### 1NC – Off

**The standard is maximizing expected wellbeing**

1. **pleasure and pain are intrinsically valuable. People consistently regard pleasure and pain as good reasons for action, despite the fact that pleasure doesn’t seem to be instrumentally valuable for anything.**

**Moen 16** [Ole Martin Moen, Research Fellow in Philosophy at University of Oslo “An Argument for Hedonism” Journal of Value Inquiry (Springer), 50 (2) 2016: 267–281] SJDI

Let us start by observing, empirically, that a widely shared judgment about intrinsic value and disvalue is that pleasure is intrinsically valuable and pain is intrinsically disvaluable. On virtually any proposed list of intrinsic values and disvalues (we will look at some of them below), pleasure is included among the intrinsic values and pain among the intrinsic disvalues**.** This inclusion makes intuitive sense, moreover, for there is something undeniably good about the way pleasure feels and something undeniably bad about the way pain feels, and neither the goodness of pleasure nor the badness of pain seems to be exhausted by the further effects that these experiences might have. “Pleasure” and “pain” are here understood inclusively, as encompassing anything hedonically positive and anything hedonically negative.2 The special value statuses of pleasure and pain are manifested in how we treat these experiences in our everyday reasoning about values**.** If you tell me that you are heading for the convenience store, I might ask: “What for?” This is a reasonable question, for when you go to the convenience store you usually do so, not merely for the sake of going to the convenience store, but for the sake of achieving something further that you deem to be valuable**.** You might answer, for example: “To buy soda.” This answer makes sense, for soda is a nice thing and you can get it at the convenience store. I might further inquire, however: “What is buying the soda good for?” This further question can also be a reasonable one, for it need not be obvious why you want the soda. You might answer: “Well, I want it for the pleasure of drinking it.” If I then proceed by asking “But what is the pleasure of drinking the soda good for?” the discussion is likely to reach an awkward end. The reason is that the pleasure is not good for anything further; it is simply that for which going to the convenience store and buying the soda is good.3 As Aristotle observes**:** “We never ask [a man] what his end is in being pleased, because we assume that pleasure is choice worthy in itself.”4 Presumably, a similar story can be told in the case of pains, for if someone says “This is painful!” we never respond by asking: “And why is that a problem?” We take for granted that if something is painful, we have a sufficient explanation of why it is bad. If we are onto something in our everyday reasoning about values, it seems that pleasure and pain are both places where we reach the end of the line in matters of value.

**Moreover, *only* pleasure and pain are intrinsically valuable. All other values can be explained with reference to pleasure; Occam’s razor requires us to treat these as instrumentally valuable.**

**Moen 16** [Ole Martin Moen, Research Fellow in Philosophy at University of Oslo “An Argument for Hedonism” Journal of Value Inquiry (Springer), 50 (2) 2016: 267–281] SJDI

I think several things should be said in response to Moore’s challenge to hedonists. First, **I do not think the burden of proof lies on hedonists to explain why the additional values are not intrinsic values. If someone claims that X is intrinsically valuable, this is a substantive, positive claim, and it lies on him or her to explain why we should believe that X is in fact intrinsically valuable.** Possibly, this could be done through thought experiments analogous to those employed in the previous section. Second, **there is something peculiar about the list of additional intrinsic values** that counts in hedonism’s favor**: the listed values have a strong tendency to be well explained as things that help promote pleasure and avert pain.** To go through Frankena’s list, life and consciousness are necessary presuppositions for pleasure; activity, health, and strength bring about pleasure; and happiness, beatitude, and contentment are regarded by Frankena himself as “pleasures and satisfactions.” The same is arguably true of beauty, harmony, and “proportion in objects contemplated,” and also of affection, friendship, harmony, and proportion in life, experiences of achievement, adventure and novelty, self-expression, good reputation, honor and esteem. Other things on Frankena’s list, such as understanding, **wisdom, freedom, peace, and security, although they are perhaps not themselves pleasurable, are important means to achieve a happy life, and as such, they are things that hedonists would value highly.** **Morally good dispositions and virtues, cooperation, and just distribution of goods and evils, moreover, are things that, on a collective level, contribute a happy society, and thus the traits that would be promoted and cultivated if this were something sought after.** To a very large extent, the intrinsic values suggested by pluralists tend to be hedonic instrumental values. Indeed, pluralists’ suggested intrinsic values all point toward pleasure, for while the other values are reasonably explainable as a means toward pleasure, pleasure itself is not reasonably explainable as a means toward the other values. Some have noticed this. Moore himself, for example, writes that though his pluralistic theory of intrinsic value is opposed to hedonism, its application would, in practice, look very much like hedonism’s: “Hedonists,” he writes “do, in general, recommend a course of conduct which is very similar to that which I should recommend.”24 Ross writes that “[i]t is quite certain that by promoting virtue and knowledge we shall inevitably produce much more pleasant consciousness. These are, by general agreement, among the surest sources of happiness for their possessors.”25 Roger Crisp observes that “those goods cited by non-hedonists are goods we often, indeed usually, enjoy.”26 What Moore and Ross do not seem to notice is that their observations give rise to two reasons to reject pluralism and endorse hedonism. The first reason is that if **the suggested non-hedonic intrinsic values are potentially explainable by appeal to just pleasure and pain** (which, following my argument in the previous chapter, we should accept as intrinsically valuable and disvaluable), **then—by appeal to Occam’s razor—we have at least a pro tanto reason to resist the introduction of any further intrinsic values and disvalues. It is ontologically more costly to posit a plurality of intrinsic values and disvalues, so in case all values admit of explanation by reference to a single intrinsic value and a single intrinsic disvalue, we have reason to reject more complicated accounts.** **The fact that suggested non-hedonic intrinsic values tend to be hedonistic instrumental values does not, however, count in favor of hedonism solely in virtue of being most elegantly explained by hedonism; it also does so in virtue of creating an explanatory challenge for pluralists.** The challenge can be phrased as the following question: **If the non-hedonic values suggested by pluralists are truly intrinsic values in their own right, then why do they tend to point toward pleasure and away from pain?**27

