### Framework

#### [1] The existence of conditional goodness requires unconditional human worth—that means we must treat others as ends in themselves.

Korsgaard 83 (Christine M., [American philosopher and Arthur Kingsley Porter Professor of Philosophy at Harvard University whose main scholarly interests are in moral philosophy and its history “Two Distinctions in Goodness,” The Philosophical Review Vol. 92, No. 2 (Apr. 1983), pp. 169-195, JSTOR) AG \*bracket for gendered language [Recut by Lex CH]

The argument shows how Kant's idea of justification works. It can be read as a kind of regress upon the conditions, starting from an important assumption. The assumption is that when a rational being makes a choice or undertakes an action, [they] he or she supposes the object to be good, and its pursuit to be justified. At least, if there is a categorical imperative there must be objectively good ends, for then there are necessary actions and so necessary ends (G 45-46/427-428 and Doctrine of Virtue 43-44/384-385). In order for there to be any objectively good ends, however, there must be something that is unconditionally good and so can serve as a sufficient condition of their goodness. Kant considers what this might be**:** it cannot be an object of inclination, for those have only a conditional worth, "for if the inclinations and the needs founded on them did not exist, their object would be without worth" (G 46/428). It cannot be the inclinations themselves because a rational being would rather be free from them. Nor can it be external things, which serve only as means. So, Kant asserts, the unconditionally valuable thing must be "humanity" or "rational nature," which he defines as "the power set to an end" (G 56/437 and DV 51/392). Kant explains that regarding your existence as a rational being as an end in itself is a "subjective principle of human action." By this I understand him to mean that we must regard ourselves as capable of conferring value upon the objects of our choice, the ends that we set, because we must regard our ends as good. But since "every other rational being thinks of his existence by the same rational ground which holds also for myself' (G 47/429), we must regard others as capable of conferring value by reason of their rational choices and so also as ends in themselves. Treating another as an end in itself thus involves making that person's ends as far as possible your own (G 49/430). The ends that are chosen by any rational being, possessed of the humanity or rational nature that is fully realized in a good will, take on the status of objective goods. They are not intrinsically valuable, but they are objectively valuable in the sense that every rational being has a reason to promote or realize t hem. For this reason it is our duty to promote the happiness of others-the ends that they choose-and, in general, to make the highest good our end.

#### [2] States are rational agents; they display all the relevant features of a human agent.

Donaldson 95 [Thomas Donaldson, Mark O. Winkelman Professor at the Wharton School of the University of Pennsylvania, 12-3-1995, “International Deontology Defended: A Response to Russel Hardin,” *Ethics & International Affairs*, Volume 9, <https://www.carnegiecouncil.org/publications/journal/09/articles/410>] MBB

Hardin first rejects the possibility that Kantianism could be applied to global events through the supposition that states are rational actors. “If a Kantiawn could conceive of states as analogs of individuals in Kant’s sense,” he writes, “they would be rationalist actors.” but, he concludes, “states are not rationalist actors in any literal sense and they cannot count as such for a Kantian theory of intentional relations… various officials of a particular state must typically reach different conclusions about what is rationally required in the sense of a categorical imperative for action.” (p. 136) There need be no speculation about whether Kant would endorse the rational-actor hypothesis. He explicitly endorses it in many of his writings. Kant sees the state as analogous to a human person and subject to most if not all of the obligations to which individuals are subject. Kant’s view is perhaps extreme and certainly incomplete, but the underlying premise is not wrong. That the state can for many purposes be treated as a rational actor is implied by virtually all serious discussions of international affairs. Such discussions assume that states minimally have the ability to decide and act on reasons (good and bad), to assess and weigh the consequences of certain polices, and to engage in contracts and treaties. Ironically, the very rationale of the policy of nuclear deterrence rest with the ability of deterred states to weigh the consequences upon their self-interest and to act accordingly. The fiction of the state as a person is in this sense much like the fiction of the corporation as a persona ficta. Corporations lack emotions and feeling, but they own properties, hire employees, sometimes explain their actions to the pubic, and enter into contracts. Similarly, while we must stop short of indentifying states and persons in all respects, states sometimes behave intentionally and they sometimes behave for reasons; hence, they open themselves to assessment based upon the reasons they profess and the intent they manifest. We should not in passing that even human persons do not always behave intentionally and for reasons. The status of the state as a rational agent derives directly from its intentionality. As Peter French has argued, “[if]…something is to be counted as a moral person, it must, minimally, be a davidsonian agent with the capacity or ability to intentionally modify its behavior patterns, habits, or modus operandi after learning that untoward events were brought about its past pieces of behavior.” Stripped of its philosophical jargon this means simply that a moral agent is something that can act intentionally and respond to moral evaluation.Virtually all modern nation-states satisfy this condition.

