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### NC

#### The meta ethic is practical reason.

#### 1] Is-ought gap – empiricism can only observe what is since that’s the only thing in our perception, not what ought to be, but it’s impossible to derive an ought from descriptive premises which requires a priori premises to form morality.

#### 2] Empirical uncertainty– evil demon could deceive us, dreaming, simulation, and inability to know other’s experiences makes empiricism an unreliable basis for universal ethics.

#### 3] Infallibility – practical reason is the only unescapable authority because to ask why we should be reasoners is to concede authority to reason since the question itself uses reason – anything else is nonbinding and arbitrary.

#### Reason requires that maxims we act upon must be universalizable – any reasoner would know that two plus two equals four because there is no a priori distinction between agents so norms must be universally valid.

#### And willing an action that violates the freedom of others is a contradiction – if I decide to kill someone, that action is not universalizable because that would justify other people killing me too.

#### Thus, the standard is respecting freedom. Prefer additionally –

#### 1] Performativity—freedom is the key to the process of justification of arguments. Willing that we should abide by their ethical theory presupposes that we own ourselves in the first place.

#### 2] All other frameworks collapse—non-Kantian theories source obligations in extrinsically good objects, but that presupposes the goodness of the rational will.

#### 3] TJFs and they outweigh since it precludes engagement on the framework layer – prefer for Resource disparities- Our framework ensures big squads don’t have a comparative advantage since debates become about quality of arguments rather than quantity - their model crowds out small schools because they have to prep for every unique advantage under each aff, every counterplan, and every disad with carded responses to each of them

#### Acquisition of property can never be unjust – to create rights violations, there must already be an owner of the property being violated, but that presupposes its appropriation by another entity.

Feser 1, (Edward Feser, 1-1-2005, accessed on 12-15-2021, Cambridge University Press, "THERE IS NO SUCH THING AS AN UNJUST INITIAL ACQUISITION | Social Philosophy and Policy | Cambridge Core", Edward C. Feser is an American philosopher. He is an Associate Professor of Philosophy at Pasadena City College in Pasadena, California. [https://www.cambridge.org/core/journals/social-philosophy-and-policy/article/abs/there-is-no-such-thing-as-an-unjust-initial-acquisition/5C744D6D5C525E711EC75F75BF7109D1)[brackets](https://www.cambridge.org/core/journals/social-philosophy-and-policy/article/abs/there-is-no-such-thing-as-an-unjust-initial-acquisition/5C744D6D5C525E711EC75F75BF7109D1)%5bbrackets) for gen lang]//phs st

There is a serious difficulty with this criticism of Nozick, however. It is just this: There is no such thing as an unjust initial acquisition of resources; therefore, there is no case to be made for redistributive taxation on the basis of alleged injustices in initial acquisition. This is, to be sure, a bold claim. Moreover, in making it, I contradict not only Nozick’s critics, but Nozick himself, who clearly thinks it is at least possible for there to be injustices in acquisition, whether or not there have in fact been any (or, more realistically, whether or not there have been enough such injustices to justify continual redistributive taxation for the purposes of rectifying them). But here is a case where Nozick has, I think, been too generous to the other side. Rather than attempt —unsatisfactorily, in the view of his critics—to meet the challenge to show that initial acquisition has not in general been unjust, he ought instead to have insisted that there is no such challenge to be met in the first place. Giving what I shall call “the basic argument” for this audacious claim will be the task of Section II of this essay. The argument is, I think, compelling, but by itself it leaves unexplained some widespread intu- itions to the effect that certain specific instances of initial acquisition are unjust and call forth as their remedy the application of a Lockean proviso, or are otherwise problematic. (A “Lockean proviso,” of course, is one that forbids initial acquisitions of resources when these acquisitions do not leave “enough and as good” in common for others.) Thus, Section III focuses on various considerations that tend to show how those intuitions are best explained in a way consistent with the argument of Section II. Section IV completes the task of accounting for the intuitions in question by considering how the thesis of self-ownership itself bears on the acqui- sition and use of property. Section V shows how the results of the previ- ous sections add up to a more satisfying defense of Nozickian property rights than the one given by Nozick himself, and considers some of the implications of this revised conception of initial acquisition for our under- standing of Nozick’s principles of transfer and rectification. II. The Basic Argument The reason there is no such thing as an unjust initial acquisition of resources is that there is no such thing as either a just or an unjust initial acquisition of resources. The concept of justice, that is to say, simply does not apply to initial acquisition. It applies only after initial acquisition has already taken place. In particular, it applies only to transfers of property (and derivatively, to the rectification of injustices in transfer). This, it seems to me, is a clear implication of the assumption (rightly) made by Nozick that external resources are initially unowned. Consider the following example. Suppose an individual A seeks to acquire some previously unowned resource R. For it to be the case that A commits an injustice in acquiring R, it would also have to be the case that there is some individual B (or perhaps a group of individuals) against whom A commits the injustice. But for B to have been wronged by A’s acquisi- tion of R, B would have to have had a rightful claim over R, a right to R. By hypothesis, however, B did not have a right to R, because no one had a right to it—it was unowned, after all. So B was not wronged and could not have been. In fact, the very first person who could conceivably be wronged by anyone’s use of R would be, not B, but A himself, since A is the first one to own R. Such a wrong would in the nature of the case be an injustice in transfer—in unjustly taking from A what is rightfully his—not in initial acquisition. The same thing, by extension, will be true of all unowned resources: it is only after some- one has initially acquired them that anyone could unjustly come to possess them, via unjust transfer. It is impossible, then, for there to be any injustices in initial acquisition.7

### DA

#### Private sector innovation in the commercial space industry is high now.

**Smith 18** [Matthew Smith, 6-11-2018, "Commercialized Space and You," Science in the News, https://sitn.hms.harvard.edu/flash/2018/commercialized-space-and-you/]//DDPT

Step aside, NASA. The 20th century model of space exploration is running out of fuel, and private companies are now leading the race for human expansion across the galaxy. Elon Musk, Richard Branson, and Jeff Bezos are three of the billionaires leading this extraterrestrial adventure with their respective companies, SpaceX, Virgin Galactic, and Blue Origin. Bezos, the founder of Amazon and currently the wealthiest person in the world, has a vision of sending autonomous rovers to the Moon and helping to eventually create a Moon Village. He has explained that collaborations with the National Aeronautics and Space Administration (NASA) and other government agencies are encouraged and appreciated, but are no longer essential to achieve his goal. [Musk](https://www.geekwire.com/2018/jeff-bezos-blue-origin-space-venture-go-moon-settlements/), who co-founded Tesla, has already launched nine rockets within the first five months of 2018, one of which was the most powerful private spacecraft [ever sent into orbit](http://sitn.hms.harvard.edu/flash/2018/spacex-launches-falcon-heavy-rocket-successfully/). Looking forward, SpaceX aims to complete its first manned mission to Mars in 2024, almost a decade earlier than NASA’s projections. Even the current US president is encouraging this shift to private companies driving [innovation in space](https://www.washingtonpost.com/news/the-switch/wp/2018/02/11/the-trump-administration-wants-to-turn-the-international-space-station-into-a-commercially-run-venture/?noredirect=on&utm_term=.d2c1eccab4ca). With almost [$1 billion](https://www.forbes.com/sites/alexknapp/2018/04/10/nearly-1-billion-was-invested-in-space-startups-in-1q2018-new-report-says/#5fdd019b285c) invested in space-focused startups in the first quarter of 2018, the commercialized space industry shows no sign of slowing down.

#### Private space appropriation is uniquely key to ensuring ongoing innovation towards space exploration and colonization.

**Cheng 20** [Dean Cheng, 09-16-2020, "Outer Space and Private Property," Heritage Foundation, https://www.heritage.org/space-policy/commentary/outer-space-and-private-property]//DDPT

Fully 53 years after the Outer Space Treaty, however, this has begun to change. The success of SpaceX, Blue Origin, Virgin Galactic, and other private companies has led to what has been termed Space 2.0.

The Obama administration’s decision to rely on commercial space-launch services to resupply the International Space Station opened the door to expanding private enterprise’s role in space.

The innovation exhibited in the various Falcon launches, including the ability to reuse the booster rockets, has seen a significant drop in the cost of placing payloads into orbit. As a result, a real opportunity exists for companies to begin thinking about how to use space not simply to improve terrestrial operations, but to make money from space and its physical resources.

