**1**

**The standard is maximizing expected wellbeing. (30)**

**1] Morality originates from the physical world, not a priori knowledge.**

**Papineau 20**

[Papineau, David. “Naturalism.” Stanford Encyclopedia of Philosophy, Stanford University, 31 Mar. 2020, plato.stanford.edu/entries/naturalism/.] This card has been bracketed for tense.//AM

In the middle of the nineteenth century the conservation of kinetic plus potential energy came to be accepted as a basic principle of physics (Elkana 1974). In itself this does not rule out distinct mental or vital forces, for there is no reason why such forces should not be ‘conservative’, operating in such a way as to compensate losses of kinetic energy by gains in potential energy and vice versa. (The term ‘nervous energy’ is a relic of the widespread late nineteenth-century assumption that mental processes store up a species of potential energy that is then released in action.) However, the **conservation of energy [implies] that** any such special **forces must be governed by strict deterministic laws: if** mental or vital **forces arose spontaneously,** then **there would be nothing to ensure that they never led to energy increases.** During the course of the twentieth century received scientific opinion became even more restrictive about possible causes of physical effects, **and** ruled out any sui generis mental or vital causes, even of a law-governed and predictable kind. Detailed **physiological research**, especially **into the operation of nerve cells, gave no indication of any physical effects that cannot be explained in terms of** basic **physical forces** that also occur outside living bodies. By the middle of the twentieth century, belief in sui generis mental or vital forces had become a minority view. This led to the widespread acceptance of the doctrine now known as the “causal closure” or the “causal completeness of the physical”, according to which all physical effects have fully physical causes. This historical sequence casts light on the evolution of ontologically naturalist doctrines. In the initial seventeenth-century mechanical phase, there was a tension, as Leibniz observed, between the dominant strict mechanism and interactive dualism. However, once mechanism was replaced by a more liberal understanding of forces in the second Newtonian phase, science ceased to raise any objections to dualism and more generally to non-physical causes of physical effects. As a result, the default philosophical view was a non-naturalist interactive pluralism which recognized a wide range of fundamental non-physical influences, including spontaneous mental influences (or “determinations of the soul” as they would then have been called). In the third phase, the nineteenth-century discovery of the conservation of energy continued to allow that sui generis non-physical forces can interact with the physical world, but required that they be governed by strict force laws. Sui generis mental and vital forces were still widely accepted, but an extensive philosophical debate about the significance of the conservation of energy led to a widespread recognition that any such forces would need to be law-governed and thus amenable to scientific investigation. We might usefully view this as a species of ontological naturalism that falls short of full physicalism. **Mental and other special forces were still sui generis and non-physical, but even so they [fall] within the realm of scientific law and so could not operate spontaneously.** (As many commentators at the time recognized, this weaker form of naturalism already carried significant philosophical implications, particularly for the possibility of free will.) In the final twentieth-century phase, the acceptance of the causal closure of the physical led to full-fledged physicalism. **The causal closure [thesis implies] that, if mental and other special causes are to produce physical effects, they must themselves be physically constituted.** It thus gave rise to the strong physicalist doctrine that **anything that has physical effects must itself be physical.**

**This implies util since morals are based on empirical outcomes.**

**2] Actor spec:**

**--governments use util because they don’t have intentions and are dealing with tradeoffs and the scope of effect.**

**--takes out calc indites as they are empirically denied.**

**3] No intent foresight distinction:**

**--foreseen consequences become a part of our deliberation, making it intrinsic to our actions.**

**4] Weighing:**

**--only consequentialism explains degrees of wrongness and allows us to compare between two actions**

**5] Extinction first:**

**MacAskill**

[MacAskill, William, Oxford Philosopher and youngest tenured philosopher in the world, Normative Uncertainty, 2014]//AM

However, even if we believe in a moral view according to which human extinction would be a good thing, **we** still **have strong reason to prevent near-term human extinction**. To see this, we must note three points. **First**, we should note that the **extinction** of the human race **is an extremely high stakes moral issue.** Humanity could be around for a very long time: if humans survive as long as the median mammal species, we will last another two million years. On this estimate, **the number of humans** in existence in the future, **given that we don’t go extinct** any time soon, **would be 2×10^14.** So if it is good to bring new people into existence, then it’s very good to prevent human extinction. **Second**, human **extinction is** by its nature **an irreversible scenario**. If we continue to exist, then we always have the option of letting ourselves go extinct in the future (or, perhaps more realistically, of considerably reducing population size). But if we go extinct, then we can’t magically bring ourselves back into existence at a later date. **Third, we should expect** ourselves **to progress, morally**, over the next few centuries, as we have progressed in the past. So we should expect that **in a few centuries’ time we will have better evidence about how to evaluate human extinction than we currently have.** Given these three factors, it would be better to prevent the near-term extinction of the human race, even if we thought that the extinction of the human race would actually be a very good thing. To make this concrete, I’ll give the following simple but illustrative model. **Suppose that we [are]** have 0.8 credence that it is a bad thing to produce new people, and **0.2 certain that it’s a good thing to produce new people;** and the degree to which it is good to produce new people, if it is good, is the same as the degree to which it is bad to produce new people, if it is bad. That is, I’m supposing, for simplicity, that we know that one new life has one unit of value; we just don’t know whether that unit is positive or negative. And let’s use our estimate of 2×10^14 people who would exist in the future, if we avoid near-term human extinction. **Given our stipulated credences**, the expected benefit of letting the human race go extinct now would be (.8-.2)×(2×10^14) = 1.2×(10^14). Suppose that, if we let the human race continue and did research for 300 years, we would know for certain whether or not additional people are of positive or negative value. If so, then with the credences above we should think it 80% likely that we will find out that it is a bad thing to produce new people, and 20% likely that we will find out that it’s a good thing to produce new people. So there’s an 80% chance of a loss of 3×(10^10) (because of the delay of letting the human race go extinct), the expected value of which is 2.4×(10^10). But **there’s** also **a** **20% chance of a gain of 2×(10^14),** the expected value of which is 4×(10^13). **That is, in expected value terms, the cost of waiting for a few hundred years is vanishingly small compared with the benefit of keeping one’s options open while one gains new information.**

**Definitions:**

**Medicine: (Oxford Dictionary)**

[“Medicine.” Lexico Dictionaries | English, Lexico Dictionaries, www.lexico.com/definition/medicine.]//AM

**A** drug or other **preparation for the treatment or prevention of disease.**

**Reduce: (Oxford Dictionary)**

[“Reduce.” Lexico Dictionaries | English, Lexico Dictionaries, www.lexico.com/definition/reduce.] This card has been bracketed to add the word “or” for greater fluency.//AM

**bring** someone or **something to (a** lower or **weaker state [or] condition**, or role).

**Vaccine: (CDC)**

[“Basics of Vaccines.” Centers for Disease Control and Prevention, Centers for Disease Control and Prevention, 14 Mar. 2012, www.cdc.gov/vaccines/vpd/vpd-vac-basics.html.] “them” was replaced with “diseases” for clarity.//AM

**A vaccine stimulates your immune system to produce antibodies**, exactly like it would if you were exposed to the disease. **After getting vaccinated, you develop immunity** to that disease, without having to get the disease first. This is what makes vaccines such powerful medicine. Unlike most medicines, which treat or cure diseases, **vaccines prevent [diseases].**

**Elaboration: (if needed)**

Pharma Guidelines Novel Medical Drug Research Pharmaceutical Manufacturing Guidelines, 11 Nov. 2010, www.pharmacistspharmajournal.org/2010/11/definitions-of-drug-radioactive-drug\_11.html., “Medication.” Wikipedia, Wikimedia Foundation, 13 Aug. 2021, en.wikipedia.org/wiki/Medication., “Drug Definition US FDA Drug Approval Process.” //AM

**A medication (also referred to as medicament, medicine, pharmaceutical drug, medicinal drug or simply drug) is** a drug **used to diagnose, cure, treat, or prevent disease.**[1][2][3] Drug therapy (pharmacotherapy) is an important part of the medical field and relies on the science of pharmacology for continual advancement and on pharmacy for appropriate management. **Drugs are classified in multiple ways**. One of the key divisions is by level of control, which distinguishes **prescription drugs** (those that a pharmacist dispenses only on the order of a physician, physician assistant, or qualified nurse) from **over-the-counter drugs** (those that consumers can order for themselves). Another key distinction is between traditional **small-molecule drugs**, usually derived from chemical synthesis, and biopharmaceuticals, which **include recombinant proteins, vaccines, blood products** used therapeutically (such as IVIG), **gene therapy, monoclonal antibodies and cell therapy** (for instance, stem-cell therapies). Other ways to classify medicines are by mode of action, route of administration, biological system affected, or therapeutic effects. An elaborate and widely used classification system is the Anatomical Therapeutic Chemical Classification System (ATC system). The World Health Organization keeps a list of essential medicines.

