### Framing

#### The meta-ethic is Procedural Moral Realism.

#### [1] Collapses –

#### [2] Uncertainty –

#### [3] Is/Ought Gap –

#### Practical reason is that procedure –

#### Moral law must be universal –

#### Thus, the standard is Consistency with The Categorical Imperative.

#### Prefer:

#### [1] Performativity –

#### [2] Humanity Principle –

#### [3] Ethical frameworks must be theoretically legitimate. All frameworks are functionally topicality interpretations of the word ought so they must theoretically justified. Prefer our standard –

#### A] Resource Disparities –

#### B] Ground –

#### [4] Frameworks all share equal value –

#### [5] Identifying your own rational agency requires you to know that you are taking an action with a certain principle of choice

**Korsgaard 99** [CHRISTINE M. KORSGAARD, “SELF-CONSTITUTION IN THE ETHICS OF PLATO AND KANT”. The Journal of Ethics 1999, Volume 3, Issue 1, pp 1-29. Specifically, “VII. GOOD ACTION AND THE UNITY OF THE KANTIAN WILL”. Professor of Philosphy, Harvard University.] //ACCS JM

The first step is this: To conceive yourself as the cause of your actions is to identify with the principle of choice on which you act. A rational will is a self-conscious causality, and a self-conscious causality is aware of itself as a cause. To be aware of yourself as a cause is to identify yourself with something in the scenario that gives rise to the action, and this must be the principle of choice. For instance, suppose you experience a conflict of desire: you have a desire to do both A and B, and they are incompatible. You have some principle which favors A over B, so you exercise this principle, and you choose to do A. In this kind of case, you do not regard yourself as a mere passive spectator to the battle between A and B. You regard the choice as yours, as the product of your own activity, because you regard the principle of choice as expressive, or representative, of yourself. You must do so, for the only alternative to identifying with the principle of choice is regarding the principle of choice as some [a] third thing in you, another force on a par with the incentives to do A and to do B, which happened to throw in its weight in favor of A, in a battle at which you were, after all, a mere passive spectator. But then you are not the cause of the action. Self- conscious or rational agency, then, requires identification with the principle of choice on which you act.

#### [6] Abductivism disproves the best guess – normative judgements require certainty which necessitates deductive foundations.

Douven 17, Igor, "Abduction", The Stanford Encyclopedia of Philosophy (Summer 2017 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/sum2017/entries/abduction/>. //Massa

You happen to know **that** Tim and Harry **have recently** had a **terrible** row that ended their friendship. Now someone tells you that she just saw Tim and Harry jogging together. The best explanation for this that you can think of is that they made up. You conclude that they are friends again. One morning you enter the kitchen to find a plate **and cup on the table**, with breadcrumbs and a pat of butter on it, and surrounded by a jar of jam, a pack of sugar, and an empty carton of milk. You conclude **that** one of your house-mates got up at night to make him- or herself a midnight snack and was too tired to clear the table. This**,** you think, best explains the scene **you are facing. To be sure,** it might be that someone burgled the house and took **the time to have** a bite **while on the job**, or a house-mate might have arranged the things on the table without having a midnight snack but just to make you believe that someone had a midnight snack. But these hypotheses strike you as providing much more contrived explanations of the data than the one you infer to. Walking along the beach, you see what looks like a picture of Winston Churchill in the sand. It could be that, as in the opening pages of Hilary Putnam’s (1981), what you see is actually the trace of an ant crawling on the beach. The much simpler, and therefore (you think) much better, explanation is that someone intentionally drew a picture of Churchill in the sand. That, in any case, is what you come away believing. In these examples, the conclusions do not follow logically from the premises. For instance, it does not follow **logically** that Tim and Harry are friends again from the premises that they had a terrible row which ended their friendship and that they have just been seen jogging together; it does not even follow, we may suppose, from all the information you have about Tim and Harry. Nor do you have any useful statistical data about friendships, terrible rows, and joggers that might warrant an inference from the information that you have about Tim and Harry to the conclusion that they are friends again, or even to the conclusion that, probably (or with a certain probability), they are friends again. What leads you to the conclusion, and what according to a considerable number of philosophers may also warrant this conclusion, is precisely the fact that Tim and Harry’s being friends again would, if true, best explain the fact that they have just been seen jogging together. (The proviso that a hypothesis be true if it is to explain anything is taken as read from here on.) Similar remarks apply to the other two examples. The type of inference exhibited here is called abduction or, somewhat more commonly nowadays, Inference to the Best Explanation.

