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Pharmaceutical Patents: the 'Normative Resilience' of Property and the Arguments from Utility and Liberty

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Abstract

Pharmaceutical patents are often presented as a source of conflicting duties reflecting the moral dilemma between health and property. This prevalent approach insulates the debate over patented medicines from the wider discussion on intellectual property and favours solutions based on corporate social responsibility. In doing so, it succumbs to a fallacy, the 'normative resilience' of property which allows respect for property to survive the understanding of its injustice. This paper aims to remedy the situation by exploring pharmaceutical patents as a standard rather than exceptional case of intellectual property. A closer look at the main justifications in hand, i.e. the arguments from utility and liberty shows that they both fail to support pharmaceutical patents by being either indecisive, or undermining their cause. This outcome is explored in the light of intellectual property's recent expansion beyond traditional safeguards, e.g. non-patentability of natural laws and basic food.

The ethical issues arising from pharmaceutical patents are considered highly controversial. Nevertheless, the mounting literature on this topic reveals the surfacing of a shared framework, according to which patenting medicines should be interpreted in terms of a genuine moral dilemma. For instance, Gewertz and Amado argue that pharmaceutical patents express an authentic conflict between two fundamental values, i.e. health and property (2004: 295). In the same vein, Santoro introduces the issue of patenting medicines as a "dynamic tension between healthcare's dual status as an economic commodity and a moral right" (Santoro and Gorrie 2005: 251). This emerging common approach relies on the standard assumption that the pharmaceutical industry has conflicting obligations *qua* business and a healthcare provider, e.g. fiduciary duties versus duties of care, respect for property rights versus respect for the right to health, etc.[1] The problematic aspects of pharmaceutical patents are essentially confined to potentially

[1] See, *inter alia*, Bolton 2002, De George 2005, Sterckx 2005, Johnston and Wasunna 2007, and Schuklenk and Gallagher 2007. An additional difficulty is created by a widespread, quasi-Friedmanesque conjecture, according to which the pharmaceuticals in the capacity of businesses are simply obligated to make profits, as if it would not matter by what means a business achieves profitability. An analogous claim with regard to individuals would justify all sorts of things, as long as one has to earn a living. For an analysis of this misconception, see Radoilska 2007.

harmful consequences such as limited access to life-saving treatments, whilst the patents themselves, as a category of intellectual property are seldom in the spotlight.[2] Even radical critics of the current patent regime (e.g. Pogge 2005) build their case upon medical exception rather than question the philosophical foundations of intellectual property. For the exclusive focus on health leads to considering pharmaceutical patents as a *sui generis*, instead of a typical case of intellectual property. As a result, the ethics of patenting medicines is often addressed separately from the general debates over intellectual property and its possible justifications.

This paper resists the trend above by relating the discussion on pharmaceutical patents to the philosophical analysis of intellectual property. Furthermore, it shows that recurrent solutions based on corporate social responsibility (CSR) display an inconspicuous but far-reaching bias, to which Waldron sheds light in terms of property's 'normative resilience' (2001: 12-17). For property is an institution, the respect for which commonly survives the reflective understanding of its injustice.[3] Applied to the issue of pharmaceutical patents, the concept of normative resilience helps establish that appeals to CSR are counterproductive and effectively reinforce instead of mitigating the intellectual property rights of the pharmaceuticals. Having critically examined the case for the industry's voluntary commitment as a way to redress the ethical problems arising from patenting medicines, I look at the two principal arguments in favour of intellectual property that come out in the discussion on pharmaceutical patents, i.e. the arguments from utility and liberty. I argue that neither actually supports pharmaceutical patents. The argument from utility is indecisive while the argument from liberty undermines its alleged purpose. I conclude by indicating the significance of the proposed analysis, i.e. pharmaceutical patents are supported by entrenched attitudes of complacency about property rather than valid philosophical arguments and relate this conclusion to the recent expansion of intellectual property rights beyond traditional safeguards, e.g. non-patentability of natural laws and basic food production.

[2] See however Werhane and Gorman 2005a and 2005b for a noteworthy exception.
[3] For instance, those who infringe conventional property rights are branded dishonest and usually feel guilt, even when the justification of these rights is utterly flawed and morally abject as in the case of slavery, e.g. Hart's analysis on Huckleberry Finn's sense of guilt for helping a runaway slave (1994: 200ff.).