**2**

**Plan text: The member nations of the WTO ought to reduce intellectual property protections for medicines during pandemics.**

**Young 21** [Roberta; Counsel in Seyfarth’s Litigation department and Intellectual Property and Patent Litigation practice groups in Los Angeles; Jamaica Potts-Szeliga; Partner in Seyfarth’s Litigation department and Intellectual Property and Patent Litigation practice groups in Washington, DC. She also provides advice on FDA regulatory issues and is part of the firm’s Health Care, Life Sciences, and Pharmaceuticals team; “A Third Option: Limited IP Waiver Could Solve Our Pandemic Vaccine Problems,” IP Watch Dog; 7/21/21; <https://www.ipwatchdog.com/2021/07/21/third-option-limited-ip-waiver-solve-pandemic-vaccine-problems/id=135732/>] Justin

Limited Waiver Approach

This article suggests a third option, between voluntary vaccine donation and the full IP waiver proposal, that may offer a way forward. The third proposed solution is incentivized **limited IP waivers that could encourage** (or require) private companies to engage in **licensing agreements with nations to share some**, **but not all, of the knowledge and designs covering the COVID-19 vaccines** to the developing world. The limited IP waivers could cover the minimum necessary portions of the technology to produce **basic** COVID-19 **vaccines**. The waivers could be limited in time to the **duration of the pandemic**, or another term agreed to by the WTO. The term could also be defined as ending when widespread vaccination and immunity goals are achieved. The incentive for pharmaceutical companies to support such limited IP waivers could be provided in the **form of patent term extensions for the technology covered by the limited IP waivers.**

Extensions of patent term are already known and widely used. In the U.S., patent term adjustments are **automatically added on to the patent lifespan** to account for any delays by the USPTO in the patent prosecution process. In some cases, these mechanisms may extend the patent term for years. Patent term extensions also are available for regulatory delays (35 U.S.C. § 156). In particular, patents covering, **inter alia, drug products approved by the United States Food & Drug Administration may be eligible for up to five years** of additional patent term to give back time required to complete the regulatory review process. Both patent term adjustments and patent term extensions arise from activities beyond the control of the pharmaceutical companies. A pandemic patent term extension fashioned after such known extensions could be made **used to compensate** for the current pressing global health needs.

This third proposal may be achievable at the WTO. Hurdles remain and it could be months or years before the WTO reaches an agreement on any waiver of IP protections, and years before countries build factories, gather materials, and gain the expertise to produce the vaccines. A steep hurdle is that mRNA is a new technology, with no machines or experts for hire. Nonetheless, the third solution offers hope to find a middle ground that may begin to be implemented before the end of the current pandemic and be in place for the future.

The patent term extension could be provided for countries with patent offices and could be adapted based on laws and conditions in each country. 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.

Let’s Not Repeat Past Mistakes

It’s been a century since the last pandemic devastated the globe and the only certainty is that this will not be the last pandemic. Solutions created today lay a **foundation for mitigation of the next pandemic**. It’s been said that those who refuse to learn from history are doomed to repeat it, a thought too painful to contemplate with a pandemic. The **industrial** **nations** of the world have technology that others are literally **dying** to obtain—a high price to pay. Incentivized limited IP waivers may offer a compromise to **bridge the gap between maintaining IP rights** (and thus relying on charity alone) and arbitrary compulsory licensing that could deter the technological investment to create life-saving solutions in the future.

**The plan is critical to boosting WTO legitimacy.**

**Navnit 21** [Brajendra; Ambassador and Permanent Representative of India to WTO; “Science has delivered, will the WTO deliver?” Helsinki Times; 1/18/21; <https://www.helsinkitimes.fi/columns/columns/viewpoint/18561-science-has-delivered-will-the-wto-deliver.html>] Justin

**TRIPS waiver proposal** from India, South Africa and other members

A proposal by India, South Africa and eight other countries calls on the World Trade Organisation (WTO) to **exempt member countries from enforcing some patents**, and **other Intellectual Property** (IP) rights under the **organization’s Agreement on Trade-Related Aspects of Intellectual Property Rights**, known as TRIPS, for a limited period of time.

It is to ensure that IPRs **do not restrict the rapid scaling- up of manufacturing** of COVID-19 vaccines and treatments. While a few members have raised concerns about the proposal, a large proportion of the WTO membership supports the proposal. It has also received the backing of various international organizations, multilateral agencies and global civil society.

Unprecedented times call for unorthodox measures. We saw this in the efficacy of strict lockdowns for a limited period, as a policy intervention, in curtailing the spread of the pandemic.International Monetary Fund (IMF) in its October 2020 edition of World Economic Outlook states “…However, the risk of worse growth outcomes than projected remains sizable. If the virus resurges, progress on treatments and vaccines is slower than anticipated, or countries’ access to them remains unequal, economic activity could be lower than expected, with renewed social distancing and tighter lockdowns”. The situation appears to be grimmer than predicted, we have already lost 7% of economic output from the baseline scenario projected in 2019. It translates to a loss of more than USD 6 trillion of global GDP. Even a 1% improvement in global GDP from the baseline scenario will add more than USD 800 billion in global output, offsetting the loss certainly of a much lower order to a sector of economy on account of the Waiver.

"While making the **vaccines available was a test of science**, making them **accessible and affordable is going to be a test of humanity**"

Merely a signal to ensure timely and affordable access to vaccines and treatments will work as a **big confidence booster for demand revival** in the economy. With the emergence of successful vaccines, there appears to be some hope on the horizon. But how will these be made accessible and affordable to global population? The fundamental question is whether there will be enough of Covid-19 vaccines to go around. As things stand, even the most optimistic scenarios today cannot assure access to Covid-19 vaccines and therapeutics for the majority of the population, in rich as well as poor countries, by the end of 2021. All the members of the WTO have agreed on one account that there is an urgent need to scale-up the manufacturing capacity for vaccines and therapeutics to meet the massive global needs. The TRIPS Waiver Proposal **seeks to fulfil this need by ensuring** that IP **barriers do not come in the way of such scaling up of manufacturing capacity.**

Why existing flexibilities under the TRIPS Agreement are not enough

The existing flexibilities under the TRIPS Agreement are not adequate as these were not designed keeping pandemics in mind. Compulsory licenses are issued on a country by country, case by case and product by product basis, where every jurisdiction with an IP regime would have to issue separate compulsory licenses, practically making collaboration among countries extremely onerous. While we encourage the use of TRIPS flexibilities, the same are time-consuming and cumbersome to implement. Hence, only their use cannot ensure the timely access of affordable vaccines and treatments. Similarly, we have not seen a very encouraging progress on WHO’s Covid19-Technology Access Pool or the C-TAP initiative, which encourages voluntary contribution of IP, technology and data to support the global sharing and scale-up of the manufacturing of COVID- 19 medical products. Voluntary Licenses, even where they exist, are shrouded in secrecy. Their terms and conditions are not transparent. Their scope is limited to specific amounts or for a limited subset of countries, thereby encouraging nationalism rather than true international collaboration.

Why is there a need to go beyond existing global cooperation initiatives?

Global cooperation initiatives such as the COVAX Mechanism and the ACT-Accelerator are inadequate to meet the massive global needs of 7.8 billion people. The ACT-A initiative aims to procure 2 billion doses of vaccines by the end of next year and distribute them fairly around the world. With a two-dose regime, however, this will only cover 1 billion people. That means that even if ACT-A is fully financed and successful, which is not the case presently, there would not be enough vaccines for the majority of the global population.

Past experience

During the initial few months of the current pandemic, we have seen that shelves were emptied by those who had access to masks, PPEs, sanitizers, gloves and other essential Covid-19 items even without their immediate need. The same should not happen to vaccines. Eventually, the world was able to ramp up manufacturing of Covid-19 essentials as there were no IP barriers hindering that. At present, we need the **same pooling of IP rights and know-how** for **scaling up the manufacturing of vaccines** and **treatments**, which unfortunately has not been **forthcoming**, necessitating the need for the Waiver.

It is the pandemic – an extraordinary, once in a lifetime event – that has mobilized the collaboration of multiple stakeholders. It is knowledge and skills held by scientists, researchers, public health experts and universities that have enabled the cross-country collaborations and enormous public funding that has facilitated the development of vaccines in record time – and not alone IP!

Way forward

The TRIPS waiver proposal is a targeted and proportionate response to the exceptional public health emergency that the world faces today. Such a Waiver is well-within the **provisions of Article IX of the Marrakesh Agreement which established the WTO**. It can help in ensuring that human lives are not lost for want of a timely and affordable access to vaccines. The **adoption** of the Waiver will also **re-establish WTO’s credibility and show that multilateral trading system continues to be relevant and can deliver in times of a crisis**. Now is the time for WTO members to act and **adopt the Waiver** to save lives and help in getting the economy back on the revival path quickly.

While making the vaccines available was a test of science, making them accessible and affordable is going to be a test of humanity. History should remember us for the “AAA rating” i.e. for Availability, Accessibility and Affordability of Covid19 vaccines and treatments and not for a single “A rating” for Availability only. Our future generations deserve nothing less.

