# Yale r3

## 1ac

### fw

#### The meta-ethic is practical reason.

#### A] Bindingness – Any obligation must not only tell us what is good, but why we ought to be good or else agents can reject the value of goodness itself. That means ethics must start with what is constitutive of agents since it traces obligations to features that are intrinsic to being an agent – as an agent you must follow certain rules. Only practical agency is constitutive since agents can use rationality to decide against other values but the act of deciding to reject practical agency engages in it.

#### B] Action theory – every moral analysis requires an action to evaluate, but actions are infinitely divisible into smaller meaningless movements. The act of stealing can be reduced to going to a house, entering, grabbing things, and leaving, all of which are distinct actions without moral value. Only the practical decision to steal ties these actions together to give them any moral value.

#### That justifies universalizability.

#### A] The principle of equality is true since anything else assigns moral value to contingent factors like identity and justifies racism, and the principle of non-contradiction is true since 2+2 can’t equal 4 for me and not for you meaning ethical statements true for one must be true for all.

#### B] Is ought gap – experience only tells us what is since that’s what we perceive, not what ought to be. But it’s impossible to derive an ought from descriptive premises, so there needs to be additional a priori premises to make a moral theory. Applying reason to a priori truth results in universal obligations.

#### This requires a system of property – mere empirical possession is insufficient and contrary to freedom, Hogdson 10:

Louis Philippe Hogdson, 2010, “Kant on Property Rights and the State” <http://www.yorku.ca/lhodgson/kant-on-property-rights-and.pdf> //LHP AV

