# R4 1AC v Pranav Emory

## 1AC

### Framework

#### The resolution is a question of if a potential action by private entities would be unjust. This action is indescribable apart from a reference to the institutional rules of the practice of which the agent is a part of - Schapiro 01:

Schapiro, Tamar (Stanford University). Three Conceptions of Action in Moral Theory, Noûs 35 (1):93–117, 2001.

In his early article, “Two Concepts of Rules,” Rawls sets out to limit the scope of the utilitarian principle by arguing that it is inapplicable to actions of a certain type. His claim is that actions which fall under practice rules, for example actions governed by the rules of games and social institutions, have a structure which is different from the structure of action presupposed by utilitarianism. Such actions are not, therefore, directly subject to utilitarian evaluation. Whereas a practice as a whole can be judged in terms of its overall consequences, Rawls claims, **a particular move within a practice can only be judged in relation to the practice rules**. Rawls’ argument turns on a conceptual point about the relation between the rules of a practice and the cases to which they are applied. Practice rules, he claims, are “logically prior” to particular cases. “In a practice there are rules setting up offices, specifying certain forms of action appropriate to various offices, establishing penalties for the breach of rules, and so on. We may think of the rules of a practice as defining offices, moves, and offenses. Now what is meant by saying that the practice is logically prior to particular cases is this: **given any rule which specifies a form of action (a move), a particular action which would be taken as falling under this rule given that there is the practice would not be described as that sort of action unless there was the practice.”** Rawls illustrates the logical priority of practice rules over actions with reference to moves **in** the game of American **baseball. Outside the “stage-setting” of the game, it is certainly possible to “throw a ball, run, or swing a peculiarly shaped piece of wood.” But it is impossible to “steal base, or strike out, or draw a walk**, or make an error, or balk.” Where the rules of baseball are in force, movements come to constitute moves of particular kinds, and conversely in the absence of such rules, actions, which might appear to be moves are properly, described as mere movements. In this respect, Rawls claims, practice rules differ from another general class of rules called “summary rules.” Summary rules are “rules of thumb.” Their role is to [They] allow us to approximate the results of applying some more precise but perhaps more unwieldy principle to particular cases. As such, summary rules are arrived at by generalizing the results of the prior procedure. They are “reports” of these results, presented as guides for deliberating about what to do in cases which are relevantly similar to those used to generate the reports. Summary rules are therefore logically posterior to the cases to which they apply. For in order to specify a summary rule, it is necessary to generalize over some range of cases, and the relevant descriptions of these cases must be given in advance if generalization over them is to be possible. Whereas summary rules presuppose the existence of a well-defined context of application, the establishment of a practice imposes a new conceptual and normative structure on the context to which they are to apply. In this sense, a practice amounts to “the specification of a new form of activity,” along with a new order of status relations in which that activity makes sense. From the point of view of a participant, the establishment of a practice transforms an expanse of grass into “playing field,” bags on the ground into “bases,” and individuals into occupants of determinate “positions.” Universal laws come to hold a priori, for example that “three strikes make an out,” and that “every inning has a top and a bottom.” And within that new order people come to have special powers, such as the power to “strike out,” or to “steal a base.” The salient point for Rawls’ purposes is that **there are constitutive constraints on the exercise of these new powers, constraints by which any participant must abide in order to make her movements count as the moves she intends them to be.**

#### This means in order for appropriation to count as a legitimate action, it must be done so within the practices of state regulations. States give rights and determine capability for respective private entities. However, rules of international law define what it means to be a state and what states can do in the international arena even if states have different domestic ends. Consequently, it can only be the case that an action by a private entity is legitimate if in compliance with international law - Nardin 92:

Terry Nardin , “International Ethics and International Law”. Review of International Studies, Vol. 18, No. 1 (Jan., 1992), pp. 19-30, published by Cambridge University Press . JStor, Stable URL: http://www.jstor.org/stable/20097279 . RP 2/6/13

Any description of the international system as an association of states that share certain ends is necessarily incomplete. Such an association would not constitute a rule-governed moral or legalorder. **What transforms a number of powers**, contingently related in terms of shared interests**, into a society proper is** not their agreement to participate in a common enterprise for as long as they desire to participate, but **their** participation in and implicit **recognition of** the practices, procedures, and other **rules of international law that compose international society**. **The rules of international law**, in other words, **are** not merely regulatory but **constitutive**: **they** not only **create a normative order among separate political** communities but **define the status, rights, and duties of these communities** within this normative order. In international society'states' are constituted as such within the practice of international law; 'statehood' is a position or rolethat is defined by **international law**, not independent of it.**International law includes rules** that are the outcome of cooperation to further shared goals as well as rules that make such cooperation possible and that exist even where shared goals are lacking. But it is rules of the latter sort **that are fundamental**. **First**, **the** particular**arrangements through which states** cooperate to**promote shared goals** themselves**depend on** having available authoritative**procedures for negotiating such arrangements**. These procedures, **embodied** **in** customary**international law**, are prior to the treaties, alliances, and international organizations through which states cooperate. Customary association. international law is thus the foundation of all international **Second**ly, it is the**rules of** customary**international law** that delimit the jurisdiction of states, prohibit aggression and unlawful intervention, and**regulate** the **activities** of treaty-making, diplomacy, and war.**Because they govern** the**relations of enemies as well as of friends, these rules provide a basis** for international order even**in the absence of shared** beliefs, values, or**ends**. By requiring restraint in the pursuit of national aims and toleration of national diversity, customary**international law reflects** **the** inevitably**plural character of international society and** may be said to**constitute** amorality of states, one that is a morality **of coexistence**.

