# 1NC Yale Round 5

## 1

**Interpretation: The affirmative must only defend a permanent reduction of intellectual property protections for medicines**

**Reynolds 59** – Judge (In the Matter of Doris A. Montesani, Petitioner, v. Arthur Levitt, as Comptroller of the State of New York, et al., Respondents [NO NUMBER IN ORIGINAL] Supreme Court of New York, Appellate Division, Third Department 9 A.D.2d 51; 189 N.Y.S.2d 695; 1959 N.Y. App. Div. LEXIS 7391 August 13, 1959, lexis)

Section 83's counterpart with regard to nondisability pensioners, section 84, prescribes a reduction only if the pensioner should again take a public job. The disability pensioner is penalized if he takes any type of employment. The reason for the difference, of course, is that in one case the only reason pension benefits are available is because the pensioner is considered incapable of gainful employment, while in the other he has fully completed his "tour" and is considered as having earned his reward with almost no strings attached. It would be manifestly unfair to the ordinary retiree to accord the disability retiree the benefits of the System to which they both belong when the latter is otherwise capable of earning a living and had not fulfilled his service obligation. If it were to be held that withholdings under section 83 were payable whenever the pensioner died or stopped his other employment the whole purpose of the provision would be defeated, i.e., the System might just as well have continued payments during the other employment since it must later pay it anyway. [\*\*\*13] The section says "reduced", does not say that monthly payments shall be temporarily suspended; it says that the pension itself shall be reduced. The plain dictionary meaning of the word is to diminish, lower or degrade. The word "reduce" seems adequately to indicate permanency.

**Prefer - its a legal definition from the Supreme Court which is the only legally applicable and predictable one - new 1ar definitions are unpredictable and late breaking**

**Violation: the aff defends a temporary waiver.**

Vineeta **Gupta and** Sreenath **Namboodiri, 7-13**-2021, "America And The TRIPS Waiver: You Can Talk The Talk, But Will You Walk The Walk?," No Publication, <https://www.healthaffairs.org/do/10.1377/hblog20210712.248782/full/> AA

In October 2020, the governments of India and South Africa, with the support of 62 WTO member states, proposed a TRIPS Agreement waiver proposal that would temporarily waive intellectual property rights protections for technologies needed to prevent, contain, or treat COVID-19, including vaccines and vaccine-related technologies. More than 100 low-income countries support this proposal, but it is receiving much opposition from many high-income countries, including some European Union (EU) member states, the UK, Japan, Canada, and Australia. On May 5, 2021, the Biden administration announced support for negotiating this waiver, intensifying debate in the US and the EU—but so far the US has not gone further than its announcement of support.

**Standards:**

1. **Precision outweighs - anything outside the res is arbitrary and unpredictable because the topic determines prep, not being bound by it lets them jettison any word. Aff arguments are non-unique since a] it relies on semantics to convey those messages and b] pragmatics can be discussed anytime while we only have 2 months to discuss the wording of this unique topic**
2. **Limits and Ground - they can specify infinite different aff skewed timeframes like only during a certain pandemic or only when IP is violating human rights - decks predictable engagement and delink out of core neg ground such as conditions counterplans and DAs since patents would be restored later e.g. no econ DA since job loss is temporary and no pharma backlash since they wouldn’t spend energy on a temporary thing**

**Fairness and education are voters – debate’s a game that needs rules to evaluate it and it teaches portable skills that we use lifelong. Drop the debater - severance kills 1NC strat construction—1AR restart favors aff since it’s 7-6 time skew and they get 2 speeches to my one. No rvi - a) they’ll bait theory and prep it out with aff infinite prep—justifies infinite abuse and chilling us from checking abuse in fear of things like 2ar ethos which lets them recontextualize and always seem right on the issue b) forces the NC to go 7 minutes of theory because nothing else matters--outweighs because its the longest speech and the 2nr can never recover since the nc is our only route to generate offense. Competing interps - a) reasonability’s arbitrary & forces judge intervention especially with 2ar recontextualizations to always sound like the more reasonable debater b) norm setting - we find the best possible norms c) reasonability collapses - you use offense/defense paradigm to evaluate brightlines. Outweighs case - [a] they don’t get to weigh case if we couldn’t engage [b] all arguments including the K presume its evaluated fairly, making it a side constraint [c]**

## 2

**Interp: The affirmative must delineate what intellectual property protections they reduce in the 1AC**

**Its a vague and ambiguous term with no meaning**

Richard M. **Stallman, 2018**/12/15, Did You Say “Intellectual Property”? It's a Seductive Mirage <https://www.gnu.org/philosophy/not-ipr.en.html> //SR

