## 1ac

### Underview

#### 1] Aff gets 1AR theory to prevent infinite abuse it’s DTD since the 1AR needs it to make the time investment worth, no RVIs because you can dump on a 30 sec shell for 6 minutes, and competing interps since the 2n can’t dump on a reasonability bright-line that excludes only what they did wrong – 1AR theory comes first the 1AR is too short to be able to rectify abuse and adequately cover substance.

#### 2] Here are some counter solvency advocates links in the doc,

<https://e15initiative.org/wp-content/uploads/2015/09/E15-Innovation-LippoldtSchultz-FINAL.pdf>

<https://www.nytimes.com/roomfordebate/2015/09/23/should-the-government-impose-drug-price-controls/to-lower-drug-prices-innovate-dont-regulate>

https://www.dispatch.com/story/opinion/columns/guest/2021/08/28/elizabeth-wright-consumers-feel-pain-if-pbms-over-regulated/5578470001/

#### 3] Procedural fairness first a) probability – one round cant alter subjectivity, but it can rectify fairness skews, b) link turns their role of the ballot since it proves we couldn’t engage in it and it is exclusionary, c) answers are self-defeating since they presuppose the judge evals them fairly.

**4]** **Permissibility and Presumption Affirm**

**A] Otherwise we’d have to have a proactive justification to do things like drink water.**

**B] If anything is permissible, then definitionally so is the aff.**

**C] Statements are true before false since if I told you my name, you’d believe me.**

### Metaethic

#### The metaethic is pluralism or the idea that differing views of ethics are valid,

#### 1] Empirics- Best studies prove pluralistic tendencies are inevitable

Polzler and Wright 19[Thomas Pölzler and Jennifer Cole Wright- “Empirical research on folk moral objectivism” <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6686698/> NCBI. Published July 5th 2019]

Examining these studies' results more closely, however, makes it less clear whether this interpretation is appropriate (Pölzler, 2018b). Take again Goodwin and Darley's study. In this study, almost 30% of subjects' responses to the disagreement measure and almost 50% of their responses to the truth‐aptness measure fell on the option that the researchers took to be indicative of subjectivism (Goodwin & Darley, 2008, pp. 1347, 1351). Moreover, while some moral statements were dominantly classified as objective (e.g., the above statement about robbery), many others were dominantly classified as nonobjective (e.g., the stem cell research statement). This suggests that subjects in Goodwin and Darley's study may have actually favored what Wright, Grandjean, and McWhite (2013) called “metaethical pluralism,” i.e., they sometimes sided with objectivism and other times with nonobjectivism. More recent studies have by and large confirmed this hypothesis of folk metaethical pluralism. Wright et al. (2013) and Wright, McWhite, and Grandjean (2014), for example, replicated Goodwin and Darley's results, using the exact same measures, but letting subjects classify the presented statements as moral and nonmoral themselves. Objectivity ratings for statements that were dominantly self‐classified as moral varied between as little as 5% and as much as 85%. Research based on different measures yielded high proportions of intrapersonal variation as well (e.g., Beebe, 2014; Beebe, Qiaoan, Wysocki, & Endara, 2015; Beebe & Sackris, 2016; Fisher, Knobe, Strickland, & Keil, 2017; Goodwin & Darley, 2012; Heiphetz & Young, 2017; Wright, 2018; Zijlstra, forthcoming.

#### Emperics O/W they are the only verifiable metric and take into account all conditions.

#### 2] Resolvability – Thousands of years of unresolved debates over ethics are on our side. It’s unlikely a 45 minute debate can come to a useful truth.

### Framing

#### Meaning only has value in a frame of reference when it is practical to the individual, James 2K

James, William [William James was an American philosopher, historian, and psychologist, and the first educator to offer a psychology course in the United States.], and Giles B. Gunn. Pragmatism and Other Writings. New York: Penguin Books, 2000. Print.

A glance at the history of the idea will show you still better what pragmatism means. The term is derived from the same Greek word , meaning action, from which our words ‘practice’ and ‘practical’ come. It was first introduced into philosophy by Mr. Charles Peirce in 1878. In an article entitled ‘How to Make Our Ideas Clear,’ in the ‘Popular Science Monthly’ for January of that year,1 Mr. Peirce, after pointing out that our beliefs are really rules for action, said that, to develop a thought’s meaning, we need only determine what conduct it is fitted to produce: that conduct is for **us** its sole significance. And the tangible fact at the root of all our thought-distinctions, however subtle, is that there is no one of them so fine as to consist in anything but a possible difference of practice. To attain perfect clearness in our thoughts of an object, then, we need only consider what conceivable effects of a practical kind the object may involve — what sensations we are to expect from it, and what reactions we must prepare. Our conception of these effects, whether immediate or remote, is then for us the whole of our conception of the object, so far as that conception has positive significance at all. This is the principle of Peirce, the principle of pragmatism. It lay entirely unnoticed by any one for twenty years, until I, in an address before Professor Howison’s philosophical union at the university of California, brought it forward again and made a special application of it to religion.34 By that date (1808) the times seemed ripe for its reception. The word ‘pragmatism’ spread, and at present It fairly spots the pages of the philosophic journals. On all hands we find the ‘pragmatic movement’ spoken of, sometimes with respect, sometimes with contumely, seldom with clear understanding. It is evident that the term applies itself conveniently to a number of tendencies that hitherto have lacked a collective name, and that it has ‘come to stay.’ To take in the importance of Peirce’s principle, one must get accustomed to applying it to concrete cases. I found a few years ago that Ostwald, the illustrious Leipzig chemist, had been making perfectly distinct use of the principle of pragmatism in his lectures on the philosophy of science; though he had not called it by that name.35 “All realities influence our practice,” he wrote me, “and that influence is their meaning for us. I am accustomed to put questions to my classes in this way: In what respects would the world be different if this alternative or that were true? If I can find nothing that would become different, then the alternative has no sense.” That is, the rival views mean practically the same thing, and meaning, other than practical, there is for us none. Ostwald in a published lecture gives this example of what he means. Chemists have long wrangled over the inner constitution of certain bodies called ‘tautomerous.’ Their properties seemed equally consistent with the notion that an instable hydrogen atom oscillates inside of them, or that they are instable mixtures of two bodies. Controversy raged, but never was decided. “It would never have begun,” says Ostwald, “if the combatants had asked themselves what particular experimental fact could have been made different by one or the other view being correct. For it would then have appeared that no difference of fact could possibly ensue; and the quarrel was as unreal as if, theorizing in primitive times about the raising of dough by yeast, one party should have invoked a ‘brownie,’ while another insisted on an ‘elf’ as the true cause of the phenomenon.2 It is astonishing to see how many philosophical disputes collapse into insignificance the moment you subject them to this simple test of tracing a concrete consequence. There can be no difference anywhere that doesn’t make a difference elsewhere — no difference in abstract truth that doesn’t express itself in a difference in concrete fact and in conduct consequent upon that fact, imposed on somebody, somehow, somewhere, and somewhen. The whole function of philosophy ought to be to find out what definite difference it will make to you and me, at definite instants of our life, if this world-formula or that world-formula be the true one. There is absolutely nothing new in the pragmatic method. Socrates was an adept at it.37 Aristotle used it methodically. 38Locke, Berkeley,39and Hume4041made momentous contributions to truth by its means. Shadworth Hodgson keeps insisting that realities are only what they are ‘known as.’ But these forerunners of pragmatism used it in fragments: they were preluders only. Not until in our time has it generalized itself, become conscious of a universal mission, pretended to a conquering destiny. I believe in that destiny, and I hope I may end by inspiring you with my belief.

#### Thus deliberation must be used for moral inquiry, Misak 99

Misak, C. J. (Cheryl J.) [Cheryl J. Misak FRSC is a Canadian philosopher who works in pragmatism, the history of analytic philosophy, and bioethics. She is a University Professor at the University of Toronto, a Fellow of the Royal Society of Canada, and a recipient of a Guggenheim Fellowship in intellectual and cultural history.], “Truth, politics, morality: pragmatism and deliberation”, 1999, https://philpapers.org/rec/MISTPM-4

