# 1AC

**Framework**

**Ethics must be a priori:**

**1] Regress: A theory is only binding when you can answer the question “why should I do this?” and not continue to ask “why”. Only practical reason provides a deductive foundation for ethics since the question “why should I be rational” already concedes the authoritative power of agency since your agency is at work. Metaethical standards outweigh: they determine what counts as a warrant for a standard, so absent grounding in some metaethical framework, their arguments aren’t relevant normative considerations.**

**2] Is-ought gap – experience only tells us what is since we can only perceive what is, not what ought to be. But it’s impossible to derive an ought from descriptive premises, so there needs to be additional a priori premises to make a moral theory.**

**3] Action theory: only evaluating action through reason solves since reason is key to evaluate intent, otherwise we could infinitely divide actions. For example: If I was brewing tea, I could break up that one big action into multiple small actions. Only our intention, to brew tea unifies these actions if we were never able to unify action, we could never classify certain actions as moral or immoral since those actions would be infinitely divisible**

**That justifies universalizability. Two warrants:**

**1] Absent universal ethics, morality becomes arbitrary and fails to guide action, which means that ethics is rendered useless. Therefore err aff on risk of offense since anything else means ethics cannot serve it’s purpose.**

**2] Any non-universalizable norm justifies someone’s ability to impede on your ends which also means universalizability acts as a side constraint on ends-based frameworks.**

**Siyar 99** Jamsheed Aiam Siyar: Kant’s Conception of Practical Reason. Tufts University, 1999**:**

. Now, **when I represent my end as to be done, I represent it as binding me to certain courses of action**, precluding other actions, etc. **Thus, my ends function as constraints for me in that they determine what I can** or must **do** (at least if I am to be consistent). I may of course give up an end such as that of eating ice cream at a future point; yet while I have the end, I must see myself as bound to do what is necessary to realize it.35 Thus, I must represent my ends as constraints that I have adopted, constraints that structure the possible space of choice and action for me. Further, given that my end is rationally determined, I take it to be generally recognizable that my end functions as a rationally determined constraint. That is, I take it that other subjects can also recognize my end as an objective constraint, for I take it that they as well as myself can cognize its determining grounds—the source of its objective worth—through the exercise of reason. Indeed, **in representing an end, I** in effect **demand recognition for it from other subjects: since the end functions as an objective though self-imposed constraint for me**, I must demand that this constraint be recognized as such. The thought here is simply that **if I am committed to some end,** e.g. my ice cream eating policy, I must act in certain ways to realize it. In this context, **I cannot be indifferent to the** attitudes and **actions of others, for these may either help or hinder my pursuit of my end. Hence, if I am** in fact **committed to realizing my end,** i.e. if I represent an end at all, **I must demand that the worth of my end**, its status as to be done, **be recognized by others.**

**Thus the standard is consistency with the categorical imperative. Prefer:**

**1] Performativity- All arguments by definition appeal to reason; otherwise you are conceding they have no warrant to structure them and are by definition baseless. Thus reason is an epistemic constraint on evaluating neg arguments.**

**2] Consequences Fail: [A] Every action has infinite stemming consequences, because every consequence can cause another consequence. [B] Aggregation Fails – suffering is not additive can’t compare between one migraine and 10 headaches [C] Predictions are impossible because anything could lead to a butterfly effect of unexpected consequences i.e. sneezing becoming a tornado and killing thousands. [D] destroy ethics since you only know for certain an action is correct is after you take it which makes it too late to correct a wrongdoing. Also, we’d1 always be culpable for things outside of the will due to infinite external factors which would infinitely condemn agents.**

**3] All frameworks are based on interpretations of the resolution so therefore must have theoretical interpretations too so prefer ours as A) time skew – any other framework moots 6 minutes off of the AC which means it kills fairness and my ability to be an agent B) resource disparities – allows bigger schools with more resources to just have master framework files which preps out every framework and makes it where smaller schools can never engage C) Strategy skew – crunched 1ar can’t extend framework, beat framework and beat counter offense all at once when the neg gets to do the same but with more 75% more time than me to do it and 50% more than mine to respond**

**4] Means-based ethics are key to ethical decision-making – other frameworks fail.**

**Anderson:** Anderson, Kerby. [National Director of Probe Ministries International] “Utilitarianism: The Greatest Good for the Greatest Number.” *Probe*, 2004**. Strake Jesuit JX**

**One problem with utilitarianism is that its** leads to **an ‘end justifies the means’ mentality. If any** worthwhile **end can justify the means** to attain it, **a** true **ethical foundation is lost.** But we all know that the end does not justify the means. If that were so, **then Hitler could justify the Holocaust because the end was to purify the human race. Stalin could justify his slaughter of millions because he was trying to achieve a communist utopia. The end never justifies the means. The means must justify themselves. A particular act cannot be judged as good simply because it may lead to a good consequence. The means must be judged by some objective and consistent standard of morality. Second, utilitarianism cannot protect the rights of minorities if the goal is the greatest good for the greatest number. Americans in the eighteenth century could justify slavery on the basis that it provided a good consequence for a majority of Americans.** Certainly the majority benefited from cheap slave labor even though the lives of black slaves were much worse. A third problem with utilitarianism is predicting the consequences. **If morality is based on results, then we would have to have omniscience in order to accurately predict the consequence of any action. But at best we can only guess at the future, and often these educated guesses are wrong. A fourth problem with utilitarianism is that consequences themselves must be judged. When results occur, we must still ask whether they are good or bad results. [Further][,] [u]tilitarianism provides no objective and consistent foundation to judge results because results are the mechanism used to judge the action itself. Inviolability is intrinsically valuable.**

