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#### The biotech industry is strong now---it’s weathered the COVID storm.

Cancherini et al. 21 – Consultant in M`cKinsey’s Brussels office

Laura Cancherini, Joseph Lydon, Jorge Santos da Silva, Alexandra Zemp, “What’s ahead for biotech: Another wave or low tide?,” McKinsey & Company, April 2021, https://www.mckinsey.com/industries/life-sciences/our-insights/whats-ahead-for-biotech-another-wave-or-low-tide

Unlike most industries in these extraordinarily challenging times, biotech is experiencing a high. Executives in many other sectors are becoming more pessimistic about the outlook for their businesses as the global pandemic continues to spread.1 But the search to understand and find treatment or preventive solutions to COVID-19 has focused intense government, media, and public attention on science and medicine, reinforcing the perception that biotech acquisitions and partnerships represent a good investment.

In an effort to understand worldwide biotech financing in the context of the COVID-19 crisis, McKinsey analyzed the sector’s financial performance and interviewed 20 C-level executives from small and midsize biotechs and venture-capital (VC) firms.

The pandemic has had an enormous financial impact on many sectors, but biotech has weathered the storm: after a brief downturn early in the crisis, it recovered quickly (Exhibit 1). Between January 2020 and January 2021, the average share price for European and US biotechs increased at more than twice the rate of the S&P 500, and Chinese biotechs performed more than six times better, with their average share price more than doubling in a year. Overall, biotech is outperforming its sister industry, pharmaceuticals, as well as many household-name consumer-goods and technology companies.

With acquisitions, partnerships, IPOs, and fundraising still increasing, biotech’s star has, if anything, risen higher than it was before the pandemic. The industry’s response to the crisis, its record of innovation, and its reputation as a safe haven for investment have all served it well. But whether biotech can sustain this performance is open to question. This article looks at the industry’s record of growth, its resilience during the global pandemic, and the factors that could determine whether the biotech wave continues.

#### Biotech is key to climate change solutions---waiving IP rights decks it by setting a sweeping precedent that chills innovation.

Brand 21 – Assistant General Counsel and Director of Intellectual Property at the Biotechnology Innovation Organization

Melissa Brand, “TRIPS IP Waiver Could Establish Dangerous Precedent for Climate Change and Other Biotech Sectors,” IP Watchdog, May 2021, https://www.ipwatchdog.com/2021/05/26/trips-ip-waiver-establish-dangerous-precedent-climate-change-biotech-sectors/id=133964/

While the discussions around waiving intellectual property (IP) rights set forth in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) are currently (and somewhat amorphously) limited to COVID-19 related drug and medical products, it is probably shortsighted to ignore the implications for other technologies critical to sustaining our environment and advancing a more healthful world. In fact, if we want to ensure continued investment in these technologies, we should be very concerned about the message conveyed by the international political tide: if you overcome a challenging scientific problem and your solution has the potential to save lives, be prepared to be subjected to intense political pressure and to potentially hand over your technology without compensation and regardless of the consequences.

The biotech industry is making remarkable advances towards climate change solutions, and it is precisely for this reason that it can expect to be in the crosshairs of potential IP waiver discussions. President Biden is correct to refer to climate change as an existential crisis. Yet it does not take too much effort to connect the dots between President Biden’s focus on climate change and his Administration’s recent commitment to waive global IP rights for Covid vaccines (TRIPS IP Waiver). “This is a global health crisis, and the extraordinary circumstances of the COVID-19 pandemic call for extraordinary measures.” If an IP waiver is purportedly necessary to solve the COVID-19 global health crisis (and of course we dispute this notion), can we really feel confident that this or some future Administration will not apply the same logic to the climate crisis? And, without the confidence in the underlying IP for such solutions, what does this mean for U.S. innovation and economic growth? United States Trade Representative (USTR) Katherine Tai was subject to questioning along this very line during a recent Senate Finance Committee hearing. And while Ambassador Tai did not affirmatively state that an IP waiver would be in the future for climate change technology, she surely did not assuage the concerns of interested parties.

International Pressure May Be Influencing Domestic IP Policy

The United States has historically supported robust IP protection. This support is one reason the United States is the center of biotechnology innovation and leading the fight against COVID-19. However, a brief review of the domestic legislation arguably most relevant to this discussion shows just how far the international campaign against IP rights has eroded our normative position. The Clean Air Act, for example, contains a provision allowing for the mandatory licensing of patents covering certain devices for reducing air pollution. Importantly, however, the patent owner is accorded due process and the statute lays out a detailed process regulating the manner in which any such license can be issued, including findings of necessity and that no reasonable alternative method to accomplish the legislated goal exists. Also of critical importance is that the statute requires compensation to the patent holder. Similarly, the Atomic Energy Act contemplates mandatory licensing of patents covering inventions of primary importance in producing or utilizing atomic energy. This statute, too, requires due process, findings of importance to the statutory goals and compensation to the rights holder.

A TRIPS IP waiver would operate outside of these types of frameworks. There would be no due process, no particularized findings, no compensation and no recourse. Indeed, the fact that the World Trade Organization (WTO) already has a process under the TRIPS agreement to address public health crises, including the compulsory licensing provisions, with necessary guardrails and compensation, makes quite clear that the waiver would operate as a free for all.

Forced Tech Transfer Could Be on The Table

When being questioned about the scope of a potential TRIPS IP waiver, Ambassador Tai invoked the proverb “Give a man a fish and you feed him for a day. Teach a man to fish and you feed him for a lifetime.” While this answer suggests primarily that, in times of famine, the Administration would rather give away other people’s fishing rods than share its own plentiful supply of fish (here: actual COVID-19 vaccine stocks), it is apparent that in Ambassador Tai’s view waiving patent rights alone would not help lower- and middle-income countries produce their own vaccines. Rather, they would need to be taught how to make the vaccines and given the biotech industry’s manufacturing know-how, sensitive cell lines, and proprietary cell culture media in order to do so.

In other words, Ambassador Tai acknowledged that the scope of the current TRIPS IP waiver discussions includes the concept of forced tech transfer. In the context of climate change, the idea would be that companies who develop successful methods for producing new seed technologies and sustainable biomass, reducing greenhouse gases in manufacturing and transportation, capturing and sequestering carbon in soil and products, and more, would be required to turn over their proprietary know-how to global competitors.

While it is unclear how this concept would work in practice and under the constitutions of certain countries, the suggestion alone could be devastating to voluntary international collaborations. Even if one could assume that the United States could not implement forced tech transfer on its own soil, what about the governments of our international development partners? It is not hard to understand that a U.S.-based company developing climate change technologies would be unenthusiastic about partnering with a company abroad knowing that the foreign country’s government is on track – with the assent of the U.S. government – to change its laws and seize proprietary materials and know-how that had been voluntarily transferred to the local company.

Necessary Investment Could Diminish

Developing climate change solutions is not an easy endeavor and bad policy positions threaten the likelihood that they will materialize. These products have long lead times from research and development to market introduction, owing not only to a high rate of failure but also rigorous regulatory oversight. Significant investment is required to sustain and drive these challenging and long-enduring endeavors. For example, synthetic biology companies critical to this area of innovation raised over $1 billion in investment in the second quarter of 2019 alone. If investors cannot be confident that IP will be in place to protect important climate change technologies after their long road from bench to market, it is unlikely they will continue to invest at the current and required levels.

