### Contention 1: Property

#### 1] IP rights prevent people from receiving the fruits of their mental labor.

Lindsey and Teles 17 [Ricketts, M. (2018). The Captured Economy: How the Powerful Enrich Themselves, Slow Down Growth, and Increase Inequality by Brink Lindsey and Steven M. Teles. Oxford University Press (2017), 221 pp. ISBN: 978-0190627768 (hb, £16.99). Economic Affairs, 38(2), 297–300. doi:10.1111/ecaf.12299]//Lex AKu recut Lex VM

In our opinion, the biggest problem with the moral case for patents and copyright laws is that those laws as currently constituted regularly violate the principle on which they are supposedly grounded—namely, entitlement to the fruits of one’s mental labor. The exclusive rights granted to copyright and patent holders aren’t just an additional premium layer of protection on top of the basic rights that all enjoy. Rather, copyright and patent laws extend premium rights to some in a way that frequently restricts the basic rights of others. Perversely, copyright and patent laws are regularly used to stop people from producing or selling their own original works. This was not always the case with copyright. Originally, US law prohibited only simple copying of full works as originally published. Thus, translations and even abridgments were not considered infringing. Gradually, the concept of infringement expanded to cover so-called derivative works—for example, a play based on a book, or a book that contains characters created by another author. This expansion was checked, to a limited and uncertain extent, by the concurrent rise of the doctrine of “fair use.” According to this doctrine, some derivative works—parodies, for example, and books that include brief quoted passages from other works—are not considered infringing. For everything else, including adaptations of an artistic work to a new format, new works using existing literary characters or settings, remixes or mashups of musical works, and so forth, the restrictions and penalties of copyright apply. In all these cases, artists can expend mental effort to create something new and original, but they are not allowed to publish or sell it.33 They are thus deprived of their basic rights to the fruits of their own mental labor. In the case of patent law, independent invention has never been a defense against claims of infringement. As a result, inventors who come in second in a patent race have no right at all to make use of and profit from their ideas. This is by no means an unusual occurrence, for nearly simultaneous and completely independent discovery of new technologies occurs with astonishing frequency.34 Indeed, patent infringement lawsuits only rarely involve intentional copying of someone else’s invention; in the clear majority of lawsuits, the alleged infringers developed their products on their own and weren’t even aware of the patent in question. In summary, the moral case for patents and copyright is supposedly based on the entitlement to enjoy the fruits of one’s mental labor. Yet under current law, the most basic and universal form that this entitlement can take, one whose general propriety is completely uncontroversial, is regularly traduced. We therefore find unconvincing the claim that copyright and patent holders are rightful property owners who are only receiving their just due. Yes, we can imagine intellectual property laws in which the moral claims for exclusive rights are much stronger. If copyright were limited to its original concern of preventing sales of full reproductions, and if patents were awarded to all independent co-inventors (or at least independent invention were a complete defense in any infringement action), then intellectual property rights would indeed provide additional protections for artists and inventors without impinging on the basic rights of other artists and inventors. But that is not the intellectual property law we have today, and to get there would require major statutory changes. The copyright and patent laws we have today therefore look more like intellectual monopoly than intellectual property. They do not simply give people their rightful due; on the contrary, they regularly deprive people of their rightful due. If there is a case to be made for the special privileges granted under these laws, it must be based on utilitarian grounds. As we have already seen, that case is surprisingly weak, and utterly incapable of justifying the radical expansion in IP protection that has occurred in recent years. Therefore, it is entirely appropriate to strip IP protection of its sheep’s clothing and to see it for the wolf it is, a major source of economic stagnation and a tool for unjust enrichment.

#### 2] IP Rights hand partial control of others property to IP Creators.

Kinsella 13 [Kinsella S. (2013) The Case Against Intellectual Property. In: Luetge C. (eds) Handbook of the Philosophical Foundations of Business Ethics. Springer, Dordrecht. https://doi.org/10.1007/978-94-007-1494-6\_99]//Lex AKu recut Lex VM \*\*\*Brackets for Gendered Language\*\*\*

Let us recall that IP rights give to pattern-creators partial rights of control – ownership – over the material property of everyone else. The pattern-creator has partial ownership of others’ property, by virtue of his [their] IP right, because he [they] can prohibit them from performing certain actions with their own property. Author X, for example, can prohibit a third party, Y, from inscribing a certain pattern of words on Y’s own blank pages with Y’s own ink. That is, by merely authoring an original expression of ideas, by merely thinking of and recording some original pattern of information, or by finding a new way to use his own property (recipe), the IP creator instantly, magically becomes a partial owner of others’ property. He [They] has some say over how third parties can use their property. He is granted, in effect, a type of “negative servitude” in others’ already owned property” (See [32]). IP rights change the status quo by redistributing property from individuals of one class (material-property owners) to individuals of another (authors and inventors). Prima facie, therefore, IP law trespasses against or “takes” the property of material-property owners, by transferring partial ownership to authors and inventors. It is this invasion and redistribution of property that must be justified in order for IP rights to be valid. We see, then, that utilitarian defenses do not do the trick. Further problems with natural-rights defenses are explored below.

#### 3] Justifying ownership based on creation is unjust.

Kinsella 13 [Kinsella S. (2013) The Case Against Intellectual Property. In: Luetge C. (eds) Handbook of the Philosophical Foundations of Business Ethics. Springer, Dordrecht. https://doi.org/10.1007/978-94-007-1494-6\_99]//Lex AKu recut Lex VM

One problem with the creation-based approach is that it almost invariably protects only certain types of creations – unless, i.e., every single useful idea one comes up with is subject to ownership (more on this below). But the distinction between the protectable and the unprotectable is necessarily arbitrary. For example, philosophical or mathematical or scientific truths cannot be protected under current law on the grounds that commerce and social intercourse would grind to a halt were every new phrase, philosophical truth, and the like considered the exclusive property of its creator. For this reason, patents can be obtained only for so-called practical applications of ideas, but not for more abstract or theoretical ideas. Rand agrees with this disparate treatment, in attempting to distinguish between an unpatentable discovery and a patentable invention. She argues that a “scientific or philosophical discovery, which identifies a law of nature, a principle, or a fact of reality not previously known” is not created by the discoverer. But the distinction between creation and discovery is not clear-cut or rigorous.31 Nor is it clear why such a distinction, even if clear, is ethically relevant in defining property rights. No one creates matter; they just manipulate and grapple with it according to physical laws. In this sense, no one really creates anything. They merely rearrange matter into new arrangements and patterns. An engineer who invents a new mousetrap has rearranged existing parts to provide a function not previously performed [90]. Others who learn of this new arrangement can now also make an improved mousetrap. Yet the mousetrap merely follows laws of nature. The inventor did not invent the matter out of which the mousetrap is made, nor the facts and laws exploited to make it work. Similarly, Einstein’s “discovery” of the relation E = mc2 , once known by others, allows them to manipulate matter in a more efficient way. Without Einstein’s, or the inventor’s, efforts, others would have been ignorant of certain causal laws, of ways matter can be manipulated and utilized. Both the inventor and the theoretical scientist engage in creative mental effort to produce useful, new ideas. Yet one is rewarded, and the other is not. In one recent case, the inventor of a new way to calculate a number representing the shortest path between two points – an extremely useful technique – was not given patent protection because this was “merely” a mathematical algorithm.32 But it is arbitrary and unfair to reward more practical inventors and entertainment providers, such as the engineer and songwriter, and to leave more theoretical science and math researchers and philosophers unrewarded. The distinction is inherently vague, arbitrary, and unjust.