1. **Moral uncertainty means preventing extinction should be our highest priority.  
   Bostrom 12** [Nick Bostrom. Faculty of Philosophy & Oxford Martin School University of Oxford. “Existential Risk Prevention as Global Priority.” Global Policy (2012)]  
   These reflections on **moral uncertainty suggest** an alternative, complementary way of looking at existential risk; they also suggest a new way of thinking about the ideal of sustainability. Let me elaborate.¶ **Our present understanding of axiology might** well **be confused. We may not** nowknow — at least not in concrete detail — what outcomes would count as a big win for humanity; we might not even yet **be able to imagine the best ends** of our journey. **If we are** indeedprofoundly **uncertain** about our ultimate aims,then we should recognize that **there is a great** option **value in preserving** — and ideally improving — **our ability to recognize value and** to **steer the future accordingly. Ensuring** that **there will be a future** version of **humanity** with great powers and a propensity to use them wisely **is** plausibly **the best way** available to us **to increase the probability that the future will contain** a lot of **value.** To do this, we must prevent any existential catastrophe.

#### No act-omission distinction – choosing to omit is an act – governments actively decide not to act so there is no omission. Also, If we foresee a consequence, then it is intrinsic to our action since we intend it to happen

#### Universizability requires the equal satisfaction of everyone’s preferences

**R. M. Hare** [White's Professor of Moral Philosophy at the University of Oxford from 1966 until 1983. “Universal Prescriptivism.” Originally published in Peter Singer, A Companion to Ethics (Blackwell Publishers, 1991)] **AJ**A possible move for one who is looking for the necessary constraints on moral thinking is to say that **unless I treat the person,** in **who**se place **I am imagining myself being**, **on equal terms with myself,** showing him equal concern, **I am not really imagining him as being me. This entails treating his preferences as of equal weight with my own** present preferences, and thus forming preferences for the hypothetical situation in which I am he, equal in strength to those which he actually has. This is what is involved in following the Golden Rule, doing to others as we wish others to do to us, and loving our neighbours as ourselves. It is also implicit in Bentham's maxim 'Everybody to count for one, nobody for more than one' (cited in Mill, 1861, Ch. 5 s.f.). The Kantian method we have been outlining is consistent with a form of utilitarianism (though not, we must add, exactly Bentham's form, because that is put in terms of pleasure, whereas Kant's theory is put in terms of will). It is wrong to think, as many do, that Kantianism and utilitarianism have to be at odds. **To treat a person** 'never simply as a means but always at the same time **as an end' requires, as Kant** himself **says** on the next page, **that 'the ends of a subject** who is an end in himself **must,** if this conception is to have its full effect [46] in me, **be also,** as far as possible**, my ends’** (1785, BA 69=430 f.). An end is what is willed for its own sake; **so we are,** according to Kant, **to give equal respect to everybody's** wills-for-**ends**, including our own; and **this is** what **util**itarianism also binds us do. **This involves,** in a harmless sense**, treating the ends of many people as if they were the ends of** one person **(myself).** But this does not involve failing to 'take seriously the distinction between persons' (Rawls, 1971,pp. 27, 187)- a distinction of which Kant and the utilitarians are well aware.