CSR and the normative resilience of pharmaceutical patents

CSR-based solutions are a natural extension of the emerging common approach to the ethics of patented drugs as identified in the opening section. Despite the manifest trend to adjudicate in favour of health as an overarching value that overrides property *in extremis*, these solutions have the perverse justificatory effect of acknowledging pharmaceutical patents as property rights set in stone. Just as the traditional plea to the well-off to take public interest into consideration recognises their entitlement to use as they please the resources in their control, the arguments from social responsibility fully embrace the current institutional arrangements. For instance, backing up drug donations to the global poor with the dangers of reputational damage amounts to advising the pharmaceutical industry how to use *their property* wisely.[4]

In a similar vein, it has been argued that pressing problems of global health cannot be tackled unless the developing nations commit to effective patent protection. If they continue to 'free-ride' on pharmaceutical products for global diseases, there would be no reason for the pharmaceutical industry to invest in research and development concerning 'low-profile' diseases that affect primarily their citizens. In order to avoid this unwelcome eventuality, Resnik suggests that the developing countries should undertake reciprocal obligations with the pharmaceutical industry, i.e. "insure that companies can make reasonable profit", "honour pharmaceutical product patents" and "adhere to intellectual property treatises" (2001: 32). Otherwise, the industry could not be expected to take seriously its social responsibilities toward the developing world.

Resnik's argument for reciprocity between developing nations and pharmaceutical multinationals is instructive in that it conceives strict obligation on behalf of the former as a prerequisite for the latter's discretionary commitment to alleviate disease burden in the developing world. The underlying assumption appears to be that pharmaceutical patents are rightfully owned by the pharmaceuticals. Consequently, respect for the industry's property rights is a must, if its help is to be implored.

[4] See Lesinger who defines society as the sum total of actual and potential customers (2005: 592) and urges the industry to take its social responsibilities seriously in order to keep up with the reputational side of the market.

Another example of a CSR-based strategy is provided by Johnston and Wasunna 2007 who actually notice that classifying patents as a kind of property right might unduly strengthen the status of patented drugs. Furthermore, they adopt a critical stance toward pharmaceutical patents and end their report with the conclusion: "Patents should not always be treated as absolute, nor are they always the optimal policy tool to encourage innovation or to ensure access to biomedical inventions and discoveries." (2007: 30). Yet, Johnston and Wasunna defend CSR as the most plausible way to mitigate the negative impact of patents on both scientific innovation and access to medication. They reason as follows: Public assistance is given to private companies that engage in biomedical research. This obliges them to take into consideration public interest when deciding whether to file a patent application or offer a license. Moreover, the pharmaceutical industry deals in lifesaving or dramatically life-improving technologies. Its self-proclaimed role in society is to foster health. But this role includes the responsibility to take into account the interests of prospective patients in its decision-making process (2007: 27-28). Hence, Johnston and Wasunna's argument concurs with Resnik's proposal as they both assume an interpretation of reciprocity between industry and society which requires the former to use its property rights considerately and generously as long as security and favourable treatment are offered by the later.

CSR-based solutions are but a clearer instance of property's normative resilience in the debate over patented medicines. Other proposals share in this paradox and endeavour to show that the industry will not lose out by their implementation.[5] A helpful parallel from the general theory of property is provided by Murphy and Nagel's analysis of the attitude of natural entitlement toward pre-tax income and its role in creating the 'myth of ownership' (2002). According to this unwarranted but widespread intuition, taxes are governments' 'takings' and should be justified against private property's independent existence and validity. However, private property is primarily a legal convention partly defined by the tax system. In contrast, the myth of ownership prompts the view that taxation is about state appropriation and distribution of something that

[5] For instance, this seems to be the case with the advanced purchase commitment for researching into vaccines and neglected diseases suggested by Kremer and Glennester 2004. See Johnston and Wasunna 2007: 20-29 for a comprehensive survey of current proposals.

already belongs to the taxpayers, whereas taxation is in fact instrumental in determining ownership (2002: 175-178). Similarly, the idea that changes in the current patent regime should be assessed by their impact on the industry's intellectual property reveals the untenable assumption that the industry owns some intellectual property independently of any patent system or legal order. Although intellectual property is a relatively new institution and was only recently extended to medical treatments, e.g. some European countries conceded patent protection for drugs as late as 1992, just two years before the TRIPS (Trade Related Aspects on Intellectual Property Rights) agreement expanded this protection globally, the respect for pharmaceutical patents seems as deeply entrenched as that for tangible property.[6] It is therefore essential to examine the main reasons in support of intellectual property with reference to medication and ascertain whether they really justify the widespread acceptance of intellectual property claims made by pharmaceuticals.

