**1AC -- Biocolonialism**

**Biocolonialism is an institutionalized *global form* of “*dispossession and conquest*” perpetuated at the will of multinational corporations through the piracy of traditional knowledge and resources in the name of “intellectual property rights” and “international patents”.**

**Breske ’18** [Ashleigh, visiting assistant professor of international studies in the global politics and societies (GPS) department @ Hollins University. She earned her Ph.D. in planning, governance, and globalization at Virginia Tech, her M.A.L.S. in social sciences with a focus on Roman history from Hollins University, and her B.S. in biology with a concentration in classical studies and chemistry. Her current research explores how institutions and cultural values mediate changes in repatriation policy for indigenous cultural property, “Biocolonialism: Examining Biopiracy, Inequality, and Power”, Spectra, 6(2), pp.58–73. DOI: http://doi.org/10.21061/spectra.v6i2.a.6]//pranav

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**.

**Traditional patent law and IPP *legitimize* biopiracy’s control over dominated subjects, turning them into capital.**

**Breske 2** [Ashleigh, visiting assistant professor of international studies in the global politics and societies (GPS) department @ Hollins University. She earned her Ph.D. in planning, governance, and globalization at Virginia Tech, her M.A.L.S. in social sciences with a focus on Roman history from Hollins University, and her B.S. in biology with a concentration in classical studies and chemistry. Her current research explores how institutions and cultural values mediate changes in repatriation policy for indigenous cultural property, “Biocolonialism: Examining Biopiracy, Inequality, and Power”, Spectra, 6(2), pp.58–73. DOI: http://doi.org/10.21061/spectra.v6i2.a.6]//pranav

**Through biopiracy, outside corporations and nations can quickly take resources and secure their control through international intellectual property rights and patents.** **The legitimation for these corporations stems from this westernized, neoliberal economy and the reduction in trade barriers that benefits the wealthier areas of the world at the expense of marginalized peoples**. Power over these populations becomes normalized as a conception of power over dominated subjects. Indigenous communities are generally smaller populations that remain on the margins within the nation-state until they are found to have economic value. Peripheral governance then becomes more pervasive in their lives under neoliberalism and the erosion of international trade barriers and increases in foreign investors. Under neoliberalism, market rationality is extended to all aspects of life. According to Wendy Brown, and her reading of Weber, there is nothing outside of the market. This is a system that allows for transnational entities to have greater control than individual sovereignties. The deregulation of the market, the elimination of tariffs and social safety nets, and an increase in the decimation of the environment and marginalized cultures are all hallmarks of neoliberalism.xvii **When societies and their traditional resources are incorporated into the economy, they become a form of capital**. Essentially, in relation to resources and traditional knowledge, neoliberalism’s desire for profit creates a political tension between national interests and globalized capital.xviii

**This represents a form of *cultural genocide* of Indigenous peoples in line with the notion of terra nullius – anything else relies on Western preoccupations with objectivity that ignores the communal nature of Indigenous “ownership”.**

**Diver ’04** [Alice, Dr Alice Diver is a Senior Lecturer in Law at Liverpool John Moores University, who publishes in the areas of adoption, human rights, property law, and law in literature. She joined LJMU in September 2018, having worked as a Senior Law Lecturer and Programme Leader for the LLB (Law and Criminology) and as a Senior (Faculty) Fellow for L& T at EHU (2015-2018). Prior to that she was employed as a Lecturer in Law/TJI Associate Researcher, and Course Director for the LLB programmes (Magee campus) at Ulster University, N Ireland (2000-2015). She previously worked as a Solicitor in N Ireland in private practice (1989-1995) and as an Associate Lecturer in Law at NWRC (1993-2004). She is an alumna of Queen's University Belfast (LLB, 1984; LLM (Dist.), 2004) and gained a First class BA Hons in English Literature from Ulster University in 2017. She is the author of a 2013 monograph on origin deprivation, closed records and familial contact in adoption and surrogacy entitled 'A Law of Blood-ties: The 'Right' to Access Genetic Ancestry' (Springer) which is based upon her PhD (Ulster, 2012). She was co-editor of an international collection of essays on socio-economic rights: 'Justiciability of Human Rights Law in Domestic Jurisdictions'' (Springer, 2015). She has served as an EU-funded country reporter (UK, NI) for the Asser Inst./Utrecht University on matters of cross-border family law, in 2008 and 2017, contributing to an EU-wide guide for family law practitioners (2018). She was a co-convenor of the International Society of Family Law's Regional Conference in Derry, N Ireland (2010). She was a trustee of Londonderry Inner City Trust from 2012 -2016, and has been a trustee for Kinship Care NI since 2014, and a board member for Apex Housing NI since 2013. She has served as an external examiner for a number of LLB and LLM programmes throughout the UK and Ireland, since 1999, “‘A Just War’ - Protecting Indigenous Cultural Property”, 2004, [http://classic.austlii.edu.au/au/journals/IndigLawB/2004/43.html]//pranav](http://classic.austlii.edu.au/au/journals/IndigLawB/2004/43.html%5d//pranav)

* Also implicates 2nr “everyone dies” discourse – criticizes ‘greater good’ discourse and means that that discourse just turns native populations into “haphazard aggregations”
* Neg is assimilationist policy

**When indigenous cultural property rights are defined by western concepts of ‘property ownership’, they risk the fate of indigenous land rights**. Where entire continents were lost under terra nullius, **indigenous peoples’ descendants now face a ‘cultural genocide’ with ‘discovered’ culture appropriated to benefit the ‘greater good’.** Human rights issues resurface; would cultural property rights be better protected via segregation or ‘integration’ into majority cultures? Should rights be framed as collective ‘group’ claims or as ‘matters for individuals’?[2] If so, might cultural property be capable of ‘self-determination’? If ‘cultural secession’ occurs, demands for defined territories become paramount. Human Rights lawyers may have to revise emerging customary norms given recent cases highlighting western judicial bias, where European definitions of ‘land use’ disregard the nomadic, ‘hunter-gatherer’ nature of many indigenous populations, **Anglo-western preoccupation with ‘alienability’ conflicts with the ‘perpetual’ nature of indigenous ownership**[3] and the ‘individualistic orientation of Anglophone countries’[4] **ignores the communal, ‘caretaker’ nature of aboriginal ownership. Although Mabo[5] appeared to extinguish terra nullius, its legacy lingers on**. This paper examines whether legal ‘blemishes of the past ... translate into current inequities’. The ‘evolving character’ of international jurisprudence initially sought to justify colonialism’s ‘brutal settlement patterns’.[7] Early defenders of aboriginal rights[8] highlighted the ‘essential humanity of the Indians’[9] and ‘condemned’ colonial abuses, but nevertheless made ‘integrationist assumption(s)’[10] that colonisation was ‘an incessant trend, heralding a new era of progress and prosperity’.[11] **The concept of ‘noble primitive, close to nature’,[12] needing fiduciary protection to use property correctly, runs through nineteenth-century American jurisprudence[13] and treaties.[14]** These ‘constrained claims and kinds of remedies’[15] displaced the ‘personal and cultural identity’[16] of native people, who were forced to ‘adopt a view of themselves ... that fits with the rights-conferring political machinery of the state’.[17] **With cultural property rights, loss of identity is pronounced, and the consequences profound; ‘what was fluid, changeable and non-material, becomes ... a predictable objective of a colonial state.’**[18] Just as land was state-ceded in return for rights to ‘reserve’ some of it, the ‘contrivance of sameness’[19] now seems necessary to protect cultural rights. **Assimilationist government policies, despite ‘politically correct language of participation and citizenship,’[20] frequently ‘deny difference’; underlying colonialism ensures that native populations remain ‘haphazard aggregations’[21] rather than distinct, rights-bearing state ‘beneficiaries’.**

**The TRIPS agreement is *forged* in a biocolonial exclusion of indigenous communities through a false belief of indigenous peoples as merely holders. This is inextricably tied to global demand for medicine and MNCs surge in biopiracy.**

**Breske 3** [Ashleigh, visiting assistant professor of international studies in the global politics and societies (GPS) department @ Hollins University. She earned her Ph.D. in planning, governance, and globalization at Virginia Tech, her M.A.L.S. in social sciences with a focus on Roman history from Hollins University, and her B.S. in biology with a concentration in classical studies and chemistry. Her current research explores how institutions and cultural values mediate changes in repatriation policy for indigenous cultural property, “Biocolonialism: Examining Biopiracy, Inequality, and Power”, Spectra, 6(2), pp.58–73. DOI: [http://doi.org/10.21061/spectra.v6i2.a.6]//pranav](http://doi.org/10.21061/spectra.v6i2.a.6%5d//pranav)

**The global demand for medicinal drugs has led to an increase in biopiracy in the Global South**. Once companies find something they believe will be profitable, they want to patent it straightaway so that no one else can capitalize off it. Patents are an easily accessible source of income for those able to apply for them. In fact, patents act as an exclusive control on a product, and, when corporations hold patents on biodiversity, they are creating a monopoly on food and health.xxviii In some ways **it is impossible for those in developing countries to compete with MNCs due to how patents and intellectual property rights are sustained**. Since patents are held nationally instead of internationally, most patent holders tend to be from more developed countries. Because of this divide, **it is possible to inflate the price of patented medicines so that corporations can make an even greater profit, which leads to more global inequalities.** **Rich states can also pay for access to technology for research and resources to control epidemics and infectious diseases more readily than poorer areas of the world.** **With the establishment of the World Trade Organization in 1994, international trade negotiations opened, and western notions of intellectual property rights took a firm hold in pharmaceutical research and development, increasing the strength of MNCs.** This was classified under TRIPS, the Agreement on Trade Related Intellectual Property Rights.xxix TRIPS was negotiated at the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) and set the standard for member states to recognize the same intellectual property rights. This then meant that industries could bypass local patent law by registering their patents in the most favorable jurisdiction.”xxx Before TRIPS, which set consistent requirements, intellectual property was considered a domestic issue with protections set on the national level. However, with TRIPS, transnational corporations are now much more successful at acquiring patents. xxxi For example, looking at the number of patents held at the end of the twentieth century, most were filed by the United States (41.8%) and Europe (41.95%).xxxii **The TRIPS agreements and domestic patent laws, specifically US law, shapes international IPRs and show that the legal system is excluding indigenous or marginalized communities**. xxxiii **There has been a push for TRIPS, predominantly by the pharmaceutical industry, to restrict profit potential by indigenous communities.** Corporations make minor genetic or chemical formula changes for their intellectual property claims and patents and can then claim their product is no longer directly linked to the initial source. Debra Harry has claimed that **the main problem with biocolonialism is the “manipulation and ownership of life itself, and the ancient knowledge systems held by Indigenous peoples.”** xxxiv **The problem stems from the belief that indigenous peoples are merely the holders, not owners, of communal knowledge. What are not considered are their territorial rights to the resources on their lands**. Xxxv

**Plan: The member nations of the World Trade Organization should eliminate patents on medicines based on Indigenous knowledge from patentability.**

**IPW ‘06** [Intellectual Property Watch quoting Debra Harry -- executive director of the Indigenous Peoples’ Council on Biocolonialism, and a member of the Paiute tribe in the United States, “Inside Views: Indigenous Groups Tell WIPO, ‘Don’t Patent Our Traditional Knowledge’”, [https://www.ip-watch.org/2006/12/06/inside-views-indigenous-groups-tell-wipo-dont-patent-our-traditional-knowledge/]//pranav](https://www.ip-watch.org/2006/12/06/inside-views-indigenous-groups-tell-wipo-dont-patent-our-traditional-knowledge/%5d//pranav)

* Examples of medicines the plan would affect include reserpine, digitoxin, American ginseng medicines, Qualaquin, Neem, Turmeric, Aspirin, and many others.
* The ev cites an actual joint statement from a tribal group
* Ev also answers the “what if a company decides to j mass produce” question

The joint statement of tribal group says: “**Any attempt to develop IPR-based mechanisms to ‘protect’ IK [indigenous knowledge] actually poses much more threat to our knowledge, as a whole, than it can ever claim to prevent**. **Rather than protect, the imposition of IPRs over IK actually would serve to facilitate the alienation, misappropriation, and commercialization of IK.”** “We believe patent applications that include or are based on IK should be specifically excluded from patentability. **In IP terms, we’re sure you understand that these patent claims would fail to meet the test of innovation, novelty or inventiveness**. But more importantly for Indigenous peoples, **such patent claims should be denied because IK is in the Indigenous domain; that is, it is already under the jurisdiction of Indigenous legal systems, which protect the IK in perpetuity as the inherent and inalienable cultural property of Indigenous peoples.**

**This invalidates the IPRs of western pharmaceutical companies and *terminates* their ‘*ethical right’* to Indigenous knowledge.**

**Breske 4** [Ashleigh, visiting assistant professor of international studies in the global politics and societies (GPS) department @ Hollins University. She earned her Ph.D. in planning, governance, and globalization at Virginia Tech, her M.A.L.S. in social sciences with a focus on Roman history from Hollins University, and her B.S. in biology with a concentration in classical studies and chemistry. Her current research explores how institutions and cultural values mediate changes in repatriation policy for indigenous cultural property, “Biocolonialism: Examining Biopiracy, Inequality, and Power”, Spectra, 6(2), pp.58–73. DOI: http://doi.org/10.21061/spectra.v6i2.a.6]//pranav

Looking at the production of pharmaceuticals, **we can see the importance of Intellectual Property Rights (IPRs) in the debate over the accessibility of indigenous knowledge to outside corporations and investors**. IPRs impact many different fields: healthcare, biodiversity, technology, human and cultural rights, research and development, and agricultural innovations; but, the international system that established international intellectual property rights was hastily organized and linked to trade agreements. xli Shiva claims **IPR laws, under the development of TRIPS and the World Trade Organization (WTO), “have unleashed an epidemic of the piracy of nature’s creativity and millennia of indigenous innovation**.” xlii Transnational corporations are taking advantage of slight “innovations” on traditional knowledge to maintain many of their IPRs. xliii **Together, IPRs and TRIPS, work to suppress indigenous peoples’ ability to control their traditional way of life**. The regulatory system includes domestic laws of developed areas of the world, like the United States, Japan, and Europe, and broader international intellectual property rights agreements. **These agreements resemble doctrines promoting colonialism since they are legal documents fostering the idea of ownership by the dominant colonizers.** Xliv Attempts have been made to establish a declaration that would negate corporate intellectual property rights if public health issues were brought forward by struggling nations’ governments. xlv **But this does not address the issue of restoring indigenous intellectual property rights. Large pharmaceutical corporations in the United States and the European Union have used their vast corporate wealth to prevent the nullification of their IPRs. The inability to invalidate their IPRs means that pharmaceutical companies have ensured rigidity in the trade agreements and prevented generics from being manufactured. This has also ensured their continued legal right to Indigenous knowledge, if not an ethical right**. xlvi Patents are an apparatus of power with universal political and social consequences. Patent policies are developed in western countries but affect poorer, marginalized areas of the world. Unfortunately, there is no international governing body through which all patents are channeled, and they are granted according to individual national domestic laws. These patents are generally established in western countries like Canada, the European Union, and the United States. For all intents and purposes, pharmaceutical companies have more legal rights than people due to trade liberalization.

