## 1AC vs. Nchu

### 1AC – Framing

#### The standard is maximizing expected wellbeing.

#### 1] Government actions will inevitably lead to trade-offs because they benefit some and harm others – aggregation is the only way to resolve these conflicts since A] anything else would unjustifiably prioritize one group over another and B] side constraints would freeze action in the face of tradeoffs.

#### 2] States have no act-omission distinction – they’re responsible for everything in the public domain so every omission is an active implicit authorization. States lack intentions since policies are collective actions.

#### Actor-specificity comes first since different agents have different ethical standings.

#### Takes out util calc indicts since they’re empirically denied – they just prove util is hard, not wrong - and link turns them because the alt would be no action

#### 3] Only consequentialism explains degrees of wrongness—if I break a promise to meet up for lunch, that is not as bad as breaking a promise to take a dying person to the hospital. Only the consequences of breaking the promise explain why the second one is much worse than the first.

#### 4] Prioritize probability.

Kessler 08 (Oliver; April 2008; PhD in IR, professor of sociology at the University of Bielefeld, and professor of history and theory of IR at the Faculty of Arts; Alternatives, Vol. 33, “From Insecurity to Uncertainty: Risk and the Paradox of Security Politics” p. 211-232)

The problem of the second method is that it is very difficult to "calculate" politically unacceptable losses. If the risk of terrorism is defined in traditional terms by probability and potential loss, then the focus on dramatic terror attacks leads to the marginalization of probabilities. The reason is that even the highest degree of improbability becomes irrelevant as the measure of loss goes to infinity.^o The mathematical calculation of the risk of terrorism thus tends to overestimate and to dramatize the danger. This has consequences beyond the actual risk assessment for the formulation and execution of "risk policies": If one factor of the risk calculation approaches infinity (e.g., if a case of nuclear terrorism is envisaged), then there is no balanced measure for antiterrorist efforts, and risk management as a rational endeavor breaks down. Under the historical condition of bipolarity, the "ultimate" threat with nuclear weapons could be balanced by a similar counterthreat, and new equilibria could be achieved, albeit on higher levels of nuclear overkill. Under the new condition of uncertainty, no such rational balancing is possible since knowledge about actors, their motives and capabilities, is largely absent. The second form of security policy that emerges when the deterrence model collapses mirrors the "social probability" approach. It represents a logic of catastrophe. In contrast to risk management framed in line with logical probability theory, the logic of catastrophe does not attempt to provide means of absorbing uncertainty. Rather, it takes uncertainty as constitutive for the logic itself; uncertainty is a crucial precondition for catastrophes. In particular, catastrophes happen at once, without a warning, but with major implications for the world polity. In this category, we find the impact of meteorites. Mars attacks, the tsunami in South East Asia, and 9/11. To conceive of terrorism as catastrophe has consequences for the formulation of an adequate security policy. Since catastrophes hap-pen irrespectively of human activity or inactivity, no political action could possibly prevent them. Of course, there are precautions that can be taken, but the framing of terrorist attack as a catastrophe points to spatial and temporal characteristics that are beyond "rationality." Thus, political decision makers are exempted from the responsibility to provide security—as long as they at least try to preempt an attack. Interestingly enough, 9/11 was framed as catastrophe in various commissions dealing with the question of who was responsible and whether it could have been prevented. This makes clear that under the condition of uncertainty, there are no objective criteria that could serve as an anchor for measuring dangers and assessing the quality of political responses. For ex- ample, as much as one might object to certain measures by the US administration, it is almost impossible to "measure" the success of countermeasures. Of course, there might be a subjective assessment of specific shortcomings or failures, but there is no "common" currency to evaluate them. As a consequence, the framework of the security dilemma fails to capture the basic uncertainties. Pushing the door open for the security paradox, the main problem of security analysis then becomes the question how to integrate dangers in risk assessments and security policies about which simply nothing is known. In the mid 1990s, a Rand study entitled "New Challenges for Defense Planning" addressed this issue arguing that "most striking is the fact that we do not even know who or what will constitute the most serious future threat, "^i In order to cope with this challenge it would be essential, another Rand researcher wrote, to break free from the "tyranny" of plausible scenario planning. The decisive step would be to create "discontinuous scenarios ... in which there is no plausible audit trail or storyline from current events"52 These nonstandard scenarios were later called "wild cards" and became important in the current US strategic discourse. They justified the transformation from a threat-based toward a capability- based defense planning strategy.53 The problem with this kind of risk assessment is, however, that even the most absurd scenarios can gain plausibility. By constructing a chain of potentialities, improbable events are linked and brought into the realm of the possible, if not even the probable. "Although the likelihood of the scenario dwindles with each step, the residual impression is one of plausibility. "54 This so-called Othello effect has been effective in the dawn of the recent war in Iraq. The connection between Saddam Hussein and Al Qaeda that the US government tried to prove was disputed from the very beginning. False evidence was again and again presented and refuted, but this did not prevent the administration from presenting as the main rationale for war the improbable yet possible connection between Iraq and the terrorist network and the improbable yet possible proliferation of an improbable yet possible nuclear weapon into the hands of Bin Laden. As Donald Rumsfeld famously said: "Absence of evidence is not evidence of absence." This sentence indicates that under the condition of genuine uncertainty, different evidence criteria prevail than in situations where security problems can be assessed with relative certainty.

#### 5] Structural violence first

Winter and Leighton 99 |Deborah DuNann Winter and Dana C. Leighton. Winter|Psychologist that specializes in Social Psych, Counseling Psych, Historical and Contemporary Issues, Peace Psychology. Leighton: PhD graduate student in the Psychology Department at the University of Arkansas. Knowledgable in the fields of social psychology, peace psychology, and justice and intergroup responses to transgressions of justice “Peace, conflict, and violence: Peace psychology in the 21st century.” Pg 4-5

Direct violence is horrific, but its brutality usually gets our attention: we notice it, and∂ often respond to it. Structural violence, however, is almost always invisible, embedded in∂ubiquitous social structures, normalized by stable institutions and regular experience.∂ Structural violence occurs whenever people are disadvantaged by political, legal,∂ economic, or cultural traditions. Because they are longstanding, structural inequities∂usually seem ordinary—the way things are and always have been. But structural violence∂ produces suffering and death as often as direct violence does, though the damage is∂ slower, more subtle, more common, and more difficult to repair. The chapters in this∂ section teach us about some important but invisible forms of structural violence, and alert∂ us to the powerful cultural mechanisms that create and maintain them over generations.∂ Johan Galtung originally framed the term “structural violence” to mean any constraint∂ on human potential caused by economic and political structures (1969). Unequal accessto resources, to political power, to education, to health care, or to legal standing, are forms of structural violence. When inner-city children have inadequate schools while∂ others do not, when gays and lesbians are fired for their sexual orientation, when laborers∂ toil in inhumane conditions, when people of color endure environmental toxins in their∂ neighborhoods, structural violence exists. Unfortunately, even those who are victims of∂ structural violence often do not see the systematic ways in which their plight is∂ choreographed by unequal and unfair distribution of society’s resources. Such is the∂ insidiousness of structural violence.∂ Structural violence is problematic in and of itself, but it is also dangerous because it∂frequently leads to direct violence. The chronically oppressed are often, for logical∂ reasons, those who resort to direct violence. Organized armed conflict in various parts of∂ the world is easily traced to structured inequalities. Northern Ireland, for example, has∂ been marked by economic disparities between Northern Irish Catholics—who have∂ higher unemployment rates and less formal education—and Protestants (Cairns & Darby,∂ 1998). In Sri Lanka, youth unemployment and underemployment exacerbates ethnic∂ conflict (Rogers, Spencer, & Uyangoda, 1998). In Rwanda, huge disparities in both∂ income and social status between the Hutu and Tutsis eventually led to ethnic massacres.∂ While structural violence often leads to direct violence, the reverse is also true, as∂ brutality terrorizes bystanders, who then become unwilling or unable to confront social∂ injustice. Increasingly, civilians pay enormous costs of war, not only through death, but∂ through devastation of neighborhoods and ecosystems. Ruling elites rarely suffer from∂ armed conflict as much as civilian populations do, who endure decades of poverty and∂ disease in war-torn societies.ecognizing the operation of structural violence forces us to ask questions about how∂ and why we tolerate it, questions that often have painful answers. The first chapter in this∂ section, “Social Injustice,” by Susan Opotow, argues that our normal perceptual/cognitive∂ processes lead us to care about people inside our scope of justice, but rarely care about∂ those people outside. Injustice that would be instantaneously confronted if it occurred to∂ someone we love or know is barely noticed if it occurs to strangers or those who are∂ invisible or irrelevant to us. We do not seem to be able to open our minds and our hearts∂ to everyone; moral exclusion is a product of our normal cognitive processes. But Opotow∂ argues convincingly that we can reduce its nefarious effects by becoming aware of our distorted perceptions. Inclusionary thinking can be fostered by relationships,∂ communication, and appreciation of diversity.∂ One outcome of exclusionary thinking is the belief that victims of violence must in∂ some way deserve their plight. But certainly it is easy to see that young children do not∂ deserve to be victims. The next two chapters in this section address the violence∂ experienced by children. In the first, “The War Close to Home: Children and Violence in∂ the United States,” Kathleen Kostelny and James Garbarino describe the direct and∂ structural violence which children in Chicago and other urban areas of the United States∂ endure, paralleling that experienced by children who live in countries at war. Children∂ who endure these environments often become battle weary, numb, hopeless, and/or∂ morally impaired. But children not only suffer directly from violence, they also suffer∂ from the impaired parenting and communities which poverty inflicts. The authors∂ describe how community and family support mechanisms can mitigate these effects. For xample, home visitation and early childhood education programs provide crucial family∂ and community support.∂ While Kostelny and Garbarino focus on community intervention techniques, Milton∂ Schwebel and Daniel Christie, in their article “Children and Structural Violence,” extend∂ the analysis of structural violence by examining how economic and psychological∂ deprivation impairs at-risk children. Children living in poverty experience diminished∂ intellectual development because parents are too overwhelmed to be able to provide∂ crucial linguistic experiences. Schwebel and Christie’s discussion concludes that∂ economic structures must provide parents with living-wage employment, good prenatal∂ medical care, and high-quality child-care if we are to see the next generation develop into∂ the intelligent and caring citizens needed to create a peaceful world.∂ If children are the invisible victims of society’s structural violence, so are their∂ mothers. In the chapter “Women, Girls, and Structural Violence: A Global Analysis,”∂ Diane Mazurana and Susan McKay articulate the many ways in which global sexism∂ systematically denies females access to resources. From health care and food to legal∂ standing and political power, women and girls get less than males in every country on the∂ planet. Mazurana and McKay argue that patriarchy-based structural violence will not be∂ redressed until women are able to play more active roles making decisions about how∂ resources are distributed.∂ Patriarchal values also drive excessive militarism, as Deborah Winter, Marc Pilisuk,∂ Sara Houck, and Matthew Lee argue in their chapter “Understanding Militarism: Money,∂ Masculinism, and the Search for the Mystical.” The authors illuminate three motives ueling excessive military expenditures: money, which, because of modern market forces,∂ leads half the world’s countries to spend more on arms than on health and education∂ combined; masculinism, which leads societies to make soldiering a male rite of passage∂ and proof of manhood; and the search for the mystical, as men attempt to experience∂ profound human processes of selfsacrifice, honor, and transcendence through war. Like∂ William James, these authors argue that we will need to find a moral equivalent to war, in∂ order to build lasting peace.

