## Offs

### T

#### Interpretation: The aff may only derive offense from the implementation of the resolution as a policy. To clarify, deriving offense from the reading of the aff itself or an alternative method is bad.

#### “Resolved” means enactment of a law.

Words and Phrases 64 Words and Phrases Permanent Edition (Multi-volume set of judicial definitions). “Resolved”. 1964.

Definition of the word **“resolve,”** given by Webster is “to express an opinion or determination by resolution or vote; as ‘it was resolved by the legislature;” It **is** of **similar** force **to the word “enact,”** which is defined by Bouvier as **meaning “to establish by law”.**

#### Violation:

#### Prefer my model of debate –

#### 1] Limits – absent the rez the aff could be anything which makes infinite affs. That destroys fairness – their abuse is supercharged by two things. A] they literally have infinite prep since the 2-month topic reset doesn’t apply and B] they can cherry pick their aff to be something trivially true like racism bad which I can’t substantively deny. C] They also create a moral hazard that leads to affs only about individual self-care so even if you think this aff is answerable, the ones they incentivize are not, so assume the worst possible affirmative when weighing our impacts.

#### 2] Clash – I don’t have prep specific to their non-T aff to generate in depth clash – they can leverage their specific knowledge of their aff to always frame out generics and use their extensive frontlines to crush any pre round prep I generated. That A] destroys fairness because it’s impossible for me to engage with the aff, B] outweighs on education since arg interaction is the only specific way we learn in debate, C] turns their aff scholarship – the only way to create change through debate is by allowing clash or else the judge and everyone write off your substance and win as a non-T aff – allowing clash forces people to actually consider your claims and D] is an independent voter that outweighs on constitutivism – clash is what differentiates between debate and speech which means that it’s a prerec to having a debate in the first place

#### 3] Switch side debate –

#### A] defending different positions is key to ideological reflexivity

#### B] you can read the aff on the neg, which solves the aff

#### Vote on fairness –

#### a] testing – you can’t evaluate their args because the round was skewed – if they have 10 minutes to win their aff or fairness bad and I have 1 for the opposite they will win

#### b] they concede its authority via speech times and tournament procedure

#### c] hacking – if they say it’s irrelevant then you can be unfair against them and vote for me

#### d] the ballot can never alter subjectivities but it can rectify unfairness

#### e] jurisdiction – the ballot says to vote for the better debater not the better cheater – that’s a metaconstraint

#### f] inclusion – nobody plays an unfair game – that’s lexically prior to their reading of the aff in debate

#### Competing interps over reasonability – a] to avoid judge intervention and b] framework is about the very structure of debate so they should be forced to defend theirs

#### Drop the debater – a] to deter future abuse and b] drop the arg on T is functionally the same

#### No RVI – a] logic – I’m fair vote for me makes no sense and outweighs because all args must be logical, b] baiting – rvis incentivize abuse to win on theory

#### TVA –

#### A] say that the resolutional plan collapses monopolization of information in medicine via data exclusivity or patents.

#### B] disads to the TVA just prove there is neg ground which turns the disads.

#### C] much better for aff scholarship because there are different perspectives on marxism – orthodox vs. semiocap

### NC

Truth-testing

A] collapses

B] inclusion

C] judge, rickert

#### Ethics must start from a conception of the subject – you must understand the self to prescribe it action. Anything else is circular by allowing moral conclusions to define the premise of subjectivity, which then can define morality.

#### The subject is intrinsically rational and sensible. However, the distinction between the noumenal and the phenomenal world is not an uncrossable bridge – freedom must be won through socially building conceptions of it, Schroeder 05:

Schroeder, Jeanne L. "Unnatural rights: Hegel and intellectual property." U. Miami L. Rev. 60 (2005): 453.

