# NC

## 1

#### 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.

## 2

#### CP: The member nations of the World Trade Organization ought to implement a universal healthcare system.

#### Implementing a UHC system gets medicine to the uninsured

Goozner PhD 20

Merril Goozner (PhD and literally wrote the book on overpriced drugs, called “The 800$ pill), Winter 2020, "Insulin Should Be Free. Yes, Free.," Democracy Journal, <https://democracyjournal.org/magazine/55/insulin-should-be-free-yes-free/> // AW

Later in the year, on the eve of the second Democratic Party debate, Senator Bernie Sanders, who has made Medicare-for-All his signature policy proposal, took a busload of diabetics to Canada to purchase insulin that is one-tenth the United States price. **Sanders’s single-payer system would go beyond negotiating lower prices** as is done in Canada and other industrialized nations. **It would completely eliminate the copays and deductibles that stand in the way of many patients**—including some who are well-insured—getting the medications they need. That our health-care system fails to provide essential medicines to people who face immediate death or injury without them is morally outrageous. The pricing and access policies of profit-seeking drug companies also make that failure quite literally a human rights violation. Those companies—and the government that fails to control them—are flagrantly ignoring the World Health Organization’s constitution, which calls “the highest attainable standard of health a fundamental right of every human being.” The document, which the United States signed in 1946, also says that “understanding health as a human right creates a legal obligation on states to ensure access to timely, acceptable, and affordable health care of appropriate quality.”

#### Medicine needs to made free DIRECTLY – even after IP removal, likely new laws + industry subsidies to keep big pharma in power

Goozner PhD 20

Merril Goozner (PhD and literally wrote the book on overpriced drugs, called “The 800$ pill), Winter 2020, "Insulin Should Be Free. Yes, Free.," Democracy Journal, <https://democracyjournal.org/magazine/55/insulin-should-be-free-yes-free/> // AW

But flagrant violations of international norms have not convinced Congress to put an end to this human rights abuse. The drug industry’s protectors include virtually every member of the Republican Party, which marches in lockstep with the army of lobbyists deployed by Big Pharma. Last year, the drug industry spent $169.8 million on lobbying, more than any other industry. It’s on track to spend even more this year, having poured $129.4 million into its Washington influence machine through September, according to the Center for Responsive Politics. Despite their numerous protests, many Democratic Party leaders remain conflicted about how to solve the problem. Too many legislators buy into the industry’s assertions that high prices are necessary to incentivize innovation. Most Democrats also accept drug and insurance industry campaign contributions, making them reluctant to pursue dramatic changes in the status quo. And conflicted members are in key positions for making policy. Since the beginning of 2019, New Jersey Democratic Representative Frank Pallone, chairman of the House Energy and Commerce Committee, raised $130,700 from medical professionals and $66,500 from drug companies, which together represented nearly 13 percent of his total campaign contributions. Democrat Anna Eshoo, who chairs that committee’s health subcommittee and is a vocal defender of her Silicon Valley district’s biotech companies, raised $115,700 from Big Pharma and $106,350 from medical professionals. That is fully 26 percent of her campaign contributions so far this year. Drug and biotechnology companies are concentrated in areas (eastern Pennsylvania/New Jersey, Boston, and San Francisco/Silicon Valley) that are heavily Democratic.

## 3

**The WTO is dying, but the IPR waiver saves it.**

Stangler 9/10 - Cole Stangler, 9-10, 11, Jacobin, Joe Biden Is Still Fighting a Vaccine Waiver for the Rest of the World, https://jacobinmag.com/2021/09/joe-biden-vaccine-waiver-global-ip-world-trade