**WTO cred solves wars that go nuclear.**

**Hamann 09** [Georgia; 2009; J.D. Candidate, Vanderbilt University Law School; “Replacing Slingshots with Swords: Implications of the Antigua-Gambling 22.6 Panel Report for Developing Countries and the World Trading System,” VANDERBILT JOURNAL OF TRANSNATIONAL LAW, http://www.jogoremoto.pt/docs/extra/duqJ53.pdf] Justin

Both Antigua and the U.S. claimed the resolution of the arbitration as a victory.99 In reality, the decision reached a midpoint between the respective countries’ positions, establishing a victory for the evolution of the international trading system itself. **Voluntary compliance** with **WTO rules and procedures** is of the **utmost importance to the international trading system**.100 Given the **increasingly globalized market**, **the coming years will see an increase in the importance of** the **WTO as a cohesive force** and **arbiter of disputes** that likely will become more **frequent and injurious**.101 The **work of the WTO** cannot be **overstated** in a **nuclear-armed world**, as the body continues to **promote respect** and even **amity** among **nations** with opposing **philosophical goals or modes of governance**.102 Demagogues in the Unites States may **decry the rise of China as a geopolitical threat**,103 and extremists in **Russia** **may play dangerous games of brinksmanship** with other great powers, but **trade keeps politicians’ fingers off “the button.”**104 The WTO offers an **astounding rate of compliance** for an organization with no standing army and no real power to enforce its decisions, suggesting that governments recognize **the** **value of maintaining the international construct of the WTO**.105 In order to promote voluntary compliance, the **WTO must maintain a high level of credibility.106** Nations must **perceive the WTO as the most reasonable option for dispute resolution** or **fear** that the WTO wields enough influence to enforce sanctions.107 The arbitrators charged with performing the substantive work of the WTO by negotiating, compromising, and issuing judgments are keenly aware of the responsibility they have to uphold the organization’s credibility.108

**Nuclear war causes extinction – mass starvation and ice age.**

**Starr 15** (Steven Starr 15. “Nuclear War: An Unrecognized Mass Extinction Event Waiting To Happen.” Ratical. March 2015. <https://ratical.org/radiation/NuclearExtinction/StevenStarr022815.html>) TG

A war fought with 21st century strategic nuclear weapons would be more than just a great catastrophe in human history. If we allow it to happen, such a war would be a mass extinction event that [ends human history](https://ratical.org/radiation/NuclearExtinction/StarrNuclearWinterOct09.pdf). There is a profound difference between extinction and “an unprecedented disaster,” or even “the end of civilization,” because even after such an immense catastrophe, human life would go on. But extinction, by definition, is an event of utter finality, and a nuclear war that could cause human extinction should really be considered as the ultimate criminal act. It certainly would be the crime to end all crimes. The world’s leading climatologists now tell us that nuclear war threatens our continued existence as a species. Their studies predict that a large nuclear war, especially one fought with strategic nuclear weapons, would create a post-war environment in which for many years it would be too cold and dark to even grow food. Their findings make it clear that not only humans, but most large animals and many other forms of complex life would likely vanish forever in a nuclear darkness of our own making. The environmental consequences of nuclear war would attack the ecological support systems of life at every level. Radioactive fallout produced not only by nuclear bombs, but also by the destruction of nuclear power plants and their spent fuel pools, would poison the biosphere. Millions of tons of smoke would act to [destroy Earth’s protective ozone layer](https://www2.ucar.edu/atmosnews/just-published/3995/nuclear-war-and-ultraviolet-radiation) and block most sunlight from reaching Earth’s surface, creating Ice Age weather conditions that would last for decades. Yet the political and military leaders who control nuclear weapons strictly avoid any direct public discussion of the consequences of nuclear war. They do so by arguing that nuclear weapons are not intended to be used, but only to deter. Remarkably, the leaders of the Nuclear Weapon States have chosen to ignore the authoritative, long-standing scientific research done by the climatologists, research that predicts virtually any nuclear war, fought with even a fraction of the operational and deployed nuclear arsenals, will leave the Earth essentially uninhabitable.

**3**

**A] COVID has 210 million cases, and more variants are appearing by the day. 5 million people have died as a result. (COVID Tracker)**

[“Coronavirus Cases:” Worldometer, 14 Aug. 2021, www.worldometers.info/coronavirus/?utm\_campaign=homeAdUOA%3FSi.]//AM

**Only the plan can solve covid access – inequalities heighten the risk of mutations and uneven development – neg objections miss the boat.**

**Kumar 21** [Rajeesh; Associate Fellow at the Institute, currently working on a project titled “Emerging Powers and the Future of Global Governance: India and International Institutions.” He has PhD in International Organization from Jawaharlal Nehru University, New Delhi. Prior to joining MP-IDSA in 2016, he taught at JamiaMilliaIslamia, New Delhi (2010-11& 2015-16) and University of Calicut, Kerala (2007-08). His areas of research interest are International Organizations, India and Multilateralism, Global Governance, and International Humanitarian Law. He is the co-editor of two books;Eurozone Crisis and the Future of Europe: Political Economy of Further Integration and Governance (London: Palgrave Macmillan, 2014); and Islam, Islamist Movements and Democracy in the Middle East: Challenges, Opportunities and Responses (Delhi: Global Vision Publishing, 2013); “WTO TRIPS Waiver and COVID-19 Vaccine Equity,” IDSA Issue Briefs; <https://idsa.in/issuebrief/wto-trips-waiver-covid-vaccine-rkumar-120721>]

According to Duke Global Health Innovation Center, which monitors COVID-19 vaccine purchases, **rich nations representing** just 14 per cent of the world population have bought up to **53 per cent of the most promising vaccines** so far. As of 4 July 2021, the **high-income countries** (HICs) purchased more than half (6.16 billion) vaccine doses sold globally. At the same time, the low-income countries (**LICs**) received only 0.3 per cent of the vaccines produced. The low and middle-income countries (LMICs), which account for **81 per cent of the global adult population**, purchased **33 per cent**, and COVAX (COVID-19 Vaccines Global Access) has received 13 per cent.10 Many HICs bought enough doses to vaccinate their populations several times over. For instance, Canada procured 10.45 doses per person, while the UK, EU and the US procured 8.18, 6.89, and 4.60 doses per inhabitant, respectively.11

Consequently, there is a **significant disparity between HICs and LICs** in vaccine administration as well. As of 8 July 2021, **3.32 billion vaccine doses had been administered globally**.12 Nonetheless, only **one per cent** of people in LICs have been given at least **one dose**. While in HICs almost one in four people have received the vaccine, in LICs, it is one in more than 500. The World Health Organization (WHO) notes that about 90 per cent of African countries will miss the September target to vaccinate at least 10 per cent of their populations as a third wave looms on the continent.13 South Africa, the most affected African country, for instance, has vaccinated less than two per cent of its population of about 59 million. This is in contrast with the US where almost 47.5 per cent of the population of more than 330 million has been fully vaccinated. In Sub-Saharan Africa, **vaccine rollout remains the slowest in the world**. According to the International Monetary Fund (IMF), at current rates, by the end of 2021, a massive **global inequity** will continue to exist, with Africa still **experiencing meagre vaccination** rates while other parts of the world move much closer to complete vaccination.14

This vaccine inequity is not only **morally indefensible** but also **clinically counter-productive**. If this situation prevails, LICs could be **waiting until 2025 for vaccinating** half of their people. Allowing most of the world’s population to go unvaccinated will also spawn **new virus mutations**, more **contagious viruses** leading to a steep rise in COVID-19 cases. Such a scenario could cause twice as many deaths as against distributing them globally, on a priority basis. Preventing this humanitarian catastrophe requires removing all barriers to the production and distribution of vaccines. TRIPS is one such barrier that prevents vaccine production in LMICs and hence its equitable distribution.

TRIPS: **Barrier to Equitable Health Care Access**

The opponents of the waiver proposal argue that IPR are not a significant barrier to equitable access to health care, and existing TRIPS flexibilities are sufficient to address the COVID-19 pandemic. However, **history suggests the contrary**. For instance, when South Africa passed the Medicines and Related Substances Act of 1997 to address the HIV/AIDS public health crisis, nearly **40 of world’s largest and influential pharma companies took the South African government to court over the violation of TRIPS**. The Act, which invoked the compulsory licensing provision, allowed South Africa to produce affordable generic drugs.15 The Big Pharma also lobbied developed countries, particularly the US, to put bilateral **trade sanctions against South Africa**.16

Similarly, when Indian company Cipla decided to provide generic antiretrovirals (ARVs) to the African market at a lower cost, Big Pharma retaliated through **patent litigations in Indian and international trade courts and branded Indian drug companies as thieves**.17 Another instance was when Swiss company Roche initiated patent infringement proceedings against Cipla’s decision to launch a generic version of cancer drug, “erlotinib”. Though the Delhi High Court initially dismissed Roche's appeal by citing “public interest” and “affordability of medicines,” the continued to pressure the generic pharma companies over IPR. 18 Likewise, Pfizer’s aggressive patenting strategy prevented South Korea in developing pneumonia vaccines for children.19

A recent document by Médecins Sans Frontières (MSF), or Doctors Without Borders, highlights various instances of how IP **hinders manufacturing and supply of diagnostics, medical equipment**, **treatments** and **vaccines** during the COVID-19 pandemic. For instance, during the peak of the COVID-19 first wave in Europe, Roche rejected a request from the Netherlands to release the recipe of key chemical reagents needed to increase the production of diagnostic kits. Another example was patent holders threatening producers of 3D printing ventilators with patent infringement lawsuits in Italy.20 The MSF also found that patents pose a severe threat to access to affordable versions of newer vaccines.21

The opponents of the TRIPS waiver also argue that IP is the **incentive for innovation and if it is undermined**, future innovation will **suffer**. However, most of the COVID-19 **medical innovations**, particularly vaccines, are developed with **public financing assistance**. Governments spent billions of dollars for COVID-19 vaccine research. Notably, out of $6.1 billion in investment tracked up to July 2021, 98.12 per cent was public funding.22 The US and Germany are the largest investors in vaccine R&D with $2.2 billion and $1.5 billion funding.

Private companies received 94.6 per cent of this funding; Moderna received the highest $956.3 million and Janssen $910.6 million. Moreover, governments also invested $50.9 billion for advance purchase agreements (APAs) as an incentive for vaccine development. A recent IMF working paper also notes that public research institutions were a key driver of the COVID-19 R&D effort—accounting for 70 per cent of all COVID-19 clinical trials globally.23 The argument is that vaccines are developed with the support of substantial public financing, hence there is a public right to the scientific achievements. Moreover, private companies reaped billions in profits from COVID-19 vaccines.

