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#### Legal processes to curtail IPR become embroiled in the death drive as they replicate the father-son relationshiip. Sween 09

Gretchen S. Sween, Who's Your Daddy? A Psychoanalytic Exegesis of the Supreme Court's Recent Patent Jurisprudence, 7 Nw. J. Tech. & Intell. Prop. 204 (2009). <https://scholarlycommons.law.northwestern.edu/njtip/vol7/iss2/4>//Aanya

III. PSYCHOANALYZING THE COURT’S CONSISTENCY ¶36 The recent patent cases discussed above reflect the Supreme Court’s inclination to shift the balance of power away from patent holders by relying on older, simpler precedents—although these precedents did not necessarily arise in analogous circumstances or even in patent infringement disputes. Of course, the Supreme Court’s implicit message that a patent case is just a case like any other is, in one sense, quite correct. That is, litigation is litigation, and “thinking like a lawyer” (or like a judge) is critical to navigating any lawsuit judiciously. But that does not mean that it is appropriate or “fair” to treat legal issues in a Procrustean manner.97 There may be sound reasons why a specialized court has crafted special rules that deviate in certain ways from similar, broadly applicable principles that were formulated by a court of general jurisdiction. ¶37 As elegant as the Court’s consistency may be, that very consistency across the ideological divide is suspect because it suggests a preference for simplicity in a context that is not especially amenable to simplicity. Indeed, the complexity of intellectual property law is what prompted Congress to create the Federal Circuit—not because this complexity is a “problem” to be eradicated, but because complexity is a core characteristic of patent law. The Federal Court’s mandate has been to tease out the complexities in a doctrinal area whose underlying subject matter is peculiarly dynamic (and thus complex): human innovation. Thus, by insisting that patent cases be treated like any other, by issuing holdings that routinely rest on older, simpler precedents, and by rejecting subject-specific nuance, the Supreme Court has implicitly challenged a key justification for the Federal Circuit’s very existence. ¶38 Why would the Supreme Court feel compelled to pursue such a fundamental assault upon the Federal Circuit? ¶39 If one accepts the premise that the institutional relationship between the Supreme Court and the Federal Circuit is analogous to a father-son relationship,98 the Supreme Court’s recent patent opinions, when considered collectively, expose a pronounced desire on the part of the father to make it clear to the son who is boss. In turn, the uncanny repetition of this reminder from the patriarch suggests a degree of anxiety about the son’s growing significance. This anxiety is quite understandable if one considers the context in which this particular father has found himself: A generalist confronting concepts that have evolved in an esoteric area of law replete with its own peculiar argot, in a cultural epoch where technological innovation moves at mind-boggling speed, and where businesses’ intellectual property is often more valuable than hard assets whose worth is far easier to quantify. The labyrinth of arcane, patent-specific jurisprudential concepts is decidedly difficult to negotiate—even for profoundly intelligent human beings such as Supreme Court Justices. And even profoundly intelligent, accomplished patriarchs can be reluctant to admit that their upstart sons may occasionally craft a better, more nuanced solution to a complex problem. ¶40 Members of the Highest Court in this land would likely bristle at the suggestion that their approach to adjudicating appeals in patent cases reflects a struggle for dominance between father and son. A traditional Freudian, however, would quickly counter that denial is a natural, initial response to being confronted with uncomfortable truths buried in one’s psyche. And at least within the hermetic realm of psychoanalysis, the road to self-awareness requires that one recognize the patterns and symbols that reveal the repressed concerns that lie beneath the surface of consciousness. Only by exhuming the artifacts of the unconscious and exposing them to the light of Reason can one see, and then address, the latent anxieties that unwittingly affect one’s behavior—in ways that may not be as facially reasonable as the Ego is inclined, a priori, to believe.99 And, again, according to the psychoanalytic model, symbolic clues as to what is really afoot occasionally float to the surface when we let our guard down, thereby beckoning us to unearth them.100 The subterranean exploration recommended here focuses on the psyche of the Supreme Court qua father, and that father’s decision to reassert its influence in a particular area after being otherwise engaged for the preceding fifty years. ¶41 But can Freud really provide a decent road map for this exploration? ¶42 Freud might well have been interested in Egyptian Goddess, Inc. v. Swisa, Inc.,101 a post-Quanta by-product of the dialogue between the Federal Circuit and the Supreme Court. This recent, unanimous, en banc Federal Circuit decision suggests that the son may be cognizant of at least one of the patterns in the father’s recent patent-law jurisprudence described above. In Egyptian Goddess, the Federal Circuit discarded its own 20-year-old “point of novelty” test for design patent infringement and reverted back to a 137-year-old Supreme Court standard articulated in Gorham v. White. 102 The latter test was, heretofore, described only in that lone 1871 case. The old Gorham/new Egyptian Goddess test asks what an “ordinary observer,” upon comparing two competing designs, would recognize as infringing. Thus, the Federal Circuit has resurrected a broader, simpler standard—in a development that resonates with irony since this standard should actually make it easier for a certain category of patent holders to prevail, whereas the Supreme Court’s recent decisions have all resulted in curtailing patent holders’ rights. Also, Freud might have deemed it significant that this case is seemingly appeal-proof— because the plaintiff successfully attacked the legal test at issue, yet, the Court still found that the patentee’s design had not been infringed; therefore, although the defendants lost on the legal issue, the infringement claim against them was dismissed.103 ¶43

#### Anticapitalist struggles attempt to remove the limits of capitalism to reach a utopian society in which the forces of production experience no constraints - the impact is lashouts and it just reproduces capitalism.

McGowan 16 - Todd McGowan is an Associate Professor of English at the University of Vermont, 2016 [“Capitalism and Desire: The Psychic Cost of Free Markets”, Columbia Press New York, pages 19-34] rpg

When Marx discusses the contradictions of capitalism, he is really describing the system as one of true infinitude. This becomes evident in the middle of the third volume of Capital, where he makes a famous proclamation about the limits of capitalism. He says, “The true barrier to capitalist production is capital itself.” The project of infinitely expanding the forces of production encounters the barrier of capital’s need to become profitable. A bit later, Marx contrasts capitalist means with the capitalist end, noting that “the means—the unrestricted development of the social forces of production—comes into persistent conflict with the restricted end, the valorization of the existing capital.” The limit is not external to capitalism but the product of its own striving to transcend every limit. In the capitalist universe the logic of the bad infinite leads the system directly to the true infinite, and this infinite spells its failure. Marx is able to see this but then goes awry when he tries to imagine communism in response to this contradiction. The problem with Marx’s conception of communist society derives from his investment in the capitalist bad infinite. In other words, Marx would have been a better revolutionary if he had remained a Hegelian. The revolution, as Marx sees it, would unleash the forces of production without any restriction at all from the mode of production, from capital’s need for self-valorization. This image of a future of unrestricted production jettisons the limit altogether. Instead of continually surpassing their limit (which is what occurs under capitalism), the forces of production would experience no limit at all. They would continue to grow unabated in concert with the growth of desire. Marx’s image of a society without a limit errs not just due to its fantasmatic nature, as many critics claim. The problem with this vision of the future is that it is not fantasmatic enough. In an actual fantasy the subject does not just envision the complete evanescence of the limit and untrammeled access to the object. Instead, the fantasy introduces an external limit where none exists, thereby enabling the subject to enjoy the object through this barrier. Fantasy focuses on the loss of the object and then shows its reacquisition, but the loss has primacy, which is why only the last few minutes of Hollywood fantasies are devoted to the object’s reacquisition. By completely eliminating the barrier when it comes to imagining the economy of the future, Marx betrays his own critique of capitalism and the communist fantasy of escaping it. Here Marx’s analysis undergoes a shocking change: he compellingly identifies how capitalism stumbles on the true infinite while pursuing the bad infinite of endless progress, but then he theorizes communism as the perfect realization of the bad infinite when he proclaims that communism will remove all restraints on the forces of production. It is commonplace to laud Marx as a critic of capitalism and criticize him as a prophet of communism, but in this passage from the third volume of Capital the reason for this discrepancy becomes clear. The true infinite simply drops out of the analysis. This departure from Hegel right at the point of Hegel’s key insight creates a chasm between Marx’s analysis of capitalism and his image of the communist future. The one benefits from the conception of the true infinite while the other is handicapped by its absence. The failure to sustain the idea of the true infinite leads Marx to misrepresent the nature of the dialectical shift that would occur with the transition from capitalism to communism. For Marx, communism will solve the contradiction between the forces of production and the means of production in capitalism—and thus allow for unfettered productivity. Hegel never conceives of dialectical transitions in this way. The transition or Aufhebung does not involve an elimination of the limit that haunts the prior structure, as it does for Marx. Instead, it involves a recognition that the limit is internal to the structure rather than external. Aufhebung requires, in other words, a recognition that the limit is not a contingent barrier but a necessary obstacle constituted through the structure’s own logical requirements. To take an example from The Phenomenology of Spirit, Hegel insists that stoicism as a philosophy runs aground on its own internal obstacle. Stoicism preaches a retreat from the external world into the serenity of the self, but at the same time, it requires the hostile external world from which the stoic can execute a retreat. Th e unconscious focus of the stoic is on the external world that the stoic claims to disdain. The dialectical move out of stoicism, for Hegel, involves making the unconscious focus on the external world qua obstacle into the basis of a new philosophy— skepticism. The skeptic doesn’t retreat from the external world but calls its reality into question. In this way, the obstacle undergoes a dramatic transformation and becomes the center of the new philosophy. If we follow Hegel’s line of thought about change, then we must rethink the relationship to the obstacle or limit that capitalism establishes. It cannot simply be a question of dispensing with this limit altogether. To try to do so is to fall into the capitalist trap, as Marx himself does, despite—or perhaps because of—his fervent anticapitalism. Capitalism demands the notion of the natural world as an external limit that it will constantly work to overcome, but it cannot integrate any limit as internal to its own functioning. This is what Hegel’s dialectic would demand. His version of communism or socialism would thus be significantly different from Marx’s. Marx, as everyone who reads him knows, offers very little description of the nature of communist society. The most famous of these moments occurs in The German Ideology, when he and Engels pause during their opening diatribe against Ludwig Feuerbach to offer their vision of the postrevolutionary future. In their brief account of communist society, they portray a world in which limits do not exist. They claim that one will be able “to do one thing today and another tomorrow, to hunt in the morning, fish in the afternoon, rear cattle in the evening, criticize after dinner, just as I have a mind, without ever becoming hunter, fisherman, shepherd or critic.” Marx and Engels provide a description of how socialist society would strip away fixed social identity. The problem with this image of the future is its resemblance to the capitalist present. Today, economic necessity forces many workers to be newspaper carriers in the morning, convenience store clerks in the afternoon, and janitors in the evening. Though this is a parody of what Marx imagines, it does suggest that the overcoming of fixed identity is not necessarily an anticapitalist development. Fixed identity is yet another limit that capitalism itself aims to overcome and does.

