# Util NC

#### The standard is consistency with utilitarianism

#### 1] Preventing extinction is the most ethical outcome

Bostrom 13 (Nick, Professor at Oxford University, Faculty of Philosophy & Oxford Martin School, Director, Future of Humanity Institute, Director, Oxford Martin Programme on the Impacts of Future Technology University of Oxford, “Existential Risk Prevention as Global Priority”, Global Policy Volume 4, Issue 1, February 2013 // AKONG)

Some other ethical perspectives We have thus far considered existential risk from the perspective of utilitarianism (combined with several simplify- ing assumptions). We may briefly consider how the issue might appear when viewed through the lenses of some other ethical outlooks. For example, the philosopher Robert Adams outlines a different view on these matters: I believe a better basis for ethical theory in this area can be found in quite a different direction—in a commitment to the future of human- ity as a vast project, or network of overlapping projects, that is generally shared by the human race. The aspiration for a better society—more just, more rewarding, and more peaceful—is a part of this project. So are the potentially end- less quests for scientific knowledge and philo- sophical understanding, and the development of artistic and other cultural traditions. This includes the particular cultural traditions to which we belong, in all their accidental historic and ethnic diversity. It also includes our interest in the lives of our children and grandchildren, and the hope that they will be able, in turn, to have the lives of their children and grandchil- dren as projects. To the extent that a policy or practice seems likely to be favorable or unfavor- able to the carrying out of this complex of pro- jects in the nearer or further future, we have reason to pursue or avoid it. ... Continuity is as important to our commitment to the project of the future of humanity as it is to our commit- ment to the projects of our own personal futures. Just as the shape of my whole life, and its connection with my present and past, have an interest that goes beyond that of any iso- lated experience, so too the shape of human history over an extended period of the future, and its connection with the human present and past, have an interest that goes beyond that of the (total or average) quality of life of a popula- tion-at-a-time, considered in isolation from how it got that way. We owe, I think, some loyalty to this project of the human future. We also owe it a respect that we would owe it even if we were not of the human race ourselves, but beings from another planet who had some understanding of it (Adams, 1989, pp. 472–473). Since an existential catastrophe would either put an end to the project of the future of humanity or drasti- cally curtail its scope for development, we would seem to have a strong prima facie reason to avoid it, in Adams’ view. We also note that an existential catastrophe would entail the frustration of many strong preferences, sug- gesting that from a preference-satisfactionist perspective it would be a bad thing. In a similar vein, an ethical view emphasising that public policy should be determined through informed democratic deliberation by all stake- holders would favour existential-risk mitigation if we suppose, as is plausible, that a majority of the world’s population would come to favour such policies upon reasonable deliberation (even if hypothetical future peo- ple are not included as stakeholders). We might also have custodial duties to preserve the inheritance of humanity passed on to us by our ancestors and convey it safely to our descendants.23 We do not want to be the failing link in the chain of generations, and we ought not to delete or abandon the great epic of human civili- sation that humankind has been working on for thou- sands of years, when it is clear that the narrative is far from having reached a natural terminus. Further, many theological perspectives deplore naturalistic existential catastrophes, especially ones induced by human activi- ties: If God created the world and the human species, one would imagine that He might be displeased if we took it upon ourselves to smash His masterpiece (or if, through our negligence or hubris, we allowed it to come to irreparable harm).24 We might also consider the issue from a less theoreti- cal standpoint and try to form an evaluation instead by considering analogous cases about which we have defi- nite moral intuitions. Thus, for example, if we feel confident that committing a small genocide is wrong, and that committing a large genocide is no less wrong, we might conjecture that committing omnicide is also wrong.25 And if we believe we have some moral reason to prevent natural catastrophes that would kill a small number of people, and a stronger moral reason to pre- vent natural catastrophes that would kill a larger number of people, we might conjecture that we have an even stronger moral reason to prevent catastrophes that would kill the entire human population.

#### 2] Actor specificity – Util is the only moral system available to policymakers. Goodin 95

Robert E. Goodin 95 [professor of government at the University of Essex, and professor of philosophy and social and political theory at Australian National University], “Utilitarianism as a Public Philosophy”, Cambridge Studies in Philosophy and Public Policy, May 1995, BE

Consider, first, the argument from necessity. Public officials are obliged to make their choices under uncertainty, and uncertainty of a very special sort at that. All choices - public and private alike - are made under some degree of uncertainty, of course. But in the nature of things, private individuals will usually have more complete information on the peculiarities of their own circumstances and on the ramifications that alternative possible choices might have for them. Public officials, in contrast, are relatively poorly informed as to the effects that their choices will have on individuals, one by one. What they typically do know are generalities: averages and aggregates. They know what will happen most often to most people as a result of their various possible choices. But that is all. That is enough to allow public policy-makers to use the utilitarian calculus - if they want to use it at all - to choose general rules of conduct. Knowing aggregates and averages, they can proceed to calculate the utility payoffs from adopting each alternative possible general rule. But they cannot be sure what the payoff will be to any given individual or on any particular occasion. Their knowledge of gener- alities, aggregates and averages is just not sufficiently fine-grained for that.

#### A] No intent-foresight distinction – If we foresee a consequence, then it becomes part of our deliberation which makes it intrinsic to our action since we intend it to happen.

#### 3] Pleasure and pain are intrinsically valuable.

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

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

#### 4] No act-omission distinction –

#### A] Psychology – choosing to omit is an act itself – governments decide not to act which means being presented with the aff creates a choice between two actions, neither of which is an omission.

#### B] Actor specificity – governments are culpable for omissions because their purpose is to protect the constituency – otherwise they would have no obligation to make murder illegal. Only util can escape culpability in the instance of tradeoffs – i.e. it resolves the trolley problem because a deontological theory would hold you responsible for killing regardless. Actor spec o/w – different agents have different ethical standings that affect their obligations and considerations.

#### 5] Every study of credible social theories concludes consequentialism is good---Scientific studies of biology, evolution, and psychology prove that deontological proclivities are only illogical layovers from evolution

* Util isn’t about treating humans as objects: it’s about treating each person equally and choosing the action that maximizes human life, which is the ultimate human good

Greene 2010 – Joshua, Associate Professor of Social science in the Department of Psychology at Harvard University (The Secret Joke of Kant’s Soul published in Moral Psychology: Historical and Contemporary Readings, accessed: www.fed.cuhk.edu.hk/~lchang/material/Evolutionary/Developmental/Greene-KantSoul.pdf)

What turn-of-the-millennium science is telling us is that human moral judgment is not a pristine rational enterprise, that our moral judgments are driven by a hodgepodge of emotional dispositions, which themselves were shaped by a hodgepodge of evolutionary forces, both biological and cultural. Because of this, it is exceedingly unlikely that there is any rationally coherent normative moral theory that can accommodate our moral intuitions. Moreover, anyone who claims to have such a theory, or even part of one, almost certainly doesn't. Instead, what that person probably has is a moral rationalization. It seems then, that we have somehow crossed the infamous "is"-"ought" divide. How did this happen? Didn't Hume (Hume, 1978) and Moore (Moore, 1966) warn us against trying to derive an "ought" from and "is?" How did we go from descriptive scientific theories concerning moral psychology to skepticism about a whole class of normative moral theories? The answer is that we did not, as Hume and Moore anticipated, attempt to derive an "ought" from and "is." That is, our method has been inductive rather than deductive. We have inferred on the basis of the available evidence that the phenomenon of rationalist deontological philosophy is best explained as a rationalization of evolved emotional intuition (Harman, 1977). Missing the Deontological Point I suspect that rationalist deontologists will remain unmoved by the arguments presented here. Instead, I suspect, they will insist that I have simply misunderstood what Kant and like-minded deontologists are all about. Deontology, they will say, isn't about this intuition or that intuition. It's not defined by its normative differences with consequentialism. Rather, deontology is about taking humanity seriously. Above all else, it's about respect for persons. It's about treating others as fellow rational creatures rather than as mere objects, about acting for reasons rational beings can share. And so on (Korsgaard, 1996a; Korsgaard, 1996b). This is, no doubt, how many deontologists see deontology. But this insider's view, as I've suggested, may be misleading. The problem, more specifically, is that it defines deontology in terms of values that are not distinctively deontological, though they may appear to be from the inside. Consider the following analogy with religion. When one asks a religious person to explain the essence of his religion, one often gets an answer like this: "It's about love, really. It's about looking out for other people, looking beyond oneself. It's about community, being part of something larger than oneself." This sort of answer accurately captures the phenomenology of many people's religion, but it's nevertheless inadequate for distinguishing religion from other things. This is because many, if not most, non-religious people aspire to love deeply, look out for other people, avoid self-absorption, have a sense of a community, and be connected to things larger than themselves. In other words, secular humanists and atheists can assent to most of what many religious people think religion is all about. From a secular humanist's point of view, in contrast, what's distinctive about religion is its commitment to the existence of supernatural entities as well as formal religious institutions and doctrines. And they're right. These things really do distinguish religious from non-religious practices, though they may appear to be secondary to many people operating from within a religious point of view. In the same way, I believe that most of the standard deontological/Kantian self-characterizatons fail to distinguish deontology from other approaches to ethics. (See also Kagan (Kagan, 1997, pp. 70-78.) on the difficulty of defining d eontology.) It seems to me that consequentialists, as much as anyone else, have respect for persons, are against treating people as mere objects, wish to act for reasons that rational creatures can share, etc. A consequentialist respects other persons, and refrains from treating them as mere objects, by counting every person's well-being in the decision-making process. Likewise, a consequentialist attempts to act according to reasons that rational creatures can share by acting according to principles that give equal weight to everyone's interests, i.e. that are impartial. This is not to say that consequentialists and deontologists don't differ. They do. It's just that the real differences may not be what deontologists often take them to be. What, then, distinguishes deontology from other kinds of moral thought? A good strategy for answering this question is to start with concrete disagreements between deontologists and others (such as consequentialists) and then work backward in search of deeper principles. This is what I've attempted to do with the trolley and footbridge cases, and other instances in which deontologists and consequentialists disagree. If you ask a deontologically-minded person why it's wrong to push someone in front of speeding trolley in order to save five others, you will get characteristically deontological answers. Some will be tautological: "Because it's murder!" Others will be more sophisticated: "The ends don't justify the means." "You have to respect people's rights." But, as we know, these answers don't really explain anything, because if you give the same people (on different occasions) the trolley case or the loop case (See above), they'll make the opposite judgment, even though their initial explanation concerning the footbridge case applies equally well to one or both of these cases. Talk about rights, respect for persons, and reasons we can share are natural attempts to explain, in "cognitive" terms, what we feel when we find ourselves having emotionally driven intuitions that are odds with the cold calculus of consequentialism. Although these explanations are inevitably incomplete, there seems to be "something deeply right" about them because they give voice to powerful moral emotions. But, as with many religious people's accounts of what's essential to religion, they don't really explain what's distinctive about the philosophy in question.

