# 1AC Bronx Dubs vs. Harrison AC

## 1ac

### Plan

#### Plan: The member nations of the World Trade Organization ought to eliminate data exclusivity intellectual property protections for medicines, Diependaele 17

Diependaele, Lisa, et al. “Raising the Barriers to Access to Medicines in the Developing World - the Relentless Push for Data Exclusivity.” Developing World Bioethics, John Wiley and Sons Inc., Apr. 2017, [www.ncbi.nlm.nih.gov/pmc/articles/PMC5347964/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC5347964/). // LHP PS

**There seem to be few, if any, reasons left to accept data exclusivity in addition to the existing patent regime. Data exclusivity poses a considerable additional risk to the affordable access to medicines in developing countries.** In the absence of evidence that data exclusivity will support innovation and economic development, **there is no legitimate ground for developing countries to favour such a policy.** Moreover, **since current levels of revenue already generate copious profit margins for the pharmaceutical industry in US and EU markets, it is inequitable and highly problematic to require developing countries to implement data exclusivity**. For developed country markets, the key question remains whether society should pay the price for extended monopolies in return for merely ‘incremental’ innovations**. Even in the US and the EU, the implementation of data exclusivity, by undermining legitimate competition, seems incompatible with the long tradition of stringent competition and anti‐trust policies, which have always been vital components of the economic structure.** In its current form, **data exclusivity offers the pharmaceutical industry an ‘easy route’ to market exclusivity, without fear of challenges. Indeed, it seems that data exclusivity is meant to increase the (already significant) profitability of the pharmaceutical industry, rather than allowing them to have a legitimate demand fulfilled.**

#### It’s topical and the aff solves – Data Exclusivity is a TRIPs Plus IP protection, Thrasher 21

Thrasher, Rachel. “How Data Exclusivity Laws Impact Drug Prices:” *Global Development Policy Center Chart of the Week How Data Exclusivity Laws Impact Drug Prices Comments*, 25 May 2021, [www.bu.edu/gdp/2021/05/25/chart-of-the-week-how-data](http://www.bu.edu/gdp/2021/05/25/chart-of-the-week-how-data)-exclusivity-laws-impact-drug-prices/. // LHP AB

**Data exclusivity is a form of intellectual property protection that applies specifically to data from** pharmaceutical **clinical trials. While innovator firms run their own clinical trials to gain marketing approval, generic manufacturers typically rely on the innovator’s clinical trials for the same approval. Data exclusivity rules keep generic firms from relying on that data for 5 to 12 years, depending on the specific law.** Data exclusivity operates independently of patent protection and **can block generic manufacturers from gaining marketing approval even if the patent has expired or the original pharmaceutical product does not qualify for patent protection.** Although data exclusivity laws are matters of domestic legislation, the United States, the EU and others increasingly demand in their free trade agreement (FTA) negotiations that their trading partners protect clinical trial data in this way. **Data exclusivity is just one of a host of “TRIPS-plus” treaty provisions designed to raise the overall level of intellectual property protection for innovator firms**. Although the WTO’s Agreement on Trade-Related Intellectual Property Rights (TRIPS) does require Member states to protect clinical trial and other data from “unfair commercial use,” it does not require exclusivity rules that block the registration of generic products.

### Adv – Medicine Prices

#### Data exclusivity massively raises medicine prices.

#### 1] Exclusivity kills access to affordable medicine particularly in developing countries by granting market exclusivity without patents explicit to them – Guatemala proves – Diependaele, et al. 17

Diependaele, Lisa, et al. “Raising the Barriers to Access to Medicines in the Developing World - the Relentless Push for Data Exclusivity.” Developing World Bioethics, John Wiley and Sons Inc., Apr. 2017, [www.ncbi.nlm.nih.gov/pmc/articles/PMC5347964/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC5347964/). // LHP AB

**In** **many** **developing countries**, public health **institutions cannot provide essential medicines to patients**. Moreover, even if essential medicines are available, **they remain unaffordable for billions** of people. Especially **original brand medicines are ‘priced out of reach’**.[70](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5347964/#dewb12105-note-0071) Although many factors can increase the accessibility and affordability of essential medicines, the United Nations (UN) and the World Health Organization (**WHO**) highly **recommend** that developing countries make full use of TRIPS flexibilities and **facilitate the production and importation of generics**.[71](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5347964/#dewb12105-note-0072)

In many cases, **data exclusivity will delay the availability of new generics**. A **recent study showed that the implementation of a data exclusivity regime in Guatemala, mandated by DR‐CAFTA, resulted in generic competition being denied entry to the Guatemalan market**.[72](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5347964/#dewb12105-note-0073) **In each case, the available originator drugs were priced substantially higher**.[73](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5347964/#dewb12105-note-0074) **Especially in** those **countries which, pre‐TRIPS, did not grant patents for pharmaceuticals**, **data exclusivity** can be an efficient method to **ensure market exclusivity for originator drugs and prevent generic competition in that market**.

As the access to medicines in the developing world is a highly complex issue, simply not providing data exclusivity cannot by itself resolve the lack of basic healthcare infrastructure in many developing and least‐developed countries. However, for both governments and individuals, the **price of medicines can be a significant financial burden**. Although generics are not necessarily affordable for all, the **prices of original drugs tend to be at least ten times higher**.[74](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5347964/#dewb12105-note-0075) Because most developing countries rely strongly on generics, the **consequences of implementing data exclusivity could be enormous**.[75](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5347964/#dewb12105-note-0076)

Data **exclusivity** **also offers industry the opportunity to ‘optimize’ its global business strategy**. **Pharmaceutical companies do not file patent applications in all the countries where they will eventually market their products**. The **inclusion of data exclusivity in FTAs ensures market exclusivity without a patent**. Furthermore, **companies will first introduce new drugs in wealthy markets**, where they expect the best commercial opportunities. **Only at a later stage, are new drugs marketed in developing countries**. Consequently, **delaying marketing approval** ‐ by means of data exclusivity ‐ **can equally delay generic competition**.

#### 2] Data exclusivity destroys generic competition skyrocketing medicine prices – Malpani

Malpani, Rohit. “All Costs, No Benefits: How TRIPS-plus Intellectual Property Rules in the US-Jordan FTA Affect Access to Medicines.” Oxfam Library, Mar. 2007, oxfamilibrary.openrepository.com/bitstream/handle/10546/114080/bp102-all-costs-no-benefits-trips-210307-en.pdf%3Bjsessionid%3D089750820CF675173F0C3204C369D63F%3Fsequence%3D1. // LHP AB

Rohit Malpani is Director of Policy and Analysis at Médecins Sans Frontières’ (MSF) Access Campaign. Before that, Malpani was Special Adviser, Policy and Campaigns Unit for Oxfam Hong Kong. Previously, he served as Senior Campaigns Adviser at Oxfam America, where he managed Oxfam’s “access to medicines” campaign, provided advice to Oxfam on the intersection of intellectual property and development, and also served as a corporate campaigns adviser with Oxfam America’s Private Sector Department. Previously, he worked as a human rights adviser to the World Health Organization and the International Labor Organization, and also with local civil society groups in Thailand and Argentina. Malpani started his legal career as an intellectual property attorney with the law firm of Wilson, Sonsini, Goodrich and Rosati. He holds a DJur from New York University School of Law and a Bachelor of Arts from Rice University.