**The 1AC’s demand to be recognized as a form of political dissent is an investment in the hegemonic order – the power of demand stems from the authority of the system. Their failure to theorize desire turns the 1AC into a moment of jouissance that betrays their radical intentions in order to maintain the possibility of protest. The 1nc is a no to the affirmative and disrupts the agential fantasy in favor of reinvesting desire in light of the death drive.**

**Lundberg ’12** (Christian, Associate Prof. of Rhetoric @ UNC Chapel Hill, “On Being Bound to Equivalental Chains,” Cultural Studies, Volume 26, Issue 2-3, 2012)

On this diagnosis, the Mexican response typifies institutional attempts to downplay protest, a problem of misrecognition. The problem here is not that the protest is ineffective per se, but that the Mexican authorities do not recognize the danger that the protestors pose: the lack of recognition does not make the protest ineffective - the statement reaffirms that ‘ordinary citizens’ continue to represent the ‘biggest threat to the WTO’. Instead, the fact that the Mexican Government and the WTO misrecognize the power of ordinary citizens animates this critique. Not to be outdone, the Mexico Solidarity Network created an online form letter for self-identified ‘dangerous anti-globalization groups’: Dear Government Agents Bent on Restricting Civil Liberties,¶ I recently found out about the ‘watch list’ prepared by Mexican authorities, purportedly to quell the voice of civil society at the upcoming WTO Ministerial in Cancun . . . Please add my name to your ‘watch list’ immediately!! Nothing less is acceptable.¶ (Mexico Solidarity 2004)¶ How might we understand such demands for recognition by the Mexican authorities? One might read such demands as parodic critiques of globalization and security, as ironic calls for mobilization, as foregrounding the ideology of globalization, as a strategy of over-identification, or as any combination of these. Perhaps, **the purpose of the demands is simply inclusion, calling for the democratization of global governance. But these demands are not simply demands for inclusion: they are also demands to be recognized as dangerous and in solidarity with other similarly dangerous global citizens**. On the one hand, such demands often accompany calls for specific changes in processes of global governance, aiming at concrete change. But on the other hand, these demands also condense a more universal demand for recognition of the act of dissent. As Laclau might have it, demands are caught up in a formal logic of trope: metonymic connections between disparate demands are condensed in metaphors that figure a relation to and make claims on a political order. But it is also possible to detail the rhetorical functionality of such demands by taking them both as a set of tropologically animated connections, and simultaneously at their word in reading the affective implications of a literal call to be recognized as dangerous to and excluded from the processes of global governance. How is it possible to ground a literal reading of the rhetorical functionality of the demand to be recognized as dangerous in this case? This reading strategy involves identifying a supplemental split to the one between the universal and particular political content of a demand, between subjects who enjoy the mere fact of affinity with a group as a mode of (mis)identification and the set of identitarian equivalences inaugurated by entry into the particular. This strategy involves reading such utterances both as specific political demands, as containing a universal commitment that authorizes equivalential linkages, and simultaneously as practices of enjoyment, creating ritually repeated relationships to a hegemonic order. On this reading it is not the change that the demand anticipates that is significant, nor is in the political potential of forging equivalential links, **but rather the role demand plays for the one who utters it, and the modes of interpassive political affinity entailed**.¶ Working through the complexity of demands requires reading the demand for recognition as a practice of enjoyment **􏰑** as an affectively invested call for sanction and love by the governing order. Framing demands as a practice of enjoyment opens a conversation with and point of political critique for Laclau’s conception of the demand by marking the affective complexity of the politics of demands **􏰑** **demands also entail a perverse dialectic of political agency as resistance and simultaneous interpassive political constraint**. Demands empower forms of political agency by generating an oppositional relationship to hegemonic structures, and by providing the equivalential preconditions for identity. As Slavoj Zˇizˇek might have it, there is always the risk that the demands of protestors are the supplement that authorizes the functioning of capital(Zˇizˇek 2000).**∂** Laclau and the politics of the demand∂ Laclau’s On Populist Reason provides an elegant account of demand as the fundamental unit of the political, and by extension of politics as a field of antagonism. Laclau’s basic goal is to define the specificity of populist reason, or, to give an account of populism as ‘special emphasis on a political logic which, is a necessary ingredient of politics tout court’, of ‘Populism, quite simply, as a way of constructing the political’ (Laclau 2005, p. 18). Here, a focus on demands replaces a now prevalent approach focused on various taxonomies of populism (which Laclau diagnoses as hopelessly unsystematic) with a more formal account of the political based on the logic of demands, which in turn provides a way of thinking about the political as the space of demand and politics as a practice of working through specific demands.∂ Demands serve a number of functions that derive from the split between the universal and the particular that Laclau relies upon. Demands articulate a specific political claim at the level of the particular, and also imply a more generalized relationship to hegemony in the register of the universal. On this logic, demands represent the hegemonic order, creating an implicit picture of how it functions and might change. Simultaneously, demands create possible lines of equivalential affinity between others also making demands on the hegemonic order. Thus, the demand is more fundamental than the group, in that the operation of the split demand inaugurates all ‘the various forms of articulation between a logic of difference and a logic of equivalence’ that animate the social affinities that give groups their coherence (Laclau 2005, p. 20). The logic of the demand is in turn the logic of equivalence, and equivalence is as important for how it animates a group identity, as it is in positing claims on a hegemonic order.∂ Although Laclau owes a significant debt to Freud and Lacan, it is not clear that his theory of demand is explicitly crafted from psychoanalytic categories. For example, how central is enjoyment to Laclau’s relatively formal account of the demand? As Glynos and Stavrakakis have argued, there is a ‘complete and conspicuous absence in Laclau’s work of Lacanian categories such as fantasy, and, perhaps more importantly, jouissance’ (Glynos and Stavrakakis 2006, p. 202). Glynos and Stavrakakis claim that there is ‘to [their] knowledge no reference in Laclau’s work to the concept of jouissance’ (Glynos and Stavrakakis 2006, p. 209).∂ On Populist Reason contains a brief discussion of the concept of jouissance as worked out by Copjec, which Laclau summarizes by saying:∂ there is no achievable jouissance except through radical investment in an objet petit a. But the same discovery (not merely an analogous one) is made if we start from the angle of political theory. No social fullness except through hegemony; and hegemony is nothing more than the investment in a partial object, of a fullness which will always evade us. The logic of the objet petit a and the hegemonic logic are not just similar, they are simply identical. (Laclau 2005, p. 109)∂ There is an elegance to Laclau’s point about enjoyment, provided that enjoyment is reducible to a set of logical forms. This presupposition makes the lack of talk about jouissance in Laclau’s work understandable. If jouissance and hegemony are identical, one does not need Lacan to say something that might be said more elegantly with Gramsci. Jouissance is simply hegemonic investment, an elevation of an object or identity to the level of a thing or a universal.∂ Despite occasional caveats to the contrary, the greatest virtues of Laclau’s version of the political stem from his relentlessly persistent application of a formal, almost structural account of the political. And, as is the case with many well executed structuralist accounts, Laclau’s system can elegantly incorporate caveats, objections to and oversights in the original system by incorporating them into the functioning of the structure jouissance can easily be read as nothing more than hegemony in this account without changing the original coordinates of the system too drastically.∂ Yet, enjoyment provides one particularly difficult stumbling block for a dedicated formal account. To start with, enjoyment is never quite as ‘achievable’ as the preceding quotation might suggest. Far from being the consummation of a logic of structure and investment, enjoyment is a supplement to a failing in a structure: for example, Lacan frames jouissance as a useless enjoyment of one’s own subjectivity that supplements the fundamental failings of a subject in either finding a grounding or consummating an authoritative account of its coherence. This ‘uselessness’ defines the operation of jouissance. Thus, for example, when Lacan suggests that ‘language is not the speaking subject’ in the Seminar on Feminine Sexuality, lodging a critique of structural linguistics as a law governing speech, jouissance is understood as something excessive that is born of the failure of structures of signification (Lacan 1977). Language is not the speaking subject precisely because what is passed through the grist mill of the speech is the result of a misfiring of structure as much as it is prefigured by logics of structure, meaning and utility. Therefore the interpretive difficulty for a structuralist account of enjoyment: the moment that the fact of enjoyment is recoded in the language of structure, the moment that it is made useful in a logic of subjectivization is precisely the moment where it stops being jouissance.∂ Following Glynos and Stavrakakis’s suggestion, one might press the question of the relationship between the demand and jouissance as a way of highlighting the differences that a purely Lacanian reading of demand might make for Laclau’s understanding of politics. Framing enjoyment as equivalent with hegemony, Laclau identifies the fundamental ‘split’ in psychoanalytic theory between the universal and the particular demands of a group. Framing the split in this way, and as the privileged site of the political, Laclau occludes attention to another split: namely, the split within a subject, between the one who enters an equivalential relationship and the identitarian claim that sutures this subject into a set of linkages. This too is a site of enjoyment, where a subject identifies with an external image of itself for the sake of providing its practices of subjectivity with a kind of enjoyable retroactive coherence. The demand is relevant here, but not simply because it represents and anticipates a change in the social order or because it identifies a point of commonality. Here the demand is also a demand to be recognized as a subject among other subjects, and given the sanction and love of the symbolic order. The implication of this argument about the nature of enjoyment is that the perverse dialectic of misfirings, failure and surpluses in identity reveals something politically dangerous in not moving beyond demand. Put another way: not all equivalences are equally equivalent. Some equivalences become fetishes, becoming points of identification that eclipse the ostensible political goal of the demand. To extend the line of questioning to its logical conclusion, can we be bound to our equivalential chains?∂ Freud, Lacan and the demand∂ Demand plays a central role in Freud’s tripartite scheme for the human psyche specifically in the formation of the ego. Although this scheme does not exercise the same hold over psychoanalytic thinking that it once did, the question of the ego still functions as an important point of departure for psychoanalytic thinking as a representative case of the production of the subject and identity. Even for critics of ‘ego psychology’, the idea of the ego as a representation of the ‘I’ of the human subject is still significant the main question is what kind of analytical dispositions one takes towards the ego, the contingencies of its emergence and its continuing function.∂ Despite the tendency of some commentators to naturalize Freud’s tripartite schema of the human psyche, Freud’s account of the ego does not characterize the ego as pre-existent or automatically given. Although present in virtually every human subject, the ego is not inevitably present: the ego is a compensatory formation that arises in the usual course of human development as a subject negotiates the articulation and refusal of its needs as filtered through demand. Hypothetically a ‘subject’ whose every need is fulfilled by another is never quite a subject: this entity would never find occasion to differentiate itself from the other who fulfils its every need.