Pragmatism, I have suggested, can offer such protection. Unlike noncognitivism, it does provide the theoretical wherewithal to think that one’s reasons are more than just what one happens to think. For a judgement aims at being true, where being true amounts to being the belief which would best fit with reasons and experience. And pragmatism provides the theoretical wherewithal to criticise others. For a methodological principle has been justified: engaging in genuine moral inquiry – searching for principles and for particular judgements which will not be susceptible to recalcitrant experience and argument – requires that we take our beliefs to be responsive to new arguments and sensibilities about what is good, cruel, kind, oppressive, worthwhile, or just. Those who neglect or denigrate the experiences of others because of their gender, skin colour, or sexual orientation are adopting a very bad means for arriving at true and rational beliefs. They can be criticised as failing to aim at truth properly. This methodological criticism will come into play in relatively few cases. The project is not to derive the whole of morals and politics from a general and proven principle. The methodological point is not a fountain from which all policy must flow, although it supports a certain direction for policy, rich and possibly radical. For the most part, moral debate will be conducted in the usual way, with reasons offered of the sort: that someone fails to see how much pain she is causing; that lying to a person in order to get what you want is treating him as a means to an end and that this is an inappropriate way to treat a person; that keeping a class oppressed in order to maintain a luxurious lifestyle indicates a perverse ordering of the importance of various needs, and so on. That is, once the pragmatist/cognitivist ethics is up and running, there will be countless familiar principles which will provide grounds of justification and criticism. But these principles will not have the general justification that the methodological principle enjoys. Their justifications will be even more low profile and fallible. Agreement on this or that issue must always be taken to be possibly wrong, for we do not know that inquiry or debate has been pursued as far as it could go. We have seen that not even the methodological principle should pretend that it is necessarily true and this holds even more sharply for the first-order principles. But the fact that our judgements are fallible does not mean that the arguments for them are weak. We can have good reasons to think that a way of life, a conception of the good, a comprehensive doctrine, a religious commitment, a norm of behaviour, an ideal of virtue, a kind of character, a Moral deliberation 105 cultural value, or a recommendation for action in a particular context is right or wrong. It is clearly crucial for the pragmatist theory that wanting to get the truth is something which cuts across whatever divides us from others. Luckily for that theory, we are indeed hard pressed to find opponents in our moral and political lives who do not assert or believe or claim that their position is true, or best, or that which ought to be enforced. This is all we need in order to see them as participating in inquiry and all we need in order to see them as bound to the minimal requirement of taking experience seriously. Once our Schmittian and other illiberal opponents are brought into the epistemic fold, they can be criticised as failing to really hold beliefs – things which are responsive to reasons. For they refuse to take the reasons of all seriously. So despite the fact that the pragmatist’s methodology is sparse and is something that is relatively easy to accept, it gives us what Habermas wants and what everyone should want – critical bite. And despite the fact that the pragmatist says that we must start our theory with ongoing practice, that theory can provide us with a guide for future practice. We can debate substantive moral issues and, over and above the first-order criticisms which we will level, we are guided by a methodological normative principle. An inquirer can fail to aim at truth, can fail to hold genuine beliefs or genuine assertions, or he can follow a method that is unlikely to get him true beliefs. The first-order reasons we may invoke for or against some proposal are not reducible to the second-order reasons – to the epistemological arguments about truth and inquiry. The epistemological arguments tell us what it is to have a belief which aims at truth, moral belief being a special case of that general type (a case where arguments about the rightness of respecting others happen to take primacy of place). The first-order reasons will be about moral properties, such as the fair distribution of resources and how we ought to treat others when we interact personally with them. It is the first-order reasons which will constantly come into play in our ethical and political lives, unlike the epistemological reasons. And there will be plenty of first-order reasoning which bears on the question of whether we ought to treat the experience of others with respect. But that does not damage the point that the epistemological arguments give us something additional to the first-order reasons to say to ourselves about why and how we can criticise those who denigrate the experiences of others. It does not damage the point that the epistemological arguments give additional weight or justification to the idea that we must take the experiences of others seriously. David Estlund (1997) and Henry Richardson (1997) can be seen as offering the following justification for deliberative democracy, which has affinities with the justification offered here. Assume that impartiality and fairness are a part of our aim in morals and politics. We have a preference for deliberative over random ways of achieving these aims. We think that flipping a coin would 106 Truth, Politics, Morality be a bizarre method of making political decisions, even though it exemplifies a kind of impartiality. This preference reflects something – it reflects that there are standards which require our respect. A legitimate procedure must be answerable to reasons – it must be capable of paying attention to the reasons that matter. If, for instance, a vote – which exemplifies another kind of impartiality – failed to provide minimal resources to the most needy, we would reject it. For it would fail to meet standards of charity or generosity which demand respect. Since reasons come out in debate and deliberation, a legitimate procedure must be one that proceeds by debate and deliberation. Flipping a coin or simple voting cannot guarantee that standards and reasons will be respected and so we need to deliberate. That is the only methodology which is justified for those who hold that random methods of impartiality are not preferable over methods which pay attention to reasons. My argument, along similar but more all-embracing lines, is that any method for arriving at genuine beliefs (beliefs which aim at truth) must be a method which is driven by reasons and experience. The argument embraces more because having a belief that is aimed at truth, or at getting things right, is something that every believer is committed to, whereas impartiality is not. So the point I have been urging is stronger than Estlund’s and Richardson’s. The shared point is that if you want to have your beliefs governed by reasons, then you will have to expose yourself to different reasons, different perspectives, different arguments. You will have to engage in debate and deliberation. The stronger point is that a case can be made that any opponent is committed to having her beliefs governed by reasons, so any opponent is committed, whether he acknowledges it or not, to debate and deliberation. It will be asked here whether I am not trying to give a sort of transcendental argument for the principle that we must take the experience of others seriously – a kind of argument for which I criticised Habermas and Apel. Do I not also try to have democratic principles fall out of the very ideas of belief, assertion, and truth? Indeed, my argument is that the requirements of genuine belief show that we must, broadly speaking, be democratic inquirers. But the argument avoids the difficulties which accompany Habermas’ and Apel’s view. First, many problems for Habermas and Apel arise because their account of the necessary preconditions of communication seems to rest on an unintuitive definition of communication as an attempt at mutual understanding. Communication often, it seems, flies in the face of the democratic principles. I have argued that certain things are required for genuine belief and my argument, I hope, is based on a plausible and thin understanding of what is involved in the concept. A belief is something that one gives, or would give, or could give, reasons for, something that one takes to be responsive to the way things are. And that seems right. Second, I have offered an independent argument for the thought that truth is what would be agreed upon. I do not take for granted an identification of truth with the results of inquiry when I try to justify the democratic method. Moral deliberation 107 And one of my arguments for that method – that adopting a method which ignores the experience of others is a bad means for getting beliefs which best account for all experience and argument – has no transcendental ring at all to it. It does not suggest that the possibility of language or communication depends on a certain conception of how to live (i.e. freely and equally). Rather, it is a hypothetical imperative of the sort: if you want beliefs which will withstand the force of experience, then do such-and-such. The additional empirical or sociological claim is then added – virtually everybody claims to be after such beliefs. So my argument rests on a conception of deliberation or inquiry which tries to be relatively uncontentious. All it takes for someone to be a participant in these practices is a commitment to wanting beliefs which will not be overturned by subsequent experience and reason. Again, it is extremely easy for a state to qualify itself as a belief on this view. All it takes is that acknowledgement, explicit or implicit, that the belief answers to something. This is not Popper’s claim that a belief must be straightforwardly falsifiable. A belief merely must be sensitive to something. And in those cases in which I fail in my commitment to have my belief sensitive to reasons, all that can be said is that I fail to have a genuine belief aimed at truth, not, contra Habermas in some moods, that my humanity is compromised. I merely do not aim at the state I say I aim at, or I adopt a method which is not appropriate to my stated aim. One reason for the thin conception of inquiry here is to avoid the kind of difficulties that face Habermas and Apel. But another is to avoid an objection often put to liberalism. The charge is that the liberal tries to elevate a particular conception of the good – something like ‘rational’ debate – to the status of an obvious and universal good. Rawls, for instance, has been accused of having a conception of the self as a rational chooser who wants to maximise her own advantage. The charge is that it is far from obvious that such a conception of the rational self ought to be written in stone for all. I try to defend a view which has it that all conceptions of good be on the table for discussion. There appears to be no built-in bias here, no bias which will ensure that certain conceptions will be declared best. But is the pragmatist not sectarian in that she thinks that the life of active citizenship, or the life of deliberation, or some other variation on a liberal ideal is the life we must live?2 Some will see in pragmatism an unpleasant privileging of the inquirer, the debater, or the investigator. Perhaps pragmatism merely enshrines the culturally specific values of argumentation, impartiality, and experimentation. We shall see in the following sections that, for a number of reasons, this is not right. The pragmatist does not think that deliberation is always appropriate. And the nature of deliberation is left entirely open. For hand in hand with the idea that truth would be the product of human inquiry is the idea that what is true, what is rational, and what the standards of good deliberation are is a matter of what human inquiry would take to be true, rational, and good by way of standards of inquiry. There is no truth beyond our human inquiries, 108 Truth, Politics, Morality which always take place in a particular context. So even the kind of deliberation that is appropriate is something that will come out only through thought and deliberation. Indeed, the self will only be formed through thinking and decision-making. It is only in the midst of inquiry that we discover who and what we are, what we want, and what fits best with the evidence and argument. But we shall see that this kind of process can take all kind of forms, not all of them resembling self-conscious, organised, and systematic investigation. Again, the point is that it is much more plausible to think that all inquirers aim at getting beliefs which will not disappoint them than to think that all inquirers aim at being rational, in the fairly narrow sense meant by some Western academics. The pragmatist rejects the idea that the nature of reason (that it is neutral, that it abides by first-order logic, or whatever) is identifiable in advance of inquiry. Rather than require all to conform to such purportedly objective standards, the pragmatist makes the thinner and more plausible requirement that all inquirers aim at getting beliefs which will stand up to the test of experience. It is very easy to qualify oneself as an inquirer on this conception of inquiry. Neutrality: three senses Although the pragmatist puts forward a methodology for moral and political deliberation which is thin and low-profile, it would be a mistake to suggest that it is thereby neutral, in the sense most often meant by liberal political theorists. ‘Neutral’ is one of those words that is so overused that confusion about just what is meant often accompanies it. The sense of neutrality which I am concerned to distance myself from is what I shall call the neutrality principle and it is the pillar of many a liberal theory. The neutrality principle holds that government should not encourage or discourage conceptions of what it is to lead a good life. On this kind of neutrality, as long as the pursuit of a conception of the good does not directly harm others, the state should take a principled position of non-interference. The view is often summarised by saying that conceptions of the good are off the public agenda – the state cannot explicitly encourage them and citizens, in their public roles, cannot appeal to them in debate and argument. I shall argue, on the contrary, that often an appeal to reasons which refer to one’s conception of what is valuable can and should be made in public deliberation. If the relevant distinction is between the neutral and the public/ political willingness to judge ways of life, then we shall see that the pragmatist wants to allow for such judgement and declare this kind of neutrality unwise. There are other distinctions, which issue in other senses of neutrality, which we would do well to keep in mind. One is between the neutral and the committed and another is between the neutral and the biased. Moral deliberation 109 We have seen that central to the pragmatist’s argument is that it is impossible to be neutral in the first sense – to be uncommitted.3 There is no way of thinking of neutrality as a kind of perspectivelessness. One must have some perspective, some commitments. If being impartial involves the thought that an individual can rise above a particular context and somehow make a judgement which stands apart from her background beliefs, then impartiality is indeed not to be had.4 Our policies and beliefs arise from deliberation between individuals with particular, partial, views, views laden with the reasoner’s background beliefs, education, and cultural expectations. It is, however, possible and desirable in politics to be neutral in the second sense, to try to eradicate bias. A person is biased if he holds to his commitments in such a way as to close his mind to other beliefs. So being unbiased requires, amongst other things, that one try to put oneself in the other’s shoes, so to speak – that one try to imagine what it would be like to see the issue from the perspective of others. If we pull together the thoughts regarding these two distinctions, we can see that having commitments, being steeped in a fallible point of view, having a perspective, need not be a form of illusion, bias, or distortion. As with one’s location in perceiving an object, one must perceive from a particular perspective. But a range of perspectives will be consistent with each other and consistent with a particular description of the object or situation. If we are careful to try to shift perspectives, we can get a more complete take on matters.5 An individual occupies a perspective, and can occupy any one of a number of perspectives. Attention to these possibilities can produce a judgement that is not biased. There are of course difficulties in drawing the line between having a perspective and having a bias. For instance, in 1994 the Ontario Court of Appeal dealt with a charge of bias against a member of a Police Services Board of Inquiry into the conduct of officers who strip-searched a black woman in public. The board member in question was the president of a Chapter of the Congress of Black Women of Canada and the majority in the court agreed that the statements about the prevalence of racism, which the Congress had made in the past, created a reasonable apprehension of bias. The dissenting judge, however, noted that affiliation with an organisation which by its very nature might be said to favour one side in a dispute could not be enough to show bias. The other board members, after all, were recommended by the Ontario Police Association and the Ontario Association of Municipalities.6 The difficulty is that a board member on a tribunal always has some view, fallible and defeasible, about what constitutes discrimination and what should be done about it. Did this woman’s having the view she had constitute a bias that made her unsuitable to make judgements of improper searches by police officers? Should a candidate be disqualified from being a Constitutional Court judge who has to decide on same-sex gender legislation because he believes that homosexuals should have the same rights as heterosexuals? Should he 110 Truth, Politics, Morality be disqualified if he is a gay rights activist? What makes it more likely that someone who is a believer in ‘family-values’ can be fair in thinking about such legislation? They also have a view or a perspective. The fact that it is difficult to draw these lines does not mean that we can or should avoid thinking about them. We must make judgements about when someone is biased. One way I have suggested making them is to ask whether that person is taking the experience of all seriously. And there will be a host of other kinds of searching questions to be asked. There are of course limitations on the exercise of viewing matters from different perspectives. (Can I really get a sense of what it is to be a black unemployed male with no prospects at all?) But again, we must not draw a too-pessimistic conclusion from the difficulties. They do not entail that one should not do one’s best. Indeed, as Kymlicka argues, without the attempt to get into the shoes of another, elected representatives cannot even begin to do what they are supposed to do (1995: 140f). If understanding the needs and interests of those who differ from oneself is impossible, then those who are supposed to represent citizens cannot do so, for they are sure to differ in some respects from all whom they are supposed to represent. We assume that empathy with others can produce some understanding. Indeed, the assumption behind our attempts to understand others must be right, if we accept the point which is stressed by Onora O’Neil and Donald Davidson. If we can translate and interpret the utterances of others, if we can communicate at all, this reveals a great deal of shared belief. (Davidson argues that in order to have an idea or a concept at all, we have to communicate and thus share a picture of the world.) If we succeed in talking together and thinking together, if we succeed in disagreeing with others, rather than simply failing to comprehend others, then we share a great deal. Agreement and disagreement are parasitic on mutual understanding. And thus the idea that we have different conceptual schemes, that we live in different worlds, so to speak, is scuttled. Let us now turn to the neutrality principle, the principle on which a central dispute between the pragmatist and the mainstream liberal lies. The advocate of this kind of neutrality holds that politics is not the place for debate about what is good. He thinks it always undesirable or impossible to judge, in a public forum, the way of life or the practices of another. The pragmatist argues, on the other hand, that we sometimes can and ought to make these judgements. In what follows, I shall show how the pragmatist can shut out the neutrality principle without shutting out the things that it is designed to promote – autonomy, equality, and tolerance. The upshot will be that multiculturalism must be promoted by the institutions of a pragmatist democracy. The liberal who thinks the neutrality principle important will be attracted to a policy of benign neglect of minority groups. We shall see that the pragmatist, on the other hand, will think that a policy upon which minority groups are encouraged and perhaps even granted special group rights and powers might be warranted. Moral deliberation 111 We might, that is, find ourselves heeding Kymlicka’s advice to treat different kinds of group claims differently (1995: 58–60). For instance, what is in the interests of justice for African-Americans, with their history of slavery, segregation and exclusion from the majority culture, may not be in the interests of Native Americans with their history of forced inclusion into the majority culture. ‘Colour-blind’ laws may be what is required in the first case, but not in the second. The ‘may’ here is important. The negative side of colour-blind laws is that they can rule out affirmative action and encourage laws which are merely ‘facially neutral’ – for instance, heavy mandatory sentences for crack cocaine in the US, which tend to impact severely on blacks. So one has to go carefully before making such a recommendation. As I shall argue below, it is not the philosopher’s place to say that such-and-such a policy is what is required. It is the philosopher’s place to make theoretical room for the controversies to come to the surface and for the right public policy to be made. The principle of neutrality The liberal neutrality principle is prompted by a worry. History shows us that if the state takes it upon itself to evaluate conceptions of the good, then the likes of homosexual acts, possession of soft drugs, and divorce can get prohibited. For such things can be thought by those in power to be worse than worthless. So Ronald Dworkin expresses his reasons for the importance of the neutrality principle thus: Government must… leave people free to live as they think best so long as they do not harm others. But the Reverend Jerry Falwell, and other politicians who claim to speak for some ‘moral majority,’ want to enforce their own morality with the steel of the criminal law. They know what kind of sex is bad, which books are fit for public libraries, what place religion should have in education and family life, when human life begins, that contraception is sin, and that abortion is capital sin. (1983: 1) If we want to keep at bay the likes of the moral majority, we must prohibit appeals to any particular parochial morality (in this case, the fundamentalist Christian morality) in politics. That some moral majority will enforce their beliefs upon all is indeed a worry. But it is just a worry. It is not a necessary result of allowing conceptions of the good a voice on the public agenda. And the worry might be quieted by any one of a number of different policies, the neutrality principle being one of the many. We ought to be concerned about the possibility that certain ways of life will be wrongly denigrated, but neutrality may not be the only, or the best, way to prevent that from happening. 112 Truth, Politics, Morality One argument for the neutrality principle begins from a scepticism about morality. If it is impossible to make objective judgements about what is valuable, then a government cannot do it. And citizens, when they are arguing about policy and about justice, cannot do it either. We saw in Chapter 1 that Schmitt turns this argument on its head so that it is an argument not for, but against the idea of liberal neutrality. If it is not possible to aim at making rational and true judgements about the good, then all that one can do is plumb for one’s own conception. Some of these conceptions will undermine the liberal framework, and thus that framework only thinks itself neutral, when in fact it really cannot help but be an upholding of the liberal view of the good under the bogus name of neutrality. So a consideration against the argument from scepticism is that it crumbles internally and that it just as easily leads to intolerance within a society, not tolerance. Another consideration against the argument is the bundle of reasons given in Chapter 2 about how we are better advised to think of moral judgements as genuine beliefs and assertions which aim at truth. There is a perspective – a human, not a God’s eye perspective – from which values and conceptions of the good can be judged. Not every advocate of the neutrality principle, however, is a sceptic about moral judgement. Some argue that even if it is possible to adjudicate between conceptions of the good, governments ought to avoid it and leave such deliberation to individuals in private forums. These arguments start from the thought that something like autonomy, or equality, or respect for persons, is basic.7 Dworkin, for instance, argues that equality and respect require neutrality: a government which forces or encourages its citizens to live what it takes to be the good life puts constraints on citizens which ‘they could not accept without abandoning [their] sense of [their] equal worth’ (1983: 3). If a government is going to treat its citizens as equals, it must be neutral with respect to the nature of the good life. Or one could claim that if individuals are to retain their autonomy – their capacity to stand apart from their current interests and aims in order to revise, question, discover, and choose their ends – their ends cannot be chosen by an authority. They must be free to choose what kind of life plan they will adopt, free to change that plan, and free to make mistakes. Governments ought not to decide what the best lifestyle is and use their coercive power to then interfere with individuals who fail to adopt it or happen to fall outside of it. I shall suggest that the pragmatist can have autonomy, equality and respect for persons, without adopting the neutrality principle. This is a good thing, for I shall also set some arguments against the non-sceptical version of the neutrality principle. One argument is Andrew Kernohan’s recent claim that the liberal’s commitment to the moral equality of persons requires the liberal to think that governments must act, in a non-neutral way, to discourage a polluted cultural Moral deliberation 113 climate (Kernohan 1998). An oppressive culture, such as one in which women are treated as inferior, and encouraged to see themselves as inferior, can cause real accumulative harm. It can undermine self-respect, it can cause stereotypes to be internalised by those who are oppressed,8 and it can harm our interest in knowing the good. Thus a government which is committed to liberal principles of equality and respect for persons should not be neutral about such oppression – it ought to use its persuasive power to try to reform a polluted climate.

