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### 1AC – Adv – Pandemics

#### Only the plan can solve covid access – inequalities heighten the risk of mutations and uneven development – neg objections miss the boat.

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According to Duke Global Health Innovation Center, which monitors COVID-19 vaccine purchases, rich nations representing just 14 per cent of the world population have bought up to 53 per cent of the most promising vaccines so far. As of 4 July 2021, the high-income countries (HICs) purchased more than half (6.16 billion) vaccine doses sold globally. At the same time, the low-income countries (LICs) received only 0.3 per cent of the vaccines produced. The low and middle-income countries (LMICs), which account for 81 per cent of the global adult population, purchased 33 per cent, and COVAX (COVID-19 Vaccines Global Access) has received 13 per cent.10 Many HICs bought enough doses to vaccinate their populations several times over. For instance, Canada procured 10.45 doses per person, while the UK, EU and the US procured 8.18, 6.89, and 4.60 doses per inhabitant, respectively.11

Consequently, there is a significant disparity between HICs and LICs in vaccine administration as well. As of 8 July 2021, 3.32 billion vaccine doses had been administered globally.12 Nonetheless, only one per cent of people in LICs have been given at least one dose. While in HICs almost one in four people have received the vaccine, in LICs, it is one in more than 500. The World Health Organization (WHO) notes that about 90 per cent of African countries will miss the September target to vaccinate at least 10 per cent of their populations as a third wave looms on the continent.13 South Africa, the most affected African country, for instance, has vaccinated less than two per cent of its population of about 59 million. This is in contrast with the US where almost 47.5 per cent of the population of more than 330 million has been fully vaccinated. In Sub-Saharan Africa, vaccine rollout remains the slowest in the world. According to the International Monetary Fund (IMF), at current rates, by the end of 2021, a massive global inequity will continue to exist, with Africa still experiencing meagre vaccination rates while other parts of the world move much closer to complete vaccination.14

This vaccine inequity is not only morally indefensible but also clinically counter-productive. If this situation prevails, LICs could be waiting until 2025 for vaccinating half of their people. Allowing most of the world’s population to go unvaccinated will also spawn new virus mutations, more contagious viruses leading to a steep rise in COVID-19 cases. Such a scenario could cause twice as many deaths as against distributing them globally, on a priority basis. Preventing this humanitarian catastrophe requires removing all barriers to the production and distribution of vaccines. TRIPS is one such barrier that prevents vaccine production in LMICs and hence its equitable distribution.

TRIPS: Barrier to Equitable Health Care Access

The opponents of the waiver proposal argue that IPR are not a significant barrier to equitable access to health care, and existing TRIPS flexibilities are sufficient to address the COVID-19 pandemic. However, history suggests the contrary. For instance, when South Africa passed the Medicines and Related Substances Act of 1997 to address the HIV/AIDS public health crisis, nearly 40 of world’s largest and influential pharma companies took the South African government to court over the violation of TRIPS. The Act, which invoked the compulsory licensing provision, allowed South Africa to produce affordable generic drugs.15 The Big Pharma also lobbied developed countries, particularly the US, to put bilateral trade sanctions against South Africa.16

Similarly, when Indian company Cipla decided to provide generic antiretrovirals (ARVs) to the African market at a lower cost, Big Pharma retaliated through patent litigations in Indian and international trade courts and branded Indian drug companies as thieves.17 Another instance was when Swiss company Roche initiated patent infringement proceedings against Cipla’s decision to launch a generic version of cancer drug, “erlotinib”. Though the Delhi High Court initially dismissed Roche's appeal by citing “public interest” and “affordability of medicines,” the continued to pressure the generic pharma companies over IPR. 18 Likewise, Pfizer’s aggressive patenting strategy prevented South Korea in developing pneumonia vaccines for children.19

A recent document by Médecins Sans Frontières (MSF), or Doctors Without Borders, highlights various instances of how IP hinders manufacturing and supply of diagnostics, medical equipment, treatments and vaccines during the COVID-19 pandemic. For instance, during the peak of the COVID-19 first wave in Europe, Roche rejected a request from the Netherlands to release the recipe of key chemical reagents needed to increase the production of diagnostic kits. Another example was patent holders threatening producers of 3D printing ventilators with patent infringement lawsuits in Italy.20 The MSF also found that patents pose a severe threat to access to affordable versions of newer vaccines.21

The opponents of the TRIPS waiver also argue that IP is the incentive for innovation and if it is undermined, future innovation will suffer. However, most of the COVID-19 medical innovations, particularly vaccines, are developed with public financing assistance. Governments spent billions of dollars for COVID-19 vaccine research. Notably, out of $6.1 billion in investment tracked up to July 2021, 98.12 per cent was public funding.22 The US and Germany are the largest investors in vaccine R&D with $2.2 billion and $1.5 billion funding.

Private companies received 94.6 per cent of this funding; Moderna received the highest $956.3 million and Janssen $910.6 million. Moreover, governments also invested $50.9 billion for advance purchase agreements (APAs) as an incentive for vaccine development. A recent IMF working paper also notes that public research institutions were a key driver of the COVID-19 R&D effort—accounting for 70 per cent of all COVID-19 clinical trials globally.23 The argument is that vaccines are developed with the support of substantial public financing, hence there is a public right to the scientific achievements. Moreover, private companies reaped billions in profits from COVID-19 vaccines.

One could argue that since the US, Germany and other HICs are spending money, their citizens are entitled to get vaccines first, hence vaccine nationalism is morally defensible. Nonetheless, it is not the case. The TRIPS Agreement includes several provisions which mandates promotion of technology transfer from developed countries to LDCs. For instance, Article 7 states that "the protection and enforcement of IP rights should contribute to the promotion of technological innovation and the transfer and dissemination of technology, to the mutual advantage of producers and users of technical knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations."24 Similarly, Article 66.2 also mandates the developed countries to transfer technologies to LDCs to enable them to create a sound and viable technological base. The LMICs opened their markets and amended domestic patent laws favouring developing countries’ products against this promise of technology transfer.

Another argument against the proposed TRIPS waiver is that a waiver would not increase the manufacturing of COVID-19 vaccines. Indeed, one of the significant factors contributing to vaccine inequity is the lack of manufacturing capacity in the global south. Further, a TRIPS waiver will not automatically translate into improved manufacturing capacity. However, a waiver would be the first but essential step to increase manufacturing capacity worldwide. For instance, to export COVID-19 vaccine-related products, countries need to ensure that there are no IP restrictions at both ends – exporting and importing. The market for vaccine materials includes consumables, single-use reactors bags, filters, culture media, and vaccine ingredients. Export blockages on raw materials, equipment and finished products harm the overall output of the vaccine supply chain. If there is no TRIPS restriction, more governments and companies will invest in repurposing their facilities.

Similarly, the arguments such as that no other manufacturers can carry out the complex manufacturing process of COVID-19 vaccines and generic manufacturing as that would jeopardise quality, have also been proven wrong in the past. For instance, in the early 1990s, when Indian company Shantha Biotechnics approached a Western firm for a technology transfer of Hepatitis B vaccine, the firm responded that “India cannot afford such high technology vaccines… And even if you can afford to buy the technology, your scientists cannot understand recombinant technology in the least.”25 Later, Shantha Biotechnics developed its own vaccine at $1 per dose, and the UNICEF (United Nations Children’s Emergency Fund) mass inoculation programme uses this vaccine against Hepatitis B. In 2009, Shantha sold over 120 million doses of vaccines globally.

India also produces high-quality generic drugs for HIV/AIDS and cancer treatment and markets them across the globe. Now, a couple of Indian companies are in the last stage of producing mRNA (Messenger RNA) vaccines.26 Similarly, Bangladesh and Indonesia claimed that they could manufacture millions of COVID-19 vaccine doses a year if pharmaceutical companies share the know-how.27 Recently, Vietnam also said that the country could satisfy COVID-19 vaccine production requirements once it obtains vaccine patents.28 Countries like the United Arab Emirates (UAE), Turkey, Cuba, Brazil, Argentina and South Korea have the capacity to produce high-quality vaccines but lack technologies and know-how. However, Africa, Egypt, Morocco, Senegal, South Africa and Tunisia have limited manufacturing capacities, which could also produce COVID-19 vaccines after repurposing.

Moreover, COVID-19 vaccine IPR runs across the entire value chain – vaccine development, production, use, etc. A mere patent waiver may not be enough to address the issues related to its production and distribution. What is more important here is to share the technical know-how and information such as trade secrets. Therefore, the existing TRIPS flexibilities, such as compulsory and voluntary licensing, are insufficient to address this crisis. Further, compulsory licensing and the domestic legal procedures it requires is cumbersome and not expedient in a public health crisis like the COVID-19 pandemic.

India’s Role in Ensuring Vaccine Equity India's response to COVID-19 at the global level was primarily two-fold. First, its proactive engagements in the regional and international platforms. Second, its policies and programmes to provide therapeutics and vaccines to the world. Since the beginning of the COVID-19 pandemic, India has been advocating international cooperation and policy coordination in fighting it. For instance, in April 2020, India co-sponsored a UN resolution that called for fair and equitable access to essential medical supplies and future vaccines to COVID-19. Later, in October 2020, India also put pressure on developed countries with a joint WTO proposal for TRIPS waiver. India’s Vaccine Maitri initiative also aims vaccine equity. As of 29 May 2021, India has supplied 663.698 lakh doses of COVID-19 vaccines to 95 countries. It includes 107.15 lakh doses as a gift to more than 45 countries, 357.92 lakh doses by commercial sales, and 198.628 lakh doses to the COVAX facility.29 The COVAX initiative aims to ensure rapid and equitable access to COVID-19 vaccines for all countries, regardless of their income level. India has decided to supply 10 million doses of the vaccine to Africa and one million to the UN health workers under the COVAX facility. India has also removed the IPR of Covaxin that would help platforms like C-TAP once WHO and developed countries’ regulatory bodies approve the vaccine. If agreed, the waiver would benefit India in many ways. First, more vaccines will help the country to control the pandemic and its recurring waves. Second, it will be a boost to India's pharma industry, particularly the generic medicine industry. According to the Biotechnology Innovation Organization, 834 unique active compounds are involved in the current R&D of COVID-19 therapeutics, vaccines, and diagnostics. It means that thousands of new patents are awaited, and that will hinder India's ability to produce COVID-19 related medical products. Only through a waiver, this challenge can be addressed. Similarly, scientists note that mRNA is the future of vaccine technology. However, manufacturing mRNA vaccines involves complex processes and procedures. Only a very few Indian manufacturers have access to this technology; however, that too is limited. Once Indian companies have access to mRNA technology, it will help country’s generic medicine industry and boost India’s economy. Therefore, even if the WTO agrees on a waiver for a period shorter than proposed, India should accept it. In addition, mRNA vaccines can be produced in lesser time compared to the traditional vaccines. While traditional vaccines’ production takes four to five months, mRNA needs only six to eight weeks. Access to this technology will be vital for India in expediting the fight against COVID-19 and future pandemics. Finally, a waiver may strengthen India's diplomatic soft power. At present, what hinders India's Vaccine Maitri initiative is the scarcity of vaccines at home. On the other hand, China is increasing its standing in Africa, South America and the Pacific through vaccine diplomacy. The WHO approval of the Chinese vaccines and lack of access to vaccines by most developing countries, opens up huge space for China to do its vaccine diplomacy. Here, India should convince its Quad partners, particularly Australia and Japan, who oppose the waiver that vaccine production in developing countries through TRIPS waiver will enable the grouping to deliver its pledged billion doses of COVID-19 vaccine in the Indo-Pacific region. In short, the proposed waiver, if agreed, will help India in addressing the public health crisis by producing more vaccines and distributing them at home; economically, by boosting its generic pharmaceutical industry, and diplomatically, providing vaccines to the developing and least-developed countries. Therefore, India should use all available means and methods, from trade-offs to pressurising, to make the waiver happen.

#### Yes scale-up for covid.

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Currently many idle suppliers can’t begin vaccine production until they upgrade and repurpose existing manufacturing capacity for new technology. Opponents often argue that this step is the true barrier to rapid scale-up. One high-profile detractor, BIO President and CEO Michelle McMurry-Heath, argues that “handing [needy countries] the blueprint to construct a kitchen that — in optimal conditions — can take a year to build will not help us stop the emergence of dangerous new Covid variants.”

This argument ignores two core truths: In many cases, manufacturing capacity needs only repurposing which can take mere months. And Covid-19, at the current global response and vaccination rates, will be a threat for years.

Both truths suggest that we pass the blueprint and build the kitchen.

Facilitating structures to transfer technology and capacity are already in place. The WHO launched the mRNA technology transfer hub model last month to provide manufacturers in low- and middle-income countries with the financial, training, and logistical support needed to scale up vaccine manufacturing capacity. Scores of manufacturers in these countries have already expressed interest. This initiative, however, requires recipient manufacturers to acquire the IP necessary for mRNA technologies— which is currently missing.

#### Independently strategic patenting harms innovation incentives during pandemics – encourages reproduction of generics and decrease breakthroughs.