∂ As a mode of individuation and subjectification, egos are economies of frustration and compensation. This economy relies on a split in the Freudian demand, which is both a demand to satiate a specific need and a demand for addressee to provide automatic fulfilment of need generally. The generative power of the demand relies on this split and on fact that some demands will be refused. This economy of need and frustration works because refusal of a specific need articulated as a demand on another is also a refusal of the idea that the addressee of the demand can fulfil all the subject’s needs, requiring a set of individuation compensatory economic functions to negotiate the refusal of specific demands.∂ ‘Ego’ is nothing more than the name for the contingent economy of compensatory subjectification driven by the repetition and refusal of demands - the nascent subject presents wants and needs in the form of the demand, but the role of the demand is not the simple fulfilment of these wants and needs. The demand and its refusal are the fulcrum on which the identity and insularity of the subject are produced: an unformed amalgam of needs and articulated demands is transformed into a subject that negotiates the vicissitudes of life with others. Put in the metaphor of developmental psychology, an infant lodges the instinctual demands of the id on others but these demands cannot be, and for the sake of development, must not be fulfilled. Thus the logic of the pop-psychology observation that the incessant demands of children for impermissible objects (‘may I have a fourth helping of dessert’) or meanings that culminate in ungroundable authoritative pronounce- ments (the game of asking a never-ending ‘whys’) are less about satisfaction of a request than the identity producing effects of the distanciating parental ‘no’. In ‘The Question of Lay Analysis’, Freud argues:∂ If . . . demands meet with no satisfaction, intolerable conditions arise . . . At that point . . . the ego begins to function. If all the driving force that sets the vehicle in motion is derived from the id, the ego . . . undertakes the steering, without which no goal can be reached. The instincts in the id press for immediate satisfaction at all costs, and in that way they achieve nothing or even bring about appreciable damage. It is the task of the ego to guard against such mishaps, to mediate between the claims of the id and the objections of the external world. (Freud 1986, p. 22)∂ Later works move this theory from the narrow bounds of the parent/child relationship to a broader social relationship which was continually constituting and shaping the function of the ego this is a theme of works such as Group Psychology and the Analysis of the Ego, as well as Civilization and its Discontents. The latter repeats the same general dynamics of ego formation as ‘The Question of Lay Analysis’, but moves the question beyond individual development towards the entirety of social relations. For Freud, the inevitability of conflicts between an individual and the social whole is simply one of the facts of life among other people. Life with others inevitably produces blockages in the individual’s attempts to fulfil certain desires some demands for the fulfilment of desires must be frustrated. This blockage produces feelings of guilt, which in turn are sublimated as a general social morality. Here frustration of demand is both productive in that it authorizes social moral codes, and civilization as mode of functioning, though it does so at the cost of imposing a constitutively contested relationship with social mores (Freud 1989).∂ Though there are many places to begin thinking the Freudian demand in Lacan, one of the best places to start is an almost accidental Lacanian rumination on demands. Confronted by student calls to join the movement of 1968 Lacan famously quipped: ‘as hysterics you demand a new master: you will get it!’ Framing the meaning of his response requires a treatment of Lacan’s theory of the demand and its relationship to hysteria as an enabling and constraining political subject position.∂ Lacan’s theory of the demand picks up at Freud’s movement outward from the paradigmatic relationships between the parent/child and individual/ civilization towards a more general account of the subjects, sociality and signification. The infrastructure supporting this theoretical movement transposes Freud’s comparatively natural and genetic account of development to a set of metaphors for dealing with the subject’s entry into signification. Lacan’s goal is to rearticulate Freudian development processes as metaphors for a theory of the subject’s production within signification. In Lacanian terms, what is at stake in this transposition is a less naturalized account of the subject by privileging supplementary practices of enjoyment that give a subject coherence as an agent, not in the sense of an ultimate ontological grounding, but rather as a mode of enjoying the repetition of retroactive totalities that name and produce subjects.∂ This process is most famously worked out in Lacan’s famous ‘Mirror Stage’ which details the trauma of the subject’s insertion into the symbolic order, and the way that this constitutive dislocation generates the jouissance that sustains the production of subjectivity (Lacan 1982a). Looking in the mirror, Lacan’s hypothetical infant does not yet have a concept of a unified self, puzzled by the fact that when it moves the image of the child in the mirror also moves. From the child in the mirror, Lacan infers the existence of two ‘I’s underwriting processes of subjectivization: an ‘ideal I’, a statuesque projection of what it means to be an ‘I’ (in this case the image of the child) and a phenomenological experience of ‘I-ness’.∂ Lacan treats the dialectic of misidentification in the mirror as a constant and constitutive performance of subjectivity as opposed to a specific developmental stage (Wilden 1982). In this interpretation, the child in the mirror stage is a metaphor for the constant production of the subject as a performance of the self in relation to a constitutive gap between the Symbolic and the subject, and the articulation of subjectivity as a category serves to repress the trauma produced in the margin between a nascent subject, its alienation from a projected external identity, and within the structure of signification.∂ The paradoxical effect of this mode of subject formation is that not only does the child ‘discover’ that she is the child in the mirror, it also experiences a disorienting distance between itself and its image. Despite this fact, the child requires the an external image such as the one in the mirror to impose a kind of unity on its experience the image of the other child provides an imaginary framing, a retroactive totality or a kind of narrative about what it means to be a self. The paradox of subjectivity lies in the simultaneity of identifying with an image of one’s self that is given by a specific location within the symbolic order and the simultaneous alienation produced by the image’s externality. Thus, the assumption of a frame for identity cannot ever completely effective, or, a subject is never completely comfortable inhabiting subjectivity there is always an impossible gap between an experience of alienated subjectivity, a prefigured given image of one’s subjectivity and the experience of being produced by the Symbolic.∂ There is a famous Lacanian aphorism that holds that ‘the signifier represents a subject for another signifier’ (Lacan 1977, p. 142). This formulation of the subject’s relation to language inverts the conventional wisdom that ontologically pre-given subjects use language as an instrument to communicate their subjective intentions. Signifiers are constituted by their difference, and subjects come into being in negotiating their entry into this realm of difference. Instead of articulating subjective states through language, subjects are articulated through language, within the differential space of signification. The paradoxical implication of this reversal is that the subject is simultaneously produced and disfigured by its unavoidable insertion into the space of the Symbolic. The mirror stage marks the excess of the demand as a mode of subject formation. Subjects assume the identity as subjects as a way of accommodating to the demand placed on them by the symbolic, and as a node for producing demands on the symbolic, or, of being recognized as a subject (Lacan 1982a, p. 4).∂ Here jouissance is nothing more than the useless enjoyment of one’s own subjectivity, surplus produced in negotiating a difficult gap between the phenomenological and ideal ‘I’s, produced by a failure in relation between Lacan’s phenomenological I and the Symbolic. Both the site of subject production and the site where this subject fills out an identity by investing in equivalential linkages and common demands are sites of enjoyment. In this sense, perhaps there is an excess of jouissance that remains even after the reduction of jouissance to hegemony. This remainder may even be logically prior to hegemony, in that it is a useless but ritually repeated retroactive act of naming the self that produces the conditions of possibility for investment, the defining point for Laclau’s reduction of jouissance to hegemony.∂ This specific site of excess, where the subject negotiates the terms on a non-relationship with the symbolic is the primary site splitting need, demand and desire. Need approximates the position of the Freudian id, in that it is a precursor to demand. Demand is the filtering of the need through signification, but as Sheridan notes ‘there is no adequation between need and demand’ (Sheridan 1982). The same type of split that inheres in the Freudian demand inheres in the Lacanian demand, though in this case the split does not derive from the empirical impossibility of fulfilling demands as much as it stems from the impossibility of ever fully articulating needs to or receiving a satisfactory response from the Other. Since there is no adequation, the specificity of the demand becomes less relevant than the structural fact that demand presupposes the ability of the addressee to fulfil the demand. This impossibility points to the paradoxical nature of demand: namely that the demand is less a way of addressing need than a call for love and recognition by this other. ‘In this way’, writes Lacan, ‘demand annuls (aufheht) the particularity of everything that can be granted by transmuting it into a proof of love, and the very satisfactions that it obtains for need are reduced (sich erniedrigt) to the level of being no more than the crushing of the demand for love’ (Lacan 1982b, p. 286). The difficulty is that the Other cannot, by definition, ever give this gift: the starting presupposition of the mirror stage is the constitutive impossibility of comfortably inhabiting the symbolic – the mirror stage marks the constitutive split between the subject and the Symbolic. This paradoxical split, namely the structural impossibility of fulfilling demands, resonates with the logic of the Freudian demand in that the frustration of demand produces the articulation of desire. Thus, Lacan argues that ‘desire is neither the appetite for satisfaction, nor the demand for love, but the difference that results from the subtraction of the first from the second’ (Lacan 1982b, p. 287). How might this subtraction occur? The answer to this question requires an account of the Other as seemingly omnipotent, and as simultaneously unable to fulfil demands. This sentiment animates the crucial Lacanian claim for the impossibility of the other giving a gift which it does not have, namely the gift of love: It will seem odd, no doubt, that in opening up the immeasurable space that all demand implies, namely, that of being a request for love …. Desire begins to take shape in the margin in which demand becomes separated from need: this margin being that which is opened up by demand, the appeal of which can be unconditional only in regards to the Other … having no universal satisfaction … It is this whim that introduces the phantom of omnipotence, not of the subject, but of the other in which his demand is installed. (Lacan 1982c, p. 311) Transposed to the realm of political demands, this framing of demand reverses the classically liberal presupposition regarding demand and agency. In the classical iteration and contemporary critical theories that inherit its spirit, there is a presupposition that a demand is a way of exerting agency, and that the more firmly that the demand is lodged, the greater the production of an agential effect. The Lacanian framing of the demand sees the relationship as exactly the opposite: the more firmly one lodges a demand the more desperately one clings to the legitimate ability of an institution to fulfil it. Thus, demands ought to reach a kind of breaking point where the inability of an institution or order to proffer a response should produce a re-evaluation of the economy of demand and desire.