#### Thus, the standard is promoting pragmatic deliberation.

#### Prefer:

#### 1] Materiality- Our framework moves away from abstraction and understands knowledge as changing in order to base social change and revision of ideas. Glaude 7’ Eddie S. (Eddie S. Glaude Jr. is the chair of the Center for African-American Studies and the William S. Tod Professor of Religion and African-American Studies at Princeton University.) In a Shade of Blue : Pragmatism and the Politics of Black America. University of Chicago Press, 2007. EBSCOhost. (5-7) Recut from Dulles AS

In a Shade of Blue is my contribution to the tradition I have just sketched. My aim is to think through some of the more pressing conceptual problems confronting African American political life, and I do so as a Deweyan prag-matist. I should say a bit about what I mean by this self-description. John Dewey thought of philosophy as a form of cultural and social criticism. He held the view that philosophy, properly understood as a mode of wis-dom, ought to aid us in our efforts to overcome problematic situations and worrisome circumstances. The principal charge of the philosopher, then, is to deal with the problems of human beings, not simply with the problems of philosophers. For Dewey, over the course of his long career, this involved bridging the divide between science, broadly understood, and morals—a divide he traced to a conception of experience that has led philosophers over the centuries to tilt after windmills. Dewey declared, “The problem of restoring integration and co-operation between man’s beliefs about the world in which he lives and his beliefs about values and purposes that should direct his conduct is the deepest problem of any philosophy that is not isolated from life.”9Dewey bases this conclusion on several features of his philosophy: (1) anti foundationalism, (2) experimentalism, (3) contextualism, and (4) soli-darity.10 Antifoundationalism, of course, is the rejection of foundations of knowledge that are beyond question. Dewey, by contrast, understands knowledge to be the fruit of our undertakings as we seek “the enrichment of our immediate experience through the control over action it exercises.”**11He insists that we turn our attention from supposed givens to actual consequences**, pursuing a future fundamentally grounded in values shaped by experience and realized in our actions. This view makes clear the experimental function of knowledge. Dewey emphasized that knowledge entails efforts to control and select future experience and that we are always con-fronted with the possibility of error when we act. We experiment or tinker, with the understanding that all facts are fallible and, as such, occasionally afford us the opportunity for revision.12Contextualism refers to an understanding of beliefs, choices, and actions as historically conditioned. Dewey held the view that inquiry, or the pursuit of knowledge, is value-laden, in the sense that we come to problems with interests and habits that orient us one way or another, and that such pursuits are also situational, in the sense that “knowledge is pursued and produced somewhere, some when, and by someone.”13Finally, solidarity captures the associational and cooperative dimensions of Dewey’s thinking. Dewey conceives of his pragmatism as “an instrument of social improvement” aimed principally at expanding democratic life and broadening the ground of individual self-development.14Democracy, for him, constitutes more than a body of formal procedures; it is a form of life that requires constant attention if we are to secure the ideals that purportedly animate it. Individuality is understood as developing one’s unique capacities within the context of one’s social relations and one’s community. The formation of the democratic character so important to our form of associated living involves, then, a caring disposition toward the plight of our fellows and a watchful concern for the well-being of our democratic life.

#### 2] Social relations are dynamic and constantly being decentered from normative systems of knowledge; only pragmatism’s understanding of interactive knowledge production can mitigate entrenched violence.

Kadlec 8, Alison. "Critical pragmatism and deliberative democracy." Theoria 55.117 (2008): 54-80. (doctorate in political science from the University of Minnesota and bachelor's degrees from Michigan State University in political theory, constitutional democracy and English literature.)//Dulles AS