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As the COVID-19 pandemic is sweeping through the world, thousands of people urgently need access to affordable medicines. Based on past experience of treatments for other life-threatening diseases, there is a fear that access to any vaccines and treatment that may be developed in the future will be affected by patents, leading to unaffordably high prices. However, the problem of high drug prices is not new. It had been inflating healthcare budgets and posing a serious risk to the affordability and accessibility of medicines for society well before the pandemic.Footnote3 This problem is further exacerbated by the fact that, despite the alleged surge in investments into pharmaceutical R&D, current statistics indicate that the number of new breakthrough medicines is decreasing.Footnote4 On the other hand, the number of drugs that contain modifications of existing medicines is growing, demonstrating that pharmaceutical companies have been increasingly focusing their research on incremental drug development, rather than on breakthrough innovation.Footnote5 Various reasons for high drug prices and the growing focus on incremental innovation are put forward by pharmaceutical companies, including the complexity of drug discovery and development, as well as the expensive and lengthy regulatory procedures involved.Footnote6 While these reasons play an important role in this regard, some practices by pharmaceutical companies substantially contribute to this problem.Footnote7 In particular, pharmaceutical companies have been increasingly engaging in strategic patenting to delay or even block generic competition.Footnote8 These practices attracted the attention of the European Commission, which discussed them more than a decade ago in its 2009 Pharmaceutical Sector Inquiry Report.Footnote9 The Commission identified a series of patent strategies which it described as aiming “to extend the breadth and duration of [originators’] patent protection”Footnote10 and “to delay or block the market entry of generic medicine”.Footnote11 Such findings have fuelled debates as to whether these strategies may be deemed unlawful and violate EU competition rules, while also being justifiable business practices under patent law. Until today, no agreement has been reached either on the legality of these practices, or on an efficient legal tool to assess them. As a result, despite there being solid evidence that such strategies may block generic competition, allowing originators to maintain artificially high drug prices and preventing patients from accessing cheaper generics, they remain outside the ambit of the Commission’s activities. Instead, the Commission has been focusing on more straightforward patent-related practices, such as reverse payment agreements. This article argues that strategic patenting by pharmaceutical companies requires a long-overdue intervention by competition authorities. It aims to attract their attention to the harmful effects of strategic patenting. Specifically, it will contest the argument traditionally put forward by originator pharmaceutical companies that the intervention of competition law into patenting practices will reduce their incentives to innovate. The paper will argue to the contrary that, along with a more immediate negative effect in the form of high drug prices that is widely explored in the literature,Footnote12 strategic patenting also affects dynamic competition by stifling innovation. Importantly, it will be explained that the assessment of the effect of this practice should focus not only on innovation by originators, but should also take a wider market perspective by assessing its effect on follow-on innovation by generic companies. The latter argument is often overlooked. The paper will outline the current approach to strategic patenting that considers this practice lawful, and will provide arguments for the intervention of competition law. This, in turn, will open the possibility for competition authorities to investigate this practice in order to prevent its harmful effect on innovation and consumer welfare. Moreover, while patent law may provide certain mechanisms to deal with strategic patenting, such as raising the bar for patentability of pharmaceutical follow-on inventions,Footnote13 these tools may not be effective in all cases. Therefore, as will be explained further, competition law may be a more suitable tool to address the negative effects of strategic patenting.Footnote14 The article will be organised as follows. It will first discuss the complex structure of the pharmaceutical industry, focusing on its key players for the purpose of this article: originators and generic companies. It will further explore patenting practices employed by pharmaceutical companies and will define the notion of strategic patenting. The article will then argue that the latter strategy is against the rationale of patent and competition laws, as it stifles competition by impairing incentives to innovate of both originators and generic companies. Finally, it will discuss the current approach to strategic patenting that considers this practice lawful, and will argue that it should be subject to scrutiny under the rules of competition law, to address its negative effects. Pharmaceutical Innovation and Generic Competition in the Pharmaceutical Industry The pharmaceutical industry is unique in its complexity. It is characterised by heavy state regulation and, sometimes, by the competing interests of the pharmaceutical business and society. It also involves multiple actors, including originators,Footnote15 marketing authorisation bodies, generic companies,Footnote16 doctors, pharmacies and patients. Each of them plays their part in the lengthy and complicated process of transforming a chemical compound into an effective and affordable medicine, which is then prescribed, dispensed and consumed. In these complex relationships, the two key players have crucial roles. On the one hand, originators play an important role in developing new and improved medicines for the benefit of society. On the other hand, generic companies benefit society by supplying cheaper equivalents of the originators’ medicines, which leads to the reduction of drug prices and facilitates access to affordable medicines. When the interests of these two players are kept in balance, benefits are maximised for society, which receives innovative and improved medicines, as well as timely access to generic drugs. However, if the balance swings towards one of the players, then society loses out, as there will be insufficient access to either innovative or affordable medicines. Therefore, both pharmaceutical innovation and generic competition must be duly incentivised and protected. Moreover, these two elements of the pharmaceutical industry are constantly interacting and have a profound impact on each other. In particular, pharmaceutical innovation is the backbone of the pharmaceutical industry, in which originators play an important role. The process of drug development is long and complicated, requires significant investments, and bears considerable commercial risks.Footnote17 It is also highly regulated, including, among other things, the requirement for originators to obtain a special authorisation from a designated state authority to market a drug. Such marketing authorisations are granted to the originators only if they can prove that the drug is safe and effective, which typically requires lengthy and expensive clinical trials.Footnote18 In order to protect these significant efforts and investments, pharmaceutical companies rely heavily on the exclusivity granted by intellectual property rights, and in particular, patents.Footnote19 Patents provide a 20-year monopoly right, during which a pharmaceutical company enjoys market exclusivity and can charge a monopoly price for its products. Originators argue that strong patent protection is essential in order to recoup investments, as well as to incentivise them to engage in further innovation.Footnote20 Once such patent protection expires, however, other companies may develop generics of a branded drug, and start competing with the originator for the market. This is called generic competition. Generic drugs are bioequivalent versions of a branded drug that has lost its patent protection.Footnote21 It is estimated that the generic entry typically leads to, on average, an 80 per cent market share loss and a 20–30 per cent reduction of a drug price, with further price decreases with each additional generic entrant, leading, in some instances, to a fall in price of up to 90 per cent.Footnote22 A representative example of the effect of generic competition on the originators’ drug prices is the significant decrease in price and dramatic loss of profits by Eli Lilly. The expiration of a patent protecting its blockbusterFootnote23 antidepressant Prozac in 2001 resulted in a loss of almost 70 per cent of its market and $2.4 billion in annual U.S. sales.Footnote24 This effect of generic competition is beneficial for society, as it reduces the financial pressure on healthcare budgets and increases the accessibility of drugs. Patenting Practices by Pharmaceutical Companies As was mentioned above, generic competition is prevented during the life of a patent protecting an active compound of a drug (a so-called “basic” or “primary” patent).Footnote25 Such a basic patent covers an active ingredient itself and, therefore, provides the strongest protection for the product. Therefore, generic competition normally starts only after the basic patent expires, or if a generic company succeeds in invalidating it. While in the past pharmaceutical companies mainly protected their products with a single patent covering an active compound,Footnote26 they now increasingly seek additional patent protection on various aspects of a drugFootnote27 in order to protect their market position.Footnote28 Such additional patents are often called secondary patents.Footnote29 A pharmaceutical company may want to obtain secondary patents, which protect such aspects of a drug as, for example, its process of manufacture, formulation and/or specific form, etc. Therefore, even after the basic patent protecting an active compound expires, a drug may still be protected by other secondary patents. This may result in the extension of the scope and length of the protection of a product, especially if secondary patents have a later expiration date than a basic patent.Footnote30 This, in particular, may occur if, for example, the process of producing an active compound disclosed in the basic patent is sufficient only for reproducing this compound in a laboratory, but it is unsuitable for producing it on a large commercial scale.Footnote31 If the originator was able to secure a secondary patent that protects such a large scale manufacturing process, it would prevent generics from using this process for producing their generic versions of a drug; otherwise they would risk infringing this secondary patent.Footnote32 However, a unique feature of pharmaceuticals is that an active ingredient can be manufactured using different methods and processes, can exist in different forms or can be used in different formulations. Therefore, when a basic patent on an active ingredient expires, other companies can develop alternative methods of production, forms or formulations of this active compound and start competing with the originator company.Footnote33 While such patenting strategies by originators are lawful in principle, some of them may be problematic. In particular, in anticipation of the loss of patent protection, originators may engage in strategic patenting which artificially prevents generic competition and results in an extension of their market monopoly.Footnote34 Defining Strategic Patenting In its Sector Inquiry Report, the European Commission explained that the drug development process consists of three main stages: (i) the R&D stage, which ends with the launch of a drug on the market; (ii) the period between the launch and the patent expiry; and (iii) the period after the patent expiration, when generics can enter the market.Footnote35 During the second stage, i.e. after the launch of a drug, originators seek to maximise their income from the product in order to recoup their R&D investments and earn profits before the commencement of generic competition.Footnote36 It is also during this stage that pharmaceutical companies seek to prolong their market exclusivity. In recent years, pharmaceutical companies have been increasingly relying on the strategic use of the patent system to combat the pressure of generic competition. Such practices are often called “life cycle management” by originators and proponents of the practice. For example, as Burdon and Sloper explained, “[a] key element of any life cycle management strategy … is to extend patent protection beyond the basic patent term for as long as possible, by filing secondary patents which are effective to keep generics off the market”.Footnote37 However, critics have characterised the practice as “evergreening”,Footnote38 as it essentially evergreens the patent protection and the exclusivity of a product.Footnote39 For instance, Bansal et al. explain that evergreening “refers to different ways wherein patent owners take undue advantage of the law and associated regulatory processes to extend their IP monopoly, particularly over highly lucrative ‘blockbuster’ drugs, by filing disguised/artful patents on an already patent-protected invention shortly before expiry of the ‘parent’ patent”.Footnote40 During its investigation into the pharmaceutical industry, the European Commission found that the number of patents granted and pending applications significantly increases with the value of a drug, i.e. “blockbuster medicines can even be protected by up to nearly 100 INNFootnote41-specific EPO patented bundles and applications …, which in one particular case led to 1,300 patents and applications across all the EU Member States”.Footnote42 The Commission also found that the ratio of primary to secondary patents is 1:7, where the latter “mostly concern formulations, processes and non-formulation products…, such as salts, polymorphic forms, particles, solvates and hydrates”.Footnote43 As a result, the Commission concluded that the practice of “maximising patent coverage in such a way is the creation of a web of patents”, which affects the generics’ ability to “develop a generic version of the medicine in form of a salt, crystalline or amorphous form”, because it “would inevitably infringe a patent (for example, a patent for the relevant salt, crystalline or amorphous form of the medicine)”.Footnote44 Each of such patents would typically have a later expiration date, which effectively extends a period of market exclusivity beyond the expiration of a basic patent.Footnote45 In addition, most of these patents that protect such follow-on modifications are so-called “sleeping” patents, i.e. patents which a company has no intention of commercialising.Footnote46 Moreover, such modifications may provide little or no therapeutic benefits to the patient compared to the original drug.Footnote47 Nevertheless, such patents allow originators to secure the most efficient, broadest and longest possible protection for their successful products.Footnote48 The denser the web of secondary patents, the more difficult it is for generics to develop their generic equivalents, even if they know that only a few patents of a large portfolio would, in fact, be valid and infringed by their products.Footnote49 Despite such knowledge, it is impossible to be certain before introducing a generic whether this will be the case and, thus, whether the generic company will be subject to injunctions preventing the sale of their generic products.Footnote50 Such practice, therefore, provides an appreciable competitive advantage for originators by creating a significant legal and commercial uncertainty for generics in relation to the possibility of their market entry.Footnote51 This paper argues that such a strategic use of the patent system by pharmaceutical companies is against the shared goal of patent and competition laws of facilitating innovation for the benefit of society. As will be explained further, in addition to a more immediate negative effect in the form of high drug prices, strategic patenting may also impair innovation by reducing originators’ incentives to innovate, and affecting generics’ ability to develop alternative generic products. Strategic patenting, therefore, may enable originators to avoid competitive pressures by preventing generic competition without a need to engage in genuine innovation. Strategic Patenting Contradicts the Rationale of the Patent System and Competition Law In the competitive markets, the success of a company is based on its business performance.Footnote52 In order to compete on performance by “offering better quality and a wider choice of new and improved goods and services”Footnote53 firms must innovate. Realising the importance of protecting innovation, which is considered to be the main driver of economic growth,Footnote54 states have put in place various mechanisms to ensure a suitable environment for its advancement. These include granting the property rights to the results of innovation in the form of patents, as well as implementing competition law rules to stimulate dynamic competition.Footnote55 Specifically, one of the main justifications for the patent system is the encouragement of innovationFootnote56 that serves as an engine for economic growth and development.Footnote57 The patent system pursues this aim by offering the patent owners a period of exclusive rights as a reward for their innovative efforts and an incentive to engage in further innovation.Footnote58 Therefore, intellectual property rules, and patents in particular, are seen as an essential element of undistorted competition on the internal market.Footnote59 These exclusive rights are considered to be a necessary incentive to invest in R&D and innovation, particularly in such sectors as pharmaceuticals, where the R&D costs are high, but the costs of copying the R&D results are marginal.Footnote60 At the same time, the “innovation theory”, embodied in the EU competition law rules and policy, is designed to stimulate innovation by fostering competition on the markets.Footnote61 The competition law rules keep markets innovative by maintaining effective competition through preventing the foreclosure of markets and maintaining access to them.Footnote62 The rationale is that firms react to pressures of competition by continuously seeking to innovate.Footnote63 Therefore, patent and competition laws complement each other, as on the one hand, existing competition creates pressures on firms, forcing them to innovate, the so-called “stick”, while on the other hand, patent law provides a “carrot” in the form of the exclusive right, thus inducing innovators to innovate.Footnote64 These two bodies of laws are seen as “complementary efforts to promote an efficient marketplace and long-run, dynamic competition through innovation”.Footnote65 As the European Commission noted “both intellectual property rights and competition are necessary to promote innovation and ensure a competitive exploitation thereof”.Footnote66 These two bodies of laws, therefore, have the same fundamental goal of enhancing innovation for the benefit of consumer welfare. Importantly, patent and competition laws are designed to stimulate not only innovation of “pioneer” innovators, but they are also aimed at facilitating follow-on innovation.Footnote67 Patent law contains provisions that require inventors to disclose information about their inventions, as well as providing exceptions such as experimental use and compulsory licensing, which allow third parties to access the inventions still under patent protection.Footnote68 Therefore, along with pioneer innovators, the rationale of incentives to innovate in patent law also applies to follow-on innovators, balancing the interests of these two types of inventors.Footnote69 Similarly, competition law aims at stimulating all types of innovation, including follow-on innovation. On the other hand, EU competition law proscribes practices that reduce incentives to innovate both for “pioneer” and follow-on innovators. This is enshrined in Art. 102(b) TFEU, which prohibits abuses that consist of, inter alia, limiting technological development. For example, in AstraZeneca the General Court considered that the company’s practice of misusing the patent system had the potential of reducing its incentives to innovate and was anticompetitive.Footnote70 In MagillFootnote71 and Microsoft,Footnote72 the courts found that the IP rights owners abused their dominant positions by blocking innovation of their potential competitors. More recently, several decisions by the European Commission also emphasised the importance of protecting innovation. In January 2018, the Commission fined QualcommFootnote73 €997 million for abusing its market dominance in LTEFootnote74 baseband chipsets.Footnote75 The Commission considered that the exclusivity payments that Qualcomm paid to Apple denied rivals the possibility to compete on the merits, and deprived European consumers of genuine choice and innovation.Footnote76 Furthermore, in July 2018, the Commission found in Google Android that Google abused its dominant position, and fined the company €4.34 billion for anticompetitive restrictions it had imposed on mobile device manufacturers and network operators to strengthen its dominant position in general internet search.Footnote77 The Commission considered that Google’s restrictive practices denied other companies the chance to compete on the merits and innovate.Footnote78 Finally, in 2017 the Commission issued its decision, in which it took the view that Amazon abused its dominant positions on the markets for the retail distribution of e-books by inserting the so-called “parity clauses” in the agreements with its e-book suppliers.Footnote79 It concluded that these clauses had the potential of reducing the incentives to innovate both by e-book suppliers and retailers.Footnote80 These decisions demonstrate that the European Commission recognises the fundamental importance of protecting innovation. They confirm that strategies that are capable of stifling innovation and reducing the incentives to innovate may constitute an abuse of dominance under Art. 102 TFEU. It is argued in this article that, along with the practices condemned by the Commission in the decisions discussed above, strategic patenting can also harm innovation by impairing incentives to innovate of both originators and generic companies, and therefore should raise competition law concerns. Strategic Patenting Impairs Originators’ Incentives to Innovate While originator companies typically argue that the competition law intervention into their patenting practices will reduce their incentives to innovate,Footnote81 this article asserts that strategic patenting itself reduces originators’ incentives. Thus, in a properly functioning system, when a patent protecting a product is close to expiration the originator would be encouraged to innovate further in order to introduce a new product on the market and maintain its competitive position. However, by engaging in strategic patenting, the originator’s incentive to innovate diminishes as it enjoys its monopoly position by merely procuring numerous secondary patents that shield its current product from generic competition. Therefore, when companies engage in such strategic patenting, they are merely protecting themselves from the competitive pressures that competition law aims to establish. Maintaining that this practice is lawful, originators argue that strong patent protection is essential for recouping their investments, as well as for incentivising them to engage in further innovation.Footnote82 Such a position may find some support in the arguments put forward by Joseph Schumpeter and his followers, who claimed that since monopoly increases the reward of the innovator, monopolists are more prone to innovation.Footnote83 However, as Lowe noted:Footnote84 the empirical evidence of the past few decades has worked against Schumpeter and in favor of Kenneth Arrow, who contends that in favoring monopolies Schumpeter underestimated the incentives for innovation that competition can offer. Monopolists tend to want to keep their monopolies by resorting to any measures that can keep new entrants out. Firms under competitive pressure from actual or potential competition, on the other hand, are less complacent and know that inventing a new product is their best strategy for maintaining and increasing their market share. In the same vein, the Commission emphasises the importance of competition for the incentives to innovate, stating that: “[r]ivalry between undertakings is an essential driver of economic efficiency, including dynamic efficiencies in the form of innovation. In its absence the dominant undertaking will lack adequate incentives to continue to create and pass on efficiency gains.”Footnote85 Evidence from the pharmaceutical industry confirms that strategic patenting reduces incentives to engage in genuine and meritorious innovation. In many cases, strategically accumulated secondary patents are of marginal quality and are typically the result of routine research activities.Footnote86 For example, in Perindopril the European Commission revealed that most of the secondary patents, procured as part of the originator company’s anti-generic strategy, were seen by the company as “blocking” or “paper”, some of which it considered involved “zero inventive step”Footnote87 and a purely editorial task.Footnote88 Moreover, these follow-on pharmaceutical inventions are specifically timed around the expiration of the basic patent and can be developed on demand.Footnote89 In AstraZeneca the Commission noted that the company designed to “[f]ile a patent-cloud of mixtures, uses, formulations, new indications, and chemistry” in relation to its blockbuster product omeprazole to slow down generic entry at a specifically defined time, close to the expiration of the basic patent.Footnote90 The main aim of these patents is to increase uncertainty for generic companies as to the possibility of their market entry.Footnote91 Therefore, while many of these secondary patents may be trivial and potentially invalid, the originator pursues them to protect its current successful product from generic competition.Footnote92 Even if a company continues to engage in innovation in parallel to pursuing strategic patenting, it still protects itself from the pressures of competition, which would have forced the company to innovate faster and would thus provide consumers with better products and/or access to cheaper generic versions earlier. As Ullrich argues:Footnote93 A slowdown in the transition of the new medicines from the protected status of a proprietary medicine to the status of generic products manufactured and distributed in open competition does not simply mean a loss of static efficiency, namely a loss of consumer well-being due to a slowdown in the reduction of process. Rather, such a slowdown also involves the risk of a loss of dynamic efficiency in that it extends the duration of a monopoly rent situation, thus reducing the pressure to innovate more quickly. Following the rationale of the General Court’s statement in AstraZeneca, the practice of the originator that extends its market monopoly by relying on the patent system “potentially reduces the incentive to engage in innovation, since it enables the company in a dominant position to maintain its exclusivity beyond the period envisaged by the legislator”.Footnote94 Such practices, according to the Court, act “contrary to the public interest”.Footnote95 Therefore, the practice of strategic patenting that protects originators’ monopolies from competitive pressures and significantly reduces their incentives to engage in genuine innovation is contrary to the rationale of the patent system, has a significant negative effect on competition and should raise competition law concerns. Strategic Patenting Impairs Follow-on Innovation of Generic Companies Strategic patenting also has a chilling effect on follow-on innovation by generic competitors in the form of developing alternative versions of an off-patent compound. As was discussed earlier, the expiry of a basic patent that protects an active compound facilitates generic competition. This is because even if the product is still protected by process, specific form or formulation patents, generic companies may develop alternative ways of producing or formulating the product and start competing with the originator. In the absence of strategically accumulated patents by the originator, generic companies are typically open to innovating to launch alternative generic products as soon as the basic patent expires. However, by pursuing strategic patenting, originators may discourage generics from engaging in follow-on innovation because of the uncertainty about the patent protection and a fear of infringing on one of the numerous patents.Footnote96 In its Sector Inquiry Report, the Commission cited the following quote from one of the originators: The entire point of the patenting strategy adopted by many originators is to remove legal certainty. The strategy is to file as many patents as possible on all areas of the drug and create a “minefield” for the generics to navigate. All generics know that very few patents in that larger group will be valid and infringed by the product they propose to make, but it is impossible to be certain prior to launch that your product will not infringe and you will not be the subject of an interim injunction.Footnote97 Therefore, as a result of creating an impenetrable ring of patent protection by the originator,Footnote98 generic competitors may be prevented from developing alternative generic versions of an off-patent compound. One of the examples revealed by the Commission during its Pharmaceutical Sector Inquiry was the filing by an originator company of “more than 30 patent families translating into several hundreds of patents in the Member States in relation to one product”, many of which were filed after the introduction of the product.Footnote99 This affected the intentions of several generic companies that planned to develop and bring their generic versions of the original product to the market.Footnote100 As a result, in addition to the already high barriers to entry into the pharmaceutical market due to patents that protect an existing product and the need to obtain a marketing authorisation, strategic patenting raises these entry barriers further, making it very difficult for generic companies to overcome them. This strategy, therefore, “may without further enforcement action by originator companies, … delay generic entry until the patent situation is clearer or even discourage more risk-sensitive generic companies from entering altogether”.Footnote101 Consequently, the fact that actual or potential competitors of originators would not be able to develop alternative generic products means that no one could enter the market and challenge originators’ monopoly positions. This results in a weakening of competition in the relevant market and a strengthening of the originator’s already dominant position. As Maggiolino put it, “patent accumulation … may work as a pre-emptive entry-deterrence strategy to protect monopoly power and … lower consumer welfare by allowing dominant firms to keep on charging over-competitive prices”.Footnote102 Therefore, when an array of accumulated secondary patents “blocks monopolists’ rivals from producing follow-on innovations, this strategy prevents the whole society from enjoying … these further innovations”.Footnote103 While practices that facilitate innovation are encouraged by competition law, practices that are aimed at blocking follow-on innovation by competitors should raise competition law concerns.

