### 1

#### We do not exist as sovereign subjects but rather a multiplicity of relations to others. We are constantly being affected on by other subjects and beings around us that have far more power on ourselves then we do. This means any ethical theory must start from a standpoint of the instability of subjectivity

#### Hardt 14 “The Power to be Affected”

The first step of this process is to take stock realistically and recognize that we are not sovereign subjects. Berlant is rightly suspicious of the standard ethical injunctions that assume our individual sovereignty, as well as those that aim at constructing or supporting sovereign political powers. Consider the sovereign individual, in correspondence with Carl Schmitt’s political formula, as the one who decides (2007). Berlant questions both elements of this statement: the one and the decision. Sovereign decision, she claims, resides on an illusion of self-control, “a fantasy misrecognized as an objective state” (2011, p. 97). People are not always engaged in projects of selfextension, she says, and in fact, they seldom have significant control over their decision-making. Spinoza expresses the same idea in quantitative terms. The power of all individual or limited subjects to think and act autonomously corresponds proportionally to the relation between their powers and the power of nature as a whole. “The force by which a man perseveres in existing is limited, and infinitely surpassed by the power of external causes” (1985 Ethics IV P3). Only God (or nature as a whole) is self-caused because it has no outside. The fact that the power of the world outside of us so far surpasses our own power means that we are affected by others much more than we affect the world or even autonomously affect ourselves, and thus, our capacity for sovereign decision-making is minimal too. The other half of Schmitt’s dictum is equally unfounded: “the one” never decides or acts or is acted on. The subject is never one. Agency and causality, Berlant suggests, should be understood not in terms of unities but instead “as dispersed environmental mechanisms at the personal as well as the institutional level” (2011, p. 114). Spinoza expresses this too in mathematical and geometrical form. A body or an individual, he explains, is formed when a great number of parts agree with each other and thus communicate in a consistent way (1985 Ethics II P13 definition). Essential to a body is the relation: the body lives as long as that relation is maintained. Instead of thinking in terms of unities, then, we need to think the relation among multiplicities and recognize the consistency of dispersed landscapes. To identify the locus of decision or acting or being acted upon, we need to look to not the one but the consistent relation among the many. There is no point in lamenting our relative lack of power or unity or ability to rule ourselves autonomously. Spinoza, in fact, ridicules those wise men who, maintaining a fantasy of the sovereign subject, chastise us for being ruled by passions. “Philosophers look upon the passions by which we are assailed as vices, into which men fall by their own fault. So it is their custom to deride, bewail, berate them, or, if their purpose is to appear more zealous than others, to execrate them. They believe that they are thus performing a sacred duty, and that they are attaining the summit of wisdom when they have learnt how to shower extravagant praise on a human nature that nowhere exists and the revile that which exists in actuality. The fact is that they conceive men not as they are, but as they would like them to be. As a result, for the most part it is not ethics they have written, but satire; and they have never worked out a political theory that can have practical application” (2002 Political Treatise, Chapter 1, Introduction, 680). A practical political theory instead must begin where people are, and really existing people are primarily filled, so to speak, by passions. Berlant poses the terrain of the nonsovereign in terms of the “interruptions” or “intermissions” that break the imagined efforts of self Hardt extension of sovereign subjects. (Be careful, though, not to be misled by these terms because, as Berlant makes clear, they are the norm not the exception: we live in the interruption and the intermission the vast majority of the time.)

#### The system of legal personhood and the state has failed. It forces minority groups to compete for recognition under the state and requires them to explain their oppression to the oppressor. This recreates categories based off the western man as people are judged in opposition to what is the ideal legal person thus, the ROTB is to vote for the debater that best deconstructs the western man

**Weheliye 14**, Alexander G. Habeas Viscus: Racializing Assemblages, Biopolitics, and Black Feminist Theories of the Human. Duke University Press, 2014.