In this section I will address three common mis-readings of Hegel's personality theory that might lead to the incorrect conclusion that logic dictates that society recognize intellectual property. First, I show that Hegel believes that there are no natural rights of any sort, let alone natu- ral property rights. Second, I address the closely related point that Hegel rejects a first-occupation justification of property rights. Third, I show that intellectual property has no privileged place in personality theory. For simplicity, I stated that Hegel started his analysis by contin- gently adopting the notion of the free individual in the state of nature. I now more carefully explain my terminology as we consider Hegel's the- ory of the relationship between freedom and nature. Hegel thought that the freedom of the autonomous individual in the "state of nature" was only potential. Hegel argued not merely that the individual must leave the state of nature and go out into the real world if he is to make his freedom actual as a matter of fact. He also believed that the individual is driven by a passionate desire to do so. A complete discussion as to why the individual would desire to leave this uterine state of ignorant bliss is beyond the scope of this Arti- cle. Suffice it to say, it relates to one of the fundamental points of Hegel's idealism and theism. Hegel's idealism should not be confused with a vulgar neo-Platonic concept of an ideal world "out there" beyond the imperfect physical world. Such a notion is more reminiscent of the Kantian notion of an unknowable, intellectual, necessary, eternal, and transcendent world of essences called the noumenon or "thing-in-itself' beyond the contingent, empirical, temporary, and immanent world of appearance that can be known by experience (the phenomena). Hegel's metaphysics is an extended critique of Kant's. **Hegel rejects all concepts of transcendence**. 9 8 **There is no essence beyond appearance.** 99 Essence only exists insofar as it appears. 1" Or more rad- ically, essence is nothing but appearance properly understood. Hegel's is a radically materialistic philosophy, 01 but not an atheistic one. None- theless, Hegel's God, or Spirit, is not transcendent, but immanent in the material world. Why this is significant for our purposes is that **it follows from Hegel's rejection of transcendence that there can be no potentiality with- out actuality-what claims to be potential must become actual or reveal itself a liar**. Actually, the theory is even more radical than this. As I have argued elsewhere,102 Hegel's logic is retroactive, not prospective. **Potentiality is only retroactively revealed after something becomes actual.** **Consequently, if the autonomous individual in the state of nature claims to be free, and if this radically negative freedom is only potential, then the individual's claims to freedom can only be retroactively tested after he leaves the state of nature and makes his freedom affirmative and actual**. 103 Another way of saying this is that the liberal "state of nature" is not natural at all. Rather, it is a logically "necessary" hypothesis that is retroactively posited by the fact that we occasionally observe actualized freedom in modern constitutional states. As such, the "state of nature" is actually created by human thought. To Hegel, like Kant, real "nature" is the empirical, mechanical world governed by the causal laws of neces- sity where there is no freedom. Any freedoms and rights derived from the liberal conception of the hypothetical "state of nature" by definition cannot literally be natural. 2. NATURE AND RIGHTS Hegel sharply distinguishes between natural and positive law, and locates rights within the latter. He states, "[t]here are two kinds of laws, laws of nature and laws of right: the laws of nature are simply there and are valid as they stand ....The laws of right are something laiddown, something derivedfrom human beings."'" The liberal "state of nature" is, in fact, the hypothesis that autonomous individuality is a necessary, albeit inadequate, moment of human personality that we retroactively posit to understand political freedom. If so, what is the status of "nature" and its relationship to rights and freedom? Once again, I do not pretend to give a comprehensive account of Hegel's philosophy of nature, but will point out one aspect relevant to this Article. The first thing to note is to reiterate the simple point that there can be no "rights" in the hypothetical state of nature because the "state of nature" is defined as autonomy. Rights are necessarily interrelational. Hegel's point is more subtle and powerful than this, however. More specifically, there is no freedom in the empirical natural world. This can probably best be explained by going back to Kant's famous analysis of antinornies presented in his CritiqueofPureReason."5 An antimony is a logical paradox, or two statements that seem to be equally logically required yet are in contradiction. To say they are in contradiction means not merely that they are mutually inconsistent, but that they are the only logically possible alternatives. This suggests not merely that if one statement is true then the other must be false, but also that if one statement is proven to be false, the other is proven to be true. 0 6 For reasons that do not concern us here, Kant identifies four antinomies that he divides into two dyads: two "mathematical" antino- mies and two "dynamical" antinomies. He claims to solve the two mathematical antinomies by showing that neither statement is true because there is a heretofore unrealized third alternative that may be true. 10 7 He claims to solve the two dynamic antinomies by arguing that both statements are true, but that their contradiction is merely apparent so that, in fact, they can be reconciled.108 It is Kant's third antinomy of freedom and nature that concerns us. The thesis of Kant's first antinomy is that freedom can exist in the world.10 9 Kant is referring to negative freedom as the uncaused cause- the potential for pure spontaneity, action beyond necessity. Like all of Kant's theses, this is a dogmatic proposition posited by reason alone. 1 0 Its antithesis is that everything is subjected to the causal laws of nature-there are no uncaused causes and, therefore, no freedom.' Like all of Kant's antitheses, this is an empirical proposition reached by applying logic to our experience of the world.1 1 2 As this is a dynamic antinomy, Kant must solve this paradox by arguing that the contradiction between the two propositions is only apparent. If they are properly understood, then they can be reconciled. Kant argues that both propositions are true, but about different aspects of the world. Kant relies on his distinction between the phenomenal, or empirical, contingent, changing world of appearance that we can know from experience, and the noumenal, or transcendental, necessary, eternal world of essences, or the "thing-in-itself' which we do not know directly, but can infer through logic.113 **It is true, Kant states, that the entire phenomenal world is natural and therefore subject to the laws of nature-i.e., everything empirical is caused.1 14 It is also true, however, that freedom exists in the transcendental, non-empirical world of the noumena.15 Indeed, these conclusions follow from his definitions of phenomena and noumena. 