#### 4] Property rights for IP are unnecessary.

Lindsey and Takash 19 [Niskanen Center, “Why ‘Intellectual Property’ is a Misnomer”, September 2019, Brink Lindsey Vice President for Policy Niskanen Center, Daniel Takash Regulatory Policy Fellow Niskanen Center, https://www.niskanencenter.org/wp-content/uploads/2019/09/LT\_IPMisnomer-2-1.pdf]//Lex AKu recut Lex VM

Because ideal goods are nonrivalrous, they are not scarce in the way that physical objects are. In other words, there is no either/or decision that has to be made about who gets to use and control them — that is, about who owns them. An infinite number of people can sing the same song, tell the same story, or use the same design for a widget without interfering with the ability of anyone else to do the same.7 But if one person eats a steak, nobody else can and it’s gone; if one person is shooting a basketball, nobody else can shoot that ball at the same time; if a developer wants to build a shopping center on a piece of land but the neighbors want to leave it as a park, they can’t both get their way. The inherent scarcity of rivalrous physical goods means that there is an everpresent potential for conflict over who gets what. It’s either/or, zero-sum: For every disputed object there’s one winner and a world of losers. In Hobbes’ grim vision of a state of nature without government, and thus without legally enforceable ownership claims, the “war of all against all” is ultimately a contest over who can use and control scarce valuable resources.

### Contention 2: Mutations

**Global health inequality encourages vaccine resistant mutations.**

**Fink 21** (Fink 7-30-21 (Jenni, <https://www.newsweek.com/who-warns-world-blind-understanding-covid-spread-hurting-ability-end-pandemic-1614722>)

A lack of testing for COVID-19 in parts of the world is preventing countries from having a clear picture of how the virus is spreading and therefore hurting the world's chances at **fighting the virus and ending the pandemic**, according to the World Health Organization. **Health inequities** throughout the world have plagued the global response to COVID-19 from the outset and WHO has pushed higher income countries to help lower income countries in the interest of ending the pandemic. Along with restricted access to vaccines, lower income countries have struggled to have sufficient testing, meaning the virus is likely going undetected in certain areas, further enabling its ability to spread. Low testing rates is "leaving the world blind to understanding where the disease is and how it's changing," Dr. Tedros Adhanom Ghebreyesus, director general of the WHO said on Friday during a press briefing. Without improving global testing rates, Ghebreyesus said the world can't "fight the disease" or mitigate the risk it poses to people around the globe. who blind covid spread cases On Friday, the World Health Organization warned the world is "blind" to how COVID-19 is spreading because of a lack of testing in certain places. W,HO Director-General Tedros Adhanom Ghebreyesus attends a daily press briefing on the new coronavirus dubbed COVID-19, at the WHO headquaters on March 2, 2020, in Geneva. FABRICE COFFRINI//AFP/GETTY IMAGES NEWSWEEK NEWSLETTER SIGN-UP > One of Ghebreyesus' biggest frustrations with the pandemic response is the failure to **evenly distribute the vaccine** around the world. In some countries, like the United States and other higher-income nations, significant portions of the population have been vaccinated. While those large vaccinated populations help reduce the spread of the virus in some areas, other countries, especially those in Africa, haven't been able to vaccinate even 10 percent of their population. This puts the entire world at risk because when the virus is able to spread throughout communities it **has the ability to mutate**, thereby increasing the possibility that a mutation could **evade the vaccines**. It's a scenario public health officials have been warning about for months and Ghebreyesus said on Friday that "hard won **gains are in jeopardy**" or have already been lost because the virus has been able to spread. Nearly 30 countries have high or rising oxygen needs and the shortage of life-saving oxygen could lead to increased deaths. More than 196 million cases of COVID-19 have been reported around the world, according to a Johns Hopkins University tracker, and more than 4.2 million people have died. Ghebreyesus suspected the number of cases would top 200 million within the next two weeks and warned that health systems in many countries **are being overwhelmed.** Preventing hospitals from exceeding capacity was a massive concern when the pandemic first broke out and a year later, parts of the U.S. are having their health systems strained as the more transmissible Delta variant spreads. On Thursday, Arkansas Governor Asa Hutchinson declared a public health emergency that allows the state to bring in health care workers from outside Arkansas and makes it easier for retired health care workers and medical students to become licensed. The goal is to help alleviate stress on health care systems and Hutchinson said they've had people waiting in ambulances because there wasn't an open spot in a hospital. That strain will only become more exacerbated if a mutation occurs that evades the vaccine, as inoculations have proven effective at helping to keep people out of the hospital. Ghebreyesus warned that more variants will emerge if global access to vaccines and testing doesn't improve. "The pandemic will end when the world chooses to end it. It is in our hands. We have all the tools we need. We can prevent this disease. We can test for it and we can treat it," Ghebreyesus said.

**IP protections are the vital internal link to reduce vaccine inequality.**

**Kumar 21** (Kumar, PhD, 7-12-21 (Rajeesh, Associate Fellow Manohar Parrikar Institute for Defence Studies and Analysis, https://www.idsa.in/issuebrief/wto-trips-waiver-covid-vaccine-rkumar-120721)

