## Definitions

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

First, the definition of “intellectual property:”

Saha and Bhattacharya 11, Chandra Nath Saha, Sanjib Bhattacharya, associate professor of HRDC & physics, at the University of North Bengal, "Intellectual property rights: An overview and implications in pharmaceutical industry," April-June 2011, National Center for Biotechnology Information, accessed 24 August 2021, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/> brackets for gender ~ST~

Intellectual property (IP) pertains to any original creation of the human intellect such as artistic, literary, technical, or scientific creation. Intellectual property rights (IPR) refers to the legal rights given to the inventor or creator to protect his invention or creation for a certain period of time.[[1](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/#ref1)] These legal rights confer an exclusive right to the inventor/creator or his assignee to fully utilize ~~his~~ [their] invention/creation for a given period of time. It is very well settled that IP play a vital role in the modern economy. It has also been conclusively established that the intellectual labor associated with the innovation should be given due importance so that public good emanates from it. There has been a quantum jump in research and development (R&D) costs with an associated jump in investments required for putting a new technology in the market place.[[2](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/#ref2)] The stakes of the developers of technology have become very high, and hence, the need to protect the knowledge from unlawful use has become expedient, at least for a period, that would ensure recovery of the R&D and other associated costs and adequate profits for continuous investments in R&D.[[3](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/#ref3)] IPR is a strong tool, to protect investments, time, money, effort invested by the inventor/creator of an IP, since it grants the inventor/creator an exclusive right for a certain period of time for use of his invention/creation. Thus IPR, in this way aids the economic development of a country by promoting healthy competition and encouraging industrial development and economic growth. Present review furnishes a brief overview of IPR with special emphasis on pharmaceuticals.

## Framework

**The metaethic is non-naturalism, that moral facts are derived from abstraction instead of experience.**

**[1] Is-ought gap – we only perceive what is, not what ought to be. It’s impossible to derive prescriptive obligation from descriptive premises.**

**[2] Uncertainty – a posteriori ethics is subject to uncertainty. We could be dreaming, hallucinating, or being deceived by an evil demon. Infinitely outweighs because it would be escapable and therefore pointless.**

**Next, ethics must begin with practical reason.**

**[1] Action theory – action is infinitely divisible. For example, the action of brewing tea could be broken into many small actions. The actions can’t be moral or immoral since it would be infinitely divisible, but intention to brew tea unifies action.**

**[2] Bindingness – experience is subjective; only practical reason unifies and creates a moral theory.**

**[3] Epistemology – all arguments appeal to reason; otherwise, they are baseless, so reason is a constraint on evaluating their arguments.**

**[4] Infinite regress – we can always ask “why should I follow this framework,” leading to infinite regress, but asking for a reason for reason concedes its authority. Only self-justified frameworks are epistemically sound.**

**That entails universal maxims.**

**[1] Arbitrariness – absent universal ethics, morality is arbitrary and can’t guide action, making it useless.**

**[2] Non-contradiction – there is no world in which p and ~p are both true. Acting recognizes the validity of others to take the action, which makes universal maxims a logical side constraint to other frameworks.**

**[3] Reason implies universalizability.**

Korsgaard 85 Christine M. Korsgaard, professor of philosophy at Harvard University, “Kant's Formula of Universal Law,” 1985, Pacific Philosophical Quarterly 66, no. 1-2: 24-47, accessed 6 September 2021, pg. 1, https://dash.harvard.edu/bitstream/handle/1/3201869/Korsgaard\_KantForumulaUniversalLaw.pdf?sequence=2&isAllowed=y //ACCS JM recut

