#### 1]

#### Interpretation: The affirmative should only defend the hypothetical implementation of the resolution

#### Outer space means anything above Earth’s Karman line

Dunnett 21 (Oliver Tristan, lecturer in geography at Queen’s University Belfast). Earth, Cosmos and Culture: Geographies of Outer Space in Britain, 1900–2020 (1st ed.). Routledge. 2021. <https://doi.org/10.4324/9780815356301> EE

In such ways, this book argues that Britain became a home to rich discourses of outer space, both feeding from and contributing to iconic achievements in space exploration, while also embracing the cosmos in imaginative and philosophical ways.2

INSERT FOOTNOTE 2

2 This book primarily uses the term ‘outer space’ to describe the realm beyond the Earth’s atmosphere, conventionally accepted as beginning at the Kármán line of 100km above sea level. Other terms such as ‘interplanetary space’, ‘interstellar space’, ‘cosmos’, and ‘the heavens’ are used in specific contexts.

END FOOTNOTE 2

Cognisant of this spatial context, a central aim is to demonstrate how contemporary geographical enquiry can provide specific and valuable perspectives from which to understand outer space. This is an argument that was initiated by Denis Cosgrove, and his critique of Alexander von Humboldt’s seminal work Cosmos helped to demonstrate geography’s special relevance to thinking about outer space.3 The key thematic areas which provide the interface for this book’s research, therefore, are the cultural, political and scientific understandings of outer space; the context of the United Kingdom since the start of the last century; and the geographical underpinnings of their relationship.

#### “Appropriation” means to take as property – prefer our definition since it’s contextual to space

Leon 18 (Amanda M., Associate, Caplin & Drysdale, JD UVA Law) "Mining for Meaning: An Examination of the Legality of Property Rights in Space Resources." Virginia Law Review, vol. 104, no. 3, May 2018, p. 497-547. HeinOnline.

Appropriation. The term "appropriation" also remains ambiguous. Webster's defines the verb "appropriate" as "to take to oneself in exclusion of others; to claim or use as by an exclusive or pre-eminent right; as, let no man appropriate a common benefit."16 5 Similarly, Black's Law Dictionary describes "appropriate" as an act "[t]o make a thing one's own; to make a thing the subject of property; to exercise dominion over an object to the extent, and for the purpose, of making it subserve one's own proper use or pleasure."166 Oftentimes, appropriation refers to the setting aside of government funds, the taking of land for public purposes, or a tort of wrongfully taking another's property as one's own. The term appropriation is often used not only with respect to real property but also with water. According to U.S. case law, a person completes an appropriation of water by diversion of the water and an application of the water to beneficial use.167 This common use of the term "appropriation" with respect to water illustrates two key points: (1) the term applies to natural resources-e.g., water or minerals-not just real property, and (2) mining space resources and putting them to beneficial use-e.g., selling or manufacturing the mined resources could reasonably be interpreted as an "appropriation" of outer space. While the ordinary meaning of "appropriation" reasonably includes the taking of natural resources as well as land, whether the drafters and parties to the OST envisioned such a broad meaning of the term remains difficult to determine with any certainty. The prohibition against appropriation "by any other means" supports such a reading, though, by expanding the prohibition to other types not explicitly described.168

As illustrated by this analysis, considerable ambiguity remains after this ordinary-meaning analysis and thus, the question of Treaty obligations and property rights remains unresolved. In order to resolve these ambiguities, an analysis of preparatory materials, historical context, and state practice follows.

2. Preparatory Materials

A review of meeting reports of the Committee on the Peaceful Uses of Outer Space and its Legal Sub-Committee regarding the Treaty reveals little to clear up the ambiguities of Articles I and II of the OST. In fact, the reports indicate that, despite several negotiating states expressing concern about the lack of clarity with respect to the meaning of "use" and the scope of the non-appropriation principle, no meaningful discussion occurred and no consensus was reached.16 9 Some commentators still conclude that the preparatory work does in fact confirm the drafters' intent for "use" to include exploitation. 170 These commentators do admit, however, that discussions of the term "exploitation" supporting their conclusion focused on remote sensing and communications satellites rather than on resource extraction.17 1 Further skepticism about such an intent for "use" to include "exploitation" also arises given the uncertainty amongst negotiating states about the meaning of these terms. A mere few months before the Treaty opened for signature in January 1967, negotiators were still asking questions about the meaning of "use" during the last few Legal Sub-Committee meetings. For example, in July 1966, the representative of France inquired: "Did the latter term ["use"] imply use for exploration purposes, such as the launching of satellites, or did it mean use in the sense of exploitation, which would involve far more complex issues?" 172 The representative noted that while some activities such as extraction of minerals were difficult to imagine presently, "[i]t was important for all States, and not only those engaged in space exploration, to know exactly what was meant by the term 'use.'173 In the same meeting, the representative from the USSR offered an interesting response to the question posed by the representative of France:

[A]dequate clarification was to be found in article II of the USSR draft, which specified that outer space and celestial bodies should not be subject to national appropriation by means of use or occupation, or by any other means. In other words no human activity on the moon or any other celestial body could be taken as justification for national appropriation. 174