It has become fashionable to toss copyright, patents, and trademarks—three separate and different entities involving three separate and different sets of laws—plus a dozen other laws into one pot and call it “intellectual property”. The distorting and confusing term did not become common by accident. Companies that gain from the confusion promoted it. The clearest way out of the confusion is to reject the term entirely. According to Professor Mark Lemley, now of the Stanford Law School, the widespread use of the term “intellectual property” is a fashion that followed the 1967 founding of the World “Intellectual Property” Organization (WIPO), and only became really common in recent years. (WIPO is formally a UN organization, but in fact represents the interests of the holders of copyrights, patents, and trademarks.) Wide use dates from around 1990. (Local image copy) The term carries a bias that is not hard to see: it suggests thinking about copyright, patents and trademarks by analogy with property rights for physical objects. (This analogy is at odds with the legal philosophies of copyright law, of patent law, and of trademark law, but only specialists know that.) These laws are in fact not much like physical property law, but use of this term leads legislators to change them to be more so. Since that is the change desired by the companies that exercise copyright, patent and trademark powers, the bias introduced by the term “intellectual property” suits them. The bias is reason enough to reject the term, and people have often asked me to propose some other name for the overall category—or have proposed their own alternatives (often humorous). Suggestions include IMPs, for Imposed Monopoly Privileges, and GOLEMs, for Government-Originated Legally Enforced Monopolies. Some speak of “exclusive rights regimes”, but referring to restrictions as “rights” is doublethink too. Some of these alternative names would be an improvement, but it is a mistake to replace “intellectual property” with any other term. A different name will not address the term's deeper problem: overgeneralization. There is no such unified thing as “intellectual property”—it is a mirage. The only reason people think it makes sense as a coherent category is that widespread use of the term has misled them about the laws in question. The term “intellectual property” is at best a catch-all to lump together disparate laws. Nonlawyers who hear one term applied to these various laws tend to assume they are based on a common principle and function similarly. Nothing could be further from the case. These laws originated separately, evolved differently, cover different activities, have different rules, and raise different public policy issues. For instance, copyright law was designed to promote authorship and art, and covers the details of expression of a work. Patent law was intended to promote the publication of useful ideas, at the price of giving the one who publishes an idea a temporary monopoly over it—a price that may be worth paying in some fields and not in others. Trademark law, by contrast, was not intended to promote any particular way of acting, but simply to enable buyers to know what they are buying. Legislators under the influence of the term “intellectual property”, however, have turned it into a scheme that provides incentives for advertising. And these are just three out of many laws that the term refers to. Since these laws developed independently, they are different in every detail, as well as in their basic purposes and methods. Thus, if you learn some fact about copyright law, you'd be wise to assume that patent law is different. You'll rarely go wrong! In practice, nearly all general statements you encounter that are formulated using “intellectual property” will be false. For instance, you'll see claims that “its” purpose is to “promote innovation”, but that only fits patent law and perhaps plant variety monopolies. Copyright law is not concerned with innovation; a pop song or novel is copyrighted even if there is nothing innovative about it. Trademark law is not concerned with innovation; if I start a tea store and call it “rms tea”, that would be a solid trademark even if I sell the same teas in the same way as everyone else. Trade secret law is not concerned with innovation, except tangentially; my list of tea customers would be a trade secret with nothing to do with innovation. You will also see assertions that “intellectual property” is concerned with “creativity”, but really that only fits copyright law. More than creativity is needed to make a patentable invention. Trademark law and trade secret law have nothing to do with creativity; the name “rms tea” isn't creative at all, and neither is my secret list of tea customers. People often say “intellectual property” when they really mean some larger or smaller set of laws. For instance, rich countries often impose unjust laws on poor countries to squeeze money out of them. Some of these laws are among those called “intellectual property” laws, and others are not; nonetheless, critics of the practice often grab for that label because it has become familiar to them. By using it, they misrepresent the nature of the issue. It would be better to use an accurate term, such as “legislative colonization”, that gets to the heart of the matter. Laymen are not alone in being confused by this term. Even law professors who teach these laws are lured and distracted by the seductiveness of the term “intellectual property”, and make general statements that conflict with facts they know. For example, one professor wrote in 2006: Unlike their descendants who now work the floor at WIPO, the framers of the US constitution had a principled, procompetitive attitude to intellectual property. They knew rights might be necessary, but…they tied congress's hands, restricting its power in multiple ways. That statement refers to Article 1, Section 8, Clause 8 of the US Constitution, which authorizes copyright law and patent law. That clause, though, has nothing to do with trademark law, trade secret law, or various others. The term “intellectual property” led that professor to make a false generalization. The term “intellectual property” also leads to simplistic thinking. It leads people to focus on the meager commonality in form that these disparate laws have—that they create artificial privileges for certain parties—and to disregard the details which form their substance: the specific restrictions each law places on the public, and the consequences that result. This simplistic focus on the form encourages an “economistic” approach to all these issues. Economics operates here, as it often does, as a vehicle for unexamined assumptions. These include assumptions about values, such as that amount of production matters while freedom and way of life do not, and factual assumptions which are mostly false, such as that copyrights on music supports musicians, or that patents on drugs support life-saving research. Another problem is that, at the broad scale implicit in the term “intellectual property”, the specific issues raised by the various laws become nearly invisible. These issues arise from the specifics of each law—precisely what the term “intellectual property” encourages people to ignore. For instance, one issue relating to copyright law is whether music sharing should be allowed; patent law has nothing to do with this. Patent law raises issues such as whether poor countries should be allowed to produce life-saving drugs and sell them cheaply to save lives; copyright law has nothing to do with such matters. Neither of these issues is solely economic in nature, and their noneconomic aspects are very different; using the shallow economic overgeneralization as the basis for considering them means ignoring the differences. Putting the two laws in the “intellectual property” pot obstructs clear thinking about each one. Thus, any opinions about “the issue of intellectual property” and any generalizations about this supposed category are almost surely foolish. If you think all those laws are one issue, you will tend to choose your opinions from a selection of sweeping overgeneralizations, none of which is any good. Rejection of “intellectual property” is not mere philosophical recreation. The term does real harm. Apple used it to warp debate about Nebraska's “right to repair” bill. The bogus concept gave Apple a way to dress up its preference for secrecy, which conflicts with its customers' rights, as a supposed principle that customers and the state must yield to. If you want to think clearly about the issues raised by patents, or copyrights, or trademarks, or various other different laws, the first step is to forget the idea of lumping them together, and treat them as separate topics. The second step is to reject the narrow perspectives and simplistic picture the term “intellectual property” suggests. Consider each of these issues separately, in its fullness, and you have a chance of considering them well. And when it comes to reforming WIPO, here is one proposal for changing the name and substance of WIPO.

