

FW

Concede opp value- societal well being

[Feser] Commitments to equal human freedom necessitates a minimal state that respects self- ownership

Professor of Philosophy Edward Feser writes in 2002

(Edward Feser, Robert Nozick (1938 – 2002) www.iep.utm.edu/nozick/)

Nozick takes his position to follow from a basic moral principle associated with Immanuel Kant and enshrined in Kant's second formulation of his famous Categorical Imperative: "Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only." The idea here is that **a human being**, as a rational agent **endowed with self-awareness**, free will, and the possibility of formulating a plan of life, **has an inherent dignity and cannot properly be treated as a mere thing, or used against his will as an instrument or resource** in the way an inanimate object might be. In line with this, Nozick also describes individual human beings as self-owners (though it isn't clear whether he regards this as a restatement of Kant's principle, a consequence of it, or an entirely independent idea). The thesis of self-ownership, a notion that goes back in political philosophy at least to John Locke, is just the claim that individuals own themselves - their bodies, talents and abilities, labor, and by extension the fruits or products of their exercise of their talents, abilities and labor. They have all the prerogatives with respect to themselves that a slaveholder claims with respect to his slaves. But the thesis of self-ownership would in fact rule out slavery as illegitimate, since each individual, as a self-owner, cannot properly be owned by anyone else. (Indeed, many libertarians would argue that unless one accepts the thesis of self-ownership, one has no way of explaining why slavery is evil. After all, it cannot be merely because slaveholders often treat their slaves badly, since a kind-hearted slaveholder would still be a slaveholder, and thus morally blameworthy, for that. The reason slavery is immoral must be because it involves a kind of stealing - the stealing of a person from himself.) But **if individuals are inviolable ends-in- themselves (as Kant describes them)** and self-owners, it follows, Nozick says, that **they have** certain rights, in particular (and here again following Locke) **rights to their lives, liberty**, and the fruits of their labor. To own something, after all, just is to have a right to it, or, more accurately, to possess the bundle of rights - rights to possess something, to dispose of it, to determine what may be done with it, etc. - that constitute ownership; and thus to own oneself is to have such rights to the various elements that make up one's self. These rights function, Nozick says, as side-constraints on the actions of others; they set limits on how others may, morally speaking, treat a person. So, for example, since you own yourself, and thus have a right to yourself, **others are** constrained morally not to kill or maim you (since this would involve destroying or damaging your property), or to kidnap you or forcibly remove one of your bodily organs for transplantation in someone else (since this would involve stealing your property). They are also **constrained not to force you against your will** to work for another's purposes, **even if those purposes are good ones**. For if you own yourself, it follows that **you have a right to determine whether and how you will use your self-owned body and its powers**, e.g. either to work or to refrain from working. So far this all might seem fairly uncontroversial. But what follows from it, in Nozick's view, is the surprising and radical conclusion that taxation, of the redistributive sort in which modern states engage in order to fund the various programs of the bureaucratic welfare state, is morally illegitimate. It amounts to a kind of forced labor, for the state so structures the tax system that **any time you** labor at all, a certain amount of your labor time - the amount that produces the wealth taken away from you forcibly via taxation - is time you involuntarily work, in effect, for the state. Indeed, such taxation amounts to partial slavery, for in giving every citizen an entitlement to certain benefits (welfare, social security, or whatever), the state in effect gives them an entitlement, a right, to a part of the proceeds of your labor, which produces the taxes that fund the benefits; every citizen, that is, becomes in such a system a partial owner of you (since they have a partial property right in part of you, i.e. in your labor). But this is flatly inconsistent with the principle of self-ownership. The various programs of the modern liberal welfare state are thus immoral, not only because they are inefficient and incompetently administered, but because they make slaves of the citizens of such a state. Indeed, **the only sort of state that can be morally justified is what Nozick calls a minimal state** or "night-watchman" state, **a government which protects individuals** via police and military forces, from force, fraud, and theft, and administers courts of law, **but does nothing else**. In particular, such a state cannot regulate what citizens eat, drink, or smoke (since this would interfere with their right to use their self-owned bodies as they see fit), cannot control what they publish or read (since this would interfere with their right to use the property they've acquired with their self-owned labor - e.g. printing presses and paper - as they wish), cannot administer mandatory social insurance schemes or public education (since this would interfere with citizens' rights to use the fruits of their labor as they desire, in that some citizens might decide that they would rather put their money into private education and private retirement plans), and cannot regulate economic life in general via minimum wage and rent control laws and the like (since such actions are not only economically suspect - tending to produce bad unintended consequences like unemployment and housing shortages - but violate citizens' rights to charge whatever they want to for the use of their own property).