Suffering, especially when caused by political violence, has long functioned as the hallmark of both humane sentience and of inhuman brutality. Frequently, suffering becomes the defining feature of those subjects excluded from the law, the national community, humanity, and so on due to the political violence inflicted upon them even as it, paradoxically, grants them access to inclusion and equality. In western human rights discourse, for instance, the physical and psychic residues of political violence enable victims to be recognized as belonging to the “brotherhood of Man.” Too often, this tendency not only leaves intact hegemonic ideas of humanity as indistinguishable from western Man but demands comparing different forms of subjugation in order to adjudicate who warrants recognition and 76 Chapter Five belonging. As W. E. B. Du Bois asked in 1944, if the Universal Declaration of Human Rights did not offer provisions for ending world colonialism or legal segregation in the United States, “Why then call it the Declaration of Human Rights?”2 Wendy Brown maintains, “politicized identity” operates “only by entrenching, restating, dramatizing, and inscribing its pain in politics; it can hold out no future . . . that triumphs over this pain.”3Brown suggests replacing the identitarian declaration “I am,” which merely confirms and solidifies what already exists, with the desiring proclamation “I want,” which offers a Nietzschean politics of overcoming pain instead of clinging to suffering as an immutable feature of identity politics. While I recognize Brown’s effort to formulate a form of minority politics not beholden to the aura of wounded attachments and fixated almost fetishistically on the state as the site of change, we do well to recall that many of the political agendas based on identity (the suffragette movement, the movement for the equality of same-sex marriages, or the various movements for the full civil rights of racialized minority subjects, for instance) are less concerned with claiming their suffering per se (I am) than they are with using wounding as a stepping stone in the quest (I want) for rights equal to those of full citizens. Liberal governing bodies, whether in the form of nation-states or supranational entities such as the United Nations or the International Criminal Court make particular forms of wounding the precondition for entry into the hallowed halls of full personhood, only acknowledging certain types of physical violence. For instance, while the United Nations High Commissioner for Refugees passed a resolution in 2008 that includes rape and other forms of sexual violence in the category of war crimes, there are many forms of sexual violence that do not fall into this purview, and thus bar victims from claiming legal injury and/or personhood. Even more generally, the acknowledgment and granting of full personhood of those excluded from its precincts requires the overcoming of physical violence, while epistemic and economic brutalities remain outside the scope of the law. Congruently, much of the politics constructed around the effects of political violence, especially within the context of international human rights but also with regard to minority politics in the United States, is constructed from the shaky foundation of surmounting or desiring to leave behind physical suffering so as to take on the ghostly semblance of possessing one’s personhood. Then and only then will previously minori- Law 77 tized subjects be granted their humanity as a legal status. Hence, the glitch Brown diagnoses in identity politics is less a product of the minority subject’s desire to desperately cling to his or her pain but a consequence of the state’s dogged insistence on suffering as the only price of entry to proper personhood, what Samera Esmeir has referred to as a “juridical humanity” that bestows and rescinds humanity as an individualized legal status in the vein of property.5 Apportioning personhood in this way maintains the world of Man and its attendant racializing assemblages, which means in essence that the entry fee for legal recognition is the acceptance of categories based on white supremacy and colonialism, as well as normative genders and sexualities.

#### Intellectual property law no matter if its for medicine or culture is rooted in determining one’s legal right to property and by extension their legal personhood. Either marginalized groups ask for intellectual protections and have their culture commodified or they reduce protections and have their culture stolen no matter what the legal system of intellectual property rights is bankrupt and engaging in reform will only reinforce the rest of the system.

#### Sunder 04 “property in personhood” MADHAVI SUNDER, august 2004, School of law university of California

Despite the cogence of this analysis, current trends in academic thinking do not bode well for these new claims for property in personhood. Traditional commodification scholars would bemoan the propertization of indigenous culture, arguing that culture should be common property accessible to all. More significantly, early commodification theory warns that because of current inequalities, the commodification of indigenous culture is more likely to lead to alienation, rather than preservation, of indigenous culture.28 Recent developments in anthropology also might render one skeptical of indigenous intellectual property. Scholars in this discipline argue that property rights threaten to make dynamic cultures static.29 Still other scholars view these claims as the first step on a slippery slope toward slavery.30 Finally, there are the critiques from intellectual property. As we witness what scholars have labeled “the new enclosure movement”31 and lament what appears to be an inexorable march toward the intellectual propertization of “every thing, every word, and every idea,”32 more and more intellectual property scholars are warning that our common cultural heritage and the free circulation of ideas are massively threatened.33 Indeed, protecting the public domain of ideas and information has quickly shot up to the top of intellectual property scholars’ agenda. I am sympathetic to these projects.34 But I am also concerned that these progressive, ideal theories elide non-ideal constraints and important new claims for justice being made through the language of intellectual property rights. Critiquing each and every new claim for property rights may support current power relations by legitimating the current distribution of intellectual property rights. Revealing the relationship between intellectual property and progressive, ideal theories about commodification, culture, and the public domain helps us understand how, despite the best of intentions, the postmodern lawyer, collaborating with the postmodern anthropologist, might inadvertently leave minority cultures at the mercy of the forces of commerce and neocolonialism.35 To be sure, there are many reasons for concern about these new claims for property. But at the heart of the claims lies a challenge to current intellectual property definitions, theoretical justifications, and distributions. These challenges cannot be dismissed easily. They require us to carefully consider how these new property claims are already transforming intellectual property law and how law ought to respond to shifts in global social relations. Articulating who is seeking greater property rights and why they seek them is a complex task. Far from being a simple story of intellectual property rights expanding into the public domain, the new claims for property rights are struggles over the right to create one’s identity and to control cultural meanings. Indigenous and other subordinated peoples who have historically not owned property — to the contrary, under traditional property law, their cultural products have been characterized as a commons and thus free for the taking for others to create property from their resources — are challenging this traditional relationship. They are asserting their right to be the subjects, not the objects, of property. As the concept of identity undergoes such a profound change, it is not surprising that the property concept is morphing with it. Assertions of power over one’s own identity necessarily lead to assertions of property ownership. As Radin has taught us, property is an essential part of what it means to be fully human.36 Property enables us to have control over our external surroundings. Seen in this light, it is not enough to see all claims for more property simply as intrusions into the public domain and violations of free speech. Instead, we may begin to see them as assertions of personhood.