### Offense

#### I affirm Resolved: The member nations of the World Trade Organization ought to reduce intellectual property protections for medicines.

#### [1] An exclusive and unconditional right to property is not entailed by the categorical imperative – only conditional use is universalizable.

Westphal 97 [(Kenneth R., Professor of Philosophy at Boðaziçi Üniversitesi, PhD in Philosophy from Wisco) “Do Kant’s Principles Justify Property or Usufruct?” Jahrbuch für Recht und Ethik/Annual Review of Law and Ethics 5 (1997):141–94.] RE

The compatibility of possession with the freedom of everyone according to universal laws is not a trivial assumption even for the case of detention or “empirical” possession. Under conditions of extreme scarcity, anyone’s use of some vital thing precludes someone else’s equally vital use of that thing or of anything of its kind (given the condition of extreme relative scarcity). This is not quite to agree with Hume, that conditions of justice exclude both extreme scarcity and superabundance.32 But it is to recognize that he came close to an important insight: legitimate action requires sufficient abundance so that one person’s use (benefit) is not (at least not directly) someone else’s vital injury (deprivation). This is not merely to say that property is psychologically impossible in extreme scarcity because no one could respect it (per Hume); the point is that possession and perhaps even use are not, at least not obviously, legitimate under such conditions. (How Kant would propose to resolve the conflicting grounds of obligation in such circumstances, the duty to self-preservation versus the duty not to harm others’ life or liberty, I do not understand.)

The assumption that possession is compatible with the freedom of everyone according to universal laws [5] is even less trivial for the case of “intelligible” or “noumenal” possession, that is, possession without physical detention. The compatibility of intelligible possession with the freedom of everyone according to universal laws requires both sufficient resources so that the free use of something by one person is not as such the infringement of like freedom of another, and it requires that mere empirical or physical possession does not suffice to secure the innate right to freedom of overt (äußere) action. If physical possession did suffice to secure the innate right to overt action, Kant’s main ground of proof would entail no conclusion stronger than that rights of physical possession (detention) are legitimate. Furthermore, by assuming that noumenal possession is compatible with the freedom of everyone according to universal laws [5], Kant assumes rather than proves that possession without detention is permissible. However, this is precisely the point that needs to be proven! This issue remains central throughout the remainder of §2 and is addressed again in §3 below.

2.2.6 The previous section raises a very serious question about Kant’s justification of intelligible rights to possess and use (possessio). The questions about Kant’s supposed justification of property rights, the possibility of having things as one’s own (Eigentum, dominium), are even more acute. To derive such strong rights from Kant’s argument requires at least one of three assumptions. The first assumption would be that the sole relevant condition of use is proprietary ownership of things (cf. RL §1 ¶1); this assumption requires interpreting “Besitz” broadly. The second assumption would involve conflating the ownership of a right – viz., a right to use – with a right to property ownership. However, the legitimacy of neither of these assumptions is demonstrated by Kant’s argument in RL §2. Or it may be assumed, third, that Kant’s argument in §2 aims to prove, not merely rights to possession, but rights to property, insofar as it aims to prove a right to “arbitrary” (beliebigen) use, that is, the right to do whatever one pleases with something ([10]; cf. RL §7, 253.25–27), where this can include any of the rights involved in the further incidents of proprietary ownership. Reading Kant’s text in this way assimilates possessio to dominium by stressing Kant’s term “beliebigen”. So far as Kant’s literal statement is concerned, it is equally plausible to stress Kant’s term “Gebrauch” (use), which would restrict Kant’s argument to justifying possessio. Kant’s reductio ad absurdum argument assumes the contrapositive thesis that [it is not] altogether ... rightly in my power, i.e. it [is] not ... compatible with the freedom of everyone according to a universal law ([it is] wrong), to make use of [something which is physically within my power to use]. ([2], [1])

