# 1AC Lexington R5 vs. Oxford VM

## 1ac

### Framework

#### Only constructing ethics from our rational agency can explain the sources of normativity –

#### A] Bindingness – Any obligation must not only tell us what is good, but why we ought to be good or else agents can reject the value of goodness itself. That means ethics must start with what is constitutive of agents since it traces obligations to features that are intrinsic to being an agent – as an agent you must follow certain rules. Only practical agency is constitutive since agents can use rationality to decide against other values but the act of deciding to reject practical agency engages in it.

#### B] Action theory – every moral analysis requires an action to evaluate, but actions are infinitely divisible into smaller meaningless movements. The act of stealing can be reduced to going to a house, entering, grabbing things, and leaving, all of which are distinct actions without moral value. Only the practical decision to steal ties these actions together to give them any moral value.

#### That justifies a system of mutual recognition.

#### A] Sensibility – humans are also conditioned by the world around them – this sensibility culminates in a relationality to other subjects, Gobsch 14:

Wolfram Gobsch, “The Idea of an Ethical Community,” 2014 //LHP AV

1.2 THE ANIMALITY OF A HUMAN BEING: RELATIONALITY **To act as a human being is to actualize pure reason**, if all goes well. **But** **no human** being **is pure reason**. **Human beings are rational animals. So they are animals, sensible organisms, too**. **Sensibility is a receptive capacity of representation: a capacity to represent objects through being affected by them**. **Affection happens at a time and a place.** **So sensible organisms are spatiotemporal beings**. And affection depends on the existence of its object. **So sensibility is a capacity whose actualiza- tion has conditions the satisfaction of which cannot be the work of this capacity itself. Therefore, sensibility is limited by whatever else satisfies these conditions**. And so it is a particular capacity, a capacity with a specific form. **But if a capacity of representation is limited and particular, then its object**—the content of its act in general—**must be limited and particular, too**: its object cannot be that which is, simply as such. **It is for this reason that sensibility differs infinitely from reason, the unconditioned capacity, and that no sensible organism can be pure reason, so that the definition of a human being unites reason and sensibility as two distinct determinations**. To exist as **an animal** is, typically, to be **engaged in sensible activity**.11 **So although human beings exist**, if all goes well, **through** actualizing pure **reason**, **sen- sibility will have to play a role** in their rational practical activity. A merely pruden- tially rational animal, should such a thing be possible at all, would be determined to act by sensible desire. **Reason would merely serve to direct it toward happiness. In a human being, however, reason is, if all goes well, of itself practical.** **And so the role of sensible desire cannot be that of the determinant, the motor, of human practical activity.** As the activity of a rational animal, human activity, too, is ori- ented toward happiness. **But the subjective principles of a human being’s practical activity, principles which, as such, determine the manner in which its orientation toward happiness becomes practical, are acts of free choice**: acts of a capacity to “be determined to actions by pure will,”12 maxims, as Kant calls them. As conditioned by the moral law, such maxims presuppose their subject’s acknowledgment of her own happiness as prima facie good: as to be pursued at all in the activity of pure reason.13 In this acknowledgment, **a human being constitutes herself as a person: as individualized pure reason, as a particular manifestation of the moral law**. Through her maxims, a person, a human being as a particular manifestation of pure reason, determines the character of her pursuit of happiness. And **so it is in her maxims, her acts of free choice**, **a human being rationally displays her sensible nature: the individuality and finitude that make her an animal**. To **exist as a human being is, typically, to engage in the activity of free choice. In this activity, reason is employed theoretically, and most importantly it is of itself practical**, if all goes well. Reason is the capacity to explain why a thing is deter- mined the way it is in accordance with the laws that relate it to the activities of 182 all other things. **But the law of pure practical reason is law in virtue of no other. So in her activity of free choice, a human being is necessarily out to validate this law’s supreme reign in the world.** That is to say that, should there be a plurality of laws, she is necessarily out to realize the moral law as the supreme principle of all the laws. Now, there is, in fact, more than one human being. And **every human being is a person, a particular manifestation of the moral law.** On the one hand this means that **the particularity of a human being’s existence cannot be deduced from the moral law;** and on the other it means that, as a manifestation of the law of pure reason, **the reign of the moral law consists in every human being’s existence. Taken together, this implies that every human being constitutes a particular law in her own right**: a law necessarily to be considered in the activity of validating the moral law’s supremacy in the world. So on condition of **the fact of a multiplicity of human beings, every human being is, in her activity of free choice, out to be related to every other human being as a person**. And this is to say that, **because there is more than one human being, the activity of free choice is an activity in which everyone is out to be related to every other human being as bestowed with an unconditioned worth** that is none other than the very supremacy of the moral law itself. So, **in the light of human plurality, the reign of the moral law amounts to nothing less than the rule of unconditioned, universal human right**. Because there is more than one human being, **every human being is**, in her activity of free choice, if all goes well, **related to every other human being as a sub- ject of free choice**: as one person toward another.14 But this is to say that **the notion of relationality**, the second of the two sides of the idea of an ethical community, does **indeed bring into view an essential aspect of the practical activity character- istic of human beings: the personhood in which a human being rationally displays her particularity, her sensible nature: the individuality and finitude that make her an animal.**

#### B] Reason and freedom must exist in practice rather than only theory, or it cannot be stated that the subject is free. Freedom must be noumenal or uncaused by the laws of nature, but humans are phenomenal and subject to these laws and external interference meaning ensuring abstract rights materially is necessary for freedom. Since we are phenomenal and unavoidably change through life, our perception of the world is constantly in flux meaning there is no absolute truth for what rights we create, but they can only be recognized through intersubjectivity. Schroeder 05:

Schroeder, Jeanne L. "Unnatural rights: Hegel and intellectual property." U. Miami L. Rev. 60 (2005): 453.