**Standards:**

1. **Strat Skew and Clash - 1ar’s can skirt clash and moot neg ground by no linking IP specific disads or pics and making the normal means debate late breaking e.g. no counterfeit drug DA if you don’t defend trademarks**
2. **Resolvability - judges can’t know who to vote for if they don’t understand what each side is defending which also denies negs to make rigorous and nuanced strategies. Outweighs - all arguments presume you can resolve them**
3. **Worst case neg on presumption - policies inevitably fail if policymakers can’t hash out the specifics - our evidence gives empirical examples**

**Cx doesn’t check - a] prep skew - we were forced to prep a 1NC that hedges around the potential of you not speccing and had to prep multiple case negs b] incentivizes infinite abuse and hope you don’t get called out since its no risk if we ask you and you can strategically not meet then get extra time in cx to prep the shell since we asked c] non verifiable since judges don’t flow it d] no brightline to what constitutes a check**

## 3

**CP: The member nations of the World Trade Organization ought to enter into a prior and binding consultation with the World Health Organization over waiving the TRIPS agreement.**

**Rimmer 4**, Matthew. "The race to patent the SARS virus: the TRIPS agreement and access to essential medicines." Melbourne Journal of International Law 5.2 (2004): 335-374. <https://law.unimelb.edu.au/__data/assets/pdf_file/0007/1681117/Rimmer.pdf> (BA (Hons), LLB (Hons) (Australian National University), PhD (New South Wales); Lecturer at ACIPA, the Faculty of Law, The Australian National University)//SidK + Elmer

