# 1NC vs. Strake DA

## Offs

### T

#### Interpretation: The affirmative must only reduce intellectual property protections.

#### Reduce means make smaller, Cambridge:

<https://dictionary.cambridge.org/us/dictionary/english/reduce> //LHP AV

**to** become or to **make** **something** become **smaller** **in** size, amount, **degree**, importance, etc.:

#### Violation: They use patent term extensions which are the same length. Either a] the extension is extra T or b] they don’t reduce at all because it’s the same length – their ev below

Pandemic-related patent term extensions could be given for a period of time that the compulsory license is in force. With current pandemic projections of six months to two years for sufficient distribution, providing a patent term extension is reasonable and in line with the time period of many patent term extensions. Given that most pharmaceutical patents are prosecuted in multiple countries, this provides an incentive to participate in a limited waiver program.

#### Vote neg:

#### 1] Semantics –

#### A] jurisdiction – you don’t have the jurisdiction as per the tournament invite to vote on nontopical affs – outweighs because it constrains your ballot

#### B] stasis – anything else justifies the aff not talking about the topic – next it’ll be tech sharing, vaccine transfers, or ip extensions because it’s in the topic area which decks neg prep

#### 2] Ground – all NCs and DAs are based on the incentives of long patent terms, so they destroy any comparative disadvantage

#### 3] Preempt normal means args –

#### A] Normal means doesn’t license the aff to be nontopical – find a better solvency advocate

#### B] your own author says it’s a third option and a novel proposal – not normal nor necessary to be topical

### NC

#### Ethics must start from a conception of the subject – you must understand the self to prescribe it action. Anything else is circular by allowing moral conclusions to define the premise of subjectivity, which then can define morality.

#### The subject is intrinsically rational and sensible. However, the distinction between the noumenal and the phenomenal world is not an uncrossable bridge – freedom must be won through socially building conceptions of it, Schroeder 05:

Schroeder, Jeanne L. "Unnatural rights: Hegel and intellectual property." U. Miami L. Rev. 60 (2005): 453.

In this section I will address three common mis-readings of Hegel's personality theory that might lead to the incorrect conclusion that logic dictates that society recognize intellectual property. First, I show that Hegel believes that there are no natural rights of any sort, let alone natu- ral property rights. Second, I address the closely related point that Hegel rejects a first-occupation justification of property rights. Third, I show that intellectual property has no privileged place in personality theory. For simplicity, I stated that Hegel started his analysis by contin- gently adopting the notion of the free individual in the state of nature. I now more carefully explain my terminology as we consider Hegel's the- ory of the relationship between freedom and nature. Hegel thought that the freedom of the autonomous individual in the "state of nature" was only potential. Hegel argued not merely that the individual must leave the state of nature and go out into the real world if he is to make his freedom actual as a matter of fact. He also believed that the individual is driven by a passionate desire to do so. A complete discussion as to why the individual would desire to leave this uterine state of ignorant bliss is beyond the scope of this Arti- cle. Suffice it to say, it relates to one of the fundamental points of Hegel's idealism and theism. Hegel's idealism should not be confused with a vulgar neo-Platonic concept of an ideal world "out there" beyond the imperfect physical world. Such a notion is more reminiscent of the Kantian notion of an unknowable, intellectual, necessary, eternal, and transcendent world of essences called the noumenon or "thing-in-itself' beyond the contingent, empirical, temporary, and immanent world of appearance that can be known by experience (the phenomena). Hegel's metaphysics is an extended critique of Kant's. **Hegel rejects all concepts of transcendence**. 9 8 **There is no essence beyond appearance.** 99 Essence only exists insofar as it appears. 1" Or more rad- ically, essence is nothing but appearance properly understood. Hegel's is a radically materialistic philosophy, 01 but not an atheistic one. None- theless, Hegel's God, or Spirit, is not transcendent, but immanent in the material world. Why this is significant for our purposes is that **it follows from Hegel's rejection of transcendence that there can be no potentiality with- out actuality-what claims to be potential must become actual or reveal itself a liar**. Actually, the theory is even more radical than this. As I have argued elsewhere,102 Hegel's logic is retroactive, not prospective. **Potentiality is only retroactively revealed after something becomes actual.** **Consequently, if the autonomous individual in the state of nature claims to be free, and if this radically negative freedom is only potential, then the individual's claims to freedom can only be retroactively tested after he leaves the state of nature and makes his freedom affirmative and actual**. 103 Another way of saying this is that the liberal "state of nature" is not natural at all. Rather, it is a logically "necessary" hypothesis that is retroactively posited by the fact that we occasionally observe actualized freedom in modern constitutional states. As such, the "state of nature" is actually created by human thought. To Hegel, like Kant, real "nature" is the empirical, mechanical world governed by the causal laws of neces- sity where there is no freedom. Any freedoms and rights derived from the liberal conception of the hypothetical "state of nature" by definition cannot literally be natural. 2. NATURE AND RIGHTS Hegel sharply distinguishes between natural and positive law, and locates rights within the latter. He states, "[t]here are two kinds of laws, laws of nature and laws of right: the laws of nature are simply there and are valid as they stand ....The laws of right are something laiddown, something derivedfrom human beings."'" The liberal "state of nature" is, in fact, the hypothesis that autonomous individuality is a necessary, albeit inadequate, moment of human personality that we retroactively posit to understand political freedom. If so, what is the status of "nature" and its relationship to rights and freedom? Once again, I do not pretend to give a comprehensive account of Hegel's philosophy of nature, but will point out one aspect relevant to this Article. The first thing to note is to reiterate the simple point that there can be no "rights" in the hypothetical state of nature because the "state of nature" is defined as autonomy. Rights are necessarily interrelational. Hegel's point is more subtle and powerful than this, however. More specifically, there is no freedom in the empirical natural world. This can probably best be explained by going back to Kant's famous analysis of antinornies presented in his CritiqueofPureReason."5 An antimony is a logical paradox, or two statements that seem to be equally logically required yet are in contradiction. To say they are in contradiction means not merely that they are mutually inconsistent, but that they are the only logically possible alternatives. This suggests not merely that if one statement is true then the other must be false, but also that if one statement is proven to be false, the other is proven to be true. 0 6 For reasons that do not concern us here, Kant identifies four antinomies that he divides into two dyads: two "mathematical" antino- mies and two "dynamical" antinomies. He claims to solve the two mathematical antinomies by showing that neither statement is true because there is a heretofore unrealized third alternative that may be true. 10 7 He claims to solve the two dynamic antinomies by arguing that both statements are true, but that their contradiction is merely apparent so that, in fact, they can be reconciled.108 It is Kant's third antinomy of freedom and nature that concerns us. The thesis of Kant's first antinomy is that freedom can exist in the world.10 9 Kant is referring to negative freedom as the uncaused cause- the potential for pure spontaneity, action beyond necessity. Like all of Kant's theses, this is a dogmatic proposition posited by reason alone. 1 0 Its antithesis is that everything is subjected to the causal laws of nature-there are no uncaused causes and, therefore, no freedom.' Like all of Kant's antitheses, this is an empirical proposition reached by applying logic to our experience of the world.1 1 2 As this is a dynamic antinomy, Kant must solve this paradox by arguing that the contradiction between the two propositions is only apparent. If they are properly understood, then they can be reconciled. Kant argues that both propositions are true, but about different aspects of the world. Kant relies on his distinction between the phenomenal, or empirical, contingent, changing world of appearance that we can know from experience, and the noumenal, or transcendental, necessary, eternal world of essences, or the "thing-in-itself' which we do not know directly, but can infer through logic.113 **It is true, Kant states, that the entire phenomenal world is natural and therefore subject to the laws of nature-i.e., everything empirical is caused.1 14 It is also true, however, that freedom exists in the transcendental, non-empirical world of the noumena.15 Indeed, these conclusions follow from his definitions of phenomena and noumena. 11 6 If a "noumenon" were caused by some- thing else, then it would be contingent on that other thing and, therefore, not a noumenon. Conversely, if a "phenomenon" were free of an exter- nal cause, then it would not be a mere phenomenon, but a noumenon. The question that this analysis proposes is, if freedom is noumenal, can it manifest itself in the phenomenal world, or is merely a theoretical construct?**1 7 To put this in Kant's idiosyncratic terminology, is free- dom "practical?" ' 1 8 By extension, one might ask, since each individual human being is embodied and, therefore, phenomenal,119 can man achieve freedom? In the Critique of Pure Reason, **Kant claims to show that freedom is at least theoretically possible in the phenomenal world. He argues that although all phenomena are caused by something else, the cause need not itself be phenomenal.** A phenomenon can be caused by a nou- menon. 2 ° **Because noumena are free (uncaused), their free acts can appear in the world through the phenomena they cause. Although each individual human being is phenomenal, man's essence (his spirit or soul, his status as the liberal, autonomous individual) is noumenal and there- fore free.**12' This implies that it is at least theoretically possible that the noumenal aspect of man can actualize his freedom by causing his phe- nomenal self to act. In the Critiqueof PracticalReason, Kant tries to prove not merely that practical reason is theoretically possible but that we have good reason to think it exists. There are as many problems raised in this analysis as are solved. Even ardent Kantians are somewhat embarrassed by it.'2 2 Hegel called Kant's argument "a whole nest... of faulty procedure." 123 My simpli- fied account is not an attempt to develop a comprehensive critique of Kant. My limited point is that, as I have argued elsewhere, 24 much of Hegel's speculative logical method can be seen as being inspired by Kant's idea of antinomy. I characterize **Hegel's complaint against Kant as an accusation that Kant does not have the courage of his own convictions and is afraid to follow his insights to their logical extremes.** Hegel, in effect, criticizes Kant for thinking that there were only four antinomies. Rather, Hegel's entire universe is constituted by a fundamental, essential contradic- tion.125 Further, Hegel criticizes Kant for thinking that contradiction is a problem that must be "solved." Contradiction "is not to be taken merely as an abnormality which only occurs here and there, but is rather the negative as determined in the sphere of essence, the principle of all self- movement . "..."126 In other words, **contradiction is a universal fact about the world. It is correct that contradictions are unstable and must be resolved, but each resolution is temporary and leads to a new contra- diction ad infinitum. Far from being frightening or disturbing, this merely means that the universe is dynamic, not static. Contradiction is the engine of change.** This means that Hegel rejects the Kantian noume- nal-phenomenal distinction. **To Hegel, there can be no necessary, perma- nent, unchanging essence (noumenon) behind the contingent, temporary, empirical world of appearances that is in a constant state of flux.** To Hegel, it is appearance all the way down. Finally Hegel's sublative logic can be seen as a rejection of Kant's specific claims to have solved his four antinomies by assuming that he had to show either that both sides were true, but not in contradiction, or that both the thesis and antithesis were false because there is a third alternative. In contrast, through sublation (the standard but poor English translation of Hegel's term for the logical method of resolving contradic- tion) one realizes that both sides are simultaneously equally true and false, thereby generating a third alternative that simultaneously negates 127 Regardless of these differences between Hegel and Kant, I believe that the Philosophy of Right can be seen as Hegel's struggle to come to grips with the specific contradiction that Kant identifies in the third antinomy: freedom v. causality. In his analysis, **Hegel accepts Kant's proposition drawn from experience that all nature is subject to natural laws of causation.** This means that nature is fundamentally unfree and implies that actual (practical) freedom must be unnatural by definition. **Yet on the other hand, Hegel also begins his analysis by contingently accepting Kant's presupposition that the most basic notion of human personality is self-consciousness as free will.** Hegel seeks to prove this presupposition (that freedom is possible) by finding that freedom actu- ally exists in the phenomenal world. Because Hegel rejected transcendence, he could not adopt Kant's proposed answer to this problem: freedom is noumenal, but noumena can cause phenomena. To Hegel, Kant's proposal answered nothing. According to Kant's own theory, we can know nothing about the nou- menon. Consequently, Kant's proposition is equivalent to saying that we can know nothing about freedom. Hegel was, in effect, responding to Kant: "You are being inconsistent. Your philosophical writings show that you know a lot about freedom. By your definitions, therefore, free- dom must be actual." Hegel's counterproposal was that **actual freedom is not natural but artificial: a human creation, created out of natural materials. Legal sub- jectivity (as well as higher stages of personhood) is, therefore, not a natural state but a hard-won achievement.** The story of the development of human consciousness, to Hegel, was the struggle of man to free him- self from and overcome his natural limitations. "Hence the personality of the will stands in opposition to nature as subjective.... Personality is that which acts to overcome [] this limitation and to give itself reality .... "128 **Abstract rights are, therefore, the first most primitive step in man's attempt to actualize his freedom, understood as the overcoming of nature**. The basis [] of right is the realm of spirit in general and its precise location and point of departure is the will; the will is free, so that freedom constitutes its substance and destiny [] and the system of right is the realm of actualized freedom, the world of spirit produced 1 29 **Rights are, therefore, not merely unnatural in the sense of artificial (man made), they are a means by which man distinguishes himself from nature. 130**

#### Property and legal contracts are the only medium of recognition and intersubjectivity, Schroeder 2:

\*bracketed for gendered language\* Schroeder, Jeanne L. "Unnatural rights: Hegel and intellectual property." *U. Miami L. Rev.* 60 (2005): 453.