A few lines later, Kant says that this is equivalent to acting as though your maxim were by your will to become a law of nature, and he uses this latter formulation in his examples of how the imperative is to be applied. Elsewhere, Kant specifies that the test is whether you could will the universalization for a system of nature "of which you yourself were a part" (C2 69/72); and in one place he characterizes the moral agent as asking "what sort of world he would create under the guidance of practical reason, . . . a world into which, moreover, he would place himself as a member." 2 But how do you determine whether or not you can will a given maxim as a law of nature? **Since the will is practical reason, and since everyone must arrive at the same conclusions in matters of duty, it cannot be the case that what you are able to will is a matter of personal taste, or relative to your individual desires. Rather, the question of what you can will is a question of what you can will without contradiction.**

**Thus, the standard is consistency with universal maxims.**

**Prefer additionally:**

**[1] Performativity – freedom is key to argumentation. Abiding by their ethical theory presupposes we own ourselves, making it incoherent to justify a standard without willing ours.**

**[2] Other frameworks collapse – they contain conditional obligations which derive authority from the categorical imperative.**

Korsgaard 96 Christine M. Korsgaard, professor of philosophy at Harvard University, introduction to “Groundwork of the Metaphysics of Morals,” 1996, Cambridge University Press, accessed 6 September 2021 pg. xvii-xviii, https://cpb-us-w2.wpmucdn.com/blog.nus.edu.sg/dist/c/1868/files/2012/12/Kant-Groundwork-ng0pby.pdf AG recut

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

#### [3] Resource disparities – focus on evidence and statistics puts small school debaters without huge files at a disadvantage, but my framework can be won without prep, which means it’s theoretically preferable.

#### [4] Universalization unites the abstract with the concrete—that’s key to challenging oppression.

Farr 02 Arnold Farr, professor of philosophy at the University of Kentucky, “Can a Philosophy of Race Afford to Abandon the Kantian Categorical Imperative?” Spring 2002, JOURNAL of SOCIAL PHILOSOPHY, Vol. 33 No. 1, accessed 12 September 2021, pg. 17–32, [sci-hub.se/10.1111/1467-9833.00121](https://sci-hub.se/10.1111/1467-9833.00121)

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

#### [5] Prefer ideal theory: a) normative justification required because unjustified assumptions cause bad things, like oppression, b) collapses – saying an advocacy is better means saying it’s closer to an ideal, c) material circumstances affected by different accounts of violence, d) arguing non-ideal is better requires an ideal theory of what theories should be.

#### [6] Consequences fail – a) we don’t know if an action is bad until after it happens, meaning obligations can’t be formed, b) every consequence causes another consequence – when do we evaluate “the consequence?” c) induction fails – we know induction works because it has in the past – that relies on induction and is therefore circular, d) assumes causation, which is an a priori concept, and e) if you’re responsible for things other than intention, ethics aren’t binding because there are infinite events over which you have no control.

## Offense

#### [1] Property rights are only coherent because of the principle of rivalry

Rauscher 07 Frederick Rauscher, professor of philosophy at Michigan State University, "Kant’s Social and Political Philosophy,” 24 July 2007, Stanford Encyclopedia of Philosophy, accessed 2 September 2021, <https://plato.stanford.edu/entries/kant-social-political/> ~ST~

The “Doctrine of Right” begins with a discussion of property, showing the importance of this right for the implementation of the innate right to freedom. Property is defined as that “with which I am so connected that another’s use of it without my consent would wrong me” (6:245). In one sense, if I am holding an object such as an apple, and another snatches it from my hand, I have been wronged because in taking the object from my physical possession, the other harms me (Kant does not specify whether this harm is because one’s current use of the apple is terminated or because one’s body is affected, but the latter fits the argument better). Kant calls this “physical” or “sensible” possession. It is not a sufficient sense of possession to count as rightful possession of an object. Rightful possession must be possession of an object so that another’s use of the object without my consent harms me even when I am not physically affected and not currently using the object. If someone plucks an apple from my tree, no matter where I am and no matter whether I am even aware of the loss I am prevented from using that apple. Kant calls this “intelligible possession”.