#### Their focus Inclusion and equality will inevitably fail as it only reinvests into a system of subjugation. To fight for inclusion for one group not only affirms the rights of the state to determine inclusion but also inevitably excludes other oppressed groups, - Turns case

**Weheliye 14**, Alexander G. Habeas Viscus: Racializing Assemblages, Biopolitics, and Black Feminist Theories of the Human. Duke University Press, 2014.

We are in dire need of alternatives to the legal conception of personhood that dominates our world, and, in addition, to not lose sight of what remains outside the law, what the law cannot capture, what it cannot magically transform into the fantastic form of property ownership. Writing about the connections between transgender politics and other forms of identitybased activism that respond to structural inequalities, legal scholar Dean Spade shows how the focus on inclusion, recognition, and equality based on a narrow legal framework (especially as it pertains to antidiscrimination and hate crime laws) not only hinders the eradication of violence against trans people and other vulnerable populations but actually creates the condition of possibility for the continued unequal “distribution of life chances.”22 If demanding recognition and inclusion remains at the center of minority politics, it will lead only to a delimited notion of personhood as property that zeroes in comparatively on only one form of subjugation at the expense of others, thus allowing for the continued existence of hierarchical differences between full humans, not-quite-humans, and nonhumans. This can be gleaned from the “successes” of the mainstream feminist, civil rights, and lesbian-gay rights movements, which facilitate the incorporation of a privileged minority into the ethnoclass of Man at the cost of the still and/or newly criminalized and disposable populations (women of color, the black poor, trans people, the incarcerated, etc.).23 To make claims for inclusion and humanity via the U.S. juridical assemblage removes from view that the law itself has been thoroughly violent in its endorsement of racial slavery, indigenous genocide, Jim Crow, the prison-industrial complex, domestic and international warfare, and so on, and that it continues to be one of the chief instruments in creating and maintaining the racializing assemblages in the world of Man. Instead of appealing to legal recognition, Julia Oparah suggests counteracting the “racialized (trans)gender entrapment” within the prison-industrial complex and beyond with practices of “maroon abolition” (in reference to the long history of escaped slave contraband settlements in the Americas) to “foreground the ways in which often overlooked African diasporic cultural and political legacies inform and undergird antiprison work,” while also providing strategies and life worlds not exclusively centered on reforming the law.24 Relatedly, Spade calls for a radical politics articulated from the “‘impossible’ worldview of trans political existence,” which redefines “the insistence of government agencies, social service providers, media, and many nontrans activists and nonprofiteers that the existence of trans people is impossible.”25 A relational maroon abolitionism beholden to the practices of black radicalism and that arises from the incompatibility of black trans existence with the world of Man serves as one example of how putatively abject modes of being need not be redeployed within hegemonic frameworks but can be operationalized as variable liminal territories or articulated assemblages in movements to abolish the grounds upon which all forms of subjugation are administered.

#### This creates liminal spaces through the color line in which people are not quite human but instead exist in degrees of difference from the dominate ideal person and therefore are offered rights based on their closeness to the “ideal western man”.

Wynter [Sylvia; 2003; “Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the Human, After Man, Its Overrepresentation--An Argument,” CR: The New Centennial Review, Volume 3, Number 3,257-337]  
The Argument proposes that the new master code of the bourgeoisie and of its ethnoclass conception of the human - that is, the code of selected by Evolution/dysselected by Evolution- was now to be mapped and anchored on the only available "objective set of facts" that remained. This was the set of environmentally, climatically determined phenotypical differences between human hereditary variations as these had developed in the wake of the human diaspora both across and out of the continent of Africa; that is, as a set of (so to speak) totemic differences, which were now harnessed to the task of projecting the Color Line drawn institutionally and discursively between whites/nonwhites - and at its most extreme between the Caucasoid physiognomy (as symbolic life, the name of what is good, the idea that some humans can be selected by Evolution) and the Negroid phys- iognomy (as symbolic death, the "name of what is evil," the idea that some humans can be dysselected by Evolution)- as the new extrahuman line, or projection of genetic nonhomogeneity that would now be made to function, analogically, as the status-ordering principle based upon ostensibly differential degrees of evolutionary selectedness/eugenicity and/or dysselected- ness/dysgenicity. Differential degrees, as between the classes (middle and lower and, by extrapolation, between capital and labor) as well as between men and women, and between the heterosexual and homosexual erotic preference - and, even more centrally, as between Breadwinner (job- holding middle and working classes) and the jobless and criminalized Poor, with this rearticulated at the global level as between Sartre's "Men" and Natives (see his guide-quote), before the end of politico-military colonial- ism, then postcolonially as between the "developed" First World, on the one hand, and the "underdeveloped" Third and Fourth Worlds on the other. The Color Line was now projected as the new "space of Otherness" principle of nonhomogeneity, made to reoccupy the earlier places of the motion-filled heavens/non-moving Earth, rational humans/irrational animal lines, and to recode in new terms their ostensible extrahumanly determined differences of ontological substance. While, if the earlier two had been indispen- sable to the production and reproduction of their respective genres of being human, of their descriptive statements (i.e., as Christian and as Mam), and of the overall order in whose field of interrelationships, social hierarchies, system of role allocations, and divisions of labors each such genre of the human could alone realize itself- and with each such descriptive state- ment therefore being rigorously conserved by the "learning system" and order of knowledge as articulated in the institutional structure of each order - this was to be no less the case with respect to the projected "space of Otherness" of the Color Line. With respect, that is, to its indispensability to the production and reproduction of our present genre of the human Mam, together with the overall global/national bourgeois order of things and its specific mode of economic production, alone able to provide the material conditions of existence for the production and reproduction of the ethnoclass or Western-bourgeois answer that we now give to the question of the who and what we are.