Next on the Chopping Block

It is quite reasonable to be worried about the broad implications of a TRIPS IP waiver precedent. International campaigns to weaken IP rights seem to be taking hold in U.S. domestic policy. The TRIPS IP waiver discussions will not conclude in the near term and will not yield more shots in people’s arms. This is not even truly disputed, as our own administration acknowledges that the goal here is technology transfer abroad. Given the signaling that our Administration believes waiving IP rights is an appropriate measure to end global crises, it is proper to worry that facets of the biotech sector addressing climate change may be next on the chopping block.

#### Biotech innovation is uniquely key to combatting climate change.

McMurry-Heath 21 – Physician-scientist and the president and CEO of the Biotechnology Innovation Organization

Michelle McMurry-Heath, “To help solve climate change, look to the biosciences,” STAT News, May 2021, https://www.statnews.com/2021/05/21/climate-change-solutions-from-biosciences/

President Biden’s pledge to cut U.S. greenhouse gas emissions in half by 2030 is an admirable and ambitious undertaking. It’s nearly double the goal set by President Obama in 2015. And it establishes the United States as a world leader in battling climate change.

But reaching the president’s target in just under 10 years is a monumental task. It’s so big, in fact, that we’ll never get there by government action alone. No amount of vehicle efficiency standards, forest conservation efforts, or gas taxes can fully solve the problem.

We have to science our way out of it.

The biosciences, including biotechnology, will play a pivotal role in the fight against climate change. It is already leading the way on several fronts. According to a report from BIO, the organization I work for, the biotech industry’s green initiatives could mitigate the equivalent of 3 billion tons of carbon dioxide every year by 2030, or about half of the country’s annual CO2 emissions.

Take food, for example.

Food consumption — and production — is central to human existence. Global food production accounts for one-quarter of greenhouse gas emissions. A recent report from an international team of researchers concluded that even if all other fossil fuel emissions were eliminated, emissions from food production alone would prevent us from reaching a key goal of the climate change agreement signed in Paris: preventing the global temperature from rising more than 2 degrees Celsius.

Halting food production isn’t an option, so biotech companies are helping farmers become part of the climate solution. Take, for example, Boston-based Joyn Bio. It is engineering bacteria that pull nitrogen directly from the atmosphere. These microbes then pass the nitrogen to crops like wheat and corn, reducing the need to make, transport, and apply nitrogen fertilizers, which reduces greenhouse gas emissions.

Minnesota-based Acceligen is using a technique it calls precision breeding that improves the health of livestock while reducing their waste, greenhouse gas emissions, and water usage.

Biotechnology can also help protect food from climate change. As fungal and bacterial infections accelerated by human-driven environmental disturbances threaten to wipe out Cavendish bananas, Tropic Biosciences in the United Kingdom is using CRISPR gene-editing technology to engineer infection-resistant bananas.

Companies are also rethinking how food is packaged to reduce plastic pollution and open high-tech paths to broader adoption of biodegradables. This would be a game-changer in the interlinked fight to modulate climate change and protect the oceans.

Globally, 100 million tons of plastic are produced every year, 8 million of which ends up in the oceans. The production of plastic requires at least 8% of the world’s petroleum. Greenhouse gas emissions from plastic production and incineration could rise from the current 850 million tons a year to 3 billion tons a year by 2050. And discarded plastic that ends up in the ocean slowly breaks down in sunlight, releasing greenhouse gases and toxic microplastics.

Georgia-based Danimer Scientific — partnering with the Mars Wrigley candy company — is working on biodegradable packaging that uses plant oils to manufacture “plastic” that dissolves in soil and water. Bioplastics and biopolymers can reduce greenhouse gas emissions reductions by up to 80% more compared to their petroleum-based counterparts.

Fuel is another target for biotechnology. Transportation accounts for the highest percentage of U.S. greenhouse gas emissions. While electric cars are gaining popularity, and the $174 billion allocated to support the transition to electrics in Biden’s American Jobs Plan is important, biofuels — which are carbon neutral — will be needed to help reduce emissions in transportation and need comparable support.

The biotech company Synthetic Genomics, for instance, is utilizing saltwater algae, which convert sunlight and carbon dioxide into biomass, to make sustainable auto fuel. By 2025, 10,000 barrels of the algal biofuel could be produced per day for commercial use.

Biofuels will also play an important role in air travel. While flying accounts for less than 3% of global CO2 emissions a year, on a per-mile calculation it’s the least green form of travel. With the number of air travel passengers expected to double by 2040, the Biden administration is upping the financial incentives — through tax credits — for companies that produce sustainable aircraft fuels.

Biotech firms are already stepping up. Companies like Neste, Gevo, and World Energy are using everything from algae to used or wasted cooking oil to create sustainable jet fuels. LanzaTech recycles carbon from industrial emissions and other sources and turns it into aviation fuel — and has recently partnered with other corporations to bring that fuel to market for commercial airline use.

With help from biotechnology, the U.S. can achieve the climate change goals outlined by the Biden administration and the Paris Agreement. Human progress and technology got us into this mess. That same ingenuity can help get us out.

#### Global warming is an existential threat.

Tonn 21 – Professor of Political Science at the University of Tennesse Knoxville

Bruce E. Tonn, “Anticipation, Sustainability, Futures and Human Extinction: Ensuring Humanity’s Journey into The Distant Future,” Routledge, May 2021, https://www.taylorfrancis.com/books/mono/10.4324/9781003000105/anticipation-sustainability-futures-human-extinction-bruce-tonn

Unfortunately, unlike the aftermath of the Black Plague in the Middle Ages, human population continued to slide, or it should be said that the number of Havenots continued to decrease. Next up was climate change. For aforementioned reasons, the countries of the world had not stemmed the use of fossil fuels and, therefore, had not reduced the emissions of GHG into the atmosphere. Few technologies had been put in place to reduce GHG in the atmosphere or sequester the carbon elsewhere. It was as if the planet extracted revenge through withering droughts in Central China, Northern Africa, and North Central North America, deadly heat waves in Western and Central Europe, implacable sea-level rise in the Asia Pacific region, and apocalyptic storms worldwide. People were literally washed away down rivers and into oceans. Agricultural systems collapsed outside of the wealthy areas of the Haves, which were quickly becoming self-sufficient and hermetically sealed to the world of the Havenots. The built environment and urban infrastructures were pummeled. Another round of diseases, mostly mosquito-borne this time, ravaged the world’s population. The developed world offered no safety net for the rest of the world. The largest losses of population were in Asia and Africa, closely followed by Central and South America. Within another thirty years, another billion people perished.

During the next handful of decades, the remaining humans failed to bond together to rebuild human civilization. In fact, just the opposite happened. Instead of conflicts between nations or even ‘clashes of civilizations’, deadly and widespread violence arose between the Haves and Havenots. At the outbreak of the unrest, the militaries of the world had been deployed to protect the wealth and property of the Haves. First as pandemics roiled the world and then as major economic systems collapsed, the viciousness and desperateness of the attacks of the Havenots against the Haves increased.

The military leaders had a choice: defend the Haves or become allies of the Havenots. The Haves had all the technological advantages (not only their life-prolonging technologies, useful if they could survive the chaos, but also their nanotechnologies, biotechnologies, limited but developing renewable energy technologies, and information technologies). The Havenots had strength in numbers. The majority of the military leaders whose forces were equipped with the most sophisticated weaponry and other advanced technologies made a devil’s bargain with the Haves, security in exchange for the promised long-life and luxury.