The uncertainty associated with private property rights, however, has had a constraining effect on the ability to exploit space more extensively. Companies are unlikely to be willing to risk capital and assets if they are not sure that they will be able to profit from their investments.

#### The private sector is the key internal link to space exploration and colonization.

**Sharma 9/7** [Maanas Sharma, 9-7-2021, "The Space Review: The privatized frontier: the ethical implications and role of private companies in space exploration," The Space Review, https://www.thespacereview.com/article/4238/1]//DDPT

In recent years, private companies have taken on a larger role in the space exploration system. With lower costs and faster production times, they have displaced some functions of government space agencies. Though many have levied criticism against privatized space exploration, it also allows room for more altruistic actions by government space agencies and the benefits from increased space exploration as a whole. Thus, we should encourage this development, as the process is net ethical in the end. Especially if performed in conjunction with adequate government action on the topic, private space exploration can overcome possible shortcomings in its risky and capitalistic nature and ensure a positive contribution to the general public on Earth.

The implications of commercial space exploration have been thrust into the limelight with the successes and failures of billionaire Elon Musk’s company SpaceX. While private companies are not new to space exploration, their prominence in American space exploration efforts has increased rapidly in recent years, fueled by technological innovations, reductions in cost, and readily available funding from government and private sources.[1] In May 2020, SpaceX brought American astronauts to space from American soil for the first time in almost 10 years.[2] Recognizing the greatly reduced costs of space exploration in private companies, NASA’s budget has shifted to significantly relying on private companies.[3] However, private space companies are unique from government space agencies in the way they experience unique sets of market pressures that influence their decision-making process. Hence, the expansion of private control in the space sector turns into a multifaceted contestation of its ethicality.

The most obvious ethical concern is the loss of human life. Critics contend that companies must answer to their shareholders and justify their profits. This contributes to a larger overall psyche that prioritizes cost and speed above all else, resulting in significantly increased risks.[4] However, the possible increase in mishaps is largely overstated. Companies recognize the need for safety aboard their expeditions themselves.[5] After all, the potential backlash from a mishap could destroy the company’s reputation and significantly harm their prospects. According to Dr. Nayef Al-Rodhan, Head of the Geneva Centre for Security Policy’s Geopolitics and Global Futures Programme, “because there were no alternatives to government space programs, accidents were seen to some degree as par for the course… By comparison, private companies actually have a far more difficult set of issues to face in the case of a mishap. In a worst case scenario, a private company could make an easy scapegoat.” [6]

Another large ethical concern is the prominence capitalism may have in the future of private space exploration and the impacts thereof. The growth of private space companies in recent years has been closely intertwined with capitalism. Companies have largely focused on the most profitable projects, such as space travel and the business of space.[7] Many companies are funded by individual billionaires, such as dearMoon, SpaceX’s upcoming mission to the Moon.[8] Congress has also passed multiple acts for the purpose of reducing regulations on private space companies and securing private access to space. From this, many immediately jump to the conclusion that capitalism in space will recreate the same conditions in outer space that plague Earth today, especially with the increasing push to create a “space-for-space” economy, such as space tourism and new technologies to mine the Moon and asteroids. Critics, such as Jordan Pearson of VICE, believe that promises of “virtually unlimited resources” are only for the rich, and will perpetuate the growing wealth inequality that plagues the world today.[9]

However, others contend that just because private space exploration has some capitalist elements, it is by no means an embodiment of unrestricted capitalism. A healthy balance of restricted capitalism—for example, private space companies working through contracts with government agencies or independently under monitoring and regulation by national and international agreements—will avoid the pitfalls that capitalist colonialism faced down here on Earth. Even those who are generally against excessive government regulation should see the benefits of them in space. Lacking any consensus on definitions and rights in space will create undue competition between corporations as well as governments that will harm everyone rather than helping anyone. To create a conducive environment for new space-for-space exploration, one without confrontation but with protection for corporate astronauts, infrastructure, and other interests, governments must create key policies such as a framework for property rights on asteroids, the Moon, and Mars.[7,10]

Another key matter to note is restricted capitalism in space “could also be our salvation.”[11] Private space exploration could reap increased access to resources and other benefits that can be used to solve the very problems on Earth that critics of capitalism identify. Since governments offset some of their projects to private companies, government agencies can focus on altruistic projects that otherwise would not fit in the budget before and do not have the immediate commercial use that private companies look for. Scott Hubbard, an adjunct professor of aeronautics and astronautics at Stanford University, discusses how “this strategy allows the space agency to continue ‘exploring the fringe where there really is no business case’” but still has important impacts on people down on Earth.[12]

Indeed, this idea is a particularly powerful one when considering the ideal future of private companies in space exploration. Though there is no one set way governments will interact with companies, the consensus is that they must radically reimagine their main purpose as the role of private space exploration continues to grow. As governments utilize services from private space companies, “[i]nstead of being bogged down by the routine application of old research, NASA can prioritize their limited budget to work more on research of other unknowns and development of new long-term space travel technologies.”[13] According to the Council on Foreign Relations, such technologies have far-reaching benefits on Earth as well. Past developments obviously include communications satellites, by themselves a massive benefit to society, but also “refinements in artificial hearts; improved mammograms; and laser eye surgery… thermoelectric coolers for microchips; high-temperature lubricants; and a means for mass-producing carbon nanotubes, a material with significant engineering potential; [and h]ousehold products.”[2] Agencies like NASA are the only actors able to pursue the next game-changing missions, “where the profit motive is not as evident and where the barriers to entry are still too high for the private sector to really make a compelling business case.”[8] These technologies have revolutionized millions, if not billions, of lives, demonstrating the remarkable benefits of space exploration. It follows then that it is net ethical to prioritize these benefits.

This report concludes that the private sector, indeed, has a prominent role to play in the future of space exploration. Further, though private space exploration does bring the potential of increased danger and the colonization of space, these concerns can be effectively mitigated. Namely, strong government frameworks—particularly international ones—will minimize possible sources of ethical violations and ensure an optimal private sector role in space. This also allows government agencies to complete significantly more difficult, innovative projects which have transformative benefits for life on Earth.

#### Space exploration solves extinction and endless resource wars.

Collins 10 [Patrick Collins, professor of economics at Azabu University in Japan, and a Collaborating Researcher with the Institute for Space & Astronautical Science, as well as adviser to a number of companies, Adriano V. Autino is President of the Space Renaissance International; Manager, CEO/CTO, Systems Engineering Consultant / Trainer at Andromeda Systems Engineering LLC; and Supplier of methodological tools and consultancy at Intermarine S.p.A, Acta Astronautica, Volume 66, Issues 11–12, June–July 2010, “What the growth of a space tourism industry could contribute to employment, economic growth, environmental protection, education, culture and world peace”, Pages 1553–1562]

7. World peace and preservation of human civilisation

The major source of social friction, including international friction, has surely always been unequal access to resources. People fight to control the valuable resources on and under the land, and in and under the sea. The natural resources of Earth are limited in quantity, and economically accessible resources even more so. As the population grows, and demand grows for a higher material standard of living, industrial activity grows exponentially. The threat of resources becoming scarce has led to the concept of “Resource Wars”. Having begun long ago with wars to control the gold and diamonds of Africa and South America, and oil in the Middle East, the current phase is at centre stage of world events today [37]. A particular danger of “resource wars” is that, if the general public can be persuaded to support them, they may become impossible to stop as resources become increasingly scarce. Many commentators have noted the similarity of the language of US and UK government advocates of “war on terror” to the language of the novel “1984” which describes a dystopian future of endless, fraudulent war in which citizens are reduced to slaves.

7.1. Expansion into near-Earth space is the only alternative to endless “resource wars”

As an alternative to the “resource wars” already devastating many countries today, opening access to the unlimited resources of near-Earth space could clearly facilitate world peace and security. The US National Security Space Office, at the start of its report on the potential of space-based solar power (SSP) published in early 2007, stated: “Expanding human populations and declining natural resources are potential sources of local and strategic conflict in the 21st Century, and many see energy as the foremost threat to national security” [38]. The report ended by encouraging urgent research on the feasibility of SSP: “Considering the timescales that are involved, and the exponential growth of population and resource pressures within that same strategic period, it is imperative that this work for “drilling up” vs. drilling down for energy security begins immediately” [38].