**Multinational** pharmaceutical **companies have prevented generic competition for** many **medicines by solely enforcing data exclusivity provisions in Jordan’s IP law**. This is **because companies can rely upon data exclusivity** more **easily than patent protection to deny generic competition**. **Patent offices apply rigorous standards** and impose safeguards **to ensure that only innovative medicines are granted a monopoly**. On the contrary, a pharmaceutical **company merely has to submit clinical trial data to obtain a five-year market monopoly**.30 According to Oxfam’s analysis **of 103 medicines registered and launched since 2001 that currently have no patent protection in Jordan**, at least **79 per cent have no competition** from a generic equivalent **as a consequence of data exclusivity** (see Appendix 1 for methodology). Jordanian generic manufacturers interviewed by Oxfam **expressed frustration at the data exclusivity law** because multinational pharmaceutical companies can rely upon data exclusivity to preclude generic competition.31 A **generic competitor could replicate these medicines, in the absence of a data exclusivity law, shortly after the medicine’s launch on the domestic market**. Although data exclusivity was imposed as a result of the US-Jordan FTA and WTO accession, the TRIPS-plus measures benefit many other countries’ multinational drug companies. **At least 21 US, European Union (EU), and Swiss drug companies have taken advantage of** the benefits of **data exclusivity**. TRIPS-plus rules, although imposed by the US FTA, benefit all drug companies because developing countries must alter their national intellectual property laws to fully implement TRIPS-plus rules. Thus, all pharmaceutical companies marketing medicines in a developing country, including European companies, benefit from these changes, and benefit from US efforts to impose TRIPS-plus rules elsewhere.32 Consequences of data exclusivity on public health **Generic competition drastically reduces medicine prices**. Multinational pharmaceutical companies that enforce data exclusivity for their clinical trial data in Jordan can prevent the onset of generic competition for five years, even without a patent on the medicine. In contrast, **nearby Egypt has not introduced data exclusivity and other TRIPS-plus rules, and multinational pharmaceutical companies have only received patent protection for medicines from 2005 onwards.** Thus, **most medicines currently sold on the Egyptian market have no form of monopoly protection** (and therefore may have multiple generic competitors). **All costs, no benefits**: How TRIPS-plus intellectual property rules in the US-Jordan FTA affect access to medicines, Oxfam Briefing Paper, March 2007 9 **Heart disease and diabetes are serious public health problems in both Jordan and Egypt. Jordan had approximately 195,000 cases of diabetes in 2000, while Egypt, a more populous country, had an estimated 2.6 million cases**. Similarly, according to 2002 WHO (World Health Organization) estimates, **heart disease is one of the leading causes of death in both countries**. A comparison of prices for five best-selling medicines that treat diabetes and cardiovascular disease in Jordan and Egypt illustrates the enormous disparity between the costs of the originator medicine in Jordan (with no generic competitor available solely because of data exclusivity) against the lowest-priced generic equivalent in Egypt (where price reductions due to generic competition are unrestricted). (See Table 1.) Table 1: **Relative prices between medicines with no generic competition in Jordan (due to enforcement of data exclusivity) and the price of the lowest-priced generic equivalent in Egypt Country** (company) Active Pharmaceutica l Ingredient (dosage) Medical use Price per Unit (in Jordanian dinars at prevailing exchange rate) **Jordan** price compared to Egyptian price Egypt (local generics manufacturer) Jordan (Merck) Metformin (850 mg) Metformin (500 mg) **Anti-diabetic** .02 .16 **800% Egypt** (local generics manufacturer) Jordan (Kleva) Atenolol (100 mg) Atenolol (100 mg) Antihypertensive .03 .11 367% Egypt (local generics manufacturer) Jordan (Glaxo SmithKline) Rosiglitazone maleate (4 mg) Rosiglitazone maleate (2 mg) Anti-diabetic .40 .67 167% Egypt (local generics manufacturer) Jordan (Merck) Simvastatin (20 mg) Simvastatin (20 mg) Antihyperlipidemic .452 2.25 498% Egypt (local generics Ramipril Antihypertensive .14 557% All costs, no benefits: How TRIPS-plus intellectual property rules in the US-Jordan FTA affect access to medicines, Oxfam Briefing Paper, March 2007 10 manufacturer) Jordan (SanofiAventis) Ramipril hypertensive .78 Source: Jordan and Egypt Ministries of Health (2006) These **new medicines are significantly more expensive in Jordan than in Egypt. If TRIPS-plus rules had been present in Egypt, local manufacturers could not have driven down prices for these medicines through generic competition**, and the prices for these medicines would have been much higher. The **result would have been increased health-care costs and less medical treatment**, especially for poor people.

#### Two Impacts:

#### **1] Quality Treatment, AHA 19’**

“New Report Shows Impact of Rising Drug Prices and Drug Shortages on Patients and Hospitals: Aha.” American Hospital Association, AHA, 15 Jan. 2019, www.aha.org/press-releases/2019-01-15-new-report-shows-impact-rising-drug-prices-and-drug-shortages-patients. //LHP DP

This report confirms that **we are in the midst of a prescription drug spending crisis that threatens patient access to care and hospitals’ and health systems’ ability to provide the highest quality of care,”** said AHA president and CEO Rick Pollack. “**Solutions must be worked on to rein in out-of-control drug prices and ease the drug shortages that are putting a strain on patient care.**” “We see a developing crisis. **Relentless drug price increases and all too frequent shortages of critical medications are eroding the capacity of hospitals to provide our patients needed care,”** said FAH president and CEO Chip Kahn. “We believe **policymakers should act now to protect patients**.” “ASHP is at the forefront of efforts to combat the systemic impact of ongoing drug shortages and rapidly rising drug prices,” said ASHP CEO Paul W. Abramowitz, Pharm.D., Sc.D. (Hon.), FASHP. “By working with government agencies and partners such as AHA and FAH, we will continue to offer policy solutions and a roadmap for the changes necessary to ensure optimal care for patients.” Today’s report updates and expands on a previous AHA/FAH report from 2016 on skyrocketing inpatient hospital drug cost increases by also analyzing outpatient drug costs and the impact of drug shortages. The report found that **hospital budget pressures resulting from the continued dramatic increases in drug prices have negative impacts on patient care**, **with hospitals being forced to delay infrastructure investments, reduce staffing, and identify alternative therapies. Hospitals also struggle with drug shortages, which can disrupt typical work patterns and patient care, and often require significant staff time to address.**

#### 2] They force people into poverty

Hoban 10 Rose Hoban 9-13-2010 "High Cost of Medicine Pushes More People into Poverty" <https://www.voanews.com/science-health/high-cost-medicine-pushes-more-people-poverty> (spent more than six years as the health reporter for North Carolina Public Radio – WUNC, where she covered health care, state health policy, science and research with a focus on public health issues. She left to start North Carolina Health News after watching many of her professional peers leave or be laid off of their jobs, leaving NC with few people to cover this complicated and important topic. ALSO cites Laurens Niens who is a Health Researcher at Erasmus University Rotterdam)//Elmer

Health economist Laurens Niëns found that **drugs needed to treat chronic diseases could be considered unaffordable for many people in poor countries. Medicines can be expensive** and often make up a large portion of any family's health care budget. And the burden can be even greater for people in poor countries, where the **cost of vital medicines** can **push them into poverty**. **The problem is growing as more people around the world are diagnosed with chronic diseases such as high blood pressure and diabetes.** Being diagnosed with a chronic disease usually **compells patients to seek treatment for a prolonged period of time.** That **increases the eventual price tag for health**, says health economist Laurens Niëns at Erasmus University in the Netherlands. **Niëns examined medication pricing data from the World Health Organization** **and also looked at data from the World Bank on household income in many countries.** Using the data, he calculated how much people need to spend on necessities such as food, housing, education and medicines. "**The medicines we looked at are medicines for patients who suffer from asthma, diabetes, hypertension and we looked at an adult respiratory infection**," Niëns says. "Three conditions are for chronic diseases, which basically means that people need to procure those medicines each and every day." Niëns focused on the cost of medicine for those conditions. He found the **essential drugs could be considered unaffordable for many people in poor countries** - so much so that their cost often pushes people into abject poverty. "**The proportion of the population** that is living **below the poverty line, plus the people that are being pushed below the poverty line, can reach up to 80 percent in some countries for** some **medicines," Niëns says. He points out that generic medicines - which are more affordable than brand-name medications - are often** **not available in the marketplace**. And, according to Niëns, poor government policies can drive up the cost of medications. "For instance, a lot of governments actually tax medicines when they come into the country," he says. "[They] have no standard for the markups on medicines through the distribution chain. So often, governments think they pay a good price for the medicines when they procure them from the producer. However, before such a medicine reaches a patient, markups are sometimes up to 1,000 percent."

### Adv – Insulin

#### Data Exclusivity skyrockets insulin prices – Palmedo 21

Palmedo, Michael. “Evaluating the Impact of Data Exclusivity on the Price per Kilogram of Pharmaceutical Imports.” *Boston University Global Development Policy Center*, Apr. 2021,  [https://www.bu.edu/gdp/files/2021/04/GEGI\_WP\_048\_Palmedo\_FIN.pdf. //](http://www.bu.edu/gdp/files/2021/04/GEGI_WP__Bing_FIN.pdf.%20//) LHP AB

Michael Palmedo directs interdisciplinary research on intellectual property at American University (AU) Washington College of Law’s Program on Information Justice and Intellectual Property. His research focuses on the empirical evaluation of the impact of changes to patent and copyright laws. He recently completed the Shamnad Basheer IP/ Trade Fellowship at Texas A&M University, where he researched pharmaceutical industry influence into the U.S. government’s Special 301 Review.

This study’s pricing indicator is the **annual price per kilogram paid by each country for each sixdigit HS class of drug imports** from 1996 through 2010. This covers the period when most of the countries in my set adopted data exclusivity. During this time, Comtrade has data on imports of eight different classes of retail medicines classified at the 6-digit HS level, which are shown in Table 2. All of these are shipments of packaged medicines for human consumption, rather than active pharmaceutical ingredients or other unmixed pharmaceutical products, which fall under a different HS classification. **Table 2 also shows descriptive statistics for the price per kilogram in each of the HS classes in the dataset**. The mean varied significantly over the period from one class to the next, ranging from $29.70 for imports in HS 300450 (medicines containing vitamins) to $268.49 for those classified as HS 300439 (medicines containing certain types of hormones and antibiotics). There was also a lot of variation within each class, with the standard deviation exceeding the mean for half of the HS groups. Though skewed when taken as a whole and when disaggregated by HS class, the **data on price per kilogram logs normal**. Figure 2 compares the annual average price per kilogram paid by importing countries each year by countries with and without data exclusivity from 1996 to 2010. The price increased at a higher rate in the countries that had enacted data exclusivity. Average prices in each group tended to be similar until the early 2000s, and began to diverge after 2004. **Figure 3 compares the average price per kilogram separately for each HS classification**. While import price inflation was higher in countries with data exclusivity for all of the HS groups, the **difference was most pronounced in HS 300431** (medicines containing **insulin**) and HS 300439. The following section tests the significance of the difference in pharmaceutical import price inflation in countries with and without data exclusivity. GEGI@GDPCenter Pardee School of Global Studies/Boston University 8 www.bu.edu/gdp Figure 2. Average Price per Kilogram of Pharmaceutical Imports (USD) 0 40 80 120 160 200 1995 1997 1999 2001 2003 2005 2007 2009 2011 Data Exclusivity No Data Exclusivity Linear (Data Exclusivity) Linear (No Data Exclusivity) Table 2. HS Classifications and Descriptive Statistics HS Code Product Description Mean St. Dev. N 300410 Medicaments, containing penicillins, streptomycins or their derivatives 43.92 27.26 549 300420 Medicaments; containing antibiotics (other than penicillins, streptomycins or their derivatives) 86.74 119.20 515 300431 Medicaments; containing insulin 231.55 178.69 524 300432 Medicaments; containing corticosteroid hormones, their derivatives or structural analogues (but not containing antibiotics) 119.68 285.54 529 300439 Medicaments; containing hormones (but not insulin), adrenal cortex hormones or antibiotics 268.49 558.99 521 300440 Medicaments; containing alkaloids or their derivatives, containing ephedrine or its salts 107.45 148.18 524 300450 Medicaments; containing vitamins or their derivatives 29.70 46.38 543 300490 Medicaments; consisting of mixed or unmixed products n.e.c. in heading no. 3004 51.33 50.38 524

Chart, scatter chart

Description automatically generated

#### The graph shows how insulin prices have hugely increased in a short span b/c of data exclusivity – will further increase with more exclusivity.