In May, the Biden administration made a bombshell declaration, endorsing a call to temporarily suspend intellectual property (IP) rights on COVID vaccines that health and trade experts say could greatly improve access to shots in the Global South — a move that appeared to mark a turning point in the global fight against the pandemic. Months later, though, as **the pandemic rages** and **the glaring gap in vaccine access grows, the effort remains blocked at the** World Trade Organization **(WTO**). Any waiver for vaccines needs the green light from the organization’s TRIPS Council — the commission in charge of IP rights — and unanimous support from all 164 members. But as delegations return to Geneva after summer break, a long-circulated proposal backed by India and South Africa has yet to gain traction. Meanwhile, the Biden administration — which has deep ties to the pharmaceutical industry — has proven unwilling to share vaccine recipes with other countries, as we reported earlier this week. “It’s really upsetting watching this process,” says Hu Yuan Qiong, policy co-coordinator and senior legal and policy adviser for Doctors Without Borders’ Access Campaign. “Viruses disregard whatever game we’re playing in human society; they just carry on and mutate.” The deadlock is the product of multiple factors. Hostility from the United Kingdom and the European Union as well as criticism from Big Pharma have complicated efforts, but as experts tell us, so has the apparent unwillingness of the Biden administration to go beyond its four-month-old statement and actually start pressing for a waiver. “I’ve been working on trade policy for a while, and I know that when the United States wants something, they get it,” Burcu Kilic, a trade policy expert at Public Citizen, tells us. “The United States should [play] a proactive role in this discussion.” European Intransigence Amid Pharma’s Lobbying Blitz One immediate obstacle is the United Kingdom. As Hu from Doctors Without Borders says, Prime Minister Boris Johnson’s government has shown little interest in changing its position over the last few months. She says it’s effectively stuck to the talking points of AstraZeneca, pointing to the pharmaceutical company’s willingness to work with producers in the developing world as supposed evidence that a waiver is unnecessary. Appearing before the TRIPS Council in June, for instance, the British government argued that technology transfers and voluntary licensing “exemplified by the Oxford AstraZeneca vaccine” and its partnerships are “making real, positive impact.” In a statement, the UK said it was not “convinced how an IP waiver, if agreed, would increase the supply of COVID-19 goods.” Hu doesn’t buy it. “We’ve explained to them, ‘We’re not just talking about AstraZeneca vaccines, we’re talking about many vaccines and many treatments,’” she says of the UK. “Maybe a company like AstraZeneca has done a little bit more than another company, but that will not solve the global issue.” An ideal waiver on IP rights, she stresses, would also cover the two messenger RNA (mRNA) vaccines developed by Pfizer and Moderna, as well as medical equipment, technologies used for therapeutic treatment, and future vaccines. Lobbying disclosure regulations in the UK are relatively weak. Only lobbyists working for third-party firms are required to sign the country’s lobbying register, which, as a result, covers just a small fraction of the country’s lobbyists, most of whom are employed in-house. Still, British government departments are required to disclose information about meetings with external organizations — and, according to records compiled by Transparency International and consulted by us, no single external organization in the UK has met more with the British government since the beginning of 2021 than AstraZeneca. The Cambridge-based pharmaceutical giant beat out the country’s top business lobby, the Confederation of British Industry, and the Port of Dover, the massive seaport that has struggled to adjust to Brexit. In the meantime, the European Union also continues to oppose a proposed TRIPS waiver. While several national governments — including France and Spain — have said they support a waiver, what ultimately counts in Geneva is the stance of the EU’s executive branch, the European Commission. Rather than open up talks over the text backed by South Africa and India, the EU has offered up a separate proposal of its own, bogging down the discussion. EU officials maintain that a broad waiver on IP rights for vaccines doesn’t address the underlying problem of inadequate manufacturing capacity. According to this argument, even if producers in lower-income countries had the legal authority to start churning out COVID vaccines, they wouldn’t be able to, because they lack the factories or technological know-how. But Hu of Doctors Without Borders says that’s a red herring. Like many supporters of a temporary suspension in IP rights, she doesn’t claim a waiver will result in a transformation overnight. Instead, she views it as a launching pad to a scenario in which knowledge, data, and technology can flow more freely between states and manufacturers. “We can’t say, ‘Okay, you have a law,’ and then tomorrow start [producing]’ — it’s not going to happen that fast,” she explains. “But the earlier you open the door, the more certainty you can provide for the producers so they can prepare . . . the longer they don’t allow this door to open, the more problems we’ll face.”As we have previously reported, Big Pharma boasts a heavy presence in Brussels. Between March 2020 and May 2021, EU commissioners involved in medicine and vaccine issues met 140 times with pharmaceutical companies, and just once with an organization that supports a waiver on IP rights, according to the Corporate Europe Observatory, a watchdog group. Last year, Europe’s top pharmaceutical lobby spent more than €5.25 million on lobbying EU officials, the eighth-highest amount reported by any lobbying organization in the EU in 2020. For Hu, Big Pharma’s political influence helps explain the hostility from both London and Brussels to a waiver. “We strongly believe there is a direct correlation,” she says. Closely related political and ideological factors help drive pushback as well — especially when it comes to Europe’s largest economy and most prominent opponent of a waiver, Germany. The country is home to BioNTech, which developed the widely used mRNA shot alongside Pfizer. Even though the latter company has reaped most of the vaccine’s financial rewards, Burcu Kilic of Public Citizen says that officials in Berlin seem to regard vaccine development as a source of national pride. For many within Chancellor Angela Merkel’s ruling party, the Christian Democratic Union, there is a sense that lifting IP protections amounts to a slap in the face to national industry. “It goes beyond BioNTech,” Kilic says. “It’s about German inventions, German [small and midsize enterprises], Germany saving the world . . . it’s political, but it’s also emotional.” American Indifference Both Hu and Kilic argue the United States should be more aggressive — by putting pressure on its allies to back a waiver or, at the very least, by jump-starting serious negotiations. Up until now, the Biden administration has largely kept to the sidelines on the issue of IP rights. However, the US government may already have a strong case that it owns the IP on the Moderna vaccine, given its role in the shot’s development. The Biden administration could, in theory, share information about the dose with other producers — as the South Korean government has already requested. But even beyond the narrow issue of the Moderna shot, the American agency that negotiates trade policy, the United States Trade Representative (USTR), hasn’t issued a statement on the subject of a vaccine waiver since its widely celebrated declaration of support back in May. “That’s not usually what the United States or USTR does in these types of negotiations,” says Kilic from Public Citizen. “It’s like Lionel Messi saying, ‘I want to be in the World Cup,’ but then he’s not playing. You say you want a waiver, but you don’t do anything about it.” The USTR did not respond to a request for comment. In any case, the WTO’s TRIPS Council is slated to meet informally next week, on September 14. After weeks of inaction, that meeting could prove the impetus for progress, even if a full breakthrough doesn’t come until later in the year. Kilic remains optimistic that the deadlock will break. For one, she says political pressure is mounting on the United States, EU, and UK. But she also argues **the future of the WTO is at stake** — a fact that helps explain why the organization’s newly appointed director-general Ngozi Okonjo-Iweala has taken an active role in talks. **“In the last decade, the WTO became** a **nonfunctional** organization, and **there’s pressure** on the WTO and the WTO leadership **to do something** about that,” Kilic says. **“[The director-general] knows that if they let this go, this’ll be the end of the WTO.”** That doesn’t necessarily mean the result will be to the liking of those pushing for a broad waiver. Unlike India and South Africa, for instance, the United States has called for a waiver that covers vaccines alone — not medical equipment or other COVID-related treatments. Kilic also expects Big Pharma to start flexing its muscles in the coming weeks. If a deal at the WTO appears inevitable, industry will want to shape that outcome in its favor. She says much of the final outcome may depend on the Biden administration. “We need them to take the lead,” Kilic says of the United States. “I believe there will be something, but the question is, what will it be?”