[Boaz] Self-ownership provides the basis for action, making it the starting point of ethics.

Boaz 97, David Boaz (Executive vice president, Cato Institute). "Libertarianism: A Primer." Simon & Schuster. pp 61-62. 1997.

Any theory of rights has to begin somewhere. Most libertarian philosophers would begin the argument earlier than Jefferson did. Humans, unlike animals, come into the world without an instinctive knowledge of what their needs are and how to fulfill them. As Aristotle said, man is a reasoning and deliberating animal: **humans use the power of reason to understand their own needs**, the world around them, **and** how to use **the world** to satisfy

their needs. So they need a social system that allows them to use their reason, to act in the world, and to cooperate with others to achieve purposes that no one individual could accomplish. Every person is a unique individual. Humans are social animals—we like interacting with others, and we profit from it—but we think and act individually. Each individual owns [themselves] himself or herself. What other possibilities besides self-ownership are there? • Someone—a king or a master race—could own others. Plato and Aristotle did argue that there were different kinds of humans, some more competent than others and thus endowed with the right and responsibility to rule, just as adults guide children. Some forms of socialism and collectivism are—explicitly or implicitly—based on the notion that many people are not competent to make decisions about their own lives, so that the more talented should make decisions for them. But that would mean there were no universal human rights, only rights that some have and others do not, denying the essential humanity of those who are deemed to be owned. • [If] Everyone owns everyone, a fully-fledged communist system. In such a system, before anyone could take an action, he [they] would need to get permission from everyone else. But how could each other person grant permission without consulting everyone else? You'd have an infinite regress, making any action at all logically impossible. In practice, since such mutual ownership is impossible, this system would break down into the previous one: some one, or some group, would own everyone else. That is what happened in the communist states: the party became a dictatorial ruling elite. Thus, either communism or aristocratic rule would divide the world into factions or classes. The only possibility that is humane, logical, and suited to the nature of human beings is self-ownership. Obviously, this discussion has only scratched the surface of the question of self-ownership; in any event, I rather like Jefferson's simple declaration: Natural rights are self-evident.

[Criterion] Thus, my value criterion is rejecting governmental coercion. It may be morally virtuous to help the poor but that doesn't mean that you can steal money from someone else and give it to the poor so that you help them because that's an act of coercion which violates someone else's freedom.

C1 – forced charity

[Bapanapalli] Forced charity hurts society & violates the right to pursue one's own ends

Bapanapalli 2020 (Why Forced 'Charity' Is Bad Economics, May 13 2020, Satish Bapanapalli, Foundation for Economic Education, <https://fee.org/articles/why-forced-charity-is-bad-economics/>) //neth