The WHO has been instrumental in coordinating the international network of research on the SARS virus. It has emphasised the need for collaboration between the network participants. The WHO presented the containment of the SARS virus as ‘one of the biggest success stories in public health in recent years’.206 However, it was less active in the debate over patent law and public health epidemics. The 56th World Health Assembly considered the relationship between intellectual property, innovation and public health. It stressed that in order to tackle new public health problems with international impact, such as the emergence of severe acute respiratory syndrome (SARS), access to new medicines with potential therapeutic effect, and health innovations and discoveries should be universally available without discrimination.207 However, there was much disagreement amongst the member states as to what measures would be appropriate. The WHO has made a number of aspirational statements about patent law and access to essential medicines. Arguably, though, the organisation could be a much more informed and vocal advocate. Initially, the WHO did not view the patent issues related to SARS as being within its field of activities. The agency did not even seem aware of the patent proceedings, leaving individual research institutions without guidance. Spokesman Dick Thompson said: ‘What we care about is [that] the international collaboration continues to function. Patents, they don’t really concern us’.208 The director of WHO’s Global Influenza project, Klaus Stöhr, expressed his opinion that the patent filings would not interfere with the international cooperation on the SARS research: ‘I don’t think this will undermine the collaborative spirit of the network of labs’.209 However, he believed that, after the international network of researchers had identified the coronavirus, it was necessary to rely upon companies to commercialise such research. Klaus Stöhr conceded: ‘At a certain point of time you have to give way for competitive pharmaceutical companies’.210 On a policy front, the WHO remained deferential to the WTO over the debate over patent law and access to essential medicines, observing: Owing to the inconclusive nature of the studies conducted to date, and because of the effect that potentially significant price increases could have on access to drugs in poor countries, WHO is currently monitoring and evaluating the effects of TRIPS on the prices of medicines. It is also monitoring the TRIPS impact on other important issues such as transfer of technology, levels of research and development for drugs for neglected diseases, and the evolution of generic drug markets.211 In such a statement, the WHO appears diffident, unwilling to take on more than a spectator role. Such a position is arguably too timid, given the gravity of national emergencies, such as the SARS virus. The organisation could take a much stronger stance on the impact of the TRIPS Agreement on public health concerns. The WHO has since enunciated a position statement on the patenting of the SARS virus. A number of high ranking officials from the organisation have commented on the need to ensure that international research into the SARS virus is not impeded by competition over patents. Arguably though, the WHO should not be limited to a mere spectator role in such policy discussions. It needs to play an active advocacy role in the debate over patent law and access to essential medicines. The WHO released a position statement on ‘Patent Applications for the SARS Virus and Genes’ on 29 May 2003.212 The organisation stressed that it had no per se objection to the patenting of the SARS virus: Some people have objected to the SARS patent applications on the ground that the virus and its genes should not be patentable because they are mere discoveries, not inventions. This distinction no longer prevents the granting of patents; the novel claim rests not with the virus itself but with its isolation, and likewise with the identification of the genetic sequence not its mere occurrence. Many patents have been issued on viruses and genetic sequences, though the appropriate policies to follow in such cases — particularly as genomic sequencing becomes more routine and less ‘inventive’ — remain matters of dispute.213 Furthermore, it recognised that public institutions could legitimately use patents as a defensive means to prevent undue commercial exploitation of the research: The “defensive” use of patents can be a legitimate part of researchers’ efforts to make their discoveries (and further discoveries derived therefrom) widely available to other researchers, in the best collaborative traditions of biomedical science.214 The WHO affirmed the need for further cooperation between research organisations in respect of the SARS virus: ‘For continued progress against SARS, it is essential that we nurture the spirit of the unprecedented, global collaboration that rapidly discovered the novel virus and sequenced its genome’.215 The WHO announced its intention to monitor the effects of patents (and patent applications) on the speed with which SARS diagnostic tests, treatments, and vaccines are developed and made available for use, and on the manner in which prices are set for these technologies. It observed: In the longer term, the manner in which SARS patent rights are pursued could have a profound effect on the willingness of researchers and public health officials to collaborate regarding future outbreaks of new infectious diseases. WHO will therefore examine whether the terms of reference for such collaborations need to be modified to ensure that the credit for any intellectual property developed is appropriately attributed, that revenues derived from licensing such property are devoted to suitable uses, and that legitimate rewards for innovative efforts do not impose undue burdens on efforts to make tests, therapies, and preventive measure available to all.216 It maintained that in order to tackle new public health problems with international impact, such as the emergence of severe acute respiratory syndrome (SARS), access to new medicines with potential therapeutic effect, and health innovations and discoveries should be universally available without discrimination.219 The Assembly requested that the Director-General continue to support Member States in the exchange and transfer of technology and research findings, according high priority to access to antiretroviral drugs to combat HIV/AIDS and medicines to control tuberculosis, malaria and other major health problems, in the context of paragraph 7 of the Doha Declaration which promotes and encourages technology transfer.220 The WHO also considered a report on the emergence of the SARS virus and the international response to the infectious disease.221 It was ‘deeply concerned that SARS ... poses a serious threat to global health security, the livelihood of populations, the functioning of health systems, and the stability and growth of economies’.222 The Committee on Infectious Diseases requested that the Director-General ‘mobilize global scientific research to improve understanding of the disease and to develop control tools such as diagnostic tests, drugs and vaccines that are accessible to and affordable by Member States’.223 The Director-General of the WHO, Dr Gro Harlem Brundtland, told the World Health Assembly that there was a need to build trust and forge solidarity in the face of public health epidemics: ‘Ensuring that patent regimes stimulate research and do not hinder international scientific cooperation is a critical challenge — whether the target is SARS or any other threat to