#### The WTO is key to international trade.

WTO ’21 - World Trade Organization, “WTO in Brief,” (2021). <https://www.wto.org/english/thewto\_e/whatis\_e/inbrief\_e/inbr\_e.pdf> AT

In brief, the World Trade Organization (WTO) is the only international organization dealing with the global rules of trade. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible.¶ Global trade rules¶ Global rules of trade provide assurance and stability. Consumers and producers know they can enjoy secure supplies and greater choice of the finished products, components, raw materials and services they use. Producers and exporters know foreign markets will remain open to them.¶ This leads to a more prosperous, peaceful and accountable economic world. Decisions in the WTO are typically taken by consensus among all members and they are ratified by members’ parliaments. Trade frictions are channelled into the WTO’s dispute settlement process, where the focus is on interpreting agreements and commitments and how to ensure that members’ trade policies conform with them. That way, the risk of disputes spilling over into political or military conflict is reduced.¶ By lowering trade barriers through negotiations among member governments, the WTO’s system also breaks down other barriers between peoples and trading economies.¶ At the heart of the system – known as the multilateral trading system – are the WTO’s agreements, negotiated and signed by a large majority of the world’s trading economies, and ratified in their parliaments.¶ These agreements are the legal foundations for global trade. Essentially, they are contracts, guaranteeing WTO members important trade rights. They also bind governments to keep their trade policies transparent and predictable which is to everybody’s benefit.¶ The agreements provide a stable and transparent framework to help producers of goods and services, exporters and importers conduct their business.¶ The goal is to improve the welfare of the peoples of the WTO’s members.

**Trade causes food insecurity, environmental destruction, racist and sexist violence, poverty, exploitation, and destroys investment in public wellbeing. Business hoards the gains.**

Paul & Gebrial ’21 - The Ecologist, August 25, 2021, Harpreet Kaur Paul and Dalia Gebrial are the curators and editors of Perspectives on a Global Green New Deal, where this article first appeared. <https://theecologist.org/2021/aug/25/agribusiness-devastates-our-environment>