A protracted period of violence ensued. Both the Haves and Havenots suffered substantial casualties. Eventually, the Haves and their superior military forces ended up in approximately 5,000 heavily defended enclaves (or lifeboats, from their point of view), with about 1,000 humans in each enclave. Most enclaves were former military bases, although many were former resort islands and other easily defensible haunts of the Haves. The enclaves brought to mind the walled cities of the Middle Ages. Unlike their feudal ancestors, they did not rely upon serfs living outside the walls for their food and materials. Because of their technological prowess, they were, after a period of transition, mostly self-sufficient. The poor and otherwise ‘useless’ and ‘excessive’ inhabitants of the enclaves, mostly lower ranking soldiers but also some weak Haves, were quickly evicted so as not to stress the resources of their systems, which would need to last for centuries.

During this period of violence, the Haves and the military systematically destroyed all advanced technologies outside of the enclaves. This was done so that the Havenots could not develop the capabilities to conquer the remaining enclaves. The military effectively destroyed the remaining energy-producing facilities (including the nuclear power plants), the electricity infrastructure, the worldwide telecommunications infrastructure, shipping and transportation facilities, and even dams and irrigation systems. The result of these attacks was that the Havenots on the outside had little or no technology, no concentrated energy resources, no information technology, no electricity, no water systems, and no advanced weapons. Agricultural productivity approached pre-industrial levels. Plants stressed by heat and drought failed to produce crops. Farm animals and plants regularly fell to agricultural diseases that had previously been preventable. Wild animal stocks were slaughtered with no thought about tomorrow. Accessible stocks of fish in the lakes and oceans were depleted. Leadership and new government structures never re-evolved; anarchy reigned. New pathogens circled the globe with astonishing speed. It was every man, woman, and child for themselves. Over the next century, the reduction in population was steady, and another two billion perished.

Catastrophic changes in the world’s ecosystems coincided with the violence and also plagued the Havenots. In a mad scramble to keep themselves fed, the Havenots severely depleted the world’s stocks of birds and mammals, big and small. This reduction in the number of insect predators led to an explosion in the numbers of destructive insects. Locusts and grasshoppers devastated remaining agricultural crops. In a particularly gruesome twist of fate, the depletion of mammals and birds also reduced the food supplies for mosquitoes around the world. As their predators were eliminated and as their food supplies dwindled, they began to viciously swarm individual humans who lacked shelter. Many did not survive the onslaught.

The Havenots and the Haves alike were killed by immense fires. The dramatic rise in CO2 in the atmosphere and the expansion of ranges of temperate and tropical ecosystems promoted the accelerated growth of plant life all over the planet. Megatons of increased biomass respirated increasing levels of oxygen into the atmosphere. The bacteria that consumed the remaining oil and natural gas reserves also emitted substantial amounts of oxygen into the environment. Indeed, the level of oxygen in the atmosphere quickly began to approach 30%, from a level of about 21% at the turn of the twenty-first century. More plant materials, drought, and oxygen-rich air led to truly horrific conflagrations in North America, Europe, Northern Asia, Southern Africa, and Central and South America. Humans died directly in the fires and also died of asphyxiation if they were in the vicinity of the most massive fires.

Life in the enclaves became decidedly dystopian. The main problem was that no enclave possessed the critical mass of people, knowledge, and materials to maintain their technological base. Technology failed. In most cases, it was impossible to replace and/or fabricate new specialized chips and parts. Because the enclaves had destroyed the globe’s telecommunications infrastructure to deny the Havenots the ability to easily organize, they were unable to communicate with other enclaves. The Haves continued to perceive the Havenots and the ‘outside’, disease-ridden world, to be a threat, although had they left their enclaves they would have known otherwise. This perception kept the Haves sequestered in their enclaves. Over the next 100 years, most of the enclaves collapsed from starvation or were eventually overrun by the Havenots, having failed like the Utopian communities of the eighteenth and nineteenth centuries.

A few enclaves, however, took a different path to extinction. This is because some Haves did achieve part of their vision of Utopia during the hell storm that surrounded them. They did achieve some measure of immortality. In a handful of enclaves, there were Haves who were actually a couple of hundred years old. But they had not planned on the destruction of the rest of the world and their technologies were riddled with bugs.

It was imperative that these Haves strictly control their population. Despite their weaponry, they were essentially trapped in their enclaves. The outside world was disease ridden, chaotic, dangerous, and empty of valuable resources. They had no survival skills beyond their advanced technologies. They could not survive outside of the enclaves. Controlling their population meant that the births needed to be well planned and limited in number, especially since their numbers had been swollen with the ranks of the military.

The major flaw in this strategy is that these Haves, who desperately wanted to be immortal, basically achieved this goal. Through enhanced nutrients, key replacement organs, and medical nanotechnologies, they were able to keep their bodies in excellent condition. They were not afflicted with heart disease or cancer or obesity or diabetes. Their lives within the enclaves were rather safe because Havenots found the risks not worth the effort of confronting these small but deadly enclaves. The Haves did not travel at all nor have many on-site accidents. They were not murdered in the streets, although inevitably some were killed during disputes in their enclaves. They did not commit suicide; they were constitutionally incapable of taking their own lives, having committed themselves to immortality. After a while, the turnover in the enclaves fell to close to zero. No one died. And the enclaves could not afford to allow new births. These Haves were not too worried. After all, they had time on their side, right?

However, as time went on, these super-elders lost the ability to reproduce naturally. The eggs in the female’s ovaries aged and could not be rejuvenated. Also, frozen eggs and sperm turned out to have much shorter shelf lives than had been thought. To reproduce, that left cloning. Although advances in cloning had been impressive, problems with human cloning had not been overcome simply because the practice had been banned by most countries at the beginning of the twenty-first century and had been taboo in the enclaves for most of the time. However, these Haves decided to try to clone humans though they lacked skilled scientists to oversee this process. The results were disastrous. Miscarriages were the most common results. Many fetuses that came to term died shortly after birth. Most were aborted, those that were allowed to go to term died minutes after being born. The very few that lived further were afflicted with cognitive deficiencies, deformed limbs, and, tragically, were infertile. The attempts at cloning were rapidly abandoned.

Another problem that these Haves did not anticipate was the psychological aspects of aging. The minds of these very old people were slowly becoming completely dysfunctional. Of course, they did not suffer from Alzheimer’s or Huntington’s or Parkinson’s diseases. They had genetic tests for these maladies and could prevent or treat these diseases without much effort or risk. What they did suffer from was system overuse and overload. Too many memories over too many years were leading to inefficiencies in memory retention and organization. Sleep no longer was sufficient to help keep their minds organized. As their collective capabilities were eroding at about the same rate, these Haves were unable to recognize what was happening to them. Because of this creeping functional senility, they were also increasingly unable to maintain their other technologies in tip-top shape. Plans to move out of the enclaves vanished. Pictures of health, they were going mad down the path to extinction. Eventually, even these more resilient enclaves perished as their diminished mental capabilities proved insufficient to keep themselves alive.

When the last enclave fell, there were around 500 million Havenots left on earth. Then, what was once referred to as northwest Wyoming exploded in the largest volcanic eruption the earth had witnessed in the past 20 million years. The eruption was 10,000 times the size of the St. Helens eruption. The soot pushed up into the atmosphere severely blocked out the sun everywhere on the earth for several years. Plant life suffered due to the reduction in photosynthesis. Much like what happened several million years ago to the dinosaurs, the number of humans on the earth dropped down to the mere thousands.67

The remaining hunter-gatherer Havenots were exceedingly resourceful. Many were able to scrape by, living in caves, or building shelter from rubble and scavenging for food and water. They had been able to deal with the hell of climate change and seemed poised to deal with this new round of precipitous cooling. Unfortunately, a final sequence of events on a geological scale would soon seal their fate.