**Compensation tactics fail – they take too long and don’t end up benefitting Indigenous peoples.**

**McGonigle ’16** [Ian Vincent, Assistant Professor of Global Science, Technology, & Society at Nanyang Technological University. Was previously a PhD Candidate in Anthropology and Middle East Studies at the Center for Middle Eastern Studies at Harvard University. He has published over a dozen original research articles in top academic journals, such as: Ethnos: Journal of Anthropology; the Journal of Law and the Biosciences (including the most-read article, with over 30,000 reads); Anthropology Today (cover feature); Journal of Neuroscience; Biophysical Journal; ACS Chemical Neuroscience; and Biochemistry., “Patenting nature or protecting culture? Ethnopharmacology and indigenous intellectual property rights”, Journal of Law and the Biosciences, Volume 3, Issue 1, April 2016, Pages 217–226, DOI: https://doi.org/10.1093/jlb/lsw003]//pranav

Previously, companies tended to compensate indigenous people for their role in the drug discovery process by according them a share of the profits from the drug once it had been commercialized. 6 **But the long period of time needed for drug discovery and clinical trials, often ten years or more, was thought to render such a mechanism of reciprocity unsatisfactory for the contemporary holders of traditional ecological knowledge (TEK)7 that help develop the drug**.8 Furthermore, **in most cases, the knowledge shared would not lead to a commercial end product, so that when compensation was structured in this way, no benefit of any kind would ultimately accrue to the indigenous people.**9

**The role of the judge is to vote for the debater that endorses the best form of epistemic subsidiarity.**

**McGonigle 2** [Ian Vincent, Assistant Professor of Global Science, Technology, & Society at Nanyang Technological University. Was previously a PhD Candidate in Anthropology and Middle East Studies at the Center for Middle Eastern Studies at Harvard University. He has published over a dozen original research articles in top academic journals, such as: Ethnos: Journal of Anthropology; the Journal of Law and the Biosciences (including the most-read article, with over 30,000 reads); Anthropology Today (cover feature); Journal of Neuroscience; Biophysical Journal; ACS Chemical Neuroscience; and Biochemistry., “Patenting nature or protecting culture? Ethnopharmacology and indigenous intellectual property rights”, Journal of Law and the Biosciences, Volume 3, Issue 1, April 2016, Pages 217–226, DOI: [https://doi.org/10.1093/jlb/lsw003]//pranav](https://doi.org/10.1093/jlb/lsw003%5d//pranav)

* TEK = Traditional Ecological Knowledge
* Sui generis j means like specific to them/ is latin for “their own”
* Epistemic subsidiarity is a legal framework for resolving ontological disputes in relation to varying definitions of nature this is a formalized legal strategy that can take place in multiple ways, but has the end goal of protecting spaces for the expression of local autonomy and legitimizing Indigenous processes – this does not entail leaving traditional policy spaces, but rather explains how to improve them and include Indigenous POVs into future action
* The framework is consequentialist (obviously limited as to what consequences matter), but is focused on producing the best legal strategy – if you prove that the squo/cp/alt or whatever is a better legal strategy for establishing protections for Indigenous populations or sui generis than the 1ac, you’d win – basic competition stuff lol
* To clarify, the 1AC does operate under a comparative worlds paradigm.

In response to these shortcomings, emerging insights from social studies of science may also help in thinking about the ethical problems, legal structures, and cultural clashes that anthropologists engaging in ethnopharmacology research may face. **Such scholarship may also offer insight for informing policy solutions and establishing better exchange agreements**. Jasanoff,61 for example, **has theorized a legal framework for resolving ontological disputes in relation to varying definitions of nature**. In a discussion of transnational risk governance, **she develops the idiom of ‘epistemic subsidiarity’ to describe a formalized legal strategy that could pave the way to ‘to protect spaces for the expression of local values and local autonomy’, and therefore also protect the legitimacy of local modes of reasoning, within the same judicial system.** ‘Epistemic subsidiarity’ is particularly salient to cross-border disputes where cosmopolitan exchanges require a formal system of reciprocity, compromise, and mutual respect of each party’s respective regimes of knowledge and value. For ethnopharmacology, implementing ‘epistemic subsidiarity’ might mean the establishment of special courts that would consider indigenous claims on their own terms. With the expert mediation by anthropologists, cultural diplomats, or leaders from different parties who can mediate between secular technoscience and indigenous culture, such courts could be a space where indigenous definitions of nature and property are heard in parallel to the interests of other parties, be they states, companies, or researchers. Further, **special laws could be written that would extend the protection of indigenous intellectual property to include non-modern understandings, including ambiguous spirit entities, or acquired TEK.** A system of epistemic subsidiarity also requires political decisions be made at the ‘lowest feasible level of governance’ so that local values and concerns are first taken into account.62 **With epistemic subsidiarity, different knowledge regimes can exist side by side (such as, for example, biology, international law, state law, and local indigenous law and healing practices), without one necessarily subordinating to another**. **Epistemic subsidiarity could also facilitate the writing of trade agreements on local indigenous terms, while also recognizing international law and other parties’ interests. Combining epistemic subsidiarity with the emerging anthropological perspectives that regard indigenous visions of their world with parallel ontological status to Western science could deliver ‘symmetry’ in the negotiation of trade agreements, and consequently, could help resolve the ethical dilemmas of ethnopharmacologists and indigenous peoples.** Stories like that of the Mexican peasants and their redundancy from the industry due to shortcuts made by chemistry in conjunction with IPR, or indeed the recent case of the Peruvian people who helped Napo develop ‘Dragon’s blood,’ show that IPR are not adequate instruments for representing or protecting indigenous TEK and their embodied know-how. Moreover, **current laws do not afford equal status to, or demand a symmetrical engagement with, non-modern cultural values and ambiguous local entities**. Further, **most discourse within the ethnopharmacology community is oriented to the biological and pharmacological sciences, with much less attention paid to the broader social, political, and anthropological dimensions of the research**.63 Consequently, the ethnopharmacology community has not yet addressed these questions with sustained debate, nor has there been much done to envision an ethical platform upon which to establish exchange agreements that incorporate ‘non-modern’ visions of the world. **Indigenous communities therefore need sui generis laws to protect their shared cultural heritage and shared natural resources**. So far, ‘Brazil, Costa Rica, India, Peru, Panama, the Philippines, Portugal, Thailand and the USA have all adopted sui generis laws that protect at least some aspects of traditional knowledge’.64 But **extending the concepts of ontological pluralism and epistemic subsidiarity into indigenous IPR laws could help lawmakers resolve the ethical and legal dilemmas over whose knowledge, and definitions of property, should prevail in exchange agreements and legal disputes.**

**The logics of settler colonialism *have not* disappeared, but merely *reformulated* extinction discourse to justify the *biocolonial exploitation* of natural resources and Indigenous knowledge in the west’s “global resource frontier” through narratives of inevitable Indigenous extinction.**

**Barker ’19** [Clare, Associate Professor in English Literature at the University of Leeds and their research focuses on postcolonial literatures and cultures, and it engages centrally with disability studies and medical humanities, “Biocolonial Fictions: Medical Ethics and New Extinction Discourse in Contemporary Biopiracy Narratives”, 2019, 19(2): 94–109, [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7116577/]//pranav](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7116577/%5d//pranav)