#### Thus, the standard is consistency with international law

#### Impact Calc:

#### The standard isn’t concerned with consequences –

#### A] Cascading – all actions have an infinite chain of consequences that get increasingly less predictable – means aggregation is incoherent absent certainty

#### B] Induction – it relies on past examples to prove the future, which is just induction meaning its circular and fails

#### C] Probability – the law is certain, while consequences aren’t. Thus, any Non-I Law framing is a voter because it requires intervention to evaluate which is definitionally unfair.

#### Prefer Additionality:

#### 1] Proceduralism – evaluation of i-law is a pre-requisite to the understanding of the resolution’s truth so it comes before any ROB or framing. Topic Lit is key to education since that’s why framers pick topics and it ensures debaters can reasonably predict args to allow fair debates.

#### 2] Pluralism – clashing viewpoints are inevitable – each agent views the world through their own lenses given the absence of omniscience as we are only able to perceive the world through our own experiences which are definitionally epistemically inaccessible for others, which makes knowledge and theorization impossible. However, Ilaw synthesizes the viewpoints of states into a collective law. This is the only way to achieve knowledge of different agents - Cronin 08:

[Cronin, Bruce; “Virtual Legislation: Creating International Law by Consensus (2008)”; < www.all academic .com//meta/p\_mla\_apa\_research>]

The end of World War II saw a dramatic increase the number and intrusiveness of these types of **International** and regional **organizations**. Most of these organizations require their members to sign legally-binding charters **commit states to a process of** consultation and **collective decision-making on a wide variety of issues.** This has reduced the range of actions that states could legally pursue purely on the basis of self- help. **It** also **commits** those **states** that are part of the process (in the case of the U.N., all states) **to adhere to common principles that are legitimately derived through said process. In this way, the development of global governance institutions** that requires formal deliberation among the members of the international community **has provided a** permissive condition for the evolution of a **new type of rules, one that is rooted not in individual will, but in a convergence of international opinion**. This can be referred **to** thisas **“consensus-based”** legal **norms.**

#### 3] Fairness –

#### A] Predictability - a discussion of rights is necessitated through legal methods making it the most obvious. Key to education because we analyze real world documents that govern politics, which is an out of round impact.

#### B] Reciprocity – there are multiple ways to interpret the law, which means there’s equal ground.

#### 4] Epistemology – moral knowledge is structurally indeterminate and legal actions will be infinitely interpreted and debated without a non-arbitrary way to reach a conclusion. Only I-law solves because it is a maximally superior authority governing the entire world.

#### 5] Rule Following – the law determines justice by bridging the space between the rule and the decision -

**Sokoloff 5** (William W., Prof of Political Science @ [University of California Irvine](http://www.ratemyprofessors.com/SelectTeacher.jsp?sid=1074), “Between Justice and Legality: Derrida on Decision”, Political Research Quarterly, Vol. 58, No. 2 (Jun., 2005), pp. 341-352, Sage Publications, Inc. on behalf of the University of Utah Stable, http://www.jstor.org/stable/3595634 [AAK])

Derrida's discussion of decision proceeds through nega- tive presentation. He builds decision through a critique of the conventional conceptualization of decision. **Decisions are generally viewed as the result of rational calculation** (Rawls 1993: 212). **Information is analyzed and options are formulated in** accordance with the ultimate standard of rationality: **cost-benefit analysis**. Once the costs and benefits have been determined, a conclusion, or decision, is reached based on the calculation of overall utility. In the legal sphere, judges decide; they apply the law to particular cases. Derrida's take on decision departs from these approaches. He questions the traditional concept of decision based on a self-conscious subject who calculates and then decides: “We ask ourselves what a decision is and who decides. And if a decision is active, free, conscious and willful, sover- eign. What would happen if we kept this word and this concept, but changed these last determinations? (Derrida 1997: xi.)” For Derrida, **a decision has not been made when judges apply the law to a particular case. In order for a decision to be a decision**, **judges must** do two incompatible things at the same time. They **must enforce the law in a non-arbitrary way**: "The law applies equally to all." **And yet, judges must respect the ways in which each case is different:** "Each case is other, each decision is different and requires an absolutely unique interpretation, which no existing, coded rule can or ought to guarantee absolutely" (Derrida 1990: 961). Hence, **in order for a decision to be possible, it must be impossible; judges cannot know in advance what to decide. If they already knew what to decide in particular situations, then they are not making a decision**. The conditions for a decision must pre- vent a decision from being easy or fast. They must break from the past and they cannot be based entirely on reason or knowledge.3 Quoting Kierkegaard, Derrida claims "the moment of decision is madness" (1990: 968). The incompat- ible commands in the moment of decision test the limits of the legal order because they demand that decision be con- ceived as something more than the application of the law.