In October 2020, India and South Africa had submitted a proposal to the World Trade Organization (WTO), suggesting a waiver of certain provisions of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement for the “prevention, containment and treatment of COVID-19”. The proposal seeks the waiver of “the implementation, application, and enforcement of sections 1, 4, 5 and 7 of part II of the TRIPS agreement”, which are stipulations referring to copyright, industrial design, patents, and undisclosed information (trade secrets).1 The proponents of the proposal argue that a waiver will **enable timely and equitable access** to affordable health products and technologies, including vaccines. Though many member countries had supported and co-sponsored the proposal, a small but influential group of countries, mainly Australia, Canada, the European Union (EU), Japan, the United Kingdom (UK) and the United States (US), opposed it. They argued that existing exceptions under the TRIPS Agreement are sufficient to address the concerns mentioned in the proposal. This resulted in sidelining of the waiver proposal for months. However, on 5 May 2021, the Joseph Biden administration announced its support for waiving intellectual property protections for COVID-19 vaccines.2 It was a significant step towards breaking the seven-month gridlock, and led to many more countries modifying their position on the waiver proposal. On 25 May 2021, the co-sponsors of the waiver proposal submitted a revised proposal that specified the scope of the waiver as applying to “health products and technologies” and also added a section on the proposed duration of the waiver, i.e., three years.3 At present, more than 100 countries, including the US and China support this proposal. The principal opponent of the waiver is the EU and in June 2021, it submitted an alternative proposal to the TRIPS Council, which requested to keep TRIPS’ provisions intact and focused on compulsory licensing and removing vaccine export restrictions to address the concerns raised by India and South Africa.4 The EU proposal also stated that the TRIPS Agreement does not prevent countries from taking measures to protect public health.5 At the meeting of the TRIPS Council on 8–9 June 2021, the member states agreed to text-based negotiations focusing on two proposals tabled by members. The members also decided to hold a series of meetings till the end of July 2021 to take stock of the text-based negotiations. However, the latest developments show that the waiver discussions hit a hurdle due to a split between the developed and developing countries over the negotiation text. This brief discusses how TRIPS becomes a barrier to the equitable access of COVID-19 vaccines. It also examines how a waiver will help India in its fight against COVID-19 at home and abroad. TRIPS and its Exceptions TRIPS, a comprehensive multilateral agreement on Intellectual Property (IP), was an outcome of the Uruguay Round (1986–94) of negotiations of the General Agreement on Tariffs and Trade (GATT). The Agreement came into force on 1 January 1995 and offers a minimum standard of protection for Intellectual Property Rights (IPR).6 In WTO, IPR are divided into two main categories. First, copyright and related rights (Articles 9 to 14, Part II of the TRIPS Agreement). Second, industrial property that includes trademarks, geographical indications, industrial designs, patents, integrated circuit layout designs, and undisclosed information (Articles 15 to 38, Part II of the TRIPS Agreement).7 Article IX.3 and IX.4 of the Marrakesh Agreement Establishing the WTO deals with TRIPS waivers. Article IX.3 says that in “exceptional circumstances” the Ministerial Conference may waive off an obligation imposed on WTO member countries.8 Such a decision requires the support of three-fourths of the WTO membership. According to Article IX.4, any waiver granted for more than one year will be reviewed by the Ministerial Conference. Based on the annual review, the Conference may extend, modify, or terminate the waiver. The TRIPS Agreement provides some flexibility primarily in the form of compulsory licensing and research exceptions through Articles 30 and 31. While Article 30 permits WTO members to make limited exceptions to patent rights, Article 31 provides a detailed exception, provided certain conditions are met. Compulsory licensing is the process of granting a license by a government to use a patent without the patent holder's consent. Article 31 permits granting compulsory license under circumstances such as “national emergencies”, “other circumstances of extreme urgency”, “public noncommercial use”, or against “anti-competitive” practices.9 In addition to these original waivers, the Declaration on the TRIPS Agreement and Public Health, adopted at the 2001 Doha Ministerial Meeting, also recognises some exceptions, for instance, in situations of a public health emergency, member countries have the freedom to determine the grounds upon which compulsory licenses are granted. Similarly, under Article 66.1, the least developed countries (LDCs) are given waivers for implementing TRIPS on pharmaceuticals till 1 January 2033. COVID-19 and TRIPS Waiver Two significant factors rekindled the debate on TRIPS waiver for essential medical products—first, vaccine inequity, and second, the insufficiency of existing waiver provisions in fighting the COVID-19 pandemic. COVID-19 is an **exceptional circumstance**, and **equitable global access** to the vaccine is necessary to **bring the pandemic under control**. However, the world is witnessing quite the reverse, i.e., **vaccine nationalism**. Vaccine nationalism is “my nation first” approach to securing and stockpiling vaccines before making them available in other countries. A TRIPS waiver would be instrumental in addressing the **growing inequality in the production**, distribution, and pricing of the COVID-19 vaccines. Vaccine Inequity According to Duke Global Health Innovation Center, which monitors COVID-19 vaccine purchases, rich nations representing just 14 per cent of the world population have bought up to 53 per cent of the most promising vaccines so far. As of 4 July 2021, the high-income countries (HICs) purchased more than half (6.16 billion) vaccine doses sold globally. At the same time, the low-income countries (LICs) received only 0.3 per cent of the vaccines produced. The low and middle-income countries (LMICs), which account for 81 per cent of the global adult population, purchased 33 per cent, and COVAX (COVID-19 Vaccines Global Access) has received 13 per cent.10 Many HICs bought enough doses to vaccinate their populations several times over. For instance, Canada procured 10.45 doses per person, while the UK, EU and the US procured 8.18, 6.89, and 4.60 doses per inhabitant, respectively.11 Source:“Tracking COVID-19 Vaccine Purchases Across the Globe”, Duke Global Health Innovation Center, Updated 9 July 2021. Consequently, there is a significant disparity between HICs and LICs in vaccine administration as well. As of 8 July 2021, 3.32 billion vaccine doses had been administered globally.12 Nonetheless, **only one per cent** of people in LICs have been given at least one dose. While in HICs almost one in four people have received the vaccine, in LICs, it is one in more than 500. The World Health Organization (WHO) notes that about 90 per cent of African countries will miss the September target to vaccinate at least 10 per cent of their populations as a third wave looms on the continent.13 South Africa, the most affected African country, for instance, has vaccinated less than two per cent of its population of about 59 million. This is in contrast with the US where almost 47.5 per cent of the population of more than 330 million has been fully vaccinated. In Sub-Saharan Africa, vaccine rollout remains the slowest in the world. According to the International Monetary Fund (IMF), at current rates, by the end of 2021, a massive global inequity will continue to exist, with Africa still experiencing meagre vaccination rates while other parts of the world move much closer to complete vaccination.14 This vaccine inequity is not only morally indefensible but also **clinically counter-productive**. If this situation prevails, LICs could be waiting until 2025 for vaccinating half of their people. Allowing most of the world’s population to go unvaccinated will also **spawn new virus mutations, more contagious viruses** leading to a steep rise in COVID-19 cases. Such a scenario could cause **twice as many deaths** as against distributing them globally, on a priority basis. Preventing this humanitarian catastrophe requires **removing all barriers** to the production and distribution of vaccines. TRIPS is one such barrier that prevents vaccine production in LMICs and hence its equitable distribution. TRIPS: Barrier to Equitable Health Care Access The opponents of the waiver proposal argue that IPR are not a significant barrier to equitable access to health care, and existing TRIPS flexibilities are sufficient to address the COVID-19 pandemic. **However, history suggests the contrary.