What does it mean to say that property rights are essential for freedom? For our purposes, the crucial feature of **property is the possibility of rightfully excluding others from the use of a certain object.**8 If I own a certain apple, then that means that you wrong me if you use the apple without my permission, and hence that you can forcibly be prevented from doing so. Importantly, this is the case **regardless of whether I am physically holding the apple or not.**9 The point is worth stressing. **I can exclude you from using an apple simply by holding it. I then exclude you physically**, since we cannot both hold the apple at the same time; **I also exclude you normatively, since using force** to wrestle the apple from me **would violate my right to freedom** (assuming that you have no property right in the apple).10 **Still**, **this** form of exclusion falls short of what is required for genuine property, because it **makes my right** to the apple **entirely derivative from my right to bodily integrity**, and hence leaves me with no complaint if I accidentally drop the apple and you pick it up. **Genuine property rights do not depend on physical possession** in that way: if an apple is genuinely mine and I drop it, then you wrong me if you pick it up and walk away with it; that I was not physically holding the apple at the time is irrelevant.11 **The question we need to ask, then, is why freedom demands that it be possible for me to exclude others from using certain objects even though I am not in physical possession** of them. How can freedom place such demands with respect to objects that are external to me – objects that are neither physically connected to my body, nor essentially connected to me in the way my body is**? Kant’s answer has two parts**. **First**, he tells us that the possibility of **property is the** object of the **postulate of private right**: It is possible for me to have any external object of my choice as mine, that is, **a maxim by which**, if it were to become a law, **an object** of choice **would** in itself (objectively) have to **belong to no one** (res nullius) **is contrary to right**.12 Second, he explains the necessity of this postulate as follows: **an object of my choice is something that I have the physical power to** **use**. **If it were** nevertheless absolutely **not within my rightful power to** make **use** of **it**, that is, if the use of it could not coexist with the freedom of everyone in accordance with a universal law (**would be wrong**), **then freedom would be depriving itself of the use of its choice with regard to an object of choice, by putting usable objects beyond any possibility of being used**; in other words, **it would annihilate them in a practical respect** and make them into a res nullius, even though in the use of things choice was formally consistent with everyone’s outer freedom in accordance with universal laws.13 The problem is that this seems to get things precisely backwards. Kant stresses that external freedom demands that the use of some objects be rightful. That seems obvious enough: **there would be no external freedom to speak of if the external world were entirely off limits**. But that hardly establishes a link between freedom and property in the stronger sense that concerns us here. Kant explains why it is not possible for every object to be off limits to all; the question we need to ask is how it is possible for any object that I am not physically holding to be off limits to others. The difficulty I am pointing to can be brought out by considering an alternative to a system of property: a system of mere empirical possession in which everything in the world can rightfully be used, so long as it is not under someone’s physical control. In this system, the ground on which I stand and the objects I carry around with me are off limits to you, but the rest of the world – including objects I put down or dropped a moment ago – is up for grabs. Such a system does not put ‘usable objects beyond any possibility of being used’ in any straightforward sense. Yet, if Kant believes that freedom demands the possibility of full-fledged property rights, he must think that a system of empirical possession unjustifiably restricts freedom. How is that the case? **The problem, in a nutshell, is that a system of empirical possession only allows me to pursue projects taking place within the space I occupy at a given moment and involving objects that I can hold for the entire duration of the project**. Any other project – and this means any remotely complex project – will involve objects whose use I cannot rightfully determine through my choices, and for whose use I am therefore inevitably dependent on the choices of others. Put differently, a system of mere empirical possession makes my (eminently restricted) ability to occupy space and to hold objects the measure of my ability to make objects into my means, and thus to set and pursue ends for myself. This unjustifiably restricts my external freedom, because there is no reason why my having only two hands (to name only one obvious physical limitation) should determine what means I can rightfully secure for myself. To illustrate the point, **suppose that I want to build** myself **a house**. Suppose that one of the means **I need** to pursue this project is **a hammer**, and that I happen to find just the hammer I need. The problem that a system of **mere empirical possession** poses is not that it makes the hammer off limits to me, as Kant seems to suggest in the passage I quoted above, but, rather, that it **makes** **my right to stop you from taking the hammer contingent on my ability to hold on to it**. As soon as I put it down for a second, you are perfectly entitled to pick it up and walk away with it. Worse, once you have grabbed the hammer, it is yours in the sense appropriate to the system, and I cannot rightfully take it back so long as you are holding it. The same holds for the land on which I plan to build my house: my right to exclude others from it only extends to the ground on which I am standing at a given time. You are perfectly entitled to move around on the rest of the land I intend to use, regardless of whether I have fenced it off or started building on it. Indeed, if you decide to stand on part of the land that I claim, you make it off limits to me, and thereby make it impossible for me to realize my project without wronging you. **That I would be wronging you is important here: it shows how your interference differs from other unforeseen circumstances** I may face in pursuing my project. An earthquake could destroy most of what I have built, and thereby hamper my pursuit far more than you would by grabbing the hammer. But the earthquake does not raise normative problems for how I may pursue my end. If it destroys my house, then I can just rebuild it; indeed, if I have the means, I am justified in stopping the earthquake from happening altogether. In this way, the earthquake only presents me with an instrumental problem: it requires me to revise my calculations for how I am to achieve my goal. Interference of that kind does not restrict my ability to set and pursue ends; it is simply part of what exercising that ability involves for a finite being. Your interference raises a different problem. As **a rational agent, you are not just some circumstance that I have to work around: your right to freedom means that you can make things off limits** to me simply by holding on to them. If you choose to stand on the ground where I intended to build, you thereby put a stop to my project of building a house there; if you choose to pick up an object I left lying around, you make it impossible for me to use it for my project. **All a system of mere empirical possession allows me to do to avoid such occurrences is to plead with you** not to interfere with my project. In other words, on such a system, it is always partly up to you whether I can rightfully make use of an object that I am not currently holding, or of a piece of land on which I am not currently standing. The only means I can have at my disposal to set and pursue my ends with are objects to which I am physically connected. As I said above, **this** makes my limited ability to hold objects the measure of what means I can have at my disposal, **which arbitrarily restricts my ability to set and pursue ends** for myself.14 Now on Kant’s view, as I said at the outset, such a restriction can be justified, but only if it is required by freedom. In our case, this means that **the restriction imposed by the system of mere empirical possession is acceptable only if my having a full-fledged property right in the hammer** – that is, my being allowed to stop you from using it even when I am not holding it – **would somehow be incompatible with your freedom**. We can easily show that this is not the case. One way to make the point is to stress that **your freedom depends on your ability to set and pursue ends** for yourself, **which does not depend on** your access to **any particular object**; **therefore, I do not restrict your freedom** by making the hammer off limits to you.15 There is also a more direct way to make the point in the present context. One can simply note that, **from the point of view of you**r access to the hammer, **there is no relevant difference between** a system of **full**-fledged **property** rights **and** a system of mere **empirical possession**, since both systems allow me to exclude you entirely from using the hammer. Of course, on the latter system, I can do so only by physically holding on to the hammer for the rest of my life, whereas the former system allows me to set the hammer down while still excluding you. But **from your standpoint the two scenarios amount to the same thing, since what matters is simply that I exclude you** from using the hammer, not how I do it. A full-fledged system of property thus brings about no further restriction on your freedom. **Consequently, any restriction of freedom associated with a system of mere empirical possession cannot be grounded in the need to protect freedom itself and hence must be unjustified on Kant’s view**. Let me close this section by stressing the general character of the conclusion we have reached. We have seen that **freedom requires property**. This is not to say that freedom requires the specific form of private property found in modern capitalist societies. Kant’s argument only requires some system of rights allowing one to exclude others from using a certain object for a certain amount of time, regardless of whether one is holding it or not. That could be achieved by a system under which the means of production are communally owned, so long as it appropriately determines who has the right to use a given object at a given time.16 The considerations presented here thus do not amount to an endorsement of capitalism, or of the sort of absolute private property rights advocated by libertarians.17 They support a broader thesis: that, **if rational agents are to live together without undermining one another’s freedom, then they must have a system that allows them to control certain objects through their choices without having to hold on to them physically**. Nothing more is required for the rest of our argument. objects through their choices without having to hold on to them physically. Nothing more is required for the rest of our argument.

#### However, we are rational and impulsive – this nonideal situation requires a state with coercive authority that secures equal outer freedom and property, Koch 92:

\*bracketed for gendered language\* Koch, Andrew M. "Immanuel Kant, The Right of Necessity, and the Liberal Foundation of Social Welfare" Southeastern Political Review, 20: 2 (Fall 1992) 295-314. <https://libres.uncg.edu/ir/asu/f/koch_andrew_1992_Immanuel_Kant.pdf> //LHP AV DOA: 9/14/21

