### Framework

#### Constitutivism must be the starting point for ethics—it is the only way for principles to be binding and all external standards collapse to constitutive ones.

Korsgaard 10 [(Christine, Philosophy Professor at Harvard) “The Normative Constitution of Agency,” keynote lecture for the Conference on Collective Intentionality VII: Perspectives on Social Ontology, August 2010, http://www.people.fas.harvard.edu/~korsgaar/CMK.NCA.pdf] TDI

* 1) constittivism is only way for principles to be binding

Constitutive standards are important, I claimed above, because they meet skeptical challenges with ease. But the importance of the idea is deeper than that, for I believe—and I know this is more controversial— that the only way to establish the authority of any purported normative principle is to establish that it is constitutive of something to which the person whom it governs is committed— something that she either is doing or has to do. And I think that Kant thought this too. The laws of logic govern our thoughts because if we don’t follow them we just aren’t thinking. Illogical thinking is not merely bad, it is defective, it is bad as thinking. The laws of the understanding govern our beliefs because if we don’t follow them, we just aren’t constructing a representation of an objective world (9.7.5). And as I will argue, the laws of practical reason govern our actions because if we don’t follow them we just aren’t acting, and acting is something that we must do. A constitutive principle for an inescapable activity is unconditionally binding. How could it be otherwise? Constitutive standards have unquestionable authority, while external standards give rise to further questions, and leave space for skeptical doubt. How then can we ever give authority to an external standard, except by tracing its authority back to a constitutive one? Consider again that house that blocks the neighbors’ view of the lake. Why shouldn’t the house-builder build it? For I’m supposing that we all do agree that really, after all, he shouldn’t do it, in spite of the fact that it wouldn’t therefore be a defective house. Well, perhaps he identifies himself as a good neighbor, a citizenly type, and doesn’t need to ask why he shouldn’t build a house that is a blight on the neighborhood. Or perhaps he loves his neighbors, and wouldn’t want to harm them. Or perhaps— to anticipate the success of the views we are working on here—it would be morally wrong to build a house that blocks the view of the neighbors, and so although it might be all very well as a bit of house-building, it would be defective as an action.

Prefer -

1. Is/ought gap – experience only tells us what is, not what ought to be, which raises the question why we ought to follow their framework

2. problem of relativism – inability to know each other’s experience makes it an unreliable basis for ethics. People could just say they don’t experience the same.

Moral law must be universal—our judgements can’t only apply to ourselves any more than 2+2=4 can be true only for me.

#### Thus, the standard is consistency with the categorical imperative

#### Prefer additionally:

#### 1]Other frameworks collapse—all moral valuations presuppose the unconditional worth of humanity.

Korsgaard 83 [(Christine, Philosophy Professor at Harvard) “Two Distinctions in Goodness,” Duke University Press The Philosophical Review Vol. 92, No. 2, April 1983, <https://www.jstor.org/stable/2184924>] TDI

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, he or she 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 45-46/427-28; Doctrine of Virtue 43- 44/384-85). 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 capacity to set an end (G 56/437; 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 them. 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.

#### 2]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.

### Advocacy

#### I affirm: The member nations of the World Trade Organization ought to reduce intellectual property protections for medicines.

#### Enforcement is done through waiving TRIPS protections and modifying relevant domestic law to ensure patent protections are reduced---spec is delineated in the card.

Jones et al. 21, Mike Jones, J.D., cum laude, Brooklyn Law School, 2014. Sean McConnell, University of Pittsburgh School of Law, J.D., 2002. Lauren Giambalvo, University of Georgia School of Law, J.D., magna cum laude, Order of the Coif, 2019; Georgia Law Review. Emily Harmon, Villanova University Charles Widger School of Law, J.D., 2020. Ipwatchdog, August 9, 2021. “What is a ‘Patent Waiver’ Anyway? Zooming Out on the TRIPS COVID IP Waiver Debate” <https://www.ipwatchdog.com/2021/08/09/patent-waiver-anyway-zooming-trips-covid-ipwaiver-debate/id=136381/> brett

Scientists, engineers, and everyday people have developed solutions for testing, preventing, and treating the COVID-19 disease. Ordinarily, we wouldn’t think twice about granting patents on these inventions. But, today, when COVID-19 is spreading all over the world and killing millions of people, some world leaders are questioning whether we should be granting the exclusionary rights of patent protection on inventions that help respond to the pandemic. Included in that group is the Biden-Harris Administration, which, in May, announced their support of an “IP waiver” on COVID 19 vaccines.

Patent Waiver

The “patent waiver” is a proposal to waive certain provisions of the Trade-Related Aspects of Intellectual Property (TRIPS) Agreement for three years. The TRIPS Agreement requires certain member countries (“Members”), including the United States, to have certain minimum intellectual property protections. While this proposal is often referred to as a “patent waiver,” the proposal would also waive sections associated with copyright, industrial designs, and undisclosed information.

