## 1

#### 1. Inclusion – It’s bad for inclusion:

#### A) it’s ableist.

Ryan 11, Intro to ethics @ Birmingham University Phil 140; “Cognitive Disability, Misfortune, and Justice”; Jan 17; <http://parenethical.com/phil140win11/2011/01/17/group-3-cognitive-disability-misfortune-and-justice-deontology-ryan/>

In Kant's deontological ethics, one has a duty to treat humanity not as a means, but as an ends. However, Kant's criterion for being part of humanity and moral agency is not biological. In order to be considered fully human, and a moral agent, one must be autonomous and rational. If one lacks rationality and autonomy they cannot escape the chain of causality to act freely from moral principles, and hence are not moral agents. Kant's moral program fails to account for those who are cognitively impaired because they lack autonomy and rationality. Since Kant's requirement for moral agency is so cut-and-dry and leaves no room for ambiguity, there is no clear moral distinction made between the cognitively impaired and other non-human animals. In the case of Kant, there could be no universal moral law from the categorical imperative that would apply to the cognitively impaired and not non-human animals as well. Kant and McMahan are similar, in that their standards for moral agency exclude the cognitively impaired (rationality/autonomy and psychological capacities respectively). In Kant's morality, those who are rational and autonomous are to be treated as ends in themselves. In the case of the cognitively impaired, there is no such requirement. Similarly, in McMahan's moral theory, those who are human and unfortunate are entitled to compensation by society under the dictates of justice. However, according to McMahan the cognitively impaired are not human in the relevant sense (possessing certain psychological capacities and features) so they are not entitled to compensation. In excluding the cognitively impaired from moral agency, both Kant and McMahan reach a conclusion that many of us find unsettling, in which we might give the cognitively impaired a moral preference over a similarly endowed non-human animal, is because of a responsibility to respect the family members of the cognitively endowed, not because [that] they have [no] any value as moral agents in themselves.

#### B) It’s homophobic. This isn’t an ad hominem but the logical conclusion of his philosophy. Being gay is a contradiction in conception, since if everyone had homosexual intercourse, their would be no reproduction. Kant believes this is sex without function, requires sacrificing rational agency for the subordinate end of pleasure.

Alan Soble, American philosopher and author of several books on the philosophy of sex. He taught at the University of New Orleans from 1986 to 2006. He is currently Adjunct Professor of philosophy at Drexel University in Philadelphia, Kant and Sexual Perversion, The Monist 86:1 (Jan. 2003), pp. 55-89, <https://philpapers.org/archive/SOBKAS> ///AHS PB

Kant's Vorlesung treatment of the crimina carnis contra naturam sounds like Aquinas's and (ignoring the chronology) looks like an extension to other practices of what Kant wrote about masturbation in the Tugendlehre: Uses of sexuality which are contrary to natural instinct and to animal nature are crimina carnis contra naturam. First among them we have onanism. This is abuse of the sexual faculty without any object, the exercise of the faculty in the complete absence of any object of sexuality. The practice is contrary to the ends of humanity and even opposed to animal nature. By it man sets aside his person and degrades himself below the level of animals.74 Kant does not mention that the masturbator might create an object through imagination. What the masturbator does is to have a sexual experience without any worldly object (Aquinas) and hence cannot preserve the species. But notice that Kant says that masturbation "is contrary to the ends of humanity and even opposed to animal nature," as if its being contrary to nature is of independent and secondary moral importance. What seems crucial for Kant is that masturbation "is contrary to the ends of humanity," that is, directly violates the Second Formulation. Kant immediately continues by completing his sparse inventory of three objectionable, sexually unnatural, practices: A second crimen carnis contra naturam is intercourse between sexus homogenii, in which the object of sexual impulse is a human being but there is homogeneity instead of heterogeneity of sex. . . . This practice too is contrary to the ends of humanity; for the end of humanity in respect of sexuality is to preserve the species without debasing the person; but in this instance the species is not being preserved (as it can be by a crimen carnis secundum naturam), but the person is set aside, the self is degraded below the level of the animals, and humanity is dishonoured. The third crimen carnis contra naturam occurs when the object of the desire is in fact of the opposite sex but is not human. Such is sodomy, or intercourse with animals. This, too, is contrary to the ends of humanity and against our natural instinct. It degrades mankind below the level of animals, for no animal turns in this way from its own species.75

