# 1AC Bronx R5 vs. Basis Peoria PY

## 1ac

### Plan

#### Plan: The member nations of the World Trade Organization ought to eliminate data exclusivity intellectual property protections for medicines, Diependaele 17

Diependaele, Lisa, et al. “Raising the Barriers to Access to Medicines in the Developing World - the Relentless Push for Data Exclusivity.” Developing World Bioethics, John Wiley and Sons Inc., Apr. 2017, [www.ncbi.nlm.nih.gov/pmc/articles/PMC5347964/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC5347964/). // LHP PS

**There seem to be few, if any, reasons left to accept data exclusivity in addition to the existing patent regime. Data exclusivity poses a considerable additional risk to the affordable access to medicines in developing countries.** In the absence of evidence that data exclusivity will support innovation and economic development, **there is no legitimate ground for developing countries to favour such a policy.** Moreover, **since current levels of revenue already generate copious profit margins for the pharmaceutical industry in US and EU markets, it is inequitable and highly problematic to require developing countries to implement data exclusivity**. For developed country markets, the key question remains whether society should pay the price for extended monopolies in return for merely ‘incremental’ innovations**. Even in the US and the EU, the implementation of data exclusivity, by undermining legitimate competition, seems incompatible with the long tradition of stringent competition and anti‐trust policies, which have always been vital components of the economic structure.** In its current form, **data exclusivity offers the pharmaceutical industry an ‘easy route’ to market exclusivity, without fear of challenges. Indeed, it seems that data exclusivity is meant to increase the (already significant) profitability of the pharmaceutical industry, rather than allowing them to have a legitimate demand fulfilled.**

#### It’s topical and the aff solves – Data Exclusivity is a TRIPs Plus IP protection, Thrasher 21

Thrasher, Rachel. “How Data Exclusivity Laws Impact Drug Prices:” *Global Development Policy Center Chart of the Week How Data Exclusivity Laws Impact Drug Prices Comments*, 25 May 2021, [www.bu.edu/gdp/2021/05/25/chart-of-the-week-how-data](http://www.bu.edu/gdp/2021/05/25/chart-of-the-week-how-data)-exclusivity-laws-impact-drug-prices/. // LHP AB

**Data exclusivity is a form of intellectual property protection that applies specifically to data from** pharmaceutical **clinical trials. While innovator firms run their own clinical trials to gain marketing approval, generic manufacturers typically rely on the innovator’s clinical trials for the same approval. Data exclusivity rules keep generic firms from relying on that data for 5 to 12 years, depending on the specific law.** Data exclusivity operates independently of patent protection and **can block generic manufacturers from gaining marketing approval even if the patent has expired or the original pharmaceutical product does not qualify for patent protection.** Although data exclusivity laws are matters of domestic legislation, the United States, the EU and others increasingly demand in their free trade agreement (FTA) negotiations that their trading partners protect clinical trial data in this way. **Data exclusivity is just one of a host of “TRIPS-plus” treaty provisions designed to raise the overall level of intellectual property protection for innovator firms**. Although the WTO’s Agreement on Trade-Related Intellectual Property Rights (TRIPS) does require Member states to protect clinical trial and other data from “unfair commercial use,” it does not require exclusivity rules that block the registration of generic products.

### Adv – Medicine Prices

#### Data exclusivity massively raises medicine prices.

#### 1] Exclusivity kills access to affordable medicine particularly in developing countries by granting market exclusivity without patents explicit to them – Guatemala proves – Diependaele, et al. 17

Diependaele, Lisa, et al. “Raising the Barriers to Access to Medicines in the Developing World - the Relentless Push for Data Exclusivity.” Developing World Bioethics, John Wiley and Sons Inc., Apr. 2017, [www.ncbi.nlm.nih.gov/pmc/articles/PMC5347964/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC5347964/). // LHP AB

**In** **many** **developing countries**, public health **institutions cannot provide essential medicines to patients**. Moreover, even if essential medicines are available, **they remain unaffordable for billions** of people. Especially **original brand medicines are ‘priced out of reach’**.[70](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5347964/#dewb12105-note-0071) Although many factors can increase the accessibility and affordability of essential medicines, the United Nations (UN) and the World Health Organization (**WHO**) highly **recommend** that developing countries make full use of TRIPS flexibilities and **facilitate the production and importation of generics**.[71](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5347964/#dewb12105-note-0072)

In many cases, **data exclusivity will delay the availability of new generics**. A **recent study showed that the implementation of a data exclusivity regime in Guatemala, mandated by DR‐CAFTA, resulted in generic competition being denied entry to the Guatemalan market**.[72](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5347964/#dewb12105-note-0073) **In each case, the available originator drugs were priced substantially higher**.[73](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5347964/#dewb12105-note-0074) **Especially in** those **countries which, pre‐TRIPS, did not grant patents for pharmaceuticals**, **data exclusivity** can be an efficient method to **ensure market exclusivity for originator drugs and prevent generic competition in that market**.

As the access to medicines in the developing world is a highly complex issue, simply not providing data exclusivity cannot by itself resolve the lack of basic healthcare infrastructure in many developing and least‐developed countries. However, for both governments and individuals, the **price of medicines can be a significant financial burden**. Although generics are not necessarily affordable for all, the **prices of original drugs tend to be at least ten times higher**.[74](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5347964/#dewb12105-note-0075) Because most developing countries rely strongly on generics, the **consequences of implementing data exclusivity could be enormous**.[75](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5347964/#dewb12105-note-0076)

Data **exclusivity** **also offers industry the opportunity to ‘optimize’ its global business strategy**. **Pharmaceutical companies do not file patent applications in all the countries where they will eventually market their products**. The **inclusion of data exclusivity in FTAs ensures market exclusivity without a patent**. Furthermore, **companies will first introduce new drugs in wealthy markets**, where they expect the best commercial opportunities. **Only at a later stage, are new drugs marketed in developing countries**. Consequently, **delaying marketing approval** ‐ by means of data exclusivity ‐ **can equally delay generic competition**.

