# Mid America R5

# 1AC

## 1AC

### 1AC – Fwrk

#### Ethics must be derived a priori –

#### [1] Uncertainty – evil demon could deceive us, dreaming, simulation, and inability to know others’ experience make empiricism an unreliable basis for universal ethics. Outweighs since it would be escapable since people could say they don’t experience the same.

#### [2] Is/Ought Gap – experience only tells us what is since we can only perceive what is, not what ought to be. But it’s impossible to derive an ought from descriptive premises, so there needs to be additional a priori premises to make a moral theory.

#### The existence of conditional goodness requires unconditional human worth—that means we must treat others as ends in themselves.

Korsgaard 83 (Christine M., [American philosopher and Arthur Kingsley Porter Professor of Philosophy at Harvard University whose main scholarly interests are in moral philosophy and its history “Two Distinctions in Goodness,” The Philosophical Review Vol. 92, No. 2 (Apr. 1983), pp. 169-195, JSTOR) AG \*bracket for gendered language [recut by Lex CH]

The argument shows how Kant's idea of justification works. It can be read as a kind of regress upon the conditions, starting from an important assumption. The assumption is that when a rational being makes a choice or undertakes an action, [they] supposes the object to be good, and its pursuit to be justified. At least, if there is a categorical imperative there must be objectively good ends, for then there are necessary actions and so necessary ends (G 45-46/427-428 and Doctrine of Virtue 43-44/384-385). In order for there to be any objectively good ends, however, there must be something that is unconditionally good and so can serve as a sufficient condition of their goodness. Kant considers what this might be**:** it cannot be an object of inclination, for those have only a conditional worth, "for if the inclinations and the needs founded on them did not exist, their object would be without worth" (G 46/428). It cannot be the inclinations themselves because a rational being would rather be free from them. Nor can it be external things, which serve only as means. So, Kant asserts, the unconditionally valuable thing must be "humanity" or "rational nature," which he defines as "the power set to an end" (G 56/437 and DV 51/392). Kant explains that regarding your existence as a rational being as an end in itself is a "subjective principle of human action." By this I understand him to mean that we must regard ourselves as capable of conferring value upon the objects of our choice, the ends that we set, because we must regard our ends as good. But since "every other rational being thinks of his existence by the same rational ground which holds also for myself' (G 47/429), we must regard others as capable of conferring value by reason of their rational choices and so also as ends in themselves. Treating another as an end in itself thus involves making that person's ends as far as possible your own (G 49/430). The ends that are chosen by any rational being, possessed of the humanity or rational nature that is fully realized in a good will, take on the status of objective goods. They are not intrinsically valuable, but they are objectively valuable in the sense that every rational being has a reason to promote or realize t hem. For this reason it is our duty to promote the happiness of others-the ends that they choose-and, in general, to make the highest good our end.

#### Outweighs – All other frameworks collapse—non-Kantian theories source obligations in extrinsically good objects, but that presupposes the goodness of the rational will.

#### Next – Any moral rule faces the problem of regress – I can keep asking “why should I follow this.” Regress collapses to skep since no one can generate obligations absent grounds for accepting them. Only reason solves since asking “why reason?” requires reason to do in the first place which concedes its authority.

#### Practical reason means we must be able to universally will maxims –

#### A] our judgements are authoritative and can’t only apply to ourselves any more than 2+2=4 can be true only for me.

#### B] Action theory – absent a will, we are just blobs of chemicals – only practical reason makes action coherent, otherwise every action can be split into an infinite number of smaller actions.

#### The only constraint is noncontradiction –

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

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

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

#### The standard is consistency with the categorical imperative. To clarify, consequences don’t link to the framework.

#### Prefer –

#### [1] 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.

#### [2] Other frameworks collapse – they rely on some categorical imperative that require inherent principles to act

Korsgaard 98 [CHRISTINE M. KORSGAARD, greatest philosopher alive, 1998, “Introduction”, Groundwork of the Metaphysics of Morals] AG // Recut Lex AKu