** For instance, when South Africa passed the Medicines and Related Substances Act of 1997 to address the HIV/AIDS public health crisis, nearly 40 of world’s largest and influential pharma companies took the South African government to court over the violation of TRIPS. The Act, which invoked the compulsory licensing provision, allowed South Africa to produce affordable generic drugs.15 The Big Pharma also lobbied developed countries, particularly the US, to put bilateral trade sanctions against South Africa.16 Similarly, when Indian company Cipla decided to provide generic antiretrovirals (ARVs) to the African market at a lower cost, Big Pharma retaliated through patent litigations in Indian and international trade courts and branded Indian drug companies as thieves.17 Another instance was when Swiss company Roche initiated patent infringement proceedings against Cipla’s decision to launch a generic version of cancer drug, “erlotinib”. Though the Delhi High Court initially dismissed Roche's appeal by citing “public interest” and “affordability of medicines,” the continued to pressure the generic pharma companies over IPR. 18 Likewise, Pfizer’s aggressive patenting strategy prevented South Korea in developing pneumonia vaccines for children.19 A recent document by Médecins Sans Frontières (MSF), or Doctors Without Borders, highlights various instances of how **IP hinders manufacturing and supply of diagnostics,** medical equipment, treatments and vaccines during the COVID-19 pandemic. For instance, during the peak of the COVID-19 first wave in Europe, Roche rejected a request from the Netherlands to release the recipe of key chemical reagents needed to increase the production of diagnostic kits. Another example was patent holders threatening producers of 3D printing ventilators with patent infringement lawsuits in Italy.20 The MSF also found that patents pose a severe threat to access to affordable versions of newer vaccines.21 Source:“COVID-19 Vaccine R&D Investments”, Global Health Centre, Graduate Institute, Geneva, Updated 9 July 2021. The opponents of the TRIPS waiver also argue that **IP is the incentive for innovation** and if it is undermined, future innovation will suffer. However, most of the COVID-19 medical innovations, particularly vaccines, are developed with **public financing assistance**. Governments spent billions of dollars for COVID-19 vaccine research. Notably, out of $6.1 billion in investment tracked up to July 2021**, 98.12** per cent was public funding.22 The US and Germany are the largest investors in vaccine R&D with $2.2 billion and $1.5 billion funding. Source:“COVID-19 Vaccine R&D Investments”, Global Health Centre, Graduate Institute, Geneva, Updated 9 July 2021. Private companies received 94.6 per cent of this funding; Moderna received the highest $956.3 million and Janssen $910.6 million. Moreover, governments also invested $50.9 billion for advance purchase agreements (APAs) as an incentive for vaccine development. A recent IMF working paper also notes that **public research institutions** were a key driver of the COVID-19 R&D effort—accounting for 70 per cent of all COVID-19 clinical trials globally.23 The argument is that vaccines are developed with the support of substantial public financing, hence there is a public right to the scientific achievements. Moreover, private companies reaped billions in profits from COVID-19 vaccines. Source: Katharina Buchholz, “COVID-19 Vaccines Lift Pharma Company Profits”, Statista, 17 May 2021. One could argue that since the US, Germany and other HICs are spending money, their citizens are entitled to get vaccines first, hence vaccine nationalism is morally defensible. Nonetheless**, it is not the case**. The TRIPS Agreement includes several provisions which mandates promotion of technology transfer from developed countries to LDCs. For instance, Article 7 states that "the protection and enforcement of IP rights should contribute to the promotion of technological innovation and the transfer and dissemination of technology, to the mutual advantage of producers and users of technical knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations."24 Similarly, Article 66.2 also mandates the developed countries to transfer technologies to LDCs to enable them to create a sound and viable technological base. The LMICs opened their markets and amended domestic patent laws favouring developing countries’ products against this promise of technology transfer. Another argument against the proposed TRIPS waiver is that a waiver would not increase the manufacturing of COVID-19 vaccines. Indeed, one of the significant factors contributing to vaccine inequity is the lack of manufacturing capacity in the global south. Further, a TRIPS waiver will not automatically translate into improved manufacturing capacity. **However, a waiver would be the first but essential step to increase manufacturing capacity worldwid**e. For instance, to export COVID-19 vaccine-related products, countries need to ensure that there are no IP restrictions at both ends – exporting and importing. The market for vaccine materials includes consumables, single-use reactors bags, filters, culture media, and vaccine ingredients. Export blockages on raw materials, equipment and finished products harm the overall output of the vaccine supply chain. If there is no TRIPS restriction, more governments and companies will invest in repurposing their facilities. Similarly, the arguments such as that no other manufacturers can carry out the complex manufacturing process of COVID-19 vaccines and generic manufacturing as that **would jeopardise quality**, have also been **proven wrong in the past**. For instance, in the early 1990s, when Indian company Shantha Biotechnics approached a Western firm for a technology transfer of Hepatitis B vaccine, the firm responded that “India cannot afford such high technology vaccines… And even if you can afford to buy the technology, your scientists cannot understand recombinant technology in the least.”25 Later, Shantha Biotechnics developed its own vaccine at $1 per dose, and the UNICEF (United Nations Children’s Emergency Fund) mass inoculation programme uses this vaccine against Hepatitis B. In 2009, Shantha sold over 120 million doses of vaccines globally. India also produces high-quality generic drugs for HIV/AIDS and cancer treatment and markets them across the globe. Now, a couple of Indian companies are in the last stage of producing mRNA (Messenger RNA) vaccines.26 Similarly, Bangladesh and Indonesia claimed that they could manufacture millions of COVID-19 vaccine doses a year if pharmaceutical companies share the know-how.27 Recently, Vietnam also said that the country could satisfy COVID-19 vaccine production requirements once it obtains vaccine patents.28 Countries like the United Arab Emirates (UAE), Turkey, Cuba, Brazil, Argentina and South Korea have the capacity to produce high-quality vaccines but lack technologies and know-how. However, Africa, Egypt, Morocco, Senegal, South Africa and Tunisia have limited manufacturing capacities, which could also produce COVID-19 vaccines after repurposing. Moreover, COVID-19 vaccine IPR runs across the entire value chain – vaccine development, production, use, etc. A mere patent waiver may not be enough to address the issues related to its production and distribution. What is more important here is to share the technical know-how and information such as trade secrets. Therefore, the existing TRIPS flexibilities, such as compulsory and voluntary licensing, are insufficient to address this crisis. Further, compulsory licensing and the domestic legal procedures it requires is cumbersome and not expedient in a public health crisis like the COVID-19 pandemic.