Immanuel Kant, Ontology, Morality, and the Law The discussion of "necessity" in the writings of Immanuel Kant takes place within a broad context, linking the Kantian epistemology, ontology, and claims regarding civil society. **The ontology of** Immanuel Kant asserts that **the human** being **is both phenomenal**, part of the physical world of experience, **and noumenal**, part of the "realm of the mind." (Kant 1977b, 196-198) **As a part of the physical environment a person is subject to all the laws which govern** the interaction of **objects** in physical space. **However, Kant suggested** the possibility **that the individual, having** the power of transcendental **reason**, has the capacity for thought which is independent of the deterministic features of the phenomenal world. This seemingly abstract philosophic notion is very significant with respect to Kant's claim about the possibility of freedom and morality. If the power of the will operates in a realm outside the determinism of the phenomenal world then the freedom of the will to direct the body's actions may be assumed. If there is an undetermined element in the make-up of the human being, said Kant, the individual "may" be provided with the possibility of autonomous action. Here it should be noted that Kant does not claim he can "prove" the autonomy of the will, only that the possibility for it exists. He does, however, assert emphatically that, "...**the principle of autonomy is the sole principle of morals**." (Kant 1977b, 188) Kant argues that without freedom no moral accountability is possible. If individuals do not choose their actions they cannot be held morally accountable for those actions. **When a person is not free to do otherwise, that person bears no responsibility for the outcome of an act**. So while freedom of the will cannot be proven within the Kantian scheme, it must be assumed if morality is to have any meaning. **For Kant, the interaction of individuals creates problems. If human beings are truly free, the social environment in which they pursue their happiness will generate "antagonisms."** (Kant 1977c, 429) As both reason and impulse, **selfish egoism would reign unchecked should some mechanism to control the impulsive side** of the human character **not be present.** Kant concluded that in society man is in need of a "master." (Kant 1977a, 122**) The aggression and selfishness in human nature can be mitigated if reason is used to keep impulse under control.** (Kant 1977a, 119) **Reason allows for the creation of an external body of rule which can serve to regulate social interaction**. **This regulation of freedom is designed to produce the maximum amount of freedom that can be shared by all**. (Kant 1977a, 121) Kant indicated that he did not believe every problem could be solved by creating laws. **No matter how perfect a system of laws, the perfectibility of the human being is still in doubt.** As Kant stated, "...a complete solution is impossible. One cannot fashion something absolutely straight from wood which is as crooked as that of which man is made." (Kant 1977a, 123) **The best that one can hope for is an approximate** solution. That consists of creating an external body of laws that will regulate the behavior of individuals in their social interactions. Here Kant is making a very specific claim regarding the role of law in civil society. **Freedom of interaction is to be maximized for everyone equally. The role of the law is to deter those who would subvert the attainment of a common level of freedom for all**. The use of force, that is organized and legitimated as the externalization of human reason, **serves a deterrent function in society**. Those that would inhibit the freedom of others would be, according to Kant, deterred by the threat of punishment. **Law, and the collective force that it represents, checks the impulsive and egoistic elements in human nature. Only when the natural antagonisms among people are checked can [hu]mankind reach its fullest potential**. **A functioning set of laws designed to regulate human intercourse is essential to civil society**. The collection of those laws Kant referred to as a "civil constitution." Kant stated that **joining into civil society is the first duty of those who cannot avoid having mutual influence on one another**. (Kant 1977c, 415) **A union of people in a commonwealth involves the externalization of duties into a formal set of standards based on the principle of freedom.** (Kant 1977c, 415) Kant is emphatic with regard to the standard that is to govern the conduct of individuals in civil society. Kant declared that **people should always act to treat others as "ends"** not merely as means**. Thus Kant has linked the idea of personal obligation and morality to the formulation of law in civil society**. In Part I of The Metaphysics of Morals, a section entitled The Metaphysical Elements of Justice, Kant explored this further by asserting what he called the "Universal Principle of Justice." Every action is just if its maxim is such that the freedom of the will of each can coexist with the freedom of everyone....(Kant 1965, 35) This statement contains a variety of elements relevant to the notion of freedom in Kant's moral and political philosophy. The primary characteristic of justice is the maintenance of freedom in social intercourse. It is also important to note that Kant makes no reference to the content of interaction or of its goals. **In fact, he specifically states that the content of social interaction is not the specific concern of justice**. "[T]he content of justice does not take into consideration the matter of the content of the will . . . " (Kant 1965, 34) **Only the form of interaction is relevant for Kant. Relations must be such that the participants share a common and equal level of freedom in the conduct of their affairs**. **Rights** and duties within the state ultimately **derive from the principle of freedom**. (Kant 1977c, 415) **The state has the role of both legal adjudicator and coercive apparatus in the maintenance of freedom**. The strategy of civil society is to create an external set of duties, "publiccoercive law," in which every person's rights are secured against interference from any other person in the society. (Kant 1977c, 415) The state, said Kant, "is a union of men under juridical laws." (Kant 1935, 182) **The state, as a collection of laws, is a legitimate instrument of coercion if it uses its power for the maintenance of the maximum level of freedom that all the members of society can share**. (Kant 1965, 36-39) The state's system of justice, positive law, emerges in order to protect each citizen from the natural antagonisms that arise as individuals seek to maximize their happiness in the social environment. (Kant 1977c, 416-417) **The state has both the obligation and the force to compel compliance to** the laws which **protect the freedom** of all.