#### 2] Data exclusivity destroys generic competition skyrocketing medicine prices – Malpani

Malpani, Rohit. “All Costs, No Benefits: How TRIPS-plus Intellectual Property Rules in the US-Jordan FTA Affect Access to Medicines.” Oxfam Library, Mar. 2007, oxfamilibrary.openrepository.com/bitstream/handle/10546/114080/bp102-all-costs-no-benefits-trips-210307-en.pdf%3Bjsessionid%3D089750820CF675173F0C3204C369D63F%3Fsequence%3D1. // LHP AB

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**Multinational** pharmaceutical **companies have prevented generic competition for** many **medicines by solely enforcing data exclusivity provisions in Jordan’s IP law**. This is **because companies can rely upon data exclusivity** more **easily than patent protection to deny generic competition**. **Patent offices apply rigorous standards** and impose safeguards **to ensure that only innovative medicines are granted a monopoly**. On the contrary, a pharmaceutical **company merely has to submit clinical trial data to obtain a five-year market monopoly**.30 According to Oxfam’s analysis **of 103 medicines registered and launched since 2001 that currently have no patent protection in Jordan**, at least **79 per cent have no competition** from a generic equivalent **as a consequence of data exclusivity** (see Appendix 1 for methodology). Jordanian generic manufacturers interviewed by Oxfam **expressed frustration at the data exclusivity law** because multinational pharmaceutical companies can rely upon data exclusivity to preclude generic competition.31 A **generic competitor could replicate these medicines, in the absence of a data exclusivity law, shortly after the medicine’s launch on the domestic market**. Although data exclusivity was imposed as a result of the US-Jordan FTA and WTO accession, the TRIPS-plus measures benefit many other countries’ multinational drug companies. **At least 21 US, European Union (EU), and Swiss drug companies have taken advantage of** the benefits of **data exclusivity**. TRIPS-plus rules, although imposed by the US FTA, benefit all drug companies because developing countries must alter their national intellectual property laws to fully implement TRIPS-plus rules. Thus, all pharmaceutical companies marketing medicines in a developing country, including European companies, benefit from these changes, and benefit from US efforts to impose TRIPS-plus rules elsewhere.32 Consequences of data exclusivity on public health **Generic competition drastically reduces medicine prices**. Multinational pharmaceutical companies that enforce data exclusivity for their clinical trial data in Jordan can prevent the onset of generic competition for five years, even without a patent on the medicine. In contrast, **nearby Egypt has not introduced data exclusivity and other TRIPS-plus rules, and multinational pharmaceutical companies have only received patent protection for medicines from 2005 onwards.** Thus, **most medicines currently sold on the Egyptian market have no form of monopoly protection** (and therefore may have multiple generic competitors). **All costs, no benefits**: How TRIPS-plus intellectual property rules in the US-Jordan FTA affect access to medicines, Oxfam Briefing Paper, March 2007 9 **Heart disease and diabetes are serious public health problems in both Jordan and Egypt. Jordan had approximately 195,000 cases of diabetes in 2000, while Egypt, a more populous country, had an estimated 2.6 million cases**. Similarly, according to 2002 WHO (World Health Organization) estimates, **heart disease is one of the leading causes of death in both countries**. A comparison of prices for five best-selling medicines that treat diabetes and cardiovascular disease in Jordan and Egypt illustrates the enormous disparity between the costs of the originator medicine in Jordan (with no generic competitor available solely because of data exclusivity) against the lowest-priced generic equivalent in Egypt (where price reductions due to generic competition are unrestricted). (See Table 1.) Table 1: **Relative prices between medicines with no generic competition in Jordan (due to enforcement of data exclusivity) and the price of the lowest-priced generic equivalent in Egypt Country** (company) Active Pharmaceutica l Ingredient (dosage) Medical use Price per Unit (in Jordanian dinars at prevailing exchange rate) **Jordan** price compared to Egyptian price Egypt (local generics manufacturer) Jordan (Merck) Metformin (850 mg) Metformin (500 mg) **Anti-diabetic** .02 .16 **800% Egypt** (local generics manufacturer) Jordan (Kleva) Atenolol (100 mg) Atenolol (100 mg) Antihypertensive .03 .11 367% Egypt (local generics manufacturer) Jordan (Glaxo SmithKline) Rosiglitazone maleate (4 mg) Rosiglitazone maleate (2 mg) Anti-diabetic .40 .67 167% Egypt (local generics manufacturer) Jordan (Merck) Simvastatin (20 mg) Simvastatin (20 mg) Antihyperlipidemic .452 2.25 498% Egypt (local generics Ramipril Antihypertensive .14 557% All costs, no benefits: How TRIPS-plus intellectual property rules in the US-Jordan FTA affect access to medicines, Oxfam Briefing Paper, March 2007 10 manufacturer) Jordan (SanofiAventis) Ramipril hypertensive .78 Source: Jordan and Egypt Ministries of Health (2006) These **new medicines are significantly more expensive in Jordan than in Egypt. If TRIPS-plus rules had been present in Egypt, local manufacturers could not have driven down prices for these medicines through generic competition**, and the prices for these medicines would have been much higher. The **result would have been increased health-care costs and less medical treatment**, especially for poor people.

