### Part 1: There is much to be taken from the Jungle.

#### Appropriation of TK is a settler colonialist move not unlike territory seizure. Columbus brought back chocolate, sugar, coffee, tobacco and gold. He told tales of the island people’s herbs and strange ways. He mined their lands for new products. He claimed these new “discoveries” as his own. IPR resurrects his spirit in biocolonialism.

Dutfield 2001 [Graham, D.Phil., Researcher, Oxford Centre for the Environment, Ethics and Society, Mansfield College, University of Oxford] “TRIPS-Related Aspects of Traditional Knowledge,” **Case W. Res. J. Int'l L.** <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1476&context=jil/EM>

Traditional peoples and communities see the globalization of patent regulations modeled on those of the United States and Europe as a form of neo-colonialism. Well-meaning corporate bioprospectors and patent lawyers are likely to deny vehemently - and sincerely - that they are neocolonialists. But indigenous peoples, in particular, have framed the issues that concern them in ways they consider to be completely justified by historical experience. As far as they are concerned, the misappropriation of their knowledge and the patenting of inventions based upon this knowledge are just as colonialist as the seizure of their territories and their displacement from their homelands. To them, territories, ecosystems, folk varieties, medicinal plants, and their knowledge have always been and continue to be treated as if they are free for the taking until they are "discovered" by explorers, scientists, governments, corporations, and conservation organizations and subsequently privatized.79

#### Because of the intellectual nature of TK and the concept of the global commons, trade imperialism is difficult to dislodge. Current WTO policy intersects with neoliberalism to create a particularly vicious exploitation of IK. Tackling biopiracy attacks the western neoliberalism.

**Breske 2018** [Ashleigh, Visiting assistant professor of international studies in the global politics and societies (GPS) department @ Hollins University] “Biocolonialism: Examining Biopiracy, Inequality, and Power,” **Spectra**, 6(2), pp.58–73. DOI: [http://doi.org/10.21061/spectra.v6i2.a.6]//EM](http://doi.org/10.21061/spectra.v6i2.a.6%5d//EM)

According to Lorenzo Veracini, the least visible types of colonial subjugation, like informal colonialism and trade imperialism, are the most resistant to change.i This is especially true for biocolonialism, which arises through the dominant discourse of neoliberal economic practices around the world. This form of colonialism is based on the exploitation and extraction of traditional resources and knowledge through western conceptions of property ownership. Neoliberalism has created a polarization in the world through conflicts between ethnicities and socio-economic levels, resulting in a dichotomy between the Global North and the Global South. Concepts of western legal practices, intellectual property rights, national property laws, and biotechnology innovations create a system of biocolonialism with the dominant North capitalizing on these policies and practices.ii This has adversely affected the Global South in many ways and acts as an ideology promoting profit and economic growth at the expense of the marginalized. The shift to neoliberalism has increased the divide between the developed and developing world and the “ideology of the market, and the omnipresence of market forces, have left an indelible mark on the western conception of knowledge.”iii Power is often in the hands of [TNCs] transnational corporations and lobbyist groups with the global economy becoming larger than individual nation-state economies.iv Cori Hayden theorizes that bioprospecting is “an important site for thinking about how neoliberalism works.”v For Hayden, biopiracy is an institutionalized practice garnering transnational capital. In other words, the opening of the market on biodiversity is argued to be both a development strategy and an argument for conservation within an economic framework. For example, in Peru, foreign corporations have filed more than 11,690 patents on natural resources traditionally used by indigenous communities.vi Corporate interest in medicinal plants and seeds stems from long-term economic goals. This example illustrates the current trend of outside transnational corporations showing an interest in traditionally-used medicinal plants and seeds. Within the globalized economy, free trade agreements create a power imbalance between multinational corporations (MNCs) and the indigenous communities holding traditional knowledges and resources. Since indigenous knowledge is disseminated among the community and no one person owns it in the western, legal sense,vii MNCs use bioprospecting projects in areas with rich biodiversity for future development of products.viii It has been found that bioprospecting success rates greatly increase with the inclusion of indigenous knowledge or local guidance. These endeavors are financed as exploratory enterprises to find aspects of biodiversity and indigenous knowledge as resources that can be patented and used for future development. Bioprospecting can be considered a form of colonization using a “knowledge-based economy” with profit sought through marginalized peoples and their traditional resources.ix But, according to Hayden, “[b]ioprospecting is the new name for an old practice: it refers to corporate drug development based on medicinal plants, traditional knowledge, and microbes culled from the “biodiversity-rich” regions of the globe—most of which reside in the so-called developing nations.” (Hayden 2003, 1).