This response implies that Article II acts as a qualification on Article I's broad provision for free exploration and use of outer space by all. Activity such as resource extraction would be viewed as national appropriation and such activity cannot be justified given Article II's prohibition, not even by falling within the ordinary meaning of "use." Despite this clarification, uncertainty appears to have remained, as lingering concerns were communicated in subsequent meetings by several other states, including Australia, Austria, and France."' Nevertheless, the committee put the Treaty in front of the General Assembly two months later without final resolution of the ambiguities regarding property rights arising from Articles I and II176 The preparatory materials ultimately fail to fully clarify the ambiguities of the meanings of "use" and "appropriation." The statement of the representative of the Soviet Union, one of the two main drafting parties, does, however, help push back on the interpretation of some academics that the nonappropriation principle fails to overcome the presumption of freedom of use.7

3. Historical Context

Two interrelated, major historical events cannot be ignored when considering the meaning of the OST: (1) the Cold War and (2) the Space Race. The success of Sputnik I in 1957 showed space travel and exploration no longer to be a dream, but a reality.7 While exciting, this news also brought fear in light of the world's fragile balance of power and tensions between the United States and the Soviet Union. 17 9 What if the Soviet Union managed to launch a nuclear weapon into space? What if the United States greedily claimed the Moon as the fifty-first state? To many, the combination of the Cold War and Space Race made the late 1950s and the 1960s a perilous time.so When viewed as a response to this perilous era, the OST begins to look much more like a nuclear arms treaty and an attempt to ease Cold War tensions than a treaty concerned with the issue of property rights in space."' The Treaty's emphasis on "peaceful purposes" supports this contextual interpretation. 1 82

On the one hand, as many suggest, this context leads to the conclusion that the vague nonappropriation principle of Article II does not prevent private property rights in space resources and the presumption of broad "use" prevails.1 83 Private property rights were simply not a concern of the Treaty drafters and therefore, the Treaty does not address-nor prohibit-such claims. On the other hand, the context surrounding the treaty's drafting does not necessarily lead to this conclusion. In fact, the emphasis on "peaceful purposes" and reducing international tension might instead suggest a stricter reading of Articles I and II. If things were so unstable and tense on Earth, the drafters may have instead intended Article II as a qualification on the general right to explore and use outer space in Article I, recognizing the simple fact that disputes over property, both land and minerals, have sparked some of history's bloodiest conflicts.

The Antarctic treaty experience evidences Cold War concern over potential resource rights disputes. Leading up to the finalization of the Antarctic Treaty of 1959,184 seven nations had already made official territorial claims over varying portions of the frozen landscape in hopes of laying claim to the plethora of resources thought to be located within the subsurface."' Although the Treaty itself did not directly address rights to mineral resources in the Antarctic,186 the treaty is interpreted to have frozen these claims in the interest of "[f]reedom of scientific investigation in Antarctica and cooperation toward that end.""' In a manner notably similar to the terms of Articles XI and XII of the OST, the Treaty promotes scientific exploration by encouraging information sharing of scientific program plans, personnel, and observations' and inspection of stations on a reciprocal basis.189 This Treaty along with several later treaties and protocols constitute the "Antarctic Treaty System," which as a whole manages the governance of Antarctica.1 9 0 In 1991, the Protocol on Environmental Protection to the Antarctic Treaty 91 ("Madrid Protocol") settled the question of property rights for the fifty years following the Protocol's entry into force. 192 The Madrid Protocol provides for "the comprehensive protection of the Antarctic environment ... [and] designate[s] Antarctica as a natural reserve, devoted to peace and science."193 Article 7 explicitly-and simplystates "[a]ny activity relating to mineral resources, other than scientific research, shall be prohibited."1 94 Though Article 25 allows for the creation of a binding legal regime to determine whether and under what conditions mineral resource activity be allowed, no such international legal regime has been created to date. 195 The ban on mineral resource exploitation may only be amended by unanimous consent of the parties. 19 6 The United States signed and ratified both the Antarctic Treaty of 1959 and the Madrid Protocol. 197

The freezing of territorial claims in the Antarctic 98 by the Antarctica Treaty of 1959199 illustrates the existence of true concern over potential resource dispute and conflict during the Cold War, in addition to the major concerns posed by nuclear weapons.2 00 The drafting states also recognized the potential for conflict over property in outer space and drew on the language of the Antarctic Treaty of 1959 to draft the OST.2 01 Given these driving concerns, Article II could be reasonably read as qualifying Article I's general rule. Under this reading, Article II serves the same qualifying purpose as Article IV regarding military and nuclear weapon use in space. Some might push back on this interpretation by claiming that the drafters could have used language such as that in the Madrid Protocol to explicitly prohibit mining in space. However, this argument is flawed. The Madrid Protocol was not written until well after both the original Antarctic Treaty of 1959 and the OST. Furthermore, the timing of the Madrid Protocol perhaps provides further evidence that resources in space are not to be harvested until a subsequent agreement regarding rights over them can be agreed upon internationally. While the historical context does leave some ambiguity as to whether the OST permits property rights over space resources, the Antarctic experience provides a compelling analogy and suggests that the OST does not allow for property rights in space resources.

