## I affirm. Part 1: Wake Up

#### [Reid-Brinkley & ROJ] CURRENT DEBATE RENDERS REAL VIOLENCE INVISIBLE – it distances us from actual harm by focusing on improbable extinction scenarios.

Reid-Brinkley: Reid-Brinkley, Dr. Shanara. [Ph.D., Assistant Professor and Co-Director of Forensics at California State University, Fullerton] “The Harsh Realities of ‘Acting Black’: How African-American Policy Debaters Negotiate Representation Through Racial Performance and Style.” University of Georgia, Spring 2008. CV/CH

Genre Violation Four: Policymaker as Impersonal and the Rhetoric of Personal Experience. Debate is a competitive game. 112 It requires that its participants take on the positions of state actors (at least when they are affirming the resolution). Debate resolutions normally call for federal action in some area of domestic or foreign policy. Affirmative teams must support the resolution, while the negative negates it. The debate then becomes a “laboratory” within which debaters may test policies. 113 Argumentation scholar Gordon Mitchell notes that “Although they may research and track public argument as it unfolds outside the confines of the laboratory for research purposes, in this approach students witness argumentation beyond the walls of the academy as spectators**, with little or no apparent recourse to directly participate or alter the course of events.**” 114 Although debaters spend a great deal of time discussing and researching government action and articulating arguments relevant to such action, what hap**pens in debate rounds has limited or no real impact on contemporary governmental policy making. And participation does not result in the majority of the debate community engaging in activism around the issues they research**. Mitchell observes that the stance of the policymaker in debate comes with a “sense of detachment associated with the spectator posture.” 115 In other words, its **participants are able to engage in debates where they are able to** distance themselves **from the events that are the subjects of debates. Debaters can throw around terms like torture, terrorism, genocide and nuc**lear **war without blinking. Debate simulations can only serve to** distance **the debaters from real world participation in the political contexts they debate about**. As William Shanahan remarks: …the topic established a relationship through interpellation that inhered irrespective of what the particular political affinities of the debaters were. The relationship was both political and ethical, and needed to be debated as such. When we blithely call for United States Federal Government policymaking, **we are not immune to the colonialist legacy that establishes our place on this continent**. **We cannot wish away the horrific atrocities** perpetrated everyday in our name simply **by refusing to acknowledge** these implications” (emphasis in original). 116 The “objective” stance of the policymaker is an impersonal or imperialist persona. The policymaker relies upon “acceptable” forms of evidence, engaging in logical discussion, producing rational thoughts. As Shanahan, and the Louisville debaters’ note, such a stance is **integrally** **linked to the normative, historical and contemporary practices of power that produce and maintain varying networks of oppression.** In other words, the discursive practices of policyoriented debate are developed within, through and from systems of power and privilege. Thus, these practices are critically implicated in the maintenance of hegemony. So, rather than seeing themselves as government or state actors, Jones and Green choose to perform themselves in debate, violating the more “objective” stance of the “policymaker” and require their opponents to do the same.

Thus, the Role of the Judge is to Promote Real World Orientations in the Debate Space, which means we consider high-probability impacts to actual people over low-probability scenarios, regardless of magnitude.

#### [Bledsoe & Wright & ROB] And racial capitalism is a root cause of structural violence in the squo.

**Bledsoe & Wright:** Bledsoe, Adam [Department of Geography, Florida State University], and Willie Jamaal Wright [Assistant Professor, Department of Geography, Rutgers University]. “The anti-Blackness of global capital.” *Environment and Planning D: Society and Space*, Vol. 37, Issue 1, 8–26, 2019. <https://journals.sagepub.com/doi/pdf/10.1177/0263775818805102> CH

The world is living through a moment in which hyper-visualized examples of anti-Black violence have gripped the public and spurred discourses around Black life and its prevailing (lack of) value (Akuno, 2015; Ferreira da Silva, 2017; Sharpe, 2016). From Ferguson to Baltimore to Charleston to New York to Minneapolis to Orlando to Rio de Janeiro, highly publicized images of the murder of Black women, men, children, and transgendered people have forced academics and lay people alike to reflect on the material and immaterial factors that have created the world in which we currently live. The discipline of Geography has begun to attend to the issue of anti-Blackness in present-day constitutions of space (Derickson, 2016; Eaves, 2016; McCutcheon, 2016; Pulido, 2017). Environment and Planning: D, specifically, has reserved space for geographical engagements with current forms of anti-Blackness and the responses to it. These engagements have yielded important interventions by Deborah Cowen, Nemoy Lewis, and Brian Jordan Jefferson, which have addressed the issue of anti-Blackness in unique ways. Cowen and Lewis (2016) offer an analysis of internal colonialism, arguing that the “Black ghetto” remains a space of colonial administration and imperial violence that take shape through gentrification, the subprime mortgage crisis, the suburbanization of displaced Black communities, and the intense policing of Black peoples that necessarily occurs as part of such processes. Jefferson, on the other hand, explores how renewed rounds of Black murder help to reify racial hierarchy for White populations facing structural insecurity like increased unemployment, fears of “terroristic” violence, increased drug and alcohol abuse, and suicides (Jefferson, 2016). Both essays draw on prevailing political economic trends to help explain present manifestations of premature Black death. We seek to carry these conversations forward by offering new explanations of the connections between political economy and anti-Blackness within the context of the United States and abroad.