#### 6. Actor specificity –

#### A] Aggregation – every policy benefits some and harms others, which also means side constraints freeze action.

#### B] No intent-foresight distinction – If we foresee a consequence, then it becomes part of our deliberation which makes it intrinsic to our action since we intend it to happen.

#### 7. Don’t oppress if trying to lift up all and stop death for all not just a few

### 1NC – Off

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#### CP: Member nations of the World Trade Organization should enter into a prior and binding consultation with the World Health Organization over reducing intellectual property protections for medicines. Member nations will support the proposal and adopt the results of consultation.

#### WHO says yes – it supports increasing the availability of generics and limiting TRIPS

Hoen 03 [(Ellen T., researcher at the University Medical Centre at the University of Groningen, The Netherlands who has been listed as one of the 50 most influential people in intellectual property by the journal Managing Intellectual Property, PhD from the University of Groningen) “TRIPS, Pharmaceutical Patents and Access to Essential Medicines: Seattle, Doha and Beyond,” Chicago Journal of International Law, 2003] JL

However, subsequent resolutions of the World Health Assembly have strengthened the WHO’s mandate in the trade arena. In 2001, the World Health Assembly adopted two resolutions in particular that had a bearing on the debate over TRIPS [30]. The resolutions addressed:

– the need to strengthen policies to increase the availability of generic drugs;

– and the need to evaluate the impact of TRIPS on access to drugs, local manufacturing capacity, and the development of new drugs

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

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

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

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

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

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

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

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

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

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

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

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

#### Extinction – defense is wrong

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

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

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

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

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

### FW

#### Only consequentialism can justify the actions necessary to reach some moral end.

Sinnot-Armstrong 92 -- Walter (prof. of philosophy @ Yale University, Philosophical Perspectives, 6, Ethics, “An Argument for Consequentialism”, p. 415-416)

All of this leads to necessary enabler **consequentialism** or NEC. NEC **claims that all moral reasons for acts are provided by facts that the acts are necessary enablers for preventing harm or promoting good**. All moral reasons on this theory are consequential reasons, but there are two kinds. Some moral reasons are prevention reasons, because they are facts that an act is a necessary enabler for preventing harm or loss. For example, if giving Alice food is necessary and enables me to prevent her from starving, then that fact is a moral reason to give her food. In this case, I would not cause her death even 416 / Walter Sinnott-Armstrong if I let her starve, but other moral prevention reasons are reasons to avoid causing harm. For example, if turning my car to the left is necessary and enables me to avoid killing Bobby, that is a moral reason to turn my car to the left. The other kind of moral reason is a promotion reason. This kind of reason occurs when doing something is necessary and enables me to promote (or maximize) some good. For example, I have a moral reason to throw a surprise party for Susan if this is necessary and enables me to make her happy. Because of substitutability, these moral reasons for actions also yield moral reasons against contrary actions. **There are then also moral reasons not to do what will cause harm or ensure a failure to prevent harm or to promote good. What makes these facts moral reasons is that they can make an otherwise immoral act moral.** If I have a moral reason to feed my child, then it might be immoral to give my only food to Alice, who is a stranger. But this would not be immoral if giving Alice food is necessary and enables me to prevent 'Alice from starving, as long as my child will not starve also. Similarly, it is normally immoral to lie to Susan, but a lie can be moral if it is necessary and enables me to keep my party for Susan a surprise, and if this is also necessary and enables me to make her happy. Thus, NEC fits nicely into the above theory of moral reasons. **NEC can provide a natural explanation of moral substitutability for both kinds of moral reasons. I have a prevention moral reason to give someone food when doing so is necessary and enables me to prevent that person from starving. Suppose that buying food is a necessary enabler for giving the person food, and getting in my car is a necessary enabler for buying food. Moral substitutability warrants the conclusion that I have a moral reason to get in my car. And this act of getting in my car does have the property of being a necessary enabler for preventing starvation. Thus, the necessary enabler has the same property that provided the moral reason to give the food in the first place.** This explains why substitutability holds for moral prevention reasons. The other kind of moral reason covers necessary enablers for promoting good. In my example above, if a surprise party is a necessary enabler for making Susan happy, and letting people know about the party is a necessary enabler for having the party, then letting people know is a necessary enabler for making Susan happy. The very fact that provides a moral reason to have the party also provides a moral reason to let people know about it. Thus, NEC can explain why moral substitutability holds for every kind of moral reason that it includes. Similar explanations work for moral reasons not to do certain acts, and **this explanatory power is a reason to favor** NEC.17

### Contention

#### Only consequentialism can justify the actions necessary to reach some moral end.

Sinnot-Armstrong 92 -- Walter (prof. of philosophy @ Yale University, Philosophical Perspectives, 6, Ethics, “An Argument for Consequentialism”, p. 415-416)