#### C) Kantianism is anti-Black racism – not his personal views, but his transcendental philosophy depends on the character and capacity individuals have for moral reasoning. Black people may have value, but they lack moral worth and the character necessary for rational moral thought in Kant’s critical philosophy. Kantianism denies Black, Brown, and Indigenous humanity for white superiority. Eze 97,

Eze—1997 (Emmanuel, Professor of Philosophy @DePaul University, “The Color of Reason” in PostColonial African Philosophy: A Critical Reader [Cambridge: Blackwell Publishing, 1997], 103-131

Over and beyond Buffon or Linnaeus, **Kant, in his transcendental philosophy (e.g., *Critique of Pure Reason),* describes ways of orienting oneself geographically in space, mathematically in space and time, and, logically, in the construction of both categories into other sorts of consistent whole**. In the *Observations on the Feeling o/the Beautiful and Sublime,* a work which ought to be considered as primarily anthropological, **Kant shows the theoretic transcendental philosophical position at work when he attempts to work out and establish how a particular (moral) feeling relates to *humans generally,* and how it differs between men and women, and among different races.** For example, "feeling" as it appears in the title of the work refers to a specific refinement of character which is *universally* properly human: that is, belonging to human nature as such. And we recall that for Kant "human nature" resides in the developmental expression of rational-moral "character." **Since it is character that constitutes the specificity of human nature, "human nature *proper,"* then whatever dignity or moral worth the individual" may have is derived from the fact that one has struggled to develop one's character, or one's· humanity, as universal**. Kant states: In order to assign man into a system of living nature, and thus to characterize him, no other alternative is left than this: that he has a character which he himself creates by being capable of perfecting himself after the purposes chosen by himself. Through this, he, as an animal endowed with reason *(animale rationabile)* can make out of himself a rational animal *(animale rationale).* "**Character," as the moral formation of personality, seems to be that on which basis humans have worth and dignity,and one consequence of this is that those peoples and "races" to whom Kant assigns minimal or pseudo rational-moral capacity** - either because of their non-"white" skin color (evidence of lack of "true talent") or because of the presence of phlogiston in their blood or both - **are seriously naturally or inherently inferior to those who have the "gift" of higher rational attainments, evidence of which is seen in their superior "white" skin color, the absence of phlogiston in their blood, and the superior European civilization While the non-European may have "value," it is not certain that he or she has true "worth.**" According to Kant: everything has either a value or a worth. What has value has a substitute which can replace it as its equivalent; but whatever is, on the other hand, exalted above all values, and thus lacks an equivalent ... has no merely relative value, that is, a price, but rather an inner worth,. that is dignity ... Hence morality, and humanity, in so far as it is capable of morality, can alone possess dignity**. If non-white peoples lack "true" *rational* character** (Kant believes, for example, that the character of the *Mohr* is made up of *imagination* rather than reason) **and therefore lack "true" *feeling* and moral sense, then they do not have "true" worth, or dignity. The black person, for example, can accordingly be denied full humanity, since full and "true" humanity accrues only to the white European.For Kant European humanity is *the* humanity *par excellence.***

## 2

#### Volition, or the structure of the will, is a pre-condition for ethics and has intrinsic value –

#### A) Proceduralism

#### B) Motivation

#### C) Identity – the nature of the will is most constitutive to the creation of the subject since it determines what each subject considers intrinsic to its identity and what exists externally as an façade.

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#### Thus, the standard is consistency with non-alienated relations.

#### Prefer –

#### 1. Performativity

#### 2. Epistemology

## 3

#### CP Text: Non-Profits should buy out medical patents. This uses incentives instead of coercion to solve the aff.

Silver 17 - Jonathan Silver, Health Affairs Blog, APRIL 5, 2017 “A Strategy For Lowering Brand Drug Prices: Patent Buyouts And Licensing” [https://www.healthaffairs.org/do/10.1377/hblog20170405.059438/full/] Accessed 9/18/21 SAO