#### 6] We can’t predict extinction impacts

Matheson 15 (Calum Matheson – This is his PhD dissertation at the University of North Carolina at Chapel Hill, “Desired Ground Zeros: Nuclear Imagination and the Death Drive”, https://cdr.lib.unc.edu/indexablecontent/uuid:4bbcb13b-0b5f-43a1-884c-fcd6e6411fd6, pgs. 77 – 86,)

Herman Kahn and Bernard Brodie, perhaps the most prominent American strategists of the early Cold War, tried to make nuclear war “thinkable” in the sense that they tried to explain how such a war might start and what options would exist for national leaders. At the same time, both acknowledged that the outcome of a full-scale nuclear war was indescribable. In Brodie’s words, to “make an intellectual prediction of the likelihood of war is one thing, to project oneself imaginatively and seriously into an expected war situation is quite another” (Ghamari-Tabrizi 149). The unwillingness or inability to think “seriously” about a nuclear war—in other words, to understand it instrumentally rather than through dislocating language of the sublime—was met by organizations like the RAND Corporation with an attempt to systematize nuclear strategy and develop the intellectual and technical means to actually fight and control a nuclear war. Before RAND exercised its power through the “Whiz Kids” of the Kennedy Administration, the Strategic Air Command’s “Sunday punch” nuclear plan, enshrined in SIOP-62, was an all-out nuclear attack on the USSR, Eastern Europe, and the People’s Republic of China. It might have killed 285 million people in the initial attack (Kaplan 269). Despite its intricate planning and detailed execution strategies, SIOP was immensely inflexible. Asked whether the U.S. had any options to attack without striking China, which might not even be a combatant in the war, General Thomas Power replied “Well yeh [sic], we could do that, but I hope nobody thinks of it because it would really screw up the plan” (Kaplan 270, emphasis in original). Starting in the 1960s, a set of war games of various complexity was developed to test a broader range of nuclear theories and attack options at RAND and elsewhere (Arbella 35). Games like them continue to be used for strategic military planning today (Raatz). Most of these games—or at least their results—are classified, as they became the basis for US nuclear plans. In politicomilitary games, a number of military officers, civilians, and generally mid- to lowranking government officials would play various roles as US and/or foreign. decisionmakers. Another group, “control,” would feed them information about the actions of countries or groups not played by the participants or about world events that might influence the context of their actions. In more limited military simulations, extant or proposed war plans would be evaluated by computer or human players to identify possible flaws and improvements. The games themselves never had a guarantee of accuracy and were often quite obviously flawed. In one Navy game, American aircraft carriers were declared to be unsinkable. In others, the Soviet Union was assumed to have no effective airpower. Because factors like air pressure, prevailing winds, defense effectiveness, early warning, and missile failure rate were largely random or incalculable, a “fudge factor” simply declared estimated success. Even their designers sometimes admitted that the games were inaccurate, unprovable, or simply wishful thinking (Ghamari-Tabrizi 8; Allen 78). Especially in the case of nuclear war, these games cannot possibly be understood as accurate simulations of a real-world system, because there is no empirical data on the compound effects of many near-simultaneous nuclear explosions and no data on what factors cause states to cross the nuclear threshold against other similarly-armed states, a fact that bedevils nuclear planning in general and always has (Kaplan 87). By the admission of many of those who create and play them, they are “social science fiction” with no tangible effect other than that they are entertaining (Ghamari-Tabrizi 160-1). Some contemporary social science work supports this claim especially in the context of extinction-level events. Human beings simply aren’t wired to think at such a scale, and they perform very poorly assessing probability and calculating magnitude (Yudkowsky). Others have suggested that warfare is a stochastic system that we could never identify laws for, no matter how diligent we might be, because its initial conditions are simply too complex a model and they do not conform to linear causality (Beyerchen; Buchanan 62). Indeed, military planners tended to be far less willing to predict the conduct and outcome of a conventional war—despite an enormous data set spanning thousands of years—than a nuclear war fought between two superpowers, an event that has never occurred in recorded history. Fred Iklé, former RAND strategists who was at times head of the Arms Control and Disarmament Agency and Undersecretary of Defense for Policy, criticized these semi-mathematical abstractions in harsh terms that deserve to be quoted at length: The prominence of the calculations continues because we know how to make them…we have tailored the problem to our capability to calculate. The seemingly rigorous models of nuclear deterrence are built on the rule: "What cannot be calculated, leave out’”…Such thoughts, especially those focusing on deterrence, lack real empirical referents or bases. No other field of human endeavor demands—absolutely compels—one to work out successful solutions without obtaining directly relevant experience, without experimenting. There can be no trial and error here, no real learning. Curiously, we are far more skeptical in accepting the calculations of traditional conventional military campaigns than the calculations of nuclear warfare. In fact, the more battle experience and information military analysts have, the more modest they become in predicting the course of conventional war. Such modesty is missing for nuclear war, where pretentious analyses and simplistic abstractions dominate and blot out the discrepancies existing between abstractions and possible reality—a reality that for so many reasons is hard even to imagine. (Iklé 246). Iklé is drawing attention to two unique aspects of nuclear war planning: first, that no empirical date (or at least very little) can be gathered for the species of war that planners concerned themselves with, and second, that unlike other military problems where little data exists, defense intellectuals were willing to display great confidence in untested (and untestable) theories. Despite this lack of empirical grounding, nuclear war simulations have been repeated again and again over the decades while nuclear doctrine has remained fundamentally the same (McKinzie et al. ix-xi). There has been some dispute in military circles about whether these exercises should be called simulations or games, with “simulations” becoming more popular by the 1980s (Allen 7). To call politico-military exercises “roleplaying games” conjures images of adolescent boys rolling dice and weaving fantasies about orcs and dragons. To call battle simulations “war games” might associate them with videogames produced for entertainment. Still, even military officers responsible for the creation of these artifacts had trouble distinguishing between game, model, and simulation and used them interchangeably. In his comprehensive history of U.S. wargaming, Thomas Allen writes that the three words “hover over imaginary battlefields like a mysterious, ever-shifting concept of the Trinity” (64, emphasis added). Berger, Boulay and Zisk, writing in the journal Simulation & Gaming acknowledge that “[d]efinitions of simulation are legion,” but center on representations of a system that allow users to model behavior (Berger et al. 416). Brewer and Shubik define games as a subset of simulation and simulation as a subset of modelling, the key defining feature of a game being the inclusion of human beings playing roles. Still, their extended attempt to define these terms results in the acronym MSG, grouping them all together (3-8). The difficulty in Brewer and Shubik’s definition is that all models and simulations require that human beings make decisions at least indirectly, at a minimum defining the independent variables and the parameters of the exercise. As a result, they all create some possibility for investment in the outcome. In common usage, the difference between simulations and models, on the one hand, and games, on the other appears to be a ludic dimension. Games are for play, with an agent making decisions within a set of prescribed rules to change the outcome, while simulations and models may simply represent the rules of a system. The least common denominator is that one rules-bound system—the game— stands in for another. Games, simulations, and models therefore have a metaphorical quality to them.10 In his work on videogames, Ian Bogost has identifies what he calls procedural rhetoric as “the practice of persuading through processes in general and computational processes in particular…a technique for making arguments with computational systems and for unpacking computational arguments others have created” (3). Whereas oral rhetoric attempts to persuade an audience to adopt a particular viewpoint through speech and written rhetoric does the same through writing, procedural rhetoric has its own unique goals and characteristics suited to the medium of games. Videogames create a digital process that simulates a real-world process, allowing the player to model something extant in the world of flesh, blood, steel and glass that exists outside of the game. Procedural rhetoric is the persuasive aspect of simulation. Bogost’s argument might be adapted to this understanding of metaphor. The replacement of the tenor (the thing represented) with the vehicle (the signifier standing in for it) makes an enthymematic argument that draws the audience to do the work of cathexis in connecting the two based on the shared principle that allows the substitution. This does not suggest that we read games as texts. Games require their players to invest in a specific way because they are called on to make choices that alter the outcome. Players identify with their characters in a powerful way: what is shared is not just a set of traits, but decisions over time that, to maintain the interest that keeps players playing, require at least some minimal attachment. One can identify deeply with Sauron, but no reading of Lord of the Rings can make him finally subjugate his haughty human and elven foes, let alone order the Scourging of the Shire and its disgustingly bourgeois hobbits when he still has a chance to succeed.11 This is the procedural element of Bogost’s theory: it is the procedure that links the system with its representation in the game, and the sense of control that binds us, something that differentiates this medium from others. One doesn’t have to decide that play matters and narrative doesn’t—it is the interaction between the two that channels the player’s investment in a game. In war games, attachments are formed even when a computerized Sam fights a computerized Ivan to test the SIOP and RSIOP.12 Allen’s book is full of examples of war game players becoming emotionally tied to their games, sometimes in perverse ways. Failing in a game that he was allowed to play, Allen himself described his team reacting with shock, real shock, not just a reaction to a bad break in a game. We were really feeling upset about what was happening in our imaginary world. ‘What is happening to our institutions?’ someone indignantly asked, as if real institutions were really going through what the situation paper had described. I had an unreasonable feeling of helplessness and failure. Some of us spoke softly to each other about having failed. (18). The prevalence of this reaction is confirmed in more recent scholarship by Paul Bracken, himself a war game participant. Bracken puts the case simply: “People get emotionally involved in games” (20).