The Havenots were a very unlucky lot. Weakened from disease, malnutrition, and inbreeding, they were also becoming very lethargic, light-headed, and disoriented. The shortness of breath was the key symptom explaining this new malady. You see, they were beginning to suffocate because the oxygen levels in the atmosphere had dropped below 20%.

What had happened to the oxygen? The conflagrations had drawn a great deal of oxygen out of the atmosphere. The remnants of civilization were also oxidizing. Old bridges, steel buildings, and especially billions of metal automobiles, trucks, motorcycles, and signs were rusting and rapidly sucking oxygen out of the atmosphere. As the Havenots did not have the technologies in place to produce their own oxygen, they suffered from oxygen deprivation en masse.

Cooling continued to worsen. All the negative feedback effects were in place: severe reduction of sunlight, loss of plant life, reductions in greenhouse gases in the atmosphere, increased radiative cooling, further loss of plant life, further reductions in greenhouse gases, etc. The Arctic Ocean, already refrozen, started its march southward. The Antarctic ice fields rapidly expanded. Glaciers, which had reappeared on the mountain-tops, quickly moved toward the valleys. As a consequence, sea levels dropped precipitously worldwide.

As a result, enormous amounts of rock now stood bare to the elements. Land scrapped clear due to erosion from floods and storms was not revegetated and was also exposed to the elements. These rocks, along with the husk of human civilization, oxidized, drawing ever more oxygen out of the environment. Indeed, large areas of the earth began to resemble the Red Planet, Mars. All remaining aerobic species not only faced a life deprived of sufficient oxygen, but they now faced the prospect of asphyxiation. Within another couple of hundred years, the oxygen in the atmosphere dropped below 19.5%, on its way to a low of 15%. The last human took her last breath in Southern Africa, just like the last Gorgon did over 250 million years ago.68

#### Waiving IP protections sends a signal that encourages China to further erode U.S. IP---makes sustaining competitiveness impossible.

Staudt 21 – Current President of the Intellectual Property Owners Association, an international trade association representing members that own, or are interested in, intellectual property (IP) rights

Daniel J. Staudt, “Waiving IP Rights: The Wrong Path to the Right Goals,” IP Watchdog, June 2021, https://www.ipwatchdog.com/2021/06/15/waiving-ip-rights-the-wrong-path-to-the-right-goals/id=134546/

Waiving intellectual property (IP) protections for COVID-19 vaccines will hinder rather than further three meritorious objectives of the current U.S. Presidential Administration: ending the pandemic as soon as possible, leveling the IP playing field with China, and pursuing a worker-centric trade policy. Ensuring equitable, widespread, and successful distribution of vaccines across the globe to meet the challenges of COVID-19, ending the erosion of U.S. IP at the hands of China, and putting Americans back to work are goals that most of us in the U.S. share. An examination of the facts, however, demonstrates that waiving IP rights in the name of COVID-19 relief undermines each of these three U.S. government goals.

Waiver Would Hurt, Not Help

In terms of ending the pandemic as soon as possible, the Washington Post got it right in its May 4 editorial when it stated, “Sharing doses and know-how is better than stripping patents.” It is noteworthy that, during this global debate over whether IP protections should be waived, there have been no instances identified where IP has been used to limit access to vaccines or other COVID-related technologies. In contrast, there are many examples of innovator companies from a wide array of industries who have partnered and shared IP to create testing, vaccines, and therapies to address this pandemic. In fact, IP has enabled this innovation and facilitated this collaboration by providing the incentives that have enabled innovators to devote the resources, technical knowledge, and know-how necessary to counter the pandemic. As a result, our innovative industries have been able to create vaccines and other measures to fight the pandemic. Should an IP waiver be implemented, however, there would not be a stable framework in place to provide confidence to innovators that they can take the necessary risks associated with their inventions and creations as we continue to combat COVID-19. In fact, a waiver would have an immediate chilling effect on continued research and collaborations that are needed, for example, to overcome new variants of the virus, create vaccines for special populations, and develop new tools to help defeat the pandemic and for future vaccine development for other infectious deceases.

Waiver Would Be a Windfall for U.S. Competitors

A second stated goal of the Administration is to become more competitive with countries such as China. To that end, the Senate just passed legislation totaling well over $200 billion that’s designed to strengthen U.S. competitiveness against China. However, to achieve that goal, the United States needs to protect our IP against forced tech-transfer from foreign governments, not give it away. Providing a windfall to U.S. competitors at the same time we are purportedly trying to level the playing field with regards to IP not only makes a farce out of U.S. attempts to “get tough,” but it also sends a dangerous message – that the United States is willing to cave to global pressure and waive Word Trade Organization IP commitments, even if the efficacy of the waiver is not supported by the facts. Unfortunately, we have no reason to think that will be the last of the calls to waive such commitments.

#### Short-term competition key to prevent U.S.-China war.

Beckley & Brands 20 – Associate Professor of Political Science at Tufts University and Jeane Kirkpatrick Visiting Scholar at the American Enterprise Institute; Henry A. Kissinger Distinguished Professor of Global Affairs at the Johns Hopkins University School of Advanced International Studies and a Resident Scholar at the American Enterprise Institute

Michael Beckley, Hal Brands, “Competition With China Could Be Short and Sharp: The Risk of War Is Greatest in the Next Decade,” Foreign Affairs, December 2020, https://www.foreignaffairs.com/articles/united-states/2020-12-17/competition-china-could-be-short-and-sharp

The good news for the United States is that over the long term, competition with China may prove more manageable than many pessimists believe. Americans may one day look back on China the way they now view the Soviet Union—as a dangerous rival whose evident strengths concealed stagnation and vulnerability. The bad news is that over the next five to ten years, the pace of Sino-American rivalry will be torrid, and the prospect of war frighteningly real, as Beijing becomes tempted to lunge for geopolitical gain. The United States still needs a long-term strategy for protracted competition. But first it needs a near-term strategy for navigating the danger zone.

RED FLAGS

Much debate on Washington’s China policy focuses on the dangers China will pose as a peer competitor later this century. Yet the United States actually faces a more pressing and volatile threat: an already powerful but insecure China beset by slowing growth and intensifying hostility abroad.

China has the money and muscle to challenge the United States in key areas. Thanks to decades of rapid growth, China boasts the world’s largest economy (measured by purchasing power parity), trade surplus, financial reserves, navy by number of ships, and conventional missile force. Chinese investments span the globe, and Beijing is pushing for primacy in such strategic technologies as 5G telecommunications and artificial intelligence (AI). Add in four years of disarray in the U.S.-led world order under President Donald Trump, and it is hardly surprising that Beijing is testing the status quo from the South China Sea to the border with India.

Yet China’s window of opportunity may be closing fast. Since 2007, China’s annual economic growth rate has dropped by more than half, and productivity has declined by ten percent. Meanwhile, debt has ballooned eightfold and is on pace to total 335 percent of GDP by the end of 2020. China has little hope of reversing these trends, because it will lose 200 million working-age adults and gain 300 million senior citizens over the next 30 years. And as economic growth falls, the dangers of social and political unrest rise. Chinese leaders know this: President Xi Jinping has given multiple speeches warning about the possibility of a Soviet-style collapse, and Chinese elites are moving their money and children abroad.