#### Thus, the standard is consistency with a system of equal and outer freedoms. Prefer additionally,

#### 1] An intrinsic feature to any action is the acceptance of the goodness of universal freedom, Gewirth 84 bracketed for grammar and gendered language

[Alan Gewirth, () "The Ontological Basis of Natural Law: A Critique and an Alternative" American Journal Of Jurisprudence: Vol. 29: Iss. 1 Article 5, 1984, https://scholarship.law.nd.edu/ajj/vol29/iss1/5/, DOA:9-10-2018 // WWBW Recut LHP AV]

Let me briefly sketch the main line of argument that leads to this conclusion. As I have said, the argument is based on the generic features of human action. To begin with, **every agent acts for purposes [t]he[y] regards as good.** Hence, **[t]he[y] must regard as necessary goods the freedom** and well being **that [is]** are the generic features and **necessary conditions of** his **action** and successful action in general. From this, it follows that **every agent logically must hold or accept** that he has **rights to these conditions**. For if he were **to deny** that he has **these rights**, then he **would** have to **admit that it is permissible** for other persons **to remove** from him the very **conditions** of freedom and well-being **that**, as **an agent**, he **must have**. But **it is contradictory** for him **to hold both that [t]he[y] must have these conditions and also that he may not have them.** Hence, on pain of self-contradiction, every agent must accept that he has rights to freedom and well-being. Moreover, **every agent must further admit that all other agents also have those rights, since all other actual or prospective agents have the same general characteristics of agency** on which he must ground his own right-claims. What I am saying, then, is that every agent, simply by virtue of being an agent, must regard his freedom and well being as necessary goods and must hold that he and all other actual or prospective agents have rights to these necessary goods. Hence, every agent, on pain of self-contradiction, must accept the following principle: Act in accord with the generic rights of your recipients as well as of yourself. The generic rights are rights to the generic features of action, freedom, and well-being. I call this the Principle of Generic Consistency (PGC), because it combines the formal consideration of consistency with the material consideration of the generic features and rights of action.

#### 2] Agency requires deliberation to choose what actions to take which creates a practical identity identical for every agent. It is the only form of ontology that can account for every individual, making it the only identity that can create obligations.

Christine M. Korsgaard, 1992

“The Sources of Normativity.” The Tanner Lectures on Human Values, Cambridge University.

The Solution: Those who think that the human mind is internally luminous and transparent to itself think that the term “self-consciousness” is appropriate because what we get in human consciousness is a direct encounter with the self. Those who think that the human mind has a reflective structure use the term too, but for a different reason. The reflective structure of the mind is a source of “self-consciousness” because it forces us to have a conception of ourselves. As Kant argues, this is a fact about what it is like to be reflectively conscious and it does not prove the existence of a metaphysical self. From a third person point of view, outside of the deliberative standpoint, it may look as if what happens when someone makes a choice is that the strongest of his conflicting desires wins. But that isn’t the way it is for you when you deliberate. When you deliberate, it is as if there were something over and above all of your desires, something that is you, and that chooses which desire to act on. This means that the principle or law by which you determine your actions is one that you regard as being expressive of yourself. To identify with such a principle or law is to be, in St. Paul’s famous phrase, a law to yourself.6 An agent might think of herself as a Citizen in the Kingdom of Ends. Or she might think of herself as a member of a family or an ethnic group or a nation. She might think of herself as the steward of her own interests, and then she will be an egoist. Or she might think of herself as the slave of her passions, and then she will be a wanton. And how she thinks of herself will determine whether it is the law of the Kingdom of Ends, or the law of some smaller group, or the law of the egoist, or the law of the wanton that is the law that she is to herself. The conception of one’s identity in question here is not a theoretical one, a view about what as a matter of inescapable scientific fact you are. It is better understood as a description under which you value yourself, a description under which you find your life to be worth living and your actions to be worth undertaking. So I will call this a conception of your practical identity. Practical identity is a complex matter and for the average person there will be a jumble of such conceptions. You are a human being, a woman or a man, an adherent of a certain religion, a member of an ethnic group, someone’s friend, and so on. And all of these identities give rise to reasons and obligations. Your reasons express your identity, your nature; your obligations spring from what that identity forbids.

#### Impacts: A] Since obligations arise from a universal identity, they must be the same for all, B] hijacks any role of the judge since judging is an identity contained within the practical one

### Offense

#### Plan: The member nations of the World Trade Organization ought to eliminate patent protections for life-saving medicines. Rizvi 20:

Husna Rizvi, “WHAT IF…DRUG PATENTS WERE SCRAPPED?” 24 June 2020, <https://newint.org/features/2020/06/11/what-if-drug-patents-were-scrapped> //LHP AV DOA: 9/17/21