### 1AC – UV

#### 1] 1AR theory is legit – anything else means infinite abuse – drop the debater – 1AR is too short to make up for the time trade-off of solely drop the argument– no RVIs – 6 min 2NR means they can brute force me every time deterring theory no ressivilty

### 1AC – Advantage

#### The status quo ensures vaccine imperialism. Intellectual property law is the lynchpin of North-South health inequality and has empirically resulted in disparate life outcomes, accelerating disease spread.

Vanni 21 – Dr. Amaka Vanni is Lecturer in Law at the University of Leeds. ("On Intellectual Property Rights, Access to Medicines and Vaccine Imperialism," 3-23-2021, <https://twailr.com/on-intellectual-property-rights-access-to-medicines-and-vaccine-imperialism/>) julian

While the response to COVID-19 has shown what can be accomplished when the world works together, it has also underscored three interrelated points. First, the neoliberal framework – including the critical role intellectual property (IP) law plays in constituting this form of civilisation – is an unsuitable model for delivering the goods needed to respond to global health emergencies. The current economic/market system does not allow for equitable responses to infectious diseases, particularly access to sufficient medical and health resources. This inequity was obvious in the early days of the pandemic when test kits, PPEs, and ventilation machines were being distributed on the basis of who could pay the most rather than who needed them the most. Second, the beggar-thy-neighbor response currently adopted by developed countries hurts everyone because failing to stop the spread of the virus globally allows more mutations, which makes existing vaccines less effective. As COVID-19 has shown, no one is safe until everyone is safe. Yet, despite this warning, the hoarding of vaccines by developed countries continues unabated and speaks to the wider racist capitalist system we live in. If anything, this crude accumulation of vaccines reinforces North-South economic and political dominance and marks, as Onur Ince observes, the conceptual locus of political violence operative in the global genealogy of capitalism.

Third, while COVID-19 may endanger us all, it is far more costly to some than others. Numerous reports have shown how black and brown people are most impacted by the pandemic. In the United States, for example, indigenous Americans have the highest COVID-19 mortality rates nationwide while African American communities have COVID-19 mortality that is 2.3 times higher than the rate for Asians and Latinxs, and 2.6 times higher than the rate for Whites. Similar data is also emerging in the UK where people from black and minority ethnic groups are at greater risk of dying from coronavirus. This means those groups suffer higher loss of life compared to other racial groups due to inequities in healthcare access as well as higher rate of pre-existing conditions. In other parts of the world, the most vulnerable and the economically marginalized such as those working in the informal sector and living in shanty towns are feeling the effects of the pandemic the most. In Latin America and the Caribbean, 70 per cent of domestic workers have been affected by the pandemic where most have stopped receiving income. In Ghana, residents of slums at Old Fadama – a suburb in Accra – were made homeless when the government demolished their homes. The ensuing homelessness means there is little to no space of observing social distancing rules, access to running water and access to other resources to practice basic hygiene. Meanwhile in India, the pandemic has unsurprisingly hit the country along caste lines where the Dalits are most impacted because many are poor and have limited access to healthcare.

As Kimberlé Williams Crenshaw reminds us, the high number of minority deaths is not new. Rather, this crisis simply amplified racism and other forms of structural inequality as a pre-existing condition – an intersectional issue – where those disproportionately hurt are those who are already structurally marginalized. Thus, while recognising a broken global IP regime that triggered the scramble for vaccines, the racialized impact of the pandemic cannot be ignored, and it points to the entangled roots of race and capitalism.

The rest of this analysis takes a close look at some of the legal, political and economic forces that have animated IP rights and access to COVID-19 vaccine. It will focus on how the entanglement of corporate capture of global IP regime, state complicity and vaccine imperialism have come together to shape public health responses to the pandemic. It underscores how the law, in this case international IP law, consistently shelters capital and operates as an expression to further corporate pharmaceutical interests. If there is a lesson to be gleaned from this pandemic, it is that intellectual property is not failing us but is functioning the way it is set up to do. As the history of IP globalization has shown, the World Trade Organization’s (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) is a transplant of the Euro-American model of property, driven by multinational corporations who used their respective national governments to underwrite and export their domestic IP claims. Therefore, it is unsurprising that this international legal regime employed to advance the interests of particular classes, nations and regions at the expense of others continues to reproduce extreme inequality with human costs.

#### The TRIPS IP regime is at the heart of that imbalance. It creates a privileged class of elites with access to medicine and locks in data exclusivity and evergreening practices that delay the entrance of generic medicines into the market, which would decrease prices.

Vanni 21 – Dr. Amaka Vanni is Lecturer in Law at the University of Leeds. ("On Intellectual Property Rights, Access to Medicines and Vaccine Imperialism," 3-23-2021, <https://twailr.com/on-intellectual-property-rights-access-to-medicines-and-vaccine-imperialism/>) julian

Intellectual property rights (IPRs) are time-limited legal rights granted to inventors and creators. IPRs include copyrights, trademarks, patents, trade secrets, and geographical indications, while protected subject-matters include, but are not limited to, brands, inventions, designs, and biological materials. Importantly, IPRs overlap as a product may be covered by a series of rights. For example, a pharmaceutical medicine, defined by Britannica as a ‘substance used in the diagnosis, treatment, or prevention of disease’, is protected by patents, trademarks, and trade secrets. Patents are the most common form of IPR used for the protection of innovation in pharmaceuticals. Patents grant inventors limited market exclusivity for their inventions, and, in exchange, the inventor must disclose sufficient information such that competitors will be able to step into the market. This disclosure allows a competitor to make preparation to enter the market at the end of the monopoly period. Due to this legally-mandated exclusivity, patent owners – usually multinational corporations – have the right to prevent others from making, using, or selling a patented invention. The TRIPS Agreement, concluded as part of the Uruguay Round of multilateral trade negotiation and in force since 1995, provides a minimum of 20 years patent protection. The belief is that the duration allows corporations to recoup the expenses of developing, testing and upscaling an innovative pharmaceutical product.