#### Corona escalates security threats that cause extinction – cooperation thesis is wrong.

Recna 21 [Research Center for Nuclear Weapon Abolition; Nagasaki, Japan; “Pandemic Futures and Nuclear Weapon Risks: The Nagasaki 75th Anniversary pandemic-nuclear nexus scenarios final report,” Journal for Peace and Nuclear Disarmament; 5/28/21; <https://www.tandfonline.com/doi/full/10.1080/25751654.2021.1890867>] Justin

The Challenge: Multiple Existential Threats

The relationship between pandemics and war is as long as human history. Past pandemics have set the scene for wars by weakening societies, undermining resilience, and exacerbating civil and inter-state conflict. Other disease outbreaks have erupted during wars, in part due to the appalling public health and battlefield conditions resulting from war, in turn sowing the seeds for new conflicts. In the post-Cold War era, pandemics have spread with unprecedented speed due to increased mobility created by globalization, especially between urbanized areas. Although there are positive signs that scientific advances and rapid innovation can help us manage pandemics, it is likely that deadly infectious viruses will be a challenge for years to come.

The COVID-19 is the most demonic pandemic threat in modern history. It has erupted at a juncture of other existential global threats, most importantly, accelerating climate change and resurgent nuclear threat-making. The most important issue, therefore, is how the coronavirus (and future pandemics) will increase or decrease the risks associated with these twin threats, climate change effects, and the next use of nuclear weapons in war.5

Today, the nine nuclear weapons arsenals not only can annihilate hundreds of cities, but also cause nuclear winter and mass starvation of a billion or more people, if not the entire human species. Concurrently, climate change is enveloping the planet with more frequent and intense storms, accelerating sea level rise, and advancing rapid ecological change, expressed in unprecedented forest fires across the world. Already stretched to a breaking point in many countries, the current pandemic may overcome resilience to the point of near or actual collapse of social, economic, and political order.

In this extraordinary moment, it is timely to reflect on the existence and possible uses of weapons of mass destruction under pandemic conditions – most importantly, nuclear weapons, but also chemical and biological weapons. Moments of extreme crisis and vulnerability can prompt aggressive and counterintuitive actions that in turn may destabilize already precariously balanced threat systems, underpinned by conventional and nuclear weapons, as well as the threat of weaponized chemical and biological technologies. Consequently, the risk of the use of weapons of mass destruction (WMD), especially nuclear weapons, increases at such times, possibly sharply.

The COVID-19 pandemic is clearly driving massive, rapid, and unpredictable changes that will redefine every aspect of the human condition, including WMD – just as the world wars of the first half of the 20th century led to a revolution in international affairs and entirely new ways of organizing societies, economies, and international relations, in part based on nuclear weapons and their threatened use. In a world reshaped by pandemics, nuclear weapons – as well as correlated non-nuclear WMD, nuclear alliances, “deterrence” doctrines, operational and declaratory policies, nuclear extended deterrence, organizational practices, and the **existential risks** posed by retaining these capabilities – are all up for redefinition.

A pandemic has potential to destabilize a nuclear-prone conflict by incapacitating the supreme nuclear commander or commanders who have to issue nuclear strike orders, creating uncertainty as to who is in charge, how to handle nuclear mistakes (such as errors, accidents, technological failures, and entanglement with conventional operations gone awry), and opening a brief opportunity for a first strike at a time when the COVID-infected state may not be able to retaliate efficiently – or at all – due to leadership confusion. In some nuclear-laden conflicts, a state might use a pandemic as a cover for political or military provocations in the belief that the adversary is distracted and partly disabled by the pandemic, increasing the risk of war in a nuclear-prone conflict. At the same time, a pandemic may lead nuclear armed states to increase the isolation and sanctions against a nuclear adversary, making it even harder to stop the spread of the disease, in turn creating a pandemic reservoir and transmission risk back to the nuclear armed state or its allies.

In principle, the common threat of the pandemic might induce nuclear-armed states to reduce the tension in a nuclear-prone conflict and thereby the risk of nuclear war. It may cause nuclear adversaries or their umbrella states to seek to resolve conflicts in a cooperative and collaborative manner by creating habits of communication, engagement, and mutual learning that come into play in the nuclear-military sphere. For example, militaries may cooperate to control pandemic transmission, including by working together against criminal-terrorist non-state actors that are trafficking people or by joining forces to ensure that a new pathogen is not developed as a bioweapon.

To date, however, the COVID-19 pandemic has increased the isolation of some nuclear-armed states and provided a textbook case of the failure of states to cooperate to overcome the pandemic. Borders have slammed shut, trade shut down, and budgets blown out, creating enormous pressure to focus on immediate domestic priorities. Foreign policies have become markedly more nationalistic. Dependence on nuclear weapons may increase as states seek to buttress a global re-spatialization6 of all dimensions of human interaction at all levels to manage pandemics. The effect of nuclear threats on leaders may make it less likely – or even impossible – to achieve the kind of concert at a global level needed to respond to and administer an effective vaccine, making it harder and even impossible to revert to pre-pandemic international relations. The result is that some states may proliferate their own nuclear weapons, further reinforcing the spiral of conflicts contained by nuclear threat, with cascading effects on the risk of nuclear war.

### 1AC – Adv – WTO Legitimacy

#### The plan is critical to boosting WTO legitimacy.

Navnit 21 [Brajendra; Ambassador and Permanent Representative of India to WTO; “Science has delivered, will the WTO deliver?” Helsinki Times; 1/18/21; <https://www.helsinkitimes.fi/columns/columns/viewpoint/18561-science-has-delivered-will-the-wto-deliver.html>] Justin

TRIPS waiver proposal from India, South Africa and other members A proposal by India, South Africa and eight other countries calls on the World Trade Organisation (WTO) to exempt member countries from enforcing some patents, and other Intellectual Property (IP) rights under the organization’s Agreement on Trade-Related Aspects of Intellectual Property Rights, known as TRIPS, for a limited period of time. It is to ensure that IPRs do not restrict the rapid scaling- up of manufacturing of COVID-19 vaccines and treatments. While a few members have raised concerns about the proposal, a large proportion of the WTO membership supports the proposal. It has also received the backing of various international organizations, multilateral agencies and global civil society. Unprecedented times call for unorthodox measures. We saw this in the efficacy of strict lockdowns for a limited period, as a policy intervention, in curtailing the spread of the pandemic.International Monetary Fund (IMF) in its October 2020 edition of World Economic Outlook states “…However, the risk of worse growth outcomes than projected remains sizable. If the virus resurges, progress on treatments and vaccines is slower than anticipated, or countries’ access to them remains unequal, economic activity could be lower than expected, with renewed social distancing and tighter lockdowns”. The situation appears to be grimmer than predicted, we have already lost 7% of economic output from the baseline scenario projected in 2019. It translates to a loss of more than USD 6 trillion of global GDP. Even a 1% improvement in global GDP from the baseline scenario will add more than USD 800 billion in global output, offsetting the loss certainly of a much lower order to a sector of economy on account of the Waiver. "While making the vaccines available was a test of science, making them accessible and affordable is going to be a test of humanity" Merely a signal to ensure timely and affordable access to vaccines and treatments will work as a big confidence booster for demand revival in the economy. With the emergence of successful vaccines, there appears to be some hope on the horizon. But how will these be made accessible and affordable to global population? The fundamental question is whether there will be enough of Covid-19 vaccines to go around. As things stand, even the most optimistic scenarios today cannot assure access to Covid-19 vaccines and therapeutics for the majority of the population, in rich as well as poor countries, by the end of 2021. All the members of the WTO have agreed on one account that there is an urgent need to scale-up the manufacturing capacity for vaccines and therapeutics to meet the massive global needs. The TRIPS Waiver Proposal seeks to fulfil this need by ensuring that IP barriers do not come in the way of such scaling up of manufacturing capacity. Why existing flexibilities under the TRIPS Agreement are not enough The existing flexibilities under the TRIPS Agreement are not adequate as these were not designed keeping pandemics in mind. Compulsory licenses are issued on a country by country, case by case and product by product basis, where every jurisdiction with an IP regime would have to issue separate compulsory licenses, practically making collaboration among countries extremely onerous. While we encourage the use of TRIPS flexibilities, the same are time-consuming and cumbersome to implement. Hence, only their use cannot ensure the timely access of affordable vaccines and treatments. Similarly, we have not seen a very encouraging progress on WHO’s Covid19-Technology Access Pool or the C-TAP initiative, which encourages voluntary contribution of IP, technology and data to support the global sharing and scale-up of the manufacturing of COVID- 19 medical products. Voluntary Licenses, even where they exist, are shrouded in secrecy. Their terms and conditions are not transparent. Their scope is limited to specific amounts or for a limited subset of countries, thereby encouraging nationalism rather than true international collaboration. Why is there a need to go beyond existing global cooperation initiatives? Global cooperation initiatives such as the COVAX Mechanism and the ACT-Accelerator are inadequate to meet the massive global needs of 7.8 billion people. The ACT-A initiative aims to procure 2 billion doses of vaccines by the end of next year and distribute them fairly around the world. With a two-dose regime, however, this will only cover 1 billion people. That means that even if ACT-A is fully financed and successful, which is not the case presently, there would not be enough vaccines for the majority of the global population. Past experience During the initial few months of the current pandemic, we have seen that shelves were emptied by those who had access to masks, PPEs, sanitizers, gloves and other essential Covid-19 items even without their immediate need. The same should not happen to vaccines. Eventually, the world was able to ramp up manufacturing of Covid-19 essentials as there were no IP barriers hindering that. At present, we need the same pooling of IP rights and know-how for scaling up the manufacturing of vaccines and treatments, which unfortunately has not been forthcoming, necessitating the need for the Waiver. It is the pandemic – an extraordinary, once in a lifetime event – that has mobilized the collaboration of multiple stakeholders. It is knowledge and skills held by scientists, researchers, public health experts and universities that have enabled the cross-country collaborations and enormous public funding that has facilitated the development of vaccines in record time – and not alone IP! Way forward The TRIPS waiver proposal is a targeted and proportionate response to the exceptional public health emergency that the world faces today. Such a Waiver is well-within the provisions of Article IX of the Marrakesh Agreement which established the WTO. It can help in ensuring that human lives are not lost for want of a timely and affordable access to vaccines. The adoption of the Waiver will also re-establish WTO’s credibility and show that multilateral trading system continues to be relevant and can deliver in times of a crisis. Now is the time for WTO members to act and adopt the Waiver to save lives and help in getting the economy back on the revival path quickly. While making the vaccines available was a test of science, making them accessible and affordable is going to be a test of humanity. History should remember us for the “AAA rating” i.e. for Availability, Accessibility and Affordability of Covid19 vaccines and treatments and not for a single “A rating” for Availability only. Our future generations deserve nothing less.