The global food system is driving environmental injustice and increasing greenhouse gas emissions. The ability of communities around the world to live autonomously and harmoniously on the land to which they are tied is routinely and violently intercepted by multinational corporations in the name of conservation and food and energy provision. Yet, the same **communities in the Global South whose land is grabbed under** international **trade** and investment **agreements** for these purposes**, are the same communities systematically denied from the harvests exported from places that have been taken**. This series of articles has been published in partnership with Dalia Gebrial and Harpreet Kaur Paul and the Rosa Luxemburg Stiftung in London. It first appeared in a collection titled Perspectives on a Global Green New Deal. Toll The global food system is driving environmental injustice through extreme water use, the pollution of ecosystems by pesticides and agricultural run-off and producing roughly a quarter of the world’s greenhouse gas emissions. **In the last two decades,** it is estimated that **26.7 million hectares of land has been acquired by foreign investors** for use in the agriculture business. Yet, the global, multinational corporation driven agricultural industry - which we refer to as agribusiness - implicated in these acquisitions, has only become more inefficient, unequal, polluting and reliant on displacement.Much of this is rooted in the unevenness of land ownership, where **industrial commodity crop farms have taken land away from those who use it for** direct, **local food production,** and who often have spiritual, cultural and ancestral connections to the land. Many of these commodity crop farms use vast swathes of land for the production of just one crop, like palm oil or sugar, which places a huge toll on the health of the soil and its ability to support diverse plant growth later. Deprivations According to GRAIN, small farms make up 90 percent of all farms - and yet these small farmers have just 25 percent of the world’s farmland to work on.3 Indeed, small farmers - mainly women - feed most of the world on less than a quarter of all agricultural land. The large **agribusinesses** that own the majority of the land and **control trade in grain, biotech and industrial food production force out local food producers and impoverished people,** and drive environmental degradation **with** the highly **polluting activities and intensive water use** at the core of their practice. Workers in the industry also continue to rank among the world’s most insecure workforces. The International Labour Organization (ILO) estimates that at least **170,000 workers in the agricultural sector are killed each year** - whether **through lack of protections, higher risk of poverty or exposure to toxic pesticides. Indigenous peoples** are custodians of 80 percent of the world’s remaining biodiversity, but **are facing severe food insecurity** Meanwhile, indigenous peoples are custodians of 80 percent of the world’s remaining biodiversity, but are facing severe food insecurity, extreme poverty and other human rights deprivations. Trade **Agribusiness** fundamentally **fails** to adequately fulfil **the food needs of the worlds’** population - **one in three people face** some form of **malnourishment,** and one in nine face hunger issues. The ‘supermarketisation’ of food systems leads to an increase in reliance on processed, rather than fresh, food - con- tributing to this rise in malnutrition and obesity. Children remain the most vulnerable to malnutrition - according to the World Health Organization, malnutrition is the underlying contributing factor in approximately 45 percent of deaths of children under five. Today’s ***food systems are dominated by trade​​​​​​ agreements and economic policies that prioritise profits over the right to food.*** ***Power is concentrated in the hands of a few corporate actors that benefit from free trade rules and export-oriented agricultural policies.*** Such regimes privilege large-scale agribusinesses to the detriment of others, creating instability in the global food system. Pollution Yet, the food produced in this way represents a small part of global production - the UN estimates that 70-80 percent of the food consumed in most of the Global South is produced by smallholder farms. The 20-30 percent of food produced by large agri-businesses is having huge, destructive impacts across the system. Big commodity traders like Bunge Ltd, Cargill, Luis Dreyfus and Archer Daniels Midland, are the agricultural equivalents of fossil fuel companies like Shell and BP. They reap the rewards of a broken system and are subsidised by state handouts, while leaving the basic needs of millions unfulfilled and de- stroying the natural world. **Trade agreements encourage the planting of cash crops and the industrial meat industry, thereby incentivising deforestation, the redirection of water away from local communities and the pollution of ecosystems.** Grazing Indeed, the destruction of forests in order to grow animal feed is one of the biggest threats to biodiversity, which is vital to sustainable agriculture, resilient and sustainable food production, and carbon sequestration. This process also results in the marginalisation of women from agricultural decision-making, whose subsistence-based knowledge and practices are derided and made impossible. Women face a lack of voice in shaping work agendas, and increasingly depend on men for cash and access to the market to purchase the food they previously grew. This contributes to a growing dissonance between women’s roles as agriculturalists and the social recognition accorded to them, and has particularly troubling implications for household food security, since the main responsibility for this lies in women’s hands. It also prioritises business-led ways of knowing and doing over more sustainable methods, like traditional rotational systems, permanent pasture and conservation grazing. System Industrial agricultural practices also threaten food stability by reducing our resilience to intensifying ecological impacts - such as desertification - in the future. A 2015 report from the UN Food and Agriculture Organization found that, globally, 25 to 40 billion tonnes of topsoil are lost annually to erosion, thanks mainly to ploughing and intensive cropping. The IPCC’s August 2019 Special Report on Climate Change and Land found that to become fit for purpose in an era of climate change, agriculture must move away from intensive and industrialised approaches, and towards food systems based on agroecology and less and better meat. **Countries on the frontline** of the most extreme impacts **have** done very little to cause the crisis and instead **been required - through trade** and investment **agreements - to open** their **markets to foreign investment in a carbon intensive, displacing and polluting way of growing food.** A vicious and ironic cycle, where global agribusiness is behind some of the biggest threats to food sustainability and accessibility, is therefore coded in the DNA of our global food system. Agro-chemicals The Special Rapporteur on Extreme Poverty and Human Rights warns that **this is leading towards a “climate apartheid** scenario **in which the wealthy pay to escape overheating, hunger and conflict, while the rest of the world is left to suffer**”. In response to this crisis, the international peasant movement La Vía Cam- pesina developed the concept of ‘food sovereignty’ in the 1990s. Introduced at the World Food Summit in 1996, food sovereignty was framed as an explicit critique of the neoliberal global food system13, representing a radical break with the dominant agrarian system. The 2007 Nyeleni Declaration defines food sovereignty as “the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems.” Food sovereignty prioritises factors such as local production, direct commercialisation, the use of agroecological methods, opposition to genetically modified crops and agro-chemicals, and rights to land, water, seeds and biodiversity. Trade creates gender and social inequality Donatella Alessandrini, 8-23, 21, Trade and the Green New Deal, <https://theecologist.org/2021/aug/23/trade-and-green-new-deal>, Donatella Alessandrini is a Professor Of Law at University Of Kent in Canterbury, UK. Giant chickens opposing a US trade deal visit the North Somerset constituency surgery of Liam International **trade** and investment **treaties are built on the** problematic **assumption that countries trade** with one another **because** they have different **competitive advantages** which can be exchanged to everyone’s mutual benefit. The problem with this assumption is that it fails to articulate how various advantages came about.The ways in which **states and corporations** come to **gain** specific **competitive advantages** are **through processes permeated** by social inequalities, including **gender and racial inequalities.** This series of articles has been published in partnership with Dalia Gebrial and Harpreet Kaur Paul and the Rosa Luxemburg Stiftung in London. It first appeared in a collection titled Perspectives on a Global Green New Deal.Inequalities **Underpinning gender inequalities in the labour market,** as feminist economists have argued**, is the pursuit of competitive advantage by avoiding paying towards the full costs of the reproduction of the labour force and of our planet.** For example **firms** may **establish themselves in jurisdictions where they pay less tax, which has a negative impact on the revenue available to provide** local public **education, health services and,** crucially**, environmental standards.** Multinational corporations also create complex supply webs to push any costs of contributing in these ways to local contractors who then squeeze the labour force and exploit or neglect the environment in order to extract profits on small operating revenues, **while big brands take the bulk of the trade benefit.** CompetitivenessThe way in which workers and the environment are treated and regulated is constitutive of what we call competitive advantage, rather than being its consequence or ‘externality’.The pressure on firms and states to abide by the ‘commercial provisions’ of trade and investment treaties (to say nothing of the private contracts signed between firms) means that, unless the contribution workers and the environment make to production and trade is properly acknowledged, treated and remunerated, its invisibilization and/or devaluation will continue to provide a source of competitiveness in the global economy.