#### The external impact is a resentful and reactive form of subjectivity that authorizes mass violence, individuals are distanced from the genuine self-affirmation of enacting change by the logic of demand

Alcorn 2 (Marshall W. Jr., George Washington University, *Changing the Subject in English Class: Discourse and the Constructions of Desire*, p. 51-3)//LA \*\*\*We don’t endorse ableist language.

Let me now advance an argument in support of a posthumanist ideal of free speech.7 I defend free speech in terms of a larger cultural perspective on the various mechanisms that generate and regulate subjectivity. What is important in teaching is not simply the truths advocated but the structures of discourses and subjectivity set into motion. Any society that relies purely on something termed knowledge will be oppressive. What is wrong, then, about a pedagogy of demand is not the immediate effect of a demand but the larger network of social relations structured by demand. Demand creates a subject fully submissive to the meanings of the master. Gilbert Chaitin points out that demand replays the subject’s most primitive relations between meaning and pleasure, relations in which the child’s need to symbolize is supported (or nor) by the mother’s smile (169). The mother’s smile, in itself, confers meaning on symbolization; it marks the meanings that really matter.8 The Lacanian theorists Robert Samuels argues that the average social subject submits to demand, but this submission is costly. “In both hypnosis and love” (overly idealized love), he observes, “there is an idealization of the Other that serves to deplete the ego of its power and energy.” (122-23). Society, in general, operates largely by means of the force of the demand. This is a demand made by culture as a whole, what Lacan terms the Other, the general expectations of society as they are present in a set of symbols and understandings. Samuels points out that subjectivity is to a large extend generated as the subject submits to the demand of the other (90). The teacher who facilitates the circulation of truth by means of demand is thus a simple extension of normal social practice.9 The problem is that the “normal” creation of human subjects causes social problems. Because the normal subject of society is produced by a submission to the demand of the Other, the normal subject is robbed of a flexible response to feeling states both within the self and within others. Desires that arise from within particular selves are not mobilized for social interactions; desires that arise in others are not recognized. Individuals most determinedly constituted by demand are individuals whose desires are fixated by the practices of strong authorities. In this way, the social field suffers from an inability to transmit freely among different subject messages inflected with spontaneous expressions of desire. The consequence of this state of affairs is both an impoverishment of the self (an inability to feel responsive to desire) and a symbolic rigidity in the social field. Individuals not nourished by free movements of desire become members of social groups quick to scapegoat others. They are anxious about the expression of desire and quick to vilify its unapproved forms. Characteristically, they see outside-group individuals with different desires than their own as threats to their own fixated desire. Slavoj Zizek suggests that people who are robbed of their own relation to desire find the robbers of this desire elsewhere. Other people will be seen not simply as different but as enemies who threaten their well-being. In order to maintain their love for the Other who has stolen their desire, they will find external other to blame for the loss caused by their submission to the Other. In Looking Awry, Zizek argues that more so than democracies, it is the “fate” of “totalitarianism” to be “condemned ceaselessly to invent external ‘enemies’ to account for its failures” (168). Speech determined by demand may be more disposed to violence and exploitation than speech determined by unrestricted movements of desire. Speech determined by demand more violently misrepresents other because it is a form of speech generated by a subject threatened by the desires of others. It thus more anxiously seeks to displace the various threats to its master’s truth. Real other people, people such as the victims in Milgram’s experiment, serve as simple and empty representations for their fear or ambition. I should make it clear that I am not developing an argument in support of an autonomous subject. The point that I want to make is precisely that speech and desire are socially determined by mechanisms in the social field, but such a generalization does not go far enough. In the Milgram experiment, if we ask what foes wrong in the flow of a message from one who suffers to those able to help, the answer would seem to be that what goes wrong is an understanding. The victim’s plea for help is ignored because someone understands that it is not relevant to his purpose. Let me extrapolate from this to suggest a larger generalization: People suffer because various kinds of understandings make this suffering seem necessary or inevitable, or even desirable. These understandings, moreover, are held in place by authorities who demand belief from their followers. In this manner, abstract political claims made about other become more important than the information generated by direct expressions of desire or need generated by real people in real, material conditions. To say that desire is socially constructed does not mean that desire should be socially constructed on the basis of some enlightened social plan. The general social field is constantly responding to changes in cultural conditions, material conditions, and technological innovation. Human desire must be able to respond to these changes in its diversity without censorship or misrepresentation. Human desire must be able to flow freely across a symbolic field. This analysis suggests, then, that demand is not the solution to political problems. Demand, rather than the solution to the problem, is itself the problem. Alternative pedagogies would seek to create societies in which the free transmission of expressed desire is not only possible but privileged.