#### Intellectual property protections form dominant apparatuses of power that disseminates indigenous knowledge and informs racialized actions against minorities.

Breske 18 Breske, Ashleigh. “Biocolonialism: Examining Biopiracy, Inequality, and Power.” Spectra, vol. 6, no. 2, 2018, pp. 1–3., doi:10.21061/spectra.v6i2.a.6./SJKS // Rehighlighted Justin

Introduction: Political Structures Creating a Space for Biopiracy Through examples of epistemic exploitation and a review of current literature on biocolonialism, this paper will highlight issues of indigenous knowledge and resource appropriation and how they relate to neoliberal economic practices. According to Lorenzo Veracini, the least visible types of colonial subjugation, like informal colonialism and trade imperialism, are the most resistant to change.i This is especially true for biocolonialism, which arises through the dominant discourse of neoliberal economic practices around the world. This form of colonialism is based on the exploitation and extraction of traditional resources and knowledge through western conceptions of property ownership. Neoliberalism has created a polarization in the world through conflicts between ethnicities and socio-economic levels, resulting in a dichotomy between the Global North and the Global South. Concepts of western legal practices, intellectual property rights, national property laws, and biotechnology innovations create a system of biocolonialism with the dominant North capitalizing on these policies and practices.ii This has adversely affected the Global South in many ways and acts as an ideology promoting profit and economic growth at the expense of the marginalized. The shift to neoliberalism has increased the divide between the developed and developing world and the “ideology of the market, and the omnipresence of market forces, have left an indelible mark on the western conception of knowledge.”iii Power is often in the hands of transnational corporations and lobbyist groups with the global economy becoming larger than individual nation-state economies.iv Cori Hayden theorizes that bioprospecting is “an important site for thinking about how neoliberalism works.”v For Hayden, biopiracy is an institutionalized practice garnering transnational capital. In other words, the opening of the market on biodiversity is argued to be both a development strategy and an argument for conservation within an economic framework. For example, in Peru, foreign corporations have filed more than 11,690 patents on natural resources traditionally used by indigenous communities.vi Corporate interest in medicinal plants and seeds stems from long-term economic goals. This example illustrates the current trend of outside transnational corporations showing an interest in traditionally-used medicinal plants and seeds. Within the globalized economy, free trade agreements create a power imbalance between multinational corporations (MNCs) and the indigenous communities holding traditional knowledges and resources. Since indigenous knowledge is disseminated among the community and no one person owns it in the western, legal sense,vii MNCs use bioprospecting projects in areas with rich biodiversity for future development of products.viii It has been found that bioprospecting success rates greatly increase with the inclusion of indigenous knowledge or local guidance. These endeavors are financed as exploratory enterprises to find aspects of biodiversity and indigenous knowledge as resources that can be patented and used for future development. Bioprospecting can be considered a form of colonization using a “knowledge-based economy” with profit sought through marginalized peoples and their traditional resources.ix But, according to Hayden, “[b]ioprospecting is the new name for an old practice: it refers to corporate drug development based on medicinal plants, traditional knowledge, and microbes culled from the “biodiversity- rich” regions of the globe—most of which reside in the so-called developing nations.” (Hayden 2003, 1). Bioprospecting can quickly lead to biopiracy, or the appropriation of traditional knowledge and natural resources without due compensation.x Biopiracy—and by extension, the intellectual property and patent system—is essentially a new apparatus of power used by MNCs. Bioprospectors make claims on biological resources based on the assumption that the resources are available and open to everyone.xi Initially, corporations present themselves as the protectors and innovators of these “universally” valuable resources. They claim that if it were not for their investments, the information and original sources might be lost. However, it was only after the development of international patents and free trade agreements that indigenous groups understood their exclusion from the economic yields gained by utilizing their knowledge.xii Essentially, biocolonialism, in the form of pharmaceutical and agricultural industry development by transnational corporations, is a “continuation of the oppressive power relations that have historically informed the interactions of western and indigenous cultures, and part of a continuum of contemporary practices that constitute forms of cultural imperialism.”xiii More simply, it is a form of dispossession and conquest through the lens of neoliberalism. Writing in 1993, Vandana Shiva published Monocultures of the Mind: Perspectives on Biodiversity and Biotechnology, which argued that the Global North was having a detrimental impact on the Global South’s environment and traditional systems of food cultivation and societal relationships. She would later write Biopiracy: The Plunder of Nature and Knowledge (1997) further exploring the impact the North makes on the South through exploitative appropriation (biopiracy). Counterclaims made by researchers and corporations argue that bioprospecting is for the common good and it creates hybrid knowledges by implementing indigenous practices and knowledges into western understandings of capital.xiv But, authors writing about biopiracy continually highlight the colonial dynamics for marginalized or indigenous peoples through the extraction of knowledge or resources and hopes for altering the power imbalance: “...indigenous activists, engaged ethnoscientists and legal scholars, and nongovernmental organizations have thus attempted to pry open the exclusive hold that Northern, corporate entities have had on intellectual property rights.”xv Indigenous knowledge is disempowered through its cooption by the MNCs and wealthy nation- states and then legitimized when attached to the legacy of western knowledge and technological advances. It is viewed as primitive, or localized, until MNCs produce wealth with what they have found. Through biopiracy and patents, the global “free” market allows these corporate practices to establish a form of biocolonialism, which becomes a continuation of previous imperialism as a technologically-advanced, biologically-controlled hold on indigenous communities. According to Shiva, “Biodiversity has been redefined as “biotechnological inventions” to make the patenting of life-forms appear less controversial.”xvi Power for transnational colonizers, previously grounded in colonial assumptions of race, gender, domination, etc., is now based in the value of resources and knowledge under biocolonialism.

#### WTO cred solves wars that go nuclear.

Hamann 09 [Georgia; 2009; J.D. Candidate, Vanderbilt University Law School; “Replacing Slingshots with Swords: Implications of the Antigua-Gambling 22.6 Panel Report for Developing Countries and the World Trading System,” VANDERBILT JOURNAL OF TRANSNATIONAL LAW, http://www.jogoremoto.pt/docs/extra/duqJ53.pdf] Justin

Both Antigua and the U.S. claimed the resolution of the arbitration as a victory.99 In reality, the decision reached a midpoint between the respective countries’ positions, establishing a victory for the evolution of the international trading system itself. Voluntary compliance with WTO rules and procedures is of the utmost importance to the international trading system.100 Given the increasingly globalized market, the coming years will see an increase in the importance of the WTO as a cohesive force and arbiter of disputes that likely will become more frequent and injurious.101 The work of the WTO cannot be overstated in a nuclear-armed world, as the body continues to promote respect and even amity among nations with opposing philosophical goals or modes of governance.102 Demagogues in the Unites States may decry the rise of China as a geopolitical threat,103 and extremists in Russia may play dangerous games of brinksmanship with other great powers, but trade keeps politicians’ fingers off “the button.”104 The WTO offers an astounding rate of compliance for an organization with no standing army and no real power to enforce its decisions, suggesting that governments recognize the value of maintaining the international construct of the WTO.105 In order to promote voluntary compliance, the WTO must maintain a high level of credibility.106 Nations must perceive the WTO as the most reasonable option for dispute resolution or fear that the WTO wields enough influence to enforce sanctions.107 The arbitrators charged with performing the substantive work of the WTO by negotiating, compromising, and issuing judgments are keenly aware of the responsibility they have to uphold the organization’s credibility.108

### 1AC – Plan

#### Plan text: The member nations of the World Trade Organization ought to reduce intellectual property protections for medicines during pandemics.

#### Enforcement through limited IP waivers solve – patent term extensions are normal means and solves innovation and scale-up.

Young and Potts-Szeliga 21 [Roberta; Counsel in Seyfarth’s Litigation department and Intellectual Property and Patent Litigation practice groups in Los Angeles; Jamaica Potts-Szeliga; Partner in Seyfarth’s Litigation department and Intellectual Property and Patent Litigation practice groups in Washington, DC. She also provides advice on FDA regulatory issues and is part of the firm’s Health Care, Life Sciences, and Pharmaceuticals team; “A Third Option: Limited IP Waiver Could Solve Our Pandemic Vaccine Problems,” IP Watch Dog; 7/21/21; <https://www.ipwatchdog.com/2021/07/21/third-option-limited-ip-waiver-solve-pandemic-vaccine-problems/id=135732/>] Justin

Limited Waiver Approach

This article suggests a third option, between voluntary vaccine donation and the full IP waiver proposal, that may offer a way forward. The third proposed solution is incentivized limited IP waivers that could encourage (or require) private companies to engage in licensing agreements with nations to share some, but not all, of the knowledge and designs covering the COVID-19 vaccines to the developing world. The limited IP waivers could cover the minimum necessary portions of the technology to produce basic COVID-19 vaccines. The waivers could be limited in time to the duration of the pandemic, or another term agreed to by the WTO. The term could also be defined as ending when widespread vaccination and immunity goals are achieved. The incentive for pharmaceutical companies to support such limited IP waivers could be provided in the form of patent term extensions for the technology covered by the limited IP waivers.

Extensions of patent term are already known and widely used. In the U.S., patent term adjustments are automatically added on to the patent lifespan to account for any delays by the USPTO in the patent prosecution process. In some cases, these mechanisms may extend the patent term for years. Patent term extensions also are available for regulatory delays (35 U.S.C. § 156). In particular, patents covering, inter alia, drug products approved by the United States Food & Drug Administration may be eligible for up to five years of additional patent term to give back time required to complete the regulatory review process. Both patent term adjustments and patent term extensions arise from activities beyond the control of the pharmaceutical companies. A pandemic patent term extension fashioned after such known extensions could be made used to compensate for the current pressing global health needs.

This third proposal may be achievable at the WTO. Hurdles remain and it could be months or years before the WTO reaches an agreement on any waiver of IP protections, and years before countries build factories, gather materials, and gain the expertise to produce the vaccines. A steep hurdle is that mRNA is a new technology, with no machines or experts for hire. Nonetheless, the third solution offers hope to find a middle ground that may begin to be implemented before the end of the current pandemic and be in place for the future.

The patent term extension could be provided for countries with patent offices and could be adapted based on laws and conditions in each country. Pandemic-related patent term extensions could be given for a period of time that the compulsory license is in force. With current pandemic projections of six months to two years for sufficient distribution, providing a patent term extension is reasonable and in line with the time period of many patent term extensions. Given that most pharmaceutical patents are prosecuted in multiple countries, this provides an incentive to participate in a limited waiver program.

Let’s Not Repeat Past Mistakes

It’s been a century since the last pandemic devastated the globe and the only certainty is that this will not be the last pandemic. Solutions created today lay a foundation for mitigation of the next pandemic. It’s been said that those who refuse to learn from history are doomed to repeat it, a thought too painful to contemplate with a pandemic. The industrial nations of the world have technology that others are literally dying to obtain—a high price to pay. Incentivized limited IP waivers may offer a compromise to bridge the gap between maintaining IP rights (and thus relying on charity alone) and arbitrary compulsory licensing that could deter the technological investment to create life-saving solutions in the future.

### 1AC – FW

#### The standard is maximizing expected well-being – to clarify, saving lives. Calc indicts don’t link—my framework evaluates offense—pandemics is bad because as far as we know, it would cause suffering.

#### 1] Death outweighs— A] Agents can’t act if they fear for their bodily security—my framework constrains every NC and K and B] It’s the worst form of evil:

Paterson 3 – Department of Philosophy, Providence College, Rhode Island (Craig, “A Life Not Worth Living?”, Studies in Christian Ethics.

Contrary to those accounts, I would argue that it is death per se that is really the objective evil for us, not because it deprives us of a prospective future of overall good judged better than the alter- native of non-being. It cannot be about harm to a former person who has ceased to exist, for no person actually suffers from the sub-sequent non-participation. Rather, death in itself is an evil to us because it ontologically destroys the current existent subject — it is the ultimate in metaphysical lightening strikes.80 The evil of death is truly an ontological evil borne by the person who already exists, independently of calculations about better or worse possible lives. Such an evil need not be consciously experienced in order to be an evil for the kind of being a human person is. Death is an evil because of the change in kind it brings about, a change that is destructive of the type of entity that we essentially are. Anything, whether caused naturally or caused by human intervention (intentional or unintentional) that drastically interferes in the process of maintaining the person in existence is an objective evil for the person. What is crucially at stake here, and is dialectically supportive of the self-evidency of the basic good of human life, is that death is a radical interference with the current life process of the kind of being that we are. In consequence, death itself can be credibly thought of as a ‘primitive evil’ for all persons, regardless of the extent to which they are currently or prospectively capable of participating in a full array of the goods of life.81  In conclusion, concerning willed human actions, it is justifiable to state that any intentional rejection of human life itself cannot therefore be warranted since it is an expression of an ultimate disvalue for the subject, namely, the destruction of the present person; a radical ontological good that we cannot begin to weigh objectively against the travails of life in a rational manner. To deal with the sources of disvalue (pain, suffering, etc.) we should not seek to irrationally destroy the person, the very source and condition of all human possibility.82

#### 2] Actor spec—governments must use util because they don’t have intentions and are constantly dealing with tradeoffs—outweighs since different agents have different obligations—takes out calc indicts since they are empirically denied.