**5] Only universalizable reason can effectively explain the perspectives of agents – that’s the best method for combatting oppression because it abstracts from empirical nature which is what individuals use in order to justify discrimination.**

**Farr 2 writes…**

Arnold Farr (prof of phil @ UKentucky, focusing on German idealism, philosophy of race, postmodernism, psychoanalysis, and liberation philosophy). “Can a Philosophy of Race Afford to Abandon the Kantian Categorical Imperative?” JOURNAL of SOCIAL PHILOSOPHY, Vol. 33 No. 1, Spring 2002, 17–32.

**One** of the most popular **criticism**s **of Kant’s moral philosophy is that it is too formalistic.**13 That is, the universal nature of the categorical imperative leaves it devoid of content. Such a principle is useless since moral decisions are made by concrete individuals in a concrete, historical, and social situation. This type of criticism lies behind Lewis Gordon’s rejection of any attempt to ground an antiracist position on Kantian principles. The rejection of universal principles for the sake of emphasizing the historical embeddedness of the human agent is widespread in recent philosophy and social theory. I will argue here on Kantian grounds that **although a distinction between the universal and the concrete is** a **valid** distinction, **the unity of the two is required for** an understanding of human **agency.** The attack on Kantian formalism began with Hegel’s criticism of the Kantian philosophy.14 The list of contemporary theorists who follow Hegel’s line of criticism is far too long to deal with in the scope of this paper. Although these theorists may approach the problem of Kantian formalism from a variety of angles, the spirit of their criticism is basically the same: The universality of the categorical imperative is an abstraction from one’s empirical conditions. **Kant is** often **accused of making the moral agent an abstract, empty**, noumenal **subject. Nothing could be further from the truth. The Kantian subject is** an **embodied**, empirical, concrete subject. However, this concrete subject has a dual nature. Kant claims in the Critique of Pure Reason as well as in the Grounding that human beings have an intelligible and empirical character.15 It is impossible to understand and do justice to Kant’s moral theory without taking seriously the relation between these two characters. The very concept of morality is impossible without the tension between the two. By “empirical character” Kant simply means that we have a sensual nature. We are physical creatures with physical drives or desires. **The** very **fact that I cannot simply satisfy my desires without considering the rightness** or wrongness **of my actions suggests that my empirical character must be held in check** by something, or else I behave like a Freudian id. My empiri- cal character must be held in check **by my intelligible character**, which is the legislative activity of practical reason. It is through our intelligible character that **we formulate principles that keep our** empirical **impulses in check.** The categorical imperative is the supreme principle of morality that is constructed by the moral agent in his/her moment of self-transcendence. What I have called self-transcendence may be best explained in the following passage by Onora O’Neill: In restricting our maxims to those that meet the test of the categorical imperative we refuse to base our lives on maxims that necessarily make our own case an exception. The reason why a universilizability criterion is morally signiﬁcant is that it makes our own case no special exception (G, IV, 404). In accepting the Categorical Imperative we accept the moral reality of other selves, and hence the possibility (not, note, the reality) of a moral community. **The Formula of Universal Law enjoins no more than that we act only on maxims that are open to others also.**

## Offense

**1] An exclusive and permanent right to property is not entailed by the categorical imperative. Only conditional use is universalizable**

**Westphal 97** [(Kenneth R., Professor of Philosophy at Boðaziçi Üniversitesi, PhD in Philosophy from Wisco) “Do Kant’s Principles Justify Property or Usufruct?” Jahrbuch für Recht und Ethik/Annual Review of Law and Ethics 5 (1997):141–94.] RE

The compatibility of possession with the freedom of everyone according to universal laws is not a trivial assumption even for the case of detention or “empirical” possession. Under conditions of extreme scarcity, anyone’s use of some vital thing precludes someone else’s equally vital use of that thing or of anything of its kind (given the condition of extreme relative scarcity). This is not quite to agree with Hume, that conditions of justice exclude both extreme scarcity and superabundance.32 But it is to recognize that he came close to an important insight: legitimate action requires sufficient abundance so that one person’s use (benefit) is not (at least not directly) someone else’s vital injury (deprivation). This is not merely to say that property is psychologically impossible in extreme scarcity because no one could respect it (per Hume); the point is that possession and perhaps even use are not, at least not obviously, legitimate under such conditions. (How Kant would propose to resolve the conflicting grounds of obligation in such circumstances, the duty to self-preservation versus the duty not to harm others’ life or liberty, I do not understand.)