#### Insulin price gouging makes an essential medicine unaffordable – that causes diabetics to skip/ration doses, skimp on necessities, or die trying.

Barker 20 [Erin M Barker, Executive Editor at the Campbell Law Review with a JD, 2020, "When Market Forces Fail: The Case for Federal Regulation of Insulin Prices," Campbell Law Review, https://heinonline.org/HOL/P?h=hein.journals/camplr42&i=331]/Kankee

INTRODUCTION Today, a single vial of insulin can cost more than $250 in the United States, and most patients use between two and four vials each month.' Consequently, if a diabetic patient is without insurance, or if insurance does not cover a specific brand of insulin, that person could pay upwards of $500 to $1,000 per month out-of-pocket for an essential medication.2 These costs are astronomical and unacceptable-the federal government must step in to regulate pricing. On January 11, 1922, fourteen-year-old Leonard Thompson faced the end stages of a terminal illness: diabetes mellitus, otherwise known as type 1 diabetes.3 Thompson weighed only sixty-five pounds after living with diabetes for three years.' His attempt to control his diabetes with a starvation diet failed to keep him from slipping in and out of a diabetic coma.5 Desperate for any chance to save his son, Thompson's father agreed to let the hospital inject the boy with a recently-discovered drug-insulin.6 Thompson would be the first human subject to receive the injection,' and the results were nothing short of miraculous.' His blood sugar lowered to a normal level, and the glucose and ketones' present in his urine also lowered to a tolerable level.10 Four men discovered this "wonder drug"": Frederick Banting, Charles Best, James Collip, and John Macleod.12 Following Banting's and Best's initial publication of their results,13 the discovery of insulin and its successful application to human subjects landed on the covers of newspapers worldwide.14 Insulin provided life-saving treatment for people who previously faced a death sentence; the drug brought diabetic patients out of comas, allowing them to end their starvation diets and eat carbohydrates." For their discovery, Banting and Macleod won the 1923 Nobel Prize in Physiology or Medicine and split their winnings with Best and Collip.16 Banting, Best, and Collip acquired an American patent on insulin and its method of creation on January 23, 1923.17 When applying for their patent, the trio maintained that "their goal was not profit, but ensuring the speedy and safe availability of their discovery to the public.""8 They then sold their patent rights to the Board of Governors of the University of Toronto for $1.00 each.1 9 In a letter to the University's president, the trio wrote, "The patent would not be used for any other purpose than to prevent the taking out of a patent by other persons. When the details of the method of preparation are published anyone would be free to prepare the extract, but no one could secure a profitable monopoly."20 Banting, Best, and Collip stated a clear goal: their lifesaving invention was to remain available to all. That goal has failed. This Comment analyzes how federal regulation of insulin prices will correct failed market forces, leading to a stabilized market for the indispensable medication. Part I of this Comment will provide a brief overview of the current state of the insulin market in the United States. Part II of this Comment will explain economics-based justifications for adopting federal legislation to regulate the insulin market. It will also provide an overview of the types of regulatory schemes that the government could utilize in this market. Part III of this Comment will describe and critique legislation that two states-Nevada and Colorado-have already acted to regulate the cost of insulin and will then examine currently proposed federal legislation that aims to lower insulin prices. Lastly, Part IV of this Comment offers a solution: the addition of language to the proposed federal legislation, incentivizing competition and positively affecting market prices through the nationalization of patents. I. THE STATE OF THE INSULIN MARKET IN THE UNITED STATES TODAY A. Economic Impact ofRising Insulin Prices From 2002 to 2013, the cost of insulin nearly tripled.21 Then, from 2012 to 2016, the cost of insulin rose dramatically again, nearly doubling. 22 In the first month of 2019 alone, insulin manufacturers Sanofi and Novo Nordisk raised some of their insulin product prices as much as 4.9% and 5.2%, respectively. 23 As of 2017, diabetes treatment and complications cost the United States ("U.S.") more than $327 billion per year, making it the most expensive chronic illness in the country.24 This cost is a combination of $237 billion in direct medical costs, including $15 billion for insulin, and $90 billion in indirect costs. 25 The American Diabetes Association reports: While much of the cost of diabetes appears to fall on insurers (especially Medicare) and employers (in the form of reduced productivity at work, missed work days, and higher employer expenditures for health care), in reality such costs are passed along to all of society in the form of higher insurance premiums and taxes, reduced earnings, and reduced standard of living.26 Government insurance, including Medicare, Medicaid, and insurance through the military, provide for a majority (67.3%) of the cost of diabetes care in this country.27 Private insurance pays for 30.7%, and the uninsured pay for 2% of the cost of diabetes care. 28 Uninsured diabetics visit the doctor 60% less and receive 52% fewer prescriptions than insured diabetics, yet uninsured diabetics account for 168% more emergency department visits than insured diabetics.2 9 Accordingly, because of both the direct and indirect costs of diabetes care, it is not just diabetics who are paying-all of society shoulders the financial burden of the increasing cost of diabetes. 30 B. Social Impact ofRising Insulin Prices Rising insulin prices induce "negative health and financial burdens on the population." 3 1 Of the 30 million diabetic Americans, approximately 7.4 million require daily doses of insulin to survive.32 Rising insulin prices have forced some to cut back on or skip doses of insulin. 3 Others elect to forgo other necessities such as food or rent in order to afford insulin. 3 A 2018 study found that almost 26% of diabetics in the U.S. had rationed their insulin the previous year.35 Recently, poignant stories have emerged detailing the tragic societal consequences of these negative health and financial burdens, including deaths due to an inability to afford insulin. 6 One such story is that of Alec Smith, a twenty-six-year-old who died less than a month after his mother's health insurance plan removed him as a beneficiary.3 7 Smith, who worked a full-time job and earned more than minimum wage, could afford neither new insurance nor the monthly $1,000 out-of-pocket cost of his insulin. 38 Another story is that of Meaghan Carter, a forty-seven-year-old woman who died alone on her sofa on Christmas night because she could not afford insulin.3 9 Carter, a nurse, was between jobs.4 0 She planned to start a new nursing position with health insurance benefits only a week after her death.4 1 Carter's family found empty vials of insulin among Carter's nursing supplies in her home.42 According to Carter's sister-in-law Mindi Patterson, "[s]he had gauze, bandages and all her nursing supplies"-"plenty to take care of others but not enough to take care of herself." 4 3 The stories of Alec Smith and Meaghan Carter demonstrate that there is more than just money at stake here-people's lives are on the line because of insulin prices in the U.S. Almost a hundred years after the discovery of insulin, diabetics should not be forced to ration an essential drug or face death due to excessive costs. Banting, Best, and Collip's goal was to make insulin affordable for all," but that is not the case today. The current price of insulin in the U.S. is unacceptable and must be addressed. II. THE FEDERAL GOVERNMENT SHOULD REGULATE THE INSULIN MARKET BECAUSE OF THE FAILURE OF TYPICAL MARKET FORCES

#### Reducing IP protection for insulin increases innovation – it stops redundant research and competition

Emily 20 [Emily Hanson, JD Candidate at the University of Georgia School of Law, 2020, “Economic Burdens of Life: Trade Secrecy and the Insulin Pricing Crisis in the United States,” Journal of Intellectual Property Law, https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1457&context=jipl]/Kankee

