### Framework

#### Our ability to create and justify judgements about the world is constitutive of our subjectivity. This is called rationality.

**Gobsch**, W. (**2014**). The Idea of an Ethical Community: Kant and Hegel on the Necessity of Human Evil and the Love to Overcome It. *Philosophical Topics,* *42*(1), 177-200. Retrieved June 24, 2021, from [http://www.jstor.org/stable/43932722 //](http://www.jstor.org/stable/43932722%20//) sosa

What is reason, and how does it relate to sensibility in a human being? Reason, one might begin, is a capacity to justify judgments. To judge is to claim to think truly. And to think truly is to think something that is the case. Now, there is no outside to the totality of that which is the case, the world; being is unbounded: the form of being cannot be negated, the law of non-contradiction does not apply to it. That means that being, that which is the case, cannot be the object of a limited capacity of representation; the object of such a capacity could only be being with an index: being as it appears to particular subjects. So the capacity to judge, the intellect, must itself be unlimited or entirely general: νουˆς, as Aristotle puts this, “has no other nature than to be capacity.”2 And because to judge is to claim to think what is the case, one cannot justify judgments through acts of a limited capacity either: one cannot reveal one’s judgment’s content as belonging to being by referring it to an activity incapable of representing being. So reason, as a capacity to justify judgments, must be unlimited, too. But obviously, there cannot be more than one unlimited capacity. So reason and the intellect are essentially the same. And this is to say, first, that reason is the capacity to justify judgments through acts of the intellect, i.e. through judgments, that it is the capacity to infer, and, second, that it is the only capacity to justify judgments.3 To justify a judgment, to infer it, is to explain why its content is something that is the case: part of the world. But the world has no outside. So in order to explain something’s being the case, one must appeal to what is part of the world, or more precisely—as the world is one cohering whole, and a circle no justification—to everything else that is the case. Yet every something is another something’s other. So every something’s being the case is to be explained in a way that looks to everything else and, thereby, back to that something itself. Now, for something to be explanatorily dependent on another is to be related to it under laws. And for something to be the case is, basically, for a thing to be determined in some way. So to justify a judgment is, basically, to explain why the thing that is the subject of its content is determined the way it is through its activity according to the laws (under which it falls in virtue of its definition) that relate it to the activities of all other things (in virtue of their definitions). Laws can only play this role in justification, if they constitute the form of the world. And because the form of the world cannot be negated, laws cannot be conceived of as merely induced from what happens to be the case; they must be conceived as articulating a necessity that is prior to mere actuality, or as Kant puts it: there is “necessity [. . .] thought in every law, namely objective necessity from a priori grounds.” Reason, then, is the power to represent laws. Now, rational beings are beings, too: they exist in the world. So to exist as a rational being is to exist through representing laws, or as Kant puts it: Everything in nature acts according to laws. A rational being alone has the capacity to act from the representation of laws.5 This holds for both human beings and merely prudentially rational animals alike, should these be possible at all. The laws from the representation of which a being of the latter sort would act would not be the laws that explain why it acts at all: although such a being would act from the representation of laws, there would always be laws that govern the activity that constitutes its existence that would not themselves be represented in this very activity as the laws from which it acts. In a merely prudentially rational animal, reason, in representing laws, would only serve to direct the animal’s practical activity toward the realization of its happiness—the most complete satisfaction of its desires throughout the whole of its existence—, while the very actuality of this activity itself would not be due to reason, but to sensible desire. Although such a being would essentially act with reason, reason itself would remain entirely theoretical for it. In us human beings, however, pure reason is of itself practical, if all goes well: ideally, the laws from the representation of which we act are therein known by us to be the laws that explain why we act at all.6 They are practical laws. Thus defined, a practical law is a self-applying law: its application in the activity that constitutes a human being’s existence does not, if all goes well, have conditions the satifaction of which could possibly remain to be explained by other laws. So it cannot be hypothetical, it will be categorical: it will be law in virtue of no other law. As law, however, it will govern belonging in the totality that has no outside, the world. So there can only be one such law.7 In its necessary singularity, this law, then, is lawness itself, reason; or as Kant puts it: “pure reason, practical of itself, is here immediately lawgiving.”8

#### However, this form of rationality is not pure. Existence is divided between the rational judgement and power of affect.

**Gobsch 2**, W. (2014). The Idea of an Ethical Community: Kant and Hegel on the Necessity of Human Evil and the Love to Overcome It. *Philosophical Topics,* *42*(1), 177-200. Retrieved June 24, 2021, from [http://www.jstor.org/stable/43932722 //](http://www.jstor.org/stable/43932722%20//) sosa