### 1

#### Counterplan: High-income country governments, backed by the United States, should provide all necessary funding and technology to build manufacturing capacity for emergency use listing medicines during public health emergencies of international concern to fund research and development, buy advance purchase commitments, and buy large number of doses of the medicines at a set price.

Lindsay 6/11 - Brink Lindsay, Brookings, 6-11, 2021, Why intellectual property and pandemics don’t mix, https://www.brookings.edu/blog/up-front/2021/06/03/why-intellectual-property-and-pandemics-dont-mix/

Waiving patent protections is certainly no panacea. What is needed most urgently is a massive drive of technology transfer, capacity expansion, and supply line coordination to bring vaccine supply in line with global demand. Dispensing with patents in no way obviates the need for governments to fund and oversee this effort.¶ Although focusing on these immediate constraints is vital, we cannot confine our attention to the short term. First of all, the COVID-19 pandemic is far from over. Although Americans can now see the light at the end of the tunnel thanks to the rapid rollout of vaccines, most of the world isn’t so lucky. The virus is¶ currently raging in India and throughout South America, overwhelming health care systems and inflicting suffering and loss on a horrific scale. And consider the fact that Australia, which has been successful in suppressing the virus, recently announced it was sticking to plans to keep its borders closed until mid-2022. Criticisms of the TRIPS waiver that focus only on the next few months are therefore short-sighted: this pandemic could well drag on long enough for elimination of patent restrictions to enable new vaccine producers to make a positive difference.¶ Furthermore, and probably even more important, this is almost certainly not the last pandemic we will face. Urbanization, the spread of factory-farming methods, and globalization all combine to increase the odds that a new virus will make the jump from animals to humans and then spread rapidly around the world. Prior to the current pandemic, the 21st century already saw outbreaks of SARS, H1N1, MERS, and Ebola. Everything we do and learn in the current crisis should be viewed from the perspective of getting ready for next time.¶ The Nature of the Patent Bargain¶ When we take the longer view, we can see a fundamental mismatch between the policy design of intellectual property protection and the policy requirements of effective pandemic response. Although patent law, properly restrained, constitutes one important element of a well-designed national innovation system, the way it goes about encouraging technological progress is singularly ill-suited to the emergency conditions of a pandemic or other public health crisis. Securing a TRIPS waiver for COVID-19 vaccines and treatments would thus establish a salutary precedent that, in emergencies of this kind, governments should employ other, more direct means to incentivize the development of new drugs.¶ Here is the basic bargain offered by patent law: encourage the creation of useful new ideas for the long run by slowing the diffusion of useful new ideas in the short run. The second half of the bargain, the half that imposes costs on society, comes from the temporary exclusive rights, or monopoly privileges, that a patent holder enjoys. Under U.S. patent law, for a period of 20 years nobody else can manufacture or sell the patented product without the permission of the patent holder. This allows the patent holder to block competitors from the market, or extract licensing fees before allowing them to enter, and consequently charge above-market prices to its customers. Patent rights thus slow the diffusion of a new invention by restricting output and raising prices.¶ The imposition of these short-run costs, however, can bring net long-term benefits by sharpening the incentives to invent new products. In the absence of patent protection, the prospect of easy imitation by later market entrants can deter would-be innovators from incurring the up-front fixed costs of research and development. But with a guaranteed period of market exclusivity, inventors can proceed with greater confidence that they will be able to recoup their investment.¶ For the tradeoff between costs and benefits to come out positive on net, patent law must strike the right balance. Exclusive rights should be valuable enough to encourage greater innovation, but not so easily granted or extensive in scope or term that this encouragement is outweighed by output restrictions on the patented product and discouragement of downstream innovations dependent on access to the patented technology.¶ Unfortunately, the U.S. patent system at present is out of balance. Over the past few decades, the expansion of patentability to include software and business methods as well as a general relaxation of patenting requirements have led to wildly excessive growth in these temporary monopolies: the number of patents granted annually has¶ skyrocketed roughly fivefold since the early 1980s. One unfortunate result has been the rise of “non-practicing entities,” better known as patent trolls: firms that make nothing themselves but buy up patent portfolios and monetize them through aggressive litigation. As a result, a law that is supposed to encourage innovation has turned into a¶ legal minefield for many would-be innovators. In the pharmaceutical industry, firms have abused the law by piling up patents for trivial, therapeutically irrelevant “innovations” that allow them to¶ extend their monopolies and keep raising prices long beyond the statutorily contemplated 20 years.¶ Patent law is creating these unintended consequences because policymakers have been caught in an ideological fog that¶ conflates “intellectual property” with actual property rights over physical objects. Enveloped in that fog, they regard any attempts to put limits on patent monopolies as attacks on private property and view ongoing expansions of patent privileges as necessary to keep innovation from grinding to a halt. In fact, patent law is a tool of regulatory policy with the usual tradeoffs between costs and benefits; like all tools, it can be misused, and as with all tools there are some jobs for which other tools are better suited. A well-designed patent system, in which benefits are maximized and costs kept to a minimum, is just one of various policy options that governments can employ to stimulate technological advance—including tax credits for R&D, prizes for targeted inventions, and direct government support.¶ Public Health Emergencies and Direct Government Support¶ For pandemics and other public health emergencies, patents’ mix of costs and benefits is misaligned with what is needed for an effective policy response**. The basic patent bargain**, even when well struck, **is to pay for more innovation down the roa**d with slower diffusion of innovation today. In the context of a pandemic, that bargain is a bad one and should be rejected entirely. Here the imperative is to accelerate the diffusion of vaccines and other treatments, not slow it down. Giving drug companies the power to hold things up by blocking competitors and raising prices pushes in the completely wrong direction. What approach to encouraging innovation should we take instead? How do we incentivize drug makers to undertake the hefty R&D costs to develop new vaccines without giving them exclusive rights over their production and sale? **The most effective approach during a public health crisis is direct government support: public funding of R&D, advance purchase commitments** by the government **to buy large numbers of doses at set prices, and other, related payouts.** And when we pay drug makers, **we should not hesitate to pay generously**, even extravagantly**: we want to offer** drug companies **big profits so** that **they prioritize this work above everything else, and so that they are** ready and **eager to come to the rescue again the next time there’s a crisis.** It was direct support via Operation Warp Speed that made possible the astonishingly rapid development of COVID-19 vaccines and then facilitated a relatively rapid rollout of vaccine distribution (relative, that is, to most of the rest of the world). And it’s worth noting that a major reason for the faster rollout here and in the United Kingdom compared to the European Union was the latter’s misguided penny-pinching. The EU bargained hard with firms to keep vaccine prices low, and as a result their citizens ended up in the back of the queue as various supply line kinks were being ironed out. This is particularly ironic since the Pfizer-BioNTech vaccine was developed in Germany. As this fact underscores**, the chief advantage of direct support** isn’t to “get tough” with drug firms and keep a lid on their profits. Instead, it **is to accelerate the end of the public health emergency by making sure drug makers profit** handsomely **from doing the right thing.** Patent law and direct support should be seen not as either-or alternatives but as complements that apply different incentives to different circumstances and time horizons**. Patent law provides a decentralized system for encouraging innovation. The government doesn’t presume to tell the industry which new drugs are needed**; it simply incentivizes the development of whatever new drugs that pharmaceutical firms can come up with by offering them a temporary monopoly. It is important to note that patent law’s incentives offer no commercial guarantees. Yes, you can block other competitors for a number of years, but that still doesn’t ensure enough consumer demand for the new product to make it profitable. The situation is different in a pandemic. Here the government knows exactly what it wants to incentivize: the creation of vaccines to prevent the spread of a specific virus and other drugs to treat that virus. Under these circumstances, the decentralized approach isn’t good enough. There is no time to sit back and let drug makers take the initiative on their own timeline. Instead, the government needs to be more involved to incentivize specific innovations now. As recompense for letting it call the shots (pardon the pun), the government sweetens the deal for drug companies by insulating them from commercial risk. **If pharmaceutical firms develop effective vaccines and therapies, the government will buy large, predetermined quantities at prices set high enough to guarantee a healthy return.** For the pharmaceutical industry, it is useful to conceive of **patent law** as the default regime for innovation promotion. It **improves pharmaceutical companies’ incentives to develop new drugs while leaving them free to decide which new drugs to pursu**e – and also leaving them to bear all commercial risk. In a pandemic or other emergency, however, it is appropriate to shift to the direct support regime, in which the government focuses efforts on one disease. In this regime, it is important to note, the government provides qualitatively superior incentives to those offered under patent law. Not only does it offer public funding to cover the up-front costs of drug development, but it also provides advance purchase commitments that guarantee a healthy return. It should therefore be clear that the pharmaceutical industry has no legitimate basis for objecting to a TRIPS waiver. Since, because of the public health crisis, drug makers now qualify for the superior benefits of direct government support, they no longer need the default benefits of patent support. Arguments that a TRIPS waiver would deprive drug makers of the incentives they need to keep developing new drugs, when they are presently receiving the most favorable incentives available, can be dismissed as the worst sort of special pleading. That said, it is a serious mistake to try to cast the current crisis as a morality play in which drug makers wear the black hats and the choice at hand is between private profits and public health. We would have no chance of beating this virus without the formidable organizational capabilities of the pharmaceutical industry, and providing the appropriate incentives is essential to ensure that the industry plays its necessary and vital role. It is misguided to lament that private companies are profiting in the current crisis: those profits are a drop in the bucket compared to the staggering cost of this pandemic in lives and economic damage. What matters isn’t the existence or size of the profits, but how they are earned. We have good reason to want drug makers to profit from vaccinating the world: the comparative price is minuscule, and the incentive effects are a vital safeguard of public health in the event of future crises. What we want to avoid at all costs is putting drug makers in the position where drug companies can profit from standing in the way of rapid global vaccination. That is why intellectual property rights need to be taken out of the equation. Vaccinating the world in any kind of reasonable time frame will require large-scale technology transfer to drug firms in other countries and rapid expansion of their production capacity. And looking beyond the current pandemic to the longer term, we need ample, redundant global vaccine production capacity that is widely distributed around the planet. To achieve these goals as rapidly as possible will require the active cooperation of the U.S. pharmaceutical industry, which is why the direct support model now needs to be extended. What is needed now is an Operation Warp Speed for the world, in which we make it worth current vaccine producers’ while to share their know-how broadly and ramp up global capacity. Here again, we must recognize that the choice isn’t between people on the one hand and profits on the other. Rather, the key to good pandemic response policy is ensuring that incentives are structured so that drug company profit-seeking and global public health are well aligned. That means opting out of the default, decentralized patent bargain in favor of generous but well-focused direct government support.