One could argue that since the US, Germany and other HICs are spending money, their citizens are entitled to get vaccines first, hence vaccine nationalism is morally defensible. Nonetheless, it is not the case. The TRIPS Agreement includes several provisions which mandates promotion of technology transfer from developed countries to LDCs. For instance, Article 7 states that "the protection and enforcement of IP rights should contribute to the promotion of technological innovation and the transfer and dissemination of technology, to the mutual advantage of producers and users of technical knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations."24 Similarly, Article 66.2 also mandates the developed countries to transfer technologies to LDCs to enable them to create a sound and viable technological base. The LMICs opened their markets and amended domestic patent laws favouring developing countries’ products against this promise of technology transfer.

Another argument against the proposed TRIPS waiver is that a waiver would not increase the manufacturing of COVID-19 vaccines. Indeed, one of the **significant factors contributing to vaccine inequity** is the **lack of manufacturing capacity** in the global south. Further, a TRIPS waiver will not automatically translate into improved manufacturing capacity. However, a waiver would be the first but essential step to **increase manufacturing capacity** worldwide. For instance, to **export COVID-19 vaccine-related products**, countries need to ensure that there are no IP restrictions at both ends – exporting and importing. The market for vaccine materials includes consumables, single-use reactors bags, filters, culture media, and vaccine ingredients. Export blockages on raw materials, equipment and finished products harm the overall output of the vaccine supply chain. If there is no TRIPS restriction, more governments and companies will invest in **repurposing their facilities.**

Similarly, the arguments such as that **no other manufacturers can carry out the complex manufacturing** **process** of COVID-19 vaccines and generic manufacturing as that would jeopardise quality, have also been proven **wrong** in the past. For instance, in the early 1990s, when Indian company Shantha Biotechnics approached a Western firm for a technology transfer of Hepatitis B vaccine, the firm responded that “India cannot afford such high technology vaccines… And even if you can afford to buy the technology, your scientists cannot understand recombinant technology in the least.”25 Later, Shantha Biotechnics **developed its own vaccine at $1 per dose**, and the UNICEF (United Nations Children’s Emergency Fund) mass inoculation programme uses this vaccine against Hepatitis B. In 2009, Shantha sold over 120 million doses of vaccines globally.

India also produces **high-quality generic drugs for HIV/AIDS and cancer treatment** and markets them across the globe. Now, a couple of Indian companies are in the **last stage of producing mRNA** (Messenger RNA) vaccines.26 Similarly, Bangladesh and Indonesia claimed that they could **manufacture millions of COVID-19 vaccine doses a year** if pharmaceutical companies share the know-how.27 Recently, Vietnam also said that the country could **satisfy COVID-19 vaccine production** requirements once it obtains vaccine patents.28 Countries like the United Arab Emirates (UAE), Turkey, Cuba, Brazil, Argentina and South Korea have the capacity to produce high-quality vaccines but lack technologies and know-how. However, Africa, Egypt, Morocco, Senegal, South Africa and Tunisia have limited manufacturing capacities, which could also produce COVID-19 vaccines after repurposing.

Moreover, COVID-19 vaccine IPR runs **across the entire value chain** – vaccine development, production, use, etc. A mere patent waiver may not be enough to address the issues related to its production and distribution. What is more important here is to share the technical **know-how and information** such as trade secrets. Therefore, the existing TRIPS flexibilities, such as **compulsory and voluntary licensing, are insufficient** to address this crisis. Further, compulsory licensing and the domestic legal procedures it requires is cumbersome and not expedient in a public health crisis like the COVID-19 pandemic.

India’s Role in Ensuring Vaccine Equity India's response to COVID-19 at the global level was primarily two-fold. First, its proactive engagements in the regional and international platforms. Second, its policies and programmes to provide therapeutics and vaccines to the world. Since the beginning of the COVID-19 pandemic, India has been advocating international cooperation and policy coordination in fighting it. For instance, in April 2020, India co-sponsored a UN resolution that called for fair and equitable access to essential medical supplies and future vaccines to COVID-19. Later, in October 2020, India also put pressure on developed countries with a joint WTO proposal for TRIPS waiver. India’s Vaccine Maitri initiative also aims vaccine equity. As of 29 May 2021, India has supplied 663.698 lakh doses of COVID-19 vaccines to 95 countries. It includes 107.15 lakh doses as a gift to more than 45 countries, 357.92 lakh doses by commercial sales, and 198.628 lakh doses to the COVAX facility.29 The COVAX initiative aims to ensure rapid and equitable access to COVID-19 vaccines for all countries, regardless of their income level. India has decided to supply 10 million doses of the vaccine to Africa and one million to the UN health workers under the COVAX facility. India has also removed the IPR of Covaxin that would help platforms like C-TAP once WHO and developed countries’ regulatory bodies approve the vaccine. If agreed, the waiver would benefit India in many ways. First, more vaccines will help the country to control the pandemic and its recurring waves. Second, it will be a boost to India's pharma industry, particularly the generic medicine industry. According to the Biotechnology Innovation Organization, 834 unique active compounds are involved in the current R&D of COVID-19 therapeutics, vaccines, and diagnostics. It means that thousands of new patents are awaited, and that will hinder India's ability to produce COVID-19 related medical products. Only through a waiver, this challenge can be addressed. Similarly, scientists note that mRNA is the future of vaccine technology. However, manufacturing mRNA vaccines involves complex processes and procedures. Only a very few Indian manufacturers have access to this technology; however, that too is limited. Once Indian companies have access to mRNA technology, it will help country’s generic medicine industry and boost India’s economy. Therefore, even if the WTO agrees on a waiver for a period shorter than proposed, India should accept it. In addition, mRNA vaccines can be produced in lesser time compared to the traditional vaccines. While traditional vaccines’ production takes four to five months, mRNA needs only six to eight weeks. Access to this technology will be vital for India in expediting the fight against COVID-19 and future pandemics. Finally, a waiver may strengthen India's diplomatic soft power. At present, what hinders India's Vaccine Maitri initiative is the scarcity of vaccines at home. On the other hand, China is increasing its standing in Africa, South America and the Pacific through vaccine diplomacy. The WHO approval of the Chinese vaccines and lack of access to vaccines by most developing countries, opens up huge space for China to do its vaccine diplomacy. Here, India should convince its Quad partners, particularly Australia and Japan, who oppose the waiver that vaccine production in developing countries through TRIPS waiver will enable the grouping to deliver its pledged billion doses of COVID-19 vaccine in the Indo-Pacific region. In short, the proposed waiver, if agreed, will help India in addressing the public health crisis by producing more vaccines and distributing them at home; economically, by boosting its generic pharmaceutical industry, and diplomatically, providing vaccines to the developing and least-developed countries. Therefore, India should use all available means and methods, from trade-offs to pressurising, to make the waiver happen.

**It’s try or die—**

**Sloan ‘21**

Sloan 21 (David Sloan is a writer for DW, Vaccine inequities are hindering COVID-19 response, 12,04,21,<https://www.dw.com/en/vaccine-inequities-are-hindering-covid-19-response/a-57166872>)//AM

Global leaders warned at a World Bank–IMF meeting that **the lack of access to vaccines in the developing world and low-income nations would not just** [**exacerbate global financial and health inequalities**](https://www.dw.com/en/coronavirus-eu-not-ready-to-share-covid-vaccines-with-poorer-countries/a-56944274) **but would hinder progress already made in fighting the COVID-19 pandemic. Months before the vaccines were made available to the general public, wealthier nations were able to secure millions of doses of the COVID-19 vaccine** — this has not been the case for the rest of the world. The United States in mid-August was able to secure and preorder around 800 million doses of vaccines prior to development and the United Kingdom was able to purchase around 340 million doses. As of April, over 700 million doses have been distributed, but with most of those coming from North America and Europe."Since the pandemic started, the solidarity and national unity have been not as good as one would desire," Tedros Adhanom Ghebreyesus, WHO director-general said at the World Bank Group Spring meeting. "**Sharing and supporting each other is not charity." The lopsided distribution has been a cause for concern for global leaders as they try to expand distribution while aspiring to meet high demand, overcome logistical challenges and build trust with local communities. Some countries might have to wait months and even years before their entire population will be inoculated**. There are concerns that the **wealthier nations have monopolized vaccines, leaving lower income nations scrambling.** There is collective fear that **without adequate vaccine distribution, the variants will grow and mutate, curbing the progress that has been made since the vaccine has been made available."The virus will get a space to continue to spread and mutate, then you'll have more variants,"** said Tedros. **"Even those countries which have high average of vaccines will not be secure." The worry is that the vaccines will be rendered useless against the new variants and stall global efforts.**

**Failure to contain COVID-19 causes extinction**

Guy R. **McPherson, PhD, 20** [PhD Range Science, Professor Emeritus, University of Arizona School of Natural Resources and Department of Ecology & Evolutionary Biology], “Will COVID-19 Trigger Extinction of All Life on Earth?” Eart & Envi Scie Res & Rev, Volume 3 Issue 2, 4-8-2020, <https://opastonline.com/wp-content/uploads/2020/04/will-covid-19-trigger-extinction-of-all-life-on-earth-eesrr-20-.pdf>