From the onset, the TRIPS IP regime created imbalance between innovation, market monopoly, and medicines access, because it failed to take into consideration the health burden, development needs and local conditions of the various countries that make up the WTO. This has led to several issues. First, the market monopoly of IP rights, which allows the corporation to set the market for drugs, has created a privileged societal class with access to lifesaving medication distinguishing them from those excluded from access to available medications. This phenomenon is vividly illustrated in the HIV/AIDS crisis of the 1990s and early 2000s. While HIV/AIDS patients in developed countries were able to afford antiretroviral (ARVs) treatments, which had been developed, approved and patented as early as 1987, many patients in Africa and other parts of the developing world could not afford the approximately USD 12,000 per annum treatment at that time. By 2001, approximately 2.4 million people in the region had died of AIDS. The South African government intervened to reduce the cost of ARVs by amending its domestic patent laws to allow the authorization of parallel imports of patented pharmaceuticals and to encourage the use of generic drugs, but it was sued by the US industry group Pharmaceutical Research and Manufacturers of America (PhRMA). Though the lawsuit was eventually dropped, it highlights the measures pharmaceutical corporations, backed by some national governments, are willing to take to protect their profits at the cost of human lives. Significantly, we see how law (or the threat of legal action) is used not only to protect and expand the profitability of a certain kind of property but, as Anjali Vats and Deidré Keller have taught us, also reveals IP law’s racial investments in whiteness and its continuing implications for racial (in)equality, particularly in the way it informs systems of ownership, circulation, and distribution of knowledge. Similarly, Natsu Saito takes up the analysis of IP, race and capitalism by theorizing some of the ways in which ‘value’ in IP law concentrated in the hands of large corporations is calculated in terms of its profitability rather than what it contributes to the well-being of society. However, the proverbial chickens have come home to roost as even rich countries are beginning to feel the bite of the dysfunctional IP system.

The issue of excessive pricing for medicines is a growing problem in developed countries as well and has now become the single biggest category of healthcare spending in these states, particularly the US. An empirical report by I-MAK reveals how excessive pharmaceutical patenting is extending monopolies and driving up drug prices. The report, for example, notes that over half of the top twelve drugs in the US have more than 100 attempted patents per drug. Specifically, the report revealed that Humira® by AbbVie (used in the treatment of Crohn’s disease and the US’s highest grossing drug) has been issued 130 patents. The drug costs USD 44,000 annually and generated more than USD 19.2 billion for the company in 2019 alone. The Report also notes that the first patent filed for Herceptin® – used in the treatment for certain breast and stomach cancers – was in 1985 but currently has pending patent applications that could extend its market monopoly for 48 more years. Meanwhile, Celgene has over 105 patents for its oral cancer drug Revlimid® (used in the treatment of multiple myeloma) extending its monopoly until the end of 2036 – a patent lifespan of 40 years. In addition to excessive patenting and pricing, we have also come to understand the power of data in this context.

Second, regulatory agencies worldwide require drugs to undergo safety and efficacy testing to ensure they are harmless before approval. These tests, known as clinical trials, involve human subjects and are costly because they can run up to three separate phases. The data collected during these clinical trials are the proprietary materials of the company conducting the tests. Because it is expensive and time-consuming, generic drug companies usually rely on the safety and efficacy data of brand name companies to seek regulatory approval as long as they can prove their generic version is chemically and biologically equivalent to the original. Relying on the test data of brand name companies reduces the production cost for generic medicines and allows for quicker market entry. However, recent years have seen a promotion of time-limited, legally mandated protection against the non-proprietary use of such data by generic companies. This is known as data exclusivity. Put differently, data exclusivity is a period when a generic company cannot use the clinical trial data of an innovator pharmaceutical company to receive regulatory approval for a generic medicine. In so doing, data exclusivity provides a layer of protection in addition to patent protection to further delay market entry of generic medicines.

Data exclusivity periods vary depending on the jurisdiction. For example, it is twelve years in US and ten years in the EU. While the TRIPS Agreement does not create property rights over registration data, the US and the EU have continued to champion and export data exclusivity through free trade agreements, particularly for biologics. For example, the US Affordable Health Care for America Act in 2009 extended a 12-year exclusivity period for biologics. This US interpretation for registration data was also included in the United States-Mexico-Canada Agreement (USMCA), which sought a 10-year data exclusivity for new biologics. However, after intense negotiations, the data exclusivity protection was reduced to 5 years for new pharmaceuticals. In this instance, we see a crystallising of Euro-American ideas of property and a willingness to promote those property interests through the law, both domestic and international. In fact, certain scholars assert that this pursuit of higher TRIPS standards is driven, in part, by the US desire to achieve levels of protection it anticipated from the TRIPS Agreement but failed to secure. Given the influence of the industry and its representative group, PhRMA, in seeking stronger protection on a global scale, it is not surprising that the US’s post-TRIPS policies continue to rachet up standards in ways that undermine access to affordable medicines, and perpetuate social hierarchy and subordination.

Third, patent practices in recent decades have seen pharmaceutical companies engaging in trivial and cosmetic tweaking of a drug whilst still reaping the benefit of 20 years of patent protection. This tweaking sometimes involves making minor changes to patented drugs, such as changes in mode of administration, new dosages, extended release, or change in color of the drug. These changes normally do not offer any significant therapeutic advantage even though pharmaceutical companies argue they provide improved health outcomes to patients. These additional patents on small changes to existing drugs, known as evergreening or patent thickets, block the early entry of competitive, generic medicines that drive medicine prices down. For example, while not mandated by TRIPS, many US led TRIPS-plus free trade agreements have expanded the scope for evergreening. These include the US-Jordan FTA (2000), US-Australia FTA (2004) as well as the US-Korea FTA (2007), which allow for the patenting of new forms, uses, or methods of using existing products.

The cancer drug Gleevec®, owned by Novartis, is another example of how pharmaceutical companies often secure patents on new, more convenient versions with marginal therapeutic benefit to patients whilst blocking the entry of generic medicines. In 2013, Novartis’ patent application for Gleevec®– the β crystalline form of the salt imatinib mesylate – was rejected by the Indian Supreme Court because it lacked novelty. However, the company has secured patents for this product in other jurisdictions such as the US and has maintained a high price of Gleevec there. But in India the price of Gleevec® was reduced from approximately USD 2,200 to USD 88 for one month’s treatment in the generic drugs market as a result of the 2013 Indian Supreme Court judgement. Novartis is not the only culprit. The depression drug Effexor® by Pfizer was granted an evergreen patent when the company introduced an extended-release version, Efexor-XR®, even though there was no additional benefit to patients. Eventually, the patent was declared invalid, but by then it had already cost an estimated USD 209 million to Australian taxpayers and kept generic competition off the market for two and a half years. In another instance, Pfizer went on to secure an additional patent for the Pristiq®, which contained identical chemical compound as Efexor-XR®,and again with no added therapeutic benefit.

These evergreening practices, of course, have material effects. Apart from delaying the entry of generic versions, they give brand-name pharmaceutical companies free reign in the market, which allows them to set the market price. Recent years have seen monopoly prices rise exorbitantly causing significant financial strain to patients, domestic healthcare services and even insurance companies in developed countries. A notorious example is Martin Shkreli, who in 2015 bought the rights to an anti-malarial drug, then raised the price by 5,000 per cent from a cost of USD 13.50 to USD 750. Similarly, a white paper by I-MAK shows how excessive patenting and related strategies are driving families to overspend on lifesaving medicines. Celgene, the makers of Revlimid® raised the price of the drug by more than 50 per cent since 2012 to over USD 125,000 per year of treatment. Using the example of Solvadi® by Gilead, which costs USD 84,000 per treatment, Feldman notes the drug would cost the US Department of Defense more than USD 12 billion to treat all hepatitis-infected patients in US Veterans Affairs. But the US is not alone. In Europe, expensive drugs have prompted a growing backlash against pharmaceutical corporations. Reacting to these price hikes, Dutch pharmacies are bypassing these exorbitant prices by preparing medicines in-house for individual patients. The broken IP system ranging from an extraordinarily low standard for granting patents to permissions of patent thickets around a single molecule has not only severely distorted the system of innovation, but they have also skewed access to life-saving drugs. As a result, prices for new and existing medicines are constantly rising, making essential medicines inaccessible for millions of people around the world.

#### Vaccine imperialism inevitably commodifies medicine and results in vaccine nationalism that magnifies North-South health disparities.