#### Two Impacts:

#### **1] Quality Treatment, AHA 19’**

“New Report Shows Impact of Rising Drug Prices and Drug Shortages on Patients and Hospitals: Aha.” American Hospital Association, AHA, 15 Jan. 2019, www.aha.org/press-releases/2019-01-15-new-report-shows-impact-rising-drug-prices-and-drug-shortages-patients. //LHP DP

This report confirms that **we are in the midst of a prescription drug spending crisis that threatens patient access to care and hospitals’ and health systems’ ability to provide the highest quality of care,”** said AHA president and CEO Rick Pollack. “**Solutions must be worked on to rein in out-of-control drug prices and ease the drug shortages that are putting a strain on patient care.**” “We see a developing crisis. **Relentless drug price increases and all too frequent shortages of critical medications are eroding the capacity of hospitals to provide our patients needed care,”** said FAH president and CEO Chip Kahn. “We believe **policymakers should act now to protect patients**.” “ASHP is at the forefront of efforts to combat the systemic impact of ongoing drug shortages and rapidly rising drug prices,” said ASHP CEO Paul W. Abramowitz, Pharm.D., Sc.D. (Hon.), FASHP. “By working with government agencies and partners such as AHA and FAH, we will continue to offer policy solutions and a roadmap for the changes necessary to ensure optimal care for patients.” Today’s report updates and expands on a previous AHA/FAH report from 2016 on skyrocketing inpatient hospital drug cost increases by also analyzing outpatient drug costs and the impact of drug shortages. The report found that **hospital budget pressures resulting from the continued dramatic increases in drug prices have negative impacts on patient care**, **with hospitals being forced to delay infrastructure investments, reduce staffing, and identify alternative therapies. Hospitals also struggle with drug shortages, which can disrupt typical work patterns and patient care, and often require significant staff time to address.**

#### 2] They force people into poverty

Hoban 10 Rose Hoban 9-13-2010 "High Cost of Medicine Pushes More People into Poverty" <https://www.voanews.com/science-health/high-cost-medicine-pushes-more-people-poverty> (spent more than six years as the health reporter for North Carolina Public Radio – WUNC, where she covered health care, state health policy, science and research with a focus on public health issues. She left to start North Carolina Health News after watching many of her professional peers leave or be laid off of their jobs, leaving NC with few people to cover this complicated and important topic. ALSO cites Laurens Niens who is a Health Researcher at Erasmus University Rotterdam)//Elmer

Health economist Laurens Niëns found that **drugs needed to treat chronic diseases could be considered unaffordable for many people in poor countries. Medicines can be expensive** and often make up a large portion of any family's health care budget. And the burden can be even greater for people in poor countries, where the **cost of vital medicines** can **push them into poverty**. **The problem is growing as more people around the world are diagnosed with chronic diseases such as high blood pressure and diabetes.** Being diagnosed with a chronic disease usually **compells patients to seek treatment for a prolonged period of time.** That **increases the eventual price tag for health**, says health economist Laurens Niëns at Erasmus University in the Netherlands. **Niëns examined medication pricing data from the World Health Organization** **and also looked at data from the World Bank on household income in many countries.** Using the data, he calculated how much people need to spend on necessities such as food, housing, education and medicines. "**The medicines we looked at are medicines for patients who suffer from asthma, diabetes, hypertension and we looked at an adult respiratory infection**," Niëns says. "Three conditions are for chronic diseases, which basically means that people need to procure those medicines each and every day." Niëns focused on the cost of medicine for those conditions. He found the **essential drugs could be considered unaffordable for many people in poor countries** - so much so that their cost often pushes people into abject poverty. "**The proportion of the population** that is living **below the poverty line, plus the people that are being pushed below the poverty line, can reach up to 80 percent in some countries for** some **medicines," Niëns says. He points out that generic medicines - which are more affordable than brand-name medications - are often** **not available in the marketplace**. And, according to Niëns, poor government policies can drive up the cost of medications. "For instance, a lot of governments actually tax medicines when they come into the country," he says. "[They] have no standard for the markups on medicines through the distribution chain. So often, governments think they pay a good price for the medicines when they procure them from the producer. However, before such a medicine reaches a patient, markups are sometimes up to 1,000 percent."

### Adv – Innovation

#### We are in an innovation crisis – new drugs are not being developed in favor of re-purposing old drugs to infinitely extend patent expiration.

Feldman 19 Robin Feldman 2-11-2019 "‘One-and-done’ for new drugs could cut patent thickets and boost generic competition" <https://www.statnews.com/2019/02/11/drug-patent-protection-one-done/> (Arthur J. Goldberg Distinguished Professor of Law, Albert Abramson ’54 Distinguished Professor of Law Chair, and Director of the Center for Innovation)//SidK + Elmer

Drug companies **have brought great innovations** to market. Society rewards innovation with patents, or with non-patent exclusivities that can be obtained for activities such as testing drugs in children, undertaking new clinical studies, or developing orphan drugs. The rights provided by patents or non-patent exclusivities provide a defined time period of protection so companies can recoup their investments by charging monopoly prices. When patents end, lower-priced competitors should be able to jump into the market and drive down the price. **But that’s not happening**. Instead, drug companies build massive patent walls around their products, extending the protection **over and over again**. Some modern drugs have an avalanche of U.S. patents, with expiration dates **staggered across time**. For example, the rheumatoid arthritis drug Humira is **protected by more than 100 patents**. Walls like that **are insurmountable**. Rather than rewarding innovation, our patent system is now largely repurposing drugs. Between 2005 and 2015, **more than three-quarters** of the drugs associated with new patents **were not new ones** coming on the market but existing ones. In other words, we are mostly churning and recycling. Particularly troubling, new patents can be **obtained on minor tweaks** such as adjustments to dosage or delivery systems — a once-a-day pill instead of a twice-a-day one; a capsule rather than a tablet. Tinkering like this may have some value to some patients, but it nowhere near justifies the rewards we lavish on companies for doing it. From society’s standpoint, incentives should drive scientists back to the lab to look for new things, not to recycle existing drugs for minimal benefit.