His argument then purports to derive a contradiction from this assumption. From this contradiction follows the negation of this assumption by disjunctive syllogism. Strictly speaking, what Kant’s argument (at best) proves is that it is indeed rightful to make use of things which in principle are within one’s power, provided (“obgleich ...”) that one ’s use is compatible with the freedom of everyone in accord with a universal law [5]. As mentioned, Kant’s argument assumes rather than proves that this assumption is correct. Kant must prove that this assumption is correct in order to prove his conclusion. This requires showing that possession and use of things (in their narrow, strict senses) is consistent with the freedom of everyone in accord with universal laws. That would justify rights to possessio. To justify the stronger rights to dominium requires showing that holding things in accord with the rights involved in the further incidents of property ownership is also consistent with the freedom of everyone in accord with universal laws. Because the rights involved in property ownership are not analytically, indeed are not necessarily, related, justifying dominium requires separate justification of each component right. But it also requires more than this. Insofar as these rights are supposed to be proven as a matter of natural right, these further rights cannot be instituted solely by convention. However, there are alternative packages of rights, both for kinds of property as well as for various weaker sets of rights to use, any of which can be formulated in ways that are consistent with the like freedom of everyone according to universal laws. Consequently, merely demonstrating the consistency of one or another of these sets of rights with the freedom of everyone according to universal laws suffices only to justify the permissibility of that set of rights.

It does not suffice to justify the obligation to respect that set of rights instead of any other such set of rights. This is to say, once alternative sets of rights are possible or permissible because they meet the sine qua non of consistency with the like freedom of everyone according to universal laws [5], Kant’s natural law grounds of proof do not suffice to justify an obligation to respect one particular set of rights among the range of possible, permissible alternatives. Consequently, interpreting Kant’s statement [10] by stressing “beliebigen”, using it to specify the scope of “Gebrauch”, can only lead to fallacious, question-begging interpretations of Kant’s argument. Consequently, it is strongly preferable to interpret Kant’s statement by stressing “Gebrauch”, and using it in its strict, narrow sense to specify the scope of “beliebigen”. (This parallels the case for interpreting “Besitz” narrowly instead of broadly.)

In sum, to use something legitimately it suffices to have a right to use it. That, in brief, is “possession” strictly speaking; in the narrow sense of the term, “possession” involves only the right of a qualified chose in possession. Since this condition suffices to fulfill the condition specified by Kant’s reductio argument, no stronger condition follows from Kant’s argument. One can have or “own” a right to use something without, of course, having property in that thing. Recall Honoré’s point that possession involves two claims: being in exclusive control and remaining in control by being free of unpermitted interference of others. Insofar as possession persists despite subsequent and continuing disuse, Kant’s proof does not demonstrate even a narrow right to possession. (This is why I speak of qualified choses in possession; one key qualification justified by Kant’s argument is that one’s right to use persists only so long as one’s legitimate need to use and regular use continue.) Moreover, aside from the prohibition on harmful use, Kant’s argument does not even address the other incidents of property ownership. If Kant’s primary assumption [5] can be justified, then Kant’s proof demonstrates at most three important conclusions: one has the right to use things one currently detains, one has the right to use any usable thing not previously (and hence currently) detained by others (provided one’s use does not infringe the like freedom of others), and one has the right to continue to use things so long as one’s need to use them and actions of using them continue. These are not trivial theses! However, because it does not prove the indefinite duration of possession, in the narrow sense, Kant’s proof of the (first version of the) Postulate of Practical Reason regarding Right is unsound. Kant’s further considerations in RL §6 suffer analogous weaknesses (see §§2.4f.).