To act as a human being is to actualize pure reason, if all goes well. But no human being is pure reason. Human beings are rational animals. So they are animals, sensible organisms, too. Sensibility is a receptive capacity of representation: a capacity to represent objects through being affected by them. Affection happens at a time and a place. So sensible organisms are spatiotemporal beings. And affection depends on the existence of its object. So sensibility is a capacity whose actualization has conditions the satisfaction of which cannot be the work of this capacity itself. Therefore, sensibility is limited by whatever else satisfies these conditions. And so it is a particular capacity, a capacity with a specific form. But if a capacity of representation is limited and particular, then its object—the content of its act in general—must be limited and particular, too: its object cannot be that which is, simply as such. It is for this reason that sensibility differs infinitely from reason, the unconditioned capacity, and that no sensible organism can be pure reason, so that the definition of a human being unites reason and sensibility as two distinct determinations. To exist as an animal is, typically, to be engaged in sensible activity.11 So although human beings exist, if all goes well, through actualizing pure reason, sensibility will have to play a role in their rational practical activity. A merely prudentially rational animal, should such a thing be possible at all, would be determined to act by sensible desire. Reason would merely serve to direct it toward happiness. In a human being, however, reason is, if all goes well, of itself practical. And so the role of sensible desire cannot be that of the determinant, the motor, of human practical activity. As the activity of a rational animal, human activity, too, is oriented toward happiness. But the subjective principles of a human being’s practical activity, principles which, as such, determine the manner in which its orientation toward happiness becomes practical, are acts of free choice: acts of a capacity to “be determined to actions by pure will,”12 maxims, as Kant calls them. As conditioned by the moral law, such maxims presuppose their subject’s acknowledgment of her own happiness as prima facie good: as to be pursued at all in the activity of pure reason.13 In this acknowledgment, a human being constitutes herself as a person: as individualized pure reason, as a particular manifestation of the moral law. Through her maxims, a person, a human being as a particular manifestation of pure reason, determines the character of her pursuit of happiness. And so it is in her maxims, her acts of free choice, a human being rationally displays her sensible nature: the individuality and finitude that make her an animal. To exist as a human being is, typically, to engage in the activity of free choice. In this activity, reason is employed theoretically, and most importantly it is of itself practical, if all goes well. Reason is the capacity to explain why a thing is determined the way it is in accordance with the laws that relate it to the activities of 183 all other things. But the law of pure practical reason is law in virtue of no other. So in her activity of free choice, a human being is necessarily out to validate this law’s supreme reign in the world. That is to say that, should there be a plurality of laws, she is necessarily out to realize the moral law as the supreme principle of all the laws. Now, there is, in fact, more than one human being. And every human being is a person, a particular manifestation of the moral law. On the one hand this means that the particularity of a human being’s existence cannot be deduced from the moral law; and on the other it means that, as a manifestation of the law of pure reason, the reign of the moral law consists in every human being’s existence. Taken together, this implies that every human being constitutes a particular law in her own right: a law necessarily to be considered in the activity of validating the moral law’s supremacy in the world. So on condition of the fact of a multiplicity of human beings, every human being is, in her activity of free choice, out to be related to every other human being as a person. And this is to say that, because there is more than one human being, the activity of free choice is an activity in which everyone is out to be related to every other human being as bestowed with an unconditioned worth that is none other than the very supremacy of the moral law itself. So, in the light of human plurality, the reign of the moral law amounts to nothing less than the rule of unconditioned, universal human right. Because there is more than one human being, every human being is, in her activity of free choice, if all goes well, related to every other human being as a subject of free choice: as one person toward another.14 But this is to say that the notion of relationality, the second of the two sides of the idea of an ethical community, does indeed bring into view an essential aspect of the practical activity characteristic of human beings: the personhood in which a human being rationally displays her particularity, her sensible nature: the individuality and finitude that make her an animal

#### This divide creates “ethical life”, i.e., the unity of rationality and sensibility. Upon encountering the other, we can recognize the same traits in them. This recognition births the ethical community.

**Gobsch 3**, W. (2014). The Idea of an Ethical Community: Kant and Hegel on the Necessity of Human Evil and the Love to Overcome It. *Philosophical Topics,* *42*(1), 177-200. Retrieved June 24, 2021, from [http://www.jstor.org/stable/43932722 //](http://www.jstor.org/stable/43932722%20//) sosa