4. State Practice

In its Frequently Asked Questions released about the SREU Act, the House Committee on Science, Space, and Technology forcefully asserted that the Act does not violate international law.20 2 in fact, according to the committee, the Act's provision of property rights "is affirmed by State practice and by the U.S. State Department in [c]ongressional testimony and written correspondence."2 03 Proponents of this view base their beliefs on several examples. One, "no serious objection" arose to the United States and the Soviet Union bringing samples of rocks and other materials from the Moon back by manned and robotic missions in the late 1960s, nor to Japan successfully collecting a small asteroid sample in 2010.204 Two, a practice of respecting ownership over such retrieved samples and a terrestrial market for such items exists, as illustrated by the fact that no one doubts that the American Museum of Natural History "owns" three asteroids found in Greenland by arctic explorer Robert E. Peary that are now part of the museum's Arthur Ross Hall of Meteorites. 205 Three, Congressmen also cite to a federal district court case, United States v. One Lucite Ball Containing Lunar Material,2 06 to illustrate state practice in favor of ownership over spaces resources. The case involved an Apollo lunar sample gifted to Honduras by the United States. The sample was stolen and sold to an individual in the United States.2 07 When caught during a sting operation intended to uncover illegal sales of imposter samples, the buyer was forced to forfeit the lunar sample after the court concluded the moon rocks had in fact been stolen, basing its decision in part on its recognition of Honduras having national property ownership over the sample. 208

These examples appear overwhelming, but they are not actually examples of activities of the same "form and content" that the SREU Act approves. 2 09 These examples all involve collection of samples in limited amounts and for scientific purposes, while the SREU Act approves large-scale collection and for commercial exploitation. The OST explicitly emphasizes a "freedom of scientific investigation in outer space," and the collection of scientific samples reasonably fall under this enumerated right. 2 10 Alternatively, the OST says nothing with respect to commercial exploitation, only discussing "benefits" of space in terms of sharing those benefits with all mankind.211 Furthermore, the American Museum of Natural History and Lucite Ball examples relied upon are misleading because they suggest that types of celestial artifacts found or gifted on Earth are subject to the same legal regime as resources mined or collected in space, which may not necessarily be true. The analogy of ownership over fish extracted from the high seas is also often cited in response to this pushback. Much like outer space, the high seas are open to all participants, yet the law of the seas still recognizes the right to title over fish extracted on the high seas by fishermen, who can then sell the fish.212 But again, this analogy has limited import because both the 1958 Geneva Convention on the High Seas and the United Nations Convention on the Law of the Sea ("UNCLOS") explicitly recognize the right to fish, while the OST grants no such right to exploit space resources. 2 1 3

Furthermore, state practice relevant to the question of property rights under the OST goes beyond these examples and analogies of ownership of resources taken from commons. State practice regarding property rights in general must be considered. For example, Professor Fabio Tronchetti disagrees with the oft-cited notion that state practice affirms the SREU Act.2 14 According to the professor, "under international law, property rights require a superior authority, a State, entitled to attribute and enforce them." 2 15 By granting property rights in the SREU Act, the United States impliedly claims that it has the authority to confer property rights over space resources-an authority traditionally reserved for the owner of a resource. This notion clashes with the nonappropriation principles of the OST. Though there is no consensus regarding whether the nonappropriation principle prohibits claims of sovereignty over resources, a strong consensus at least exists that the principle prohibits states from claiming sovereignty over real property in space.216 In some traditional systems of mineral ownership, however, ownership over resources ran with ownership over land.217 For example, under Roman law, property rights over subsurface minerals belonged to the landowner. 2 18 Thus, if the United States cannot have title in space lands under the nonappropriation principle, it cannot have title to the space resources in those lands either. Without title to the resources, the United States cannot bestow such title to its citizens under traditional international property law; by claiming that it can bestow such title, the United States is abrogating Article II of the OST. One could also argue that the in situ resources the Act grants rights in are actually still part of the celestial bodies; thus, the resources are real property prior to their removal, and are off limits under the Treaty.2 19 Given the limited import of the cited examples of state practice (limited quantity and scientific versus large-scale and commercial), the traditional practice of property rights being conferred from a sovereign to a citizen become incredibly compelling and suggest the SREU Act may abrogate the United States' treaty obligations.

A final piece of evidence, however, again inserts ambiguity into the interpretation: the sweeping rejection of the Moon Agreement and its limitations on property rights by the international community discussed supra Part JJJ.A.2. On the one hand, the rejection may imply that the international community approved of property rights. On the other hand, however, there were other reasons for the sweeping rejection. For example, Professors Francis Lyall and Paul B. Larsen claim the "main area of controversy"2 2 0 actually surrounded the Agreement's proclamation of the Moon and celestial bodies and their natural resources as the "common heritage of mankind" in Article 11.1,221 rather than the Agreement's general property-right provisions. Many believed the invocation of the "common heritage of mankind" language would impart actual obligations upon parties to share extracted resources, whereas the "province of all mankind" and "for the benefit and interest of all" language of the OST did not.222 As with ordinary meaning, preparatory materials, and historical context, state practice leaves some ambiguities and state interpretations should also be considered.