#### CP answers their Efrani and Gostin card because it enables domestic manufacturing

### 2

#### The pharma industry is strong now but patents are key for continued economic growth. Batell and PhRMA 14:

Batell and PhRMA {Battelle is the world’s largest nonprofit independent research and development organization, providing innovative solutions to the world’s most pressing needs through its four global businesses: Laboratory Management, National Security, Energy, Environment and Material Sciences, and Health and Life Sciences. The Pharmaceutical Research and Manufacturers of America (PhRMA) represents the country’s leading pharmaceutical research and biotechnology companies, which are devoted to inventing medicines that allow patients to live longer, healthier, and more productive lives.}, 14 – “The U.S. Biopharmaceutical Industry: Perspectives on Future Growth and The Factors That Will Drive It,” http://phrma-docs.phrma.org/sites/default/files/pdf/2014-economic-futures-report.pdf//marlborough-wr//

Compared to other capital-intensive, advanced manufacturing industries in the U.S., the biopharmaceutical industry is a leader in R&D investment, IP generation, venture capital investment, and R&D employment. Policies and infrastructure that helped foster these innovative activities have allowed the U.S. to seize global leadership in biopharmaceutical R&D over the past 30 years. However, as this report details, other countries are seeking to compete with the U.S. by borrowing and building upon some of these pro-innovation policies to improve their own operating environment and become more favorable to biopharmaceutical companies making decisions about where to locate their R&D and manufacturing activities. A unique contribution of this report was the inclusion of the perspective of senior-level strategic planning executives of biopharmaceutical companies regarding what policy areas they see as most likely to impact the favorability of the U.S. business operating environment. The executives cited the following factors as having the most impact on the favorability of the operating environment and hence, potential growth of the innovative biopharmaceutical industry in the U.S.: • Coverage and payment policies that support and encourage medical innovation • A well-functioning, science-based regulatory system • Strong IP protection and enforcement in the U.S. and abroad The top sub-attribute identified as driving future biopharmaceutical industry growth in the U.S. cited by executives was a domestic IP system that provides adequate patent rights and data protection. Collectively, these factors underscore the need to reduce uncertainties and ensure adequate incentives for the lengthy, costly, and risky R&D investments necessary to develop new treatments needed by patients and society to address our most costly and challenging diseases. With more than 300,000 jobs at stake between the two scenarios, the continued growth and leadership of the U.S. innovative biopharmaceutical industry cannot be taken for granted. Continued innovation is fundamental to U.S. economic well-being and the nation’s ability to compete effectively in a globalized economy and to take advantage of the expected growth in demand for new medicines around the world. Just as other countries have drawn lessons from the growth of the U.S. biopharmaceutical sector, the U.S. needs to assess how it can improve the environment for innovation and continue to boost job creation by increasing R&D investment, fostering a robust talent pool, enhancing economic growth and sustainability, and continuing to bring new medicines to patients.

#### COVID has kept patents and innovation strong, but continued protection is key to innovation by incentivizing quick biomedical research – it’s also crucial to preventing counterfeit medicines, economic collapse, and fatal diseases, which independently turns case. Macdole and Ezell 4-29:

Jaci Mcdole and Stephen Ezell {Jaci McDole is a senior policy analyst covering intellectual property (IP) and innovation policy at the Information Technology and Innovation Foundation (ITIF). She focuses on IP and its correlations to global innovation and trade. McDole holds a double BA in Music Business and Radio-Television with a minor in Marketing, an MS in Education, and a JD with a specialization in intellectual property (Southern Illinois University Carbondale). McDole comes to ITIF from the Institute for Intellectual Property Research, an organization she co-founded to study and further robust global IP policies. Stephen Ezell is vice president, global innovation policy, at the Information Technology and Innovation Foundation (ITIF). He comes to ITIF from Peer Insight, an innovation research and consulting firm he cofounded in 2003 to study the practice of innovation in service industries. At Peer Insight, Ezell led the Global Service Innovation Consortium, published multiple research papers on service innovation, and researched national service innovation policies being implemented by governments worldwide. Prior to forming Peer Insight, Ezell worked in the New Service Development group at the NASDAQ Stock Market, where he spearheaded the creation of the NASDAQ Market Intelligence Desk and the NASDAQ Corporate Services Network, services for NASDAQ-listed corporations. Previously, Ezell cofounded two successful innovation ventures, the high-tech services firm Brivo Systems and Lynx Capital, a boutique investment bank. Ezell holds a B.S. from the School of Foreign Service at Georgetown University, with an honors certificate from Georgetown’s Landegger International Business Diplomacy program.}, 21 - ("Ten Ways Ip Has Enabled Innovations That Have Helped Sustain The World Through The Pandemic," Information Technology & Innovation Foundation, 4-29-2021, https://itif.org/publications/2021/04/29/ten-ways-ip-has-enabled-innovations-have-helped-sustain-world-through)//marlborough-wr/