Meanwhile, global anti-China sentiment has soared to levels not seen since the 1989 Tiananmen Square massacre. Nearly a dozen countries have suspended or canceled participation in Belt and Road Initiative (BRI) projects. Another 16 countries, including eight of the world’s ten largest economies, have banned or severely restricted use of Huawei products in their 5G networks. India has been turning hard against China since a clash on their shared border killed 20 soldiers in June. Japan has ramped up military spending, turned amphibious ships into aircraft carriers, and strung missile launchers along the Ryukyu Islands near Taiwan. The European Union has labeled China a “systemic rival”; and the United Kingdom, France, and Germany are sending naval patrols to counter Beijing’s expansion in the South China Sea and Indian Ocean. On multiple fronts, China is facing the blowback created by its own behavior.

HISTORY RHYMES

Many people assume that rising revisionists pose the greatest danger to international security. But historically, the most desperate dashes have come from powers that had been on the ascent but grew worried that their time was running short.

World War I is a classic example. Germany’s rising power formed the strategic backdrop to that conflict, but German fears of decline triggered the ultimate decision for war. Russia’s growing military power and mobility menaced Germany’s eastern flank; new French conscription laws were changing the balance in the West; and a tightening Franco-Russian-British entente was leaving Germany surrounded. German leaders ran such catastrophic risks in the July crisis for fear that geopolitical greatness would elude them if they did not act quickly.

The same logic explains imperial Japan’s fatal gamble in 1941, after the U.S. oil embargo and naval rearmament presented Tokyo with a closing window of opportunity to dominate the Asia-Pacific. In the 1970s, Soviet global expansion peaked as Moscow’s military buildup matured and the slowing of the Soviet economy created an impetus to lock in geopolitical gains.

Given that China is currently facing both a grim economic forecast and a tightening strategic encirclement, the next few years may prove particularly turbulent. The United States obviously needs a long-term strategy to compete with China. But it also needs to blunt a potential surge of Chinese aggression and expansion this decade.

The early Cold War offers a useful parallel. At that time, American leaders understood that winning the long-term struggle against the Soviet Union required not losing crucial battles in the short term. The Marshall Plan, unveiled in 1947, was meant to prevent economic collapse in Western Europe, because such a breakdown might allow Moscow to extend its political hegemony over the entire continent. The creation of NATO and rearmament during the Korean War forged a military shield that allowed the West to thrive. Strategic urgency was the prelude to strategic patience: the United States could exploit its lasting economic and political advantages only if it closed off more immediate vulnerabilities.

Today, the United States again needs a danger-zone strategy, which should be based on three principles. First, focus on denying China near-term successes that would radically alter the long-term balance of power. The most pressing dangers are a Chinese conquest of Taiwan and Chinese preeminence in 5G telecommunications networks. Second, rely on tools and partnerships available now or in the near future rather than assets that require years to develop. Third, focus on selectively degrading Chinese power rather than changing Chinese behavior. Seduction and coercion are out; targeted attrition is in. Such an approach entails greater risk. But the United States must act assertively now to prevent more destabilizing spirals of hostility later.

#### U.S.-China war is likely and goes nuclear.

Kulacki 16 – China Project Manager in the UCS Global Security Program

Gregory Kulacki, “The Risk of Nuclear War with China: A Troubling Lack of Urgency,” Union of Concerned Scientists, 2016, https://www.ucsusa.org/sites/default/files/attach/2016/05/Nuclear-War-with-China.pdf

It is not difficult to imagine situations that could trigger an inadvertent or accidental nuclear war. For example, PRC leaders could underestimate U.S. willingness to use nuclear weapons to stop a conventional war. U.S. leaders could underestimate PRC willingness to retaliate after a tailored U.S. nuclear attack. The PRC could launch a retaliatory nuclear attack if the United States were to launch conventional missile strikes that China mistakenly believed were nuclear. The United States could make the same mistake. Equipment in the command and control network of either nation could be destroyed or malfunction, especially given the interest of both countries in anti-satellite weapons. Decision makers may not have timely access to accurate information in the fog of a conflict.

A PRC decision to move to launch on warning would be especially dangerous. The U.S. and Soviet/Russian experience with warning systems shows that false alarms and unexpected situations occur due to human and technical errors, and they are especially likely early in the deployment and operation of such a system. Errors of this sort increased the risk of a nuclear exchange on multiple occasions for the United States and Russia both during and after the Cold War.

No Technical Exit

As long as both sides remain committed to pursuing technical solutions to their unique strategic problems, they are condemned to continue competing indefinitely. But stalemate is not a stable outcome; rather, it is a perpetual high-wire act. Twenty-four hours a day, 365 days a year, the governments of the United States and China are a few poor decisions away from starting a war that could escalate rapidly and end in a nuclear exchange.

Lack of mutual trust and a growing sense that their differences may be irreconcilable incline both governments to continue looking for military solutions—for new means of coercion that help them feel more secure. Establishing the trust needed to have confidence in diplomatic resolutions to the disagreements, animosities, and suspicions that have troubled leaders of the United States and the PRC for almost 70 years is extremely difficult when both governments take every new effort to up the technological ante as an act of bad faith.

The bilateral dialogues on strategic stability aim to manage the military competition, but they do not seek to end it. Although the two governments work very hard at avoiding conflict, they have yet to find a way out of what Graham Allison called their “Thucydides trap”—the risk of conflict between a rising power and an established power invested in the status quo (Allison 2015). Allison’s warning not to minimize the risks of war is sage advice, even if he does not say how the United States and China can escape the trap he describes.

PRC leaders believe it is possible to prosecute a major war without risking a U.S. nuclear attack. The leaders of the United States believe stopping the PRC from prosecuting such a war may depend, in certain contingencies, on a credible threat to use nuclear weapons—a threat U.S. leaders state they are prepared to execute. These mismatched perceptions increase both the possibility of war and the likelihood it will result in the use of nuclear weapons.

Well-informed U.S. officials tend to dismiss the possibility that the United States and the PRC could wander into a nuclear war. For example, Admiral Dennis Blair, a former Director of National Intelligence whose final military post was Commander in Chief of the U.S. Pacific Command, assured a large gathering of U.S. arms-control experts that “the chances of a nuclear exchange between the United States and China are somewhere between nil and zero.” J. Stapleton Roy, a former U.S. ambassador to the PRC, wholeheartedly agreed (Swaine, Blair, and Roy 2015). Similarly, PRC military strategists and arms control experts believe that the risk of nuclear war with the United States is not an urgent concern even if that risk may not be zero (Cunningham and Fravel 2015).

This lack of urgency is troubling. For example, the United States reportedly told the PRC it would risk military escalation to prevent or stop a proposed PRC island reclamation project in the Scarborough Shoal (Cooper and Douglas 2016). The PRC reportedly responded by committing to move ahead with the project later in 2016 (Chan 2016). This particular contest of wills is part of a steadily increasing number of unresolved diplomatic spats that have escalated to the level of overt military posturing reminiscent of U.S.-Soviet jousting during the Cold War.

The United States and the PRC are decades-old enemies, preparing for war and armed with nuclear weapons. Good faith efforts by the leaders of both nations have failed to stop accelerating preparations for war, including new investments in their nuclear forces. Miscommunication, misunderstanding, or poor judgment could spark a conflict that both governments may find difficult to stop.

#### AT: Feldman – this card doesn’t make sense given that you’ve only defended a subset of patents – it says choosing which medicines to patent is bad but the affirmative is tiny – that means its not a link turn because its not about the aff and doesn’t answer perception.