Seklala et al 21 – Sharifah Sekalala, Warwick Law School, University of Warwick, Coventry, UK; Lisa Forman, Dalla Lana School of Public Health, University of Toronto, Toronto, Ontario, Canada; Timothy Hodgson, International Commission of Jurists, Johannesburg, South Africa,;Moses Mulumba, Center for Health, Human Rights and Development, Kampala, Uganda; Hadijah Namyalo-Ganafa, School of Law, Makerere University, Kampala, Uganda; Benjamin Mason Meier, Department of Public Policy, University of North Carolina at Chapel Hill, Chapel Hill, North Carolina, USA (“Decolonising human rights: how intellectual property laws result in unequal access to the COVID-19 vaccine,” 2021, pg. 2-4) julian

The development and dissemination of COVID-19 vaccines has highlighted how the international legal system pertaining to global health is driving global health inequalities instead of alleviating them. As a result, in part, of neocolonial ‘development’ models that promote inequitable IP laws, most of the vaccine supply has been manufactured in the Global North and purchased by governments in those countries to be stockpiled for their own populations—a practice sometimes described as ‘vaccine hoarding’ or ‘vaccine nationalism’.19 20

Even where countries in the Global South have produced vaccines themselves in significant quantities, they have sometimes been guilty of perpetuating inequity of other Global South countries through vaccine nationalism and vaccine diplomacy, in which vaccines are offered to poorer countries in order to achieve geopolitical objectives.21 22 A decolonised approach to global health enables us to conceptualise this behaviour as a reproduction of a neocolonial system which pits some formerly colonised countries against others.23 24 This has meant that some countries in the Global South also benefit from this uneven system, and they too contribute to the exploitation of poorer countries in the Global South.21

Although the WHO cocreated the COVAX Facility, a donor-funded mechanism that seeks to pool procurement to enhance access to vaccines for LMICs, the charitable funding scheme is facing a serious shortfall in meeting global needs. The WHO has estimated that most people in LMICs will not be vaccinated until the end of 2023,25 and even this estimate may be optimistic, given the delays in initial distributions through COVAX.26

This prompts the obvious question: How is it that existing legal mechanisms, or at least the prevailing interpretations and understandings of them, have permitted and even enabled this inequity? International IP law embedded in international trade agreements allows pharmaceutical companies time-limited rights to prevent others from making, using or selling their patented invention without permission. Under the 1995 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which was included in the Uruguay Round of multilateral trade negotiation, pharmaceutical companies have at least 20 years from filing a patent to profit from their investments in developing, testing and upscaling pharmaceutical products throughout the world.27 This protection is given to pharmaceutical companies to incentivise them to engage in greater research and development for new drugs. However, there is evidence that challenges previous assumptions about the linkages between Research and Development spending and innovation for essential medicines.28 The current COVID-19 crisis has brought this into sharp focus, with projections that the global public sector had spent at least €93 billion on the development of COVID-19 vaccines and therapeutics—€85.6 billion of this on vaccines.29

Global IP rights, whether adopted in accordance with TRIPS, or subsequent bilateral and multilateral agreements, are part of a wider legal system which facilitates global neocolonialism. For instance, powerful actors such as the European Union (EU) and the USA have included TRIPS-plus provisions in bilateral and multilateral agreements. These agreements often force countries of the Global South to concede to more stringent patent protections in order to gain trade advantages and also to escape trade sanctions.30

In so doing, IP law commodifies medicines that are essential to human survival and well-being, and sacrifices the lives and health of the poor and otherwise marginalised on the altar of corporate profitability.31 Common interpretations and understandings of the international IP system are that healthcare goods and services derive their value from their tradability.14 (‘We use the term “public good” as it is used in global health to mean a good that should be available universally because of its critical importance to health, and not as the term is used in economics to mean a good that is both non-excludable and non-rivalrous.’)14 32 However, many, including critical Global South scholars, have questioned the prioritisation of property rights (including IP rights) over other rights (especially the rights to health, life and equal benefit from scientific progress) in a manner that is inconsistent with international human rights law.31

Many low-income countries have long been active in resisting the IP system as an unjust extension of a colonial trade system. At the height of the HIV pandemic, in which millions of people in the Global South were denied lifesaving medicines, civil society treatment access campaigns galvanised states within the World Trade Organization (WTO) into agreeing to the Doha Declaration on TRIPS and Public Health.33 This WTO Declaration recognises human rights and allows states to use all of the ‘flexibilities’ within the TRIPS regime to protect public health, acknowledging the need for access to medicines in a public health emergency.34 However, this international consensus on IP has always been strongly contested by pharmaceutical companies and their host governments, predominantly in the Global North.

This remarkably strong resistance to employing TRIPS flexibilities has continued in the current COVID-19 crisis, as the attempts of countries largely from the Global South to try to obtain a TRIPS waiver to increase their supply of vaccines for COVID-19 have been unsuccessful. Although the USA has recently supported a watered-down version of a TRIPS waiver, it remains far from certain whether other states in the Global North will support this prioritisation of health over IP rights, or whether this would be sufficient, as we discuss in the section on flexibilities below.

Rather than allowing for equitable vaccine access as a human right for all people everywhere, states have instead turned to a charitable donation and market purchase scheme through the COVAX initiative. This type of model, which focuses on charity and not rights, is consistent with exactly the kind of understandings of human rights and public health that are in need of decolonisation. While there have been public consensus statements issued by the Human Rights Council, in which states have agreed that all states have the right to access vaccines and the right to use TRIPS flexibilities, this statement reflects a disappointing failure to acknowledge any corresponding state obligations to employ such flexibilities.35 This has allowed countries from the Global North, and their few Global South allies, to agree to this statement and support the right to vaccine access rhetorically, and in principle within the Human Rights Council, while resisting any calls for a TRIPS waiver within the WTO, and thus consolidating a denial of their obligations to employ TRIPS flexibilities.

#### Squo distribution results in disparities which leads to colonial hierarchies of health.

Seklala et al 21 – Sharifah Sekalala, Warwick Law School, University of Warwick, Coventry, UK; Lisa Forman, Dalla Lana School of Public Health, University of Toronto, Toronto, Ontario, Canada; Timothy Hodgson, International Commission of Jurists, Johannesburg, South Africa,;Moses Mulumba, Center for Health, Human Rights and Development, Kampala, Uganda; Hadijah Namyalo-Ganafa, School of Law, Makerere University, Kampala, Uganda; Benjamin Mason Meier, Department of Public Policy, University of North Carolina at Chapel Hill, Chapel Hill, North Carolina, USA (“Decolonising human rights: how intellectual property laws result in unequal access to the COVID-19 vaccine,” 2021, pg. 4) julian

The current global distribution of COVID-19 vaccines is largely dictated by power disparities and inequities in financial and other resources, with predominantly high-income countries contracting bilaterally with individual pharmaceutical companies (many in their own countries) for specific vaccines, leaving countries from the Global South facing inequitable vaccine access. Bilateral deals between states and pharmaceutical companies, whether completed by Global North or Global South states, significantly compromise the effectiveness and equity of the COVAX initiative, limited as it already is by the coercive influence, vested interests and participation of pharmaceutical companies and their host nations. The African Union, for example, endorsed the TRIPS waiver to relax WTO rules so that LMICs could create their own COVID-19 vaccines, but this collective effort across African countries faced resistance from Global North countries and pharmaceutical companies.

The IP system appears to have pushed countries in the Global South that may prefer not to be dependent on the charitable model of the COVAX scheme to join high-income countries in engaging directly with manufacturers to purchase COVID-19 vaccines. This has included African countries, despite the African Union’s criticism of the inequities resulting from IP law protections. This process has reproduced colonially entrenched power dynamics, in which poorer countries lack the bargaining power to obtain competitive rates and, consequently, typically end up paying far more than the wealthier, developed countries. More broadly, countries in the Global South are pressured into participating in global systems of trade that result in the exploitation of their own populations by unjust global economic systems and IP laws.39 The high cost of vaccines for countries from the Global South constitutes a large proportion of their health expenditure, and this comes at the expense of other health priorities.

In many cases, the only way in which Global South countries can purchase vaccines is to move themselves further into debt. Given the detrimental neocolonial implications of debt, with a long history of loan conditionalities through structural adjustment programmes, increasing debt to service health needs contributes to the worsening of inequalities between the Global North and Global South.40 These programmes may increase debt and undermine development in ways that limit the realisation of the right to health.41 The World Bank has set aside US$12 billion and has already disbursed loans of US$500 million for vaccines in low-income and middle-income nations;42 poorer nations, instead of servicing already depleted health systems, are forced to divert additional funds to servicing debt.

#### It also results in intranational inequalities – politicians create hierarchies of access which feeds racism, classism, and corruption.

Seklala et al 21 – Sharifah Sekalala, Warwick Law School, University of Warwick, Coventry, UK; Lisa Forman, Dalla Lana School of Public Health, University of Toronto, Toronto, Ontario, Canada; Timothy Hodgson, International Commission of Jurists, Johannesburg, South Africa; Moses Mulumba, Center for Health, Human Rights and Development, Kampala, Uganda; Hadijah Namyalo-Ganafa, School of Law, Makerere University, Kampala, Uganda; Benjamin Mason Meier, Department of Public Policy, University of North Carolina at Chapel Hill, Chapel Hill, North Carolina, USA (“Decolonising human rights: how intellectual property laws result in unequal access to the COVID-19 vaccine,” 2021, pg. 4-5) julian

The high costs of vaccines also propagate inequalities within nations, as desperate countries try to recoup some of the costs by charging their people for vaccine access or using complex arrangements that prioritise some people over others. Egypt, for instance, is charging for the COVID-19 vaccine, which is likely to exclude the poorest people, who have already been severely affected by the crisis.43 In reality, it also means that wealthier individuals are prioritised, as they usually find it easier to pay for access. Those able to access vaccines in these countries, very often a small economic and political elite, are often in positions of power precisely along the lines of existing global inequalities and often to the prejudice of groups marginalised on the basis of gender, race and other grounds of discrimination prohibited under international human rights law.