All of this leads to necessary enabler **consequentialism** or NEC. NEC **claims that all moral reasons for acts are provided by facts that the acts are necessary enablers for preventing harm or promoting good**. All moral reasons on this theory are consequential reasons, but there are two kinds. Some moral reasons are prevention reasons, because they are facts that an act is a necessary enabler for preventing harm or loss. For example, if giving Alice food is necessary and enables me to prevent her from starving, then that fact is a moral reason to give her food. In this case, I would not cause her death even 416 / Walter Sinnott-Armstrong if I let her starve, but other moral prevention reasons are reasons to avoid causing harm. For example, if turning my car to the left is necessary and enables me to avoid killing Bobby, that is a moral reason to turn my car to the left. The other kind of moral reason is a promotion reason. This kind of reason occurs when doing something is necessary and enables me to promote (or maximize) some good. For example, I have a moral reason to throw a surprise party for Susan if this is necessary and enables me to make her happy. Because of substitutability, these moral reasons for actions also yield moral reasons against contrary actions. **There are then also moral reasons not to do what will cause harm or ensure a failure to prevent harm or to promote good. What makes these facts moral reasons is that they can make an otherwise immoral act moral.** If I have a moral reason to feed my child, then it might be immoral to give my only food to Alice, who is a stranger. But this would not be immoral if giving Alice food is necessary and enables me to prevent 'Alice from starving, as long as my child will not starve also. Similarly, it is normally immoral to lie to Susan, but a lie can be moral if it is necessary and enables me to keep my party for Susan a surprise, and if this is also necessary and enables me to make her happy. Thus, NEC fits nicely into the above theory of moral reasons. **NEC can provide a natural explanation of moral substitutability for both kinds of moral reasons. I have a prevention moral reason to give someone food when doing so is necessary and enables me to prevent that person from starving. Suppose that buying food is a necessary enabler for giving the person food, and getting in my car is a necessary enabler for buying food. Moral substitutability warrants the conclusion that I have a moral reason to get in my car. And this act of getting in my car does have the property of being a necessary enabler for preventing starvation. Thus, the necessary enabler has the same property that provided the moral reason to give the food in the first place.** This explains why substitutability holds for moral prevention reasons. The other kind of moral reason covers necessary enablers for promoting good. In my example above, if a surprise party is a necessary enabler for making Susan happy, and letting people know about the party is a necessary enabler for having the party, then letting people know is a necessary enabler for making Susan happy. The very fact that provides a moral reason to have the party also provides a moral reason to let people know about it. Thus, NEC can explain why moral substitutability holds for every kind of moral reason that it includes. Similar explanations work for moral reasons not to do certain acts, and **this explanatory power is a reason to favor** NEC.17

#### Kant justifies a fundamental right to property

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

Kant believed that any object onto which a person projects his or her will may come to be owned. Kant seemed to consider ownership as a primitive concept whose roots run very deep in human consciousness. This is evident from the language he uses. The origin of property, he says, is in a deep and abiding sense of “Mine and Yours.” “That is rightfully mine,” he writes, “if I am so bound to it that anyone who uses it without my consent would thereby injure me.”15

But what is the point of this? Why do people want to be bound to things? In essence, Kant says, to expand their range of freedom— their autonomy.16 People have a desire to carry out projects in the world. Sometimes, those projects require access to and control over external objects. The genesis of property is the desire of an individual to carry out personal projects in the world, for which various objects are necessary. For Kant, this desire must be given its broadest scope, to promote the widest range of human choice, and therefore human projects. Kant accordingly refuses to accept any binding legal rule that makes some objects strictly unownable, because the rationale for such a rule would conflict with the basic need for maximal freedom of action. Freedom to appropriate is so basic, so tied to matters of individual will and personal choice, that Kant finds it unthinkable to rule out large categories of things from the domain of the potentially ownable. As Kant scholar Paul Guyer says, for Kant, “The fundamental principle of morality dictates the protection of the external use of freedom or freedom of action, as a necessary expression of freedom of choice and thus as part of autonomy as a whole. . . .”17 This captures it in a nutshell: freedom of action, including the right to possess, as a necessary expression of freedom of choice, or autonomy.

#### IP is property

Schultz 14 [(Mark, Chair in Intellectual Property Law and the Director of the Intellectual Property and Technology Law Program at the University of Akron School of Law and co-founder and a leader of the Center for Intellectual Property x Innovation Policy at George Mason University) “A free market perspective on intellectual property rights,” American Enterprise Institute, 2/23/2014] JL

Point 1.Intellectual property secures the same values as physical property

As an institution, property secures rights in what we create through our work. In this regard, there’s no cause or need to distinguish intellectual property from any other forms of property. In all cases, a person employs his intellect and talents to impose his plan and will on his environment to bring something new into the world. This is the essence of productive labor, the fruits of which property protects.

