University of Warmia and Mazury in Olsztyn
Law Review

vol. 1 (2008), pp. 1 – 17

Maximizing Social Minimums: Political Liberalism, Property Rights, and International Drug Patents

Mitch Avila
Associate Professor of Philosophy, California State University Fullerton

April 2008 (Revised July 14, 2008)

http://wpia.uwm.edu.pl/lawreview

§1 INTRODUCTION: INTELLECTUAL PROPERTY AS A HUMAN RIGHTS CONSIDERATION

In keeping with the theme of the 8th International Human Rights Conference held at University of Warmia and Mazury in Olsztyn, Poland, May 2008 ('the right to knowledge and information as a human rights issue in global society'), this paper considers the question of how to conceptualize information property rights on an international or global level. This is a clear human rights issue given incontrovertible evidence that international trade agreements designed to protect intellectual property rights are preventing the world's poor from accessing life-saving and life-enhancing technological developments. For example and in particular, a global enforcement system regulating pharmaceutical patents has severely limited the ability of the world's poor to access life-saving medications at affordable prices. For some, this is a case of moral conflict: an unfortunate and irresolvable conflict between the natural right to property and the human right to health and medicine. In this paper I argue that this appearance of conflict is illusory and results from the failure to correctly theorize intellectual property rights. In my view, both libertarian and utilitarian (wealth-maximizing) defenses of intellectual property rights are inadequate and only partially correct. Instead, I argue that Political Liberalism—by which I mean any theory of political justice that values fairness and reciprocity in a context of personal liberty (and of which Rawls is the leading representative)—has a useful and theoretically defensible concept of property rights in general and of intellectual property rights in particular. While this paper pays close attention to drug patents in particular, my main claims are meant to be generalizable to intellectual property in all its social guises. As far as I am aware, while there are many libertarian and utilitarian defenses of intellectual property rights, no one has thus far attempted to demonstrate the relevance of Political Liberalism to this debate. It is my position that Political Liberalism provides the only reasonable theory of political legitimacy, both domestically and internationally. As part of a larger project of showing the superiority of Political Liberalism to competing views, this paper attempts to show how Political Liberalism has sufficient conceptual resources, in this case, a nuanced conception of property rights, to provide a compelling and convincing resolution to a practical and urgent international moral problem. To anticipate my conclusion,

I will argue below that citizens and corporations of wealthy, industrialized nations have no intellectual property rights *whatsoever* in poor, underdeveloped nations.

§2 BACKGROUND: INTELLECTUAL PROPERTY RIGHTS AS IDEOLOGY

As is widely known, since the mid-1990s, Western powers, most notably the United States, have used the authority and power of the WTO to implement the TRIPs Agreement ("Trade Related Aspects of Intellectual Property Rights," as part of the Uruguay Round of negotiations that established the WTO).[1] This agreement requires uniform protection of patent rights by nations operating within the scope of the WTO including minimum standards for pharmaceutical patents. The net effect, not surprisingly, has been that pharmaceutical firms have had "greater scope for price discrimination, a rational move for profit-maximising firms, but exploitive to persons in developing countries."[2] A good example of this is India. Prior to the TRIPs Agreement, Indian manufacturers were free to manufacture pharmaceutical products patented in other countries. The result was a competitive local industry: "Domestic producers, both private and public, could, then, supply their populations with basic medicines, at prices often considerably lower than those of the research-based pharmaceutical industry . . . ."[3] This possibility has now been effectively eliminated by the United States which used its considerable influence to guarantee India's compliance with the TRIPs Agreement.

It is now, I think, widely recognized that the neo-liberal ideology behind these trade agreements has had disastrous effects. Essentially these agreements "imposed on the entire world the dominant intellectual property regime in the United States and Europe, as it is today."[4] But these legal conceptions of property are poorly suited for many developing countries, especially when it comes to creating fair access to a robust health care system. As Amartya Sen notes, while "We live in an age of science, technology, and economic affluence when . . . we can, for the first time in history, deal effectively with the diseases that ravage humanity," nonetheless "the reach of science and of globalization has stopped short of bringing reasonable opportunity for survival within the grasp of the deprived masses in our

1 A useful summary of the negotiations can be found in May, Christopher. "The Right to Property: Intellectual Property Rights as Human Rights," in *The Essentials of Human Rights,* ed. Rhona K. M. Smith and Christtien van der Anker (Hodder Arnold: 2005), pp. 293ff.