#### That implies that intellectual property is unjust.

Westphal 97 [(Kenneth R., Professor of Philosophy at Boðaziçi Üniversitesi, PhD in Philosophy from Wisco) “Do Kant’s Principles Justify Property or Usufruct?” Jahrbuch für Recht und Ethik/Annual Review of Law and Ethics 5 (1997):141–94.] RE

6.2 One right that is not justified by the Kantian defense of rights to use developed above is the exclusion of others from the use of something to which one has a right on those occasions when one does not need and is not likely to need to use the item in question. Property rights involve such an exclusion. To the extent that I have shown that qualified choses in possession suffice to fulfill the desiderata established by Kant’s own principles and strategy for justifying possession (in the narrow sense), I have shown that property rights cannot be justified by Kant’s metaphysical principles. This is because there are alternative sets of rights to things which meet both Kant’s sine qua non of being consistent with the freedom of all in accord with universal laws [5] and Kant’s metaphysical grounds of proof concerning freedom of overt action. Neither Kant’s own argument nor my reconstruction of it address most of the incidents of property ownership. (Though I have suggested that Kant’s principles can justify the prohibition on harmful use and very likely some version of the liability to execution.) Indeed, Kant’s sole Innate Right to Freedom, Universal Law of Right, and Permissive Law of Practical Reason appear to entail that it is illegitimate to exclude others’ use of something to which one has a qualified chose in possession provided that their use does not interfere with one’s own regular and reliable use of the item in question. Moreover, Kant’s principles give priority to use over first acquisition, and indeed they justify first acquisition only in view of legitimate and needful use. To this extent, Kant’ s principles undermine and repudiate one of the cherished hallmarks of the liberal conception of private property, namely, that first acquisition as such secures a right over the disposition of a thing, regardless of subsequent disuse (cf. §3.10).

#### [2] Patents attempt to assert ownership over nature and impede individuals’ abilities to pursue their own ends.

Long 95 [(Roderick T., professor of philosophy at Auburn University, editor of the Journal of Ayn Rand Studies, director and president of the Molinari Institute and a Senior Fellow at the Center for a Stateless Society) “The Libertarian Case Against Intellectual Property Rights,” Free Nation Foundation, 1995] JL recut Lex VM

The moral case against patents is even clearer. A patent is, in effect, a claim of ownership over a law of nature. What if Newton had claimed to own calculus, or the law of gravity? Would we have to pay a fee to his estate every time we used one of the principles he discovered?

Defenders of patents claim that patent laws protect ownership only of inventions, not of discoveries. (Likewise, defenders of copyright claim that copyright laws protect only *implementations* of ideas, not the ideas themselves.) But this distinction is an artificial one. Laws of nature come in varying degrees of generality and specificity; if it is a law of nature that copper conducts electricity, it is no less a law of nature that this much copper, arranged in this configuration, with these other materials arranged so, makes a workable battery. And so on.

Suppose you are trapped at the bottom of a ravine. Sabre-tooth tigers are approaching hungrily. Your only hope is to quickly construct a levitation device I've recently invented. You know how it works, because you attended a public lecture I gave on the topic. And it's easy to construct, quite rapidly, out of materials you see lying around in the ravine.

But there's a problem. I've patented my levitation device. I own it — not just the individual model I built, but the universal. Thus, you can't construct your means of escape without using my property. And I, mean old skinflint that I am, refuse to give my permission. And so the tigers dine well.

This highlights the moral problem with the notion of intellectual property. By claiming a patent on my levitation device, I'm saying that you are not permitted to use your own knowledge to further your ends. By what right?

Another problem with patents is that, when it comes to laws of nature, even fairly specific ones, the odds are quite good that two people, working independently but drawing on the same background of research, may come up with the same invention (discovery) independently. Yet patent law will arbitrarily grant exclusive rights to the inventor who reaches the patent office first; the second inventor, despite having developed the idea on his own, will be forbidden to market his invention.