Social Intelligence: The Critical Potential Lived Experience Though human nature is intersubjectively generated on an ongoing basis, we are not merely the products of Platonic conceptions of ourselves. Individuals are cultivated in and by society through experiential processes in which we are acted upon, and act back upon a dynamic environment. For Dewey, 'experience' connotes a very specific process that stands in stark contrast to the traditional conception of experience as a matter of private consciousness. Because Dewey's notion of experience is **social, active, and educative,** what he calls the 'experiential continuum' is the process by which we are best able to develop social intelligence. The 'experiential continuum' is characterised by our enduring and undergoing the consequences of our actions, and intelligence is to be understood as the self-conscious and ongoing process of adjusting our attitudes in light of these consequences.25 In The Public and Its Problems , Dewey gives this view of intelligence a decidedly deliberative spin when he says, 'we lie, as Emerson said, in the lap of an immense intelligence. But that intelligence is dormant and its communications are broken, inarticulate and faint until it possesses the local community as its medium'.26 In 'Ethical Principles Underlying Education', Dewey is more explicit in explaining his view of the relationship between social intelligence and the normative commitment to democracy in his declaration that 'ultimate moral motives and forces are nothing more nor less than social intelligence the power of observing and comprehending social situations and social power trained capacities of control at work in the service of social interest and aims'.27 Dewey's unflagging faith in the transformative potential of social intelligence intrinsic to democracy as a way of life **is not Utopian**, nor is it based on a belief that all problems are finally solvable. Rather, it expresses a moral commitment that suggests that a working faith in social intelligence is our best shot at crafting habits and institutions that will further encourage us to identify **new opportunities for the expansion of our capacities** moving forward. The upshot here is that democracy as a way of life means, above all, that we stop thinking of democracy as a thing and start thinking about it as a way. Democracy is belief in the ability of human experience to generate the aims and methods by which further experience will grow in ordered richness. . . . Democracy is the faith that the process of experience is more important than any special result attained, so that the special results achieved are of ultimate value only as they are used to enrich and order the ongoing process. Since the process of experience is capable of being **educative**, faith in democracy is all one with faith in experience and education. All ends and values that are cut off from the ongoing process become arrests and fixations. They strive to fixate what has been gained instead of using it to open the road and point the way to new and better experiences.28 On this account, social intelligence is not a possession, it is a de-centred and educative process of ordering our **experiences** through manifold **communication**. The guiding principles, then, of social intelligence are 1) the protection and expansion of our capacity for free and communicative inquiry and 2) the protection and expansion of our capacity to perceive the shared consequences of our habits and policies. We judge the goodness or badness of these consequences by evaluating the way they act back on and impact our individual capacities for free inquiry that inform the ongoing development of social intelligence In turn, the 'proper conditions' for social intelligence then are those that increase our ability to perceive the complex shared consequences of our choices and practices. Intelligence is social in pragmatism because it requires the development of both firstand second-order attitudes that can only take place in an ongoing process of communication. Free inquiry is not just a matter of having the opportunity to seek information that will allow for the generation of thoughtful attitudes about issues, it is also a matter of appreciating and harnessing the democratic potential of second-order attitudes (attitudes about our attitudes). We are not passive receivers of information, **but dynamic interactors**, and therefore intelligence is intrinsically communicative. Free inquiry is the engine of social intelligence, which is in turn based on our willingness to have our firstorder attitudes adjusted in light of our second-order attitudes.29 The ongoing mutual adjustment of our first-order and second-order attitudes through a back and forth process between the two emerges only to the extent that we have the opportunities to communicate freely with others, and this is none other than the 'method' of social intelligence. The goal of communicative inquiry then is to build an ever richer context for the ongoing development of our ability to perceive the relationship between our beliefs, practices, and institutions. By taking a principal focus on increasing our ability for evermore sophisticated perception of the consequences of our habits of thought and action, we will be better equipped to distinguish between those habits that improve and those that impede our capacities for free inquiry. This is the material of problem-solving, as it is just this capacity for free inquiry that makes it possible to identify common problems in a way that they may be productively addressed. Turning back to the challenges leveled by radical democratic theorists, we can begin to see the opportunities made possible by critical pragmatism. Tapping into the critical potential of lived experience under conditions of unalterable changefulness begins with the therapeutic recognition that there is no such thing as a unified field of power directed entirely by stable and fixed interests. The first implication here is that there are always new opportunities to exploit cracks and fissures in various structurally **entrenched forms of power**. Second, the essentially complexity and flux of our world is always **producing new opportunities for transformative resistance** and for the development of more creative approaches to meaningful deliberation. Critical pragmatism pivots on the notion that under such conditions what we most need are not fixed and static foundations, we need the flexible habits of inquiry and **communication** that make it possible to both identify pernicious obstacles to deliberation and to challenge, circumvent, or neutralise their impact.

#### 3] Actor spec – governments use pragmatism i.e. ancient Greece or in 2005 the US working with thousands of ordinary citizens to rebuild after hurricane katrina. o/w on real world and specificity since differnet agents have differnet obligations

#### 4] Rule following paradox – we can infinitely question why to follow that rule, which will eventually terminate at some base assumption with no external justification. Only the pragmatic deliberation solves since we realize what it means to follow rules is to participate in the common good because we look at multiple interpretation of the rules

#### 5] Value Pluralism- Other ethical theories rely on minimalistic criteria as their foundation, our framework resolves this by using these criteria to better inform our judgments LaFollete 2K

"Pragmatic Ethics" [Hugh LaFollette](http://www.hughlafollette.com/index.htm) In [Blackwell Guide to Ethical Theory](http://www.hughlafollette.com/papers/b-guide.htm) 2000. Hugh LaFollette is Marie E. and Leslie Cole Professor in Ethics at the University of South Florida St. Petersburg. He is editor-in-chief of The International Encyclopedia of Ethics. <https://www.hughlafollette.com/papers/b-guide.htm> recut from Dulles AS

Pragmatic ethics takes a more aggressive approach, insisting that mankind is responsible for determining the best ethical system possible, which will be refined as new discoveries are made. Put simply; truth does not exist in some abstract realm of thought independent of social relationship or actions; instead, the truth is a function of an active … Pragmatism, according to William James, is derived from the Greek word pragma, which means action and serves as the basis of our English words practical and practice. Pragmatism originated in the United States around 1870, and now presents a growing third alternative to both analytic and Continental philosophical traditions worldwide. 1 - Acceptance . Ethics is a branch of philosophy that is responsible for studying the principles that govern the conduct of an individual. Employs criteria, but is not criterial The previous discussions enable us to say more precisely why pragmatists reject a criterial view of morality. Pragmatism's core contention that practice is primary in philosophy rules out the hope of logically prior criteria. Any meaningful criteria evolve from our attempt to live morally – in deciding what is the best action in the circumstances. Criteria are not discovered by pure reason, and they are not fixed. As ends of action, they are always revisable. As we obtain new evidence about ourselves and our world, and as our worlds changes, we find that what was appropriate for the old environment may not be conducive to survival in the new one. A style of teaching that might have been ideal for one kind institution (a progressive liberal arts college) at one time (the 60s) may be wholly ineffective in another institution (a regional state university) at another time (the 80s). But that is exactly what we would expect of an evolutionary ethic. Neither could criteria be complete. The moral world is complex and changeable. No set of criteria could give us univocal answers about how we should behave in all circumstances. If we cannot develop an algorithm for winning at chess, where there are only eighteen first moves, there is no way to develop an algorithm for living, which has a finitely large number of "first moves." Moreover, while the chess environment (the rules) stays constant, our natural and moral environments do not. We must adapt or fail. While there is always one end of chess -- the game ends when one player wins – the ends of life change as we grow, and as our environments change. Finally, we cannot resolve practical moral questions simply by applying criteria. We do not make personal or profession decisions by applying fixed, complete criteria. Why should we assume we should make moral decisions that way? Appropriates insights from other ethical theories Nonetheless, there is a perfectly good sense in which a pragmatic ethic employs what we might call criteria, but their nature and role dramatically differ from that in a criterial morality (Dewey 1985/1932) . Pragmatic criteria are not external rules we apply, but are tools we use in making informed judgements. They embody learning from previous action, they express our tentative efforts to isolate morally relevant features of those actions. These emergent criteria can become integrated into our habits, thereby informing the ways that we react to, think about, and imagine our worlds and our relations to others. This explains why pragmatists think other theories can provide guidance on how to live morally. Standard moral theories err not because they offer silly moral advice, but because they misunderstand that advice. Other moral theories can help us isolate (and habitually focus on) morally relevant features of action. And pragmatists take help wherever they can get it. Utilitarianism does not provide an algorithm for deciding how to act, but it shapes habits to help us "naturally" attend to the ways that our actions impact others. Deontology does not provide a list of general rules to follow, but it sensitizes us to ways our actions might promote or undermine respect for others. Contractarianism does not resolve all moral issues, but it sensitizes us to the need for broad consensus. That is why it is mistaken to suppose that the pragmatist makes specific moral judgements oblivious to rules, principles, virtues, and the collective wisdom of human experience. The pragmatist absorbs these insights into her habits, and thereby shapes how she habitually responds, and how she habitually deliberates when deliberation is required. This also explains why criterial moralities tend to be minimalistic. They specify minimal sets of rules to follow in order to be moral. Pragmatism, on the other hand, like virtue theories, is more concerned to emphasize exemplary behavior – to use morally relevant features of action to determine the best way to behave, not the minimally tolerable way

#### Impact Calc:

#### Deliberation is procedural not substantive, which means that we are first concerned with the decision-making procedure of deliberation and then evaluation of what impacts matter most. To clarify, consequences are a sequencing question. Serra 09,

Juan Pablo Serra. What Is and What Should Pragmatic Ethics Be? Some Remarks on Recent Scholarship*.* EUROPEAN JOURNAL OF PRAGMATISM AND AMERICAN PHILOSOPHY. 2009. Francisco de Vitoria College, Humanities Department, Faculty member. Dulles AS

BY WAY OF CONCLUSION: As LaFollette presents it, the key to understanding pragmatist ethics is that it is not an ethical theory per se, but rather it is an anthropology, a way of understanding the human being and his moral action. Therefore, pragmatist ethics in reality does not propose a new ethical theory, but rather “reconstructs” through a new prism the basic intuitions of the best ethical theories. The fundamental element on which the attention of pragmatist ethics centers is deliberation. Deliberationisnotdirectlyresponsible for directing action,butonly doessoindirectly**,** bymeans of a critique of past actions, theefforttocorrect or reinforce certain habits and mental experiments that each actor performs in order to determine his own future conduct, and even to determine in a general manner the way in which one wishes to live one’s life (or, what amounts to the same thing, the type of person one wishes to be). Thetaskofapragmatistethics, therefore**,** isnottoprovidefinalsolutions**,** butrather to indicate that it is onlyvia thetestingandcommunicationofexperiencesthatthe superiorityof onemoral ideaover another can be demonstrated. In this sense, one of the principal missions of any given version of pragmatist ethics is to indicate some general manner in which habits can be acquired which, later, will facilitate personal deliberation – both internal and external – in the broad variety of circumstances which make up the moral life.

### Offense

#### 1] IPPs hinder deliberation by allowing industry to dominate negotiations, Chapman 99

Audrey R. Chapman, Ph.D., Director, Science and Human Rights Program, January 1999, “A Human Rights Perspective on Intellectual Property, Scientific Progress, and Access to the Benefits of Science”, American Association for the Advancement of Science, <https://www.wipo.int/edocs/mdocs/tk/en/wipo_unhchr_ip_pnl_98/wipo_unhchr_ip_pnl_98_5.doc> AT

All of these trends have been further accelerated in the past fifteen years. Weeramantry advocated the need to undertake broad reforms to reorient the political process so as to assure that science and technology policy not be dictated from the top or shaped by a few powerful interests, but this has not taken place. Instead the rapid development of science and technology and the pressures imposed by economic globalization have shifted the balance even further away from citizens’ control. A recent paper written by the Center for International Environmental Law describes the situation with regard to the formulation of intellectual property law as follows: “Intellectual property laws are defined through closed, secretive international negotiations dominated by industry – and are then brought to national legislatures as faits accomplis, without democratic deliberation. Combined with the technical, arcane nature of intellectual property legal specialty, this has helped corporate interests to avoid public scrutiny and expand their control over developments in applications such as electronic information, biotechnology or pharmaceuticals. Industrial country governments promote corporate interests in expanded intellectual property rights in the name of maximizing national competitiveness in a global marketplace.”[[1]](#footnote-1) The World Trade Organization’s role in standard setting, particularly in light of the closed nature of its proceedings and its lack of concern for democratic procedures or human rights principles, has been of particular concern to many non-governmental organizations, human rights advocates, and environmental groups. Intellectual property is covered by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994 (the TRIPS Agreement). This Agreement, which was a product of the Uruguay Round of trade talks, sets minimum standards for national protection of intellectual property rights and imposes enforcement measures, including the potential for trade sanctions against WTO members who do not comply with WTO rules and procedures. The power of the WTO has been described as “unprecedented in the field of intellectual property protection.”[[2]](#footnote-2)

#### 2] Trade secrets hinder deliberation between drug companies and the customer, insurance companies, and government regulators because they hide drug prices so people don’t know the true cost of medicines.