#### Existing WTO medical IPR regimes instill the logic of the colony and extend the project Columbus created. Now the subjugation of indigenous knowledge is not just debate, it is policy. This re-creates the assumption of Terra Nullus that drives 62 hydrogen bombs in the Pacific Islands, thousands of nuclear tests in Native lands. This aerial view allows for the true extinction of all indigenous people.

**Breske 2018** [Ashleigh, Visiting assistant professor of international studies in the global politics and societies (GPS) department @ Hollins University] “Biocolonialism: Examining Biopiracy, Inequality, and Power,” **Spectra**, 6(2), pp.58–73. DOI: [http://doi.org/10.21061/spectra.v6i2.a.6]//EM](http://doi.org/10.21061/spectra.v6i2.a.6%5d//EM)

There are parallels between current intellectual property rights on patenting both genetic material and biodiversity and the legal doctrines of early European colonialism in the Americas.xxv Alejandro Madrazo gives a differing opinion on the language used to describe biopiracy from other authors, stating that he does not believe these cultivations can be considered true piracy since “piracy is an illegal activity or an activity at the margins of the law, whereas modern bioprospecting is a practice that is enabled precisely by the specific rules of current intellectual property law.”xxvi This raises an interesting point of what is legally allowable due to transnational property law. Currently, bioprospecting allows for indigenous systems of knowledge to become publicly available and enter “into the contested knowledge systems of colonialist corporations whose main concern is to privatize knowledge as patents on life forms.”xxvii The global demand for medicinal drugs has led to an increase in biopiracy in the Global South. Once companies find something they believe will be profitable, they want to patent it straightaway so that no one else can capitalize off it. Patents are an easily accessible source of income for those able to apply for them. In fact, patents act as an exclusive control on a product, and, when corporations hold patents on biodiversity, they are creating a monopoly on food and health.xxviii In some ways it is impossible for those in developing countries to compete with MNCs due to how patents and intellectual property rights are sustained. Since patents are held nationally instead of internationally, most patent holders tend to be from more developed countries. Because of this divide, it is possible to inflate the price of patented medicines so that corporations can make an even greater profit, which leads to more global inequalities Rich states can also pay for access to technology for research and resources to control epidemics and infectious diseases more readily than poorer areas of the world. With the establishment of the World Trade Organization in 1994, international trade negotiations opened, and western notions of intellectual property rights took a firm hold in pharmaceutical research and development, increasing the strength of MNCs. This was classified under TRIPS, the Agreement on Trade Related Intellectual Property Rights.xxix TRIPS was negotiated at the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) and set the standard for member states to recognize the same intellectual property rights. This then meant that industries could bypass local patent law by registering their patents in the most favorable jurisdiction.”xxx Before TRIPS, which set consistent requirements, intellectual property was considered a domestic issue with protections set on the national level. However, with TRIPS, transnational corporations are now much more successful at acquiring patents. xxxi For example, looking at the number of patents held at the end of the twentieth century, most were filed by the United States (41.8%) and Europe (41.95%).xxxii The TRIPS agreements and domestic patent laws, specifically US law, shapes international IPRs and show that the legal system is excluding indigenous or marginalized communities.xxxiii There has been a push for TRIPS, predominantly by the pharmaceutical industry, to restrict profit potential by indigenous communities. Corporations make minor genetic or chemical formula changes for their intellectual property claims and patents and can then claim their product is no longer directly linked to the initial source. Debra Harry has claimed that the main problem with biocolonialism is the “manipulation and ownership of life itself, and the ancient knowledge systems held by Indigenous peoples.”xxxiv The problem stems from the belief that indigenous peoples are merely the holders, not owners, of communal knowledge. What are not considered are their territorial rights to the resources on their lands.

Once again, the wealthy nations show they are more interested in the agendas of corporations than marginalized people.lxxiii Corporations use the fact that traditional knowledge is communal as a reason to not compensate indigenous peoples, siting the colonial assumption that it is “terra nullus – empty and free for the taking.” lxxiv According to Madrazo, there is no longer a need to conquer along traditional colonial models, instead patents are used to control resources. This “replicates the colonial doctrine of res nullius.”