His proof that there must be this intelligible possession and not merely physical possession turns on the application of human choice (6:246). An object of choice is one that some human has the capacity to use as means for various ends or purposes. Rightful possession would be the right to make use of such an object. Suppose that for some particular object, no one has rightful possession. This would mean that a usable object would be beyond possible use. Kant grants that such a condition does not contradict the principle of right because it is compatible with everyone’s freedom in accordance with universal law. But putting an object beyond rightful use when humans have the capacity to use it would “annihilate” the object in a practical respect, treat it as nothing. Kant claims that this is problematic because in a practical respect an object is considered merely as an object of possible choice. This consideration of the mere form alone, the object simply as an object of choice, cannot contain any prohibition of use for an object, for any such prohibition would be freedom limiting itself for no reason. Thus in a practical respect an object cannot be treated as nothing, and so the object must be considered as at least potentially in rightful possession of some human being or other. So all objects within human capacity for use must be subject to rightful or intelligible possession.

#### Rivalry doesn’t apply to IP – it can be used by many agents simultaneously. That makes IP protections unjust.

Westphal 97 Kenneth R. Westphal, Professor of Philosophy at Boðaziçi Üniversitesi, Ph.D. in Philosophy from Wisco, “Do Kant’s Principles Justify Property or Usufruct?” 1997, Jahrbuch für Recht und Ethik/Annual Review of Law and Ethics 5, accessed 5 September 2021, pg. 189-190, sci-hub.se/10.2307/43593592 RE recut

6.2 One right that is not justified by the Kantian defense of rights to use developed above is the exclusion of others from the use of something to which one has a right on those occasions when one does not need and is not likely to need to use the item in question. Property rights involve such an exclusion. To the extent that I have shown that qualified choses in possession suffice to fulfill the desiderata established by Kant’s own principles and strategy for justifying possession (in the narrow sense), I have shown that property rights cannot be justified by Kant’s metaphysical principles. This is because there are alternative sets of rights to things which meet both Kant’s sine qua non of being consistent with the freedom of all in accord with universal laws [5] and Kant’s metaphysical grounds of proof concerning freedom of overt action. Neither Kant’s own argument nor my reconstruction of it address most of the incidents of property ownership. (Though I have suggested that Kant’s principles can justify the prohibition on harmful use and very likely some version of the liability to execution.) Indeed, Kant’s sole Innate Right to Freedom, Universal Law of Right, and Permissive Law of Practical Reason appear to entail that it is illegitimate to exclude others’ use of something to which one has a qualified chose in possession provided that their use does not interfere with one’s own regular and reliable use of the item in question. Moreover, Kant’s principles give priority to use over first acquisition, and indeed they justify first acquisition only in view of legitimate and needful use. To this extent, Kant’ s principles undermine and repudiate one of the cherished hallmarks of the liberal conception of private property, namely, that first acquisition as such secures a right over the disposition of a thing, regardless of subsequent disuse (cf. §3.10).

#### [2] Medicine is a discovery because it’s about truth statements.

Rhodes 19 Rosamond Rhodes, professor of medical education at Mount Sinai University, "The ethical concept of medicine as a profession discovery or invention?," December 2019, Journal of Medical Ethics, accessed 24 August 2021, <https://jme.bmj.com/content/45/12/786.full/> ~ST~

The Ethical Concept of Medicine as a Profession as a Discovery

The history of Western philosophy offers us two pathways to address this question. The first is the quest for certainty,2 a quest fulfilled by using methods designed to discover concepts that are independent of human thought and judgement and thus intellectually and morally authoritative for everyone. Such concepts are timeless and therefore transcultural, transreligious and transnational. Examples include Plato’s Forms,3 PF Stawson’s (1919–2006) ‘our conceptual structure’,4 Edmund Pellegrino’s (1920–2003) ‘fact of illness’ and the ‘act of profession’ in response to the vulnerability that illness creates,5 and common morality.6 Thought experiments, using what Rhodes characterises as ‘the hypethetico-deductive method’,1 aim to discover timeless concepts.