To better understand the role of IP in enabling solutions related to COVID-19 challenges, this report relies on 10 case studies drawn from a variety of nations, technical fields, and firm sizes. This is but a handful of the thousands of IP-enabled innovations that have sprung forth over the past year in an effort to meet the tremendous challenges brought on by COVID-19 globally. From a paramedic in Mexico to a veteran vaccine manufacturing company in India and a tech start-up in Estonia to a U.S.-based company offering workplace Internet of Things (IoT) services, small and large organizations alike are working to combat the pandemic. Some have adapted existing innovations, while others have developed novel solutions. All are working to take the world out of the pandemic and into the future. The case studies are: Bharat Biotech: Covaxin Gilead: Remdesivir LumiraDX: SARS-COV-2 Antigen POC Test Teal Bio: Teal Bio Respirator XE Ingeniería Médica: CápsulaXE Surgical Theater: Precision VR Tombot: Jennie Starship Technologies: Autonomous Delivery Robots Triax Technologies: Proximity Trace Zoom: Video Conferencing As the case studies show, IP is critical to enabling innovation. Policymakers around the world need to ensure robust IP protections are—and remain—in place if they wish their citizens to have safe and innovative solutions to health care, workplace, and societal challenges in the future. THE ROLE OF INTELLECTUAL PROPERTY IN R&D-INTENSIVE INDUSTRIES Intangible assets, such as IP rights, comprised approximately 84 percent of the corporate value of S&P 500 companies in 2018.4 For start-ups, this means much of the capital needed to operate is directly related to IP (see Teal Bio case study for more on this). IP also plays an especially important role for R&D-intensive industries.5 To take the example of the biopharmaceutical industry, it is characterized by high-risk, time-consuming, and expensive processes including basic research, drug discovery, pre-clinical trials, three stages of human clinical trials, regulatory review, and post-approval research and safety monitoring. The drug development process spans an average of 11.5 to 15 years.6 For every 5,000 to 10,000 compounds screened on average during the basic research and drug discovery phases, approximately 250 molecular compounds, or 2.5 to 5 percent, make it to preclinical testing. Out of those 250 molecular compounds, approximately 5 make it to clinical testing. That is, 0.05 to 0.1 percent of drugs make it from basic research into clinical trials. Of those rare few which make it to clinical testing, less than 12 percent are ultimately approved for use by the U.S. Food and Drug Administration (FDA).7 In addition to high risks, drug development is costly, and the expenses associated with it are increasing. A 2019 report by the Deloitte Center for Health Solutions concluded that since 2010 the average cost of bringing a new drug to market increased by 67 percent.8 Numerous studies have examined the substantial cost of biopharmaceutical R&D, and most confirm investing in new drug development requires $1.7 billion to $3.2 billion up front on average.9 A 2018 study by the Coalition for Epidemic Preparedness found similar risks and figures for vaccines, stating, “In general, vaccine development from discovery to licensure can cost billions of dollars, can take over 10 years to complete, and has an average 94 percent chance of failure.”10 Yet, a 2010 study found that 80 percent of new drugs—that is, the less than 12 percent ultimately approved by the FDA—made less than their capitalized R&D costs.11 Another study found that only 1 percent (maybe three new drugs each year) of the most successful 10 percent of FDA approved drugs generate half of the profits of the entire drug industry.12 To say the least, biopharmaceutical R&D represents a high-stakes, long-term endeavor with precarious returns. Without IP protection, biopharmaceutical manufacturers have little incentive to take the risks necessary to engage in the R&D process because they would be unable to recoup even a fraction of the costs incurred. Diminished revenues also result in reduced investments in R&D which means less research into cancer drugs, Alzheimer cures, vaccines, and more. IP rights give life-sciences enterprises the confidence needed to undertake the difficult, risky, and expensive process of life-sciences innovation secure in the knowledge they can capture a share of the gains from their innovations, which is indispensable not only to recouping the up-front R&D costs of a given drug, but which can generate sufficient profits to enable investment in future generations of biomedical innovation and thus perpetuate the enterprises into the future.13 THE IMPORTANCE OF INTELLECTUAL PROPERTY TO INNOVATION Although anti-IP proponents have attacked biopharmaceutical manufacturers particularly hard, the reality is all IP-protected innovations are at risk if these rights are ignored, or vitiated. Certain arguments have shown a desire for the term “COVID-19 innovations” to include everything from vaccines, therapeutics, diagnostics, and PPE to biotechnology, AI-related data, and educational materials.14 This could potentially open the floodgates to invalidate IP protection on many of the innovations highlighted in this report. However, much of the current discussion concerning IP focuses almost entirely on litigation fears or R&D incentives. Although R&D is an important aspect of IP, as previously mentioned, these discussions ignore the fact that IP protection can be—and often is—used for other purposes, including generating initial capital to create a company and begin manufacturing and, more importantly, using licensing agreements and IP to track the supply chain and ensure quality control of products. This report highlights but a handful of the thousands of IP-enabled innovations that have sprung forth over the past year in an effort to meet the tremendous challenges brought on by COVID-19 globally. In 2018, Forbes identified counterfeiting as the largest criminal enterprise in the world.15 The global struggle against counterfeit and non-regulated products, which has hit Latin America particularly hard during the pandemic, proves the need for safety and quality assurance in supply chains.16 Some communities already ravaged by COVID-19 are seeing higher mortality rates related to counterfeit vaccines, therapeutics, PPE, and cleaning and sanitizing products.17 Polish authorities discovered vials of antiwrinkle treatment labeled as COVID-19 vaccines. 18 In Mexico, fake vaccines sold for approximately $1,000 per dose.19 Chinese and South African police seized thousands of counterfeit vaccine doses from warehouses and manufacturing plants.20 Meanwhile, dozens of websites worldwide claiming to sell vaccines or be affiliated with vaccine manufacturers have been taken down.21 But the problem is not limited to biopharmaceuticals. The National Intellectual Property Rights Coordination Center has recovered $48 million worth of counterfeit PPE and other products.22 Collaborative efforts between law enforcement and manufacturers have kept numerous counterfeits from reaching the population. In countries with strong IP protection, the chances of counterfeit products reaching the market are significantly lower. This is largely because counterfeiting tends to be an IP-related issue, and these countries generally provide superior means of tracking the supply chain through trademarks, trade secrets, and licensing agreements. This enables greater quality control and helps manufacturers maintain a level of public confidence in their products. By controlling the flow of knowledge associated with IP, voluntary licensing agreements provide innovators with opportunities to collaborate, while ensuring their partners are properly equipped and capable of producing quality products. Throughout this difficult time, the world has seen unexpected collaborations, especially between biopharmaceutical companies worldwide such as Gilead and Eva Pharma or Bharat Biotech and Ocugen, Inc. Throughout history, and most significantly in the nineteenth century through the widespread development of patent systems and the ensuing Industrial Revolution, IP has contributed toward greater economic growth.23 This is promising news as the world struggles for economic recovery. A 2021 joint study by the EU Intellectual Property Office (EUIPO) and European Patent Office (EPO) shows a strong, positive correlation between IP rights and economic performance.24 It states that “IP-owning firms represent a significantly larger proportion of economic activity and employment across Europe,” with IP-intensive industries contributing to 45 percent of gross domestic product (GDP) (€6.6 trillion; US$7.9 trillion).25 The study also shows 38.9 percent of employment is directly or indirectly attributed to IP-intensive industries, and IP generates higher wages and greater revenue per employee, especially for small-to-medium-sized enterprises.26 That concords with the United States, where the Department of Commerce estimated that IP-intensive industries support at least 45 million jobs and contribute more than $6 trillion dollars to, or 38.2 percent of, GDP.27 In 2020, global patent filings through the World Intellectual Property Organization’s (WIPO) Patent Cooperation Treaty (PCT) system reached a record 275,900 filings amidst the pandemic, growing 4 percent from 2019.28 The top-four nations, which accounted for 180,530 of the patent applications, were China, the United States, Japan, and Korea, respectively.29 While several countries saw an increase in patent filings, Saudi Arabia and Malaysia both saw significant increases in the number of annual applications, with the top two filing growths of 73 percent and 26 percent, respectively.30 The COVID-19 pandemic slowed a lot of things, but it certainly couldn’t stop innovation. There are at least five principal benefits strong IP rights can generate, for both developing and developed countries alike.31 First, stronger IP protection spurs the virtuous cycle of innovation by increasing the appropriability of returns, enabling economic gain and catalyzing economic growth. Second, through patents—which require innovators to disclose certain knowledge as a condition of protection—knowledge spillovers build a platform of knowledge that enables other innovators. For instance, studies have found that the rate of return to society from corporate R&D and innovation activities is at least twice the estimated returns that each company itself receives.32 Third, countries with robust IP can operate more efficiently and productively by using IP to determine product quality and reduce transaction costs. Fourth, trade and foreign direct investment enabled and encouraged by strong IP protection offered to enterprises from foreign countries facilitates an accumulation of knowledge capital within the destination economy. That matters when foreign sources of technology account for over 90 percent of productivity growth in most countries.33 There’s also evidence suggesting that developing nations with stronger IP protections enjoy the earlier introduction of innovative new medicines.34 And fifth, strong IP boosts exports, including in developing countries.35 Research shows a positive correlation between stronger IP protection and exports from developing countries as well as faster growth rates of certain industries.36 The following case studies illustrate these benefits of IP and how they’ve enabled innovative solutions to help global society navigate the COVID-19 pandemic.