The proposal seeks to waive Part II, Section 5 Patents of the TRIPS Agreement and the associated enforcement sections only with respect to “health products and technologies including diagnostics, therapeutics, vaccines, medical devices, personal protective equipment, their materials or components, and their methods and means of manufacture for the prevention, treatment or containment of COVID-19” for a period of three years. Article 27 of Section 5 requires that certain Members issue patents to inventions that “are new, involve an inventive step and are capable of industrial application.” However, Members have the option to refuse to grant patents to certain categories of inventions, including, “diagnostic, therapeutic and surgical methods for the treatment of humans or animals.” Article 28 explains that an owner of a patent can prevent others from “making, using, offering for sale, selling, or importing” (“infringing”) the patented inventions. Finally, Part III of the TRIPS Agreement explains the potential consequences of infringing a patent. Among other things, the infringer can be liable for money damages and the judicial authority of the Member may order injunctions.

Therefore, as the TRIPS Agreement currently stands, each Member must have patent laws that give patents to inventions that meet certain requirements, and each must provide avenues for patent holders to enforce its patent rights. As applied to the current situation, Members are required to grant patents to qualifying inventions related to “the prevention, containment and treatment of COVID-19” (with exceptions for pharmaceuticals if the Member does not allow pharmaceutical patents). Infringers could be liable for money damages and the judicial authority of the Member may order injunctions.

If provisions in Part II, Section 5 and the associated enforcement sections are waived, Members would no longer be required to issue patents or provide avenues for patent holders to enforce patent rights. The proposal does not, however, require Members to waive their own domestic patent rights. In other words, the proposal to waive certain provisions of the TRIPS Agreement, the “patent waiver,” does not directly waive any patent protections. Rather, the patent waiver grants to Members permission to waive their own domestic patent protections.

Patent laws are geographically limited; they only protect an invention in the country that issued the patent. For example, one cannot make, use, offer to sell, sell, or import an invention protected only by a U.S. patent in the U.S; however, one may do those things in another country where corresponding patent protection does not exist. Therefore, in order to waive patent protections worldwide, each Member subject the TRIPS Agreement’s requirement to have certain minimum intellectual property protection would have to waive its own domestic patent protections.

The United States patent laws are codified in Title 35 to the U.S. Code. It provides that inventors may obtain patents for their new and useful inventions and infringers are liable for making, using, offering to sell, selling, or importing into the U.S. patented inventions without the patent holders consent. Because the power to enact patent laws lies with Congress, Congress would likely have to waive these laws. If Congress chooses not to waive the U.S.’s patent laws, patent holders will continue to be able to enforce their U.S. patent rights in the U.S.

### Offense

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

#### Lindsey and Teles 17 [Lindsey, Brink, and Steven Michael Teles. *The Captured Economy: How the Powerful Enrich Themselves, Slow down Growth, and Increase Inequality*. Oxford University Press, 2017.]//Lex AKu

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 limit freedom of the owners of property by handing partial control 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](https://doi.org/10.1007/978-94-007-1494-6_99%5d//Lex) AKu

\*\*\*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] IPR is nonuniversalizable and interferes with the freedom of people who need medicine

Merges 11 [(Robert, Wilson Sonsini Goodrich & Rosati Professor of Law and Technology, University of California, Berkeley, School of Law) “Justifying Intellectual Property,” Harvard University Press, 2011] JL recut Lex VM

Under Kant’s Universal Principle of Right (UPR), “laws secure our right to external freedom of choice to the extent that this freedom is compatible with everyone else’s freedom of choice under a universal law.”8 As I explained in Chapter 3, Kant’s theory of property rights expresses a special instance of this general principle: property is widely available, yet denied when individual appropriation interferes with the freedom of others. Kant says that although the need for robust property drives the formation of civil society, property rights are nonetheless subject to this “universalizing” principle. Under the operation of the UPR, property rights are constrained: they must not be so broad that they interfere with the freedom of fellow citizens. In a Kantian state, individual property is both necessary— to promote autonomy and self- development; see Chapter 3— and necessarily restricted under the UPR.9

Death is the ultimate restraint on autonomy; there is no more “self” to guide after a person dies. So when a claim to property by person A leads to the death of person B, Kant’s Universal Principle would seem to rebut that claim. As with other issues, however, Kant’s views in this regard are not so simple. In par tic u lar, he expressed complex views on the legal defense of “necessity,” which bears a close resemblance to the property- limiting principle I am attributing to him here.10 Kant says, in effect, that in at least one important example of necessity— where A kills B, or at least puts B in immediate grave danger, to save A’s own life— one who commits a necessary act is culpable but not punishable.11 As with so much in the Kantian canon, there is a great deal of debate over just what Kant was trying to say about necessity. One view— at least as plausible as most others, and more plausible than some— holds that Kant thought of necessity as something like an excuse or defense: a wrong act is not made right by necessity, but it is insulated from formal legal liability.12 This view, well described by among others the Kant scholar Arthur Ripstein, depends on the distinction between formal, positive law (“external,” in Kant’s terminology; see Chapter 3) and “internal” morality. Property for Kant is an absolute right, and taking it without permission is always objectively wrong. But at the same time, some takings are not punishable by the state because they fall outside the proper bounds of legitimate lawmaking.