#### The alternative is to engage in Habeus Viscus to see suffering not as the body but as the flesh, instead of focusing on legal recognition for the oppressed we engage in an affective relation with the suffering voices around us to imagine a future that can not yet be described through the liberal state.

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this closing chapter I would like to continue taking up Hortense Spillers’s challenge and ask what it might mean to claim the monstrosity of the flesh as a site for freedom beyond the world of Man in order to heed Baby Suggs’s words in Toni Morrison’s Beloved about loving the flesh: “In this here place, we flesh; flesh that weeps, laughs; flesh that dances on bare feet in grass. Love it. Love it hard. Yonder they do not love your flesh. They despise it.”1 In order to improperly inhabit and understand the politics and poetics of habeas viscus, we must return to some of the voices from the previous two chapters. Revisit them we should, however, not to authenticate them as acoustic mirrors of the oppressed or to grant them juridical humanity but in order to listen more closely to prophetic traces of the hieroglyphics of the flesh in these echoes of the future anterior tense. Many critics assume that political violence is somehow outside the grasp of linguistic structures. In her now classic account of the body in pain, Scarry argues that pain in general and torture in particular causes a regression to the “pre-language of cries and groans,” which becomes indicative of the annihilation of the tortured’s world.2 In making this argument, Scarry assumes that world and language preexist and are unmade by the act of torture, which imagines political violence as exterior to the normal order rather than as an instrument in the creation of the world and language of Man. Agamben’s point about language 126 Chapter Eight and witnessing vis-à-vis Auschwitz, although not quite in the same register, skirts fairly close to making a similar argument: “It is thus necessary that the impossibility of bearing witness, the ‘lacuna,’ that constitutes human language, collapses, giving way to a different impossibility of bearing witness—that which does not have language” (Remnants, 39). Perhaps it might be more useful to construe “cries and groans,” “heart-rending shrieks,” “the mechanical murmurs without content” as language that does not rely on linguistic structures, at least not primarily, to convey meaning, sense, or expression.3 For language, especially in the space-ways of the flesh, comes in many varieties, and functions not only—or even primarily—to create words in the service of conforming to linguistic structures transparent in the world of Man.4 This approach also cannot imagine that for many of those held captive by Man it is always already “after the end of the world. . . . Don’t you know that yet?” long before the actual acts of torture have begun. Roman Grzyb, a former concentration camp prisoner, for instance, gives the following account of the Muselmann’s idiolect: “The Muselmann used his very own jargon by constantly repeating what came to his completely confused mind. The sentences were often incomplete and were illogical, stopping abruptly at random points.”5As can be gleaned from the testimonies of Muselmänner, slaves, or Ellis Island detainees, what is at stake is not so much the lack of language per se, since we have known for a while now that the subaltern cannot speak, but the kinds of dialects available to the subjected and how these are seen and heard by those who bear witness to their plight. Nevertheless, the suffering voices exemplified by James and the Muselmänner should not be understood as fountains of authenticity but rather as instantiations of a radically different political imaginary that steers clear of reducing the subjectivity of the oppressed to bare life. In R. Radhakrishnan’s thinking, this political domain produces “critical knowledge, which in turn empowers the voice of suffering to make its own cognitiveepistemological intervention by envisioning its own utopia, rather than accepting an assigned position within the ameliotary schemes proposed by the dominant discourse.”6 Thus, suffering appears as utopian erudition—or is expressed through hieroglyphics of the flesh to echo Spillers and Zora Neale Hurston—and not as an end unto itself or as a precritical sphere of truth, as the liberal humanist Weltanschauung would have it; rather, “liberalism is tolerant of abundant speech as long as it does not have to take into account voices it does not understand.”7 Where dominant discourse seeks to develop Freedom 127 upgrades of the current notions of humanity as Man, improvements are not the aim or product of the imaginaries borne of racializing assemblages and political violence; instead they summon forms of human emancipation that can be imagined but not (yet) described.

## Case

### FW

#### OV –

#### As long as we win the FW the debate becomes a strength of link test to the ROTB and because the aff utilizes the state it cannot weigh under the ROTB because the state is the embodiment of the western man thus, the only offense is on the K page, and they don’t get to weigh case because we have critiqued their starting point of the state so it doesn’t matter how good the policy is because its bankrupt from the start.