Small lives matter. Indeed, the “human body contains about 100 trillion cells, but only maybe one in 10 of those cells is actually — human” [1]. We are comprised of bacteria and other tiny living organisms, as well as non-living entities such as viruses. One such virus has captured the attention of the world, and with good reason. **The novel coronavirus could trigger extinction of humans, and therefore the extinction of all life on Earth**. I frequently hear and read that COVID-19 is a nefarious attempt by the so-called “elite” among us to depopulate the burgeoning human population on Earth. Other conspiracy theories abound, including COVID-19 as an attempt to further reduce human rights, promote expensive medical therapies, and otherwise enrich the wealthy at the expense of the bamboozled masses. I do not doubt the ability of the informed wealthy to fleece the ignorant masses. Nor do I doubt the ability of the informed wealthy to turn virtually any situation into an opportunity for monetary gain. A quick glance at the past two centuries provides plenty of examples. However, I doubt the monetarily wealthy among us are interested in accelerating human extinction, even for financial gain. As I explain below, **the ongoing reduction in industrial activity as a result of COVID-19 almost certainly leads to loss of habitat for human animals, hence putting us on the fast track to human extinction**. I doubt the knowledgeable “elite” are interested in altering the sweet deal they are experiencing with the current set of living arrangements. The aerosol masking effect, or global dimming, has been described in the peer-reviewed literature since at least 1929 [2, 3]. **Coincident with industrial activity adding to greenhouse gases that warm the planet, industrial activity simultaneously cools the planet by adding aerosols to the atmosphere. These aerosols block incoming sunlight, thereby keeping cool our pale blue dot. Reducing industrial activity by as little as 35 percent is expected to cause a global-average temperature rise of 1 degree Celsius within a few weeks**, according to research on the aerosol masking effect [4]. Such research was deemed collectively too conservative by a paper in the 17 January 2019 issue of Science [5]. As pointed out by the lead author of the latter paper on 22 January 2019 “Global efforts to improve air quality by developing cleaner fuels and burning less coal could end up harming our planet by reducing the number of aerosols in the atmosphere, and by doing so, diminishing aerosols’ cooling ability to offset global warming” [6]. The cooling effect is “nearly twice what scientists previously thought,” and the paper by Rosenfeld et al. [5] cites the conclusion by Levy et al. [4], indicating as little as 35% reduction in industrial activity drives a 1 C global-average rise in temperature, thereby suggesting that as little as a 20% reduction in industrial activity will drive a 1 C spike in temperature within a few weeks [7]. Additional, recent support for the importance of the aerosol masking effect comes from [8, 9]. Furthermore, loss of aerosols exacerbates heat waves [10]. Human extinction might have been triggered several years ago when the global-average temperature of Earth exceeded 1.5 C above the 1750 baseline. According to a comprehensive overview published by European Strategy and Policy Analysis System in April, an “increase of 1.5 degrees is the maximum the planet can tolerate; … at worst, [such a rise in temperature above the 1750 baseline will cause] the extinction of humankind altogether” [11, 12]. Earth’s global-average temperature hit 1.73 C above the 1750 baseline by April, 2018 the highest global-average temperature experienced by Homo sapiens on Earth [13, 14]. By 13 March 2020, 2 C above the 1750 baseline was crossed [11]. In other words, human extinction via the death-by-a-thousandcuts route might be locked in with no further heating of Earth. In light of the ongoing pandemic, the ongoing Mass Extinction Event, and abrupt, irreversible climate change, it is pleasantly surprising that humans still occupy Earth. The pandemic-induced reduction in industrial activity may have already reduced the aerosol masking effect sufficiently to trigger a 1 C temperature spike. The outcome is not yet obvious because the timing of the outbreak of the novel coronavirus was favorable for human habitat. Trees produced leaves in the Northern Hemisphere spring of 2020 as a result of carbohydrates stored the previous year and grain crops were harvested before the novel coronavirus emerged. Results of the recent and ongoing rise in temperature, which have already been reported in China and India, will become obvious to most humans when many more trees die. Large-scale die-off of trees likely will approximately correspond with catastrophic crop failure. This might occur by the end of this year, although I would rather it not. **Every civilization requires bread and circuses**. There is little doubt **the circuses attendant to industrial civilization will continue until the end of the planetary show for Homo sapiens. Bread, however, requires wheat. Wheat production requires a delicate balance of growing conditions that, like habitat for humans, teeters on the brink** [15]. **The path to near-term human extinction thus runs from a tiny virus underlying a pandemic through a reduction of industrial activity that overheats a planet already running a fever**. **The outbreak of COVID-19 could very well be the event that accelerates human extinction via reduction of industrial activity, hence loss of habitat for Homo sapiens. As a result of the rapid environmental change likely to follow, we are almost certain to lose all life on Earth** [16]. History is replete with examples of human hubris. We thought we were mighty, and we certainly have left our mark on Earth. **How embarrassing for the big-brained human species that a microscopic virus could pull the trigger on our extinction** [15].

**Scale-up for covid.**

**Erfani et al 21** [Parsa; Lawrence Gostin; Vanessa Kerry; Parsa Erfani is a Fogarty Global Health Scholar at Harvard Medical School and the University of Global Health Equity. Lawrence Gostin is a professor at Georgetown University Law Center, director of the school’s O’Neill Institute for National and Global Health Law, and director of the World Health Organization Center on National and Global Health Law. Vanessa Kerry is a critical care physician at Massachusetts General Hospital, director of the Program for Global Public Policy at Harvard Medical School, and CEO of Seed Global Health, a nonprofit that trains health workers in countries with critical shortages; “Beyond a symbolic gesture: What’s needed to turn the IP waiver into Covid-19 vaccines,” STAT; 5/19/21; <https://www.statnews.com/2021/05/19/beyond-a-symbolic-gesture-whats-needed-to-turn-the-ip-waiver-into-covid-19-vaccines/>]

Currently many idle suppliers **can’t begin vaccine production** until they upgrade and **repurpose existing manufacturing capacity** for new technology. Opponents often argue that **this step is the true barrier to rapid scale-up**. One high-profile detractor, BIO President and CEO Michelle McMurry-Heath, argues that “handing [needy countries] the blueprint to construct a kitchen that — in optimal conditions — can take a year to build will not help us stop the emergence of dangerous new Covid variants.”

This argument **ignores two core truths**: In many cases, **manufacturing capacity needs only repurposing which can take mere months**. And Covid-19, at the current global response and vaccination rates, will be a threat for years.

Both truths suggest that we **pass the blueprint and build the kitchen.**

Facilitating structures to transfer technology and capacity are **already in place**. The WHO launched the **mRNA technology transfer hub model** last month to provide manufacturers in low- and middle-income countries with the **financial, training, and logistical support needed** to scale up vaccine manufacturing capacity. Scores of manufacturers in these countries have already **expressed interest**. This initiative, however, requires recipient manufacturers to acquire **the IP necessary for mRNA technologies— which is currently missing.**

**Corona escalates security threats that cause extinction – cooperation thesis is wrong.**

**Recna 21** [Research Center for Nuclear Weapon Abolition; Nagasaki, Japan; “Pandemic Futures and Nuclear Weapon Risks: The Nagasaki 75th Anniversary pandemic-nuclear nexus scenarios final report,” Journal for Peace and Nuclear Disarmament; 5/28/21; <https://www.tandfonline.com/doi/full/10.1080/25751654.2021.1890867>]

The Challenge: **Multiple Existential Threats**

The relationship between pandemics and war is as long as human history. Past pandemics have **set the scene for wars** by **weakening societies**, undermining **resilience**, and **exacerbating civil and inter-state conflict**. Other disease outbreaks have erupted during wars, in part due to the appalling public health and battlefield conditions resulting from war, in turn sowing the seeds for new conflicts. In the post-Cold War era, pandemics have spread with unprecedented speed due to increased mobility created by globalization, especially between urbanized areas. Although there are positive signs that scientific advances and rapid innovation can help us manage pandemics, it is likely that deadly infectious viruses will be a challenge for years to come.

The COVID-19 is the most **demonic pandemic threat in modern history**. It has erupted at a juncture of other existential global threats, most importantly, accelerating climate change and resurgent nuclear threat-making. The most important issue, therefore, is how the coronavirus (and future pandemics) will **increase or decrease the risks associated with these twin threats, climate change effects, and the next use of nuclear weapons in war.5**

Today, the nine **nuclear weapons arsenals** not only can **annihilate hundreds of cities**, but also cause **nuclear winter and mass starvation** of a billion or more people, if not the **entire human species**. Concurrently, climate change is **enveloping the planet with more frequent** and **intense storms**, accelerating **sea level rise**, and advancing **rapid ecological change**, expressed in **unprecedented forest fires** across the world. Already **stretched** to a breaking point in many countries, the current pandemic may overcome resilience to the point of near or **actual collapse of social, economic, and political order.**

In this extraordinary moment, it is timely to **reflect** on the existence and **possible uses of weapons of mass destruction under pandemic conditions** – most importantly, **nuclear weapons**, but also **chemical** and **biological** weapons. Moments of **extreme crisis and vulnerability** can prompt **aggressive** and counterintuitive **actions** that in turn may destabilize already precariously balanced threat systems, underpinned by conventional and nuclear weapons, as well as the threat of weaponized **chemical and biological technologies**. Consequently, the **risk of the use of weapons of mass destruction** (WMD), estrspecially nuclear weapons, **increases** at such times, possibly sharply.