**Turns case - Free trade leads to massive spread of infectious disease**

**ASU 15** (Arizona State University, cites a new study by Charles Perrings, an ASU professor of environmental economics, “Infectious disease spread is fueled by international trade” December 22 2015, https://www.sciencedaily.com/releases/2015/12/151222163415.htm)

International trade and travel has literally opened up new vistas for humans, ranging from travel to exotic places to enjoying the products and services of those distant lands. But along with international trade and travel comes the risk of **spreading infectious diseases**, a growing problem in today's global economy, says an Arizona State University researcher. "The recent Ebola outbreak made us realize that **we are all just a plane ride away from exposure to emerging infectious diseases**," says Charles Perrings, an ASU professor of environmental economics. Perrings recently published the paper, "Options for Managing the Infectious Animal and Plant Disease Risks of International Trade," in the early online version of the journal Food Security. The paper reported project results to an international conference "Global Plant Health Risks and Consequences: Linking Science, Economics and Policy," hosted by the British Food and Environment Research Agency, and supported by the Organisation for Economic Cooperation and Development's Cooperative Research Programme on Biological Resource Management for Sustainable Agricultural Systems. Perrings is the principle investigator of a project funded by the National Science Foundation-National Institutes of Health-U.S. Department of Agriculture Ecology and Evolution of Infectious Diseases program in collaboration with the UK's Biotechnology and Biological Sciences Research Council. In the paper, Perrings describes the growth of international trade since the 1950s and the increasingly tight coupling of developed and developing economies. The paper considers how the global community currently deals with trade-related infectious disease risks of animals and plants, and asks how the system could be made more effective. An example of the impact of an infectious disease came in 2001 in the UK when an outbreak of hoof and mouth disease cost some $10 billion and more than 2 million sheep and cattle had to be destroyed, Perrings said. More recently, African swine fever--a much more serious disease of pigs--has been spread in the Caucasus region through trade in pork, pork product or through waste in trade vehicles. "The more trade grows as a proportion of global production, the more likely it is that diseases will be spread through trade, and the higher the economic cost of resulting trade bans," Perrings said. "What is at risk is the food we eat, the fibers we wear and build with, and the fuels we burn." "In addition many infectious diseases that affect animals also affect people," he added. "Zoonoses like SARS, MERS, HIV AIDS, or highly pathogenic avian influenza, all originated in wild animals and were then spread person to person through trade and travel." Perrings said current instruments to control infectious diseases are far from adequate, as the recent report of the Harvard-London School of Hygiene and Tropical Medicine Independent Panel on the Global Response to Ebola, published in the Lancet, makes clear. "There are two problems to address," he said. "One is that disease spread is an unintended (external) effect of trade. To solve this problem exporters and importers need to be confronted with the risks they impose on consumers."

## case

### Cap

#### No offense- Their cards don’t even claim to resolve all of capitalism, only the side effects. They should win no offense off of the advantage, because their cards say they only resolve the effects of capitalism so far as they mitigate the effects of the COVID virus on minorities.

#### Turn- using the WTO affirms it. Their card proves that the aff is good for WTO perception, but there is no warrant for why the WTO would actually be motivated to reform.

### AT Advantage

#### No solvency – There is no IP barrier in most countries. The fact that they are not manufacturing vaccine shows that they *can’t* without compulsory licensing.

**Mercurio 21**

Mercurio 2/12 - Bryan Mercurio; Chinese University of Hong Kong - Faculty of Law, ; 2-12-2021; "Wto Waiver From Intellectual Property Protection For Covid-19 Vaccines And Treatments: A Critical Review (February 12, 2021)”; Virginia Journal Of International Law Online (Forthcoming 2021), Available At Ssrn: Https://Ssrn.Com/Abstract=3789820 Or Http://Dx.Doi.Org/10.2139/Ssrn.3789820"; https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3789820, accessed 7-21-2021; JPark

Second, the proposed waiver will do nothing to address the problem of lack of capacity or the transfer of technology and goodwill. Pharmaceutical companies have not applied for patents in the majority of developing countries – in such countries, any manufacturer is free to produce and market the vaccine inside the territory of that country or to export the vaccine to other countries where patents have not been filed.33 Patents cannot be the problem in the countries where no patent applications have been filed, but the lack of production in such countries points to the real problem – these countries lack manufacturing capacity and capability. While advanced pharmaceutical companies will have the technology, know-how and readiness to manufacture, store and transport complex vaccine formulations, such factories and logistics exist in only a handful of countries.34 Regardless of whether an IP waiver is granted, the remaining countries will be left without enhanced vaccine access and still reliant on imported supplies. With prices for the vaccine already very low, it is doubtful that generic suppliers will be able to provide the vaccine at significantly lower prices. Under such a scenario, the benefit of the waiver would go not to the countries in need but to the generic supplier who would not need to pay the licence fee or royalty to the innovator. Thus, the waiver would simply serve to benefit advanced generic manufacturers, most of which are located in a handful of countries, including China and Brazil as well as (unsurprisingly) India and South Africa. Countries would perhaps be better off obtaining the vaccine from suppliers that have negotiated a voluntary licence from the patent holder, as such licences include provisions for the transfer of technology, know-how and ongoing quality assurance support.