5. State Interpretations

Much like the preparatory materials discussed supra Part IV.A.1, subsequent state interpretation of the OST fails to fully address the question of the legality of property rights in space resources. On the one hand, the Senate Committee on Foreign Relations found that the drafters intended Articles I, II, and III of the Treaty to be general in nature when reviewing the Treaty,223 which perhaps suggests Article II's nonappropriation principle does not qualify Article I's general right to use or act as an exception. Yet, the committee also found the Treaty to be in response to the "potential for international competition and conflict in outer space." 2 24 To the committee, Articles I, II, and III stressed the importance of free scientific investigation, guaranteed free access to all areas of celestial bodies, and prohibited claims of sovereignty.225 Not only would property rights in natural resources potentially ignite and exacerbate conflict in space, but they also seemed somewhat incompatible with scientific investigation, free access, and the prohibition on sovereignty. During its hearing on the Treaty, the Senate Committee on Foreign Relations focused a majority of its discussion of Article I on whether or not the language "province of all mankind" imparted strict obligations, while devoting little to no time to the issue of the meaning of "use." 22 6 Former Justice Arthur Goldberg, then U.S. ambassador to the United Nations, did note the goal of the article was to "cnot subject space to exclusive appropriation by any particular power." 227 Nevertheless, this statement fails to resolve whether natural resources may be exploited, as such exploitation could be carried out in an inclusive manner.

The committee's review of Article II consumes only eight lines of the hearing transcript, merely adding that the Article is complementary to Article I and that space cannot be claimed for the country (likely referring to land rather than resources).2 28 A different exchange between Ambassador Goldberg, Senator Lausche, and the Chairman leaves further ambiguity regarding the use of natural resources in space: Mr. Goldberg: We wanted to establish our right to explore and use outer space. Senator Lausche: Yes. That is, any one of the signatory nations shall have the right to the use of whatever might be found in one of the space bodies. Mr. Goldberg: No, no. It doesn't mean that. It means that they shall be free on their own to explore outer space. The Chairman: Or to use it. Mr. Goldberg: To use it. The Chairman: But not on an exclusive basis. Mr. Goldberg: Everyone is free.229

At first, Ambassador Goldberg appears to have refuted the notion that a signatory could simply "use" anything found in one of the space bodies, such as a mineral, implying Senator Lausche's example exceeded the scope of Article I. He then went on to emphasize exploratory activities. But then, Ambassador Goldberg backtracked and reasserted the right to use without clarifying his initial qualification.

This sense of ambiguity remains today despite Congress signing off on the SREU Act. While sponsors of the bill and statements from resource extraction companies emphasized the broad scope of the right to "use" outer space and state practice in support of the legality of 230 property rights, several expert witnesses expressed genuine concern that obligations under the Treaty remain unclear and require additional analysis.231

B. Compatibility

Employing the treaty interpretation tools of ordinary meaning, preparatory materials, historical context, state practice, and state interpretation offers many possible understandings of the obligations imparted by Articles I and II of the OST. For example, while the ordinary meaning of "use" could reasonably include the exploitation of materials, the meeting summaries of the Fifth Session of the U.N. Committee on the Peaceful Uses of Outer Space Legal Sub-Committee make clear that no consensus was ever reached regarding whether "use" includes large-scale exploitation of space resources, let alone fee-simple ownership and the ability to sell commercially. State practice dealing with extraterrestrial samples also sheds little light on the confusion, as the examples cited all deal instead with scientific samples of limited quantity. The international community's rejection of the Moon Agreement also fails to bring clarity. While on the one hand the rejection could be read as a rejection of the idea that the OST prohibits private property rights, it could also be read as a rejection of the common heritage of mankind doctrine. Finally, the prospect of privateventure space mining and extraterrestrial resource extraction remained far off and futuristic at the time of the Treaty's negotiation, making drawing legal conclusions about the legality of these revolutionary activities extremely difficult.

Overall, however, the Treaty's structure and its purposes (preserving peace and avoiding international conflict in outer space) ultimately indicate that private property rights in space resources are prohibited by Article II's non-appropriation principle, at least until future international delegation determines otherwise (like in the Antarctic). The Treaty's structure confirms this interpretation. Article I lays down a general rule for activity in space. Subsequent articles of the Treaty then lay out more specific requirements of and qualifications to this general rule. Much like Article IV restricts the use of nuclear weapons in space, Article II restricts the use of space in ways that might result in potentially controversial property claims. Historically, claims to mineral rights have resulted in just as contentious conflict as those over sovereign lands. Treaty efforts to avoid conflicts in Antarctica and the high seas reflect similar sentiments. The Soviet Union's representative even hinted at this structural relationship between Articles I and II during Treaty S1 232 negotiations.22 In light of the imminent need to ease Cold War tensions, the potential for conflict over property, and the final structure of the Treaty, this Note concludes that the large-scale extraction of space resources is incompatible with the non-appropriation principle of Article II of the OST.23 3 As a result, the United States' provision of property rights to its citizens to possess, own, transport, use, and sell space and asteroid resources extracted through the SREU Act contravenes its international obligations established by the OST.

#### Private entity = majority nonstate

Warners 20 (Bill, JD Candidate, May 2021, at UIC John Marshall Law School) "Patents 254 Miles up: Jurisdictional Issues Onboard the International Space Station." UIC Review of Intellectual Property Law, vol. 19, no. 4, 2020, p. 365-380. HeinOnline.