In 1955, virologist Jonas Salk was asked about the intellectual property rights of his polio vaccine. To which he responded: ‘**There is no patent**. Could you patent the sun?’ Salk’s choice to make the vaccine patent free ultimately beat back the US polio epidemic by 1962. The pharmaceuticals industry has ballooned in size since then, reaching an estimated value of $1.2 trillion in 2018, made possible by a patents system that grants firms at least 20 years’ exclusive rights to manufacture, sell and market new drugs. Although an estimated two-thirds of global research and development is paid out of the public purse, manufacturers can charge governments eyewatering sums for drugs. According to Médecins Sans Frontières (MSF), it costs just $0.25 to $0.50 to make the daily dose of the tuberculosis drug bedaquiline. But manufacturer Johnson & Johnson charges over eight times that cost in developing countries. Patients require up to 14,600 pills over two years, pricing thousands out of treatment. The tension between public health and private profit has never been more visible, especially as the world searches for a vaccine against coronavirus. Advert Newint - ES FAM Sept 21 Some experts point to existing provisions to compel industry to release vital drugs during times of crisis. **World Trade Organization rules specify that governments can override patents** to allow other manufacturers **to produce generic versions of life-saving medicines** – **this is called compulsory licensing. But Big Pharma fights back with lawsuits.** Corporate Europe Observatory predicts a wave of ‘pandemic legal disputes’ if governments try using this provision to combat coronavirus. As during the AIDS crisis, when 39 transnational pharmaceutical companies sued Nelson Mandela for defying HIV drug licences, companies are unlikely to want to make an exception for Covid-19. **The pharmaceutical patents system is based on the belief that without patents, medical innovation will cease**. **But researchers have shown how firms stifle innovation, engaging in ‘killer acquisitions’ to buy up smaller innovative companies, solely to stop their drug development projects and remove future competition**. **It’s a broken system, not delivering the drugs** we need at prices we need. At the time of writing, the world death toll from Covid-19 is 350,000. Economist Joseph Stiglitz asks: what if a global network of laboratories, without Intellectual Property (IP) lawyers breathing down their necks, ‘monitored for emerging strains of a contagious virus, periodically updated an established formula for vaccinating against it, and then made that information available to companies and countries around the world?’ It’s not pie in the sky. **It’s how flu vaccine research already operates**. **The World Health Organization (WHO) convenes world experts twice a year to add emerging flu strains in order to update flu vaccines. Researchers from across 110 countries, funded largely by governments, are committed to this open-source science**. The infrastructure to gather, interpret and distribute actionable knowledge for the development of vaccines already exists. This system could be funded through prizes, Stiglitz suggests, rewarding companies that invent necessary new medicines. **Companies would need to agree to make products patent-free, be transparent over pricing and costs and share clinical trial data so that other countries can develop the same capacity**. Researchers at Global Justice Now also propose modelling democratically owned start-up firms with workers, clinicians and patients on their boards and on the Medicines Patent Pool (MPP), a UN body set up to increase access to drugs in the Global South. Governments would retain a controlling interest in these bodies. **Abolishing the IP burden would incentivize knowledge-sharing across borders, with open-source data that any WHO member could access.** With increasing vulnerability to pandemics what is needed is an ambitious strategy to compel industry to manufacture the drugs we need at scale. Transitional steps, proposed by Washington University professors Michele Boldrin and David Levine, include shortening patent terms to slowly but surely ‘decrease the strength of intellectual property interventions’. They hasten to add: ‘**the final goal cannot be anything short of abolition**.’

#### Vote aff –

#### 1] IP rights violate an individual’s actual right to property and the grounds on which they are justified while a lack of scarcity makes them unnecessary,

Cernea and Uszkai 12 Cernea, Mihail-Valentin, and Radu Uszkai. *The Clash between Global Justice and Pharmaceutical Patents: A Critical Analysis*. 2012, the-clash-between-global-justice-and-drug-patents-a-critical-analysis.pdf. SJEP

To make this point clearer, we regard property as an ethical institution which emerged in the context of reiterated conflict between agents for tangible goods. A useful analogy would be, for example, the particular way in which David Hume discusses the emergence of justice in the context of scarcity in which agents pursue their own interests4 . As a result, the purpose of property rights would be that of avoiding or minimizing the possibility of conflict and that of increasing the costs of free-riding or trespassing. Let’s take the following example which will illustrate better our point. Assume that X is a philosophy student and has a copy of Immanuel Kant’s Groundwork of the Metaphysics of Morals. Y is a college of him but he does not have the book. They both have to write an essay on Kant’s categorical imperative. Because Y does not have the book, let’s assume that he decides, whether by the use of coercion or fraud to take his book. As a result, the theft leaves X without his property because tangible goods are rivalrous in consumption. Both student can’t, at the same time but in a different place read about Kant’s categorical imperative from the same copy. Now a different example: suppose X invents a new way of harvesting corn and Y harvests his corn accordingly. This situation is quite different in comparison to the case we presented earlier, because Y does not leaves X without either his new harvesting mechanisms which he created but neither without the idea behind the mechanism. It would be hard to say that Y stole something from X because the consumption of intangible goods such as ideas does not have the same rivalrous property as a copy of a book written by Kant. Actually, the existence of the patent system fosters the scarcity of ideas. In this context patents represent unjustified state-granted monopolies. Moreover, intellectual property rights have another profound immoral consequence: it limits the use of tangible objects which we acquired fully in line with market rules.

#### 2] Right of necessity – nations can legitimately break patents in order to produce life-saving medicines, Bierson 21:

Marshall Bierson, [Marshall is currently completing his PhD in Philosophy at Florida State University. His primarily studies the intersection of ethics and the nature of persons. Outside of Academia, Marshall also directs curricular design for high school debate camps with the Victory Briefs Institute.] “Intellectual Property and the Right of Necessity” August 18, 2021, <https://www.prindlepost.org/2021/08/intellectual-property-and-the-right-of-necessity/> //LHP AV DOA:9/14/21