Fulfillment from Charity I couldn't agree more. Just like freedom is a fundamental desire of every human being, so is the desire to help fellow humans. Individuals express charity in many other forms such as support towards animal welfare, nature conservancy, promotion of arts, incentivizing fundamental research, and environmental causes. Not to be a cynic, but the fulfillment that charity brings to people is just like any other service. We pay a price to watch a movie or have a great time at an amusement park like Universal Studios. In return, we get the satisfaction of great memories. In the case of charity, the price we pay brings us fulfillment. So, why is it important to view fulfillment derived from charity just like any other commodity? Because then economists can apply their theories and have fun! (*huge economist grin*) Let's consider two thought experiments. First, how would you feel if your desire is to buy a Lexus sedan with your money, but you are forced to buy a Hyundai sedan instead for the same price, even though the Hyundai sedan is priced much lower in the market? Second, let's say you get great satisfaction by donating your money to the Wounded Warrior Project. However, you are instead forced to donate that money to help with protection of Indian Rhinoceros' habitat. How does that make you feel? Both thought experiments are similar. Buying a Lexus sedan and donating to Wounded Warrior Project are your personal choices. That is why charity is personal! If you are instead coerced to donate to charities that you do not relate to, then you do not derive equivalent fulfillment out of that donation.

[Bapanapalli] Forced charity encourages dependence

Bapanapalli 2020 (Why Forced 'Charity' Is Bad Economics, May 13 2020, Satish Bapanapalli, Foundation for Economic Education, <https://fee.org/articles/why-forced-charity-is-bad-economics/>) //neth

And worst of all, people who are being forced by the government to perform this 'charity' do not even get the satisfaction of having helped fellow human beings in need due to the impersonal nature of charity via government welfare programs. And the welfare recipients don't feel grateful, because politicians and activists have convinced them that welfare is a government-given right, not a charitable gift. In countries with highly homogenous populations like Scandinavian countries, charitable people still derive adequate satisfaction from government-enforced 'charity' because they can relate to the recipients of government 'charity'. That is why a large welfare state in such countries does not lead to perceptible public dissatisfaction. As the countries become more non-homogenous, the dissatisfaction levels increase considerably. The US is a good example. Private charities are able to positively discriminate against people who are capable of standing up on their own feet but willfully refuse to do so versus people who are in genuine need of charity. As Jude Blanchette puts it, "aid given without nourishment of a man's character would accomplish little except to demean him". Government 'charity' has little room for such positive discrimination due to the bureaucratic nature of enforcement by rigid rules, and in fact encourages dependency due to bad incentives such as bigger welfare rolls leading to bigger welfare

budgets for the bureaucrats. Here is a quirky way to summarize the ‘charity’ enforced by US federal and state governments. You want to buy a Lexus sedan for \$50,000. But the government is instead taking away \$150,000 from you and in return giving you a Hyundai sedan that is priced at \$20,000. That is, you are being coerced to spend the difference of \$130,000 without deriving any value from it. Bad economics! In free-market economic transactions, both the buyer and seller mutually benefit from a transaction. And that’s what happens in voluntary charity too. The charitable people (buyers) voluntarily give their preferred amount of money to causes they believe in. The recipients of charity (sellers) are grateful for the much-needed help. That’s good economics. **In government-enforced ‘charity’, the buyers (taxpayers) do not get fulfillment commensurate with their expenditure because they are forced to spend way more money than they intended to and on causes they don’t necessarily believe in.** Even the sellers (welfare recipients) do not get proportionate satisfaction because they think they have a right to more welfare payments and that they are being short changed by the government and “the system”. That’s bad economics overall! **Bad economic policies result in lackluster economic growth which leads to more poverty.** The share of the US population in poverty was declining rapidly until Lyndon Johnson declared his ill-conceived “war on poverty” in the 1960s via a massive expansion of the welfare state. Since then the share of the US population in poverty has stalled around 14 percent. Forced

C2 - property rights

[Mercurio] IPP was necessary to produce the vaccine – waiving property rights now will end cooperation for future diseases

Mercurio 2021 (Bryan Mercurio, June 24 2021, “The IP Waiver for COVID-19: Bad Policy, Bad Precedent,” <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/>) //neth

When asked if a waiver would improve vaccine availability and equity, Watal responded: “No. It won’t. That’s clear.”²¹ 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”**²² I refuse to sacrifice academic integrity by supporting a proposal simply because it is gaining traction in some circles.²³ **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.**²⁴ 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.