#### 6] Abstract right is materialized in the community in the legal order - undermining the system through which we manifest our rights violates our freedom as subjects and outweighs – Buchwalter:

Buchwalter, Andrew. “Hegel, Human Rights, and Political Membership.”

In addition, Hegel asserts that **the very idea of autonomous personality presupposes and demands articulation in an existing system of law**. Hegel construes autonomy intersubjectively, as selfhood in otherness, or Bei-sich-selbstsein. **A comprehensive account of achieved intersubjectivity depends on establishing a legal-political community juridically committed to principles of respect and reciprocity.**3 On the one hand, **autonomous personality depends on a social order that recognises and supports that autonomy**. **Conversely, that order itself depends on individuals who recognize its authority and act accordingly**. Only in a lawfully ordered community is the individual ‘recognised and treated as a rational being, as free, as a person; and the individual, on his side, makes himself worthy of this recognition by overcoming the natural state of his selfconsciousness and obeying a universal, the will that is its essence and actuality, the law; he behaves, therefore, towards others in a manner that is universally valid, recognising them—as he wishes others to recognise him—as free, as persons’ (EM y432). It is no coincidence that Hegel construes the principle of autonomous personality in terms of a legal imperative: it is a commandment of right that one ‘be a person and respect others as persons’ (PR y36). Hegel may proceed from the seemingly abstract notion of autonomous personality, but **a proper account of the person itself depends on a developed system of legal relations**. The point is also central to Hegel’s concept of right itself. In line with the modern natural law tradition, Hegel understands right as a normative principle, one based on the principle of freedom and the free will. Indeed, for Hegel right is the idea of freedom itself. But an idea on his view is not an abstract principle contraposed to conditions of institutional embodiment. In line with his general conceptual realism, he maintains that an idea denotes a concept conjoined with its existence—an understanding consonant as well with a view of freedom as selfhood in otherness. As the idea of freedom, right itself is nothing but freedom under the conditions of its actualization; it is indeed the ‘existence of the free will’ (Dasein des freien Willens) (PR y29). **In its capacity as a principle of freedom, right is a general normative principle. But in that capacity it is also a principle of legal positivism, one tied to a legal system committed to its institutionalization and enforcement. Right for Hegel is the ‘realm of actualized freedom’, articulated in an existing system of positive law. A developed legal system is the domain in which ‘freedom attains its supreme right’** (PR y258) and ‘in which alone right has its actuality’ (EM y502). In fashioning an embodied account of right, Hegel demonstrates his distinctive relationship to the natural right tradition. To the extent that that tradition evinces an abstract prepolitical ahistoricism, he is opposed, proposing instead that natural law ‘be replaced with the designation philosophical doctrine of right’ (NRPS y2). Directed to the ‘idea’ of that under consideration (the concept joined with its realisation), a philosophical doctrine of right affirms that right is intelligible only within the framework of developed social and political institutions (PR y1). Elaboration of the idea of right is itself exeundum esse e statu naturae (VRP 1: 239f ). And lest there be any doubt about his distance from the natural right tradition, Hegel even suggests that the term right itself is inadequate to the requirements for institutional embodiment. While sometimes calling his practical philosophy a Philosophy of Right, he elsewhere, in his philosophical system, employs the title Theory of Objective Spirit. It is this account of spirit objectified that reflects the distinctiveness in Hegel’s notion of right as institutionally realised freedom. At the same time, however, Hegel’s departure from the natural right tradition should not be exaggerated. An early proponent of the method of immanent critique, Hegel maintains that the most consequential criticism of a contested position is one that confronts that position on its own terms. This expectation is no less in evidence in his reception of the tradition of natural right. Employing the dialectic of true and spurious being central to his principle of self-contradiction, Hegel criticizes the natural law doctrine because its liberal formulation conflicts not with an alien standard, but with its true self or ‘nature’. Thus an analysis of individual rights in terms of their inherent concept focuses not on an individual’s natural and immediate existence, but on his true being, what Hegel calls ‘die Natur der Sache’ (PR y57). For Hegel, a citizen is defined by a concept of autonomous personality which is realised only in developed political and cultural community.4 Hence, a defence of natural rights is likewise a defence of the principle of political community, just as a repudiation of the liberal approach to natural rights is a realisation of the concept of natural law. It is no coincidence that Hegel subtitles his Philosophy of Right ‘Natural Law and Political Science’, for the concept of natural law is meaningless on his view without an account of established political institutions. Hegel champions the idea of Objective Spirit over that of Natural Right, not because he opposes the principle of the latter, but because that principle only finds expression in a system of ethical life. The point may be made as well by noting how appeal to communal membership itself reaffirms elements of the tradition of natural right. For Hegel, **a proper account of communal membership depends on a self-awareness** (Selbstgefu¨hl) **on the part of members of their status as members** (PR y147). As Hegel says of political community generally, ‘[i]t is the self-awareness of individuals which constitutes the actuality of the state’ (PR y265A). **Proper to membership is an appreciation of oneself as a member of such community.