### 1NC

#### CP: Member nations of the World Trade Organization should enter into a prior and binding consultation with the World Health Organization over reducing intellectual property protections. Member nations will support the proposal and adopt the results of consultation.

#### WHO says yes:

#### It opposes data exclusivity and TRIPS-plus measures

WHO 17 [(World Health Organization) “Data exclusivity and other TRIPS-plus measures,” UHC Technical Brief, 2017] JL

Finally, data exclusivity could prevent the registration of generic versions of medicines even when there is no patent on a medicine, e.g. when a pharmaceutical product does not meet the standards for patentability (e.g. because it is not new or an inventive step), the patent lapses, when a country has no patent law, or when patents are not being granted for pharmaceuticals. The latter situation can arise in least-developed countries that are World Trade Organization (WTO) Members, which do not have to grant or enforce patents for pharmaceuticals until 2033.b

It has at times been argued that Article 39.3 of the TRIPS Agreement makes it mandatory for countries to grant data exclusivity. However, careful reading of Article 39.3 (see Box 1) does not warrant this conclusion; the text of the Article does not make any reference whatsoever to exclusivity or exclusive rights.

Article 39.3 requires countries to protect undisclosed registration data about new chemical entities (i) against disclosure and (ii) against unfair commercial use. Thus, regulatory authorities may not publish registration data,c or share them with third parties (e.g. generic competitors). There is some debate as to what exactly is meant by “unfair commercial use”. Does the use of bioequivalence studies instead of full clinical trials represent “unfair commercial use”? There is no “unfair commercial use” by the generic company: the generic manufacturer never uses the originator’s data, and does not even have access to them. Meanwhile, regulatory authorities also do not normally use the originator’s data, though, as mentioned above, they may (indirectly) rely on them. Even even if the regulators were to use the data, it would not be commercial use, as the regulatory agency is not a commercial organization. The unfair comercial use does not apply to the work of a government regulatory body.

Thus, legal and public health experts believe that TRIPS requires data protection, but not data exclusivity – and national laws do not need to be more restrictive than TRIPS. It is important to note that least-developed countries are not required to provide the data protection mandated by TRIPS on pharmaceuticals till 2033.

It is also worthwhile noting that in developing countries, regulatory authorities often rely on data that are already published or otherwise in the public domain – and that therefore do not fall within the scope of Article 39.3 (which imposes protection only for undisclosed data).

As mentioned above, from the perspective of public health and access to medicines, it is preferable not to grant data exclusivity. Moreover, there is no requirement under international law that countries grant data exclusivity; countries have to provide for data protection only.

#### It supports increasing the availability of generics

Hoen 03 [(Ellen T., researcher at the University Medical Centre at the University of Groningen, The Netherlands who has been listed as one of the 50 most influential people in intellectual property by the journal Managing Intellectual Property, PhD from the University of Groningen) “TRIPS, Pharmaceutical Patents and Access to Essential Medicines: Seattle, Doha and Beyond,” Chicago Journal of International Law, 2003] JL

However, subsequent resolutions of the World Health Assembly have strengthened the WHO’s mandate in the trade arena. In 2001, the World Health Assembly adopted two resolutions in particular that had a bearing on the debate over TRIPS [30]. The resolutions addressed:

– the need to strengthen policies to increase the availability of generic drugs;

#### Consultation displays strong leadership and authority which are key to WHO legitimacy

Gostin et al 15 [(Lawrence O., Linda D. & Timothy J. O’Neill Professor of Global Health Law at Georgetown University, Faculty Director of the O’Neill Institute for National & Global Health Law, Director of the World Health Organization Collaborating Center on Public Health Law & Human Rights, JD from Duke University) “The Normative Authority of the World Health Organization,” Georgetown University Law Center, 5/2/2015] JL

Members want the WHO to exert leadership, harmonize disparate activities, and set priorities. Yet they resist intrusions into their sovereignty, and want to exert control. In other words, ‘everyone desires coordination, but no one wants to be coordinated.’ States often ardently defend their geostrategic interests. As the Indonesian virus-sharing episode illustrates, the WHO is pulled between power blocs, with North America and Europe (the primary funders) on one side and emerging economies such as Brazil, China, and India on the other. An inherent tension exists between richer ‘net contributor’ states and poorer ‘net recipient’ states, with the former seeking smaller WHO budgets and the latter larger budgets.

Overall, national politics drive self-interest, with states resisting externally imposed obligations for funding and action. Some political leaders express antipathy to, even distrust of, UN institutions, viewing them as bureaucratic and inefficient. In this political environment, it is unsurprising that members fail to act as shareholders. Ebola placed into stark relief the failure of the international community to increase capacities as required by the IHR. Guinea, Liberia and Sierra Leone had some of the world's weakest health systems, with little capacity to either monitor or respond to the Ebola epidemic.20 This caused enormous suffering in West Africa and placed countries throughout the region e and the world e at risk. Member states should recognize that the health of their citizens depends on strengthening others' capacity. The WHO has a central role in creating systems to facilitate and encourage such cooperation.

The WHO cannot succeed unless members act as shareholders, foregoing a measure of sovereignty for the global common good. It is in all states' interests to have a strong global health leader, safeguarding health security, building health systems, and reducing health inequalities. But that will not happen unless members fund the Organization generously, grant it authority and flexibility, and hold it accountable.

#### WHO is key to disease prevention – it is the only international institution that can disperse information, standardize global public health, and facilitate public-private cooperation

Murtugudde 20 [(Raghu, professor of atmospheric and oceanic science at the University of Maryland, PhD in mechanical engineering from Columbia University) “Why We Need the World Health Organization Now More Than Ever,” Science, 4/19/2020] JL

WHO continues to play an indispensable role during the current COVID-19 outbreak itself. In November 2018, the US National Academies of Sciences, Engineering and Medicine organised a workshop to explore lessons from past influenza outbreaks and so develop recommendations for pandemic preparedness for 2030. The salient findings serve well to underscore the critical role of WHO for humankind.

The world’s influenza burden has only increased in the last two decades, a period in which there have also been 30 new zoonotic diseases. A warming world with increasing humidity, lost habitats and industrial livestock/poultry farming has many opportunities for pathogens to move from animals and birds to humans. Increasing global connectivity simply catalyses this process, as much as it catalyses economic growth.

WHO coordinates health research, clinical trials, drug safety, vaccine development, surveillance, virus sharing, etc. The importance of WHO’s work on immunisation across the globe, especially with HIV, can hardly be overstated. It has a rich track record of collaborating with private-sector organisations to advance research and development of health solutions and improving their access in the global south.

It discharges its duties while maintaining a dynamic equilibrium between such diverse and powerful forces as national securities, economic interests, human rights and ethics. COVID-19 has highlighted how political calculations can hamper data-sharing and mitigation efforts within and across national borders, and WHO often simply becomes a convenient political scapegoat in such situations.

International Health Regulations, a 2005 agreement between 196 countries to work together for global health security, focuses on detection, assessment and reporting of public health events, and also includes non-pharmaceutical interventions such as travel and trade restrictions. WHO coordinates and helps build capacity to implement IHR.