#### 3] The WTO’s purpose is to allow free trade, WTO

WTO, xx-xx-xxxx, "What is the WTO?," No Publication, https://www.wto.org/english/thewto\_e/thewto\_e.htm

The World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world’s trading nations and ratified in their parliaments. The goal is to ensure that trade flows as smoothly, predictably and freely as possible.

### Advantage

#### The advantage is drug prices,

#### Drug prices are high now, Rajkumar 20

[S. Vincent Rajkumar](https://www.nature.com/articles/s41408-020-0338-x#auth-S_-Vincent_Rajkumar), 6-23-2020, "The high cost of prescription drugs: causes and solutions," Blood Cancer Journal, <https://www.nature.com/articles/s41408-020-0338-x> //Lex AT

Global spending on prescription drugs in 2020 is expected to be ~$1.3 trillion; the United States alone will spend ~$350 billion[1](https://www.nature.com/articles/s41408-020-0338-x#ref-CR1). These high spending rates are expected to increase at a rate of 3–6% annually worldwide. The magnitude of increase is even more alarming for cancer treatments that account for a large proportion of prescription drug costs. In 2018, global spending on cancer treatments was approximately 150 billion, and has increased by >10% in each of the past 5 years[2](https://www.nature.com/articles/s41408-020-0338-x#ref-CR2). The high cost of prescription drugs threatens healthcare budgets, and limits funding available for other areas in which public investment is needed. In countries without universal healthcare, the high cost of prescription drugs poses an additional threat: unaffordable out-of-pocket costs for individual patients. Approximately 25% of Americans find it difficult to afford prescription drugs due to high out-of-pocket costs[3](https://www.nature.com/articles/s41408-020-0338-x#ref-CR3). Drug companies cite high drug prices as being important for sustaining innovation. But the ability to charge high prices for every new drug possibly slows the pace of innovation. It is less risky to develop drugs that represent minor modifications of existing drugs (“me-too” drugs) and show incremental improvement in efficacy or safety, rather than investing in truly innovative drugs where there is a greater chance of failure.

#### Trade secrets force high drug prices by hiding information from health plan companies and regulators, Feldman 1

Robin Feldman, 6 Oct 2020, "Naked Price and Pharmaceutical Trade Secret Overreach," No Publication, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3426225> //Lex AT

Other perverse incentives flow from the structure of industry, with its central players the **Pharmacy Benefit Managers** (PBMs). PBMs are middle players between drug companies and insurance plans— including both private insurers and Medicare. On behalf of insurance plans and patients, PBMs negotiate the prices of drugs with the companies. PBMs also help the plans set formularies, which determine **whether patients will have access to a particular drug** and the terms of that access. In an ideal world, this system would allow insurance plans and patients to pay the lowest cost possible for brand-name drugs. In reality, the deals between PBMs and brand companies frequently operate to **channel patients into more expensive drugs**, with resulting long-term and short-term effects on the system. Although a full discussion of the PBMs and the drug supply chain is beyond the scope of this Article, 29 certain aspects are important for understanding the role that assertions of trade secrecy are playing in this space. In simplified form, PBMs stand between their clients (the health plans) and drug companies. Although a health plan knows what it pays when a patient buys a particular drug at the pharmacy, **the true price is hidden**. Somewhere down the line, the health plan will receive a rebate check from the PBM that includes rebates for this, and many other, drug transactions. Along the way, **PBMs pocket a large portion of the rebate dollars**—as much as $166 billion each year30 by one estimate—although the health plans are not permitted to know the size of the rebates or the portions retained. In fact, the true net price, and the terms of the agreements between PBMs and drug companies are highly guarded secrets; even the health plan’s auditors are not given full access to the agreements.31 Moreover, given that PBMs help create their clients’ formularies, PBMs and drug companies **can strike deals that may not be in the patient’s long-term interests**. Recent case allegations and press reports have described patients **who are forced to pay more for generics** than for brand name drugs and patients **completely blocked from access** to generic versions of a drug. For example, a complaint filed in 2017 alleges that Allergan’s rebate scheme for its blockbuster dry-eye drug Restasis blocked access for competing generics. 32 One Medicare plan administrator quoted in the complaint explained that with the particular scheme, **a new entrant could give its drug away for free and still would not be able to gain a foothold in the market**.33 Similarly, a recent case alleges that Johnson and Johnson launched a rebate scheme for its rheumatoid arthritis drug Remicade that induced hospitals and health plans to essentially exclude the lower-priced biosimilar. 34 One physician called practices such as these “Alice-in-Wonderland” in the drug world.35 Moreover, these deals can maximize the payments that the PBMs are able to keep, while keeping patients away from cheaper generic drugs. In addition, although PBMs represent the health plan as its clients, the PBMs receive various large payments directly from the drug companies. As well as the rebate portions mentioned above, PBMs also receive various fees from drug companies, such as “data management fees” and “administrative fees.”36 With the formulary power of PBMs, these **fees** have the potential to **encourage PBMs to drive patients toward the companies that are offering more attractive terms** to them as a middle player, regardless of whether those terms benefit patients in either the short or long-term. Again, these fees are **hidden from the health plan, from regulators, and from the public**.37 One might think that the health plans and their patients, let alone government auditors, would have the right to know the net prices they are paying for each drug and to access the terms of agreements made on their behalf. So, just how is it that these terms are so deeply hidden? PBMs and drug companies claim that net price is a **trade secret**. It is under the cloak of **trade secrecy** that this system, and its impact on rising prices, remains sheltered from view.

#### High drug prices leads to use of substandard drugs which cause antimicrobial resistance, WBG 17

World Bank Group, March 2017, “DRUG-RESISTANT INFECTIONS A Threat to Our Economic Future”, <https://documents1.worldbank.org/curated/en/323311493396993758/pdf/final-report.pdf> //Lex AT

Even as there is overuse and misuse of antimicrobials, some poor populations still lack access to effective medicines. For example, one million children are estimated to die each year from untreated pneumonia and sepsis, which can be effectively managed with antibiotics (Laxminarayan et al. 2016). Weak health care systems, AMR, and the penetration of many countries’ antimicrobials markets by substandard and counterfeit drugs— these conditions all contribute to low access to effective antimicrobials. Relatively high prices of the more powerful, later-generation, antimicrobial drugs are also a factor. The development and marketing of these drugs occurred since the first-line, relatively inexpensive antimicrobials lost their effectiveness because of AMR. High drug prices then squeeze the finite health care budgets of governments, charities, and households, resulting in diminished access to treatment, especially for the poor and vulnerable. In addition to the effect on individual health outcomes, shrinking access to effective antimicrobials hinders progress toward universal health coverage (UHC), a pillar of the Sustainable Development Goals for 2030.4 We will discuss the potential development impacts of AMR extensively in Part II. In Part IV, we will show how country action to promote UHC can simultaneously enable more effective AMR control.

#### Extinction - generic defense doesn’t apply.

Srivatsa 17 Kadiyali Srivatsa 1-12-2017 “Superbug Pandemics and How to Prevent Them” <https://www.the-american-interest.com/2017/01/12/superbug-pandemics-and-how-to-prevent-them/> (doctor, inventor, and publisher. He worked in acute and intensive pediatric care in British hospitals)//Elmer