2 Cohen, Jillian Clare and Illingworth, Patricia. "The Dilemma of Intellectual Property Rights for Pharmaceuticals: The Tension between Ensuring Access of the Poor to Medicines and Committing to International Agreements," in *Developing World Business* (3:1, 2003), p. 32.

3 Cohen and Illingworth, p. 33.

4 Stiglizt, Joseph E. *Making Globalization Work* (W.W. Norton and Company, 2007, paperback edition), p. 117.

affluent world."[5] The leading causes of death in the world are, after all, infectious diseases (TB, AIDS, diarrhea, and so forth) and we currently possess the necessary pharmaceuticals and knowledge to prevent the death of tens of millions of the world's poor each year.[6] The global commodification of medicine achieved in part by intellectual property agreements, however well intentioned it may have been, has had a disastrous effect on the world's poor. As Paul Farmer plaintively remarks "Whether you are sitting in a clinic in rural Haiti, and thus witness to stupid deaths from infection, or sitting in an emergency room in a U.S. city, and thus the provider of first resort for forty million uninsured, you must acknowledge that the commodification of medicine invariably punishes the vulnerable."[7]

What makes this situation even more depressing and outrageous, however, is that it is hard to avoid the conclusion that neo-liberal attempts to impose a uniform market model were motivated, not by profit, but by ideology. Given that the bottom 20 percent of the world's poor represents only 1.3% of the world's income, a complete loss of this market to pharmaceutical companies would represent only a trivial loss in profit. Given that as of 1998, the ratio between the richest and poorest 20 percent has grown to 82:1, it is fantastic to suppose that life-saving technologies available in wealthy nations could be delivered to the world's poor through market schemes.[8] It is difficult to see what precisely is at stake here other than ideology (unless it is simple mean-spiritedness or perhaps an abhorrent form of social Darwinism). One need not be a doctrinaire Marxist (and I trust there are few of these left) to recognize that the driving ideology behind contemporary conceptions of intellectual property rights is a simple and deeply regrettable example of Marx's dictum that "The ruling ideas are the ideas of the ruling class."

5 Sen, Amartya. "Preface," in *Pathologies of Power: Health, Human Rights, and the New War on the Poor,* by Paul Farmer (University of California Press, 2005), p. xvii.

6 Farmer, Paul. *Infections and Inequalities* (University of California Press, 1999), p. 3ff.

7 Farmer, Paul. *Pathologies of Power: Health, Human Rights, and the New War on the Poor* (University of California Press, 2005), p. 152.

8 This is put well by Dennis Ray and I have here merely updated his figures. See Ray, Dennis M. "Let Them Eat (Genetically Re-engineered) Cake and the Little Purple Pill: A Rejoinder to Miles, Munilla and Covin" *Journal of Business Ethics* (57, 2005), p. 115.

§3 CONCEPTUALIZING INTELLECTUAL PROPERTY RIGHTS

Our task is to avoid these crippling ideological conceptions of property. As I have stated previously, Political Liberalism in my view has a defensible theoretical conception of property. Political Liberalism rejects both libertarian and market-based conceptions of property rights and instead conceptualizes property rights within a framework provided by principles of justice designed to insure fairness and equality. The central innovation here is the claim that there are two distinct forms of property, each of which is associated with one of two principles of justice (see below). The first form is 'Personal Property', what Rawls calls a 'basic right' and a 'primary good'.

Among the basic rights is the right to hold and to have the exclusive use of personal property. One ground of this right is to allow a sufficient material basis for personal independence and a sense of self-respect, both of which are essential for the adequate development and exercise of the moral powers.[9]

Because ownership of property is necessary to advance personal liberty and autonomy, the right to personal property is one of the rights guaranteed by the Equal Liberties Principle ("Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all")[10]. On the other hand, the second form, 'Social Capital', is property that has value only within the context of a pattern of social and economic cooperation. Indeed, social capital typically only comes into existence as part of a pattern of social cooperation. (A drug patent, for example, is social capital but not personal property. The patent does not have value outside of a shared system of social cooperation. The drugs in my cupboard, however, are my personal property because possessing them is a way in which I exercise autonomy over my health.) Social capital is regulated by the Difference Principle ("Social and Economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society")[11]. The Difference Principle requires that the

9 Rawls, John. *Justice as Fairness: A Restatement,* ed Erin Kelly (Belknap Press, 2001), p. 114.
10 Rawls, *Justice as Fairness*, p. 42.
11 Rawls, *Justice as Fairness*, p. 42.

background institutions of society be structured in such a fashion as to advance the interests of the least advantaged. Whatever institutional structures achieve this are, then, legitimate. Questions about whether social capital is privately or publicly owned are decided according to whatever form of institutional ownership best satisfies the demands of the Difference Principle, that is, by whatever 'is in the best interests of the worst off'. This in turn is a question of setting up just background institutions that insure fairness and reciprocity, both in terms of social opportunity and wealth.