**The aff’s presentation of suffering creates a marketplace of trauma, transforming wounds into a commodity for western consumption. Their fantasy of change through investment in the law shields criticism and guises violence.**

**Berlant ‘99** (Lauren, George M. Pullman Professor, Department of English, University of Chicago, “The Subject of True Feeling: Pain, Privacy and Politics” in Cultural Pluralism, Identity Politics and the Law ed. Sarat & Kearns, Ann Arbor: University of Michigan Press, Pg. 49-54/ Ravaged wages and ravaged bodies … for sustaining the hegemonic field.9)

Ravaged wages and ravaged bodies saturate the global marketplace in which the United States seeks desperately to compete "competitively," as the euphemism goes, signifying a race that will be won by the nations whose labor conditions are most optimal for profit. 2 In the United States the media of the political public sphere regularly register new scandals of the proliferating sweatshop networks "at home" and "abroad," which has to be a good thing, because it **produces feeling** and with it something at least akin to consciousness that can lead to action) Yet, even as the image of the traumatized worker proliferates, even as evidence of exploitation is found under every rock or commodity, it competes with a normative/**utopian image of the U.S. citizen** who remains **unmarked, framed, and protected** by the private trajectory of his life project, which is sanctified at the juncture where the unconscious meets history: the **American Dream**. 4 In that story one's identity is not borne of suffering, mental, physical, or economic. If the u.S. worker is lucky enough to live at an economic moment that sustains the Dream, he gets to appear at his least national when he is working and at his most national at leisure, with his family or in semipublic worlds of other men producing surplus manliness (e.g., via sports). In the American dreamscape his **identity is private property**, a zone in which structural obstacles and cultural differences fade into an ether of prolonged, deferred, and individuating enjoyment that he has earned and that the nation has helped him to earn. Meanwhile, exploitation only appears as a **scandalous** nugget in the sieve of memory when it can be condensed into an exotic thing of **momentary fascination**, a squalor of the bottom too horrible to be read in its own **actual banality**. The exposed traumas of workers in ongoing extreme conditions **do not** generally **induce more than mourning** on the part of the state and the public culture to whose feeling-based opinions the state is said to respond. Mourning is what happens when a grounding object is lost, is dead, no longer living (to you). Mourning is an experience of irreducible boundedness: I am here, I am living, he is dead, I am mourning. It is a beautiful, not sublime, experience of emancipation: mourning supplies the subject the definitional perfection of a being no longer in flux. It takes place over a distance: even if the object who induces the feeling of loss and helplessness is neither dead nor at any great distance from where you are. 5 In other words, mourning can also be an act of aggression, of **social deathmaking**: it can perform the evacuation of significance from actually-existing subjects. Even when liberals do it, one might say, "others" are ghosted for a **good cause**. 6 The sorrow songs of scandal that sing of the exploitation that is always "elsewhere" (even a few blocks away) are in this sense aggressively songs of mourning. **Play them backward, and the military march of capitalist triumphalism** (The Trans-Nationale) **can be heard**. Its lyric, currently crooned by every organ of record in the United States, is about necessity. It exhorts citizens to understand that the "bottom line"7 of national life is neither utopia nor freedom but survival, which can only be achieved by a citizenry that **eats its anger**, makes no unreasonable claims on resources or control over value, and uses its most creative energy to cultivate intimate spheres while scrapping a life together flexibly in response to the market world's caprice. 8 In this particular moment of expanding class unconsciousness that looks like consciousness emerges a peculiar, though not unprecedented, hero: the exploited child. If a worker can be infantilized, pictured as young, as small, as feminine or feminized, as starving, as bleeding and diseased, and as a (virtual) slave, the righteous indignation around procuring his survival resounds everywhere. The child must not be sacrificed to states or to profiteering. His wounded image speaks a truth that subordinates narrative: he has not "**freely" chosen his exploitation**; the optimism and play that are putatively the right of childhood have been stolen from him. Yet only "voluntary" steps are ever taken to try to control this visible sign of what is ordinary and systemic amid the chaos of **capitalism, in order to make its localized nightmares seem uninevitable**. **Privatize the atrocity, delete the visible sign, make it seem foreign**. Return the child to the family, replace the children with adults who can look dignified while being paid virtually the same revolting wage. The problem that organizes so much feeling then regains livable proportions, and the uncomfortable pressure of feeling dissipates, like so much gas. Meanwhile, the pressure of feeling the shock of being uncomfortably political produces a cry for a double therapy-to the victim and the viewer. But before "we" appear too complacently different from the privileged citizens who desire to caption the mute image of exotic suffering with an aversively fascinated mourning (a desire for the image to be dead, a ghost), we must note that this feeling culture crosses over into other domains, the domains of what we call identity politics, where the wronged take up voice and agency to produce transformative testimony, which depends on an analogous conviction about the self-evidence and therefore the objectivity of painful feeling. The central concern of this essay is to address the place of painful feeling in the making of political worlds. In particular, I mean to challenge a powerful popular belief in the positive workings of something I call national sentimentality, a rhetoric of promise that a nation can be built across fields of social difference through channels of affective identification and empathy. Sentimental politics generally promotes and **maintains** the hegemony of the national identity form, no mean feat in the face of continued widespread intercultural antagonism and economic cleavage. But national sentimentality is more than a current of feeling that circulates in a political field: the phrase describes a longstanding contest between two models of u.S. citizenship. In one, the classic model, each citizen's value is secured by an equation between abstractness and emancipation: a cell of national identity provides juridically protected personhood for citizens regardless of anything specific about them. In the second model, which was initially organized around labor, feminist, and antiracist struggles of the nineteenth-century United States, another version of the nation is imagined as the index of collective life. This nation is peopled by suffering citizens and noncitizens whose structural exclusion from the utopian-American dreamscape exposes the state's claim of legitimacy and virtue to an acid wash of truth telling that makes hegemonic disavowal virtually impossible, at certain moments of political intensity. Sentimentality has long been the means by which mass subaltern pain is advanced, in the dominant public sphere, as the true core of national collectivity. It operates when the pain of intimate others burns into the conscience of classically privileged national subjects, such that they feel the pain of flawed or denied citizenship as their pain. Theoretically, to eradicate the pain those with power will do whatever is necessary to return the nation once more to its legitimately utopian odor. Identification with pain, a universal true feeling, then leads to structural social change. In return, subalterns scarred by the pain of failed democracy will reauthorize universalist notions of citizenship in the national utopia, which involves believing in a redemptive notion of law as the guardian of public good. The object of the nation and the law in this light is to eradicate systemic social pain, the absence of which becomes the definition of freedom. Yet, since these very sources of protection-the state, the law, patriotic ideology-have traditionally buttressed traditional matrices of cultural hierarchy, and since their historic job has been to protect universal subject/citizens from feeling their cultural and corporeal specificity as a political vulnerability, the imagined capacity of these institutions to assimilate to the affective tactics of subaltern counterpolitics suggests some weaknesses, or misrecognitions, in these tactics. For one thing, it may be that the sharp specificity of the traumatic model of pain implicitly **mischaracterizes what a person is as what a person becomes in the experience of social negation**; this model also falsely promises a **sharp picture** of structural violence's source and scope, in turn promoting a **dubious optimism that law** and other visible sources of inequality, for example, can provide the best remedies for their own taxonomizing harms. It is also possible that counterhegemonic deployments of pain as the measure of structural injustice **actually sustain the utopian image of a homogeneous national metaculture**, which can look like a healed or healthy body in contrast to the scarred and exhausted ones. Finally, it might be that the tactical use of trauma to describe the effects of social inequality so overidentifies the eradication of pain with the achievement of justice that it enables various confusions: for instance, the equation of pleasure with freedom or the sense that changes in feeling, even on a mass scale, amount to substantial social change. Sentimental politics makes these confusions credible and these **violences bearable**, as its cultural power confirms the centrality of interpersonal identification and empathy to the vitality and viability of collective life. This gives citizens something to do in response to overwhelming structural violence. Meanwhile, by equating mass society with that thing called "national culture," these important transpersonal linkages and intimacies all too frequently serve as **prophylactic shields**, as ethically uncontestable legitimating devices for **sustaining the hegemonic field**.