#### 3] Extinction outweighs VTL:

#### A] Life comes first – fluctuations in value to life are inevitable.

Bernstein 02 (Richard J., Vera List Prof. Phil. – New School for Social Research, “Radical Evil: A Philosophical Interrogation”, p. 188-192)

There is a basic value inherent inorganic being, a basic affirmation, "The Yes' of Life" (IR 81). 15 "The self-affirmation of being becomes emphatic in the opposition of life to death. Life is the explicit confrontation of being with not-being. . . . The 'yes' of all striving is here sharpened by the active `no' to not-being" (IR 81-2). Furthermore — and this is the crucial point for Jonas — this affirmation of life that is in all organic being has a binding obligatory force upon human beings. This blindly self-enacting "yes" gains obligating force in the seeing freedom of man, who as the supreme outcome of nature's purposive labor is no longer its automatic executor but, with the power obtained from knowledge, can become its destroyer as well. He must adopt the "yes" into his will and impose the "no" to not-being on his power. But precisely this transition from willing to obligation is the critical point of moral theory at which attempts at laying a foundation for it come so easily to grief. Why does now, in man, that become a duty which hitherto "being" itself took care of through all individual willings? (IR 82). We discover here the transition from is to "ought" — from the self-affirmation of life to the binding obligation of human beings to preserve life not only for the present but also for the future. But why do we need a new ethics? The subtitle of The Imperative of Responsibility — In Search of an Ethics for the Technological Age — indicates why we need a new ethics. Modern technology has transformed the nature and consequences of human action so radically that the underlying premises of traditional ethics are no longer valid. For the first time in history human beings possess the knowledge and the power to destroy life on this planet, including human life. Not only is there the new possibility of total nuclear disaster; there are the even more invidious and threatening possibilities that result from the unconstrained use of technologies that can destroy the environment required for life. The major transformation brought about by modern technology is that the consequences of our actions frequently exceed by far anything we can envision. Jonas was one of the first philosophers to warn us about the unprecedented ethical and political problems that arise with the rapid development of biotechnology. He claimed that this was happening at a time when there was an "ethical vacuum," when there did not seem to be any effective ethical principles to limit ot guide our ethical decisions. In the name of scientific and technological "progress," there is a relentless pressure to adopt a stance where virtually anything is permissible, includ-ing transforming the genetic structure of human beings, as long as it is "freely chosen." We need, Jonas argued, a new categorical imperative that might be formulated as follows: "Act so that the effects of your action are compatible with the permanence of genuine human life"; or expressed negatively: "Act so that the effects of your action are not destructive of the future possibility of such a life"; or simply: "Do not compromise the conditions for an indefinite continuation of humanity on earth"; or again turned positive: "In your present choices, include the future wholeness of Man among the objects of your will."

#### B] “No value to life” doesn’t outweigh – prioritize existence because value is subjective and could improve in the future

Tännsjö 11 (Torbjörn, the Kristian Claëson Professor of Practical Philosophy at Stockholm University, “Shalt Thou Sometimes Murder? On the Ethics of Killing,” <http://people.su.se/~jolso/HS-texter/shaltthou.pdf>) //BS 1-27-2018

I suppose it is correct to say that, if Schopenhauer is right, if life is never worth living, then according to utilitarianism we should all commit suicide and put an end to humanity. But this does not mean that, each of us should commit suicide. I commented on this in chapter two when I presented the idea that utilitarianism should be applied, not only to individual actions, but to collective actions as well.¶ It is a well-known fact that people rarely commit suicide. Some even claim that no one who is mentally sound commits suicide. Could that be taken as evidence for the claim that people live lives worth living? That would be rash. Many people are not utilitarians. They may avoid suicide because they believe that it is morally wrong to kill oneself. It is also a possibility that, even if people lead lives not worth living, they believe they do. And even if some may believe that their lives, up to now, have not been worth living, their future lives will be better. They may be mistaken about this. They may hold false expectations about the future.¶ From the point of view of evolutionary biology, it is natural to assume that people should rarely commit suicide. If we set old age to one side, it has poor survival value (of one’s genes) to kill oneself. So it should be expected that it is difficult for ordinary people to kill themselves. But then theories about cognitive dissonance, known from psychology, should warn us that we may come to believe that we live better lives than we do.¶ My strong belief is that most of us live lives worth living. However, I do believe that our lives are close to the point where they stop being worth living. But then it is at least not very far-fetched to think that they may be worth not living, after all. My assessment may be too optimistic.¶ Let us just for the sake of the argument assume that our lives are not worth living, and let us accept that, if this is so, we should all kill ourselves. As I noted above, this does not answer the question what we should do, each one of us. My conjecture is that we should not commit suicide. The explanation is simple. If I kill myself, many people will suffer. Here is a rough explanation of how this will happen: ¶ ... suicide “survivors” confront a complex array of feelings. Various forms of guilt are quite common, such as that arising from (a) the belief that one contributed to the suicidal person's anguish, or (b) the failure to recognize that anguish, or (c) the inability to prevent the suicidal act itself. Suicide also leads to rage, loneliness, and awareness of vulnerability in those left behind. Indeed, the sense that suicide is an essentially selfish act dominates many popular perceptions of suicide. ¶ The fact that all our lives lack meaning, if they do, does not mean that others will follow my example. They will go on with their lives and their false expectations — at least for a while devastated because of my suicide. But then I have an obligation, for their sake, to go on with my life. It is highly likely that, by committing suicide, I create more suffering (in their lives) than I avoid (in my life).

#### C] Extinction outweighs

MacAskill 14 [William, Oxford Philosopher and youngest tenured philosopher in the world, Normative Uncertainty, 2014]

The human race might go extinct from a number of causes: asteroids, supervolcanoes, runaway climate change, pandemics, nuclear war, and the development and use of dangerous new technologies such as synthetic biology, all pose risks (even if very small) to the continued survival of the human race.184 And different moral views give opposing answers to question of whether this would be a good or a bad thing. It might seem obvious that human extinction would be a very bad thing, both because of the loss of potential future lives, and because of the loss of the scientific and artistic progress that we would make in the future. But the issue is at least unclear. The continuation of the human race would be a mixed bag: inevitably, it would involve both upsides and downsides. And if one regards it as much more important to avoid bad things happening than to promote good things happening then one could plausibly regard human extinction as a good thing.For example, one might regard the prevention of bads as being in general more important that the promotion of goods, as defended historically by G. E. Moore,185 and more recently by Thomas Hurka.186 One could weight the prevention of suffering as being much more important that the promotion of happiness. Or one could weight the prevention of objective bads, such as war and genocide, as being much more important than the promotion of objective goods, such as scientific and artistic progress. If the human race continues its future will inevitably involve suffering as well as happiness, and objective bads as well as objective goods. So, if one weights the bads sufficiently heavily against the goods, or if one is sufficiently pessimistic about humanity’s ability to achieve good outcomes, then one will regard human extinction as a good thing.187 However, even if we believe in a moral view according to which human extinction would be a good thing, we still have strong reason to prevent near-term human extinction. To see this, we must note three points. First, we should note that the extinction of the human race is an extremely high stakes moral issue. Humanity could be around for a very long time: if humans survive as long as the median mammal species, we will last another two million years. On this estimate, the number of humans in existence in the The future, given that we don’t go extinct any time soon, would be 2×10^14. So if it is good to bring new people into existence, then it’s very good to prevent human extinction. Second, human extinction is by its nature an irreversible scenario. If we continue to exist, then we always have the option of letting ourselves go extinct in the future (or, perhaps more realistically, of considerably reducing population size). But if we go extinct, then we can’t magically bring ourselves back into existence at a later date. Third, we should expect ourselves to progress, morally, over the next few centuries, as we have progressed in the past. So we should expect that in a few centuries’ time we will have better evidence about how to evaluate human extinction than we currently have. Given these three factors, it would be better to prevent the near-term extinction of the human race, even if we thought that the extinction of the human race would actually be a very good thing. To make this concrete, I’ll give the following simple but illustrative model. Suppose that we have 0.8 credence that it is a bad thing to produce new people, and 0.2 certain that it’s a good thing to produce new people; and the degree to which it is good to produce new people, if it is good, is the same as the degree to which it is bad to produce new people, if it is bad. That is, I’m supposing, for simplicity, that we know that one new life has one unit of value; we just don’t know whether that unit is positive or negative. And let’s use our estimate of 2×10^14 people who would exist in the future, if we avoid near-term human extinction. Given our stipulated credences, the expected benefit of letting the human race go extinct now would be (.8-.2)×(2×10^14) = 1.2×(10^14). Suppose that, if we let the human race continue and did research for 300 years, we would know for certain whether or not additional people are of positive or negative value. If so, then with the credences above we should think it 80% likely that we will find out that it is a bad thing to produce new people, and 20% likely that we will find out that it’s a good thing to produce new people. So there’s an 80% chance of a loss of 3×(10^10) (because of the delay of letting the human race go extinct), the expected value of which is 2.4×(10^10). But there’s also a 20% chance of a gain of 2×(10^14), the expected value of which is 4×(10^13). That is, in expected value terms, the cost of waiting for a few hundred years is vanishingly small compared with the benefit of keeping one’s options open while one gains new information.

#### Impact calc –

#### 1] Extinction outweighs: A] Reversibility- it forecloses the alternative because we can’t improve society if we are all dead B] Structural violence- death causes suffering because people can’t get access to resources and basic necessities C] Objectivity- body count is the most objective way to calculate impacts because comparing suffering is unethical

### 1AC – Underview

#### 1] 1AR theory is legit – anything else means infinite abuse – drop the debater, competing interps, and the highest layer – 1AR are too short to make up for the time trade-off – no RVIs – 6 min 2NR means they can brute force me every time.

#### 2] Procedural fairness is a voter and outweighs a] it’s an intrinsic good – debate is fundamentally a game and some level of competitive equity is necessary to sustain the activity, b] probability – debate can’t alter subjectivity, but it can rectify skews which means the only impact to a ballot is fairness and deciding who wins, c] it internal link turns every impact – a limited debate promotes in-depth research and engagement which is necessary to access all of their education d] All your arguments concede the importance of fairness since you assume your arguments will be esvaluated fairly when you enter the round – means fairness impact turns all arguments.

### 1AC – Method

#### Gains are limited but they are still gains—denouncing action because we are on stolen land is scholarly lazy

NoiseCat 16. Julian Brave NoiseCat, enrolled member of the Canim Lake Band Tsq'escen in British Columbia and a graduate of Columbia University and the University of Oxford, “The Indigenous Revolution,” Jacobin, November 26, 2016, https://www.jacobinmag.com/2016/11/standing-rock-dakota-access-pipeline-obama/