11 6 If a "noumenon" were caused by some- thing else, then it would be contingent on that other thing and, therefore, not a noumenon. Conversely, if a "phenomenon" were free of an exter- nal cause, then it would not be a mere phenomenon, but a noumenon. The question that this analysis proposes is, if freedom is noumenal, can it manifest itself in the phenomenal world, or is merely a theoretical construct?**1 7 To put this in Kant's idiosyncratic terminology, is free- dom "practical?" ' 1 8 By extension, one might ask, since each individual human being is embodied and, therefore, phenomenal,119 can man achieve freedom? In the Critique of Pure Reason, **Kant claims to show that freedom is at least theoretically possible in the phenomenal world. He argues that although all phenomena are caused by something else, the cause need not itself be phenomenal.** A phenomenon can be caused by a nou- menon. 2 ° **Because noumena are free (uncaused), their free acts can appear in the world through the phenomena they cause. Although each individual human being is phenomenal, man's essence (his spirit or soul, his status as the liberal, autonomous individual) is noumenal and there- fore free.**12' This implies that it is at least theoretically possible that the noumenal aspect of man can actualize his freedom by causing his phe- nomenal self to act. In the Critiqueof PracticalReason, Kant tries to prove not merely that practical reason is theoretically possible but that we have good reason to think it exists. There are as many problems raised in this analysis as are solved. Even ardent Kantians are somewhat embarrassed by it.'2 2 Hegel called Kant's argument "a whole nest... of faulty procedure." 123 My simpli- fied account is not an attempt to develop a comprehensive critique of Kant. My limited point is that, as I have argued elsewhere, 24 much of Hegel's speculative logical method can be seen as being inspired by Kant's idea of antinomy. I characterize **Hegel's complaint against Kant as an accusation that Kant does not have the courage of his own convictions and is afraid to follow his insights to their logical extremes.** Hegel, in effect, criticizes Kant for thinking that there were only four antinomies. Rather, Hegel's entire universe is constituted by a fundamental, essential contradic- tion.125 Further, Hegel criticizes Kant for thinking that contradiction is a problem that must be "solved." Contradiction "is not to be taken merely as an abnormality which only occurs here and there, but is rather the negative as determined in the sphere of essence, the principle of all self- movement . "..."126 In other words, **contradiction is a universal fact about the world. It is correct that contradictions are unstable and must be resolved, but each resolution is temporary and leads to a new contra- diction ad infinitum. Far from being frightening or disturbing, this merely means that the universe is dynamic, not static. Contradiction is the engine of change.** This means that Hegel rejects the Kantian noume- nal-phenomenal distinction. **To Hegel, there can be no necessary, perma- nent, unchanging essence (noumenon) behind the contingent, temporary, empirical world of appearances that is in a constant state of flux.** To Hegel, it is appearance all the way down. Finally Hegel's sublative logic can be seen as a rejection of Kant's specific claims to have solved his four antinomies by assuming that he had to show either that both sides were true, but not in contradiction, or that both the thesis and antithesis were false because there is a third alternative. In contrast, through sublation (the standard but poor English translation of Hegel's term for the logical method of resolving contradic- tion) one realizes that both sides are simultaneously equally true and false, thereby generating a third alternative that simultaneously negates 127 Regardless of these differences between Hegel and Kant, I believe that the Philosophy of Right can be seen as Hegel's struggle to come to grips with the specific contradiction that Kant identifies in the third antinomy: freedom v. causality. In his analysis, **Hegel accepts Kant's proposition drawn from experience that all nature is subject to natural laws of causation.** This means that nature is fundamentally unfree and implies that actual (practical) freedom must be unnatural by definition. **Yet on the other hand, Hegel also begins his analysis by contingently accepting Kant's presupposition that the most basic notion of human personality is self-consciousness as free will.** Hegel seeks to prove this presupposition (that freedom is possible) by finding that freedom actu- ally exists in the phenomenal world. Because Hegel rejected transcendence, he could not adopt Kant's proposed answer to this problem: freedom is noumenal, but noumena can cause phenomena. To Hegel, Kant's proposal answered nothing. According to Kant's own theory, we can know nothing about the nou- menon. Consequently, Kant's proposition is equivalent to saying that we can know nothing about freedom. Hegel was, in effect, responding to Kant: "You are being inconsistent. Your philosophical writings show that you know a lot about freedom. By your definitions, therefore, free- dom must be actual." Hegel's counterproposal was that **actual freedom is not natural but artificial: a human creation, created out of natural materials. Legal sub- jectivity (as well as higher stages of personhood) is, therefore, not a natural state but a hard-won achievement.** The story of the development of human consciousness, to Hegel, was the struggle of man to free him- self from and overcome his natural limitations. "Hence the personality of the will stands in opposition to nature as subjective.... Personality is that which acts to overcome [] this limitation and to give itself reality .... "128 **Abstract rights are, therefore, the first most primitive step in man's attempt to actualize his freedom, understood as the overcoming of nature**. The basis [] of right is the realm of spirit in general and its precise location and point of departure is the will; the will is free, so that freedom constitutes its substance and destiny [] and the system of right is the realm of actualized freedom, the world of spirit produced 1 29 **Rights are, therefore, not merely unnatural in the sense of artificial (man made), they are a means by which man distinguishes himself from nature. 130**