human health’.224 Similarly, Dr Marie-Paule Kieny, Director of the WHO Initiative for Vaccine Research, said: If we are to develop a SARS vaccine more quickly than usual, we have to continue to work together on many fronts at once, on scientific research, intellectual property and patents issues, and accessibility. It is a very complicated process, involving an unprecedented level of international cooperation, which is changing the way we work.225 She emphasised that patents and intellectual property issues and their safeguards can help rather than hinder the rapid development of SARS vaccines and ensure that, once developed, they are available in both industrialised and developing countries.226 C Summary The WHO should play a much more active role in the policy debate over patent law and access to essential medicines. James Love, the director of the Consumer Project on Technology, run by Ralph Nader, is critical of the WHO statement on ‘Intellectual Property Rights, Innovation, and Public Health’.227 He maintains that the Assembly could have addressed ‘practical examples, like SARS’ and cites the report in The Washington Post that notes that a number of commercial companies are investing in SARS research.228 The non-government organisation Médecins Sans Frontières has been critical in the past of the passive role played by the WHO in the debate over access to essential medicines: ‘As the world’s leading health agency, and armed with the clear mandate of recent World Health Assembly resolutions, the WHO can and should do much more’.229 The WHO should become a vocal advocate for public health concerns at the WTO and its TRIPS Council — especially in relation to patent law and the SARS virus. It must staunchly defend the rights of member states to incorporate measures in their legislation that protect access to medicines — such as compulsory licensing, parallel imports, and measures to accelerate the introduction of generic pharmaceutical drugs. It needs to develop a clearer vision on global equity pricing for essential medicines. The race to patent the SARS virus seems to be an inefficient means of allocating resources. A number of public research organisations — including the BCCA, the CDC and HKU — were compelled to file patents in respect of the genetic coding of the SARS virus. Such measures were promoted as ‘defensive patenting’ — a means to ensure that public research and communication were not jeopardised by commercial parties seeking exclusive private control. However, there are important drawbacks to such a strategy. The filing of patents by public research organisations may be prohibitively expensive. It will also be difficult to resolve the competing claims between the various parties — especially given that they were involved in an international research network together. Seth Shulman argues that there is a need for international cooperation and communication in dealing with public health emergencies such as the SARS virus: The success of a global research network in identifying the pathogen is an example of the huge payoff that can result when researchers put aside visions of patents and glory for their individual laboratories and let their work behave more like, well, a virus. After all, the hallmark of an opportunistic virus like the one that causes SARS is its ability to spread quickly. Those mounting a response need to disseminate their information and innovation just as rapidly.230 There is a danger that such competition for patent rights may undermine trust and cooperation within the research network. Hopefully, however, such concerns could be resolved through patent pooling or joint ownership of patents. Furthermore, a number of commercial companies have filed patent applications in respect of research and development into the SARS virus. There will be a need for cooperation between the public and private sectors in developing genetic tests, vaccines, and pharmaceutical drugs that deal with the SARS virus. There is also a need to reform the patent system to deal with international collaborative research networks — such as that created to combat the SARS virus. Several proposals have been put forward. There has been a renewed debate over whether patents should be granted in respect of genes and gene sequences. Some commentators have maintained that the SARS virus should fall within the scope of patentable subject matter — to promote research and development in the field. However, a number of critics of genetic technology have argued that the SARS virus should not be patentable because it is a discovery of nature, and a commercialisation of life. There has been a discussion over the lack of harmonisation over the criteria of novelty and inventive step between patent regimes. As Peter Yu comments, ‘[w]hile [the] US system awards patents to those who are the first to invent, the European system awards patents to those who are the first to file an application’.231 There have been calls for the requirement of utility to be raised. There have also been concerns about prior art, secret use and public disclosure. Representative Lamar Smith of Texas has put forward the CREATE Act, which recognises the collaborative nature of research across multiple institutions. Such reforms are intended to ensure that the patent system is better adapted to deal with the global nature of scientific inquiry. The race to patent the SARS virus also raises important questions about international treaties dealing with access to essential medicines. The public health epidemic raises similar issues to other infectious diseases — such as AIDS, malaria, tuberculosis, influenza, and so forth. The WHO made a public statement about its position on the patenting of the SARS virus. It has stated that it will continue to monitor developments in this field. Arguably, there is a need for the WHO to play a larger role in the debate over patent law and access to essential medicines. Not only could it mediate legal disputes over patents in respect of essential medicines, it could be a vocal advocate in policy discussions. The WTO has also played an important role in the debate over patent law and access to essential medicines. A number of public interest measures could be utilised to secure access to patents relating to the SARS virus including compulsory licensing, parallel importation and research exceptions. The appearance of the SARS virus shows that there should be an open-ended interpretation of the scope of diseases covered by the Doha Declaration on the TRIPS Agreement and Public Health. Important lessons should be learned from the emergence of the SARS virus, and the threat posed to global health. As the World Health Report 2003 notes: SARS will not be the last new disease to take advantage of modern global conditions. In the last two decades of the 20th century, new diseases emerged at the rate of one per year, and this trend is certain to continue. Not all of these emerging infections will transmit easily from person to person as does SARS. Some will emerge, cause illness in humans and then disappear, perhaps to recur at some time in the future. Others will emerge, cause human illness and transmit for a few generations, become attenuated, and likewise disappear. And still others will emerge, become endemic, and remain important parts of our human infectious disease ecology.232 Already, in 2004, there have been worries that pharmaceutical drug companies and patent rights are impeding efforts to prevent an outbreak of bird flu — avian influenza.233 There is a need to ensure that the patent system is sufficiently flexible and adaptable to cope with the appearance of new infectious diseases.234