The discussion above paints a grim picture. The abbreviated pathway to approval provided for under federal law has not achieved its goal of increasing competition and lowering prices in the insulin market. As progress stalls, many people with diabetes continue to struggle to pay for the medication they need as insulin prices continue to rise. It should be noted that some steps have been taken in 2019 by both corporations and governments to alleviate the insulin pricing crisis. For example, the three major insulin manufacturers, Eli Lilly, Sanofi, and Novo Nordisk, have each announced that they will lower the list prices of their insulin products.180 Furthermore, pharmacy benefits manager, Express Scripts, announced a price cap of twenty-five dollars per month for its members.181 Colorado recently passed legislation capping the price of insulin at $100 per month for insured patients.182 These efforts have one thing in common: they illustrate the fact that attention is increasingly being directed at this issue. The increase in attention, however, does not mean that the issue is solved. Unfortunately, all of the measures identified above are too limited in scope to serve as a complete solution to the problem. After all, Novo Nordisk or Express Scripts, for example, may decide tomorrow that the price guarantees they make today are no longer economically viable, which will leave diabetic patients in much the same place they are now. Many diabetics with health insurance in Colorado are seemingly out of immediate danger, but Colorado is home to only a very small percentage of all diabetics in the U.S.183 This is why legislation at the federal level is necessary to correct this issue for good. As discussed in section III(C) infra, trade secret is one of the three forms of intellectual property protection available to pharmaceutical innovators. In order for an innovation to qualify for this protection, it must: (1) confer economic benefit upon the holder, (2) not be generally known, and (3) be the object of reasonable steps by the holder to maintain its secrecy.184 Makers of pharmaceutical products, and biologic drugs in particular, avail themselves of trade secret protection quite liberally.185 Trade secret is particularly attractive for protecting the manufacturing processes for insulin and other biologics, which has a major impact on competition.186 Biologics like insulin differ considerably from chemical medications in terms of the difficulty of manufacturing them.187 Small-molecule chemical medications are relatively simple to describe scientifically,188 and a generic manufacturer can use any of a number of methods to synthesize the compound, all of which produce a result easily proven to be identical to the reference product.189 Insulin and other biologics, by contrast, have much more complex chemical structures.190 Small differences in the method of synthesis can lead to broad variation in the final result.191 This means that showing biosimilarity is very difficult unless the manufacturer uses the same method that the maker of the reference product used.192 Furthermore, the precise molecular identity of some biologic drugs is not known because the analytical techniques needed to make that determination do not yet exist.193 Crucially, to qualify for abbreviated approval under the Biosimilars Act, the maker of the biosimilar must make a product that not only is biosimilar, but can be shown to be biosimilar.194 Because trade secret protection can theoretically last indefinitely,195 makers of would-be biosimilar insulins may never have access to manufacturing process information, all but foreclosing the possibility of producing a follow-on insulin that the maker is able to prove is biosimilar to the reference.196 A claim that X is the same as Y is impossible to prove or disprove when Y’s identity is not known. A scaling back of trade secret protection for pharmaceuticals would ameliorate this problem. The Biosimilars Act does not require the maker of a reference product to disclose manufacturing information to any greater extent than is required under Hatch-Waxman, which means that it is unlikely to be successful in increasing competition in the insulin market now that insulin is within its scope.197 Insulin will likely continue to be more trouble than it is worth to biosimilar manufacturers. The Defend Trade Secrets Act of 2016 provides an extremely broad scope of the type of information that may be eligible for trade secret protection: [A]ll forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing.198 The breadth of the protection available under the DTSA means that makers of follow-on insulins will have an extremely difficult time showing that their products are biosimilar. Statutorily eliminating biologics manufacturing process information from trade secret eligibility (as an amendment to the Biosimilars Act, for example) would force pharmaceutical companies to choose among three alternatives. They could: (a) include process information in their patent application, (b) apply for separate patent protection for the process and the product, or (c) leave the process information with no protection at all. Acknowledging choice (c) to be in all likelihood the least popular of these, the net effect would be that the process by which biologics like insulin are manufactured would become part of the public omain once the patent expires, rather than remaining secret indefinitely as it does today. This change would naturally have downstream effects, both positive and negative. The first advantage would be that insulin and other biologics would become more attractive to makers of follow-on products. Armed with the knowledge needed to create a biosimilar without going through the costly process of additional research and development, follow-on firms could produce biosimilar insulins more cheaply. The second advantage would be that the growing fund of public knowledge about insulin and other biologics would facilitate greater innovation in the field over time.199 By keeping critical information about their discoveries secret, pharmaceutical companies prevent other companies, universities, and private research firms from benefitting from it.200 Trade secret law is often criticized for its tendency to cause redundancy and duplication of effort,201 and repetition of clinical trials to prove that a follow-on is biosimilar or interchangeable can cost hundreds of millions of dollars.202 A free flow of information about process in a field where process has a tremendous influence on the identity and quality of the final product203 would have substantial value to society.204 To that end, the third advantage to reducing trade secret protections would be a rebalancing of the public and private interests at stake in the market for insulin. The free-market approach to drugs and other medical products that operates in the U.S. presumes that the same forces at work in the markets for CocaCola and iPhones are at work in similar ways in the markets for insulin and other healthcare products.205 As discussed previously, the free-market approach has undoubted advantages,206 but the ethical implications of letting the market decide who can afford insulin and who cannot should not be ignored. A reduction of protection for an already immensely profitable industry207 would ease the burden on people who rely on insulin for survival. On the other hand, this approach does have drawbacks. For example, as with any limitation on intellectual property protection, there is the concern that this would decrease incentives to innovate.208 Insulin makers may decide to slow or halt development of costly new products if they fear that they will not be able to recoup their losses.209 However, this particular issue seems to be of less concern here than in other situations in which cutting edge biologics are not yet on the market. Insulin’s age and long history in the market will likely shield it from this negative effect because several safe and effective varieties already exist. Thus, while reducing trade secret protections for biologics may have the effect of making some drug manufacturers more reluctant to develop entirely new biologic drugs, it will likely have the opposite effect of improving competition for drugs that are already on the market. Furthermore, a compromise might be made to restrict the scaling-back of trade secret protection to insulin alone, rather than to all biologics. Using insulin as a sort of pilot for a broader scheme of reducing trade secret protections in the pharmaceutical industry would provide lawmakers and the public with some context for the effectiveness of such a scheme. A second potential drawback to this proposal is the possibility of a chilling effect on insulin production in general. Once information about manufacturing insulin enters the public domain, regulatory agencies like FDA will have the ability to set manufacturing standards accordingly.210 The more that is known about a substance, the easier it is to regulate.211 An increase in the minimum standard may raise production costs, thus deterring current producers from continuing to make insulin, and discouraging new firms from entering the insulin market in the first place. Trade secrecy has kept the barriers to entry high for competitors in the insulin market.212 There is no question that, in general, insulin and other biologics are more difficult and more expensive to produce than chemical medications.213 Thus, the U.S. is unlikely to see drastic price reductions for these products such as those that resulted from the enactment of Hatch-Waxman.214 However, the current situation is clearly untenable for patients, and a scaling back of trade secrecy in the insulin market would likely help facilitate price reduction. VI. CONCLUSION

### Framework

#### **Pain and pleasure are intrinsically valuable – to justify beyond that runs into moral incoherence. Moen 16,**

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] SJDI // RCT by JPark

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.

#### Thus, the standard is maximizing expected well-being. To clarify, hedonistic act util. Prefer additionally.

#### 1] Death is the worst impact and outweighs, A] internal link turn – it fundamentally destroys the subject which makes alternative value and resistance impossible, B] its irreversible so any chance life is good means it comes first

#### 2] Actor specificity

#### A] governments must aggregate because their policies benefit some and harm others so the only non-arbitrary way to prioritize is by helping the most amount of people

#### B] Actor specificity comes first because different agents have different obligations. Takes out calc indicts because they’re empirically denied.

### Underview

#### 1] 1ar theory – the aff gets it because otherwise the neg can get away with infinite abuse. It’s drop the debater because the 1ar and 2ar are both too short to win theory and substance.

#### 2] Fairness is a voter – it’s key to objective evaluation of who the better debater is which is the judge’s obligation. Absent fairness, it’s impossible to test which arguments are true because they weren’t subject to rigorous contestation.

### Method

#### The role of the ballot should be a critical pedagogy of hope centering around formulating concrete alternatives to existing conditions. Amsler 08:

Amsler, Sarah S. 2008 “Pedagogy against “dis-utopia”: From conscientization to the education of desire.”