#### [3] This constrains consequentialist theories. While consequences may be relevant, they are of secondary importance.

Lee 85 [Steven Lee, “The Morality of Nuclear Deterrence: Hostage Holding and Consequences”, *Ethics*, Vol. 95, No. 3, Special Issue: Symposium on Ethics and Nuclear Deterrence, (Apr., 1985), pp. 549-56] AG

But nuclear deterrence is not, of course, an individual action. It is not an isolated deterrent act but a large-scale, ongoing public policy involving thousands of persons in various roles. It is, in other words, a social institution.4 How can the method of moral evaluation of an individual action be applied as a model in judging the moral status of a social institution? Any institution is liable to involve some isolated violations of nonconsequentialist rules, and when it does, the method of moral evaluation of an individual action can be applied in a straightforward manner: if the institution achieves sufficient social benefit to override the violations, then it may be morally justified despite them. But some institutions involve not merely isolated violations of nonconsequentialist rules but systematic violations of such rules**.** This occurs when injustice or disrespect for rights, for example, is essential to, or characteristic of, the institution**'s** functioning. In this case the moral objection to the institution on non- consequentialist grounds is so much stronger than when violations are isolated that no amount of social benefit the institution could be expected to achieve would be sufficient to override its nonconsequentialist unacceptability. For example**,** a slave-based economy would not be justified even by great economic productivity. As a result, lack of systematic non-consequentialist rule violations becomes, in practice, a necessary condition for the moral justifiability of social institutions. This idea may be called the principle of the morality of social institutions (PMSI): PMSI: Social institutions are morally justified only if they achieve their social benefit in a way that does not systematically violate nonconsequentialist rules, such as those of justice and respect for rights. The issue of the morality of punishment is a good example of the principle at work. The institution of legal punishment is morally justified not only in terms of the social benefit of its deterrent effects but also in terms of its conformity to nonconsequentialist rules of retributive justice. H. L. A. Hart has clearly expressed the point that deterrent effects justify punishment only if the burdens of the system are distributed in a retri- butively just manner, in accordance with desert.5 The lack of systematic nonconsequentialist rule violations is, then, a necessary condition on the moral justifiability of this institution. But a justified system of punishment may involve isolated injustices, as when occasional mistakes occur in the operation of the system, resulting in miscarriages of justice. But if there were a system of punishment which systematically violated principles of retributive justice, that system would not be morally justified despite its deterrent effects. A system of vicarious punishment would be of this kind. In such a system it is not the lawbreakers who are punished but other persons, such as members of the lawbreakers' families. One thing wrong with this, of course, is that the persons punished are innocent parties and do not deserve punishment. But more than the actual pun- ishment of innocent persons is wrong with vicarious punishment. Innocent persons are threatened with punishment, whether they are actually pun- ished or not, and they are thereby held hostage to the lawful behavior of the potential lawbreakers. The institution which threatens them is an institution of systematic hostage holding. Such hostage holding clearly violates nonconsequentialist rules, whether it is regarded as an unjust distribution of the institution's burdens, as a case of violating the rights of the innocent persons threatened, or simply as a process that treats persons as mere means rather than as ends. Vicarious punishment, despite its deterrent effects, is morally unacceptable because it is systematic hostage holding. But our interest is in the institution of nuclear deterrence. Nuclear deterrence must accord with PMSI if it is to be morally justified. In order to determine whether it so accords, we should begin by examining it from a nonconsequentialist perspective.

#### Thus, the standard is treating humanity as an end in itself.

#### Prefer it additionally

#### [1] Other frameworks collapse—they contain conditional obligations which derive their authority from the categorical imperative.

Korsgaard 98 [CHRISTINE M. KORSGAARD, 1998, “Introduction”, Groundwork of the Metaphysics of Morals] AG

This is the sort of thing that makes even practiced readers of Kant gnash their teeth. A rough translation might go like this: the categorical imperative is a law, to which our maxims must conform. But the reason they must do so cannot be that there is some further condition they must meet, or some other law to which they must conform. For instance, **suppose** someone proposed **that one must keep** one's **promises because it is the will of God** that one should do so - **the law would** then **"contain the condition" that our maxims should conform to the will of God. This would yield only a conditional requirement to keep one's promises — if you would obey the will of God, then you must keep your promises - whereas the categorical imperative must** give us an **unconditional** requirement. **Since there can be no such condition, all that remains is that the categorical imperative should tell us that our maxims themselves must be laws - that is, that they must be universal, that being the characteristic of laws**. There is a simpler way to make this point. What could make it true that we must keep our promises because it is the will of God? **That would be true only if** it were true that we must indeed obey the will of God, that is, if "**obey the will of God" were itself a categorical imperative. Conditional requirements give rise to a regress; if there are unconditional requirements, we must at some point arrive at principles on which we are required to act, not because we are commanded to do so by some yet higher law, but because they are laws in themselves. The categorical imperative**, in the most general sense, **tells us to act on those principles**, principles which are themselves laws.