The COVID-19 pandemic is **clearly driving massive, rapid, and unpredictable changes** that will **redefine every aspect of the human condition**, including **WMD** – just as the world wars of the first half of the 20th century led to a revolution in international affairs and entirely new ways of organizing societies, economies, and international relations, in part based on nuclear weapons and their threatened use. In a world **reshaped by pandemics**, **nuclear weapons** – as well as correlated **non-nuclear WMD**, **nuclear alliances**, **“deterrence” doctrines**, operational and **declaratory policies**, nuclear **extended deterrence**, organizational practices, and the **existential risks** posed by retaining these capabilities – are all up for redefinition.

A pandemic has potential to **destabilize a nuclear-prone conflict by incapacitating** the supreme nuclear commander or **commanders** who have to **issue nuclear strike orders**, creating uncertainty as to who is in charge, how to handle nuclear mistakes (such as errors, accidents, technological failures, and entanglement with conventional operations gone awry), and opening a brief opportunity for a first strike at a time when the COVID-infected state may not be able to retaliate efficiently – or at all – due to leadership confusion. In some nuclear-laden conflicts, a state might use a pandemic as a cover for political or military provocations in the belief that the adversary is distracted and partly disabled by the pandemic, increasing the risk of war in a nuclear-prone conflict. At the same time, a pandemic may lead nuclear armed states to increase the isolation and sanctions against a nuclear adversary, making it even harder to stop the spread of the disease, in turn creating a pandemic reservoir and transmission risk back to the nuclear armed state or its allies.

In principle, the common threat of the pandemic might induce nuclear-armed states to reduce the tension in a nuclear-prone conflict and thereby the risk of nuclear war. It may cause nuclear adversaries or their umbrella states to seek to resolve conflicts in a cooperative and collaborative manner by creating habits of communication, engagement, and mutual learning that come into play in the nuclear-military sphere. For example, militaries may cooperate to control pandemic transmission, including by working together against criminal-terrorist non-state actors that are trafficking people or by joining forces to ensure that a new pathogen is not developed as a bioweapon.

To date, however, the COVID-19 pandemic has increased the isolation of some nuclear-armed states and provided a textbook case of the **failure of states to cooperate to overcome the pandemic**. Borders have slammed shut, trade shut down, and budgets blown out, creating enormous pressure to focus on immediate domestic priorities. Foreign policies have become markedly more nationalistic. Dependence on **nuclear weapons may increase as states seek to buttress a global re-spatialization6** of all dimensions of human interaction at all levels to manage pandemics. The effect of nuclear threats on leaders may make it less likely – or even impossible – to achieve the kind of concert at a global level needed to respond to and administer an effective vaccine, making it harder and even impossible to revert to pre-pandemic international relations. The result is that some states may **proliferate** their own nuclear weapons, further reinforcing the spiral of conflicts contained by nuclear threat, with **cascading effects on the risk of nuclear war.**

**4**

**Independently strategic patenting harms innovation incentives during pandemics – encourages reproduction of generics and decrease breakthroughs.**

**Gurgula 20** [Olga; Lecturer in Intellectual Property Law at Brunel Law School, Brunel University London. She is also a Visiting Fellow at the Oxford Martin Programme on Affordable Medicines, University of Oxford; “Strategic Patenting by Pharmaceutical Companies – Should Competition Law Intervene?” Springer Link; 10/28/20; <https://link.springer.com/article/10.1007/s40319-020-00985-0#Sec4>]