In other words, **critical pedagogy is often assumed to be an inherent source of hope because it disrupts and denounces the illusion of historical fate** and liberates emergent utopian impulses through which self-determination is announced (da Veiga Coutinho 1974: 11). **But** critical educators are now asking **what relevance this understanding of pedagogy might have in a society where desires for individual transcendence and social change are or appear to be absent, devalued or denied. What are the possible consequences of conscientization in conditions where exposing complex power relations and dominant social forces emboldens fatalistic emotions rather than transforming them into hope; where, to paraphrase a well-worn theory, we see through ideologies and yet still buy into them?** Or as Henry Giroux more poignantly asks – and here what appears as hyperbole must be understood in the context of contemporary American political culture and the moral indignities of Abu Ghraib – ‘**what resources and visions does hope offer…when most attempts to interrupt the operations of an incipient fascism appear to fuel a growing cynicism rather than promote widespread individual and collective acts of resistance?’** (Giroux 2002: 38) What become of efforts to democratize knowledge when consuming publics democratically demand authoritarian teaching, or when self-realization is defined as the skilful adaptation to an existing order of things? In such circumstances, **‘critical hope’ becomes a paradoxical problematic rather than an assumed outcome of critical education**. **If the need or desire for personal transcendence or social change is not taken for granted as pre-existing or immanent, then the object of critical pedagogy must either be to create them, or to create the conditions for their emergence**. The aim of educating against the ideological forces of post-modern capitalism is therefore neither simply to recognize the social world, nor to create conditions of emancipatory communication. Instead, it is to produce the value orientations that make both of these activities meaningful in the first place. Hence, **the new movement in critical pedagogy prioritizes the ideational production of ‘critical hope’ as a motivational basis for transformative social action prior to and outside of concrete political or economic struggle, rather than beginning from it. Institutionalized critical education has become a project less in the service of particular political struggles and more an attempt to resist the closure, privatization, apathy, and psycho-emotional ‘coldness’ that is presumed to abort political struggle at its immediate roots of subjective experience.** Writing in defence of higher education as a key site of cultural resistance, **Giroux argued that critical pedagogy is no longer simply a matter of ‘raising consciousness’ about the possibilities for realistic opposition, but a question of educating people to believe that these possibilities are worthwhile in the first place** (1997: 28). This type of educational practice moves beyond cognitive rationality and towards the psychological, emotional and ethical experiences through which it is mediated. **The question here is not only what makes it possible for people to rationally formulate alternatives to existing conditions, but also what makes it possible for them to want to do so**. This reflects a turn away from the duality of ‘reason and freedom’ towards a more complex theory of social agency that includes its ‘morethan-rational’ and ‘less-than-rational’ dimensions (or in other words, the ‘pretheoretical’ and ‘extramundane’ elements) of human action, as well as the social and emotional foundations of inter-subjective ethics (Ahmed 2004; Anderson 2006; Anderson and Harrison 2006). In other words, contemporary critical educators are trying to produce through pedagogy a condition which, according to Honneth, is presumed to have been lost in the mid-twentieth century and yet which critical theory requires for its own justification: an innate, essential and indomitable need for personal and social transformation. This presents a familiar dilemma: ‘how can we imagine these new concepts even arising here and now in living beings if the entire society is against such an emergence of new needs?’ (Marcuse 1970: 76). Or, in the words of C. Wright Mills, we seem to have two choices when theorizing need and desire. On the one hand, he wrote, ‘if we take the simple democratic view that what men [sic] are interested in is all that concerns us, then we are accepting the values that have been inculcated, often accidentally and often deliberately’. On the other hand, ‘if we take the dogmatic view that what is to men’s interests, whether they are interested in it or not, is all that need concern us morally, then we run the risk of violating democratic values’ (Mills 1959: 194). In his habitually accessible way, Mills expressed the stubborn tension between socially constituted need asit-appears or is experienced, on the one hand, and universal norms of need that may be abstracted from or alien to lived experience, on the other. **It is this unhappy no-choice between the reification of immediate particular experience and the authoritarian imposition of abstract generality that critical theory must aim to transcend.**

#### Successful revolutions have never asked for a complete clean break--the only way to make radical change is through a process of finding a target and building a movement, Malm 21:

Malm, Andreas. “We Must Nationalise Total.” Versobooks.com, 2021, https://www.versobooks.com/blogs/5168-we-must-nationalise-total.

Clearly, the situation is not the same. Our political world is completely different. That said, the First World War can be seen as the catastrophe that really began the twentieth century. Governments throughout the world, particularly in Europe, were prepared to send millions of soldiers to die on the battlefield without a valid reason. Individuals such as Vladimir Ilyich Ulyanov, known as Lenin, and Rosa Luxemburg, then asserted that if we wanted to stop this catastrophe, we had to depose its artisans and transform the war into a political crisis. That is how the situation today is analogous. **We are faced with a chronic emergency which will continue for the long term and worsen on many fronts because we have ruling classes that maintain the driving forces of this ecological crisis. Our political task is** precisely that which Lenin and Rosa Luxemburg had to confront: **how to transform these moments of crisis, such as the pandemic, into political crises that shatter the driving forces behind these problems.** *You quote Lenin when he said that ‘to temporise in insurrection is death…It is impossible to save anything now by half-measures.’ There is no place here for reformism. Where do you situate yourself between the three classic branches of political transformation, i.e. reformism, revolutionary reformism and revolution?* If I understand you correctly, I would say **that I situate myself rather on the side of revolutionary reformism, because I do not think that the left or the climate movement should demand today the complete abolition of capitalism, should seek to make a clean slate. To start with, no revolution of that kind ever succeeded. Lenin himself did not demand such a thing, the Bolshevik slogan was peace, bread and land**. Those were the key demands that fuelled their revolutionary project. **The left has spent around two centuries trying to abolish capitalism, so far without success, and it finds itself today, throughout the world, in a state of unprecedented weakness. To imagine that we could pass from our dreadful present weakness to the total abolition of capitalism tomorrow is for me completely unrealistic. Besides, we have to act extremely rapidly given the timescale of the climate crisis, and we cannot give ourselves tasks that are impossible to accomplish in this short space of time. But it is precisely because the timescale is so short and the change needed so colossal that we have to attack the very powerful interests at the heart of the capitalist economy**. **Take Total for example – the largest French private company – which continues to grow in the Arctic or in East Africa by constructing what will soon be the longest oil pipeline in the world.****[[1]](https://www.versobooks.com/blogs/5168-we-must-nationalise-total" \l "_edn1" \o ") That must stop. We cannot have companies of this type, which profit from the expansion of fossil fuel production. These companies must be closed and transformed into something completely different. Those are the kinds of ‘reform’ I would like to see: nationalise Total, immediately end completely its production of oil and gas, and transform it into a company devoted to the capture and sequestration of atmospheric CO2, for example**. **To achieve this, we need a different kind of French state, acting in response to massive popular pressures. And if this reform were brought about, would it also open up a process of reorganisation of French society? I don’t know. But these are fundamental demands, concrete ones, that we have to formulate. At the stage of the conflict where we are at present, therefore, it is not a matter of saying that we have to get rid of the capitalist system from one day to the next, but certainly to formulate extremely basic and necessary demands** – in this case to take control of oil and gas companies, and then see where we go from there. *Perhaps the most difficult change concerns our way of life, the goods we produce, the way in which we consume… Fossil energies are one thing, but there is also the extraction of metal to make cars or buses, natural resources to build homes, etc. The idea of sobriety and sharing goes against the desire produced by society to live like the upper classes. How do we convince the population?* Two things. **On a strategic level, it is logical to be a bit down to earth in the sense that, to start a process of radical transformation of society, you have to begin somewhere and identify an enemy – or a force – that is actually at the centre of the disorder and must be defeated. And once you have achieved this, you move on to the following steps. So, to concentrate on the oil and gas companies doesn’t mean that everything is perfect with solar or wind energy, electric cars, etc., but that this is what is imperative strategically**. Now, I also think that we can envisage a transition towards a society without fossil fuels, which will improve people’s quality of life and is not just a question of sacrifice. Certain sacrifices will have to be accepted, of course, such as aviation as we know it, and by the richest people first of all. But ordinary workers will also have to accept certain sacrifices – the overconsumption of meat, for example. It is possible to explain to people in a sufficiently convincing way that they have much to gain from such a transition: working less, not seeing their job suddenly offshored to China, etc. *Many currents in the ecological movement are inspired by anarchism, and have a pretty hostile attitude towards the state, seeing it as centralising, concerned to develop its power and its economy, fundamentally anti-democratic… What is your position towards the state?* **In my ideal world, power would be decentralised. But we are at the opposite extreme from an ideal situation, and we are heading closer towards nightmare and dystopia. To wait for another form of state would therefore be both crazy and criminal. The only way to escape from the impasse, I believe, is a centralised power capable of braking the forces of destruction.** Take the recent legal case where The Hague tribunal decided that Shell has to reduce its CO2 emissions by 45 per cent by 2030. Of course, we don’t know if this will be carried out. **But, in principle, what this suggests is that you can have a state apparatus ordering an oil and gas company to change its practices, and perhaps, in the end, to cease its activities completely. I can see no other institution than the state, in our societies, able to take and apply such a decision. That is not something that can be carried out by neighbourhood committees or a federation of councils – unless this establishes itself as a new state.** Concerning this case at The Hague, it is interesting to the extent that it reveals that therex is a branch of our state apparatus, the judicial branch, which is sensitive to the pressure of the climate movement. **We must not stop exerting pressure on the various branches of the state apparatus, even if we do not like the state. We are in a crisis, and we must use all the forces available to us.** *You are one of the few intellectuals to think on both a strategic and a tactical level, with the ideas you develop in* How to Blow Up a Pipeline*. How do you combine the two things?* Certain methods would do us a lot of harm at this stage – for example, if some climate activists started to adopt armed struggle. But that apart, **we need the greatest possible diversity of tactics, including legal cases, various kinds of lobbying, parliamentary efforts, electoral campaigns, street occupations, and mass blockades of lignite mines, as Ende Gelände have been doing in Germany.****[[2]](https://www.versobooks.com/blogs/5168-we-must-nationalise-total" \l "_edn2" \o ") Mass civil disobedience, of course, but also the destruction of property and sabotage.** The projects to expand the extraction of fossil fuel that are currently under way throughout the world really deserve to be destroyed. If people in Uganda or Tanganyika destroyed the pipelines there tomorrow, I don’t see how you could condemn this. Throughout human history, what destruction of property would be more legitimate than that? The great paradox is that this has not yet happened on a large scale. *That’s what you call the ‘Lanchester enigma’, after the essayist John Lanchester who in 2007 expressed his surprise that climate activists had not yet committed acts of terrorism, given the scale of the catastrophe, and the ease with which one could sabotage a gas station or vandalise an SUV…* It’s just crazy that ‘business as usual’ continues with everything we know today, given that 30 million people have had to flee their homes just in the last year because of natural catastrophes bound up with extreme meteorological phenomena – consequences of global heating. That reminds me of the recent novel by Kim Stanley Robinson, *The Ministry for the Future*. He imagines a very convincing transition in the form of a kind of best-case scenario for the coming decades, involving a plethora of movements and tactics. **Sabotage and destruction of property play a key role. But there are also existing state institutions operating under the aegis of the United Nations, and a multitude of local initiatives… I believe that this is the best way of thinking the transition: a turbulent and disorderly process, acting on different levels, with recourse to various tactics. If French people launched a campaign against Total, that could very easily include forms of destruction of property, and that could increase the pressure.**

#### Methodological pluralism is a necessary aspect of critique.

Bleiker ’14 (Roland, professor of international relations at the University of Queensland. “International Theory between Reification and Self-Reflective Critique” International Studies Review, Volume 16, Issue 2. June 17, 2014.)