**WHO says yes**

Spencer **Kimball and** Rich **Mendez**, 7-3-**2020**, "WHO chief urges world to follow U.S. lead and support waiving Covid vaccine patent protections," CNBC, <https://www.cnbc.com/2021/05/07/who-chief-urges-world-to-follow-us-waive-covid-vaccine-patent-protections.html> //SR

World Health Organization Director General-Tedros Adhanom Ghebreyesus on Friday urged other countries, particularly the Group of Seven industrialized nations, to follow the U.S. example and support a World Trade Organization motion to temporarily waive Covid-19 vaccine patent protections. "Wednesday's announcement by the U.S. that it will support a temporary waiver of intellectual property protections for Covid-19 vaccines is a significant statement of solidarity and support for vaccine equity," Tedros said at a press briefing. "I know that this is not a politically easy thing to do, so I very much appreciate the leadership of the U.S. and we urge other countries to follow their example."

**Consultation displays strong leadership, authority, and cohesion among member states which are key to WHO legitimacy**

**Gostin et al 15** [(Lawrence O., Linda D. & Timothy J. O’Neill Professor of Global Health Law at Georgetown University, Faculty Director of the O’Neill Institute for National & Global Health Law, Director of the World Health Organization Collaborating Center on Public Health Law & Human Rights, JD from Duke University**) “**The Normative Authority of the World Health Organization,” Georgetown University Law Center, 5/2/2015] JL

Members want the WHO to exert leadership, harmonize disparate activities, and set priorities. Yet they resist intrusions into their sovereignty, and want to exert control. In other words, ‘everyone desires coordination, but no one wants to be coordinated.’ States often ardently defend their geostrategic interests. As the Indonesian virus-sharing episode illustrates, the WHO is pulled between power blocs, with North America and Europe (the primary funders) on one side and emerging economies such as Brazil, China, and India on the other. An inherent tension exists between richer ‘net contributor’ states and poorer ‘net recipient’ states, with the former seeking smaller WHO budgets and the latter larger budgets. Overall, national politics drive self-interest, with states resisting externally imposed obligations for funding and action. Some political leaders express antipathy to, even distrust of, UN institutions, viewing them as bureaucratic and inefficient. In this political environment, it is unsurprising that members fail to act as shareholders. Ebola placed into stark relief the failure of the international community to increase capacities as required by the IHR. Guinea, Liberia and Sierra Leone had some of the world's weakest health systems, with little capacity to either monitor or respond to the Ebola epidemic.20 This caused enormous suffering in West Africa and placed countries throughout the region e and the world e at risk. Member states should recognize that the health of their citizens depends on strengthening others' capacity. The WHO has a central role in creating systems to facilitate and encourage such cooperation. The WHO cannot succeed unless members act as shareholders, foregoing a measure of sovereignty for the global common good. It is in all states' interests to have a strong global health leader, safeguarding health security, building health systems, and reducing health inequalities. But that will not happen unless members fund the Organization generously, grant it authority and flexibility, and hold it accountable.

**WHO legitimacy is uniquely necessary to resist pandemics, populism, and conflict through solidarity - flips their accessibility offense**

**Friedman 17** Eric Friedman March 2017 “New WHO Leader Will Need Human Rights to Counter Nationalistic Populism”<https://www.hhrjournal.org/2017/03/new-who-leader-will-need-human-rights-to-counter-populism/> (JD, Project Leader of the Platform for a Framework Convention on Global Health at the O’Neill Institute for National and Global Health Law at the Georgetown University Law Center in Washington, DC)//Elmer