To satisfy these three necessary requirements for a new patent regime, the ISS IGA must add an additional clause ("Clause 7") in Article 21 specifically establishing a patent regime for private nonstate third parties onboard the ISS. First, Clause 7 would define the term "private entity" as an individual, organization, or business which is primarily privately owned and/or managed by nonstate affiliates. Specifically defining the term "private entity" prevents confusion as to what entities qualify under the agreement and the difference between "public" and "private."99 This definition would also support the connection of Clause 1 in Article 21 to "Article 2 of the Convention Establishing the World Intellectual Property Organization." 100 A succinct definition also alleviates international concerns that the changes to the ISS IGA pushes out Partner State influence. 101 Some in the international community may still point out that Clause 7 still pushes towards a trend of outer space privatization. However, this argument fails to consider that private entities in outer space have operated in space almostas comprehensively as national organizations. 102

#### They violate—they don’t defend that private appropriation of outer space by private entities is unjust.

#### Standards:

#### 1] Competitive equity – 3 warrants:

#### A] Ground: they get to pick the topic ex post facto which incentivizes vague argumentation that’s not grounded in a consistent, stable mechanism – they’re playing dodgeball with hand grenades – caselists are concessionary, unpredictable, beaten by perms, and don’t justify their model.

#### B] Limits: their model has no resolutional bound and creates the possibility for literally an infinite number of 1ACs. Not debating the topic allows someone to specialize in one area of the library for 4 years giving them a huge edge over people who switch research focus ever 2 months. Cutting negs to every possible aff is a commitment even large squads can’t handle, let alone small schools like us. Counter-interpretations are arbitrary, unpredictable, and don’t solve the world of neg prep because there’s no grounding in the resolution

#### C] Causality: debating the resolution forces the affirmative to defend a cause and effect relationship, the state doing x results in y. Non topical affs establish their own barometer “I think x is good for me” that aren’t negatable – that independently decks clash cuz there’s no way for me to engage with the affirmative.

#### D] Fairness is an impact – [1] it’s an intrinsic good – some level of competitive equity is necessary to sustain the activity – if it didn’t exist, then there wouldn’t be value to the game since judges could literally vote whatever way they wanted regardless of the competing arguments made [2] probability – your ballot can’t solve their impacts but it can solve mine – debate can’t alter subjectivity, but can rectify skews [3] internal link turns every impact – a limited topic promotes in-depth research and engagement which is necessary to access all of their education [4] comes before substance – deciding any other argument in this debate cannot be disentangled from our inability to prepare for it – any argument you think they’re winning is a link, not a reason to vote for them, since it’s just as likely that they’re winning it because we weren’t able to effectively prepare to defeat it. This means they don’t get to weigh the aff.

#### Second is switch side and idea-testing --- only a limited topic that leaves a role for the negative allows contestation and second-order testing that overcomes polarization. Switching sides forces them to scrutinize their own beliefs, which is valuable for developing and defending their own convictions more robustly.

Poscher 16

Ralf Poscher, Diat the Institute for Staatswissenschaft and Philosophy of Law at the University of Freiburg “Why We Argue About the Law: An Agonistic Account of Legal Disagreement”, Metaphilosophy of Law, Tomasz Gizbert-Studnicki/Adam Dyrda/Pawel Banas (eds.), Hart Publishing. 2016.

Hegel’s dialectical thinking powerfully exploits the idea of negation. It is a central feature of spirit and consciousness that they have the power to negate. The spirit “is this power only by looking the negative in the face and tarrying with it. This […] is the magical power that converts it into being.”102 The tarrying with the negative is part of what Hegel calls the “labour of the negative”103. In a loose reference to this Hegelian notion Gerald Postema points to yet another feature of disagreements as a necessary ingredient of the process of practical reasoning. Only if our reasoning is exposed to contrary arguments can we test its merits. We must go through the “labor of the negative” to have trust in our deliberative processes.104

This also holds where we seem to be in agreement. Agreement without exposure to disagreement can be deceptive in various ways. The first phenomenon Postema draws attention to is the group polarization effect. When a group of like‐minded people deliberates an issue, informational and reputational cascades produce more extreme views in the process of their deliberations.105 The polarization and biases that are well documented for such groups106 can be countered at least in some settings by the inclusion of dissenting voices. In these scenarios, disagreement can be a cure for dysfunctional deliberative polarization and biases.107 A second deliberative dysfunction mitigated by disagreement is superficial agreement, which can even be manipulatively used in the sense of a “presumptuous ‘We’”108. Disagreement can help to police such distortions of deliberative processes by challenging superficial agreements. Disagreements may thus signal that a deliberative process is not contaminated with dysfunctional agreements stemming from polarization or superficiality. Protecting our discourse against such contaminations is valuable even if we do not come to terms. Each of the opposing positions will profit from the catharsis it received “by looking the negative in the face and tarrying with it”.

These advantages of disagreement in collective deliberations are mirrored on the individual level. Even if the probability of reaching a consensus with our opponents is very low from the beginning, as might be the case in deeply entrenched conflicts, entering into an exchange of arguments can still serve to test and improve our position. We have to do the “labor of the negative” for ourselves. Even if we cannot come up with a line of argument that coheres well with everybody else’s beliefs, attitudes and dispositions, we can still come up with a line of argument that achieves this goal for our own personal beliefs, attitudes and dispositions. To provide ourselves with the most coherent system of our own beliefs, attitudes and dispositions is – at least in important issues – an aspect of personal integrity – to borrow one of Dworkin’s favorite expressions for a less aspirational idea.