Many Americans, Canadians, Australians, and New Zealanders believe that indigenous people are long gone and defeated. Inheritors of the imperial myth of “Manifest Destiny,” they presume the colonizers’ victory was inevitable and even [predetermined](https://books.google.com/books?id=5AaRo8c2-JYC&pg=PA83&lpg=PA83&dq=arthur+samuel+atkinson+killing+maori&source=bl&ots=GMsXrn6JNH&sig=tMvg8D1knMq2knttH3w4YyRvuJM&hl=en&sa=X&ved=0ahUKEwjCze3M_6PQAhWmsFQKHfmZAfsQ6AEIITAB#v=onepage&q=arthur%20samuel%20atkinson%20killing%20maori&f=false). This racist myth has led empires and states to underestimate indigenous power.¶ Global histories of indigenous resistance, survival, and resurgence tell another story. On these Oceti Sakowin plains in 1876, a cocksure General Custer rushed into the Battle of the Little Bighorn only to be soundly defeated by allied Lakota, Cheyenne, and Arapaho forces. Dalrymple appears poised to repeat Custer’s mistake.¶ Countless indigenous communities, nations, and confederacies from the Americas to Australasia, and South Africa to Siberia, including Aboriginal Australians, Apache, Arapaho, Cherokee, Cheyenne, Chukchi, Comanche, Cree, Creek, Diné, Hawaiian, Haudenosaunee, Kiowa, Maori, Modoc, Nez Perce, Pueblo, Salish, Sauk, Seminole, Shawnee, Tasmans, Tlingit, Ute, Xhosa, Yakima, Zulu, and others have resisted imperial powers and industrial states and prevailed.¶ Before defeating Custer, the Oceti Sakowin had a long history of settler handling. In 1862, the Dakota pushed thousands of settlers off the Minnesota frontier. Six years later, the Lakota defeated the United States Army in Red Cloud’s War.¶ Retribution followed many indigenous victories. In California, entire communities were [hunted like animals](http://www.nytimes.com/2016/05/29/books/review/an-american-genocide-by-benja.html?_r=0). After taking dozens of Dakota men as prisoners of war following the uprising of 1862, Abraham Lincoln signed an order to execute [thirty-eight](http://www.startribune.com/dec-26-1862-38-dakota-men-executed-in-mankato/138273909/) of them — the largest mass execution in American history. Later in 1890, the United States Army gunned down three hundred Lakota at [Wounded Knee](https://www.jacobinmag.com/2016/09/standing-rock-dakota-access-pipeline-protest/).¶ This history continues to devastate. Indigenous people remain the poorest of the poor and the [most likely](http://www.cjcj.org/news/8113) to be killed by law enforcement. Four of the fifteen most impoverished counties in the United States [include](https://www.census.gov/did/www/saipe/data/statecounty/data/2014.html) Lakota reservations in South Dakota. The two poorest, Oglala Lakota and Todd County, lie entirely within the Pine Ridge and Rosebud reservations, where half of all residents live in poverty. In Ziebach County, which includes parts of the Standing Rock and Cheyenne River reservations, 45 percent of the population lives at or below the poverty line.¶ Elsewhere in the United States, Canada, Australia, and New Zealand, indigenous people are among the poorest, most oppressed, and least visible. They are overrepresented in prisons and underrepresented in universities. Their economic realities are bleak. Their pain is intergenerational.¶ In short, colonialism endures.¶ Yet these same communities are uniquely positioned to resist unjust systems and force them to retreat. We must hold these two seemingly contradictory realities of devastation and resilience in our minds at the same time. The Fourth World lives in devastation. The Fourth World is unconquered and on the rise.¶ Since the 1970s, indigenous people in the United States, Canada, Australia, and New Zealand have danced impressive victories. They have compelled states to forego assimilationist policies like the involuntary removal of indigenous children to abusive residential schools and the relocation of indigenous workers to cities. Overtly coercive policies have been slowly and steadily replaced with policies that recognize indigenous rights to land, jurisdiction, and sovereignty. Gains are limited, but they are still gains.¶ At certain times over the past thirty years, indigenous claims have prevented corporations from exploiting natural resources. In New Zealand in the 1980s, Maori claims under the Treaty of Waitangi stopped a state drive to privatize [fisheries](http://vup.victoria.ac.nz/maori-and-the-state-crown-maori-relations-in-new-zealand-aotearoa-1950-2000/) and [hydroelectric power](http://duwaterlawreview.com/new-zealand-maori-council/). In [Canada](https://books.google.com/books?id=9v3HZDKUlG4C) and [Australia](https://www.dukeupress.edu/the-cunning-of-recognition), from the 1990s to the present, aboriginal claims have increased risk for prospective investors in extractive industries.¶ But the dance with the state can be perilous. In recent decades, some indigenous groups mistook [neoliberals](http://www.uhpress.hawaii.edu/p-5513-9781869692865.aspx) who denounced “big government” for allies. They [accepted](https://www.upress.umn.edu/book-division/books/red-skin-white-masks) land claims settlements, [treaty agreements](https://www.theguardian.com/commentisfree/2015/aug/03/canada-first-nation-land-rights), and business deals that enabled states to slash social services for the most vulnerable while restructuring indigenous communities as junior corporate partners in the global economy.¶ As Trump prepares to take power in the US and Brexit changes the economic calculus in Britain and across the world, it is clear that the dance with the state is entering a [new age](https://www.jacobinmag.com/2016/11/trump-victory-clinton-sanders-democratic-party/).¶ The New Colonialism¶ The new age has [precedents](http://www.history.ac.uk/reviews/review/895).¶ Any Howard Zinn reader knows that the United States is built on stolen land with stolen labor. However, this is an observation too imprecise to help us understand and predict the trajectory of a global political economy steered and shaped by the likes of Trump and Nigel Farage. If you squint hard enough, Jack Dalrymple might look like a young George Custer, but that does not make him so.¶ To prevail, indigenous people and the Left must fully understand the precise ways that emerging systems will dispossess indigenous communities. In the nineteenth century, the United States Army incarcerated indigenous people on reservations, claimed land for homesteaders, protected prospectors, and cleared the way for railroad barons. In the 1960s, a different set of historical, political, and economic forces erected the [Lake Oahe Dam](http://www.msnbc.com/interactives/geography-of-poverty/nw.html) on the Missouri River, flooding two hundred thousand acres of the Standing Rock reservation to provide power to suburban homeowners.¶ Today, the drive for independence from OPEC sees a solution in hydraulic fracturing technology. North American oil fields and infrastructure are funded by a financial system that encourages speculation, drives massive inequality, and fails to account for costs associated with human and environmental risks — passing these very real risks and consequences on to communities, workers, and indigenous nations. Inherently unaccountable capitalists are paid big money for being even more unaccountable, and indigenous dispossession continues on new frontiers.¶ Preliminary post-election forecasts indicate that Trump’s victory and Brexit will redirect capital back toward the American West and the British [Commonwealth](http://www.express.co.uk/news/politics/691826/Brexit-what-mean-for-Commonwealth-Britain-leaves-EU-impact-new-trade-deals-migration).¶ In particular, Trump — a [DAPL investor](https://www.theguardian.com/us-news/2016/oct/26/donald-trump-dakota-access-pipeline-investment-energy-transfer-partners) himself — will expedite completion of DAPL and similar projects. He will push to reopen and complete the [Keystone XL Pipeline](https://www.washingtonpost.com/news/energy-environment/wp/2016/11/09/now-that-trump-has-won-transcanada-wants-to-give-keystone-xl-pipeline-another-try/). If he keeps his campaign promises, he will support infrastructure projects and extractive industries, including [coal and fracking](http://www.wsj.com/articles/oil-coal-seen-as-winners-with-trump-victory-1478693338), in indigenous homelands across the American hinterlands.¶ At the same time, a conservative Supreme Court, an Interior Department [led by](http://www.reuters.com/article/us-usa-trump-interior-idUSKBN13G2C0) Sarah Palin or oil baron Lucas Forrest, and a Justice Department led by Jeff Sessions means limited but hard-won Native rights will be rolled back. If this gang of reactionary appointees can’t figure out how to dismantle complex legal precedents, they can just cut funding to essential services like housing, schools, and health care that are already woefully underfunded, putting tribes in a stranglehold of austerity. Native resistance will be policed by [Orwellian surveillance systems](https://www.theguardian.com/commentisfree/2016/nov/09/president-trump-national-security-nuclear-arsenal) finely tuned by the Obama administration. Militarized law enforcement will find reinforcements in the booming private security and [prison industries](https://www.washingtonpost.com/news/wonk/wp/2016/11/10/the-private-prison-industry-was-crashing-until-donald-trumps-victory/).¶ Surveillance, state law enforcement, and private security will drive mass arrests, as we’re seeing at Standing Rock. Law enforcement will have more power than ever to quash protesters and silence dissent.¶ In the former British Wests of Canada, Australia, and New Zealand, where the right-wing populist revolution has yet to take hold in the same way, suppression of indigenous resistance may be less visibly coercive — perhaps with the exception of [skyrocketing](https://www.theguardian.com/australia-news/2016/aug/24/indigenous-prison-rate-soars-52-in-decade-report-reveals) policing, incarceration, and deaths-in-custody of indigenous people, particularly Aboriginal Australians (the “[most imprisoned people in the world](https://www.washingtonpost.com/world/asia_pacific/in-australian-state-aboriginal-kids-53-times-more-likely-to-be-in-jail-than-others/2016/03/05/210dadc4-e15a-11e5-8c00-8aa03741dced_story.html)”).¶ Politicians in the Commonwealth will look to roll back or restructure indigenous rights won over the last three decades in ways that are favorable to capital.¶ Governments, like Justin Trudeau’s Liberals in Canada, are already [abandoning](https://www.theguardian.com/environment/true-north/2016/sep/19/justin-trudeaus-lofty-rhetoric-on-first-nations-a-cheap-simulation-of-justice) campaign promises to indigenous people, opting instead to grab land and resources (as seen in the ham-fisted effort to force through the [Site C Dam](http://www.cbc.ca/news/canada/british-columbia/first-nations-site-c-challenge-denied-1.3830441) against [indigenous opposition](http://bc.ctvnews.ca/thousands-protest-kinder-morgan-pipeline-expansion-in-vancouver-1.3168634)). Trudeau’s minister of natural resources has already stated that Canada will no longer ask First Nations for consent before going forward with lucrative natural resource projects like Kinder Morgan’s Trans Mountain Expansion project and Enbridge’s Northern Gateway [pipelines](http://www.ubcic.bc.ca/consent).¶ In Australia, the government is steamrolling the Wangan and Jagalingou peoples’ Native Title claims in order to move forward with the massive Carmichael Coalmine in Queensland.¶ With the Commonwealth clamoring to [cash in](https://www.theguardian.com/world/2016/oct/18/britain-and-new-zealand-agree-to-start-regular-trade-talks-in-wake-of-brexit) on opportunities created by Brexit, [new free trade deals](http://www.telegraph.co.uk/news/2016/08/31/brexit-brings-the-chance-to-build-a-new-and-better-commonwealth/) with the United Kingdom will be struck, resuscitating and rebuilding the capital networks of the former British Empire, previously weakened by globalization and the European Single Market. The Tory dream of a revived [Anglosphere](http://www.newstatesman.com/politics/2015/02/rise-anglosphere-how-right-dreamed-new-conservative-world-order), long derided as fanciful, nostalgic, and bad business by [Liberals](http://www.nybooks.com/articles/2000/05/11/the-anglosphere/), may even emerge as a legitimate principle and framework of international relations and trade. It will compete with increasingly powerful Chinese and Indian capital throughout the Commonwealth, as already witnessed in the Canadian [tar sands](https://www.theguardian.com/business/2010/feb/14/canada-china-investment-oil-sands), [Australian coalmines](https://www.theguardian.com/australia-news/2015/mar/26/aboriginal-group-fights-to-stop-16bn-carmichael-coalmine), and [New Zealand real estate and dairy](https://www.kpmg.com/NZ/en/IssuesAndInsights/ArticlesPublications/Documents/KPMG-Foreign-Direct-Investment-analysis-August-2015.pdf).¶ Combined with the rise of China and India, this will bring new waves of exploitive capital into indigenous homelands, along with increased policing and the dismantling of indigenous rights.¶ Renewed colonial and capitalist pressure on indigenous people means that the Fourth World’s adversarial relationship with the state will become more central to the struggle to transform political and economic systems for all. If the history of the indigenous dance with the state is any indication, the Fourth World will suffer tremendously while at the same time standing athwart the forces of capitalism and exploitation.¶ The Left must stand with the Fourth World in our collective struggle.¶ The Fourth World and a Fourth Way¶ On November 14, the Army Corps of Engineers temporarily halted DAPL’s progress, stating that “the history of the Great Sioux Nation’s dispossessions of lands” and the United States’ “government-to-government” relationship with indigenous nations demanded that the route of the proposed pipeline be reassessed. The Army told Energy Transfer Partners (ETP), the company building DAPL, that construction beneath the Missouri River required explicit approval, and asked the Standing Rock Sioux to negotiate conditions for the pipeline to cross tribal territory. Faced with a momentary victory for Standing Rock, Kelcy Warren, Dallas [billionaire](http://www.wsj.com/articles/SB10001424052748704141104575588721155904524) and CEO of ETP, denounced the decision as “motivated purely by politics at the expense of a company that has done nothing but play by the rules.”¶ Warren was right. Had it not been for thousands of people mobilizing behind an indigenous-led coalition, DAPL would have been business as usual. ETP would have desecrated the graves of Standing Rock ancestors unimpeded. Workers, lured by relatively high wages, would have taken on [toxic and insecure](https://www.jacobinmag.com/2016/10/standing-rock-dakota-access-pipeline-labor-trumka/) work. The tribe’s hunting and fishing grounds would have been jeopardized, and if the pipeline leaked, Standing Rock and its downstream communities would have been poisoned. Environmental degradation and runaway climate change would have pressed ahead unabated. Carbon dependency would have become even more deeply engrained in our political economy. Eventually, ETP and their investors would have cashed out, and future generations would have been robbed.¶ And all of this still will happen if President Obama doesn’t heed the water protectors and instead sides with ETP.¶ ETP spent [$1.2 million](http://www.opensecrets.org/pacs/lookup2.php?strID=C00438754) over the last five years paying politicians to legislate in its favor. Warren personally donated [$103,000](https://www.theguardian.com/us-news/2016/oct/26/donald-trump-dakota-access-pipeline-investment-energy-transfer-partners) to the Trump campaign. But when indigenous people organized, turning to direct action and the law to pressure elected officials and government systems, they wrested power from ETP’s hands.¶ DAPL is just one chapter in a much longer story of indigenous resistance to, and victories against, pipelines across North America. In 2015, the Obama administration nixed the Keystone XL Pipeline, yielding to pressure from the [Cowboy Indian Alliance](http://rejectandprotect.org/). In Minnesota, Enbridge shelved plans for the Sandpiper pipeline, after encountering tribal opposition. The Unist’ot’en camp in northern British Columbia has held out against numerous proposed pipelines through their territory, building a space where indigenous sovereignty stands tall on lands defined by industry as an “energy corridor.”¶

#### Framing settler colonialism through a totalizing lens makes indigenous liberation impossible by setting the terms of victory as all-or-nothing—pessimism actively reifies settler dominance – this is a straight turn to fatalism.

Busbridge 18 [Research Fellow at the Centre for Dialogue, La Trobe University (Rachel, “Israel-Palestine and the Settler Colonial ‘Turn’: From Interpretation to Decolonization,” Theory, Culture & Society Vol 35, Issue 1, 2018.]

**The prescription for decolonisation**—that is, **a normative project committed to the** liberation of the colonised and the overturning of colonial relationships of power (Kohn & McBride, 2011: 3)—is indeed **one of the** most counterhegemonic implications **of the settler colonial paradigm** as applied to IsraelPalestine, **potentially shifting it from a diagnostic frame to a prognostic one which offers a ‘proposed solution to the problem, or at least a plan of attack’** (Benford & Snow, 2000: 616). **What**, however, **does the settler colonial paradigm offer by way of** envisioning decolonisation? As Veracini (2007) notes, while settler colonial studies scholars have sought to address the lack of attention paid to the experiences of Indigenous peoples in conventional historiographical accounts of decolonisation (which have mostly focused on settler independence and the loosening of ties to the ‘motherland’), **there is** nevertheless **a ‘**narrative deficit’ when it comes to imagining settler decolonisation. While Veracini (2007) relates this deficit to a matter of conceptualisation, it is apparent that the structural perspective **of the paradigm** in many ways closes down possibilitiesof imagining the type of social **and** political transformation **to which the** notion of decolonisation aspires. In this regard, there is a worrying tendency (**if not** tautological discrepancy) **in settler colonial studies, where the** only solution to settler colonialism is decolonisation**—which a faithful adherence to the paradigm** renders largely unachievable**, if not** impossible**.**

To understand why this is the case, it is necessary to return to Wolfe’s (2013a: 257) account of settler colonialism as guided by a ‘zero-sum logic whereby settler societies, for all their internal complexities, uniformly require the elimination of Native alternatives’. The **structuralism** of this account has immense power as a means of mapping forms of injustice and indignity as well as strategies of resistance and **refusal**, and Wolfe is careful to show how transmutations of the logic of elimination are complex, variable, discontinuous and uneven. **Yet, in** seeking to elucidate the logic of elimination as the overarching historical force guiding settler-native relations there is an operational weakness in the theory, whereby such a logic is simply there, omnipresent and manifest even when (and perhaps especially when) it appears not to be; the settler colonial studies scholar need only read it into a situation or context**. It** thushurtles from the past to the present into the future, never to be fully extinguished until the native is, or until history itself ends**. There is thus a** powerful ontological (if not metaphysical) dimension to Wolfe’s account, **where there is such thing as a ‘**settler will’ thatinherently desires the elimination of the native **and the distinction between the settler and native** can only ever be categorical**, founded as it is on the ‘primal binarism of the frontier’** (2013a: 258). It is here that the differences between earlier settler colonial scholarship on Israel-Palestine and the recent settler colonial turn come into clearest view. While Jamal Hilal’s (1976) Marxist account of the conflict, for instance, engaged Palestinians and Jewish Israelis in terms of their relations to the means of production, Wolfe’s account brings its own ontology: the bourgeoisie/proletariat distinction becomes that of settler/native, and the class struggle the struggle between **settler**, who **seeks to** destroy and replace the native**, and native**, who can only ever push back. Indeed, **if the settler colonial paradigm views history in** similar **teleological terms** to the Marxist framework, **it** does not offer **the same hopeful vision of** a liberated future. After all, **settler colonialism has** only one story to tell—‘either total victory or total failure’ (Veracini, 2007).

Veracini’s attempt to disaggregate different forms of settler decolonisation is revealing of the difficulties that come along with this zero-sum perspective. It is significant to note that beyond settler evacuation (which may decolonise territory, he cautions, but not necessarily relationships) the picture he paints is a relatively bleak one. For Veracini (2011: 5), claims for decolonisation from Indigenous peoples in settler societies can take two broad forms: an ‘anticolonial rhetoric expressing a demand for indigenous sovereign independence and self-determination… and an “ultra”-colonial one that seeks a reconstituted partnership with the [settler state] and advocates a return to a relatively more respectful middle ground and “treaty” conditions’. While both, he suggests, are tempting strategies in the struggle for change, though ‘ultimately ineffective against settler colonial structures of domination’ (2011: 5), it is the latter strategy that invites Veracini’s most scathing assessment. As he writes,

under settler colonial conditions the independent polity is the settler polity and sanctioning the equal rights of indigenous peoples has historically been used as a powerful weapon in the denial of indigenous entitlement and in the enactment of various forms of coercive assimilation. This decolonisation actually enhances the subjection of indigenous peoples… it is at best irrelevant and at worst detrimental to indigenous peoples in settler societies (2011: 6-7).

The ‘primal binarism of the frontier’ plays a particularly ambivalent role in Veracini’s (2011: 6) formulation, where the categorical distinction between settler and native obstructs the ‘possibility o**f a genuinely decolonised relationship’** (by virtue of its lopsidedness) **yet is** a necessary political strategy to guard against the absorption of Indigenous people into the settler fold, which would represent settler colonialism’s final victory. **The battle here is between a ‘settler colonialism [that] is designed to produce a fundamental discontinuity as its “logic of elimination” runs its course until it actually extinguishes the settler colonial relation’ and an anti-colonial struggle that ‘**must aim to keep the settler-indigenous relationship going’ (2011: 7). In other words, **the categorical distinction produced by the frontier** must be maintained in order to struggle against its effects. Given the lack of options presented to Indigenous peoples by Veracini (2014: 315), his conclusion that settler decolonisation demands a ‘radical, post-settler colonial passage’ is perhaps not surprising – although he has ‘no suggestion as to how this may be achieved and [is] pessimistic about its feasibility’.