#### **Data Exclusivity reduces innovation– Diapendaele & Sterckz 18:**

Diependaele, Lisa, Sigrid Sterckx, “Mandating Data Exclusivity for Pharmaceuticals Through International Agreements: A Fair Idea?” *Chap A,* 9 October 2018, DO - 10.1007/978-3-319-93907-0\_44

First, **empirical** evidence indicates there is a point beyond which increased patent protection no longer results in additional innovation, as measured by number **of patent applications**.67 **Hence, it is doubtful whether the possibility of a monopoly extension through data exclusivity will eventually result in additional R&D investments or patent applications**. What is more, **data exclusivity might discourage innovation by making the development and marketing of non-innovative drugs—not eligible for patent protection—more lucrative. The development of such drugs costs less, is significantly less risky, and can also be rewarded with a market monopoly for several years.** Furthermore, data exclusivity might not be the best mechanisms to compensate for the risks associated with R&D, as the **highest costs of development come at a time when the risks of failure are at the lowest and the time to the market short**.68 Second, cross-country studies show that there is only a consistently positive correlation between patent protection and innovation (as measured by R&D investments and patent applications) in developed and emerging economies.69 **In developing countries, (increasing) patent protection has not systematically resulted in increased innovation**. When compared to the global increase of patent applications, the **number of patent applications by domestic applicants** even **declined for** some **developing countries**.70 Hence, the **biggest advantages of stronger patents will not necessarily go to domestic industries but to foreign companies**.71 Even for incoming technology transfers and foreign R&D investments, MANDATING DATA EXCLUSIVITY FOR PHARMACEUTICALS… 582 often assumed to rise as a result of increased patent protection, the **beneficial effects are limited to developed and emerging economies**.72 For data exclusivity, the **available empirical evidence suggests there is no relationship at all between whether or not a country offers data exclusivity and the amount of investment in the country by the pharmaceutical industry**.73 Likewise, there is **no indication that the adoption of data exclusivity by developing countries could encourage the development of drugs for diseases that mainly affect poorer populations**, as a **market incentive can only incentivize market-driven innovation, dependent on solvent consumers**.74 In sum, for developing countries, there is little evidence that (increased) patent protection or data exclusivity will deliver on its promises. On the contrary, **various studies report that the adoption of data exclusivity delays the availability of generic drugs**.75 In light of the fact that for billions of people, **drugs are simply ‘priced out of reach,’76 the adverse consequences of implementing data exclusivity could be enormous**.77 Encouraging innovation can be a legitimate pursuit. However, the assumption that increased protection will automatically encourage innovation is questionable. Most empirical data show a more nuanced picture. Furthermore, there is no evidence of a causal relationship between market exclusivity and innovation.78 The positive correlations found by many studies can be explained by confounding factors such as educational attainment and economic freedom.79 Hence, the argument that data exclusivity is necessary to encourage innovation is insufficiently supported by empirical evidence. With regard to developing countries, this conclusion is even more pertinent. In light of the inconclusive evidence and the persisting problems regarding the lack of access to affordable drugs (which is not limited to the developing world), there seems to be **no legitimate ground to demand that countries adopt data exclusivity, let alone strengthen it.** Hence, the inclusion of binding standards on the protection of clinical test data through data exclusivity in FTAs cannot be justified with the innovation argument.

#### Pharma Innovation prevents Extinction – checks new diseases.

Engelhardt 8, H. Tristram. Innovation and the pharmaceutical industry: critical reflections on the virtues of profit. M & M Scrivener Press, 2008 (doctorate in philosophy (University of Texas at Austin), M.D. (Tulane University), professor of philosophy (Rice University), and professor emeritus at Baylor College of Medicine)

Many are suspicious of, or indeed jealous of, the good fortune of others. Even when profit is gained in the market without fraud and with the consent of all buying and selling goods and services, there is a sense on the part of some that something is wrong if considerable profit is secured. There is even a sense that good fortune in the market, especially if it is very good fortune, is unfair. One might think of such rhetorically disparaging terms as "wind-fall profits". There is also a suspicion of the pursuit of profit because it is often embraced not just because of the material benefits it sought, but because of the hierarchical satisfaction of being more affluent than others. The pursuit of profit in the pharmaceutical and medical-device industries is tor many in particular morally dubious because it is acquired from those who have the bad fortune to be diseased or disabled. Although the suspicion of profit is not well-founded, this suspicion is a major moral and public-policy challenge. Profit in the market for the pharmaceutical and medical-device industries is to be celebrated. This is the case, in that if one is of the view (1) thatthe presence of additional resources for research and development spurs innovation in the development of pharmaceuticals and med-ical devices (i.e., if one is of the view that the allure of profit is one of the most effective ways not only to acquire resources but productively to direct human energies in their use), (2) that given the limits of altruism and of the willingness of persons to be taxed, the possibility of profits is necessary to secure such resources, (3) that the allure of profits also tends to enhance the creative use of available resources in the pursuit of phar-maceutical and medical-device innovation, and (4) if one judges it to be the case that such innovation is both necessary to maintain the human species in an ever-changing and always dangerous environment in which new microbial and other threats may at any time emerge to threaten human well-being, if not survival (i.e., that such innovation is necessary to prevent increases in morbidity and mortality risks), as well as (5) in order generally to decrease morbidity and mortality risks in the future, it then follows (6) that one should be concerned regarding any policies that decrease the amount of resources and energies available to encourage such innovation. One should indeed be of the view that the possibilities for profit, all things being equal, should be highest in the pharmaceutical and medical-device industries. Yet, there is a suspicion regarding the pursuit of profit in medicine and especially in the

### Framework

#### **Pain and pleasure are intrinsically valuable – to justify beyond that runs into moral incoherence. Moen 16,**

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 // RCT by JPark

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.