Suppose a non-profit entity or entities were formed with the announced intention of buying IP rights to any one of a group of close substitute, brand drugs. **Each monopolist would face pressure to sell its IP rights at a reasonable mark-up** over the value of its IP given generic competition, since if it did not sell its IP but one of its competitors did, it would suffer a bigger loss. The effect of such a non-profit company would be to enhance competition by converting brand-brand competition to brand-generic competition. This would promote the economic interests of consumers, generic manufacturers, and insurers, who pay the bulk of the cost of prescription drugs. Thus, generic manufacturers and insurers would be reasonable candidates to fund such an endeavor. The Nature Of The New Entities: Nonprofit And Tax Exempt A for-profit company would have no incentive to license IP rights to multiple manufacturers since it could make more money by selling a monopoly drug. The project therefore requires a non-profit. Could such a non-profit qualify for tax-exempt status? Under IRS code 501(c)(6), an organization that promotes economic interests of a defined group, such as a trade association for insurers or generic manufacturers, qualifies as tax exempt so long as it doesn’t perform specific services for particular members. Thus, it might be important for the non-profit to be structured in a way that avoided promoting narrow business interests of particular funders. Previous work has described potential advantages of government buying patents and licensing them broadly, but this entails much greater government intervention and interference with private enterprise than the idea proposed here: focused, non-profit, non-governmental, patent buyouts. The same strategy, however, could be used by governments in countries where government plays a more active role in pharmaceutical markets.

## on case

#### [1] Not having IP protections violates the categorical principle.

**Van Dyke 18 -** “The Categorical Imperative for Innovation and Patenting” on july 17, 2018 By Raymond Van Dyke has been an intellectual and technology attorney and consultant for over 25 years, specializing in IP procurement, prosecution, IP portfolio building and management, licensing, legislative advocacy and expert witnessing. He is licensed to practice law in Washington, DC, Maryland, New Jersey, New York, Texas, and the Patent & Trademark Office of the United States. He is also admitted to practice before the Supreme Court of the United States, the Court of Appeals for the Federal, Second, Third, Fourth and Fifth Circuits, as well as the Federal Court of Claims and the Court of International Trade. For more information or to contact see his profile at Van Dyke Law. [https://www.ipwatchdog.com/2018/07/17/categorical-imperative-innovation-patenting/id=99178/] // ahs emi

As we shall see, applying Kantian logic entails first acknowledging some basic principles; that the people have a right to express themselves, that that expression (the fruits of their labor) has value and is theirs (unless consent is given otherwise), and that government is obligated to protect people and their property. Thus, an inventor or creator has a right in their own creation, which cannot be taken from them without their consent. So, employing this canon, a proposed Categorical Imperative (CI) is the following Statement: creators should be protected against the unlawful taking of their creation by others. Applying this Statement to everyone, i.e., does the Statement hold water if everyone does this, leads to a yes determination. Whether a child, a book or a prototype, creations of all sorts should be protected, and this CI stands. This result also dovetails with the purpose of government: to protect the people and their possessions by providing laws to that effect, whether for the protection of tangible or intangible things. However, a contrary proposal can be postulated: everyone should be able to use the creations of another without charge. Can this Statement rise to the level of a CI? This proposal, upon analysis would also lead to chaos. Hollywood, for example, unable to protect their films, television shows or any content, would either be out of business or have robust encryption and other trade secret protections, which would seriously undermine content distribution and consumer enjoyment. Likewise, inventors, unable to license or sell their innovations or make any money to cover R&D, would not bother to invent or also resort to strong trade secret. Why even create? This approach thus undermines and greatly hinders the distribution of ideas in a free society, which is contrary to the paradigm of the U.S. patent and copyright systems, which promotes dissemination. By allowing freeriding, innovation and creativity would be thwarted (or at least not encouraged) and trade secret protection would become the mainstay for society with the heightened distrust.

#### [2] Property is an extension of free will so it must be protected.

**Marks 19** - “Patent Law’s Latent Schism” by Matthew G. Sipe\* Frank H. Marks Visiting Associate Professor, George Washington University Law School; J.D., Yale Law School; B.A., University of Virginia. [https://www.law.uh.edu/wipip2019/full-draft/MSipe\_draft.pdf] // ahs emi

Immanuel Kant provides such an articulation of property, grounded fundamentally in service of maximizing individual autonomy.30 As Professor Merges explains: People have a desire to carry out projects in the world. Sometimes, those projects require access to and control over external objects. . . . For Kant, this desire must be given its broadest scope, to promote the widest range of human choice, and therefore human projects. . . . Consider Michelangelo, approaching a large block of marble. He may have a plan, a mental picture of what he wants to do, what design he wants to impose on that chunk of rock. . . . To fully realize this vision, to work out his plan for the marble, he needs to know that he can count on two things: continued access to it, and noninterference by others.31 For Kant, free will is a defining characteristic of persons as compared to objects; “[w]e can dispose of things which have no freedom, but not of a being which has free will.”32 That internal free will is only reified, however, by forming intentions and acting on objects in the external world.33 By so doing, the individual becomes connected to the object, which gives rise to what Kant defines as property: that “with which I am so connected that another’s use of it without my consent would wrong me.”34