Facilitating vaccine access for more affluent members of society reinforces power structures at the expense of marginalised populations. In South Africa, conservative non-governmental organisations aligned closely with the interests of the white minority and elite corporate interests launched a court challenge in order to procure private supplies of vaccines, bypassing the nationwide mechanisms set up by the government to ensure equitable vaccine access. However, having faced opposition from human rights activists and the South African government, this litigation was ultimately withdrawn. (For more information on this litigation see ref 44 45.) Kenya has also prioritised diplomats for COVID-19 vaccination at the expense of health workers, and Indonesia has suggested that the ‘more productive’ members of society be vaccinated first.46 47 In other countries, such as Peru, political elites and their families and friends were secretly vaccinated before the broader populations. (See as examples ref 48 49.)

An important issue at the boundary of national and international concerns is the potential use of ‘vaccine passports’.50 Free movement of goods is integral to one of the core objectives of the IHR, and yet many governments are proposing the use of COVID-19 vaccination passports as a mechanism for reopening their economies, which would discriminate against those who have not been vaccinated. The EU introduced vaccine passports in the summer of 2021 for entry into the eurozone and excluded vaccines that were made from the Serum Institute in India which is responsible for the majority of vaccines provided in the Global South.51 Vaccination disparities both within and between countries mean that many people in LMICs are unlikely to be vaccinated until 2023; therefore, vaccine passports would only further exacerbate both national and global inequalities and disproportionately restrict the rights of large swathes of the global population from exercising their right to freedom of movement on an equal basis.

#### This means COVID and future pandemics will reproduce untenable working conditions and racialized and classed life outcomes.

Sell 20 – Susan K. Sell is a Professor of Political Science and International Affairs at George Washington University. (“What COVID‑19 Reveals About Twenty‑First Century Capitalism: Adversity and Opportunity,” pg. 152-153) julian

The COVID-19 pandemic has revealed the lethal consequences of the sharp rise in economic inequality, the concentration of wealth in fewer and fewer hands and the increasing precarity of labour. For example, as COVID-19 slammed Manhattan, members of the top 1% flocked to their beach retreats in the Hamptons to ride out the contagion (Sellinger 2020). Meanwhile, ‘essential workers’ at the bottom of the contemporary economic hierarchy had no options but to continue to show up for work and face exposure to the deadly virus. First responders, bus drivers, nursing home workers, janitors, postal workers, grocery stockers, agricultural workers, Wal-Mart employees, Amazon warehouse workers, delivery drivers, and meat packers—many earning minimum wage and most without employer-subsidized health insurance or other benefits—had to keep working. As Bertha Bradley, a food service worker in North Carolina stated, ‘I don’t get health benefits, I don’t get sick time, I don’t get paid vacations, I don’t get a living wage’ (Jaffe and Chen 2020: 126). Katie Pine and Kate Henne refer to them as ‘new risk workers’, many of whom are given mandates for minimizing risk but few resources to implement them (Pine and Henne 2020). For example, in the John H. Stroger Hospital in Chicago, nurses were being told to reuse N95 masks, ‘sometimes up to forty-five days’ (Jaffe and Chen 2020: 138). By contrast, knowledge workers could work from the safety of their own homes and reduce their risks of becoming infected.

COVID-19 has disproportionately attacked communities of colour, compounding economic inequality and systemic racism. It is clear that ‘race matters for the way that markets have been built historically and function today’ (McNamara and Newman 2020: 6). As Presidential candidate Joe Biden pointed out during the presidential debate in September 2020, 1 out of every one-thousand African Americans in the US has died from COVID-19. In Chicago about 70% of the COVID deaths were African Americans (Jaffe and Chen 2020: 140). The UN Secretary-General António Guterres pointed out that COVID-19 ‘is exposing fallacies and falsehoods everywhere … the delusion that we live in a post-racist world, the myth that we are all in the same boat’ (Guterres 2020). In September, Citigroup released a report that systemic racism, discrimination against African Americans, has cost the economy $16 trillion (Akala 2020).

Many of the precariat are people of colour, recent immigrants and undocumented workers. By May 2020 slaughterhouses around the world became virus hot spots and exposed multiple layers of dysfunction. The meat processing industry is highly consolidated, dominated by global multinational corporations including Cargill, JBS, Smithfield and Tyson. Since the 1980s this industry has pursued the financialized model of consolidation and vertical integration, ‘aimed at increasing profits through efficiency and low wages’ (van der Zee et al. 2020). Many migrant workers in these plants live in communal housing; crowded working conditions, large plants and cramped housing, and lack of paid sick leave all exacerbate the spread of coronavirus in these environments. Indeed, Tyson was even offering workers $500 bonuses to keep working in the midst of plant outbreaks (van der Zee et al. 2020). Workers are shouldering all of the risk as slaughterhouse companies get the rewards. Structures of the global economy, including financialization and monopoly capitalism have amplified the dangers of the pandemic and pushed people further ‘into unequal groups that are not only divided by money but by matters of life and death’ (McNamara and Newman 2020: 11; Sell and Williams 2019).

#### The plan reverse casually ensures the reduction of vaccine imperialism.

Vanni 21 – Dr. Amaka Vanni is Lecturer in Law at the University of Leeds. ("On Intellectual Property Rights, Access to Medicines and Vaccine Imperialism," 3-23-2021, <https://twailr.com/on-intellectual-property-rights-access-to-medicines-and-vaccine-imperialism/>) julian

This brings us to the present and how this dysfunction continues to be normalised in the current pandemic. Moderna, for example, has filed over 100 patents for the mRNA technology used in its vaccine, despite receiving funds from the US government with its IP partly owned by the US National Institutes of Health. Pfizer/BioNTech have also filed multiple patents on not only their COVID-19 vaccine product, but also on the manufacturing process, method of use and related technologies even though BioNtech was given $450 million by the German government to speed up vaccine work and expand production capacity in Germany. It has become increasingly plain that IP makes private rights out of public funds while benefitting particular corporate interests. In fact, reports show the US government under Operation Warp Speed led by the US Department of Health also funded other vaccines developed in 2020 by several pharmaceutical corporations including Johnson and Johnson, Regeneron, Novavax, Sanofi and GlaxoSmithKline, AstraZeneca, and others. In spite of this boost from public funds, and with many governments wholly taking on the risks for potential vaccine side effects, drug manufacturers fully own the patents and related IP rights and so can decide how and where the vaccines get manufactured and how much they cost. As a result, taxpayers are paying twice for the same shot: first for its development, then again for the finished product. Meanwhile, a New York Times report has revealed that in some of the agreements between pharmaceutical companies and states, governments are prohibited from donating or reselling doses. This prohibition helps explain the price disparity in vaccine purchases among countries where poor countries are paying more. For example, Uganda is paying USD 8.50 per dose of the AstraZeneca vaccine while the EU is paying only USD 3.50 per dose. By prioritizing monopoly rights of a few western corporations, IP dysfunction not only continues to reproduce old inequities and inequality in health access, but helps frame our understanding about the creation and management of knowledge. And perhaps we begin to see the refusal of drug makers to share knowledge needed to boost global vaccine supply for what it truly is: an extension in capitalist bifurcation of who is imagined as a legitimate intellectual property owner and who is envisioned as a threat to the (intellectual) propertied order.

Despite calls to make COVID-19 vaccines and related technologies a global public good, western pharmaceutical companies have declined to loosen or temporarily suspend IP protections and transfer technology to generic manufacturers. Such transfer would enable the scale-up of production and supply of lifesaving COVID-19 medical tools across the world. Furthermore, these countries are also blocking the TRIPS waiver proposal put forward by South Africa and India at the WTO despite being supported by 57 mostly developing countries. The waiver proposal seeks to temporarily postpone certain provisions of the TRIPS Agreement for treating, containing and preventing the coronavirus, but only until widespread vaccination and immunity are achieved. This means that countries will not be required to provide any form of IP protection on all COVID-19 related therapeutics, diagnostics and other technologies for the duration of the pandemic. It is important to reiterate the waiver proposal is time-limited and is different from TRIPS flexibilities, which are safeguards within the Agreement to mitigate the negative impact of patents such as high price of patented medicines. These safeguards include compulsory licenses and parallel importation. However, because of the onerous process of initiating these flexibilities as well as the threat of possible trade penalties by the US through the United States Trade Representative (USTR) “Special 301” Report targeting countries even in the absence of illegality, many developing countries are reluctant to invoke TRIPS flexibilities for public health purposes. For example, in the past, countries such as Colombia, India, Thailand and recently Malaysia have all featured in the Special 301 Report for using compulsory licenses to increase access to cancer medications. It is these challenges that the TRIPS waiver seeks to alleviate and, if approved, would also provide countries the space, without fear of retaliation from developed countries, to collaborate with competent developers in the R&D, manufacturing, scaling-up, and supply of COVID-19 tools. However, because this waiver is being opposed by a group of developed countries, we are grappling with the problem of artificially-created vaccine scarcity. The effect of this scarcity will further prolong and deepen the financial impact of this pandemic currently estimated to cost USD 9.2 trillion, half of which will be borne by advanced economies. Thus, in opposing the TRIPS waiver with the hopes of reaping huge financial rewards, developed countries are worsening pandemic woes in the long term.