In this section I will address three common mis-readings of Hegel's personality theory that might lead to the incorrect conclusion that logic dictates that society recognize intellectual property. First, I show that Hegel believes that there are no natural rights of any sort, let alone natu- ral property rights. Second, I address the closely related point that Hegel rejects a first-occupation justification of property rights. Third, I show that intellectual property has no privileged place in personality theory. For simplicity, I stated that Hegel started his analysis by contin- gently adopting the notion of the free individual in the state of nature. I now more carefully explain my terminology as we consider Hegel's the- ory of the relationship between freedom and nature. Hegel thought that the freedom of the autonomous individual in the "state of nature" was only potential. Hegel argued not merely that the individual must leave the state of nature and go out into the real world if he is to make his freedom actual as a matter of fact. He also believed that the individual is driven by a passionate desire to do so. A complete discussion as to why the individual would desire to leave this uterine state of ignorant bliss is beyond the scope of this Arti- cle. Suffice it to say, it relates to one of the fundamental points of Hegel's idealism and theism. Hegel's idealism should not be confused with a vulgar neo-Platonic concept of an ideal world "out there" beyond the imperfect physical world. Such a notion is more reminiscent of the Kantian notion of an unknowable, intellectual, necessary, eternal, and transcendent world of essences called the noumenon or "thing-in-itself' beyond the contingent, empirical, temporary, and immanent world of appearance that can be known by experience (the phenomena). Hegel's metaphysics is an extended critique of Kant's. **Hegel rejects all concepts of transcendence**. 9 8 **There is no essence beyond appearance.** 99 Essence only exists insofar as it appears. 1" Or more rad- ically, essence is nothing but appearance properly understood. Hegel's is a radically materialistic philosophy, 01 but not an atheistic one. None- theless, Hegel's God, or Spirit, is not transcendent, but immanent in the material world. Why this is significant for our purposes is that **it follows from Hegel's rejection of transcendence that there can be no potentiality with- out actuality-what claims to be potential must become actual or reveal itself a liar**. Actually, the theory is even more radical than this. As I have argued elsewhere,102 Hegel's logic is retroactive, not prospective. **Potentiality is only retroactively revealed after something becomes actual.** **Consequently, if the autonomous individual in the state of nature claims to be free, and if this radically negative freedom is only potential, then the individual's claims to freedom can only be retroactively tested after he leaves the state of nature and makes his freedom affirmative and actual**. 103 Another way of saying this is that the liberal "state of nature" is not natural at all. Rather, it is a logically "necessary" hypothesis that is retroactively posited by the fact that we occasionally observe actualized freedom in modern constitutional states. As such, the "state of nature" is actually created by human thought. To Hegel, like Kant, real "nature" is the empirical, mechanical world governed by the causal laws of neces- sity where there is no freedom. Any freedoms and rights derived from the liberal conception of the hypothetical "state of nature" by definition cannot literally be natural. 2. NATURE AND RIGHTS Hegel sharply distinguishes between natural and positive law, and locates rights within the latter. He states, "[t]here are two kinds of laws, laws of nature and laws of right: the laws of nature are simply there and are valid as they stand ....The laws of right are something laiddown, something derivedfrom human beings."'" The liberal "state of nature" is, in fact, the hypothesis that autonomous individuality is a necessary, albeit inadequate, moment of human personality that we retroactively posit to understand political freedom. If so, what is the status of "nature" and its relationship to rights and freedom? Once again, I do not pretend to give a comprehensive account of Hegel's philosophy of nature, but will point out one aspect relevant to this Article. The first thing to note is to reiterate the simple point that there can be no "rights" in the hypothetical state of nature because the "state of nature" is defined as autonomy. Rights are necessarily interrelational. Hegel's point is more subtle and powerful than this, however. More specifically, there is no freedom in the empirical natural world. This can probably best be explained by going back to Kant's famous analysis of antinornies presented in his CritiqueofPureReason."5 An antimony is a logical paradox, or two statements that seem to be equally logically required yet are in contradiction. To say they are in contradiction means not merely that they are mutually inconsistent, but that they are the only logically possible alternatives. This suggests not merely that if one statement is true then the other must be false, but also that if one statement is proven to be false, the other is proven to be true. 0 6 For reasons that do not concern us here, Kant identifies four antinomies that he divides into two dyads: two "mathematical" antino- mies and two "dynamical" antinomies. He claims to solve the two mathematical antinomies by showing that neither statement is true because there is a heretofore unrealized third alternative that may be true. 10 7 He claims to solve the two dynamic antinomies by arguing that both statements are true, but that their contradiction is merely apparent so that, in fact, they can be reconciled.108 It is Kant's third antinomy of freedom and nature that concerns us. The thesis of Kant's first antinomy is that freedom can exist in the world.10 9 Kant is referring to negative freedom as the uncaused cause- the potential for pure spontaneity, action beyond necessity. Like all of Kant's theses, this is a dogmatic proposition posited by reason alone. 1 0 Its antithesis is that everything is subjected to the causal laws of nature-there are no uncaused causes and, therefore, no freedom.' Like all of Kant's antitheses, this is an empirical proposition reached by applying logic to our experience of the world.1 1 2 As this is a dynamic antinomy, Kant must solve this paradox by arguing that the contradiction between the two propositions is only apparent. If they are properly understood, then they can be reconciled. Kant argues that both propositions are true, but about different aspects of the world. Kant relies on his distinction between the phenomenal, or empirical, contingent, changing world of appearance that we can know from experience, and the noumenal, or transcendental, necessary, eternal world of essences, or the "thing-in-itself' which we do not know directly, but can infer through logic.113 **It is true, Kant states, that the entire phenomenal world is natural and therefore subject to the laws of nature-i.e., everything empirical is caused.1 14 It is also true, however, that freedom exists in the transcendental, non-empirical world of the noumena.15 Indeed, these conclusions follow from his definitions of phenomena and noumena. 