#### Pharmaceutical innovation is key to protecting against future pandemics, bioterrorism, and antibiotic resistance.

Marjanovic and Fejiao ‘20 Marjanovic, Sonja, and Carolina Feijao. Sonja Marjanovic, Ph.D., Judge Business School, University of Cambridge. Carolina Feijao, Ph.D. in biochemistry, University of Cambridge; M.Sc. in quantitive biology, Imperial College London; B.Sc. in biology, University of Lisbon. "Pharmaceutical Innovation for Infectious Disease Management: From Troubleshooting to Sustainable Models of Engagement." (2020). [Quality Control]

As key actors in the healthcare innovation landscape, pharmaceutical and life sci-ences companies have been called on to develop medicines, vaccines and diagnostics for pressing public health challenges. The COVID-19 crisis is one such challenge, but there are many others. For example, MERS, SARS, Ebola, Zika and avian and swine flu are also infectious diseases that represent public health threats. Infectious agents such as anthrax, smallpox and tularemia could present threats in a **bioterrorism con-text**.1 The general threat to public health that is posed by **antimicrobial resistance** is also **well-recognised** as an area **in need of pharmaceutical innovation**. Innovating in response to these challenges does not always align well with pharmaceutical industry commercial models, shareholder expectations and compe-tition within the industry. However, the expertise, networks and infrastructure that industry has within its reach, as well as public expectations and the moral imperative, make pharmaceutical companies and the wider life sciences sector an **indispensable** partner in the search for solutions that save lives. This perspective argues for the need to establish more sustainable and scalable ways of incentivising pharmaceu-tical innovation in response to infectious disease threats to public health. It considers both past and current examples of efforts to mobilise pharmaceutical innovation in high commercial risk areas, including in the context of current efforts to respond to the COVID-19 pandemic. In global pandemic crises like COVID-19, the urgency and scale of the crisis – as well as the spotlight placed on pharmaceutical companies – mean that contributing to the search for effective medicines, vaccines or diagnostics is **essential** for socially responsible companies in the sec-tor.2 It is therefore unsurprising that we are seeing indus-try-wide efforts unfold at unprecedented scale and pace. Whereas there is always scope for more activity, industry is currently contributing in a variety of ways. Examples include pharmaceutical companies donating existing com-pounds to assess their utility in the fight against COVID-19; screening existing compound libraries in-house or with partners to see if they can be repurposed; accelerating tri-als for potentially effective medicine or vaccine candidates; and in some cases rapidly accelerating in-house research and development to discover new treatments or vaccine agents and develop diagnostics tests.3,4 Pharmaceutical companies are collaborating with each other in some of these efforts and participating in global R&D partnerships (such as the Innovative Medicines Initiative effort to accel-erate the development of potential therapies for COVID-19) and supporting national efforts to expand diagnosis and testing capacity and ensure affordable and ready access to potential solutions.3,5,6 The primary purpose of such innovation is to **benefit patients** and wider **population health**. Although there are also reputational benefits from involvement that can be realised across the industry, there are likely to be rela-tively few companies that are ‘commercial’ winners. Those who might gain substantial revenues will be under pres-sure not to be seen as profiting from the pandemic. In the United Kingdom for example, GSK has stated that it does not expect to profit from its COVID-19 related activities and that any gains will be invested in supporting research and long-term pandemic preparedness, as well as in developing products that would be affordable in the world’s poorest countries.7 Similarly, in the United States AbbVie has waived intellectual property rights for an existing com-bination product that is being tested for therapeutic poten-tial against COVID-19, which would support affordability and allow for a supply of generics.8,9 Johnson & Johnson has stated that its potential vaccine – which is expected to begin trials – will be available on a not-for-profit basis during the pandemic.10 Pharma is mobilising substantial efforts to rise to the COVID-19 challenge at hand. However, we need to consider how pharmaceutical innovation for responding to emerging infectious diseases can best be enabled beyond the current crisis. Many public health threats (including those associated with other **infectious diseases**, **bioterror-ism** agents **and antimicrobial resistance**) are **urgently in need of pharmaceutical innovation**, **even if their impacts are not as visible** to society **as COVID**-19 is in the imme-diate term. The pharmaceutical industry has responded to previous public health emergencies associated with infec-tious disease in recent times – for example those associated with Ebola and Zika outbreaks.11 However, it has done so to a lesser scale than for COVID-19 and with contribu-tions from fewer companies. Similarly, levels of activity in response to the threat of antimicrobial resistance are still **low**.12 There are important policy questions as to whether – and how – industry could engage with such public health threats to an even greater extent under improved innova-tion conditions.

#### Bioterror causes extinction---quick innovation key

Farmer 17 (“Bioterrorism could kill more people than nuclear war, Bill Gates to warn world leaders” http://www.telegraph.co.uk/news/2017/02/17/biological-terrorism-could-kill-people-nuclear-attacks-bill/)

Bioterrorists could one day kill hundreds of millions of people in an attack more deadly than nuclear war, Bill Gates will warn world leaders. Rapid advances in genetic engineering have opened the door for small terrorism groups to tailor and easily turn biological viruses into weapons. A resulting disease pandemic is currently one of the most deadly threats faced by the world, he believes, yet governments are complacent about the scale of the risk. Speaking ahead of an address to the Munich Security Conference, the richest man in the world said that while governments are concerned with the proliferation of nuclear and chemical weapons, they are overlooking the threat of biological warfare. Mr Gates, whose charitable foundationis funding research into quickly spotting outbreaks and speeding up vaccine production, said the defence and security establishment “have not been following biology and I’m here to bring them a little bit of bad news”. Mr Gates will today (Saturday) tell an audience of international leaders and senior officers that the world’s next deadly pandemic “could originate on the computer screen of a terrorist”. He told the Telegraph: “Natural epidemics can be extremely large. Intentionally caused epidemics, bioterrorism, would be the largest of all. “With nuclear weapons, you’d think you would probably stop after killing 100million. Smallpox won’t stop. Because the population is naïve, and there are no real preparations. That, if it got out and spread, would be a larger number.” He said developments in genetic engineering were proceeding at a “mind-blowing rate”. Biological warfare ambitions once limited to a handful of nation states are now open to small groups with limited resources and skills. He said: “They make it much easier for a non-state person. It doesn’t take much biology expertise nowadays to assemble a smallpox virus. Biology is making it way easier to create these things.” The increasingly common use of gene editing technology would make it difficult to spot any potential terrorist conspiracy. Technologies which have made it easy to read DNA sequences and tinker with them to rewrite or tweak genes have many legitimate uses. He said: “It’s not like when someone says, ‘Hey I’d like some Plutonium’ and you start saying ‘Hmmm.. I wonder why he wants Plutonium?’” Mr Gates said the potential death toll from a disease outbreak could be higher than other threats such as climate change or nuclear war. He said: “This is like earthquakes, you should think in order of magnitudes. If you can kill 10 people that’s a one, 100 people that’s a two... Bioterrorism is the thing that can give you not just sixes, but sevens, eights and nines. “With nuclear war, once you have got a six, or a seven, or eight, you’d think it would probably stop. [With bioterrorism] it’s just unbounded if you are not there to stop the spread of it.” By tailoring the genes of a virus, it would be possible to manipulate its ability to spread and its ability to harm people. Mr Gates said one of the most potentially deadly outbreaks could involve the humble flu virus. It would be relatively easy to engineer a new flu strain combining qualities from varieties that spread like wildfire with varieties that were deadly. The last time that happened naturally was the 1918 Spanish Influenza pandemic, which went on to kill more than 50 million people – or nearly three times the death toll from the First World War. By comparison, the recent Ebola outbreak in West Africa which killed just over 11,000 was “a Richter Scale three, it’s a nothing,” he said. But despite the potential, the founder of Microsoft said that world leaders and their militaries could not see beyond the more recognised risks. He said: “Should the world be serious about this? It is somewhat serious about normal classic warfare and nuclear warfare, but today it is not very serious about bio-defence or natural epidemics.” He went on: “They do tend to say ‘How easy is it to get fissile material and how accurate are the plans out on the internet for dirty bombs, plutonium bombs and hydrogen bombs?’ “They have some people that do that. What I am suggesting is that the number of people that look at bio-defence is worth increasing.” Whether naturally occurring, or deliberately started, it is almost certain that a highly lethal global pandemic will occur within our lifetimes, he believes. But the good news for those contemplating the potential damage is that the same biotechnology can prevent epidemics spreading out of control. Mr Gates will say in his speech that most of the things needed to protect against a naturally occurring pandemic are the same things needed to prepare for an intentional biological attack. Nations must amass an arsenal of new weapons to fight such a disease outbreak, including vaccines, drugs and diagnostic techniques. Being able to develop a vaccine as soon as possible against a new outbreak is particularly important and could save huge numbers of lives, scientists working at his foundation believe.