They add:

Of the many political economic factors effecting Black populations in the United States, neither gentrification, deindustrialization, capital flight, nor any other such phenomenon develop by chance (Lees, 2000, 2012; Moskowitz, 2017; Paton, 2014). Rather, these processes are all part of a much larger trend within the global economy that results in a spatial, economic, and cultural reorganization of society. This new ordering of our globe happens in accord with ever-innovating forms of capitalism. Gentrification, in particular, has come to comprise “an increasingly unassailable capital accumulation strategy” by weaving “global financial markets together with large- and medium-sized real-estate developers” (Smith, 2002: 443). As capitalism enacts new rounds of accumulation through practices like gentrification, its purveyors (e.g., real estate developers, financiers, and municipal leaders) must find or create favorable conditions for that accumulation. Thus policies, relations, and regulatory identities that once inhibited the free flow of capital (tariffs, unions, Keynesian modes of governance, localized non-capitalist practices, etc.) are increasingly manipulated and done away with to facilitate new rounds of accumulation (Hackworth and Smith, 2001; Moskowitz, 2017). As a result, human and nonhuman beings are increasingly at the mercy of capitalism and its exploitations, expropriations, and expulsions (Sassen, 2014). These oppressive spatial processes continually affect Black populations. The spatial fix—described by David Harvey (2001)—preserves and propagates capitalism and also entails a racial fix(ation) as the continuation of accumulation treats certain places and populations as obsolete, in need of appropriation, removal, and erasure. For example, in the midst of efforts to accumulate surplus value through real estate development via the gentrification of Black communities, municipalities attempt to appease Black communities and capitalize on Black cultural/spatial expressions by hemming Black histories into museums as they eradicate the makers of Black history. The African American Library at the Gregory School in Houston’s Fourth Ward, the Houston Museum of African American Culture in Houston’s Third Ward, and the National Museum of African American History and Culture in Washington, D.C. are examples of this phenomenon. Each cultural hub emerged as the neighborhoods and cities in which they are located underwent forms of gentrification that dislocated many Black residents and history makers.

**Thus,** the **Role of the Ballot** is to **Resist Racial Capitalism**, which requires endorsing a method for rejecting anti-Black economic structures in our approaches to the topic – comes first, since this controls the link to other impacts.

## Part 2: Cashing In

#### [Gupta et al] Shocker – current WTO rules stymie competition to benefit the rich, and the EU’s Draft Declaration to waive IPP is a delay tactic to stop real change.

Gupta et al: Gupta, Vineeta [MD, JD, LLM; maternal and child health physician; Director, ACTION Global Health Advocacy Partnership] and Sreenath Namboodiri [LLM, LLB; assistant professor at the School of Ethics, Governance, Culture and Social Systems at Chinmaya Vishwavidyapeeth; post-graduate on law of intellectual property rights (IPR) from Inter University Centre for IPR Studies]. “America And The TRIPS Waiver: You Can Talk The Talk, But Will You Walk The Walk?” *Health Affairs Blog*, July 13, 2021.

https://www.healthaffairs.org/do/10.1377/hblog20210712.248782/full/ CH

The EU Draft Declaration recognizes that “the response to the COVID-19 crisis needs to be comprehensive and include, but not be limited to, ensuring that the intellectual property system supports efforts to enhance production and supply of vaccines and medicines.” However, it falls short. As outlined above, the Draft Declaration introduces no new policy measures; it is, at best, simply an explanation of already existing provisions in the TRIPS Agreement and Doha Declaration. While global vaccine uptake has been widely inequitable, the Draft Declaration fails to suggest any new points that would help remedy this and ensure lifesaving vaccines are accessible everywhere. The current TRIPS flexibilities, as restated by the EU, are not efficient during a global pandemic. Legal obstacles and pressure from pharmaceutical companies make the process too slow and complicated to address the immediate challenges at hand. Furthermore, the Draft Declaration is limited to patents only and fails to address the barriers created by other intellectual property restrictions. For instance, if one thing is clear from the discussions and the opposition raised against the India-South Africa waiver proposal, it is the pivotal role of trade secrets in the transfer of tacit knowledge of technology. The operational specificities for the scaling up of vaccine production and information for regulatory approval are secured as trade secrets, making it difficult for new manufacturers to produce and enter the COVID-19 vaccine market. The EU Draft Declaration is completely silent on this matter and, hence, fails to provide a viable policy measurement “to increase manufacturing capacity and investment, as well as supplies at an affordable cost.” The Draft Declaration is not much of a surprise when one considers who is profiteering from the pandemic. All of the frontrunner vaccines, except for Moderna’s COVID-19 vaccine, are either solely or jointly developed or produced by European pharmaceutical companies. While the EU appears to be helping to alleviate this dire global crisis, it clearly has incentive to protect the interests of its pharmaceutical companies. Thus, the EU has mooted the Draft Declaration to divert attention from and delay text-based negotiations on the waiver proposal. By submitting its Draft Declaration, which is considered a proposal on par with that of the India-South Africa waiver proposal, the EU is aiming to delay text-based negotiations. Negotiations will take much longer given that the WTO TRIPS Council now has to discuss this counter proposal, too. Additionally, one might argue that the EU’s Draft Declaration is, in fact, not a proposal at all, given that it gives no new policy recommendations and is only a reiteration of the existing TRIPS flexibilities. Organizations such as Les Medecins Sans Frontiers and Health Action International have voiced their discontent with the EU for submitting this Draft Declaration to delay the text-based negotiations of the India‑South Africa proposal. In the midst of a global pandemic that has already killed more than four million people, there is no room for hesitancy nor inaction.