In hard cases we must – in some way – lay out the argument for ourselves to figure out what we believe to be the right answer. We might not know what we believe ourselves in questions of abortion, the death penalty, torture, and stem cell research, until we have developed a line of argument against the background of our subjective beliefs, attitudes and dispositions. In these cases it might be rational to discuss the issue with someone unlikely to share some of our more fundamental convictions or who opposes the view towards which we lean. This might even be the most helpful way of corroborating a view, because we know that our adversary is much more motivated to find a potential flaw in our argument than someone with whom we know we are in agreement. It might be more helpful to discuss a liberal position with Scalia than with Breyer if we want to make sure that we have not overlooked some counter‐argument to our case.

It would be too narrow an understanding of our practice of legal disagreement and argumentation if we restricted its purpose to persuading an adversary in the case at hand and inferred from this narrow understanding the irrationality of argumentation in hard cases, in which we know beforehand that we will not be able to persuade. Rational argumentation is a much more complex practice in a more complex social framework. Argumentation with an adversary can have purposes beyond persuading him: to test one’s own convictions, to engage our opponent in inferential commitments and to persuade third parties are only some of these; to rally our troops or express our convictions might be others. To make our peace with Kant we could say that “there must be a hope of coming to terms” with someone though not necessarily with our opponent, but maybe only a third party or even just ourselves and not necessarily only on the issue at hand, but maybe through inferential commitments in a different arena.

f) The Advantage Over Non‐Argumentative Alternatives

It goes without saying that in real world legal disagreements, all of the reasons listed above usually play in concert and will typically hold true to different degrees relative to different participants in the debate: There will be some participants for whom our hope of coming to terms might still be justified and others for whom only some of the other reasons hold and some for whom it is a mixture of all of the reasons in shifting degrees as our disagreements evolve. It is also apparent that, with the exception of the first reason, the rationality of our disagreements is of a secondary nature. The rational does not lie in the discovery of a single right answer to the topic of debate, since in hard cases there are no single right answers. Instead, our disagreements are instrumental to rationales which lie beyond the topic at hand, like the exploration of our communalities or of our inferential commitments. Since these reasons are of this secondary nature, they must stand up to alternative ways of settling irreconcilable disagreements that have other secondary reasons in their favor – like swiftness of decision making or using fewer resources. Why does our legal practice require lengthy arguments and discursive efforts even in appellate or supreme court cases of irreconcilable legal disagreements? The closure has to come by some non‐argumentative mean and courts have always relied on them. For the medieval courts of the Germanic tradition it is bequeathed that judges had to fight it out literally if they disagreed on a question of law – though the king allowed them to pick surrogate fighters.109 It is understandable that the process of civilization has led us to non‐violent non‐ argumentative means to determine the law. But what was wrong with District Judge Currin of Umatilla County in Oregon, who – in his late days – decided inconclusive traffic violations by publicly flipping a coin?110 If we are counting heads at the end of our lengthy argumentative proceedings anyway, why not decide hard cases by gut voting at the outset and spare everybody the cost of developing elaborate arguments on questions, where there is not fact of the matter to be discovered?

#### Third—small schools disad: under-resourced are most adversely affected by a massive, unpredictable caselist which worsens structural disparities

#### Disads to the TVA – Defend that private space appropriation should be removed. They can defend activists for funding could be better served elsewhere. Ex. You can run that Black Panthers were against the Space Race. prove there’s negative ground and that it’s a contestable stasis point, and if their critique is incompatible with the topic reading it on the neg solves and is better because it promotes switch-side debate

#### \*Winning pessimism doesn’t answer T because only through the process of clash can they refine their defense of it—they need an explanation of why we switch sides and why there’s a winner and loser under their model

#### Reject the team—T is question of models of debate and the damage to our strategy was already done

#### Competing interps—they have to proactively to justify their model and reasonability links to our offense

#### No rvis or impact turns—it’s their burden to prove their topical. Beating back T doesn’t prove their advocacy is good

#### D] Vote negative – A] this procedurally evaluates whether their model is good, which is a prior question B] they can’t get offense: we don’t exclude them, only persuade you that our methodology is best. Every debate requires a winner and loser, so voting negative doesn’t reject them from debate, it just says they should make a better argument next time.

#### Independently, undisclosed K affs are a voting issue.

#### 1] The neg gets no shot at preparing a strategy at all – I attempt to read key literature to engage with non-traditional arguments, but breaking it new completely forecloses my ability to do so – it teaches them to value new above good and forecloses in-depth research – they don’t defend the topic, which makes predicting what they’re going to say an impossibility. That link turns all their reasons reading framework is bad because they forced us into it

#### 2] An open model creates the best politics and arguments

## Case

#### Their rejection of the political and coalitional movements gives up valuable tools in fights against racism. Turns the case.

**Lukacs 17** (Martin Lukacs is a Montreal-based investigative journalist. He is a former environmental writer for The Guardian, and has written for the Toronto Star, The Walrus, and The New York Review of Books. He is the author of The Trudeau Formula: Seduction and betrayal in an age of discontent. “Neoliberalism has conned us into fighting climate change as individuals”. July 17, 2017.)