#### The alternative is to embrace the death drive – only a society re-founded around enjoyment can create the conditions for political transformation

McGowan ’13 (Todd, Associate Prof. of Arts & Sciences @ U. of Vermont, “Enjoying What We Don’t Have: The Political Project of Psychoanalysis,” University of Nebraska Press, July, 2013, pp. 283-286)

There is no path leading from the death drive to utopia. The death drive undermines every attempt to construct a utopia; it is the enemy of the good society. It is thus not surprising that political thought from Plato onward has largely ignored this psychic force of repetition and negation. But this does not mean that psychoanalytic thought concerning the death drive has only a negative value for political theorizing. It is possible to conceive of a positive politics of the death drive. The previous chapters have attempted to lay out the political implications of the death drive, and, on this basis, we can sketch what a society founded on a recognition of the death drive might look like. Such a recognition would not involve a radical transformation of society: in one sense, it would leave everything as it is. In contemporary social arrangements, the death drive subverts progress with repetition and leads to the widespread sacriﬁce of self-interest for the enjoyment of the sacriﬁce itself. This structure is impervious to change and to all attempts at amelioration. But in another sense, the recognition of the death drive would change everything. Recognizing the centrality of the death drive would not eliminate the proclivity to sacriﬁce for the sake of enjoyment, but it would change our relationship to this sacriﬁce. Rather than being done for the sake of an ultimate enjoyment to be achieved in the future, it would be done for its own sake. The fundamental problem with the effort to escape the death drive and pursue the good is that it leaves us unable to locate where our enjoyment lies. By positing a future where we will attain the ultimate enjoyment (either through the purchase of the perfect commodity or through a transcendent romantic union or through the attainment of some heavenly paradise), we replace the partial enjoyment of the death drive with the image of a complete enjoyment to come. There is no question of fully enjoying our submission to the death drive. We will always remain alienated from our mode of enjoying. As Adrian Johnston rightly points out, “Transgressively ‘overcoming’ the impediments of the drives doesn't enable one to simply enjoy enjoyment.” But we can transform our relationship to the impediments that block the full realization of our drive. We can see the impediments as the internal product of the death drive rather than as an external limit. The enjoyment that the death drive provides, in contrast to the form of enjoyment proffered by capitalism, religion, and utopian politics, is at once inﬁnite and limited. This oxymoronic form of enjoyment operates in the way that the concept does in Hegel’s Logic. The concept attains its inﬁnitude not through endless progress toward a point that always remains beyond and out of reach but through including the beyond as a beyond within itself. As Hegel puts it, "The universality of the concept is the achieved beyond, whereas that bad inﬁnity remains afflicted with a beyond which is unattainable but remains a mere progression to inﬁnity.” That is to say, the concept transforms an external limit into an internal one and thereby becomes both inﬁnite and limited. The inﬁnitude of the concept is nothing but the concepts own self-limitation. The enjoyment that the death drive produces also achieves its inﬁnitude through self-limitation. It revolves around a lost object that exists only insofar as it is lost, and it relates to this object as the vehicle for the inﬁnite unfurling of its movement. The lost object operates as the self-limitation of the death drive through which the drive produces an inﬁnite enjoyment. Rather than acting as a mark of the drives ﬁnitude, the limitation that the lost object introduces provides access to inﬁnity. A society founded on a recognition of the death drive would be one that viewed its limitations as the source of its inﬁnite enjoyment rather than an obstacle to that enjoyment. To take the clearest and most traumatic example in recent history, the recognition of the death drive in 19305 Germany would have conceived the ﬁgure of the Jew not as the barrier to the ultimate enjoyment that must therefore be eliminated but as the internal limit through which German society attained its enjoyment. As numerous theorists have said, the appeal of Nazism lay in its ability to mobilize the enjoyment of the average German through pointing out a threat to that enjoyment. The average German under Nazism could enjoy the ﬁgure of the Jew as it appeared in the form of an obstacle, but it is possible to recognize the obstacle not as an external limit but as an internal one. In this way, the figure of the Jew would become merely a ﬁgure for the average German rather than a position embodied by actual Jews. Closer to home, one would recognize the terrorist as a ﬁgure representing the internal limit of global capitalist society. Far from serving as an obstacle to the ultimate enjoyment in that society, the terrorist provides a barrier where none otherwise exists and thereby serves as the vehicle through which capitalist society attains its enjoyment. The absence of explicit limitations within contemporary global capitalism necessitates such a ﬁgure: if terrorists did not exist, global capitalist society would have to invent them. But recognizing the terrorist as the internal limit of global capitalist society would mean the end of terrorism. This recognition would transform the global landscape and deprive would-be terrorists of the libidinal space within which to act. Though some people may continue to blow up buildings, they would cease to be terrorists in the way that we now understand the term. A self-limiting society would still have real battles to ﬁght. There would remain a need for this society to defend itself against external threats and against the cruelty of the natural universe. Perhaps it would require nuclear weapons in space to defend against comets or meteors that would threaten to wipe out human life on the planet. But it would cease positing the ultimate enjoyment in vanquishing an external threat or surpassing a natural limit. The external limit would no longer stand in for a repressed internal one. Such a society would instead enjoy its own internal limitations and merely address external limits as they came up. Psychoanalytic theory never preaches, and it cannot help us to construct a better society. But it can help us to subtract the illusion of the good from our own society. By depriving us of this illusion, it has the ability to transform our thinking about politics. With the assistance of psychoanalytic thought, we might reconceive politics in a direction completely opposed to that articulated by Aristotle, to which I alluded in the introduction. In the Politics, Aristotle asserts: “Every state is a community of some kind, and every community is established with a view to some good; for everyone always acts in order to obtain that which they think good. But, if all communities aim at some good, the state or political community, which is the highest of all, and which embraces all the rest, aims at good in a greater degree than any other, and at the highest good."3 Though later political thinkers have obviously departed from Aristotle concerning the question of the content of the good society, few have thought of politics in terms opposed to the good. This is what psychoanalytic thought introduces. If we act on the basis of enjoyment rather than the good, this does not mean that we can simply construct a society that privileges enjoyment in an overt way. An open society with no restrictions on sexual activity, drug use, food consumption, or play in general would not be a more enjoyable one than our own. That is the sure path to impoverishing our ability to enjoy, as the aftermath of the 1960s has made painfully clear. One must arrive at enjoyment indirectly. A society centered around the death drive would not be a better society, nor would it entail less suffering. Rather than continually sacriﬁcing for the sake of the good, we would sacriﬁce the good for the sake of enjoyment. A society centered around the death drive would allow us to recognize that we enjoy the lost object only insofar as it remains lost.

## 2

### Framework

#### The meta-ethic is procedural moral realism - substantive realism holds that moral truths exist independently of that in the empirical world. Prefer procedural realism –

#### [1] Uncertainty – our experiences are inaccessible to others which allows people to say they don’t experience the same, however a priori principles are universally applied to all agents.

#### [2] Naturalistic fallacy – experience only tells us what is since we can only perceive what is, not what ought to be, this means experience may be generally useful but should not be the basis for ethical action.

#### Practical Reason is that procedure. To ask for why we should be reasoners concedes its authority since it uses reason – anything else is nonbinding.

#### Moral law must be universal—any non-universalizable norm justifies someone’s ability to impede on your ends.

#### Thus, the standard is consistency with liberty. To clarify, consequences don’t link to the framework.

#### Freedom justifies property rights – which is conceptual and centered around

#### Prefer –

#### 1] freedom is the key to the process of justification of arguments. Willing that we should abide by their ethical theory presupposes that we own ourselves in the first place.

#### 1] Patents protect private companies.

Na 19 [Blake Na, "Protecting Intellectual Property Rights in the Pharmaceutical Industry", Chicago-Kent | Journal of Intellectual Property, 4-19-2019, https://studentorgs.kentlaw.iit.edu/ckjip/protecting-intellectual-property-rights-in-the-pharmaceutical-industry/, accessed: 8-24-2021.] //Lex VM

Patent Rights A pharmaceutical company may apply for a patent from the PTO at any time in the development lifetime of a drug.[12] A drug is patentable if it is non-obvious, new, and useful.[13] The drug must be non-obvious when comparing the drug with another previously invented drug, i.e., it does not bring the same type of information as the other drugs. The drug must also not exist, and it must have a purpose. Intellectual property rights, especially patent rights, are the foundation of the pharmaceutical industry. The industry heavily depends on the future profits which innovation (and as a result, exclusivity) enable. Drug patents grant the originator company to market exclusivity for a fixed term of 20 years from the patent’s original filing date. By giving this 20-year patent term in which the government cannot regulate the price, market exclusivity allows pharmaceutical companies to have a monopoly over the market. To maximize their profit, pharmaceutical companies work on extending the exclusivity of a drug. For example, AbbVie extended the manufacturing exclusivity of Humira by delaying generic companies from manufacturing generic entrants until 2023. The market exclusivity can be lengthened anywhere between 180 days to 7 years. Thus, due to efforts to derive profits from patents, pharmaceutical companies’ patents contribute to roughly 70-80 percent of their overall revenues. Patents in the pharmaceutical industry are normally referred to as their product portfolio and are the most effective method for protecting innovation and creating significant returns on investments. Accordingly, as mentioned above, patents help in recouping costs related to research, development, and marketing of a drug. Patents not only help pharmaceutical companies recoup investments, they can also act as a shield against infringement claims. Strong patent protection can safeguard drugs from potential infringers. Without consent from the patentee, other competing companies cannot use, make, or distribute the invention. However, because a drug can be easily imitated by competitors, bringing an infringement suit can also protect a patentee’s rights. Recently, DUSA Pharmaceuticals, Inc.—an arm of the Indian pharmaceutical company Su Pharma and ranked among the top 50 global Pharma Companies—was recently granted injunctive relief from a U.S. court against Biofrontera Inc. in a patent infringement case[14]. The court’s order prohibited Biofrontera from making use of information, including sales data, marketing data, technical information, and unpublished clinical data, of DUSA Pharmaceuticals[15]. Although bringing an infringement suit is a valuable remedial measure for patentees, pharmaceutical companies often face difficulty with the high costs and uncertainty of litigation

#### That negates – A] Promise breaking – states promised legally binding IP protections to companies who might not have otherwise developed medicines – the aff is a unilateral violation of that contract. B] That’s a form of restricting the free economic choices of individuals.