11 6** If **a "noumenon" were caused by some- thing else, then it would be contingent on that other thing and, therefore, not a noumenon. Conversely, if a "phenomenon" were free of an exter- nal cause, then it would not be a mere phenomenon, but a noumenon. The question that this analysis proposes is, if freedom is noumenal, can it manifest itself in the phenomenal world, or is merely a theoretical construct?**1 7 To put this in Kant's idiosyncratic terminology, is free- dom "practical?" ' 1 8 By extension, one might ask, since each individual human being is embodied and, therefore, phenomenal,119 can man achieve freedom? In the Critique of Pure Reason, **Kant claims to show that freedom is at least theoretically possible in the phenomenal world. He argues that although all phenomena are caused by something else, the cause need not itself be phenomenal.** A phenomenon can be caused by a nou- menon. 2 ° **Because noumena are free (uncaused), their free acts can appear in the world through the phenomena they cause. Although each individual human being is phenomenal, man's essence (his spirit or soul, his status as the liberal, autonomous individual) is noumenal and there- fore free.**12' This implies that it is at least theoretically possible that the noumenal aspect of man can actualize his freedom by causing his phe- nomenal self to act. In the Critiqueof PracticalReason, Kant tries to prove not merely that practical reason is theoretically possible but that we have good reason to think it exists. There are as many problems raised in this analysis as are solved. Even ardent Kantians are somewhat embarrassed by it.'2 2 Hegel called Kant's argument "a whole nest... of faulty procedure." 123 My simpli- fied account is not an attempt to develop a comprehensive critique of Kant. My limited point is that, as I have argued elsewhere, 24 much of Hegel's speculative logical method can be seen as being inspired by Kant's idea of antinomy. I characterize **Hegel's complaint against Kant as an accusation that Kant does not have the courage of his own convictions and is afraid to follow his insights to their logical extremes.** Hegel, in effect, criticizes Kant for thinking that there were only four antinomies. Rather, Hegel's entire universe is constituted by a fundamental, essential contradic- tion.125 Further, Hegel criticizes Kant for thinking that contradiction is a problem that must be "solved." Contradiction "is not to be taken merely as an abnormality which only occurs here and there, but is rather the negative as determined in the sphere of essence, the principle of all self- movement . "..."126 In other words, **contradiction is a universal fact about the world. It is correct that contradictions are unstable and must be resolved, but each resolution is temporary and leads to a new contra- diction ad infinitum. Far from being frightening or disturbing, this merely means that the universe is dynamic, not static. Contradiction is the engine of change.** This means that Hegel rejects the Kantian noume- nal-phenomenal distinction. **To Hegel, there can be no necessary, perma- nent, unchanging essence (noumenon) behind the contingent, temporary, empirical world of appearances that is in a constant state of flux**. To Hegel, it is appearance all the way down. Finally Hegel's sublative logic can be seen as a rejection of Kant's specific claims to have solved his four antinomies by assuming that he had to show either that both sides were true, but not in contradiction, or that both the thesis and antithesis were false because there is a third alternative. In contrast, through sublation (the standard but poor English translation of Hegel's term for the logical method of resolving contradic- tion) one realizes that both sides are simultaneously equally true and false, thereby generating a third alternative that simultaneously negates 127 Regardless of these differences between Hegel and Kant, I believe that the Philosophy of Right can be seen as Hegel's struggle to come to grips with the specific contradiction that Kant identifies in the third antinomy: freedom v. causality. In his analysis, **Hegel accepts Kant's proposition drawn from experience that all nature is subject to natural laws of causation.** This means that nature is fundamentally unfree and implies that actual (practical) freedom must be unnatural by definition. **Yet on the other hand, Hegel also begins his analysis by contingently accepting Kant's presupposition that the most basic notion of human personality is self-consciousness as free will.** Hegel seeks to prove this presupposition (that freedom is possible) by finding that freedom actu- ally exists in the phenomenal world. Because Hegel rejected transcendence, he could not adopt Kant's proposed answer to this problem: freedom is noumenal, but noumena can cause phenomena. To Hegel, Kant's proposal answered nothing. According to Kant's own theory, we can know nothing about the nou- menon. Consequently, Kant's proposition is equivalent to saying that we can know nothing about freedom. Hegel was, in effect, responding to Kant: "You are being inconsistent. Your philosophical writings show that you know a lot about freedom. By your definitions, therefore, free- dom must be actual." Hegel's counterproposal was that **actual freedom is not natural but artificial: a human creation, created out of natural materials. Legal sub- jectivity (as well as higher stages of personhood) is, therefore, not a natural state but a hard-won achievement.** The story of the development of human consciousness, to Hegel, was the struggle of man to free him- self from and overcome his natural limitations. "Hence the personality of the will stands in opposition to nature as subjective.... Personality is that which acts to overcome [] this limitation and to give itself reality .... "128 **Abstract rights are, therefore, the first most primitive step in man's attempt to actualize his freedom, understood as the overcoming of nature**. The basis [] of right is the realm of spirit in general and its precise location and point of departure is the will; the will is free, so that freedom constitutes its substance and destiny [] and the system of right is the realm of actualized freedom, the world of spirit produced 1 29 **Rights are, therefore, not merely unnatural in the sense of artificial (man made), they are a means by which man distinguishes himself from nature. 130**