#### Property and legal contracts are the only medium of recognition and intersubjectivity, Schroeder 2:

\*bracketed for gendered language\* Schroeder, Jeanne L. "Unnatural rights: Hegel and intellectual property." *U. Miami L. Rev.* 60 (2005): 453.

Contract solves this problem. To reiterate, Hegel believes that **subjectivity is created not by possession per se, but by intersubjective recognition by other subjects. Property is only a medium for this purpose. This regime of recognition is abstract right-the rule of law. Subjectiv- ity is the capacity to bear legal rights and duties recognized by, and enforceable against, other subjects**. To concentrate on the specific object of property is to conflate subject with object-the opposite of recognizing the person's unique subjectivity. This is in sharp contradis- tinction to Radin's proposition that the merging of owner with her per- sonal property furthers human flourishing. Hegel, looking forward to psychoanalysis, considers such a relationship to be destructive-an addiction, or more technically, fetishism. **In contract, each party remains identifiable as a rights-bearing sub- ject through object relations because the object [t]he[y] gives up in contract is simultaneously replaced by a new object. That is, the contracting parties recognize each other as rights-bearing subjects, or persons having the capacity not only to own property, but to respect the property rights of others, and to live up to his contractual obligations.** In Hegel's words: [Contract] contains the implication that each party, in accordance with his own and the other party's will, *ceases* to be an owner of property, *remains*one, and *becomes* one. This is the mediation of the will to give up a property (an individual property) and the will to accept such a property (and hence the property of someone else). The context of this mediation is one of identity, in that the one voli- tion comes to a decision only in so far as the other volition is present.74 Hegel went so far as to assert that "[tihe whole issue can also be viewed in such a way that alienation is regarded as a true mode of taking posses- sion. 75 That is, **possession is the recognition by others that a specific object belongs to a specific subject. Paradoxically, this recognition only *expressly* occurs *retroactively* when the owner contracts to sell that object to another person. In other words, the identification of subject to object in possession is only *effectively* recognized at the moment when another subject pays the first subject to release the object from her possession.** Once again, one must remember Hegel's radical definition of objects as anything that is not the individual herself. This includes not only intangibles, but also an individual's own labor is an object separate from her personhood. Consequently, service contracts, whereby the individual alienates part of her productive capacity in exchange for wages is, to the Hegelian analysis, a contract for the exchange of prop- erty. In fact, the service contract is an excellent example of the logic of Hegel's dialectic of recognition. In our modem capitalistic society, a primary way we recognize each other is through our occupations. **The mutual intersubjectivity of contract is necessary because**, according to Hegel, **one becomes a subject** (eine Person)**only when one is recognized as such by another subject. Subjectivity (the capacity to bear legal rights and duties) exists only insofar as rights are enforceable.** **Since all persons logically begin as abstract individuals (not subjects), in order to achieve subjectivity, each individual must first make other indi- viduals into subjects by recognizing them as such. This means that it is impossible to create rights by unilaterally claiming them for oneself.** Since rights are intersubjective they can only be created intersubjec- tively. This is one reason why the Lockean attempt to justify claims of property through first-appropriation fails. The conundrum should be obvious. How does anyone become a subject recognized by other subjects when there are no subjects in the state of nature? Where does thefirst subject come from? The Hegelian answer is that **multiple subjects must come into existence simultaneously**. This is the alchemy that Lacan calls "love"-the relationship in which each lover sees in his beloved more than she has, that empowers the beloved to live up to the lover's expectations and become more than she once was.76 Contract is the most primitive form of eroticism-albeit a pathetic, and unromantic one. **Each individual,by admitting that another individ- ual has legal rights** (i.e., the right to possess and contract to exchange the object to be acquired), **makes that individual into more than she once was-she is no longer an individual, but a subject**. 3. FORMALITY AND RECOGNITION The Hegelian logic of alienation confuses many commentators because they do not recognize the purely formal nature of subjectivity and abstractright. Here, **object relations are purely instrumental and subordinate to the goal of recognition.** Hegel, like Kant, defines a free individual as an end in and for her self, and not the means to the end of another. In contrast, an object is something that is the means to the ends of something else. **In abstract right, each individual paradoxically wants both-that other individuals help him reach his end of becoming a subject, and that other individuals remain an end in and to themselves rather than merely a means to the first person's ends. Subjectivity is only created through recognition as such by a person that one recognizes as another subject. To treat another person as one's means, rather than as his own ends, is to fail to recognize him as an individual or a subject. The question then becomes, how can one accomplish one's own ends (which requires action by another person) without impinging on the ends of that other person or treating her like a means (an object)?** The Hegelian answer is that subjects can mediate their relationship through objects. **Both subjects mutually exploit the objects of exchange as means of recognizing each other-each fulfills her own ends (becom- ing a subject) while respecting the ends of the other (also to become a subject). The two subjects are united in a common will, in the sense that each wills his own ends, but these potentially competing ends tempora- rily coincide in the meeting of minds known as contract.