§3.1 PROPERTY AND ENTITLEMENT

The distinctiveness of Rawls' position can be seen in his rejection of the concepts of 'legitimate expectation', 'entitlement', and 'desert' insofar as these are understood as logically prior to rules of social cooperation:

> . . . I stress that there is no criterion of a legitimate expectation, or of an entitlement, apart from the public rules that specify the scheme of cooperation. Legitimate expectations and entitlements are always (in justice as fairness) based on these rules. Here we assume, of course, that these rules are compatible with the two principles of justice. Given that those rules are satisfied by the basic structure, and given that all legitimate expectations and entitlements are honored, the resulting distribution is just, whatever it is. Apart from existing institutions, there is no prior and independent idea of what we may legitimately expect, or of what we are entitled to, that the basic structure is designed to fulfill. All these claims arise within the background system of fair social cooperation; they are based on its public rules and on what individuals and associations do in the light of those rules.[12]

It is not difficult to apply this model to intellectual property rights. According to this two-fold conception of property, intellectual property rights are part of the background structure of society and as such constitute a scheme of social cooperation. They are simply and only legal constructions ('fictions'). The question of whether or not a particular corporation or person is 'entitled' to an intellectual property right is decided by these principles. These principles require that 'entitlements' to intellectual property rights be part of a larger pattern of social cooperation according to which wealth or property is distributed fairly. 'Fairness' in turn is

12 Rawls, *Justice as Fairness*, p. 72.

defined as (a) not violating any personal liberty guaranteed by the equal liberties principle, (b) insuring fairness of opportunity to all persons, and (c) advancing the interests of the least advantaged members of society.

It is arguably the case that contemporary patent law (in the United States and Europe) at least attempts to conform to these principles. While often framed in terms of individual desert and right, "political authorities have recognized for 500 years that the public benefits of wide dissemination [of technology and public benefit] must also be protected."[13] Drug patents, for example, may provide a corporation with a market monopoly for a limited period, but doing so is at least conceptually in the best interests of the worst off since it provides an incentive for capital investment and risk, supposedly leading to the introduction of useful pharmaceuticals. Note, however, that in contemporary industrial societies, drug patents are only in the 'interests of the least advantaged' given the assumption of just background institutions. These vary from society to society, but the relevant just background institutions include such things as guaranteed employment (and income), access to medical care either through socialized medicine or universal insurance, and so forth. Without these background institutions in place, it highly doubtful that awarding drug patents could reasonably be seen as a just policy that 'maximizes social minimums'. For our purposes, the key point is that an intellectual property right exists for Political Liberalism only as part of a complex pattern of social cooperation which itself can reasonably be judged as promoting fairness and equality.

§3.2 LIBERTARIAN CONCEPTIONS OF PROPERTY

Compare this view of property rights with alternative theoretical conceptions of property. On a libertarian or Lockean view, property ownership is secured either through Locke's 'labor-mixing principle' or through legitimate market transactions (as Nozick stressed). On this view, a pharmaceutical corporation would come to own a drug because it developed the drug, which normally includes acquiring the technology to do so through legitimate market transactions. Unfortunately, it is widely recognized that there are some deep conceptual problems with using Locke labor-mixing principle as the basis for intellectual property rights. Most importantly, conceptualizing most intellectual property rights, especially pharmaceuticals, on a libertarian model can only be defended by grossly misrepresenting the

13 May, p. 293

process by which the patent was produced. This fact is widely recognized in the secondary literature. Not only are pharmaceutical patents almost always collective projects, but they (a) depend heavily on past research, (b) take advantage of primary scientific research that is not patented, (c) depend on a community of scholars that values openness and the exchange of ideas, and (d) often rely upon public funding. Complex technological patents only come into existence—and thus only have value—as part of a pattern of social cooperation between scholars, business, and government agencies that is almost always so complex as to defy simplistic claims to originality and innovation.