Discovering timeless concepts must address their ontological and epistemological status. Plato’s ontology of Forms,2 for example, is not clear, as evidenced in the centuries-long disputes among scholars of ancient Greek philosophy. Discovering timeless concepts assumes that we have the intellectual capacity to be free of bias, which is at least dubious given the findings of behavioural psychology.

#### Patents attempt to assert ownership over natural truth and impede individual’s abilities to pursue ends.

Long 95 Roderick T. Long, professor of philosophy at Auburn University, editor of the Journal of Ayn Rand Studies, director and president of the Molinari Institute and a Senior Fellow at the Center for a Stateless Society, “The Libertarian Case Against Intellectual Property Rights,” Autumn 1995, Free Nation Foundation, accessed 5 September 2021, http://freenation.org/a/f31l1.html JL recut

The moral case against patents is even clearer. A patent is, in effect, a claim of ownership over a law of nature. What if Newton had claimed to own calculus, or the law of gravity? Would we have to pay a fee to his estate every time we used one of the principles he discovered?

Defenders of patents claim that patent laws protect ownership only of inventions, not of discoveries. (Likewise, defenders of copyright claim that copyright laws protect only implementations of ideas, not the ideas themselves.) But this distinction is an artificial one. Laws of nature come in varying degrees of generality and specificity; if it is a law of nature that copper conducts electricity, it is no less a law of nature that this much copper, arranged in this configuration, with these other materials arranged so, makes a workable battery. And so on.

Suppose you are trapped at the bottom of a ravine. Sabre-tooth tigers are approaching hungrily. Your only hope is to quickly construct a levitation device I've recently invented. You know how it works, because you attended a public lecture I gave on the topic. And it's easy to construct, quite rapidly, out of materials you see lying around in the ravine.

But there's a problem. I've patented my levitation device. I own it — not just the individual model I built, but the universal. Thus, you can't construct your means of escape without using my property. And I, mean old skinflint that I am, refuse to give my permission. And so the tigers dine well.

This highlights the moral problem with the notion of intellectual property. By claiming a patent on my levitation device, I'm saying that you are not permitted to use your own knowledge to further your ends. By what right?

Another problem with patents is that, when it comes to laws of nature, even fairly specific ones, the odds are quite good that two people, working independently but drawing on the same background of research, may come up with the same invention (discovery) independently. Yet patent law will arbitrarily grant exclusive rights to the inventor who reaches the patent office first; the second inventor, despite having developed the idea on his own, will be forbidden to market his invention.

#### [3] Intellectual property protections in the squo violate physical property rights.

Krawisz 09 Daniel Krawisz, director of research at Satoshi Nakamoto Institute, "The Fallacy of Intellectual Property," 25 August 2000, Mises Institute, accessed 16 September 2021, https://mises.org/library/fallacy-intellectual-property

Intellectual property is the principle that the creator of an idea has a right to certain controls over all the physical forms in which ~~his~~ [their] idea is recorded. The extent of this control may be different depending on whether the idea is considered copyrighted, patented, or trademarked, but the essential principle is the same in all cases.[1] This presumed right of the creator of an idea is often believed to be similar to the right that a homesteader has to land he has settled, but the analogy is false. Intellectual property is necessarily a statist doctrine.

The Nature of Property

People cannot be expected to agree unanimously on what the world ought to be like and what each person should do, nor are people necessarily coordinated and patient enough to arrive at a consensus through deliberation. Instead they will tend to be apart from one another, desiring immediate action and lacking established procedures of efficiently coming to decisions.

When people disagree and are unwilling to deliberate, one person's decision must prevail without regard to the others' desires. Whose decision prevails may be determined in two ways: physical conflict, or deferral to a system of property. With a system of property in place, it is necessary only to ask who owns a thing, rather than to endure the costs of deliberation or to resort to violence.