** This means that, as a logical matter, one does not enter into object relations for the sake of the object itself or for the "natural" or other concrete functions they might serve. The specific characteristics of any object of a property claim is irrelevant and should be a matter of indifference to the subjects, from a logical standpoint. Right is something utterly sacre dfor the simple reason that it is the existence [ ] of the absolute concept, of self-conscious freedom. But the formalism of right-and also of duty-arises out of the dif- ferent stages in the development of the concept of freedom. In oppo- sition to the more formal, i.e. more abstractand hence more limited kind of right, that the sphere and stage of the spirit in which the spirit has determined and actualized within itself the further moments con- tained in its Idea possesses a higher right, for it is the more concrete sphere, richer within itself and more truly universal. Each stage in the development of the Idea of freedom has its distinctive right, because it is the existence of freedom in one of its own determinations. When we speak of the opposition between morality or ethics and right, the right in question is merely the initial and formal right of abstract personality. Morality, ethics, and the interest of the state-each of these is a distinct variety of right, because each of them gives determinate shape and existence to freedom.77 In other words, a full concrete personality requires the entire regime that Hegel calls Recht, which includes not only abstract right (property and contract), but morality and ethics. Abstract right is the most primitive form of right that only creates the form necessary for freedom-the empty vessel of legal subjectivity understood as the mere ability to accept legal rights and duties imposed by others. The content of person- ality will be added by morality and ethics. Consequently, Hegel states with respect to the legal subject: Since particularity, in the person [i.e. what I am calling the subject], is not yet present as freedom, everything which depends on particu- larity is here a matter of indifference. If someone is interested only in his formal right, this may be pure stubbornness, such as is often encountered in emotionally limited people; for uncultured people insist most strongly on their rights, whereas those of nobler mind seek to discover what other aspects there are to the matter in ques- tion. Thus abstract right is initially a mere possibility, and in that respect is formal in character as compared with the whole extent of the relationship. Consequently, a determination of right gives me a warrant, but it is not absolutely necessary that I should pursue my rights, because this is only one aspect of the whole relationship. For possibility is being, which also has the significance of not being. 78 Indeed, it is precisely the function of the element of alienation to make this irrelevance and indifference manifest. Nevertheless, even as subtle an analyst as Hughes, who expressly recognizes that the fact that object relations can also serve natural functions (food and shelter) is irrelevant to a Hegelian analysis, 79 misses this point. Hughes finds alienation "incoherent"80 because the subject loses the object that supposedly makes the subject recognizable.8' He finds this particularly problematic in Hegel's discussion of copyright, because the objects of copyright, being the author's creations, seem intrinsically linked to the author's personality.82 Consequently, he infers that the objects of copyright uniquely serve the goal of differentiating and identifying the author and concludes that complete alienation of artistic works might defeat the goal of the creation of personality. Consequently, he sees the Hegelian analysis of property as supporting certain restraints on alienation of copyrightable material, such as in the droit morale under which an artist retains some control over her creations after sale.83 But this critique is based on the misimpression that, to Hegel, the legal right of property relates to the creation of the full complex per- sonhood of empirical human beings situated in relations of family, civil society, and state.84 But **legal relationships relate only to the creation of legal subjects-persons capable of bearing rights and duties. The legal subjectivity mutually constituted with abstract right is, therefore, equally abstract and formal. Moreover, it is precisely abstractness and formality that enable abstract right and legal subjectivity to serve as the substra- tum for the concrete freedom of citizenship.** Above, I mentioned in passing an analysis that I have developed extensively elsewhere: Hegel's property jurisprudence is essentially erotic because contract is a primitive type of "love."8 5 My goal in doing so was to break down the dichotomy between rationality and passion that implicitly underlies both utilitarianism and romanticism. To Hegel's jurisprudence, rationality and passion are two sides of the same coin.86 **Reason tells the autonomous individual that he must actualize his freedom and to do so requires recognition by other subjects. Conse- quently, the free individual rationally decides that he must give way to the desire for others. Because abstract right is created in order to enable the interrelationship of mutual recognition to occur, it is erotic.** The "love" and desire that exist at the level of abstract right are only a pale shadow of the passions we feel towards our family, lovers, and friends. Consequently, I have argued vociferously that although utilitarians like Posner are right in seeing a parallel between economic activity and sexuality, they are wrong in trying to reduce the latter to a form of the former.87 Rather, from the Hegelian position, the former (economics) is merely a step that makes the latter (eroticism) possible. That is, contract establishes the form of love, not its content. Conversely, Hughes and Radin are equally mistaken in trying to argue that property can perform a direct function in the creation of the full, loving artistic personality. Although Hegel was a great defender of legalism and capitalistic markets, he also insisted that they be limited to their appropriate sphere. To analyze more complex interrelationships in terms of abstract right (property) is not merely erroneous. Never one to mince words, Hegel called it "crude" and shameful.88 Consequently, only the most base persons stand on their rights.8 9 The noble person accords rights to others. This is why Hegel condemns the classical lib- eral concept of government as social contract-citizenship is Hegel's most highly developed level of personality, and therefore, unlike the subject, cannot be comprised solely by legal categories. A corollary of this is that it is equally incorrect, indeed shameful, to adopt the romantic position towards copyright that conflates the legal relationship of property with the flowering of personality in artistic expression. From a Lacanian point of view, to do so is literally per- verse. Specifically it is fetishistic-the identification of objects with subjects.90 The specific content of objects of copyright has nothing to do with their status as a legal concept. To Hegel, saying copyright is "property" is not to say that society must or should establish a copyright regime. This decision can only be made by pragmatic reasoning. In this sense, Hegel's theory has a surprising utilitarian twist. Society's desire to further creativity may, however, be a good pragmatic argument in favor of such a regime.