Another kind of scarcity caused by vaccine nationalism has also reduced equitable access. Vaccine nationalism is a phenomenon where rich countries buy up global supply of vaccines through advance purchase agreements (APA) with pharmaceutical companies for their own populations at the expense of other countries. But perhaps it is time to reorient our sight and call the ongoing practices of buying up global supply of vaccine what it truly is – vaccine imperialism. If we take seriously the argument put forward by Antony Anghie on the colonial origins of international law, particularly how these origins create a set of structures that continually repeat themselves at various stages, we will begin to see COVID-19 vaccine accumulation not only as political, but also as imperial continuities manifesting in the present. Take, for instance, the report released by the Duke Global Health Innovation Center that shows that high-income countries have already purchased nearly 3.8 billion COVID-19 vaccine doses. Specifically, the United States has secured 400 million doses of the Pfizer-BioNTech and Moderna vaccines, and has APAs for more than 1 billion doses from four other companies yet to secure US regulatory approval. The European Union has similarly negotiated nearly 2.3 billion doses under contract and is negotiating for about 300 million more. With these purchases, these countries will be able to vaccinate their populations twice over, while many developing states, especially in Africa, are left behind. In hoarding vaccines whilst protecting the IP interests of their pharmaceutical multinational corporations, the afterlife of imperialism is playing out in this pandemic.

Moreover, these bilateral deals are hampering initiatives such as the COVID-19 Vaccine Global Access Facility (COVAX) – a pooled procurement mechanism for COVID-19 vaccine – aimed at equitable and science-led global vaccine distribution. By engaging in bilateral deals, wealthy countries impede the possibility of effective mass-inoculation campaigns. While the usefulness of the COVAX initiative cannot be denied, it is not enough. It will cover only the most vulnerable 20 per cent of a country’s population, it is severely underfunded and there are lingering questions regarding the contractual obligations of pharmaceutical companies involved in the initiative. For instance, it is not clear whether the COVAX contract includes IP-related clauses such as sharing of technological know-how. Still, even with all its faults, without a global ramping-up of production, distribution and vaccination campaigns via COVAX, the world will not be able to combat the COVID-19 pandemic and its growing variants. Health inequity and inequalities in vaccine access are not unfortunate outcomes of the global IP regime; they are part of its central architecture. The system is functioning exactly as it is set up to do.

These events – the corporate capture of the global pharmaceutical IP regime, state complicity and vaccine imperialism – are not new. Recall Article 7 of TRIPS, which states that the objective of the Agreement is the ‘protection and enforcement of intellectual property rights [to] contribute to the promotion of technological innovation and to the transfer and dissemination of technology’. In similar vein, Article 66(2) of TRIPS further calls on developed countries to ‘provide incentives to enterprises and institutions within their territories to promote and encourage technology transfer to least-developed country’. While the language of ‘transfer of technology’ might seem beneficial or benign, in actuality it is not. As I discussed in my book, and as Carmen Gonzalez has also shown, when development objectives are incorporated into international legal instruments and institutions, they become embedded in structures that may constrain their transformative potential and reproduce North-South power imbalances. This is because these development objectives are circumscribed by capitalist imperialist structures, adapted to justify colonial practices and mobilized through racial differences. These structures are the essence of international law and its institutions even in the twenty-first century. They continue to animate broader socio-economic engagement with the global economy even in the present as well as in the legal and regulatory codes that support them. Thus, it is not surprising that even in current global health crisis, calls for this same transfer of technology in the form of a TRIPS waiver to scale up global vaccine production is being thwarted by the hegemony of developed states inevitably influenced by their respective pharmaceutical companies. The ‘emancipatory potential’ of TRIPS cannot be achieved if it was not created to be emancipatory in the first place. It also makes obvious the ways international IP law is not only unsuited to promote structural reform to enable the self-sufficiency and self-determination of the countries in the global south, but also produces asymmetries that perpetuate inequalities.

### 1AC – Plan

#### Plan: The member nations of the World Trade Organization ought to eliminate patent protections for medicines.

Adler 21 – Paul Adler is assistant professor of 20th Century U.S. in the World History at Colorado College and author of "No Globalization Without Representation: U.S. Activists and World Inequality," with University of Pennsylvania Press. (“Activism is the key to getting vaccines to the world," 4-23-2021, <https://www.washingtonpost.com/outlook/2021/04/23/activism-is-key-getting-vaccines-world/>) julian

A major reason for the delay in rolling out vaccinations is that rules protecting intellectual property are slowing production. Vaccines such as those for the coronavirus typically require around 200 individual components, most of which are patented by various corporations. Globally, these patents and other intellectual property concerns fall under the protection of “TRIPS” — the Agreement on Trade Related Aspects of Intellectual Property Rights — which is overseen by the World Trade Organization (WTO).

The need to make more vaccines faster is clear. That is why a wide coalition — from the South African and Indian governments to nonprofits such as Oxfam, Public Citizen and ActionAid to 170 Nobel laureates and former heads of state — are demanding that the WTO issue a “TRIPS waiver.” This action would temporarily suspend WTO intellectual property protections, allowing more companies and countries to produce coronavirus vaccine components. So far, the idea has been met with, at best, ambivalence by representatives from key economic powers, including the European Union, Canada, Brazil and the United States. Meanwhile, major pharmaceutical companies and lobbies largely oppose a TRIPS waiver.

This coronavirus is a newer virus. But debates around corporate power, intellectual property, pharmaceuticals and global inequalities have long histories. For over four decades, activists have worked for a fairer global regime of medicine production and distribution. Today’s campaign for a TRIPS waiver marks a crucial moment in the long struggle by globally minded activists to forge systems of international governance that serve the interests of the world’s most impoverished and marginalized.

#### Prioritize our impacts. Intellectual monopoly capitalism prioritizes profitability over health, which blurs the lines between life and death.

Sell 20 – Susan K. Sell is a Professor of Political Science and International Affairs at George Washington University. (“What COVID‑19 Reveals About Twenty‑First Century Capitalism: Adversity and Opportunity,” pg. 151-152) julian

In the late 1970s and early 1980s, US-based IP owners lobbied for regulatory and legislative reform to expand IP protection. Pharmaceutical, software, publishing and entertainment producers argued that their industries provided America with competitive advantages in global markets. They sought the incorporation of IP into the trade regime to ensure that their IP would be remunerated in global markets and that trading partners would respect and enforce their ‘rights’. By 1994 IP owners had succeed in globalizing their preferences through the Agreement on Trade-Related Intellectual Property Rights (TRIPs) in the World Trade Organization (Sell 2003). TRIPs is hard law; it is binding and enforceable. It mandates 20 years of patent protection for pharmaceutical products. Violations result in trade sanctions.

The institutionalization of intellectual property protection in the global trade regime cemented the shift from Reagan/ Thatcher neoliberalism to intellectual monopoly capitalism. When we talk about ‘trade’ these days, we are really discussing the role of intangibles such as IP and financial services. The main beneficiaries of contemporary trade agreements are those who control global value chains (GVCs), including international banks, Big Tech, Big Pharma, Big Food and Transnational Corporations. Lead firms in GVCs promote stricter IP requirements in trade agreements to ‘contain the risk of IP appropriation resulting from the international fragmentation of production’ (Durand and Milberg 2018: 21–22). Most of the post-TRIPs trade agreements in which IP-rich nations are involved feature IP provisions that extend well beyond the TRIPs obligations in the WTO. Today, ‘profitability is a function of a firm’s ability to extract monopoly rents from complex value chains using their control over IPRs’ (Schwartz 2017: 197). For example, Apple extracts the lion’s share of value from every iPad sold whereas the manufacturers in China receive only pennies on the dollar.

Big Pharma routinely blocks pro-health initiatives aimed at promoting the use of TRIPs’ flexibilities, such as compulsory licensing and parallel importation, that would make essential medicines affordable and accessible; these would threaten their profits and reduce shareholder value (Correa 2006). The profit imperative of financialized capitalism has meant that Big Pharma has invested far more in lifestyle diseases such as erectile dysfunction and baldness than in diseases of the Global South. As Feldman argues, ‘our incentive structure is badly misaligned with societal goals’ (Feldman 2018).

Patent protection increases prices and reduces access to medicines, diagnostics, vaccines, medical devices and PPE. Strategic behaviour aimed at blocking generic competition contributes to rising drug prices. Pharma firms routinely engage in ‘evergreening’ to extend patent protection terms. A firm may have a popular drug with an about-to-expire patent, and then offer a ‘new’ formulation—from a tablet to a gel cap—of the same drug and obtain another 20 years of protection. This strategic behaviour does not affect everyone equally. For example, during the HIV/AIDS pandemic of the late 1990s/early 2000s as deaths plummeted in affluent countries an estimated 12 million infected Africans were left to die, ‘waiting for enough life-saving drugs to reach the continent’ (Nkengasong et al. 2020: 198). India and South Africa have both asked the World Trade Organization to waive TRIPs provisions to allow them to engage in compulsory licensing and parallel importation of COVID-19 therapies (Reuters 2020). Their past experiences with HIV/AIDs and the swine and avian influenzas have bred understandable suspicion about the barriers to access that IP can create. As COVID-19 tests, therapies and vaccines are developed there is legitimate concern that ‘intellectual property rights and reluctance to share related know-how may act as barriers to the rapid scale up for timely supply at affordable prices in all countries’ (Tellez 2020).