Scholars have long reckoned with the ambivalence of the settler colonial situation, which is simultaneously colonial and postcolonial, colonising and decolonising (Curthoys, 1999: 288). **Given the generally dreadful** Fourth World **circumstances facing many Indigenous peoples** in settler societies, **it** could be argued that **there is good reason for** such pessimism. The settler colonial paradigm, in this sense, offers an important caution against celebratory narratives of progress. Wolfe (1994), it must be recalled, wrote the original articulation of his thesis precisely against the idea of ‘historical rupture’ that dominated in Australia post-Mabo, and was thus as much a scholarly intervention as it was a political challenge to the idea of Australia having broken with its colonial past. Nonetheless**, the** fatalism **of the settler colonial paradigm**—whereby decolonisation is by and large put beyond the realms of possibility—**has** seen it **come** under considerable critique for reifying settler colonialism as a **transhistorical meta-structure where colonial relations of domination are** inevitable (Macoun & Strakosch, 2013: 435; Snelgrove et al., 2014: 9). Not only does Wolfe’s **ontology** erase contingency**,** heterogeneity **and (crucially) agency** (Merlan, 1997; Rowse, 2014), **but its polarised framework** effectively ‘puts politics to death’ (Svirsky, 2014: 327). In response to such critiques, Wolfe (2013a: 213) suggests that ‘the repudiation of binarism’ may just represent a ‘settler perspective’. However, as Elizabeth Povinelli (1997: 22) has astutely shown, it is in this regard that **the** totalising logic **of** Wolfe’s **structure of invasion** rests on a disciplinary gesture where ‘any discussion which does not insist on the polarity of the [settler] colonial project’ is assimilationist, worse still, genocidal in effect if not intent. Any attempt to ‘explore the dialogical or hybrid nature of colonial subjectivity’—which would entail working beyond the bounds of absolute polarity—is disciplined as complicit in the settler colonial project itself, leaving ‘the only nonassimilationist position one that adheres strictly and solely to a critique of [settler] state discourse’. This gesture not only disallows the possibility of counter-publics and strategic alliances (even limited ones), but also comes dangerously close to ‘resistance as acquiescence’ insofar as the settler colonial studies scholar may malign the structures set in play by settler colonialism, but only from a safe distance unsullied by the messiness of ambivalences and contradictions of settler and Native subjectivities and relations. Opposition is thus left as our only option**, but**, as we know from critical anti-colonial and postcolonial scholarship, **opposition** in itself **is** not decolonisation.

#### Psychoanalysis is infinitely regressive, not falsifiable, and too abstract

Gordon 1 – Paul Gordon, accomplished psychotherapist, “Psychoanalysis and Racism: The Politics of Defeat,” RACE & CLASS v. 42 n. 4, 2001, pp. 17-34.

But in the thirty years since Kovel wrote, that attempt to relate mind and society has been fractured by the advent of postmodernism, with its subsumption of the material/historical, of notions of cause and effect, to what is transitory, contingent, free-¯oating, evanescent. Psychoanalysis, by stepping into the vacuum left by the abandonment of all metanarrative, has tended to put mind over society. This is particularly noticeable in the work of the Centre for New Ethnicities Research at the University of East London, which purports to straddle the worlds of the academy and action by developing projects for the local community and within education generally.28 But, in marrying psychoanalysis and postmodernism, on the basis of claiming to be both scholarly and action oriented, it degrades scholarship and undermines action, and ends in discourse analysis a language in which metaphor passes for reality. Cohen's work unavoidably raises the question of the status of psycho- analysis as a social or political theory, as distinct from a clinical one. Can psychoanalysis, in other words, apply to the social world of groups, institutions, nations, states and cultures in the way that it does, or at least may do, to individuals? Certainly there is now a considerable body of literature and a plethora of academic courses, and so on, claim- ing that psychoanalysis is a social theory. And, of course, in popular discourse, it is now a commonplace to hear of nations and societies spoken of in personalised ways. Thus `truth commissions' and the like, which have become so common in the past decade in countries which have undergone turbulent change, are seen as forms of national therapy or catharsis, even if this is far from being their purpose. Nevertheless, the question remains: does it make sense, as Michael Ignatieff puts it, to speak of nations having psyches the way that individuals do? `Can a nation's past make people ill as we know repressed memories sometimes make individuals ill? . . . Can we speak of nations ``working through'' a civil war or an atrocity as we speak of individuals working through a traumatic memory or event?' 47 The problem with the application of psychoanalysis to social institutions is that there can be no testing of the claims made. If someone says, for instance, that nationalism is a form of looking for and seeking to replace the body of the mother one has lost, or that the popular appeal of a particular kind of story echoes the pattern of our earliest relationship to the maternal breast, how can this be proved? The pioneers of psychoanalysis, from Freud onwards, all derived their ideas in the context of their work with individual patients and their ideas can be examined in the everyday laboratory of the therapeutic encounter where the validity of an interpretation, for example, is a matter for dialogue between therapist and patient. Outside of the consulting room, there can be no such verification process, and the further one moves from the individual patient, the less purchase psychoanalytic ideas can have. Outside the therapeutic encounter, anything and everything can be true, psychoanalytically speaking. But if everything is true, then nothing can be false and therefore nothing can be true. An example of Cohen's method is to be found in his 1993 working paper, `Home rules', subtitled `Some re¯ections on racism and nation- alism in everyday life'. Here Cohen talks about taking a `particular line of thought for a walk'. While there is nothing wrong with taking a line of thought for a walk, such an exercise is not necessarily the same as thinking. One of the problems with Cohen's approach is that a kind of free association, mixed with deconstruction, leads not to analysis, not even to psychoanalysis, but to . . . well, just more free association, an endless, indeed one might say pointless, play on words. This approach may well throw up some interesting associations along the way, connections one had never thought of but it is not to be confused with political analysis. In `Home rules', anything and everything to do with `home' can and does ®nd a place here and, as I indicated above, even the popular ®lm Home Alone is pressed into service as a story about `racial' invasion.

#### The aff is at the heart of the global south’s demands---only governmental pressure creates the momentum necessary to fight profit motives and white nationalism.

Hassan 21 [Fatima; South African social justice activist and human rights lawyer. She worked on HIV/AIDS medicine access advocacy and litigation for many years with the AIDS Law Project and for the Treatment Action Campaign, clerked at the Constitutional Court of South Africa, served as special advisor to South Africa’s former minister of health and public enterprises, and is the founder and current head of the Health Justice Initiative based in Cape Town; “Don’t Let Drug Companies Create a System of Vaccine Apartheid,” FP; 2/23/21; <https://foreignpolicy.com/2021/02/23/dont-let-drug-companies-create-a-system-of-vaccine-apartheid/>] Justin

The gap in equitable global coverage and African nations’ limited access to available supplies is in large part due to the fact that richer nations had placed multiple individual orders with multiple pharmaceutical companies as well as with COVAX, through advanced market commitments before clinical outcomes were available; these companies also agreed to serve some markets and countries before others, with limited timely sublicensing arrangements.

These one-sided and often nontransparent contracts are not rooted in any epidemiological or sound public health approach and are very similar to the disparities in access to antiretroviral drugs to treat HIV in the late 1990s and 2000s.

As with HIV/AIDS, patent monopolies are determining which countries will get access to certain vaccines, which companies will manufacture supplies, which regions will be prioritized, and which populations will benefit first. Governments that were in the driver’s seat negotiating with public institutions, using public funds with companies to accelerate important vaccine research last year, turned a blind eye to the need for equitable access, affordability, and manufacturing scale-up, and focused instead on narrow national supplies.

Despite initial commitments of global solidarity, vaccine nationalism is a key risk to global population immunity—so much so that both WHO Director-General Tedros Adhanom Ghebreyesus and U.S. infectious disease expert Anthony Fauci recently warned about its impact on the current global goal of vaccinating everyone. This nationalism is manifesting in three ways: through single country or regional deals, export bans, and a refusal to compel manufacturing scale-up beyond a handful of companies and for the benefit of only specific countries.

Worse still, the very institutions set up to address global access equity were at the outset undermined by the non-transparent conduct of richer nations and mostly refuse to condemn this behavior publicly.

The South African and Indian governments have pushed since July 2020 to get a Trade-Related Aspects of Intellectual Property Rights (TRIPS) waiver at the World Trade Organization. Despite being backed by 140 nations, the effort continues to be blocked shamelessly by the very nations that have commenced their own selfishly nationalistic vaccination programs.

The TRIPS waiver is at the heart of the vaccine access battle. Implicit in the opposition by richer nations in the European Union—as well as the United States, Canada, Australia, Britain, Japan, and even Brazil—is an existential threat to the continuing practice of treating medicines as a commodity.

The glaring vaccine supply crisis has exposed why that approach is no longer correct or sustainable—medically and economically—during this and future pandemics. These countries’ opposition is rooted in the fear that if the COVID-19 waiver succeeds, it opens the door to a partial relaxation of patents that the industry may not be able to close, which will set a precedent for future pandemics.

That means pharmaceutical giants will not be able to defend monopoly protection and in turn the unfettered power to segment markets; unilaterally decide whether to cooperate or not in technology transfer; carry though exclusivity arrangements; determine sublicenses and the timing of sharing information or know-how; set prices with no reference to true production and research costs (despite often being co-funded by public institutions); demand unconscionable indemnities; and make huge profits now and in the future.

This is an industry that rarely commits to high levels of transparency. Even with HIV/AIDS, lawyers and activists had to challenge the often undisclosed terms and conditions of sublicensing agreements that had a direct impact on people’s health, and the nontransparent pricing practices of companies, to insist on research and development cost disclosure, at times using antitrust routes to challenge monopolies on life-saving medicines. Incidentally, no drug company or vaccine manufacturer has yet voluntarily entered the WHO’s technology access pool.

The White House has now activated the U.S. Defense Production Act albeit in a limited way, in an effort to scale up domestic capacity. While this is country-specific, it suggests a turning of the tide. Recently, after Tedros’s comments and warnings, Fauci also noted that the U.S. government could in fact help strengthen global manufacturing capacity with both policy intervention and the cooperation of pharmaceutical companies in relaxing some patents—following an open letter sent by the People’s Vaccine Campaign for South Africa to Fauci and others, signed by the Anglican archbishop of southern Africa, Thabo Makgoba.

This is a start—but forcing the pharmaceutical industry to put lives ahead of patents and profits will require even greater pressure from governments and civil society globally. As Doctors Without Borders has repeatedly emphasized, “not even a global pandemic can stop pharmaceutical corporations from following their business-as-usual approach, so countries need to use every tool available to make sure that COVID-19 medical products are accessible and affordable for everyone who needs them.”

#### Disease securitization is uniquely good to mobilize action.

Mastroianni 17 [Brian Mastroianni; Covers science and technology for CBSNews.com; “We are not ready": Experts warn world is unprepared for next Ebola-size outbreak,” 3/16/17; CBS News; <http://www.cbsnews.com/news/study-says-world-underprepared-ebola-level-outbreaks/>] Elmer // Re-Cut Justin

Pandemics as global security threats What happens next time a health crisis threatens to spiral out of control? Moon said an “ideal system” would “see all countries of the world have some basic level of preparedness” when there seems to be a “suspicious pattern of infectious disease.” But it’s not just about medical practices — some experts say governments need to view pandemics as security threats. “The Neglected Dimension of Global Security,” a 2016 report from public health officials published by the National Academy of Medicine, looks at how the wave of large-scale infectious disease outbreaks over the past few decades — not just Ebola, but others like HIV/AIDS and SARS — exposed how economically and politically vulnerable nations are in the face of the ravages of future pandemics. The report finds that a range of factors, from growing population numbers to environmental degradation to increasing economic globalization, have shifted the dynamics of how disease outbreaks can affect countries. “We have not done nearly enough to prevent or prepare for such potential pandemics,” Peter Sands, the commission’s chair, wrote in the preface. “While there are certainly gaps in our scientific defenses, the bigger problem is that leaders at all levels have not been giving these threats anything close to the priority they demand.” Sands called this the “neglected dimension of global security.” This report essentially places global pandemics on the same level of seriousness as a military assault on a country. Since pandemics are generally viewed as “health problems” rather than “security risks,” the study argues that public health departments tend to put outbreak preparedness on the back burner. Rather than building up defenses as one would for a war or a terrorist attack, potential pandemics are relatively ignored. The commission issued 10 recommendations for building more effective public health resources in countries that are particularly prone to being decimated by an Ebola-level pandemic, such as developing universal benchmarks for preparedness that nations have to meet. Economic assistance for at-risk countries is also needed —and the report argues that money spent on preparedness would more than pay for itself. For instance, the study contends that if nations invested $4.5 billion a year to safeguard against the next major outbreak, $60 billion a year in losses from future pandemics could be avoided.

#### Engaging institutions is necessary especially in the face of settler colonialism – political change is an iterative process that can hold settlers accountable

Davis et al 17—Associate Professor, Indigenous Studies, Trent University, \*Associate Professor, Sociology McMaster University, and \*\*Associate Professor, Social Work University of Regina [Lynne Davis, Jeff Denis, and Raven Sinclair, 2017, Pathways of settler decolonization, Settler Colonial Studies, 7:4, 393-397, DOI: 10.1080/2201473X.2016.1243085, Accessed through the Wake Forest Library] AMarb