Distinguishing between physical and intellectual labor, as some would, is misguided, because both are, at heart, the same activity. Whether it is a carpenter building a house, a farmer planting a field, an author writing a book, a director filming a movie, or an inventor developing a new drug, the activity is, ultimately, productive labor.

#### Constitutivism fails—showing we inevitably do engage in agency is insufficient to prove we ought to

Enoch 11 [(David, Philosophy Professor at Hebrew University) “Shmagency Revisited,” New Waves in Metaethics pp 208-233, 2011, https://link.springer.com/chapter/10.1057/9780230294899\_11] TDI

3.2 Irrelevance

So much, then, for the implausibility of the but-you-do-care response to the whyshould-I-care-about-(e.g.)-self-understanding challenge. What I want to argue now is that even if we ignore this implausibility, still this response cannot possibly work, because it does not even qualify as a response – it fails to address the challenge. The thought here is very simple: Noting that I do Φ is never a good answer to the question whether I should Φ. This is true for actions, and it is just as true for carings. Perhaps I do care about something; but how does noticing this fact count as an answer to the normative question whether I should care about it, or indeed as a reason for caring about it?

The point is not merely an is-ought-gap kind of point. True, some of us have somehow become very good at convincing ourselves that sometimes, an ought can after all be derived from an is, or that some normative facts or properties just are some natural facts or properties, or some such. But what we are up against here is an especially problematic instance of such a move – it is the move from someone caring about something, immediately to it being the case that she should care about it, or at least that she has a reason to so care. I take it even those of us with the strongest stomach for naturalistic fallacies should not be happy with such a move. When someone asks "Why should I care about self-understanding?" (or whatever else is constitutive of agency), and the response comes "But you do care!", all that is needed by way of counter-response is "So what? I asked whether I should care, not whether I 14 do. You haven't answered my question." The but-you-do-care response is thus no response at all. It is utterly irrelevant.

Constitutivists like to emphasize that the agency game is not just one we do play, but also one we cannot avoid playing, agency is – in certain senses – inescapable for creatures like us. Constitutivists then sometimes suggest that the inescapability of agency somehow helps with the shmagency challenge (and related challenges) 17.

Thus, Velleman (136-7) distinguishes two senses of inescapability, suggesting that their combined strength helps in answering the why-should-I-care-about-self-understanding challenge. His two senses may be labeled natural and dialectical18. Let me postpone discussion of dialectical inescapability to sections 5 through 7. The natural inescapability of agency seems to come down to the fact that we cannot opt out of the game of agency, such opting out is just not something we can do. We can, of course, choose to end our lives, but as I also noted in "Agency, Shmagency" (188), far from opting out of the game of agency, this would be a major move within this game. And we can temporarily opt out of this game, say by going to sleep. But still, acting and choosing is, as Korsgaard likes to put things, "our plight"19.

I want to concede that agency is indeed naturally inescapable for us. But I also want to note (as I did, to an extent, in "Agency, Shmagency" (188 and on)) that such inescapability does not matter in our context, and in particular does not render the but- you-do-care response any better. For the move from "You inescapably Φ" to "You should Φ" is no better – not even the tiniest little bit – than the move from "You actually Φ" to "You should Φ".

#### Even if shmagency is impossible the objection still applies

Enoch 11 [(David, Philosophy Professor at Hebrew University) “Shmagency Revisited,” New Waves in Metaethics pp 208-233, 2011, https://link.springer.com/chapter/10.1057/9780230294899\_11] TDI

Perhaps an example can help here. Assume a philosopher – call her the paperskeptic – who believes that there's something intellectually corrupting about the papers analytic philosophers are so fond of reading and writing. Philosophical progress, she thinks, can only be achieved by writing books. The paper-frenzy is just a race to philosophical superficiality, and an incentive to substitute technical skills for deep philosophical insights. Being a conscientious professional, she writes this all down, presenting her analysis and arguments, culminating in the conclusion that philosophers should not write papers. But – in order for the example to be interesting – she writes this all down in the format of a paper, and proceeds to submit it to her friendly-neighborhood philosophy journal (where it is rejected, without comments, eleven months later).