#### [Vanni 1] And TRIPS promotes racialized economic discrimination by shutting out non-white countries.

**Vanni 1:** Vanni, Amaka. [Ph.D. and LLM in International Economic Law from the University of Warwick] “On Intellectual Property Rights, Access to Medicines and Vaccine Imperialism.” *Third World Approaches to International Law Review*,March 23, 2021. https://twailr.com/on-intellectual-property-rights-access-to-medicines-and-vaccine-imperialism/ AA

From the onset, **the TRIPS IP regime created imbalance between innovation, market monopoly, and medicines access, because it failed to** take into **consider**ation **the health burden, development needs and local conditions of the various countries that make up the WTO.** This has led to several issues. First**, the market monopoly of IP rights,** which allows the corporation to set the market for drugs, **has create**d **a privileged societal class with access to lifesaving medication distinguishing them from those excluded from access** to available medications**. This** phenomenon **is vividly illustrated in the HIV/AIDS crisis** of the 1990s and early 2000s. While HIV/AIDS patients in developed countries were able to afford antiretroviral (ARVs) treatments, which had been developed, approved and patented as early as 1987, many patients in Africa **and other parts of the developing world could not** afford the approximately USD 12,000 per annum treatment at that time**. By 2001, approximately 2.4 million people in the region had died of AIDS.** The South African government intervened to reduce the cost of ARVs by amending its domestic patent laws to allow the authorization of parallel imports of patented pharmaceuticals and to encourage the use of generic drugs, but it was sued by the US industry group Pharmaceutical Research and Manufacturers of America (PhRMA). Though the lawsuit was eventually dropped, it highlights the measures pharmaceutical corporations, backed by some national governments, are willing to take to protect their profits at the cost of human lives. **Significantly, we see how law (or the threat of legal action) is used not only to protect and expand the profitability of a certain kind of property but**, as Anjali Vats and Deidré Keller have taught us, **also reveals IP** law**’s racial investments in whiteness and** its **continuing implications for racial (in)equality, particularly in the way it informs systems of ownership, circulation, and distribution of knowledge.** Similarly, Natsu Saito takes up the analysis of IP, race and capitalism by theorizing some of the ways in which **‘value’ in IP law concentrated in the hands of large corporations is calculated in terms of its profitability rather than what it contributes to the well-being of society.** However, the proverbial chickens have come home to roost as even rich countries are beginning to feel the bite of the dysfunctional IP system. **The issue of excessive pricing for medicines is a growing problem** in developed countries as well and has now become the [single biggest category of healthcare spending](https://jamanetwork.com/journals/jama/article-abstract/2674671) in these states, particularly the US. An empirical report by I-MAK reveals how excessive pharmaceutical patenting is extending monopolies and driving up drug prices. The report, for example, notes that over half of the [top twelve drugs in the US have more than 100 attempted patents per drug](http://www.i-mak.org/wp-content/uploads/2018/08/I-MAK-Overpatented-Overpriced-Report.pdf). Specifically, the report revealed that Humira® by AbbVie (used in the treatment of Crohn’s disease and the US’s highest grossing drug) has been issued 130 patents. The drug costs [USD 44,000](https://www.nytimes.com/2018/01/06/business/humira-drug-prices.html) annually and generated more than USD 19.2 billion for the company in 2019 alone. The Report also notes that the first patent filed for Herceptin® – used in the treatment for certain breast and stomach cancers – was in 1985 but currently has pending patent applications that could extend its market monopoly for 48 more years. Meanwhile, Celgene has over 105 patents for its oral cancer drug Revlimid® (used in the treatment of multiple myeloma) extending its monopoly until the end of 2036 – a patent lifespan of 40 years. In addition to excessive patenting and pricing, we have also come to understand the power of [data](https://twailr.com/digital-colonialism-and-the-world-trade-organization/) in this context.

#### [Vanni 2] Worse, patent protections apply to data – that delays market entry and access for smaller corporations.

**Vanni 2:** Vanni, Amaka. [Ph.D. and LLM in International Economic Law from the University of Warwick] “On Intellectual Property Rights, Access to Medicines and Vaccine Imperialism.” *Third World Approaches to International Law Review*,March 23, 2021. https://twailr.com/on-intellectual-property-rights-access-to-medicines-and-vaccine-imperialism/ AA

Second, **regulatory agencies worldwide require drugs to undergo safety and efficacy testing to ensure they are harmless before approval.** These tests, known as clinical trials, involve human subjects and are costly because they can run up to three separate phases. The data collected during these clinical trials are the proprietary materials of the company conducting the tests. **Because it** i**s expensive and time-consuming, generic drug companies usually rely on the safety and efficacy data of brand name companies to seek regulatory approval** as long as they can prove their generic version is chemically and biologically equivalent to the original**.** Relying on the test data of brand name companies reduces the production cost for generic medicines and allows for quicker market entry. However, **recent years have seen a promotion of time-limited, legally mandated protection against the non-proprietary use of such data by generic companies. This is known as data exclusivity**.Put differently, **data** exclusivity is **a period when a generic company can**no**t use the clinical trial data of** an **innovator pharma**ceutical company **to receive regulatory approval for a generic medicine.** In so doing, **data exclusivity provides a layer of protection in addition to patent protection to further delay market entry of generic med**icine**s.**

#### **[Pirtle] AND THIS CREATES ENDLESS CYCLES OF DISEASE –** racial cap IS THE CAUSE OF THE PROBLEM.

Pirtle: Pirtle, Whitney N. Laster. [Ph.D., University of California Merced] “Racial Capitalism: A Fundamental Cause of Novel Coronavirus (COVID-19) Pandemic Inequities in the United States.” *Health Education & Behavior*, Vol. 47(4) 504–508, 2020. https://journals.sagepub.com/doi/full/10.1177/1090198120922942 CH