#### We hold the root cause to in and out groups being the establishment of legal personhood. Means that all the aff is able to do is shuffle groups around between the groups while never dissolving the groups themselves cross apply Weheliye 14 they force groups to compete and present their oppression in order to gain access to the “in” group, but this inevitably leaves out other minorities IE when gay marriage became a thing, we say marriage is equal while ignoring that disabled folks still cant get married. Acts as a DA to the FW because they promote a ruse of solvency that prevents us from addressing the root cause.

#### Trying to fix inequality caused by the state through the state will inevitably fail and only lead to violence recreating itself. IE when we seek legal change to end slavery the government happened to add a loophole to allow slavery in prisons. This means that they are stuck in a constant feedback loop of getting help from the state only for the state to recreate violence and have to appeal to it again. This creates psychological violence for oppressed people

#### On ROTB

#### Their ROTB links hard into the K they say that “, the pedagogical is inherently ideological political” means that their education forces minoritys to gain rights through political movements and the state which leads to psychological violence as they explain their oppression to the oppressor independent reason to reject their ROTB

#### Our ROTB solves better A. intersectionality – their card is spec to colonialism while the western man can explain colonialism as well as all other oppressions B. Critical pedagogy – their education gets co-opted by liberal academia that fights for “inclusion” and “equaility” under the confines of the state this guts any revolutionary potential while our movement is pedagogical education outside the state

#### Their ROTB fails to understand affect theory because subjects are inherently affective we cannot base our claims absent an understanding of how affect changes us

#### On Wazner 12 1. Turn we should focus on oppression but not through the lens of legality because it inevitably reinvites that very same oppression 2. We do focus on oppression so the card doesn’t take out our TOP we are just a better method of preventing oppression

### Offense

#### Alt solves case by engaging in habeus viscus we solve for the root cause of vaccine and medical inequality which is legal personhood that renders flesh that is outside the western man as not deserving of medical care. The issue isn’t patents but a theory of power that treats everything as a legal exercise and ignores violence against flesh. And also acts as a solvency deficit because as long as they reform the system the system won’t get better medical inequality will just pop up in different ways like health care.

#### Turn the issue of inequality among nations patents lead to the development of poorer countries which leads to better human rights

Sarah Joseph 11, Professor of Human Rights Law, and the Director of the Castan Centre for Human Rights Law at Monash University, Sarah, “Blame it on the WTO?” http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199565894.001.0001/acprof-9780199565894-chapter-8#acprof-9780199565894-note-1350

IP protection restricts trade and competition, so IP clauses are somewhat anomalous in trade agreements, which are normally designed to decrease trade barriers. What is the justification for IP protection?44 Due to their relevance to this chapter, I will concentrate on arguments in favour of patents.45 Patents reward people for their inventions, thus encouraging creativity and innovation. Patents operate on the assumption that people are not inherently altruistic, and expect rewards for their endeavours, especially when those endeavours are risky as they may, and often do, result in costly failure.46 Furthermore, the money raised from patent protection is said to be necessary to fund the considerable costs of research and development (R&D).47 Therefore, without patents, innovation in the pharmaceutical field (or any industrial field) might grind to a standstill. While it is true that the high prices generated by patent protection may render access to drugs selective, (p.221) it is nevertheless better that a drug is available to some rather than non-existent and available to no one. The global extension of patent law mandated by TRIPS helps to ensure that patents are not undermined by the sale of competing pirated copies. Furthermore, global IP regimes should theoretically encourage greater technology transfer between countries, greater foreign direct investment, and greater local innovation within compliant states.48 All of these outcomes should accelerate the economic development of poor countries, with positive knock-on effects for human rights. Thus, perhaps it is arguable that pharmaceutical patents are justifiable under international human rights law, as they promote R&D which is essential for the future enhancement of rights to life and health. Furthermore, to the extent that they are held by natural persons, they are one way of protecting that person’s rights under Article 15(1)(c) of the ICESCR.

#### The aff doesn’t solve – access to medicine is not a one-way street and there are multiple other factors that they just can’t resolve

Motari 21, Marion Motari, [Jean-Baptiste Nikiema](javascript:;), [Ossy M. J. Kasilo](https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-021-10374-y#auth-Ossy_M__J_-Kasilo), [Stanislav Kniazkov](https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-021-10374-y#auth-Stanislav-Kniazkov), [Andre Loua](https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-021-10374-y#auth-Andre-Loua), [Aissatou Sougou](https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-021-10374-y#auth-Aissatou-Sougou), [Prosper Tumusiime](https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-021-10374-y#auth-Prosper-Tumusiime) are Adjunct Faculty, Daystar University School of Law, Nairobi, Kenya, “The role of intellectual property rights on access to medicines in the WHO African region: 25 years after the TRIPS agreement”, <https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-021-10374-y>, accessed apark 6/27/21

Although this paper focuses on the role of intellectual property rights on access to medicines, it is recognized that limited access to medicines in countries of the World Health Organization (WHO) African Region[Footnote3](https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-021-10374-y#Fn3) is a multidimensional problem. It is affected by other factors such as lack of public financing for health care and over-reliance on out of pocket expenditure[[7](https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-021-10374-y#ref-CR7)], fragile logistics, storage challenges and high transport and distribution costs [[2](https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-021-10374-y#ref-CR2)] and inadequate or inappropriate medicines regulatory frameworks [[8](https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-021-10374-y#ref-CR8)]. These factors are further exacerbated by insufficient scientific, technological and local manufacturing capabilities in the Region [[9](https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-021-10374-y#ref-CR9)].