Contract solves this problem. To reiterate, Hegel believes that **subjectivity is created not by possession per se, but by intersubjective recognition by other subjects. Property is only a medium for this purpose. This regime of recognition is abstract right-the rule of law. Subjectiv- ity is the capacity to bear legal rights and duties recognized by, and enforceable against, other subjects**. To concentrate on the specific object of property is to conflate subject with object-the opposite of recognizing the person's unique subjectivity. This is in sharp contradis- tinction to Radin's proposition that the merging of owner with her per- sonal property furthers human flourishing. Hegel, looking forward to psychoanalysis, considers such a relationship to be destructive-an addiction, or more technically, fetishism. **In contract, each party remains identifiable as a rights-bearing sub- ject through object relations because the object [t]he[y] gives up in contract is simultaneously replaced by a new object. That is, the contracting parties recognize each other as rights-bearing subjects, or persons having the capacity not only to own property, but to respect the property rights of others, and to live up to his contractual obligations.** In Hegel's words: [Contract] contains the implication that each party, in accordance with his own and the other party's will, *ceases* to be an owner of property, *remains*one, and *becomes* one. This is the mediation of the will to give up a property (an individual property) and the will to accept such a property (and hence the property of someone else). The context of this mediation is one of identity, in that the one voli- tion comes to a decision only in so far as the other volition is present.74 Hegel went so far as to assert that "[tihe whole issue can also be viewed in such a way that alienation is regarded as a true mode of taking posses- sion. 75 That is, **possession is the recognition by others that a specific object belongs to a specific subject. Paradoxically, this recognition only *expressly* occurs *retroactively* when the owner contracts to sell that object to another person. In other words, the identification of subject to object in possession is only *effectively* recognized at the moment when another subject pays the first subject to release the object from her possession.** Once again, one must remember Hegel's radical definition of objects as anything that is not the individual herself. This includes not only intangibles, but also an individual's own labor is an object separate from her personhood. Consequently, service contracts, whereby the individual alienates part of her productive capacity in exchange for wages is, to the Hegelian analysis, a contract for the exchange of prop- erty. In fact, the service contract is an excellent example of the logic of Hegel's dialectic of recognition. In our modem capitalistic society, a primary way we recognize each other is through our occupations. **The mutual intersubjectivity of contract is necessary because**, according to Hegel, **one becomes a subject** (eine Person)**only when one is recognized as such by another subject. Subjectivity (the capacity to bear legal rights and duties) exists only insofar as rights are enforceable.** **Since all persons logically begin as abstract individuals (not subjects), in order to achieve subjectivity, each individual must first make other indi- viduals into subjects by recognizing them as such. This means that it is impossible to create rights by unilaterally claiming them for oneself.** Since rights are intersubjective they can only be created intersubjec- tively. This is one reason why the Lockean attempt to justify claims of property through first-appropriation fails. The conundrum should be obvious. How does anyone become a subject recognized by other subjects when there are no subjects in the state of nature? Where does thefirst subject come from? The Hegelian answer is that **multiple subjects must come into existence simultaneously**. This is the alchemy that Lacan calls "love"-the relationship in which each lover sees in his beloved more than she has, that empowers the beloved to live up to the lover's expectations and become more than she once was.76 Contract is the most primitive form of eroticism-albeit a pathetic, and unromantic one. **Each individual,by admitting that another individ- ual has legal rights** (i.e., the right to possess and contract to exchange the object to be acquired), **makes that individual into more than she once was-she is no longer an individual, but a subject**. 3. FORMALITY AND RECOGNITION The Hegelian logic of alienation confuses many commentators because they do not recognize the purely formal nature of subjectivity and abstractright. Here, **object relations are purely instrumental and subordinate to the goal of recognition.** Hegel, like Kant, defines a free individual as an end in and for her self, and not the means to the end of another. In contrast, an object is something that is the means to the ends of something else. **In abstract right, each individual paradoxically wants both-that other individuals help him reach his end of becoming a subject, and that other individuals remain an end in and to themselves rather than merely a means to the first person's ends. Subjectivity is only created through recognition as such by a person that one recognizes as another subject. To treat another person as one's means, rather than as his own ends, is to fail to recognize him as an individual or a subject. The question then becomes, how can one accomplish one's own ends (which requires action by another person) without impinging on the ends of that other person or treating her like a means (an object)?** The Hegelian answer is that subjects can mediate their relationship through objects. **Both subjects mutually exploit the objects of exchange as means of recognizing each other-each fulfills her own ends (becom- ing a subject) while respecting the ends of the other (also to become a subject). The two subjects are united in a common will, in the sense that each wills his own ends, but these potentially competing ends tempora- rily coincide in the meeting of minds known as contract.** This means that, as a logical matter, one does not enter into object relations for the sake of the object itself or for the "natural" or other concrete functions they might serve. The specific characteristics of any object of a property claim is irrelevant and should be a matter of indifference to the subjects, from a logical standpoint. Right is something utterly sacre dfor the simple reason that it is the existence [ ] of the absolute concept, of self-conscious freedom. But the formalism of right-and also of duty-arises out of the dif- ferent stages in the development of the concept of freedom. In oppo- sition to the more formal, i.e. more abstractand hence more limited kind of right, that the sphere and stage of the spirit in which the spirit has determined and actualized within itself the further moments con- tained in its Idea possesses a higher right, for it is the more concrete sphere, richer within itself and more truly universal. Each stage in the development of the Idea of freedom has its distinctive right, because it is the existence of freedom in one of its own determinations. When we speak of the opposition between morality or ethics and right, the right in question is merely the initial and formal right of abstract personality. Morality, ethics, and the interest of the state-each of these is a distinct variety of right, because each of them gives determinate shape and existence to freedom.77 In other words, a full concrete personality requires the entire regime that Hegel calls Recht, which includes not only abstract right (property and contract), but morality and ethics. Abstract right is the most primitive form of right that only creates the form necessary for freedom-the empty vessel of legal subjectivity understood as the mere ability to accept legal rights and duties imposed by others. The content of person- ality will be added by morality and ethics. Consequently, Hegel states with respect to the legal subject: Since particularity, in the person [i.e. what I am calling the subject], is not yet present as freedom, everything which depends on particu- larity is here a matter of indifference. If someone is interested only in his formal right, this may be pure stubbornness, such as is often encountered in emotionally limited people; for uncultured people insist most strongly on their rights, whereas those of nobler mind seek to discover what other aspects there are to the matter in ques- tion. Thus abstract right is initially a mere possibility, and in that respect is formal in character as compared with the whole extent of the relationship. Consequently, a determination of right gives me a warrant, but it is not absolutely necessary that I should pursue my rights, because this is only one aspect of the whole relationship. For possibility is being, which also has the significance of not being. 78 Indeed, it is precisely the function of the element of alienation to make this irrelevance and indifference manifest. Nevertheless, even as subtle an analyst as Hughes, who expressly recognizes that the fact that object relations can also serve natural functions (food and shelter) is irrelevant to a Hegelian analysis, 79 misses this point. Hughes finds alienation "incoherent"80 because the subject loses the object that supposedly makes the subject recognizable.8' He finds this particularly problematic in Hegel's discussion of copyright, because the objects of copyright, being the author's creations, seem intrinsically linked to the author's personality.82 Consequently, he infers that the objects of copyright uniquely serve the goal of differentiating and identifying the author and concludes that complete alienation of artistic works might defeat the goal of the creation of personality. Consequently, he sees the Hegelian analysis of property as supporting certain restraints on alienation of copyrightable material, such as in the droit morale under which an artist retains some control over her creations after sale.83 But this critique is based on the misimpression that, to Hegel, the legal right of property relates to the creation of the full complex per- sonhood of empirical human beings situated in relations of family, civil society, and state.84 But **legal relationships relate only to the creation of legal subjects-persons capable of bearing rights and duties. The legal subjectivity mutually constituted with abstract right is, therefore, equally abstract and formal. Moreover, it is precisely abstractness and formality that enable abstract right and legal subjectivity to serve as the substra- tum for the concrete freedom of citizenship.** Above, I mentioned in passing an analysis that I have developed extensively elsewhere: Hegel's property jurisprudence is essentially erotic because contract is a primitive type of "love."8 5 My goal in doing so was to break down the dichotomy between rationality and passion that implicitly underlies both utilitarianism and romanticism. To Hegel's jurisprudence, rationality and passion are two sides of the same coin.86 **Reason tells the autonomous individual that he must actualize his freedom and to do so requires recognition by other subjects. Conse- quently, the free individual rationally decides that he must give way to the desire for others. Because abstract right is created in order to enable the interrelationship of mutual recognition to occur, it is erotic.** The "love" and desire that exist at the level of abstract right are only a pale shadow of the passions we feel towards our family, lovers, and friends. Consequently, I have argued vociferously that although utilitarians like Posner are right in seeing a parallel between economic activity and sexuality, they are wrong in trying to reduce the latter to a form of the former.87 Rather, from the Hegelian position, the former (economics) is merely a step that makes the latter (eroticism) possible. That is, contract establishes the form of love, not its content. Conversely, Hughes and Radin are equally mistaken in trying to argue that property can perform a direct function in the creation of the full, loving artistic personality. Although Hegel was a great defender of legalism and capitalistic markets, he also insisted that they be limited to their appropriate sphere. To analyze more complex interrelationships in terms of abstract right (property) is not merely erroneous. Never one to mince words, Hegel called it "crude" and shameful.88 Consequently, only the most base persons stand on their rights.8 9 The noble person accords rights to others. This is why Hegel condemns the classical lib- eral concept of government as social contract-citizenship is Hegel's most highly developed level of personality, and therefore, unlike the subject, cannot be comprised solely by legal categories. A corollary of this is that it is equally incorrect, indeed shameful, to adopt the romantic position towards copyright that conflates the legal relationship of property with the flowering of personality in artistic expression. From a Lacanian point of view, to do so is literally per- verse. Specifically it is fetishistic-the identification of objects with subjects.90 The specific content of objects of copyright has nothing to do with their status as a legal concept. To Hegel, saying copyright is "property" is not to say that society must or should establish a copyright regime. This decision can only be made by pragmatic reasoning. In this sense, Hegel's theory has a surprising utilitarian twist. Society's desire to further creativity may, however, be a good pragmatic argument in favor of such a regime.

#### Thus, the standard is consistency with abstract right.

#### 1] Abstract right is materialized in the community in the legal order. Violating them undermines the system through which we manifest our rights, meaning it violates our freedom as subjects and outweighs. Buchwalter,

Buchwalter, Andrew. “Hegel, Human Rights, and Political Membership.”