The need for WHO leadership on human rights—and for global leadership on health and human rights beyond WHO—has always been present, yet has become ever more pressing. A reactionary, nationalist populism has been gaining momentum, particularly in the United States and parts of Europe, and some of its most disturbing features, such as xenophobia and disregard for international law and institutions, are surfacing elsewhere. Persisting health challenges—such as immense national and global health inequities, with universal health coverage and the Sustainable Development Goals offering some hope of lessening them—and growing threats such as outbreaks of infectious disease, worsening antimicrobial resistance, and climate change demand the type of leadership that the right to health entails. In this immensely challenging environment, WHO needs to become a 21st century institution that has the gravitas and credibility to carve a path through these obstacles towards global health justice. The next WHO Director-General, to be elected in May, must lead the organization there. The right to health can light the way ahead, with reforms to, and driven by, WHO. These reforms must develop an internal governance that is far more welcoming of civil society, with WHO member states significantly increasing contributions so work on the social determinants of health can expand, and with enhanced transparency and accountability. Furthermore, reforms are needed so that WHO leads on global health equity and human rights, including through national health equity strategies and, above all, the Framework Convention on Global Health (FCGH). The FCGH could help bring the right to health to the next level by capturing core aspects of the right to health, such as: 1) participation and accountability, setting clear standards for people’s participation in health policy-making at all levels, and establishing multi-layered health accountability frameworks with standards to which all nations would be held; 2) equity, including by catalyzing national health equity strategies—which must be developed through broad participation, itself a potentially empowering process—and advancing data disaggregation and more equitable financing; 3) financial resources, with global norms on national and international health financing responsibilities; and 4) respecting and promoting the right to health in all policies, from setting standards on health impact assessments—including participatory processes in developing them, human rights standards, an equity focus, and follow-up processes—to firmly ensuring the primacy of the right to health in other legal regimes that may undermine. From an earlier WHO treaty, the Framework Convention on Tobacco Control, we know the power of international law to significantly advance health, with the transformative power of legally binding global health norms. As a treaty, the FCGH would increase political accountability and accountability through the courts, while helping protect health other treaty-based international regimes, such as trade. It would also be a bold assertion of global solidarity for global justice, as so urgently needed, “demonstrating that the community of nations are indeed stronger together.” One candidate for the WHO Director-General election, David Nabarro, has recognized the value and civil society support that FCGH has already received, and the need to further explore the treaty (mentioned at 1:46:38 mark). A good first step would be establishing a WHO working group on the FCGH, with broad participation, particularly from states, civil society, and representatives of communities most affected by health inequities, along with relevant international agencies. We see signs of resistance of the dangerous nationalist populism, from protests that persist and judicial checks on one of the administration’s vilest acts (an immigration and refugee travel ban, with its effects falling heaviest on Muslims) in the United States to the rejection of the far-right candidate in the elections in the Netherland. Such resistance can prevent some of the worst impacts on the right to health, from discrimination against migrants to cuts to programs vital for health. Meanwhile, let’s construct an edifice for the future of health and human rights, even as we stand against its destruction. WHO, right to health, and FCGH leadership ought to be a core part of that endeavor.

## 4

**Permissibility and presumption negate—the aff has the burden of proof to show the normative claim of the resolution is true, so the neg gets anything that denies that. Ought implies a moral obligation to do something but permissibility denies the existence of said obligation**

**Objective morality is epistemically inaccessible –**

1. **Rule-Following Paradox – there is nothing inherent in a rule that mandates following a specific interpretation. They are always subject to interpretation by the observer, which means an objective moral rule would get interpreted differently by different agents since rules presume a higher rule to follow a rule to infinity**
2. **Moral Disagreement – thousands of years of moral disagreement prove that not everyone agrees on a moral theory. Also means even if there is a universal theory, it’s not binding as proven by every past act of immorality**

**The solution is the libertarian utopia – a political philosophy to preserve freedom and people’s conceptions of truth, insofar as it doesn’t violate someone else’s freedom to do the same**

**Mack 18** Eric Mack, June 15, 2018, “Robert Nozick’s Political Philosophy”<https://plato.stanford.edu/entries/nozick-political/#FraDisPro> //LHP AV

The official purpose of Part III of ASU, “Utopia”, is to show that the minimal state is not merely legitimate and just; it is also inspiring. This purpose is advanced by sketching a framework for utopia that is inspiring and noting that this framework is highly akin to—Nozick actually says “equivalent to” (333)—the minimal state. Yet Nozick also says that the framework might not have any “central authority” (329). Still, the framework is akin to the minimal state because it is an institutional structure that enforces peaceful co-existence among voluntarily formed communities. It protects the independence of such communities and their freedom to recruit members and also protects the liberty of individuals to enter and exit communities as they respectively choose. Although Nozick is not explicit about this, we have to presume that the framework enforces the same norms of personal freedom, property, and contractual compliance that the minimal state enforces except insofar as individuals voluntarily relinquish such rights within the communities they enter. The framework is inspiring because of the way it contributes to persons’ identification of and participation in communities (and other networks of relationships) through which they will find meaning and well-being. It is inspiring to anyone who appreciates how little each of us knows about what sorts of communities best suit human beings in all their depth and diversity and how much the operation of the framework assists individuals in their discovery of and engagement in communities that enhance their respective well-being. Moreover, many persons may value the framework not merely for the way it enhances their own good but, also, for the ways in which it allows them to participate vicariously in others’ achievement of their different modes of flourishing (Lomasky 2002). 5.1 The Framework as Discovery Procedure The framework is—or, more precisely, sustains—a discovery procedure. Under the protective umbrella of the framework, individuals are presented with and can try out diverse communities while communities themselves arise and modify themselves in their competitive search to sustain, improve, or increase their membership. A wide range of communities will continually arise out of and in response to the evolving perceptions that diverse individuals will have about what modes of sociality will best suit them and will best attract welcome partners. Communities will survive and perhaps expand or be imitated insofar as they actually embody modes of relationship that serve well their actual or prospective membership or insofar as they successfully refine their offerings in the market place of communities. The framework also insures that those who are already confident that they know what sort of community is best for them will be free to form those communities by voluntary subscription and, thereby, to manifest their actual value (or disvalue) to themselves and to other seekers of well-being. Part of Nozick’s sub-text here is a message to socialist utopians that nothing in the framework (or the minimal state) precludes their non-coercive pursuit of their ideal communities. How, therefore, can socialists object to the framework (or the minimal state)? This generalizes Nozick’s earlier claims in ASU that that advocates of meaningful work and workers’ control of productive enterprises ought not to be hostile to the minimal state since the minimal state is fully tolerant of non-coercive endeavors to establish such conditions (246–253). In a short essay in Reason magazine published four years after ASU, Nozick asked, “Who Would Choose Socialism?” (Nozick 1978). More precisely, his question was: What percent of the adult population would choose “to participate in socialist interpersonal relations of equality and community” were they in position to choose between “a reasonably attractive socialist option and also a reasonably attractive non-socialist one?” (Nozick 1978: 277). Nozick takes the choice available to Israelis between membership and non-membership in kibbutzim to be a good instance of a choice between such options and notes that around six percent of the adult population of Israel in the 1970s had chosen the socialist option. He speculates that socialists are at least “tempted” to be imperialists precisely because they sense that there will be too few volunteers (Nozick 1978: 279). The discovery procedure that the framework sustains is a version of Millian experiments in living—albeit it is a version that places much more emphasis on the role of a marketplace of communities in providing individuals with experimental options. This discovery procedure (like Millian experiments in living) is, of course, a Hayekian invisible hand process. Given the enormous diversity among individuals, we do not know what one form of community would be best. The idea that there is one best composite answer to all of these questions [about what features utopia has], one best society for everyone to live in, seems to me to be an incredible one. (And the idea that, if there is one, we now know enough to describe it is even more incredible.) (311) Nor do we know what distinct modes of community would be best for distinct types of persons. Thus, we cannot design an inclusive utopia; nor can we design an array of mini-utopia such that some significantly fulfilling community will be available to everyone—or even to most. It is helpful to imagine cavemen sitting together to think up what, for all time, will be the best possible society and then setting out to institute it. Do none of the reasons that make you smile at this apply to us? (313–314) Given our ignorance, the best way to realize utopia—almost certainly many distinct utopia—is through the discovery procedure that the framework sustains. (We should note, however, an implicit, somewhat puzzling, and wholly unnecessary presupposition of Nozick’s discussion, viz, that individuals with utopian aspirations will generally seek out communities that are made up of other individuals like themselves. The suggestion is that chosen communities will be internally homogeneous with heterogeneity existing only across these communities.)