The assumption that possession is compatible with the freedom of everyone according to universal laws [5] is even less trivial for the case of “intelligible” or “noumenal” possession, that is, possession without physical detention. The compatibility of intelligible possession with the freedom of everyone according to universal laws requires both sufficient resources so that the free use of something by one person is not as such the infringement of like freedom of another, and it requires that mere empirical or physical possession does not suffice to secure the innate right to freedom of overt (äußere) action. If physical possession did suffice to secure the innate right to overt action, Kant’s main ground of proof would entail no conclusion stronger than that rights of physical possession (detention) are legitimate. Furthermore, by assuming that noumenal possession is compatible with the freedom of everyone according to universal laws [5], Kant assumes rather than proves that possession without detention is permissible. However, this is precisely the point that needs to be proven! This issue remains central throughout the remainder of §2 and is addressed again in §3 below.

2.2.6 The previous section raises a very serious question about Kant’s justification of intelligible rights to possess and use (possessio). The questions about Kant’s supposed justification of property rights, the possibility of having things as one’s own (Eigentum, dominium), are even more acute. To derive such strong rights from Kant’s argument requires at least one of three assumptions. The first assumption would be that the sole relevant condition of use is proprietary ownership of things (cf. RL §1 ¶1); this assumption requires interpreting “Besitz” broadly. The second assumption would involve conflating the ownership of a right – viz., a right to use – with a right to property ownership. However, the legitimacy of neither of these assumptions is demonstrated by Kant’s argument in RL §2. Or it may be assumed, third, that Kant’s argument in §2 aims to prove, not merely rights to possession, but rights to property, insofar as it aims to prove a right to “arbitrary” (beliebigen) use, that is, the right to do whatever one pleases with something ([10]; cf. RL §7, 253.25–27), where this can include any of the rights involved in the further incidents of proprietary ownership. Reading Kant’s text in this way assimilates possessio to dominium by stressing Kant’s term “beliebigen”. So far as Kant’s literal statement is concerned, it is equally plausible to stress Kant’s term “Gebrauch” (use), which would restrict Kant’s argument to justifying possessio. Kant’s reductio ad absurdum argument assumes the contrapositive thesis that [it is not] altogether ... rightly in my power, i.e. it [is] not ... compatible with the freedom of everyone according to a universal law ([it is] wrong), to make use of [something which is physically within my power to use]. ([2], [1])

His argument then purports to derive a contradiction from this assumption. From this contradiction follows the negation of this assumption by disjunctive syllogism. Strictly speaking, what Kant’s argument (at best) proves is that it is indeed rightful to make use of things which in principle are within one’s power, provided (“obgleich ...”) that one ’s use is compatible with the freedom of everyone in accord with a universal law [5]. As mentioned, Kant’s argument assumes rather than proves that this assumption is correct. Kant must prove that this assumption is correct in order to prove his conclusion. This requires showing that possession and use of things (in their narrow, strict senses) is consistent with the freedom of everyone in accord with universal laws. That would justify rights to possessio. To justify the stronger rights to dominium requires showing that holding things in accord with the rights involved in the further incidents of property ownership is also consistent with the freedom of everyone in accord with universal laws. Because the rights involved in property ownership are not analytically, indeed are not necessarily, related, justifying dominium requires separate justification of each component right. But it also requires more than this. Insofar as these rights are supposed to be proven as a matter of natural right, these further rights cannot be instituted solely by convention. However, there are alternative packages of rights, both for kinds of property as well as for various weaker sets of rights to use, any of which can be formulated in ways that are consistent with the like freedom of everyone according to universal laws. Consequently, merely demonstrating the consistency of one or another of these sets of rights with the freedom of everyone according to universal laws suffices only to justify the permissibility of that set of rights.

It does not suffice to justify the obligation to respect that set of rights instead of any other such set of rights. This is to say, once alternative sets of rights are possible or permissible because they meet the sine qua non of consistency with the like freedom of everyone according to universal laws [5], Kant’s natural law grounds of proof do not suffice to justify an obligation to respect one particular set of rights among the range of possible, permissible alternatives. Consequently, interpreting Kant’s statement [10] by stressing “beliebigen”, using it to specify the scope of “Gebrauch”, can only lead to fallacious, question-begging interpretations of Kant’s argument. Consequently, it is strongly preferable to interpret Kant’s statement by stressing “Gebrauch”, and using it in its strict, narrow sense to specify the scope of “beliebigen”. (This parallels the case for interpreting “Besitz” narrowly instead of broadly.)

In sum, to use something legitimately it suffices to have a right to use it. That, in brief, is “possession” strictly speaking; in the narrow sense of the term, “possession” involves only the right of a qualified chose in possession. Since this condition suffices to fulfill the condition specified by Kant’s reductio argument, no stronger condition follows from Kant’s argument. One can have or “own” a right to use something without, of course, having property in that thing. Recall Honoré’s point that possession involves two claims: being in exclusive control and remaining in control by being free of unpermitted interference of others. Insofar as possession persists despite subsequent and continuing disuse, Kant’s proof does not demonstrate even a narrow right to possession. (This is why I speak of qualified choses in possession; one key qualification justified by Kant’s argument is that one’s right to use persists only so long as one’s legitimate need to use and regular use continue.) Moreover, aside from the prohibition on harmful use, Kant’s argument does not even address the other incidents of property ownership. If Kant’s primary assumption [5] can be justified, then Kant’s proof demonstrates at most three important conclusions: one has the right to use things one currently detains, one has the right to use any usable thing not previously (and hence currently) detained by others (provided one’s use does not infringe the like freedom of others), and one has the right to continue to use things so long as one’s need to use them and actions of using them continue. These are not trivial theses! However, because it does not prove the indefinite duration of possession, in the narrow sense, Kant’s proof of the (first version of the) Postulate of Practical Reason regarding Right is unsound. Kant’s further considerations in RL §6 suffer analogous weaknesses (see §§2.4f.).