It is by now no secret that the human species is locked in a race of its own making with “superbugs.” Indeed, if popular science fiction is a measure of awareness, the theme has pervaded English-language literature from Michael Crichton’s 1969 Andromeda Strain all the way to Emily St. John Mandel’s 2014 Station Eleven and beyond. By a combination of massive inadvertence and what can only be called stupidity, we must now invent new and effective antibiotics faster than deadly bacteria evolve—and regrettably, they are rapidly doing so with our help. I do not exclude the possibility that bad actors might deliberately engineer deadly superbugs.1 But even if that does not happen, humanity faces an existential threat largely of its own making in the absence of malign intentions. As threats go, this one is entirely predictable. The concept of a “black swan,” Nassim Nicholas Taleb’s term for low-probability but high-impact events, has become widely known in recent years. Taleb did not invent the concept; he only gave it a catchy name to help mainly business executives who know little of statistics or probability. Many have embraced the “black swan” label the way children embrace holiday gifts, which are often bobbles of little value, except to them. But the threat of inadvertent pandemics is not a “black swan” because its probability is not low. If one likes catchy labels, it better fits the term “gray rhino,” which, explains Michele Wucker, is a high-probability, high-impact event that people manage to ignore anyway for a raft of social-psychological reasons.2 A pandemic is a quintessential gray rhino, for it is no longer a matter of if but of when it will challenge us—and of how prepared we are to deal with it when it happens. We have certainly been warned. The curse we have created was understood as a possibility from the very outset, when seventy years ago Sir Alexander Fleming, the discoverer of penicillin, predicted antibiotic resistance. When interviewed for a 2015 article, “The Most Predictable Disaster in the History of the Human Race, ” Bill Gates pointed out that one of the costliest disasters of the 20th century, worse even than World War I, was the Spanish Flu pandemic of 1918-19. As the author of the article, Ezra Klein, put it: “No one can say we weren’t warned. And warned. And warned. A pandemic disease is the most predictable catastrophe in the history of the human race, if only because it has happened to the human race so many, many times before.”3 Even with effective new medicines, if we can devise them, we must contain outbreaks of bacterial disease fast, lest they get out of control. In other words, we have a social-organizational challenge before us as well as a strictly medical one. That means getting sufficient amounts of medicine into the right hands and in the right places, but it also means educating people and enabling them to communicate with each other to prevent any outbreak from spreading widely. Responsible governments and cooperative organizations have options in that regard, but even individuals can contribute something. To that end, as a medical doctor I have created a computer app that promises to be useful in that regard—of which more in a moment. But first let us review the situation, for while it has become well known to many people, there is a general resistance to acknowledging the severity and imminence of the danger. What Are the Problems? Bacteria are among the oldest living things on the planet. They are masters of survival and can be found everywhere. Billions of them live on and in every one of us, many of them helping our bodies to run smoothly and stay healthy. Most bacteria that are not helpful to us are at least harmless, but some are not. They invade our cells, spread quickly, and cause havoc that we refer to generically as disease. Millions of people used to die every year as a result of bacterial infections, until we developed antibiotics. These wonder drugs revolutionized medicine, but one can have too much of a good thing. Doctors have used antibiotics recklessly, prescribing them for just about everything, and in the process helped to create strains of bacteria that are resistant to the medicines we have. We even give antibiotics to cattle that are not sick and use them to fatten chickens. Companies large and small still mindlessly market antimicrobial products for hands and home, claiming that they kill bacteria and viruses. They do more harm than good because the low concentrations of antimicrobials that these products contain tend to kill friendly bacteria (not viruses at all), and so clear the way for the mass multiplication of surviving unfriendly bacteria. Perhaps even worse, hospitals have deployed antimicrobial products on an industrial scale for a long time now, the result being a sharp rise in iatrogenic bacterial illnesses. Overuse of antibiotics and commercial products containing them has helped superbugs to evolve. We now increasingly face microorganisms that cannot be killed by antibiotics, antifungals, antivirals, or any other chemical weapon we throw at them. Pandemics are the major risk we run as a result, but it is not the only one. Overuse of antibiotics by doctors, homemakers, and hospital managers could mean that, in the not-too-distant future, something as simple as a minor cut could again become life-threatening if it becomes infected. Few non-medical professionals are aware that antibiotics are the foundation on which nearly all of modern medicine rests. Cancer therapy, organ transplants, surgeries minor and major, and even childbirth all rely on antibiotics to prevent infections. If infections become untreatable we stand to lose most of the medical advances we have made over the past fifty years. And the problem is already here. In the summer of 2011, a 43-year-old woman with complications from a lung transplant was transferred from a New York City hospital to the Clinical Center at the National Institutes of Health (NIH), in Bethesda, Maryland. She had a highly resistant superbug known as Klebsiella pneumoniae carbapenemase (KPC). The patient was treated and eventually discharged after doctors concluded that they had contained the infection. A few weeks later, a 34-year-old man with a tumor and no known link to the woman contracted KPC while at the hospital. During the course of the next few months, several more NIH patients presented with KPC. Doctors attacked the outbreak with combinations of antibiotics, including a supposedly powerful experimental drug. A separate intensive care unit for KPC patients was set up and robots disinfected empty rooms, but the infection still spread beyond the intensive care area. Several patients died and then suddenly all was silent on the KPC front, with doctors convinced they had seen the last of the dangerous bacterium. They couldn’t have been more mistaken. A year later, a young man with complications from a bone marrow transplant arrived at NIH. He became infected with KPC and died. This superbug is now present in hospitals in most, if not all U.S. states. This is not good. This past year an outbreak of CRE (carbapenem-resistant enterobacteriaceae) linked to contaminated medical equipment infected 11 patients and killed two in Los Angeles area hospitals. This family of bacteria has evolved resistance to all antibiotics, including the powerful carbapenem antibiotics that are often used as a last resort against serious infections. They are now so resilient that it is virtually impossible to remove them from medical tools such as catheters and breathing tubes placed into the body, even after cleaning. Then we have gonorrhea, chlamydia, and other sexually transmitted diseases that we cannot treat and that are spreading all over the world. Anyone who has sex can catch these infections, and because most people may not exhibit any symptoms they spread infections without anyone knowing about it. Sexually transmitted diseases used to be treatable with antibiotics, but in recent years we have witnessed the rise of multi-drug resistant STDs. Untreated gonorrhea can lead to infertility in men and women and blindness and other congenital defect in babies. As is well known, too, we have witnessed many cases of drug-resistant pneumonia. These problems have arisen in part because of simple mistakes healthcare professionals repeatedly make. Let me explain. Neither superbugs nor common bacterial infections produce any special symptoms indicative of their cause. Rashes, fevers, sneezing, runny noses, ear pain, diarrhea, vomiting, coughing, fatigue, and weakness are signs of common and minor illnesses as well as uncommonly deadly ones. Therefore, the major problem for clinicians is to identify a common symptom that may potentially be an early sign of a major infection that could result in an epidemic. We know that dangerous infections in any given geographical area do not start at the same time. They start with one victim and gradually spread. But that victim is only one among hundreds of patients a doctor will typically see, so many doctors will miss patients presenting with infections that are serious. They will probably identify diseases that kill fast, but slow-spreading infections such as skin infections that can lead to septicemia are rarely diagnosed early. In addition, I have seen doctors treating eczema with antibiotic cream, even though they know that bacteria are resistant to the majority of these drugs. This sort of action encourages simple infections to spread locally, because patients are therefore not instructed to take other, more useful precautions. On top of that, some people are frivolous about infections and assume doctors are exaggerating the threat. And some people are selfish. Once I was called to see a passenger during a flight who had symptoms consistent with infection. He boarded the plane with these symptoms, but began to feel much worse during the flight. I was scared, knowing how infections such as Ebola can spread. This made me think about a way to screen passengers before they board a flight. Airlines could refund a traveler’s ticket, or issue a replacement, in case of sickness—which is not the policy now. We currently have no method to block infectious travelers from boarding flights, and there are no changes in the incentive system to enable conscientious passengers to avoid losing their money if they responsibly miss a flight because of illness. Speaking of selfishness, I once saw a mother drop her daughter off at school with a serious bout of impetigo on her face. When I asked her why she had brought her daughter to school with a contagious infection, she said she could not spare the time to keep her at home or take her to the doctor. By allowing this child to contact other children, a simple infection can become a major threat. Fortunately, I could see the rash on the girl’s face, but other kids in schools may have rashes we cannot see. Incorrect diagnosis of skin problems and mistaken use of antibiotics to treat them is common all over the world, and so we are continually creating superbugs in our communities. Similarly, chest infections, sore throats, and illnesses diagnosed as colds that unnecessarily treated with antibiotics are also a major threat. By prescribing antibiotics for viral infections, we are not only helping bacteria develop resistance, but we are also polluting the environment when these drugs are passed in urine and feces. All of this helps resistant bacteria to spread in the community and become an epidemic. Ebola is very difficult to transmit because people who are contagious have visible and unusual symptoms. However, the emerging infections and pandemics of the future may not have visible symptoms, and they could break out in highly populous countries such as India and China that send thousands of travelers all over the world every day. When a person is infected with a contagious disease, he or she can expect to pass the illness on to an average of two people. This is called the “reproduction number.” Two is not that high a number as these things go; some diseases have far greater rates of infection. The SARS virus had a reproduction number of four. Measles has a reproduction number of 18. One person traveling as an airplane passenger and carrying an infection similar to Ebola can infect three to five people sitting nearby, ten if he or she walks to the toilet. The study that highlighted this was published in a medical journal a few years ago, but the airline industry has not implemented any changes or introduced screening to prevent the spread of infections by air travel passengers, a major vehicle for the rapid spread of disease. It is scary to think that nobody knows what will happen when the world faces a lethal disease we’re not used to, perhaps with a reproduction number of five or eight or even ten. What if it starts in a megacity? What if, unlike Ebola, it’s contagious before patients show obvious symptoms? Past experience isn’t comforting. In 2009, H1N1 flu spread around the world before we even knew it existed. The Questions Remains Why do seemingly intelligent people repeatedly do such collectively stupid things? How did we allow this to happen? The answer is disarmingly simple. It is because people are incentivized to prioritize short-term benefits over long-term considerations. It is what social scientists have called a “logic of collective action” problem. Everyone has his or her specialized niche interest: doctors their patients’ approval, business and airline executives their shareholders’ earnings, hospitals their reputations for best-practice hygienics, homemakers their obligation to keep their own families from illness. But no one owns the longer-term consequences for hundreds of millions of people who are irrelevant to satisfying these short-term concerns. Here is an example. At a recent Superbug Super Drug conference in London that I attended, scientists, health agencies, and pharmaceutical companies were vastly more concerned with investing millions of dollars in efforts to invent another antibiotic, claiming that this has to be the way forward. Money was the most pressing issue because, as everyone at the conference knew, for many years pharmaceutical companies have been pulling back from antibiotics research because they can’t see a profit in it. Development costs run into billions of dollars, yet there is no guarantee that any new drug will successfully fight infections. At the same conference Dr. Lloyd Czaplewski spoke about alternatives to antibiotics, in case we cannot come up with new ones fast enough to outrun superbug evolution. But he omitted mention of preventive strategies that use the internet or communication software to help reduce the spread of infections among families, communities, and countries. It is madness that we don’t have a concrete second-best alternative to new antibiotics, because we need them and we need them quickly. Of course, this is why we have governments, which have been known occasionally in the past as commonwealths. Governments are supposed to look out for the wider, common interests of society that niche-interested professionals take no responsibility for, and that includes public health. It is why nearly every nation’s government has an official who is analogous to the U.S. Surgeon General, and nearly every one has a public health service of some kind. Alas, national governments do not always function as they should. Several years ago physician and former Republican Senator Bill Frist submitted a proposal to the Senate for a U.S. Medical Expeditionary Corps. This would have been a specialized organization that could coordinate and execute rapid responses to global health emergencies such as Ebola. Nothing came of it, because Dr. Frist’s fellow politicians were either too shortsighted or too dimwitted to understand why it was a good idea. Or perhaps they simply realized that they could not benefit politically from supporting it. Plenty of mistakes continue to be made. In 2015, a particularly infectious form of bird flu ripped through 14 U.S. states, leading farmers to preventively slaughter nearly 40 million birds. The result of such callous and unnecessary acts is that, instead of exhausting themselves in the host population of birds, the viruses quickly find alternative hosts in which to survive, and could therefore easily mutate into a form that can infect humans. Earlier, during the 1980s, AIDS garnered more public attention because a handful of rich and famous people were infected, and because the campaign to eradicate it dovetailed with and boosted the political campaign on behalf of homosexual rights. Methicillin resistant Staphylococcus aureus (MRSA) in hospitals, by far the bigger threat at the time, was virtually ignored. Some doctors knew that MRSA would bring us to our knees and kill millions of people worldwide, but pharmaceutical companies and device and equipment manufacturers ignored these doctors and the thousands of patients dying in hospitals as a result of MRSA. They prioritized the wrong thing, and government did not correct the error. And that is partly how antibiotic-resistant infection went from an obscure hospital problem to an incipient global pandemic. Politics well outside the United States plays several other roles in the budding problem that we are confronting. Countries often will not admit they have a problem and request help because of the possible financial implications in terms of investment and travel. Guinea did not declare the Ebola epidemic early on and Chinese leaders, worried about trade and tourism, lied for months in 2002 about the presence of the SARS virus. In 2004, when avian influenza first surfaced in Thailand, officials there displayed a similar reluctance to release information. Hospitals in some countries, including India, are managed and often owned by doctors. They refuse to share information about existing infections and often categorically deny they have a problem. Reporting infections to public health authorities is not mandatory, and so hospitals that fail to say anything are not penalized. Even now, the WHO and the CDC do not have accurate and up-to-date information about the spread of E. coli or other infections, and part of the reason is that for-profit hospitals are reluctant to do anything to diminish their bottom line. Syria and Yemen are among those countries that are so weak and fragmented that they cannot effectively coordinate public healthcare. But their governments are also hostile to external organizations that offer relief. Part of the reason is xenophobia, but part is that this makes the government look bad. Relatedly, most poor-nation governments do not trust the efficacy of international institutions, and think that cooperating with them amounts to a re-importation of imperialism. They would rather their own people suffer and die than ask for needed help. That brings us to the level of international public health governance. Alas, sometimes poor-country governments estimate the efficacy of international institutions accurately. The WHO’s Ebola response in 2014-15 was a disaster. The organization was slow to declare a public health emergency even after public warnings from Médecins Sans Frontières, some of whose doctors had already died on the front line. The outbreak killed more than 28,000 people, far more than would have been the case had it been quickly identified. This isn’t just an issue of bureaucratic incompetence. The WHO is under-resourced for the problems it is meant to solve. Funding comes from voluntary donations, and there is no mechanism by which it can quickly scale up its efforts during an emergency. The result is that its response to the next major disease outbreak is likely to be as inadequate as were its responses to Ebola, H1N1, and SARS. Stakeholders admit that we need another mechanism, and most experts agree that the world needs some kind of emergency response team for dangerous diseases. But no one knows how to set one up amid the dysfunctional global governance structures that presently exist. Maybe they should turn to Bill Frist, whose basic concept was sound; if the U.S. government will not act, perhaps some other governments will, and use the UN system to do so. But as things stand, we lack a health equivalent of the military reserve. Neither government leaders nor doctors can mobilize a team of experts to contain infections. People who want to volunteer, whether for government or NGO efforts, are not paid and the rules, if any, are sketchy about what we do with them when they return from a mission. Are employers going to take them back? What are the quarantine rules? It is all completely ad hoc, meaning that humanity lacks the tools it needs to protect itself. And note, by the way, the contrast between how governments prepare for facing pandemics and how they prepare for making war. War is not more deadly to the human race than pandemics, but national defense against armed aggression is much better planned for than defense against threats to public health. There is a wealth of rules regarding it, too. Human beings study and plan for war, which kills people both deliberately and accidentally, but they do not invest comparable effort planning for pandemics, which are liable to kill orders of magnitude more people. To the mind of a medical doctor, this is strange. Creating Conditions for Infections to Spread Superbug infections spread for several interlocking reasons. Some are medical-epidemiological. Most of the infections of the past thirty years have started in one place and in one family. As already noted, they spread because many infectious diseases are highly contagious before the onset of symptoms, and because it is difficult to prevent patients who know they are sick from going to hospitals, work, and school, or from traveling further afield. But again, one reason for the problem is political, not medical. Many governments have no strategies in place to prevent pandemics because they are unwilling to tell their people how infections spread. They don’t want to worry people with such talk; it will make them, they fear, unpopular. So governments may have mountains of bureaucracy with great heaps of rules and regulations concerning public health, but they are generally unwilling to trust their own citizens to use common sense on their own behalf. This, too, seems very strange. Until now, no one has come forward to help us develop strategies to educate people how to identify and prevent the spread of infection to their families and communities. The majority of stakeholders have also been oblivious to the use of new technologies to help reduce the spread of these infections. There are some exceptions. In a fun blog post called Preparedness 101: Zombie Apocalypse, the CDC uses the threat of a zombie outbreak as a metaphor to encourage people to prepare for emergencies, including pandemics. It is well meaning and insightful, yet when my colleagues and I try to discuss ways of scaling up the CDC’s example with doctors and nurses, they shut down. Nobody plans for an actual crisis partly because it is too scary and hence paralyzing to think about. But it is also because it is not most health professionals’ job; it is not what they are trained and paid to do. It is always someone else’s job, except that it has turned out to be nobody’s job. Worse, the situation is not static. While we sit paralyzed, superbugs are evolving. Epidemiological models now predict how an algorithmic process of disease spread will move through the modern world. All urban centers around the entire globe can become infected within sixty days because we move around and cross borders much more than our ancestors did, thanks to air travel. A new pandemic could start crossing borders before we even know it exists. A flu-like disease could kill more than 33 million people in 250 days.3