Eco-consumerism may expiate your guilt. But **it’s only mass movements that have the power to alter the trajectory of the climate crisis.** This requires of us first a resolute mental break from the spell cast by neoliberalism: to stop thinking like individuals. The good news is that **the impulse** of humans **to come together** is **in**extinguishable – and the **collective imagination is** already **making a political come-back.** **The climate justice movement is blocking pipelines, forcing the divestment of trillions of dollars, and winning support for 100% clean energy economies** in cities and states **across the world. New ties are being drawn to B**lack **L**ives **M**atter, **immigrant and Indigenous rights, and fights for better wages.** On the heels of **such movements**, political parties seem finally ready to defy neoliberal dogma. None more so than Jeremy Corbyn, whose Labour Manifesto **spelled out a redistributive project to address climate change**: by publicly retooling the economy, and insisting that corporate oligarchs no longer run amok. The notion that the rich should pay their fair share to fund this transformation was considered laughable by the political and media class. Millions disagreed. Society, long said to be departed, is now back with a vengeance. So grow some carrots and jump on a bike: it will make you happier and healthier. But **it is time to** stop obsessing with how personally green we live – and **start collectively taking on corporate power.**

#### There are 2 solvency claims the aff can make. We’ll answer each

* Afropessimist literature good
* Weaponizing black death good’

1. **Don’t vote aff to endorse Afropessimist thought- Wilderson’s theory is psycho-analytic and descriptive ONLY. There is NO CURE for this, Wilderson himself says his corpus does not articulate a cure! He specifically says symbolic interventions like Gillespie endorses are useless. Stop reading double turns.**

Frank **Wilderson—July 14, 2010** (“Interview with Frank B. Wilderson: Wallowing in the Contradiction Part 1,” on *A Necessary Angel: The Ruminations, Prayers, and Complaints of Percy Howard* [http://percy3.wordpress.com/2010/07/09/frank-b-wilderson-%E2%80%9Cwallowing-in-the-contradictions%E2%80%9D-part-1/] accessed 9.20.14).

**If Blacks became** part of the **human** community then **the concept of “contemporaries” would have no outside**; and if it had no outside it could have no inside. Lacan assumes the category and thus he imagines the analysand’s problem in terms of how to live without neurosis among ones contemporaries. Fanon interrogates the category itself. For Lacan the analysands suffer psychically due to problems extant within the paradigm of contemporaries. For Fanon, the analysand suffers due to the existence of the contemporaries themselves and the fact that s/he is a stimulus for anxiety for those who have contemporaries. Now, a contemporary’s struggles are conflictual—that is to say, they can be resolved because they are problems that are of- and in the world. But a Blacks problems are the stuff of antagonisms: struggles that cannot be resolved between parties but can only be resolved through the obliteration of one or both of the parties. We are faced—**when dealing with the Black—with a set of psychic problems that cannot be resolved through any form of symbolic intervention such as psychoanalysis—though addressing them psychoanalytically we can begin to explain the antagonism (as I have done in my book,** and as Fanon does), **but it won’t lead us to a cure.**

#### Weaponizing black death to reclaim it is bad. Their attempt to repair images of black suffering limits blackness under a single authentic representation of death.

Fleetwood 11

(Nicole R Fleetwood, assistant professor of American Studies at Rutgers University, *Troubling Vision: Performance, Visuality, and Blackness*, pgs. 11)

Moreover, scholars writing about black visual artists and/or race and art history have pointed out that while black intellectual thought and public discourse have remained fixated on “the problem” of black images for much of the twentieth century, criticism has focused largely on television and film to the neglect of the practices of black visual artists. In her closing remarks to the “Black Popular Culture” conference—a field-defining event held in 1991—Michele Wallace criticized the audience of primarily black scholars and critics for marginalizing the visual arts in black culture.35 She spoke of (p.13) the general disinterest, bordering on contempt, for the works of contemporary black artists whose works had been curated as a visual component to the conference.36 Wallace's comments were well placed given that the conference highlighted scholars whose research grappled with contemporary imagery and historical legacies of black representation in dominant visual media. Building upon Wallace's assertion of the neglect of black visual arts, art historian Lisa Gail Collins frames the issue as “a visual paradox” in which there is a preoccupation with visual culture in its representations of blacks while simultaneously black visual art and artists are neglected. Collins argues that black American political leaders and intellectuals have placed emphasis on how blacks are represented visually, while ignoring or showing ambivalence toward the contributions of black visual artists throughout the last century.37¶ In essence, the visual sphere has been understood in black cultural studies as a punitive field—the scene of punishment—in which the subjugation of blacks continues through the reproduction of denigrating racial stereotypes that allow whites to define themselves through the process of “negative differentiation.”38 Based in a ruthless history of representing blacks as abject, the mobilization against dominant visual representations of blacks, particularly throughout the twentieth-century cultural history of the United States, has led to a fixation on getting images of blacks “right” as a way of countering racist **stereotypes**, or what Michele Wallace and others have described as the debate over “negative/positive images.” This is a well-treaded area in writings on black visibility and one that I will not rehearse here but to mention its significance in shaping how blackness is conceptualized and made visible in scholarship. Visual representations of blacks are meant to substitute for the real experiences of black subjects. The visual manifestation of blackness through technological apparatus or through a material experience of locating blackness in public space equates with an ontological account of black subjects. Visuality, and vision to an extent, in relationship to race becomes a thing-in-itself.