[PRI] Waiving IPP brings multiple problems – counterfeits, production issues, and lack of innovation, to name a few

PRI 2021 (Pacific Research Institute, June 21 2021, “Waiving Covid-19 Vaccine Patents Is a Bad Idea and Sets a Dangerous Precedent,” WAYNE WINEGARDEN, ROBERT POPOVIAN, PETER PITTS, TOWNHALL.COM, <https://medecon.org/waiving-covid-19-vaccine-patents-is-a-bad-idea-and-sets-a-dangerous-precedent/>) //neth

The production of these breakthrough Covid-19 vaccines requires sophisticated processes, procedures, staff training, material, and manufacturing. Under typical patent-protected arrangements for new global production facilities, patent-holders voluntarily license their product information to qualified third party-manufacturers. The patent-owners work closely with the licensees to stand up facilities that meet rigorous technological specifications and standards for safety. **Even under ideal conditions, it can take a year or longer to build out this infrastructure the right way. The WTO waiver blows up this careful process by allowing pretty much anyone to go into the business of producing Covid-19 vaccines. Suddenly, it’s the wild west out there, with legitimate producers trying to compete with aggressive cost and corner-cutters,** to say nothing of the outright fraud that has long driven the lucrative counterfeit drug trade. All the research demonstrating the safety and efficacy of the Covid-19 vaccines goes out the window under such conditions. **Nor is such a process going to produce faster results. Historically, under compulsory rather than voluntary licensing arrangements, it has taken even legitimate generic manufacturers years to receive the formulas, work out logistical challenges, and scale up production.** In one case of compulsory licensing, it took over four

years to bring a generic AIDS drug to Rwanda. The World Health Organization regularly publishes a list of “essential” medications, the vast majority of which patent protections have long expired. Any generic manufacturer can therefore set itself up producing them. Yet the WHO reports that availability of these medicines in many parts of the developing world remains spotty, at best. The quality of many of these essential medicines is also questionable. Yet none of the drugs on the WHO list are in the same universe of complexity as the Covid-19 vaccines. The patent system is not the problem here. But, some ask, why should private companies enjoy the property rights to innovation driven by government funding? This question likewise misses the mark. In a study of 478 drugs less than 10 percent had a public-sector patent associated with it. **While providing no gain, compulsory licensing promises lots of pain. Shunting aside patent and intellectual property rights sends a dangerous signal to innovative biopharmaceutical companies and their investors.** Biopharmaceutical research is risky. It costs almost \$3 billion, on average, to bring a single medicine to pharmacy shelves. **Biotech investors take these risks because of strong patent protection like those in the United States. Scientists in America now develop over half of all new drugs worldwide.** It’s important to understand the current advocacy for a “temporary” IP waiver. A small but vocal and influential public health policy cohort believes that IP protections are the most significant cause of global healthcare disparities. Their philosophies repeat and reinforce many misconceptions about the problem of improving global access to medicines. The reality is that, in order to save the world, we must all work together as partners. A free-market healthcare paradigm for drug development, although far from perfect, works. A well-appointed armamentarium of Covid-19 diagnostic tools, therapeutics, and vaccines – all invented in under one year, speaks to the power of today’s innovation ecosystem. That ecosystem is built on IP protections. **Right now, under voluntary licensing, global production capacity for Covid vaccines and treatments is expanding and accelerating.** A move to nullify IP will not result in a single resident of the developing world getting vaccinated one minute sooner.

AT

A) Infinite consequences – any action can lead to anything because of the butterfly effect one action leads to another one, to another that leads to infinitely divisible action.