Because Kant did not explicitly discuss the necessity defense as it pertains to property rights, any application of his thinking to the case of pharmaceutical patents can only be speculation. Even so, there is one point to make. As I explained in some detail in Chapter 3, there is generally a high degree of symmetry between Kant’s thinking on law and3 his theory of property. The UPR is a good example; as I explained in Chapter 3, the idea that property can extend only up to the point that it interferes with the freedom of others is simply one specific application of the general Kantian take on law and freedom. Thus, the analysis of the pharmaceutical patents problem would turn on the issue of property’s effect on the freedom of those suffering from treatable diseases. To put it simply, it is difficult to be sure of the exact conclusion Kant would reach with regard to the issue, but I am sure that the analysis would turn on the freedom- restricting qualities of pharmaceutical patents. It is hard to know the right answer, but not hard to pose the right question: should property extend so far as to cut off or restrain the freedom of those who might be treated?

#### 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](https://doi.org/10.1007/978-94-007-1494-6_99%5d//Lex) AKu

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](https://www.niskanencenter.org/wp-content/uploads/2019/09/LT_IPMisnomer-2-1.pdf%5d//Lex) AKu

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. It is the scarcity of physical objects, and the potential for conflict that such scarcity creates, that is at the heart of why we have private property at all. When physical objects are subject to potentially conflicting claims for possession, use, control, and consumption, it is necessary to devise some system for assigning those rights. Around the world, in countless different settings and cultures, private property evolved as the predominant method for allocating rights over land and physical objects of value. Property rights vary depending on the property in question — water rights are different from land rights, and both are different from rights to personal possessions. But in general, a right to property includes a number of claims that the owner may make, such as the ability to sell, bequeath, consume, or destroy. In this “bundle” of rights, the most fundamental is the right to exclude, according to philosopher David Schmidtz. 8 Because physical goods are rivalrous, none of the other rights in the bundle can be exercised effectively without the foundational right to tell other people to keep their hands off your stuff.

## Advantage

**IP protections are the vital internal link to reduce vaccine inequality. Empirics disprove all pro patent arguments**

**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.

#### Vaccine inequality threatens the whole world.

**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. WHO 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.

#### Boosting manufacturing capacity is critical to a timely response to COVID AND ensures preparedness for future pandemics.

Jecker & Atuire 21, Dr Nancy S Jecker, Department of Bioethics & Humanities, University of Washington School of Medicine. Department of Philosophy, University of Johannesburg, Auckland Park, Gauteng, South Africa. Caesar A Atuire, Department of Philosophy and Classics, University of Ghana, Accra, Accra, Ghana. All Souls College, University of Oxford, Oxford, Oxfordshire, UK. Journal of Medical Ethics 2021;47:595-598. “What’s yours is ours: waiving intellectual property protections for COVID-19 vaccines.” <https://jme.bmj.com/content/47/9/595> brett

Since consequentialist justifications treat the value of IP as purely instrumental, they are also vulnerable to counterarguments showing that a sought-after goal is not the sole or most important end. During the COVID-19 pandemic, we submit that the vaccinating the world is an overriding goal. With existing IP protections intact, the world has fallen well short of this goal. Current forecasts show that at the current pace, there will not be enough vaccines to cover the world’s population until 2023 or 2024.15 IP protections further frustrate the goal of universal access to vaccines by limiting who can manufacturer them. The WHO reports that 80% of global sales for COVID-19 vaccines come from five large multinational corporations.16 Increasing the number of manufacturers globally would not only increase supply, but reduce prices, making vaccines more affordable to LMICs. It would stabilise supply, minimising disruptions of the kind that occurred when India halted vaccine exports amidst a surge of COVID-19 cases.

It might be objected that waiving IP protections will not increase supply, because it takes years to establish manufacturing capacity. However, since the pandemic began, we have learnt it takes less time. Repurposing facilities and vetting them for safety and quality can often happen in 6 or 7 months, about half the time previously thought.17 Since COVID-19 will not be the last pandemic humanity faces, expanding manufacturing capacity is also necessary preparation for future pandemics. Nkengasong, Director of the African Centres for Disease Control and Prevention, put the point bluntly, ‘Can a continent of 1.2 billion people—projected to be 2.4 billion in 30 years, where one in four people in the world will be African—continue to import 99% of its vaccine?’18

#### Mutations and future pandemics escalates security threats that cause extinction – cooperation thesis is wrong.

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

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

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.

#### Extinction – nuke war fallout creates Ice Age and mass starvation

Steven Starr 15. “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.

## Underview

#### 1] 1AR theory –

#### a) AFF gets it because otherwise, the neg can engage in infinite abuse which outweighs on severityb) drop the debater – the short 1AR irreparably skewed from abuse on substance and time investment on theory c) no RVIs – the 6-minute 2nr can collapse to a short shell and get away with infinite 1nc abuse via sheer brute force and time spent on theory

#### 2] Kantian ethics solve can solve oppression-Contrary to Kant’s own beliefs

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./Recut Lex AKu

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.

#### 3] 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.‘