#### The animating logics of settler colonialism have not disappeared, but merely reformulated extinction discourse to justify the bio-colonial exploitation of IK through narratives of indigenous extinction, eternal life and the search for gold. Opens indigenous people to study in ongoing nuclear wars. Must contravene this genocidal process for the continued survival of humans and nonhumans.

**Barker 2019** [Clare, Associate Professor in English Literature at the University of Leeds] “Biocolonial Fictions: Medical Ethics and New Extinction Discourse in Contemporary Biopiracy Narratives,” **NCBI**  [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7116577/]//](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7116577/%5d//)EM

The logic of biocolonial extractivism operates through a reorientation of the temporal formations of settler colonialism, which equate settler practices with development and consign Indigenous peoples to the past. The land dispossessions of the colonial era were facilitated by powerful narratives of inevitable Indigenous extinction: ‘vanishing Indians’, Maori and Aboriginal ‘dying races’. As critics have shown, contemporary biocolonialist initiatives operate on similar assumptions, under which indigenous biospecimens must be preserved and biological data acquired before they vanish forever. Joanna Radin demonstrates that, since the mid-twentieth century, the ability to freeze and store blood and other organic samples has ‘emerged as a potentially powerful strategy for preserving fragments of a world that appeared to be increasingly in flux’. It enables ‘biological material to be studied in the present and especially in the future’, when (whether due to genetic admixture, European diseases, or environmental damage produced by the industrialized global North) ‘the individuals from whom it had been extracted were expected to have disappeared or changed beyond recognition’.3 In this article, I explore the intertwined relationship between medical research ethics and the logic and ideology of biocolonialism as it is represented in two contemporary American novels, Ann Patchett’s State of Wonder (2011) and Hanya Yanagihara’s The People in the Trees (2013). These novels depict ‘medical adventurer[s]’4 undertaking biocolonialist excursions into the remote jungles of, respectively, the Amazon and the Pacific, and are centrally concerned with the methods and infrastructure of biomedical and pharmaceutical research. In both cases, the fictional scientists’ ethically problematic research practices implicate them in what Pauline Wakeford calls ‘two entangled narratives of death and disappearance: the grand récits of wildlife extinction and the vanishing Indian’.5 I focus in particular on how these texts, by presenting us with fictional bioethical quandaries related to human longevity and reproduction, engage with the new formulations of extinction discourse produced by the life sciences. Patrick Brantlinger asserts that colonial ‘extinction discourse was performative in the sense that it acted on the world as well as described it’.6 State of Wonder and The People in the Trees both imagine biological discoveries with the potential to extend human lifecycles, but these research endeavours are steeped in extinctionist ideology and themselves set in motion the decimation of previously thriving Indigenous communities. Aspirational narratives of ‘eternal life’ (in Yanagihara) and ‘world health’ (in Patchett) are underpinned by the knowledge that these communities, reframed as research subjects, are likely to vanish in the wake of what Warwick Anderson calls ‘scientific colonialism’, along with their unique ecosystems.7 The different narrative temporalities of these texts – Patchett’s anticipating a significant breakthrough in global health, Yanagihara’s narrated retrospectively from a position of irreversible loss – produce divergent valuations of human and nonhuman lives and different perspectives on the ethics of biopiracy, as I shall discuss. But in reading them together, I demonstrate how fictional engagements with biocolonial science illuminate the continuities between colonial-era extractivism and contemporary research practices. In their temporal reorientations and their ability to imagine actual and potential