### 3

#### The Aff’s portrayal of a world with reduced IP protections as an “information commons” where health inequality is solved by deregulation perpetuates the neoliberal myth of increased competition ensuring a perfect market **Kapczynski 14** [(Amy, a Professor of Law at Yale Law School, Faculty Co-Director of the Global Health Justice Partnership, and Faculty Co-Director of the Collaboration for Research Integrity and Transparency. She is also Faculty Co-Director of the Law and Political Economy Project and cofounder of the Law and Political Economy blog. Her areas of research include information policy, intellectual property law, international law, and global health.) “INTELLECTUAL PROPERTY’S LEVIATHAN” Duke Law, Law & Contemporary problems, 2014. <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4710&context=lcp>] BC

Over the last decade or so, a powerful set of critiques has emerged to contest the dominant account just sketched out as well as the contemporary state of IP law.12 These arguments have come from many directions, some even arising from scholars who previously were champions of the dominant account.13 The most prominent and potent line of theoretical critique in the legal literature has come in the guise of arguments for free culture and the “information commons” and has been most influentially articulated by Lawrence Lessig and Yochai Benkler.14 Both have stressed the problems with expansive exclusive rights regimes in information and have also sketched a set of actually existing alternatives to market-based exclusionary forms of information and cultural production. Lessig has written a series of influential books that have made him a “rock star of the information age,”15 particularly for young Internet and free-culture activists. He has argued powerfully, for example, that existing copyright law is in deep conflict with the radical new possibilities for creativity in the digital age. As he points out, when a mother posting a video of her toddler dancing to a Prince song on YouTube is threatened with a $150,000 fine for copyright infringement, something has gone seriously awry.16 Lessig also contends that copyright law today is too long, too expansive, and instantiates a “permission culture” that is antithetical to free expression in the age of the remix.17 As he puts it, “the Internet has unleashed an extraordinary possibility for many to participate in the process of building and cultivating a culture that reaches far beyond local boundaries,” creating the possibility of markets that “include a much wider and more diverse range of creators,” if not stifled by incumbents who use IP law to “protect themselves against this competition.”18 Benkler’s work has also been extraordinarily formative in the field, particularly for his insights into the multiplicity of modes of information production. As he has stressed, the conventional justification for IP does not account for the many successful and longstanding modes of market nonexclusionary information production.19 For example, attorneys write articles to attract clients, software developers sell services customizing free and opensource software for individual clients, and bands give music away for free to increase revenues from touring or merchandise.20 More pathbreaking still is Benkler’s account of the importance of “commons-based peer production,” a form of socially motivated and cooperative production exemplified by the volunteer network that maintains Wikipedia or the groups of coders who create open-source software products such as the Linux operating system.21 In the digital networked age, as Benkler describes, the tools of information production are very broadly distributed, “creating new opportunities for how we make and exchange information, knowledge, and culture.”22 These changes have increased the relative role in our information economy of nonproprietary production and facilitate “new forms of production [that] are based neither in the state nor in the market.”23 Because commons-based peer production is not hierarchically organized and is motivated by social dynamics and concerns, it also offers new possibilities for human development, human freedom, a more critical approach to culture, and more democratic forms of political participation.24 This line of critique has been profoundly generative and has helped launch an important new conceptualization of the commons as a paradigm. That paradigm, as a recent book puts it, “helps us ‘get outside’ of the dominant discourse of the market economy and helps us represent different, more wholesome ways of being.”25 Proponents of the commons concept draw upon contemporary articulations of successful commons-based resource management by Elinor Ostrom and her followers.26 They do mobilize retellings of the political and economic history of the commons in land in Europe before enclosure,27 and recent evidence from psychology and behavioral economics that suggests that humans have deep tendencies toward cooperation and reciprocation.28 They argue that A key revelation of the commons way of thinking is that we humans are not in fact isolated, atomistic individuals. We are not amoebas with no human agency except hedonistic “utility preferences” expressed in the marketplace. No: We are commoners—creative, distinctive individuals inscribed within larger wholes. We may have unattractive human traits fueled by individual fears and ego, but we are also creatures entirely capable of self-organization and cooperation; with a concern for fairness and social justice; and willing to make sacrifices for the larger good and future generations.29 This stands, of course, as a powerful rebuke to the neoliberal imaginary, which “constructs and interpellates individuals as . . . rational, calculating creatures whose moral autonomy is measured by their capacity for ‘self-care’— the ability to provide for their own needs and service their own ambitions.”30 III Given this radical—and, in my view, critically important—attempt to rethink the subject at the core of neoliberal accounts, it is all the more striking that proponents of the commons often appear to adopt a neoliberal image of the state. For example, the introduction to a recently edited volume that gathers writings on the commons from seventy-three authors in thirty countries (entitled, tellingly, The Wealth of the Commons: A World Beyond Market and State) has this to say: The presumption that the state can and will intervene to represent the interests of citizens is no longer credible. Unable to govern for the long term, captured by commercial interests and hobbled by stodgy bureaucratic structures in an age of nimble electronic networks, the state is arguably incapable of meeting the needs of citizens as a whole.31 The commons, they suggest, is a concept that seeks not only to liberate us from predatory and dysfunctional markets, but also from predatory and dysfunctional states. Something immediately seems incongruous here. If people are inherently cooperative reciprocators, why are states irredeemably corrupt? After all, as Harold Demsetz famously wrote in his 1967 attack on Arrow’s optimism about state production of information, “[g]overnment is a group of people.”32 Lessig, one of the progenitors of the language of the commons in the informational domain, often leads with a similar view of the state: [I]f the twentieth century taught us one lesson, it is the dominance of private over state ordering. Markets work better than Tammany Hall in deciding who should get what, when. Or as Nobel Prize-winning economist Ronald Coase put it, whatever problems there are with the market, the problems with government are more profound.33 Lessig reveals his own sense of the power of this conception of the state when he seeks to tar IP law with the same brush; we should rebel against current IP law, he suggests, because we should “limit the government’s role in choosing the future of creativity.”34 Benkler is more measured but admits as well to viewing the state as “a relatively suspect actor.”35 We should worry, he suggests, that direct governmental intervention “leads to centralization in the hands of government agencies and powerful political lobbies,”36 a view that echoes the neoliberal account described above. It should perhaps not surprise us that leading critics of neoliberal information policy embrace a neoliberal conception of the state. After all, neoliberalism is not merely an ideology, but also a set of policy prescriptions that may have helped to call forth the state that it has described. As David Harvey puts it, “[t]he neoliberal fear that special-interest groups would pervert and subvert the state is nowhere better realized than in Washington, where armies of corporate lobbyists . . . effectively dictate legislation to match their special interests.”37 There are, it must be said, few areas of law that better exemplify this problem than IP law. For example, Jessica Litman has documented the astonishing process through which the 1976 Copyright Act was drafted, in which Congress delegated most of the drafting to interest groups that were forced to negotiate with one another.38 Other scholars have offered similarly startling accounts of the genesis of the most important IP treaty today, the TradeRelated Aspects of Intellectual Property Rights (TRIPS) Agreement. TRIPS came into force in 1996, revolutionizing international IP law by both imposing new standards and by rendering them enforceable through the WTO’s disputeresolution system, which authorizes trade retaliation to enforce its judgments. Most countries in the world are members of TRIPS, and the Agreement introduced, for developing countries in particular, substantial new obligations, such as the obligation to grant patents on medicines and food-related inventions. Several excellent histories of the treaty have been written, documenting its beginnings as a brash idea proposed by “twelve chief executive officers (representing pharmaceutical, entertainment, and software industries).”39 As Susan Sell has described, the TRIPS Agreement was a triumph of industry organizing. Through TRIPS, Industry revealed its power to identify and define a trade problem, devise a solution, and reduce it to a concrete proposal that could be sold to governments. These private sector actors succeeded in getting most of what they wanted from a global IP agreement, which now has the status of public international law.