#### Thus, the standard is consistency with materializing abstract right.

#### Impact calc – 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)

#### Prefer –

#### 1] Otherization: Only systems of recognition acknowledge the unique moral perspective of each agent—other theories are epistemologically incoherent because they can’t account for moral interactions and different moral motivations.

Haase 14 [Matthias Haase, (University of Chicago) "Am I You?" Philosophical Explorations 17 (3):358-371, 2014, https://philpapers.org/rec/HAA-6, DOA:2-28-2019 // WWBW]

Each of these renderings of the distinction reason and sensibility within the subject leads to its own specific problems. But the crucial difficulty, it seems to me, applies to all of them. With respect to the relation between reason and sensibility, Aristotle grants that one might speak of a “sort of justice”. But in the very sentence in which this way of talking is allowed, there are two clauses that restrict its significance. We are told that this is only “by similarity and transference” – that is, this is not a literal use of the word “justice”. Furthermore, it is said that this is not a proper relation between equals, as true justice would require, but rather a relation between “ruler and ruled” (see Aristotle 1999, 1138b6-9). **Reason and sensibility are related to each other as the one who commands** 10 **and the one who obeys. Mutual recognition as free and equal is not a possibility for them.** So if it is to be a possibility for you and me, then the nexus between us cannot exhibit the same form as those alleged second-personal relations within each of us. Kant is aware of the difficulty. When it comes to the concept of right, he agrees with Aristotle’s point: it describes a nexus into which one cannot enter by oneself; there has to be an actual second person. The first condition of Kant’s definition of right is that it has to do “only with the external and indeed practical relation of one person to another” (6:230). Still, one might think that the notion of right, and the idea of reciprocity it entails, can be accounted for in terms of the contrast between “internal” and “external hindrances” to one and the same form of autonomous activity or self-legislation. However, the difficulty is this. The idea of X having a right against Y that she does not F requires the intelligibility of the scenario in which X stops Y’s F-ing directly through a protest of the form, “You can’t F; this is my ... ”, such that Y refrains from F-ing because she recognizes X’s demand addressed to her.17 This requires that in refraining from F-ing Yacts from the very demand that X makes on her and that Y would express with the sentence “I can’t F; this is your ... ”. In this case, the relation between X and Y includes, as one might put it, their thinking towards each other through its terms. Given the accounts discussed so far, this will seem impossible. When the second pronoun is reduced to a linguistic phenomenon and analyzed in third-personal terms, as Heck proposes, then it follows that Y has to form an intention in the face of what X says. In consequence, X’s demand can only be a fact on which Y acts and never the perspective from which she acts.18 If, on the other hand, the second-person pronoun is internalized, as Korsgaard suggests, then there is no space any more for the other in this perspective. **For the claim was that the recognition of a practical necessity is represented in the second-personal perspective by addressing an imperative to oneself. And that is supposed to be the perspective from which one acts. So in the present scenario, Y would have to say (or think) to herself: “You can’t F ... ” Now it is impossible for her to represent, within the same act, the other – the source of this necessity – second personally.** As this demand is not addressed to X, she has to deploy the third person for the second half of the statement: “because it is his ... ” **So what she ultimately acts from is not the demand X made on her, but a posture of mind that is, as it were, turned away from him. Accordingly, it will not be true to say that X’s protest stopped her directly; it will be just a fact on which she acts.** The puzzle would dissolve if we were to make space for what Reid calls “social operations of mind”. **By contrast to their “solitary” correlates, they require, as acts of mind, the “intercourse with some other intelligent being who bears a part in them”. And whereas the former can be “complete without being expressed”, in the case of the latter “the expression is essential”. That is to say, when one performs an act of this kind, the fact in the world, the representing act of mind and its material expression are one reality.** As Reid points out, this entails that the relevant act of mind depends for its very existence on the other’s uptake: it “cannot exist [ ... ] without being known to the other” (2010, 330). **Conceived in this way, the act of address is a relation between two individuals that only holds insofar as the poles of the relation think towards one another in its terms. Accordingly, the second-personal act of mind is, literally, an act for two: my addressing you is only real through your addressing me in return.** The notion of a person elucidated by appeal to such acts is what Fichte calls a “reciprocal concept” (Fichte 2000, 45): one only falls under it by addressing one another through it. This would not be to deny that having, say, learned to play Chess with a partner, I can reenact this kind of transaction on my own: by switching between two roles. This might be a very useful training. Still, it will not be competition with myself. It is derivative of and dependent on the real game played with another and points to it at all times. **Against this background, one might arrive at a reading of the Socratic formula about thinking that is, as it were, the reverse of the one Korsgaard puts forward. According to this alternative reading, thinking is indeed the mind talking to itself. But this inner dialogue is derivative of and dependent on actual communication with others. Once I have been in conversation with you, I can, as it were, reenact such exchange in soliloquy. Still, when I do so, this does not involve the imparting of knowledge that gives sense to the very idea of asking and answering questions. So too on the practical side of things, once I stand in relations of mutual recognition to others, I can, as it were, see myself through their eyes and, if you will, even adopt the standpoint of a representative member of the “moral community” towards myself.** Still, in doing so I am not claiming rights against myself. That is for you to do.