** Such self-awareness is, however, no mere acknowledgement of the norms, practices, and traditions of a particular community. **Membership also involves, if in differing degrees, its acceptance and endorsement.** **Especially in an account of a polity, membership involves the capacity to affirm the validity of the norms and practices operative in a particular community.** Such norms and practices are not simply to be obeyed but must ‘have their assent, recognition, or even justification in y heart, sentiment, conscience, intelligence, etc.’ (EM y503). For Hegel, the capacity for cognitive affirmation—it has been termed ‘reflective acceptability’5 —is understood by means of the language of rights. A full account of membership rests on a ‘right of insight’, which itself expresses the right of subjectivity central to modern accounts of freedom. ‘The right to recognize nothing that I do not perceive as rational is the highest right of the subject’ (PR y132).6 Hegel claims that rights are not abstract normative principles but depend on conditions for membership in existing institutional settings. It is for this reason that he supplants a Theory of Right with a Doctrine of Objective Spirit. Yet the appeal to particular communities and institutions does not entail abrogation of conception of rights. Not only is membership in a political community a condition for realizing rights, **a proper account of communal membership itself entails affirmation of subjective rights and the right of subjectivity itself.** Indeed, basic to the idea of Objective Spirit—where spirit for Hegel is understood as the conjunction of substance and subjectivity7 —is the ontological dependence of a communal substance on the experience of subjective reflection. Hegel construes his philosophy of right as a theory at once of natural law and positive political science. The ‘interpenetration’ (PR y1A) of these two approaches is not only central to but constitutive of the idea of Objective Spirit.8 II In asserting that the meaning and reality of rights are linked to conditions of social membership, Hegel does not hold that any type of communal membership is acceptable. Needed rather is a community that can properly accommodate the requirements of an account of rights. Historically, Hegel claims that such requirements were at least minimally met with modern society and, in particular, modern civil society. Expressive of that ‘system of all-round interdependence’ (PR y183) diagnosed as well by theorists of political economy, modern civil society provides, on multiple counts, the conditions for a concrete realisation and embodiment of a system of right. First, civil society permits and fosters affirmation of a genuine account of human rights. Although critical of cosmopolitanism (PR y209), Hegel is not opposed to the concept of universal human rights. His position is rather that that concept cannot be asserted abstractly, but must be embodied in circumstances that accommodate and do justice to it. Historically, such concrete validation first occurred in modern civil society (PR y209). Previously, individuals may have been able to claim rights in virtue of particular status considerations, e.g., class, familial or ethnic background, social standing, or gender. In modern society, however, Hegel claims that the individual is now recognised, at least in principle, simply as such, in virtue of his/her very humanity (PR y124R). Inasmuch as a system of commercial exchange best functions only to the degree that individuals, for better or worse, are now valued simply for their economically and quantitatively relevant contributions, irrespective of other status considerations, civil society permits the realisation of right as a universal principle, indeed as a uniform principle of humanity. It is not coincidental that Hegel famously advanced his claim about the universality of rights only on his discussion of civil society, for here ‘I am apprehended as a universal person in which all are identical. A human being counts as such because he is a human being, not because he is Jew, Catholic, Protestant, German, Italian, etc.’ (PR y209, emphasis added). Modern civil society supplies the conditions for the realisation of a notion of right wherein ‘the individual as such has an infinite value’, and in the sense that freedom constitutes the ‘actuality of human beings—not something which they have, as men, but which they are’ (EM y482). Civil society is also important for Hegel in that it clarifies the binding nature of rights. One feature of modern civil society is its compulsory character. Given the complex, differentiated, interdependent nature of modern industrial society, individuals can pursue a livelihood only as a member of that society. Civil society is ‘that immense power which draws people to itself and requires them to work for it’ (PR y238). Indeed, life itself depends on such membership. For a system of realised freedom, then, membership in civil society itself entails certain rights, even as those rights also