**The logic of biocolonial extractivism operates through a reorientation of the temporal formations of settler colonialism, which equate settler practices with development and consign Indigenous peoples to the past.** **The land dispossessions of the colonial era were facilitated by powerful narratives of inevitable Indigenous extinction:** ‘vanishing Indians’, Maori and Aboriginal ‘dying races’. As critics have shown, **contemporary biocolonialist initiatives operate on similar assumptions, under which indigenous biospecimens must be preserved and biological data acquired before they vanish forever**. Joanna Radin demonstrates that, since the mid-twentieth century, the ability to freeze and store blood and other organic samples has ‘emerged as a potentially powerful strategy for preserving fragments of a world that appeared to be increasingly in flux’. It enables ‘biological material to be studied in the present and especially in the future’, when (whether due to genetic admixture, European diseases, or environmental damage produced by the industrialized global North) ‘the individuals from whom it had been extracted were expected to have disappeared or changed beyond recognition’.3 In this article, I **explore the intertwined relationship between medical research ethics and the logic and ideology of biocolonialism** as it is represented in two contemporary American novels, Ann Patchett’s State of Wonder (2011) and Hanya Yanagihara’s The People in the Trees (2013). These novels depict ‘medical adventurer[s]’4 undertaking biocolonialist excursions into the remote jungles of, respectively, the Amazon and the Pacific, and are centrally concerned with the methods and infrastructure of biomedical and pharmaceutical research. In both cases, the fictional **scientists’ ethically problematic research practices implicate** **them in** what Pauline Wakeford calls ‘**two entangled narratives of death and disappearance: the grand récits of wildlife extinction and the vanishing Indian’.**5 **I focus in particular on how these texts, by presenting us with fictional bioethical quandaries related to human longevity and reproduction, engage with the new formulations of extinction discourse produced by the life sciences**. Patrick Brantlinger asserts that **colonial ‘extinction discourse was performative in the sense that it acted on the world as well as described it’**.6 State of Wonder and The People in the Trees **both imagine biological discoveries with the potential to extend human lifecycles, but these research endeavours are steeped in extinctionist ideology and themselves set in motion the decimation of previously thriving Indigenous communities**. **Aspirational narratives of ‘eternal life’ (in Yanagihara) and ‘world health’ (in Patchett) are underpinned by the knowledge that these communities, reframed as research subjects, are likely to vanish in the wake of what Warwick Anderson calls ‘scientific colonialism’, along with their unique ecosystems.**7 The different narrative temporalities of these texts – Patchett’s anticipating a significant breakthrough in global health, Yanagihara’s narrated retrospectively from a position of irreversible loss – produce divergent valuations of human and nonhuman lives and different perspectives on the ethics of biopiracy, as I shall discuss. But in reading them together, I demonstrate how fictional engagements with biocolonial science illuminate the continuities between colonial-era extractivism and contemporary research practices. **In their temporal reorientations and their ability to imagine actual and potential acts of extinction, these texts resituate extinction discourse squarely within the context of twentieth- and twenty-first-century bioscientific experimentation**. State of Wonder follows Marina Singh, a pharmacologist for a multinational pharmaceutical corporation, Vogel, on her expedition into the Amazon to investigate the death in the field of her colleague, Anders Eckman, and to assess the progress of a senior scientist, Annick Swenson, who is developing a fertility drug for Vogel while living with a remote tribe, the Lakashi. Swenson has discovered that the Lakashi women’s practice of chewing bark from a particular local tree (the Martin tree) not only alters their reproductive chemistry, allowing them to conceive and give birth into their seventies and eighties, but also inoculates them against malaria. Alongside their work on the fertility drug, Swenson and her team are surreptitiously developing a malaria vaccine at Vogel’s expense, which will have little appeal to company shareholders even though it ‘will have enormous benefits to world health’, since ‘[t]he people who need a malarial vaccine will never have the means to pay for it’.8 **As the narrative unfolds, the protection of the Lakashi, their lifeways, and their environment is pitted against this urgent global health imperative to save the lives of the ‘[e]ight hundred thousand children’ who, as Swenson tells Marina, ‘die every year of malaria’ in the so-called ‘Third World’.9** The People in the Trees is framed as the memoirs of Norton Perina, a ‘renowned immunologist’ who, as a young doctor in 1950, joins an anthropological expedition to U’ivu, a fictional Micronesian state.10 Along with his anthropologist colleagues, he ‘discovers’ a ‘lost tribe’ living on the island of Ivu’ivu whose ritual ingestion of a sacred turtle endemic to the island, the opa’ivu’eke, causes extended longevity, with some tribe members apparently living for several hundred years. Perina’s research on this phenomenon earns him a Nobel Prize for Medicine, but also kickstarts a rapid process of biocolonial incursion on this island that has ‘never [before] been colonized’, beginning with pharmaceutical companies, seeking to develop ‘age-retarding drugs, … anti-aging skin creams, [and] elixirs to restore male potency’, ‘swarming throughout Ivu’ivu on the hunt for the opa’ivu’eke’.11 It results in the extinction of the turtle, the razing of the island, and the decimation of the Ivu’ivuan community through an accelerated experience of the impacts of colonization, including forced displacement, alcoholism, and disease. Both texts emphasize the overdetermination of their respective jungle environments by longstanding colonialist tropes of exotic difference that are inflected by bioscientific discourse. **The Pacific island, as Elizabeth DeLoughrey has demonstrated, has long been figured as a remote, ‘hermetically sealed laboratory’, ‘deemed ahistorical and isolated’ from modernity and therefore ideal for experimentation in anthropology, ecology, and nuclear science**.12 The Amazon, meanwhile, is imagined as what Veronica Davidov terms a ‘pharmacopia’ that holds within its rich ecosystems ‘fantastic cures for illnesses that defy the capacities of the Western pharmaceutical industry’, or, as Dr Swenson puts it in State of Wonder, ‘some sort of magical medicine chest’.13 **Under the globalized conditions of the biomedical and pharmaceutical industries, the jungle spaces outside the West are vulnerable to exploitation due to their construction as ‘global commons’ or ‘global resource frontier[s]’ available to be harvested for their medical riches**.14 As Swenson asserts in an unapologetic utilization of extractivist rhetoric: ‘there is much to be taken from the jungle’.15 Through their focus on the activities of life scientists in the interconnected fields of big pharma and global health, both novels appear to offer a critique of the impacts of biocolonialism on Indigenous people and the ecosystems in which they exist. But, as I will show, Perina’s retrospective narration in The People in the Trees brings into critical focus the extinctionist logic of biocolonial science, while State of Wonder’s anticipatory positioning is ultimately bound up with the future-oriented rhetoric used to justify much exploitative and damaging scientific research. The People in the Trees introduces its Ivu’ivuan ‘lost tribe’ through the lens of 1950s anthropology. As an ambitious junior doctor on an anthropological expedition, Perina observes his anthropologist colleagues with a degree of scorn regarding their research activities, which seem to consist of conducting ‘fruitless interviews with the dreamers’ – the elderly Ivu’ivuans who have ingested opa’ivu’eke flesh and who are consequently aged between one and three hundred years old – and ‘filling entire notebooks with minute descriptions of the most mundane of activities’.16 The text enacts a forensic examination of anthropological method and ideology, presenting us with anthropologists who are, in line with recent critiques of the discipline, ‘entrenched in island boundedness, isolation, and atemporality’ in this period before the field’s critical turn.17 In thematizing this mid-twentieth-century anthropological perspective on the Indigenous tribe, Yanagihara draws attention to anthropology’s foundational role in establishing problematic research engagements with Indigenous people. **The ‘funereal but very modern science of anthropology’, as Brantlinger terms it, was heavily implicated in, and dependent upon, extinction discourse ‘in its attempt to learn as much as possible about primitive societies and cultures before they vanish forever’**.18 The People in the Trees dramatizes what Johannes Fabian famously termed ‘**the denial of coevalness’ – the assumption that supposedly ‘primitive’ Indigenous subjects of anthropological study exist on a different temporal plane from the ‘modern’ scientists studying them**.19 Yanagihara employs contrasting notions of time in Perina’s account of the villagers and the scientists. The researchers obey a ‘definition of time … determined in the part of the world where people consulted clocks and made and kept appointments’ (consonant with Mark Rifkin’s notion of ‘settler time’), while in the Ivu’ivuan jungle, Perina recounts, ‘time twirled itself into long, spiraling whorls, defying biology and evolution; not even the human body respected it’.20 He understands the villagers to possess ‘no notion of time, no notion of history’, despite being aware of their 400-day year and system for measuring birthdays.21 **While extinction discourse in the colonial era was mobilized to make way for the settler, conveniently bypassing Indigenous sovereignty on the land with the assumption of their inevitable elimination, in this context of 1950s Pacific anthropology, the denial of coevalness makes way for biocolonial exploitation of natural resources and Indigenous knowledge.** The research of the lead anthropologist, Paul Tallent, on a U’ivuan origin story linking the opa’ivu’eke to immortality, as well as on recent island histories rich in ecological and climatic knowledge, forms the basis for Perina’s biomedical experimentation on the dreamers and turtles.

**Research paradigms are not static, but rather in a *constant fluidity* that mandates the deployment of mixed methods to create effective change. The 1AC is NOT western pragmatism, but a *radical and unsettling form* of decolonizing research practices as the starting point for the broader project of decolonization.**

**Held ’19** [Mirjam, PhD student @ Dalhousie University, “Decolonizing Research Paradigms in the Context of Settler Colonialism: An Unsettling, Mutual, and Collaborative Effort”, 01-23-2019, International Journal of Qualitative Methods, DOI:10.1177/1609406918821574]//pranav

**Because paradigms are fluid scholarly constructs that are not homogenously applicable to the entire research community**. In his seminal work, The Structure of Scientific Revolutions, Kuhn (1962) defined paradigms “to be universally recognized scientific achievements that for a time provide model problems and solutions to a community of practitioners” (p. x). Thus, **a paradigm is nothing static** nor is it applicable to any and all researchers. According to Kuhn’s original definition, **a paradigm can either change over time or fall out of fashion**. Further, it provides guidance about which questions to ask and how to answer them only to a smaller subset of researchers, namely a scholarly community that works from the same theoretical and empirical background (Kuhn, 1996, as cited in Morgan, 2007). Or as Morgan (2007) put it, paradigms can be seen “as shared beliefs among members of a specialty area” (p. 53). While this view was first put forward for Kuhn’s linear paradigm shift model in which a new paradigm replaces and older one, it is equally applicable to the proliferation perspective. Thought and theories that were to be developed into nonpositivist research paradigms for qualitative social inquiry emerged in the 1960s and 1970s (Denzin & Lincoln, 1994, 2000, 2005). While the development of the postpositivist, constructivist and what is now often called the transformative paradigm was characterized by a number of defining crises (Denzin & Lincoln, 1994, 2000, 2005), the emergence of mixed methods, specifically the combining of quantitative and qualitative methods, led to confrontations that are now known as “paradigm wars” (Denzin, 2010; Teddlie & Tashakkori, 2003). Researchers have employed mixed methods since the early days of qualitative inquiry in the 1900s, but explicit multimethod research designs did not emerge until the 1960s (Teddlie & Tashakkori, 2003). In the 1980s, mixed methods that combined quantitative and qualitative methods seemingly had no place in methodological scholarship as their respective paradigms, that is, postpositivism and constructivism, were deemed incompatible (Denzin, 2010). **Then, some scholars of this specialty area took their shared conviction, namely that they should have the freedom to choose whatever method or combination of methods is most appropriate for answering the research question, and created the pragmatic paradigm** (for a more detailed account of the history of mixed methods, see Denzin, 2010; Teddlie & Tashakkori, 2003). **This pragmatic move allowed them to combine methods and thus methodologies that were previously (and still, by some scholars) believed to be irreconcilable**. From a paradigm incompatibility perspective, merging Western and Indigenous methodologies is equally impossible. Can the pragmatic paradigm thus provide a framework under which transformative and Indigenous methodologies can be used in combination? Not directly. The pragmatic paradigm was constructed to provide the flexibility to make quantitative/qualitative mixed-methods research legitimate from a philosophical/theoretical point of view. Early pragmatism (in the late 19th and early 20th centuries) was a philosophical movement that emphasized research as a social endeavor (Maxcy, 2003). Today, issues of power are still important to researchers who practice mixed-methods research in the context of feminist approaches (e.g., Hesse-Biber, 2010; Hesse-Biber & Griffin, 2015) or to generally challenge dominant views of reality (e.g., Hesse-Biber, 2010; Mertens, Bledsoe, Sullivan, & Wilson, 2010). Yet often, current practices of mixed-methods research under the pragmatic paradigm lack a true axiological stance, either overlooking or ignoring questions of ethics or value (Biddle & Schafft, 2015, p. 323; Teddlie & Tashakkori, 2009; p. 90). Research, however, is always already political (Denzin & Lincoln, 2008b, p. xi) and thus any paradigm that guides transformative/Indigenous research—which is inherently emancipatory/liberatory—needs to include values and let them play a formative role. Still, **the creation of the pragmatic paradigm can provide a model for rejecting the “either-or” of two seemingly incommensurable paradigms.** The transformative paradigm is based on a Western worldview, while Indigenous paradigms are rooted in a holistic, localized worldview. Nevertheless, they share many of their philosophical underpinnings. Another common tenet are decolonizing aspirations. These, however, are more than just another social justice issue. Decolonization is, by default, an unsettling enterprise and therefore “cannot easily be grafted onto pre-existing discourses/frameworks” as stated by Tuck and Yang (2012, p. 3). In the Canadian context of settler colonialism, decolonization is about land, resources, sovereignty, and self-determination (Tuck & Yang, 2012); as such, it involves the creation of a new social order. Thus, it is a mutual undertaking involving the colonizer and the colonized (Beeman-Cadwallader, Quigley, & Yazzie-Mintz, 2011). **I suggest applying this radical interpretation of decolonization to the decolonization of research in order to advance the discussion on multiparadigmatic research spaces.** **Radically decolonizing research means that any decolonizing research paradigm must be developed conjointly between Western and Indigenous researchers, creating a new research framework altogether**. It also means that decolonizing paradigms is not a means to an end (e.g., to provide alternative pathways to research or to make the research endeavor more inclusive and diverse), but just a small piece in the puzzle that is the decolonization project, which is ultimately a radical social reform. Decolonizing research under these premises will be an unsettling collaboration with fraught solidarity (Tuck & Yang, 2012) and an unknown outcome. **Decolonization is a long-term process involving the bureaucratic, cultural, linguistic, and psychological divesting of colonial power** (Smith, 2012) **by undoing “the privileging of dominant Euro-centred cultural values and beliefs in education, scholarship, knowledge production, the legitimization of intellectual capital, and the networks and systems of power”** (Styres, 2017, p. 19). **It is about reinventing the coexistence of the currently dominant society, more recent settlers and the Indigenous peoples by redefining where power is located.** This shift will include allowing the colonized to view and understand themselves through their own worldviews (Chilisa, 2012, p. 13). There is a progression to this process. Based on the experiences in his native Hawaii, Laenui (2000) identified five stages of the decolonization process: rediscovery and recovery, mourning, dreaming, commitment, and action. These phases share overlaps, and can happen at the same time and in various combinations (Laenui, 2000). Laenui’s phases were formulated for Indigenous or other colonized peoples; however, the decolonization of the dominant society will similarly proceed in stages. With dominance comes privilege; in order to undo white privilege, we need to thoroughly understand it (Land, 2015, p. 31). Thus, for the colonizer, too, the action phase will have to be preceded by a clear comprehension of the past and the status quo, before the hegemonic concept of European/Western thought can be challenged and a more equitable and collaborative future envisioned and attempted. The notion that “there are no spaces that are not colonized” (Anderson, 2004, p. 239) reinforces the need for decolonization to be an all-encompassing and collaborative effort. **It does not mean, however, that the perpetrators and the victims play the same role;** the burden is with the dominant society who has to take responsibility for its actions (see Getty, 2010, p. 7; Tuck & Yang, 2012, p. 35). Societal structures are either colonizing or liberatory. The shift from the former to the latter will be an unsettling and challenging process that, at best, will lead to mutual understanding, healing, and, ultimately, a postcolonial coexistence and collaboration. I interpret this postcolonial future as an era when the current ongoing oppression and marginalization of Indigenous peoples (collectively and individually) as a result of colonialism has been redressed and the former colonizer and the formerly colonized have found a balance that honors the Treaty rights, Aboriginal rights, and the individual and collective rights of Indigenous peoples as enshrined in the UNDRIP. The Canadian government is committed to acting upon the calls to action put forward by the TRC (Trudeau, 2015) and has indeed recently become a full signatory of the UNDRIP (Government of Canada, 2016). But when it comes to implementing deeds that advance reconciliation and decolonization on the ground, there has so far been much more talk than walk. While a change in rhetoric around Canada’s colonial past and neocolonial present is a start, only the implementation of the demands for—and rights to—indigenization, self-determination, and equality will lead to real change. This postcolonial prospect as envisioned by decolonization is not to be confused with the term postcolonialism that is currently in use in academia. Influenced by postmodernism and poststructuralism (Anderson, 2004), postcolonialism or postcolonial theory is “a critical theory that provides a way of deconstructing colonialism and its historical effects on the colonized,” as summarized by Getty (2010, p. 7). Helping to reveal the unequal power relations of past and present colonialism, postcolonial theory has been used by non-Indigenous scholars to analyze and critique the impacts of colonialism (Browne, Smye, & Varcoe, 2005). However, the approach is rather descriptive and does not reflect Indigenous ways of knowing (Getty, 2010); thus, Indigenous scholars have criticized its failure to support decolonization and Indigenous self-determination (e.g., Grande, 2000; Kovach, 2010; Smith, 2012). Decolonizing approaches, on the other hand, are not satisfied with describing and critiquing unequal power relations stemming from colonialism, they strive to undo them. In terms of decolonizing methodologies, Indigenous scholars made the first step by reviving, articulating, and using Indigenous methodologies and research paradigms for their research (e.g., Bishop, 2005; Graveline, 2000; Hart, 2010; Kovach, 2009; Rigney, 1999; Wilson, 2008). Based on local and relational worldviews, these paradigms, however, are only accessible to the respective Indigenous communities. Non-Indigenous scholars who support the self-determination of Indigenous peoples—also referred to as allied others—then tried to incorporate Indigenous ways of knowing and knowledge production into their research but still worked from a Western paradigm (e.g., Jackson-Barrett et al., 2015; Mertens, 2012). Many scholars engaged in research that tries to bridge Western and Indigenous approaches have expressed frustration over the fact that the ethical space of such research is ill-defined. Particularly, graduate student researchers (both Indigenous students and allies) who wish to embark on decolonizing research have to stem a lack of guidance and understanding, be it from advisory committees, ethics boards, university legal services, or granting agencies which are still often biased toward Western research approaches (cf. Kovach, 2009; Kuokkanen, 2007; Simonds & Christopher, 2013; Snow, 2018; Styres, Zinga, Bennett, & Bomberry, 2010). Both allies and Indigenous scholars are in search of a research ethics that is feminist, caring, communitarian, holistic, respectful, mutual (i.e., power balanced), sacred, and ecologically sound (Lincoln & Denzin, 2008, p. 569). In this quest, **an increasing number of authors has developed thought around a new multiparadigmatic space that combines elements of the transformative and of an Indigenous paradigm.** Indigenous scholars from around the world have put forward indigenized paradigms that are based on Indigenous perspectives and philosophical assumptions: examples are the Kaupapa Māori research approach (e.g., Bishop, 2005; Mane, 2009; Smith, 2000), Rigney’s (1999) Indigenist research paradigm for Australian Indigenous peoples, research frameworks developed by North American Indigenous peoples (e.g., Graveline, 2000; Hart, 2010; Kovach, 2009; Wilson, 2008) and by African scholars such as Chilisa’s (2012; Chilisa et al., 2017) postcolonial Indigenous research paradigm and Afrikology as a transdisciplinary approach (Buntu, 2013; Nabudere, 2011, 2012). Another transdisciplinary pathway is two-eyed seeing, coined by Mi’kmaq Elder Albert Marshall and first developed as a colearning journey that weaves together Indigenous and Western knowledges in science education (Bartlett, Marshall, & Marshall, 2012).2 These Indigenous paradigms can be used by Indigenous and non-Indigenous researchers alike, for, as Chilisa et al. (2017) posit, **paradigmatic positions need not be treated in exclusivist terms, that is, that the use of one precludes thinking in terms of the other.** Recognizing the need for diversity among the current “big four” (Dillard, 2006) Western research paradigms (postpositivist, constructivist, transformative, and pragmatic), Indigenous and Western scholars have called for the inclusion of a fifth paradigm, one based on non-Western perspectives, be they African, Eastern, African American, or Cree (e.g., Buntu, 2013; Chilisa, 2012; Chilisa et al., 2017; Dillard, 2006; Romm, 2015; Russon, 2008; Wilson, 2008).