This is the sort of thing that makes even practiced readers of Kant gnash their teeth. A rough translation might go like this: the categorical imperative is a law, to which our maxims must conform. But the reason they must do so cannot be that there is some further condition they must meet, or some other law to which they must conform. For instance, suppose someone proposed that one must keep one's promises because it is the will of God that one should do so - the law would then "contain the condition**"** that our maxims should conform to the will of God. This would yield **only** a conditional requirement to keep one's promises — if you would obey the will of God, then you must keep your promises - whereas the categorical imperative must give us an unconditional requirement.Since there can be no such condition**,** all that remains is that the categorical imperative should tell us that our maxims themselves must be laws - that is, that they must be universal, that being the characteristic of laws. There is a simpler way to make this point. What could make it true that we must keep our promises because it is the will of God? That would be true only if it were true that we must indeed obey the will of God, that is, if "obey the will of God" were itself a categorical imperative. Conditional requirements give rise to a regress; if there are unconditional requirements, we must at some point arrive at principles on which we are required to act, not because we are commanded to do so by some yet higher law, but because they are laws in themselves. The categorical imperative, in the most general sense, tells us to act on those principles, principles which are themselves laws. Kant continues:

#### [3] Only universalizable reason can effectively explain the perspectives of agents – that’s the best method for combatting 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.

**One** of the most popular **criticism**s **of Kant’s moral philosophy is that it is too formalistic.**13 That is, the universal nature of the categorical imperative leaves it devoid of content. Such a principle is useless since moral decisions are made by concrete individuals in a concrete, historical, and social situation. This type of criticism lies behind Lewis Gordon’s rejection of any attempt to ground an antiracist position on Kantian principles. The rejection of universal principles for the sake of emphasizing the historical embeddedness of the human agent is widespread in recent philosophy and social theory. I will argue here on Kantian grounds that **although a distinction between the universal and the concrete is** a **valid** distinction, **the unity of the two is required for** an understanding of human **agency.** The attack on Kantian formalism began with Hegel’s criticism of the Kantian philosophy.14 The list of contemporary theorists who follow Hegel’s line of criticism is far too long to deal with in the scope of this paper. Although these theorists may approach the problem of Kantian formalism from a variety of angles, the spirit of their criticism is basically the same: The universality of the categorical imperative is an abstraction from one’s empirical conditions. **Kant is** often **accused of making the moral agent an abstract, empty**, noumenal **subject. Nothing could be further from the truth. The Kantian subject is** an embodied, empirical, concrete subject. However, this concrete subject has a dual nature. Kant claims in the Critique of Pure Reason as well as in the Grounding that human beings have an intelligible and empirical character.15 It is impossible to understand and do justice to Kant’s moral theory without taking seriously the relation between these two characters. The very concept of morality is impossible without the tension between the two. By “empirical character” Kant simply means that we have a sensual nature. We are physical creatures with physical drives or desires. **The** very **fact that I cannot simply satisfy my desires without considering the rightness** or wrongness **of my actions suggests that my empirical character must be held in check** by something, or else I behave like a Freudian id. My empiri- cal character must be held in check **by my intelligible character**, which is the legislative activity of practical reason. It is through our intelligible character that **we formulate principles that keep our** empirical **impulses in check.** The categorical imperative is the supreme principle of morality that is constructed by the moral agent in his/her moment of self-transcendence. What I have called self-transcendence may be best explained in the following passage by Onora O’Neill: In restricting our maxims to those that meet the test of the categorical imperative we refuse to base our lives on maxims that necessarily make our own case an exception. The reason why a universilizability criterion is morally signiﬁcant is that it makes our own case no special exception (G, IV, 404). In accepting the Categorical Imperative we accept the moral reality of other selves, and hence the possibility (not, note, the reality) of a moral community. **The Formula of Universal Law enjoins no more than that we act only on maxims that are open to others also.**16 O’Neill’s description of the universalizability criterion includes the notion of self-transcendence that I am working to explicate here to the extent that like self-transcendence, universalizable moral principles require that the individ- ual think beyond his or her own particular desires. The individual is not allowed to exclude others **as** rational **moral agents** who have the right to act as he acts in a given situation. For example, if I decide to use another person merely as a means for my own end I must recognize the other person’s right to do the same to me. I cannot consistently will that I use another as a means only and will that I not be used in the same manner by another. **Hence,** the **universalizability** criterion **is a principle of consistency and** a principle of inclusion**.** That is, in choosing my maxims **I** attempt to **include the perspective of other moral agents.**

#### [4] Actor specificity – 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.

### 1AC – Plan

#### Thus the plan – The member nations of the World Trade Organization ought to reduce intellectual property protections for medicines. CPs, Ks, and PICs affirm because they do not disprove my general thesis.

#### Here’s spec – enforcement through limited IP waivers solve – patent term extensions are normal means and solves innovation and scale-up.

