts found that IP protections are associated with a **decrease in the price premium** of patented drugs, and that patents are generally associated with an earlier launch of new products and higher sales. In short, far from impeding access to medicine, IP protections have been empirically shown to encourage the development of life-saving drugs, therapies, medical devices, and protocols. Second, as many experts recognize, **strong IP protections inhibit the production and distribution of counterfeit and fake drugs.** The WHO estimates that approximately 10 percent of drugs sold globally are counterfeit, and some reports estimate that 50-70% of drugs sold in developing countries are counterfeit. Fake drugs pose a serious health risk: the WHO has found that as many as 20% of the million annual malaria-related deaths may be attributed to counterfeit medicines. The WHO has also found that it is easier to counterfeit drugs where there is—among other things—a lack of effective IP protections and weak regulatory controls. The threat of government enforcement actions and private suits go a long way in discouraging counterfeiting. Unsurprisingly, experts have criticized the UN Panel for “undermin[ing] the intellectual property rights architecture that . . . protects patients from counterfeit medicines.” As Dr. Kristina Lybecker—an author of a recent Organization for Economic Co-Operation and Development report—recently stated: “Given the devastating impact of counterfeit medicines on patients and the importance of intellectual property protection in combating pharmaceutical counterfeiting, it is troubling that the UN High Level Panel seems poised to prevent a series of recommendations that will undermine public health under the guise of enhancing access. Without the assurance of quality medicines, access is meaningless.”