This book is part of an increasing trend of scholarly works that have embraced poststructural critique but want to ground it in more positive political foundations, while retaining a reluctance to return to the positivist tendencies that implicitly underpin much of constructivist research. The path that Daniel Levine has carved out is innovative, sophisticated, and convincing. A superb scholarly achievement. For Levine, the key challenge in international relations (IR) scholarship is what he calls “unchecked reification”: the widespread and dangerous process of forgetting “the distinction between theoretical concepts and the real-world things they mean to describe or to which they refer” (p. 15). The dangers are real, Levine stresses, because IR deals with some of the most difficult issues, from genocides to war. Upholding one subjective position without critical scrutiny can thus have far-reaching consequences. Following Theodor Adorno—who is the key theoretical influence on this book—Levine takes a post-positive position and assumes that the world cannot be known outside of our human perceptions and the values that are inevitably intertwined with them. His ultimate goal is to overcome reification, or, to be more precise, to recognize it as an inevitable aspect of thought so that its dangerous consequences can be mitigated. Levine proceeds in three stages: First he reviews several decades of IR theories to resurrect critical moments when scholars displayed an acute awareness of the dangers of reification. He refreshingly breaks down distinctions between conventional and progressive scholarship, for he detects self-reflective and critical moments in scholars that are usually associated with straightforward positivist positions (such as E.H. Carr, Hans Morgenthau, or Graham Allison). But Levine also shows how these moments of self-reflexivity never lasted long and were driven out by the compulsion to offer systematic and scientific knowledge. The second stage of Levine's inquiry outlines why IR scholars regularly closed down critique. Here, he points to a range of factors and phenomena, from peer review processes to the speed at which academics are meant to publish. And here too, he eschews conventional wisdom, showing that work conducted in the wake of the third debate, while explicitly post-positivist and critiquing the reifying tendencies of existing IR scholarship, often lacked critical self-awareness. As a result, Levine believes that many of the respective authors failed to appreciate sufficiently that “reification is a consequence of all thinking—including itself” (p. 68). The third objective of Levine's book is also the most interesting one. Here, he outlines the path toward what he calls “sustainable critique”: a form of self-reflection that can counter the dangers of reification. Critique, for him, is not just something that is directed outwards, against particular theories or theorists. It is also inward-oriented, ongoing, and sensitive to the “limitations of thought itself” (p. 12). The challenges that such a sustainable critique faces are formidable. Two stand out: First, if the natural tendency to forget the origins and values of our concepts are as strong as Levine and other Adorno-inspired theorists believe they are, then how can we actually recognize our own reifying tendencies? Are we not all inevitably and subconsciously caught in a web of meanings from which we cannot escape? Second, if one constantly questions one's own perspective, does one not fall into a relativism that loses the ability to establish the kind of stable foundations that are necessary for political action? Adorno has, of course, been critiqued as relentlessly negative, even by his second-generation Frankfurt School successors (from Jürgen Habermas to his IR interpreters, such as Andrew Linklater and Ken Booth). The response that Levine has to these two sets of legitimate criticisms are, in my view, both convincing and useful at a practical level. He starts off with depicting reification not as a flaw that is meant to be expunged, but as an a priori condition for scholarship. The challenge then is not to let it go unchecked. Methodological pluralism lies at the heart of Levine's sustainable critique. He borrows from what Adorno calls a “constellation”: an attempt to juxtapose, rather than integrate, different perspectives. It is in this spirit that Levine advocates multiple methods to understand the same event or phenomena. He writes of the need to validate “multiple and mutually incompatible ways of seeing” (p. 63, see also pp. 101–102). In this model, a scholar oscillates back and forth between different methods and paradigms, trying to understand the event in question from multiple perspectives. No single method can ever adequately represent the event or should gain the upper hand. But each should, in a way, recognize and capture details or perspectives that the others cannot (p. 102). In practical terms, this means combining a range of methods even when—or, rather, precisely when—they are deemed incompatible. They can range from poststructual deconstruction to the tools pioneered and championed by positivist social sciences. The benefit of such a methodological polyphony is not just the opportunity to bring out nuances and new perspectives. Once the false hope of a smooth synthesis has been abandoned, the very incompatibility of the respective perspectives can then be used to identify the reifying tendencies in each of them. For Levine, this is how reification may be “checked at the source” and this is how a “critically reflexive moment might thus be rendered sustainable” (p. 103). It is in this sense that Levine's approach is not really post-foundational but, rather, an attempt to “balance foundationalisms against one another” (p. 14). There are strong parallels here with arguments advanced by assemblage thinking and complexity theory—links that could have been explored in more detail.

#### Targeted demands on the state are *critical*

King ‘16 (has been active in campaigning for refugee rights and against border controls for over a decade, has taught at the University of Nottingham and worked as a caseworker with the British Refugee Council, Natasha, No Borders: The Politics of Immigration Control and Resistance pg 39-42, dml)

But to what extent are these experiments in autonomy ever entirely autonomous? In response to Richard Day’s book on the newest social movements, Richard Thompson argues that it’s unrealistic to talk about creating wholly autonomous social structures because ‘[t]he second they’re consequential is the second they’ll be noticed [by the state]. At that point, it becomes impossible to break the cycle of antagonism by will alone. They will come after us’ (Thompson n.d., emphasis added). In other words, experiments in autonomy are rarely (if ever) entirely free from a relation to the state, or from state antagonism, and we are rarely able to ignore that antagonism. We may antagonize the state, but we are forced also to respond to the state, as a form of self-defence. This has happened time and time again, from the steady illegalization of squatting in Europe, and the tightening of laws around private property, to the infiltration by the CIA of the Black Panther movement, to the struggle between the Zapatistas and the Mexican state. We see this in the struggle for the freedom of movement when, continuing with the examples above, the EU employs Frontex special missions on the Turkish/Greek borders, or when the living spaces of people without papers are raided or destroyed. Whether people have been forced to, or they have seen it as the best strategy, the history of struggles for liberation has been one that included demands on the state. Often this has taken the form of engagement in a politics of rights