Without the possibility of two persons attempting to control any one thing, defining property rights would be a mere psychological game without any consequences for human action. If persons were bodiless ghosts able to pass through one another without interacting, or if everyone lived in his own universe without being able to move from one to another, all disagreements about what to do with the world would be irrelevant. The purpose of property rights is the prevention of physical conflict. An essential characteristic of property is exclusivity, meaning that the use of an object by one person prevents it from being used by another.[2]

In addition to property rights, political theorists have proposed many other kinds of rights. All such rights must resolve into rights over physical things. When we speak of a right to free speech or a right to one's labor, for example, we really mean a right over one's own physical body. All rights, therefore, are ultimately property rights.

Ultimately, though we might speak of ownership over abstract things, it is only physical things, which can actually be fought over, that are owned. This we must keep in mind, for it is possible to sound reasonable and humane when discussing in abstract terms rights that would sound monstrous if they were described in terms of property.

Libertarians have often noted, for example, that the "right" to health care, a job, or a minimum income implies a property right over the people capable of providing such things and is therefore really a form of slavery. Similarly, the right to a vote is really a joint ownership between all citizens over the people, land, and everything else within a particular jurisdiction.

Libertarians themselves are at times confused over this issue. For example, they sometimes claim that in a free market broadcast industry, broadcasters would own certain frequencies in a given region and would therefore have the right to broadcast without interference by a pirate radio station on the same frequency.

Yet it is clearly not the frequency that is owned, because a frequency is not a physical object but rather an abstract property of all waves. It is the land over which that frequency is broadcast that is owned, albeit only for the purposes of broadcasting that frequency. Ownership of a radio frequency is ultimately a property right over a region of space, which allows someone to broadcast at a given frequency over it.[3]

This example demonstrates that ownership is not necessarily over entire objects but rather over decisions to be made with regard to them. An object can be owned by many different people because there are many kinds of decisions that can be made about it. Since different frequencies of radio waves can pass through one another without interfering, the same territory can be owned separately for the purposes of broadcasting at each frequency without leading to a conflict.[4]

Ideas cannot themselves be controlled with physical force, but instead must be controlled by way of other things — paper, printing presses, computers, and people. It is therefore in these things that intellectual property consists. To own a patent in a given invention is to have rights over everything in the universe that might be used to replicate that invention. This ownership is limited; one only owns things to the extent of being able to prevent others from arranging them in a particular way.

Similarly, to have a copyright in a song or a book is to have a property right over all paper, printing presses, computers — even over all people — everywhere. The owner may prevent the copying or public performance of his work by them all. Intellectual property is, like socialism, a kind of slavery, albeit a limited kind. Unlike socialism, however, intellectual property does not limit itself to the people and property in a given town or nation, or even the entire world. Since most matter in the universe could be used to encode an idea, intellectual property is a claim over the entire universe.

"Intellectual property is necessarily a statist doctrine." Rather than seeing intellectual property as a particularly expansive kind of physical property, many people see it as a separate, analogous, and equally fundamental construction. To copy an intellectual work is therefore a form of theft analogous to burglary; however, I insist that there is no analogy.

Intellectual property and physical property cannot exist side-by-side as logically independent legal constructions. Anything that gives control over physical things necessarily limits others' control of those things, and therefore acts exactly like a physical property right. If you have an intellectual property right to your monograph, you may prevent me from copying it, thereby limiting the physical property right I have in my ink, pen, and paper.

#### That affirms – even if IP is legit, it’s strictly theoretical and has no jurisdiction over its physical manifestations.

#### [4] Current medicine patents violate patients’ ability to pursue freedom from death.

Merges 11 Robert P. Merges, professor of law and technology at the University of California, “Justifying Intellectual Property,” 13 June 2011, Harvard University Press, accessed 6 September 2021, pg. 275-277, https://in.booksc.me/book/52982150/a95147 SJEP recut

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

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

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

In my view, the freedom of disease sufferers is so constrained that the property rights in pharmaceutical patents must give way. As I said, this is not the only plausible reading of Kant’s Universal Principle with respect to the problem at hand. But I think it is the best reading, and it is certainly the best I can do, given Kant’s text and the problem of pharmaceutical patents as I understand it.