As the COVID-19 pandemic is sweeping through the world, thousands of people urgently need access to affordable medicines. Based on **past experience of treatments for other life-threatening diseases**, there is a fear that access to any **vaccines** and **treatment** that may be **developed** in the **future** will be **affected by patents**, leading to unaffordably high prices. However, the problem of high drug prices is not new. It had been inflating healthcare budgets and posing a serious risk to the affordability and accessibility of medicines for society well before the pandemic.Footnote3 This problem is further **exacerbated** by the fact that, despite the **alleged surge in investments** into pharmaceutical R&D, **current statistics** indicate that the **number** of new **breakthrough medicines is decreasing**.Footnote4 On the other hand, the number of drugs that contain modifications of existing medicines is growing, demonstrating that pharmaceutical companies have been increasingly focusing their research on **incremental drug development**, rather than on breakthrough innovation.Footnote5 Various reasons for high drug prices and the growing focus on incremental innovation are put forward by pharmaceutical companies, including the complexity of drug discovery and development, as well as the expensive and lengthy regulatory procedures involved.Footnote6 While these reasons play an important role in this regard, some practices by pharmaceutical companies substantially contribute to this problem.Footnote7 In particular, **pharmaceutical companies** have been increasingly **engaging in strategic patenting to delay or even block generic competition**.Footnote8 These practices attracted the attention of the European Commission, which discussed them more than a decade ago in its 2009 Pharmaceutical Sector Inquiry Report.Footnote9 The Commission identified a series of patent strategies which it described as aiming “to extend the breadth and duration of [originators’] patent protection”Footnote10 and “to delay or block the market entry of generic medicine”.Footnote11 Such findings have fuelled debates as to whether these strategies may be deemed unlawful and violate EU competition rules, while also being justifiable business practices under patent law. Until today, no agreement has been reached either on the legality of these practices, or on an efficient legal tool to assess them. As a result, despite there being solid evidence that such strategies may block generic competition, allowing originators to maintain artificially high drug prices and preventing patients from accessing cheaper generics, they remain outside the ambit of the Commission’s activities. Instead, the Commission has been focusing on more straightforward patent-related practices, such as reverse payment agreements. This article argues that strategic patenting by pharmaceutical companies requires a long-overdue intervention by competition authorities. It aims to attract their attention to the harmful effects of strategic patenting. Specifically, it will contest the argument traditionally put forward by originator pharmaceutical companies that the intervention of competition law into patenting practices will reduce their incentives to innovate. The paper will argue to the contrary that, along with a more immediate negative effect in the form of high drug prices that is widely explored in the literature,Footnote12 strategic patenting also affects **dynamic competition by stifling innovation**. Importantly, it will be explained that the assessment of the **effect of this practice** should **focus** not only on innovation by originators, but should also **take a wider market perspective by assessing** its effect on follow-on innovation by generic companies. The latter argument is often overlooked. The paper will outline the current approach to strategic patenting that considers this practice lawful, and will provide arguments for the intervention of competition law. This, in turn, will open the **possibility for competition authorities to investigate this practice in order to prevent its harmful effect on innovation** and **consumer welfare**. Moreover, while patent law may provide certain mechanisms to deal with strategic patenting, such as raising the bar for patentability of pharmaceutical follow-on inventions,Footnote13 these tools may not be effective in all cases. Therefore, as will be explained further, competition law may be a more suitable tool to address the negative effects of strategic patenting.Footnote14 The article will be organised as follows. It will first discuss the complex structure of the pharmaceutical industry, focusing on its key players for the purpose of this article: originators and generic companies. It will further explore patenting practices employed by pharmaceutical companies and will define the notion of strategic patenting. The article will then argue that the latter strategy is against the rationale of patent and competition laws, as it stifles competition by impairing incentives to innovate of both originators and generic companies. Finally, it will discuss the current approach to strategic patenting that considers this practice lawful, and will argue that it should be subject to scrutiny under the rules of competition law, to address its negative effects. Pharmaceutical Innovation and Generic Competition in the Pharmaceutical Industry The pharmaceutical industry is unique in its complexity. It is characterised by heavy state regulation and, sometimes, by the competing interests of the pharmaceutical business and society. It also involves multiple actors, including originators,Footnote15 marketing authorisation bodies, generic companies,Footnote16 doctors, pharmacies and patients. Each of them plays their part in the lengthy and complicated process of transforming a chemical compound into an effective and affordable medicine, which is then prescribed, dispensed and consumed. In these complex relationships, the two key players have crucial roles. On the one hand, originators play an important role in developing new and improved medicines for the benefit of society. On the other hand, generic companies benefit society by supplying cheaper equivalents of the originators’ medicines, which leads to the reduction of drug prices and facilitates access to affordable medicines. When the interests of these two players are kept in balance, benefits are maximised for society, which receives innovative and improved medicines, as well as timely access to generic drugs. However, if the balance swings towards one of the players, then society loses out, as there will be insufficient access to either innovative or affordable medicines. Therefore, both pharmaceutical innovation and generic competition must be duly incentivised and protected. Moreover, these two elements of the pharmaceutical industry are constantly interacting and have a profound impact on each other. In particular, pharmaceutical innovation is the backbone of the pharmaceutical industry, in which originators play an important role. The process of drug development is long and complicated, requires significant investments, and bears considerable commercial risks.Footnote17 It is also highly regulated, including, among other things, the requirement for originators to obtain a special authorisation from a designated state authority to market a drug. Such marketing authorisations are granted to the originators only if they can prove that the drug is safe and effective, which typically requires lengthy and expensive clinical trials.Footnote18 In order to protect these significant efforts and investments, pharmaceutical companies rely heavily on the exclusivity granted by intellectual property rights, and in particular, patents.Footnote19 Patents provide a 20-year monopoly right, during which a pharmaceutical company enjoys market exclusivity and can charge a monopoly price for its products. Originators argue that strong patent protection is essential in order to recoup investments, as well as to incentivise them to engage in further innovation.Footnote20 Once such patent protection expires, however, other companies may develop generics of a branded drug, and start competing with the originator for the market. This is called generic competition. Generic drugs are bioequivalent versions of a branded drug that has lost its patent protection.Footnote21 It is estimated that the generic entry typically leads to, on average, an 80 per cent market share loss and a 20–30 per cent reduction of a drug price, with further price decreases with each additional generic entrant, leading, in some instances, to a fall in price of up to 90 per cent.Footnote22 A representative example of the effect of generic competition on the originators’ drug prices is the significant decrease in price and dramatic loss of profits by Eli Lilly. The expiration of a patent protecting its blockbusterFootnote23 antidepressant Prozac in 2001 resulted in a loss of almost 70 per cent of its market and $2.4 billion in annual U.S. sales.Footnote24 This effect of generic competition is beneficial for society, as it reduces the financial pressure on healthcare budgets and increases the accessibility of drugs. Patenting Practices by Pharmaceutical Companies As was mentioned above, generic competition is prevented during the life of a patent protecting an active compound of a drug (a so-called “basic” or “primary” patent).Footnote25 Such a basic patent covers an active ingredient itself and, therefore, provides the strongest protection for the product. Therefore, generic competition normally starts only after the basic patent expires, or if a generic company succeeds in invalidating it. While in the past pharmaceutical companies **mainly protected their products** with a single patent covering an active compound,Footnote26 they now increasingly seek **additional patent protection** on various aspects of a drugFootnote27 in order to protect their market position.Footnote28 Such additional patents are often called secondary patents.Footnote29 A pharmaceutical company may want to obtain secondary patents, which protect such aspects of a drug as, for example, its process of manufacture, formulation and/or specific form, etc. Therefore, even after the basic patent protecting an active compound expires, a **drug may still be protected by other secondary patents.** This may **result in the extension of the scope and length of the protection of a product**, especially if secondary **patents have a later expiration date** than a basic patent.Footnote30 This, in particular, may occur if, for example, the process of producing an active compound disclosed in the basic patent is sufficient only for reproducing this compound in a laboratory, but it is unsuitable for producing it on a large commercial scale.Footnote31 If the originator was able to secure a secondary patent that protects such a large scale manufacturing process, it would **prevent generics from using this process for producing their generic versions** of a drug; otherwise they would **risk infringing this secondary patent**.Footnote32 However, a unique feature of pharmaceuticals is that an active ingredient can be manufactured using **different methods and processes**, can exist in different forms or can be used in different formulations. Therefore, when a basic patent on an active ingredient expires, other companies can develop alternative methods of production, forms or formulations of this active compound and start competing with the originator company.Footnote33 While such patenting strategies by originators are lawful in principle, some of them may be problematic. In particular, in anticipation of the loss of patent protection, originators may engage in strategic patenting which **artificially prevents generic competition and results in an extension of their market monopoly**.Footnote34 Defining Strategic Patenting In its Sector Inquiry Report, the European Commission explained that the drug development process consists of three main stages: (i) the R&D stage, which ends with the launch of a drug on the market; (ii) the period between the launch and the patent expiry; and (iii) the period after the patent expiration, when generics can enter the market.Footnote35 During the second stage, i.e. after the launch of a drug, originators seek to maximise their income from the product in order to recoup their R&D investments and earn profits before the commencement of generic competition.Footnote36 It is also during this stage that pharmaceutical companies seek to prolong their market exclusivity. In recent years, pharmaceutical companies have been increasingly relying on the **strategic use of the patent system to combat the pressure of generic competition**. Such practices are often called “life cycle management” by originators and proponents of the practice. For example, as Burdon and Sloper explained, “[a] key element of any life cycle management strategy … is to extend patent protection beyond the basic patent term for as long as possible, by filing secondary patents which are effective to keep generics off the market”.Footnote37 However, critics have characterised the practice as “**evergreening**”,Footnote38 as it essentially evergreens the patent protection and the exclusivity of a product.Footnote39 For instance, Bansal et al. explain that evergreening “refers to different ways wherein patent owners take undue advantage of the law and associated regulatory processes to **extend their IP monopoly**, particularly over highly lucrative ‘blockbuster’ drugs, by filing disguised/artful patents on an already patent-protected invention shortly before expiry of the ‘parent’ patent”.Footnote40 During its investigation into the pharmaceutical industry, the European Commission found that the number of patents granted and pending applications significantly increases with the value of a drug, i.e. “blockbuster medicines can even be protected by up to nearly 100 INNFootnote41-specific EPO **patented bundles and applications** …, which in one particular case led to 1,300 patents and applications across all the EU Member States”.Footnote42 The Commission also found that the ratio of primary to secondary patents is 1:7, where the latter “mostly concern formulations, processes and non-formulation products…, such as salts, polymorphic forms, particles, solvates and hydrates”.Footnote43 As a result, the Commission concluded that the practice of “maximising patent coverage in such a way is the creation of a web of patents”, which affects the generics’ ability to “develop a generic version of the medicine in form of a salt, crystalline or amorphous form”, because it “would inevitably infringe a patent (for example, a patent for the relevant salt, crystalline or amorphous form of the medicine)”.Footnote44 Each of such patents would typically have a later expiration date, which effectively extends a period of market exclusivity beyond the expiration of a basic patent.Footnote45 In addition, most of these patents that protect such follow-on modifications are so-called “sleeping” patents, i.e. patents which a company has no intention of commercialising.Footnote46 Moreover, such modifications may **provide little or no therapeutic benefits to the patient compared to the original drug**.Footnote47 Nevertheless, such patents allow originators to secure the most efficient, broadest and longest possible protection for their successful products.Footnote48 The denser the web of secondary patents, the more **difficult it is for generics to develop their generic equivalents**, even if they know that only a few patents of a large portfolio would, in fact, be valid and infringed by their products.Footnote49 Despite such knowledge, it is impossible to be certain before introducing a generic whether this will be the case and, thus, whether the generic company will be subject to injunctions preventing the sale of their generic products.Footnote50 Such practice, therefore, provides an appreciable competitive advantage for originators by creating a significant legal and commercial uncertainty for generics in relation to the possibility of their market entry.Footnote51 This paper argues that such a strategic use of the patent system by pharmaceutical companies is against the shared goal of patent and competition laws of facilitating innovation for the benefit of society. As will be explained further, in addition to a more immediate negative effect in the form of high drug prices, strategic patenting may also impair innovation by reducing originators’ incentives to innovate, and affecting generics’ ability to develop alternative generic products. Strategic patenting, therefore, may enable originators to avoid competitive pressures by preventing