In addition, Hegel asserts that **the very idea of autonomous personality presupposes and demands articulation in an existing system of law**. Hegel construes autonomy intersubjectively, as selfhood in otherness, or Bei-sich-selbstsein. **A comprehensive account of achieved intersubjectivity depends on establishing a legal-political community juridically committed to principles of respect and reciprocity.**3 On the one hand, **autonomous personality depends on a social order that recognises and supports that autonomy**. **Conversely, that order itself depends on individuals who recognize its authority and act accordingly**. Only in a lawfully ordered community is the individual ‘recognised and treated as a rational being, as free, as a person; and the individual, on his side, makes himself worthy of this recognition by overcoming the natural state of his selfconsciousness and obeying a universal, the will that is its essence and actuality, the law; he behaves, therefore, towards others in a manner that is universally valid, recognising them—as he wishes others to recognise him—as free, as persons’ (EM y432). It is no coincidence that Hegel construes the principle of autonomous personality in terms of a legal imperative: it is a commandment of right that one ‘be a person and respect others as persons’ (PR y36). Hegel may proceed from the seemingly abstract notion of autonomous personality, but **a proper account of the person itself depends on a developed system of legal relations**. The point is also central to Hegel’s concept of right itself. In line with the modern natural law tradition, Hegel understands right as a normative principle, one based on the principle of freedom and the free will. Indeed, for Hegel right is the idea of freedom itself. But an idea on his view is not an abstract principle contraposed to conditions of institutional embodiment. In line with his general conceptual realism, he maintains that an idea denotes a concept conjoined with its existence—an understanding consonant as well with a view of freedom as selfhood in otherness. As the idea of freedom, right itself is nothing but freedom under the conditions of its actualization; it is indeed the ‘existence of the free will’ (Dasein des freien Willens) (PR y29). **In its capacity as a principle of freedom, right is a general normative principle. But in that capacity it is also a principle of legal positivism, one tied to a legal system committed to its institutionalization and enforcement. Right for Hegel is the ‘realm of actualized freedom’, articulated in an existing system of positive law. A developed legal system is the domain in which ‘freedom attains its supreme right’** (PR y258) and ‘in which alone right has its actuality’ (EM y502). In fashioning an embodied account of right, Hegel demonstrates his distinctive relationship to the natural right tradition. To the extent that that tradition evinces an abstract prepolitical ahistoricism, he is opposed, proposing instead that natural law ‘be replaced with the designation philosophical doctrine of right’ (NRPS y2). Directed to the ‘idea’ of that under consideration (the concept joined with its realisation), a philosophical doctrine of right affirms that right is intelligible only within the framework of developed social and political institutions (PR y1). Elaboration of the idea of right is itself exeundum esse e statu naturae (VRP 1: 239f ). And lest there be any doubt about his distance from the natural right tradition, Hegel even suggests that the term right itself is inadequate to the requirements for institutional embodiment. While sometimes calling his practical philosophy a Philosophy of Right, he elsewhere, in his philosophical system, employs the title Theory of Objective Spirit. It is this account of spirit objectified that reflects the distinctiveness in Hegel’s notion of right as institutionally realised freedom. At the same time, however, Hegel’s departure from the natural right tradition should not be exaggerated. An early proponent of the method of immanent critique, Hegel maintains that the most consequential criticism of a contested position is one that confronts that position on its own terms. This expectation is no less in evidence in his reception of the tradition of natural right. Employing the dialectic of true and spurious being central to his principle of self-contradiction, Hegel criticizes the natural law doctrine because its liberal formulation conflicts not with an alien standard, but with its true self or ‘nature’. Thus an analysis of individual rights in terms of their inherent concept focuses not on an individual’s natural and immediate existence, but on his true being, what Hegel calls ‘die Natur der Sache’ (PR y57). For Hegel, a citizen is defined by a concept of autonomous personality which is realised only in developed political and cultural community.4 Hence, a defence of natural rights is likewise a defence of the principle of political community, just as a repudiation of the liberal approach to natural rights is a realisation of the concept of natural law. It is no coincidence that Hegel subtitles his Philosophy of Right ‘Natural Law and Political Science’, for the concept of natural law is meaningless on his view without an account of established political institutions. Hegel champions the idea of Objective Spirit over that of Natural Right, not because he opposes the principle of the latter, but because that principle only finds expression in a system of ethical life. The point may be made as well by noting how appeal to communal membership itself reaffirms elements of the tradition of natural right. For Hegel, **a proper account of communal membership depends on a self-awareness** (Selbstgefu¨hl) **on the part of members of their status as members** (PR y147). As Hegel says of political community generally, ‘[i]t is the self-awareness of individuals which constitutes the actuality of the state’ (PR y265A). **Proper to membership is an appreciation of oneself as a member of such community.** Such self-awareness is, however, no mere acknowledgement of the norms, practices, and traditions of a particular community. **Membership also involves, if in differing degrees, its acceptance and endorsement.** **Especially in an account of a polity, membership involves the capacity to affirm the validity of the norms and practices operative in a particular community.** Such norms and practices are not simply to be obeyed but must ‘have their assent, recognition, or even justification in y heart, sentiment, conscience, intelligence, etc.’ (EM y503). For Hegel, the capacity for cognitive affirmation—it has been termed ‘reflective acceptability’5 —is understood by means of the language of rights. A full account of membership rests on a ‘right of insight’, which itself expresses the right of subjectivity central to modern accounts of freedom. ‘The right to recognize nothing that I do not perceive as rational is the highest right of the subject’ (PR y132).6 Hegel claims that rights are not abstract normative principles but depend on conditions for membership in existing institutional settings. It is for this reason that he supplants a Theory of Right with a Doctrine of Objective Spirit. Yet the appeal to particular communities and institutions does not entail abrogation of conception of rights. Not only is membership in a political community a condition for realizing rights, **a proper account of communal membership itself entails affirmation of subjective rights and the right of subjectivity itself.** Indeed, basic to the idea of Objective Spirit—where spirit for Hegel is understood as the conjunction of substance and subjectivity7 —is the ontological dependence of a communal substance on the experience of subjective reflection. Hegel construes his philosophy of right as a theory at once of natural law and positive political science. The ‘interpenetration’ (PR y1A) of these two approaches is not only central to but constitutive of the idea of Objective Spirit.8 II In asserting that the meaning and reality of rights are linked to conditions of social membership, Hegel does not hold that any type of communal membership is acceptable. Needed rather is a community that can properly accommodate the requirements of an account of rights. Historically, Hegel claims that such requirements were at least minimally met with modern society and, in particular, modern civil society. Expressive of that ‘system of all-round interdependence’ (PR y183) diagnosed as well by theorists of political economy, modern civil society provides, on multiple counts, the conditions for a concrete realisation and embodiment of a system of right. First, civil society permits and fosters affirmation of a genuine account of human rights. Although critical of cosmopolitanism (PR y209), Hegel is not opposed to the concept of universal human rights. His position is rather that that concept cannot be asserted abstractly, but must be embodied in circumstances that accommodate and do justice to it. Historically, such concrete validation first occurred in modern civil society (PR y209). Previously, individuals may have been able to claim rights in virtue of particular status considerations, e.g., class, familial or ethnic background, social standing, or gender. In modern society, however, Hegel claims that the individual is now recognised, at least in principle, simply as such, in virtue of his/her very humanity (PR y124R). Inasmuch as a system of commercial exchange best functions only to the degree that individuals, for better or worse, are now valued simply for their economically and quantitatively relevant contributions, irrespective of other status considerations, civil society permits the realisation of right as a universal principle, indeed as a uniform principle of humanity. It is not coincidental that Hegel famously advanced his claim about the universality of rights only on his discussion of civil society, for here ‘I am apprehended as a universal person in which all are identical. A human being counts as such because he is a human being, not because he is Jew, Catholic, Protestant, German, Italian, etc.’ (PR y209, emphasis added). Modern civil society supplies the conditions for the realisation of a notion of right wherein ‘the individual as such has an infinite value’, and in the sense that freedom constitutes the ‘actuality of human beings—not something which they have, as men, but which they are’ (EM y482). Civil society is also important for Hegel in that it clarifies the binding nature of rights. One feature of modern civil society is its compulsory character. Given the complex, differentiated, interdependent nature of modern industrial society, individuals can pursue a livelihood only as a member of that society. Civil society is ‘that immense power which draws people to itself and requires them to work for it’ (PR y238). Indeed, life itself depends on such membership. For a system of realised freedom, then, membership in civil society itself entails certain rights, even as those rights also entail specific duties. ‘[I]f a human being is to be a member of civil society, he has rights and claims in relation to it. y Civil society must protect its members and defend their rights, just as the individual owes a duty to the right of civil society’ (PR y238A). Civil society further clarifies what counts as rights. Revolving around particular need satisfaction, modern societies give special place to ‘negative’ rights, those guaranteeing ‘the undisturbed security of persons and property’ (PR y230). The system of justice institutionalized with civil society secures recognition for the principle Hegel associates with the abstract right of persons: ‘not to violate (verletzen) personality and what ensues from personality’ (PR y38). For Hegel, civil society is also expected to secure certain ‘positive’ rights, those enabling individuals to realise themselves and the freedoms civil society is presumed to actualize (NRPS y118). Given that the livelihood and indeed the very existence of individuals is dependent on membership in civil society, society in turn has an obligation to provide the resources—e.g., subsistence, health, education, housing—enabling individuals to function effectively as members of society. The system of interdependence constituting civil society is such that ‘the livelihood and welfare of individuals should be secured—i.e., that particular welfare should be treated as a right and duly actualized’ (PR y230). Moreover, given that the right to life—that which is ‘absolutely essential’ (NRPS y118)—is presupposed in the protection of rights of person and property, Hegel assigns a measure of priority to positive rights.9 In addition, civil society gives rise to political rights, those enabling individuals to participate in collective efforts to define and shape the conditions of their shared existence. Such rights, to be sure, are fully articulated not in civil society itself, but in the state or political community proper. Yet the idea of political rights is entailed as well by requirements for full membership opportunities established with civil society. They are entailed as well by a full account of the reciprocity of rights and duties articulated by civil society. And they are entailed by the account of the complex and wide-ranging intermediation of individual and community facilitated through civil society. Certainly Hegel does not affirm a right to direct participation in public affairs. He also does not allow for universal suffrage, preferring instead a mode of political representation based on membership in intermediate associations, subpolitical bodies, municipalities, and community based organizations (PR yy308f). Yet far from militating against a notion of public autonomy on the part of the wider populace, participation in such entities can serve to facilitate it. Not only does membership in such bodies facilitate representation in modern societies, whose size and complexity have rendered all but impossible meaningful direct participation on the part of individuals in the affairs of state; citizen involvement in intermediate associations is a central factor in the very ‘constitution’ of a polity, itself based on the intermediation of objective institutional structures and subjective dispositions of individuals. In addition, Hegel maintains that governance of communities, intermediate associations, and subpolitical entities—many of which are already present in civil society—is itself linked to participatory rights. ‘This is the point of view of right, that individuals have the right to administer their resources’ (NRPS y141). Civil society is distinctive not just in that in articulates the three central rights attendant on social membership. It also gives voice to a meta-right, what Hegel calls the ‘absolute right’ (VPRHe: 127). Right on this account denotes not simply the possession of specific rights, but the general recognition, by those directly affected and by the community as a whole, that members of society are entitled to rights and their status as bearers of rights. This is indeed ‘the right to have rights’ (VPRHe: 127),10 and it is uniquely facilitated by civil society. **Predicated as it is on the comprehensive mediation of individual and community, civil society provides the institutional basis to recognise general claims to right**. For one thing, modern civil society underwrites the idea of a realised constitutional order, understood as a promulgated system of law applicable to society as a whole and committed to the dignity and equal treatment of each and every member of society. In addition, it furnishes the conditions for what Richard Rorty has termed a ‘human rights culture’,11 one in which individuals are recognised as entitled to rights and the protections they afford. **Not only does civil society nurture in individuals an understanding of themselves as holders of rights that are to be respected and honoured; through its system of wide-ranging interdependence, it provides the framework for a community in which individuals appreciate that support for the rights of others and the institutions providing such support is intertwined with their own rights and wellbeing.** Civil society ‘gives right an existence [Dasein] in which it is universally recognized, known and willed, and in which, through the mediation of this quality of being known and willed, its validity and objective actuality’ (PR y209). In terms of both institutional and cognitive requirements, civil society concretizes a right to have rights: it represents a social order in which individuals are recognised, by themselves and others, as subjects possessing rights (and corresponding duties)

#### The affs international imposition of trade policies violates the legal sovereignty of states to develop trade policy. Herrmann-Pillath,

Herrmann-Pillath, Carsten. “Leadership, Deliberative Trade Policy, and Civil Society: The Hegelian Approach”