Young and Potts-Szeliga 21 [Roberta; Counsel in Seyfarth’s Litigation department and Intellectual Property and Patent Litigation practice groups in Los Angeles; Jamaica Potts-Szeliga; Partner in Seyfarth’s Litigation department and Intellectual Property and Patent Litigation practice groups in Washington, DC. She also provides advice on FDA regulatory issues and is part of the firm’s Health Care, Life Sciences, and Pharmaceuticals team; “A Third Option: Limited IP Waiver Could Solve Our Pandemic Vaccine Problems,” IP Watch Dog; 7/21/21; <https://www.ipwatchdog.com/2021/07/21/third-option-limited-ip-waiver-solve-pandemic-vaccine-problems/id=135732/>] Justin

Limited Waiver Approach This article suggests a third option, between voluntary vaccine donation and the full IP waiver proposal, that may offer a way forward. The third proposed solution is incentivized limited IP waivers that could encourage (or require) private companies to engage in licensing agreements with nations to share some, but not all, of the knowledge and designs covering the COVID-19 vaccines to the developing world. The limited IP waivers could cover the minimum necessary portions of the technology to produce basic COVID-19 vaccines. The waivers could be limited in time to the duration of the pandemic, or another term agreed to by the WTO. The term could also be defined as ending when widespread vaccination and immunity goals are achieved. The incentive for pharmaceutical companies to support such limited IP waivers could be provided in the form of patent term extensions for the technology covered by the limited IP waivers. Extensions of patent term are already known and widely used. In the U.S., patent term adjustments are automatically added on to the patent lifespan to account for any delays by the USPTO in the patent prosecution process. In some cases, these mechanisms may extend the patent term for years. Patent term extensions also are available for regulatory delays (35 U.S.C. § 156). In particular, patents covering, inter alia, drug products approved by the United States Food & Drug Administration may be eligible for up to five years of additional patent term to give back time required to complete the regulatory review process. Both patent term adjustments and patent term extensions arise from activities beyond the control of the pharmaceutical companies. A pandemic patent term extension fashioned after such known extensions could be made used to compensate for the current pressing global health needs. This third proposal may be achievable at the WTO. Hurdles remain and it could be months or years before the WTO reaches an agreement on any waiver of IP protections, and years before countries build factories, gather materials, and gain the expertise to produce the vaccines. A steep hurdle is that mRNA is a new technology, with no machines or experts for hire. Nonetheless, the third solution offers hope to find a middle ground that may begin to be implemented before the end of the current pandemic and be in place for the future. The patent term extension could be provided for countries with patent offices and could be adapted based on laws and conditions in each country. Pandemic-related patent term extensions could be given for a period of time that the compulsory license is in force. With current pandemic projections of six months to two years for sufficient distribution, providing a patent term extension is reasonable and in line with the time period of many patent term extensions. Given that most pharmaceutical patents are prosecuted in multiple countries, this provides an incentive to participate in a limited waiver program. Let’s Not Repeat Past Mistakes It’s been a century since the last pandemic devastated the globe and the only certainty is that this will not be the last pandemic. Solutions created today lay a foundation for mitigation of the next pandemic. It’s been said that those who refuse to learn from history are doomed to repeat it, a thought too painful to contemplate with a pandemic. The industrial nations of the world have technology that others are literally dying to obtain—a high price to pay. Incentivized limited IP waivers may offer a compromise to bridge the gap between maintaining IP rights (and thus relying on charity alone) and arbitrary compulsory licensing that could deter the technological investment to create life-saving solutions in the future.

### 1AC – Offense

#### 1] IP rights prevent certain 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] Creation doesn’t justify ownership.