#### 2] Through mutual recognition in spite of differences, we can rupture systems of power – the Haitian slave revolt proves, Buck-Morss 05:

Susan Buck-Morss, March 1, 2005, “Hegel, Haiti, and Universal History” //LHP AV

**African Lemba was ritual expiation**. It assuaged the guilty con- science of wealthy traders and mitigated the jealousies of the un- successful, preventing the region’s social fabric from being totally destroyed by the Euro-Atlantic trade. If, as Janzen and others argue, striking continuities can be discerned between Lemba practices in Old World and New, then there were radical discontinuities in their historical roles. African Lemba produced the miseries that New World slaves endured. **The task of reconciliation among the slaves shipped to Saint-Domingue, hardly an issue of redistributing wealth, con- cerned building fraternal alliances of trust among former enemies of war and among persons massed together in labor gangs who had no common background and little understanding of each other, indeed, they may not have known of each other’s cultural existence before the crossing**. If vèvès and altar arrangements in Haitian Vodou temples repli- cate in miniature the cosmograms paced out by Lemba members on African meadows, if the names of the Dahomean divinities reap- pears in the dominant Rada cult of Vodou loa, in short, if the words and the structure of cultural language remained, **what was said in this language in response to historical events was totally new.127 This is nowhere more obvious than in the case of the secret societies of war- riors that are said to have played a part in the Haitian Revolution.**128 Warrior societies existed in Kongo, in Dahomey, and elsewhere in Africa, but their purpose was never to initiate an event of slave insurrection. On the contrary: “The slave trade intensi0ed the Dahomean warrior way of life,” because prisoners of war were sold to the traders.129 None **of Vodou’s precedents in Africa ever con- ceived of eliminating the institutional arrangement of master and slave altogether. No European nation did either. The radical anti- slavery articulated in Saint-Domingue was politically unprecedented**. The de0nition of universal history that begins to emerge here is this: **rather than giving multiple, distinct cultures equal due, whereby people are recognized as part of humanity indirectly through the mediation of collective cultural identities, human universality emerges in the historical event at the point of rupture.** **It is in the discontinuities of history that people whose culture has been strained to the breaking point give expression to a humanity that goes be- yond cultural limits.** **And it is in our empathic identi0cation with this raw, free, and vulnerable state, that we have a chance of under- standing what they say**. **Common humanity exists in spite of culture and its diferences**. A **person’s nonidentity with the collective allows for subterranean solidarities that have a chance of appealing to uni- versal, moral sentiment, the source today of enthusiasm and hope. It is not through culture, but through the threat of culture’s betrayal that consciousness of a common humanity comes to be**.

### Contention

#### I affirm the resolution. Resolved: The appropriation of outer space by private entities is unjust. I’ll defend implementation, but it’s not relevant to the aff framework.

#### For a property claim to be legitimate, it requires mutual recognition and a common will, which subjects are rationally compelled to pursue, Chitty 13:

Chitty, Andrew (2013) Recognition and property in Hegel and the early Marx. Ethical Theory and Moral Practice, 16 (4). pp. 685-697. ISSN 1386-2820 //LHP AV

**However this ‘declared willing’ that I** be able to **do whatever I choose** with a thing **is not yet sufficient to genuinely objectify my freedom** in the thing, **or to fully make it my property** in Hegel’s philosophical sense. For **it is one thing for others to be aware** of this willing, **but another for those others to conform** their own willing to it. It is only in so far as they do the latter, and so will not to interfere with the thing, that the thing really gains the status of something with which I can do anything I choose. **This must be what Hegel has in mind by saying that for a thing to be** fully my **property**, or for me to fully objectify my freedom in it, **my will must exist for the will, as opposed to simply the cognition, of the other**: **Existence** [das Dasein], as determinate being, **is** **essentially being for another** [...] **Property**, in that it is something that exists as an external thing, **is for other external things and in the context of their necessity and contingency.** **But as the existence of the will, it is for another only as for the will of another person.** **This relation of will to will is the distinctive and true ground in which freedom has existence. This mediation, whereby I no longer have property by means of a thing and my subjective will, but also by means of another will, and thereby in a common will, constitutes the sphere of contract**. (PR §71) **Here** the idea of **recognition** **enters Hegel’s account of property**. **For to say that my will has an existence (**Dasein) for the will of another **is** in effect **to say that the other recognises my will in some way**, as we have defined that term. **Specifically**, what Hegel must have in mind is not only that the other is aware of (or identifies) my will that I be able to do whatever I choose with a thing as such a will, but that the other thereby becomes disposed to act in accord with my will, or conforms its will to mine, so that **the two wills form,** as he says, **a ‘common will’** with regard to the thing. So Hegel has argued that I **can only objectify my freedom as a person in a thing by establishing a relation with others** in which I declare to them my will that I be able to do whatever I choose with the thing, and they are aware of my will and are thereby disposed to act in accord with it; or, as I shall put it from now on, in which I claim, and others recognise, the thing as ‘mine’. **Since to claim or recognise a thing as ‘mine’** (as such that I can do whatever I choose with it) is tantamount to claiming or recognising it as my property in the everyday sense of the term (as such that I am entitled, in some sense, to do whatever I choose with it), Hegel has in effect argued that I **can make a thing my property in his philosophical sense only by claiming it, and getting it recognised by others**, as my property in the everyday sense and in fact as my private property, for Hegel takes it for granted that in so far as a thing is ‘mine’ it cannot be ‘another’s’ (PR §§46, 50). **This immediately raises the question of why others should recognise as ‘mine’ the thing that I claim as ‘mine’,** in other words why in virtue of being aware of my will that it be ‘mine’ they should conform their own will to this will. **I may need others to do this in order for me to objectify my freedom, but why should they be interested** in whether I objectify my freedom**?** **Hegel’s answer must be that persons are from the start self-conscious subjects who have been rationally compelled to engage in mutual recognition** as free, and to recognise each other as free includes being disposed to ‘treat’ each other as free. I suggest that **for Hegel to treat another as free one must act in accord with the will of the other in so far as the content of that will is rationally necessitated by the other’s status as free**. But as we have seen the status of being free gives rise with rational necessity to a will to objectify that freedom. So **recognising another as free must include being disposed to act in accord with the other’s will to objectify its freedom**. At the present stage, where self-conscious subjects conceive themselves as persons, or possessors of abstract freedom, **the rational compulsion to recognise each other as free takes the form of a compulsion to recognise each other as persons,** or as abstractly free. Hence the commandment ‘be a person and respect others as persons’, which Hegel introduces immediately after defining a person (PR §36). So this recognition will include a disposition to act in accord with the other's rationally necessitated will to objectify its abstract freedom. But my claiming a thing as ‘mine’ is the expression of my rationally necessitated will to objectify my abstract freedom. Therefore **in virtue of recognising me as a person others must recognise as ‘mine’ what I claim as ‘mine’.**