#### No solvency – the problem is supply. IP has already been voluntarily licensed.

Tabarrok 21 **-** Alex Tabarrok (Bartley J. Madden Chair in Economics at the Mercatus Center and am a professor of economics at George Mason University). “Patents are Not the Problem!” Marginal Revolution. 6 May 2021. JDN. https://marginalrevolution.com/marginalrevolution/2021/05/ip-is-not-the-constraint.html

For the last year and a half I have been shouting from the rooftops, “invest in capacity, build more factories, shore up the supply lines, spend billions to save trillions.” Fortunately, some boffins in the Biden administration have found a better way, “the US supports the waiver of IP protections on COVID-19 vaccines to help end the pandemic.”¶ Waive IP protections. So simple. Why didn’t I think of that???¶ Patents are not the problem. All of the vaccine manufacturers are trying to increase supply as quickly as possible. Billions of doses are being produced–more than ever before in the history of the world. Licenses are widely available. AstraZeneca have licensed their vaccine for production with manufactures around the world, including in India, Brazil, Mexico, Argentina, China and South Africa. J&J’s vaccine has been licensed for production by multiple firms in the United States as well as with firms in Spain, South Africa and France. Sputnik has been licensed for production by firms in India, China, South Korea, Brazil and pending EMA approval with firms in Germany and France. Sinopharm has been licensed in the UAE, Egypt and Bangladesh. Novavax has licensed its vaccine for production in South Korea, India, and Japan and it is desperate to find other licensees but technology transfer isn’t easy and there are limited supplies of raw materials:¶ Virtually overnight, [Novavax] set up a network of outside manufacturers more ambitious than one outside executive said he’s ever seen, but they struggled at times to transfer their technology there amid pandemic travel restrictions. They were kicked out of one factory by the same government that’s bankrolled their effort. Competing with larger competitors, they’ve found themselves short on raw materials as diverse as Chilean tree bark and bioreactor bags. They signed a deal with India’s Serum Institute to produce many of their COVAX doses but now face the realistic chance that even when Serum gets to full capacity — and they are behind — India’s government, dealing with the world’s worst active outbreak, won’t let the shots leave the country.¶ Plastic bags are a bigger bottleneck than patents. The US embargo on vaccine supplies to India was precisely that the Biden administration used the DPA to prioritize things like bioreactor bags and filters to US suppliers and that meant that India’s Serum Institute was having trouble getting its production lines ready

for Novavax. CureVac, another potential mRNA vaccine, is also finding it difficult to find supplies due to US restrictions (which means supplies are short everywhere). As Derek Lowe said:¶ Abolishing patents will not provide more shaker bags or more Chilean tree bark, nor provide more of the key filtration materials needed for production. These processes have a lot of potential choke points and rate-limiting steps in them, and there is no wand that will wave that complexity away.¶ Technology transfer has been difficult for AstraZeneca–which is one reason they have had production difficulties–and their vaccine uses relatively well understood technology. The mRNA technology is new and has never before been used to produce at scale. Pfizer and Moderna had to build factories and distribution systems from scratch. There are no mRNA factories idling on the sidelines. If there were, Moderna or Pfizer would be happy to license since they are producing in their own factories 24 hours a day, seven days a week (monopolies restrict supply, remember?). Why do you think China hasn’t yet produced an mRNA vaccine? Hint: it isn’t fear about violating IP. Moreover, even Moderna and Pfizer don’t yet fully understand their production technology, they are learning by doing every single day. Moderna has said that they won’t enforce their patents during the pandemic but no one has stepped up to produce because no one else can.¶ The US trade representative’s announcement is virtue signaling to the anti-market left and will do little to nothing to increase supply.

#### No solvency - too many jurisdictional barriers, but the squo solves through cooperation and competition. Mercurio 6/24

Bryan Mercurio [Simon F.S. Li Professor of Law, The Chinese University of Hong Kong, Shatin, Hong Kong], 6-24-2021, "The IP Waiver for COVID-19: Bad Policy, Bad Precedent," IIC - International Review of Intellectual Property and Competition Law, [https://link.springer.com/article/10.1007/s40319-021-01083-5 accessed 8/12/2021](https://link.springer.com/article/10.1007/s40319-021-01083-5%20accessed%208/12/2021) //JH