In a human being, pure reason is of itself practical, if all goes well, but only by subjecting every maxim, which is not of itself an act of pure reason, to the moral law.15 Pure reason’s practicality is here conditioned by something other: by the pursuit of happiness, hence by sensible desire. Kant uses the distinction between form and matter to characterize the relation between law and maxim: in knowing the moral law to be the sole determinant of one’s practical activity, one knows it to constitute the form of one’s choice, without, therein, knowing it to provide for its matter, too.16 But, now, how could it possibly be correct to say that pure reason, the unconditioned, can be of itself practical, if its practicality is conditioned by something other? “The thing is strange enough,” Kant notes.17 Indeed, as he himself knows perfectly well: prima facie, it is utterly impossible. The thing, free choice, would be impossible, that is, if the distinction between form and matter had to be the last word about it—unless, that is, we may come to recognize pure reason to be the source of both the form and the matter of the activity of free choice or of 184 an activity knowable as free choice’s necessary perfection. Otherwise, the idea of pure, unconditioned reason as of itself practical—and with it the very idea of free choice, hence the very concept of a human being—would just be plain nonsense. The idea of pure reason as the origin of both the determining form and the enabling matter of the activity of pure reason is the idea of the moral law as itself the origin of happiness. The ensuing idea of the unity of one’s activity from nothing but respect for the moral law and one’s happiness as the result of nothing but the former is the idea of “the unconditioned totality of the object of pure reason,”18 the idea of pure reason’s complete end. In Kant’s philosophy, this idea figures under the title of the highest good: complete happiness through complete virtue.19 Because the highest good is the complete end of the activity of pure reason, the unconditioned, it is necessarily possible.20 The unity of the highest good is the unity thought in the concept of a human being. It is the unity of reason, as of itself practical, with sensibility. It is the unity of pure reason and free choice, of moral law and maxim, through pure reason alone, unconditioned by anything else. Therefore, the idea of this unity, the idea of the highest good, is none other than the idea of ethical life, the idea of a reality in which the internality that is thought in the idea of the moral law as the principle from consciousness of which alone human beings act, if all goes well, and the relationality that is thought in the idea of the power of free choice in its dependence on sensible matter coincide with necessity, and that is: through pure reason. The idea of the highest good is the idea of ethical life: it is the idea of the actuality of a community constituted by the practical law as not only the principle from consciousness of which alone its constituents act, if all goes well, but in and only in so acting from which alone they are related to one another as persons. To identify the idea of ethical life with the idea of the highest good is to conceive of pure reason as the sole ground of the satisfaction of all the conditions of its actuality, or as Hegel puts it, referring to freedom and self-consciousness, the hallmarks of rational activity: Ethical life is the concept of freedom which has become the existing world and the nature of self-consciousness.21 One of the conditions of the actuality of the idea of ethical life is the very multiplicity of the human beings who constitute an ethical community. Satisfaction of this condition, too, must eventually come to be conceived—not as a brute fact, but—as the work of nothing but pure reason. And this is to say, among other things, that the actuality of an ethical community cannot be explained within the scope of methodological individualism. Ethical life, that is, cannot be explained as the result of a contract, for example.22 This reflects back on the content of the idea of ethical life. To act from one’s consciousness of nothing but the moral law is to act autonomously, it is to give this law to oneself: it is to act in such a way as to therein also constitute and preserve oneself as a being who is acting from nothing but one’s consciousness of this law. So for me to be related to you as one person to another 185 in my acting from such respect for the moral law is for me to give the law to both of us and to therein receive it from you who is equally giving it to both of us. So as members of our ethical community, each of us acts in such a way as to constitute and preserve herself and therein the other as a person who acts from nothing but her consciousness of the moral law. In this sense, an act from respect for the moral law, conceived as the principle of an ethical community, is a joint or general act of the will. So in ethical life, the willing itself is relational.23 In our ethical community, that is, my willing is our willing, only from my perspective, oriented toward you; and your willing is our willing, only from your perspective, oriented toward me.24 And because our willing is our acting from nothing but our consciousness of the moral law, I am, in my willing, conscious of myself as related to you in this manner, and you are, in your willing, conscious of yourself as related to me in this manner: we share the same—relational—self-consciousness. In ethical life, the willing itself is relational in its very internality, in its very character as self-consciousness.25 In ethical life, we are conscious of one another as one at heart: as one in the consciousness of the principle from which we act; we are practically conscious of one another’s hearts. Through this consciousness we constitute a sense of “we” in which “validity for every human being (universitas vel omnitudo distributiva), i.e. communality of insight” and “universal union (omnitudo collectiva)”26 coincide with necessity. This implies that for me to act merely in accordance with the moral law, conceived as the principle of our ethical community, but not from my consciousness of it alone, is to break this law and to therein wrong you. But if I do act from nothing but my consciousness of the moral law, thus conceived, I am moved by reason and, therein, by you. That is to say that ethical life is the activity of unconditionally approving of one another’s individuality in such a way as to therein constitute and preserve one another as engaged in this very activity, and that is: love. It is the rational love we know as אהב) ahābā), ἀγάπη, caritas, and solidarity.27

#### Thus the standard is Consistency with the Principles of the Ethical Community

#### Impact Calculus:

#### Our framework is only concerned with preserving mutual recognition of the rationality and sensibility of subjects, as well as promoting acts of recognition within the community

#### Use intent-based ethics as opposed to Consequentialism:

#### Objectiveness- ethical theories premised on intrinsic-ness means actions are objectively good or bad, whereas consequentialism necessitates different impact calcs that are subjective to determine if an action should be taken- this means intent is a sequencing question to guiding action

#### Accountability- intent creates the most verifiable way to govern action- omissions and foresights may be able to be acted on but it’s less reliable to hold agents accountable to ethical systems, which would trigger permissibility

#### Prefer ethical theories premised on interpersonal relations as opposed to other values

#### Bindingness- Determining the nature of our relationship to the other is a prerequisite to ethical theorizations because the nature of ethics is that it attempts to constrain what actions are good or bad for people to take- this means absent a framework explaining how relationships work, you prefer ours on explanatory power