Now, us paper-writing philosophers are eager to defeat the paper-skeptic's challenge. Does it suffice, in order to do that, to show that she has no stable ground to stand on while she's launching her attack, that in a sense she defeats herself because she wrote down her paper-skepticism in the form of a paper? Perhaps – though I doubt it – this shows that our paper-skeptic is in some sense in trouble. But this certainly does not show that we are out of trouble. If her arguments still work, then we – committed as we are to writing papers – are in trouble. We need a substantive answer to the challenge she puts in a sort-of self-defeating way. The challenge is real enough. It is real enough even if putting her paper-skepticism in the format of a paper is for some reason inescapable for her. Indeed, the challenge is real enough even if a paper-skeptic does not, or even cannot, exist. And so it is better to tell the story without anthropomorphizing the arguments at all. There are arguments attempting to show that we shouldn't be so seriously into writing papers. We need to deal with these arguments. It just doesn't matter whether there is a character – the paper-skeptic – who can help us make this debate more dramatic. And even if there is such a character, we should not mistake finding flaws with her for vindicating our paperwriting practices28. We should not, in a term I borrow from Crispin Wright (1991, 89), commit the mistake of the adversarial stance.

The analogy, I hope, is clear. Showing that the practical-reason-skeptic (the one asking "Why should I care about (e.g.) self-understanding?") has no safe grounds from which to launch his attack is neither here nor there. It does not even begin to vindicate practical reason. Thinking otherwise is like settling – in the discussion with the paper-skeptic – for noting that she's written a paper, without tackling her arguments against paper-writing head on. And so here too – as in the paper-skepticism case – we are better off avoiding the dramatic effects and anthropomorphizing the challenge. The challenge is a challenge for us, non-skeptic as we are29. It is we who have to come up with a theory of normativity that will be adequate (at least) by our own lights. It is we who must be convinced that agency is not normatively arbitrary (for us), that we do have, even upon reflection, reason to care about whatever it is that's constitutive of action and agency30, even if regardless of having or failing to have such a story, we inescapably do care about it. And so, it is us who are vulnerable to the shmagency challenge. Whether or not there is an agent (or a shmagent) who can stably embody this challenge is just beside the point.

#### Bad action problem—Korsgaard can’t explain agents not acting in accordance with their constitutive aims

Katsafanas 19 **summarizes** [(Paul, Associate Professor of Philosophy at Boston University) “Constitutivism about Practical Reasons,” Boston University Libraries, 31 October 2019, https://www.bu.edu/cas-promotion/files/2019/11/8-Constitutivism.pdf] TDI

16.5.5 The Bad Action Problem

The constitutivist wants to move from the claim (i) Action has constitutive feature F. to the claim (ii) F is the standard of success for action. Railton (1997) and Clark (2001) have argued that this creates a problem: according to (i), every action has F; according to (ii), F is the standard of success for action. It follows that every action is a success. In other words, it seems that there is no distance between something’s being an action and its being a good action.

#### The categorical imperative fails to guide action and applying it relies on irresolvable empirical claims

Huemer 93 [(Michael, Professor of Philosophy at the University of Colorado, Boulder) “A Critique of Kantian Ethics,” Graduate Seminar at Rutgers, Spring 1993, https://spot.colorado.edu/~huemer/papers/kant1.htm] TDI

Third, and probably as a result of that problem, categorical imperative #1 isn't actually an imperative of the ordinary sort; it doesn't really tell us what actions to perform. Instead, it tells us what sort of maxims to act on, as if our deliberations typically were not about what actions to perform but about under what maxims to perform them. The categorical imperative represents a test on maxims or rules of conduct -- a necessary condition of their acceptability. This would be perfectly fine, if only the condition were strict enough to determine a unique set of acceptable rules, or, barring that, at least a greatly limited number. Given that Kant claims his categorical imperative is the sole principle of morality (the only categorical imperative, that is), we are entitled to expect that it determine the principles of morality uniquely, since if it leaves multiple incompatible sets of maxims open, we will have no basis for choosing among them, there being no other principles of morality on which to base the choice besides categorical imperative #1. Our expectations are disappointed. Take, once again, the utilitarian moral theory for an example. Surely it would be possible to will the universal maximization of happiness? The principle of utility, then, passes Kant's test; and, contrary to popular opinion, it turns out Kant's moral theory is consistent with utilitarianism. To my knowledge, no moral system has ever been articulated that would not pass the test of categorical imperative #1. This might at first be thought to be good, as a sign that the test is valid (it doesn't rule out anything that shouldn't be ruled out), but it also unfortunately means the condition is too weak to be of any use to us. How about a religious ethics, for another example? It surely seems possible to will universal conformity to the Bible (assuming the Bible is itself internally consistent). To be even more antagonistic to Kant, why wouldn't it be possible to will that everybody should just act on the basis of arbitrary whims? Or, why couldn't one will universal egoistic hedonism?