## Underview

#### Theory:

#### [1] Aff gets 1AR theory because otherwise the neg can engage in infinite abuse, making debate impossible.

#### [2] DTD – the 1AR is too short for theory and substance so ballot implications are key to check abuse.

#### [3] No RVIs – they can dump 6 minutes of answers to a short argument and make the 2AR impossible.

#### [4] Competing interps – 1AR interps aren’t bidirectional and the neg should have to defend their norm since they have more time.

#### [5] Aff theory highest layer of the round – they get thirteen minutes on theory vs our seven minutes – they’ll say we can read 1AC theory but we can’t preempt every possible abuse story.

#### [6] No new 2NR theory or paradigm issues – makes the aff always lose since there’s no way to cover everything in the 2AR, and paradigm issues can be contested in the 1NC.

#### Permissibility and presumption affirm:

#### [1] If not, we’d have to have a proactive justification to do things like drinking water.

#### [2] Linguistics

University of Missouri no date University of Missouri, "Ethical Theory," no date, University of Missouri School of Medicine, accessed 6 September 2021, <https://medicine.missouri.edu/centers-institutes-labs/health-ethics/faq/theory> ~ST~

Expanding the category of “morally right” to include three different subcategories better captures the distinctions we want:

1. morally wrong
2. morally right
   1. morally neutral
   2. morally obligatory
   3. morally supererogatory

#### [3] Logically safer since it’s better to be supererogatory than to fail to meet an obligation.

#### [4] If I told you my name was Selena, you’d believe me until it was proven otherwise.

#### [5] We wouldn’t be able to start a strand of reasoning since we’d have to question that reason.

#### [6] Time skew – the neg gets 7 minutes to respond to the 1AC and 6 minutes to respond to the 1AR, outweighs because it controls access to the ballot.

#### [7] Reciprocity – aff proving obligation means it’s reciprocal for the neg to prove negative obligation, which is prohibition.

#### [8] Affirming is harder – neg-side bias statistically significant:

Shah 21 Sachin Shah, "A Statistical Study of Side Bias on the 2021 January-February Lincoln-Douglas Debate Topic by Sachin Shah," February 2021, NSD Update, accessed 7 September 2021, <http://nsdupdate.com/2021/a-statistical-study-of-side-bias-on-the-2021-january-february-lincoln-douglas-debate-topic-by-sachin-shah/?fbclid=IwAR1deQHPlAQqzvuK7Ya07wipR6K8C4vktiavQLFI3cQcjFejrEdIE3KPOq4> ~ST~

It is also interesting to look at the trend over multiple topics. Of the 243 bid distributing tournaments from August 2015 to present, the negative won 52.30% of rounds (p-value < 10^-34, 99% confidence interval [51.82%, 52.78%]). Of elimination rounds, the negative won 55.85% of rounds (p-value < 10^-18, 99% confidence interval [54.16%, 57.54%]). Additionally, after fitting logistical regression to the entire dataset, the offset was found to be 12.57. That translates to 9% of rounds for the negative where the debater predicted to win changed as a result of the bias. This continues to suggest the negative side bias might be structural and not topic specific as this analysis now includes 18 topics. Although debaters commonly use theoretical arguments that negating is harder in rounds i.e., judge psychology, affirmatives speak first and last, etc., these arguments are superseded by the empirical evidence. Even if these arguments correctly point out an advantage for the affirmative, the data shows that after accounting for all advantages and disadvantages (for both sides), negating is still easier.

#### If the round ends up equal, I overcame a disadvantage and debated better, which means you affirm.

#### Miscellaneous:

#### [1] No framing issues against aff spikes or embedded clash – they must line by line. 1AR can’t tell the implication of their arguments so negs can outspread in the 2NR. 2AR has no chance to recover because of 6-3 time skew and no new 2AR arguments.