#### Thus, the standard is consistency with abstract right.

#### Negate for personality theory – IP is uniquely an extension of reason and sensibility through personal investment – Priya 08:

Priya, Kanu. "Intellectual Property and Hegelian Justification." NUJS Law Review, vol. 2008, no. 2, 2008, p. 359-366. HeinOnline. // LHP PS

**Many proponents of intellectual property law seek refuge in a personality theory of property associated with GW.F. Hegel.** This theory seems to protect intellectual property from potential attacks by a utilitarian analysis that would recognizes property only contingently insofar as it furthers society's goals of utility or wealth maximization. **Personality theory, in contrast, supposedly offers a principled argument that intellectual property right must be recognized by a just state, regardless of efficiency considerations**. Personality theory **also seems to protect intellectual property from assault by critics who maintain that it is not a form of "true" property at all.** Finally, **the theory has also been used to** support **an argument for heightened protection of intellectual property beyond that given to other forms of property - the Continental "moral" right of artists in their creations is an example**! **Hegel's view of property, with its foundation on the notion of the individual and the formation of self-identity, "is perhaps most directly applicable to the narrower notion of intellectual property."** Also characterized as the "personality theory" of property, **Hegel's rationale suggests that the inventor has imbued the invention with his personality or will, making the process of creation an intensely individualistic one.** **Hegel postulates that property and ownership are important milestones in the journey toward self-development, and are essential to survival as well.** **These are ideas that should make sense to emerging countries seeking to justify their protection of intellectual property rights.** However, this view may not successfully justify intellectual property rights in cultural systems that are less centered on the individual and more focused on the identity of the community and on the protection of community property. The individualistic underpinnings of patent law, expounded by philosophers such as Hegel, may be difficult to incorporate into more community-oriented societies.9 It has long been argued that intellectual property is justified on a number of alternative bases. Economic, labour and spiritual theories have been advanced to justify propertising intellectual creations. **Intellectual property theorists**, following Hegel's and Kant's thoughts on the subject, **contend that the personhood theory of property is especially true when the property is a work of art. They argue that works of art are created through a person's mental labor and thus embody more of her individual essence of being than works created through routine physical labor.** **Since artistic works are part of an artist's very identity, she never should be completely separated from the work. The personhood theory of intellectual property thus supports not only the idea of copyright in artistic products, but also the idea of moral rights**. The debate surrounding the correct theory about why intellectual property exists is not purely academic. It can play a decisive role in the outcome of copyright cases. For example, in Sony v. Universal City Studios (The Betamax Case) 1, the Supreme Court held the videotaping of televised programs for purposes of "time-shifting" could be considered fair use. The discussion of reputation and values shows that open-source software can embody and express personality, but it assumes a capacity for software to express personality similar to that of other copyright subject matter. This assumption requires examination, because software has unique attributes as copyrightable subject matter. Despite the differences, in terms of personality expressing capacity, the similarity is sufficiently close to conclude that the opensource approach carries and expresses personality equivalently to moral rights, even if traditional closed software does not, or perhaps cannot, because the source code is not available to be viewed. The other moral rights also fit the personality theory. The author or artist needs to control the first publication or disclosure of the work in order to ensure that when the work leaves the author's domain, it embodies the personalityview desired. Once released, the right of attribution ensures that the original author or artist retains the degree of association with the work under which the author released it. This is often done by name, but could also be under a pseudonym, or be anonymous. The right to withdraw the work upon remuneration also fits the personality theory. If the artist changes the genre or reworks the image, it may be fitting, from a moral rights perspective, for the artist to withdraw from circulation works that clash with a prior era in the artist's development. The justifications advanced for intellectual property law have been many and varied. It has been suggested that intellectual property is analogous to tangible property and justifications used to support the propertisation of physical creations can be advanced for intellectual ones as well. A common assertion used tojustify propertising **intellectual works is that intangible creations require property protection because they are economically valuable works worthy of protection in their own .** This is essentially an economic justification, one premised upon overcoming market failure and market imperfections. **Economic justification for propertising creative work is premised on the very foundation that without proper protection authors would have insufficient incentives to write new works unless they are compensated with property rights.**

## Case

### Turns

Vote neg on presumption –

#### Uniqueness overwhelms the link and the aff is not reverse causal –

#### A] the aff can only change patents and life saving patents, not the overall structure of capitalism.

#### B] they can’t solve for manufacturing differentials that exist in the world, this is proven by the fact that they cause counterfeits Unpatented medicine cause counterfeits—

Lynbecker 16 [(Kristina M. L. Acri née, an Associate Professor of Economics at Colorado College in Colorado Springs, where she is also the Associate Chair of the Department of Economics and Business and the Gerald L. Schlessman Professor of Economics. Dr. Lybecker’s research analyzes the difficulties of strengthening intellectual property rights protection in developing countries, specifically special problems facing the pharmaceutical industry.) “Counterfeit Medicines and the Role of IP in Patient Safety,” IPWatchDog, 7/27/16. <https://www.ipwatchdog.com/2016/06/27/counterfeit-medicines-ip-patient-safety/id=70397/>] RR