Hegel had argued against Kant’s formal foundation of ethics in stating that real-world commitments to universal values can only emerge in a historical process that links those values to specific commitments in particular societies (Hicks 2012). His position reveals some deep affinities with the economist’s viewpoint as one reason for this insufficiency of purely abstract and rational principles is that there would be no incentivization for acting accordingly ithin particularistic contexts. Hegel’s distinctiveness and similarity with Sen is also obvious from his conceptualization of ‘freedom’, which he regards as the most pivotal ethical value, but does not conceive merely as an abstract human right. According to Hegel, **freedom is nothing what exists as a ‘natural’ claim, but what is constituted by concrete historically evolved institutions out of which the abstract conception of values emerges, and in which individuals are enabled to realize their freedom in communities of ethical life** (Neuhouser 2008). This clearly resonates with Sen’s ideas about positive freedoms in his theory of capabilities (Boldyrev and Herrmann-Pillath 2013). **Hegel was the founding father of the idea of ‘civil society’** (for an assessment of this concept in the context of international relations, see Stillman 2012). **By this he referred to a historically emergent structure of institutions that are geared towards the division of labour and market relations, embedded into generalized notions of cooperation and shared commitments to values. Apart from the rule of law, this structure includes a web of associational relationships, mostly organized along professional and occupational lines, and a representational setting in the context of the state (which he conceived as a constitutional monarchy). The state is the primordial unit that encompasses all these structures and stands in a higher-order relationship with other states. Citizenship as defined by states is a core criterion for individual identities beyond their associational ascriptions.** Hence, on first sight Hegel perceived international relations in what today are called ‘realist’ terms, with an apparently Hobbesian flavour. Thus, we might conclude that Hegel’s approach fits nicely into the standard view underlying hegemonial theory. Hegemonial theory clearly puts states and their relative power positions at the centre, and explains institutions as reflecting those international structures. A leader is a country that assumes as pivotal role in these power structures and can therefore incentivize other countries in taking actions. However, as the recent discussion of the Hegelian theory of international relations has shown, this view would be overly narrow (Vincent 1983; Buchwalter 2012). Matching with these contributions, I propose a Hegelian framework for deliberative trade policy that differs from these simplistic realist interpretations. At the same time, this Hegelian view also differs from current institutionalist approaches (which are mainly inspired by the ‘New Institutional Economics’) and ties up with the recent revival of ‘ideational’ studies in political science. In ddition, the Hegelian approach is congenial to game theoretic analyses of international relations which have shown that realism and institutionalism can be reconciled if incentive structures, communication patterns and information flows are properly detailed (for a seminal approach, see Snidal 1993). In order to make the essentials of a Hegelian approach clear, it is necessary to reflect upon the most basic notion of ‘freedom’ and to apply this on the notion of ‘free trade’ (Neuhouser 2008; Buchwalter 2012: 214f). Neuhouser distinguishes between ‘personal freedom’, ‘moral freedom’ and ‘social freedom’: Personal freedom refers to the autonomy of the will, moral freedom means the autonomy to commit oneself to moral constraints on one’s own actions, and social freedom means to have the necessary capacities to realize the other freedoms in the context of a concrete community. I argue that these three dimensions also apply on the notion of ‘freedom’ in international trade. **Hegel’s concept of personal freedom as applied on individuals means autonomy and self-determination, clearly building on Kant. Now, in the very first place this means autonomy from natural urges to action, that is, refers to one’s own nature, and only secondarily freedom relative to others. To be free means to be able to reflect upon one’s desires, and to determine actions based on autonomous decisions of will.** Basically, this idea of freedom, firstly unfolded in the Phenomenology, also underlies the notion of sovereignty of the state, deployed in the Philosophy of Right (as embodied in Hegel’s figure of the monarch). Now, consider **the typical structure of economic theories of trade policy, including hegemonial theories. They share one important property with ‘naturalistic’ theories of the individual in being mechanistic theories. That means they identify a causal structure by which observed actions of governments result into certain institutions**. For example, there are political support functions that directly translate into certain institutions; given certain assumptions about the generic incentive structure of governments (such as aiming at reelection) (classical approaches are Grossman and Helpman 1994, 1996). That corresponds to the simple picture of ‘natural desires’ driving the actions of the individuals, given certain goal functions, if we approach both on an abstract level as ‘mechanistic’ theories of action, individual or political. **Hence, we can make a rather surprising Hegelian point about trade policy, namely that, in the first place, ‘freedom’ means autonomy of governments in setting trade policies: ‘autonomy’ is manifest in the capacity to act independently from any domestic or international pressures to take a particular action in trade policy** (this idea is also familiar from political science approaches to the role of domestic constraints on international relations, see Deese 2008: 32ff.). In the Hegelian view, ‘**free trade’ therefore needs to be based on the idea of sovereignty of governments in terms of trade policies. This implies that trade policy cannot be justified by imposing certain external norms of ‘free trade’ on countries.** Indeed, although today most people would agree that high tariffs are bad, the issues at stake in the GMO controversy seem much more contentious. In this context, **the first Hegelian principle implies that countries should be free in determining the institutional setting of their trade policy.** It is important to notice that this principle guided the old GATT, but has been partly weakened as a result of the Uruguay round, leading to the current stalemate of the Doha round. For example, whereas under the old GATT countries actually negotiated about mutually valued rights to market access, **the ‘single undertaking’ approach of the WTO partly imposes the same institutions on all member countries, such as in the TRIPS agreement, if they want to enjoy the benefits of other parts of the agreement** (Finger and Nogués 2002). In transferring the logic of Hegel’s reasoning from the individual to entire countries, we follow his own approach in equating the sovereignty of the state with the free will of the monarch, but there is also another, more systematic rationale. **Why are countries the ultimate actors in trade policy, and not individuals,** as in the Kantian constitutional view? **This is because in the absence of a unified international law and hence, world government, individual freedom to trade can only be enshrined in rights that are contained in national laws, such that in the international domain, this freedom can only be established in coordinating those national laws. This coordination cannot be achieved on the individual level, but always needs to involve the governments as representatives of the individuals qua citizens of their nations, and as being the only institutions that have the right to enforce legal norms (monopoly of violence). Therefore, even if one adopts the view that freedom to trade is an individual right, this right cannot come into existence but by means of coordinated actions by governments, both in their role as representatives and enforcers.** This argument can be supported by further considerations, such as considering the use of domestic public goods in conducting international trade, which I leave out for reasons of space (see Herrmann-Pillath 2009). This view is also bolstered by an argument in the standard theory of trade policy which builds on the terms-of-trade effects of tariffs (Bagwell and Staiger 2002). The argument can be easily related with Hegel’s notion of individual freedom, because the sovereign freedom of governments to impose tariffs on international trade does not only affect their own citizens, but may also cause ToT externalities on citizens of other countries if the country imposing tariffs has market power (which is often the case if one considers specific industries and products). These externalities work via the international price system and therefore directly affect individual welfare, hence curtail the sphere of personal freedom in the international marketplace: In fact, it means that the government does not only tax its own citizens, but also citizens of other countries, who have no channel of political influence, however (a tax without representation). So, these ToT externalities cannot be countervailed by individual actions directly: Therefore, only an international agreement among governments can result into institutions that also safeguard individual freedom. It is important to notice that the ToT argument, though disputed in the literature (see e.g. Ethier 2004), is sufficiently powerful to explain a number of specific features of the current multilateral trading systems, such as the Most Favoured Nation principle. Now, one most interesting Hegelian turn results to be the insight that the autonomy of states also applies to domestic politics: **Sovereignty as freedom means that states can overcome the mechanisms of domestic political economy as scrutinized by the economic approaches.** This linkage, following seminal approaches such as Putnam’s ‘two-level games’, has also been recently explored by many political science contributions (for an overview, see Snidal and Thompson 2004).

#### 2] Personality Theory – IP is uniquely an extension of reason and sensibility through personal investment – Priya 08:

Priya, Kanu. "Intellectual Property and Hegelian Justification." NUJS Law Review, vol. 2008, no. 2, 2008, p. 359-366. HeinOnline. // LHP PS

**Many proponents of intellectual property law seek refuge in a personality theory of property associated with GW.F. Hegel.** This theory seems to protect intellectual property from potential attacks by a utilitarian analysis that would recognizes property only contingently insofar as it furthers society's goals of utility or wealth maximization. **Personality theory, in contrast, supposedly offers a principled argument that intellectual property right must be recognized by a just state, regardless of efficiency considerations**. Personality theory **also seems to protect intellectual property from assault by critics who maintain that it is not a form of "true" property at all.** Finally, **the theory has also been used to** support **an argument for heightened protection of intellectual property beyond that given to other forms of property - the Continental "moral" right of artists in their creations is an example**! **Hegel's view of property, with its foundation on the notion of the individual and the formation of self-identity, "is perhaps most directly applicable to the narrower notion of intellectual property."** Also characterized as the "personality theory" of property, **Hegel's rationale suggests that the inventor has imbued the invention with his personality or will, making the process of creation an intensely individualistic one.** **Hegel postulates that property and ownership are important milestones in the journey toward self-development, and are essential to survival as well.** **These are ideas that should make sense to emerging countries seeking to justify their protection of intellectual property rights.** However, this view may not successfully justify intellectual property rights in cultural systems that are less centered on the individual and more focused on the identity of the community and on the protection of community property. The individualistic underpinnings of patent law, expounded by philosophers such as Hegel, may be difficult to incorporate into more community-oriented societies.9 It has long been argued that intellectual property is justified on a number of alternative bases. Economic, labour and spiritual theories have been advanced to justify propertising intellectual creations. **Intellectual property theorists**, following Hegel's and Kant's thoughts on the subject, **contend that the personhood theory of property is especially true when the property is a work of art. They argue that works of art are created through a person's mental labor and thus embody more of her individual essence of being than works created through routine physical labor.** **Since artistic works are part of an artist's very identity, she never should be completely separated from the work. The personhood theory of intellectual property thus supports not only the idea of copyright in artistic products, but also the idea of moral rights**. The debate surrounding the correct theory about why intellectual property exists is not purely academic. It can play a decisive role in the outcome of copyright cases. For example, in Sony v. Universal City Studios (The Betamax Case) 1, the Supreme Court held the videotaping of televised programs for purposes of "time-shifting" could be considered fair use. The discussion of reputation and values shows that open-source software can embody and express personality, but it assumes a capacity for software to express personality similar to that of other copyright subject matter. This assumption requires examination, because software has unique attributes as copyrightable subject matter. Despite the differences, in terms of personality expressing capacity, the similarity is sufficiently close to conclude that the opensource approach carries and expresses personality equivalently to moral rights, even if traditional closed software does not, or perhaps cannot, because the source code is not available to be viewed. The other moral rights also fit the personality theory. The author or artist needs to control the first publication or disclosure of the work in order to ensure that when the work leaves the author's domain, it embodies the personalityview desired. Once released, the right of attribution ensures that the original author or artist retains the degree of association with the work under which the author released it. This is often done by name, but could also be under a pseudonym, or be anonymous. The right to withdraw the work upon remuneration also fits the personality theory. If the artist changes the genre or reworks the image, it may be fitting, from a moral rights perspective, for the artist to withdraw from circulation works that clash with a prior era in the artist's development. The justifications advanced for intellectual property law have been many and varied. It has been suggested that intellectual property is analogous to tangible property and justifications used to support the propertisation of physical creations can be advanced for intellectual ones as well. A common assertion used tojustify propertising **intellectual works is that intangible creations require property protection because they are economically valuable works worthy of protection in their own .** This is essentially an economic justification, one premised upon overcoming market failure and market imperfections. **Economic justification for propertising creative work is premised on the very foundation that without proper protection authors would have insufficient incentives to write new works unless they are compensated with property rights.**

### CP

#### CP Text: Resolved: Member Nations of the World Trade Organization should increase Public/Private partnerships between IP owners of the Covid-19 vaccine and the government – we control solvency – they only make the problem worse – Brown 21:

Brown, Delphine. “Powerhouse Points: Will Trips Waiver of Ip Protection for Covid-19 Vaccines Serve Global Need?” Powerhouse Points: Will TRIPS Waiver of IP Protection for COVID-19 Vaccines Serve Global Need?-News | Freeborn & Peters LLP, 2021, www.freeborn.com/perspectives/powerhouse-points-will-trips-waiver-ip-protection-covid-19-vaccines-serve-global-need. // LHP PS