Kant claims that the last is impossible in his discussion of the duty of charity, but this brings us to his fourth difficulty: the applications Kant derives from CI #1 do not follow from it. He lists four duties:

a) The duty to keep promises. He claims universal promise-breaking would be impossible because it would mean no one would ever believe a promise made to him, and this would cause the institution of promising to collapse. But it is not logically impossible that promising could continue to exist. It is only an empirical hypothesis that if promises were generally broken then people would stop believing in them, and a further empirical hypothesis that if no one believed promises then people would stop making them. If we are allowed to consider empirical facts in morality (contra Kant's repeated insistences upon its a priori nature), these facts still do not show that people would be unable to carry on universally making and breaking promises -- only that they would probably not wish to.

#### The categorical imperative criminalizes morally neutral maxims

Huemer 93 [(Michael, Professor of Philosophy at the University of Colorado, Boulder) “A Critique of Kantian Ethics,” Graduate Seminar at Rutgers, Spring 1993, https://spot.colorado.edu/~huemer/papers/kant1.htm] TDI

These examples show how very little about morality categorical imperative #1 tells us. Basically, the only sorts of things that people could choose to do that CI #1 rules out are actions whose maxims include (by definition) the fact that other people are not doing the same thing. For example, if I were to write some books by way of trying to become the best philosopher in the world, or if I tried to be the best at anything, my maxim would not be universalizable. I could not choose that everybody be the best. Incidentally, this is of course a counter-example to the Kantian principle. There is nothing wrong with trying to be the best. There is nothing wrong per se with doing things that, if you do them, other people cannot.

#### 1]people can still be held repsosbile- sana armstong answers this

#### 2] aff is an example contradiction by denying rights to ip

#### The conclusion of Kant’s moral philosophy is political libertarianism- flows neg since reduction ip by the state

Otteson 09 [(James R., professor of philosophy and economics at Yeshiva University) “Kantian Individualism and Political Libertarianism,” The Independent Review, v. 13, n. 3, Winter, [2009](https://link.springer.com/article/10.1007/s10790-015-9506-9)] TDI

It is difficult to imagine a stronger defense of the “sacred” dignity of individual agency. Kantian individuality is premised on its rational nature and its entailed inherent dignity, and the rest of his moral philosophy arguably is built on this vision.1

Kant relies on a similarly robust conception of individuality in work other than his explicitly moral philosophy. The 1784 essay “An Answer to the Question: ‘What Is Enlightenment?’” (Kant 1991), for example, emphasizes in strong terms the threat that paternalism poses to one’s will. Kant argues that “enlightenment” (Aufklärung) involves a transition from moral and intellectual immaturity, wherein one depends on others to make one’s moral and intellectual decisions, to maturity, wherein one makes such decisions for oneself. One cannot effect this transition if one remains under another’s tutelage, and, as a corollary, one compromises another’s enlightenment if one undertakes to make such decisions for the other person—which, as Kant argues, is the case under a paternalistic government. Kant also writes in his 1786 essay “What Is Orientation in Thinking?” that “To think for oneself means to look within oneself (i.e. in one’s own reason) for the supreme touchstone of truth; and the maxim of thinking for oneself at all times is enlightenment” (1991, 249, italics and bold in the original). These passages are consistent with the position he takes in Grounding that a person who depends on others is acting heteronomously, not autonomously, and is to that extent not exercising a free moral will.

These passages also help to clarify Kant’s notion of personhood and rational agency by indicating some of their practical implications. For example, on the basis of his argument, one would expect him to argue for setting severe limits on the authority that any group of people, including the state, may exercise over others: because individual freedom is necessary both to achieve enlightenment and to exercise one’s moral agency, Kant should argue that no group may impinge on that freedom without thereby acting immorally.

Kant expressly draws this conclusion in his 1793 essay “On the Common Saying: ‘This May Be True in Theory, but It Does Not Apply in Practice’”: Right is the restriction of each individual’s freedom so that it harmonises with the freedom of everyone else (in so far as this is possible within the terms of a general law). And public right is the distinctive quality of the external laws which make this constant harmony possible. Since every restriction of freedom through the arbitrary will of another party is termed coercion, it follows that a civil constitution is a relationship among free men who are subject to coercive laws, while they retain their freedom within the general union with their fellows. (1991, 73, emphasis in original)

Kant insists on the protection of a sphere of liberty for each individual to self-legislate under universalizable laws of rationality, consistent with the formulation of the categorical imperative requiring the treatment of others “always at the same time as an end and never simply as a means” (1981, 36). This formulation of the categorical imperative might even logically entail the position Kant articulates about “right,” “public right,” and “freedom.” Persons do not lose their personhood when they join a civil community, so they cannot rationally endorse a state that will be destructive of that personhood; on the contrary, according to Kant, a person enters civil society rationally willing that the society will protect both his own agency and that of others. Robert B. Pippen rightly says that for Kant “political duties are a subset of moral duties” (1985, 107–42), but the argument here puts it slightly differently: political rights, or “dignities,” derive from moral rights, which for Kant are determined by one’s moral agency. Thus, the only “coercive laws” to which individuals may rationally allow themselves to be subject in civil society are those that require respect for each others’ moral agency (and provide for the punishment of infractions thereof) (see Pippen 1985, 121). When Kant comes to state his own moral justification for the state in the 1797 Metaphysics of Morals, this claim is exactly the one he makes: the state is necessary for securing the conditions of “Right”—in other words, the conditions under which persons can exercise their autonomous agency (see 1991, 132–35).