#### That escalates security threats that cause extinction – cooperation thesis is wrong.

Recna 21 [Research Center for Nuclear Weapon Abolition; Nagasaki, Japan; “Pandemic Futures and Nuclear Weapon Risks: The Nagasaki 75th Anniversary pandemic-nuclear nexus scenarios final report,” Journal for Peace and Nuclear Disarmament; 5/28/21; <https://www.tandfonline.com/doi/full/10.1080/25751654.2021.1890867>] Justin

* Miscalc Incapacitated commanders
* Social political order collapse
* First strike to take advantage of weaker nations

The Challenge: Multiple Existential Threats The relationship between pandemics and war is as long as human history. Past pandemics have set the scene for wars by weakening societies, undermining resilience, and exacerbating civil and inter-state conflict. Other disease outbreaks have erupted during wars, in part due to the appalling public health and battlefield conditions resulting from war, in turn sowing the seeds for new conflicts. In the post-Cold War era, pandemics have spread with unprecedented speed due to increased mobility created by globalization, especially between urbanized areas. Although there are positive signs that scientific advances and rapid innovation can help us manage pandemics, it is likely that deadly infectious viruses will be a challenge for years to come. The COVID-19 is the most demonic pandemic threat in modern history. It has erupted at a juncture of other existential global threats, most importantly, accelerating climate change and resurgent nuclear threat-making. The most important issue, therefore, is how the coronavirus (and future pandemics) will increase or decrease the risks associated with these twin threats, climate change effects, and the next use of nuclear weapons in war.5 Today, the nine nuclear weapons arsenals not only can annihilate hundreds of cities, but also cause nuclear winter and mass starvation of a billion or more people, if not the entire human species. Concurrently, climate change is enveloping the planet with more frequent and intense storms, accelerating sea level rise, and advancing rapid ecological change, expressed in unprecedented forest fires across the world. Already stretched to a breaking point in many countries, the current pandemic may overcome resilience to the point of near or actual collapse of social, economic, and political order. In this extraordinary moment, it is timely to reflect on the existence and possible uses of weapons of mass destruction under pandemic conditions – most importantly, nuclear weapons, but also chemical and biological weapons. Moments of extreme crisis and vulnerability can prompt aggressive and counterintuitive actions that in turn may destabilize already precariously balanced threat systems, underpinned by conventional and nuclear weapons, as well as the threat of weaponized chemical and biological technologies. Consequently, the risk of the use of weapons of mass destruction (WMD), especially nuclear weapons, increases at such times, possibly sharply. The COVID-19 pandemic is clearly driving massive, rapid, and unpredictable changes that will redefine every aspect of the human condition, including WMD – just as the world wars of the first half of the 20th century led to a revolution in international affairs and entirely new ways of organizing societies, economies, and international relations, in part based on nuclear weapons and their threatened use. In a world reshaped by pandemics, nuclear weapons – as well as correlated non-nuclear WMD, nuclear alliances, “deterrence” doctrines, operational and declaratory policies, nuclear extended deterrence, organizational practices, and the **existential risks** posed by retaining these capabilities – are all up for redefinition. A pandemic has potential to destabilize a nuclear-prone conflict by incapacitating the supreme nuclear commander or commanders who have to issue nuclear strike orders, creating uncertainty as to who is in charge, how to handle nuclear mistakes (such as errors, accidents, technological failures, and entanglement with conventional operations gone awry), and opening a brief opportunity for a first strike at a time when the COVID-infected state may not be able to retaliate efficiently – or at all – due to leadership confusion. In some nuclear-laden conflicts, a state might use a pandemic as a cover for political or military provocations in the belief that the adversary is distracted and partly disabled by the pandemic, increasing the risk of war in a nuclear-prone conflict. At the same time, a pandemic may lead nuclear armed states to increase the isolation and sanctions against a nuclear adversary, making it even harder to stop the spread of the disease, in turn creating a pandemic reservoir and transmission risk back to the nuclear armed state or its allies. In principle, the common threat of the pandemic might induce nuclear-armed states to reduce the tension in a nuclear-prone conflict and thereby the risk of nuclear war. It may cause nuclear adversaries or their umbrella states to seek to resolve conflicts in a cooperative and collaborative manner by creating habits of communication, engagement, and mutual learning that come into play in the nuclear-military sphere. For example, militaries may cooperate to control pandemic transmission, including by working together against criminal-terrorist non-state actors that are trafficking people or by joining forces to ensure that a new pathogen is not developed as a bioweapon. To date, however, the COVID-19 pandemic has increased the isolation of some nuclear-armed states and provided a textbook case of the failure of states to cooperate to overcome the pandemic. Borders have slammed shut, trade shut down, and budgets blown out, creating enormous pressure to focus on immediate domestic priorities. Foreign policies have become markedly more nationalistic. Dependence on nuclear weapons may increase as states seek to buttress a global re-spatialization6 of all dimensions of human interaction at all levels to manage pandemics. The effect of nuclear threats on leaders may make it less likely – or even impossible – to achieve the kind of concert at a global level needed to respond to and administer an effective vaccine, making it harder and even impossible to revert to pre-pandemic international relations. The result is that some states may proliferate their own nuclear weapons, further reinforcing the spiral of conflicts contained by nuclear threat, with cascading effects on the risk of nuclear war.

#### Nuclear war causes extinction.

**Starr 15** (Steven. “Nuclear War: An Unrecognized Mass Extinction Event Waiting To Happen.” Ratical. March 2015. <https://ratical.org/radiation/NuclearExtinction/StevenStarr022815.html> TG)

A war fought with 21st century strategic nuclear weapons would be more than just a great catastrophe in human history. If we allow it to happen, such a war would be a mass extinction event that [ends human history](https://ratical.org/radiation/NuclearExtinction/StarrNuclearWinterOct09.pdf). There is a profound difference between extinction and “an unprecedented disaster,” or even “the end of civilization,” because even after such an immense catastrophe, human life would go on. But extinction, by definition, is an event of utter finality, and a nuclear war that could cause human extinction should really be considered as the ultimate criminal act. It certainly would be the crime to end all crimes. The world’s leading climatologists now tell us that nuclear war threatens our continued existence as a species. Their studies predict that a large nuclear war, especially one fought with strategic nuclear weapons, would create a post-war environment in which for many years it would be too cold and dark to even grow food. Their findings make it clear that not only humans, but most large animals and many other forms of complex life would likely vanish forever in a nuclear darkness of our own making. The environmental consequences of nuclear war would attack the ecological support systems of life at every level. Radioactive fallout produced not only by nuclear bombs, but also by the destruction of nuclear power plants and their spent fuel pools, would poison the biosphere. Millions of tons of smoke would act to [destroy Earth’s protective ozone layer](https://www2.ucar.edu/atmosnews/just-published/3995/nuclear-war-and-ultraviolet-radiation) and block most sunlight from reaching Earth’s surface, creating Ice Age weather conditions that would last for decades. Yet the political and military leaders who control nuclear weapons strictly avoid any direct public discussion of the consequences of nuclear war. They do so by arguing that nuclear weapons are not intended to be used, but only to deter. Remarkably, the leaders of the Nuclear Weapon States have chosen to ignore the authoritative, long-standing scientific research done by the climatologists, research that predicts virtually any nuclear war, fought with even a fraction of the operational and deployed nuclear arsenals, will leave the Earth essentially uninhabitable.

### Advocacy

#### Plan – The member nations of the World Trade Organization ought to reduce intellectual property protections for medicines.

### Framework

#### Humans have an innate right to independence.

**Ripstein 09** (Ripstein, Arthur, [Professor of Law and Philosophy at the University of Toronto] Force and freedom : Kant’s Legal and Political Philosophy, 2009) // Lex CH **\*\*Bracket for Gendered Language**

The core idea of independence is an articulation of the distinction between persons and things. A person is a being capable of setting [their] own purposes, while a thing is something that can be used in pursuit of purposes. Kant follows Aristotle in distinguishing choice from mere wish on the grounds that to choose something, a person must take himself to have means available to achieve it. You can wish that you could fly, but you cannot choose to fly unless you have or acquire means that enable you to do so. In this sense, having means with which to pursue purposes is conceptually prior to setting those purposes. In the first instance, your capacity to set your own purposes just is your own person: your ability to conceive of ends, and whatever bodily abilities you have with which to pursue them. You are independent if you are the one who decides which purposes you will pursue. It may seem misleading to conceive of your own bodily powers as a means that you have, if this suggests that they are somehow external to your ability to set and pursue purposes, or that they only matter insofar as you are actively using them. Kant makes the different claim that you are independent if your body is subject to your choice rather than anyone else’s, so that you, alone or in voluntary cooperation with others, are entitled to decide what purposes you will pursue. You are dependent on an-other person’s choice if that **person gets to decide what purposes you will pursue. The person who uses your body or a part of it for a purpose you have not authorized makes you dependent on [their] choice; your per- son, in the form of your body, is used to accomplish somebody else’s purpose, and so your independence is violated**. This is true even if that per- son does not harm you, and indeed, even if (they benefit) he benefits you.