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\*\*\*

We can see from these examples that creation is relevant to the question of ownership of a given “created” scarce resource, such as a statue, sword, or farm, only to the extent that the act of creation is an act of occupation, or is otherwise evidence of first occupation. However, “creation” itself does not justify ownership in things; it is neither necessary nor sufficient. One cannot create some possibly disputed scarce resource without first using the raw materials used to create the item. But these raw materials are scarce, and either I own them or I do not. If not, then I do not own the resulting product. If I own the inputs, then, by virtue of such ownership, I own the resulting thing into which I transform them. Consider the forging of a sword. If I own some raw metal (because I mined it from ground I owned), then I own the same metal after I have shaped it into a sword. I do not need to rely on the fact of creation to own the sword, but only on my ownership of the factors used to make the sword.44 And I do not need creation to come to own the factors, since I can homestead them by simply mining them from the ground and thereby becoming the first possessor. On the other hand, if I fashion a sword using your metal, I do not own the resulting sword. In fact, I may owe you damages for trespass or conversion. Creation, therefore, is neither necessary nor sufficient to establish ownership. The focus on creation distracts from the crucial role of first occupation as a property rule for addressing the fundamental fact of scarcity. First occupation, not creation or labor, is both necessary and sufficient for the homesteading of unowned scarce resources. One reason for the undue stress placed on creation as the source of property rights may be the focus by some on labor as the means to homestead unowned resources. This is manifest in the argument that one homesteads unowned property with which one mixes one’s labor because one “owns” one’s labor. However, as Palmer correctly points out, “occupancy, not labor, is the act by which external things become property.”45 By focusing on first occupancy, rather than on labor, as the key to homesteading, there is no need to place creation as the fount of property rights, as Objectivists and others do. Instead, property rights must be recognized in first-comers (or their contractual transferees) in order to avoid the omnipresent problem of conflict over scarce resources. Creation itself is neither necessary nor sufficient to gain rights in unowned resources. Further, there is no need to maintain the strange view that one “owns” one’s labor in order to own things one first occupies. Labor is a type of action, and action is not ownable; rather, it is the way that some material things (e.g., bodies) act in the world. The problem with the natural-rights defense of IP, then, lies in the argument that because an author-inventor “creates” some “thing,” he is [they are] “thus” entitled to own it. The argument begs the question by assuming that the ideal object is ownable in the first place; once this is granted, it seems natural that the “creator” of this piece of property is the natural and proper owner of it. However, ideal objects are not ownable. Under the libertarian approach, when there is a scarce (ownable) resource, we identify its owner by determining who its first occupier is. In the case of “created” goods (i.e., sculptures, farms, etc.), it can sometimes be assumed that the creator is also the first occupier by virtue of the gathering of raw materials and the very act of creation (imposing a pattern on the matter, fashioning it into an artifact, and the like). But it is not creation per se that gives rise to ownership, as pointed out above.46 For similar reasons, the Lockean idea of “mixing labor” with a scarce resource is relevant only because it indicates that the user has possessed the property (for property must be possessed in order to be labored upon). It is not because the labor must be rewarded, nor because we “own” labor and “therefore” its fruits. In other words, creation and labor-mixing indicate when one has occupied – and, thus, homesteaded – unowned scarce resources.47 By focusing on creation and labor, rather than on first occupancy of scarce resources, as the touchstone of property rights, IP advocates are led to place undue stress on the importance of “rewarding” the labor of the creator, much as Adam Smith’s flawed labor theory of value led to Marx’s even more deeply flawed communist views on exploitation.48 As noted above, for Rand, IP rights are, in a sense, the reward for productive work, i.e., labor. Rand and other natural-rights IP proponents seem to adopt a mixed natural rights – utilitarian rationale in holding that the person who invests time and effort must be rewarded or benefit from this effort (e.g., Rand opposed perpetual patent and copyright on the grounds that because distant descendants did not create their ancestors’ works, they deserve no reward) (See also [38], pp. 388–89).

#### 4] 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.

#### 5] 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.

### 1AC – U/V

#### [1] 1AR theory –

#### a) AFF gets it because otherwise the neg can engage in infinite abuse, which outweighs on severity because we literally can’t engage,

#### b) DTD – the 1AR is too short for theory and substance so ballot implications are key to check abuse,

#### c) no RVIs – they can stick me with 6min of answers to a short arg and make the 2AR impossible

#### d) competing interps – 1AR interps aren’t bidirectional and the neg should have to defend their norm since they have more time,

#### e) 1AR theory comes first – it’s the largest portion of the constructive speeches which means there’s more abuse if I’m devoting a more time and the 2N can win multiple layers,

#### f) no 2NR theory – 2-to-1-time tradeoff makes it devastating for the 2AR,

#### h) RVIs on NC theory we need an out of the 746 skews on theory i) structural abuse outweighs it determines our ability to debate in the first place

#### [2] Fiat is good faith implementation – neg teams always win if governments try to actively undermine the aff.

#### [3] Permissibility collapses to presumption and affirm –

#### a) Statements are true before false since if I told you my name, you’d believe me

#### b) Epistemics – we wouldn’t be able to start a strand of reasoning since we’d have to question that reason.

#### c) Illogical – presuming statements false is illogical since you can’t say things like P and ~P are both wrong.

#### d) If anything is permissible, then definitionally so is the aff since there is nothing that prevents us from doing it.

#### e) Squo bias – you are cognitively bias to maintaining the squo so if both options are equal err on the side of change.