#### That affirms –

#### 1] there is no state in space, which means private appropriation is unjust

#### A] Persons absent state sovereignty make universal judgements that impose coercive judgements on others,

Stilz 1 (Anna Stilz, Anna Stilz is Laurance S. Rockefeller Professor of Politics and the University Center for Human Values. Her research focuses on questions of political membership, authority and political obligation, nationalism and self-determination, rights to land and territory, and collective agency. , 2009, accessed on 12-18-2021, Muse.jhu, "Project MUSE - Liberal Loyalty", https://muse.jhu.edu/book/30179)//phs st

It might seem, then, that Kant, like Simmons, would hold that although our acquired rights are initially indefinite, our private acts of appropria- tion in a state of nature can function to more clearly delimit their contours. Once I appropriate an external object—for example, my piece of land in the state of nature—the boundaries of my right to external freedom might simply be equivalent to those of the things and spaces that I have appropriated. If this were so, then individuals could succeed in more precisely defining property without the help of the state, and simply by coordinating expectations based on their private acts. In order to respect and acknowledge my external freedom, on this view, you would just have to cede me the spot I have rightfully occupied and to refrain from infringing on my choices within that sphere. Yet Kant does not take this position: he argues that the rights made possible by the postulate of practical reason are problematic. Whatever rights our private acts of appropriation outside the state confer upon us can only be understood as provisional rights, that is, they are not conclusive and settled (peremp- torische): indeed, for him, “It is possible to have something external as one’s own only in a rightful condition, giving laws publicly, that is, a civil condition” (MM, 6:255). What is the problem with these private methods of defining our rights to property? Why are they so unsatisfactory, from Kant’s perspective? The essential problem with acquiring property rights in a state of nature, for Kant, seems to be that we cannot unilaterally—through private will— impose a new obligation on other persons to respect our property that they would not otherwise have had.30 “By my unilateral choice I cannot bind another to refrain from using a thing, an obligation he would not otherwise have; hence I can do this only through the united choice of all who possess it in common” (MM, 6:261).31 Even claiming to interpret the a priori general will on another person’s behalf, says Kant, is at- tempting to impose a law on them on my own private authority, since every act of appropriation is “the giving of a law that holds for everyone” (MM, 6:253).32 And he worries that this claim to private authority over others is a potential source of injustice: “Now when someone makes ar- rangements about another, it is always possible for him to do the other wrong; but he can never do wrong in what he decides upon with regard to himself (for volenti non fit inuria)” (MM, 6:314). My will to appro- priate, in the belief that my appropriation is justifiable to others, cannot yet serve as a (coercive) law for everyone else, because it cannot put them under an obligation. Kant suggests, in other words, that figuring out how to carve up shares of the external world consistently with everyone’s freedom does not ex- haust the entire problem of justice involved in acquiring rights to prop- erty. We might appeal to criteria of salience or convention to help coordi- nate our expectations on which of the many possible property distributions to choose. But we face an additional difficulty: how do we impose one of these distributions without at the same time arrogating to ourselves the private authority to lay down the law for an equally free being, one who has an innate right not to be constrained by our private will? In coercing someone to respect our view of our property rights, we are also necessarily claiming the right to impose our private will upon that person. If it is to really respect everyone’s freedom, Kant thinks, a property distribution cannot be unilaterally imposed in this way. This additional dimension of the problem of justly acquiring rights— the problem of unilateral imposition—is rooted in each person’s basic “right to do what seems right and good to him and not to be dependent upon another’s opinion about this” (MM, 6:312). This right to do what seems right and good to him derives from the moral equality of persons: no one has an innate right to decide in another person’s behalf. And be- cause each person is an equally authoritative judge, it is therefore impossi- ble—in a state of nature—to put [them] under an obligation of justice that [they] himself does not recognize. The will of all others except for himself, which proposes to put him under obligation to give up a certain possession, is merely unilateral, and hence has as little lawful force in denying him possession as he has in asserting it (since this can be found only in a general will). (MM, 6:257) In conditions of equal authority—such as those that exist in any state of nature—one is obligated only by what one recognizes, by one’s own lights, as an objectively valid requirement of justice. For that reason, no other person’s merely unilateral will can bind one in the face of one’s own disagreement. Kant concludes from this that “no particular will can be legislative for the commonwealth” (TP, 8:295), since no private person’s will can effec- tively claim to impose an obligation on others. Instead, Kant says that “all right,” that is to say all claims that impose binding duties on others, “depends on laws” (TP, 8:294). Law overcomes the problem of unilater- alism inherent in imposing new obligations on others on one’s own au- thority, by substituting an omnilateral will in place of a unilateral one: “Only the concurring and united will of all, insofar as each decides the same thing for all, and all for each, and so only the general united will of the people, can be legislative” (MM, 6:314). But why is law—imposed from a public perspective—consistent with everyone’s freedom in a way that particular wills—based on our private judgments—are not? Fundamentally, Kant argues that defining and enforcing both our rights over our bodies and our rights to external objects through public and nonarbitrary laws is the only way to secure ourselves against the coercive interference of other private persons in our affairs. For Kant, then, the only sort of property distribution to which we could all hypothetically consent must necessarily be one that is defined and enforced by the state, since all privately enforced distributions have the inevitable side-effect of subjecting us to the wills of others. To show this in more detail, Kant points out two different ways that unilateral private enforcement under- mines our right to independence: first, through unilateral interpretation— a particularly pervasive problem in the enforcement of property rights, since these rights are fully conventional in a way our rights over our bod- ies are not; and second, through unilateral coercion, which threatens in- terference by others in all our rights, both our rights over our bodies and our rights over external things.