Racial capitalism is a fundamental cause of disease in the world and will be a root cause of the racial and socioeconomic inequities in COVID-19 that we will be left to sort out when the dust settles. What is a fundamental cause? In Link and Phelan’s widely cited (1995) theoretical article, they argued that a social condition is a basic, fundamental cause of disease disparities if it (a) influences multiple disease outcomes, (b) affects disease outcomes through multiple risk factors, (c) involves access to flexible resources that can be used to minimize both risks and the consequences of disease, and (d) is reproduced overtime through the continual replacement of intervening mechanisms. Sociological health research has since proven that both socioeconomic and racial social inequities are social conditions that fit the formula and contribute to socioeconomic and racial health inequities (i.e., Gee & Ford, 2011; Lutfey & Freese, 2005; Phelan & Link, 2015; Phelan et al., 2010; Sewell, 2016; Williams & Collins, 2001). I extend this conversation by arguing that the research is actually capturing how racial capitalism works to have a fundamental impact on health inequities, as Black radical thought traditions suggested as much decades ago. As introduced by Robinson (1983), racial capitalism is the idea that racialized exploitation and capital accumulation are mutually constitutive. Racial capitalism created the modern world system, through slavery, colonialism, and genocide because “the development, organization, and expansion of capitalist society pursued essentially racial directions, so too did social ideology” (Robinson, 1983, p. 2). Racially minoritized and economically deprived groups face capitalist and racist systems that continue to devalue and harm their lives, even within newer, supposedly deracialized neoliberal agendas (Clarno, 2017; Johnson, 2017). We have ample evidence of racial capitalism as a cause of health inequities in the United States though, collectively, scholarship has not always connected all the pieces. For instance, Pulido (2016) argues that racial capitalism is at the very core of the Flint, Michigan lead water crisis: The people of Flint are so devalued that their lives are subordinated to the goals of municipal fiscal solvency . . . this devaluation is based on both their blackness and their surplus status, with the two being mutually constituted. (p. 1)

She adds: Pirtle, Whitney N. Laster. [Ph.D., University of California Merced] “Racial Capitalism: A Fundamental Cause of Novel Coronavirus (COVID-19) Pandemic Inequities in the United States.” *Health Education & Behavior*, Vol. 47(4) 504–508, 2020. https://journals.sagepub.com/doi/full/10.1177/1090198120922942 CH

COVID-19 Is Showing America Who We Are, Again—But What Can We Do? An interview on Democracy Now with Dr. Abdul El-Sayed, former director of the Detroit Health Department, perfectly summarizes the impact of racial capitalism on COVID-19 inequities in the area, specifically highlighting political and economic decisions about water: when you look at communities that are suffering the most, they’re communities on which environmental injustice, structural racism, and their implications on poverty, have already softened the space for the incoming of this virus to devastate people [emphasis added]. You know, you think about something like water . . . Detroiters were literally having to pay back the debt that the entire region incurred because Detroit was the single utility purifying water for everybody. And then they just raised rates . . . and then you fast-forward, and you think about the incoming pandemic, and we’re telling people to wash their hands with warm, soapy water for 20 seconds. Well, if you don’t have water in your house, you can’t do that. All of those— all of that is seeded by decisions that have been made, that have been patterned around race and patterned around wealth for a very long time [emphasis added]. (El-Sayed, 2020) Racialized capitalist pursuits have left behind the poor, people of color in Detroit, devaluing life so much that it is being easily snatched up by the novel coronavirus pandemic. Speaking even more broadly, capitalist gain has threatened the health of millions of Americans within the pandemic. Volunteer innovators printing important medical technologies report being threatened with litigation from large corporations (Peters, 2020). Individual racketeers have wiped out entire city’s stock of hand sanitizer in seek of profit. Wisconsin Republicans in power reject extensions for returning absentee ballots exploiting the pandemic and increasing voter disenfranchisement of poor, people of color (Bearman, 2020). Xenophobic racism has already affected health outcomes, as governmental officials lacked to enact policies by othering the problem, or later enacting targeted border policies (Goh, 2020). Anti-Asian interpersonal discrimination has increased and social distancing may spike rates of White Nationalism (Dickson, 2020). “Each public health issue is a snapshot where we can see the unfolding of the collective processes that define who we are, what we believe, and what we value as a society” (Wallack, 2019, p. 901). COVID-19 is showing us who we are . . . again. The racist, capitalist frameworks that sustain the modern world is a fundamental cause of COVID-19 within and across countries, but what can we do? As a collective, we must first ask, what would it take to create the change we need to solve this problem (Wallack, 2019)? Public health and health education research, in particular, must look beyond interventions focused to individual and interpersonal characteristics and more to institutions, environments, and Laster Pirtle 507 ideologies (Golden & Earp, 2012). As Link and Phelan (1995) instruct, “If one wishes to address fundamental social causes, the intervention must address inequality in the resources that fundamental causes entail” (p. 89). C. P. Jones (2014) offers three tangible way to address health equity that combats racial capitalism: “valuing all individuals and populations equally; recognizing and rectifying historical injustices; providing resources according to need.” (p. S75).

## Thus, I affirm:

#### [Vanni 3] The member nations of the World Trade Organization ought to reduce intellectual property protections for medicines.