#### [3] IPR is nonuniversalizable and interferes with the freedom of people who need medicine.

Merges 11 [(Robert, Wilson Sonsini Goodrich & Rosati Professor of Law and Technology, University of California, Berkeley, School of Law) “Justifying Intellectual Property,” Harvard University Press, 2011] JL recut Lex VM

Under Kant’s Universal Principle of Right (UPR), “laws secure our right to external freedom of choice to the extent that this freedom is compatible with everyone else’s freedom of choice under a universal law.”8 As I explained in Chapter 3, Kant’s theory of property rights expresses a special instance of this general principle: property is widely available, yet denied when individual appropriation interferes with the freedom of others. Kant says that although the need for robust property drives the formation of civil society, property rights are nonetheless subject to this “universalizing” principle. Under the operation of the UPR, property rights are constrained: they must not be so broad that they interfere with the freedom of fellow citizens. In a Kantian state, individual property is both necessary— to promote autonomy and self- development; see Chapter 3— and necessarily restricted under the UPR.9

Death is the ultimate restraint on autonomy; there is no more “self” to guide after a person dies. So when a claim to property by person A leads to the death of person B, Kant’s Universal Principle would seem to rebut that claim. As with other issues, however, Kant’s views in this regard are not so simple. In par tic u lar, he expressed complex views on the legal defense of “necessity,” which bears a close resemblance to the property- limiting principle I am attributing to him here.10 Kant says, in effect, that in at least one important example of necessity— where A kills B, or at least puts B in immediate grave danger, to save A’s own life— one who commits a necessary act is culpable but not punishable.11 As with so much in the Kantian canon, there is a great deal of debate over just what Kant was trying to say about necessity. One view— at least as plausible as most others, and more plausible than some— holds that Kant thought of necessity as something like an excuse or defense: a wrong act is not made right by necessity, but it is insulated from formal legal liability.12 This view, well described by among others the Kant scholar Arthur Ripstein, depends on the distinction between formal, positive law (“external,” in Kant’s terminology; see Chapter 3) and “internal” morality. Property for Kant is an absolute right, and taking it without permission is always objectively wrong. But at the same time, some takings are not punishable by the state because they fall outside the proper bounds of legitimate lawmaking.

Because Kant did not explicitly discuss the necessity defense as it pertains to property rights, any application of his thinking to the case of pharmaceutical patents can only be speculation. Even so, there is one point to make. As I explained in some detail in Chapter 3, there is generally a high degree of symmetry between Kant’s thinking on law and3 his theory of property. The UPR is a good example; as I explained in Chapter 3, the idea that property can extend only up to the point that it interferes with the freedom of others is simply one specific application of the general Kantian take on law and freedom. Thus, the analysis of the pharmaceutical patents problem would turn on the issue of property’s effect on the freedom of those suffering from treatable diseases. To put it simply, it is difficult to be sure of the exact conclusion Kant would reach with regard to the issue, but I am sure that the analysis would turn on the freedom- restricting qualities of pharmaceutical patents. It is hard to know the right answer, but not hard to pose the right question: should property extend so far as to cut off or restrain the freedom of those who might be treated?

#### [4] A universal system of freedom justifies a libertarian state.

**Otteson 9** [brackets in original] James R. Otteson (professor of philosophy and economics at Yeshiva University) “Kantian Individualism and Political Libertarianism” The Independent Review, v. 13, n. 3, Winter 2009