To sum up, my argument so far established that the recurring suggestions to tackle the apparent wrongs of pharmaceutical patents exhibit an attitude of complacency toward alleged intellectual property over patented medicines. This attitude reflects a broader bias, i.e. property's normative resilience which helps insulate regard for conventional property rights from the reflective assessment of underlying institutional arrangements. As a result, CSR-based approaches not only add force to the intellectual property claims of the pharmaceutical industry, but also lead to firmly associating this relatively new realm of property to traditionally established forms. In reply to this persistent trend, I will look at the two prevailing strategies for justifying pharmaceutical patents as a kind of property rights, i.e. the arguments form utility and liberty.

The argument from utility

[6] See Cornish (2004: 1-40) for a concise presentation of the theory and history of modern patents and Correa (2002) and Richards (2004) for thorough analysis of TRIPs and its extensive implications.

Utilitarian justifications of intellectual property are pervasive in the literature on pharmaceutical patents. It is argued that patents are indispensable for pharmaceutical innovation and weakened patent protection would jeopardise the health of future generations. Consequently, limited access to patented drugs at present is the fair social price to be paid for innovative medicine in the future (e.g. Taurel 2005).[7]

The popularity of this line of reasoning reflects the general understanding that modern patent law is primarily based on economic considerations. It is designed to promote both innovative research and its availability to society. By offering a monopoly over the production and commercialisation of useful inventions, society aims to secure continued investment in research, the beneficial outcomes of which will be made publicly available instead of being kept secret. Hence, patents' main function is not to reward scientific breakthrough, but to attract commercial investment despite the high risk that naturally comes along with innovation. For instance, US legislation encourages recipients of public funding to file patent applications in order to catch the attention of the private sector.[8]

The argument from utility depends on empirical confirmation. Thus, the existence of pharmaceutical patents would be groundless unless they are proven to serve their intended purpose, which is to make useful innovation available to society more efficiently than other policy tools, e.g. government subsidies. However, empirical studies on the consequences of pharmaceutical patents have been inconclusive so far.[9] For instance, Attran and Gillespie-White (2001) defended pharmaceutical patents by showing that access to anti-retroviral drugs in Africa is hampered by lack of infrastructure and political will rather than strong patent protection. Yet, this argument is insufficient from a utilitarian perspective. For it only demonstrates that pharmaceutical patents are not the primary cause of various health disasters. In contrast, a valid utilitarian case for international patent protection of drugs has to show that patents are instrumental in

[7] See Radoilska and Scott 2005 for a critical discussion of the argument from utility showing that its proponents often misidentify the sheer existence of more medicines with actual health improvement.
[8] Mowery et al. 2004; see also and Johnston and Wasunna 2007: 3. Patents and copyright are very similar in this respect as they both benefit primarily commercial investment, whilst using the rhetoric of rewarding scientists' innovation and authors' creativity (e.g. Cornish 2004: 42-50).
[9] See Fisher 2001: 177 – 184 and Johnston and Wasunna 2007: 3 – 16 for analysis of the relevant empirical research to date.

alleviating the global disease burden. But the unambiguous 10/90 gap in drugs' research and development indicates that the current, globalised patent system provides incentives for bringing into the market 'me-too' and life-style drugs rather than genuine medicines, even less so for diseases that affect primarily poorer nations. This situation arguably harms health in both developing and developed countries, although for different reasons (and to a different extent): endemic lack of essential medicines in the former and overmedication and disease-mongering in the latter (Heath 2005).

Furthermore, a uniform, globalised system of pharmaceutical patents is conceptually problematic within a utilitarian framework. For this framework derives its legitimacy from the fact that society as a sovereign people grants intellectual property rights in order to foster socially beneficial innovation, thereby forgoing immediate advantages, e.g. cheap copies. Developed, democratic countries seem to satisfy this condition of legitimacy. Despite some discrepancy between medical importance and economic priority in drugs research and development for conditions affecting the developed world, it could be said that people usually get the medicines that they demand. For some instances of enhancement may take precedence over some therapies for the majority of a population, thereby explaining the prevalence of life-style drugs. Moreover, those who suffer from rare conditions or 'orphan diseases' are still in a position to advance their cause through patients' rights groups and other associations. Conversely, in the absence of a global democratic order, a decision to grant global protection to pharmaceutical products is at odds with the theoretical underpinnings of the argument from utility. For the current international order does not reflect the will of a global community, nor are all nations represented by governments answerable to their people.[10]