The competitive scramble for COVID-19 vaccines is in full cry, with many affluent countries negotiating advance purchasing deals and raising concerns that the Global South will once again be ‘left to die’ (Torjesen 2020). The pandemic has exposed supply chain bottlenecks and overreliance on too-few suppliers that reduce the availability of needed inputs. Current collective efforts to develop COVID-19 vaccines, including the COVID-19 Vaccine Global Access (COVAX) initiative led by the World Health Organization (WHO), the Coalition for Epidemic Preparedness and Innovation (CEPI), and GAVI (the Vaccine Alliance) are promising and 167 countries have already signed up to it. The aim is to produce and distribute heavily subsidized vaccines to protect health care workers and vulnerable populations even in poor nations. However, questions about intellectual property protection remain and competition for vaccines is evident. The U.S. has made its own deals with several private firms; high-income countries have signed contracts with individual companies to buy vaccines, and the partnership between Oxford University and AstraZeneca raises questions about the non-profit versus for-profit future of vaccines in development (Nkengasong et al. 2020: 197; Garrison 2020).

Microsoft founder Bill Gates’s generosity as a philanthropist has been remarkable, donating hundreds of millions of dollars to the Bill & Melinda Gates Foundation to focus on health. However, the prominence of Bill Gates in the vaccine space also raises questions; he has been a major benefactor and ardent promoter of intellectual monopoly capitalism. The outsized role of global plutocrats such as Gates, whose personal wealth has increased by over $10 billion during the pandemic, raises questions about governance for equity and the public good (McNamara and Newman 2020: 10; Schwab 2020). The Gates Foundation has invested over $250 million in dozens of companies working on COVID-19 responses and stands to reap significant financial gains as a result. The financialization dynamic is evident in his $40 million investment in CureVac, a German company. Just two days after CureVac’s Initial Public Offering in August 2020, its stock value jumped 400%, allowing investors to extract value (Schwab 2020). Given the Gates Foundation’s outsized role in the pandemic response, its financial stakes should be accompanied by greater transparency and accountability. As a core beneficiary and supporter of both Wall Street and Monopoly capitalisms that have extravagantly enriched the few at the expense of the many, his role raises legitimate questions about the likelihood of further entrenching a badly skewed system during a global pandemic. Gates’ preference for exclusive licenses for intellectual property does not bode well for widespread access over time. South Africa and India recognize this, as reflected in their request for TRIPs waivers in COVID-19 time.

#### Status quo medical innovation results in inequality, which the aff corrects.

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The private sector then capitalizes on the results of this scientific curiosity to develop socially beneficial technologies, which are made available in the marketplace. Key to this is the modern patent system: the government incentivizes inventors by providing them with patent rights, to commercialize and profit from their new technologies exclusively and for a limited period of time (Parthasarathy 2017). The US Congress reinforced the links among government funding, university science, and the marketplace with the 1980 Bayh-Dole Act, which allowed universities to retain the rights to patents on inventions created through government-funded research (Popp Berman 2012). The more inventions were patented and made available to the private sector, the logic went, the more technology would be available to the public. Today, increasingly cash-strapped universities encourage their researchers to patent inventions, and license these patents to private companies who will develop and commercialize them (Kleinman 2003). As a result, there has been a sharp rise in US patents granted, and high-tech industries have blossomed. And countries across the world have adopted these innovation policies, seeking to replicate the US approach (Siepmann 2004).

But the COVID-19 crisis has shown us that these innovation policies do not serve citizens equally, in at least three ways:

(1) Minimal Funding for Health Disparities Research. The US approach to research funding has left us unprepared for and unable to manage the disproportionate health impacts of the virus among people of color, especially Black communities. The NIH, the world’s largest public funder of biomedical research, devotes little money to this subject. One analysis found that it spends 500 times more on genetics research as on structural racism and its impacts on health (Krieger 2005). This is not surprising in a system where scientists drive funding priorities, and where investigators from historically disadvantaged minority groups struggle to receive funding. The needs and concerns of disadvantaged minorities may seem less important or urgent to most scientists (Shavers et al. 2005). But this scarcity has left us without the evidence to understand why communities of color are disproportionately suffering and dying from COVID-19, or what steps to take to address this imbalance.

2) Uncoordinated Research and Development Creates Uneven Access to Diagnostic Testing. Absent the “rigid controls” that Bush dismissed, the US innovation system is highly decentralized and market-driven. So, diagnostic testing for SARS-CoV-2 (the virus that causes COVID-19) has been essentially impossible to coordinate. Traditionally, the Centers for Disease Control and Prevention and public laboratories funded by state and local governments lead infectious disease surveillance, but they have limited capacity (Crawford et al. 2010). The COVID-19 pandemic created demand that far outstripped what these laboratories could provide, but there was no systematic way to expand capacity. A variety of laboratories, including at universities, stepped up, but it remains difficult to connect supply and demand (Maxmen 2020). Different electronic records platforms cannot communicate. Some hospitals have exclusive partnerships with big commercial laboratories. And, even as testing has become more available, white and higher income communities gain access more easily (McMinn et al. 2020).

By contrast, South Korea has been widely praised for its SAR-CoV-2 testing strategy (Thompson 2020). Three weeks after the Chinese government shared the virus’s genome sequence on January 12, the South Korean government approved multiple diagnostic tests developed by its biotechnology sector (The Government of the Republic of Korea 2020). The country’s National Health Insurance Corporation purchased and distributed them. Ultimately, testing was plentiful and widespread, and the government implemented a companion contact-tracing program that minimized the number of COVID-19 cases and deaths.

Certainly, South Korea has learned from its experiences with previous coronaviruses, and benefits from a nationally coordinated healthcare system. But the rapid and straightforward development and distribution of diagnostic testing is also the result of a different approach to innovation policy than what the United States has taken up. Since the 1960s, South Korea’s government has played a major role in shaping research and development including in the industrial sector, by building capacity and setting priorities (Yim and Kim 2005). Government and industry have close professional ties and a sense of shared goals. In the years before COVID-19, for example, the South Korean government funded multiple companies developing viral diagnostic testing (The Government of the Republic of Korea 2020). With these relationships, technologies, and coordination with the healthcare system established, the government was able to immediately ask the private sector to develop SARS-CoV-2 tests. Three of the first five companies to receive emergency regulatory approval had received government funding for their diagnostics research. This proactive capacity building ensured that there was no need to ration testing, and therefore no inequality in access.

(3) Patent Policies Limit Access to Essential Technologies. While patents provide an incentive to innovate, the exclusive rights of commercialization they carry can make the most valuable technologies the most expensive. There is growing concern that COVID-19 treatments and vaccines will be priced out of reach for many, despite their importance for public health and economic recovery. Consider the case of remdesivir, a promising COVID-19 treatment developed with the help of US government and university scientists but which biotechnology company Gilead Sciences has patented and commercialized (Ardizzone 2020). Gilead has a long history of charging high prices for its patented drugs, including hepatitis C drug Sovaldi which costs $84,000 for a 12-week course of treatment (Senior 2014). The company must now balance pressure from its investors against its interpretation of civic duty as it determines pricing for this promising COVID-19 drug.

#### Flexibilities are insufficient.

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Although countries from the Global South have the option of engaging TRIPS flexibilities in the absence of a general waiver, they often do not do so because the process of using these flexibilities is often stacked against them, reproducing neocolonial dynamics. For instance, TRIPS allows states with limited manufacturing capacity to waive a patent for a limited duration so as to import essential medicines through a compulsory licence. However, in practice, this process is lengthy and complex, as it relies on ensuring that both the importing and exporting countries have enacted local laws that permit them to use TRIPS flexibilities. Further, the importing country needs to negotiate

with the pharmaceutical company in order to establish a fair price, which is always tricky, but made significantly more difficult in a crisis. To date, this process has been used only once, when Rwanda obtained access to generic antiretrovirals through an importation agreement with the Canadian company Apotex. However, even in that context, although Rwanda notified the WTO Council of its intention to use the mechanism in July 2007, it took 15 months before it could import its first batch of antiretrovirals. Despite its strong support, the manufacturer Apotex felt that the process was too cumbersome to use again.36

This complexity has been heightened during the COVID-19 crisis due to the speed at which vaccines were manufactured, which has created a lack of transparency around the patent process.37 Thus, the Bolivian government, which is seeking to use TRIPS flexibilities through compulsory licences, recognises in their application that there is a lack of clarity around the exact extent of product and process patents for any of the existing COVID-19 vaccines due to inadequate information about manufacturing or regulatory processes in different countries.38 Additionally, many countries that have manufacturing capacity, such as those in the EU, have not sought to support countries in the Global South that want to use these flexibilities. In sum, cumbersome rules, political and economic pressures and a lack of transparency conspire to enable the Intellectual Property Regime (IPR) system to sustain and deepen global health inequities.