The role of intellectual property rights (IPRs) and access to medicines is contentious. On the one hand, IPRs encourage investment, innovation and the advancement of health science. On the other hand, the limited-term monopoly rights can result in artificially high prices and become a barrier to access to medicines. While the wisdom of the IPRs system has at times been tested, it has proven its value in the current COVID-19 pandemic as IPRs played a large role in the rapid (and unprecedented) development and availability of multiple vaccines. Despite the success, India and South Africa proposed that the World Trade Organization (WTO) waive IPRs under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in order to increase access to vaccines and other COVID-19-related technologies.[Footnote1](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn1) ¶The proposal, tabled at a meeting of the TRIPS Council in October 2020, calls on Members to waive IPRs relating to and having an impact on the “prevention, containment or treatment of COVID-19”.[Footnote2](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn2) The proposal attracted support from the majority of developing country Members,[Footnote3](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn3) but was opposed by a handful of Members including the United States (US).[Footnote4](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn4) Given that consensus could not be reached within the deadline of 90 days as set out in Art. IX:3 of the Agreement Establishing the WTO, Members agreed to keep the waiver proposal on the agenda of the TRIPS Council in 2021.[Footnote5](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn5) ¶On 5 May 2021, the US reversed its position and announced that it would support a waiver for COVID-19 vaccines.[Footnote6](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn6) To be clear, this does not mean that the US supported the waiver as proposed by India and South Africa. Instead, the US has simply agreed to negotiate the perimeters of a waiver. Others, including the European Union (EU), Canada, Australia, Norway, Switzerland, the United Kingdom (UK) and even leading developing countries such as Brazil, Chile and Mexico remain opposed or lukewarm on the waiver.[Footnote7](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn7) The US dropping opposition does not mean the concerns of other Members will simply disappear – one would hope that these nations opposed the waiver for valid reasons and did not simply blindly follow the US. Indeed, many of the above-listed Members remain unconvinced that even such a draconian step as a waiver of IPRs would accomplish the goal of increased vaccine production.[Footnote8](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn8) For its part, the EU continues to favour an approach which makes better use of existing flexibilities available in the TRIPS Agreement.[Footnote9](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn9) ¶Thus, those expecting quick agreement on the waiver will be disappointed. Negotiations at the WTO are always difficult and lengthy, and US Trade Representative Katherine Tai acknowledged that the “negotiations will take time given the consensus-based nature of the institution and the complexity of the issues involved”.[Footnote10](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn10) Issues of negotiation will include the scope of the waiver. Whereas the original proposal and its amended form extend the waiver beyond patents and vaccines to include nearly all forms of IP (i.e. copyright,[Footnote11](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn11) industrial designs and trade secrets) as well as to all “health products and technologies including diagnostics, therapeutics, vaccines, medical devices, personal protective equipment, their materials or components, and their methods and means of manufacture for the prevention, treatment or containment of COVID-19”[Footnote12](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn12) (with no requirement on how or the extent to which they are related to or useful in combatting COVID-19), the US and others seem to support a waiver limited to patents and vaccines.[Footnote13](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn13) The length of the waiver will also be a contentious negotiating issue, with proponents seeking a virtual indefinite waiver lasting until the Membership agrees by consensus that it is no longer required – meaning even a single Member’s objection to ending the waiver would mean the waiver continues to remain in force[Footnote14](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn14) – as will the request that any action claimed to be taken under the waiver is outside the scope of the WTO’s dispute settlement mechanism.[Footnote15](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn15) These provisions will almost certainly be opposed by other Members, who would perhaps agree to a time-limited waiver which could be extended rather than an unchallengeable indefinite waiver which will be difficult to reverse. The proposal also fails to mention anything in relation to transparency and notification requirements and lacks safeguards against abuse or diversion. These points will likely also prove contentious in the negotiations. ¶With so many initial divergences and as yet undiscussed issues, the negotiations at best could be completed by the time of the next WTO Ministerial Conference, scheduled to begin on 20 November 2021. There is precedent in this regard, as previous TRIPS negotiations involving IP and pharmaceuticals were not fully resolved until the days before the Ministerial Conferences (in 2003 and 2005).[Footnote16](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn16) There is also a chance that the negotiations will continue past the calendar year 2021. ¶The chance for a swift negotiation diminished with the release of a revised proposal by India and South Africa on 22 May 2021. As mentioned above, the proposal contains no limit as to product coverage, scope, notification requirements or safeguards and proposes that the waiver will remain in effect for what could be an indefinite period. This was not a proposal designed to engender quick negotiations and a solution. Instead, the proposal perhaps reveals India’s and South Africa’s true intent to use the COVID-19 pandemic as an excuse to roll-back IPRs rather than a good-faith effort to rapidly increase access to lifesaving vaccines and treatments around the world. ¶It is not only the length of time which is an issue but also the ultimate impact of the waiver. A waiver simply means that a WTO Member would not be in violation of its WTO obligations if it does not protect and enforce the COVID-19-related IPRs for the duration of the waiver. The waiver would thus allow Members to deviate from their international obligations but not obligate Members to suspend protection and enforcement of the IPRs. Members like the US who support the waiver may not implement the necessary domestic legislation to waive IPRs within the jurisdiction. It is questionable whether the US could even legally implement the waiver given that IPRs are a matter of constitutional law.[Footnote17](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn17) ¶The US announcement remains meaningful, however, for two reasons. First, it signals a departure from the longstanding and bipartisan support for the pharmaceutical industry, which for decades has been instrumental in setting the IP and trade agenda.[Footnote18](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn18) Second, it sends a strong signal that the US does not oppose others from waiving patent protection for vaccines. This shift may also be part of a broader and alternative strategy to increase vaccine production and distribution, whereby the US is not viewing or supporting waiver negotiations as a legal tool but more so as a threat to encourage vaccine innovators to increase production. In essence, the desired reaction would be that the IP holders increase efforts to license, transfer technology and expand manufacturing – exactly what the world needs at this time. ¶Alan Beattie, writing in the Financial Times, believes that even the proponents of the waiver desire this outcome: “having talked to the proponents, [the original proposal] was always a tactical position designed to start a debate, identify possible support and flush out opponents rather than a likely outcome. To that end, it seems to have worked rather well.”[Footnote19](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn19) India’s negotiator to the TRIPS Agreement and longtime WTO staffer, Jayashree Watal, agrees, stating the proposal is an “indirect attempt to put pressure on the original manufacturers to cooperate [and license production to companies in their countries]”.[Footnote20](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn20) This view makes sense, as the proponents (and their supporters) have not even pointed to one credible instance where IPRs have blocked the production of a COVID-19 vaccine. Moreover, it is well known that the leading vaccines using mRNA are difficult to reproduce and having the “blueprints” does not guarantee safe and effective production. Simply stated, if a pastry chef provides instructions on how to bake a cake, the cake they bake is still going to be better than cakes baked by novices using the exact same recipe. The know-how and trade secrets are the key ingredient to the manufacture of quality, safe and effective pharmaceuticals or vaccines, and not only is it not transferred through compulsory licenses but it is hard to imagine how any government would force the transfer of such information even under a waiver. For this reason, instead of encouraging production everywhere – including in locations where safety and efficacy standards are virtually nonexistent – and accepting that there will be a flood of substandard vaccines coming onto the world market (with devastating effects) it is much more sensible to find out where potential manufacturing capabilities exist and find ways to exploit them and scale them up. ¶When asked if a waiver would improve vaccine availability and equity, Watal responded: “No. It won’t. That’s clear.”[Footnote21](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn21) I share Watal’s view and do not support a TRIPS waiver for IPRs or even a limited waiver for patents. With evidence mounting that “what the proposal … will definitely not achieve is speeding up the Covid-19 vaccination rate in India or other parts of the Global South”[Footnote22](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn22) I refuse to sacrifice academic integrity by supporting a proposal simply because it is gaining traction in some circles.[Footnote23](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn23) IPRs played a key role in delivering vaccines within a year of the discovery of a new pathogen; it seems inexplicable that the world would abandon the system without any evidence that IPRs are limiting during the current crisis.[Footnote24](https://link.springer.com/article/10.1007/s40319-021-01083-5#Fn24) Moreover, innovators have been generous in licensing technology transfer and production and one would be hard-pressed to find credible reports of qualified generic producers being refused a license. This is not surprising, since multiple competing vaccines are on the market it simply does not make economic sense for innovators to refuse a license – the generic manufacturer would simply obtain a license (and market share) and pay royalties to a competitor. ¶Instead, I support efforts to enable prompt and effective use of existing flexibilities in the TRIPS Agreement and concerted and coordinated efforts involving governments and the private sector to ensure all qualified generic producers willing and capable of manufacturing vaccines are doing so and to create supply by working to bring more facilities up to standard. Cooperation will not only lead us out of this pandemic but also put us in a better position to deal with the next one. Killing the goose that laid the golden egg may seem appealing to some in the short term but will only ensure that no eggs are delivered in the next pandemic.