acts of extinction, these texts resituate extinction discourse squarely within the context of twentieth- and twenty-first-century bioscientific experimentation. State of Wonder follows Marina Singh, a pharmacologist for a multinational pharmaceutical corporation, Vogel, on her expedition into the Amazon to investigate the death in the field of her colleague, Anders Eckman, and to assess the progress of a senior scientist, Annick Swenson, who is developing a fertility drug for Vogel while living with a remote tribe, the Lakashi. Swenson has discovered that the Lakashi women’s practice of chewing bark from a particular local tree (the Martin tree) not only alters their reproductive chemistry, allowing them to conceive and give birth into their seventies and eighties, but also inoculates them against malaria. Alongside their work on the fertility drug, Swenson and her team are surreptitiously developing a malaria vaccine at Vogel’s expense, which will have little appeal to company shareholders even though it ‘will have enormous benefits to world health’, since ‘[t]he people who need a malarial vaccine will never have the means to pay for it’.8 As the narrative unfolds, the protection of the Lakashi, their lifeways, and their environment is pitted against this urgent global health imperative to save the lives of the ‘[e]ight hundred thousand children’ who, as Swenson tells Marina, ‘die every year of malaria’ in the so-called ‘Third World’.9 The People in the Trees is framed as the memoirs of Norton Perina, a ‘renowned immunologist’ who, as a young doctor in 1950, joins an anthropological expedition to U’ivu, a fictional Micronesian state.10 Along with his anthropologist colleagues, he ‘discovers’ a ‘lost tribe’ living on the island of Ivu’ivu whose ritual ingestion of a sacred turtle endemic to the island, the opa’ivu’eke, causes extended longevity, with some tribe members apparently living for several hundred years. Perina’s research on this phenomenon earns him a Nobel Prize for Medicine, but also kickstarts a rapid process of biocolonial incursion on this island that has ‘never [before] been colonized’, beginning with pharmaceutical companies, seeking to develop ‘age-retarding drugs, … anti-aging skin creams, [and] elixirs to restore male potency’, ‘swarming throughout Ivu’ivu on the hunt for the opa’ivu’eke’.11 It results in the extinction of the turtle, the razing of the island, and the decimation of the Ivu’ivuan community through an accelerated experience of the impacts of colonization, including forced displacement, alcoholism, and disease. Both texts emphasize the overdetermination of their respective jungle environments by longstanding colonialist tropes of exotic difference that are inflected by bioscientific discourse. The Pacific island, as Elizabeth DeLoughrey has demonstrated, has long been figured as a remote, ‘hermetically sealed laboratory’, ‘deemed ahistorical and isolated’ from modernity and therefore ideal for experimentation in anthropology, ecology, and nuclear science.12 The Amazon, meanwhile, is imagined as what Veronica Davidov terms a ‘pharmacopia’ that holds within its rich ecosystems ‘fantastic cures for illnesses that defy the capacities of the Western pharmaceutical industry’, or, as Dr Swenson puts it in State of Wonder, ‘some sort of magical medicine chest’.13 Under the globalized conditions of the biomedical and pharmaceutical industries, the jungle spaces outside the West are vulnerable to exploitation due to their construction as ‘global commons’ or ‘global resource frontier[s]’ available to be harvested for their medical riches.14 As Swenson asserts in an unapologetic utilization of extractivist rhetoric: ‘there is much to be taken from the jungle’.15 Through their focus on the activities of life scientists in the interconnected fields of big pharma and global health, both novels appear to offer a critique of the impacts of biocolonialism on Indigenous people and the ecosystems in which they exist. But, as I will show, Perina’s retrospective narration in The People in the Trees brings into critical focus the extinctionist logic of biocolonial science, while State of Wonder’s anticipatory positioning is ultimately bound up with the future-oriented rhetoric used to justify much exploitative