***Progress* for Indigenous peoples is slow, but history proves it *is* *possible* – every small change matters.**

**Ecohawk & Drew ’20** [John Ecohawk is executive director of the Boulder, Colorado-based Native American Rights Fund and is a member of the Pawnee people, Kevin Drew is the assistant managing editor for international news, “Native Americans' Slow Path to Progress”, 07-15-2020, https://www.usnews.com/news/best-countries/articles/2020-07-15/supreme-court-ruling-puts-focus-on-slow-path-to-progress-for-native-americans]//pranav

In an age of growing global protests against racial inequalities, last week's **U.S. Supreme Court decision to classify about half of Oklahoma as a Native American reservation put a spotlight on the economic, health and educational disparities that countries' indigenous peoples still face around the world.** A 2009 U.N. report, for example, chronicled the widespread poverty, unhealthy living conditions and food insecurity that indigenous peoples face in the United States, Canada, Latin America, Australia, New Zealand and throughout Asia. A decade later, however, little progress has been made. A World Bank report published at the end of 2019 notes that the 476 million indigenous peoples in 90 countries make up about 6% of the global population, but account for 15% of the world's extreme poor. In Canada, a June 2019 government report stated that the deaths of thousands of indigenous women in recent decades constituted genocide and was the result of discrimination and the government's failure to protect First Nations people. And last February, Australian Prime Minister Scott Morrison conceded that his country's national policies to improve indigenous inequalities had failed and needed to be replaced. Those inequalities, including restricted access to national health care systems, make indigenous communities around the world especially vulnerable to the impacts of natural disasters and disease outbreaks such as the current COVID-19 pandemic, the World Bank report said. Still, **this may be a pivotal time for activists pushing back against systemic racism against Native Americans**. **The Supreme Court's 5-4 ruling on July 9 decided whether lands of the Muscogee (Creek) Nation remained a reservation after Oklahoma became a state.** **The decision came days after a federal judge ordered the Dakota Access pipeline to be shut down, a major victory for Native American communities that raised environmental concerns the pipeline posed to tribal lands**. And on Monday, Washington, D.C.'s NFL team announced it would change its nickname, a move activists have sought for decades to eliminate the team's use of the racial slur. U.S. News & World Report spoke with John Echohawk, executive director of the Boulder, Colorado-based Native American Rights Fund. The 74-year-old Echohawk, a Pawnee, co-founded the NARF in 1970 after becoming one of the first U.S. citizens to graduate with a law degree focused on Native American law. Today, NARF also has offices in Washington, D.C., and Anchorage, Alaska, has a staff of 35 employees, including 18 ½ full-time attorneys operating on a $12 million annual budget. Echohawk discussed the significance of the Supreme Court's Oklahoma ruling, and the slow, sometimes tortured path to progress for Native Americans. Can you put into historical context how significant the July 9 Supreme Court ruling concerning Oklahoma is for Native American rights? **The Creek Nation treaty was the first one (signed with the U.S. government) so this has been an issue going on and on for all these years.** The question is, what's the reservation's boundaries? Is it still intact? Has it been set in treaties or has it been changed by Congress? **The Supreme Court answered that – a treaty is a treaty. It stays in effect until Congress changes it with explicit language. That never happened, so the boundaries are still intact.** Do you anticipate the ruling having a spillover effect across the country? With 564 tribes across the country, there are plenty of disputes about boundaries and jurisdictions. **So this (the Supreme Court ruling) is another legal precedent that talks about the clear rules you would use to analyze whether a boundary has been diminished or not.** There are probably some cases out there that benefit from this clarification. What type of cases does your organization typically focus on? We have an all-native board of directors and there's no way we can undertake to represent all of the tribes, organizations and individuals that call us needing representation, so we have to be very selective and strategic. Our board has set up some priorities for us to follow. There are five and they're on our website: protection of tribal existence; protection of our tribal natural resources; protection of our human rights; holding the government accountable to the treaties and laws they passed to benefit us; and fifth, develop Indian law and educate the public about Native American law and policy. Can you discuss the development of the federal government's Native American policies? That basically requires a history lesson and it starts with 1492 and the first contact (between Europeans and native tribes). The European nations eventually came to realize tribes are nations, so they started resolving these issues through treaties. This practice found its way into the U.S. Constitution in 1787, and Congress was given the authority in Article I to deal with various sovereigns, foreign nations, the states and the tribal nations. And so we started entering into treaties … hundreds of treaties. Those treaties had resolved plenty of conflicts and land issues. But in 1871 the U.S. House of Representatives became jealous of the U.S. Senate because they were the ones conducting Indian affairs – the treaties could only be changed by the Senate. So Congress passed a law saying from now on we're going to deal with tribes through federal law. Federal Indian law and policy began developing in the 1880s and Congress thought it was wise to start assimilating and breaking up tribes and making them live like white people. One of the main ways they did that was to do what they call "allotment" … to take the tribal nations and reservations and take that land and divide it up and give individual tribal members the parcels of lands – allotments. What they didn't give to individual tribal members they would open up for settlement by non-Indians to come onto those reservations and buy that land and live among the Indians. Over the years this patchwork land ownership pattern was called checkerboard reservations. **This didn't happen to all of the tribes, it happened to some of the tribes and one of them was the Creek Nation**. The tribes lost about two-thirds of their lands through that process, and basically the tribes became destitute. That takes us into the 20th century. How did U.S. federal policy for Native Americans change? **After the Great Depression the U.S. (government) realized that allotment policy was a mistake and so they stopped it and passed the Indian Reorganization Act, which started recognizing tribal governments and the right of tribal governments to run tribal affairs.** That went on for about 20 years and then the politics of the 1950s came along and some people thought Indians living in their communal societies were too much like communists and they needed to be done away with, so they started terminating tribes – taking their land, selling it, moving Indians to the cities to be assimilated. This happened to about 100 tribes beginning in the '50s. And of course they didn't ask the tribes about that, they just did it. So in the 1960s and during the civil rights movement, our people started fighting back, complaining about this practice. **In 1970 under President Nixon, he announced a national Native American policy that stopped termination and started recognizing tribal self-determination – the right of tribal nations to exist and manage their own affairs.** So for the last 50 years that policy has stayed in effect and we have basically changed things. Our socioeconomic conditions are much better but still not as good as most people and we're still among the poorest of the poor. It's kind of a patchwork situation where some tribes do better than others. Has there been any lingering effect of trying to separate nations? Along the way, as you might guess, this was one of the first issues our board of directors had us address. One tribe, **the Menominee Nation in Wisconsin, took their situation back to Congress and explained how that decimated their tribe, and asked Congress to admit they were wrong and to restore the Menominee Nation and their lands, and they did. And other tribes followed in their footsteps – those terminated tribes all went back (to their lands), one after another and all got restored**. So **Congress corrected its mistake**. What are the greatest challenges facing Native Americans today, or is it even fair to try to lump all tribes as suffering the same issues? Different tribes have different issues. A lot of the challenges are lumped into those five priority issues that I mentioned. **Overall, things are getting better**. A lot of the reason for that is people understand we're still here. They just don't know about us but they're learning about us. They're learning that the United States is made up of federal government, state government and tribal government.

**You should not view the 1AC as a policy action as separate from the 1AC as a resistance project – only through embracing counter-hegemonic legal projects can we create new discourse and social meaning.**

**Mukuka 10** [George Sombe Mukuka holds two PhD degrees: in History from the University of KwaZulu-Natal and in Archaeology from the University of Witwatersrand. “Indigenous Knowledge Systems and Intellectual Property Laws in South Africa” Feb 20,2010 https://core.ac.uk/download/pdf/39667211.pdf] //aaditg