#### Extinction – defense is wrong

Piers Millett 17, Consultant for the World Health Organization, PhD in International Relations and Affairs, University of Bradford, Andrew Snyder-Beattie, “Existential Risk and Cost-Effective Biosecurity”, Health Security, Vol 15(4), http://online.liebertpub.com/doi/pdfplus/10.1089/hs.2017.0028

Historically, disease events have been responsible for the greatest death tolls on humanity. The 1918 flu was responsible for more than 50 million deaths,1 while smallpox killed perhaps 10 times that many in the 20th century alone.2 The Black Death was responsible for killing over 25% of the European population,3 while other pandemics, such as the plague of Justinian, are thought to have killed 25 million in the 6th century—constituting over 10% of the world’s population at the time.4 It is an open question whether a future pandemic could result in outright human extinction or the irreversible collapse of civilization.

A skeptic would have many good reasons to think that existential risk from disease is unlikely. Such a disease would need to spread worldwide to remote populations, overcome rare genetic resistances, and evade detection, cures, and countermeasures. Even evolution itself may work in humanity’s favor: Virulence and transmission is often a trade-off, and so evolutionary pressures could push against maximally lethal wild-type pathogens.5,6

While these arguments point to a very small risk of human extinction, they do not rule the possibility out entirely. Although rare, there are recorded instances of species going extinct due to disease—primarily in amphibians, but also in 1 mammalian species of rat on Christmas Island.7,8 There are also historical examples of large human populations being almost entirely wiped out by disease, especially when multiple diseases were simultaneously introduced into a population without immunity. The most striking examples of total population collapse include native American tribes exposed to European diseases, such as the Massachusett (86% loss of population), Quiripi-Unquachog (95% loss of population), and theWestern Abenaki (which suffered a staggering 98% loss of population).

In the modern context, no single disease currently exists that combines the worst-case levels of transmissibility, lethality, resistance to countermeasures, and global reach. But many diseases are proof of principle that each worst-case attribute can be realized independently. For example, some diseases exhibit nearly a 100% case fatality ratio in the absence of treatment, such as rabies or septicemic plague. Other diseases have a track record of spreading to virtually every human community worldwide, such as the 1918 flu,10 and seroprevalence studies indicate that other pathogens, such as chickenpox and HSV-1, can successfully reach over 95% of a population.11,12 Under optimal virulence theory, natural evolution would be an unlikely source for pathogens with the highest possible levels of transmissibility, virulence, and global reach. But advances in biotechnology might allow the creation of diseases that combine such traits. Recent controversy has already emerged over a number of scientific experiments that resulted in viruses with enhanced transmissibility, lethality, and/or the ability to overcome therapeutics.13-17 Other experiments demonstrated that mousepox could be modified to have a 100% case fatality rate and render a vaccine ineffective.18 In addition to transmissibility and lethality, studies have shown that other disease traits, such as incubation time, environmental survival, and available vectors, could be modified as well.19-2

#### WHO diplomacy solves great power conflict

Murphy 20 [(Chris, U.S. senator from Connecticut serving on the U.S. Senate Foreign Relations Committee) “The Answer is to Empower, Not Attack, the World Health Organization,” War on the Rocks, 4/21/2020] JL

The World Health Organization is critical to stopping disease outbreaks and strengthening public health systems in developing countries, where COVID-19 is starting to appear. Yemen announced its first infection earlier this month, and other countries in Africa, Asia and the Middle East are at severe risk. Millions of refugees rely on the World Health Organization for their health care, and millions of children rely on the WHO and UNICEF to access vaccines.

The World Health Organization is not perfect, but its team of doctors and public health experts have had major successes. Their most impressive claim to fame is the eradication of smallpox – no small feat. More recently, the World Health Organization has led an effort to rid the world of two of the three strains of polio, and they are close to completing the trifecta.

These investments are not just the right thing to do; they benefit the United States. Improving health outcomes abroad provides greater political and economic stability, increasing demand for U.S. exports. And, as we are all learning now, it is in America’s national security interest for countries to effectively detect and respond to potential pandemics before they reach our shores.

As the United States looks to develop a new global system of pandemic prevention, there is absolutely no way to do that job without the World Health Organization. Uniquely, it puts traditional adversaries – like Russia and the United States, India and Pakistan, or Iran and Saudi Arabia – all around the same big table to take on global health challenges. It has relationships with the public health leaders of every nation, decades of experience in tackling viruses and diseases, and the ability to bring countries together to tackle big projects. This ability to bridge divides and work across borders cannot be torn down and recreated – not in today’s environment of major power competition – and so there is simply no way to build an effective international anti-pandemic infrastructure without the World Health Organization at the center.

#### Ought means should

Merriam Webster, No Date – Merriam Webster’s Learner’s Dictionary, “ought”, <http://www.learnersdictionary.com/definition/ought>  
ought /ˈɑːt/ verb  
Learner's definition of OUGHT [modal verb] 1 ◊ Ought is almost always followed by to and the infinitive form of a verb. The phrase ought to has the same meaning as should and is used in the same ways, but it is less common and somewhat more formal. The negative forms ought not and oughtn't are often used without a following to. — used to indicate what is expected They ought to be here by now. You ought to be able to read this book. There ought to be a gas station on the way. 2 — used to say or suggest what should be done You ought to get some rest. That leak ought to be fixed. You ought to do your homework.

#### Should means must and is immediate

Summers 94 (Justice – Oklahoma Supreme Court, “Kelsey v. Dollarsaver Food Warehouse of Durant”, 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

¶4 The legal question to be resolved by the court is whether the word "should"[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13) in the May 18 order connotes futurity or may be deemed a ruling in praesenti.[14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn14) The answer to this query is not to be divined from rules of grammar;[15](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn15) it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.[16](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn16) [CONTINUES – TO FOOTNOTE] [13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn13) "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as more than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation* *and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, [802 P.2d 813](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=802&box2=P.2D&box3=813) (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). [14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn14) In praesenti means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is presently or immediately effective, as opposed to something that will or would become effective in the future *[in futurol*]. See Van Wyck v. Knevals, [106 U.S. 360](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=106&box2=U.S.&box3=360), 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

## Case

### FW

#### The role of the ballot is the evaluate if the aff is a good idea

#### Only pain and pleasure are intrinsically good or bad – everything else collapses.

Moen 16 [Ole Martin Moen, Research Fellow in Philosophy at University of Oslo “An Argument for Hedonism” Journal of Value Inquiry (Springer), 50 (2) 2016: 267–281]

Let us start by observing, empirically, that a widely shared judgment about intrinsic value and disvalue is that pleasure is intrinsically valuable and pain is intrinsically disvaluable. On virtually any proposed list of intrinsic values and disvalues (we will look at some of them below), pleasure is included among the intrinsic values and pain among the intrinsic disvalues. This inclusion makes intuitive sense, moreover, for there is something undeniably good about the way pleasure feels and something undeniably bad about the way pain feels, and neither the goodness of pleasure nor the badness of pain seems to be exhausted by the further effects that these experiences might have. “Pleasure” and “pain” are here understood inclusively, as encompassing anything hedonically positive and anything hedonically negative.2 The special value statuses of pleasure and pain are manifested in how we treat these experiences in our everyday reasoning about values. If you tell me that you are heading for the convenience store, I might ask: “What for?” This is a reasonable question, for when you go to the convenience store you usually do so, not merely for the sake of going to the convenience store, but for the sake of achieving something further that you deem to be valuable. You might answer, for example: “To buy soda.” This answer makes sense, for soda is a nice thing and you can get it at the convenience store. I might further inquire, however: “What is buying the soda good for?” This further question can also be a reasonable one, for it need not be obvious why you want the soda. You might answer: “Well, I want it for the pleasure of drinking it.” If I then proceed by asking “But what is the pleasure of drinking the soda good for?” the discussion is likely to reach an awkward end. The reason is that the pleasure is not good for anything further; it is simply that for which going to the convenience store and buying the soda is good.3 As Aristotle observes: “We never ask [a man] what his end is in being pleased, because we assume that pleasure is choice worthy in itself.”4 Presumably, a similar story can be told in the case of pains, for if someone says “This is painful!” we never respond by asking: “And why is that a problem?” We take for granted that if something is painful, we have a sufficient explanation of why it is bad. If we are onto something in our everyday reasoning about values, it seems that pleasure and pain are both places where we reach the end of the line in matters of value.