### Part 2: The Change

#### The WTO will reduce patent protection on medicines by establishing a joint WTO/WHO Commission through request to apply the Nagoya protocol enforcing a binding nullification on patenting of life forms and related biological processes and binding protection of indigenous and traditional knowledge claims from bio-prospecting. Funding and enforcement will be guaranteed.

### Part 3: Plietos Colombinos

#### Columbus was plagued with influenza and other fevers, bleeding from the eyes, temporary blindness and prolonged attacks of gout. The attacks increased in duration and severity and culminated in his death. In his later years Columbus demanded that the Spanish Crown give him 10 percent of all profits made in the new lands. After his death, his heirs sued the Crown for a part of the profits from trade with America. This led to a protracted series of legal disputes known as the “pleitos colombinos.”

#### Decolonization is a process. The plan can begin that process and other post-colonial experiences can help us along. Must join forces with other projects to truly de-colonize the mind. Reject the logic of Columbus and embrace a post-colonial IP. Thus, the ROB is practicing decoloniality through discursive interventions, resistive performative practices and community building.

Vats 2020 [Anjali, Assoc Prof Communication and African and African Diaspora Studies Boston College. “The Color of Creatorship: Intellectual Property, Race, and the Making of Americans”, Stanford University Press, September 29, 2020

Delinking decoloniality in the context of intellectual property requires the rejection of narratives which categorize Other knowledge as secondary or inferior to that of Westerners, whether implicitly or explicitly. Terms such as “traditional knowledge,” “indigenous knowledge,” and “folklore” are dangerous precisely because they create a bifurcation between that knowledge produced informally, often by non-Westerners, and “real” knowledge. Resisting such narratives, for instance by advancing narratives of bio-piratical theft from the non-Western world and reclaiming memories that might otherwise be erased from the canon, are important first steps in remaking the laws of information. The step, which follows pulling back the curtain on the implications of the modernity/coloniality binary for intellectual property law, however, is a more complicated one. Decolonization requires reconstituting universality in a manner, which, instead of substituting the European for the totality, creates space for the embrace of multiple perspectives, in a manner, which is both democratic and cosmopolitan. While we do not offer a model to supplant that of modernity/coloniality, we note that several nations, such as India,321 Ghana,322 and South Africa,323 are remaking intellectual properties through the embrace of digital databases, local models of intellectual property protection, and rejection of international intellectual property regimes. Moreover, decolonizing practices can unfold at the individual level as well, through resistive performative practices, such as discursive interventions and arts. Our goal in highlighting both the undoing of narratives of modernity/coloniality in intellectual property and practices which supplant Western intellectual property law is to point to further avenues of research for Critical Race IP scholars. Existing scholarship in these areas suggests that attending to decoloniality as a means of interrogating the intersections of race and intellectual property is likely to be a fruitful avenue for further research. CONCLUSION This article endeavors to name and provisionally map the field of Critical Race IP, an area of study which describes that scholarship concerned with the intersections of race and intellectual property law. In doing so, it situates Critical Race IP in a larger socio-cultural context, in which racial capitalism is a constant but evolving feature of the historical landscape. We contend that the emergence of the Information Economy, after the era of Fordism, resulted in a repackaging of familiar racial projects in and through intellectual properties and pushes for intellectual property maximalism. Critical Race IP represents a relatively new and rapidly growing direction in CRT scholarship, it is an exemplar of the ways the latter must constantly evolve to accommodate changing economic and cultural conditions and racial formations. In articulating Critical Race IP as an area of study, our goal is not necessarily to suggest particular methodologies or even fixed unifying questions that define the interdisciplinary movement. Rather, we are concerned with naming and describing prevalent themes and core tenets in a set of scholarly works that interrogate the inequalities which emerge at the intersections of intellectual property and intersectional racial identities. We hope that project can be a generative move for scholars who wish to research, write, and practice in this area. In setting forth a history of post-Fordism and the rise of Critical Race IP, we show that, as a product of modernity/coloniality, intellectual property law is always already invested in whiteness and racial inequality in ways which necessitate both examination and undoing. Scholars in a variety of disciplines have started to undertake such examinations, with their works engaging a set of themes which we have highlighted here. Continuing to examine questions related to defining (intellectual) property, understanding intellectual property’s stories, the public domain, framing and reframing “piracy” and “counterfeiting,” distributive justice, access to knowledge, managing traditional knowledge, and contemplating intellectual properties is an important task, one which we urge scholars to continue to take up in new and innovative ways. We also highlight the significance of personal relationships and public feelings in developing this area of study. One way to facilitate dialogue and scholarship in Critical Race IP is to invest in community building and intimacy making, cornerstones of the growth and development of CRT, both of which play a valuable role in cultivating generative interpersonal connections and structures of feeling through which new ideas can flourish. Conferences and workshops as well as collaborative projects which bring together senior and junior scholars play a significant role in cultivating and retaining Critical Race IP scholars. Finally, in concluding with a discussion of the decolonial turn, we offer a framework for moving beyond the radically unequal systems produced from the vantage point of law and economics.

#### Plan uses global governance to solve which is superior because it is a global problem, and there will be broader compliance. Global WTO/WHO approach incorporates the CBD and Nagoya into global IPR protecting the IP of indigenous groups. Plan foments fund for biodiversity management and support for claim settlement for indigenous groups. Creates capacity for health care delivery and LDC development.