The core of orientalism is the capacity of the occident to claim to possess knowledge through which the orient is represented. In other words, since the nexus of knowledge is power, orientalism is about management and control of the orient by means of power (2003: 39). ***The creation of the current legal framework has created a fissure between the West and indigenous communities and can thus be interpreted as a conscious plan to deny power to indigenous communities through colonialism and apartheid.*** Said further contends that the orient and his world were seen as not existing in their own right, having life of their own, but rather as the extension of the European. It therefore would seem that orientalism was about diffusion of power from the centre, the West, towards the margins, the East, or in this case, Africa. Critical in this transaction were the West’s presumptions to claim knowledge of the orient by which they represented the orient. The ***orient is portrayed a ‘thing’, an ‘object’, and a ‘specimen’. Accordingly, he is someone who can be judged (as in a court of law), a subject matter to be studied (as in a curriculum) or examined, something to be disciplined (as in a school or prison), something one illustrates (as in a zoological manual).*** Furthermore, orientalism was strengthened by the knowledge that Europe or the West controlled the immense part of the earth surface (Said 2003). Subjugation of the orient did not merely entail land. It was intellectual and embraced within various discourses: Christian religion, sociology, ethnology, anthropology, politics and law. These explained the behaviour of orientals; they attributed to orientals a mentality, a genealogy, and an atmosphere; most importantly, they allowed Europeans to deal with and even see orientals as a phenomenon possessing regular characteristics. Nonetheless, the durability of orientalist notions was such that it influenced both the orientals as well as the European occident. This is the character of orientalism (2003: 2). 29 Rather than simply being a positive doctrine, at best it is understood as a set of constraints upon, and limitations to, not of thought. ***Orientalism presupposes and maintains that non-Europeans are irrevocably different from Europeans.*** More particularly the supposed inferior intellectual and physical abilities attributed to non-Europeans, so it was maintained, would make it impossible for them to attain cultural achievements similar to those achieved by their European counterparts. This notion was elaborated in various ways: for instance, technologically, it was assumed that it manifested in their inability to control nature; environmentally, it was held that their bodily constitution was compromised by the tropical climate. Postcolonial theory assists in trying to negotiate a new meaning of indigenous intellectual property ownership and current South African intellectual property laws by looking at how the subaltern or the indigenous communities consent to the domain of civil society through such channels as education, cultural practices and even intellectual property laws. This is non-liberative as the subaltern forgo their right to indigenous and communal ownership, as seen in the way the West has continuously plundered non-western materials and continued its political subjugation. The indigenous communities, according to orientalism, are consistently put at the service of colonial administration. In our case, indigenous knowledge is persistently put at the service of western knowledge systems and down played by western legal systems. The core of orientalism is the capacity by the West to claim possession of knowledge possessed by the orient. Therefore, orientalism will help us deconstruct and explain the transaction between indigenous knowledge systems and intellectual property laws as orientalism deals with how Europeans had power to manage and the orient or the indigenous communities over a significant period. Power to control did not only entail land. As stated earlier it was intellectual and it encompassed all aspects of life including law. ***The control by the West of intellectual property rights still exists since very little input from the indigenous communities has been solicited in the present intellectual property laws***. If they have been solicited the over riding paradigm is still Western and basically foreign in its approach. But even though the postcolonial theory helps us to look at the complex colonisation process, embedded in the postcolonial theory are cultural underpinnings which I shall look at in the next section. 30 2.3 Contested Cultures ***There is a critical need to assert how law and culture interact in our societies today. They are not independent of each other – they reinforce the hegemonic processes within communities. This investigation takes cognisance of a direct link between the law and indigenous cultural communities in the sense that even though cultural values might have not been factored into the current South African legal systems, the intellectual property law is alien in trying to address the needs of indigenous communities.*** Coombe (1998) notes legal forums are perceptibly significant locations for practices in which hegemony is constructed and then contested, providing institutional venues for struggles to establish and legitimate authoritative meanings. Law generates, then promotes, aspects of positivities, and at the same time it promotes prohibitions, legitimations, and oppositions to the subjects and objects, which it recognises. The resurgence of legal anthropology has contributed to the theoretical understandings of power, hegemony, and resistance (Comaroff 1995). With the rise of legal anthropology, prominence is then accorded to cultural milieu and: “Legal discourses are spaces of resistance as well as regulation, possibility as well as prohibition, subversion as well as sanction” (Coombe 1998: 25). There has been a rise of legal anthropology, which uplifts cultural aspects of communities; with rise in importance, the legal discourses become arenas on which new forms of legal systems may emerge. This process becomes vital in our study as it gives an opportunity for new forms of intellectual property protection to emerge based on the resurgence of legal and cultural anthropologies. Law is central to hegemonic process as stated earlier, but it is also a useful reservoir for counterhegemonic struggles. This is especially seen when the eminent realities are seized by those who in other instances might have versions of social relations formally consented to and other cultural meanings recognised. ***If indigenous communities can manage to change the current intellectual property laws, that is, deal with protection from their own cultural perspective, it is possible that overturning the understanding of intellectual property rights can bear some hegemonic consequences on the current social, political and economic relations and in turn new forms of ownership might be recognized.*** This then means that indigenous communities can be accorded an opportunity to contribute to the cultural, ideological and power struggles of the South African community. 31 Coombe continues to point out that ***law, then, is culturally explored “as discourse, process, practice, and system of domination and resistance” (1998: 26) to be connected to larger historical movements while remaining sensitive to the nuances of “the ontological and epistemological categories of meaning on which the discourse of law is based” (1998: 26). Historically structured and locally interpreted, law provides means and forums both for legitimating and contesting dominant meanings and the social hierarchies they support.*** Hegemony is an ongoing articulatory practice that is performatively enacted in juridical spaces where, as Susan Hirsch and Mindie Lazarus-Black put it, “webs of dominant signification enmesh at one level even those who would resist at another,” (1998: 26) and “hegemonic and oppositional strategies both constitute and reconfigure each other” (Comaroff 1995: 9). Legal situations usually shape the social meanings, which are assumed by signifying properties in public spheres. These social meanings are socially produced in fields which are typically seen by inequalities of digressing from subject to subject and material resources, symbolic capital, and access to channels of communication as Coombe expands: “if culture is our nature, whatever threatens to shut down, repress, or distort representation through the assertion of some absolute ‘presence’ threatens also to put an end to both culture and history” (1998: 26). ***Intellectual property rights currently formulated in our current context pose a threat to contemporary societal practices, invariably freezing forms, deeming denotation, and containing connotation.*** With the process of commodification of different cultural forms, there is a creation of new relations of power in contemporary cultural politics. With indigenous knowledge system it is hoped that it can play an important part in the creation of new power relations in South Africa. Its input will be a force to reckon and bargain with as many South Africans operate within its framework. For Coombe, laws ***legitimise and reinvigorate sources of “cultural authority by giving the owners of intellectual property priority in struggles to fix social meaning***” (1998: 26). If one draws examples principally from the field of trademark law of the cultural politics that engage commodified cultural signs in the condition of postmodernity, Coombe suggests that “the commodity/sign is always simultaneously participating in a poetics and a politics driven by social groups with differential abilities to influence the complexes of signifying forms within which they have agency” (1998: 26; 15 & 285). Cultural meanings are constantly contested. It is through this contest that indigenous knowledge can seek to have an upper hand and influence the discourse so that cultural 32 considerations from the indigenous communities can play a vital role in balancing the power relations which control the South African society. Coombe concludes by saying that increasingly, the holders of intellectual property rights are socially and juridically endowed with monopolies over the public meaning and the ability to be able to “control the cultural connotations of their corporate insignias (trademarks being the most visible signs of their presence in consumer culture). Intellectual property, then, is an arena for connotative struggle – ‘contested culture’” (1998: 26). It is against this background that I would like to examine intellectual property and its hegemonic role in cultural contestations. The existence of such laws intrinsically implies that certain communities by nature of their development have more latent power than other communities especially indigenous communities. There is a constant tension over this struggle, as indigenous communities would like to assert their control on the hegemonic process by claiming the importance of their indigenous intellectual property. On the one hand, it has been ignored and on the other hand, it has been exploited from the time of conquest till today.

**Traditional Knowledge is the origin for innovation, but current formal systems are built to harm Indigenous peoples – only effective policy outcomes solve.**

**Bagley et al. ’17** [Margo Bagley is a CIGI Senior fellow and is the Asa Griggs Candler Professor of Law @ the Emory University School of Law, Ruth Okediji is the Traditional Knowledge Expert Group Chair and Jerimiah Smith Jr. Professor of Law @ Harvard Law School, Kathy Hodgson Smith is a Canadian Indigenous Lawyer and a member of the Métis Communities, Jerome Reichman is a CIGI Senior Fellow and the Bunyan S Womble Professor of Law @ Duke Law School, Graham Dutfield is a Professor of International Governance & Faculty of Law at Leeds University, the video is titled “What is Traditional Knowledge?”, the article is titled “What If a Patent Is Based on Traditional Knowledge?”, 06-12-2017, Centre for International Governance Innovation, evidence is transcribed from the video using the written subtitles , 0:00 – 1:45 ,https://www.cigionline.org/multimedia/what-if-patent-based-traditional-knowledge/]//pranav

**Traditional knowledge in particular, represents innovation, it represents culture, it represents history, it represents the present, it represents the future.** Traditional knowledge means different things to different people. It may relate to genetic resources, plants, animals, insects, that are native to the area where that particular community resides. Indigenous peoples have an insight into sustainable development and conservation and protection of biodiversity and that there’s something important in that, that we need to hear. When Indigenous people suffer from illnesses from microbes, what have they done to combat those illnesses? Have they used plants, have they used some food? These are clues to potential sources of medicine. What **this project** does at CIGI, is it **makes visible the people and the cultures and the norms and the values that undergird the formal systems to which we pay so much attention, to the detriment sometimes of the people who historically have been the origin of much of the innovation and much of the knowledge that we enjoy and experience today.** What **we need to** do in our Expert Group, is to **ensure that evidence is made available and packaged in a way that can actually directly transfer into policy outcomes at these important forums in Geneva and elsewhere in the world**.

**CP**

**CP: Member nations of the World Trade Organization should establish a sui generis right for holders of traditional knowledge.**

**That solves the aff by preventing biopiracy while ensuring indigenous communities can use IP as an economic bargaining chip**

**Garcia 07** [(Javier, attorney at Perkins Coie LLP in Seattle, Washington, J.D. from Gonzaga University School of Law and B.A. from the University of Redlands) “Fighting Biopiracy: The Legislative Protection of Traditional Knowledge,” Berkeley La Raza Law Journal,” 3/2007] JL

The establishment of **a sui generis right for holders of traditional knowledge would provide compensation for communities that do not otherwise qualify for patent protection**. Under Article 8 of the TRIPS agreement, countries can adopt legislation to protect "sectors of vital importance to their socio-economic and technological development."'' 7 s A sui generis right could therefore be adopted in conjunction with domestic legislation as a catch-all provision pursuant to Article 8. The nature of a traditional knowledge sui generis right is detailed below.

Establishing a sui generis right for traditional knowledge holders could resolve problems stemming from patent law's limited term of protection. 7 6 Foremost among them is that certain forms of traditional knowledge may fall under the realm of public domain, and thus, be exempt from any patent protection. 7 Likewise, some **traditional knowledge holders may also seek terms of protection that are incompatible with patent law, seek to prevent any sharing of their knowledge, or seek exclusive rights over their knowledge** for an unlimited amount of time. 7 1 Such efforts would prove at odds with current patent law, which only rewards patent . . ... . '79 protection for a limited period of time to enable further innovations. Although a sui generis right could address some of these concerns, traditional knowledge holders will likely have to make sacrifices to avoid the misappropriation of their intellectual property rights. For example, the documentation of traditional knowledge will ultimately submit any documented traditional knowledge to the public domain. This may prove contradictory to the values of some traditional knowledge holders who wish to maintain ownership and control of their knowledge forever; nonetheless, it is an adaptation that must be made to avoid the exploitation of traditional knowledge. A traditional knowledge sui generis right could also **overcome patent law's relative incompatibility with communal ownership**. Confronting this hurdle is necessary since it may be against communal customs for an individual to own knowledge developed and modified over many generations.' Recognition of a sui generis right could also **overcome barriers posed by international patent standards** that require that an invention be new and subject to industrial applicability. I5 '

Finally, **a sui generis right could modify patent law with respect to traditional knowledge holders to allow benefit sharing among communities not considered inventors under current patent law**. For example, in 2004, the University of California, Berkeley, signed an agreement with the Samoan government to isolate from an indigenous tree the gene for a promising anti-AIDS drug and to share any royalties from sale of a gene-derived drug with the people of Samoa. 182 The agreement, signed by the prime minister of Samoa and U.C. Berkeley's Vice Chancellor for research, allocates Samoa's fifty percent share to the government, villages, and the families of healers who first shared the knowledge of how to use the plant. 18 Under the agreement, any commercial developer must "first negotiate an equitable benefit-sharing agreement with Samoa."' 184 This landmark agreement could be duplicated in Mexico under domestic legislation. Agreements like these may pose a problem given the amount of government corruption in Mexico and other 185 developing countries. Nevertheless, it may be the lesser of the two evils. Under domestic legislation or a sui generis right, **compensation from patent royalties would be guaranteed at least to the State** and would hopefully be spent in Mexico, rather than abroad. Furthermore, local government officials may be more entitled to compensation from profitable traditional knowledge than foreign, corporations.

An **effective dispute resolution mechanism** is necessary to make domestic legislation successful. First, it allows a country to establish jurisdiction over foreign companies that enter the country to extract resources. The mere existence of a dispute resolution process **places foreign companies on notice that they are subject to jurisdiction and criminal or civil liability for violative conduct**, such as environmental damage resulting from the excavation of resources, misappropriation of intellectual property rights, and civil rights violations. Currently, foreign companies are entering sovereign territories without permission, but governments do not have the legislation in place to regulate them effectively. 186 A dispute resolution mechanism will **force entities to abide by the laws and regulations established by the proposed legislation**.

The mechanism should provide a dispute resolution process for domestic conflicts and conflicts involving other sovereign states, thus requiring two levels of dispute-resolution. The first level should be for States to resolve disputes. The second level should provide a dispute-resolution mechanism for private parties who claim ownership of traditional knowledge, such as two tribal communities claiming ownership over the same traditional knowledge. 189 This level of dispute resolution will adjudicate intellectual property rights among all domestic entities, including indigenous communities, local inventors, corporations, or any other patent applicants claiming ownership of traditional knowledge.

The protection of traditional knowledge is vital to underdeveloped countries. **Traditional knowledge is one of the few resources and bargaining chips these countries still retain**. Accordingly, Mexico and other underdeveloped countries should protect themselves from the misappropriation of traditional knowledge that has already begun. Adopting domestic legislation provides the best means to regulate and control foreign entities seeking to extract and exploit traditional knowledge from vulnerable indigenous communities.