#### Sequencing- It’s impossible to have an obligation if we don’t recognize other people as people because they become fundamentally no different than the world around us

#### Ethical theories must respect the Other’s ability to create their own truth

**Joyce**, R. (**2001**). *The Myth of Morality* (Cambridge Studies in Philosophy). Cambridge: Cambridge University Press. doi:10.1017/CBO9780511487101

This distinction between what is accepted from within an institution, and “stepping out” of that institution and appraising it from an exterior perspective, is close to Carnap’s distinction between internal and external questions. 15 Certain“linguistic frameworks” (as Carnap calls them) bringwith themnewterms andways of talking: accepting the language of “things” licenses making assertions like “The shirt is in the cupboard”;accepting mathematics allows one to say “There is a prime number greater than one hundred”; accepting the language of propositions permits saying “Chicago is large is a true proposition,” etc. Internal to the framework in question, confirming or disconfirming the truth of these propositions is a trivial matter. But traditionallyphilosophers have interested themselves inthe external question –the issue of the adequacy of the framework itself**:** “Do objects exist?”, “Does the world exist?”, “Are there numbers?”, “Are the propositions?”, etc. Carnap’s argument is that theexternalquestion**,** as it has been typically construed,does not make sense. From a perspective that accepts mathematics, the answer to the question “Do numbers exist?” is justtrivially“Yes.”From a perspective which has not accepted mathematics, Carnap thinks, the only sensible way of construing the question is not as a theoretical question, but as a practical one: “Shall I accept the framework of mathematics?”, and this pragmatic question is to be answered by consideration of the efficiency, the fruitfulness, the usefulness,etc., of the adoption. But the (traditional)philosopher’s questions – “But is mathematics true?”, “Are there really numbers?” – are pseudo-questions**.** By turning traditional philosophical questions into practical questions of the form “Shall I adopt...?”, Carnap is offering a noncognitive analysis of metaphysics. Since I am claiming that we can critically inspect morality from an external perspective – that we can ask whether there are any non-institutional reasons accompanying moral injunctions – and that such questioning would not amount to a “Shall we adopt...?” query, Carnap’s position represents a threat. What arguments does Carnap offer to his conclusion? He starts with the example of the “thing language,” which involves reference to objects that exist in time and space.Tostep out of the thing language andask “But does the world exist?” is a mistake, Carnap thinks, because the very notion of “existence” is a term which belongs to the thing language, and can be understood only within that framework, “hence this concept cannot be meaningfully applied to the system itself.” 16 Moving on to the external question “Do numbers exist?” Carnap cannot use the same argument – he cannot say that “existence” is internal to the number language and thus cannot be applied to the system as a whole. Instead he says that philosophers who ask the question do not mean material existence, but have no clear understanding of what other kind of existence might be involved, thus such questions have no cognitive content. It appears that this is the form of argument which he is willing to generalize to all further cases: persons who disputewhether propositions exist, whether properties exist**,** etc., do not know what they are arguing over, thus theyare not arguing over the truth of a proposition, but over the practical value of their respective positions**.** Carnap adds that this is so because there is nothing that both parties would possibly count as evidence that would sway the debate one way or the other.

#### Prefer additionally:

#### Performativity- responding to our framework concedes the necessity of recognizing my subjecthood, proving mutual recognition is a prerequisite to ethics.

#### Actor Spec- Only our framework explains the existence of the state- specifically key on a topic about recognizing rights.

Pensky 95 [Max Pensky, (MAX PENSKY is Assistant Professor of Philosophy at Binghamton University.) "Universalism And The Situated Critic" In S. White (Ed.), The Cambridge Companion To Habermas (Cambridge Companions To Philosophy, Pp. 67-94), 1995, https://www.cambridge.org/core/books/cambridge-companion-to-habermas/3B448B1C9FEC698C747242C8E3618D84, DOA:3-1-2019 // WHS-RS recut WWBW recut again sosa]

The universalist kernel of Habermas's moral and political writing has been the object of more criticism than any other aspect of his work. The central claim that **there is always a preexistent intersubjective context for any morally relevant question translates the moment of universality** in collective political life **to the** basic attributions and expectations of reasonableness that **speakers** and hearers in modern, rationalized societies can make of each other's discursive conduct, in situations when needs and problems have to be collectively settled. "**Universalism**" is itself not so much a concrete political value as it **is a collectively shared mentality; a sense of solidarity inhabiting a public space that is distinct from** political or economic **institutions. It is a locationless network of competencies; the ability to approach one's own situated needs and interests reflectively; to take the position of the other at least to the extent that one is willing to recognize that the other's needs are at least potentially legitimate**; that one attributes value and comprehensibility to the other's needs and interest. **A universalistic mentality cannot adjudicate questions of the good life, for such questions are inextricably particular. But a collectively shared universalist mentality does enforce the principle that norms are only just insofar as they can meet with the considered approval of all those who will be affected by their implementation.** For Habermas, universalism is the only formal criterion of the rightness or justice of collective norms that is available, and hence the only recourse that modem societies have for opening up a sphere in which particular questions of the good life can even be addressed. In this sense, **"universalism" means** something like **the basic shared mentality that allows individuals to conceive of themselves as citizens of a democratic state**, one in which **citizenship consists of a constellation of interlocking duties and rights that together form an abstract level of popular sovereignty subsisting below** - and making possible - the spectrum of particularistic kinds of identity operating within a diverse society. **In democratic societies, the capacity for mutual recognition and the generalization of norms must install itself as an attitude that can reflectively separate from the particular fabric of their own interests.**