#### TRIPS reduces global health inequality

Samir Raheem Alsoodani 15, “"The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) may offered an access to essential pharmaceutical drugs for developing countries,” Journal Of the College of law /Al-Nahrain University 2015, Volume 17, Issue 2, Pages 393-410, <https://www.iasj.net/iasj/article/109180>

To conclude, it is beyond doubt that the TRIPS Agreement and its later, permanent amendment of 2005 attempted in good faith to address an urgent issue faced by many developing countries with regards to accessing essential medicine. To a certain extent in its basic tenets, it has had a profound and positive effect on the system, as it has made permanently possible the opportunity for the poorest countries to obtain medications more cheaply through manufacture in developing countries under a compulsory licensing system. Certain positive outcomes arguably include the fact that disputes have been brought under the jurisdiction of one regulatory body, and the least developed Members have found some redress in the power balance regarding costs paid to the pharmaceutical industries based in the wealthier, developed countries (even if this redress has only been to the extent of facilitating increased bargaining capability). This can be considered a triumph from the perspective of universal human rights.

#### IP developed COVID vaccines rapidly and produced collaboration – turns vaccine imperialism

Stevens and Schultz 21 [Philip Stevens and Mark Schultz, “WHY INTELLECTUAL PROPERTY RIGHTS MATTER FOR COVID-19”. Geneva Network, January, 2021. https://geneva-network.com/wp-content/uploads/2021/01/Why-IP-matters-for-Covid-19.pdf]