**The TRIPS waiver proposals have been under discussion for over eight months with no end in sight, and will likely fall prey to months, if not years, of legal challenges if approved.** Additionally, despite India and China developing mRNA vaccine candidates, **when one considers the intellectual property landscape for mRNA vaccines, a handful of pharmaceutical companies still hold half of the patent applications. Though a TRIPS waiver might free up untapped capacity for increased vaccine production to meet the huge unmet need, it seems that government and private sector partnerships could be forged much more expeditiously and result in the desired rapid ramp up of COVID-19 vaccine production.** For example, **Moderna and Samsung Biologics recently announced an agreement for fill-and-finish manufacturing of Moderna’s COVID-19 vaccine**.[[vii]](https://www.freeborn.com/perspectives/powerhouse-points-will-trips-waiver-ip-protection-covid-19-vaccines-serve-global-need" \l "_edn7" \o ") When the IP waiver concept was first proposed last October, **Moderna agreed not to enforce its COVID-19 related patents during the pandemic. But despite Moderna’s voluntary waiver of its IP rights, no other company has stepped up to manufacture the Moderna vaccine.** **The most significant obstacle to COVID-19** vaccine supply is not just the IP rights that companies have obtained, or are pursuing, but rather the **lack of raw materials and manufacturing facilities to produce the vaccines.** Currently, **there are shortages of raw materials and equipment used to make vaccines and biological products. Unlike drug manufacturing, vaccine production processes are extremely complex and difficult to develop without support from current manufacturers. Additional manufacturers would need to have oracquire skilled expertise in mRNA technology and create or reconfigure manufacturing sites.** **Manufacturing vaccines requires additional processing steps and testing to assure quality and consistency**. **Manufacturing vaccines will also likely use the patented technology of other companies, who have not waived their IP rights.** **Investment in manufacturing is also an important piece of the solution. Whether existing companies can retool facilities and jump start manufacturing or new facilities need to be created through investment will be outcome determinative**. **There is little doubt that the waiver proposals would at the very least up-end the existing incentives, including the prospect of future pharmaceutical innovation and development of products, that resulted in the rapid development and approval of COVID-19 vaccines**. Moreover, **the TRIPS waiver proposals may not have the desired effect of boosting COVID vaccine production and availability of mRNA vaccines.** On the other hand, **recent attempts at voluntary licensing and technology transfer agreements related to adenovirus vector technology have resulted in increased vaccine production and availability.** **A TRIPS waiver may not be as effective for more complex vaccine production.** **Scaling up COVID-19 vaccine production is not a one-size-fits-all proposition**. Ensuring equitable availability and delivery complicates the matter further. Coordination and collaboration will be required within a complex network of investing in technology transfer, contracting existing and new manufacturing facilities, sourcing materials, and pooling procurement facilities. **The negotiators and drafters of any TRIPS waiver have a difficult task to craft it into the cornerstone of an effective solution to the known problems of unmet need, and supply and availability, while also anticipating issues yet to arise concerning sustainability of supply, intellectual property rights for COVID-19 tests and treatments, and sharing of research**. The next several months will determine whether a TRIPS waiver can be successfully negotiated, practically implemented, and make a timely and effective difference in COVID-19 vaccine availability.

## Case

### Solvency/Turns

#### [1] The proposed waiver won’t solve because of how complicated it would be to mandate disclosure and transfer of trade secrets—the plan is insufficient to trigger the advantages, Donahoe

<https://www.natlawreview.com/article/waiver-ip-protections-covid-19-vaccines-still-under-consideration-wto>, 24 Aug 2021, Donahoe, Casey D.

While the proposed waiver extends to several areas of IP, most agree that patents and undisclosed information, in particular, form the crux of the debate. Katherine Tai, the U.S. Trade Representative, has not publicly committed to any position beyond waiving patent protections in particular. [Karpan 2021-07-01] Moderna has temporarily waived its COVID-19 vaccine patent rights, but the vaccine is still protected, at least in the U.S. and EU by regulatory marketing exclusivity. [Collins 2021-06-11] **With respect to patents, existing TRIPS flexibilities already allow for countries to issue compulsory licenses for domestic production in the face of public health crises and, under additional criteria, compulsory licenses for export.** But proponents of the waiver argue that the existing processes, which can require country-by-country and case-by-case negotiations and litigation with the vaccine developers and may be limited to public uses, are too time-consuming and inconvenient to mount an effective response, particularly where thickets of IP protection cover single vaccines. [Labonte 2021-01-09, The Conversation]; [Public Citizen, tradewatch.org] In fact, compulsory licensing to exporting manufacturers under Article 31b is has only been successfully used once in the past twenty years, [Public Citizen, tradewatch.org] when Canada issued a compulsory license authorizing the manufacture and export of an AIDS medication to Rwanda. [WTO 2007-10-04] Additionally, multiple countries may be involved in the pipeline for manufacturing a single packaged vaccine to be distributed in a country in need. Further, one key advantage to a unanimously agreed-upon waiver over attempting to utilize existing TRIPS flexibilities, would be that countries could more comfortably exploit the waiver without the threat of trade complaints or sanctions from other nations. [Lopez 2021-05-07] Proponents of the waiver point to alleged U.S. and European retaliatory trade measures against nations that have attempted to use existing TRIPS flexibilities to skirt IP protections. [Public Citizen, tradewatch.org] While the proposed waiver extends to several areas of IP, most agree that patents and undisclosed information, in particular, form the crux of the debate. **However, even if patent protection were not an issue, manufacturing and distribution of the vaccines would remain a substantial obstacle to achieving global immunity.** [Paton 2021-05-07 Bloomberg] **Aspects of vaccine manufacturing and regulation raise further issues of what TRIPS calls “undisclosed information,” encompassing trade secrets and know-how. Such undisclosed information may be particularly crucial in scaling up manufacture in a commercially viable fashion**. [Garrison 2020-12-16]. Article 39 of TRIPS requires members to protect the confidentiality of undisclosed information, including data submitted to regulatory agencies for marketing approval of pharmaceuticals. **As related to vaccines, undisclosed information could include clinical data** (e.g., related to effectivity, including negative results), **manufacturing processes, medical formulas, cell lines, genomic information, technical designs and specifications, instruction manuals, process controls and monitoring, quality control procedures, technical training, working practices, etc.** [Garrison 2020-12-16]; [Levine 2020-07-10]; [Eakin 2021-05-25 Law360] **The Pfizer and Moderna vaccines,** in particular, are expected to be **extremely difficult to replicate** given **they rely on new mRNA technology.**

The WTO touts the COVID-19 Clinical Research Coalition, which aims to provide a platform for voluntary data-sharing, and the WHO-backed COVID-19 Technology Access Pool (C-TAP), which provides a platform for technology developers to bundle intellectual property rights, knowledge, and data into non-exclusive licenses with each other and with multiple quality-assured manufacturers, as examples of voluntary efforts to fill-in the know-how gap. [WTO Report 2020-10-15] In general, the voluntary transfer of know-how between two parties is highly contractually stipulated, usually allowing the licensor strict control over the dissemination of its know-how and protecting rights to improvements and developments that may derive from the collaboration, some of which might be patentable in themselves. [Bracho 2021-05-24 Bloomberg]. **The proposed waiver**, though, **wades into relatively unchartered territory of compulsory transfers of undisclosed information. Likely the biggest threat felt by vaccine manufacturers is that the compulsory transfer of undisclosed information will not simply diminish their return on investments in COVID19 vaccines, but would jeopardize entire proprietary technological platforms that support a wide range of potential products.** Such giveaways would likely impact small-to-medium sized enterprises especially, which account for approximately 75% of US COVID-19 treatments, and particularly small university spin-outs, which are highly depend on IP for valuation. [Balfour 2021-06-30] As details of a waiver have not yet been hammered out, it remains unclear exactly who might have access to such undisclosed information (e.g., the general public or only generic manufacturers) and the mechanisms by which such transfers would be achieved. Even with a waiver in place, individual countries would likely need to enact legislation or emergency executive actions to execute the transfer of information. [Labonte 2021-01-09, The Conversation**] The most obvious means would be for regulatory agencies to disclose data and manufacturing protocols submitted by vaccine manufacturers that they are ordinarily required to keep confidential.** In fact, the issue of data confidentiality has already been raised in the U.S. as an obstacle to developing a competitive generic biologics market, with some pointing to the Federal Pesticide Act (FPA) as a successful model which allows more free dissipation of regulatory data by the EPA. [Heled 2019] There are some exemptions to confidentiality of data supplied to regulatory drug agencies implemented in the U.S. and Europe, particularly where public funding helped finance the underlying research. For example, for research funded by the U.S. government, the Bayh-Dole Act provides some additional licensing provisions to the government which could potentially extend to some know-how; however, these provisions are largely untested and may be contractually restricted. [Collins 2021-06-11]. **But there is no precedent for compulsory transfer of confidential information in general**. [Levine 2020-07-10] **Even with a waiver in place, individual countries would likely need to enact legislation or emergency executive actions to execute the transfer of information. Additionally, knowledge holders may be located outside the jurisdiction of a member state desiring to compel transfer,** [Garrison 2020-12-16] **and waiving an obligation for member states to protect undisclosed information does not necessarily compel other member states to do so.  Notably, India, one of the waiver proponents that actually has substantial pharmaceutical manufacturing capacity, does not even presently require submission of test data for marketing approval.**  [Haugen 2020-12-01]  **Compulsory disclosure of undisclosed information is further complicated by the fact that the knowledge holders for manufacturing a single vaccine may be dispersed across multiple entities and/or even multiple jurisdictions, particularly where a supply chain of highly technical components is utilized or certain processes are outsourced to contractor entities.**  [Garrison 2020-12-16]  **The legislative levers that might be needed to fully enforce compulsory disclosure of undisclosed information or that could be pulled to halt executive branch action, as well as the lawsuits that might be filed would seem likely to stall any grand gestures of governmental action related to undisclosed information.** [Eakin 2021-05-25 Law360]  **For instance, compulsory disclosures would likely spurn allegations of violating the Takings Clause of the Fifth Amendment**, although the Supreme Court had found previously in *Ruckelshaus v. Monsanto Co*. that the FPA had not done so [Heled 2019].  Still, compulsory disclosure facilitated by regulatory agencies may not be sufficient to fill the knowledge gap for the successful manufacture of the vaccines, leaving room for countries to consider other creative avenues.  Brazil, for instance, has proposed one of a kind legislation which would tie patent rights to the compulsory disclosure of all information needed to make COVID-19 vaccines.  [Eakin 2021-05-25 Law360] Opponents argue that **bottlenecks in manufacturing capacity and supplies would stymie the effect of the waiver, despite the transfer of undisclosed information, and that even with full technology transfer, it would take months or years for factories to come up to speed on vaccine production.**  [Leonard 2021-05-06, Bloomberg]; [Paton 2021-05-07 Bloomberg]  **Manufacturing capacity is particularly limited for mRNA-based vaccines and there’s not even necessarily a sufficient population of people with expertise capable of manufacturing them.**  [Karpan 2021-05-11 Law360]  **Some also warn that redistributing crucial supplies to manufacturers without existing capabilities to manufacture the high-quality vaccines with regulatory approval would actually hinder vaccine distribution efforts.**  [Karpan 2021-05-11 Law360]; [Lima 2021-05-08 Bloomberg]; [Paton 2021-05-07 Bloomberg]  Even manufacturing facilities with access to all IP rights are experiencing production delays from regulatory reviews.  [Baschuck 2021-05-06]  Opponents also resound that such efforts to undermine IP rights will only discourage future innovation, including research that targets new variants of the coronavirus.  [Bacchus 2020-12-16 Cato Institute];  [Paton 2021-05-07 Bloomberg] The large divide between fervid proponents of the waiver and even those who have expressed some mild support suggests any significant compromise may be some time coming.  Many view the waiver controversy any way as less of a problem-driven exercise and more of an opportunity for the usual players to debate both the power of big pharma in the U.S.  [Collins 2021-06-11] and the stifling effects IP protections can have on the least developed nations around the world.  Also, the angst amongst some proponents of the waiver, some believe, may stem more from policies of vaccine nationalism than of TRIP impediments. [Clarke 2021-04-22 Lexology] Regardless, the decisions reached at the WTO during this crisis are likely to shape future policy discussions for years to come.