Although the use of extra-terrestrial resources on a substantial scale may still be some decades away, it is important to recognise that simply acknowledging its feasibility using known technology is the surest way of ending the threat of resource wars. That is, if it is assumed that the resources available for human use are limited to those on Earth, then it can be argued that resource wars are inescapable [22] and [37]. If, by contrast, it is assumed that the resources of space are economically accessible, this not only eliminates the need for resource wars, it can also preserve the benefits of civilisation which are being eroded today by “resource war-mongers”, most notably the governments of the “Anglo-Saxon” countries and their “neo-con” advisers. It is also worth noting that the $1 trillion that these have already committed to wars in the Middle-East in the 21st century is orders of magnitude more than the public investment needed to aid companies sufficiently to start the commercial use of space resources.

Industrial and financial groups which profit from monopolistic control of terrestrial supplies of various natural resources, like those which profit from wars, have an economic interest in protecting their profitable situation. However, these groups’ continuing profits are justified neither by capitalism nor by democracy: they could be preserved only by maintaining the pretence that use of space resources is not feasible, and by preventing the development of low-cost space travel. Once the feasibility of low-cost space travel is understood, “resource wars” are clearly foolish as well as tragic. A visiting extra-terrestrial would be pityingly amused at the foolish antics of homo sapiens using long-range rockets to fight each other over dwindling terrestrial resources—rather than using the same rockets to travel in space and have the use of all the resources they need!

7.2. High return in safety from extra-terrestrial settlement

Investment in low-cost orbital access and other space infrastructure will facilitate the establishment of settlements on the Moon, Mars, asteroids and in man[/woman]-made space structures. In the first phase, development of new regulatory infrastructure in various Earth orbits, including property/usufruct rights, real estate, mortgage financing and insurance, traffic management, pilotage, policing and other services will enable the population living in Earth orbits to grow very large. Such activities aimed at making near-Earth space habitable are the logical extension of humans’ historical spread over the surface of the Earth. As trade spreads through near-Earth space, settlements are likely to follow, of which the inhabitants will add to the wealth of different cultures which humans have created in the many different environments in which they live.

Success of such extra-terrestrial settlements will have the additional benefit of reducing the danger of human extinction due to planet-wide or cosmic accidents [27]. These horrors include both man-made disasters such as nuclear war, plagues or growing pollution, and natural disasters such as super-volcanoes or asteroid impact. It is hard to think of any objective that is more important than preserving peace. Weapons developed in recent decades are so destructive, and have such horrific, long-term side-effects that their use should be discouraged as strongly as possible by the international community. Hence, reducing the incentive to use these weapons by rapidly developing the ability to use space-based resources on a large scale is surely equally important [11] and [16]. The achievement of this depends on low space travel costs which, at the present time, appear to be achievable only through the development of a vigorous space tourism industry.

#### Extinction first under any other framework – A] It precludes the possibility of any kind of moral value – we can’t confer value onto anything if we’re not alive, B] Future generations mean infinite magnitude – we must look towards future lives as well.

### CP

#### States ought to:

#### --Announce that appropriation of outer space by private actors violates the Outer Space Treaty and that this is a settled matter of customary international law

#### --Announce that this action is taken pursuant to *opinio juris* (the belief that the action is taken pursuant to a legal obligation) and that non-compliant actors are in violation of international law

#### --Fully comply, not appropriating outer space in a manner inconsistent with these proclamations

#### Solves the Aff.

[Fabio](https://kluwerlawonline.com/journalarticle/Air+and+Space+Law/33.3/AILA2008021) **Tronchetti 8**. Dr. Fabio Tronchetti works as a Co-Director of the Institute of Space Law and Strategy and as a Zhuoyue Associate Professor at Beihang University, “The Non–Appropriation Principle as a Structural Norm of International Law: A New Way of Interpreting Article II of the Outer Space Treaty,” Air and Space Law, Volume 33, No 3, 2008, <https://kluwerlawonline.com/journalarticle/Air+and+Space+Law/33.3/AILA2008021>, RJP, **DebateDrills**.

The non–appropriation principle represents the fundamental rule of the space law system. Since the beginning of the space era, it has allowed for the safe and orderly development of space activities. Nowadays, however, the principle is under attack. Some proposals, arguing the need for abolishing it in order to promote commercial use of outer space are undermining its relevance and threatening its role as a guiding principle for present and future space activities. This paper aims at safeguarding the non–appropriative nature of outer space by suggesting a new interpretation of the non–appropriation principle that is based on the view that this principle should be regarded as a customary rule of international law of a special character, namely ‘a structural norm’ of international law.

#### That competes ---

#### 1] Widespread support for OST overhaul means a new treaty is likely---top military leaders are pushing it.

Theresa **Hitchens 21**. Theresa Hitchens is the Space and Air Force reporter at Breaking Defense. The former Defense News editor was a senior research associate at the University of Maryland’s Center for International and Security Studies at Maryland (CISSM). Before that, she spent six years in Geneva, Switzerland as director of the United Nations Institute for Disarmament Research (UNIDIR). “US Should Push New Space Treaty: Atlantic Council,” Breaking Defense, April 12, 2021, <https://breakingdefense.com/2021/04/us-should-push-new-space-treaty-atlantic-council/>, RJP, **DebateDrills**

WASHINGTON: The US should push hard to overhaul the entire international legal framework for outer space — including replacing the foundational [1967 Outer Space Treaty (OST),](https://breakingdefense.com/tag/outer-space-treaty/) a new report from the Atlantic Council says.

As it moves to do so, the US also should more aggressively court allies with an eye to establishing a “collective security alliance for space” among likeminded countries to “deter aggression” and defend “key resources and access.”

“The 1967 Treaty is dated. It was written, literally, in a different era,” said former Air Force Secretary Deborah Lee James in an Atlantic Council briefing today. “At present it is too broad, and in some cases it’s probably overly specific.”

The year-long study, [“The Future of Security In Space: A Thirty-Years US Strategy”](https://www.atlanticcouncil.org/wp-content/uploads/2021/04/TheFutureofSecurityinSpace.pdf)was co-chaired by James and retired Marine Corps Gen. Hoss Cartwright, former vice chair of the Joint Chiefs of Staff. In essence, it argues that the US needs to lead international efforts to craft a new rules-based regime to govern all space activities — from exploration to commercial ventures to military interactions. As the two argued in a recent [op-ed in Breaking D,](https://breakingdefense.com/2021/03/the-space-rush-new-us-strategy-must-bring-order-regulation/) “Great-power competition among the United States, China, and Russia has launched into outer space without rules governing the game.”

“The international law of space, centered on the 1967 Outer Space Treaty, is outdated and insufficient for a future of space in which economic activity is primary. The international community needs a new foundational space treaty, and the United States should precipitate its negotiation,” the study argues.

James elaborated that the idea would be to craft a more expansive treaty that covers emerging issues like debris mitigation and removal and [commercial extraction of resources](https://breakingdefense.com/tag/space-resource-extraction/) from the Moon and/or asteroids. That said, she stressed that the US should not abandon the OST — which has been signed by 193 nations — unless and until something new is there to replace it.

#### 2] Space law is typically treaty-based---Russian and Chinese proposals prove.

Stephanie **Nebehay 8**. Reporter, Reuters, “China, Russia to Offer Treaty to Ban Arms in Space,” Reuters, January 26, 2008, <https://www.reuters.com/article/us-arms-space/china-russia-to-offer-treaty-to-ban-arms-in-space-idUSL2578979020080125>, RJP, **DebateDrills**

GENEVA (Reuters) - China and Russia will submit a joint proposal next month for an international treaty to ban the deployment of weapons in outer space, a senior Russian arms negotiator said on Friday.

Valery Loshchinin, Russia’s ambassador to the United Nations-sponsored Conference on Disarmament, said the draft treaty would be presented to the 65-member forum on February 12.

Russian Foreign Minister Sergei Lavrov is due to address the Geneva forum, which constitutes the world’s main disarmament negotiating body, on that day. Loshchinin gave no details on the proposal which has been circulated to some senior diplomats.

Tensions between Russia and the United States have deepened in recent years over U.S. plans to revive its stalled “Star Wars” program from the 1980s with a new generation of missile defense shields.