Political Liberalism, for its part however, agrees that some forms of personal property may well be acquired by Locke's principle. Libertarian conceptions of property rights seem well suited for some intellectual property rights such as literary and artistic copyrights. On the other hand, nothing can be said about 'entitlement' or what 'one deserves' as compensation for these copyrights. The key point is that intellectual property rights are legitimately regulated by the state according to whatever pattern of social cooperation secures social and economic fairness and reciprocity. Of course, assigning patent rights to the corporation that organized and structured the various contributions of the various sections into the creation of a useful drug is normally a fair and reasonable decision,[14] but it is critical to recognize here that complex pharmaceutical products are *never* the product of individuals or even of 'corporations'. The technology to create a new pharmaceutical exists only within the context of a complex legal and social system that makes the acquisition of this knowledge possible and that gives it value. Drug development almost always occurs as part of a public-private

14 In a discussion about native endowments, Rawls states that "what is regarded as the common asset is the distribution of native endowments and not our native endowments per se. . . . [T]he question of ownership of our endowments does not arise. . . .What is to be regarded as a common asset, then, is the distribution of native endowments, that is, the differences among persons" (*Justice as Fairness*, p. 75). Although the context is different, the same principle applies to ownership of intellectual property. It is not the intellectual property that is the common asset. Rather, the common asset is how that intellectual property is part of a pattern of distribution that produces differences between persons. If we assume a background maximin principle, then ownership becomes irrelevant per se. What is relevant is how those ownership rights contribute toward maximizing social minimums. Of course, in most instances, when it comes to social capital, it is profit, not ownership that is at stake.
In my view, one of the conceptual problems with Lockean conceptions of property is that the emphasis on ownership fails to answer the more pressing and relevant question about the degree to which property ownership legitimates rent-seeking behavior. For its part, Political Liberalism can then fully incorporate Lockean conceptions of property ownership as long as they are conceptually distinguished from the concept of a 'fair entitlement' through market transactions.

partnership that includes private capital, but also government grants and research by universities.

§3.3 UTILITARIAN CONCEPTIONS OF PROPERTY

Political Liberalism can also be contrasted with utilitarian or 'wealth-maximizing' conceptions of property ownership. (Posner is a representative example of this view in legal theory; Friedman for economic theory.) On this view, intellectual property rights are assigned according to whatever schema maximizes social wealth. A drug patent that gives a corporation a market monopoly is thought to be wealth-maximizing because it encourages capital investment in a risky field by promising windfall profits. The limited length of the monopoly insures the corporation maximizes the application of its patent at an early stage, after which it is 'wealth-maximizing' for the patent to be within the public domain because it promotes efficiency and allows the technology to be utilized in other forms. Seen from the point of view of 'law and economics', the current legal regime is not based on any pre-existing 'natural right', but represents the rational outcome of a complex negotiation between interested parties who have lobbied to maximize their rational advantage.

Again, Political Liberalism does not oppose this view per se, although it does add the provision that maximizing wealth is not a sufficient reason for granting a property right to social capital. Rather it must be reasonably certain that doing so is in the interests of the least advantage. For example, Political Liberalism would reject market schemas that prevent the least advantaged members of society from benefiting from useful new drugs or procedures due to their economic cost. It should be pointed out that market neo-liberals often pay at least lip-service to precisely this principle, that is, that justice requires a pattern of social cooperation that is in the interest of the worst off. Unfortunately, they often make the empirically false assumption that maximizing aggregate wealth also 'maximizes the social minimum'. (It is noteworthy that in both Europe and the U.S., laws exist to correct for market failures in cases where intellectual property rights pose either economic threats or urgent moral considerations.[15] This is an implicit recognition that 'the invisible hand' sometimes

15 For example, the European Parliament and Council Regulation No 816/2006, "on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems," provides for a scheme of compulsory licensing for the purpose of distributing drugs in countries with no manufacturing base. This act can be found on the European Commission website at: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_157/l_15720060609en00010007.pdf.

grossly fails not merely to advance the interests of the least advantaged, but also to meet a standard of minimal moral decency.)