#### **Extinction is a unique ontological phenomenon that outweighs under every ethical theory.**

Burke et al., Associate Professor of International and Political Studies @ UNSW, Australia, ‘16

(Anthony, Stefanie Fishel is Assistant Professor, Department of Gender and Race Studies at the University of Alabama, Audra Mitchell is CIGI Chair in Global Governance and Ethics at the Balsillie School of International Affairs, Simon Dalby is CIGI Chair in the Political Economy of Climate Change at the Balsillie School of International Affairs, and, Daniel J. Levine is Assistant Professor of Political Science at the University of Alabama, “Planet Politics: Manifesto from the End of IR,” Millennium: Journal of International Studies 1–25)

8. Global ethics must respond to mass extinction. In late 2014, the Worldwide Fund for Nature reported a startling statistic: according to their global study, 52% of species had gone extinct between 1970 and 2010.60 This is not news: for three decades, conservation biologists have been warning of a ‘sixth mass extinction’, which, by definition, could eliminate more than three quarters of currently existing life forms in just a few centuries.61 In other words, it could threaten the practical possibility of the survival of earthly life. Mass extinction is not simply extinction (or death) writ large: it is a qualitatively different phenomena that demands its own ethical categories. It cannot be grasped by aggregating species extinctions, let alone the deaths of individual organisms. Not only does it erase diverse, irreplaceable life forms, their unique histories and open-ended possibilities, but it threatens the ontological conditions of Earthly life.

IR is one of few disciplines that is explicitly devoted to the pursuit of survival, yet it has almost nothing to say in the face of a possible mass extinction event.62 It utterly lacks the conceptual and ethical frameworks necessary to foster diverse, meaningful responses to this phenomenon. As mentioned above, Cold-War era concepts such as ‘nuclear winter’ and ‘omnicide’ gesture towards harms massive in their scale and moral horror. However, they are asymptotic: they imagine nightmares of a severely denuded planet, yet they do not contemplate the comprehensive negation that a mass extinction event entails. In contemporary IR discourses, where it appears at all, extinction is treated as a problem of scientific management and biopolitical control aimed at securing existing human lifestyles.63 Once again, this approach fails to recognise the reality of extinction, which is a matter of being and nonbeing, not one of life and death processes.

Confronting the enormity of a possible mass extinction event requires a total overhaul of human perceptions of what is at stake in the disruption of the conditions of Earthly life. The question of what is ‘lost’ in extinction has, since the inception of the concept of ‘conservation’, been addressed in terms of financial cost and economic liabilities.64 Beyond reducing life to forms to capital, currencies and financial instruments, the dominant neoliberal political economy of conservation imposes a homogenising, Western secular worldview on a planetary phenomenon. Yet the enormity, complexity, and scale of mass extinction is so huge that humans need to draw on every possible resource in order to find ways of responding. This means that they need to mobilise multiple worldviews and lifeways – including those emerging from indigenous and marginalised cosmologies. Above all, it is crucial and urgent to realise that extinction is a matter of global ethics. It is not simply an issue of management or security, or even of particular visions of the good life. Instead, it is about staking a claim as to the goodness of life itself. If it does not fit within the existing parameters of global ethics, then it is these boundaries that need to change.

9. An Earth-worldly politics. Humans are worldly – that is, we are fundamentally worldforming and embedded in multiple worlds that traverse the Earth. However, the Earth is not ‘our’ world, as the grand theories of IR, and some accounts of the Anthropocene have it – an object and possession to be appropriated, circumnavigated, instrumentalised and englobed.65 Rather, it is a complex of worlds that we share, co-constitute, create, destroy and inhabit with countless other life forms and beings.

The formation of the Anthropocene reflects a particular type of worlding, one in which the Earth is treated as raw material for the creation of a world tailored to human needs. Heidegger famously framed ‘earth’ and ‘world’ as two countervailing, conflicting forces that constrain and shape one another. We contend that existing political, economic and social conditions have pushed human worlding so far to one extreme that it has become almost entirely detached from the conditions of the Earth. Planet Politics calls, instead, for a mode of worlding that is responsive to, and grounded in, the Earth. One of these ways of being Earth-worldly is to embrace the condition of being entangled. We can interpret this term in the way that Heidegger66 did, as the condition of being mired in everyday human concerns, worries, and anxiety, to prolong existence. But, in contrast, we can and should reframe it as authors like Karen Barad67 and Donna Haraway68 have done. To them and many others, ‘entanglement’ is a radical, indeed fundamental condition of being-with, or, as Jean-Luc Nancy puts it, ‘being singular plural’.69 This means that no being is truly autonomous or separate, whether at the scale of international politics or of quantum physics. World itself is singular plural: what humans tend to refer to as ‘the’ world is actually a multiplicity of worlds at various scales that intersect, overlap, conflict, emerge as they surge across the Earth. World emerges from the poetics of existence, the collision of energy and matter, the tumult of agencies, the fusion and diffusion of bonds.

Worlds erupt from, and consist in, the intersection of diverse forms of being – material and intangible, organic and inorganic, ‘living’ and ‘nonliving’. Because of the tumultuousness of the Earth with which they are entangled, ‘worlds’ are not static, rigid or permanent. They are permeable and fluid. They can be created, modified – and, of course, destroyed. Concepts of violence, harm and (in)security that focus only on humans ignore at their peril the destruction and severance of worlds,70 which undermines the conditions of plurality that enables life on Earth to thrive.

#### Util is lexically prior – in order for agents to be able to engage in complex moral deliberations they must first be safe and not in danger of death – that means materially reducing violence outweighs.

#### They say our threats are constructed – this isnt a framing argument – you have to do substantive link debating – if you win they’re not real, then sure

### Case

#### Frame the 1ac through relative solvency – the plan text doesn’t stop the theft of indigenous knowledge nor its commercialization and sale – the only thing they resolve is the patenting of that knowledge.

#### None of their evidence is reverse causal – simply stopping IK from being patented doesn’t actually resolve the theft nor stop it from happening in the first place which begs the question of what the affirmative does. Breske is really short and maybe warrants why IPP for IK is bad but certainly doesn’t say removing it would be anywhere near sufficient.

#### Breske #2 isn’t great either – its blippy as hell and underwarranted.

#### Absent the ability for Indigenous people to patent their own knowledge companies are still able to profit off of indigenous knowledge – this answers Breske #3 because there is no way to stop the theft of IK.

#### McGonigle – this isn’t a way to evaluate a debate – at best this is a reason why the affirmative is good and a framing argument but this doesn’t warrant why we don’t get to weigh the consequences of the disad.

#### Barker – this isn’t about extinction discourse in the way we’ve used it – Barker says that arguments about the inevitability of indigenous extinction were used to justify colonialism which is obviously distinct from what we’ve done. Read their evidence -its misrepresented.

#### Bagley – this evidence is really under warranted – all it says is “indigenous people innovate” but not that a) the status quo makes this impossible or b) why that innovation resolves the impacts to the disadvantage.