Nuclear and other weapons of mass destruction are banned from space under a 1967 international treaty. But Washington’s plans have stirred concerns about non-nuclear arms in space.

#### 3] Treaties are the foundation of space law.

Sophie **Goguichvili et. al 21**. Program Associate, the Wilson Center, “The Global Legal Landscape of Space: Who Writes the Rules on the Final Frontier?” The Wilson Center, October 1, 2021, <https://www.wilsoncenter.org/article/global-legal-landscape-space-who-writes-rules-final-frontier>, RJP, **DebateDrills**

As previously mentioned, a series of treaties adopted by the U.N. General Assembly (UNGA) form the foundation of the global space governance system. The first and most significant of these treaties is the “Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space including the Moon and Other Celestial Bodies,” more commonly known as the **Outer Space Treaty**or**OST** for short (1967). The Outer Space Treaty is considered the most comprehensive space treaty and provides the basic framework for international space law, namely: the exploration and use of outer space for peaceful purposes by all States for the benefit of mankind (Art. I); the outlaw of national appropriation or claims of sovereignty of outer space or celestial objects (Art. II); a ban on the placement of weapons of mass destruction in orbit or on celestial bodies (Art. IV); that astronauts should be regarded as the envoys of mankind (Art. V); and that States are required to supervise the activities of their national entities (Art. VI).

#### We solve better, since CIL is far superior to treaties for space AND causes follow-on.

Koplow, 9 – Professor of Law, Georgetown University Law Center.

David A. Koplow, “ASAT-isfaction: Customary International Law and the Regulation of Anti-Satellite Weapons,” Michigan Journal of International Law. Volume 30, Summer 2009. <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1452&context=facpub>

Finally, the Article concludes with some policy recommendations, suggesting mechanisms for the world community to press forward with autonomous efforts to promote stability and security in outer space, even in the face of recalcitrance from the leading space powers. I would certainly support the negotiation and implementation of a comprehensive new treaty to prevent an arms race in outer space, and a carefully drafted, widely accepted accord could accomplish much, well beyond what customary law alone could create. But the treaty process, too, has costs and disadvantages, and the world need not pursue just one of these alternatives in isolation.

If the absence of global consensus currently inhibits agreements that countries could already sign, perhaps the world community can nevertheless get some "satisfaction" via the operation of CIL, constructing a similar (although not completely equivalent) edifice of international regulation of ASATs based simply on what countries do.

### Horsetrading DA

#### The plan requires clarifying international space law---causes strategic bargaining to extract concessions

Alexander William Salter 16, Assistant Professor of Economics, Rawls College of Business, Texas Tech University, "SPACE DEBRIS: A LAW AND ECONOMICS ANALYSIS OF THE ORBITAL COMMONS", 19 STAN. TECH. L. REV. 221 (2016), https://law.stanford.edu/wp-content/uploads/2017/11/19-2-2-salter-final\_0.pdf

V. MITIGATION VS. REMOVAL

Relying on international law to create an environment conducive to space debris removal initially seems promising. The Virginia school of political economy has convincingly shown the importance of political-legal institutions in creating the incentives that determine whether those who act within those institutions behave cooperatively or predatorily.47 In the context of space debris, the role of nation-states, or their space agencies, would be to create an international legal framework that clearly specifies the rules that will govern space debris removal and the interactions in space more generally. The certainty afforded by clear and nondiscriminatory48 rules would enable the parties of the space debris “social contract” to use efficient strategies for coping with space debris. However, this ideal result is, in practice, far from certain. To borrow a concept from Buchanan and Tullock’s framework,49 the costs of amending the rules in the case of international space law are exceptionally high. Although a social contract is beneficial in that it prevents stronger nation-states from imposing their will on weaker nation-states, it also creates incentives for the main spacefaring nations to block reforms that are overall welfare-enhancing but that do not sufficiently or directly benefit the stronger nations.

The 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (more commonly known as the Outer Space Treaty) is the foundation for current international space law.50 All major spacefaring nations are signatories. Article VIII of this treaty is the largest legal barrier to space debris removal efforts. This article stipulates that parties to the treaty retain jurisdiction over objects they launch into space, whether in orbit or on a celestial body such as the Moon. This article means that American organizations, whether private firms or the government, cannot remove pieces of Chinese or Russian debris without the permission of their respective governments. Perhaps contrary to intuition, consent will probably not be easy to secure.

A major difficulty lies in the realization that much debris is valuable scrap material that is already in orbit. A significant fraction of the costs associated with putting spacecraft in orbit comes from escaping Earth’s gravity well. The presence of valuable material already in space can justifiably be claimed as a valuable resource for repairs to current spacecraft and eventual manufacturing in space. As an example, approximately 1,000 tons of aluminum orbit as debris from the upper stages of launch vehicles alone. Launching those materials into orbit could cost between $5 billion and $10 billion and would take several years.51 Another difficulty lies in the fact that no definition of space debris is currently accepted internationally. This could prove problematic for removal efforts, if there is disagreement as to whether a given object is useless space junk, or a potentially useful space asset. Although this ambiguity may appear purely semantic, resolving it does pose some legal difficulties. Doing so would require consensus among the spacefaring nations. The negotiation process for obtaining consent would be costly.

Less obvious, but still important, is the 1972 Convention on International Liability for Damage Caused by Space Objects, normally referred to as the Liability Convention. The Liability Convention expanded on the issue of liability in Article VII of the Outer Space Treaty. Under the Liability Convention, any government “shall be absolutely liable to pay compensation for damage caused by its space objects on the surface of the Earth or to aircraft, and liable for damage due to its faults in space.”52 In other words, if a US party attempts to remove debris and accidentally damages another nation’s space objects, the US government would be liable for damages. More generally, because launching states would bear costs associated with accidents during debris removal, those states may be unwilling to participate in or permit such efforts. In theory, insurance can partly remediate the costs, but that remediation would still make debris removal engagement less appealing.

A global effort to remediate debris would, by necessity, involve the three major spacefaring nations: the United States, Russia, and China.53 However, any effort would also require—at a minimum—a significant clarification and—at most —a complete overhaul of existing space law.54 One cannot assume that parties to the necessary political bargains would limit parleying to space-related issues. Agreements between sovereign nation-states must be self-enforcing.55 To secure consent, various parties to the change in the international legal-institutional framework may bargain strategically and may hold out for unrelated concessions as a way of maximizing private surplus. The costs, especially the decision-making costs, of changing the legal framework to secure a global response to a global commons problem are potentially quite high.

#### Russia uses negotiations to push the PPWT---erodes US space dominance---unilat solves

Michael Listner 18, JD, Regent University School of Law, the founder and principal of the legal and policy think-tank/consultation firm Space Law and Policy Solutions, Sept 17 2018, "The art of lawfare and the real war in outer space", The Space Review, www.thespacereview.com/article/3571/1

A battle for primacy in outer space took place on August 14, 2018, among the Russian Federation, the United States, and, indirectly, the People’s Republic of China. This battle did not involve the exotic technology of science fiction, antisatellite weapons (ASATs), or the incapacitation of satellites; it was not part of a hot war and did not even occur in outer space. Rather, it took place in the halls of the Conference of Disarmament in Geneva, Switzerland, and concerned the interdiction of the hypothetical deployment of instrumentalities of a hot war in outer space. The carefully orchestrated arena for this battle by the proponents of banning so-called space weapons involved methodologies, institutions, and agents of international law but was undermined by a vigorous counterattack by the United States using the same forum and suite of instruments so skillfully levied against it.1 This battle, of course, is not a single instance but the latest skirmish of a much larger conflict involving real war in space.