The Right of Necessity and Intellectual Property **If there is a right of necessity, what implication would that have for i**ntellectual **p**roperty rights **over life-saving medication?** **Life-saving medication**, almost by definition, **is often necessary for survival**. Thus, if **the right to necessity justifies** stealing bread from those who have extra, so too it would seem to justify **stealing a vial of unaffordable medication**. Similarly, if I can steal an unaffordable vial of life-saving medication to save a life, **then it would be strange to think I cannot violate an international patent to create that life-saving vial**. It seems, then, that if we accept the old doctrine that there exists a right of necessity, it **would have profound implications for the justice of intellectual property law. Nations, according to such reasoning, possess a natural right to break patents if it is necessary to produce life-saving medication for those who could otherwise not afford them**. (The affordability qualification is an important one. Just as it would be theft for me, who can afford to buy food, to steal a loaf of bread. So too it would be unjust to violate international patents for patients who can otherwise afford to buy the medication.) But even with the affordability qualification in place, **there is currently a huge problem of access to life-saving medications by the global poor. As such, the right of necessity suggests a standing right to break many international medical patents.**

#### The right of necessity is a logical constraint on the coercive powers of the state – even if not ethical, reducing IP for life saving medicines is not in the jurisdiction of legal punishment – that would undermine the very foundation of the omnilateral will, Koch 92:

Koch, Andrew M. "Immanuel Kant, The Right of Necessity, and the Liberal Foundation of Social Welfare" Southeastern Political Review, 20: 2 (Fall 1992) 295-314. <https://libres.uncg.edu/ir/asu/f/koch_andrew_1992_Immanuel_Kant.pdf> //LHP AV DOA: 9/14/21

**Kant** did not leave the discussion on the functions of law here. In the appendix to Metaphysical Elements of Justice he **suggested two caveats to the ability of the state to compel human action**. There are two areas of human interaction where justice, as the state's use of legitimate coercive force, does not serve its intended purpose. In these two areas **the coercive power of the state cannot, logically, be effective in regulating human behavior** or protecting human freedom. The first of these exceptions to the role played by the law in regulating human interaction is what Kant called the "right of equity." The second he called the "right of necessity." In discussing the right of equity, Kant asserted that the law is not applicable to issues involving the subjective moral conscience of a person. For example, in establishing a private contract between two individuals all the possible contingencies may not be foreseen. In such a case one of the contracting partners may have to appeal to the fairness or sense of "equity" in the other. Kant defined this appeal to personal conscience as "right without coercion." (Kant 1965, 39) The judicial system cannot oversee all the possible facets of interaction, therefore appeals to "fairness" will be part of the interaction of individuals. As part of the general discussion of morality, Kant believed that a general "moral sentiment" can be engendered in individuals through education and moral training. The process of moral training will serve to regulate what is "fair," even when the law cannot be directly engaged. Kant's second caveat to his theory of justice, however, is far more important for the consideration of the state's responsibilities with regard to its citizenry. **Kant defined the right of necessity as essentially "coercion without right."** (Kant 1965, 39) Stated directly**, "necessity" is the right to take any action necessary in order to preserve one's own life.** By "necessity" Kant meant considerably more than a notion of self defense. The right of self defense implies a right to preserve one's life if that life is threatened by another. **The right of necessity, on the other hand, is the right to take action that causes harm or death to another, even to a person who is not a direct threat to one's own life and safety.** This imagined right is supposed to give me permission to take the life of another person when my own life is in danger, even if he has done me no harm. (Kant 1965, 41) **Necessity involves the interaction of two or more people. According to Kant's discussion of civil society, the law is essential for the regulation of that interaction**. Kant asserted, however, that **when necessity is the issue, the law is ineffective as a restraint on human behavior.** It is quite obvious that **this** conception implies a self-contradiction within jurisprudence,...[and] ... **belongs only to ethics**. (Kant 1965, 41) The right of necessity is an issue that can only be addressed in an ethical context. But **Kant did not suggest that acts done out of necessity are ethical or enjoy insulation from moral condemnation**. The contrary is actually the case. **An action done out of necessity may be immoral and still not be appropriately subject to punitive legal action.** This is the case because **law cannot logically deter actions that are generated out of fear for one's survival.** **Necessity is invoked in a context in which the deterrent function of the law is ineffective**. Kant suggested that **when faced with the imminent threat of losing one's life there is nothing that the coercive apparatus of the state can do to compel a particular type of behavior.** **The law, and the force of punishment, can have no effect on an individual's behavior where necessity is at issue. The law cannot serve as a check on moral or social injustices**. The threat of punishment has no meaning if there is no penalty which can be worse than certain death. **The pursuit of selfpreservation**, while it may violate the legal statutes of written law, **cannot logically be punished**. Kant was very clear on this issue. A penal law applying to such a situation could never have the effect intended, for the threat of an evil that is still uncertain cannot outweigh the fear of an evil that is certain. **Hence, we must judge that, although an act of self-presentation through violence is not inculpable, it still is unpunishable**...(Kant 1965, 41) The law cannot apply to an action done out of necessity because it contains no effective threat of coercion behind it. Necessity is described as an important exception to the role positive law plays in maintaining and protecting a common quantity of freedom within the state and society. **The state and its laws are designed to protect the freedom of each of society's members. The state cannot function effectively in circumstances where the adherence to its laws cannot be guaranteed through the use of sanctions**. **"Necessity" is, logically, a constraint on the effectiveness of the law**. In raising the issue of the conditions required for the "effective" law, Kant has provided a context for questioning the state's responsibilities on issues of social policy. What conditions must be present in order for the law to function effectively? Under what conditions can the law fulfill its purpose of protecting the freedom of the citizenry? Kant realized that not all individuals can be expected to be "good." Kant asserted, however, that through a system of laws individuals can be compelled to respect the rights of others. But the conditions for that compliance must first exist. The legal system's intended purpose of protecting the freedom of the citizens cannot be fulfilled under conditions in which necessity is legitimately involved**. The state cannot fulfill its function of compelling individuals to respect the freedom of others unless the state's system of laws are sufficient to deter individual egoism at the expense of other's freedom**. Laws have no power to compel when "necessity" is at issue. **The problem necessity generates for the functioning of the law raises questions about the role of the state in a very broad social context**. If necessity inhibits the effective performance of the law, and effective laws are necessary in order to protect the citizens, then the function of the state must go beyond acting simply as the repository for collective force. The state must act to create the conditions in which the citizens are secure from violence. In order to do this the state must assure that it has created the conditions in which the law is an effective mechanism for deterring violence. **The state must seek to minimize necessity as a motivation for behavior because action generated out of necessity takes place outside of the arena in which the law is effective.** Social welfare is the state's mechanism for removing economic necessity as a motivation for action. Welfare assists in creating the conditions in which the "rule of law" is meaningful and effective. Therefore, the state's legal and coercive functions are inseparable from its welfare functions.