entail specific duties. ‘[I]f a human being is to be a member of civil society, he has rights and claims in relation to it. y Civil society must protect its members and defend their rights, just as the individual owes a duty to the right of civil society’ (PR y238A). Civil society further clarifies what counts as rights. Revolving around particular need satisfaction, modern societies give special place to ‘negative’ rights, those guaranteeing ‘the undisturbed security of persons and property’ (PR y230). The system of justice institutionalized with civil society secures recognition for the principle Hegel associates with the abstract right of persons: ‘not to violate (verletzen) personality and what ensues from personality’ (PR y38). For Hegel, civil society is also expected to secure certain ‘positive’ rights, those enabling individuals to realise themselves and the freedoms civil society is presumed to actualize (NRPS y118). Given that the livelihood and indeed the very existence of individuals is dependent on membership in civil society, society in turn has an obligation to provide the resources—e.g., subsistence, health, education, housing—enabling individuals to function effectively as members of society. The system of interdependence constituting civil society is such that ‘the livelihood and welfare of individuals should be secured—i.e., that particular welfare should be treated as a right and duly actualized’ (PR y230). Moreover, given that the right to life—that which is ‘absolutely essential’ (NRPS y118)—is presupposed in the protection of rights of person and property, Hegel assigns a measure of priority to positive rights.9 In addition, civil society gives rise to political rights, those enabling individuals to participate in collective efforts to define and shape the conditions of their shared existence. Such rights, to be sure, are fully articulated not in civil society itself, but in the state or political community proper. Yet the idea of political rights is entailed as well by requirements for full membership opportunities established with civil society. They are entailed as well by a full account of the reciprocity of rights and duties articulated by civil society. And they are entailed by the account of the complex and wide-ranging intermediation of individual and community facilitated through civil society. Certainly Hegel does not affirm a right to direct participation in public affairs. He also does not allow for universal suffrage, preferring instead a mode of political representation based on membership in intermediate associations, subpolitical bodies, municipalities, and community based organizations (PR yy308f). Yet far from militating against a notion of public autonomy on the part of the wider populace, participation in such entities can serve to facilitate it. Not only does membership in such bodies facilitate representation in modern societies, whose size and complexity have rendered all but impossible meaningful direct participation on the part of individuals in the affairs of state; citizen involvement in intermediate associations is a central factor in the very ‘constitution’ of a polity, itself based on the intermediation of objective institutional structures and subjective dispositions of individuals. In addition, Hegel maintains that governance of communities, intermediate associations, and subpolitical entities—many of which are already present in civil society—is itself linked to participatory rights. ‘This is the point of view of right, that individuals have the right to administer their resources’ (NRPS y141). Civil society is distinctive not just in that in articulates the three central rights attendant on social membership. It also gives voice to a meta-right, what Hegel calls the ‘absolute right’ (VPRHe: 127). Right on this account denotes not simply the possession of specific rights, but the general recognition, by those directly affected and by the community as a whole, that members of society are entitled to rights and their status as bearers of rights. This is indeed ‘the right to have rights’ (VPRHe: 127),10 and it is uniquely facilitated by civil society. **Predicated as it is on the comprehensive mediation of individual and community, civil society provides the institutional basis to recognise general claims to right**. For one thing, modern civil society underwrites the idea of a realised constitutional order, understood as a promulgated system of law applicable to society as a whole and committed to the dignity and equal treatment of each and every member of society. In addition, it furnishes the conditions for what Richard Rorty has termed a ‘human rights culture’,11 one in which individuals are recognised as entitled to rights and the protections they afford. **Not only does civil society nurture in individuals an understanding of themselves as holders of rights that are to be respected and honoured; through its system of wide-ranging interdependence, it provides the framework for a community in which individuals appreciate that support for the rights of others and the institutions providing such support is intertwined with their own rights and wellbeing.** Civil society ‘gives right an existence [Dasein] in which it is universally recognized, known and willed, and in which, through the mediation of this quality of being known and willed, its validity and objective actuality’ (PR y209). In terms of both institutional and cognitive requirements, civil society concretizes a right to have rights: it represents a social order in which individuals are recognised, by themselves and others, as subjects possessing rights (and corresponding duties)