In a crucial passage in Metaphysics of Morals, Kant writes that the “Universal Principle of Right” is **“‘[e]very action which by itself or by its maxim enables the freedom of each individual’s will to co-exist with the freedom of everyone else** in accordance with a universal law is right.’” He concludes, “Thus the universal law of right is as follows: let your external actions be such that the free application of your will can co-exist with the freedom of everyone in accordance with a universal law” (1991, 133, emphasis in original).5 This stipulation **becomes** for Kant **the grounding justification for the existence of a state**, its raison d’être, and the reason we leave the state of nature is to secure **this sphere of** maximum freedom compatible with the same freedom of all others. Because this freedom must be **complete**, in the sense of being as full as possible given the existence of other persons who demand similar freedom, it entails that the state may—indeed, must—secure this condition of freedom, but undertake **to do** nothing else because any other state activities would compromise the **very** autonomy the state seeks to defend. Kant’s position thus outlines and implies a political philosophy that is broadly libertarian; that is, it endorses a state constructed with the sole aim of protecting its citizens against invasions of their liberty. For Kant, **individuals create a** state **to** protect **their moral** agency**,** and in doing so they consent to coercion only insofar as it is required to prevent themselves or others from impinging on their own or others’ agency. In his argument, individuals cannot rationally consent to a state that instructs them in morals, coerces virtuous behavior, commands them to trade or not, directs their pursuit of happiness, or forcibly requires them to provide for their own or others’ pursuits of happiness. And except in cases of punishment for wrongdoing,6 this severe limitation on the scope of the state’s authority must always be respected: “The rights of man must be held sacred, however great a sacrifice the ruling power may have to make. There can be no half measures here; it is no use devising hybrid solutions such as a pragmatically conditioned right halfway between right and utility. For all politics must bend the knee before right, although politics may hope in return to arrive, however slowly, at a stage of lasting brilliance” (Perpetual Peace, 1991, 125). The implication is that a Kantian state protects against invasions of freedom and does nothing else; in the absence of invasions or threats of invasions, it is inactive.

#### That affirms – enforcing intellectual property rights is an illegitimate use of governmental power.

# Accessibility

### Framing

#### Identifying your own rational agency requires you to know that you are taking an action with a certain principle of choice

**Korsgaard 99**

A rational will is a self-conscious causality identify yourself with something in the scenario that gives rise to the action you have a desire to do both A and some principle favors A You regard the choice as yours because you regard the principle of choice as expressive of yourself for the alternative to identifying with the principle of choice is not the cause of the action rational agency, requires identification

#### Abductivism disproves the best guess – normative judgements require certainty which necessitates deductive foundations.

Douven 17

You know Tim and Harry ended their friendship. you saw Tim and Harry jogging together. You conclude that they are friends again. the conclusions do not follow logically from the premises. it does not follow that Tim and Harry are friends again from the premises that they had a terrible row

### Offense

#### An exclusive and unconditional right to property is not entailed by the categorical imperative – only conditional use is universalizable.

Westphal 97

anyone’s use of some thing precludes someone else’s use of that given the condition of scarcity legitimate action requires sufficient abundance so that one person’s use is not someone else’s (deprivation) it is rightful to make use of things within one’s power possession” involves only the right of a qualified chose in possession

#### That implies that intellectual property is unjust.

Westphal 97

exclusion of others from a right when one does not need the item Property rights involve such an exclusion principles undermine and repudiate the cherished liberal conception of property

#### Patents attempt to assert ownership over nature and impede individuals’ abilities to pursue their own ends.

Long 95

A patent is, a claim over a law of nature. it is nature that copper in this configuration makes a battery Suppose Sabre-tooth tigers are approaching Your only hope is a device I've patented my device Thus, you can't construct without my property you are not permitted to use your own knowledge to further your ends two people come up with the same invention patent law will grant exclusive rights to the inventor who reaches the office first

#### IPR is nonuniversalizable and interferes with the freedom of people who need medicine.

Merges 11

property must not interfere with the freedom of fellow citizens Death is the ultimate restraint on autonomy; there is no more “self” to guide when a claim to property by person A leads to the death of person B, Kant pharmaceutical patents would effect the freedom of those suffering from treatable diseases

#### A universal system of freedom justifies a libertarian state.

**Otteson 9**

the reason we leave the state of nature is to secure maximum freedom compatible with the same freedom of all others. Because this freedom must be as full as possible the state may secure this condition but undertake nothing else because any other activities would compromise the autonomy the state seeks to defend state protect agency and they consent to coercion only insofar as it is required to prevent themselves from impinging on others’ agency