#### There must be a right to set ends, otherwise ethics is incoherent since it assumes subjects deliberate between multiple possible courses of action. However, to prevent this right from becoming contingent, we must have a conception of property

**Buck 87** (Wayne, Yale, "Kant's Justification of Private Property." In New Essays on Kant. Ed. den Ouden, 227-244.) OS

(1) Because **human beings have the right to pursue their ends** (i.e. they have the right to external freedom) they have a right to act in those ways necessary for achieving any ends at all. **When we act to attain some end**, in many cases **our action involves manipulating** or transforming **some material object**. When I eat an apple, I use the object for sustenance. When I paint, I use a brush and oils to transform a piece of canvas. Manipulation of objects is thus one of the means necessary to achieving ends in general. Hence the right to use external things is a necessary condition of the right to external freedom. As Kant puts it, **if reason were to forbid the use of physical objects**, external freedom would come into contradiction with itself, or "freedom would be robbing itself of the use of its Willkur" (MEJ, 52 [354]). Simply put, external freedom would in effect be forbidden by reason and morally impossible. (2) So far Kant has established the inherent right to use external objects. But this is not yet to establish the Juridical Postulate, which claims that individuals have the inherent right to own things. Kant makes this second step from the right to use things to owning them by means of an analysis of the concept of "possession." The 'subjective' condition of the possibility of actually manipulating a thing is physical possession. I am not able to use an axe unless I have it in hand, and I am not able to build a cabin unless I am standing on the spot where it is to be. These kinds of possession Kant usually calls "empirischer Besitz" and "Inhabung." I will call them "custody." **Possession** in this sense, then, **is the subjective condition of** the possibility of **actually using a thing**. "Possession," however, cannot just mean custody. Suppose that my right to the use of a thing lasted only as long as no one prevented me from using it as I desired. Thus if someone wrests the thing from my control to use as she pleases, my right to use it would end. But losing the right to an object merely because another grabbed it from me is precisely the situation in which I did not have a right to use it in the first place. Therefore, my having a right to the use of a thing presupposes that **I can justifiably complain if anyone interferes with my using it as I please**, and that I am justified in preventing anyone who tries to do so. If I have rights to something there must be some circumstances in which I retain those rights even though I have lost custody of the object (MEJ, 5 4 [356]). Custody is neither necessary nor sufficient for possession in this sense. So "possession" must have a second meaning, distinct from custody, if having rights to things is to be possible. This sort of possession must be a relation between an individual and a thing that obtains independently of their spatial relations. Since "possession" in this sense cannot denote a sensible relation between persons and things, Kant calls it "intelligibler Besitz." When there is such a relation between me and some object, I have "authority" (Gewalt) over the object regardless of whether I have custody (MEJ, 61-6 4 [362-365]). Let us call this intelligible or 'noumenal' relation "ownership."

#### A conception of the state cannot be premised on a utilitarian calculus, rather it must be based upon the freedom of agents. The state can justifiably use coercion as a means of achieving freedom of agents.

**Rauscher 16** (Rauscher, Frederick [PhD Philosophy]. “Kant's Social and Political Philosophy.” Stanford Encyclopedia of Philosophy, Stanford University, 1 Sept. 2016, plato.stanford.edu/entries/kant-social-political/.) // Lex CH

“There is only one innate right,” says Kant, “Freedom (independence from being constrained by another’s choice), insofar as it can coexist with the freedom of every other in accordance with a universal law” (6:237). Kant **reject**s **any other basis for the state**, in particular **arguing that the welfare of citizens cannot be the basis of state power**. He argues that **a state cannot legitimately impose any particular conception of happiness upon its citizens** (8:290–91). **To do so would be for the ruler to treat citizens as children, assuming that they are unable to understand what is truly useful or harmful to themselves.**

This claim must be understood in light of Kant’s more general claim that moral law cannot be based upon happiness or any other given empirical good. In the Groundwork Kant contrasts an ethics of autonomy, in which the will (Wille, or practical reason itself) is the basis of its own law, from the ethics of heteronomy, in which something independent of the will, such as happiness, is the basis of moral law (4:440–41). In the Critique of Practical Reason he argues that **happiness** (the agreeableness of life when things go in accordance with one’s wishes and desires), although universally sought by human beings, **is not specific enough to entail any particular universal desires in human beings**. Further, even were there any universal desires among human beings, those desires would, as empirical, be merely contingent and thus unworthy of being the basis of any pure moral law (5:25–26). No particular conception of happiness can be the basis of the pure principle of the state, and the general conception of **happiness is too vague to serve as the basis of a law**. Hence, a “universal principle of right” cannot be based upon happiness but only on something truly universal, such as freedom. The “universal principle of right” Kant offers is thus “Any action is right if it can coexist with everyone’s freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone’s freedom in accordance with a universal law” (6:230).

This explains why happiness is not universal, but not why freedom is universal. By “freedom” in political philosophy, Kant is not referring to the transcendental conception of freedom usually associated with the problem of the freedom of the will amid determinism in accordance with laws of nature, a solution to which is provided in the Third Antinomy of the Critique of Pure Reason. Rather, freedom in political philosophy is defined, as in the claim above about the only innate right, as “independence from being constrained by another’s choice”. His concern in political philosophy is not with laws of nature determining a human being’s choice but by other human beings determining a human being’s choice, hence the kind of freedom Kant is concerned with in political philosophy is individual freedom of action. Still, the universality of political freedom is linked to transcendental freedom. Kant assumes that a human being’s use of choice (at least when it is properly guided by reason) is free in the transcendental sense. Since every human being does enjoy transcendental freedom by virtue of being rational, freedom of choice is a universal human attribute. And this freedom of choice is to be respected and promoted, even when this choice is not exercised in rational or virtuous activity. Presumably respecting freedom of choice involves allowing it to be effective in determining actions; this is why Kant calls political freedom, or “independence from being constrained by another’s choice”, the only innate right. One might still object that this freedom of choice is incapable of being the basis of a pure principle of right for the same reason that happiness was incapable of being its basis, namely, that it is too vague in itself and that when specified by the particular decisions individuals make with their free choice, it loses its universality. Kant holds that this problem does not arise for freedom, since freedom of choice can be understood both in terms of its content (the particular decisions individuals make) and its form (the free, unconstrained nature of choice of any possible particular end) (6:230). **Freedom is universal in the proper sense because, unlike happiness, it can be understood in such a way that it is susceptible to specification without losing its universality**. Right will be based on the form of free choice.