#### 2] IP is a reflection of our will and a form of property.

Merges 11 [Merges, Robert P. "Will and Object in the World of IP." Justifying Intellectual Property, Cambridge, Harvard UP, 2011, pp. 76-78. ISBN: 0674049489,9780674049482. Found on Libgen.] //Lex VM

It is clear enough at this point that Kant thought reliable expectations about ongoing possession of objects enables something positive to take place. Stable possession permits the imprinting of some aspect of a person, what Kant called his will, onto objects so as to enable the person to more fully flourish. Though nuances abound, Kant’s basic idea regarding the will24 is simple enough: Will is that aspect of a person which decides to, and wants to, act on the world.25 It has three distinctive qualities: it is personal, autonomous, and active. It is highly individual, a function of each person’s preferences and desires; Lewis White Beck says that will is “bent upon the satisfaction of some arbitrary purpose.” It is this aspect or feature of ourselves that we imprint or stamp on the world through our choices and the resulting actions that carry out or manifest these choices. Right here, in this foundational element, we see a radically individualistic and autonomous view of humans. Although this is balanced by a universalizing, transpersonal sense of reason in other parts of his philosophy,26 a highly individual will is nonetheless central to Kant’s view of human thought and action, and thus an essential aspect of what he thought it means to be human.27 will and object in the world of ip. It is tempting to get caught up in the terminology and conceptual complexity of Kant’s ideas of persons, will, and objects. To prevent that happening, it seems wise at this point to talk about some specific examples. How exactly does Kantian autonomy work? What does it look like in the context of IP rights? After we have a better grasp of these ideas, and of how they relate to Kant’s rationale for property, we can turn to an equally important topic: the limits on individual autonomy that Kant built into his theory. Our earlier example of Michelangelo showed how stable possession is required for a creator to fully work his will on a found object— in that case, a block of marble. The same basic logic applies in all sorts of cases. Individual farmers and landowners generate and then bring to life a vision for the lands they work on;28 inventors transform off- the- shelf materials into prototypes, rough designs, and finished products; and artists work in media such as paint and canvas, paper and pen, textiles and wood, keyboard and iPad, and so on, to give life to a concept or mental image. Wherever personal skill and judgment are brought to bear on things that people inherit or find, we see evidence of the Kantian process of will imprinting itself on objects. It even happens when the objects at hand are themselves intangible. A composer working out a new instance of a traditional form— a fugue or symphony, blues song or tone poem— is working on found objects just as surely as the farmer or inventor. Even in our earlier example, some of the objects that Michelangelo works on in the course of carving his sculpture are intangible: received conventions about how to depict an emotion; traditional groupings of figures in a religious set piece, such as the Pieta; or accepted norms about how to depict athletic grace or youthful energy. He may take these pieces of the cultural tableau and refine them, or he may subtly resist or transform them. However he handles them, these conventions are just as much objects in his hands as the marble itself.29 As with found physical objects, extended possession of these objects- intransformation is required to fully apply the creator’s skill and judgment. And because of this, Kantian property rights come into play with intangible objects as well. Let me say a word about this complex, and perhaps controversial, possession of intangible objects. It has often been argued that this feature of IP, the control of copies of an intangible work, constitutes a form of “artificial scarcity,”30 that it runs counter to an ethically superior regime where information is shared freely— and is maybe even counter to the nature of information, which, some say, “wants to be free.”31 According to Kant, all property rights have this element of artifice, because they define a conceptual type of possession. Property is not just a matter of physical contact between person and object; it describes a relationship that is deeper and goes well beyond the basic acts of grasping and holding. I can hear one objection to this right away. Yes, Kant speaks of legal ownership as a special relation between a person and an object. But, the objection might run, in his writings he refers only to physical objects, for example, an apple (à la Locke). So maybe the ownership relation is limited to that sort of thing? No. I give no weight to the fact that Kant uses only examples of tangible, physical property in most of the sections of the Doctrine of Right (DOR).32 Kant describes an additional type of possession that makes it crystal clear that the idea is not in any way limited to physical things—the expectation of future performance under a contract. He posits that one could not properly be said to “possess” a right to performance under an executory contract (one that has been signed or agreed to, but not yet performed) unless “I can maintain that I would have possession . . . even if the time of the performance is yet to come.”33 With that legal relation established, however, “[t]he promise of the [promisor] accordingly belongs among my worldly goods . . . , and I can include it under what is mine.”34 The synonymous use of “possession,” “object,” “belonging,” and “mine” in the case of a tangible, physical thing such as an apple and an intangible thing such as a promise of future contractual performance is too clear to require much comment. “Object” is very abstract for Kant, and can of course therefore include IPRs.35

#### 3] Neg contention choice – otherwise they can concede all of our work on framework and just read 4 minutes of turns which moots the four minutes of framework debate that the 1NC did giving them a massive advantage and limits phil debate.

## Case

#### Circumvention and they don’t solve – even if they say “durable fiat”, they have not defined the scope of the plan in the 1AC so you don’t know what the plan would materially look like

Mercurio 6/24 [Simon F.S. Li Professor of Law, The Chinese University of Hong Kong, Shatin, Hong Kong. June 24, 2021. “The IP Waiver for COVID-19: Bad Policy, Bad Precedent” <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/> Accessed 8/25 //gord0]