generic competition without a need to engage in genuine innovation. Strategic Patenting **Contradicts the Rationale of the Patent System** and Competition Law In the competitive markets, the success of a company is based on its business performance.Footnote52 In order to compete on performance by “offering better quality and a wider choice of new and improved goods and services”Footnote53 firms must innovate. Realising the importance of protecting innovation, which is considered to be the main driver of economic growth,Footnote54 states have put in place various mechanisms to ensure a suitable environment for its advancement. These include granting the property rights to the results of innovation in the form of patents, as well as implementing competition law rules to stimulate dynamic competition.Footnote55 Specifically, one of the main justifications for the patent system is the encouragement of innovationFootnote56 that serves as an engine for economic growth and development.Footnote57 The patent system pursues this aim by offering the patent owners a period of exclusive rights as a reward for their innovative efforts and an incentive to engage in further innovation.Footnote58 Therefore, intellectual property rules, and patents in particular, are seen as an **essential element of undistorted competition on the internal market**.Footnote59 These exclusive rights are considered to be a necessary incentive to invest in R&D and innovation, particularly in such sectors as pharmaceuticals, where the R&D costs are high, but the costs of copying the R&D results are marginal.Footnote60 At the same time, the “innovation theory”, embodied in the EU competition law rules and policy, is designed to stimulate innovation by fostering competition on the markets.Footnote61 The competition law rules keep markets innovative by maintaining effective competition through preventing the foreclosure of markets and maintaining access to them.Footnote62 The rationale is that firms react to pressures of competition by continuously seeking to innovate.Footnote63 Therefore, patent and competition laws complement each other, as on the one hand, existing competition creates pressures on firms, forcing them to innovate, the so-called “stick”, while on the other hand, patent law provides a “carrot” in the form of the exclusive right, thus inducing innovators to innovate.Footnote64 These two bodies of laws are seen as “complementary efforts to promote an efficient marketplace and long-run, dynamic competition through innovation”.Footnote65 As the European Commission noted “both intellectual property rights and competition are necessary to promote innovation and ensure a competitive exploitation thereof”.Footnote66 These two bodies of laws, therefore, have the same fundamental goal of enhancing innovation for the benefit of consumer welfare. Importantly, patent and competition laws are designed to stimulate not only innovation of “pioneer” innovators, but they are also aimed at facilitating follow-on innovation.Footnote67 Patent law contains provisions that require inventors to disclose information about their inventions, as well as providing exceptions such as experimental use and compulsory licensing, which allow third parties to access the inventions still under patent protection.Footnote68 Therefore, along with pioneer innovators, the rationale of incentives to innovate in patent law also applies to follow-on innovators, balancing the interests of these two types of inventors.Footnote69 Similarly, competition law aims at stimulating all types of innovation, including follow-on innovation. On the other hand, EU competition law proscribes practices that reduce **incentives to innovate both for “pioneer” and follow-on innovators**. This is enshrined in Art. 102(b) TFEU, which prohibits abuses that consist of, inter alia, limiting technological development. For example, in AstraZeneca the General Court considered that the company’s practice of misusing the patent system had the potential of reducing its incentives to innovate and was anticompetitive.Footnote70 In MagillFootnote71 and Microsoft,Footnote72 the courts found that the IP rights owners **abused their dominant positions by blocking innovation of their potential competitors**. More recently, several decisions by the European Commission also emphasised the importance of protecting innovation. In January 2018, the Commission fined QualcommFootnote73 €997 million for abusing its market dominance in LTEFootnote74 baseband chipsets.Footnote75 The Commission considered that the exclusivity payments that Qualcomm paid to Apple denied rivals the possibility to compete on the merits, and deprived European consumers of genuine choice and innovation.Footnote76 Furthermore, in July 2018, the Commission found in Google Android that Google abused its dominant position, and fined the company €4.34 billion for anticompetitive restrictions it had imposed on mobile device manufacturers and network operators to strengthen its dominant position in general internet search.Footnote77 The Commission considered that Google’s restrictive practices denied other companies the chance to compete on the merits and innovate.Footnote78 Finally, in 2017 the Commission issued its decision, in which it took the view that Amazon abused its dominant positions on the markets for the retail distribution of e-books by inserting the so-called “parity clauses” in the agreements with its e-book suppliers.Footnote79 It concluded that these clauses had the potential of reducing the incentives to innovate both by e-book suppliers and retailers.Footnote80 These decisions demonstrate that the European Commission recognises the fundamental importance of protecting innovation. They confirm that strategies that are capable of stifling innovation and reducing the incentives to innovate may constitute an abuse of dominance under Art. 102 TFEU. It is argued in this article that, along with the practices condemned by the Commission in the decisions discussed above, strategic patenting can also harm innovation by impairing incentives to innovate of both originators and generic companies, and therefore should raise competition law concerns. Strategic Patenting **Impairs Originators’ Incentives to Innovate** While originator companies typically argue that the competition law intervention into their patenting practices will reduce their incentives to innovate,Footnote81 this article asserts that strategic patenting itself reduces originators’ incentives. Thus, in a properly functioning system, when a **patent protecting a product is close to expiration the originator** would be **encouraged to innovate** further in order to introduce a new product on the market and maintain its competitive position. However, by engaging in strategic patenting, the originator’s incentive to innovate diminishes as it **enjoys its monopoly position by merely procuring numerous secondary patents** that shield its current product from generic competition. Therefore, when companies engage in such strategic patenting, they are merely protecting themselves from the **competitive pressur**es that competition law aims to establish. Maintaining that this practice is lawful, originators argue that strong patent protection is essential for recouping their investments, as well as for incentivising them to engage in further innovation.Footnote82 Such a position may find some support in the arguments put forward by Joseph Schumpeter and his followers, who claimed that since monopoly increases the reward of the innovator, monopolists are more prone to innovation.Footnote83 However, as Lowe noted:Footnote84 the empirical evidence of the past few decades has worked against Schumpeter and in favor of Kenneth Arrow, who contends that in favoring monopolies Schumpeter underestimated the incentives for innovation that competition can offer. Monopolists tend to want to keep their monopolies by **resorting to any measures that can keep new entrants** out. Firms **under competitive pressure from actual or potential competition**, on the other hand, are **less complacent** and know that inventing a new product is their best strategy for maintaining and increasing their market share. In the same vein, the Commission emphasises the importance of competition for the incentives to innovate, stating that: “[r]ivalry between undertakings is an essential driver of economic efficiency, including dynamic efficiencies in the form of innovation. In its absence the dominant undertaking will lack adequate incentives to continue to create and pass on efficiency gains.”Footnote85 Evidence from the pharmaceutical industry confirms that strategic patenting reduces incentives to engage in genuine and meritorious innovation. In many cases, strategically accumulated secondary patents are of marginal quality and are typically the result of routine research activities.Footnote86 For example, in Perindopril the European Commission revealed that most of the secondary patents, procured as part of the originator company’s anti-generic strategy, were seen by the company as “blocking” or “paper”, some of which it considered involved “**zero inventive step**”Footnote87 and a purely editorial task.Footnote88 Moreover, these follow-on pharmaceutical inventions are specifically timed around the expiration of the basic patent and can be developed on demand.Footnote89 In AstraZeneca the Commission noted that the company designed to “[f]ile a patent-cloud of mixtures, uses, formulations, new indications, and chemistry” in relation to its blockbuster product omeprazole to slow down generic entry at a specifically defined time, close to the expiration of the basic patent.Footnote90 The main aim of these patents is to increase uncertainty for generic companies as to the possibility of their market entry.Footnote91 Therefore, while many of these secondary patents may be trivial and potentially invalid, the originator pursues them to protect its current successful product from generic competition.Footnote92 Even if a company continues to engage in innovation in parallel to pursuing strategic patenting, it still protects itself from the **pressures of competition**, which would have forced the company to innovate faster and would thus provide consumers with better products and/or access to **cheaper generic versions earlier**. As Ullrich argues:Footnote93 A slowdown in the transition of the new medicines from the protected status of a proprietary medicine to the status of generic products manufactured and distributed in open competition does not simply mean a loss of static efficiency, namely a loss of consumer well-being due to a slowdown in the reduction of process. Rather, such a slowdown also involves the risk of a loss of dynamic efficiency in that it extends the duration of a monopoly rent situation, thus reducing the pressure to innovate more quickly. Following the rationale of the General Court’s statement in AstraZeneca, the practice of the originator that extends its market monopoly by relying on the patent system “potentially reduces the incentive to engage in innovation, since it enables the company in a dominant position to maintain its exclusivity beyond the period envisaged by the legislator”.Footnote94 Such practices, according to the Court, act “contrary to the public interest”.Footnote95 Therefore, the practice of strategic patenting that protects originators’ monopolies from competitive pressures and significantly reduces their incentives to engage in genuine innovation is contrary to the rationale of the patent system, has a significant negative effect on competition and should raise competition law concerns. **Strategic Patenting** Impairs **Follow-on Innovation of Generic Companies** Strategic patenting also has a **chilling effect on follow-on innovation** by generic competitors in the form of **developing alternative versions of an off-patent compound**. As was discussed earlier, the expiry of a basic patent that protects an active compound facilitates generic competition. This is because even if the product is still protected by process, specific form or formulation patents, generic companies may develop alternative ways of producing or formulating the product and start competing with the originator. In the absence of **strategically accumulated patents by the originator**, generic companies are typically open to innovating to launch alternative generic products as soon as the basic patent expires. However, by pursuing strategic patenting, originators may **discourage generics from engaging in follow-on innovation because of the uncertainty about the patent protection and a fear of infringing on one of the numerous patents**.Footnote96 In its Sector Inquiry Report, the Commission cited the following quote from one of the originators: The entire point of the patenting strategy adopted by many originators is to remove legal certainty. The strategy is to file as many patents as possible on all areas of the drug and create a “minefield” for the generics to navigate. All generics know that very few patents in that larger group will be valid and infringed by the product they propose to make, but it is impossible to be certain prior to launch that your product will not infringe and you will not be the subject of an interim injunction.Footnote97 Therefore, as a result of creating an impenetrable ring of patent protection by the originator,Footnote98 generic competitors may be prevented from developing alternative generic versions of an off-patent compound. One of the examples revealed by the Commission during its Pharmaceutical Sector Inquiry was the filing by an originator company of “more than 30 patent families translating into several hundreds of patents in the Member States in relation to one product”, many of which were filed after the introduction of the product.Footnote99 This affected the intentions of several generic companies that planned to develop and bring their generic versions of the original product to the market.Footnote100 As a result, in addition to the already high barriers to entry into the pharmaceutical market due to patents that protect an existing product and the need to obtain a marketing authorisation, strategic patenting raises these entry barriers further, making it very difficult for generic companies to overcome them. This strategy, therefore, “may without further enforcement action by originator companies, … delay generic entry until the patent situation is clearer or even discourage more risk-sensitive generic companies from entering altogether”.Footnote101 Consequently, the fact that actual or potential competitors of originators would not be able to develop alternative generic products means that no one could enter the market and challenge originators’ monopoly positions. This results in a weakening of competition in the relevant market and a strengthening of the originator’s already dominant position. As Maggiolino put it, “patent accumulation … may work as a pre-emptive entry-deterrence strategy to protect monopoly power and … lower consumer welfare by allowing dominant firms to keep on charging over-competitive prices”.Footnote102 Therefore, when an array of accumulated secondary patents “blocks monopolists’ rivals from producing follow-on innovations, this strategy prevents the whole society from enjoying … these further innovations”.Footnote103 While practices that facilitate innovation are encouraged by competition law, practices that are aimed at blocking follow-on innovation by competitors should raise competition law concerns.

**UV:**

**CX check all neg interps: can revise to make more accessible, also asked you pre-round.**

**1] 1AR theory is legit – anything else means infinite abuse – drop the debater, competing interps, and the highest layer – 1AR is too short to make up for the time trade-off – no RVIs – 6 min 2NR means they can brute force me every time.**

**2] Reasonability on 1NC theory with the brightline of link and impact turn ground – there are infinite bidirectional interps that I can never meet – the four minute 1AR doesn’t have enough time to line by line every argument, make offense, and go for substance.**

**3] Use comparative worlds – A] topic ed – forces the neg to research the topic instead of low quality rez flaw args – the only benefit to debate is making us better arguers not perfect logicians, B] reciprocity – truth-testing allows the neg to disprove any part of the aff, but the aff has to defend every part, which gives the neg too much ground, C] inclusion – truth testing says rez is only thing that’s relevant which excludes ks – either only the rez matters so we can’t punish slurs, or people should get dropped for making debate unsafe which proves other things matter**