**The very existence of a state might seem to some as a limitation of freedom**, since a state possesses power to control the external freedom of individual citizens through force. **This is the basic claim of anarchism.** Kant holds **in contrast that the state is not an impediment to freedom but is the means for freedom.** State action that is a hindrance to freedom can, when properly directed, support and maintain freedom if the state action is aimed at hindering actions that themselves would hinder the freedom of others. Given a subject’s action that would limit the freedom of another subject, the state may hinder the first subject to defend the second by “hindering a hindrance to freedom”. **Such state coercion is compatible with the maximal freedom demanded in the principle of right because it does not reduce freedom but instead provides the necessary background conditions needed to secure freedom.** The amount of freedom lost by the first subject through direct state coercion is equal to the amount gained by the second subject through lifting the hindrance to actions. State action sustains the maximal amount of freedom consistent with identical freedom for all without reducing it.

#### Property requires the existence of the general will—rights in the state of nature are provisional, and disputes could only be resolved through unilateral coercion. That means the state is legitimate in coercively enforcing rights claims as there is a duty of justice for the government.

**Korsgaard '08** (Christine, "Taking the Law into Our Own Hands: Kant on the Right to Revolution," in The Constitution of Agency: Essays on Practical Reason and Moral Psychology) OS // Recut by Lex CH

Kant also believes that there is a sense in which we have rights in the state of nature. **We have a natural right to our freedom (MPJ 6:237), and, Kant thinks, the Universal Principle of Justice allows us to claim rights in land and, more generally, in external objects, in property**. Kant argues that **it would be inconsistent with freedom to deny the possibility of property rights, on the grounds that unless we can claim rights to objects, those objects cannot be used** (MPJ 6:246).7 This would be a restriction on freedom not based in freedom itself, which we should therefore reject, and this leads us to postulate that objects may be owned. But unlike Locke, **Kant argues that in the state of nature these rights are only “provisionaľ** (MPJ 6:256). In this, Kant is partly following Rousseau. In contrast to Locke, Rousseau argues that rights are created by the social contract, and, in a sense, relative to it. My possessions become my property, so far as you and I are concerned, when you and I have given each other certain reciprocal guarantees: I will keep my hands off your possessions if you will keep your hands off mine.8 **Rights are not acquired by the metaphysical act of mixing one's labor with the land, but instead are constructed from the human relations among people who have made such agreements**. Kant adopts this idea, at least as far as the executive authority mother goat when they were born. However, one of them escaped, and you found it wandering around apparently unowned in the state of nature, took possession of it, fed it and cared for it for many years. Now we have discovered the matter, and each of us thinks she has a right to this particular goat. Since I think I have a right, I also think I may prosecute my right by coercive action. And you think the same. So what can we do? **Perhaps I have a gun and you do not, so I can simply take the goat away from you. However, there are two ways to understand my action. One is: I am using unilateral force to take the goat away from you. Such an action would be illegitimate, a use of violence which interferes with your freedom. I cannot regard my action as an enforcement of my right without acknowledging that you have rights too, which also must be enforced.** So if I am to claim that what I am doing is enforcing my right, I must understand my own action differently. The other way to understand the action is that I am forcing you to enter into political society with me. That gets us to the first step; the act of enforcing my right involves the establishment of a juridical condition (rechtlicher Zustand) between us and so establishes civil society. The second step, of course, is to settle the particular dispute in question in some lawful way. This means that Kant's conception is different from Locke's in important ways. **According to Kant** a juridical condition—**a condition in which human rights are upheld and enforced—can only exist in political society**. And therefore existence in political society is not merely, as Locke had it, in our interest. **It is a duty of justice to live in political society. That is to say, others have the right to require this of you, because that is the form that their authority to enforce their own rights takes.** And you, reciprocally, have the right to require membership in political society of others with whom you might have such disputes. Since we will that our rights be enforced, reciprocal coercion, and therefore political society, can be seen as the object of a general will. Kant does not take himself to be telling a historical story. He is answering a transcendental question: how is coercive political authority possible? His answer is that the idea of a general will to the reciprocal enforcement of rights is what makes coercive political authority possible. **Governments are legitimate because human beings who live in proximity, who must therefore work out what their respective rights are, must form a general will.** To put it another way, j**ustice, which is the condition in which we have guaranteed one another our rights, only exists where there is government. Government, then, is founded on our presumptive general will to justice.**

#### Thus, the standard is maintaining a system of equal outer freedom.

#### Prefer:

#### [1] Governments use Kantian conceptions of the state when implementing policies.

**Ripstein 15** (Arthur Ripstein (Professor of Law and Philosophy at the University of Toronto). “Just War, Regular War, and Perpetual Peace” (2015). AS 7/16/15)

Sophisticated contemporary legal systems work either implicitly or explicitly with some version of this Kantian idea of the state as a public rightful condition. Constitutional courts review legislation to make sure that it is properly within the state's legitimate mandate, and throughout the world recent awareness of problems of institutional corruption reflect the recogni[ze]tion of the fundamental importance of the distinction between properly public and improperly private purposes in the internal management of states. Conversely, its widely appreciated that the proper role of the state is not simply to bring about as much good as possible in the world, and that states have a special responsibility to their own citizens and residents.

#### [2] Performativity—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. Thus, it is logically incoherent to justify a standard without first willing that we can pursue ends free from others.

#### [3] Abstraction solves oppression.

Farr ’02 Arnold Farr (prof of phil @ UKentucky, focusing on German idealism, philosophy of race, postmodernism, psychoanalysis, and liberation philosophy). “Can a Philosophy of Race Afford to Abandon the Kantian Categorical Imperative?” JOURNAL of SOCIAL PHILOSOPHY, Vol. 33 No. 1, Spring 2002, 17–32. JDN.