#### Pragmatism: Language is entirely self-referential—one cannot look to something outside of language to determine what words mean because that process would inevitably be mediated by language. This requires a pragmatic account of truth in which the meaning of words change according to their usage.

Brandom 99 [Robert B. Brandom, (University of Pittsburgh) "Some Pragmatist Themes In Hegel's Idealism: Negotiation And Administration In Hegel's Account Of The Structure And Content Of Conceptual Norms" European Journal Of Philosophy 7 (2):164–189, 1999, https://philpapers.org/rec/BRASPT, DOA:2-28-2019 // WWBW]

**The workability** of a story along these lines **depends on** its being settled somehow, **for each rule** of synthesis and each possible manifold of representations, **whether that manifold can be synthesized successfully according to that rule.** This might be called the condition of complete or maximal determinateness of concepts. Only if this condition obtains – **only if the empirical concepts made** 166 **available by judgements of reflection are** fully and finally **determinate** – does the Kantian account make intelligible the application of concepts as being constrained by the deliverances of sense, the correctness of judgements as constrained by the particulars to which we try to apply the universals that are our determinate empirical concepts. Hegel wants us to investigate critically the transcendental conditions of the possibility of such determinateness of concepts. He does not find in Kant a satisfactory account of this crucial condition of the possibility of experience.7 The question is how we can understand the possibility of applying, endorsing, committing ourselves to, or binding ourselves by one completely determinate rule rather than a slightly different one. This problem is related to the one Kripke attributes to Wittgenstein.8 It is **the issue of understanding the conditions of the possibility of the determinateness of our conceptual commitments**, responsibilities, and obligations. I don’t want to dwell on what I take Hegel to see as the shortcomings of Kant’s answer. For my purposes it suffices to say that Hegel takes a different approach to understanding the relation between the institution and the application of conceptual norms. In fact I think Hegel’s idealism is the core of his response to just this issue, and it is here that I think we have the most to learn from him.9 A good way of understanding the general outlines of Hegel’s account of the relation between the activity of instituting conceptual norms and the activity of applying them is to compare it with a later movement of thought that is structurally similar in important ways. Carnap and the other logical positivists affirmed their neo-Kantian roots by taking over Kant’s two-phase structure: first one stipulates meanings, then experience dictates which deployments of them yield true theories. 10 The first activity is prior to and independent of experience; the second is constrained by and dependent on it. **Choosing one’s meanings is not empirically constrained in the way that deciding what sentences with those meanings to endorse or believe is.** Quine rejects Carnap’s sharp separation of the process of deciding what concepts (meanings, language) to use from the process of deciding what judgements (beliefs, theory) to endorse. For him, **it is a fantasy to see meanings as freely fixed independently and in advance of our applying those meanings in forming fallible beliefs that answer for their correctness to how things are. Changing our beliefs can change our meanings. There is only one practice – the practice of actually making determinate judgements. Engaging in that practice involves settling at once both what we mean and what we believe.** Quine’s pragmatism consists in his development of this monistic account in contrast to Carnap’s two-phase account. **The practice of using language must be intelligible as not only the application of concepts by using linguistic expressions, but equally and at the same time as the institution of the conceptual norms that determine what would count as correct and incorrect uses of linguistic expressions. The actual use of the language settles – and is all that could settle – the meanings of the expressions used.**11

That requires the AC framework—only it can account for pragmatic truth because it explains how moral judgements change according to their recognition by other agents.

#### Obligations- The word ought entails that obligations are understood through the frame of each subject- this necessitates respecting this, which affirms

**Cappelle** “Should vs Ought to” 2010 Bert Cappelle is a lecturer of English linguistics at the University of Lille [https://www.academia.edu/1433058/Should\_vs\_ought\_to //](https://www.academia.edu/1433058/Should_vs_ought_to%20//) sosa