Some asserted that intellectual property would inevitably hold up urgent research. They theorised that the “winner-takes-all” nature of intellectual property rights, especially patents, would prevent scientists from rapidly disclosing research results, and discourage the sharing of unpatentable insights that may potentially lead to patentable treatments with further work. Members of Congress warned that IP would “put public health at risk”, while NGO Médecins Sans Frontières (MSF) called for “no patents or profiteering” on yet to be developed health technologies. A coalition of over 500 NGOs claimed that IP rights were a “hindrance” to efforts to tackle the pandemic, calling for all COVID-19-related IP to be rescinded. As events demonstrated, critics of IP were wrong by a wide margin. In January 2020 very little was known about COVID-19. By January 2021, three safe and highly efficacious vaccines had been authorised for use by stringent regulatory authorities, with several others poised to follow. As of 21st December 2o20, there were 1052 COVID-19-19 vaccines, therapeutics and diagnostic tools under development or approved globally, of which 219 are vaccines. This major achievement is a testament to how well the IP system has worked during the pandemic. Calls to override intellectual property rights in the early stages of the pandemic were seductive and were backed by respected global humanitarian NGOs and prominent political figures. But it is to the credit of the majority of governments that they held their nerve and ignored such calls, despite the growing urgency of the situation over 2020. V BUILDING ON EXISTING IP IP is the bedrock upon which today’s COVID-19 vaccines have been built. The technologies they are based on did not come out of thin air at the beginning of the pandemic, but had been under development for decades, with substantial research in academic labs followed by years of risky investment by commercial start-ups. Consider the messenger RNA (mRNA) technology that is the basis for two of the first vaccines approved in Western countries. Scientists discovered in 1961 that mRNA could be used to “reprogram” cells to battle disease. It took decades of lab research and private sector-funded development by startups BioNTech and Moderna to overcome major difficulties and turn the technology into an effective vaccine that can be safely given to patients. Both companies and their investors have spent billions of dollars on mRNA research prior to the pandemic. While academic research is fundamental, the end result would not have been possible without the private sector, which depends on intellectual property rights. Shortly before the pandemic started, we spoke to Dr. Derrick Rossi, the academic founder of Moderna. When asked whether the treatments could be brought from the academic lab to patients without the help of the private sector, Dr. Rossi’s reply was categorical: “Not a chance. Academics are good at academia and fundamental science. They are not good at developing drugs for patients.” Dr. Rossi explains that bringing a drug to market takes many professionals, sharing their labour and diverse expertise. “This industry of professionals is out there... The more people that are involved in the chain, post-academic discovery, the more you have pros involved — all the way from IP filings to VCs to due diligence to assembling a team,” the more likely you are to develop a viable treatment. Developing a practical application for a great academic insight takes vast sums, and investors need some prospect of a return on that investment. As Dr. Rossi explains, “you can be working on the coolest thing, but investors need to know that there is some protection for their investment, plain and simple.” V IP HELPS NOT HINDERS R&D COLLABORATION The other claim frequently heard at the beginning of the pandemic was that IP poses a barrier to collaboration and knowledge sharing, so in a time of emergency any related IP should be open licensed or pooled. In reality, the IP system encouraged the rapid establishment of dozens of partnerships around COVID-19-19, with even commercial rivals prepared to cooperate and share capital and proprietary intellectual resources such as compound libraries. Examples of consortia between the private sector and research centres include the COVID-19-19 Therapeutics Accelerator to evaluate new and repurposed drugs and biologics, the EU-backed Swift COronavirus therapeutics REsponse, Corona Accelerated R&D in Europe (CARE) as well as dozens of bilateral agreements between companies. Indeed, the Pfizer vaccine is the result of its collaboration with BioNtech, where partners shared and combined knowhow and proprietary knowledge to create the first vaccine authorized in the U.S. Far from being a barrier to such collaborations, IP is fundamental. Because patent rights require public disclosure, they enable drug developers to identify partners with the right intellectual assets such as knowhow, platforms, compounds and technical expertise. Without patents most of this valuable proprietary knowledge would be kept hidden as trade secrets, making it impossible for researchers to know what is out there. Second, the existence of laws protecting intellectual property helps rights-holders make the decision to collaborate in the first place. By allaying concerns about confidentiality, IP enables companies to open up their compound libraries, and to share platform technology and know-how without worrying they are going to sacrifice their wider business objectives or lose control of their valuable assets. For instance, rights holders might contribute IP that is useful for entirely different diseases to COVID-19 collaborations. IP rights and licensing ensure those rights can only be used for the agreed reason, preventing competitors freeriding to gain an unfair advantage in other areas. As the former Director General of WIPO noted in June 2020, the main challenge at the time was “not access to vaccines, treatments or cures for COVID-19-19, but the absence of any approved vaccines, treatments or cures to have access to. The policy focus of governments at this stage should therefore be on supporting science and innovation”. During this initial phase of the pandemic, the majority of governments followed this advice, especially by not threatening to remove IP of products yet to be invented. No government from a country with a significant life-science R&D industry, for instance, backed the WHO’s “Solidarity Call to Action” in which companies were asked to unilaterally cede IP and data related to COVID-19 to its new technology and IP pool, C-TAP. The WHO embarked on this initiative with no evidence that IP would stand in the way of R&D and access efforts, distracting efforts away from more practical initiatives that stood greater chance of success. V WHAT ABOUT THE PRICE OF PATENTED VACCINES AND THERAPEUTICS? Nevertheless, the emergence of several competing vaccines has shifted the debate. There are increasingly loud calls to suspend IP rights in order to promote affordable prices for low and middle-income countries, and to mandate forced transfer of know-how and technology in order to scale up global manufacturing . These calls have culminated in proposals at the WTO to implement a temporary suspension of certain provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), including obligations regarding patent rights and the protection of undisclosed information on all COVID-19-related technologies Such extreme proposals are based on muddled thinking. Specifically, the political campaigns that underpin them mischaracterise IP rights as “monopolies” that allow companies to charge unaffordable prices. One eminent scholar of patents, Prof. Edmund Kitch described the application of the term “monopoly” to patents as one of the “elementary and persistent errors in the economic analysis of Intellectual Property”. In reality, IP rights drive the emergence of competing products in the same category, putting a lid on the ability of manufacturers to charge premium prices. Owning IP rarely gives control over a market and IP markets are often intensely competitive. In medicines, for instance, there are usually many substitutes and alternatives. For