**That implies that private appropriation is unjust.**

**Westphal 97** [(Kenneth R., Professor of Philosophy at Boðaziçi Üniversitesi, PhD in Philosophy from Wisco) “Do Kant’s Principles Justify Property or Usufruct?” Jahrbuch für Recht und Ethik/Annual Review of Law and Ethics 5 (1997):141–94.] RE

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

**2] Privatization of outer space runs counter to international law**

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On October 28th, Elon Musk’s company SpaceX published its Terms of Service for the beta test of its Starlink broadband megaconstellation. If successful, the project purports to offer internet connection to the entire globe – an admirable, albeit aspirational, mission. I must confess: Starlink’s terrestrial impact is a pet issue of mine. But this time, something else caught my attention. Buried in said Terms of Service, under a section called “Governing Law”, I discovered this curious paragraph:

“Services provided to, on, or in orbit around the planet Earth or the Moon… will be governed by and construed in accordance with the laws of the State of California in the United States. For Services provided on Mars, or in transit to Mars via Starship or other colonization spacecraft, the parties recognize Mars as a free planet and that no Earth-based government has authority or sovereignty over Martian activities. Accordingly, Disputes will be settled through self-governing principles, established in good faith, at the time of Martian settlement.”

CAN HE DO THAT? In short, the answer is a resounding “no”. Outer space is already subject to a system of international law, and even Elon Musk cannot colombus a new one.

Who’s responsible for Elon Musk?

Two provisions of the Outer Space Treaty (OST), both also customary, are particularly relevant here.

OST article II: “Outer space, including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.”

OST article III: “States… shall carry on activities in the exploration and use of outer space, including (…) celestial bodies, in accordance with international law”.

SpaceX is a private entity, and is not bound by the Outer Space Treaty – but that does not mean it can opt out. Its actions in space could have consequences for the United States in three ways. First, the US, as SpaceX’s launch state, bears fault-based liability for injury or damage SpaceX’s space objects cause to other states’ persons or property (OST article VII, Liability Convention articles I, III). Second, the US, as SpaceX’s state of registry, is the sole state that retains jurisdiction and control over SpaceX objects (OST article VIII, Registration Convention article II). Both refer to objects in space and are irrelevant.

According to article VI OST, States “bear international responsibility for national activities in outer space”, including Mars, including those by “non-governmental entities”. The US, as SpaceX’s state of incorporation, must authorise and continuously supervise SpaceX’s actions in space to ensure compliance with the OST (OST article VI) and international law (OST article III). In practice, this task is done by the US Federal Communications Commission, which licenses and regulates SpaceX.

Article VI OST sets a specific rule of attribution, supplementing the customary rules of state responsibility (Stubbe 2017, pp. 85-104). SpaceX acts with US authorisation, and its conduct in space within and beyond that authorisation is attributable to the US (ARSIWA articles 5, 7). In the absence of circumstances precluding wrongfulness, the result is straightforward. If SpaceX breaches a US obligation under international law, the US bears responsibility for an internationally wrongful act.

The principle of non-appropriation

SpaceX risks breaching OST article II, the “cardinal rule” of space law (Tronchetti, 2007). This principle is a jus cogens norm (Hobe et al. 2009, pp. 255-6) establishing Mars as res communis, rather than terra nullius. I must acknowledge, with tongue firmly in cheek, that SpaceX is partly correct – states have no sovereignty on Mars. But that does not leave Mars a “free planet” up for grabs – SpaceX has no sovereignty either.

On plain reading, article II OST lacks clarity on two key points: i) whose claims are prohibited, and ii) what exactly constitutes a ‘claim of sovereignty’. The first has been answered; per the then-customary interpretative rules and travaux préparatoires, there is quite broad academic consensus (Hobe, et al. 2017; Tronchetti, 2007; Pershing, 2019; Cheney, 2009) that sovereign claims include those by private entities. This is consistent with OST article VI; private entities act in space with state authorisation, and thus state authority. It also accords with the law of state responsibility, wherein conduct of entities exercising state authority is attributable to the state, even if ultra vires (ARSIWA articles 5, 7).

The second issue is more complex. Much has been written on whether claims to space resources or space property (Nemitz v United States) are sovereign. In this case, the territorial claim is less clear; is establishing a jurisdiction a sovereign claim “by other means”? SpaceX purports not to create law horizontally via contract, but to establish the only law on Mars – a vertical structure endemic to sovereign legal orders. International caselaw on territorial acquisition agrees; sovereign acts include “legislative, administrative and quasi-judicial acts” (Case concerning sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v. Malaysia), para 148; Decision regarding delimitation of the border between Eritrea and Ethiopia, para. 3.29) with the exercise of jurisdiction and local administration having “particular, probative value” (Minquiers and Ecrehos (France v. UK), p. 22). Also relevant are attempts to exclude other states’ jurisdiction (Island of Palmas (USA v. Netherlands), pp. 838-9). An attempt by SpaceX to prescribe its own jurisdiction on Mars would constitute a sovereign claim in breach of OST article II, and entail US responsibility for an internationally wrongful act.