Our corpus contained few instances in which the speaker expresses an ‘objective’ opinion (as in (1a) above)—and besides, whether an opinion counts as truly objective is always hard to verify—or in which the speaker just plainly states which requirements ‘objectively’ have to be fulfilled for some other situation (as in (1b) above). At any rate, we did not find corroboration that ought to occurs more frequently than should in such cases. However, if oughttowerereally more objective than should, then it should be avoided in contexts containing hedges like I thinkor If you ask me**,** but sentences like th[is] following do occur, seem[s] perfectly natural and have been shown in this study to be indeed more frequent than similar sentences with should (cf. the seventh result stated in section 4)**.** (20) a. If you ask me, though, it ought to be twice that size**.** (www.deadline.com/hollywood/mr-rogers-gone-but-notforgotten/) b. “I think this woman ought to be replaced immediately by myself,” he said. (Cobuild corpus, The Times newspaper) c. …what’s been er been going through my head recently is, is er the, looking at the pattern of the meetings and the way the meetings are arranged and, and how, erm, at the last meeting we had a speaker er and that I think, we all found that quite interesting and the one, one from Central America that things and I feel we ought to have that much more frequently than we do have er, a, either a speaker or a focus of some sort of meetings erm, so I think that’s something I’d like to raise and get the A G M at the next meeting I think [a] similar thing we ought to consider there… (BNC, spoken discourse) Moreover, our study also reveals that ought to (vs. should) is chosen twice as likely with first and second person subjects, which refer to the author and his addressee, as with third person subjects (cf. our eighth result). This suggests thatought to ismore (inter)subjectivethan should**.**

### 1AC -- Solvency

#### Plan: The member nations of the World Trade Organization ought to reduce intellectual property protections for medicines related to the prevention, containment, and treatment of COVID-19.

#### Enforcement is done through waiving TRIPS protections and modifying relevant domestic law to ensure patent protections are reduced---spec is delineated in the card.

Jones et al. 21, Mike Jones, J.D., cum laude, Brooklyn Law School, 2014. Sean McConnell, University of Pittsburgh School of Law, J.D., 2002. Lauren Giambalvo, University of Georgia School of Law, J.D., magna cum laude, Order of the Coif, 2019; Georgia Law Review. Emily Harmon, Villanova University Charles Widger School of Law, J.D., 2020. Ipwatchdog, August 9, 2021. “What is a ‘Patent Waiver’ Anyway? Zooming Out on the TRIPS COVID IP Waiver Debate” <https://www.ipwatchdog.com/2021/08/09/patent-waiver-anyway-zooming-trips-covid-ipwaiver-debate/id=136381/> brett

Scientists, engineers, and everyday people have developed solutions for testing, preventing, and treating the COVID-19 disease. Ordinarily, we wouldn’t think twice about granting patents on these inventions. But, today, when COVID-19 is spreading all over the world and killing millions of people, some world leaders are questioning whether we should be granting the exclusionary rights of patent protection on inventions that help respond to the pandemic. Included in that group is the Biden-Harris Administration, which, in May, announced their support of an “IP waiver” on COVID 19 vaccines.

Patent Waiver

The “patent waiver” is a proposal to waive certain provisions of the Trade-Related Aspects of Intellectual Property (TRIPS) Agreement for three years. The TRIPS Agreement requires certain member countries (“Members”), including the United States, to have certain minimum intellectual property protections. While this proposal is often referred to as a “patent waiver,” the proposal would also waive sections associated with copyright, industrial designs, and undisclosed information.

The proposal seeks to waive Part II, Section 5 Patents of the TRIPS Agreement and the associated enforcement sections only with respect to “health products and technologies including diagnostics, therapeutics, vaccines, medical devices, personal protective equipment, their materials or components, and their methods and means of manufacture for the prevention, treatment or containment of COVID-19” for a period of three years. Article 27 of Section 5 requires that certain Members issue patents to inventions that “are new, involve an inventive step and are capable of industrial application.” However, Members have the option to refuse to grant patents to certain categories of inventions, including, “diagnostic, therapeutic and surgical methods for the treatment of humans or animals.” Article 28 explains that an owner of a patent can prevent others from “making, using, offering for sale, selling, or importing” (“infringing”) the patented inventions. Finally, Part III of the TRIPS Agreement explains the potential consequences of infringing a patent. Among other things, the infringer can be liable for money damages and the judicial authority of the Member may order injunctions.

Therefore, as the TRIPS Agreement currently stands, each Member must have patent laws that give patents to inventions that meet certain requirements, and each must provide avenues for patent holders to enforce its patent rights. As applied to the current situation, Members are required to grant patents to qualifying inventions related to “the prevention, containment and treatment of COVID-19” (with exceptions for pharmaceuticals if the Member does not allow pharmaceutical patents). Infringers could be liable for money damages and the judicial authority of the Member may order injunctions.

If provisions in Part II, Section 5 and the associated enforcement sections are waived, Members would no longer be required to issue patents or provide avenues for patent holders to enforce patent rights. The proposal does not, however, require Members to waive their own domestic patent rights. In other words, the proposal to waive certain provisions of the TRIPS Agreement, the “patent waiver,” does not directly waive any patent protections. Rather, the patent waiver grants to Members permission to waive their own domestic patent protections.

Patent laws are geographically limited; they only protect an invention in the country that issued the patent. For example, one cannot make, use, offer to sell, sell, or import an invention protected only by a U.S. patent in the U.S; however, one may do those things in another country where corresponding patent protection does not exist. Therefore, in order to waive patent protections worldwide, each Member subject the TRIPS Agreement’s requirement to have certain minimum intellectual property protection would have to waive its own domestic patent protections.