and/or recognition. From the movement of the Sans Papiers in France, to ‘a Day without Migrants’ in the USA; from campaigns that fight against the detention and deportation of people without papers, to struggles against police violence, resistance through forms of visible collective action have been central to struggles against the border. In most cases such struggles have made demands on the state, particularly through seeking recognition as a group, and through making claims to rights. But to what extent are demands for rights and/or recognition part of a no borders politics? Demands for rights and recognition have played a big part in the struggle for the freedom of movement. Yet there has been a long history of criticism over the politics of citizenship. Rights claims, for example, have been seen as essentially reinforcing the role of the state as the benefactor and grantor of rights, and reinforcing the notion that rights represent entitlements applicable to those who fit certain descriptions of being a human (cf. Arendt 1973 [1951]; Barbagallo and Beuret 2008; Bojadžijev and Karakayali 2010; Elam 1994). From this perspective, demands for rights and representation amount to disputes over the allocation of equality and therefore can only ever achieve a redistribution of that equality, rather than undermining the idea that equality is somehow qualified in the first place. As Imogen Tyler says, ‘[c]itizenship is a famously exclusionary concept, and its exclusionary force is there by design. The exclusions of citizenship are immanent to its logic, and not at all accidental. Citizenship is meant to produce successful and unsuccessful subjects. Citizenship, in other words, is “designed to fail”’ (Tyler, quoted in Nyers 2015: 31). Similar variations of this critique have appeared in the autonomy of migration debate. Representation can also be thought of as a bordering technology that seeks to pacify and discipline expressions of autonomy (or attempts at escape) (Papadopoulos et al. 2008). In other words, the politics of citizenship is problematic because it only ever brings people into the state. ‘Of course migrants become stronger when they become visible by obtaining rights, but the demands of migrants and the dynamics of migration cannot be exhausted in the quest for visibility and rights’ (ibid.: 219). I have a lot of sympathy with these arguments, and because of them am extremely suspicious of a politics of citizenship. But when it comes to actual practices of struggle against the border, a resolute stand against such strategies seems naïve, and insulting to those who have taken part. Migrant-led struggles have often been claims for rights, and ultimately I don’t want to dismiss such practices because they are philosophically problematic. In fact, sometimes to appeal to rights or recognition is the only available strategy in situations of extreme vulnerability, where people’s options are highly limited. Recognizing that we are in relations of power right now means also recognizing that our situation is imperfect and that we have to struggle in our (imperfect) reality. Youssef, a long-time activist for the freedom of movement in Greece, himself of North African descent, talked about the need for pragmatism in tactics; that sometimes we must engage with the state in order to bring about greater freedoms now. ‘Today, in Creta, in Chania, they will catch five people. How can I take them from the jail? I have something in the police station, OK. I have to talk with them today. OK? But tomorrow I can fuck him. He’s not my friend. He’s not my comrade. OK. We are talking today. Tomorrow we are fucking’ (interview, Youssef). His statement reflects how many practices that refuse the border often come out of necessity. In other words they’re rarely part of some intentional or ‘noble’ act to become a rights-bearer, say, and more often pragmatic decisions based on the need to alleviate immediate situations of oppression. A no borders politics seeks to go beyond claims to representation and rights that ultimately stand to reinforce the state. But claims to representation and rights can sometimes do this too. Building on Foucault’s idea that power can be both positive and empowering or negative and dominating, Biddy Martin and Chandra Mohanty suggest that fighting oppression involves seeing power in a way that refuses totalizing visions of it and can therefore account for the possibility of resistance, as in creating something new, within existing power relations (Martin and Mohanty 2003: 104). Suggesting that representation only ever brings people into power therefore means rejecting a vast range of moments when the oppressed have voiced their refusal to be reduced to non-beings outside of politics (Sharma 2009: 475). In other words, resistance is not only or always a reaction to the constraining effects of dominating power, but can also express power as something positive and liberating. From the Black Panthers to the Sans Papiers, demands for representation, when carried out by minority groups for themselves, can challenge the role of dominant power over that group and create new, emancipated subjectivities (Goldberg 1996; Malik 1996). Depending on who it is that acts, then, in some cases demands for recognition/rights can be a radical and transformative political act (Nyers 2015. See also Butler and Spivak 2007; Isin 2008; Nyers and Rygiel 2012). As Nandita Sharma suggests, in response to Papadopoulos et al.’s book Escape Routes, we must recognise that making life and fashioning our subjectivities are intimately intertwined and making ‘new social bodies’ … is not the same as bringing people back into power through identity politics (or identity policing). It is important to recognise that there are significant qualitative differences between subjectivities. There are those that Papadopoulos et al. rightly discuss as bringing us directly back into power – and which account for most of the subjectivities that people hold today (‘race’, ‘nation’, ‘heterosexual’, ‘homosexual’, ‘native’ and so on) – but there are also those that are born of practices of escape. (Sharma 2009: 473, emphasis in original)

**Activists must learn to speak the language of TRIPS to avoid big ideas sliding back into the status quo – Halbert 05:**

Halbert, Debora. “Globalization (2005).” Globalized Resistance to Intellectual Property, 2005, globalization.icaap.org/content/v5.2/halbert.html. // LHP PS