#### Attempts to reform the WTO are neoliberal attempts to sustain the US regime of accumulation – the contradictions of neoliberalism are why credibility is low, not IP protection

Bachand 20 [(Remi, Professor of International Law, Département des sciences juridiques, member of the Centre d’études sur le droit international et la mondialisation (CÉDIM), Université du Québec à Montréal, Canada) “What’s Behind the WTO Crisis? A Marxist Analysis” The European Journal of International Law, 8/12/2020. https://academic.oup.com/ejil/article-abstract/31/3/857/5920920?redirectedFrom=fulltext] BC

To offer our own explanation, we must recall two aspects of our theoretical framework. The first is Robert Cox’s claim113 that the function of international organizations is to ensure the creation and reproduction of hegemony. To be more accurate, they serve, if we follow his argument, to defend and to expand the ‘mode of production’ (we elected to substitute this term for the concept of ‘regime of accumulation’ that appears to be more appropriate for our means) of the dominant social classes of the dominant state. Joining this idea with the école de la régulation and social structure of accumulation theory writing114 according to which a regime of accumulation needs some regulation institutions to help resolve its contradictions (and ensure profits and capital accumulation to dominant social classes), we can conclude that the Geneva organization’s function in the US hegemonic order is to make sure that neoliberalism works well enough to provide a satisfying rate of profit for US capitalists. Going in that direction, Kristen Hopewell shows that the WTO’s creation participated in a shift in global governance from ‘embedded liberalism’ to neoliberalism115 and was slated to be an important part of that governance. Using the conceptual framework developed earlier, we can infer that the WTO was thus given a regulation function that was to ensure the operationalization of counteracting factors to the fall of the rate of profit for US capitalists. Now, as we have seen, the US rate of profit has been extremely unstable in the last two decades and Chinese expansion (and that of other ‘emerging countries’) allows one to predict that the situation could easily worsen in the future. Consequently, it should come as no surprise that the crisis that has been striking neoliberalism for the last 20 years may also result in a crisis of the organizations that are supposed to manage its contradictions, especially the WTO. Concretely, this organization seems unable to fulfil its regulatory function anymore, which is to ensure US capitalists a good rate of profit and opportunities to operationalize enough counteracting factors to negate its fall. To go further, we now need to return to Stephen Gill’s claim that the function of an international organization is to limit political and economic possibilities. It is to exclude, in other words, options that are incompatible with the social order promoted by the hegemon from what is possible and achievable.116 Effectively, the WTO was created to play such a role. Indeed, promoting liberalization of goods and services, protecting (notably intellectual) property rights and attacking subsidies (in non-agriculture sectors), just to give a few examples, all serve to severely reduce state interventions into the economy and to circumscribe or at least to strongly impede the turn towards an alternative model to neoliberalism

#### Neoliberalism rips apart communal bonds to maintain the illusion that structural inequalities are individual problems – the impact is systemic victim-blaming, poverty, and violence.

Smith 12 [(Candace, author for Societpages, cites Bruno Amable, Associate Professor of Economics at Paris School of Economics) “Neoliberalism and Individualism: Ego Leads to Interpersonal Violence?” Sociology Lens is the associated site for Sociology Compass, Wiley-Blackwell’s review journal on all fields sociological] AT

There appears to be a link between neoliberalism, individualism, and violence. In reference to the association between neoliberalism and individualism, consider neoliberalism’s insistence that we do not need society since we are all solely responsible for our personal well-being (Peters 2001; Brown 2003). From a criminological standpoint, it is not hard to understand how this focus on the individual can lead to violence. According to Hirschi’s (1969) social control theory, for instance, broken or weak social bonds free a person to engage in deviancy. Since, according to this theory, individuals are naturally self-interested, they can use the opportunity of individualization to overcome the restraining powers of society. Bearing in mind neoliberalism’s tendency to value the individual over society, it could be argued that this ideology is hazardous as it acts to tear apart important social bonds and to thereby contribute to the occurrence of ego-driven crimes, including violent interpersonal crimes. Such a thought suggests that as neoliberalism becomes more prominent in a country, it can be expected that individualism and, as a result, interpersonal violence within that country will increase. When it comes to individualization, this idea is one of the fundamental aspects of neoliberalism. In fact, Bauman (2000:34) argues that in neoliberal states “individualization is a fate, not a choice.” As Amable (2011) explains, neoliberals have realized that in order for their ideology to be successful, a state’s populace must internalize the belief that individuals are only to be rewarded based on their personal effort. With such an ego-driven focus, Scharff (2011) explains that the process of individualization engenders a climate where structural inequalities are converted into individual problems.

#### The alt is to reject the aff in favor of a critique that cultivates educated hope - evaluate the aff and alt on the level of ideological commitments – these policies won’t happen which takes out consequentialism good offense – BUT until we unlearn the assumption that getting government out of the way will let markets flourish and solve all our problems, we'll never be able to engage in robust, communitarian policymaking that truly centers human need and our obligations to others. Wilson 17:

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New Stories for New Worlds As we will see in our mapping of the neoliberal conjuncture, competition's totalizing yet tenuous power over our everyday lives is rooted in what Keating calls “status quo stories”—those stories that get told in popular culture, and that we often tell ourselves, which cement our relationship to our present conjuncture and our investment in the world as we currently know it. She explains: Generally spoken with great certainty, these and similar comments (commands, really) reflect unthinking affirmation of the existing reality and a stubborn, equally unthinking resistance to change. Because we believe that our status-quo stories represent accurate factual statements about ourselves, other people, and the world, we view them as permanent, unchanging facts. This belief in the status-quo's permanence becomes self-fulfilling: We do not try to make change because change is impossible to make. “It's always been that way,” we tell ourselves, “so why waste our energy trying to change things?” “People are just like that-it's human nature, so plan accordingly and alter your expectations! There's no point in trying to change human nature!" Status-quo stories trap us in our current circumstances and conditions; they limit our imaginations because they prevent us from envisioning alternate possibilities.10 Status-quo stories double down on reality, making it seem like those socially constructed forces impinging on us are natural rather than historical, political, and subject to change. “Status-quo stories have a numbing effect,” Keating writes. “When we organize our lives around such stories or in other ways use them as ethical roadmaps or guides, they prevent us from extending our imaginations and exploring additional possibilities."11 One of my students aptly described neoliberal culture as a “status-quo storytelling machine.” To keep us living in competition, neoliberalism generates a host of status-quo stories about the naturalness and inevitability of self-enclosed individualism. Indeed, we might say that self-enclosed individualism operates as the foundational status quo story of neoliberal culture, where competition has become synonymous with all of life. Self-enclosed individualism keeps us not only divided from one another, but also actively pitted against each other. We are stuck in an oppositional consciousness that refuses to acknowledge our social interconnections, even though, as our shared anxieties suggest, we've never had more in common than right now! No matter where we are or what we're doing, neoliberal culture encourages us to see each other through a competitive lens that makes the transformation of our social world, and ourselves, impossible. We become incapable of acknowledging how our fortunes and fates are entwined with those of others who are living very different realities. We become callous and hardened to the suffering of others. We see suffering and death everywhere, and while this might register as bad or wrong or upsetting, we nonetheless stay stuck within the horizons of our own self-enclosed bubbles. The devastating powers of status-quo stories are clear in so many of the conversations we have on college campuses about power, privilege, and difference. In fact, I started teaching courses on neoliberal culture to help my students understand the broader histories and contexts that were impinging on these conversations and making them so fraught, and ultimately so unproductive. Time and time again, in open community forums and classroom discussions of systemic inequalities, I watched students voice painful personal experiences only to get nowhere. Indeed, when asked to consider various forms of privilege, many of my white, male students get defensive. The idea that they haven't earned their place through their own decisions and hard work, but rather benefited from inherited wealth and opportunity, means that they are not good people from the perspective of neoliberalism. Talking about issues of privilege threatens to diminish their sense of self and individual value, so they recoil from conversations that ask them to see their place within broader legacies of settler colonialism, patriarchy, and capitalism. Accordingly, they hold on tight to status-quo stories of self-enclosed individualism to protect themselves, doubling down on their privilege to secure their status in a competitive world. However, it is important to see that status-quo stories of self- enclosed individualism also inform my students from historically oppressed and marginalized groups. These students suffer daily: they live in an environment that professes to celebrate “diversity,” while, in the context of their own lives, they are reminded again and again just how much they don't belong or matter. Not surprisingly, they demand “safe spaces” and protection for themselves and their peers, and they often draw hard lines between allies and enemies. Here too though, we see neoliberal stories at work. What matters for my students, and rightly so, is the way that “microaggressions”—those daily, mundane experiences of discrimination that accumulate over time-diminish their own capacities for flourishing as self-enclosed individuals. My point here is not to suggest that privileged students and marginalized students are the same because they are both invested in a version of self-enclosed individualism. Rather, my point is they share a situation; despite their different and unequal social positions, they have similar feelings-of defensiveness and a fear of failure—and status-quo stories in common. These commonalities do not imply evenness or equality, but rather interconnection, that is, a shared conjuncture. It is the recognition of this conjunctural interconnection that can thread our lives together and open up possibilities for more egalitarian futures. However, living in competition and the oppositional consciousness it demands obscure these commonalities and the interconnections that could bring students into new relations with one another. As a result, we stay caught up in the world as we know it. We stay stuck in competition, even though we all are yearning for different worlds. We desperately need new stories, stories that offer us different pathways to each other. As Keating puts it, we need stories that help us move from “me” to “we” consciousness.12 However, this book is not going to write these new stories for you. Rather, the goal of this book is to provide you with the resources for writing these new stories in and through your own lives. The Work of Critique Ultimately, writing new stories will require a new sense of yourself and your world, as well as what is possible, and realizing this new sense will require, first and foremost, cultivating a deeply critical orientation toward the world as we currently know and experience it. This critical orientation dislodges the sense of inevitability of neoliberalism, self-enclosed individualism, and living in competition; it knows that things don't have to be this way and, thus, senses the possibilities for resistance and transformation that are everywhere. It is so crucial to understand that this critical orientation is not simply about saying that aspects of neoliberal culture are “bad” or "wrong.” Rather, the work of critique is about seeing the flows of power and ways of thinking that make the neoliberal conjuncture possible and hold it together. Critique is therefore a mode of knowing—a form of everyday intellectual work—that is aimed at exposing the myriad workings of power and its status-quo stories. As Michel Foucault explains, “A critique is not a matter of saying that things are not right as they are. It is a matter of pointing out on what kinds of assumptions, what kinds of familiar, unchallenged, unconsidered modes of thought the practices that we accept rest.”13 To clarify Foucault's idea, let's think back to the student discussions of power and privilege discussed above. The work of critique is not simply about pointing out privilege, although this is, of course, vital work. The work of critique goes beyond pointing out what's wrong and seeks to unravel the socially constructed conjuncture in which these problems emerge and get negotiated. For only then can we step outside of the competitive, oppositional consciousness of neoliberal culture and begin to imagine a radically different future built on equality and shared security. This work of dislodging the inevitability of our conjuncture and its status-quo stories is hard but vital intellectual work that requires not only critique of our social world, but also transformation of ourselves. Indeed, truly critical work is always profoundly disruptive of our own identities and knowledges. This work can be immensely painful, as it strips away the certainty and comfort provided by status-quo stories. This work can also be, and should be, immensely joyful and life-giving, as it enables us to free ourselves from the status-quo stories and devastating limitations they put on our lives, imaginations, and social relationships. This mix of pain and joy at the heart of critical work comes from the way that critique asks us to “lose confidence” in our world. As feminist theorist Sara Ahmed writes, Losing confidence: it can be a feeling of something gradually going away from you, being eroded. You sense the erosion. You might stumble, hesitate, falter; things might gradually unravel so you end up holding onto the barest of threads. It might be an experience in the present that throws things up, throws you off balance.... When you lose confidence it can feel like you are losing yourself: like you have gone into hiding from yourself.4 Losing confidence in your world is thus a form of existential crisis —you are disoriented; your world is shattered. At the same time, losing confidence in status-quo stories means gaining confidence for resistance and transformation. We become bolder, less anxious, more optimistic, capable of social interconnection, political intervention, and acting on and from a place of commonality. This is real freedom. Critique is ultimately about unlearning our world so that we might reconstruct it anew. Losing confidence in neoliberal culture means being able to say no to it in the conduct of our daily lives. In these capacities for resistance, we gain confidence that another world might actually be better, worth opening ourselves up to, worth fighting for. We begin to cultivate what Henry Giroux calls educated hope. Educated hope is not “a romanticized and empty” version of hope; rather, it is a form of hope enabled by critique that “taps into our deepest experiences and longing for a life of dignity with others, a life in which it becomes possible to imagine a future that does not mimic the present.” With educated hope, our sense of who we are and of what might be possible shifts in profound ways. This is when those new worlds we are longing for open up. What’s to Come Each of the chapters that follow offer a variety of intellectual tools for mapping the neoliberal conjuncture. Taken together, they are designed to produce a holistic and thick understanding of neoliberalism and its myriad powers to shape our identities, sensibilities, social worlds, and political horizons. Having a thick understanding of neoliberalism means that you feel in your bones that there is nothing natural or inevitable about neoliberalism and its status-quo stories. It means that you understand that neoliberalism is the outcome of a range of contingent historical processes that have consequences across social, political, economic, and cultural fields. In other words, by the end of our journey, you'll know how our neoliberal conjuncture has been, and continues to be, constructed. You'll also, therefore, be able to sense the other worlds on the horizon that are just waiting to be constructed, so long as, together, we can develop the resources, capacities, and stories of interconnection for bringing them into being. More specifically, the book is divided into two sections. The first section, titled “Critical Foundations,” focuses on cultivating a broad, critical orientation toward neoliberal culture. The first chapter charts the rise of neoliberal hegemony through four historical phases. The goal is to illustrate exactly how competition came to be the driving cultural force in our everyday lives. As we will see, there is nothing natural or inevitable about neoliberalism. It was a political and class-based project to remake capitalism and liberal democracy that was conceived, organized for, and eventually won. In the second chapter, we delve into the world of neoliberal theory and its critical consequences. Here we'll explore exactly what neoliberal thinkers believe about the state, markets, and human actors, and what distinguishes neoliberalism from earlier schools of liberal thought. We'll also interrogate what I call the four Ds—disposability, dispossession, disimagination, and de- democratization—which, taken together, enable us to clearly see and articulate what is so devastating about the rise of neoliberalism. The third chapter examines the cultural powers specific to neoliberalism. Neoliberalism advances through culture, specifically through the promotion of an enterprise culture that works to impose competition as a norm across all arenas of social life. In order to see and specify how neoliberalism works through culture, we take contemporary education as a case study and unpack the entangled cultural powers of neoliberal governmentality, affect, and ideology. The second section is titled “Neoliberal Culture.” In these chapters, we explore the worlds of neoliberal labor, affect, and politics respectively, tracing what happens when our everyday lives as workers, individuals, and citizens become organized around living in competition. The fourth chapter examines how neoliberalism turns everyday life into a “hustle,” where all the contexts of daily life become animated by the demands of neoliberal labor. At stake here are the ways in which we are all hustling to get by, yet we stay radically divided from one another along lines of gender, race, and class thanks to the norm of self- enterprise. The next chapter hones in on what it feels like to inhabit enterprise culture by exploring neoliberal affect and the care of the self. As we already know, living in competition breeds widespread anxiety, not to mention depression and illness, making self-care an ongoing, pressing problem of everyday life. While neoliberal culture offers us plenty of tools for self-care that ultimately keep us stuck in our self-enclosed individualism, this chapter also considers how self-care might be a site for resistance and political intervention. The final chapter focuses on neoliberal politics, tracing what happens to citizenship and social action in our contemporary conjuncture. As we'll see, neoliberalism privatizes our political horizons by remaking democracy into a market competition for visibility and equality. Throughout this mapping of the neoliberal conjuncture, we will engage in a mode of critical work that will, hopefully, enable you to unlearn neoliberalism and thus begin to write new stories about our conjuncture—including both our commonalities and differences—and the alternative worlds we are yearning for. Indeed, our critical work will only matter to the extent that it opens up our individual and collective horizons to a future beyond living in competition.

#### Nonunique- China is already developing mRNA vaccine technology and signed contracts with IP holders of the COVID vaccine.

Public Citizen 4/12 - Public Citizen [“Public Citizen is a nonprofit consumer advocacy organization that champions the public interest in the halls of power. We defend democracy, resist corporate power and work to ensure that government works for the people – not for big corporations. Founded in 1971, we now have 500,000 members and supporters throughout the country. We don’t participate in partisan political activities or endorse any candidates for elected office. We take no government or corporate money, which enables us to remain fiercely independent and call out bad actors – no matter who they are or how much power and money they have.”], “Waiver of WTO Protections for Big Pharma Will Help U.S. Economic Recovery and Boost U.S. Employment,” *Public Citizen Global Trade Watch Series*. April 12, 2021. Accessed Aug. 12, 2021. < https://www.citizen.org/article/waiver-of-wto-protections-for-big-pharma-will-help-u-s-economic-recovery-and-boost-u-s-employment/> AT

As support for the waiver grows, Big Pharma’s latest redirect effort is to reframe the COVID vaccine and treatments debate as a U.S. v. China fight, when in reality the lineup is 100 nations supporting a waiver versus a few WTO members opposing. Given the lack of access to COVID-19 vaccines and treatments in most of the developing world poses dire health and economic threats to the United States and people worldwide, namely of the emergence of a vaccine-resistant or more lethal or infectious variant, pharmaceutical interests are trying to redirect the debate. Their latest U.S. argument is that the waiver would help China take “U.S. mRNA technology” and produce mRNA vaccines exploiting U.S. tech. The reality is that mRNA research has been done for decades in developing and developed nations all over the world and is not something that U.S. firms “own.” • China already has been developing its own COVID-19 mRNA vaccine, one that can be stored at refrigerator temperature. Clinical trials on it started in late 2020. Three Chinese firms are building a manufacturing plant for that vaccine. As well, BioNTech, which is the IP holder of the mRNA innovations underlying the Pfizer vaccine, already has a contract with Chinese Fosun Pharmaceuticals to make the Pfizer/BioNtech mRNA vaccines in China. • Research on the mRNA platform has been largely government-financed. The S. National Institutes of Health even owns some of the IP underlying the Moderna vaccine, while BioNTech’s innovations (which Pfizer has licensed) were supported by the German government and also EU funding. This research and that undertaken in China and other nations has been widely shared in academic journals. The government-funded scientists already are building off of each other’s work