#### 8. A TRIPS waiver for Covid takes too long---only vaccine donations solve. Fabricius 6/25

Peter Fabricius [institute for security services consultant], 6/20 - ("South Africa: Is Ramaphosa Tripping Over a TRIPS Waiver?," allAfrica, 6/25/2021, accessed 6-30-2021, https://allafrica.com/stories/202106260001.html)//ML

His fervour is prompting some suspicion that the waiver campaign is an ideological issue for South Africa and others on the left - who have always been suspicious of big pharma - rather than an objective solution to a crisis. That's because a TRIPS waiver cannot possibly rescue Africa from the immediate grips of the pandemic.¶ Even the mRNA project in South Africa would take at least around 12 months before manufacture can begin, WHO Chief Scientist Soumya Swaminathan said. And this would be with voluntary licensing and full technological cooperation and training from the patents' owners. Manufacturing vaccines from scratch and without that cooperation through a TRIPS waiver would take much longer.¶ The only immediate remedy is a vigorous campaign to pressure rich countries to donate vaccines¶ Yogesh Pai, Assistant Professor at the National Law University in Delhi, said the TRIPS waiver proposal was 'simplistic' in assuming that allowing the formulae of companies making vaccines to be copied would automatically enable other manufacturers to produce COVID-19 vaccines quickly.¶ Pai said most complex technologies, such as vaccines, comprised not only the knowledge, which is patented to prevent copying. It also involved undisclosed information and know-how about quality control measures for production and clinical data required for regulatory clearances.¶ An intellectual property waiver wouldn't give another company access to this deeper level of know-how. Only a cooperative agreement in which the technology owner helped the new manufacturer produce the vaccines could do this, Pai suggested.¶ Prashant Yadav, an expert on medical supply chains at Harvard Medical School, told ISS Today that it would probably take two to three years to produce a vaccine via a TRIPS waiver. First, the waiver would need to be secured, and then the necessary processes worked out without the help of the original developer.¶ Can Africa wait that long? At the launch of the mRNA project this week, Michael Ryan, Head of the WHO's Health Emergencies Programme, stressed that manufacturing COVID-19 vaccines in Africa, while commendable, wouldn't address the immediate crisis. The only solution was for rich countries to stop hoarding vaccines immediately. 'It will be a catastrophic moral failure at global level if we do not do that,' Ryan warned.¶ Yadav says the urgent strategy should be reallocating doses purchased by countries that don't need them and expanding vaccine production through voluntary licensing and tech transfer from the originator companies.¶ Of course, Ramaphosa could be right in suspecting that rich countries aren't altruistic enough to donate their 'surplus' vaccines, and so Africa and the rest of the global south must become more self-reliant.