The themes found in the counter-globalization movement are not new, however new avenues for expressing these concerns have emerged. For example, resistance to the monetary policies of the 1970s foreshadows today’s critique of the WTO and the TRIPS agreement. An international environmental movement is not new, but concern over patents, biotechnology, seed ownership, and traditional knowledge have added a new dimension. Movements focused on human rights, social justice, and decolonization at the international level are not new, but issues of biopiracy, access to patented medication, and biocolonialism emerging from the TRIPS agreement are a new twist. While not the only common concern shared by these diverse groups, intellectual property has become a crosscutting issue and part of a new language of resistance through which to address the problems of globalization. The crosscutting nature of intellectual property brings together activists working at the local, national and international levels with NGOs, National governments, and the United Nations. Ultimately, these issues are then turned back upon international intellectual property agreements and create an atmosphere where new agreements or changes to already existing agreements will be met with increasing demands for public access and accountability. New social movements and grassroots organizations have also emerged around the idea of intellectual property itself (Story, 2002: 125; Drahos, 2002: 174). Drahos suggests webs of dialogue are emerging and connecting otherwise disparate groups. Nationally and internationally the process of intellectual property standard-setting is becoming caught up in webs of dialogue, webs in which an increasing number of non-state actors and non-business actors participate (175). Chapman argues that human rights organizations have entered this web of dialogue to raise concern about the consistency of human rights with intellectual property rights (2002). While these “webs” lack of a clear center, groups fighting distinct causes (access to seeds in India, access to AIDS medication in South Africa, control of traditional knowledge in Australia or Hawai’i) are thematically linked together by the underlying legal system of intellectual property. Rosemary Coombe also identifies the way resistance to intellectual property issues are forming. Strategic alliances are being forged between Indigenous NGOs, North-South alliances of farmers’ and peasants’ groups, traditional healers’ associations, environmental NGOs, development institutions and activists whose primary commitments are to maintaining food security, as well as to religious organizations who maintain an opposition to the patenting of lifeforms on spiritual grounds. These new coalitions form the core of a new and vibrant political movement organized around growing opposition to existing intellectual property laws, the way patent and plant breeder’s protections are granted, the practices of rights granting bodies in the industrialized world and an insistence upon recognition of alternative values – other than creation of incentives for the further development, proliferation, and circulation of commodities – to those currently given primacy in discussions of intellectual property (2001: 275-276). Organizations within this loosely defined sphere have begun to develop a global language of resistance designed to unite people living around the world to fight for greater equity and social justice. Conflict emerges because the language of social justice encoded in the international human rights arena is not easily translated into the language of trade and economics (Chapman: 867). The disconnect between the language spoken by grassroots organizations and the language of policy and law is of concern to some theorists who argue that at the international level the professionalization and westernization of “social movement” groups has silenced the voices of grassroots organizations in the global south (Batliwala: 396-398). In fact, the ability to speak the language of policy making becomes a key point of entry into the international system as Batliwala notes, Government authorities often collude and reinforce the exclusion of direct stakeholders by inviting the elite NGOs into policy-making processes, rather than the loud, militant, and difficult to control grassroots groups who do not speak the same bureaucratic language that elite social advocates have learned (398). These concerns are well founded and important to consider. Daniel Mato argues, for example, that Indigenous groups must learn to speak the language of Western diplomacy in order to be heard while at the same time retaining some sense of “authenticity (2000).” It is of concern that the voices heard in negotiating rooms emerge almost exclusively from the global north and from those who can speak the language of law and economics, who control access to “public space (Batliwala: 397).” However, I seek to conceptualize the problem somewhat differently. Both a critique of the current system and methods for working outside the system are necessary to long term social change. There is a need for those with training to translate legal documents into common terms and also a need to express grassroots concerns about the TRIPS agreement in terms of the law. Phrases that enter the conversation between legal scholars have no meaning to those outside the legal discourse (parallel imports, compulsory licensing, exhaustion, sui generis protection, etc). Thus, a translation in both directions is necessary. However, grassroots movements, transnational social movements, and NGOs go beyond a critique of the present by creating a vision of a different and alternative future. These visions of the future must exist outside the existing international paradigm if they are to offer an alternative to the status quo. I will divide the resistance to TRIPS into two prongs. The first prong is an imminent critique of TRIPS – one that does not wish to see the agreement thrown away, but is one where the agreement is changed to better represent interests that were initially excluded. This critique emerges from the work of legal scholars and activists who voice their concerns in the language of international law and offer remedies that can be sought within the TRIPS agreement and the framework of existing international law. The second prong is the resistance developed by transnational social movements working with local activists outside the legal discourse of TRIPS. This resistance is the articulation of an alternative to the current processes of globalization. This future vision is wrapped into the larger social protest of counter-globalization and places its focus on envisioning a better and different world. In the following two sections I will take up these prongs, beginning with a description of the immanent critique of TRIPS. CRITIQUE OF THE LANGUAGE OF TRIPS **Assuming that states wish to retain legitimacy in the face of social protest, the concerns of activists must be translated into a language understood by states and their negotiators. Street theatre and non-violent protest suggest that problems exist, but the gap between the language of activism and the language of trade agreements is so wide that conversation is difficult, if not impossible between these two spheres. The work of legal scholars, and activist groups who can speak the language of the law and who grasp the construction of the TRIPS agreement, have been especially important in translating social protest into potential changes to the TRIPS agreement.** For example, Martin Khor suggests that, “As the imbalances and problems generated by TRIPS become more obvious, there is mounting public demand for change. The range of demands include the following: More time, flexibility and freedom to choose options for developing countries in the implementation of the agreement. Restraint by developed countries and their corporations from taking action against developing countries; A review and revision of TRIPS to remove its problematic aspects and to enable the implementation of its positive aspects (such as provisions on technology transfer) The removal of TRIPS altogether from the WTO (2002: 202).” Issues like the ones outlined here come from the network of non-state and non-business actors described by Drahos who have grave concerns regarding TRIPS. In order to be taken seriously, their specific concerns are not framed as a call to eliminate TRIPS, but instead as a way of reinterpreting the agreement. While the original negotiating powers behind TRIPS may reject these suggestions, future negotiations over the TRIPS agreement will have to take many of these concerns into consideration. One important insight that has emerged from this dialogue is that flexibility already exists within TRIPS, it must now be utilized to help those who have yet to benefit from the system (Correa, 2002: 52; Love, 2002: 74). It is important to remember that concerned policy makers and legal scholars began articulating a critique of TRIPS almost from the inception of the agreement. Legal scholars and NGO groups already within the WTO system did not need the pressure of external social movements to critique the TRIPS agreement, and immanent legal critiques emerged independently from the counter-globalization efforts. Legal scholars and other groups interested in the immanent critique of TRIPS, especially those already within the TRIPS/WTO world, are in a unique position to translate the concerns of grassroots movements into the language of international treaty making. The future potential transformation of TRIPS into an agreement that meets the needs of the global south rests to a large degree on those who can translate the concerns percolating within civil society into the language of international agreements. I will draw upon three examples to illustrate the importance of this type of work. First, the work of Daniel Gervais serves as an example of translating concerns voiced within global civil society into a language that may be acceptable to the TRIPS agreement. Some of Gervais’ work focuses upon traditional knowledge and its protection within TRIPS. By developing a “Declaration of Traditional Knowledge and Trade” within the appropriate legal language, the work of Professor Gervais serves as a bridge between two distinct paradigms of thinking – one existing outside the structure of TRIPS, the other within the negotiating process (2004). While it remains important for groups focused on fighting for the preservation of traditional knowledge to articulate their concerns outside the language of copyright and patent law, and perhaps help transform the discourse from outside, it also seems important to make the agreement reflect the type of social justice we wish to see. For example, Caren Irr describes the development of a “people’s rights” perspective that would take cultural identity as a starting point and offer a critique to the economic framework of intellectual property (2003: 15). A second example comes from the Gene Campaign who worked in conjunction with farmers in India to resist legislation that would favor plant breeders over farmers. Through the work of the Gene Campaign, and other civil society groups, farmers’ rights, specifically their rights to sell seeds and to be paid for the use of their seed varieties, were added to the legislation (Sahai 2002: 214). Over a seven-year period, the Gene Campaign worked to ensure that farmers’ rights are protected in domestic legislation and not relegated to the language of “exemptions” under the law (Ibid). Because the goal was to ensure adequate protection in domestic legislation, it was important that the groups be able to translate their concerns into legal language. The Gene Campaign considered the final result a success. When combined together, local activists and transnational groups made an impact on issues related to intellectual property and moved the debate towards one that better protected the public. **A final example that highlights the combined efforts of a transnational movement with legal actors that can impact the interpretation of the TRIPS agreement comes from the on-going battle to access AIDS medication throughout the globe, but specifically in South Africa. A network of groups worked together to raise awareness of the problem and develop a language that would create solutions. Oxfam, Medecins Sans Frontieres (MSF), Health Action International (HAI), Consumer Project on Technology (CPT), South Centre, Third World Network, and the Quaker United Nations Office, ACT-UP Philadelphia, the Health GAP Coalition, and WHO worked on different aspects of the problem (Mayne, 2002: 246). The actions ranged from civil disobedience and social protest to letter writing and conferences. The movement spanned the globe and focused upon the hypocritical words of the Clinton administration and condemned the current interpretation of the TRIPS agreement. While there remains substantial work to do, these organizations brought the issue of access to medication to Doha and were successful in gaining a “new” interpretation of TRIPS through the Doha Declaration. I say a “new” interpretation, but many have argued that flexibility already exists within the TRIPS agreement, it was simply a matter of replacing the interpretation used by the U.S. with the more accurate interpretation already within the TRIPS agreement. The Doha Declaration embodied the concerns of activists within the language of international agreements. As Ruth Mayne points out, this network of organizations was able to shift the TRIPS agenda towards a more health-focused one. The actors in this specific battle go beyond social movement organizations and include NGOs and trade negotiators from the developing world, an interesting alliance (Mayne: 253).** Mayne identifies the key components that led to a successful campaign to provide access to treatment: To date, the NGO campaign has been effective because it combined: strong public campaigning messages and actions based on powerful human illustrations that helped generate public outrage an high media coverage across TV, radio and print; global and cross-sectoral alliances of NGOs that supported and built on strong national campaigns, and shared analysis through the Internet; a growing alliance between developing countries and NGOs at the WTO; partially successful attempts to find supporters among rich countries; informed insider face-to-face lobbying at the highest level based on plausible analysis and evidence; and the strategic targeting of companies and governments at different times. Nevertheless, there is still much to be done in the battle for cheap medicine, adequate healthcare and reform of global patent rules (257). **These strategic options are key to the ongoing struggle to revise the TRIPS agreement to accommodate the concerns of the public at large. Transnational actors along with legal scholars play a key role in the process by translating the larger concerns of social protest into language that can be included into legislation and international agreements.** However, an equally important aspect of transnational social movements surrounding issues of globalization is their ability to move beyond the legal language of TRIPS and to articulate a different type of globalization altogether. This function of social movements will be addressed in the next section. ANOTHER WORLD IS POSSIBLE **Activists working outside the legal discourse translate the abstract language of copyright and patents into a language understood by the general public. They do this by focusing on real harms such as the lack of medicine, the appropriation of traditional knowledge, the biopiracy of materials so that people throughout the world realize that this otherwise impenetrable document has real impacts on their lives. Organizations interested in intellectual property are growing in number. Millions throughout the world have been mobilized around intellectual property issues. Organizations in the developed world connect with those in the developing world and lobby their respective governments on issues related to intellectual property, social justice, and a democratic global civil society. By developing pressure from below, concerns are raised that democratically elected governments cannot ignore, or at least must pay lip service to. Given their position as outsiders, activists have gone beyond seeking potential remedies within legalistic language or minor repairs to the foundational documents. Part of the strength of the globalization movement is the articulation of another world. At the global level there is emerging a discourse of resistance under the Zapatista slogan another world is possible. This resistance is articulating a different globalized world based on social justice and democratic opportunities, not neo-liberal trade policies.** The World Social Forum is one example of this globalizing resistance. It operates as a unifying space for transnational actors under the banner of “another world is possible.” In January 2004, the 4 th annual WSF meeting was held in Mumbai, India where over 100,000 attended the meetings with 80,000 representatives from different nations (Thekaekara 2004; Baird 2004). The event originated as an alternative to the World Economic Forum held in Davos Switzerland, the annual event for international business elite to discuss world economic policy. The World Social Forum, by contrast, brings thousands of people from around the globe to meet and discuss the impact of globalization on their everyday lives (Morberg, 2003). The 2005 World Social Forum was held January 26-31 in Porto Alegre, Brazil with the same results. The World Social Forum is one example of new public spaces created to deal with issues of globalization and issues of intellectual property. **What transnational social movements along the globalization front bring to the table is an articulation of a different way to globalize. The critique they offer of current intellectual property and globalization efforts is important, but the articulation of alternatives is equally important and remains distinctly outside the law. Ultimately, whether the critique produces changes to the TRIPS agreement or an alternative paradigm for understanding world trade, the perspectives of global actors that contradict those who negotiated the original TRIPS agreement cannot be ignored.** THE FUTURE: TO REINTERPRET OR RETREAT? Despite global social protest, it must also be recognized that many do not see the problems with TRIPS as overprotection, but as underprotection. In fact, before the agreement even took affect, the United States had announced that TRIPS was “both inadequate and their implementation framework too long and too lax (Umoren, 1995). Any effort to redefine TRIPS along the lines of human rights and the public interest will be met with resistance on the part of intellectual property interests. In the on-going process of development, then, there must be vigilant watchdogs over the language and application of TRIPS and any future negotiation done at the international level. Some might argue that changes to the TRIPS agreement do not challenge the structure of the agreement, but merely accommodate and diffuse social protest. Thus, while many work to change the agreement and feel it can become a document that protects interests in both the north and the south, others wish to see the entire structure dismantled. This debate will continue into the future. It is possible that the evolution of the document may result in a balance achieved between the global south and the global north. However, the evidence suggests that if the global south were to gain more ground, the developed world, especially the United States, will ignore TRIPS and seek harsher punishments and wider intellectual property rights outside the TRIPS framework. Either way, a question of legitimacy remains. For the United States the agreement does not go far enough. For the global south and many working in civil society groups, it goes too far. As increasing protest regarding the scope of protection emerges, the potential is there to transform TRIPS into a document that can articulate claims about equal protection and social justice. However, in making these claims, more powerful states may opt out of the regime in favor of bilateral negotiations. TRIPS is not alone on the world scene, however. There may also be a role for the World Intellectual Property Organization (WIPO) to play in the future. WIPO has become interested in the access to knowledge issue and will hold meetings to discuss access to knowledge, an issue that is part of what is being called the “development agenda.” The development agenda emerged from the Doha WTO talks and endorses changes advocated by developing countries, NGOs, and civil society groups from around the world. These groups seek to grow a movement around development issues, especially centered on the work of WIPO and the WTO. In April, talks were held in Geneva to help plan the development agenda issues to be taken up by WIPO in June. Issues to be discussed range from traditional knowledge to open source. There is hope that as demands of access to knowledge grow, these demands can serve as a unifying theme bringing players from the north and the south together to reformat international agreements on issues concerning intellectual property rights. **To the degree that a global civil society is emerging, it is emerging around issues of democracy and social justice at the international level and is built upon resistance to a tightly controlled international regime that benefits the few at the expense of the many. Of course, while much happens at the level of ideas, until these ideas are translated into social structures that can more fairly benefit all it will be easy to slide back into the status quo. While it may never be the case that we can create another world, the past ten years can teach us that we can still try to make the world we live in a better one.**