The United States patent laws are codified in Title 35 to the U.S. Code. It provides that inventors may obtain patents for their new and useful inventions and infringers are liable for making, using, offering to sell, selling, or importing into the U.S. patented inventions without the patent holders consent. Because the power to enact patent laws lies with Congress, Congress would likely have to waive these laws. If Congress chooses not to waive the U.S.’s patent laws, patent holders will continue to be able to enforce their U.S. patent rights in the U.S.

#### Public funding and massive pre-purchases are superior incentives to patents in a pandemic.

Lindsey 21, Brink Lindsey, Vice President @ Niskanen Center “Why intellectual property and pandemics don’t mix,” Brookings Institution, June 3, 2021. <https://www.brookings.edu/blog/up-front/2021/06/03/why-intellectual-property-and-pandemics-dont-mix/> brett

What approach to encouraging innovation should we take instead? How do we incentivize drug makers to undertake the hefty R&D costs to develop new vaccines without giving them exclusive rights over their production and sale? The most effective approach during a public health crisis is direct government support: public funding of R&D, advance purchase commitments by the government to buy large numbers of doses at set prices, and other, related payouts. And when we pay drug makers, we should not hesitate to pay generously, even extravagantly: we want to offer drug companies big profits so that they prioritize this work above everything else, and so that they are ready and eager to come to the rescue again the next time there’s a crisis.

It was direct support via Operation Warp Speed that made possible the astonishingly rapid development of COVID-19 vaccines and then facilitated a relatively rapid rollout of vaccine distribution (relative, that is, to most of the rest of the world). And it’s worth noting that a major reason for the faster rollout here and in the United Kingdom compared to the European Union was the latter’s misguided penny-pinching. The EU bargained hard with firms to keep vaccine prices low, and as a result their citizens ended up in the back of the queue as various supply line kinks were being ironed out. This is particularly ironic since the Pfizer-BioNTech vaccine was developed in Germany. As this fact underscores, the chief advantage of direct support isn’t to “get tough” with drug firms and keep a lid on their profits. Instead, it is to accelerate the end of the public health emergency by making sure drug makers profit handsomely from doing the right thing.

Patent law and direct support should be seen not as either-or alternatives but as complements that apply different incentives to different circumstances and time horizons. Patent law provides a decentralized system for encouraging innovation. The government doesn’t presume to tell the industry which new drugs are needed; it simply incentivizes the development of whatever new drugs that pharmaceutical firms can come up with by offering them a temporary monopoly. It is important to note that patent law’s incentives offer no commercial guarantees. Yes, you can block other competitors for a number of years, but that still doesn’t ensure enough consumer demand for the new product to make it profitable.

DIRECT SUPPORT MAKES PATENTS REDUNDANT

The situation is different in a pandemic. Here the government knows exactly what it wants to incentivize: the creation of vaccines to prevent the spread of a specific virus and other drugs to treat that virus. Under these circumstances, the decentralized approach isn’t good enough. There is no time to sit back and let drug makers take the initiative on their own timeline. Instead, the government needs to be more involved to incentivize specific innovations now. As recompense for letting it call the shots (pardon the pun), the government sweetens the deal for drug companies by insulating them from commercial risk. If pharmaceutical firms develop effective vaccines and therapies, the government will buy large, predetermined quantities at prices set high enough to guarantee a healthy return.

For the pharmaceutical industry, it is useful to conceive of patent law as the default regime for innovation promotion. It improves pharmaceutical companies’ incentives to develop new drugs while leaving them free to decide which new drugs to pursue – and also leaving them to bear all commercial risk. In a pandemic or other emergency, however, it is appropriate to shift to the direct support regime, in which the government focuses efforts on one disease. In this regime, it is important to note, the government provides qualitatively superior incentives to those offered under patent law. Not only does it offer public funding to cover the up-front costs of drug development, but it also provides advance purchase commitments that guarantee a healthy return.

It should therefore be clear that the pharmaceutical industry has no legitimate basis for objecting to a TRIPS waiver. Since, because of the public health crisis, drug makers now qualify for the superior benefits of direct government support, they no longer need the default benefits of patent support. Arguments that a TRIPS waiver would deprive drug makers of the incentives they need to keep developing new drugs, when they are presently receiving the most favorable incentives available, can be dismissed as the worst sort of special pleading.

That said, it is a serious mistake to try to cast the current crisis as a morality play in which drug makers wear the black hats and the choice at hand is between private profits and public health. We would have no chance of beating this virus without the formidable organizational capabilities of the pharmaceutical industry, and providing the appropriate incentives is essential to ensure that the industry plays its necessary and vital role. It is misguided to lament that private companies are profiting in the current crisis: those profits are a drop in the bucket compared to the staggering cost of this pandemic in lives and economic damage.