### UV

#### Evaluate intent not consequences –

#### 1] Actors can only be culpable for their rational decision, not the outcomes. Anything else means actors have no control over the morality of decisions meaning it is impossible for them to be obligated to act.

#### 2] Induction is circular since it is only justified because it worked in the past, which is just induction. That means attempts to predict consequences have no justification, and only the rational decisions behind actions can be evaluated.

#### 3] Consequences are infinite – I could save someone that turns out to be a mass murderer – unpredictability means they are not a stable basis for ethics which freezes action since agents never know what action to take

### Theory

#### 1] 1AR Theory Paradigm –

#### Grant me it or else the neg can be infinitely abusive

#### Competing interps because reasonability incentivizes defensive dumps to overwhelm the short 2ar

#### Drop the debater because the 2ar is too short to win theory and substance

#### No RVIs or else 6 minutes in the 2n on theory makes the 2ar impossible

#### And 1AR theory outweighs –

#### A] I can’t win on the neg shell and my shell in the 3-minute 2ar.

#### B] Epistemic indict – if the 1n was abusive I couldn’t respond it, so you can’t evaluate their args.

#### 2] Fairness first –

#### A] testing – if an argument is abusive I can’t engage properly so you can’t evaluate the truth claims

#### B] proximity – the ballot can’t alter subjectivity or grant education but voting actually solves fairness impacts

#### C] the ballot says vote for the better debater not the better cheater which is a metaconstraint

### Method

#### Any resistance to systemic injustice must be based on a comprehensive normative theory which determines what the best response to specific injustices are – 4 warrants – Laurence,

Laurence, Ben. “The Priority of Ideal Theory.” PDF File. //LHPYA

However, Rawls appears to differ in holding that we can only achieve a systematic and deep understanding of the relevant issues of nonideal theory by relating them to ideal theory. We are now ready to consider this argument in detail. For this purpose, I will focus on five aspects of the dependence of nonideal theory on ideal theory: identification, explanation, comparison, practical reasoning, and moral permissibility. As we have seen, Rawls agrees with his critics that it is possible to identify injustice without worked out views about justice. However, to identify injustice in a systematic fashion, we need to go beyond our piecemeal judgments about injustice, and group different classes of injustices together by relating them to the general normative requirements that they violate. Such systematic classification of injustice thus depends on the principles of justice developed in ideal theory. The principles bring further system to our judgments insofar as they allow us to extend our judgments into ignored or uncertain areas where we are conflicted and unsure in our judgments. Since our considered judgments of injustice usually come with some awareness of the grounds on which we make the judgment, Rawls agrees that we can often explain the injustice of various phenomena without recourse to ideal theory. However, ideal theory functions to deepen and systematize these explanations by deriving the relevant judgments along with the supporting reasons from principles of justice. The arguments supporting the relevant principle connect them to the more general judgments about the relations between citizens. This serves to deepen our explanations of injustice by showing how the injustice is incompatible with the relation of free equals underlying the principle. These arguments bring to light the common ground underlying the judgments of injustice of a variety of kinds, unifying and connecting the explanation for various lower-level judgments about injustice. The third dimension of justificatory dependence concerns the function of nonideal theory to make comparative judgments concerning the grievousness of different injustices. Although Rawls can agree that such comparison can sometimes be made on the basis of our untutored judgments, a systematic approach to comparative judgments must draw on ideal theory. By providing principles of justice, ideal theory specifies numerous dimensions along which failure can occur. If we wish to be systematic in our comparisons, awareness of the relevant dimensions is important. Furthermore, the principles of justice adjudicate the reasonable claims citizens have on one another in situations where different values stand on each side of a claim. In a just society, these claims are ordered and handled in some way that the principles of justice make clear. Such evaluations, giving precedence to some claims over others, can guide us when making comparative judgments about the grievousness of situations where the choice is between two different injustices.56 For example, if a just society would not diminish rights of democratic participation to improve economic opportunity, then this indicates to us that lacking the right to vote is more unjust than having a lower rate of opportunity for upward economic mobility. Of course, this weighting might hold only for a range of cases. But even this is interesting and relevant information necessary for a systematic approach to such comparisons. Of course, since they are practical judgments, the whole purpose of the identification, explanation, and comparison of injustice is political action overcoming these practical evils. No doubt, we can reason in a piecemeal and ad hoc fashion about what responses are called for by various injustices, sometimes successfully. However, by specifying the long-range goal of our political hope and action, ideal theory orients such practical reasoning, and allows it achieve a systematic and ambitious character. It reminds us that there is a range of injustices, many inter-related, all of which must ultimately be addressed. It also equips us to make sophisticated practical judgments of a long-range character. For example, it allows us to reason about how we must transform political conditions before various more ambitious reforms become possible.58 It also allows us to situate our comparative judgments of injustice in their context, by recognizing that shortterm gains to justice are not always worth long-term costs. This is the fourth dimension of the dependence of nonideal on ideal theory. The fifth dimension of the dependence of nonideal on ideal theory involves the moral permissibility of responses to injustice. Since nonideal theory looks for politically feasible and morally permissible changes to institutional structures that move us towards a just society, nonideal theory must have something to say about what institutional changes are morally permissible. Nonideal theory also includes the account of different means by which citizens can attempt to introduce institutional change in their society, ranging from ordinary participatory politics, to boycotts and orderly protests, through civil disobedience, and all the way up to militant resistance and revolution. We can see the relevance of ideal theory to a systematic approach to these tasks in several ways. Rawls’ discussion of civil disobedience provides a nice example.59 To provide a theory of the conditions under which civil disobedience is morally permissible, we must understand the status of the rule of law in a democratic society, and the reasons for obedience to even unjust laws when produced through a genuinely democratic process. Furthermore, we must grasp an idea of democracy deeper than, say, voting in periodic elections, in order to see how civil disobedience could be a profoundly democratic act even while it contravenes democratic legislation.60 We see here the need to relate the idea of modes of resistance to a conception of the democratic relation of citizens that ideal theory provides. It seems clear as well that systematic views about what institutional policies are morally permissible responses to injustice will depend partially on claims about the nature and aims of a just society. This has to do with the idea of moral costs, and follows from the previously specified dimensions. For example, suppose an effective way of responding to an injustice involves introducing an institutional arrangement that would otherwise violate a principle of justice. This is a moral cost, and it is certainly relevant to judge the moral permissibility of the policy proposal. If an equally effective way of addressing the problem exists that does not introduce the relevant injustice, the policy may be impermissible. But the systematic specification of moral costs will depend on the identification, explanation, and comparison of various injustices, as well as the general point about practical reasoning, which all depend on ideal theory for their systematic character