#### [2] Waivers won’t solve the actual problem. Supply will be a non-issue by years end. The TRIPS waiver is a theatrical gesture aiming to let rich economies off the hook for actually solving the problem, Adler

<https://foreignpolicy.com/2021/07/20/wto-trips-waiver-vaccine-equity-distribution-covid-pandemic/>, July 20, 2021

These rollout problems found in the United States are amplified many times when it comes to global rollout. The Biden administration discovered this first hand when it attempted to donate 80 million doses from domestic U.S. supply to the rest of the world in June but fell well short of this target. **White House press secretary Jen Psaki** [**said**](https://www.whitehouse.gov/briefing-room/press-briefings/2021/06/21/press-briefing-by-press-secretary-jen-psaki-june-21-2021/)**, “what we found to be the biggest challenge is not actually the supply—we have plenty of doses to share with the world—but this is a herculean logistical challenge.** And we’ve seen that as we’ve begun to implement.” She pointed to the distributional challenges associated with storing vaccines at the proper temperature as well as the need for needles and syringes. **The TRIPS waiver can be seen as essentially a political or even theatrical gesture.** As Psaki’s comments show, there is more to vaccinating the world than just increasing supply. **Even if there are vaccine shortages at this moment, limited vaccine supply may not be a binding constraint by year end**. Serum Institute of India, the world’s largest vaccine manufacturer, has announced **it will begin** [**exporting later this year**](https://www.reuters.com/world/india/indias-serum-institute-start-export-covid-19-vaccine-by-year-end-2021-05-18/)**, implying India should have adequate vaccine supply by then.** **Pfizer/BioNTech has** [**pledged to deliver**](https://www.voanews.com/covid-19-pandemic/pfizer-biontech-pledge-2-billion-vaccine-doses-poor-nations) **2 billion doses to low- and middle-income countries**. **AstraZeneca is continuing to scale up production.** Nonetheless, the Biden administration’s signature international COVID-19 policy, the [**TRIPS waiver**](https://crsreports.congress.gov/product/pdf/IN/IN11662)**, is a supply side move—but one unlikely to lead to any actual increase in supply**. This waves intellectual property protections for COVID-19 vaccines to further foreign production. The [U.K.](https://www.gov.uk/government/news/wto-trips-council-june-2021-uk-statements) and [German](https://www.dw.com/en/germany-rejects-us-push-to-waive-covid-vaccine-patents/a-57453453) governments have viewed it skeptically and can block it. Also, as has been widely noted, manufacturing involves trade secrets and supply chain issues that go well beyond intellectual property (IP) rights. Less widely noted is the fact that the Johnson & Johnson, AstraZeneca, and Novavax vaccines have already been [licensed to Indian manufacturers](https://www.statnews.com/2021/05/05/india-vaccine-heist-shoddy-regulatory-oversight-imperil-global-vaccine-access/), so it is not clear to what degree IP rights are really hindering additional foreign production. Therefore, the TRIPS waiver can be seen as essentially a political or even theatrical gesture, well removed from the messy world of vaccine distribution and administration. It appealed to a domestic audience hostile to Big Pharma and an international audience of countries like India and South Africa whose industrial policies have long called for limitations on IP rights. The Biden administration’s policies keep [evolving](https://foreignpolicy.com/2021/07/16/biden-africa-covid-19-ship-millions-vaccines/), and newer proposals are likely to show more immediate results. The United States has [pledged](https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/10/fact-sheet-president-biden-announces-historic-vaccine-donation-half-a-billion-pfizer-vaccines-to-the-worlds-lowest-income-nations/) to buy 500 million U.S. produced doses of the Pfizer/BioNTech vaccine over the next year and donate them to low-income countries. Many [financing initiatives](https://www.npr.org/2021/02/18/969145224/biden-to-announce-4-billion-for-global-covid-19-vaccine-effort) have been announced. But U.S. plans of how to tackle the critical last mile and get the vaccines into people’s arms have not been as clearly fleshed out, with the United States mostly taking a hands-off approach. Administering vaccines requires a global rollout plan. After all, as the truism goes, a global pandemic demands a global response. However, this phrase is open to interpretation, with vaccine nationalism typically cloaked in globalist rhetoric. Many in the United States are deeply uncomfortable with a U.S.-led pandemic effort and hear the statement to mean that globalist institutions should take the lead. In other countries, the phrase can mean something very different. For instance, when European Commission President Ursula von der Leyen floated the idea of a “[vaccine export transparency mechanism](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_21_221)” to block vaccine exports from the EU to the U.K., she said it was for the “global common good.” These various meanings are somehow aligned in discouraging any U.S. unilateralism and pose challenges to a more active U.S. involvement in a global rollout. The primary global initiative to ensure all countries have access to COVID-19 vaccines is [COVAX](https://www.gavi.org/covax-facility?gclid=Cj0KCQjwub-HBhCyARIsAPctr7wD6lbQwpflk8lliN12KxEUIUL9NkbdH7NgZ3UTkYqdsLWgG380utMaAqtvEALw_wcB), co-convened by the Coalition for Epidemic Preparedness Innovations, the vaccine alliance Gavi, and the World Health Organization. Gavi oversees procurement but does not have an [on-the-ground presence](https://www.gavi.org/our-alliance/operating-model) for administering vaccines. This is left up to the health ministries of developing countries and other partners. The coalition’s key partner responsible for delivering vaccines is UNICEF. UNICEF is a [children’s agency](https://www.unicef.org/) whose mission is helping every child thrive all over the world. However, it is the elderly who are most at risk for COVID-19. Ultimately, COVAX has rollout capabilities but limited bandwidth and resources when it comes to vaccine administration. The United States has these resources, including deep expertise in both vaccine distribution and administration. Operation Warp Speed showed the Defense Department can manage the complex ultra-cold logistics required for mRNA vaccine distribution. The Centers for Disease Control and Prevention (CDC) and the U.S. Agency for International Development (USAID) have knowledge of vaccine administration—although addressing a global pandemic would be a “stretch goal.” The United States could use its personnel and expertise to help solve the global rollout problem, either on its own or in a partnership with multilateral institutions, such as COVAX. This is not to imply the United States, with its declining life expectancy, necessarily has a better health system than other afflicted countries—only that it has rollout knowledge it learned the hard way. The key lesson is the last mile is the hardest part to roll out. Rather than having vaccine supplies arrive and only then start training, it is better to have mass vaccination sites up and running and already fully staffed. The United States could offer technical guidance and materials necessary for rollouts, including refrigeration, ancillary kits, and having enough needles on hand. USAID could offer advice on how a country could improve its vaccine readiness plan. Addressing vaccine hesitancy is also critical to a successful rollout. The reasons behind vaccine hesitancy are complex and vary by country and population. Hence, responses need to be country specific but will typically require a massive communications effort. Where is the global effort? Where is the global planning for this effort? Tackling these global, last-mile challenges faces huge domestic roadblocks in the United States. It would require making global rollout a top U.S. foreign-policy priority, necessitating the planning, financing, and personnel of something akin to the Marshall Plan. It would be expensive. It involves industrial planning, which still has negative overtones in the United States. Which agency in the U.S. government should coordinate such a plan? The State Department? The Defense Department? The National Institute of Health? The CDC? The White House COVID-19 Response Team? Perhaps the most divisive question is if the United States should lead such an effort or follow the WHO’s directives. But none of this is relevant because there is no domestic political pressure for pursuing such an approach, unlike the TRIPS waiver. This is because nonprofit activism is still primarily focused on [supply](https://www.amnesty.org/en/latest/news/2021/06/g7-support-for-pharma-monopolies-putting-millions-of-lives-at-risk/) and [eliminating vaccine hoarding](https://www.oxfamamerica.org/press/cnn-rich-countries-are-hoarding-covid-19-vaccines-and-leaving-developing-world-behind-peoples-vaccine-alliance-warns/) by rich countries. True global vaccine equity requires a broader definition and effort beyond just manufacturing more supply, namely creating a global rollout plan and deploying the health resources necessary to get shots into people’s arms. The end result is the United States is hesitant to find more concrete ways to get involved with a global rollout beyond just pledging more vaccine supplies or money. It is hesitant to directly intervene to help the worst afflicted poor countries distribute and administer vaccines. And vaccine hesitancy, in whichever form it takes, can be deadly.

#### Turns case – enables rich countries to politically justify not putting additional effort into int. COVID vaccinations.

#### [3] Turn- Waiving patents can’t resolve drug access issues but instead create a more dangerous scenario for developing countries – Garde 21

Damian Garde (national biotech reporter for STAT), Helen Branswell (senior writer at STAT covering infectious diseases and global health; former CDC Knight Fellow and Nieman Global Health Fellow at Harvard; recipient of the 2020 George Polk Award for coverage of the Covid pandemic), and Matthew Herper (senior writer at STAT covering medicine). “Waiver of patent rights on Covid‐19 vaccines, in near term, may be more symbolic than substantive.” Stat News. 6 May 2021. JDN. https://www.statnews.com/2021/05/06/waiver‐of‐patent‐rights‐on‐covid‐19‐vaccines‐ in‐near‐term‐may‐be‐more‐symbolic‐than‐substantive/

In October, **Moderna vowed not to enforce its Covid‐19‐related patents for the duration of the pandemic, opening the door for manufacturers that might want to copy its vaccine. But to date, it’s unclear whether anyone has, despite the vaccine’s demonstrated efficacy and the worldwide demand for doses. That underscores the drug industry’s case that patents are just one facet of the complex process of producing vaccines**. “There are currently no generic vaccines primarily because there are hundreds of pro‐ cess steps involved in the manufacturing of vaccines, and thousands of check points for testing to assure the quality and consistency of manufacturing. One may transfer the IP, **but the transfer of skills is not that simple,” said Norman Baylor,** who formerly **headed the F**ood and **D**rug **A**dministration**’s Office of Vaccines Research and Review**, and who is now president of Biologics Consulting. While there are factories around the world that can reliably produce generic Lipitor, vaccines like the ones from Pfizer and Moderna — **using messenger RNA technology** — require skilled expertise that even existing manufacturers are having trouble sourcing. “In such a setting, imagining that someone will have staff who can create a new site or refurbish or reconfigure an existing site to make mRNA [vaccine] is highly, highly unlikely,” Yadav said. **There are already huge constraints on some of the raw materials and equipment used to make vaccines. Pfizer, for instanc**e, had to appeal to the Biden administration to use the Defense Production Act to help it cut the line for in‐demand materials necessary for manufacturing. Rajeev Venkayya, head of Takeda Vaccines — which is not producing its own Covid vaccine but is helping to make vaccine for Novavax — said supply shortages are impacting not just Covid vaccine production but the manufacture of other vaccines and biological products as well. “This is an industry‐wide ... looming crisis that will not at all be solved by more tech transfers,” Venkayya said. He suggested many of the people advocating for this move are viewing the issue through the prism of drug development, where lifting intellectual property restrictions can lead to an influx of successful generic manufacturing. “I think in this area there is an unrecognized gap in understanding of the complexities of vaccine manufacturing by many of the ‘experts’ that are discussing it,” said Venkayya, who stressed that while he believes they have good intentions, “nearly **all of the peo‐ ple who are providing views on the value of removing patent protections have zero experience in vaccine development and manufacturing**.”  As Michelle McMurry‐Heath, CEO of the trade group BIO, put it in a statement, “**hand‐ ing needy countries a recipe book without the ingredients, safeguards, and sizable work‐ force needed will not help people waiting for the vaccine.”**

#### [4] A vaccine waiver greenlights counterfeit medicine – independently turns Case.

**Conrad 5-18** John Conrad 5-18-2021 "Waiving intellectual property rights is not in the best interests of patients" <https://archive.is/vsNXv#selection-5353.0-5364.0> (president and CEO of the Illinois Biotechnology Innovation Organization in Chicago.)//Elmer

The Biden's administration's support for India and South Africa's proposal before the World Trade Organization to temporarily waive anti-COVID vaccine patents to boost its supply will fuel the **development of counterfeit vaccines and weaken the already strained global supply chain**. The proposal will not increase the effective number of COVID-19 vaccines in India and other countries. The manufacturing standards to produce COVID-19 vaccines are **exceptionally complicated**; it is unlike any other manufacturing process. To ensure patient safety and efficacy, only manufacturers with the **proper facilities and training should produce the vaccine, and they are**. Allowing a temporary waiver that permits compulsory licensing to allow a manufacturer to export counterfeit vaccines will **cause confusion and endanger public health**. For example, between 60,000 and 80,000 children in Niger with fatal falciparum malaria were treated with a counterfeit vaccine containing incorrect active pharmaceutical ingredients, resulting in more than **100 fatal infections.** Beyond the patients impacted, counterfeit drugs erode public confidence in health care systems and the pharmaceutical industry. Vaccine hesitancy is a rampant threat that feeds off of the distribution of misinformation. Allowing the production of vaccines from improper manufacturing facilities further opens the door for antivaccine hacks to stoke the fear fueling **vaccine hesitance**.

#### [5] Lack of access is not a result of IP – rather IP is key to ensure high quality vaccines that pass regulatory hurdles, which means the plan actually reduces access

Stevens, Philip, and Mark Schultz 1/14. “Why Intellectual Property Rights Matter for COVID-19 - Geneva Network - Intellectual Property Rights and Covid-19.” Geneva Network, 14 Jan. 2021, geneva-network.com/research/why-intellectual-property-rights-matter-for-covid-19/. Philip Stevens in the Founder and Executive Director of Geneva Network. He is also a Senior Fellow at the Institute for Democracy and Economic Affairs, Malaysia.; Professor Mark F. Schultz is the Goodyear Tire & Rubber Company Endowed Chair in Intellectual Property Law, the Director of the Intellectual Property and Technology Law Program at the University of Akron School of Law. He was a professor at Southern Illinois University School of Law for 16 years and was co-founder and a leader of the Center for Protection of Intellectual Property (CPIP) at George Mason University in Washington, D.C., where he remains a non-resident Senior Scholar. He also serves as a Senior Fellow of the Geneva Network. //sid

IP has underpinned the research and development that has led to the arrival of several game-changing vaccines. But the challenge does not end there. Perhaps the biggest hurdle is manufacturing billions of doses or new antibody treatments while maintaining the highest quality standards.