Besides uncertain impact on global health, pharmaceutical patents are not clearly conducive to scientific innovation either. For instance, Heller and Einseberg employ the term 'tragedy of the anticommons' in order to recap the risks that the current patent system inflicts on biomedical research, i.e. "proliferation of intellectual property rights upstream may be stifling life-saving innovations further downstream in the course of

[10] See for instance, Brown (2003) who elaborates on the peculiar status of the UN Security Council which is meant to act on behalf of the society of states, whilst its constitution entitles the permanent members to exert their influence in a self-interested way.

research and product development" (1998: 700).[11] Furthermore, the patent system provides protection at a price which is prohibitive for the most participants in the market, e.g. filing for a patent and litigation over its prospective breaches (e.g. Macdonald 2002). Thus, patent protection helps maintain the *status quo* rather than promote invention. For it is only the leading and well-established companies for which patenting makes sense.[12] As a result, such companies are in a position to continue dominating the market by imposing an additional cost to the product development of their emerging competitors who are bound to require a licence for some of their existing patents. In contrast, the industry leaders are able to realise an extremely lucrative revenue without bearing any production costs, i.e. by merely licensing their patents to others (Lea 2008: 40 – 43). This aspect of patent protection seems particularly damaging within an internationalised patent system that could perpetuate global inequalities and hamper the technological progress of companies from developing countries by imposing on them an 'intellectual property' tax on behalf of various multinationals.[13]

Finally, it is important to understand the inherent constraints of a valid argument from utility. Even if we were to assume that uncontroversial empirical confirmation would become available for this argument, it would still not be in a position to offer pharmaceutical patents the status of 'untrumpable' property rights that some authors support. For instance, Rosenberg (2004) defends this view of patents in biotechnology on grounds of predictability of innovation and secure incentives. The author identifies innovation as the only foreseeable source of future welfare and subsequently argues that no other welfare considerations could override the intellectual property rights of innovative companies. However, this conclusion does not follow within Rosenberg's chosen framework, which is utility-based. From this perspective patents are no more than economic incentives, "blunt instruments" without independent value of their own and not

[11] Cf. Johnston and Wasunna (2007: 15): "Until better evidence of the actual impact of patents on research exist, and in the light of the potential for patent infringement lawsuits, the risk that patents may slow or prevent research ought to be taken seriously."

[12] See Lee (2007) who illustrates the tension between patents and innovative up-and-coming business with the drastic change in Microsoft's attitude towards patents from its early days (only 8 patents filed up to 1991) to its current dominant state within the software industry (over 6000 patents held in 2007).

[13] See Lea (2008) for a detailed defence of this thesis, based on his understanding of intellectual property rights as income claim-rights over the prospective earnings of other market agents.

natural rights, the infringement of which would amount to liberty violation.[14] Therefore, the argument from utility cannot provide justification for the recurrent claim that non-compliance with strong patent protection boils down to a theft.[15] Rosenberg's thesis that biomedical patents should be considered untrumpable rights seems to be motivated by the newly acquired normative resilience of intellectual property rather than impartial balancing of competing interests, both social and private. In this respect, it echoes Bentham's own reluctance to redistribute for the greatest good of the greatest number in order to avoid the even greater misery of frustrating the deep-rooted expectations brought about by established property arrangements.[16]

To recap the key points of this section, the argument from utility could offer a limited justification for pharmaceutical patents as an overall beneficial trade-off between society and the pharmaceutical industry as long as two conditions, the one empirical and the other conceptual are satisfied. Firstly, patent protection for medicines needs empirical back-up in order to show that it serves well its intended purpose, i.e. availability of useful innovation to society. Secondly, the underling assumption of a utilitarian trade-off between society and industry requires society to be in a position to engage in such a trade-off, i.e. as a sovereign people. At present, neither of the conditions above are fulfilled. Empirical evidence on patents both in general and in the case of pharmaceuticals is indecisive at best, although some compelling empirical research suggests that the current patent system causes more harm than benefit on account of both innovation and availability, especially in the developing countries. Furthermore, the existing international order is at odds with the idea of global pharmaceutical patents as a fair trade-off. In addition to being inclusive, the argument from utility lacks the potential to justify pharmaceutical patents as robust property rights.