There’s been significant attention—and overstatem­ent— about the effect of a proposed Space Force by the United States, including an arms race and dominance as articulated by the United States,2 yet little attention has been given to the contest that continues to be fought over outer space using the tools of international law and policy, both of which are instruments of “lawfare.” Maj. General Charles N. Dunlap, Jr. (retired)3 first defined lawfare in the paper “Law and Military Interventions: Preserving Humanitarian Values in 21st Conflicts,” as “a method of warfare where law is used as a means of realizing a military objective.”4 This definition can be expanded to the use of hard law, soft law, and non-governmental organizations and institutions within the international arena to achieve a national objective and geopolitical end that would otherwise require the use of hard power. As observed by General Dunlap, lawfare imputes the teachings of Sun Tzu in particular this teaching: “The supreme art of war is to subdue the enemy without fighting.”5

Lawfare is not a new concept and has been used in many domains, but the tools brought to bear have become more prolific, and the domain of outer space has been and continues to be a theater where it is applied. The earliest example of lawfare (even though the term was not yet coined) in outer space occurred pre-Sputnik with Soviet Union attempting to use customary law to make claims of sovereignty extending beyond the atmosphere to the space above its territory. This claim was preempted by the launch of Sputnik 1 and the act of the satellite flying over the territory of other nations.6 The Eisenhower Administration saw this as an opportunity to meet a national space policy goal and likewise used customary law as an implement of lawfare and successfully created the principle of free access to outer space, which it utilized for photoreconnaissance activities in lieu of overflights of another nation’s sovereign airspace.7 The Soviet Union unsuccessfully attempted to defeat this move using lawfare in the United Nations through a proposal that would have prohibited the use of outer space for the purpose of intelligence gathering.8

Since that setback, the art of lawfare in outer space has settled on the objective ascribed to another teaching of Sun Tzu:

“With regard to precipitous heights, if you proceed your adversary, occupy the raised and sunny spots, and there wait for him to come up. Remember, if the enemy has occupied precipitous heights before you, do not follow him, but retreat and try to entice him away.”9

The second part of this teaching exemplifies the role of lawfare in the present war in outer space: to employ the tools and institutions of international law as a means to legally corner an adversary and gain geopolitical advantage in soft power, with the aim of slowing and eroding the advantage that adversary has attained through preeminence in the domain of outer space, and replace it with their own. This objective is accomplished by two general means: legally-binding measures, most commonly in the form of treaties, and so-called non-binding measures couched as sustainability.

Lawfare in space continued in the intervening years between Sputnik-1 and the signature and ratification of the Outer Space Treaty and afterward. The weapon of choice: disarmament proposals for outer space. Provisions for banning so-called space weapons in the Outer Space Treaty were rejected by the Soviet Union in favor of separate arms control measures.10 These measures included proposals, some of which related to the proscription of ASATs, designed to not only gain an advantage in outer space but to gauge political intent and resolve.11

The lawfare offensive escalated after the proposed Strategic Defense Initiative with an effort curtail space-based missile defense technology through a ban on so-called space weapons and a proverbial arms race in outer space. The Prevention of an Arms Race in Outer Space (PAROS), introduced in 1985, continues to seek a legally binding measure to place any weapon in outer space, including those designed for self-defense. It spawned measures such as the Prevention of the Placement of Weapons in Outer Space, the Threat or Use of Force against Outer Space Objects (PPWT), co-sponsored by Russia and China. This and other measures have met resistance as unverifiable and certainly are not likely to gain the advice and consent of the US Senate for ratification. The end game of the use of lawfare in the form of efforts like PAROS—the latest attempt at which was defeated in Geneva—is to propose legally binding measures that proponents would ignore to their advantage in any event. The sponsors and advocates of these hard-law measures recognize they will not come to fruition but, in the process of promoting them, will enhance their soft power and moral authority, which can be applied to entice their adversary down.

Non-binding resolutions and measures in the form of political agreements and guidelines are being used concurrently in the lawfare engagement in outer space, where proposals for legally binding measures alone fall short of the goal of creating hard law and challenging dominance in outer space. These resolutions and measures, which emphasize sustainability, are designed to perform an end run around the formalities of a treaty to entice agreement on issues that would otherwise be unacceptable i

n a hard-law agreement. These measures have the dual effect to create soft-power support on the one hand and hard law on the other. This tool of lawfare, which uses clichés of cooperation and sustainability, is a ploy that applies the ambiguous nature of customary international law to achieve what cannot be done through treaties: to “entice the adversary away” and create legal and political constraints to bind and degrade its use of outer space or prevent it from maintaining its superiority, all the while allowing others to play catchup and replace one form of dominance with another. While lawfare is by nature asymmetric, this indirect approach could be considered a subset an irregular tactic of lawfare, as opposed to the use of formal treaties in lawfare.

The crux is that, like space objects used in outer space, international law and its implements are dual-use in that they can be used for proactive ends or weaponized, with those using the appliances of lawfare to encourage cession of the high ground choosing the latter rather than the former. The decision to weaponize international law and its institutions to prosecute this war in space brings into question the efficacy of new rules or norms. Indeed, the idea of expanding the jurisprudence of outer space through custom, as being suggested by the United States, and more recently gap-filling rules being suggested by academia that could become custom, presents the real chance that, rather than the creation of the ploughshare of sustainability, new and more effective swords for lawfare will be forged.

To paraphrase Sun Tzu, “all war is deception.” In the case of outer space, the pretext in the current war in space is that an arms race and a hot war in outer space is inevitable, and can only be avoided by formal rules or international governance. Conversely, a hot war can be prevented in no small part by using lawfare to engage in the contemporary war in space using the tools of, and the abundant resources found in, the experience of attorneys and litigators in particular to supplement and support diplomats to extend the velvet glove when applicable, and bare knuckles when necessary. If the August 14 statement in Geneva is any indicator, the United States may have just done that and begun the shift from light-touch diplomacy to bringing its legal warriors to bear in full-contact lawfare to engage and win the current war in outer space and help deter a more serious hot war from occurring without sacrificing the superiority it possesses in outer space.

#### The PPWT prohibits space-based missile defense

Jack M. Beard 16, Associate Professor of Law at the University of Nebraska College of Law, Feb 15 2016, "Soft Law ’s Failure on the Horizon: The International Code of Conduct for Outer Space Activities", University of Pennsylvania Journal of International Law, Vol. 38, No. 2, 2016, <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1086&context=spacelaw>

B. Avoid Arms Control Traps in Space

Any successful effort to achieve legally binding restrictions on military activities or weapons in space must focus on specific, definable, and limited objectives or run afoul of issues that have historically ensured deadlock among suspicious and insecure adversaries.306 Some seemingly desirable goals, however, are likely to ensure failure.

The first such problematic goal involves attempting to use arms control agreements or other instruments to comprehensively ensure peace in space. Unfortunately, the integration of modern military systems on earth, sea, air and space guarantees that at some point states seeking to disrupt or deny the ability of an adversary (such as the United States) to project power will find space capabilities to be a particularly appealing target, especially in the early stages of a crisis or conflict.307 The presence of so many things of military value in space thus makes actions by an adversary to neutralize, disrupt or destroy these things likely during a major conflict on earth.308

The second problematic arms control goal in space that seems certain to ensure stalemate involves attempting to define and prohibit military technologies with a view to broadly prevent the weaponization of space. Clearly defining a space weapon for purposes of any legally binding arms control agreement is a daunting task, one which is made particularly challenging by the “essentially military nature of space technology.”309 As noted, space technologies are routinely viewed as dual-use in nature, meaning that they can be readily employed for both civilian and military uses. Determining the ultimate purpose of many space technologies may thus depend on discerning the intentions of states, a process perhaps better suited for psychological than legal evaluation. 310

Further complicating the classification of space military technologies is the inherent difficulty in distinguishing most space weapons on the basis of their offensive and defensive roles or even their specific missions.311 For example, this problem lies at the heart of debates over the status and future of ballistic missile defense (BMD) programs, since the technology underlying BMD systems and offensive ASAT weapons is often indistinguishable.312 Vague and broad soft law instruments do not resolve this problem, but create instead their own confusion and insecurity. Vague and broad provisions in legally binding agreements that do not or cannot distinguish between these missions are similarly problematic.