### Solvency

#### Plan – The member nations of the World Trade Organization ought to reduce intellectual property protections for medicines by implementing thin trade secret protections in the TRIPS agreement.

#### The plan solves price abuse, Feldman 2

Robin Feldman, 6 Oct 2020, "Naked Price and Pharmaceutical Trade Secret Overreach," No Publication, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3426225> //Lex AT

With trade secret becoming a weapon of choice in contemporary intellectual property litigation, there is a growing risk that it will be used in manners far beyond its animating logic of balancing interests between parties, generally those who were in privity with one another, regarding ordinary-course business information. Thus, courts should consider borrowing from copyright to develop its own version of thinness. 185 Thin trade secret would exist when the independent economic value or creation aspect of the secret is scant, such that the item of information qualifies for protection, but only just so.186 Unlike secret formula and manufacturing techniques, thin information would exist near the margins of trade secret protection. At this distance from the core conceptualization of what is protectable, they would rest on a lighter limb of the trade secret tree. In that case, the tug of a countervailing public policy interest would have particular force. One would not want defendants to simply claim any interest in the guise of public policy, however. Thus, thin copyright could be designed primarily for circumstances in which trade secret comes into conflict with other doctrinal areas embodying their own public policies. In those circumstances, the doctrine of thin trade secret creates space for navigating the boundaries. The doctrine of thin trade secret is distinct from the notion of confidential-but-not-secret information that a relational, nonproperty conception of trade secret law would entertain. Thin trade secret operates only when the information is within the bounds of statutory trade secret status, albeit at the edge of those bounds. In this manner, thin trade secret avoids the trap of creating a vague second tier of protectable information that falls outside the bounds of statutory trade secret protection, a development which would only incentivize the aggressive litigation of weak and nebulous claims, without the framework of rules and defenses the trade secret statutes provide to adjudicate and rebut such claims. There is a risk, of course, that with the existence of thin trade secret, judges could inadvertently sweep unwarranted information into the trade secret fold. Information might be easier to declare a trade secret, given the comfort of being able to deny protection in a particular case through the public interest. Without great care, such an approach could allow the boundaries of trade secret to creep ever wider across time. All jurisprudential arenas, however, face the temptation of rules of convenience, and the antidote is the same throughout. Regardless of the doctrinal area, courts and commentators must find analyses that can be applied with logical consistency across the regime, rather than resting on handy decisions in a particular case that create distinctions without a difference.187 The concept of thin trade secret has the potential to protect trade secret regime from a societal backlash as new claims stray into uncharted territory. Without such an outlet, courts, in frustration over expansive claiming, could be tempted to slash large and ambiguous swaths of territory, generating confusion in trade secret doctrine. By delineating an area of greater force for public policy, thin trade secret would cabin analysis into a common zone for discussion and thus lessen the chance of mayhem throughout the regime. To be sure, developing a theory of thin trade secret cannot be accomplished in one step. Practical questions, such as what justifications permit application of the concept and what degree of use or disclosure in particular concepts are weighed against protection, await future commentary. One could conceivably consider borrowing from copyright to develop a fair use trade secret defense. In that vein, courts could examine whether other policies might outweigh a finding that a party’s trade secret has been used. Thinness, however, has the advantage of signaling that the supposed trade secret just barely makes it over the line, a conclusion that seems particularly appropriate for these circumstances. Although intellectual property misuse may provide a useful pathway, we believe that more narrow and targeted rules will be important. In particular, at the dawn of doctrinal development, one would be welladvised to proceed with caution. Thus, the concept of thin trade secret provides a careful approach for recognition of expanding areas of innovation without trampling the public policies reflected in doctrinal areas with which trade secret must interact. Once again, the example of drug prices and regulatory disclosure is illustrative. As described above, naked price does not fall within the bounds of trade secrets. Even if a court were to find that bare negotiated price points between PBMs and pharmaceutical manufacturers fell within the bounds of trade secrets, those rights would be achingly close to the line. At most, if pricing information in the special context of PBM agreements were deemed to be a trade secret at all, it would be a thin and untraditional right, not core intellectual property. It should pale in comparison to thick IP rights such as manufacturing process details, formula details, and other scientific work products. A thin, barely-over-the-line trade secret hardly deserves the same deference in a regulatory disclosure context as the latter types of information.

#### Regulations exist in the status quo—BUT lack of transparency is the only barrier, Feldman 3

Robin Feldman, 6 Oct 2020, "Naked Price and Pharmaceutical Trade Secret Overreach," No Publication, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3426225> //Lex AT

Public outcry over rising prices in the United States, particularly in contrast to comparable countries across the globe, has prompted numerous legislative and regulatory attempts to reform the system. More than 40 states have introduced legislation to address rising pharmaceutical pricing, with many of those bills directed at transparency in drug pricing. Transparency has been an issue for Congress and federal regulators as well, with the introduction of transparency bills and regulations.45 As state actors have sought to regulate or even investigate pharmaceutical pricing and practices, they have run into claims of trade secrecy. For example, Caremark is one of three major Pharmacy Benefit Managers that control 85% of the market. When the State of Ohio investigated in 2018 how PBMs spent state and federal funds, a third party prepared a report for the state which included details of such spending. Caremark then objected to publication of the report, filed a lawsuit seeking to suppress the report. In shrill language, the Pharmacy Benefit Manager argued that pricing information regarding prescription drugs in its contracts with entities that manage Medicaid for patients constituted “proprietary” “trade secrets,” such that publication would be “devastating,” with “severe financial harm” to its business.46 Trying to have it both ways, Caremark represented that the report it did not want the public to read found that “allegations against Caremark were not true” with respect to “preferential pricing.”47 Along the same lines, a California court enjoined the state from publishing information about a pharmaceutical company’s planned drug price increases before those prices would go into effect on the ground that for purposes of the order, the information constituted trade secrets.48

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Chopra 18, Samir. “The Idea of Intellectual Property Is Nonsensical and Pernicious: Aeon Essays.” Aeon, Aeon Magazine, 12 Nov. 2018, aeon.co/essays/the-idea-of-intellectual-property-is-nonsensical-and-pernicious. Samir Choprais professor of philosophy at Brooklyn College of the City University of New York. He is the author of several books, including A Legal Theory for Autonomous Artificial Agents (2011), co-authored with Laurence White.//sid

In the United States, media and technology have been shaped by these laws, and indeed many artists and creators owe their livelihoods to such protections. But recently, in response to the new ways in which the digital era facilitates the creation and distribution of scientific and artistic products, the foundations of these protections have been questioned. Those calling for reform, such as the law professors Lawrence Lessig and James Boyle, free software advocates such as Richard Stallman, and law and economics scholars such as William Landes and Judge Richard Posner, ask: is ‘intellectual property’ the same kind of property as ‘tangible property’, and are legal protections for the latter appropriate for the former? And to that query, we can add: is ‘intellectual property’ an appropriate general term for the widely disparate areas of law it encompasses? The answer to all these questions is no. And answering the latter question will help to answer the former. Stallman is a computer hacker extraordinaire and the fieriest exponent of the free-software movement, which holds that computer users and programmers should be free to copy, share and distribute software source code. He has argued that the term ‘intellectual property’ be discarded in favour of the precise and directed use of ‘copyright’, ‘patents’, ‘trademarks’ or ‘trade secrets’ instead – and he’s right. This is not merely semantic quibbling. The language in which a political and cultural debate is conducted very often determines its outcome. Stallman notes that copyright, patent, trademark and trade secret law were motivated by widely differing considerations. Their intended purposes, the objects covered and the permissible constraints all vary. In fact, knowledge of one body of law rarely carries over to another. (A common confusion is to imagine that an object protected by one area of law is actually protected by another: ‘McDonald’s’ is protected by trademark law, not copyright law, as many consumers seem to think.) Such diversity renders most ‘general statements … using “intellectual property”… false,’ Stallman [writes](https://www.gnu.org/philosophy/not-ipr.en.html). Consider the common claim that intellectual property promotes innovation: this is actually true only of patent law. Novels are copyrighted even if they are formulaic, and copyright only incentivises the production of new works as public goods while allowing creators to make a living. These limited rights do not address innovations, which is also true of trademark and trade secret law. Crucially, ‘intellectual property’ is only partially concerned with rewarding creativity (that motivation is found in copyright law alone). Much more than creativity is ‘needed to make a patentable invention’, Stallman explains, while trademark and trade secret law are orthogonal to creativity or its encouragement. Clubbing these diversities under the term ‘intellectual property’ has induced a terrible intellectual error A general term is useful only if it subsumes related concepts in such a way that semantic value is added. If our comprehension is not increased by our chosen generalised term, then we shouldn’t use it. A common claim such as ‘they stole my intellectual property’ is singularly uninformative, since the general term ‘intellectual property’ obscures more than it illuminates. If copyright infringement is alleged, we try to identify the copyrightable concrete expression, the nature of the infringement and so on. If patent infringement is alleged, we check another set of conditions (does the ‘new’ invention replicate the design of the older one?), and so on for trademarks (does the offending symbol substantially and misleadingly resemble the protected trademark?) and trade secrets (did the enterprise attempt to keep supposedly protected information secret?) The use of the general term ‘intellectual property’ tells us precisely nothing. Furthermore, the extreme generality encouraged by ‘intellectual property’ obscuresthe specific areas of contention