**It competes:**

1. **The CP is anti-topical action**

**IPTF 04** [(International Intellectual Property Institute, not-for-profit 501 corporation that provides education and training on intellectual property) “Is a Sui Generis System Necessary?” 1/14/2004] JL

WIPO and the WTO are in the process of establishing international rules for the protection of biodiversity. One of the key questions under consideration is whether or not to create a sui generis system to establish the norms and rules for protection. A “sui generis” system simply means “one that is of its own kind1 ”. In this case it refers to the creation of **a new national law or the establishment of international norms that would afford protection to intellectual property** dealing with genetic resources -or biodiversity - and the biotechnology that might result. It also refers to a law that might protect creations, inventions, models, drawings, designs, innovations contained in images, figures, symbols, petroglyphs, art, music, history and other traditional artistic expressions.

1. **Eliminate means get rid of – the CP doesn’t get rid of IP protections, just changes who they’re afforded to**

**Oxford n.d.** [“Eliminate,” Oxford Languages] JL

completely remove or get rid of (something).

**DA**

**Biotech industry strong now.**

**Cancherini et al. 4/30** [(Laura, Engagement Manager @ McKinsey & Company, Joseph Lydon, Associate Partner @ McKinsey & Company, Jorge Santos Da Silva, Senior Partner at McKinsey & Company, and Alexandra Zemp, Partner at McKinsey & Company), “What’s ahead for biotech: Another wave or low tide?“, McKinsey & Company, 4-30-2021, https://www.mckinsey.com/industries/pharmaceuticals-and-medical-products/our-insights/whats-ahead-for-biotech-another-wave-or-low-tide] TDI

As the pandemic spread across the globe in early 2020, biotech leaders were initially pessimistic, reassessing their cash position and financing constraints. When McKinsey and BioCentury interviewed representatives from 106 biotech companies in May 2020,4 half of those interviewed were expecting delays in financing, and about 80 percent were tight on cash for the next two years and considering trade-offs such as deferring IPOs and acquisitions. Executives feared that valuations would decline because of lower revenue projections and concerns about clinical-trial delays, salesforce-effectiveness gaps, and other operational issues.

Belying this downbeat mood, biotech has in fact had one of its best years so far. By January 2021, venture capitalists had invested some 60 percent more than they had in January 2020, with more than $3 billion invested worldwide in January 2021 alone.5 IPO activity grew strongly: there were 19 more closures than in the same period in 2020, with an average of $150 million per raise, 17 percent more than in 2020. Other deals have also had a bumper start to 2021, with the average deal size reaching more than $500 million, up by more than 66 percent on the 2020 average (Exhibit 3).6

What about SPACs?

The analysis above does not include special-purpose acquisition companies (SPACs), which have recently become significant in IPOs in several industries. Some biotech investors we interviewed believe that SPACs represent a route to an IPO. How SPACs will evolve remains to be seen, but biotechs may be part of their story.

Fundamentals continue strong

When we asked executives and investors why the biotech sector had stayed so resilient during the worst economic crisis in decades, they cited innovation as the main reason. The number of assets transitioning to clinical phases is still rising, and further waves of innovation are on the horizon, driven by the convergence of biological and technological advances.

In the present day, many biotechs, along with the wider pharmaceutical industry, are taking steps to address the COVID-19 pandemic. Together, biotechs and pharma companies have more than 250 vaccine candidates in their pipelines, along with a similar number of therapeutics. What’s more, the crisis has shone a spotlight on pharma as the public seeks to understand the roadblocks involved in delivering a vaccine at speed and the measures needed to maintain safety and efficacy standards. To that extent, the world has been living through a time of mass education in science research and development.

Biotech has also benefited from its innate financial resilience. Healthcare as a whole is less dependent on economic cycles than most other industries. Biotech is an innovator, actively identifying and addressing patients’ unmet needs. In addition, biotechs’ top-line revenues have been less affected by lockdowns than is the case in most other industries.

Another factor acting in the sector’s favor is that larger pharmaceutical companies still rely on biotechs as a source of innovation. With the top dozen pharma companies having more than $170 billion in excess reserves that could be available for spending on M&A, the prospects for further financing and deal making look promising.

For these and other reasons, many investors regard biotech as a safe haven. One interviewee felt it had benefited from a halo effect during the pandemic.

More innovation on the horizon

The investors and executives we interviewed agreed that biotech innovation continues to increase in quality and quantity despite the macroeconomic environment. Evidence can be seen in the accelerating pace of assets transitioning across the development lifecycle. When we tracked the number of assets transitioning to Phase I, Phase II, and Phase III clinical trials, we found that Phase I and Phase II assets have transitioned 50 percent faster since 2018 than between 2013 and 2018, whereas Phase III assets have maintained much the same pace. There could be many reasons for this, but it is worth noting that biotechs with Phase I and Phase II assets as their lead assets have accounted for more than half of biotech IPOs. Having an early IPO gives a biotech earlier access to capital and leaves it with more scope to concentrate on science.

**IP protections for traditional knowledge are key to innovation**

**Ngatcha 20** [(Beatrice T., lawyer and patent agent in Lavery’s intellectual property group, patent agent registered to practice in Canada and the United States,member of the Quebec Bar, doctoral degree in chemistry from *Université Laval* and post-doctoral fellow at the National Research Council in Ottawa) “Natural Products and Pharmaceutical Innovations: What are the Patent Options?” Lavery, 5/29/2020] JL

Natural products play an **important role in pharmaceutical innovation**. They are active components in many medicines. For example, nearly half of the small molecules used to **treat cancer** are natural products or directly derived from natural products.[1](https://www.lavery.ca/en/publications/our-publications/3225-natural-products-and-pharmaceutical-innovations-what-are-the-patent-options-ip-intellectual-property.html#01) They are also components of **vaccines**.

**The pharmaceutical industry is constantly seeking access to natural products and the traditional knowledge associated with them**. These include **plants** (roots, bark, leaves), **micro-organisms** (terrestrial and marine), **toxins, venoms and other natural biological agents**.

In the current race to develop a drug and/or vaccine against COVID-19, natural products or derivatives are surely worth considering as a starting point.

The harvesting of natural resources for use by the pharmaceutical industry is usually **carried out by partners such as traditional healers**, farmers, academics or businesses. Thus, the process usually involves several stakeholders, including providers and users of natural resources and associated traditional knowledge, which are often located in different parts of the world.

Fair and equitable collaboration in such a context requires well-developed collaboration agreements and access and benefit-sharing agreements. Various instruments of international law encourage the signing of such agreements, including:

The Convention on Biological Diversity **(CBD), which recognizes the sovereignty of states over their natural resources**. The CBD sets out fundamental principles to **regulate access and benefit-sharing**, including that access to natural resources, their use and the sharing of benefits arising from them should be based on “mutually agreed terms.”[2](https://www.lavery.ca/en/publications/our-publications/3225-natural-products-and-pharmaceutical-innovations-what-are-the-patent-options-ip-intellectual-property.html#02)

The Nagoya Protocol covers the sharing of the results of research and development, the payment of royalties and joint ownership of intellectual property (IP) rights.[3](https://www.lavery.ca/en/publications/our-publications/3225-natural-products-and-pharmaceutical-innovations-what-are-the-patent-options-ip-intellectual-property.html#03)

The World Intellectual Property Organization (WIPO) has developed a guide to assist providers and users of natural resources and associated traditional knowledge in the negotiation and establishment of IP clauses in access and benefit-sharing agreements. The guide describes how IP rights can be exploited and managed to achieve the desired objectives, and how the benefits arising from the use can be created and shared in a fair and equitable manner, thereby promoting the conservation and use of biodiversity.[4](https://www.lavery.ca/en/publications/our-publications/3225-natural-products-and-pharmaceutical-innovations-what-are-the-patent-options-ip-intellectual-property.html#04)

Furthermore, research and development activities in the pharmaceutical industry are known to be associated with **high risk** and **high investment costs**. Indeed, it is widely recognized that the process to develop a drug can take up to 15 years, only about 16% of molecules entering the clinical phase will be approved, and only 1 in 5 marketed drugs generates revenues equal to or greater than the research and development costs involved.[5](https://www.lavery.ca/en/publications/our-publications/3225-natural-products-and-pharmaceutical-innovations-what-are-the-patent-options-ip-intellectual-property.html#05)

In the pharmaceutical industry, **intellectual property, especially patents and data protection, is thus considered an essential instrument for securing the economic benefits of an innovation**.

Efforts in this intense period of development of a drug/vaccine against COVID-19 are of course focused on the technical aspects directly related to research and development. Nevertheless, those involved should not lose sight of the importance of collaboration agreements and access and benefit-sharing agreements.

**50% of medicine comes from IK**

Eiland 08 [Dr. Eiland received a doctorate in Oriental Archaeology from Oxford University and an LLM from the Munich Intellectual Property Law Center], “Patenting Traditional Medicine”, Nomos Verlagsgesellschaft mbH & Co. KG, pg. 7-10, 2008 //SLC PK

* TM = traditional medicine

In 1982, it was estimated that about 50 % of all filled prescriptions in the US originated from drugs that were derived – one way or another – from natural substances. This generated US sales of about 20 billion.4 Another estimate found that 3/4 of the plants used in prescription drugs originally came to the attention of drug companies because of their use in TM.5 In 1995, the worldwide market value of TM derived pharmaceuticals was estimated to be $43 billon.6 While one could argue about the precise values, TM has significant pharmaceutical applications. Drug companies are interested in acquiring TM, both natural substances, as well as the knowledge about how to use them.

**Biopharmaceutical innovation is key to prevent future pandemics and bioterror.**

**Marjanovic and Feijao 20** [(Sonja Marjanovic, Ph.D., Judge Business School, University of Cambridge. Carolina Feijao, Ph.D. in biochemistry, University of Cambridge; M.Sc. in quantitative biology, Imperial College London; B.Sc. in biology, University of Lisbon.) "How to Best Enable Pharma Innovation Beyond the COVID-19 Crisis," RAND Corporation, 05-2020, https://www.rand.org/pubs/perspectives/PEA407-1.html] TDI

As key actors in the healthcare innovation landscape, pharmaceutical and life sciences companies have been called on to develop medicines, vaccines and diagnostics for pressing public health challenges. The COVID-19 crisis is one such challenge, but there are many others. For example, MERS, SARS, Ebola, Zika and avian and swine flu are also infectious diseases that represent public health threats. Infectious agents such as anthrax, smallpox and tularemia could present threats in a bioterrorism context.1 The general threat to public health that is posed by antimicrobial resistance is also well-recognised as an area in need of pharmaceutical innovation. Innovating in response to these challenges does not always align well with pharmaceutical industry commercial models, shareholder expectations and competition within the industry. However, the expertise, networks and infrastructure that industry has within its reach, as well as public expectations and the moral imperative, make pharmaceutical companies and the wider life sciences sector **an indispensable partner** in the search for solutions that save lives. This perspective argues for the need to establish more sustainable and scalable ways of incentivising pharmaceutical innovation in response to infectious disease threats to public health. It considers both past and current examples of efforts to mobilise pharmaceutical innovation in high commercial risk areas, including in the context of current efforts to respond to the COVID-19 pandemic. In global pandemic crises like COVID-19, the urgency and scale of the crisis – as well as the spotlight placed on pharmaceutical companies – mean that contributing to the search for effective medicines, vaccines or diagnostics is essential for socially responsible companies in the sector. 2 It is therefore unsurprising that we are seeing industry-wide efforts unfold at unprecedented scale and pace. Whereas there is always scope for more activity, industry is currently contributing in a variety of ways. Examples include pharmaceutical companies donating existing compounds to assess their utility in the fight against COVID19; screening existing compound libraries in-house or with partners to see if they can be repurposed; accelerating trials for potentially effective medicine or vaccine candidates; and in some cases rapidly accelerating in-house research and development to discover new treatments or vaccine agents and develop diagnostics tests.3,4 Pharmaceutical companies are collaborating with each other in some of these efforts and participating in global R&D partnerships (such as the Innovative Medicines Initiative effort to accelerate the development of potential therapies for COVID-19) and supporting national efforts to expand diagnosis and testing capacity and ensure affordable and ready access to potential solutions.3,5,6 The primary purpose of such innovation is to benefit patients and wider population health. Although there are also reputational benefits from involvement that can be realised across the industry, there are likely to be relatively few companies that are ‘commercial’ winners. Those who might gain substantial revenues will be under pressure not to be seen as profiting from the pandemic. In the United Kingdom for example, GSK has stated that it does not expect to profit from its COVID-19 related activities and that any gains will be invested in supporting research and long-term pandemic preparedness, as well as in developing products that would be affordable in the world’s poorest countries.7 Similarly, in the United States AbbVie has waived intellectual property rights for an existing combination product that is being tested for therapeutic potential against COVID-19, which would support affordability and allow for a supply of generics.8,9 Johnson & Johnson has stated that its potential vaccine – which is expected to begin trials – will be available on a not-for-profit basis during the pandemic.10 Pharma is mobilising substantial efforts to rise to the COVID-19 challenge at hand. However, we need to consider how pharmaceutical innovation for responding to emerging infectious diseases can best be enabled beyond the current crisis. Many public health threats (including those associated with other infectious diseases, bioterrorism agents and antimicrobial resistance) are urgently in need of pharmaceutical innovation, even if their impacts are not as visible to society as COVID-19 is in the immediate term. The pharmaceutical industry has responded to previous public health emergencies associated with infectious disease in recent times – for example those associated with Ebola and Zika outbreaks.11 However, it has done so to a lesser scale than for COVID-19 and with contributions from fewer companies. Similarly, levels of activity in response to the threat of antimicrobial resistance are still low.12 There are important policy questions as to whether – and how – industry could engage with such public health threats to an even greater extent under improved innovation conditions.