#### f) that’s means we need a positive justification for things like breathing which is obviously illogical

#### [4] Interpretation—the neg must fairly prove the truth of the statement “the member nations of the WTO ought not reduce IPP for COVID goods.” To clarify, other than theory, all negative arguments must prove the truth of the statement.

#### A] Research – proving the converse means they have to actively search out reasons the plan is a bad idea--their model ensures that they never have to research different topics or do prep since it gives them an infinite number of objections

#### B] Strat skew—2 warrants – 1, you get variable ground if not bound by the rez--means you have access to more layers since I have a truth burden and you don’t, 2, you can moot 6 minutes of the 1ac by shifting the debate to a separate layer that the aff doesn’t interact with

#### C] DTD on 1ac theory---they have the opportunity to meet my interp and only I rectify the skew of you being able to choose either to agree to debate under the aff framing OR contest it – No RVI on 1ac theory that has a pre-emptive violation--they would have 7 minutes to answer a minute-long shell and the debate would end right there

#### [5] Ideal theory is in no way incompatible with a radical agenda—broad principles can inspire broad sweeping change and allow previously-excluded groups to claim political agency.

Holmstrom [Holmstrom, Nancy [Prof. Emeritus @ Rutgers]. "Response to Charles Mills's." Radical Philosophy Review 15.2 (2012): 325-330.]

We have to speak to people where they are, he says, and that means appealing to core values of liberalism: individualism, equal rights and moral egalitarianism. Against what he calls the conventional wisdom among radi- cals, he argues that there is no inherent incompatibility between these values and a radical agenda. If these values are suitably interpreted, I think he is absolutely right. Over two hundred years ago, Mary Wollstonecraft and Toussaint Louverture took the abstract universalistic principles of the French Revolution and extended them to groups they were intended to exclude. Gradually and incompletely women and blacks and landless men have achieved the democratic rights promised to all (in words) by the anti-feudal revolution. So I agree with Charles that such universalistic principles have great value; even if usually applied in self-serving ways, they have a deeply radical potential and it would be foolish of radicals to reject them, any more than we should reject all of the technological developments of the Indus- trial Revolution which also developed with the rise of capitalism. in fact, few American radicals have rejected these aspects of liberalism in their politi- cal practice but have been their strongest champions since the Revolution; socialists of all kinds helped to build the labor and civil rights movements.‘

#### 7] Applying Kantian ideals in a racialized context can help repudiate oppression and promote self-respect. The end of any approach to solving oppression is universal respect which demands a Kantian focus.

Mills 18 [Charles W. Mills. “Black Radical Kantianism.” Res Philosophica, Vol. 95, No. 1, January 2018, pp. 1–33 https:// doi.org/ 10.11612/ resphil.1622.]