B) Spectator politics— Util endlessly defers violence that occurs incrementally/structurally over time. This disconnect about the importance of long term violence undermines objective analysis of magnitude

C) our fwk is a prereq- only way to maximize societal welfare is increasing autonomy through reducing coercion

c1

1-- Lack of IP protection makes medical innovation prohibitively risky and expensive-maintaining the incentive is key to maintaining innovation

Grabowski et al 15 [(Henry, Professor of Economics, member of the faculty for the Health Sector Management Program, and Director of the Program in Pharmaceuticals and Health Economics at Duke University) “The Roles of Patents and Research And Development Incentives In Biopharmaceutical Innovation,” Health Affairs, 2/2015] TDI

The essential rationale for patent protection for biopharmaceuticals is that **long-term benefits in the form of continued future innovation by pioneer or brand-name drug manufacturers outweigh the relatively short-term restrictions on imitative cost competition associated with market exclusivity.** Regardless, **the entry of other branded agents remains an important source of therapeutic competition during the patent term.**

Several economic characteristics make patents and intellectual property protection particularly important to innovation incentives for the biopharmaceutical industry. **The R&D process often takes more than a decade to complete**, and according to a recent analysis by Joseph DiMasi and colleagues, **per new drug approval (including failed attempts), it involves more than a billion dollars in out-of-pocket costs. Only approximately one in eight drug candidates survive clinical testing.**

As a result of the high risks of failure and the high costs, **research and development must be funded by the few successful, on-market products** (the top quintile of marketed products provide the dominant share of R&D returns). **Once a new drug’s patent term and any regulatory exclusivity provisions have expired, competing manufacturers are allowed to sell generic equivalents that require the investment of only several million dollars and that have a high likelihood of commercial success. Absent intellectual property protections that allow marketing exclusivity, innovative firms would be unlikely to make the costly and risky investments needed to bring a new drug to market.**

Patents confer the right to exclude competitors for a limited time within a given scope, as defined by patent claims. However, they do not guarantee demand, nor do they prevent competition from nonidentical drugs that treat the same diseases and fall outside the protection of the patents.

2-- Infectious diseases don't cause extinction

Owen Cotton-Barratt 17, et al, PhD in Pure Mathematics, Oxford, Lecturer in Mathematics at Oxford, Research Associate at the Future of Humanity Institute, 2/3/2017, Existential Risk: Diplomacy and Governance, <https://www.fhi.ox.ac.uk/wp-content/uploads/Existential-Risks-2017-01-23.pdf>

For most of human history, natural pandemics have posed the greatest risk of mass global fatalities.³⁷ However, there are some reasons to believe that natural pandemics are very unlikely to cause human extinction. Analysis of the International Union for Conservation of Nature (IUCN) red list database has shown that of the 833 recorded plant and animal species extinctions known to have occurred since 1500, less than 4% (31 species) were ascribed to infectious disease.³⁸ None of the mammals and amphibians on this list were globally dispersed, and other factors aside from infectious disease also contributed to their extinction. It therefore seems that our own species, which is very numerous, globally dispersed, and capable of a rational response to problems, is very unlikely to be killed off by a natural pandemic. One underlying explanation for this is that highly lethal pathogens can kill their hosts before they have a chance to spread, so there is a selective pressure for pathogens not to be highly lethal. Therefore, pathogens are likely to co-evolve with their hosts rather than kill all possible hosts.³⁹

3--- Diseases won't cause extinction – burnout and geographical isolation check

Consiglio 17 [Dave, Community College Professor of Chemistry and Physics, 12/7/17, "Could a Disease Wipe Out Humans Entirely?", <https://www.forbes.com/sites/quora/2017/12/07/could-a-disease-wipe-out-humans-entirely/#387c2f308203> Accessed 2/8/28] BBro