These issues, particularly difficulties in distinguishing ASAT and BMD systems, have figured prominently in complicating negotiations on space weapons over previous decades.313 Similarly, these concerns were a significant factor in initial U.S. opposition to the arms control measure proposed by China and Russia (the PPWT) since it prohibits states from placing any type of weapon in outer space (regardless of its military mission), thus effectively prohibiting the deployment of ballistic missile defense systems. 314 Furthermore, even if clear legal restrictions could be developed, verifying compliance with respect to technology in orbit around Earth would be very difficult (a point conceded even by China with respect to its own proposed PPWT).315

#### Causes rogue state missile threats---that escalates

Patrick M. Shanahan 19, Acting Secretary of Defense from January to June 2019, previously vice president and general manager of Boeing Missile Defense Systems, Jan 2019, "2019 MISSILE DEFENSE REVIEW", US Department of Defense, https://media.defense.gov/2019/Jan/17/2002080666/-1/-1/1/2019-MISSILE-DEFENSE-REVIEW.PDF

U.S. Homeland Missile Defense will Stay Ahead of Rogue States’ Missile Threats

Technology trends point to the possibility of increasing rogue state missile threats to the U.S. homeland. Vulnerability to rogue state missile threats would endanger the American people and infrastructure, undermine the U.S. diplomatic position of strength, and could lead potential adversaries to mistakenly perceive the United States as susceptible to coercive escalation threats intended to preclude U.S. resolve to resist aggression abroad. Such misperceptions risk undermining our deterrence posture and messaging, and could lead adversaries to dangerous miscalculations regarding our commitment and resolve.

It is therefore imperative that U.S. missile defense capabilities provide effective protection against rogue state missile threats to the homeland now and into the future. The United States is technically capable of doing so and has adopted an active missile defense force-sizing measure for protection of the homeland. DoD will develop, acquire, and maintain the U.S. homeland missile defense capabilities necessary to effectively protect against possible missile attacks on the homeland posed by the long-range missile arsenals of rogue states, defined today as North Korea and Iran, and to support the other missile defense roles identified in this MDR.

This force-sizing measure for active U.S. missile defense is fully consistent with the 2018 NPR, and in order to keep pace with the threat, DoD will utilize existing defense systems and an increasing mix of advanced technologies, such as kinetic or directed-energy boost-phase defenses, and other advanced systems. It is technically challenging but feasible over time, affordable, and a strategic imperative. It will require the examination and possible fielding of advanced technologies to provide greater efficiencies for U.S. active missile defense capabilities, including space-based sensors and boost-phase defense capabilities. Further, because the related requirements will evolve as the long-range threat posed by rogue states evolves, it does not allow a static U.S. homeland defense architecture. Rather, it calls for a missile defense architecture that can adapt to emerging and unanticipated threats, including by adding capacity and the capability to surge missile defense as necessary in times of crisis or conflict.

In coming years, rogue state missile threats to the U.S. homeland will likely expand in numbers and complexity. There are and will remain inherent uncertainties regarding the potential pace and scope of that expansion. Consequently, the United States will not accept any limitation or constraint on the development or deployment of missile defense capabilities needed to protect the homeland against rogue missile threats. Accepting limits now could constrain or preclude missile defense technologies and options necessary in the future to effectively protect the American people.

As U.S. active defenses for the homeland continue to improve to stay ahead of rogue states’ missile threats, they could also provide a measure of protection against accidental or unauthorized missile launches. This defensive capability could be significant in the event of destabilizing domestic developments in any potential adversary armed with strategic weapons, and as long-range missile capabilities proliferate in coming years.

U.S. missile defense capabilities will be sized to provide continuing effective protection of the U.S. homeland against rogue states’ offensive missile threats. The United States relies on nuclear deterrence to address the large and more sophisticated Russian and Chinese intercontinental ballistic missile capabilities, as well as to deter attacks from any source consistent with long-standing U.S. declaratory policy as re-affirmed in the 2018 NPR.

### Ballot PIC

#### We’ll endorse the entirety of the affirmative except for their commitment to the ballot.

#### Escaping as a radical critique of the system misidentifies how neoliberal capital functions – they is not *opposition* in semiotic economies but the *new normal*. We are at the end of the system and- the aff’s narrative of sustenance as a method of overcoming the psychic violence of the system they necessitate is exactly the fuel debate needs

James 16 (Robin James is Associate Professor of Philosophy at UNC Charlotte, FORTHCOMING- Incandescence, Melancholy, and Feminist Bad Vibes: A Response to Ziarek’s Feminist Aesthetics and the Politics of Modernism, Differences 25 (2), p. 120-123, philpapers recut amrita)

A method for overcoming melancholia (97), potentiality is a way of bouncing back from the damage wrought by modern white supremacist patriarchy. For white men, this damage manifests as what Robert Gooding Williams calls “skeptical melancholy” (54), or alienation from embodied receptivity; for women and nonwhites, it manifests as melancholic muteness, immanence rather than alienation.8 The women writers Ziarek studies rework this damaging immanence into ecstatic incandescence, effecting “an aesthetic transformation of loss into art’s own shining possibilities” (115). This incandescence is a two-step process: the artist first performs her damage (sparking a fire) so that she can then be seen to overcome it (radiating beyond her past inertia). Neoliberalism co-opts this incandescence (or at least the most visible, legible part of its spectrum), domesticating its critical force into the means of producing aesthetic pleasure and reproducing social normativity. Potentiality has been “upgraded” into resilience.9 In resilient art, formal experimentation cultivates, or incites (to use a more Foucaultian term), shocks and feeds the resultant shockwaves back into the system.10 This feedback supports rather than destabilizes hegemonic institutions. The aesthetic damage through which modernist art established its heteronomous/ autonomous position of critique—stuttering, fragmented, degraded, aleatory, dissonant—is now the very medium of normalization.11 Neoliberal resilience, in other words, is a method or process of recycling modernist damage. For example, if modernist art invested aesthetic pleasure in the objectification of women (what Laura Mulvey famously calls scopophilia), neoliberal art invests aesthetic pleasure in women’s spectacular assumption of subjectivity—what Ziarek calls incandescence. If in modernity we liked doing damage to women, we now like to see women overcome that damage.12 This means that we expect women to perform their damage as a baseline from which “good” women then progress. That damage is the fuel for incandescent fires, so it must be constantly incited and invoked so that there’s something for incandescent women to ignite. In this way, resilience discourse normalizes traditional patriarchal damage (e.g., the damage of exclusion and objectification) as a systemic or background condition that individual women are then responsible for overcoming. “Undoing [. . .] feminism while simultaneously appearing to be engaging in a wellinformed and even well-intended response to feminism” (McRobbie 1), resilient incandescence is quintessentially postfeminist. We, the audience, use our identification with the resilient heroine as a way to disidentify with and (supposedly) transgress the imperatives of modernist patriarchy. This is why, as Ziarek explains, audiences have a “sympathetic identification with subversive femininity, with the mother avenging the murderous sacrifice of her daughter for political ends, rather than with the murderous father/king” (104). We enjoy women’s spectacular subjectivization (i.e., their overcoming of scopophilic objectification) because this distances us from unfashionable patriarchal formations and tastes (i.e., this latter scopophilia). In postfeminist neoliberalism, “bearing witness to both the destruction of women’s artistic capacities and women’s revolutionary aspirations” (5) becomes a source of aesthetic pleasure not because it’s revolutionary, but because it’s normative. To use Jack Halberstam’s term, we like our women to “go gaga” because this incandescence, this “unpredictable feminine” (114) methodology allows us to eke even more light out of otherwise exhausted enlightenment modernity. If we’ve reached, as Ziarek discusses, the so-called end of art and the end of history (and the end of tonality and the end of representation and, well, the end of modernity), then the only way to find more resources is, like Pixar’s wall-e, by sifting through our vast piles of waste. And in that waste heap is abject femininity (what musicologist Susan Cook calls the feminized “abject popular”). Femininity is abject because its exclusion from patriarchy is what constitutes patriarchy as a coherent system. In both Ziarek’s aesthetics of potentiality and in resilience discourse, women artists do the cultural work of remaking abjection or constitutive exclusion into ecstatic radiance.13 In the former case, that work is revolutionary; in the latter case, that work normalizes. Resilience discourse transposes feminist revolution into a nationalist, patriarchal, white supremacist practice. Take, for example, Katy Perry’s “Firework,” in which the lyrics trace the affective journey from dejection to radiant exceptionality. The song begins by asking listeners to identify with feelings of irrelevance, weakness, loneliness, and hopelessness; it posits and affirms damage, suffering, and pain. But then Perry’s narrator argues that in spite and perhaps because of this damage, the listener has precisely the means to connect to others, to make a difference, to have hope: “[T]here’s a spark in you / You just gotta ignite the light and let it shine.” She uses the metaphor of fireworks (and their association with u.s. Independence Day celebrations) to describe the listener’s self-transformation from black dust to shining light: you may feel like trash, but if you can just light yourself on fire, that trash will burn with a dazzling radiance that lights up the sky, just as it lights up audiences’ faces. Here, Perry transforms abjection—feeling like trash, unmoored, socially dead—into incandescent triumph. In the song, the addressee’s personal triumph evokes u.s. nationalist narratives of overcoming colonization (i.e., the Declaration of Independence, celebrated on the Fourth of July). Feminine incandescence—the transformation of waste and melancholy into glowing potential—is no longer revolutionary. Not only parallel to u.s. nationalism, it is the very means for reproducing normativity. In resilience discourse, wild and crazy femmes—like, say, Ke$ha— reproduce normativity in the same way that deregulatory economic practices do (see Cardenas). Unlike Kant’s genius, who gives laws and generates order (i.e., regulation, giving a law) out of unruly materiality, the incandescent, “gaga” femme amplifies what feels like disorder by “resignif[ying] damaged bodies and objects previously expelled from the realm of meaning” (6). And to do this, incandescent femme geniuses use a specific type of experimentation, what Ziarek calls “a dynamic model of interrelation between literary form and material elements of the work of art” (6). This “dynamic interaction” between large-scale form and material details produces “effects” that are “unpredictable and unforeseeable” (Adorno qtd. in Ziarek 114). Experimental methods produce aleatory results.14 Neoliberalism, however, has systematized the aleatory; deregulatory practices are designed to control background conditions so that “dynamic interactions” between form and material produce a range of superficially random outcomes.15 Deregulation turns experimentation into the means of capitalist/hegemonic production. Brilliant gaga ecstasy is what fuels economic and social reproduction.16 So even though incandescent potentiality might be “the very opposite of the traffic in women” (Ziarek 119) figured as the exchange of commodities (e.g., in Irigaray and Rubin), it is quite consistent with neoliberal political and aesthetic economies. Who radiates with potentiality more than the resilient, entrepreneurial postfeminist woman? In the same way that feminized, blackened receptivity was the solution to modernist anxieties about alienation (e.g., the aforementioned Gooding-Williams), feminized, racially nonwhite resilience is taken as a solution to the problem of the “end of art.” Having transgressed all limits and prohibitions—for example, emancipating dissonance, making music out of noise—modernist art had no means of establishing its opposition to society/social normativity. Similarly, capitalism had colonized the globe, exhausting its ability to profit through simple expansion; with no new markets, with nothing else new to conquer, it needed a new method for generating surplus value. As Jeffery Nealon and others argue, capitalism has become a logic of investment and intensity. Instead of expanding and assimilating, it recycles waste and increases efficiencies. Thus, traditionally non- or devalued “women’s work” becomes the fastest growing sector of the service-and-care-work economy. And women’s art-making practices become the hottest new thing in the artworld: think of all the “feminist art” retrospectives and exhibits that have taken place in the past five or so years. Modernism’s constitutive outside becomes neoliberalism’s bread and butter; or, the abject is now central to the means of capital, political, and aesthetic production.17