#### Thus, the standard is maximizing expected well-being. To clarify, hedonistic act util. Prefer additionally.

#### 1] Death is the worst impact and outweighs, A] internal link turn – it fundamentally destroys the subject which makes alternative value and resistance impossible, B] its irreversible so any chance life is good means it comes first

#### 2] Actor specificity

#### A] governments must aggregate because their policies benefit some and harm others so the only non-arbitrary way to prioritize is by helping the most amount of people

#### B] Actor specificity comes first because different agents have different obligations. Takes out calc indicts because they’re empirically denied.

#### 3] Extinction hijacks and side constrains the framework – it o/w and comes first

Pummer 15 [Theron, Junior Research Fellow in Philosophy at St. Anne's College, University of Oxford. “Moral Agreement on Saving the World” Practical Ethics, University of Oxford. May 18, 2015] AT

There appears to be lot of disagreement in moral philosophy. Whether these many apparent disagreements are deep and irresolvable, I believe there is at least one thing it is reasonable to agree on right now, whatever general moral view we adopt: that it is very important to reduce the risk that all intelligent beings on this planet are eliminated by an enormous catastrophe, such as a nuclear war. How we might in fact try to reduce such existential risks is discussed elsewhere. My claim here is only that we – whether we’re consequentialists, deontologists, or virtue ethicists – should all agree that we should try to save the world. According to consequentialism, we should maximize the good, where this is taken to be the goodness, from an impartial perspective, of outcomes. Clearly one thing that makes an outcome good is that the people in it are doing well. There is little disagreement here. If the happiness or well-being of possible future people is just as important as that of people who already exist, and if they would have good lives, it is not hard to see how reducing existential risk is easily the most important thing in the whole world. This is for the familiar reason that there are so many people who could exist in the future – there are trillions upon trillions… upon trillions. There are so many possible future people that reducing existential risk is arguably the most important thing in the world, even if the well-being of these possible people were given only 0.001% as much weight as that of existing people. Even on a wholly person-affecting view – according to which there’s nothing (apart from effects on existing people) to be said in favor of creating happy people – the case for reducing existential risk is very strong. As noted in this seminal paper, this case is strengthened by the fact that there’s a good chance that many existing people will, with the aid of life-extension technology, live very long and very high quality lives. You might think what I have just argued applies to consequentialists only. There is a tendency to assume that, if an argument appeals to consequentialist considerations (the goodness of outcomes), it is irrelevant to non-consequentialists. But that is a huge mistake. Non-consequentialism is the view that there’s more that determines rightness than the goodness of consequences or outcomes; it is not the view that the latter don’t matter. Even John Rawls wrote, “All ethical doctrines worth our attention take consequences into account in judging rightness. One which did not would simply be irrational, crazy.” Minimally plausible versions of deontology and virtue ethics must be concerned in part with promoting the good, from an impartial point of view. They’d thus imply very strong reasons to reduce existential risk, at least when this doesn’t significantly involve doing harm to others or damaging one’s character. What’s even more surprising, perhaps, is that even if our own good (or that of those near and dear to us) has much greater weight than goodness from the impartial “point of view of the universe,” indeed even if the latter is entirely morally irrelevant, we may nonetheless have very strong reasons to reduce existential risk. Even egoism, the view that each agent should maximize her own good, might imply strong reasons to reduce existential risk. It will depend, among other things, on what one’s own good consists in. If well-being consisted in pleasure only, it is somewhat harder to argue that egoism would imply strong reasons to reduce existential risk – perhaps we could argue that one would maximize her expected hedonic well-being by funding life extension technology or by having herself cryogenically frozen at the time of her bodily death as well as giving money to reduce existential risk (so that there is a world for her to live in!). I am not sure, however, how strong the reasons to do this would be. But views which imply that, if I don’t care about other people, I have no or very little reason to help them are not even minimally plausible views (in addition to hedonistic egoism, I here have in mind views that imply that one has no reason to perform an act unless one actually desires to do that act). To be minimally plausible, egoism will need to be paired with a more sophisticated account of well-being. To see this, it is enough to consider, as Plato did, the possibility of a ring of invisibility – suppose that, while wearing it, Ayn could derive some pleasure by helping the poor, but instead could derive just a bit more by severely harming them. Hedonistic egoism would absurdly imply she should do the latter. To avoid this implication, egoists would need to build something like the meaningfulness of a life into well-being, in some robust way, where this would to a significant extent be a function of other-regarding concerns (see chapter 12 of this classic intro to ethics). But once these elements are included, we can (roughly, as above) argue that this sort of egoism will imply strong reasons to reduce existential risk. Add to all of this Samuel Scheffler’s recent intriguing arguments (quick podcast version available here) that most of what makes our lives go well would be undermined if there were no future generations of intelligent persons. On his view, my life would contain vastly less well-being if (say) a year after my death the world came to an end. So obviously if Scheffler were right I’d have very strong reason to reduce existential risk. We should also take into account moral uncertainty.What is it reasonable for one to do, when one is uncertain not (only) about the empirical facts, but also about the moral facts? I’ve just argued that there’s agreement among minimally plausible ethical views that we have strong reason to reduce existential risk – not only consequentialists, but also deontologists, virtue ethicists, and sophisticated egoists should agree. But even those (hedonistic egoists) who disagree should have a significant level of confidence that they are mistaken, and that one of the above views is correct. Even if they were 90% sure that their view is the correct one (and 10% sure that one of these other ones is correct), they would have pretty strong reason, from the standpoint of moral uncertainty, to reduce existential risk. Perhaps most disturbingly still, even if we are only 1% sure that the well-being of possible future people matters**, it** is at least arguable that, from the standpoint of moral uncertainty, reducing existential risk is the most important thing in the world. Again, this is largely for the reason that there are so many people who could exist in the future – there are trillions upon trillions… upon trillions. (For more on this and other related issues, see this excellent dissertation). Of course, it is uncertain whether these untold trillions would, in general, have good lives. It’s possible they’ll be miserable. It is enough for my claim that there is moral agreement in the relevant sense if, at least given certain empirical claims about what future lives would most likely be like, all minimally plausible moral views would converge on the conclusion that we should try to save the world. While there are some non-crazy views that place significantly greater moral weight on avoiding suffering than on promoting happiness, for reasons others have offered (and for independent reasons I won’t get into here unless requested to), they nonetheless seem to be fairly implausible views. And even if things did not go well for our ancestors, I am optimistic that they will overall go fantastically well for our descendants, if we allow them to. I suspect that most of us alive today – at least those of us not suffering from extreme illness or poverty – have lives that are well worth living, and that things will continue to improve. Derek Parfit, whose work has emphasized future generations as well as agreement in ethics, described our situation clearly and accurately: “We live during the hinge of history. Given the scientific and technological discoveries of the last two centuries, the world has never changed as fast. We shall soon have even greater powers to transform, not only our surroundings, but ourselves and our successors. If we act wisely in the next few centuries, humanity will survive its most dangerous and decisive period. Our descendants could, if necessary, go elsewhere, spreading through this galaxy…. Our descendants might, I believe, make the further future very good. But that good future may also depend in part on us. If our selfish recklessness ends human history, we would be acting very wrongly.**”** (From chapter 36 of On What Matters)