created by the varying legal regimes. Those debating copyright law wonder whether the copying of academic papers should be allowed; patent law is irrelevant here. Those debating patent law wonder whether pharmaceutical companies should have to issue compulsory licences for life-saving drugs to poor countries; copyright law is irrelevant here. ‘Fair use’ is contested in copyright litigation; there is no such notion in patent law. ‘Non-obviousness’ is contested in patent law; there is no such notion in copyright law. Clubbing these diversities under the term **‘intellectual property’ has induced** a **terrible** intellectual error: facile and misleading **overgeneralisation**. Indiscriminate use of ‘intellectual property’ has unsurprisingly bred absurdity. Anything associated with a ‘creator’ – be it artistic or scientific – is often grouped under ‘intellectual property’, which doesn’t make much sense. And the widespread embrace of ‘intellectual property’ has led to historical amnesia. According to Stallman, many Americans have held that ‘the framers of the US Constitution had a principled, procompetitive attitude to intellectual property’. But Article 1, Section 8, Clause 8 of the US Constitution authorises only copyright and patent law. It does not mention trademark law or trade secret law. Why then does ‘intellectual property’ remain in use? Because it has polemical and rhetorical value. Its deployment, especially by a putative owner, is a powerful inducement to change one’s position in a policy argument. It is one thing to accuse someone of copyright infringement, and another to accuse of them of the theft of property. The former sounds like a legally resolvable technicality; the latter sounds like an unambiguously sinful act.

#### Specific instances prove generics which also means I meet, Cimpian 10

Cimpian et al 10 (PhDs – Andrei, Amanda C. Brandone, Susan A. Gelman, Generic statements require little evidence for acceptance but have powerful implications, Cogn Sci. 2010 Nov 1; 34(8): 1452–1482)

Generic statements (e.g., “Birds lay eggs”) express generalizations about categories. In this paper, we hypothesized that there is a paradoxical asymmetry at the core of generic meaning, such that these sentences have extremely strong implications but require little evidence to be judged true. Four experiments confirmed the hypothesized asymmetry: Participants interpreted novel generics such as “Lorches have purple feathers” as referring to nearly all lorches, but they judged the same novel generics to be true given a wide range of prevalence levels (e.g., even when only 10% or 30% of lorches had purple feathers). A second hypothesis, also confirmed by the results, was that novel generic sentences about dangerous or distinctive properties would be more acceptable than generic sentences that were similar but did not have these connotations. In addition to clarifying important aspects of generics’ meaning, these findings are applicable to a range of real-world processes such as stereotyping and political discourse. Keywords: generic language, concepts, truth conditions, prevalence implications, quantifiers, semantics Go to: 1. Introduction A statement is generic if it expresses a generalization about the members of a kind, as in “Mosquitoes carry the West Nile virus” or “Birds lay eggs” (e.g., Carlson, 1977; Carlson & Pelletier, 1995; Leslie, 2008). Such generalizations are commonplace in everyday conversation and child-directed speech (Gelman, Coley, Rosengren, Hartman, & Pappas, 1998; Gelman, Taylor, & Nguyen, 2004; Gelman, Goetz, Sarnecka, & Flukes, 2008), and are likely to foster the growth of children’s conceptual knowledge (Cimpian & Markman, 2009; Gelman, 2004, 2009). Here, however, we explore the semantics of generic sentences—and, in particular, the relationship between generic meaning and the statistical prevalence of the relevant properties (e.g., what proportion of birds lay eggs). Consider, first, generics’ truth conditions: Generic sentences are often judged true despite weak statistical evidence. Few people would dispute the truth of “Mosquitoes carry the West Nile virus”, yet only about 1% of mosquitoes are actually carriers (Cox, 2004). Similarly, only a minority of birds lays eggs (the healthy, mature females), but “Birds lay eggs” is uncontroversial. This loose, almost negligible relationship between the prevalence of a property within a category and the acceptance of the corresponding generic sentence has long puzzled linguists and philosophers, and has led to many attempts to describe the truth conditions of generic statements (for reviews, see Carlson, 1995; Leslie, 2008). Though generics’ truth conditions may be unrelated to property prevalence (cf. Prasada & Dillingham, 2006), the same cannot be said about the implications of generic statements. When provided with a novel generic sentence, one often has the impression that the property talked about is widespread. For example, if we were unfamiliar with the West Nile virus and were told (generically) that mosquitoes carry it, it would not be unreasonable to assume that all, or at least a majority of, mosquitoes are carriers (Gelman, Star, & Flukes, 2002). It is this paradoxical combination of flexible, almost prevalence-independent truth conditions, on the one hand, and widespread prevalence implications, on the other, that is the main focus of this article. We will attempt to demonstrate empirically that the prevalence level that is sufficient to judge a generic sentence as true is indeed significantly lower than the prevalence level implied by that very same sentence. If told that, say, “Lorches have purple feathers,” people might expect almost all lorches to have these feathers (illustrating generics’ high implied prevalence), but they may still agree that the sentence is true even if the actual prevalence of purple feathers among lorches turned out to be much lower (illustrating generics’ flexible truth conditions). Additionally, we propose that this asymmetry is peculiar to generic statements and does not extend to sentences with quantified noun phrases as subjects. That is, the prevalence implied by a sentence such as “Most lorches have purple feathers” may be more closely aligned with the prevalence that would be needed to judge it as true. Before describing our studies, we provide a brief overview of previous research on the truth conditions and the prevalence implications of generic statements. 1.1. Generics’ truth conditions Some of the first experimental evidence for the idea that the truth of a generic statement does not depend on the underlying statistics was provided by Gilson and Abelson (1965; Abelson & Kanouse, 1966) in their studies of “the psychology of audience reaction” to “persuasive communication” in the form of generic assertions (Abelson & Kanouse, 1966, p. 171). Participants were presented with novel items such as the following: Altogether there are three kinds of tribes—Southern, Northern, Central. Southern tribes have sports magazines. Northern tribes do not have sports magazines. Central tribes do not have sports magazines. Do tribes have sports magazines? All items had the same critical feature: only one third of the target category possessed the relevant property. Despite the low prevalence, participants answered “yes” approximately 70% of the time to “Do tribes have sports magazines?” and other generic questions similar to it. Thus, people’s acceptance of the generics did not seem contingent on strong statistical evidence, leaving the door open for persuasion, and perhaps manipulation, by ill-intentioned communicators. A similar conclusion about the relationship between statistical prevalence and generics’ truth conditions emerged from the linguistics literature on this topic (e.g., Carlson, 1977; Carlson & Pelletier, 1995; Dahl, 1975; Declerck, 1986, 1991; Lawler, 1973). For example, Carlson (1977) writes that “there are many cases where […] less than half of the individuals under consideration have some certain property, yet we still can truly predicate that property of the appropriate bare plural” (p. 67), as is the case with “Birds lay eggs” and “Mosquitoes carry the West Nile virus” but also with “Lions have manes” (only males do), “Cardinals are red” (only males are), and others. He points out, moreover, that there are many properties that, although present in a majority of a kind, nevertheless cannot be predicated truthfully of that kind (e.g., more than 50% of books are paperbacks but “Books are paperbacks” is false). Thus, acceptance of a generic sentence is doubly dissociated from the prevalence of the property it refers to—not only can true generics refer to low-prevalence properties, but high-prevalence properties are also not guaranteed to be true in generic form.

#### Trade secrets are IP, SpencePC 16

[SpencePC, 24 Aug, 2016, "Four Types of Intellectual Property for Businesses", No Publication, https://www.spencepc.com/intellectual-property-basics/four-types-of-intellectual-property-for-businesses, date accessed 9-12-2021] //Lex AT

Four Types of IP Copyrights Patents Trademarks Trade Secrets

#### Trade secrets is part of TRIPs, USPTO 21

[USPTO, Feb 11, 2021, "Trade related aspects of IP rights", No Publication, https://www.uspto.gov/ip-policy/patent-policy/trade-related-aspects-ip-rights, date accessed 9-16-2021] //Lex AT

TRIPS applies basic international trade principles to member states regarding intellectual property, including national treatment and most-favored-nation treatment. TRIPS establishes minimum standards for the availability, scope, and use of seven forms of intellectual property: copyrights, trademarks, geographical indications, industrial designs, patents, layout designs for integrated circuits, and undisclosed information (trade secrets). It spells out permissible limitations and exceptions in order to balance the interests of intellectual property with interests in other areas, such as public health and economic development. (For the complete text of the TRIPS Agreement, as well as an explanation of its provisions, see the WTO web site at [www.wto.org](http://www.wto.org/) .)

#### Plurals can be affirmed by singular instances

Zweig 09 [(Zweig, Eytan). Number-neutral bare plurals and the multiplicity implicature. Linguistics and Philosophy, 32(4), 353–407. 2009. doi:10.1007/s10988-009-9064-3] TDI

A third environment in which similar behavior holds is questions. Take the following dialogue: (29) Did you see bears during your hike? (30) a. #No, I saw one. b. Yes, I saw one. If I had gone on a hike yesterday, during which I saw a single bear, it would be quite bizarre for me to respond to (29) with (30a). A natural answer is instead (30b). But since seeing one bear is sufficient for an affirmative answer, it follows that the question was not about seeing more than one bear. Compare this to the following: (31) Did you see several bears during your hike? (32) a. No, I saw one. b. #Yes, I saw one. In the same scenario, if I were asked (31), I would most probably answer with (32a). It is thus not a property of all plural-containing questions that they can be answered affirmatively with a singular; rather, this is a special property of bare plurals. Finally, the same phenomenon occurs in certain modal environments. For example: (33) Sherlock Holmes should question local residents to find the thief. Given (33), it does not follow that Holmes needs to question the residents in groups of two or more; nor does it follow that if the first resident that he questions happens to be the thief, he must nonetheless question a second one. Based on this set of observations, the authors mentioned above conclude that bare plurals do not contain a multiplicity condition in their denotation. Krifka (2004), whose main focus is the relationship between the existential reading of bare plurals and kind readings, does not attempt to account for where the multiplicity meaning in positive sentences such as (23) comes from. Both Sauerland et al. (2005) and Spector (2007), on the other hand, offer detailed theories of the multiplicity, both arguing that it is in fact a conversational implicature. In this they share much with my own conclusion in the matter, as argued for below in Sect. 4.2. However, neither paper considers data from dependent plurals; Sauerland et al. focus entirely on sentences with only one plural NP, and make no mention of the phenomenon. Spector makes a brief mention of dependent plurals in a footnote, in which he suggests that the behavior of bare plurals in dependent readings and in downwards entailing environments are independent phenomena. The methods used to calculate the multiplicity implicature in Sauerland et al. (2005) and Spector (2007) differ both from each other and from my own proposal. Detailed discussion of their proposals appear in Sects. 5.1 and 5.2 below.

1. David Downes, “The 1999 WTO Review of Life Patenting Under TRIPS,” Revised Discussion Paper, Center for International Environmental Law, Washington, D.C., September 1998, p. 1. [↑](#footnote-ref-1)
2. *Ibid.*, p.1. [↑](#footnote-ref-2)