## Case

### 1NC – AT: Psycho

#### Their explanation for violence is reductive and wrong

Pinker 13

Steven Pinker, Prof of Psychology at Harvard, "The Decline of War and Conceptions of Human Nature", International Studies Review, 2013, 15, pp. 396-419

2. Human Nature Has Multiple Components

People tend to reduce human nature to a single essence and then debate what that essence consists of. Are we nasty or noble, Hobbesian or Rousseauan, ape or angel? In this way of thinking, if we regularly engage in violence, we must be a violent species; if we are capable of peace we must be pacifistic.

But the brain is a mind-bogglingly complex organ with many anatomically and chemically distinguishable circuits. Most psychologists believe that human nature is not just one thing, but comprises multiple intelligences, modules, faculties, organs, drives, or other subsystems. Some of these subsystems may impel us toward violence, but others inhibit us from violence.

Human violence springs from at least four kinds of motives, each involving different neurobiological systems:

Exploitation: Violence used as the means to an end; that is, damaging a human who happens to be an obstacle on the path to something the actor wants. Examples include plunder, rape, conquest, the displacement or genocide of native peoples, and the murder or imprisonment of political or economic rivals.

Dominance: The urge among individuals to ascend the pecking order and become the alpha male, and the corresponding urge among groups for tribal, ethnic, racial, national, or religious supremacy.

Revenge: The conviction that someone who has committed a moral infraction deserves to be punished.

Ideology: Shared belief systems, spread virally or by indoctrination or force, which hold out the prospect of a utopia. Examples include nationalism, Fascism, Nazism, communism, and militant religions. Since a utopia is a world that will be infinitely good forever, one is permitted to perpetrate unlimited amounts of force against those who stand in its way, as in the saying, “You can’t make an omelet without breaking a few eggs.”

Pushing against these nasty impulses are some of our kinder, gentler faculties:

Self-control: Circuitry in the frontal lobes of the brain that can anticipate the long-term consequence of actions and inhibit them accordingly.

Empathy: The ability to feel someone else’s pain.

The moral sense: A system of norms and taboos centered on intuitions of fairness to individuals, loyalty to a community, deference to legitimate authority, and the safeguarding of purity and sanctity. The moral sense can motivate the imposition of standards of fairness and can render certain courses of harmful action unthinkable. (Unfortunately, it can also be a cause of violence, because it can rationalize militant ideologies based on tribalism, puritanism, and authoritarianism.)

Reason: Cognitive processes that allow us to engage in objective, detached analysis. Whether people actually commit acts of violence, then, depends on the interplay among these faculties; the mere existence of human nature does not doom our species to a constant rate of violence.

The decision to wage war, in particular, may be triggered by any combination of the violence-inducing motives. If the decision is not overturned by any of the motives that inhibit violence, the decision-maker must then mobilize an aggressive coalition by whipping up the aggressive motives in his compatriots, while disabling the peaceable motives. The actual outbreak of war thus depends on many psychological processes lining up in the right way and escaping the restraining influence of other psychological processes, which are distributed in social networks connecting many other individuals. There is no reason to expect that the relative strengths of these competing influences should remain constant over the course of human history.

3. Facultative Components of Human Nature

Many components of human nature are facultative (environmentally sensitive), not hydraulic (homeostatic). The intuition that a respite from war could not possibly be real often rests on a mental model in which the drive toward violence is conceived of as a hydraulic force. At best, it can be diverted or channeled, but it cannot be bottled up indefinitely. The hydraulic model of human motivation is deeply embedded in the way we think about violence. It was given a scientific imprimatur by psychoanalysis, ethology, and behaviorism (in the guise of drive reduction), and it fits with the cybernetic notion of homeostasis, in which a feedback loop maintains a system in a steady state by counteracting any imbalance. It also fits with our subjective experience: no one can go indefinitely without food, water, or sleep, and it is a challenge to do without sex or to hold in a mounting urge to yawn, sneeze, scratch an itch, or expel various substances from the body.

But, it is a big mistake to think that all human responses are homeostatic. Many are opportunistic, reactive, or facultative: they are elicited by combinations of environmental triggers and cognitive and emotional states. Consider evolutionarily prepared fears such as those of heights, snakes, confinement, deep water, or spiders. Even if one were born with an innate phobia of snakes, as long as one never encountered a snake one could live one’s entire life without experiencing that fear. Other examples include the tendency to shiver, fall head over heels in love, or experience sexual jealousy.

The motives that lead to violence, too, need not be homeostatic. There is no reason to believe that the urge to hurt someone gradually builds up and periodically needs to be discharged. Violence carries significant risks of injury or death when the target defends himself, when he or his relatives wreak revenge, or when he is tempted into attacking preemptively. The theory of natural selection predicts that adaptations evolve when their expected costs exceed their expected benefits. We should not expect a hydraulic urge to violence to evolve, but rather one that is sensitive to circumstances. These may include predation and exploitation, when an opportunity to exploit a victim at low risk presents itself; dominance, when one’s masculinity is suddenly impugned in front of an important audience; vengeance, to punish (and thus ultimately deter) insults or injuries; rampage, when a longstanding menace is suddenly exposed in a window of vulnerability. If the circumstances never materialize—say, if one lives an orderly, bourgeois life, free from grave threats or insults—any tendency to react with violence could lie as dormant as a fear of poisonous snakes. The same sensitivity to environmental contingencies could, if circumstances line up, prevent political leaders from experiencing any urge to mobilize their countries for war.