The threat of counterfeit goods took center stage on June 15th in a hearing convened by Senate Finance Committee Chairman Orrin Hatch (R-Utah). Focusing on trade opportunities and challenges for American businesses in the digital age, Senator Hatch stated: “The Organization for Economic Co-Operation and Development (OECD) recently released a study that shows that counterfeit products accounted for up to 2.5 percent of world trade, or $461 billion, in 2013. This is a dramatic increase from a 2008 estimate that showed that fake products accounted for less than half that amount. Counterfeits are a worldwide problem, but the OECD estimates that the United States is the hardest hit, followed by Italy and France. Of the estimated $461 billion in counterfeit trade in 2013, goods with registered intellectual property rights in the U.S. represented 20 percent, or $92 billion, of the OECD estimate.”[1] As the author of the chapter on illicit trade in counterfeit medicines within the OECD report, I worry that global policymakers may be working against each other when it comes to battling counterfeit drugs, especially in the context of intellectual property rights. While the Senate Hearing and the OECD report highlight the importance of strong IP protection in combating the growing threat of counterfeit goods, their efforts coincide with an initiative by the UN Secretary-General that has the potential to greatly worsen the problems of counterfeit pharmaceuticals. UN Secretary General Ban Ki Moon’s High Level Panel on Access to Medicines proposes “to review and assess proposals and recommend solutions for remedying the policy incoherence between the justifiable rights of inventors, international human rights law, trade rules and public health in the context of health technologies.”[2] The High Level Panel is a thinly veiled attempt to undermine the intellectual property rights architecture that incentivizes pharmaceutical innovation and protects patients from counterfeit medicines. While patents and other forms of intellectual property rights are widely recognized as fostering pharmaceutical innovation, they also serve to inhibit counterfeiting. The World Health Organization has determined that counterfeiting is facilitated where “there is weak drug regulatory control and enforcement; there is a scarcity and/or erratic supply of basic medicines; there are extended, relatively unregulated markets and distribution chains, both in developing and developed country systems; price differentials create an incentive for drug diversion within and between established channels; there is lack of effective intellectual property protection; due regard is not paid to quality assurance”.[3] [Kristina] According to INTERPOL estimates, approximately 30 percent of drugs sold worldwide are counterfeit.[4] However, as is the case with many other counterfeit trade statistics, the origins of this figure are somewhat uncertain, as is the methodology used to make the calculation. Perhaps the most widely-cited statistic originates from the World Health Organization, which estimates that 10 percent of the global market for pharmaceuticals is comprised of counterfeits and reports place the share in some developing countries as high as 50-70%.[5] While difficult to measure, estimates do exist on the extent of the market for counterfeit drugs and the harm done to human health. As noted in my chapter in the OECD report, “INTERPOL estimates that more than one million people die each year from counterfeit drugs.[6] While counterfeit drugs seem to primarily originate in Asia, Asian patients are also significantly victimized by the problem. A 2005 study published in PLoS Medicine estimate that 192,000 people are killed in China each year by counterfeit medicines.[7] According to work done by the International Policy Network, an estimated 700,000 deaths from malaria and tuberculosis are attributable to fake drugs. [8] The World Health Organization presents a much more modest number noting that malaria claims one million lives annually and as many as 200,000 may be attributed to counterfeit medicines which would be avoidable if the medicines available were effective, of good quality and used correctly.[9] Even this number is double that presented by academic researchers Amir Attaran and Roger Bate who claim that each year more than of 100,000 people around the world may die from substandard and counterfeit medications.[10]” [11] Given the devastating impact of counterfeit medicines on patients and the importance of intellectual property protection in combating pharmaceutical counterfeiting, it is troubling that the UN High Level Panel seems poised to prevent a series of recommendations that will undermine public health under the guise of enhancing access. Without the assurance of quality medicines, access is meaningless. Moreover, while falsely presenting intellectual property rights as the primary obstacle to global health care, the High Level Panel downplays a host of other factors that prevent developing country patients from getting the drugs they need: inadequate medical infrastructure, insufficient political will, a shortage of clinical trials in nations where neglected diseases are endemic, poverty, and insufficient market incentives.