Mackey and Liange 2012 [Tim, PhD, Bioscience; Brian, M.D., J.D., PhD] “Integrating Biodiversity Management and Indigenous Biopiracy Protection to Promote Environmental Justice and Global Health,” **American journal of Public Health** <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3483946/EM>

Bioprospecting has resulted in key advances (e.g., making polymerase chain reaction processes stable for medical application) and has led to life-saving advances in medicines and population health.1 It has also established economic value for these resources and supported biodiversity conservation and indigenous communities.2 However, biopiracy occurs when bioprospecting is used to appropriate knowledge and biodiversity resources to gain exclusive use through intellectual property rights (IPRs) without benefits for indigenous populations.2,3 In addition to raising serious environmental justice issues, biopiracy adversely affects the health of local populations that fail to benefit from economic and medical gains derived from the biodiversity and indigenous knowledge that originated in their communities. The global health consequences of biopiracy include lack of access to medicines, failure to compensate for valuable traditional knowledge, and depletion of biodiversity resources that are needed by indigenous communities for their own ethnomedicine and health care. These impacts are particularly problematic because the health of these communities can be poor.4 Because of the global nature of bioprospecting, biopiracy, and biodiversity, effective management—including environmental protection and sustainable development approaches—may be best performed through global governance. Global governance, however, has been ineffective in protecting biodiversity from biopiracy. Global IPR rules comprise domestic, multilateral, and supranational systems that establish minimum intellectual property standards. These global IPR systems focus on patent systems and private economic development under the World Trade Organization (WTO) TRIPS regime (Agreement on Trade-Related Aspects of Intellectual Property Rights) and on activities of the World Intellectual Property Organization. However, they have failed to protect indigenous rights, promote access to life-saving drugs, prevent biopiracy, or provide for responsible biodiversity development.5–9 Governance relies on market forces and state entities of independent governments within a defined territory, which preclude the participation and protection of indigenous communities (both in developed and developing countries) that comprise groups of diverse social self-identification. This traditional state-focused governance model has not created incentives for developing countries to invest in adequate conservation, and thus, biodiversity resources in these countries are in danger of being depleted.4,6 In response, in October 2010, the UN Convention on Biodiversity adopted the Nagoya Protocol, which attempts to protect biodiversity and sets rules on how nations access and share biodiversity benefits.10 It successfully introduces key components of resource sharing of biodiversity benefits by establishing a framework for norms and rules that may be implemented by member states in the future. However, the protocol does not adequately address several concerns, including the following: a forum for indigenous peoples to adjudicate biopiracy claims, strong penalties to create disincentives for biopiracy, ensured indigenous access to developed drugs, promotion of the planning and implementation of sustainable biodiversity conservation and investment in public health infrastructures in developing countries, and adequate promotion of public–private partnerships (PPPs) that can leverage resources from both public and private stakeholders. We therefore propose a policy employing a joint health–economics committee, a World Health Organization (WHO)–WTO Joint Committee on Bioprospecting and Biopiracy, to address these equity issues and promote sustainable and responsible global governance in biodiversity management.