What scenarios seem like they should kill everyone but actually won't? Disease. Everyone seems worried about a killer disease, be it HIV or Ebola or Flu or some unknown pathogen. But humans are going to be really hard to wipe out via disease. Why? Well, we have several things going for us: We have a massive population. We are geographically widespread. We are capable of eating nearly anything. We are reasonably diverse as a species. There are geographically and genetically isolated pockets of our population. Diseases require a vector to spread. Let's say the perfect disease arose tomorrow: It kills two weeks after you get it, shows no symptoms until the last minute, is really easy to transmit, and we have very little immunity to it. It still doesn't kill everyone. Native Greenlanders and the people in Antarctica and people on Navy submarines and the few random people who are immune, and park rangers all either never come into contact with an infected person or else are spared by a genetic fluke. We even have the International Space Station as a potential place to hide and wait for the epidemic to die down. In fairness, nearly everyone is dead in short order, but once the disease has run its course, the pathogen that causes it is also likely to be dead. The vast majority of pathogens don't survive for long outside of their hosts. As such, once nearly everyone is dead and the survivors wait a bit, they're unlikely to encounter live pathogen. As an added bonus, the few surviving people include many of the most naturally immune members of the (now mostly dead) population. Now, don't get me wrong, this scenario would be catastrophic for humanity. 99.9% of us could die in this way. And it's possible that the remaining humans would be so isolated as to be unable to find one another for the purposes of reproduction. But I doubt it. Humans are nothing if not fecund, and we have those submarines, boats, airplanes, etc. We will eventually come out from hiding, find that special someone, and breed our way out of trouble. It's why we're still around as a species - nothing stops us from making more humans.

4- no link—not specific evidence to WTO

c2

1-- IPR is not the cause of medicine inequality and high prices. Multiple alternative causes exist

Haugen 2021 [Hans Morten, Professor of International Diakonia at the VID Specialized University, Oslo, Norway, The Journal of World Intellectual Property, "Does TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights) prevent COVID-19 vaccines as a global public good?" March 18, <https://onlinelibrary.wiley.com/doi/10.1111/jwip.12187>

This article analyzes the context for the allegation that IP is among the crucial factors in promoting health innovation globally, and not preventing the universal and equitable access to vaccines, even if supply of medicines is held by developed countries to be “difficult” (WTO Secretariat, 2020a). Biotechnology actors expressed criticism of the UN High-level Panel on Access to Medicines (2016), arguing that **IP tends to be overemphasized in debates over access** to medicines, **ignoring** the wider context of **what impedes such access** (International Council of Biotech Associations [ICBA], 2016; Biotechnology Innovation Organization [BIO], 2016). Hence, **developed countries** and biotech associations **concur in identifying weak funding** of health care **and lack of manufacturing capacity as constituting the core of the problem of access** (WTO Secretariat, 2020a; see also U.S. Department of State, 2016), **as well as regulatory inefficiencies, trade policies and inadequate health insurance** (ICBA, 2016).

2—no solvency Companies will keep complex production steps secret if forced to forgo patents – that shuts down cooperation.

Silverman 3/21 Rachel Silverman -- a policy fellow at the Center for Global Development, “Waiving vaccine patents won’t help inoculate poorer nations”, 15 March 2021, <https://www.washingtonpost.com/outlook/2021/03/15/vaccine-coronavirus-patents-waive-global-equity/> | MU

According to some activists, the solution to this inequity is relatively simple: By **suspending protections on covid-19 vaccine patents**, the international community “**could** help break Big Pharma monopolies and **increase supplies so there are enough doses for everyone**, everywhere,” [claims](#) the People’s Vaccine Alliance. Indeed, 58 low- and middle-income countries have mobilized in support of a proposed World Trade Organization [waiver](#) that would temporarily exempt [coronavirus](#)-related intellectual property from normal international rules and protections. And while the effort to waive IP protections has been a global health hot topic for months, it gained a high-profile endorsement in the United States recently from Sen. Bernie Sanders (I-Vt.). In a March 10 video statement, Sanders [called upon President Biden](#) to support the IP suspension while slamming “huge, multibillion-dollar pharmaceutical companies [that] continue to prioritize profits by protecting their monopolies.”