example, a patient needing a cholesterol drug has a host of statins from which to choose, both patented and generic. Similarly, patients with osteoporosis and their doctors can choose from Fosamax®, Actonel®, or Boniva®. Recent years have seen the emergence of competing shingle vaccines, increased competition in the lung cancer therapeutic space, and a slew of promising clinical trials and new drug launches in the under-served area of lung disease. Each of the owners of patents in these products has a temporary exclusive right to their product; none of them has a monopoly over the market for this type of treatment. The most spectacular demonstration of this point is the recent emergence of multiple competing hepatitis C cures, which have opened up a wide range of treatment options and placed downward pressure on prices. As Geoffrey Dusheiko and Charles Gore wrote in The Lancet, “The market has done its work for HCV treatments: after competing antiviral regimens entered the market, competition and innovative price negotiations have driven costs down from the initially high list prices in developed countries.” Every step of the development of this new market in hepatitis C cures was accompanied by calls to override their IP by civil society and certain intergovernmental organizations. Had those calls been heeded, it is doubtful such a competitive market would exist today. A similar story is unfolding in the COVID-19 vaccine space. Pharmaceutical market analysts predict competition will hold COVID-19 vaccine prices down even in the unlikely scenario of rights holders declining to license their IP to other manufacturers. “In two years’ time, there could be 20 vaccines on the market,” Emily Field, head of European pharmaceutical research at Barclays told the BBC. “It’s going to be difficult to charge a premium price.” V THE REAL CHALLENGES IP has underpinned the research and development that has led to the arrival of several game-changing vaccines. But the challenge does not end there. Perhaps the biggest hurdle is manufacturing billions of doses or new antibody treatments while maintaining the highest quality standards. There’s more to it than starting a global manufacturing free for all by overriding or ignoring patents. A spokesperson for Regeneron, a manufacturer of a novel COVID-19 antibody treatment explained to The Lancet: “Manufacturing antibody medicines is incredibly complex and transferring the technology takes many months, as well as significant resources and skill. Unfortunately, it is not as simple as putting a recipe on the internet and committing to not sue other companies during the pandemic” John-Arne Røttingen, chair of the WHO COVID-19 Solidarity trial, explains that technology transfer will be crucial to scaling up production, but voluntary mechanisms are better: “If you want to establish a biological production line, you need a lot of additional information, expertise, processes, and biological samples, cell lines, or bacteria” to be able to document to regulatory agencies that you have an identical product, he explains. The TRIPS waiver, he says, is the “wrong approach” because COVID-19 therapeutics and vaccines are complex biological products in which the main barriers are production facilities, infrastructure, and know-how. “IP is the least of the barriers”, he says. Then there is the problem of distributing the vaccines to billions of people in every country. Even with plentiful supplies, a range of issues need to be considered such as regulatory bottlenecks; supply chain, transport and storage; maintenance of the cold chain; adequately trained staff; data tracking; and vaccine hesitancy amongst the population. The costs of the vaccine itself is only a small component of the total cost of delivering doses to millions of people. The UK, for example, has spent around £2.9bn on procuring vaccines, far less than the official estimate of £8.8bn to be spent on distributing and delivering them. Comparable costs will exist for all other countries, even if they are subsidised by Overseas Development Assistance. Even then, the combined costs of vaccination are dwarved by the other economic costs of the pandemic. V IP IS PART OF THE SOLUTION Far from being a problem, IP has repeatedly proven itself to be part of the solution in fighting disease. It allows innovators to manage production scale-up by selecting and licensing technology to partners who have the skills and capacity to reliably manufacture large quantities of high-quality products, which they distribute at scale in low and middle-income countries. It would make no sense for IP owners to use it to withhold access, when they can profit from supplying all demand. IP licensing is the way this is done. This is the model unfolding for COVID-19, with new manufacturing licensing deals such as those between AstraZeneca and the Serum Institute in India (1bn doses), China’s BioKangtai (200m doses), Brazil’s FioCruz, Russia’s R-Pharm and South Korea’s SK Bioscience. Collectively, such deals will see the manufacture of 2 billion doses by the end of 2021. The Serum Institute has also entered into manufacturing licenses with a number of developers of yet to be approved COVID-19 vaccines, as have several other Indian vaccine manufacturers. Many of these doses will be procured on a non-profit basis by new collective procurement bodies such as COVAX, for distribution to low and middleincome countries. IP is important because it allows the innovator to control which partners manufacture the product, ensuring the quality of supplies, while maximising low-cost access for low and middle-income countries. It also allows the innovator to preserve its ability to recoup costs from richer markets, meaning the preservation of incentives for future R&D investment. Voluntary licensing has worked well in the past, particularly for low and middle-income countries. A recent academic analysis of hepatitis C voluntary licenses published by The Lancet Global Health concluded that they have increased access to medicines at a considerably faster pace than alternative access models, by avoiding the need for lengthy patent disputes and bringing to bear intercompany competition and economies of scale. But again, these licenses model were criticised by public health NGOs and other stakeholders, who called for the confiscation of IP rights via compulsory licensing. Time has shown such calls to be mistaken. As of January 2021, there are three vaccines approved by stringent regulatory authorities with several more likely to follow in the coming months. Prices of COVID-19 vaccines vary between more expensive but complex to manufacture, and cheaper ones based on existing technologies. Companies are offering their vaccines at cost, with pooled procurement mechanisms such as COVAX ready to leverage their enormous purchasing power to drive economies of scale and bring prices down further for developing countries, many of which will have the cost of vaccination subsidised by Overseas Development Assistance. Meanwhile, the existence of multiple vaccines means there is no COVID-19 vaccine “monopoly”, and minimal risk of premium pricing. In fact, there is a competitive marketplace in which manufacturers are incentivised to refine and improve their vaccines – vital given the new strains of the virus which constantly emerge. Providing COVID-19 vaccines rapidly at scale is a pressing challenge for all countries but there is no evidence that overriding intellectual property rights will achieve more than the licensing agreements currently being forged between innovators and reputable vaccine manufacturers in countries like India and Brazil. Manufacturing of COVID-19 vaccines is continuing at speed, and mechanisms are gearing up to ensure a rapid global role out. Forceable tech transfer and other forms of IP abrogation such as those proposed by India and South Africa at the WTO TRIPS Council would throw manufacturing supply chain planning, financing and distribution systems into chaos for little upside. Instead of sowing division and creating major distractions at venues such as the WTO, opponents of IP should stop the rhetoric. The IP system has put us in a position to end the pandemic. We should allow it to continue doing its job.