To address the provision of appropriate access for communities where biodiversity drugs originate and to promote needed public health initiatives, the Nagoya Protocol requires that such communities have fair and equitable access to the benefits of modern drug discovery and development through mutually agreeable terms. The protocol offers an opportunity to negotiate appropriate access to the final developed medicine. The specific needs of indigenous communities, the biodiversity in question, and other unique characteristics will need to be taken into account in individual cases. To create incentives for companies to follow protocol provisions, we believe penalty provisions should be implemented for potential biopiracy violators through our proposed Joint Committee on Bioprospecting and Biopiracy. For medicines, the system would permit a local community (or a national government if supported by the indigenous people) to lodge with the Joint Committee a biopiracy claim against an entity. Claims would be adjudicated first by mandatory mediation conferences between the parties. If this effort failed, there would be a formal hearing and binding ruling on states that are parties to the protocol by the Joint Committee , which would be composed of advisers who are experts in the nature of the claim and who would have voting rights in the hearing process; all affected stakeholders would be adequately represented. If the Joint Committee ruled that a violation occurred, the company would be required to provide the affected country or community with free or deeply discounted medical products—those that the company developed using biodiversity and indigenous knowledge or ethnomedicine as well as all other medicines that it sold in the country. Changes to how the company and the indigenous community shared benefits, such as potential profits derived from the medical products, might also be required. If there was a biopiracy violation under the protocol, the Joint Committee would be empowered to rule that indigenous communities may automatically access TRIPS rights unilaterally—for example, under the Doha Declaration adopted by the WTO Ministerial Conference in 2001, which secures flexibility in bypassing patent rights to protect public health. (Under the declaration, during a public health emergency, states are allowed to suspend IPRs and medicine can be produced and sold by non-IPR holders).[17](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3483946/#bib17) A specified penalty period would apply, depending on the facts and circumstances that gave rise to the biopiracy claim, allowing aggrieved countries or communities sustained and improved access to medicines. If the biopiracy claim is against a state entity, similar provisions would apply. The Joint Committee would assess the claim by the indigenous community and determine whether the state engaged in biopiracy. If it determined that it did, the committee might require the state to hand over to the indigenous community all or part of the profits derived from sale of the biopirated material. Other penalty provisions might also be applicable, such as invalidation of any established state-based compliance checkpoints or internationally recognized certificates of compliance; again, these would depend on the facts and circumstances of the biopiracy act. This proposed approach is consistent with European Union efforts to improve access to medicines in developing countries while also providing for private IPR incentives.[18](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3483946/#bib18) It addresses biopiracy financial incentives by raising the costs of this inequitable but profitable strategy, while it also ensures that the indigenous populations in question—not simply the national government exclusively—have an express role in challenging biopiracy. This would promote environmental and health justice as well as aid in bridging the gap in health disparities through increased access. Although enhanced penalties and settlement of disputes could provide equitable access to developed medicines and an appropriate biopiracy adjudication forum, most developing countries lack adequate resources to plan and implement biodiversity-sustaining efforts and to develop appropriate infrastructure for public health and health care delivery. We therefore propose that a fund be established to sustain biodiversity and responsible bioprospecting through the development of biodiversity management programs while also providing funding for local public health infrastructures in indigenous communities. This underwriting may also promote longer-term policymaker planning rather than focusing on short-term economic gains of simply commercial valuation of biodiversity resources as was done in the 1990s.[13](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3483946/#bib13) Under our proposal, companies engaged in indigenous community bioprospecting would be required to pay a global bioprospecting user fee to the Joint Committee. This would be similar to the user fees for US Food and Drug Administration drug review, which are currently at $1 million a review and are being revised.[19](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3483946/#bib19) A portion should be directly allocated to a Global Biodiversity Fund administered by the Joint Committee. Similar to other programs such as the World Bank's Health Systems Funding Platform, the fund could underwrite responsible biodiversity development, best-practices dissemination, and health infrastructures in developing countries that could promote health care access and delivery and reduce health disparities.[20](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3483946/#bib20) These funds could also be used to create focus groups to identify indigenous community needs. They could provide local communities with culturally competent education about the rights afforded under the Nagoya Protocol, including informed consent, indigenous research protocols, standardized access, and benefits sharing. These programs could better ensure informed decision-making by indigenous communities regarding sharing or protecting knowledge and resources. In addition, the Global Biodiversity Fund could act as a vehicle to disburse needed funds to indigenous communities that do not have adequate financial means for legal consultation or representation in dispute hearings.

### Part 4: The Search for Eternal Life and Gold

#### Like in colonial times, bio-piracy is killing global biodiversity.

Amarasinghe 2018 [Kusal Kavinda, LL.B (Undergraduate) (University of Colombo), Faculty of Law, University of Colombo - Sri Lanka] “Bio-piracy and its impact on Biodiversity: A special review on Sri Lankan context,” **Journal of Environmental Protection** <https://www.academia.edu/36128631/Bio_piracy_and_its_impact_on_Biodiversity_A_special_review_on_Sri_Lankan_context/EM>

Bio-piracy means unauthorized access of biological material and using them for commercial purposes and gaining of exclusive monopoly rights against institution regarding certain biological material or indigenous knowledge, while those resources belong to a community, region or another country. Nowadays bio-piracy has resulted in major impacts on biodiversity at a global scale. As a result of biopiracy, biodiversity is facing an unprecedented threat today. Sri Lanka is a tiny tropical island, which is surrounding the Indian ocean. This island has rich ecological-diversity because of its topography and climatic heterogeneity as well as its coastal influence. A significant feature of Sri Lanka's biodiversity is the remarkable high proportion of endemic species among its flora and fauna. Because of its rich biodiversity, this small tropical environment has become a well-formed hunting ground for bio-pirates.