**Extinction – defense is wrong**

Piers **Millett 17**, Consultant for the World Health Organization, PhD in International Relations and Affairs, University of Bradford, Andrew Snyder-Beattie, “Existential Risk and Cost-Effective Biosecurity”, Health Security, Vol 15(4), http://online.liebertpub.com/doi/pdfplus/10.1089/hs.2017.0028

Historically, disease events have been responsible for the **greatest death tolls** on humanity. The 1918 flu was responsible for more than 50 million deaths,1 while smallpox killed perhaps 10 times that many in the 20th century alone.2 The Black Death was responsible for killing over 25% of the European population,3 while other pandemics, such as the plague of Justinian, are thought to have killed 25 million in the 6th century—constituting over 10% of the world’s population at the time.4 It is an open question whether a future pandemic could result in outright human extinction or the irreversible collapse of civilization.

A skeptic would have many good reasons to think that existential risk from disease is unlikely. Such a disease would need to spread **worldwide** to remote populations, overcome rare genetic resistances, and evade detection, cures, and countermeasures. Even evolution itself may work in humanity’s favor: Virulence and transmission is often a trade-off, and so evolutionary pressures could push against maximally lethal wild-type pathogens.5,6

While these arguments point to a very small risk of human extinction, **they do not rule the possibility out** entirely. Although rare, there are recorded instances of species going extinct due to disease—primarily in amphibians, but also in 1 mammalian species of rat on Christmas Island.7,8 There are also historical examples of large human populations being almost entirely wiped out by disease, especially when multiple diseases were simultaneously introduced into a population without immunity. The most striking examples of total population collapse include native American tribes exposed to European diseases, such as the Massachusett (86% loss of population), Quiripi-Unquachog (95% loss of population), and theWestern Abenaki (which suffered a staggering 98% loss of population).

In the modern context, no single disease currently exists that combines the worst-case levels of transmissibility, lethality, resistance to countermeasures, and global reach. But many diseases are proof of principle that each worst-case attribute can be realized independently. For example, some diseases exhibit nearly a 100% case fatality ratio in the absence of treatment, such as rabies or septicemic plague. Other diseases have a track record of spreading to **virtually every human community worldwide**, such as the 1918 flu,10 and seroprevalence studies indicate that other pathogens, such as chickenpox and HSV-1, can successfully reach over **95% of a population**.11,12 Under optimal virulence theory, natural evolution would be an unlikely source for pathogens with the highest possible levels of transmissibility, virulence, and global reach. But advances in biotechnology might allow the creation of diseases that combine such traits. Recent controversy has already emerged over a number of scientific experiments that resulted in viruses with enhanced transmissibility, lethality, and/or the ability to overcome therapeutics.13-17 Other experiments demonstrated that mousepox could be modified to have a 100% case fatality rate and render a vaccine ineffective.18 In addition to transmissibility and lethality, studies have shown that other disease traits, such as incubation time, environmental survival, and available vectors, could be modified as well.19-2

**1NC – CP**

**CP: Member nations of the World Trade Organization should enter into a prior and binding consultation with the World Health Organization over eliminating medicines based on Indigenous knowledge from patentability. Member nations will support the proposal and adopt the results of consultation.**

**WHO says yes:**

1. **They supported the Nagoya Protocol**

**WHO 17** [“Implementation of the Nagoya Protocol and Pathogen Sharing: Public Health Implications,” World Health Organization, 2/1/2017] JL

The Nagoya Protocol provides a foundation, based on core principles, such as fairness and equity, for a global common approach to accessing pathogens, and sharing benefits arising from their use. As suggested by several respondents to this study, implementation of the Nagoya Protocol in the context of infectious diseases could help to (1) clarify and harmonize the ABS obligations associated with access to pathogens and (2) establish a fairer and more equitable approach for sharing the benefits derived from their use.

Increased clarity, fairness and equity could encourage timely sharing, which would support risk assessment and the development of medical countermeasures. In addition, predictable sharing of benefits could improve access to affordable treatments and help build capacities, such as disease surveillance, and research and development, particularly in developing countries. Through the sharing of benefits such as joint ownership of intellectual property, collaboration and acknowledgment of contributions, the Nagoya Protocol provides an opportunity for Member States to establish pathogensharing systems that support **global health equity**.

1. **WHO says yes**

**WHO 06** [“Access to AIDS medicines stumbles on trade rules,” Bulletin of the World Health Organization, 2006] JL

The holders of traditional knowledge often face a dilemma. How can they benefit from their own traditional knowledge if they don’t patent it? Intellectual property rights are often regarded as **incompatible with traditional knowledge** because patents are based on innovations or discoveries and held exclusively, while traditional knowledge is collectively owned and based on prior use.

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

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

Members want the WHO to **exert leadership, harmonize disparate activities, and set priorities**. Yet they resist intrusions into their sovereignty, and want to exert control. In other words, ‘everyone desires coordination, but no one wants to be coordinated.’ States often ardently defend their geostrategic interests. As the Indonesian virus-sharing episode illustrates, the WHO is pulled between power blocs, with North America and Europe (the primary funders) on one side and emerging economies such as Brazil, China, and India on the other. An inherent tension exists between richer ‘net contributor’ states and poorer ‘net recipient’ states, with the former seeking smaller WHO budgets and the latter larger budgets.

Overall, national politics drive self-interest, with states resisting externally imposed obligations for funding and action. Some political leaders express antipathy to, even distrust of, UN institutions, viewing them as bureaucratic and inefficient. In this political environment, it is unsurprising that members fail to act as shareholders. Ebola placed into stark relief the failure of the international community to increase capacities as required by the IHR. Guinea, Liberia and Sierra Leone had some of the world's weakest health systems, with little capacity to either monitor or respond to the Ebola epidemic.20 This caused enormous suffering in West Africa and placed countries throughout the region e and the world e at risk. Member states should recognize that the health of their citizens depends on strengthening others' capacity. The WHO has a central role in creating systems to **facilitate and encourage such cooperation**.

**The WHO cannot succeed unless members act as shareholders, foregoing a measure of sovereignty for the global common good**. It is in all states' interests to have a strong global health leader, safeguarding health security, building health systems, and reducing health inequalities. But **that will not happen unless members** fund the Organization generously, **grant it authority** and flexibility, and hold it accountable.

**WHO is critical to disease prevention – it is the only international institution that can disperse information, standardize global public health, and facilitate public-private cooperation**

**Murtugudde 20** [(Raghu, professor of atmospheric and oceanic science at the University of Maryland, PhD in mechanical engineering from Columbia University) “Why We Need the World Health Organization Now More Than Ever,” Science, 4/19/2020] JL

WHO continues to play an **indispensable role** during the current COVID-19 outbreak itself. In November 2018, the US National Academies of Sciences, Engineering and Medicine organised a workshop to explore lessons from past influenza outbreaks and so develop recommendations for pandemic preparedness for 2030. The salient findings serve well to underscore the **critical role of WHO for humankind**.

The world’s **influenza burden has only increased** in the last two decades, a period in which there have also been **30 new zoonotic diseases**. A warming world with increasing humidity, lost habitats and industrial livestock/poultry farming has many opportunities for pathogens to move from animals and birds to humans. Increasing global connectivity simply catalyses this process, as much as it catalyses economic growth.

WHO coordinates **health research, clinical trials, drug safety, vaccine development, surveillance, virus sharing**, etc. The importance of WHO’s work on **immunisation** across the globe, especially with HIV, can hardly be overstated. It has a rich track record of **collaborating with private-sector organisations to advance research and development** of health solutions and improving their access in the global south.

It discharges its duties while maintaining a **dynamic equilibrium between such diverse and powerful forces as national securities, economic interests, human rights and ethics**. COVID-19 has highlighted how political calculations can hamper data-sharing and mitigation efforts within and across national borders, and WHO often simply becomes a convenient political scapegoat in such situations.

International Health Regulations, a 2005 agreement between 196 countries to work together for global health security, focuses on detection, assessment and reporting of public health events, and also includes non-pharmaceutical interventions such as travel and trade restrictions. **WHO coordinates and helps build capacity to implement IHR**.

**Extinction – defense is wrong**

Piers **Millett 17**, Consultant for the World Health Organization, PhD in International Relations and Affairs, University of Bradford, Andrew Snyder-Beattie, “Existential Risk and Cost-Effective Biosecurity”, Health Security, Vol 15(4), http://online.liebertpub.com/doi/pdfplus/10.1089/hs.2017.0028

Historically, disease events have been responsible for the **greatest death tolls** on humanity. The 1918 flu was responsible for more than 50 million deaths,1 while smallpox killed perhaps 10 times that many in the 20th century alone.2 The Black Death was responsible for killing over 25% of the European population,3 while other pandemics, such as the plague of Justinian, are thought to have killed 25 million in the 6th century—constituting over 10% of the world’s population at the time.4 It is an open question whether a future pandemic could result in outright human extinction or the irreversible collapse of civilization.

A skeptic would have many good reasons to think that existential risk from disease is unlikely. Such a disease would need to spread **worldwide** to remote populations, overcome rare genetic resistances, and evade detection, cures, and countermeasures. Even evolution itself may work in humanity’s favor: Virulence and transmission is often a trade-off, and so evolutionary pressures could push against maximally lethal wild-type pathogens.5,6

While these arguments point to a very small risk of human extinction, **they do not rule the possibility out** entirely. Although rare, there are recorded instances of species going extinct due to disease—primarily in amphibians, but also in 1 mammalian species of rat on Christmas Island.7,8 There are also historical examples of large human populations being almost entirely wiped out by disease, especially when multiple diseases were simultaneously introduced into a population without immunity. The most striking examples of total population collapse include native American tribes exposed to European diseases, such as the Massachusett (86% loss of population), Quiripi-Unquachog (95% loss of population), and theWestern Abenaki (which suffered a staggering 98% loss of population).

In the modern context, no single disease currently exists that combines the worst-case levels of transmissibility, lethality, resistance to countermeasures, and global reach. But many diseases are proof of principle that each worst-case attribute can be realized independently. For example, some diseases exhibit nearly a 100% case fatality ratio in the absence of treatment, such as rabies or septicemic plague. Other diseases have a track record of spreading to **virtually every human community worldwide**, such as the 1918 flu,10 and seroprevalence studies indicate that other pathogens, such as chickenpox and HSV-1, can successfully reach over **95% of a population**.11,12 Under optimal virulence theory, natural evolution would be an unlikely source for pathogens with the highest possible levels of transmissibility, virulence, and global reach. But advances in biotechnology might allow the creation of diseases that combine such traits. Recent controversy has already emerged over a number of scientific experiments that resulted in viruses with enhanced transmissibility, lethality, and/or the ability to overcome therapeutics.13-17 Other experiments demonstrated that mousepox could be modified to have a 100% case fatality rate and render a vaccine ineffective.18 In addition to transmissibility and lethality, studies have shown that other disease traits, such as incubation time, environmental survival, and available vectors, could be modified as well.19-2

**WHO diplomacy solves great power conflict**

**Murphy 20** [(Chris, U.S. senator from Connecticut serving on the U.S. Senate Foreign Relations Committee) “The Answer is to Empower, Not Attack, the World Health Organization,” War on the Rocks, 4/21/2020] JL

The World Health Organization is critical to stopping disease outbreaks and strengthening public health systems in developing countries, where COVID-19 is starting to appear. Yemen announced its first infection earlier this month, and other countries in Africa, Asia and the Middle East are at severe risk. Millions of refugees rely on the World Health Organization for their health care, and millions of children rely on the WHO and UNICEF to access vaccines.

The World Health Organization is not perfect, but its team of doctors and public health experts have had major successes. Their most impressive claim to fame is the eradication of smallpox – no small feat. More recently, the World Health Organization has led an effort to rid the world of two of the three strains of polio, and they are close to completing the trifecta.

These investments are not just the right thing to do; they benefit the United States. Improving health outcomes abroad provides greater political and economic stability, increasing demand for U.S. exports. And, as we are all learning now, **it is in America’s national security interest for countries to effectively detect and respond to potential pandemics** before they reach our shores.

As the United States looks to develop a new global system of pandemic prevention, there is absolutely no way to do that job without the World Health Organization. Uniquely, **it puts traditional adversaries** – like Russia and the United States, India and Pakistan, or Iran and Saudi Arabia – **all around the same big table to take on global health challenges**. It has relationships with the public health leaders of every nation, decades of experience in tackling viruses and diseases, and the ability to bring countries together to tackle big projects. **This ability to bridge divides and work across borders cannot be torn down and recreated – not in today’s environment of major power competition** – and so there is simply no way to build an effective international anti-pandemic infrastructure without the World Health Organization at the center.