In addition to interdisciplinarity, the papers also share a concern to move from analysis toward action. Scholars such as Macoun and Strakosch,1 and Snelgrove, Dhamoon and Corntassel2 have warned against an abdication of responsibility by settler activists because the structural nature of settler colonialism would seem to defy a transformed future. In assessing the strengths and limitations of settler colonial theory, Macoun and Strakosch challenge those who use settler colonial theory (SCT) to realize its transformative opportunities while acting consciously to counter limitations identified by various critics. They caution against a stance of inevitability of settler colonialism that would risk delegitimizing Indigenous resistance, and they worry about re-inscribing settler academics’ political and intellectual authority to the detriment of Indigenous voices. At the same time, they note the contribution of SCT in providing a theoretical language to understand colonialism as a continuing force in the present, including an analysis of how both conservative and progressive settler movements may detract from Indigenous political challenges to the state, thus problematizing settler efforts at reconciliation and decolonization. They identify as one of its strengths the ability of SCT to provide non-Indigenous people with ‘a better account of ourselves’, 3 and to generate new conversations and alliances between Indigenous and non-Indigenous peoples. Snelgrove, Dhamoon and Corntassel warn that SCT’s rapid ascendancy in the academy could overshadow Indigenous Studies and the voices of Indigenous peoples. They argue that: without centering Indigenous peoples’ articulations, without deploying a relational approach to settler colonial power, and without paying attention to the conditions and contingencies of settler colonialism, studies of settler colonialism and practices of solidarity run the risk of reifying (and possibly replicating) settler colonial as well as other modes of domination.4 In their view, Indigenous resistance and resurgence must remain central in discussions of changing relationships: Theorists of Indigenous resurgence, such as Taiaiake Alfred and Leanne Simpson, among others, also express the possibility for settler society listening, learning, and acting […] in accordance with and for what is being articulated [by Indigenous people]; Indigenous resurgence is ultimately about reframing the conversation around decolonization in order to re-center and reinvigorate Indigenous nationhood. Macoun and Strakosch, and Snelgrove, Dhamoon and Corntassel gesture towards action by settler society to follow the lead of resurgence theorists in transforming settler colonialism, despite the structural, relational and affective challenges of anti-colonial struggle, in order to ‘reinvigorate Indigenous nationhood’ The authors in this volume examine pathways to settler decolonization, analyzing the uneven terrain of settler efforts and experiences through the lenses of SCT, Indigenous scholars and grassroots communities, and specific disciplinary analyses. While SCT has been criticized for its inability to theorize a decolonial future, this volume interrogates what happens when settlers engage with and seek to transform the system. What does such action look like? What challenges, complexities and barriers are faced? What are the stumbling blocks? And what opportunities and possibilities emerge? The articles in this volume all note the need for settlers to transform our/their relations with the land and with Indigenous peoples, while recognizing the structural and psychological challenges of applying these principles in practice. It is one thing to care about the environment, and quite another to reorient one’s lifestyle around sustainable practices and the health of local ecosystems. It is one thing to feel a connection to a place, and another to accept the notion of ‘non-human agency’. 6 Likewise, it is easier for settlers to advocate for the return of land to Indigenous peoples ‘over there’ rather than right where settlers and settler states and corporations (claim to) own property.7 Transforming social relations is not just a matter of befriending Indigenous people; it means developing long-term relations of accountability, engaging in meaningful dialogue, and respecting Indigenous laws and jurisdiction. Learning to transform relationships in these ways – and to transform self-understandings and thinking and feeling patterns or ‘settler common sense’ 8 – is an ongoing process; it is not linear, but rather iterative, occurring in what Hiller in this volume calls ‘upward and downward spirals’. Moreover, settlers’ anti-colonial learning (and unlearning) does not simply precede action; it occurs through action, through meaningful relationships with Indigenous peoples and with other engaged settlers, and through experimentation with activism of various sorts. The Nehiyawak (Cree) refer to this relational and iterative social justice-focused process as kisāhkīwewin: love in action. Several papers in this volume also address the role of emotions in settler decolonization. While critical self-reflection is essential to this process, and while emotions such as guilt, shame and indignation can help motivate settlers to change their ways and support Indigenous resurgence (as Bacon shows in one of the articles collected here), it is equally important not to treat ‘unsettling the settler within’ 9 as an end in itself; rather than dwelling in discomfort, the point of unsettlement is to be a springboard to action that benefits Indigenous peoples. A related point of tension (or contention) is whether decolonization is in the interests of settlers. Boudreau (in this volume) argues that deep decolonizing solidarities must not be based on self-interest; decolonization for settlers entails sacrifice, or giving up power and privilege. This may be true and, therefore, if it is believed that there is nothing in it for settlers, why would they ever pursue it? Although decolonization may not be in settlers’ short-term economic or political interests, it may fulfill a humanistic, ethical and moral commitment. Moreover, decolonization may be in virtually everyone’s long-term interest, particularly if Indigenous resurgence assists in combatting climate change, ever-growing economic inequality, and other political and social problems. As Tuck and Yang make clear, decolonization is not a metaphor for other social justice projects.10 Nevertheless, settler colonialism does intersect with other systems of oppression, and decolonization would be incomplete without also tackling racism, capitalism and heterosexism.11

#### Giving settler colonialism such extreme explanatory power makes it analytically useless

Pappas 17—Associate Professor of Philosophy at Texas A& M University [Gregory Fernando, 2017, “The Limitations and Dangers of Decolonial Philosophies: Lessons from Zapatista Luis Villoro”, Radical Philosophy Review, DOI: 10.5840/radphilrev201732768] AMarb

Notice how different Villoro’s starting point is from the usual theoretical, abstract, and global in scope approach of the decolonial turn. As a reaction to the hegemonic Eurocentric paradigms that disguise injustices under the assumption of a universal or objective point of view, decolonial thinking has stressed that our knowledge is always situated, but situated where? The context in which knowledge is situated, as well as of the injustices they aim to diagnose, are often described as power structures (global hierarchies) located in a geopolitical context (in a world-system).17 They prescribe that Latin Americans think from a particular historical and social reality, but this is understood as seeing oneself in the periphery of a global order. The tendency among decolonialists to favor this theoretical starting point and to gravitate toward global views of injustice comes from the influence of world-system and dependency theory analysis in economics. However, a key influence, not often recognized, is a general way of thinking about problems of injustice that is, ironically, European in origin. There is a long tradition of sociopolitical thought in Europe whose starting point is the injustices of society at large that have a history and persist through time, and where the task of political philosophy is to detect and diagnose the presence of these historical injustices in particular situations of injustice. For example, critical theory today has inherited an approach to social philosophy characteristic of the European tradition that goes back to Rousseau, Marx, Weber, Freud, Marcuse, and others. According to Roberto Frega, this tradition takes society to be intrinsically sick with a malaise that requires adopting a critical historical stance in order to understand how the systematic sickness affects present social situations. In other words, this approach assumes that: A philosophical critique of specific social situations can be accomplished only under the assumption of a broader and full blown critique of society in its entirety: as a critique of capitalism, of modernity, of western civilization, of rationality itself. The idea of social pathology becomes intelligible only against the background of a philosophy of history or of an anthropology of decline, according to which the distortions of actual social life are but the inevitable consequence of longstanding historical processes.18 For decolonialists the sickness that afflicts Latin America is the global hegemony—economic, military, political, and cultural—of the West, first via Europe and then the United States, broadcast under the philosophy of the Enlightenment with Europe carrying the mission. As Vallega explains, “Latin America suffered and continues to suffer under western hegemonic modernity and its system of power and knowledge.”19 Villoro believed that at the turn of the twentieth century one of the modern ideas we inherited that must be questioned is “global explanations” because “general ideologies tend to slip into totalitarianism in our thinking.”20 I think Villoro’s reservations are warranted and can be extended to decolonial thought. Granted, a theory of grand historical evil and systematic sickness in the Americas can have great explanatory power and provide theoretical comfort,21 but where are we ~~standing~~ when we start with such large historical metanarratives? How is it this not a God’s-eye view of history? Is there a danger of slipping back into a form of universalism, which they have explicitly avoided? Isn’t there a danger that when a theory explains so much it becomes nonfalsifiable and therefore nonempirical? In any case, the quest for a comprehensive explanation and a grand historical narrative is also in danger of not capturing the historical and concrete particularity (pluralism, complexity, uniqueness) of actual injustices. When we start at the broad level of globality and history as decolonialists often do, there is a risk of oversimplifying and encouraging ~~blindness~~ [ignorance] about concrete injustices. Consulting recent rigorous research done by historians and social anthropologist about Latin America (more on this later) confirms what many know from simply living there: most injustices in different parts of the Americas are so complex that any simple explanation merits the suspicion of being wishful thinking. To be fair, compared to Marxism the decolonial turn added complexity and made a significant shift. Marxism as a tool was not sensitive enough to the realities on the ground in Latin America. It was a universal model that did not adequately address its particular problems. However, decolonialists do not seem to have abandoned or questioned a similar methodological starting point. As a result, decolonial theories may sometimes be presented with the same pretension of offering a universal diagnosis of the complex and tragic problems of Latin America. Perhaps a more pluralistic and context-sensitive approach could avoid some of the dangers I have presented. Here is where the contrast with Villoro is useful. To be sure, Villoro was critical of the same things as the decolonialists: the Eurocentric narrative, modernity, liberalism, and so on. However, when he takes a reflective historical perspective about these large historical and lumpy categories there is a difference in how he does it. He anchors his account in his local present situation, is very specific about what particular aspects of modernity or liberalism are problematic, and does not have one preferred category of analysis such as coloniality. For most decolonial theorists, however, the legacy of colonialism is central (understood broadly as coloniality), and the situation of the oppressed is to be analyzed in relation to a global narrative in which Europe is at its center or in relation to modernity or a global capitalist system. The decolonial project is centered on detecting plural manifestations of the single evolving domination (a social pathology) that started in 1492. Liberation is understood as decolonization via undoing “the coloniality of power” and affirming what has been “conceal[ed] by the Western modern epistemic hegemony.”22 In contrast, at the center of Villoro’s approach is liberation from domination, and the causes of domination are plural and contextual and therefore too complex to be articulated or framed by a global theory of domination. For Villoro liberation is a local event; one of its tools is to sometimes take a global perspective, and the complexity of the problems on the ground may not be fully captured by even our best academic global historical narratives and categories. He inquired into the history of a systematic injustice in order to facilitate inquiry into the present unique, context-bound injustice. If injustice is an illness then Villoro’s approach takes as its main focus diagnosing and treating the particular present illness, i.e., the particular injustice in a corner of Mexico, and not a global “social pathology” or some single transhistorical source of injustice. As concepts and categories, global hierarchies, white supremacy, and coloniality can be great tools that can have planetary significance. One could even argue that they pick out much-larger areas of people’s lives and injustices than the categories of class and gender. However, in spite of their reach and explanatory theoretical value they are nothing more than tools to make reference to and ameliorate particular injustices experienced (suffered) in the midst of a particular and unique relationship in a situation. Why is this important? In present situations (events) of injustice in the Americas there are not only intersecting histories of white supremacy, capitalist exploitation, and patriarchy; there are also unique events, multiple countries with different complex histories and present circumstances, as well as a variety of responsible agents—local and international governments, corporations, particular individuals and communities. Regardless of how much a theory of global domination that centers on coloniality can actually explain, it is reasonable to worry about what it leaves out and question the extent to which it really helps those who are victims of injustice. A wider net may bring more fish from the ocean, but I am not sure this applies to injustices. Such theories may lead to analysis or diagnosis that while true at some level, may actually have very little to offer in terms of more specific diagnoses and solutions that can be of any help to someone suffering an injustice. However, for Mignolo coloniality is “the underlying logic of the foundation and unfolding of Western civilization from the Renaissance to today”23 Coloniality helps explain how race and gender became the basis of classification in the Americas, but it remains an open question how these categories actually operate in particular countries or even in particular unjust events. We can say all we want that the oppressed live in power structures located in global hierarchies and a world-system, but that does not fully capture where they are. However useful and true that account may be about someone’s particular circumstances, it is still overabstracted. Knowing how people have been classified according to a colonial matrix of power is important, but only insofar as it may help us inquire about the present actual causes of an injustice. Moreover, it is not obvious how the use of a single name and the prism of a single cause helps in trying to ameliorate the particular and context-specific evils from which particular countries and people in Latin America suffer. One could reply that my worries are misplaced. Calling decolonization the cure may suggest that coloniality is some sort of single homogeneous cause, but the decolonialists have distinguished between different types of coloniality and have included in their diagnosis a plurality of causes such as exploitation of resources, political manipulation, and assimilation of people from other cultures. If this is the case then why not address these more particular evils, unless one is really committed to some unitary account in which all of these evils can be reduced to a singular cause?

#### Evolutionary analysis proves offensive realism.

Johnson and Thayer 16 – Dominic D. P. Johnson, D.Phil., Ph.D.\* and Bradley A. Thayer, Ph.D., “The evolution of offensive realism Survival under anarchy from the Pleistocene to the present,” https://www.cambridge.org/core/services/aop-cambridge-core/content/view/56B778004187F70B8E59609BE7FEE7A4/S073093841600006Xa.pdf/div-class-title-the-evolution-of-offensive-realism-div.pdf

Few principles unite the discipline of international relations, but one exception is anarchy—the absence of government in international politics. Anarchy is, ironically, the ‘‘ordering’’ principle of the global state system and the starting point for most major theories of international politics, such as neoliberalism and neorealism.42,43,44,45 Other theoretical approaches, such as constructivism, also acknowledge the impact of anarchy, even if only to consider why anarchy occurs and how it can be circumvented.46,47 Indeed, the anarchy concept is so profound that it defines and divides the discipline of political science into international politics (politics under conditions of anarchy) and domestic politics (politics under conditions of hierarchy, or government). Given the prominence of the concept in present-day international relations theory, it is striking that anarchy only took hold as a central feature of scholarship in recent decades, since the publication of Kenneth Waltz’s Theory of International Politics in 1979. In fact, however, **anarchy has been a constant feature of the entire multimillion year history of the human lineage (and indeed the 3.5 billion–year history of the evolution of all life on Earth before that). It is not just that we lack a global Leviathan today; humans never had such a luxury. The fact that human evolution occurred under conditions of anarchy, that we evolved as hunter-gatherers in an ecological setting of predation, resource competition, and intergroup conflict, and that humans have been subject to natural selection** for millions of years **has profound consequences for understanding human behavior**, not least how humans perceive and act toward others. Scholars often argue over whether historically humans experienced a Hobbesian ‘‘state of nature,’’ but—whatever the outcome of that debate—it is certainly a much closer approximation to the prehistoric environment in which human brains and behavior evolved. **This legacy heavily influences our decision-making and behavior today, even—perhaps especially—in the anarchy of international politics**. We argue that **evolution under conditions of anarchy has predisposed human nature toward the behaviors predicted by offensive realism: Humans**, particularly men, **are strongly self-interested, often fear other groups, and seek more resources, more power, and more influence** (as we explain in full later). **These strategies** are not unique to humans and, in fact, **characterize a much broader trend in behavior among mammals as a whole—especially primates**—as well as many other major vertebrate groups, including birds, fish, and reptiles. **This recurrence of behavioral patterns** across different taxonomic groups **suggests that the behaviors characterized by offensive realism have broad and deep evolutionary roots**. This perspective does not deny the importance of institutions, norms, and governance in international politics. On the contrary, it provides or adds to the reasons why we demand and need them, and indeed why they are so hard to establish and maintain. Until recently, **international relations theorists rarely used insights from the life sciences to inform their understanding of human behavior**. However, **rapid advances in the life sciences offer increasing theoretical and empirical challenges to scholars in** the social sciences in general and **international relations** in particular, who are therefore under increasing pressure to address and integrate this knowledge rather than to suppress or ignore it. Whatever one’s personal views on evolution, **the time has come to explore the implications of evolutionary theory for mainstream theories of international relations**. **The most obvious challenge that evolutionary theory presents to international relations concerns our understanding of human nature**. Theories purporting to explain human behavior make explicit or implicit assumptions about preferences and motivations, and mainstream theories in international politics are no exception. Many **criticisms of international relations theories focus on these unsubstantiated or contested assumptions about underlying human nature. The parsimony of general theories depends on how well they explain phenomena across space and time**; in other words, the more closely they coincide with empirical observations across cultures and throughout history. The most enduring theories of international relations, therefore, will be ones that are able to incorporate (or at least do not run against the grain of) evolutionary theory. Although Thomas Hobbes claimed to have deduced Leviathan scientifically from ‘‘motion’’ and the physical senses, he was writing two hundred years before Darwin and so had no understanding of evolution. International relations scholars have tended to claim to deduce their own theories from Hobbes, or subsequent philosophers who followed him, and we suggest it is time to revisit the idea of foundational scientific principles. **Starting with biology, or with human evolutionary history, has never been typical in international relations scholarship**, but this approach is now less exotic than it once seemed as innovators in a range of social sciences, including economics, psychology, sociology, and political science, pursue this line of inquiry. **International relations stands to gain from** similar **interdisciplinary insights**. At the dawn of the 21st century, an era that will be dominated by science at least as much as philosophy, **we have the opportunity to move away from untested assumptions about human nature. Instead, we can make more concrete predictions about how humans tend to think and act in different conditions, based on new scientific knowledge about human cognition** and behavior, **and in particular a greater understanding of the social and ecological context in which human brains and behaviors evolved**. But what was that context?