### Underview

#### 1] 1ar theory – the aff gets it because otherwise the neg can get away with infinite abuse. It’s drop the debater because the 1ar and 2ar are both too short to win theory and substance.

#### 2] Fairness is a voter – it’s key to objective evaluation of who the better debater is which is the judge’s obligation. Absent fairness, it’s impossible to test which arguments are true because they weren’t subject to rigorous contestation.

### Method

#### The role of the ballot should be a critical pedagogy of hope centering around formulating concrete alternatives to existing conditions. Amsler 08:

Amsler, Sarah S. 2008 “Pedagogy against “dis-utopia”: From conscientization to the education of desire.”

In other words, **critical pedagogy is often assumed to be an inherent source of hope because it disrupts and denounces the illusion of historical fate** and liberates emergent utopian impulses through which self-determination is announced (da Veiga Coutinho 1974: 11). **But** critical educators are now asking **what relevance this understanding of pedagogy might have in a society where desires for individual transcendence and social change are or appear to be absent, devalued or denied. What are the possible consequences of conscientization in conditions where exposing complex power relations and dominant social forces emboldens fatalistic emotions rather than transforming them into hope; where, to paraphrase a well-worn theory, we see through ideologies and yet still buy into them?** Or as Henry Giroux more poignantly asks – and here what appears as hyperbole must be understood in the context of contemporary American political culture and the moral indignities of Abu Ghraib – ‘**what resources and visions does hope offer…when most attempts to interrupt the operations of an incipient fascism appear to fuel a growing cynicism rather than promote widespread individual and collective acts of resistance?’** (Giroux 2002: 38) What become of efforts to democratize knowledge when consuming publics democratically demand authoritarian teaching, or when self-realization is defined as the skilful adaptation to an existing order of things? In such circumstances, **‘critical hope’ becomes a paradoxical problematic rather than an assumed outcome of critical education**. **If the need or desire for personal transcendence or social change is not taken for granted as pre-existing or immanent, then the object of critical pedagogy must either be to create them, or to create the conditions for their emergence**. The aim of educating against the ideological forces of post-modern capitalism is therefore neither simply to recognize the social world, nor to create conditions of emancipatory communication. Instead, it is to produce the value orientations that make both of these activities meaningful in the first place. Hence, **the new movement in critical pedagogy prioritizes the ideational production of ‘critical hope’ as a motivational basis for transformative social action prior to and outside of concrete political or economic struggle, rather than beginning from it. Institutionalized critical education has become a project less in the service of particular political struggles and more an attempt to resist the closure, privatization, apathy, and psycho-emotional ‘coldness’ that is presumed to abort political struggle at its immediate roots of subjective experience.** Writing in defence of higher education as a key site of cultural resistance, **Giroux argued that critical pedagogy is no longer simply a matter of ‘raising consciousness’ about the possibilities for realistic opposition, but a question of educating people to believe that these possibilities are worthwhile in the first place** (1997: 28). This type of educational practice moves beyond cognitive rationality and towards the psychological, emotional and ethical experiences through which it is mediated. **The question here is not only what makes it possible for people to rationally formulate alternatives to existing conditions, but also what makes it possible for them to want to do so**. This reflects a turn away from the duality of ‘reason and freedom’ towards a more complex theory of social agency that includes its ‘morethan-rational’ and ‘less-than-rational’ dimensions (or in other words, the ‘pretheoretical’ and ‘extramundane’ elements) of human action, as well as the social and emotional foundations of inter-subjective ethics (Ahmed 2004; Anderson 2006; Anderson and Harrison 2006). In other words, contemporary critical educators are trying to produce through pedagogy a condition which, according to Honneth, is presumed to have been lost in the mid-twentieth century and yet which critical theory requires for its own justification: an innate, essential and indomitable need for personal and social transformation. This presents a familiar dilemma: ‘how can we imagine these new concepts even arising here and now in living beings if the entire society is against such an emergence of new needs?’ (Marcuse 1970: 76). Or, in the words of C. Wright Mills, we seem to have two choices when theorizing need and desire. On the one hand, he wrote, ‘if we take the simple democratic view that what men [sic] are interested in is all that concerns us, then we are accepting the values that have been inculcated, often accidentally and often deliberately’. On the other hand, ‘if we take the dogmatic view that what is to men’s interests, whether they are interested in it or not, is all that need concern us morally, then we run the risk of violating democratic values’ (Mills 1959: 194). In his habitually accessible way, Mills expressed the stubborn tension between socially constituted need asit-appears or is experienced, on the one hand, and universal norms of need that may be abstracted from or alien to lived experience, on the other. **It is this unhappy no-choice between the reification of immediate particular experience and the authoritarian imposition of abstract generality that critical theory must aim to transcend.**