**Vanni 3:** Vanni, Amaka. [Ph.D. and LLM in International Economic Law from the University of Warwick] “On Intellectual Property Rights, Access to Medicines and Vaccine Imperialism.” *Third World Approaches to International Law Review*,March 23, 2021. https://twailr.com/on-intellectual-property-rights-access-to-medicines-and-vaccine-imperialism/ AA

This brings us to the present and how this dysfunction continues to be normalised in the current pandemic. Moderna, for example, has filed over 100 patents for the mRNA technology used in its vaccine, despite receiving funds from the US government with its IP partly owned by the US National Institutes of Health. Pfizer/BioNTech have also filed multiple patents on not only their COVID-19 vaccine product, but also on the manufacturing process, method of use and related technologies even though BioNtech was given $450 million by the German government to speed up vaccine work and expand production capacity in Germany. It has become increasingly plain that IP makes private rights out of public funds while benefitting particular corporate interests. In fact, reports show the US government under Operation Warp Speed led by the US Department of Health also funded other vaccines developed in 2020 by several pharmaceutical corporations including Johnson and Johnson, Regeneron, Novavax, Sanofi and GlaxoSmithKline, AstraZeneca, and others. In spite of this boost from public funds, and with many governments wholly taking on the risks for potential vaccine side effects, drug manufacturers fully own the patents and related IP rights and so can decide how and where the vaccines get manufactured and how much they cost. As a result, taxpayers are paying twice for the same shot: first for its development, then again for the finished product. Meanwhile, a New York Times report has revealed that in some of the agreements between pharmaceutical companies and states, governments are prohibited from donating or reselling doses. This prohibition helps explain the price disparity in vaccine purchases among countries where poor countries are paying more. For example, Uganda is paying USD 8.50 per dose of the AstraZeneca vaccine while the EU is paying only USD 3.50 per dose. By prioritizing monopoly rights of a few western corporations, IP dysfunction not only continues to reproduce old inequities and inequality in health access, but helps frame our understanding about the creation and management of knowledge. And perhaps we begin to see the refusal of drug makers to share knowledge needed to boost global vaccine supply for what it truly is: an extension in capitalist bifurcation of who is imagined as a legitimate intellectual property owner and who is envisioned as a threat to the (intellectual) propertied order. Supporters and opponents of a TRIPS waiver for the COVID-19 vaccines (February 2021) Despite calls to make COVID-19 vaccines and related technologies a global public good, western pharmaceutical companies have declined to loosen or temporarily suspend IP protections and transfer technology to generic manufacturers. Such transfer would enable the scale-up of production and supply of lifesaving COVID-19 medical tools across the world. Furthermore, these countries are also blocking the TRIPS waiver proposal put forward by South Africa and India at the WTO despite being supported by 57 mostly developing countries. The waiver proposal seeks to temporarily postpone certain provisions of the TRIPS Agreement for treating, containing and preventing the coronavirus, but only until widespread vaccination and immunity are achieved. This means that countries will not be required to provide any form of IP protection on all COVID-19 related therapeutics, diagnostics and other technologies for the duration of the pandemic. It is important to reiterate the waiver proposal is time-limited and is different from TRIPS flexibilities, which are safeguards within the Agreement to mitigate the negative impact of patents such as high price of patented medicines. These safeguards include compulsory licenses and parallel importation. However, because of the onerous process of initiating these flexibilities as well as the threat of possible trade penalties by the US through the United States Trade Representative (USTR) “Special 301” Report targeting countries even in the absence of illegality, many developing countries are reluctant to invoke TRIPS flexibilities for public health purposes. For example, in the past, countries such as Colombia, India, Thailand and recently Malaysia have all featured in the Special 301 Report for using compulsory licenses to increase access to cancer medications. It is these challenges that the TRIPS waiver seeks to alleviate and, if approved, would also provide countries the space, without fear of retaliation from developed countries, to collaborate with competent developers in the R&D, manufacturing, scaling-up, and supply of COVID-19 tools. However, because this waiver is being opposed by a group of developed countries, we are grappling with the problem of artificially-created vaccine scarcity. The effect of this scarcity will further prolong and deepen the financial impact of this pandemic currently estimated to cost USD 9.2 trillion, half of which will be borne by advanced economies. Thus, in opposing the TRIPS waiver with the hopes of reaping huge financial rewards, developed countries are worsening pandemic woes in the long term.

#### [Biggers] And Biggers defines: Biggers, Alana [Dr. Alana Biggers is an internal medicine physician. She graduated from the University of Illinois at Chicago. She is an assistant professor at the University of Illinois at Chicago College of Medicine, where she specializes in internal medicine. She also has a Master of Public Health in chronic disease epidemiology.] “What is Medicine?” Medical News Today, November 16, 2018, AA

**Medicine is the field of health and healing.** It includes nurses, doctors, and various specialists. **It covers diagnosis, treatment, and prevention of disease, medical research, and** many **other aspects of health.**

## Part 3: Better Access

#### [Dhar & Gopakumar] The plan is modeled after India and South Africa’s waiver request.

**Dhar & Gopakumar:** Dhar, Biswajit [Director General, Research and Information System for Developing Countries, New Delhi; Professor and Head, Centre for WTO Studies, Indian Institute of Foreign Trade; Senior Fellow, Research and Information System for the Non-aligned and Other Developing Countries, New Delhi; Senior Consultant, Planning Commission, Government of India.] Gopakumar, K.M [Legal Advisor and Senior Researcher with the Third World Network] “Towards more affordable medicine: A proposal to waive certain obligations from the Agreement on TRIPS”, *Asia-Pacific Research and Training Network on Trade,* 2020 AA