#### 7] The only way to cohere conceptions of meaning is through the stability through what is given through history - Parrish:

Derrida`s Economy of Violence in Hobbes` Social Contract, Richard Parrish

“All of the foregoing pints to the conclusion that in the commonwealth the sovereign’sfirst and most fundamental **job is to be the ultimate definer.**Several other commentators have also reached this conclusion. By way of elaborating upon the importance of the moderation of individuality in Hobbes’ theory of government, Richard Flathman claims that **peace “is possible only if** the **ambiguity and disagreement** that pervade general thinking and acting **are eliminated** by the stipulations of a sovereign.” Pursuant to debunking the perennial misinterpretation of Hobbes’ mention of people as wolves, Paul Johnson argues that“one of the primary functions of **the sovereign is to provide** the necessary **unity of meaning** and reference **for the**‘ primary **terms in which [people]** men try to **conduct their** social **lives.” “The** whole **[purpose]** raison d’entre of sovereign helmsmanship lies squarely in the chronic**[is to] defus[e]**ing of **interpretive clashes,”without which humans would**“fly off in all directions” and **fall** inevitably **into the violence of the natural condition.”**

### Offense

#### I affirm: Resolved: The appropriation of outer space by private entities is unjust. I am willing to spec in CX to avoid frivolous theory debates if doing so doesn’t force me to abandon my maxim. I don’t defend implementation of a policy or an action rather the truth of a statement. However, the affirmative solves all specification concerns –

#### A] Scope – there are international bodies whose job is to interpret and apply the law that applies to all instances

#### B] Stable Ground – aff is unique due to the nature of the huge topic literature being based in the law

#### C] Topic Education – international law solves because it encompasses the core of the literature

#### Appropriation of outer space is a direct violation of international law – Tronchetti 07:

Tronchetti, Fabio. “The Non-Appropriation Principle under Attack: Using Article II of the Outer Space Treaty in its Defence.” International Institute of Space Law 50 (2007): 10. // LHP PS

**Since the beginning of the space era, States agreed to consider outer space, including the Moon and other celestial bodies as a res communis omnium, i.e. as an area open for free exploration and use by all States which is not subject to national appropriation.** **The non-appropriative nature of outer space, first declared in the UN General Assembly Resolution 1721 and 1962, was formally laid down in Article II of the 1967 Outer Space Treaty**. Since then, **the non-appropriation principle has provided guidance and direction for all activities in the space beyond the earth’s atmosphere. Nowadays**, however, the non-**appropriation principle is under** **attack**. Some **proposals**, **arguing the need of abolishing this principle in order to promote commercial use of outer space or claiming private ownership rights over the Moon and other celestial bodies,** are **undermining its importance and questioning its role as a guiding principle for present and future space activities**. In order to counter such proposals and to demonstrate their fallacy, this paper stresses **the binding legal value of the non-appropriation principle contained in Article II of the Outer Space Treaty by arguing that such principle should be considered a rule of customary international law holding a special character**. Indeed, not only is **the principle prohibiting national appropriation of outer space affirmed in the main space law treaties and declarations, but it also represents the basis of approach followed by States in elaborating and setting up international space law itself**. Therefore, **following this interpretation, neither States nor private entities are allowed to act in contrast with the nonappropriation principle and any amendment or modification thereof should only be carried out by all States acting collectively.**

#### That outweighs:

#### A] Framer’s Intent, Norms, and Logic – even if Article 2 doesn’t explicitly mention private entities, Article 6 requires authorization from the state - Tronchetti 2:

Tronchetti, Fabio. “The Non-Appropriation Principle under Attack: Using Article II of the Outer Space Treaty in its Defence.” International Institute of Space Law 50 (2007): 10. // LHP PS

**However, it must be said, that nowadays there is a general consensus on the fact that both national appropriation and private property rights are denied under the Outer Space Treaty.** **Several way of reasoning have been advanced to support this view**. **Sters and Tennen affirm that the argument that Article II does not apply to private entities since they are not expressly mentioned fails for the reason that they do not need to be explicitly listed in Article II to be fully subject to the non-appropriation principle8** . **Private entities are allowed to carry out space activities but, according to Article VI of the Outer Space Treaty, they must be authorized to conduct such activities by the appropriate State of nationality**. **But if the State is prohibited from engaging in certain conduct, then it lacks the authority to license its nationals or other entities subject to its jurisdiction to engage in that prohibited activity.** Jenks argues that “States bear international responsibility for national activities in space; it follows that **what is forbidden to a State is not permitted to a chartered company created by a State or to one of its nationals acting as a private adventurer**”9 . It has been also suggested that the **prohibition of national appropriation implies prohibition of private appropriation because the latter cannot exist independently from the former** 10. **In order to exist**, indeed, **private property requires a superior authority to enforce it, be in the form of a State or some other recognised entity**. In outer space, however, this practice of **State endorsement is forbidden**. Should a State recognise or protect the territorial acquisitions of any of its subjects, **this would constitute a form of national appropriation in violation of Article II**. Moreover, it is possible to use some historical elements to support the argument that both the acquisition of State sovereignty and the creation of private property rights are forbidden by the words of Article II. **During the negotiations of the Outer Space Treaty, the Delegate of Belgium affirmed that his delegation “had taken note of the interpretation of the non-appropriation advanced by several delegations-apparently without contradiction-as covering both the establishment of sovereignty and the creation of titles to property in private law”**11. The French Delegate stated that: “…**there was reason to be satisfied that three basic principles were affirmed,** namely: the prohibition of any claim of sovereignty or property rights in space…”12. The fact that the accessions to the Outer Space Treaty were not accompanied by reservations or interpretations of the meaning of Article II, it is an evidence of the fact that this **issue was considered to be settled during the negotiation phase.**