The role of intellectual property rights (IPRs) and access to medicines is contentious. On the one hand, IPRs encourage investment, innovation and the advancement of health science. On the other hand, the limited-term monopoly rights can result in artificially high prices and become a barrier to access to medicines. While the wisdom of the IPRs system has at times been tested, it has proven its value in the current COVID-19 pandemic as IPRs played a large role in the rapid (and unprecedented) development and availability of multiple vaccines. Despite the success, India and South Africa proposed that the World Trade Organization (WTO) waive IPRs under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in order to increase access to vaccines and other COVID-19-related technologies.[1](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn1) The proposal, tabled at a meeting of the TRIPS Council in October 2020, calls on Members to waive IPRs relating to and having an impact on the “prevention, containment or treatment of COVID-19”.[2](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn2) The proposal attracted support from the majority of developing country Members,[3](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn3) but was opposed by a handful of Members including the United States (US).[4](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn4) Given that consensus could not be reached within the deadline of 90 days as set out in Art. IX:3 of the Agreement Establishing the WTO, Members agreed to keep the waiver proposal on the agenda of the TRIPS Council in 2021.[5](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn5) On 5 May 2021, the US reversed its position and announced that it would support a waiver for COVID-19 vaccines.[6](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn6) To be clear, this does not mean that the US supported the waiver as proposed by India and South Africa. Instead, the US has simply agreed to negotiate the perimeters of a waiver. Others, including the European Union (EU), Canada, Australia, Norway, Switzerland, the United Kingdom (UK) and even leading developing countries such as Brazil, Chile and Mexico remain opposed or lukewarm on the waiver.[7](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn7) The US dropping opposition does not mean the concerns of other Members will simply disappear – one would hope that these nations opposed the waiver for valid reasons and did not simply blindly follow the US. Indeed, many of the above-listed Members remain unconvinced that even such a draconian step as a waiver of IPRs would accomplish the goal of increased vaccine production.[8](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn8) For its part, the EU continues to favour an approach which makes better use of existing flexibilities available in the TRIPS Agreement.[9](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn9) Thus, those expecting quick agreement on the waiver will be disappointed. Negotiations at the WTO are always difficult and lengthy, and US Trade Representative Katherine Tai acknowledged that the “negotiations will take time given the consensus-based nature of the institution and the complexity of the issues involved”.[10](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn10) Issues of negotiation will include the scope of the waiver. Whereas the original proposal and its amended form extend the waiver beyond patents and vaccines to include nearly all forms of IP (i.e. copyright,[11](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn11) industrial designs and trade secrets) as well as to all “health products and technologies including diagnostics, therapeutics, vaccines, medical devices, personal protective equipment, their materials or components, and their methods and means of manufacture for the prevention, treatment or containment of COVID-19”[12](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn12) (with no requirement on how or the extent to which they are related to or useful in combatting COVID-19), the US and others seem to support a waiver limited to patents and vaccines.[13](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn13) The length of the waiver will also be a contentious negotiating issue, with proponents seeking a virtual indefinite waiver lasting until the Membership agrees by consensus that it is no longer required – meaning even a single Member’s objection to ending the waiver would mean the waiver continues to remain in force[14](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn14) – as will the request that any action claimed to be taken under the waiver is outside the scope of the WTO’s dispute settlement mechanism.[15](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn15) These provisions will almost certainly be opposed by other Members, who would perhaps agree to a time-limited waiver which could be extended rather than an unchallengeable indefinite waiver which will be difficult to reverse. The proposal also fails to mention anything in relation to transparency and notification requirements and lacks safeguards against abuse or diversion. These points will likely also prove contentious in the negotiations. With so many initial divergences and as yet undiscussed issues, the negotiations at best could be completed by the time of the next WTO Ministerial Conference, scheduled to begin on 20 November 2021. There is precedent in this regard, as previous TRIPS negotiations involving IP and pharmaceuticals were not fully resolved until the days before the Ministerial Conferences (in 2003 and 2005).[16](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn16) There is also a chance that the negotiations will continue past the calendar year 2021. The chance for a swift negotiation diminished with the release of a revised proposal by India and South Africa on 22 May 2021. As mentioned above, the proposal contains no limit as to product coverage, scope, notification requirements or safeguards and proposes that the waiver will remain in effect for what could be an indefinite period. This was not a proposal designed to engender quick negotiations and a solution. Instead, the proposal perhaps reveals India’s and South Africa’s true intent to use the COVID-19 pandemic as an excuse to roll-back IPRs rather than a good-faith effort to rapidly increase access to lifesaving vaccines and treatments around the world. It is not only the length of time which is an issue but also the ultimate impact of the waiver. A waiver simply means that a WTO Member would not be in violation of its WTO obligations if it does not protect and enforce the COVID-19-related IPRs for the duration of the waiver. The waiver would thus allow Members to deviate from their international obligations but not obligate Members to suspend protection and enforcement of the IPRs. Members like the US who support the waiver may not implement the necessary domestic legislation to waive IPRs within the jurisdiction. It is questionable whether the US could even legally implement the waiver given that IPRs are a matter of constitutional law.[17](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn17) The US announcement remains meaningful, however, for two reasons. First, it signals a departure from the longstanding and bipartisan support for the pharmaceutical industry, which for decades has been instrumental in setting the IP and trade agenda.[18](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn18) Second, it sends a strong signal that the US does not oppose others from waiving patent protection for vaccines. This shift may also be part of a broader and alternative strategy to increase vaccine production and distribution, whereby the US is not viewing or supporting waiver negotiations as a legal tool but more so as a threat to encourage vaccine innovators to increase production. In essence, the desired reaction would be that the IP holders increase efforts to license, transfer technology and expand manufacturing – exactly what the world needs at this time. Alan Beattie, writing in the Financial Times, believes that even the proponents of the waiver desire this outcome: “having talked to the proponents, [the original proposal] was always a tactical position designed to start a debate, identify possible support and flush out opponents rather than a likely outcome. To that end, it seems to have worked rather well.”[19](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn19) India’s negotiator to the TRIPS Agreement and longtime WTO staffer, Jayashree Watal, agrees, stating the proposal is an “indirect attempt to put pressure on the original manufacturers to cooperate [and license production to companies in their countries]”.[20](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn20) This view makes sense, as the proponents (and their supporters) have not even pointed to one credible instance where IPRs have blocked the production of a COVID-19 vaccine. Moreover, it is well known that the leading vaccines using mRNA are difficult to reproduce and having the “blueprints” does not guarantee safe and effective production. Simply stated, if a pastry chef provides instructions on how to bake a cake, the cake they bake is still going to be better than cakes baked by novices using the exact same recipe. The know-how and trade secrets are the key ingredient to the manufacture of quality, safe and effective pharmaceuticals or vaccines, and not only is it not transferred through compulsory licenses but it is hard to imagine how any government would force the transfer of such information even under a waiver. For this reason, instead of encouraging production everywhere – including in locations where safety and efficacy standards are virtually nonexistent – and accepting that there will be a flood of substandard vaccines coming onto the world market (with devastating effects) it is much more sensible to find out where potential manufacturing capabilities exist and find ways to exploit them and scale them up. When asked if a waiver would improve vaccine availability and equity, Watal responded: “No. It won’t. That’s clear.”[21](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn21) I share Watal’s view and do not support a TRIPS waiver for IPRs or even a limited waiver for patents. With evidence mounting that “what the proposal … will definitely not achieve is speeding up the Covid-19 vaccination rate in India or other parts of the Global South”[22](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn22) I refuse to sacrifice academic integrity by supporting a proposal simply because it is gaining traction in some circles.[23](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn23) IPRs played a key role in delivering vaccines within a year of the discovery of a new pathogen; it seems inexplicable that the world would abandon the system without any evidence that IPRs are limiting during the current crisis.[24](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn24) Moreover, innovators have been generous in licensing technology transfer and production and one would be hard-pressed to find credible reports of qualified generic producers being refused a license. This is not surprising, since multiple competing vaccines are on the market it simply does not make economic sense for innovators to refuse a license – the generic manufacturer would simply obtain a license (and market share) and pay royalties to a competitor. Instead, I support efforts to enable prompt and effective use of existing flexibilities in the TRIPS Agreement and concerted and coordinated efforts involving governments and the private sector to ensure all qualified generic producers willing and capable of manufacturing vaccines are doing so and to create supply by working to bring more facilities up to standard. Cooperation will not only lead us out of this pandemic but also put us in a better position to deal with the next one. Killing the goose that laid the golden egg may seem appealing to some in the short term but will only ensure that no eggs are delivered in the next pandemic.

#### TRIPS IP rights are key for innovation

James Bacchus 20, adjunct scholar at CATO, “An Unnecessary Proposal: A WTO Waiver of Intellectual Property Rights for COVID-19 Vaccines,” December 16th, 2020, <https://www.cato.org/free-trade-bulletin/unnecessary-proposal-wto-waiver-intellectual-property-rights-covid-19-vaccines#does-novel-virus-present-novel-issues>

Technically, IP rights are exceptions to free trade. A long‐​standing general discussion in the WTO has been about when these exceptions to free trade should be allowed and how far they should be extended. The continuing debate over IP rights in medicines is only the most emotional part of this overall conversation. Because developed countries have, historically, been the principal sources of IP rights, this lengthy WTO dispute has largely been between developed countries trying to uphold IP rights and developing countries trying to limit them. The debate over the discovery and the distribution of vaccines for COVID-19 is but the latest global occasion for this ongoing discussion. The primary justification for granting and protecting IP rights is that they are incentives for innovation, which is the main source for long‐​term economic growth and enhancements in the quality of human life. IP rights spark innovation by “enabling innovators to capture enough of the benefits of their own innovative activity to justify taking considerable risks.”18 The knowledge from innovations inspired by IP rights spills over to inspire other innovations. The protection of IP rights promotes the diffusion, domestically and internationally, of innovative technologies and new know‐​how. Historically, the principal factors of production have been land, labor, and capital. In the new pandemic world, perhaps an even more vital factor is the creation of knowledge, which adds enormously to “the wealth of nations.” Digital and other economic growth in the 21st century is increasingly ideas‐​based and knowledge intensive. Without IP rights as incentives, there would be less new knowledge and thus less innovation. In the short term, undermining private IP rights may accelerate distribution of goods and services—where the novel knowledge that went into making them already exists. But in the long term, undermining private IP rights would eliminate the incentives that inspire innovation, thus preventing the discovery and development of knowledge for new goods and services that the world needs. This widespread dismissal of the link between private IP rights and innovation is perhaps best reflected in the fact that although the United Nations Sustainable Development Goals for 2030 aspire to “foster innovation,” they make no mention of IP rights.19

#### Weakening patents is worse – eliminates funds for R&D and halts pharma innovations that prevents an effective development of a right to health.

Sarah Joseph 11, Professor of Human Rights Law, and the Director of the Castan Centre for Human Rights Law at Monash University, Sarah, “Blame it on the WTO?” http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199565894.001.0001/acprof-9780199565894-chapter-8#acprof-9780199565894-note-1350

IP protection restricts trade and competition, so IP clauses are somewhat anomalous in trade agreements, which are normally designed to decrease trade barriers. What is the justification for IP protection?44 Due to their relevance to this chapter, I will concentrate on arguments in favour of patents.45 Patents reward people for their inventions, thus encouraging creativity and innovation. Patents operate on the assumption that people are not inherently altruistic, and expect rewards for their endeavours, especially when those endeavours are risky as they may, and often do, result in costly failure.46 Furthermore, the money raised from patent protection is said to be necessary to fund the considerable costs of research and development (R&D).47 Therefore, without patents, innovation in the pharmaceutical field (or any industrial field)