#### Fragmented politics completely cedes the political to capitalism. Engagement in undercommon communication is too individualized and resists collective and concrete change. This constitutes enjoyment of melancholic pleasures of being distanced and accommodated to the real world, and as a result remains stuck in parasitic oppression without change. Dean13

“Communist Desire”, Jodi Dean, , 2013, LHP AM

An emphasis on the drive dimension of melancholia, on Freud's attention to the way sadism in melancholia is 'turned round upon the subject's own self', leads to an interpretation of the general contours shaping the left that differs from Brown's**. Instead of a left attached to an unaclmowledged orthodoxy,** **we have one that has given way on the desire for communism, betrayed its historical commitment to the proletariat, and sublimated revolutionary energies into restorationist practices that strengthen the hold of capitalism**. **This left has replaced commitments to the emancipatory, egalitarian struggles of working people against capitalism - commitments that were never fully orthodox, but always ruptured, conflicted and contested - with incessant activity** (not unlike the manic Freud also associates with melancholia), and so **now satisfies itself with criticism and interpretation, small projects and local actions, particular issues and legislative victories, art, technology, procedures, and process**. It sublimates revolutionary desire to democratic drive, to the repetitious practices offered up as democracy (whether representative, deliberative or radical). **Having already conceded to the inevitably of capitalism, it noticeably abandons 'any striking power against the big bourgeoisie',** to return to Benjamin's language. For such a left, **enjoyment comes from its withdrawal from responsibility, its sublimation of goals and responsibilities into the branching, fragmented practices of micro-politics, self-care, and issue awareness**. Perpetually slighted, harmed and undone**, this left remains stuck in repetition, unable to break out of the circuits of drive in which it is caught** - unable because it enjoys. **Might this not explain why such a left confuses discipline with domination, why it forfeits collectivity in the name of an illusory, individualist freedom that continuously seeks to fragment and disrupt any assertion of a collective or a common?** The watchwords of critique within this structure of left desire are moralism, dogmatism, authoritarianism and utopianism - watchwords enacting a perpetual self-surveillance: has an argument, position or view inadvertently rukeo one of these errors? Even some of its militants reject party and state, division and decision, securing in advance an inefficacy sure to guarantee it the nuggets of satisfaction drive provides. **If this left is rightly described as melancholic, and I agree with Brown that it is, then its melancholia derives from the real existing compromises and betrayals inextricable from its history - its accommodations with reality, whether of nationalist war, capitalist encirclement, or so-called market demands.** Lacan teaches that, like Kant's categorical imperative, the super-ego refuses to accept reality as an explanation for failure. Impossible is no excuse - desire is always impossible to satisfy. A wide spectrum of the contemporary left has either accommodated itself, in one or another, to an inevitable capitalism or taken the practical failures of Marxism-Leninism to require the abandonment of antagonism, class, and revolutionary commitment to overturning capitalist arrangements of property and production. **Melancholic fantasy (the communist Master, authoritarian and obscene) as well as sublimated, melancholic practices (there was no alternative) shield this left, shield Ltd, from confrontation with guilt over such betrayal as they capture us in activities that feel productive, important, radical.**

#### Targeted demands on the state are *critical*

King ‘16 (has been active in campaigning for refugee rights and against border controls for over a decade, has taught at the University of Nottingham and worked as a caseworker with the British Refugee Council, Natasha, No Borders: The Politics of Immigration Control and Resistance pg 39-42, dml)