#### B] Spillover – Tronchetti 3:

Tronchetti, Fabio. “The Non-Appropriation Principle under Attack: Using Article II of the Outer Space Treaty in its Defence.” International Institute of Space Law 50 (2007): 10. // LHP PS

**The non-appropriation principle represents the cardinal rule of the space law system.** Since this principle was **incorporated in Article II of the Outer Space Treaty (OST)1 in 1967, first declared in the United Nations General Assembly (UNGA) Resolutions 1721 and 1962 , it has provided guidance and basis for space activities and has contributed to 40 years of peaceful exploration and use of outer space. The importance of the non-appropriation principle stems from the fact that it has prevented outer space from becoming an area of international conflict among States.** **By prohibiting States from obtaining territorial sovereignty rights over outer space or any of its parts, it has avoided the risk that rivalries and tensions could arise in relation to the management of outer space and its resources.** Moreover, **its presence has represented the best guarantee for the realization of one of the fundamental principles of space law, namely the exploration and use of outer space to be carried out for the benefit and in the interest of all States, irrespective of their stage of development.** When in the end of the 1950’s and in the beginning of the 1960’s **States renounced any potential claims of sovereignty over outer space**, indeed, **they agreed to consider it as a res belonging to all mankind, whose utilization and development was to be aimed to encounter not only the needs of the few States involved in space activities but also of all countries irrespective of their degree of development**. If we analyse the status of outer space 40 years after the entry into force of the Outer Space Treaty, **it is possible to affirm that the non-appropriation principle has been successful in allowing the safe and orderly development of space activities**. Nowadays, **however, despite its merits and its undisputable contribution to the success of the system of space law, the non-appropriation principle is the object of direct and indirect attacks.** On one side, there are some legal proposals arguing the need for amending or abolishing it in order to promote the commercial development of outer space4 . In these proposals the non-appropriation principle is considered to be an obstacle to the exploitation of extraterrestrial resources and an anti-economic measure preventing the free-market approach to be applied to outer space. On the other side, **there is day-by-day an increasing number of websites where it is possible to buy acres of the lunar and other celestial bodies’ surface5** . **The enterprises behind these questionable business, which claim to be allowed to carry on such activities by relying on an erroneous interpretation of Article II of the Outer Space Treaty, substantially operate as the non-appropriation principle was not in force.** Indeed, **these enterprises promise to their customers the enjoyment of full property rights over the acquired acres**, thus **acting in flagrant violation of the non-appropriative nature of outer space**. All these **practices are undermining the importance and value of the nonappropriation principle and questioning its leading role in the upcoming commercial era of outer space**. Hence, **the need to protect the non-appropriation principle arises**. This paper aims to fulfil this purpose by proposing a new interpretation of the nonappropriation principle which is based on the idea that **this principle represents a customary rule of international law holding a special character.** Simply stated, this **special character comes from the consideration that the nonappropriative nature of outer space and other celestial bodies is the fundamental concept on which the entire system of space law is based**. **If this concept is applied and properly respected, this system works**; **if not, this system is likely to collapse and to generate unforeseeable consequences.** These factors make the **non-appropriation principle a rule whose legal value and implications are unique not only in the context of space law but also in that of public international law as such.** Hence, I propose an **interpretation of the nonappropriation principle that appropriately expands upon its classic definition in terms of a customary rule and suggest to consider it something more than a usual customary rule but less than a jus cogens norm.** Thus, **having in mind the special characteristics and importance of the non-appropriation principle, the above mentioned theories proposing its abolition or its non-relevance must be rejected.**

### TT

#### The role of the ballot is to test the resolution statement’s truth or falsity – that means voting aff if the resolution is true, and voting neg if it is proven false. To clarify, winning that appropriation is not unjust still affirms – they must win it is just – prefer:

#### 1] Fiat is illusory: Nothing leaves this round other than the result on the ballot which means even if there is a higher purpose, it doesn’t change anything and you should just write whatever is important on the ballot and vote for me. Answering this triggers constitutivism since the win is necessary for your scholarship which means rules inside of the game matter.

**2] Constitutive: The ballot asks you to either vote aff or neg based on the given resolution a) Five dictionaries[[1]](#footnote-1) define to negate as to deny the truth of and affirm[[2]](#footnote-2) as to prove true which means its intrinsic to the nature of the activity**

#### 3] Bindingness: a) all arguments pre-assume that they are true as judges don’t vote an arguments proven false b) in order to win that your ROB is superior to TT you must prove true the claim that your ROB is better than TT.