To the extent that the dominant varieties of colonial/imperial liberalism were originally racist (Mehta 1999; Pitts 2005; Hobson 2012), presup- posing a hierarchy of European superiors and non-European inferiors (biologically and/or culturally), they got the social ontology wrong in an obvious way. But to the extent that postwar postcolonial (at least nom- inally) liberalism retroactively sanitized its racial past and transformed this hierarchical essentialist metaphysics into an ontology of morally equal and symmetrically positioned atomic individuals, it still continues, I would contend, to get the social ontology wrong. The Afro-modern claim is that neither is correct, because (contra the first) blacks and other people of color are equal and because (contra the second) the socially constructed inequali- ties and their historic legacy cannot be metaphysically ignored considering how fundamentally and asymmetrically they have shaped the modern world order and the raced individuals within that order. In other words, the Afro-modern tradition is insistent that modernity is established on and structured by a social ontology of race. It is not, of course—assuming meta-ethical objectivism—that these racist social conven- tions and structures actually make blacks and other people of color less than full persons. But the denial to them of social recognition as full persons, depriving them of equal rights, freedoms, and protections, and unjustly privileging whites at their expense, foundationally affects both these racial groups and the moral and political dynamics of the societies so created. Objectively, their personhood is unaffected, along with the rights, freedoms, and protections they should have, as persons. But intersubjectively, insofar as white social recognition is dominant and determinant, their socially effective personhood—the rights, freedoms, and protections they actually have—is denied.5 Thus, we have an ontology—races as central existents profoundly shaping one’s being as an individual—but an ontology socially rather than biologically created—the product of “sociogenesis,” in Frantz Fanon’s (1991 [1967]) famous coinage. As George Fredrickson (2015 [2002], 11–12) has pointed out, pre- modern social ontologies are characterized by social hierarchies of multiple kinds. So even if race existed then (which Fredrickson denies, as an expo- nent of the short periodization), it would not have been sharply differen- tiated from the others. It is the advent of modernity, which is supposed to flatten these systems of ascriptive hierarchy into simple personhood (as in the conventional portrayal of Kant), that sets racial inferiority so sharply into relief, since the R2s are then being stigmatized as less than human while the R1s become (making allowance for gender differentiation) coextensive with the human. The Afro-modern diagnosis of a metaphysics of personhood that is actually racialized is thus different from standard Euro-modern discussions of personhood and its implications for ethico- political theory. It is making a different claim than the anti-utilitarian critique within liberalism that it permits the disrespecting of persons. The putative problem with utilitarianism is not that it regards a set of persons as sub-persons, but that the fungibility of (equal) persons opens the door to the rights-violations of some (equal) persons if social welfare for (equal) persons as a whole can thereby be maximized. The Afro-modern analysis is saying that, independent of this issue, some persons are not recognized as equal persons in the first place. So it is also different from the Marxist critique from outside liberalism. The putative problem here, as originally stated in “On the Jewish Question” (Marx 2000) and later in Capital (Marx 1990 [1976], 279–280), is that in assuming individuals of equal moral and juridical status, equal recognized personhood, liberalism’s social ontology is ignoring the effects of the material differences in wealth and property ownership in the liberal state that in reality make the (white) working class effectively unequal. But the Afro-modern claim is that for blacks and other people of color, not even ethico-juridical equality, limited as it may be, is attained, so that their positioning in the liberal state is different from the beginning. Consider some classic statements of this realization from figures across the black diaspora. In his second autobiography, My Bondage and My Freedom, Frederick Douglass (1996, 213) describes how, after he had escaped from slavery to the North, and was giving abolitionist speeches, “I was generally introduced as a ‘chattel’—a ‘thing’—a piece of southern ‘property’—the chairman assuring the audience that it could speak.” But this was not surprising to him, because the experience of enslavement had taught him that “A man, without force, is without the essential dignity of humanity. Human nature is so constituted, that it cannot honor a helpless man, although it can pity him” (199). W. E. B. Du Bois’s Darkwater (2007 [1920], 35) concludes that “By reason of a crime [Atlantic slavery] (perhaps the greatest crime in human history) the modern world has been system- atically taught to despise colored peoples. . . . all this has unconsciously trained millions of honest, modern men into the belief that black folk are sub-human.” The Jamaican anti-colonial activist Marcus Garvey (1992 [1923–1925]) judges of blacks that “A race without authority and power is a race without respect.” French colonial subject Aimé Césaire (2016 [1972], 202) draws up the equation “colonization equals ‘thingification’,” an assessment echoed and elaborated upon in his Martiniquan compatriot Frantz Fanon’s (1991 [1967], 8), description of “the zone of nonbeing,” in which “the black is not a man.” Black American writer Ralph Ellison (1995 [1952]) uses Invisible Man as the title of his celebrated first novel, signifying not, as in its predecessor, H. G. Wells’s (2017) early 1897 science-fiction classic The Invisible Man, a physico-chemical invention to make the body imperceptible to our fellow-humans, so that the inventor cannot be seen, but rather the lack of equal social recognition given to blacks by their white fellow humans, who simply refuse to see them. Malcolm X (Breitman, ed. 1965, 51) recounts how “I grew up with white people. . . . and I have never met white people yet—if you are around them long enough—who won’t refertoyouasa‘boy’ora‘gal,’nomatterhowoldyouare. . . . All of our people have the same goals, the same objective. That objective is freedom, justice, equality. All of us want recognition and respect as human beings. We don’t want to be integrationists. Nor do we want to be separationists. We want to be human beings.” Across the Atlantic, South African militant Steve Biko (2002 [1978]) declares that: In terms of the Black Consciousness approach we recognize the existence of one major force in [apartheid] South Africa. This is White Racism. It is the one force against which all of us are pitted. . . . What Black Consciousness seeks to do is to produce . . . real black people who do not regard themselves as appendages to white society. . . . We do not need to apologise for this because . . . the white systems have produced through the world a number of people who are not aware that they too are people. (50–51) So the common theme is the demand for equal recognition, equal dignity, equal respect, equal personhood, in a white-supremacist world where disre- spect rather than respect is the norm, the default mode, for blacks. A race- sensitive Kantianism not merely purged of Kant’s own racism but attuned (in a way nominally color-blind Kantianism is not) to these racially demar- cated particularities