Consistent with this interpretation, Kant elsewhere endorses free trade and open markets on grounds that make his concern for “harmony” in the preceding passage reminiscent of Adam Smithian invisible-hand arguments. In his 1784 essay “Idea for a Universal History with a Cosmopolitan Purpose,” Kant writes: “Individual men and even entire nations little imagine that, while they are pursuing their own ends, each in his own way and often in opposition to others, they are unwittingly guided in their advance along a course intended by nature. They are unconsciously promoting an end which, even if they knew what it was, would scarcely arouse their interest” (1991, 41). This statement is similar to Smith’s statement of the invisible-hand argument.2 Kant proceeds to endorse some of the same laissez-faire economic policies that Smith advocated—for example, in his discussion in his 1786 work “Conjectures on the Beginning of Human History” of the benefits of “mutual exchange” and in his claim that “there can be no wealth-producing activity without freedom” (1991, 230–31, emphasis in original), as well as in his claim in the 1795 Perpetual Peace that “the spirit of commerce” is motivated by people’s “mutual self-interest” and thus “cannot exist side by side with war” (1991, 114, emphasis in original).3

Finally, although Kant argues that we cannot know exactly what direction human progress will take, he believes we can nevertheless be confident that mankind is progressing.4 Thus, in “Universal History” he writes:

The highest purpose of nature—i.e. the development of all natural capacities—can be fulfilled for mankind only in society, and nature intends that man should accomplish this, and indeed all his appointed ends, by his own efforts. This purpose can be fulfilled only in a society which has not only the greatest freedom, and therefore a continual antagonism among its members, but also the most precise specification and preservation of the limits of this freedom in order that it can co-exist with the freedom of others. The highest task which nature has set for mankind must therefore be that of establishing a society in which freedom under external laws would be combined to the greatest possible extent with irresistible force, in other words of establishing a perfectly just civil constitution. (1991, 45–46, emphasis in original)

Kant’s argument in this essay runs as follows: human progress is possible, but only in conditions of a civil society whose design allows this progress; because the progress is possible only as individuals become enlightened, and individual enlightenment is in turn possible only when individuals are free from improper coercion and paternalism, human progress is therefore possible only under a state that defends individual freedom. Kant believes that individuals have the best chance to be happy under a limited civil government, and he therefore argues that even such a laudable goal as increasing human happiness is not a justifiable role of the state: “But the whole concept of an external right is derived entirely from the concept of freedom in the mutual external relationships of human beings, and has nothing to do with the end which all men have by nature (i.e. the aim of achieving happiness) or with the recognized means of attaining this end. And thus the latter end must on no account interfere as a determinant with the laws governing external right” (“Theory and Practice,” 1991, 73, emphasis in original). The Kantian state is hence limited on the principled grounds of respecting agency; the fact that this limitation in his view provides the conditions enabling enlightenment, progress, and ultimately happiness is a great but ancillary benefit.

Thus, the positions Kant takes on nonpolitical issues would seem to suggest a libertarian political position. And Kant explicitly avows such a state. In “Universal History,” he writes: Furthermore, civil freedom can no longer be so easily infringed without disadvantage to all trades and industries, and especially to commerce, in the event of which the state’s power in its external relations will also decline. . . . If the citizen is deterred from seeking his personal welfare in any way he chooses which is consistent with the freedom of others, the vitality of business in general and hence also the strength of the whole are held in check. For this reason, restrictions placed upon personal activities are increasingly relaxed, and general freedom of religion is granted. And thus, although folly and caprice creep in at times, enlightenment gradually arises. (1991, 50–51, emphasis in original)

In “Theory and Practice,” Kant writes that “the public welfare which demands first consideration lies precisely in that legal constitution which guarantees everyone his freedom within the law, so that each remains free to seek his happiness in whatever way he thinks best, so long as he does not violate the lawful freedom and rights of his fellow subjects at large” and that “[n]o-one can compel me to be happy in accordance with his conception of the welfare of others, for each may seek his happiness in whatever way he sees fit, so long as he does not infringe upon the freedom of others to pursue a similar end which can be reconciled with the freedom of everyone else within a workable general law” (1991, 80, emphasis in original, and 74).

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.