[14] Cf. Cornish (2004: 28): "Intellectual property rights are blunt instruments. They need some adjustment to fit the many tasks for which they may prove capable."
[15] See Paine and Santoro (1995: 11-12) who bring up the industry's attitudes toward patent infringement, e.g. the claim that stealing drugs does not solve global health problems anymore than stealing food resolves endemic famines.
[16] See Waldron's analysis of Bentham's psychology of ownership (2001: 23-27).

The argument from liberty

The inconclusive character of the argument from utility has led some authors to defend pharmaceutical patents primarily on moral rather than economic grounds (e.g. Gewertz and Amado 2004). Referring to Locke's justification of private property, they consider intellectual property as a valid extension of self-ownership. Thus, the freedom to use one's own mind and body entitles people to the fruits of their labour. It also makes it possible for them to rightfully appropriate unowned resources by means of their labour, if certain conditions are fulfilled, e.g. by labouring a piece of land one earns the property rights on it, provided that "enough and as good" land is left for others to take on cultivating. In addition to that, Nozick's interpretation of the Lockean proviso makes intellectual property to appear as an even clearer-cut case of just acquisition.[17] Nozick backs the idea of strong intellectual property rights by arguing that no harm is done to those excluded from the enjoyment of a novel intellectual product, because it would not have existed were its proprietor not to originate it. Hence, nothing is really lost for the excluded parties. They are neither made worse off by private intellectual property nor have a case against the proprietors of useful inventions. As a result, breaches of intellectual property are regarded as sheer infringements of a natural right and a threat to self-ownership, i.e. the foundations of personal freedom according to this libertarian view.

Despite its prominence in the literature, it is questionable that this line of reasoning actually supports any notion of intellectual property.[18] For instance, it can be argued that Nozick's reading of the Lockean proviso does not take into account the crucial argument from waste. As Shiffrin (2001) points out, labour is not Locke's only criterion for just acquisition of common lands. In addition, he believes that land's exclusive, private ownership enables people to make better use of this resource, which would go to waste, if it were left communal. Hardly anyone would cultivate the land if

[17] Nozick 1974: 178-82.
[18] See Fisher 2001: 184-189 and especially Shiffrin 2001 for an outline of the major difficulties faced by intellectual property theories of Lockean descent.

anybody else might just as well reclaim the plot and its produce. In this scenario, everybody would be worse off, e.g. for want of food.

Locke's case for private land ownership shows that it is important to consider the nature of prospective candidates for just appropriation and see whether their use will be improved by private ownership. But intellectual objects, e.g. scientific ideas and artistic creations are dissimilar to unowned fertile land. In their case, private ownership leads to both wastefulness and incomplete enjoyment. Intellectual objects cannot achieve their full value without being widely employed and appreciated. Philosophical arguments are a good example of this as critical discussion brings less obvious implications to light. Furthermore, shared use can only increase rather than diminish anyone's enjoyment of an intellectual object, e.g. by making it possible to confer about a work of art with others who enjoyed it.[19]

A further objection to the Lockean defence of intellectual property arises from reflections on the nature of scientific research. Nozick's interpretation of the 'proviso' depicts inventions and discoveries as if they were acts of absolute creation. The assumption seems necessary in order to claim that without a particular scientific feat, its outcome would have been out of reach for all others except the inventor. This is perhaps a plausible view of artistic originality, but hardly presents a valid account of scientific innovation, which is not about a particular expression of ideas, but the (universal) ideas themselves. Moreover, the notion of discovery suggests that the outcome is ontologically independent from the discoverer, instead of revealing their singular subjectivity.[20] Although scientific discovery helps us understand something important about the world, it does not make it appear out of nothing. Besides, scientific progress scarcely resembles a discrete sequence of single-handed inventions. Instead, collective endeavour, shared methodologies and findings are behind the more visible breakthroughs that lead to a

[19] See Shiffrin 2001: 156-7.

[20] This line of reasoning is characteristic of personality theories of intellectual property, which draw on ideas about the nature of authorship and creativity by Kant (1785) and Hegel (1821). It is manifest in the doctrine of authors' moral-rights ('*droit moral*'), which are inalienable, distinct and undiminished by transfers of copyright. Moral-rights include, *inter alia*, the right to attribution, integrity of the work, and control over public disclosure. See Palmer (1990) and Fisher (2001) for a critical analysis of personality approaches.

patentable product. In the light of similar considerations, Werhane and Gorman (2005a; 2005b) have argued for a less restrictive interpretation of intellectual property.