§4 GLOBALIZING INTELLECTUAL PROPERTY

In my view, Political Liberalism has a reasonable and defensible conception of intellectual property: individuals or corporations are granted limited property rights to what is essentially a collective social phenomena as a practical and pragmatic means for advancing the interests of the least advantaged members of society. This view, however, encounters difficulties when moving from domestic or national settings to the context of international cooperation. The problem arises because property rights to 'social capital' are always assigned as part of the background institutions that constitute social justice at the domestic level. Those background institutions are essentially made possible by a particular legal regime, that is, within a particular nation-state or domestic government. Property rights, then, are always state-specific (or in the case of the EU, specific to a particular transnational legal scheme). In an international context, however, this cannot be assumed. This is because there either is no appropriate international legal regime, or if there is it cannot be assumed to be in the interests of the worst off and thus does not meet the requirements of justice. (Poor nations rightly argue that current treaties give unfair advantage to wealthy nations.)

§4.1 NO GLOBAL DIFFERENCE PRINCIPLE

Although a number of authors have argued for the idea of a global Difference Principle, in my view, Rawls is clearly correct to reject the possibility of a global Difference Principle. Those who support a global Difference Principle typically make the mistake of conceptualizing it as a form of 'allocative' distributive justice, but justice as fairness depends on procedural, not allocative, distribution policies. In short, distribution is fair when background institutions are procedurally just.

> We reject the idea of allocative justice as incompatible with the fundamental idea by which justice as fairness is organized: the idea of society as a fair system of cooperation over time. . . . In a well-ordered society, in which both the equal basic liberties (with their fair value) and fair equality of opportunity are secured, the distribution of income and wealth illustrates what we may call pure background procedural justice. . . . [T]he particular distributions of goods that result are acceptable as just . . . Observe that particular distributions cannot be judged at all apart from the claims (entitlements) of individuals

> earned by their efforts within the fair system of cooperation from which those distributions result. . . . There is no criterion for a just distribution apart from background institutions and the entitlements that arise from actually working through the procedure. It is background institutions that provide the setting for fair cooperation within which entitlements arise.[16]

This has the net result, however, that the reasons why allocative justice is rejected in the domestic case are precisely the same reasons why a Difference Principle is not possible in the global case: it is not reasonable to suppose that global society can ever be properly characterized as a fair system of social cooperation over time. As a result, the Difference Principle is not available to us as a resource for conceptualizing intellectual property on a global level.

§4.2 CONCEPTUALIZING GLOBAL INTELLECTUAL PROPERTY RIGHTS

Returning to the problem of intellectual property rights, this initially appears to leave Political Liberalism bereft of any resources by which to make a principled assignment of a property right (since the main principle for doing so, the Difference Principle, has been ruled out). On the contrary, however, I think political liberalism is actually better positioned to address the problems posed by intellectual property rights in a global setting than its competitors. The reasons for this include the following.

First, by rejecting libertarian conceptions of property ownership, Political Liberalism is free to pursue whatever policies judged are necessary to accomplish the goal of promoting political autonomy for all persons and all peoples. In short, there is no moral conflict because there is no independent conception of entitlement. Second, because liberal peoples value reciprocity and fairness (as opposed to wealth-maximization), they will enter into trade agreements with other liberal peoples that respect the political autonomy of each society. This would effectively address the free-rider issue while at the same time generating reasonable agreements between peoples that allow for distinct and culturally-specific ways of 'maximizing social minimums' in light of each people's unique history. Certainly, such agreements would have little resemblance to the current TRIPs Agreements unilaterally

16 Rawls, *Justice as Fairness*, pp. 50-51.

imposed by shortsighted neo-liberal ideologues. Third, Political Liberalism recognizes a duty to assistance which seeks to "raise the world's poor until they are either free and equal citizens of a reasonably liberal society or members of a decent hierarchical society."[17] This principle adopts as a target the creation of politically liberal societies that assure the political freedom and autonomy of their citizens. Thus, given that liberal peoples value reciprocity, they will act to secure the political liberty and autonomy of all persons. Because they have rejected libertarian and wealth-maximizing conceptions of property, they are also free to use whatever portion of their social wealth they reasonably regard as fulfilling their duty of assistance.

§4.3 COMPARISON WITH ALTERNATIVE VIEWS

Returning to the question of intellectual property rights, what right, then, does a person or corporation assigned an intellectual property right in one country have in other countries? According to Political Liberalism, there is no *automatic* right whatsoever. There may be a *conditional* right depending on the circumstances, but this is dependent on (a) domestic policy and (b) trade agreements *fairly* negotiated between liberal peoples. Domestically, that right is assigned according to whatever policy 'maximizes the social minimum'; internationally, liberal peoples may negotiate these rights with other liberal peoples or alternatively dispense with them entirely in the case of burdened societies.