The COVID-19 pandemic has once again brought a similar response from **India and South Africa**. The two countries **have tabled a joint proposal, which was discussed by the TRIPS Council, seeking waiver from certain obligations under the TRIPS Agreement for the “prevention, containment, and treatment of COVID-19”** (World Trade Organization 2020a). Kenya and Eswatini have also supported this Proposal. Using **the provisions** of Article IX of the Marrakesh Agreement Establishing the WTO, the proposal makes a request to the General Council of the WTO, to **waive the implementation, application, and enforcement** of four forms of IPRs covered by the TRIPS Agreement for some years **for the prevention, containment, and treatment of COVID-19. The scope of waiver includes the following: copyright and related rights, industrial designs, patents, and trade secrets.** It should be noted here that the waiver of legal obligations under WTO agreement is not new. Since 1995, of the waivers that were granted, three were from TRIPS obligations (World Trade Organization 2016).3 The India-South Africa proposal has been tabled in the backdrop of the cautionary note issued by the WTO that the “COVID-19 pandemic represents an unprecedented disruption to the global economy and world trade, as production and consumption are scaled back across the globe”. **The two countries have argued that it is “important for WTO Members to work together to ensure that intellectual property rights such as patents, industrial designs, copyright and protection of undisclosed information do not create barriers to the timely access to affordable medical products including vaccines and medicines or to scaling-up of research, development, manufacturing and supply of medical products essential to combat COVID-19”.** **Given the large increase in demand for access to affordable medical products including diagnostic kits, medical masks, other personal protective equipment, and ventilators, as well as vaccines and medicines for the prevention and treatment of patients, it becomes imperative that supply-side shocks eliminated.** At the same time, critical shortages in these

#### [So] Waivers ensure wide-spread production of crucial medicine – COVID vaccines prove.

**So:** So, Anthony [Anthony D. So, MD, MPA, is Professor of the Practice and Founding Director of the Innovation+Design Enabling Access (IDEA) Initiative. Based in Health Systems in the Department of International Health, the IDEA Initiative will foster innovation and design of new technologies for greater health access and impact. He also serves as thematic lead of the Transformative Technologies and Institutions arm of the Johns Hopkins Alliance for a Healthier World. As Director of the Strategic Policy Program of ReAct--Action on Antibiotic Resistance, he works with a global network dedicated to meeting the challenge of antimicrobial resistance, with regional nodes in Africa, Latin America, Asia and Europe.] “WTO TRIPS Waiver for COVID-19 Vaccines”, *Bloomberg School of Public Health,* May 10, 2021 AA

**Sharing the know-how behind making COVID-19 vaccines is key to not only scaling up production, but also bringing forward the second generation of vaccines we will need to address emerging variants. No single vaccine manufacturer can produce enough vaccines to cover the globe, and demand has far outstripped supply, with high-income countries taking the lion’s share of reserved doses. Proponents of a TRIPS waiver wonder how it can be right for a multinational vaccine manufacturer to hold exclusive rights that can stop other firms from stepping up to meet the need for vaccines, particularly in markets not being served by current vaccine producers.** They argue that the public already has paid once or twice for such innovation, either upfront in research and development (R&D) costs or through purchase guarantees of these products, or both. **Moderna’s** COVID-19 **vaccine—one of two now in use based on an mRNA platform**—was paid for largely by the U.S. government, and in fact, Moderna has pledged not to enforce its patents related to the COVID-19 vaccine during the pandemic. However, making the Moderna vaccine likely **involves other companies’ patented equipment and processes as well, so waiving patent protections on one piece of the process may not help other companies make the entire “recipe.”** This is why a TRIPS waiver is considered important to ensure other vaccine manufacturers would have the freedom to operate. **It should also be acknowledged that a TRIPS waiver may accelerate scaling up some COVID-19 vaccines where untapped capacity for vaccine production still exists, and it may also encourage existing vaccine producers to step up their technology transfer efforts.** By noting its willingness to move forward with text-based negotiations over a TRIPS waiver at the World Trade Organization, the United States signaled a seismic shift in policy. However, it is only the beginning of a process.

#### [Feldman et al] And, squo innovation doesn’t help because monopolies remove incentives for improvements.

Feldman et al. 8-10**:** Feldman, Robin [researcher at University of California Hastings College of the Law] Hyman, David [researcher at Georgetown University Law Center] Price, W. Nicholson [University of Michigan Law School researcher] and Ratain, Mark [researcher at The University of Chicago] "Negative innovation: when patents are bad for patients," *Nature Biotechnology,* August 10, 2021, AA