But to what extent are these experiments in autonomy ever entirely autonomous? In response to Richard Day’s book on the newest social movements, Richard Thompson argues that it’s unrealistic to talk about creating wholly autonomous social structures because ‘[t]he second they’re consequential is the second they’ll be noticed [by the state]. At that point, it becomes impossible to break the cycle of antagonism by will alone. They will come after us’ (Thompson n.d., emphasis added). In other words, experiments in autonomy are rarely (if ever) entirely free from a relation to the state, or from state antagonism, and we are rarely able to ignore that antagonism. We may antagonize the state, but we are forced also to respond to the state, as a form of self-defence. This has happened time and time again, from the steady illegalization of squatting in Europe, and the tightening of laws around private property, to the infiltration by the CIA of the Black Panther movement, to the struggle between the Zapatistas and the Mexican state. We see this in the struggle for the freedom of movement when, continuing with the examples above, the EU employs Frontex special missions on the Turkish/Greek borders, or when the living spaces of people without papers are raided or destroyed. Whether people have been forced to, or they have seen it as the best strategy, the history of struggles for liberation has been one that included demands on the state. Often this has taken the form of engagement in a politics of rights and/or recognition. From the movement of the Sans Papiers in France, to ‘a Day without Migrants’ in the USA; from campaigns that fight against the detention and deportation of people without papers, to struggles against police violence, resistance through forms of visible collective action have been central to struggles against the border. In most cases such struggles have made demands on the state, particularly through seeking recognition as a group, and through making claims to rights. But to what extent are demands for rights and/or recognition part of a no borders politics? Demands for rights and recognition have played a big part in the struggle for the freedom of movement. Yet there has been a long history of criticism over the politics of citizenship. Rights claims, for example, have been seen as essentially reinforcing the role of the state as the benefactor and grantor of rights, and reinforcing the notion that rights represent entitlements applicable to those who fit certain descriptions of being a human (cf. Arendt 1973 [1951]; Barbagallo and Beuret 2008; Bojadžijev and Karakayali 2010; Elam 1994). From this perspective, demands for rights and representation amount to disputes over the allocation of equality and therefore can only ever achieve a redistribution of that equality, rather than undermining the idea that equality is somehow qualified in the first place. As Imogen Tyler says, ‘[c]itizenship is a famously exclusionary concept, and its exclusionary force is there by design. The exclusions of citizenship are immanent to its logic, and not at all accidental. Citizenship is meant to produce successful and unsuccessful subjects. Citizenship, in other words, is “designed to fail”’ (Tyler, quoted in Nyers 2015: 31). Similar variations of this critique have appeared in the autonomy of migration debate. Representation can also be thought of as a bordering technology that seeks to pacify and discipline expressions of autonomy (or attempts at escape) (Papadopoulos et al. 2008). In other words, the politics of citizenship is problematic because it only ever brings people into the state. ‘Of course migrants become stronger when they become visible by obtaining rights, but the demands of migrants and the dynamics of migration cannot be exhausted in the quest for visibility and rights’ (ibid.: 219). I have a lot of sympathy with these arguments, and because of them am extremely suspicious of a politics of citizenship. But when it comes to actual practices of struggle against the border, a resolute stand against such strategies seems naïve, and insulting to those who have taken part. Migrant-led struggles have often been claims for rights, and ultimately I don’t want to dismiss such practices because they are philosophically problematic. In fact, sometimes to appeal to rights or recognition is the only available strategy in situations of extreme vulnerability, where people’s options are highly limited. Recognizing that we are in relations of power right now means also recognizing that our situation is imperfect and that we have to struggle in our (imperfect) reality. Youssef, a long-time activist for the freedom of movement in Greece, himself of North African descent, talked about the need for pragmatism in tactics; that sometimes we must engage with the state in order to bring about greater freedoms now. ‘Today, in Creta, in Chania, they will catch five people. How can I take them from the jail? I have something in the police station, OK. I have to talk with them today. OK? But tomorrow I can fuck him. He’s not my friend. He’s not my comrade. OK. We are talking today. Tomorrow we are fucking’ (interview, Youssef). His statement reflects how many practices that refuse the border often come out of necessity. In other words they’re rarely part of some intentional or ‘noble’ act to become a rights-bearer, say, and more often pragmatic decisions based on the need to alleviate immediate situations of oppression. A no borders politics seeks to go beyond claims to representation and rights that ultimately stand to reinforce the state. But claims to representation and rights can sometimes do this too. Building on Foucault’s idea that power can be both positive and empowering or negative and dominating, Biddy Martin and Chandra Mohanty suggest that fighting oppression involves seeing power in a way that refuses totalizing visions of it and can therefore account for the possibility of resistance, as in creating something new, within existing power relations (Martin and Mohanty 2003: 104). Suggesting that representation only ever brings people into power therefore means rejecting a vast range of moments when the oppressed have voiced their refusal to be reduced to non-beings outside of politics (Sharma 2009: 475). In other words, resistance is not only or always a reaction to the constraining effects of dominating power, but can also express power as something positive and liberating. From the Black Panthers to the Sans Papiers, demands for representation, when carried out by minority groups for themselves, can challenge the role of dominant power over that group and create new, emancipated subjectivities (Goldberg 1996; Malik 1996). Depending on who it is that acts, then, in some cases demands for recognition/rights can be a radical and transformative political act (Nyers 2015. See also Butler and Spivak 2007; Isin 2008; Nyers and Rygiel 2012). As Nandita Sharma suggests, in response to Papadopoulos et al.’s book Escape Routes, we must recognise that making life and fashioning our subjectivities are intimately intertwined and making ‘new social bodies’ … is not the same as bringing people back into power through identity politics (or identity policing). It is important to recognise that there are significant qualitative differences between subjectivities. There are those that Papadopoulos et al. rightly discuss as bringing us directly back into power – and which account for most of the subjectivities that people hold today (‘race’, ‘nation’, ‘heterosexual’, ‘homosexual’, ‘native’ and so on) – but there are also those that are born of practices of escape. (Sharma 2009: 473, emphasis in original)