Compare this with alternative views. On a libertarian or Lockean view, corporations and persons would have the same intellectual property rights in all countries, but this view is clearly mistaken since it fails to see intellectual property as the product of a scheme of social cooperation. In addition, since intellectual property rights consist of nothing other than the right to profit from a monopoly market position, given that there is no prior conception of entitlement apart from a fair system of cooperation, there is no basis according to which to assert a 'right' to a particular 'entitlement'. On a wealth-maximizing view, intellectual property rights would be assigned globally according to whether doing so maximized utility. But here one of two problems arises: if impoverished societies are required (by treaty or economic coercion) to recognize intellectual properties granted by other nations to corporations, then large segments of the world's poor will be denied access to life-saving

17 Rawls, John. *The Law of Peoples* (Harvard University Press, 1999), p. 119.

technologies (which can hardly be considered wealth-maximizing); on the other hand, if such nations simply 'socialize' this technology, this encourages economically inefficient 'free-rider' or 'cost-externalizing' behavior. Either way there is market failure. This is entirely predictable given that wealth-maximizing strategies are only plausible if one makes certain assumptions about the structures of legal and political institutions, assumptions that are fantastic when considered globally.

Political Liberalism, in contrast, approaches this problem differently. Individuals or corporations can only be said to 'own' or have a 'right' to intellectual property in a nominal sense: it is a useful legal fiction, but it is always society (conceived of as a system of legal and economic cooperation) that possess the 'moral right' to this property. This means that the problem is one best conceptualized as arising *between states*—and not between corporations or individuals and foreign nations. In short, it is societies qua complex patterns of social cooperation that are the rightful owners of intellectual property. Thus it is primarily a question for states to negotiate with other states.

§4.4 POTENTIAL POLICY PROPOSALS

As for insuring that the world's poor have access to life-saving pharmaceutical products, once we are clear on the nature of intellectual property, any number of potential policies can be enacted that are both conceptually possible and morally defensible. Any policy that can be reasonably judged to contribute toward fulfilling our duty to burdened societies with the target of promoting individual and domestic political autonomy is acceptable to Political Liberalism. Joseph Stiglitz lists a number of possible responses, including compulsory licensure schemes, socialization of research and development costs, market-based incentives (e.g., purchase guarantees), and an innovation fund. One of his suggested strategies, simply allowing burdened societies to do whatever they like, is worth elaborating on. Stiglitz argues that

> One of the simplest ways for the developed countries to help developing countries is to "waive" the tax, allowing them to use the intellectual property for their own citizens, so that their citizens can obtain the drug at cost. Critics might say: But then the developing countries are simply free-riding on the advanced industrial countries. To which the answer is: Yes, and they should. There is no additional cost imposed on the developed countries.

> And the benefits to the developing countries would be enormous: increased health is not only of in its own right, but it would contribute to increased productivity.

In my view this is not only a permissible policy, but a reasonable course of action that persons who value freedom, equality, and political autonomy for all persons should embrace.

§5 CONCLUSION

Current treaties governing international property rights are mish-mash of competing and often incoherent legal rationales. Most states appeal to Lockean or libertarian conceptions of intellectual property rights when negotiating treaties even though their own legal systems do not conceptualize patent rights according to this model. At other times states appear to assume that maximizing corporate profit is the primary motivation for entering into treaties, even though it is widely understood that market mechanisms rarely produce fair or desirable outcomes in the absence of just background institutions. Political Liberalism offers a coherent and morally plausible model of what would constitute a reasonably just scheme of intellectual property rights. In short, because there are no such rights per se and because no state has the obligation to recognize such rights unless doing so advances the interests of the least advantaged members of society, a politically liberal society will not insist that intellectual property rights be respected by other states. Indeed, even states that grant extensive patent rights in the domestic case need not be bound by this rationality in an international context.

In short, politically liberal peoples, because they value fairness and reciprocity and because they are reasonable, will agree to whatever schema of intellectual property rights that can reasonably be judged to 'maximize social minimums' in the domestic case and advance political autonomy in the international case. This includes, of course, respect for basic human rights. The human right to life and life-saving technology will always trump purported and spurious claims to intellectual property rights. While it may be important to discourage free-rider behavior by wealthy societies, because there are no presumptive international drug patents, liberal peoples are free to pursue whatever policies benefit the global poor. Indeed, they are obligated to do so.