### Poverty

#### Cap decreases poverty and increases life expectancy by a fold of 120 – empirics.

Horowitz 16, Steven, Tenured Professor of Economics at St. Lawrence University author of Hayek’s Modern Family: Classical Liberalism and the Evolution of Social Institutions, Capitalism Is Good for the Poor, 2016, https://fee.org/articles/capitalism-is-good-for-the-poor/

Critics frequently accuse markets and capitalism of making life worse for the poor. This refrain is certainly common in the halls of left-leaning academia as well as in broader intellectual circles. But like so many other criticisms of capitalism, this one ignores the very real, and very available, facts of history. Nothing has done more to lift humanity out of poverty than the market economy. This claim is true whether we are looking at a time span of decades or of centuries. The number of people worldwide living on less than about two dollars per day today is [less than half](http://www.worldbank.org/en/topic/poverty/overview) of what it was in 1990. The biggest gains in the fight against poverty have occurred in countries that have opened up their markets, such as China and India. If we look over the longer historical period, we can see that the trends today are just the continuation of capitalism’s victories in beating back poverty. For most of human history, we lived in a world of a few haves and lots of have-nots. That slowly began to change with the advent of capitalism and the [Industrial Revolution](https://fee.org/articles/a-myth-shattered-mises-hayek-and-the-industrial-revolution/). As economic growth took off and spread throughout the population, it created our own world in the West in which there are a whole bunch of haves and a few have-more-and-betters. For example, the percentage of American households below the poverty line who have basic appliances has grown steadily over the [last few decades](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2559403), with poor families in 2005 being more likely to own things like a clothes dryer, dishwasher, refrigerator, or air conditioner than the average household was in 1971. And consumer items that didn’t even exist back then, such as cell phones, were owned by half of poor households in 2005 and are owned by a substantial majority of them today. Capitalism has also made poor people’s lives far better by reduc[ed]ing infant and child mortality rates, not to mention maternal death rates during childbirth, and by extending life expectancies by decades. Consider, too, the way capitalism’s engine of growth has enabled the planet to sustain almost 7 billion people, compared to 1 billion in 1800. As [Deirdre McCloskey](http://www.press.uchicago.edu/ucp/books/book/chicago/B/bo9419313.html) has noted, if you multiply the gains in consumption to the average human by the gain in life expectancy worldwide by 7 (for 7 billion as compared to 1 billion people), humanity as a whole is better off by a factor of around 120. That’s not 120 *percent* better off, but 120 times better off since 1800. The competitive market process has also made education, art, and culture available to more and more people. Even the poorest of Americans, not to mention many of the global poor, have access through the Internet and TV to concerts, books, and works of art that were exclusively the province of the wealthy for centuries. And in the wealthiest countries, the dynamics of capitalism have begun to change the very nature of work. Where once humans toiled for 14 hours per day at backbreaking outdoor labor, now an increasing number of us work inside in climate-controlled comfort. Our workday and workweek have shrunk thanks to the much higher value of labor that comes from working with productive capital. We spend a much smaller percentage of our lives working for pay, whether we’re rich or poor. And even with economic change, the incomes of the poor are much less variable, as they are not linked to the unpredictable changes in weather that are part and parcel of a predominantly agricultural economy long since disappeared. Think of it this way: the fabulously wealthy kings of old had servants attending to their every need, but an impacted tooth would likely kill them. The poor in largely capitalist countries have access to a quality of medical care and a variety and quality of food that the ancient kings could only dream of. Consider, too, that the working poor of London 100 years ago were, at best, able to split a pound of meat per week among all of their children, which were greater in number than the two or three of today. In addition, the whole family ate meat once a week on Sunday, the one day the man of the household was home for dinner. That was meat for a week. Compare that to today, when we worry that poor Americans are too easily able to afford a meal with a quarter pound of meat in it every single day for less than an hour’s labor. Even if you think that capitalism has made poor people [overweight](https://fee.org/articles/mandatory-calorie-counts-are-a-dumb-idea-and-dont-help-obesity/), that’s a major accomplishment compared to the precapitalist norm of constant malnutrition and the struggle even 100 years ago for the working poor to get enough calories. The reality is that the rich have always lived well historically, as for centuries they could commandeer human labor to attend to their every need. In a precapitalist world, the poor had no hope of upward mobility or of relief from the endless physical drudgery that barely kept them alive. Today, the poor in capitalist countries live like kings, thanks mostly to the freeing of labor and the ability to accumulate capital that makes that labor more productive and enriches even the poorest. The falling cost of what were once luxuries and are now necessities, driven by the competitive market and its profit and loss signals, has brought labor-saving machines to the masses. When profit-seeking and innovation became acceptable behavior for the bourgeoisie, the horn of plenty brought forth its bounty, and even the poorest shared in that wealth. Once people no longer needed [permission to innovate](https://fee.org/articles/permissionless-innovation-vs-the-precautionary-principle/), and once the value of new inventions was judged by the improvements they made to the lives of the masses in the form of profit and loss, the poor began to live lives of comfort and dignity. These changes are not, as some would say, about technology. After all, the Soviets had great scientists but could not channel that knowledge into material comfort for their poor. And it’s not about natural resources, which is obvious today as resource-poor [Hong Kong](https://fee.org/articles/the-man-behind-the-hong-kong-miracle/) is among the richest countries in the world thanks to capitalism, while [Venezuelan socialism](https://fee.org/articles/venezuela-runs-out-of-toilet-paper-achieves-true-socialism/) has destroyed that resource-rich country. Inventions only become innovations when the right institutions exist to make them improve the lives of the masses. That is what capitalism did and continues to do every single day. And that’s why capitalism has been so good for the poor.

#### This outweigh – scale – my evidence proves life has improved by 120 times