Of course, as Thom Cheney points out, this is all just words until it isn’t – but there is cause for concern. The Federal Communications Commission (FCC) has been consistently accommodating to commercial space actors, and to SpaceX in particular, preferring to leave regulation up to markets rather than regulatory bodies. As Commissioner O’Rielly said upon granting SpaceX market access: “our job at the Commission is to approve the qualified applications [by SpaceX et al.] and then let the market work its will.” It is not unforeseeable that the FCC would prioritise corporate objectives over principle, and under an administration increasingly dismissive of the international rule of law, might fail to regulate SpaceX in case of breach. Both SpaceX’s actions or FCC inaction risk breaching OST article II, and could leave the US facing reparations claims from injured state(s).

Mars nullius: A thought experiment

But this problem extends beyond the legal. As previously mentioned, the OST, especially article II, designates Mars as res communis. This precludes territorial acquisition by occupation, which can only legitimately occur on terra nullius.

But indulge me for a moment in a half-serious thought experiment. No provision of outer space law explicitly designates Mars res communis. The exploration and use of Mars is the “province of mankind” per OST article I (emphasis added), but that language was specifically diluted in negotiations from the originally-proposed “common heritage of mankind”. The Moon is the “common heritage of mankind” (Moon Agreement, article 5), but only for 18 states. The United States has recently and repeatedly attempted to erode the status of space as res communis, including by treaty and by Executive Order, and it is not alone. If current trends continue, Mars nullius may come sooner than we think.

That line between res communis and terra nullius is the principal legal obstacle to acquiring extra-terrestrial land by the legal process of occupation. In territorial acquisition cases, international law distinguishes between the act of attempting to exercise jurisdiction or sovereignty (called an ‘effectivité‘), and the legal right to do so (sovereign title). The former is a question of fact; the latter is a question of law. Absent other sovereign claims, an effectivité compliant with international law is “as good as title” (Island of Palmas (USA v. Netherlands), p. 839; Frontier Dispute (Burkina Faso v. Mali), para 63). Such an effectivité would contravene international law now, but that law is in flux. What if the current rule proves less-than-robust? As shown above, the elements of successful effectivité, state attribution and a sovereign act with sovereign intention, are satisfied. Slipping this provision on the future Martian legal order into satellite broadband Terms of Service serves little purpose – except as basis for a claim prior to some future critical date.

Crucially, SpaceX is not an international actor. It is an American company subject to US law and continuing US supervision. In both Island of Palmas and the Pedra Branca Dispute, corporations acting under national authorisation and regulation established sovereign titles for their respective states. A future attempt by SpaceX to act on its Terms could be received by other states, either legally or politically, as an American colonisation of Mars.

Concerns and conclusions

Three primary concerns emerge from this picture. First, non-appropriation is cardinal for a reason – if breached, international peace and security in space hangs in the balance. Second, even signalling the implementation of a provision so contrary to US obligations without censure risks the international rule of law. Finally, and most pragmatically, American vulnerability to future claims by other states should concern American citizens; it is their money, their national reputation on the line.

Commercial actors in space present great innovative and developmental potential for all mankind (Aganaba-Jeanty, 2015), but their so-called ‘self-regulatory’ or administrative role should be taken with a healthy scepticism. We already know how that story ends. As Bleddyn Bowen put it, “[t]he continuation of the term ‘colonies’ in describing the potential human future in space should raise political and moral alarm bells immediately given the last 500 years of international relations. Will billionaires run their ‘colonies’ the way they run their factory floors, and treat their citizens like they treat their lowest paid employees?”

As humanity expands into space, we will need new legal rules and understandings of sovereignty to govern the process (Leib, 2015). The current legal order is a critical framework that, without supplement, will someday prove incomplete. The legal governance of Mars is an excellent example. However, those new laws must fit into that framework; they cannot hang suspended in a vacuum. We have seen previously the dangers of rashly governing the global commons based on aspiration and resource hunger (Ranganathan, 2016 and 2019). Martian soil cannot become the manganese nodules of this century. If anything, it is imperative on us to recognise and correct the inequities the current rules have created (Craven, 2019) before proposing new ones.

Space law is an established rulebook likely to undergo some high-octane developments in coming decades. While Elon is welcome to the table, he can’t keep sucking the air from the room. It leaves us space lawyers just shouting into the void.

**Violating i-Law is a form of promise breaking that is non universalizable since it leads to an inconceivable world where everyone lies and there is no conception of truth.**

## Underview

#### 1AR theory is legitimate – Otherwise the neg can be infinitely abusive, and I can’t check back against it. Aff theory comes before neg K and substance, because it indicts their method, and you reward their abuse because I don’t have time to win both theory and other areas of debate. A] 1AR theory is DTD because my 4 minute 1AR is too short to win both theory and other layers. They must also be punished to deter future abuse. B] No RVI on 1AR theory, they get a 6-3 time skew. C] Competing-interps on aff theory because it is key to set good norms and reasonability is arbitrary because they get to set their own brightline.