A more radical challenge is provided by Palmer, according to whom "liberty-based arguments for property rights are hostile to intellectual property claims, for patents and copyright monopolies interfere with the freedom of others to use their own bodies or their own justly acquired property in certain ways." (1990: 855). The author offers a helpful illustration: if a new dance's steps were somebody's intellectual property, the proprietor would be in a position to prevent the others from moving their bodies in a way that overlaps with the privately owned dance. An analogy from the realm of pharmaceutical patents would be the prevention of willing parties to engage in mutually advantageous interactions, e.g. the supply and purchase of generic medicines without having to pay a licensing fee to patent holders.

Palmer's suggestion is far-reaching as it shows that the argument from liberty may contradict rather than give unequivocal support to intellectual property. His critique of patents and copyright sheds light onto their liberty-diminishing function. For they impose arbitrary constraints on non-consenting parties within a philosophical framework intended to protect individual liberties.[21]

The current expansion of patent protection beyond traditional safeguards such as non-patentability of natural laws and basic foods further substantiates the claim that patents have a strong potential for liberty-infringement. For instance, a recent ruling of the US Court of Appeal of the Federal Circuit, according to which the defendant (LabCorp) wilfully infringed the claimant's (Metabolite) patent by merely thinking about a basic scientific relationship, i.e. connecting independently obtained test results to a specific medical condition, sets a precedent enabling those who discover a natural law to claim intellectual property over others' thoughts about it. [22] Furthermore, the broadening scope of patents granted over the last years makes it implausible to consider current

[21] Trade secrets are exempt from Palmer's criticism as they obligate only parties that stand in a consensual, i.e. contractual or fiduciary relationship with the owner.

[22] Metabolite Labs., Inc. v. Lab. Corp. of Am. Holdings, 370 F.3d 1354 (Fed. Cir. 2004). LabCorp's appeal to the US Supreme Court was dismissed by the majority, see however the dissenting opinion by Justice Breyer explaining the extraordinary legal implications of the precedent: Lab. Corp. of Am. Holdings v. Metabolite Labs., Inc., 126 S. Ct. 2921 (2006).

intellectual property claim-rights as protective of the fruits of one's labour. Instead, they seem to provide an efficient way of preventing other people from enjoying the fruits of their labour. This is particularly salient in cases where multinationals (successfully) claim intellectual property rights over ingredients of people's ancestral food or traditional farming techniques, e.g. Monsanto's patent of a strain of wheat used for preparing bread in Northern India (Lea 2008: 41 – 45).

To sum up, although the argument from liberty is often perceived as providing a moral high-ground for intellectual property claims, its logic forcefully contests the existing patent system. For the idea of a natural property right over oneself and the fruits of one's labour is meant to counter exploitative claims instead of justifying one's control over unlimited resources, let alone other individuals. In addition to that, the very nature of intellectual objects makes them unsuitable for exclusive appropriation on Lockean grounds.

Conclusion

Pharmaceuticals have not always been considered patentable. For most of the 20th century, legislators around the world agreed that neither medicines, nor agricultural products could be patented because health and food constitute basic needs. Yet, pharmaceutical patents are currently met with widespread acceptance which does not correspond to the strength of the arguments in their support. Applied to intellectual property, the argument from liberty becomes self-defeating, whereas the argument from utility is inconclusive and cannot justify rewarding scientific innovation in terms of exclusive control and intellectual property rights. Instead, it provides support only to the idea that socially beneficial research, e.g. in medicine should be rewarded as a matter of fairness (De George 2005). Thus, a revised version of 'moral-rights' could offer a proper tribute to both artists and scientists whose original works enrich human knowledge, experience, and culture.[23] Provided that moral-rights do not conflate with some form of private intellectual property, they do not seem to impose a threat to others' liberty, e.g.

[23] See n. 20 above.

one can parody another's work, but not pretend to be its creator, criticise it, but not mutilate it. In a similar vein, fairness toward private investment in projects of public significance, e.g. pharmaceuticals requires solutions that balance public and private interests better than the concept of intellectual property. For it promptly instantiates the pervasive bias of normative resilience as the case of pharmaceutical patents compellingly shows.

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