The ecological crises are increasing all around the world. Bio-piracy is one of the main environmental issues which has arisen today. Bio-piracy means the practice of commercially exploiting naturally occurring biochemical or genetic material, especially by obtaining patents that restrict its future use, while failing to pay fair compensation to the community from which it originates. Today, most of the tropical environmental areas in the world have been victimized by Bio-piracy. 90% of the world's remaining biodiversity is concentrated in tropical and sub-tropical regions within developing countries. The indigenous people in tropical countries did not use their traditional knowledge for commercial purposes. Therefore, they were able to maintain their indigenous knowledge without any damage within past centuries. But today, as biological resources and related knowledge become a source of high-priced assets in the capital market. Although there are many legal frameworks internationally and locally to protect the environment, due to the inadequacy of these existing legal frameworks, bio-piracy is becoming one of the most serious environmental problems in the world

#### Biodiversity crisis on brink. Collapse threatens planetary extinction of all life.

Wall 2021 [Kate, Senior Legislative Manager & Adina Nadler, Legislative Intern, 3/11] “Biodiversity: a crucial component of combating the environmental crisis,” **IFAW** <https://www.ifaw.org/people/opinions/biodiversity-combating-environmental-crisis?ms=UONDC220001102&cid=7013k000001C3QN&gclid=CjwKCAjwndCKBhAkEiwAgSDKQSfCQfOjcFF9RIYaM5Co03qOSC9hVngr3sMU4Mrjs5RdUGKY-qlBVhoCH44QAvD_BwE/EM>

We are in the midst of a biodiversity crisis. According to the May 2019 Global Assessment Report on Biodiversity and Ecosystem Services by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, extinction rates are tens to hundreds of times higher than the baseline rate, and still increasing, with as many as one million species already facing extinction. As seen with wolves in Yellowstone, every species within an ecosystem serves an important function, so these great losses could mean the collapse of ecosystems worldwide. Recognizing the critical need for biodiversity Humans, like every other species on the planet, are dependent on healthy ecosystems for our survival. Functioning ecosystems supply our most fundamental needs, like oxygen, clean water, and food security. A report released earlier this year, The Economics of Biodiversity: The Dasgupta Review, illustrates just how embedded our economies are within nature, and how nature is an asset, with biodiversity the key ingredient that enables nature to be productive and sustaining. Protecting biodiversity is also essential for public health. An estimated half of antibiotics and cancer medicines, and up to 70% of all modern pharmaceuticals, are rooted in natural sources. The COVID-19 crisis brings urgency to understanding the role of biodiversity loss in pathogen spread: as species disappear, we see increases in zoonotic spillover from host species into human beings. In addition, increased contact between humans and wild animals caused by human encroachment into new land creates more opportunities for these pathogens to spread.

#### In 1492, Columbus received a patent from Spain for the lands of India. Now is just the same for biodiversity in the developing world. Terra nullus. For the taking.

Shiva 2020 [Vandana, Activist and Environmental Ethics Scholar, 6/18] “We are Earth, we are nature. Patenting biodiversity means stealing the nature of life” **Lifegate** <https://www.lifegate.com/biodiversity-vandana-shiva/EM>

In 1492, Columbus was given a letters patent by King Ferdinand and Queen Isabel of Castile in Spain, to “discover and subdue some Islands and continents in the ocean”. The continent that Columbus was looking for was India, and that is why all indigenous peoples of North America are referred to as Indians. Having returned from the “Discovery of America”, he wrote to the King and Queen about the gold, its mining, its processing, and its transport to Castile. There was not a word about the original people, not a second thought about the theft. Theft and piracy were central to colonisation, and still are. In 1493, Pope Alexandar issued a Papal Bull “Inter Caetera,” to naturalise the take over of the land, territories and wealth of indigenous people, and define Colonialism as the Civilising Mission of the Church, through European Monarchs and their pirates and merchant-adventurers. In our times, Columbus, the monarchs, the Pope, and God have all collapsed into one – the billionaires who play God through their tools and technologies, who define and shape the new “civilising missions” based on those tools and technologies of extraction and control. New religions which must be forcibly imposed on the entire world.

#### Biodiversity loss drives climate change as well. Reinforcing cycles.

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Just last month, the UN Environment Programme released a report, Making Peace with Nature, stressing the fundamental need to address our multiple environmental crises together, not separately. That is a critical message. Attention is often focused - and rightly so - on climate change, but the biodiversity crisis is equally urgent, and inextricably linked to the climate itself. Climate change drives biodiversity loss, and loss of biodiversity (such as the destruction of forests) contributes to climate change. The two are related in another way as well: biodiversity is the planet's mechanism for mitigating the effects of climate change. Healthy habitats store excess carbon, reduce the impacts of flooding and storms, and minimize the effects of pollution. There is a tendency to see climate change as something that affects us, and biodiversity as something that affects life forms other than us.