#### Their endorsement of pessimist thought explicitly disavows humanism as liberatory. Their Wilderson evidence defends blackness as nonhuman nonhuman. Only a positive orientation to humanism can avert major existential crisis.

Karenga 6 (Professor and Chair Department of Africa Studies at Cal State University and a major figure in the Black Power movement [Maulana, *Philosophy in the African Tradition of Resistance: Issues or Human Freedom and Human Flourishing in Not Only The Master’s Tools*, 2006, p. 242-5]

Surely, we are at a moment of history fraught with new and old fOnTIS of anxiety, alienation, and antagonism; deepening poverty in the midst of increasing wealth; proposals and practices of ethnic cleansing and genocide; pandemic diseases; increased plunder; pollution and depletion of the environment; constant conflicts, large and small; and world-threatening delusions on the part of a superpower aspiring to a return to empire, with spurious claims of the right to preemptive aggression, to openly attack and overthrow nonfavored and fragile governments openly, and to seize the lands and resources of vulnerable peoples and establish "democracy" through military dictatorship abroad, all the while suppressing political dissent at home (Chang 2002; Cole et at. 2002). These anxieties are undergirded by racist and religious chauvinism, by the self-righteous and veiled references of these rulers to themselves as a kind of terrible and terrorizing hand of God, appointed to rid the world of evil (Ahmad 2002; Arnin 2001; Blum1995). At the same time, in this context of turmoil and terror and the use and threatened use of catastrophic weapons, there is the irrational and arrogant expectation that the oppressed will acquiesce, abandon resistance, and accept the disruptive and devastating consequences of globalization, along with the global hegemony it implies (Martin and Schumann 1997). There is great alarm among the white-supremicist rulers of these globalizing nations, given the metical resistance rising up against them, even as globalization’s technological, organizational, and economic capacity continues to expand (Barber 1996; Karenga 2002e, 2003a; Lusane 1997). There is great alarm when people who should "know" when they are defeated ridicule the assessment, refuse to be defeated or dispirited, and, on the contrary, intensify and diversify their struggles (Zepezauer 2002). Certainly the battlefields of Palestine, Venezuela, long suffering Haiti, and Chiapas, Mexico, along with other continuing emancipatory struggles everywhere, reaffirm the indomitable character of the human spirit and the durability and adaptive vitality of a people determined to be free, regardless of the odds and assessments against them. Indeed, they remind us that the motive force of history is struggle, informed by the ongoing quest for freedom, justice, power of the masses, and peace in the world. Despite "end of history" claims and single-super- power resolve and resolutions, these struggles continue. For still the oppressed want freedom, the wronged and injured want justice, the people want power over their destiny and daily lives, and the world wants peace. And all over the world-especially in this U.S. citadel of aging capitalism with its archaic dreams of empire-clarity in the analysis of issues, and in the critical determination of tasks and prospects, requires the deep and disciplined reflection characteristic of the personal and social practice we call philosophy. But this sense of added urgency for effective intervention is prompted not only by the critical juncture at which we stand but also by an awareness of our long history of resistance as a people, because in our collective strivings and social struggles we seek a new future for our people, our descendants, and the world. Joined also to these conditions and considerations is the compelling character of our self-understanding as a people, as a moral vanguard in this country and the world. For we have launched, fought, and won with our allies struggles that not only have expanded the realm of freedom in this country and the world but also have served as an ongoing inspiration and a model of liberation struggles for other marginalized and oppressed peoples and groups throughout the world. Indeed, they have borrowed from and built on our moral vocabulary and moral vision, sung our songs of freedom, and held up our struggle for liberation as a model to emulate. Now, self-understanding and self-assertion are dialectically linked. In other words, how we understand ourselves in the world determines how we assert ourselves in the world. Thus, an expansive concept of ourselves as Africans-continental and diasporan-and as Africana philosophers forms an essential component of our sense of mission and the urgency with which we approach it. It is important to note that I have conceived and written this chapter within the framework of Kausaida philosophy (Karenga 1978, 1980, 1997) Kawaida is a philosophic initiative that was forged in the crucible of ideological and practical struggles around issues of freedom, justice, equalitys, self-determination, conullunal power, self-defense, pan~African- ism, coalition and alliance, Black Studies, intellectual emancipation, and cultural recovery and reconstlouction. It continued to develop in the midst of these ongoing struggies within the life of the mind and stmggles iottbtn the life of the people, as well as within the context of the conditions of the world. Kawaida is defined as an ongoing synthesis of the best of xAfrican thought and practice in constant exchange tuttb tl3e 'U)()ltd. It characterizes culture as a unique, instructive and valuable way of being human in the world-as a foundation and framework for self-understanding and self-assertion. As a philosophy of culture and struggle, Kawaida maintains that our intellectual and social practice as Nricana activist scholars must be undergirded and informed by ongoing efforts to (1) ground our- selves in our own culture; (2) constantly recover, reconstruct, .and bring forth from our culture the best of what it means to be African and human in the fullest sense; (3) speak this special cultural truth to the world and (4) use our culture to constantly make our own unique contribution to the reconception and reconstruction of this country, and to the forward flow of human history.