There’s more to it than starting a global manufacturing free for all by overriding or ignoring patents. A spokesperson for Regeneron, a manufacturer of a novel COVID-19 antibody treatment explained to [The Lancet](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)32581-2/fulltext): “Manufacturing antibody medicines is incredibly complex and transferring the technology takes many months, as well as significant resources and skill. Unfortunately, it is not as simple as putting a recipe on the internet and committing to not sue other companies during the pandemic”.

[John-Arne Røttingen](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)32581-2/fulltext), chair of the WHO COVID-19 Solidarity trial, explains that technology transfer will be crucial to scaling up production, but voluntary mechanisms are better: “If you want to establish a biological production line, you need a lot of additional information, expertise, processes, and biological samples, cell lines, or bacteria” to be able to document to regulatory agencies that you have an identical product, he explains.

### AT Evergreening

#### First, “incremental” innovations are a key aspect of R&D, Jones 6

Nigel Jones (International Chamber of Commerce; Barrister for Gatehouse Cham‐ bers). “The importance of incremental innovation for development.” Submission to the World Health Organization’s Commission on Intellectual Property Rights, Innovation and Public Health. March 2006. JDN. https://www.lesi.org/publications/les‐ nouvelles/les‐nouvelles‐online/2006‐2015/2006/march‐2006/2011/08/08/the‐importance‐ of‐incremental‐innovation‐for‐development

As already mentioned, **the costs and time necessary to bring a drug to the market are considerable**. While the initial patents covering the basic chemical or protein entity are important to encourage the further investment to bring the drug to the market, **the length of time afforded protection** by such patents ‐ due to the considerable amount of time necessary to develop a suitable formulation and presentation of the drug, and the time to conduct clinical trials ‐ **usually does not provide sufficient protection to balance the overall financial investment.** Further, **many inventions** made during the develop‐ ment of the drug formulation or presentation, while possibly **viewed as ’incremental inventions’ by some, are actually critical to bringing the drug to the market**. Indeed, as a proportion of all patents granted worldwide, very few relate to what may be termed “breakthroughs”. **The vast majority cover innovations which build on inventions of others, with the benefit of full disclosure of those inventions in patent specifications**. That is what the patent system was designed to encourage. **By its very nature**, there‐ fore**, it encourages inventors to adapt and modify the developments** patented by others **incrementally** or in any other way. It would therefore, in ICC’s view, be wholly in‐ appropriate not to allow patents for such forms of innovation; and any such change would adversely affect the ability to finance future drug research. **The innovation process in the pharmaceutical sector, as for all other scientific sectors, is one of evolution**. The criteria for patentability are clear. Patents are available for any invention, whether product or process, in any field of technology, provided it is new, involves an inventive step and is capable of industrial application. **If an invention meets these criteria, it is entitled to patent protection. If it does not, it is not patentable. Of these criteria, the most relevant here is inventive step**. The invention must not have been obvious to a person skilled in the relevant art at the time the application for a patent was first filed, taking into account the state of the art at that time. There is no common understand‐ 192 7 Negative Evidence ing around the world on how this criterion should be applied and TRIPS provides no guidance. The precise manner in which it is applied differs from country to country. It even differs over time within the same country. Significant progress has, however, been made in harmonizing the standard, particularly in the US, Japan and Europe. This harmonized standard should, in ICC’s view, in time become the “gold standard” for patents globally. In the meantime, it may be necessary and appropriate, to encourage investment in local research and manufacturing, for developing countries to adopt a lower threshold to provide easy access to patents for local entrepreneurs. But in ICC’s view, it cannot be right to require such countries to adopt a higher standard of inventive step. In any event, neither the inventive step requirement, nor the other basic criteria, make any distinction between different types of innovation œ for example between “in‐ cremental” and “discrete”, or between “me too” and “breakthrough” innovations. As with any innovation, all of these have to be judged against the same basic rules, and that, in ICC’s view, is entirely appropriate. To the extent that genuine concerns about patent quality exist, they relate to the whole range of patents**. They are not specific to patents for healthcare products, nor to patents for so‐called incremental innovations. If such inventions fail to meet the fundamental criteria set out above, patents should not be granted for them; and where patents have wrongly been granted, courts should (and have) corrected those errors** œ all as part of the international efforts referred to above to ensure that an appropriate balance is achieved between all entities affected by patents. **However, the fact that there have been some examples of patent‐granting authorities ap‐ plying the criteria incorrectly does not justify fundamental change to those underlying principles.**

#### Second, evergreening only proves flaws in the application process, not the legitimacy of patents themselves, Jones 6

Nigel Jones (International Chamber of Commerce; Barrister for Gatehouse Cham‐ bers). “The importance of incremental innovation for development.” Submission to the World Health Organization’s Commission on Intellectual Property Rights, Innovation and Public Health. March 2006. JDN. https://www.lesi.org/publications/les‐ nouvelles/les‐nouvelles‐online/2006‐2015/2006/march‐2006/2011/08/08/the‐importance‐ of‐incremental‐innovation‐for‐development

In the context of pharmaceuticals, it has been suggested that patent protection should not be given to inventions comprising different salts, esters or other derivatives of known drugs, different dosage forms or means of administration of existing products, combinations of known products (including fixed dose combinations), nor “mere” new uses of known compounds, (all of which might qualify for the misnomer “incrementally modified drugs”); nor for modifications to medical devices (such as a single‐, rather than multiple‐dose, syringe). These suggestions are, in ICC’s view, misconceived. As stated above, if any such inventions do not satisfy the basic patentability criteria, patents should not be granted for them; and if patents are found wrongly to have been granted, courts and patents offices should correct those errors, just as they should for patents in any field and for any category of innovation. This approach should address, and is addressing, concerns about illegitimate extension of patent term, or “evergreening”. There is no need for separate, or new, legislation to deal with this issue. Further, the suggestion that such inventions do not benefit society is wrong. These types of so‐called “incremental” innovation generally result in better health outcomes2, for example by increasing efficacy, reducing side effects and/or making administration easier, resulting in improved compliance and greater effectiveness

### Heg Good

#### Impact turn – Heg is net destabilizing which internal link turns all your impact card warrants – empirically confirmed, Cambanis 12

[Thanassis - Fellow at The Century Foundation and Professor at Columbia University’s School of International and Public Affairs “The lonely superpower,” <http://bostonglobe.com/ideas/2012/01/22/the-lonely-superpower/FRkSf1s5n9lXku4VqvEtqJ/story.html>]

Now, however, with a few decades of experience to study, a young international relations theorist at Yale University has proposed a provocative new view: American dominance has destabilized the world in new ways, and the United States is no better off in the wake of the Cold War. In fact, he says, a world with a single superpower and a crowded second tier of distant competitors encourages, rather than discourages, violent conflict--not just among the also-rans, but even involving the single great power itself. In a paper that appeared in the most recent issue of the influential journal International Security, political scientist Nuno P. Monteiro lays out his case. America, he points out, has been at war for 13 of the 22 years since the end of the Cold War, about double the proportion of time it spent at war during the previous two centuries. “I’m trying to debunk the idea that a world with one great power is better,” he said in an interview. “If you don’t have one problem, you have another.” Sure, Monteiro says, the risk of apocalyptic war has decreased, since there’s no military equal to America’s that could engage it in mutually assured destruction. But, he argues, the lethal, expensive wars in the Persian Gulf, the Balkans, and Afghanistan have proved a major drain on the country. Even worse, Monteiro claims, America’s position as a dominant power, unbalanced by any other alpha states actually exacerbates dangerous tensions rather than relieving them. Prickly states that Monteiro calls “recalcitrant minor powers” (think Iran, North Korea, and Pakistan), whose interests or regime types clash with the lone superpower, will have an incentive to provoke a conflict.

Even if they are likely to lose, the fight may be worth it, since concession will mean defeat as well. This is the logic by which North Korea and Pakistan both acquired nuclear weapons, even during the era of American global dominance, and by which Iraq and Afghanistan preferred to fight rather than surrender to invading Americans. Of course, few Americans long for the old days of an arms race, possible nuclear war, and the threat of Soviet troops and missiles pointed at America and its allies. Fans of unipolarity in the foreign policy world think that the advantages of being the sole superpower far outweigh the drawbacks -- a few regional conflicts and insurgencies are a fair price to pay for eliminating the threat of global war. But Monteiro says that critics exaggerate the distinctions between the wars of today and yesteryear, and many top thinkers in the world of security policy are finding his argument persuasive. If he’s right, it means that the most optimistic version of the post-Cold War era -- a “pax Americana” in which the surviving superpower can genuinely enjoy its ascendancy -- was always illusory. In the short term, a dominant United States should expect an endless slate of violent challenges from weak powers. And in the longer term, it means that Washington shouldn’t worry too much about rising powers like China or Russia or the European Union; America might even be better off with a rival powerful enough to provide a balance. You could call it the curse of plenty: Too much power attracts countless challenges, whereas a world in which power is split among several superstates might just offer a paradoxical stability. From the 1700s until the end of World War II in 1945, an array of superpowers competed for global influence in a multipolar world, including imperial Germany and Japan, Russia, Great Britain, and after a time, the United States. The world was an unstable place, prone to wars minor and major. The Cold War era was far more stable, with only two pretenders to global power. It was, however, an age of anxiety. The threat of nuclear Armageddon hung over the world. Showdowns in Berlin and Cuba brought America and the Soviet Union to the brink, and the threat of nuclear escalation hung over every other superpower crisis. Generations of Americans and Soviets grew up practicing survival drills; for them, the nightmare scenario of thermonuclear winter was frighteningly plausible. It was also an age of violent regional conflicts. Conflagrations in Asia, Africa, and Latin America spiraled into drawn out, lethal wars, with the superpowers investing in local proxies (think of Angola and Nicaragua as well as Korea and Vietnam). On the one hand, superpower involvement often made local conflicts far deadlier and longer than they would have been otherwise. On the other, the balance between the United States and the USSR reduced the likelihood of world war and kept the fighting below the nuclear threshold. By tacit understanding, the two powers had an interest in keeping such conflicts contained. When the Soviet Union began its collapse in 1989, the United States was the last man standing, wielding a level of global dominance that had been unknown before in modern history. Policy makers and thinkers almost universally agreed that dominance would be a good thing, at least for America: It removed the threat of superpower war, and lesser powers would presumably choose to concede to American desires rather than provoke a regional war they were bound to lose. That is what the 1991 Gulf War was about: establishing the new rules of a unipolar world. Saddam Hussein invaded Kuwait, Monteiro believes, because he miscalculated what the United States was willing to accept. After meeting Saddam with overwhelming force, America expected that the rest of the world would capitulate to its demands with much less fuss. Monteiro compared the conflicts of the multipolar 18th century to those of the Cold War and current unipolar moment. What he found is that the unipolar world isn’t necessarily better than what preceded it, either for the United States or for the rest of the world. It might even be worse. “Uncertainty increases in unipolarity,” Monteiro says. “If another great power were around, we wouldn’t be able to get involved in all these wars.” In the unipolar period, a growing class of minor powers has provoked the United States, willing to engage in brinkmanship up to and including violent conflict. Look no further than Iran’s recent threats to close the Strait of Hormuz to oil shipping and to strike the American Navy. Naturally, Iran wouldn’t be able to win such a showdown. But Iran knows well that the United States wants to avoid the significant costs of a war, and might back down in a confrontation, thereby rewarding Iran’s aggressive gambits. And if (or once) Iran crosses the nuclear threshold, it will have an even greater capacity to deter the United States. During the Cold War, on the other hand, regional powers tended to rely on their patron’s nuclear umbrella rather than seeking nukes of their own, and would have had no incentive to defy the United States by developing them. Absent a rival superpower to check its reach, the United States has felt unrestrained, and at times even obligated, to intervene as a global police officer or arbiter of international norms against crimes such as genocide. Time and again in the post-Cold War age, minor countries that were supposed to meekly fall in line with American imperatives instead defied them, drawing America into conflicts in the Balkans, Somalia, Haiti, Iraq, and Afghanistan. This wasn’t what was supposed to happen: The world was supposed to be much safer for a unipolar superpower, not more costly and hazardous.