**Thus, the standard is consistency with libertarianism. Prefer additionally - all theories presume the freedom to follow them.**

**I’ll defend a lack of an obligation to the aff. Negate: IP protections define agents as autonomous beings who are able to create their own ideas and boost the free exchange of ideas in the free market by NPEs**

Bob **Zeidman &** Eashan **Gupta**, 1-5-**2016**, "Why Libertarians Should Support a Strong Patent System," IPWatchdog, <https://www.ipwatchdog.com/2016/01/05/why-libertarians-should-support-a-strong-patent-system/id=64438/> //SR

Owning property is an essential element of liberty. Protecting property and property rights is a major concern of libertarianism and one of the few functions of government that nearly all libertarians agree is necessary. The book “The Virtue of Selfishness,” a collection of essays and papers by Ayn Rand and Nathaniel Branden. Rand, founder of Objectivism, a branch of libertarianism, confirms this binding between liberty and property ownership: There is no such dichotomy as “human rights” versus “property rights.” No human rights can exist without property rights. Since material goods are produced by the mind and effort of individual men and are needed to sustain their lives, if the producer does not own the result of ~~his~~ [their] effort, he [they] does not own ~~his~~ [their] life. To deny property rights means to turn ~~men~~ [people] into property owned by the state. Whoever claims the “right” to “redistribute” the wealth produced by others is claiming the “right” to treat human beings as chattel. Is Intellectual Property Property? The issue intellectual property has divided libertarians as to whether there can really be ownership in the result of result of human creativity, and continues to do so today. Some libertarians believe that inventors deserve a claim to their hard work, while others argue that patents are government-enforced monopolies and that the current United States patent system needs to be reformed. What the patent and copyright laws acknowledge is the paramount role of mental effort in the production of material values. These laws protect the mind’s contribution in its purest form: the origination of an idea. The subject of patents and copyrights is intellectual property. Ayn Rand strongly supported patents. In her book “Capitalism: The Unknown Ideal,” she states: An idea as such cannot be protected until it has been given a material form. An invention has to be embodied in a physical model before it can be patented; a story has to be written or printed. But what the patent or copyright protects is not the physical object as such, but the idea which it embodies. By forbidding an unauthorized reproduction of the object, the law declares, in effect, that the physical labor of copying is not the source of the object’s value, that that value is created by the originator of the idea and may not be used without ~~his~~ [their] consent; thus the law establishes the property right of a mind to that which it has brought into existence. Many libertarians believe that intellectual property, being intangible, is not real property. A formal libertarian definition of property is difficult to formulate, but we would say that property is that which can be produced or contribute to production. Intellectual property falls clearly within these constraints. Yet some libertarians complain that intellectual is not tangible and is defined by government regulation—the patent laws—such that it would not exist without government definition. Let us look at this argument closer. Land is unquestionably property in the minds of libertarians. Yet the land upon which a house is built was not created by the property owner. It was created by nature or God, depending on your inclination, but no one would claim it to be created by the owner, whereas intellectual property is unquestionably created by the inventor. And how far do property lines extend? Property lines are determined by local governments. One can argue that property lines are negotiated by owners and enforced by governments, but when we moved into our homes, there were no negotiations with surrounding property owners. And how far above ground and below ground do property rights extend? These limitations are definitely not negotiated with other property owners but are determined by laws enforced by governments. Patents also have limitations in terms of scope and time that are determined by government laws. One can see that limitations on patents are similar to those on physical property and in some respects are more closely connected to production. For these reasons, libertarians should recognize patents as they do other forms of property. As a secondary but important example, libertarians are generally concerned about government spying on private conversations. When the government captures a phone conversation, it is not physically taking property. It is simply copying intangible data that exists as a form of transient electrical signals. Copying does not involve removing the original—the phone conversation is not destroyed when it is copied. Yet libertarians recognize that this copying of intangible data is a kind of theft of property. Libertarians should thus be wary of making the argument that intangible patents cannot be property or they may lose their contrary argument that private conversations are personal property to be protected. Non-Practicing Entities, Patent Trolls, and Free Markets Non-practicing entities (NPEs) are organizations that buy intellectual property and license the rights to others. Most commonly they deal in patents. Typically these NPEs purchase patents from companies in need of a capital influx, companies that are moving from one area of technology or one type of product to another, companies that are closing down and need to monetize their assets for distribution to their shareholders, and individual inventors who do not have the money and experience to license or litigate large companies that are infringing their IP. The term “patent troll” was coined by attorney Peter Detkin to describe bad actors who abuse the patent system or use loopholes in the law in ways that were unintended and that hurt patent holders and impede innovation. Ironically, Peter is now a founder of Intellectual Ventures, the largest NPE that is often labeled a “patent troll” by its critics. Let us examine this term. First, the term patent troll is now used derogatorily to describe any company dealing in patents that the name caller does not like. This was evidenced at a conference last year entitled “Patent Trolls and Patent Reform” at the Stanford University Law School. The term “patent troll” not only included NPEs but also companies that were forced out of the market by larger competitors and who were trying to recoup their R&D expenses as represented by their patents. The term was also used for companies that sent letters demanding hundreds of dollars in license fees to small mom-and-pop stores that used, for example, allegedly infringing fax machines and scanners. The term was even applied to universities attempting to license the results of their research to corporations. Whether or not one likes these entities and their business models, lumping them all together is simply a means for tarnishing all of them for the practices of some of them. For our discussion, we will use the neutral term NPE to describe those companies that buy and sell patents and patent rights. These companies act similarly to a grocery store, which could otherwise be labeled “grocery trolls” because, just as the argument against NPEs goes, such grocery trolls do not produce fruits and vegetables, they simply purchase them from those who do and then sell them to consumers. This model which is understood and encouraged by libertarians and other supporters of free markets, provides a great service by connecting distant producers and consumers and achieving economies of scale. No free market libertarian would think that such “grocery trolls” were exploiting a system, reducing consumption, hurting framers, or otherwise undeserving of the service fees that they charge. Similarly, NPEs should be praised by free market libertarians for providing a vital market that allows easier exchange of property and connecting producers and consumers who otherwise could not connect. The America Invents Act On September 16, 2011, Congress passed and President Obama signed into law the America Invents Act (“AIA”), the first major patent reform legislation in over 60 years. One justification for the change was to restrict the “abuse of patent trolls,” a concept that should have sent chills through each and every libertarian. When government attempts to regulate the property rights of an individual or business because of its particular business model, free markets are destroyed and government concepts of “fairness” override actual fairness, or what we call freedom. Another justification for the new law was “harmonization with Europe and the rest of the world.” As libertarians know, Europe has socialist tendencies that include bringing monopoly charges against U.S. businesses while maintaining their own government-supported monopolies. The EU has recently brought antitrust cases against US firms Google, Facebook, Amazon, 21st Century Fox, Disney, NBCUniversal, Paramount Pictures, Sony, Fox, Warner Bros, and Qualcomm. At the same time, European governments subsidize businesses such as Airbus. European governments significantly regulate European businesses and have labor laws tilted clearly and steeply in favor of employees and against businesses. Innovation in Europe and the rest of the world has paled in comparison to the United States since at least World War II if not since this country’s founding. The idea of making U.S. law similar to European law should have been a serious red flag for libertarians and other friends of free markets. In particular, one of the most serious changes was to make U.S. patent law depend on the concept of first-to-file rather than first-to-invent that had been the original law and the original intent of our Founding Fathers. Originally, U.S. patent law was purposely intended to reward the first person to figure out a way to implement a novel, useful invention even if that person did not have the resources to produce the invention. This would give power to the creative genius and allow him or her to raise funds or license the patent to a manufacturer. European patent law, on the other hand, required an inventor to produce the actual invention, ensuring that inventions stayed with the wealthy class. Zorina Khan, Associate Professor of Economics at Bowdoin College, writes in her book “The Democratization of Invention” about U.S. patent laws since the founding of the United States, in contrast to those of Britain: Rather than an elite that possessed rare technical skills or commanded large stocks of resources, the rise in patenting was associated with a democratic broadening of the ranks of patentees to include individuals, occupations, and geographic districts with little previous experience in invention. One finds among the roster of patentees not only engineers and machinists, but also candidates for the Greenback Party, schoolteachers, poets, humble factory workers, housewives, farmhands, teenagers, and even economists. Furthermore she attributes a kind of opportunity available to women in 19th century America through invention and patents that was not available through laws or social norms: [R]ecords indicate that nineteenth century women were active participants in the market for technology… Patents by women comprised only a small fraction of total patents, but the overall patterns of patenting and the pursuit of profit opportunities by women inventors were similar to those of male inventors… Women in frontier regions were especially inventive, and devised ingenious mechanisms to ease the burden of an arduous existence far from the conveniences of cities and extended social networks. The AIA changed the longstanding first-to-invent requirement to a first-to-file, supposedly to reduce litigation costs because it is easy to verify which inventor filed paperwork first with the patent office. It is important to remember, however, that in America litigation occurs not because we have a lot of greedy people and unscrupulous lawyers, as is often decried, but because litigation is the great equalizer. The laws apply equally to all, and litigation is a sometimes long and costly process that allows justice to be served, within the confines of human fallibility, without regard to the litigants’ social status, wealth, employment, race, color, or religion. However, now rather than rewarding the initial producers of intellectual property, this major change in U.S. patent law rewards the first entity to fill out paperwork and pay the government’s fees. This means that once again the power of the patent is given to the large corporations. This provision of the AIA in particular should alarm libertarians in that it has undone over 200 years of creative invention and equality of opportunity in favor of large corporations, wealthy individuals, and government bureaucracy. Conclusion Libertarians believe in property rights and government protection of those rights as one of the few necessary requirements of government. Ownership of property and free markets leads to competitive production and trade of goods, which in turn leads to prosperity for all of society. Intellectual property is property like other forms of property, and so government must protect IP as it protects other forms of property because it too leads to competition and trade and prosperity. Libertarians should encourage a strong patent system and object to any “reforms” that limit intellectual property ownership or introduce more government regulation than is required.