Incentives in patent law have driven innovation into spaces that are affirmatively harmful to patients, and patentees are discouraged from taking steps to improve the product so as to prevent adverse health outcomes. Patent law in the United States is historically premised on advancing the interests of society. From the store of productive activity available to all, the government restricts some activities for a limited time in hopes this will redound to the benefit of all by incentivizing innovation1. The law thereby restricts competition, forgoing the concomitant advantages of the free market, but only during the patent period. After that time, the law expects that competition will enter, driving down prices and spurring new innovation. From this perspective, US patent law centers on the benefit to the public, with the inventor’s reward providing the vehicle for accomplishing this jurisprudential goal. In the health care space, these incentives have resulted in extraordinary success stories, but the same incentives can also result in a range of undesirable consequences, including excessive development of similar (but not better) products (‘me-too drugs’), the focus on drugs for diseases that affect wealthy people and wealthy countries rather than diseases that disproportionately affect the poor and developing nations, and a lack of innovation for types of medicines that may return fewer profits, such as antibiotics2,3,4. Similarly, drug companies will not research the utility of a known (and hence unpatentable) chemical, since the ability to obtain patent protection is central to their business model5. Past literature has highlighted these problems but has largely overlooked the problem of ‘negative innovation’, in which patent law drives innovation into spaces that are affirmatively harmful to patients. By this, we mean scenarios whereby patents create incentives to bring a product to market in a way that is relatively harmful to consumers, and the existence of a patent (and the associated rents) discourages the patentee from taking steps to improve the product so as to prevent the adverse health outcomes. Of course, there are other patent-driven situations of problematic utility, including scenarios that result in purely financial harms, such as drugs that are no better than existing options but are more expensive; scenarios where a small, heightened risk of direct physical harm is offset by lower prices for the drug in question6; and scenarios where there is no existing product on the market and inadequate incentives to develop such a product, so any physical harm is the result of the underlying disease or illness7. Finally, there is a general concern that inadequate new information about existing products is generated in the current system8. All of these scenarios are different in kind from negative innovation, which results in a harmful (but profitable) product. We focus on this dangerous but overlooked space of the patent landscape, wherein patents themselves lead fairly directly to patient harm. What does negative innovation look like? We highlight a particularly pernicious example, the case of Imbruvica (ibrutinib); suggest the likelihood of broader problems; and outline various strategies for preventing such outcomes going forward. The case of ibrutinib; suggest the likelihood of broader problems; and outline various strategies for preventing such outcomes going forward.

#### [Vanni 4] Further, collaborating without barriers is the only way to address health disparities.

**Vanni 4:** Vanni, Amaka. [Dr. Vanni obtained her PhD and LLM degrees in International Economic Law from the University of Warwick. She is the current President of the African International Economic Law Network (AfIELN).] “On Intellectual Property Rights, Access to Medicines and Vaccine Imperialism”, *Third World Approaches to International Law Review*, March 23, 2021. EM

While the coronavirus (COVID-19) disease continues to destroy human lives and economies, the response to this paralyzing global pandemic has also brought to the fore the ingenuity of humanity. **Within a few months of the pandemic, researchers in China, Germany, the United Kingcdom, and the United States shared information on the genome sequence of COVID-19 to reveal the structures of key proteins that make up the new coronavirus. This particular scientific breakthrough could have taken years had these scientists not jointly collaborated by sharing findings and expertise.** Furthermore, as COVID-19 devastation worsened and its global impact became known, partnerships emerged between several governments, research institutions, international organizations, private sector actors, and philanthropic institutions for the development of vaccines targeting the virus. Triumphantly, in the twelve months since COVID-19 was first detected, several vaccine candidates are being rolled out and many more are in clinical trial stages. While the response to **COVID-19 has shown** what can be accomplished when the world works together, it has also underscored three interrelated points. First, the neoliberal framework – including **the critical role intellectual property (IP) law plays in constituting this form of civilisation – is an unsuitable model for delivering the goods needed to respond to global health emergencies.** The current economic/market system does not allow for equitable responses to infectious diseases, particularly access to sufficient medical and health resources. This inequity was obvious in the early days of the pandemic when test kits, PPEs, and ventilation machines were being distributed on the basis of who could pay the most rather than who needed them the most. Second, the beggar-thy-neighbor response currently adopted by developed countries hurts everyone because failing to stop the spread of the virus globally allows more mutations, which makes existing vaccines less effective. As COVID-19 has shown, no one is safe until everyone is safe. Yet, despite this warning, **the hoarding of vaccines by developed countries continues unabated and speaks to the wider racist capitalist system we live in.** If anything, this crude accumulation of vaccines reinforces North-South economic and political dominance and marks, as Onur Ince observes, the conceptual locus of political violence operative in the global genealogy of capitalism.

#### [Meyer] Even if the WTO has flaws, the aff spills over to create momentum to reform it.

**Meyer:** Meyer, David [the Editor of CEO Daily and a senior writer on Fortune’s European team. Author of the digital rights primer, Control Shift: How Technology Affects You and Your Rights.] “The WTO’s survival hinges on the COVID-19 vaccine patent debate, waiver advocates warn,” *Fortune,* June 18, 2021. AA