The logic of the argument seems clear and **intuitive** — at first. Without patents, which serve narrow commercial interests, companies all over the world could freely produce the vaccine. Sure, Big Pharma would lose money — but this is a pandemic, and human life comes before private profit, especially when vaccines receive substantial public financing to support research and development. As with HIV drugs in years past, widespread generic production would dramatically increase supply and drive down prices to levels affordable even in the developing world.

Reality is more complicated, however. **Because of the technical complexity of manufacturing coronavirus vaccines, waiving intellectual property rights, by itself, would have little effect. It could even backfire, with companies using the move as an excuse to disengage from global access efforts.** There are more effective ways to entice — and to pressure — companies to license and share their intellectual property and the associated know-how, without broadly nullifying patents.

The Moderna vaccine illustrates the limits of freeing up intellectual property. [Moderna announced in October](#) that **it would not enforce IP rights on its coronavirus vaccine** — and yet it has taken no steps to share information about the vaccine’s design or manufacture, citing commercial interests in the underlying technology. **Five months later, production of the Moderna vaccine remains entirely under the company’s direct control within its owned and contracted facilities.** Notably, Moderna is also the only manufacturer of a U.S.- or British-approved vaccine [not yet participating in Covax](#), a global-aid-funded effort (including a [pledged \\$4 billion from the United States](#)) to purchase vaccines for use in low- and middle-income countries. It is true, however, that activist pressure — including threats to infringe upon IP rights — can encourage originators to enter into voluntary licensing arrangements. So the global movement to liberate the vaccine patents may be useful, even if some advocates make exaggerated claims about the effects of waivers on their own.

3--- The WTO already has processes in place to ensure access that balances IP and access

Bacchus 20, James Bacchus (is a member of the Herbert A. Stiefel Center for Trade Policy Studies, the Distinguished University Professor of Global Affairs and director of the Center for Global Economic and Environmental Opportunity at the University of Central Florida. He was a founding judge and was twice the chairman—the chief judge—of the highest court of world trade, the Appellate Body of the World Trade Organization in Geneva, Switzerland), “An Unnecessary

Proposal: A WTO Waiver of Intellectual Property Rights for COVID-19 Vaccines,” CATO Institute, December 16, 2020, <https://www.cato.org/free-trade-bulletin/unnecessary-proposal-wto-waiver-intellectual-property-rights-covid-19-vaccines>

As Jennifer Hillman of the Council on Foreign Relations observed, ordinarily the “inherent tension between the protection of intellectual property and the need to make and distribute affordable medicines” is “resolved through licensing, which allows a patent holder to permit others to make or trade the protected product—usually at a price and with some supervision from the patent holder to ensure control.”⁷ But, in public health emergencies, it may be impossible to obtain a license. In such cases, “compulsory licenses” can be issued to local manufacturers, authorizing them to make

patented products or use patented processes even though they do not have the permission of the patent holders.⁸ After years of debate, WTO members clarified in the Doha Ministerial Declaration in November 2001 that each WTO member “has the right

to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted.”⁹ In August 2003, WTO members followed up on the 2001 declaration by adopting a waiver that allows poorer countries that do not have the capacity to make pharmaceutical products—and thus cannot benefit from compulsory licensing—to import cheaper generic drugs from countries where those drugs are protected by patent.¹⁰ In such a case, both the

importing and exporting countries are excused from what would otherwise be their obligations under the TRIPS Agreement. This waiver was transformed into an amendment in the WTO IP rules in 2017.¹¹ Compulsory licensing of medicines is not popular with private drug manufacturers because it is a derogation from the customary workings of market-based capitalism. However, as these actions by WTO members in 2001, 2003, and 2017 illustrate, compulsory licensing is not a derogation from the balance struck by the members of the WTO between protecting IP rights and ensuring access to essential medicines. Rather, it is a crucial part of that balance. The balance struck in the WTO treaty includes the option of compulsory licensing during health emergencies.