## Adv: Space Debris

**Private entities are increasing mining now**

Robert **Garcia 18**, currently an LLM Candidate in Cornell Law School's Law, Entrepreneurship & Technology program at Cornell Tech in NYC., “Regulating International Space Mining, an Enormous Industry,” Pacific Council on International Policy, 10-23-2018, <https://www.pacificcouncil.org/newsroom/regulating-international-space-mining-enormous-industry> [King CP recut]

In 2015, the United States passed the U.S. Commercial Space Launch Competitiveness Act. The law’s passage has caused some consternation in the international space exploration community, as it specifically contemplates U.S. citizens performing commercial recovery in what would be a clear appropriation of asteroid and space resources. The law in pertinent part states that such U.S. citizens: shall be entitled to any asteroid resource or space resource obtained, including to possess, own, transport, use and sell the asteroid resource or space resource obtained in accordance with applicable law, including the international obligations of the United States (emphasis added). Luxembourg was quick to follow suit, and it passed its own national space mining law styled the Law of 20 July 2017 on the Exploration and Use of Space Resources. This law seeks to parallel U.S. law. However, according to a spokesman for the Luxembourg Ministry of Economy, there is one significant expansion over U.S. law, in that "in the U.S. law, a majority of a company's stakeholders must be in the United States, while the Luxembourg law places no restrictions on stakeholder locations." Critics state that the controlling international law is to be found in the United Nations treaties on space exploration. There are five major space treaties, but two specifically address exploitation of outer space resources. The first is the "Outer Space Treaty" (OST). One hundred nations, including the major spacefaring nations-the United States, China, Japan, and the Russian Federation-have ratified it. A subsequent treaty-the Moon Agreement-provides in a relevant part in Article 11, Paragraph 2, that "[t]he moon is not subject to national appropriation by any claim of sovereignty, by means of use or occupation, or by any other means." As of January 2018, relatively few states (18 total) had ratified the Moon Agreement and four additional states had signed but not ratified the agreement. However, of these 22 states, perhaps only Australia, France, and India have the capability to launch space vehicles. The Moon Agreement could have provided some guidance on exploitation of space resources, as it ostensibly prohibits claiming lunar natural resources for private ownership. However, the United States and Luxembourg are not parties to the Moon Agreement, and in consequence the treaty has no "governing effect." Nonetheless, some legal scholars contend that the United States would be in breach of its international obligations if it were to "unilaterally pretend" that its citizens may exercise ownership over extracted space resources, given the absence of recognition of such rights under international law. Clearly it is the stated aim of both the United States and Luxembourg to promote the commercial exploitation of space resources. The two nations’ respective pieces of legislation attempt to provide a legal basis for private citizens to engage in such activities, **which some critics would characterize as prohibited "appropriation" under international law. The international community would be well-served by resolving the issue conclusively with an appropriate body of rules**. As the technologies advance, we are inexorably headed toward space mining becoming a reality. Whether it will lead to increased resources, providing a net benefit for all people on earth, or serve to increase economic inequality by disproportionately favoring the spacefaring nations remains to be seen.

**That causes dangerous space mining and deregulation globally**

Edd **Gent 20,** freelance science and technology writer, “Space Mining Should Be a Global Project—But It's Not Starting Off That Way,” Singularity Hub, 10-12-2020, <https://singularityhub.com/2020/10/12/the-us-is-trying-to-hijack-space-mining-and-there-could-be-disastrous-consequences/> [King CP recut]