Whereas most criticisms are aimed at the formulation of universal law and the formula of autonomy, our analysis here will focus on the formula of an end in itself and the formula of the kingdom of ends, since we have already addressed the problem of universality. The latter will be discussed ﬁrst. At issue here is what Kant means by “kingdom of ends.” Kant writes: “By ‘kingdom’ I understand a systematic union of different rational beings through common laws.”32 The above passage indicates that Kant recognizes different, perhaps different kinds, of rational beings; however, the problem for most critics of Kant lies in the assumption that Kant suggests that the “kingdom of ends” requires that we abstract from personal differences and content of private ends. The Kantian conception of rational beings requires such an abstraction. **Some feminists and philosophers of race have found this abstract notion of rational beings problematic because they take it to mean that rationality is necessarily white, male, and European.**33 Hence, the systematic union of rational beings can mean only the systematic union of white, European males. **I ﬁnd this interpretation of Kant’s moral theory quite puzzling.** Surely another interpretation is available. That is, the implication that in Kant’s philosophy, rationality can only apply to white, European males does not seem to be the only alternative. The problem seems to lie in the requirement of abstraction. **There are two ways of looking at the abstraction requirement that I think are faithful to Kant’s text and that overcome the criticisms of this requirement. First, the abstraction requirement may be best understood as a demand for intersubjectivity or recognition. Second, it may be understood as an attempt to avoid ethical egoism in determining maxims for our actions.** It is unfortunate that Kant never worked out a theory of intersubjectivity, as did his successors Fichte and Hegel. However, this is not to say that there is not in Kant’s philosophy a tacit theory of intersubjectivity or recognition. **The abstraction requirement simply demands that in the midst of our concrete differences we recognize ourselves in the other and the other in ourselves.** That is, **we recognize in others the humanity that we have in common.** Recognition of our common humanity is at the same time recognition of rationality in the other. We recognize in the other the capacity for selfdetermination and the capacity to legislate for a kingdom of ends. This brings us to the second interpretation of the abstraction requirement. **To avoid ethical egoism one must abstract from** (think beyond) **one’s own personal interest** and subjective maxims. That is, the categorical imperative requires that I recognize that I am a member of the realm of rational beings. **Hence, I organize my maxims in consideration of other rational beings.** Under such a principle other people cannot be treated merely as a means for my end but must be treated as ends in themselves. **The merit of the categorical imperative for a philosophy of race is that it contravenes racist ideology to the extent that racist ideology is based on the use of persons of a different race as a means to an end rather than as ends in themselves.** Embedded in the formulation of an end in itself and the formula of the kingdom of ends is the recognition of the common hope for humanity. That is, maxims ought to be chosen on the basis of an ideal, a hope for the amelioration of humanity. This ideal or ethical commonwealth (as Kant calls it in the Religion) is the kingdom of ends.34 Although the merits of Kant’s moral theory may be recognizable at this point, we are still in a bit of a bind. It still seems problematic that the moral theory of a racist is essentially an antiracist theory. Further, what shall we do with Henry Louis Gates’s suggestion that we use the Observations on the Feeling of the Beautiful and Sublime to deconstruct the Grounding? What I have tried to suggest is that **instead of abandoning the categorical imperative we should attempt to deepen our understanding of it and its place in Kant’s critical philosophy.** A deeper reading of the Grounding and Kant’s philosophy in general may produce the deconstruction35 suggested by Gates. However, a text is not necessarily deconstructed by reading it against another. Texts often deconstruct themselves if read properly. To be sure, the best way to understand a text is to read it in context. **Hence, if the Grounding is read within the context of the critical philosophy, the tools for a deconstruction of the text are provided by its context and the tensions within the text.** Gates is right to suggest that the Grounding must be deconstructed. However, this deconstruction requires much more than reading the Observations on the Feeling of the Beautiful and Sublime against the Grounding. It requires a complete engagement with the critical philosophy. Such an engagement discloses some of Kant’s very signiﬁcant claims about humanity and the practical role of reason. With this disclosure, deconstruction of the Grounding can begin. **What deconstruction will reveal is not necessarily the inconsistency of Kant’s moral philosophy or the racist or sexist nature of the categorical imperative, but rather**, it will disclose **the disunity between Kant’s theory and his own feelings about blacks and women. Although the theory is consistent and emancipatory and should apply to all persons, Kant the man has his own personal** and moral **problems. Although Kant’s attitude toward people of African descent was deplorable, it would be equally deplorable to reject the categorical imperative without ﬁrst exploring its emancipatory potential.**

#### [4] While consequences may be relevant, they are of secondary importance to intrinsicness.

Lee 85 [Steven Lee, “The Morality of Nuclear Deterrence: Hostage Holding and Consequences”, *Ethics*, Vol. 95, No. 3, Special Issue: Symposium on Ethics and Nuclear Deterrence, (Apr., 1985), pp. 549-56] AG

But nuclear deterrence is not, of course, an individual action. It is not an isolated deterrent act but a large-scale, ongoing public policy involving thousands of persons in various roles. It is, in other words, a social institution.4 How can the method of moral evaluation of an individual action be applied as a model in judging the moral status of a social institution? Any institution is liable to involve some isolated violations of nonconsequentialist rules, and when it does, the method of moral evaluation of an individual action can be applied in a straightforward manner: if the institution achieves sufficient social benefit to override the violations, then it may be morally justified despite them. But some institutions involve not merely isolated violations of nonconsequentialist rules but systematic violations of such rules**.** This occurs when injustice or disrespect for rights, for example, is essential to, or characteristic of, the institution**'s** functioning. In this case the moral objection to the institution on non- consequentialist grounds is so much stronger than when violations are isolated that no amount of social benefit the institution could be expected to achieve would be sufficient to override its nonconsequentialist unacceptability. For example**,** a slave-based economy would not be justified even by great economic productivity. As a result, lack of systematic non-consequentialist rule violations becomes, in practice, a necessary condition for the moral justifiability of social institutions. This idea may be called the principle of the morality of social institutions (PMSI): PMSI: Social institutions are morally justified only if they achieve their social benefit in a way that does not systematically violate nonconsequentialist rules, such as those of justice and respect for rights. The issue of the morality of punishment is a good example of the principle at work. The institution of legal punishment is morally justified not only in terms of the social benefit of its deterrent effects but also in terms of its conformity to nonconsequentialist rules of retributive justice. H. L. A. Hart has clearly expressed the point that deterrent effects justify punishment only if the burdens of the system are distributed in a retri- butively just manner, in accordance with desert.5 The lack of systematic nonconsequentialist rule violations is, then, a necessary condition on the moral justifiability of this institution. But a justified system of punishment may involve isolated injustices, as when occasional mistakes occur in the operation of the system, resulting in miscarriages of justice. But if there were a system of punishment which systematically violated principles of retributive justice, that system would not be morally justified despite its deterrent effects. A system of vicarious punishment would be of this kind. In such a system it is not the lawbreakers who are punished but other persons, such as members of the lawbreakers' families. One thing wrong with this, of course, is that the persons punished are innocent parties and do not deserve punishment. But more than the actual pun- ishment of innocent persons is wrong with vicarious punishment. Innocent persons are threatened with punishment, whether they are actually pun- ished or not, and they are thereby held hostage to the lawful behavior of the potential lawbreakers. The institution which threatens them is an institution of systematic hostage holding. Such hostage holding clearly violates nonconsequentialist rules, whether it is regarded as an unjust distribution of the institution's burdens, as a case of violating the rights of the innocent persons threatened, or simply as a process that treats persons as mere means rather than as ends. Vicarious punishment, despite its deterrent effects, is morally unacceptable because it is systematic hostage holding. But our interest is in the institution of nuclear deterrence. Nuclear deterrence must accord with PMSI if it is to be morally justified. In order to determine whether it so accords, we should begin by examining it from a nonconsequentialist perspective.

#### [5] Foundations – grounding ethics based on end states is irrelevant to the question of obligation and aggregation fails to determine the net goodness of actions.

Geach 56 (Peter T, philosopher, “Good and Evil,” Analysis Vol 17, 32-42, <http://fair-use.org/peter-t-geach/good-and-evil>) OS

Secondly, though we can sensibly speak of a good or bad human act, **we cannot sensibly speak of a good or bad event**, a good or bad thing to happen. **Event**, like thing, **is too empty a word to convey either a criterion of identity or a standard of goodness**; to ask Is this a good or bad thing (to happen)? is as useless as to ask Is this the same thing that I saw yesterday? or Is the same event still going on?, unless the emptiness of thing or event is filled up by a special context of utterance. **Caesar's murder was a bad thing to happen to a living organism, a good fate for a man who wanted divine worship for himself, and again a good or bad act on the part of his murderers; to ask whether it was a good or bad event would be senseless**.