#### That affirms-

**[1] IP rights structurally prevent all people from accessing the same intellectual rights- irreciprocal relationships prevent recognition**

**Morabito 15** - “Essay: Pharmaceuticals and Global Justice: Balancing Public Health and Intellectual Property Rights” by Marisa Morabito [https://scholarship.shu.edu/cgi/viewcontent.cgi?referer=https://scholar.google.com/&httpsredir=1&article=1808&context=student\_scholarship] //ahs emi

The approach to IP rights and global pharmaceutical industry thus requires a different philosophical, ethical framework. I would like to suggest a virtue and human flourishing approach which is based on human good and well-being and helping others to also be able to flourish by living ethical lives which parallels Nussbaum's capabilities approach, a virtue ethics view.la Virtue ethics is an ethical system based upon adherence to a principle. Virtue ethicists believe that there are "certain ideals toward which we should strive...[to allow] for the full development of our humanity" by looking at what humans can become.ls The virtue ethicist focuses on humans achieving their maximum potential while having virtues of compassion, generosity and courage.l6 For instance, "a person who has developed virtues will be naturally disposed to act in ways consistent with moral principles.lT Virtue ethics emphasizes character formation and habits to foster positive improvements in the world.18 A virtuous person wants to behave well and looks at a circumstance and decides what is right and wishes to behave according to what is right.le This view aligns with Nussbaum who takes a capabilities view which is based on the idea that well-being is "of vital moral importance [and]... individuals must have real opportunities to live well and to flourish as human beings.20 Nussbaum's capabilities view looks at the important functions of a human being and looks at what institutions are doing for those capabilities.2r For example, functions and capabilities are set and then we observe whether intuitions are promoting human flourishing based on these principles.22 If the standards are not being met, we must try to change the institution's policies to allow for human flourishing.23 Nussbaum's capabilities approach explains what flourishing is and tries to achieve this flourishing worldwide.2a Based on this theory, IP rights "generate a material circumstance for a majority of the world in which we can't maximally exercise our intellectual capacities, and thus we fail as a species to maximally flourish."25 Therefore any further discussion of IP rights and the global pharmaceutical industry must proceed clearly focused on adherence to a moral principle; maximizing human flourishing. Successful efforts in South Africa were only achieved when the policy became virtue/principle based. In the Minister of Health v. Treatment Action Campaign, the court ruled that the government breached the people's right to have access to health care services when it prevented drug availability to pregnant women in order to stop mother-to-child HIV transmission.26 2.4 million people have received free anti-retroviral treatment in 2013 which was a 1.4 million increase from 2009 while over 20 million people have been tested for HIV since the government created counseling and testing programs in2010.27 South Africa's goal is to have an extra 4.6 million people receiving anti-retroviral treatment within the next five years.28 Furthermore, South Africa has reduced the prices of anti-retrovirals and there was a tender to make one ARV pill which can be used once instead of having to take three pills two times per day which means there will be fewer pills used and consumed.2e Although there have been successes, the South African population continues to have the highest number of HIV/AIDS infected people globally as millions still lack access to ARVs.30 The ongoing tension between the fight against poverty and IP rights continues to persist at the mercy of humans in poorer nations who are unable to afford medications to cure their illnesses and diseases which hinders maximum human **f**lourishing and does not express good character. In her article "Common Ground: The Case for Collaboration Between Anti-Poverty Advocates and Public Interest Intellectual Property Advocates" Cantrell states that with intellectual property advocates, their focus is on the individuals rights to create, appropriate, and recreate.3l However, the tension between the fight against poverty and the protection of intellectual property rights is evident as the IP movement's success is frequently at the expense of the poor.32 Cantrell continues to state that Martha Nussbaum's virtue theory of human capabilities suggests that every person should have the ability to live a flourishing life yet the IP movement has placed limitations on what a person can do and be as a result of continued poverty.33

**[2] Property rights assume people arent equal which is a form of misrecognition– makes it so that some people have a divine right to help other people and the people who don’t have IPPs rely on patent holders. This is because if you have property rights you have more power then people who don’t because you have access and they don’t**

### Underview

#### Grant me 1ar theory otherwise the NC can read 7 minutes of abuse and then I cant check and lose

#### DTD on theory to deter future abuse and set the best norms- dta incentivizes strategic concessions that don’t rectify any abuse

#### 

#### No RVIs cuz a 6 minute 2nr sandbagging RVIs makes the 2ar impossible to win, disincentivizing countering abuse.

#### Competing interps to set the best norms- reasonability is either arbitrary or relies on normsetting which means you should prefer CI anyways because it allows us to determine the better one

#### 

#### Fairness is a voter- Debate is an educational activity structured as a game that requires competitive equity to engage

#### Education is a voter because it controls the internal link to debate existing the first place – schools don’t fund uneducational games

#### no new 2NR paradigm issues, theory, RVIs, or recontextualizations because you can make whole new arguments with 6 minutes forcing me to respond in only half the time, and can be solved by reading in the 1n

#### Presumption and Permissibility affirm

**a] Imposibility- otherwise we would not be able to justify morally neutral actions like drinking water since there isn’t a prohibition and we would needlessly have to prove an obligation.**

**b] Trivialism- statements are true until proven false, if I told you my name you’d believe me.**