Exploiting the resources of outer space might be key to the future expansion of the human species. But researchers argue that the US is trying to skew the game in its favor, with potentially disastrous consequences. The enormous cost of lifting material into space means that any serious effort to colonize the solar system will require us to rely on resources beyond our atmosphere. Water will be the new gold thanks to its crucial role in sustaining life, as well as the fact it can be split into hydrogen fuel and oxygen for breathing. Regolith found on the surface of rocky bodies like the moon and Mars will be a crucial building material, while some companies think it will eventually be profitable to extract precious metals and rare earth elements from asteroids and return them to Earth. But so far, there’s little in the way of regulation designed to govern how these activities should be managed. Now two Canadian researchers argue in a paper in Science that recent policy moves by the US are part of a concerted effort to refocus international space cooperation **towards short-term commercial interests, which could precipitate a “race to the bottom” that sabotages efforts to safely manage the development of space.** Aaron Boley and Michael Byers at the University of British Columbia trace back the start of this push to the 2015 Commercial Space Launch Competitiveness Act, which gave US citizens and companies the right to own and sell space resources under US law. In April this year, President Trump doubled down with an executive order affirming the right to commercial space mining and explicitly rejecting the idea that space is a “global commons,” flying in the face of established international norms. Since then, NASA has announced that any countries wishing to partner on its forthcoming Artemis missions designed to establish a permanent human presence on the moon will have to sign bilateral agreements known as Artemis Accords. These agreements will enshrine the idea that commercial space mining will be governed by national laws rather than international ones, the authors write, and that companies can declare “safety zones” around their operations to exclude others. Speaking to Space.com Mike Gold, the acting associate administrator for NASA’s Office of International and Interagency Relations, disputes the authors’ characterization of the accords and says they are based on the internationally-recognized Outer Space Treaty. He says they don’t include agreement on national regulation of mining or companies’ rights to establish safety zones, though they do assert the right to extract and use space resources. But given that they’ve yet to be released or even finalized, it’s not clear how far these rights extend or how they are enshrined in the agreements. And the authors point out that the fact that they are being negotiated bilaterally means the US will be able to use its dominant position to push its interpretation of international law and its overtly commercial goals for space development. Space policy designed around the exploitation of resources holds many dangers, say the paper authors. For a start, loosely-regulated space mining could result in the destruction of deposits that could hold invaluable scientific information. **It could also kick up dangerous amounts of lunar dust that can cause serious damage to space vehicles, increase the amount of space debris, or in a worst-case scenario, create meteorites that could threaten satellites or even impact Earth.** By eschewing a multilateral approach to setting space policy, the US also opens the door to a free-for-all where every country makes up its own rules. Russia is highly critical of the Artemis Accords process and China appears to be frozen out of it, suggesting that two major space powers will not be bound by the new rules. **That potentially sets the scene for a race to the bottom**, where countries compete to set the laxest rules for space mining to attract investment. The authors call on other nations to speak up and attempt to set rules through the UN Committee on the Peaceful Uses of Outer Space. Writing in The Conversation, Scott Shackelford from Indiana University suggests a good model could be the 1959 Antarctic Treaty, which froze territorial claims and reserved the continent for “peaceful purposes” and “scientific investigation.” But the momentum behind the US’ push might be difficult to overcome. Last month, the agency announced it would pay companies to excavate small amounts of regolith on the moon. Boley and Byers admit that if this went ahead and was not protested by other nations, **it could set a precedent in international law that would be hard to overcome.** For better or worse, it seems that US dominance in space exploration means it’s in the driver’s seat when it comes to setting the rules. As they say, to the victor go the spoils.

**Increasing the number of satellites from private companies like SpaceX would massively increase the risk of dangerous space debris.**

**Scheer and Moss 20** [(Roddy Scheer and Doug Moss, ) “The Good, The Bad &amp; The Ugly: Satellites &amp; The Environment,” Emagazine https://www.newsbreak.com/news/2178042533743/the-good-the-bad-the-ugly-satellites-the-environment, 8-13-2020//Ak// [King CP recut]

Putting satellites up into the ionosphere—the layer of our atmosphere extending from 50-600 miles above the surface where a high concentration of ions and free electrons facilitate the reflection of radio waves—isn’t anything new. The Soviets beat us to the punch when they launched the first satellite, Sputnik, in 1957, but these days there are over 9,000 satellites overhead, the majority from U.S. companies and government agencies. But with Elon Musk’s SpaceX poised to launch tens of thousands of new ones in the next few years, many people wonder whether putting all this technology overhead is such a good idea. One concern is that all this hardware eventually breaks down and shed parts. Peter Greenstreet of the Institute of Physics reports that this so-called “space junk” orbits at some 7.5 kilometers per second—so fast that even the tiniest pieces create a potential hazard for space stations and other man-made or natural objects making the same rounds.

**The impact is twofold--**

**1] Pollution– it can’t be fixed and is hugely impactful on the ozone layer – which when ignored causes extinction.**

**Prinn et al. 05**

(He served as one of the Lead Authors in the Fourth Assessment of the Intergovernmental Panel on Climate Change (IPCC) published in 2007. He has served as Chairman for Atmospheric and Hydrospheric Sciences of the American Association for the Advancement of Science (AAAS), and has chaired the Steering Committees for the IGBP/IAMAP International Global Atmospheric Chemistry Project, the U.S. National Research Council (NRC) Committee on Earth Sciences, and the U.S. Global Tropospheric Chemistry Program. He has been a member of the Steering Committees of the International Geosphere-Biosphere Program (IGBP), and the NASA Network for Detection of Atmospheric Composition Change, and a member of the IAMAP International Commission on Atmospheric Chemistry and Global Pollution, the NRC Space Science Board, the NRC Committee for the International Geosphere-Biosphere Program, the NASA Space Science and Applications Advisory Committee, and the NASA Earth System Sciences Committee. He has twice testified to the United States Congress on climate change science and its implications for policy. He is a Fellow of the American Geophysical Union (AGU), a recipient of AGU's Macelwane Medal, and a Fellow of the AAAS. He has published more than 250 peer-reviewed scientific papers, co-authored *Planets and their Atmospheres: Origin and Evolution* (Academic Press), and edited or co-edited *Global Atmospheric-Biospheric Chemistry* (Plenum), *Atmospheric Chemistry in a Changing World* (Springer), and *Inverse Methods in Global Biogeochemical Cycles* (AGU). Education: Sc.D., 1971, MIT; M.S., 1968, B.S., 1967, University of Auckland, New Zealand.) [https://globalchange.mit.edu/sites/default/files/MITJPSPGC\_Rpt118.pdf. Accessed 1 June 2022](https://globalchange.mit.edu/sites/default/files/MITJPSPGC_Rpt118.pdf.%20Accessed%201%20June%202022). //GHS CR