#### American primacy and challenging revisionist powers to force their decline encourages revisionary lashout – “use it or lose it” means their impacts are triggered – this is comparatively more likely than a revisionary challenge, Brands 18’

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There is, then, no disputing that rising powers can have profoundly disruptive effects. Yet such powers might not actually be the most aggressive or risk-prone type of revisionist state. After all, if a country’s position is steadily improving over time, why risk messing it all up through reckless policies that precipitate a premature showdown? Why not lay low until the geopolitical balance has become still more favorable? Why not wait until one has surpassed the reigning hegemon altogether and other countries defer to one’s wishes without a shot being fired? So while a rising revisionist power may be tempted to assert itself, it should also have good reason to avoid going for broke. Now imagine an alternative scenario. A revisionist power—perhaps an authoritarian power—has been gaining influence and ratcheting its ambitions upward. Its leaders have cultivated intense nationalism as a pillar of their domestic legitimacy; they have promised the populace that past insults will be avenged and sacrifices will be rewarded with geopolitical greatness and global prestige. Yet then the country’s potential peaks, either because it has reached its natural limit or because of some unforeseen development, and the balance of power starts to shift in unfavorable ways. It becomes clear to the country’s leadership that it may not be able to accomplish the goals it has set and fulfill the promises it has made, and that the situation will only further worsen with time. A roll of the iron dice now seems more attractive: It may be the only chance the nation has to claim geopolitical spoils before it is too late. In this scenario, it is not rising power that makes the revisionist state so dangerous, but the temptation to act before decline sets in.In this scenario, it is not rising power that makes the revisionist state so dangerous, but the temptation to act before decline sets in. In this sense, the dynamic bears a resemblance to the famous Davies J-Curve theory of revolution, wherein a populace is held to be more inclined to revolt not when it is maximally oppressed but rather when raised expectations are shown to be in vain. Obviously, rational analysis does not always prevail in world politics. Rising states can become intoxicated with their own strength; they may simply get tired of waiting to attain the status they desire; or some domestic pressure may impel leaders to act dangerously. But revisionists whose power has begun to decline, or who have hit a rogue bump in the road, may not feel that they even have the option of waiting. Consider again the outbreak of World War I. From a long-term perspective, Germany may have been a rising and increasingly confident power prior to the war, but Berlin’s decision-making in 1914 took place against the more immediate backdrop of deep pessimism caused by the fear of impending decline. In the east, Germany was menaced by the growth of Russian military power and the approaching completion of an improved railroad network that would dramatically shorten Russia’s mobilization timetable. In the west, changes in French conscription laws were rapidly enhancing the military manpower of another rival. The result, in Berlin, was mounting apprehension that Germany’s ability to fight a two-front war—the cornerstone of its military strategy—was about to collapse, and that its geopolitical aspirations were about to be crushed in a Franco-Russian-British vise. If that happened, internal frictions might become unmanageable: Nationalism and geopolitical ambition might no longer be able to dampen the shocks caused by intensifying conflicts between rival social and political groups. This is why Germany ran such enormous risks in the July 1914 crisis—by pushing Austria-Hungary to take an uncompromising position against Serbia after the assassination of Archduke Franz Ferdinand, by promising to back the Dual Monarchy come what may, by implementing the Schlieffen Plan for a knock-out blow against France despite the danger that this would bring Britain into the war. Chief of General Staff Helmuth von Moltke acknowledged the danger of a “war which will annihilate the civilization of almost the whole of Europe for decades to come,” but he and his colleagues pushed forward on grounds that Germany’s dreams of greatness would become hopeless illusions if not realized soon.4 Similar motives were at work in World War II. Hitler’s Germany had the most radical designs of any revisionist power in history, and it is inconceivable that Hitler would not have used Germany’s revived economic and military might to precipitate a major conflict at some point. Yet Hitler’s calculations about when and how to do so—namely, by invading Poland in 1939—were strongly influenced by fears of imminent decline. Due to rapid rearmament, the Germany economy was overheating by 1938-39, creating concerns that Berlin’s relative economic power would soon fade absent additional conquests. Just as importantly, German officials believed that their early rearmament and the absorption of resources from Austria and Czechoslovakia had given them a critical military advantage over other European powers, but that this advantage would fade as those countries—and the United States—began mobilizing. It had become necessary “to begin immediately,” Hitler explained to Mussolini to following year, “even at the risk of thereby precipitating the war intended by the Western powers.”5 In the same vein, the sense that the future would only be worse—that Germany had reached the apex of its power, that it must act boldly while it still could—underpinned the decision to invade the Soviet Union in June 1941. As Timothy Snyder has argued, Hitler believed that Germany had only a finite window to seize and colonize Soviet lands—thereby solving the Third Reich’s food supply problems and making it strategically invulnerable—before ongoing British resistance and America’s feared entry into the war began to undermine Berlin’s position.6 Japan, too, was likely influenced by calculations of impending decline. The Japanese empire had been steadily expanding between 1931 and 1940, advancing toward dominance in the Asia-Pacific. But what ultimately provoked the Japanese to strike at America was the realization that the possibilities for attaining that dominance were fading. American rearmament, symbolized by the Two-Ocean Navy Act of 1940, was bound to vitiate Japanese military advantages. “Anyone who has seen the auto factories in Detroit and the oil fields in Texas knows that Japan lacks the national power for a naval race with America,” warned Admiral Yamamoto Isoroku.7 Likewise, the U.S. oil embargo of 1941 had the unintended effect of convincing Japanese leaders that they had to move quickly before they lost the economic wherewithal to wage war. Imperial Japan, like Nazi Germany, was an aggressive power with enormous ambitions; but its penchant for aggression grew strongest when it started to fear those aspirations might not be realized. This history has implications for understanding great-power rivalry today. Both Russia and China have broadened their geopolitical horizons in recent years; both are often thought of as rising or resurgent powers. Yet both Russia and China face the prospect—whether immediate or more distant—that their relative strength may ebb, a phenomenon that could make these countries more aggressive rather than less. The specter of decline surely haunts Vladimir Putin. Russia has compiled an impressive record of expansion over the past decade; it has achieved a significant military overmatch vis-à-vis NATO on the alliance’s eastern flank; it has attained a degree of global influence greater than that enjoyed by any government in Moscow since the 1980s. Yet Putin cannot be confident about Russia’s long-term trajectory. After all, Russia’s economic revival from the early 2000s onward was largely a function of high energy prices; the collapse of those prices after 2014 revealed the long-term weakness of an economy that is probably destined—absent another sustained period of high energy prices—to stagnate over time. Russia is already losing ground against its rivals: Its inflation-adjusted GDP declined from 2014 through 2017, while that of the United States increased by over $1 trillion.8 And although Russia’s demographic trajectory is no longer as catastrophic as it once was, population growth will be anemic at best and negative at worst in coming decades. These trends, combined with the impact of Western economic sanctions, are beginning to upset Putin’s plans for continued military modernization: Kremlin defense spending declined, perhaps by as much as 20 percent, from 2017 to 2018, as Russia also began to cut spending on key social programs and pensions. Finally, fear of political instability is omnipresent for Russian leaders, who must deal with separatist forces in the North Caucasus as well as dissent provoked by their own repression and policy incompetence. Putin surely understands that these challenges imperil his goals of reasserting Russian dominance within the near abroad and playing a pivotal role in a more multipolar world—which is precisely what makes his statecraft so dangerous. Putin has already established a reputation as a risk-taker who uses bold strokes to compensate for Russia’s limited resource base. His method is to know what he wants and to catch stronger adversaries napping. (That tendency has only become more pronounced in recent years as Russia’s economic prosperity has faded and Putin’s domestic popularity has begun to wane.) He has argued that Russia requires authoritarian rule to be influential abroad; he has promised the Russian populace that the hardships it has endured will be rewarded by greater global stature. “Enormous sacrifices and privations on the part of our people,” he has declared, are the cost of “occupying a major place in world affairs.”9 If Putin perceives that he has only limited time to deliver on these promises, if he senses that the opportunity to redress his longstanding grievances against the West is slipping away, the effect may be to encourage still greater risk-taking. Russian risk-taking could take varied forms: more aggressive behavior in a crisis with NATO in the Baltic or Black Sea regions, perhaps aimed at discrediting NATO’s Article 5 guarantee; a more confrontational posture with respect to America and its partners in Syria or another Middle Eastern hotspot; intensified Russian efforts to disrupt U.S. and European electoral processes; more damaging cyberattacks on critical Western infrastructure; efforts to stir up additional “frozen conflicts” in the former Soviet space; a stronger propensity for escalation—perhaps involving limited use of nuclear weapons—should conflict between Moscow and Washington break out. Whatever the specifics, Washington could find itself facing a competitor with a “now-or-never” mentality—always a dangerous mindset for an authoritarian, revisionist state to have. By contrast, the Chinese leadership still seems to have a “time is on our side” mindset. Even as Beijing’s energy and assertiveness have surged, Chinese leaders have proven less risk-acceptant than their Russian counterparts. They have remained satisfied to advance China’s aims through small, incremental steps—such as island-building and coercion in the South China Sea—rather than dramatic, aggressive lunges. Yet even Chinese leaders cannot be confident that the country’s upward trajectory will continue unbroken for very much longer. In a geopolitical sense, Chinese officials must worry about whether the country’s window is opening or closing with respect to issues like Taiwan. For while China has greater military capability than ever before to pursue reunification through forcible means, Taiwanese support for peaceful unification is at rock-bottom levels, the development of a distinctive Taiwanese national identify becomes more unmistakable every year, and the political pendulum in Taipei is clearly swinging away toward greater resistance to Chinese pressure. There are also warning lights flashing—perhaps flashing in the distance, but flashing nonetheless—when it comes to the fundamentals of Chinese power. Economic growth has been broadly declining for at least a decade (although it may have ticked upward slightly last year), according to official government estimates that are almost certainly inflated. China suffers from astronomic debt levels and has seen dizzying volatility in its stock market, both of which may be precursors to bigger economic troubles ahead. The demographic problems China confronts are even more severe than Russia’s: The rapid aging of the population will strain social spending, inhibit growth, and confront Chinese leaders with sharper guns-versus-butter trade-offs. Beneath the façade of stability imposed by increasingly repressive governance, moreover, dissatisfaction with a corrupt and autocratic elite is increasing: Chinese officials stopped publicly reporting the number of “mass incidents” in 2005, but the frequency of such incidents is widely believed to be rising. If the drastic domestic security measures taken in areas such as Xinjiang and Tibet are any indication, major sections of the country seem to be seething with discontent. Add in the fact that China’s behavior is stirring greater fears not just in Washington but throughout the Asia-Pacific and beyond, and Beijing may soon find itself dealing with greater geopolitical pushback, including the development of military capabilities designed specifically to neutralize the leverage provided by China’s own build-up. As unlikely as it may seem right now, it is entirely possible that sometime in the next decade or two, Chinese leaders may have to face a future that is not so bright and shining as seems the case now. When this happens, will Beijing become more or less aggressive on the global stage? The answer may well be “more.” Xi Jinping and other Chinese leaders have been promising that the nation is on the verge of achieving national rejuvenation, that it can now take center stage in world affairs. The regime has assiduously stoked Chinese nationalism; it has staked out inflexible positions on maritime disputes and other issues; it has even begun to issue soft deadlines for reunification with Taiwan. It has done so on the assumption that the continued growth of national power will enable Beijing to make good on its pledges and back up its demands. If that assumption does not hold, if the “Chinese Dream” begins to elude its dreamers, Chinese leaders may be tempted to take more dramatic steps rather than admitting that they cannot deliver. In these circumstances, an attempt to retake Taiwan by force or coercion, to teach Japan a lesson in the East China Sea, to break Vietnamese or Filipino resistance in the South China Sea, or to rupture America’s alliance system in the Asia-Pacific would still be highly dangerous. But these initiatives might come to seem more attractive than simply remaining passive while Beijing’s relative power fades. Robert Kaplan has put it aptly: If a confident China has been pursuing a “methodical, well-developed” strategy of revisionism, an insecure China could shift to “daring, reactive, and impulsive behavior.”10 Limiting the damage done to U.S. interests by a rising China will be a test of epic dimensions for American policymakers. But the moment of peak danger in the relationship may actually come when China starts to fade from its own wishful trajectory.