The World Trade Organization knows all about crises. Former U.S. President Donald Trump threw a wrench into its core function of resolving trade disputes—a blocker that President Joe Biden has not yet removed—**and there is widespread dissatisfaction over the fairness of the global trade rulebook. The** 164-country **organization**, under the fresh leadership of Nigeria's Ngozi Okonjo-Iweala, **has a lot to** fix. However, **one crisis is more pressing than** the **others**: the battle over COVID-19 vaccines, and whether the protection of their patents and other intellectual property should be temporarily lifted to boost production and end the pandemic sooner rather than later. According to some of those pushing for the waiver—which was originally proposed last year by India and South Africa—**the WTO's future rests on what happens next.** **"The credibility of the WTO will depend on its ability to find a meaningful outcome on this issue** that truly ramps-up and diversifies production," says Xolelwa Mlumbi-Peter, South Africa's ambassador to the WTO. "Final nail in the coffin" The Geneva-based **WTO isn't an organization with power**, as such—it's a framework within which countries make big decisions about trade, generally by consensus. **It's supposed to be** the forum **where disputes get settled,** because all its members have signed up to the same rules. And one of its most important rulebooks is the Agreement on Trade-Related Aspects of Intellectual Property Rights, or TRIPS, which sprang to life alongside the WTO in 1995. The WTO's **founding agreement allows for rules to be waived in exceptional circumstances,** and indeed this has happened before: its members agreed in 2003 to waive TRIPS obligations that were blocking the importation of cheap, generic drugs into developing countries that lack manufacturing capacity. (That waiver was effectively made permanent in 2017.) **Consensus is the key here**. Although the failure to reach consensus on a waiver could be overcome with a 75% supermajority vote by the WTO's membership, this would be an unprecedented and seismic event. **In the case of the COVID-19 vaccine IP waiver, it would mean standing up to the European Union,** and Germany in particular, as well as countries such as Canada and the U.K.—the U.S. recently flipped from opposing the idea of a waiver to supporting it, as did France. **It's a dispute between countries, but the result will be on the WTO as a whole**, say waiver advocates. "**If, in the face of one of humanity's greatest challenges** in a century, **the WTO functionally becomes an** obstacle as in contrast to part of the solution, **I think it could be the final nail in the coffin"** **for the organization**, says Lori Wallach, the founder of Public Citizen's Global Trade Watch, a U.S. campaigning group that focuses on the WTO and trade agreements. **"If the** TRIPS **waiver is successful, and people see the WTO as being part of the solution**—saving lives and livelihoods—**it could create goodwill and momentum to address what are still daunting structural problems."** Those problems are legion. Reform needs Top of the list is the WTO's Appellate Body, which hears appeals in members' trade disputes. It's a pivotal part of the international trade system, but Trump—incensed at decisions taken against the U.S. —blocked appointments to its seven-strong panel as judges retired. The body became completely paralyzed at the end of 2019, when two judges' terms ended and the panel no longer had the three-judge quorum it needs to rule on appeals. Anyone who hoped the advent of the Biden administration would change matters was disappointed earlier this year when the U.S. rejected a European proposal to fill the vacancies. "The United States continues to have systemic concerns with the appellate body," it said. "As members know, the United States has raised and explained its systemic concerns for more than 16 years and across multiple U.S. administrations." At her confirmation hearing in February, current U.S. Trade Representative Katherine Tai reiterated those concerns—she said the appellate body had "overstepped its authority and erred in interpreting WTO agreements in a number of cases, to the detriment of the United States and other WTO members," and accused it of dragging its heels in settling disputes. "Reforms are needed to ensure that the underlying causes of such problems do not resurface," Tai said. "While the U.S. [has] been engaging [with the WTO] it hasn't indicated it would move quickly on allowing appointments to the Appellate Body," says Bryan Mercurio, an economic-law professor at the Chinese University of Hong Kong, who opposes the vaccine waiver. "This is not a good sign. In terms of WTO governance, it's a much more important step than supporting negotiations on an [intellectual property] waiver." It's not just the U.S. that wants to see reform at the WTO. In a major policy document published in February, the EU said negotiations had failed to modernize the organization's rules, the dispute-resolution system was broken, the monitoring of countries' trade policies was ineffective, and—crucially—"the trade relationship between the U.S. and China, two of the three largest WTO members, is currently largely managed outside WTO disciplines." China is one of the key problems here. It became a WTO member in 2001 but, although this entailed significant liberalization of the Chinese economy, it did not become a full market economy. As the European Commission put it in February: "The level at which China has opened its markets does not correspond to its weight in the global economy, and the state continues to exert a decisive influence on China's economic environment with consequent competitive distortions that cannot be sufficiently addressed by current WTO rules." "China is operating from what it sees as a position of strength, so it will not be bullied into agreeing to changes which it sees as not in its interests," says Mercurio. China is at loggerheads with the U.S., the EU and others over numerous trade-related issues. Its rivals don't like its policy of demanding that Chinese citizens' data is stored on Chinese soil, nor do they approve of how foreign investors often have to partner with Chinese firms to access the country's market, in a way that leads to the transfer of technological knowhow. They also oppose China's industrial subsidies. Mercurio thinks China may agree to reforms on some of these issues, particularly regarding subsidies, but "only if it is offered something in return." **All these problems won't go away if the WTO manages to come up with a TRIPS waiver** for COVID-19 vaccines and medical supplies, Wallach concedes. "**But**," she adds, "**the will and the good faith to tackle these challenges is increased enormously if the WTO has the experience of being part of the solution, not just an obstacle."** Wallach points to a statement released earlier this month by Asia Pacific Economic Cooperation (APEC) trade ministers, which called for urgent discussions on the waiver. "**The WTO must demonstrate that global trade rules can help address the human catastrophe** of the COVID-19 pandemic and facilitate the recovery," the statement read in its section about WTO reform. Okonjo-Iweala's role The **WTO's new director general**, whose route to the top was unblocked in early 2021 with the demise of the Trump administration, i**s certainly keen to fix the problems** that contributed to the early departure of her predecessor, Brazil's Robert Azevedo. "**We must act now** to get all our ambassadors to the table to negotiate a text" on the issue of an IP waiver for COVID vaccines, Ngozi Okonjo-Iweala, director general of the World Trade Organization, has said. Dursun Aydemir—Anadolu/Bloomberg/Getty Images Earlier this week, when the U.S. and EU agreed a five-year ceasefire in a long-running dispute over Boeing and Airbus aircraft subsidies, Okonjo-Iweala tweeted: **"With political will, we can solve even the most intractable problems."** However, Mercurio is skeptical about her stewardship having much of an effect on the WTO's reform process. "Upon taking [over she] stated it was time for delegations to speak to each other and not simply past each other, but at the recent General Counsel meeting delegations simply read prepared statements in what some have described as the worst meeting ever," he says. "On the other hand, **Ngozi is very much someone who will actively seek solutions to problems,** and in this way different to her predecessor. If the role of mediator is welcomed, **she could have an impact not in starting discussions but in getting deals over the finish line."**