# 1ar

#### Follow-on innovation killed, also raises prices. Gurgala 20,

Gurgula, Olga. "Strategic Patenting by Pharmaceutical Companies–Should Competition Law Intervene?." *IIC-International Review of Intellectual Property and Competition Law* 51.9 (2020): 1062-1085. //LHP YA

Strategic patenting also has a chilling effect on follow-on innovation by generic competitors in the form of developing alternative versions of an off-patent compound. As was discussed earlier, the expiry of a basic patent that protects an active compound facilitates generic competition. This is because even if the product is still protected by process, specific form or formulation patents, generic companies may develop alternative ways of producing or formulating the product and start competing with the originator. In the absence of strategically accumulated patents by the originator, generic companies are typically open to innovating to launch alternative generic products as soon as the basic patent expires. However, by pursuing strategic patenting, originators may discourage generics from engaging in follow-on innovation because of the uncertainty about the patent protection and a fear of infringing on one of the numerous patents.96 In its Sector Inquiry Report, the Commission cited the following quote from one of the originators: The entire point of the patenting strategy adopted by many originators is to remove legal certainty. The strategy is to file as many patents as possible on all areas of the drug and create a ‘‘minefield’’ for the generics to navigate. All generics know that very few patents in that larger group will be valid and infringed by the product they propose to make, but it is impossible to be certain prior to launch that your product will not infringe and you will not be the subject of an interim injunction.97 Therefore, as a result of creating an impenetrable ring of patent protection by the originator,98 generic competitors may be prevented from developing alternative generic versions of an off-patent compound. One of the examples revealed by the Commission during its Pharmaceutical Sector Inquiry was the filing by an originator company of ‘‘more than 30 patent families translating into several hundreds of patents in the Member States in relation to one product’’, many of which were filed after the introduction of the product.99 This affected the intentions of several generic companies that planned to develop and bring their generic versions of the original product to the market.100 As a result, in addition to the already high barriers to entry into the pharmaceutical market due to patents that protect an existing product and the need to obtain a marketing authorisation, strategic patenting raises these entry barriers further, making it very difficult for generic companies to overcome them. This strategy, therefore, ‘‘may without further enforcement action by originator companies, … delay generic entry until the patent situation is clearer or even discourage more risk-sensitive generic companies from entering altogether’’.101 Consequently, the fact that actual or potential competitors of originators would not be able to develop alternative generic products means that no one could enter the market and challenge originators’ monopoly positions. This results in a weakening of competition in the relevant market and a strengthening of the originator’s already dominant position. As Maggiolino put it, ‘‘patent accumulation … may work as a pre-emptive entry-deterrence strategy to protect monopoly power and … lower consumer welfare by allowing dominant firms to keep on charging over-competitive prices’’.102 Therefore, when an array of accumulated secondary patents ‘‘blocks monopolists’ rivals from producing follow-on innovations, this strategy prevents the whole society from enjoying … these further innovations’’.103 While practices that facilitate innovation are encouraged by competition law, practices that are aimed at blocking follow-on innovation by competitors should raise competition law concerns.