**Should is certain and immediate**

**Summers 94** (Justice – Oklahoma Supreme Court, “Kelsey v. Dollarsaver Food Warehouse of Durant”, 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

¶4 The legal question to be resolved by the court is whether the word "should"[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13) in the May 18 order connotes futurity or may be deemed a ruling in praesenti.[14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn14) The answer to this query is not to be divined from rules of grammar;[15](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn15) it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.[16](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn16) [CONTINUES – TO FOOTNOTE] [13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn13) "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as **more than** merely indicating preference or **desirability**. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation* *and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, [802 P.2d 813](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=802&box2=P.2D&box3=813) (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). [14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn14) In praesenti means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is presently or **immediately effective**, as opposed to something that will or would become effective in the future *[in futurol*]. See Van Wyck v. Knevals, [106 U.S. 360](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=106&box2=U.S.&box3=360), 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

**1NC – Nebel T**

**Interpretation: medicines is a generic bare plural. The aff may not defend that member nations of the World Trade Organization reduce intellectual property protections for a subset of medicines.**

**Nebel 19** Jake Nebel [Jake Nebel is an assistant professor of philosophy at the University of Southern California and executive director of Victory Briefs.] , 8-12-2019, "Genericity on the Standardized Tests Resolution," Briefly, https://www.vbriefly.com/2019/08/12/genericity-on-the-standardized-tests-resolution/ SM

Both distinctions are important. Generic resolutions can’t be affirmed by specifying particular instances. But, since generics tolerate exceptions, plan-inclusive counterplans (PICs) do not negate generic resolutions. Bare plurals are typically used to express generic generalizations. But there are two important things to keep in mind. First, generic generalizations are also often expressed via other means (e.g., definite singulars, indefinite singulars, and bare singulars). Second, and more importantly for present purposes, bare plurals can also be used to express existential generalizations. For example, “Birds are singing outside my window” is true just in case there are some birds singing outside my window; it doesn’t require birds in general to be singing outside my window. So, what about “colleges and universities,” “standardized tests,” and “undergraduate admissions decisions”? Are they generic or existential bare plurals? On other topics I have taken great pains to point out that their bare plurals are generic—because, well, they are. On this topic, though, I think the answer is a bit more nuanced. Let’s see why. 1.1 “Colleges and Universities” “Colleges and universities” is a generic bare plural. I don’t think this claim should require any argument, when you think about it, but here are a few reasons. First, ask yourself, honestly, whether the following speech sounds good to you: “Eight colleges and universities—namely, those in the Ivy League—ought not consider standardized tests in undergraduate admissions decisions. Maybe other colleges and universities ought to consider them, but not the Ivies. Therefore, in the United States, colleges and universities ought not consider standardized tests in undergraduate admissions decisions.” That is obviously not a valid argument: the conclusion does not follow. Anyone who sincerely believes that it is valid argument is, to be charitable, deeply confused. But the inference above would be good if “colleges and universities” in the resolution were existential. By way of contrast: “Eight birds are singing outside my window. Maybe lots of birds aren’t singing outside my window, but eight birds are. Therefore, birds are singing outside my window.” Since the bare plural “birds” in the conclusion gets an existential reading, the conclusion follows from the premise that eight birds are singing outside my window: “eight” entails “some.” If the resolution were existential with respect to “colleges and universities,” then the Ivy League argument above would be a valid inference. Since it’s not a valid inference, “colleges and universities” must be a generic bare plural. Second, “colleges and universities” fails the upward-entailment test for existential uses of bare plurals. Consider the sentence, “Lima beans are on my plate.” This sentence expresses an existential statement that is true just in case there are some lima beans on my plate. One test of this is that it entails the more general sentence, “Beans are on my plate.” Now consider the sentence, “Colleges and universities ought not consider the SAT.” (To isolate “colleges and universities,” I’ve eliminated the other bare plurals in the resolution; it cannot plausibly be generic in the isolated case but existential in the resolution.) This sentence does not entail the more general statement that educational institutions ought not consider the SAT. This shows that “colleges and universities” is generic, because it fails the upward-entailment test for existential bare plurals. Third, “colleges and universities” fails the adverb of quantification test for existential bare plurals. Consider the sentence, “Dogs are barking outside my window.” This sentence expresses an existential statement that is true just in case there are some dogs barking outside my window. One test of this appeals to the drastic change of meaning caused by inserting any adverb of quantification (e.g., always, sometimes, generally, often, seldom, never, ever). You cannot add any such adverb into the sentence without drastically changing its meaning. To apply this test to the resolution, let’s again isolate the bare plural subject: “Colleges and universities ought not consider the SAT.” Adding generally (“Colleges and universities generally ought not consider the SAT”) or ever (“Colleges and universities ought not ever consider the SAT”) result in comparatively minor changes of meaning. (Note that this test doesn’t require there to be no change of meaning and doesn’t have to work for every adverb of quantification.) This strongly suggests what we already know: that “colleges and universities” is generic rather than existential in the resolution. Fourth, it is extremely unlikely that the topic committee would have written the resolution with the existential interpretation of “colleges and universities” in mind. If they intended the existential interpretation, they would have added explicit existential quantifiers like “some.” No such addition would be necessary or expected for the generic interpretation since generics lack explicit quantifiers by default. The topic committee’s likely intentions are not decisive, but they strongly suggest that the generic interpretation is correct, since it’s prima facie unlikely that a committee charged with writing a sentence to be debated would be so badly mistaken about what their sentence means (which they would be if they intended the existential interpretation). The committee, moreover, does not write resolutions for the 0.1 percent of debaters who debate on the national circuit; they write resolutions, at least in large part, to be debated by the vast majority of students on the vast majority of circuits, who would take the resolution to be (pretty obviously, I’d imagine) generic with respect to “colleges and universities,” given its face-value meaning and standard expectations about what LD resolutions tend to mean.

**It applies to medicines:**

1. **Upward entailment test – spec fails the upward entailment test because saying that nations ought to reduce IPP for one medicine does not entail that those nations ought to reduce IPP for all medicines**
2. **Adverb test – adding “usually” to the res doesn’t substantially change its meaning because a reduction is universal and permanent**

**Violation: the aff only defends medicines that use indigenous knowledge**

**Vote neg:**

1. **Semantics outweigh:**
   1. **T is a constitutive rule of the activity and a basic aff burden – they agreed to debate the topic when they came here**
   2. **It’s the only stasis point we know before the round so it controls the internal link to engagement – there’s no way to use ground if debaters aren’t prepared to defend it**
2. **Limits – there are countless affs accounting for thousands of medicines – unlimited topics incentivize obscure affs that negs won’t have prep on – potential abuse doesn’t justify foregoing the topic and 1AR theory checks PICs**

**There are over 20,000 affs**

**FDA 11/18** [(U.S. Food and Drug Administration, federal agency of the Department of Health and Human Service) “Fact Sheet: FDA at a Glance,” 11/18/2020] JL

There are over **20,000 prescription drug products approved for marketing**.

FDA oversees over 6,500 different medical device product categories.

There are over 1,600 FDA-approved animal drug products.

There are about **300 FDA-licensed biologics products**.

1. **Ground – spec guts core generics like innovation that rely on reducing IP for all medicines because individual medicines don’t affect the pharmaceutical industry broadly – also means there is no universal DA to spec affs**
2. **TVA solves – read as an advantage to whole rez**

**Case**

**Framing**

1. **Moral uncertainty means preventing extinction should be our highest priority.  
   Bostrom 12** [Nick Bostrom. Faculty of Philosophy & Oxford Martin School University of Oxford. “Existential Risk Prevention as Global Priority.” Global Policy (2012)]  
   These reflections on **moral uncertainty suggest** an alternative, complementary way of looking at existential risk; they also suggest a new way of thinking about the ideal of sustainability. Let me elaborate.¶ **Our present understanding of axiology might** well **be confused. We may not** nowknow — at least not in concrete detail — what outcomes would count as a big win for humanity; we might not even yet **be able to imagine the best ends** of our journey. **If we are** indeedprofoundly **uncertain** about our ultimate aims,then we should recognize that **there is a great** option **value in preserving** — and ideally improving — **our ability to recognize value and** to **steer the future accordingly. Ensuring** that **there will be a future** version of **humanity** with great powers and a propensity to use them wisely **is** plausibly **the best way** available to us **to increase the probability that the future will contain** a lot of **value.** To do this, we must prevent any existential catastrophe.
2. **Reducing the risk of extinction is always priority number one.   
   Bostrom 12** [Faculty of Philosophy and Oxford Martin School, University of Oxford.], Existential Risk Prevention as Global Priority.  Forthcoming book (Global Policy). MP. [http://www.existenti...org/concept.pdf](http://www.existential-risk.org/concept.pdf)Even if we use the most conservative of these estimates, which entirely ignores the   possibility of space colonization and software minds, **we find that the expected loss of an existential   catastrophe is greater than the value of 10^16 human lives**.  **This implies that the expected value of   reducing existential risk by a mere one millionth of one percentage point is at least a hundred times the   value of a million human lives.**  The more technologically comprehensive estimate of 10  54 humanbrain-emulation subjective life-years (or 10  52  lives of ordinary length) makes the same point even   more starkly.  Even if we give this allegedly lower bound on the cumulative output potential of a   technologically mature civilization a mere 1% chance of being correct, we find that the expected   value of reducing existential risk by a mere one billionth of one billionth of one percentage point is worth   a hundred billion times as much as a billion human lives. **One might consequently argue that even the tiniest reduction of existential risk has an   expected value greater than that of the definite provision of any ordinary good, such as the direct   benefit of saving 1 billion lives.**  And, further, that the absolute value of the indirect effect of saving 1  billion lives on the total cumulative amount of existential riskâ€”positive or negativeâ€”is almost   certainly larger than the positive value of the direct benefit of such an action.
3. **ROB is to vote for the better debater – anything else is arbitrary, self–serving, and impact justified – they haven’t justified how debate shapes subject formation – it doesn’t – the role of individual debate rounds is white noise – *can you remember what happened round () of () your senior year?***
4. **All of their impacts also appeal to the badness of suffering – more suffering is worse than less – proves magnitude is inevitably the impact filter – the Barker evidence is unresponsive if we win an internal link**
5. **They shouldn’t garner offense from anything other than the consequences of the plan:**
   1. **That would be extra topical – voter because it infinitely explodes limits and justifies Frankenstein planks to skirt neg ground**
   2. **Solvency matters – justifies reading the racism bad framework and contention and calling it a day**

**Advantage**

1. **They can only leverage the amount of ongoing indigenous genocide solved by the aff – Chinese oppression of Uighurs, Turkey’s involvement in Syria, and Native Americans making $.60 to the dollar are all alt causes**
2. **They don’t solve – their evidence says traditional knowledge is already under jurisdiction of indigenous legal systems – tribes aren’t WTO members**

But more importantly for Indigenous peoples, **such patent claims should be denied because IK is in the Indigenous domain; that is, it is already under the jurisdiction of Indigenous legal systems, which protect the IK in perpetuity as the inherent and inalienable cultural property of Indigenous peoples**

1. **None of the ev about bioprospecting is about medicine – alt causes**

**Bruchac 14** [(Margaret, Coordinator, Native American & Indigenous Studies at the University of Pennsylvania, PhD in anthropology from the University of Massachusetts Amherst) “Indigenous Knowledge and Traditional Knowledge,” Encyclopedia of Global Archaeology, 2014] JL

Traditional Indigenous knowledge can be defined as a network of knowledges, beliefs, and traditions intended to preserve, communicate, and contextualize Indigenous relationships with culture and landscape over time. One might distinguish "knowledge" as factual data, "belief" as religious concepts, and "tradition" as practice, but these terms are often used imprecisely and interchangeably to describe Indigenous epistemologies. Indigenous knowledges are conveyed formally and informally among kin groups and communities through social encounters, oral traditions, ritual practices, and other activities. They include: **oral narratives that recount human histories; cosmological observations and modes of reckoning time; symbolic and decorative modes of communication; techniques for planting and harvesting; hunting and gathering skills; specialized understandings of local ecosystems; and the manufacture of specialized tools and technologies** (e.g., flintknapping, hide tanning, pottery-making, and concocting medicinal remedies).

1. **Circumvention – no brightline for what constitutes traditional knowledge – either pharmaceutical companies will pressure governments, so states have incentive to define it narrowly and you don’t solve or yes innovation link**
2. **Plan doesn’t solve resource extraction – even if corporations can’t patent traditional knowledge, they’ll still mine for minerals, oil, natural gas, etc.**
3. **Patents prevent biopiracy**

**Erstling 09** [(Jay, Emeritus Professor of Law at Mitchell Hamline School of Law, J.D., Cornell University Law School, 1974) “Using Patents to Protect Traditional Knowledge,” Texas Wesleyan Law Review, 2009] JL

Finally, while the patent system has been accused of facilitating biopiracy by tolerating third-party patenting of TK, using the patent system appropriately to protect TK can serve more to **prevent biopiracy** than to permit it. Biopiracy generally refers to the exploitation of traditional knowledge or genetic resources-typically by multinational companies-without the authorization of the holders of that knowledge, and/or the patenting of inventions based on traditional knowledge without the consent of the knowledge holders or payment of compensation.24 Several cases of alleged biopiracy, including patents granted for neem, turmeric, the enola bean, and quinoa, have aroused controversy and focused attention on how patenting can lead to unjust results.25 Although it is extremely difficult to estimate the extent to which biopiracy actually takes place in any particular country, protecting TK could provide some assurance against misappropriation by **clarifying the duty that third parties owe to the holders of the knowledge when the knowledge has contributed to an invention** that is the subject of a patent application.