#### It’s impossible to generalize specific hypotheses into deterministic theories of the self

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(Arnold, “Psychoanalysis in Crisis: The Danger of Ideology,” Psychoanalytic Review 102.3, June, 389-405)

My own belief is that one definition of science is the repeated formulation of new hypotheses in search of better explanations of observed data. It doesn't matter whether the particulars of any specific hypothesis eventually prove right or wrong. This searching quality is important to psychoanalysis, and as I will show, we do ourselves no favors when we suppress it.

Psychoanalysis is also a science in the pride it takes in its predictive power. Its primary postulate is the principle of psychic determinism, which is used both to explain the past and predict the future. (I am reminded of the patient who told Selma Freiberg that she was good at “backwards future talking.”) On the other hand, many have asserted that psychoanalytic evidence “can be so manipulated as to escape refutation no matter what facts are adduced.” (Nagel 1959, cited in Slochower 1964, p. 165) Harry Slochower in his study of psychoanalysis as science and art makes the interesting point that Freud himself considered this a serious lack, at least when applied to other people's convictions. Since religious doctrines can be neither proven nor refuted, Freud said in The Future of an Illusion, that their "reality value" cannot be judged. (Freud, The Future of an Illusion, Anchor Books, New York, 1964.)

So while we can respect Freud's scientific sensitivity and aspirations, we must also acknowledge that psychoanalysis is in some ways undeniably unlike other sciences, including even the other human sciences. Its subject is the intangible unconscious, and its tool is the relationship between two human beings. Each analyst/analysand pair is unique, making it very difficult to generalize from the interaction between the observer and the observed. Replication is not possible, and validation is possible only in limited ways -- for instance, tape recorded sessions—and on different terms. Furthermore, psychoanalysis looks not at static states, but at complex processes determined by multiple variables. Under those circumstances, immaculate perception is impossible, and so is immaculate conception. Objectivity in psychoanalysis is always tempered by subjectivity, and the knower always influences the known. Affect is at play as much as reason.

Exact science is neutral. Psychoanalysis is not.

We can finesse some other aspects of the debate by recognizing that psychoanalysis is not a monolith, and it's good to remind ourselves of this occasionally, too. Psychoanalysis is at once a theory of development, a theory of psychopathology, a theory of how the mind works, and a theory of therapeutic process and cure. Each of these theories is based on different assumptions and offers different propositions with different degrees of validity, and different levels of abstraction (cf. Waelder).

#### Psychoanalysis is not empirical and has no explanatory power – prefer social science because it can explain events based on causal relationships

Sadovnikov, York University, ‘07

(Slava, "Escape from Reason: Labels as Arguments and Theories", Dialogue XLVI (2007), 781-796, philpapers.org/archive/SADEFR.pdf)

The way McLaughlin shows the rosy prospects of psychoanalytical social theory boils down to this: there are people who labour at it. He reports on Neil Smelser’s lifelong elaborations of psychoanalytical sociology, which prescribed the use of Freudian theories. Then he presents a “powerful” psychoanalytical theory of creativity of Michael Farrell, commenting on how the theorist “usefully utilizes psychoanalytic insights,” though McLaughlin does not specify them. He correctly expects that I might not view his examples as scientiﬁc. Their problems begin well before that. First, due to their informative emptiness, or tautological character, all they amount to is rewordings of everyday assumptions. Second, due to their vagueness these accounts are compatible with any outcomes; in other words, they lack explanatory and predictive power. The proposed ideas are too inarticulate to subject to intersubjective criticism, and to call them empirical or scientiﬁc theories would be, no matter how comforting, a gross misuse of words.

On the constructive side, a psychoanalytic theorist may be challenged to unambiguously formulate her suppositions and specify conditions of their disproof, to leave out what we already well know and smooth out internal inconsistencies, and revise the theories in view of easily available counter-examples and competing accounts. Only after having done this can one present candidate theories to public criticism and thus make them part of science, and fruitfully discuss their further reﬁnements. Another suggestion is not to label them “powerful theories,” “classics,” or anything else before their real scrutiny begins.

That criticism and disagreement are indispensable for science is not a “Popperian orthodoxy,” although Popper does champion this idea; it is the pivot of the tradition (which we owe to the Greeks) which identiﬁes rationalism with criticism. 4 McLaughlin ostensibly bows to the critical tradition but does not put it to use. Instead of critical evaluation of the theories in question he writes of “compelling case,” “powerful analytic model,” and “useful conceptual tool.”

On the methodological side of the issue, we should inquire into the mode of thinking common to Fromm and all adherents of conﬁrmation-ism. The trick consists in mere replacement of familiar words with new, more peculiar ones; customary expressions are substituted by “instrumental intimacy,” “collaborative circles,” and “idealization of a self-object.” Since the new, funnier, and pseudo-theoretical tag does the job of naming just as well, it “shows how” things work. The new labels in the cases criticized here do not add anything to our knowledge; nor do they explain. We have seen Fromm routinely abuse this technique. The vacuity of Fromm’s explanations by character type was the central point in my analysis of Escape , yet McLaughlin conveniently ignores it and, like Fromm, uses the method of labelling as somehow supporting his cause.

The widely popular practice of mistaking new labels for explanations has been exposed by many methodologists in the history of philosophy, but probably the most famous example of such critique comes from Molière. In the now often-quoted passage, his character delivers a vacuous explanation of opium’s property to induce sleep by renaming the property with an offhand Latinism, “virtus dormitiva.” The satire acutely points not only at the Impostor doctor’s hiding his lack of knowledge behind foreign words, but also at the emptiness of his alleged explanation. (Pseudo-theoretical literature is boring precisely because of its “dormitive virtue,” its shufﬂing of labels without rewarding inquiring minds.)

Let me review notable criticisms of this approach in the twentieth century by Hempel, Homans, and Weber leaving aside their forerunners. This problem was discussed in the famous debate between William Dray and Carl Hempel. Dray argues, contra the nomological account of explanation, that historians and social scientists often try to answer the question, “What is this phenomenon?” by giving an “explanation-by-concept”

(Dray 1959, p. 403). A series of events may be better understood if we call it “a social revolution”; or the appropriate tag may be found in the expressions “reform,” “collaboration,” “class struggle,” “progress,” etc.; or, to take Fromm’s suggestions, we may call familiar motives and actions “sadomasochistic,” and any political choice save the Marxist “escape from freedom.”

Hempel agrees with Dray that such concepts may be explanatory, but they are so only if the chosen labels or classiﬁcatory tags refer to some uniformities, or are based on nomic analogies. In other words, our new label has explanatory force if it states or implies some established regularity (Hempel 1970, pp. 453-57). For example, you travel to a foreign country and, strolling along the street, see a boisterous crowd. Your guide may explain the crowd with one of several terms: that it is the local soccer team’s fans celebrating its victory, or it is a local religious festival, or a teachers’ strike, etc. The labels applied here—celebration, festival, strike— have explanatory value, because we know that things they refer to usually manifest themselves in noisy or unruly mass gatherings.

If, on the other hand, by way of explaining the boisterous crowd the guide had invoked some hidden social or psychological forces, or used expressions such as embodiment, mode of production, de-centring, simulacra, otherness, etc., its causes would remain obscure. If she had referred to psychoanalytic “character types” (say, Fromm’s authoritarian, anal, or necrophiliac types), the explanation would not make much sense either. Nothing prevents us nevertheless from unconditionally attaching all these labels to any event. The mistake McLaughlin and conﬁrmationists persistently make is in thinking that labelling social phenomena alone does theoretical and explanatory work. 5 George Homans observed the prevalence of this trick some decades ago:

Much modern sociological theory seems to us to possess every virtue except that of explaining anything. . . . The theorist shoves various aspects of behavior into his pigeonholes, cries “Ah-ha!” and leaves it at that. Like magicians in all times and places, the theorist thinks he controls phenomena if he is able to give them names, particularly names of his own invention. (1974, pp. 10-11)

### 1NC – AT: ROB

#### ROB causes oppression Olympics – they say to center [] violence, someone else says to center anti-Black violence, and the only way to resolve that is to compare competing claims between different modes of suffering.

#### The ROB is to vote for the better debater – anything else is arbitrary, self-serving, and necessarily excludes certain arguments which kills fairness and education.