The ability of the lower atmosphere (troposphere) to remove most air pollutants depends on complex chemistry driven by the relatively small amount of the sun’s ultraviolet light that penetrates through the upper atmospheric (stratospheric) ozone layer (see: Ehhalt, 1999; Prinn, 2003). This chemistry is also driven by emissions of NOx, CO, CH4 and VOCs and leads to the production of O3 and OH. Figure 1 reviews, with much simplification, the chemical reactions involved (Prinn, 1994). The importance of this chemistry to climate change occurs because it involves both climate-forcing greenhouse gases (H2O, CH4, O3) and air pollutants (CO, NO, NO2). It also involves aerosols (H2SO4, HNO3, BC) that influence climate (through reflecting or absorbing sunlight), productivity of ecosystems (through their exposure to O3, and to H2SO4 and HNO3 in acid rain), and human health (through inhalation). Also important are free radicals and atoms in two forms: very reactive species like O(1 D) and OH, and less reactive ones like HO2, O(3 P), NO and NO2. 3 UV N2O Lightning CFCs O( 1D) Hydrosphere Biosphere & Human Activity HNO3 Greenhouse Gases Primary Pollutants Absorbing Aerosols (BC) Reactive Free Radical/Atom Less Reactive Radicals Reflective Aerosols O3 H2SO4 BC Stratosphere Figure 1. Summary of the chemistry in the troposphere important in the linkage between urban air pollution and climate (after Prinn, 1994, 2003). VOCs (not shown) are similar to CH4 in their reactions with OH, but they form acids, aldehydes and ketones in addition to CO. Referring to Figure 1, when OH reacts with CH4 the CH4 is converted mostly to CO in steps that consume OH and also produce HO2. The OH in turn converts CO to CO2, NO2 to HNO3, and SO2 to H2SO4. The primary OH production pathway occurs when H2O reacts with the O(1 D) atoms that come from dissociation of O3 by ultraviolet (UV) light. Within about a second of its formation, on average, OH reacts with other gases, either by donating its O atom (e.g., to CO to form CO2 and H) or by removing H (e.g., from CH4 to form CH3 and H2O). The H and CH3 formed in these ways attach rapidly to O2 to form hydroperoxy (HO2) or methylperoxy (CH3O2) free radicals which are relatively unreactive. If there is no way to rapidly recycle HO2 back to OH, then levels of OH are kept relatively low. The addition of NOx emissions into the mix significantly changes the chemistry. Specifically, a second pathway is created in which NO reacts with HO2 to form NO2 and to reform OH. Ultraviolet light then decomposes NO2 to produce O atoms (which attach to O2 to form O3) and reform NO. Hence NOx (the sum of NO and NO2) is a catalyst which is not consumed in these reactions. The production rate of OH by this secondary path in polluted air is about five times faster than the above primary pathway involving O(1 D) and H2O (Ehhalt, 1999). The reaction of NO with HO2 does not act as a sink for HOx (the sum of OH and HO2) but instead determines the ratio of OH to HO2. Calculations for 4 polluted air suggest that HO2 concentrations are about 40 times greater than OH (Ehhalt, 1999). This is due mainly to the much greater reactivity of OH compared to HO2. If emissions of air pollutants that react with OH, such as CO, VOCs, CH4, and SO2, are increasing, then keeping all else constant, OH levels should decrease. This would increase the lifetime and hence concentrations of CH4. However, increasing NOx emissions should increase tropospheric O3 (and hence the primary source of OH), as well as increase the recycling rate of HO2 to OH (the second source of OH). This OH increase should lower CH4 concentrations. Thus changing the level of OH causes greenhouse gas, and thus climate, changes.

**2] Space War - Independently, unregulated mining causes all out space war and eventually extinction.**

Fengna **Xu 20**, Law School, Xi’an Jiaotong University, “The approach to sustainable space mining: issues, challenges, and solutions,” FNGN Xu 2020 IOP Conf. Ser.: Mater. Sci. Eng. 738 012014

3.1. Conflicts between multiple States Space resources, as res communis [3], can be appropriated to some extent on the basis of freedom of exploration and use of the outer space. However, it is likely to follow a ‘first come, first served’ approach to space resources activities. In fact, the ‘first come, first served’ approach drove early and rapid development of oil industry of the US in the 19th century, although a frenetic race among surface owners followed and led to an extraordinary waste of oil and gas. Given that so far there are no agreement or property rights on space resources, they are essentially in a ‘state of nature’. Allocation by the ‘first come, first served’ approach is simple and requires very little government involvement to deter another one (called a ‘junior’) from displacing the rightful first comer (called a ‘senior’). However, overprotecting the senior by priority rights could run the risk of disorder, waste, inequality, and even monopoly. The Outer Space Treaty, requires State parties to conduct all their activities in outer space ‘with due regard to the corresponding interests of all other States Parties’. Without specific coordinating rules, conflicts between multiple States are likely to happen. Private entities may choose to arm themselves to safeguard their own interests. In extreme cases, **States may also protect them by placing weapons of mass destruction in outer space if necessary [4]. As a result, priority rights should not be absolute but subjected to some arrangements. 7**