#### B] In the state of nature, everyone is an equal arbitrator of justice – that makes rights violations impossible to resolve.

Stilz 2 (Anna Stilz, Anna Stilz is Laurance S. Rockefeller Professor of Politics and the University Center for Human Values. Her research focuses on questions of political membership, authority and political obligation, nationalism and self-determination, rights to land and territory, and collective agency. , 2009, accessed on 12-18-2021, Muse.jhu, "Project MUSE - Liberal Loyalty", https://muse.jhu.edu/book/30179)//phs st

The Problem of Unilateral Interpretation Kant centrally appeals to the idea that to conclusively possess a right, it must be an objective right, rather than a subjective right based on one individual’s private interpretation of what justice requires. A subjective right is an individual’s good-faith belief about his rights: this belief gives him title to coerce others to keep off his property or to allow him bodily inviolability. But it does not yet place other people under a correlative duty. That would be so only if all individuals shared [their] interpretation of justice. But since individuals are equally authoritative judges in the state of nature, whenever they do not share another person’s belief about jus- tice, his belief imposes no duty on them at all. Instead, they are obliged only by the duties imposed by their own good-faith interpretation of jus- tice, which may not be concordant with his. It might be said, by someone of a more Lockean persuasion, that one of these competing interpreta- tions is the one that simply is valid as a matter of moral fact. That may be so. But as long as we remain in a state of nature, even this true view of right must remain unrealized, since each person, being an equally au- thoritative judge, has a right to enforce [their] own interpretation of justice, which means the true view of right places the person under no duties when it does not correspond with the person’s own. So as long as we remain our own judges and self-enforcers, there is no means by which we might establish which interpretation of right is morally valid without claiming the authority to serve as judge in another person’s behalf and forcibly subject the person to our will. And to claim that authority over someone else, Kant thinks, is refuse to recognize a person’s independence as an equally free being. For this reason, Kant thinks a procedure for the determination of objec- tive rights is a constitutive feature of justice, since a common process of adjudication is logically necessary if anyone’s rights are to impose any objective duties on other people.33 Objective rights are rights that are de- termined through such a process of adjudication, and that impose recog- nizable duties on us even when we disagree about what justice requires. If each person is threatened with violence every time another person’s private interpretation of justice disagrees with her own, [they] cannot possi- bly enjoy a secure sphere of freedom, since this other person is able to interfere with it whenever he sees fit. Instead, it is a constitutive part of justice that there be one univocal interpretation of the rights and duties to which everyone is subject, because only then can people securely enjoy independence from each other. Part of what justice demands, then, is a mechanism by which people can have their rights guaranteed in the exter- nal world without depending on the concordance of other people’s beliefs. Justice cannot be attained in the absence of such a procedure: only once it is in place are we fully independent of interference by other people, as we have an innate claim to be. To see how the unilateralism of interpretation undermines indepen- dence, imagine for a moment that you and I are state-of-nature neighbors. Say we have managed to resolve the indeterminacy of our property rights somewhat, perhaps by appropriating only in accordance with our inter- pretation of Kant’s a priori general will, or by coordinating our expecta- tions based on the most salient just system. So we have hit on some right- ful boundary that sets off your property from mine, such that if I desire to live side by side with you in peace, simply by respecting your basic rights, I ought to be able to do so. Let’s call our initial “property-owning” equilibrium E1. Now suppose some dispute arises between us over whether your prop- erty right has in fact been infringed. Perhaps I have built a huge garage in my area, which blocks the sunlight to your property and makes your gar- den unusable. Any number of examples are possible; what unites them all is that they represent new contingencies, the disposition of which is going to be indefinite enough according to whatever original criterion of appro- priation we are working with to make it likely parties acting in good faith might disagree. In our state-of-nature system, however, the interpretation of what right actually requires in this contingency is left up to you, along with the choice of whether or not to exercise your coercive rights to re- dress any (perceived) violation. So let’s say that you decide my garage is a violation of your acquired rights, since it makes your entire garden unusable, and so you cross our boundary in order to prevent me from blocking the light and to exact compensation from me. If I do not agree with your interpretation of your rights, I am under no obligation to submit to you: I am an equally authori- tative interpreter of justice. I may object to the rightfulness of your bound- ary-crossing in this case, or, even if I concede that you had a right to exact punishment, I may (in all good faith) think that you have exceeded the bounds of the compensation you are entitled to. So I may struggle against you, and regard myself as doing so rightfully. In this situation we both regard ourselves as having a claim of justice, and since we both act in good faith, we act with full subjective right. But in our state of nature, the only thing that can decide the matter between us is a contest of strength, since both sides are equally right from their point of view. As Jeremy Waldron puts it: there is an affront to the idea of justice when force is used by opposing sides, confrontationally and contradictorily, in justice’s name. The point of using force in the name of justice is to assure people of that to which they are entitled. But if force is being used to further contradic- tory ends, then its connection with assurance is ruptured.3 Let’s say that in this case you are the stronger, and that you succeed in demolishing my garage and in exacting what you regard as rightful com- pensation for my supposed infringement—say, one-quarter of my prop- erty. Now we have a new property-owning equilibrium, E2, in which you possess 125 percent of our combined share and I possess only 75 percent. And keeping with our initial assumption that both parties were acting in good faith, with full subjective right, this new equilibrium would not have come about unrightfully. Yet there is a real sense in which I retain a claim here, since the only reason you now possess more of the total is that you were stronger, not that I was convinced by your interpretation of justice. But the bounds of our sphere of control in the external world ought not to depend on the contingencies of who is stronger, and our innate independence ought not to be subject to continual interference by others who may coerce us at any moment in accordance with their private views. For this reason, Kant thinks it is a constitutive feature of justice that it be administered by an authoritative legal system, which can impose one set of objective rules about what constitutes an infringement of property—rules we must re- spect even when we disagree about what justice requires—and adjudicate our conflicting claims in a way that is consistent with our continued inde- pendence from each other. The idea is that if we want to possess claims that, as objective rights, are actually respected by others in the external world, we will need to recognize one and only one common set of rules about rights, not a variety of competing private interpretations that coer- cively struggle for the upper hand.