### Underview

#### 1] The AFF will defend NEG preferences on specificity insofar as it doesn't require me to abandon my maxim. Subsequently, you must propose all interps about my advocacy to guarantee better substantive debates. This also means that you should reevaluate the AC under the interpretation. If there is a problem with the paradigmatic issues set, it would justify dropping them rather than the AFF in its entirety since they are logically a prerequisite to the round.

#### 2] Permissibility Affirms – A) [Unjust](https://dictionary.cambridge.org/us/dictionary/english/unjust) is defined as not morally right, therefore the negative must prove that the resolution is expressly right or good since neutrality means it’s not necessarily right and the aff would win B) Reciprocity – it’s reciprocal since the neg gets exclusive access to T which gives them a 2-1 advantage on the theoretical layer – granting me permissibility solves since I get a 2-1 substantive advantage C] we shouldn’t need proactive justification for things – that means we couldn’t do things like drink water

#### 3] Presumption affirms –

#### A] statements are true till false – if I said my name was Prateek, you would believe me absent evidence to the contrary

#### B] affirming is harder – the 1ar has to answer 7 minutes of offense and hedge against a 6 minute 2nr collapse and empirics, Shah 2-13:

Sachin Shah, [LHP Debater, Attended TOC 2018 and TOC 2019, Broke at TOC 2019, 5 on AP Stats, Computer Science Major, Experience with side bias stats] February 13, 2020, “A Statistical Analysis of Side-Bias on the 2020 January-February Lincoln Douglas Debate Topic by Sachin Shah” <http://nsdupdate.com/2020/a-statistical-analysis-of-side-bias-on-the-2020-january-february-lincoln-douglas-debate-topic-by-sachin-shah/?fbclid=IwAR2P0AZqQtSiwMZlCpia-Fy1zFOdHn6JrGtcYgGulqeimd-V0a1xbaIMYYs> //LHP AV

It is also interesting to look at the trend over multiple topics. In the rounds **from** 142 TOC bid-distributing tournaments (September 20**17** – 20**20** YTD), **the neg**ative **won 52.75%** of ballots (p-value < 0.0001, 95% confidence interval [52.3%, 53.2%]). This suggests **the bias might be structural, and not topic specific, as this data spans nine different topics** [3]. Given a structural advantage for the negative, **the aff**irmative **may be justified** in being granted **a substantive advantage** **to compensate** for the structural skew. This could take various forms **such** **as** granting the affirmative **presumption** ground, tiny **plans**, **or** **framework choice**. Whatever form chosen should be tested to ensure the skew is not unintentionally reversed. Therefore, this analysis confirms that affirming is in fact harder again on the 2020 January-February topic. So, once again, don’t lose the flip!

#### C] Epistemics – we wouldn’t be able to start a strand of reasoning since we’d have to question that reason – means that presuming neg is incoherent because it relies on some presumptive truths.

#### 4] 1ar theory paradigm –

#### A] the aff gets it – otherwise the neg can engage in infinite abuse, making debate impossible

#### B] drop the debater on aff theory because the 1ar is too short to win theory and substance

#### C] no RVIs – the 2nr has enough time and the 2ar needs strategic flexibility

#### D] competing interps – 1ar interps aren’t bidirectional and reasonability incentivizes brute force defensive dumps

#### 5] 1ar theory first –

#### A] Strat skew – short 2AR means I need to collapse to one layer to counter the long 2N collapse

#### B] Epistemic Indict – if the 1N was abusive then my ability to respond was skewed so you can’t truly evaluate the 1nc

#### 6] Yes aff rvi –

#### a] time skew – 4 minute 1ar has to hedge against a 7 minute 1nc and counter a long 6 minute 2n collapse, no rvi make the 1ar virtually impossible and structurally behind on the debate which means we need rvi to be able to collapse to something in the 2ar and win

#### 7] No new 2n args, theory arguments and paradigm issues.

#### a) overloads the 2AR with a massive clarification burden

#### b) it becomes impossible to check NC abuse if you can dump on reasons the shell doesn't matter in the 2n – outweighs on magnitude

#### C) It kills the 2ar since I’d have to answer 6 min of new offense in 3 min.

1. <http://dictionary.reference.com/browse/negate>, <http://www.merriam-webster.com/dictionary/negate>, <http://www.thefreedictionary.com/negate>, <http://www.vocabulary.com/dictionary/negate>, <http://www.oxforddictionaries.com/definition/english/negate> [↑](#footnote-ref-1)
2. *Dictionary.com – maintain as true, Merriam Webster – to say that something is true, Vocabulary.com – to affirm something is to confirm that it is true, Oxford dictionaries – accept the validity of, Thefreedictionary – assert to be true* [↑](#footnote-ref-2)