#### 2] any act of appropriation is necessarily public, Pop 2k:

Virgiliu Pop, [Virgiliu Pop is a Romanian space lawyer and author. He has claimed ownership of the Sun in order to make a point about extraterrestrial property rights claims that he argues are bogus.] “Appropriation in outer space: the relationship between land ownership and sovereignty on the celestial bodies,” November 17, 2000, https://www.sciencedirect.com/science/article/abs/pii/S0265964600000370 //LHP AV

Finally, another reason that may be invoked when affirming that prohibition of national appropriation im- plies prohibition of private appropriation is the position according to which **private appropriation cannot exist independently from State appropriation**. **When appro- priating a previously unoccupied land, one does so neces- sarily on behalf of a State**. Oppenheim and Lauterpacht believe that `**occupation can only take place by and for a State; it must be a State act, that is, it must be per- formed in the service of a State, or it must be acknow- ledged by a State after its performancea** [16]. **Unless the State invests a private individual or corporation with the public power of acquisition and administration acquisition of territory and sovereignty thereon takes place outside the dominion of the Law of Nations, and the rules of this law, therefore, cannot be applied. If the individual or corporation which has made the acquisi- tion requires protection, he or it must either declare a new State to be in existence and ask for its recogni- tion by the Powers** (2), **or must ask an existing State to acknowledge the acquisition as having been made on its behalf** [16]. The present author will comment in the next section upon the possibility of individuals to acquire landed property outside State sovereignty. 4. Third viewpoint: private appropriation of extraterrestrial real estate is not legally enforceable The present author believes that, regardless whether prohibited or not, **landed private property cannot sur- vive outside the sphere of sovereignty or sovereign rights**. **What can exist is a mere factual situation that will or will not be subsequently converted into property by means of State endorsement.** As sovereignty or sovereign rights are outlawed by the Outer Space Treaty, **such a State en- dorsement cannot occur in regard to the private occupa- tion of land on celestial bodies**. 4.1. Private property depends upon state endorsement The present author has been inspired by the `Rous- seau-Hobbesa theory according to which `real estate arises when raw land is fenced and these fences are secured and policed via State or kingly powera [1]. This is very much in line with the meaning attached to prop- erty by Gray. His view is that property is a `legally endorsed concentration of power over things and re- sourcesa [17, pp. 299, 304]. He recognises **that `the State takes on a critical**, and so far little explored, **role** **in** de"ning the concept of &**property**'a, becoming `a vital factor in the &property' equationa [17]. Still, the role of the State in this equation has been `much overlooked in the traditional common law accounts of private prop- ertya [17]. Indeed, **in order to exist, property needs a superior authority to enforce it, be it in the form of a State or some other recognised entity.** Stubkjaer considers that **`[w]ithout a society a person would hold land in pos- session rather than own it**a [1]. **Property per se, there- fore, cannot exist outside the sphere of State protection. As sovereignty or sovereign rights are outlawed**, landed **private property on the celestial bodies is crippled due to the fact that it is not enforceable. Besides philosophical arguments**, **the views** of the pres- ent author **are supported by the following relevant legal precedents.**

### Underview

#### 1] 1ar theory –

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

#### B] drop the debater 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] Fairness is a voter – debate’s a game that requires objective evaluation – judges have obligations to vote for the better debater which fairness controls. It also controls truth value – absent fairness, args were not subject to contestation, so they only won their arg because they were unfair.