#### [2] Abstraction solves oppression.

Farr ’02 Arnold Farr (prof of phil @ UKentucky, focusing on German idealism, philosophy of race, postmodernism, psychoanalysis, and liberation philosophy). “Can a Philosophy of Race Afford to Abandon the Kantian Categorical Imperative?” JOURNAL of SOCIAL PHILOSOPHY, Vol. 33 No. 1, Spring 2002, 17–32. JDN.

Whereas most criticisms are aimed at the formulation of universal law and the formula of autonomy, our analysis here will focus on the formula of an end in itself and the formula of the kingdom of ends, since we have already addressed the problem of universality. The latter will be discussed ﬁrst. At issue here is what Kant means by “kingdom of ends.” Kant writes: “By ‘kingdom’ I understand a systematic union of different rational beings through common laws.”32 The above passage indicates that Kant recognizes different, perhaps different kinds, of rational beings; however, the problem for most critics of Kant lies in the assumption that Kant suggests that the “kingdom of ends” requires that we abstract from personal differences and content of private ends. The Kantian conception of rational beings requires such an abstraction. **Some feminists and philosophers of race have found this abstract notion of rational beings problematic because they take it to mean that rationality is necessarily white, male, and European.**33 Hence, the systematic union of rational beings can mean only the systematic union of white, European males. **I ﬁnd this interpretation of Kant’s moral theory quite puzzling.** Surely another interpretation is available. That is, the implication that in Kant’s philosophy, rationality can only apply to white, European males does not seem to be the only alternative. The problem seems to lie in the requirement of abstraction. **There are two ways of looking at the abstraction requirement that I think are faithful to Kant’s text and that overcome the criticisms of this requirement. First, the abstraction requirement may be best understood as a demand for intersubjectivity or recognition. Second, it may be understood as an attempt to avoid ethical egoism in determining maxims for our actions.** It is unfortunate that Kant never worked out a theory of intersubjectivity, as did his successors Fichte and Hegel. However, this is not to say that there is not in Kant’s philosophy a tacit theory of intersubjectivity or recognition. **The abstraction requirement simply demands that in the midst of our concrete differences we recognize ourselves in the other and the other in ourselves.** That is, **we recognize in others the humanity that we have in common.** Recognition of our common humanity is at the same time recognition of rationality in the other. We recognize in the other the capacity for selfdetermination and the capacity to legislate for a kingdom of ends. This brings us to the second interpretation of the abstraction requirement. **To avoid ethical egoism one must abstract from** (think beyond) **one’s own personal interest** and subjective maxims. That is, the categorical imperative requires that I recognize that I am a member of the realm of rational beings. **Hence, I organize my maxims in consideration of other rational beings.** Under such a principle other people cannot be treated merely as a means for my end but must be treated as ends in themselves. **The merit of the categorical imperative for a philosophy of race is that it contravenes racist ideology to the extent that racist ideology is based on the use of persons of a different race as a means to an end rather than as ends in themselves.** Embedded in the formulation of an end in itself and the formula of the kingdom of ends is the recognition of the common hope for humanity. That is, maxims ought to be chosen on the basis of an ideal, a hope for the amelioration of humanity. This ideal or ethical commonwealth (as Kant calls it in the Religion) is the kingdom of ends.34 Although the merits of Kant’s moral theory may be recognizable at this point, we are still in a bit of a bind. It still seems problematic that the moral theory of a racist is essentially an antiracist theory. Further, what shall we do with Henry Louis Gates’s suggestion that we use the Observations on the Feeling of the Beautiful and Sublime to deconstruct the Grounding? What I have tried to suggest is that **instead of abandoning the categorical imperative we should attempt to deepen our understanding of it and its place in Kant’s critical philosophy.** A deeper reading of the Grounding and Kant’s philosophy in general may produce the deconstruction35 suggested by Gates. However, a text is not necessarily deconstructed by reading it against another. Texts often deconstruct themselves if read properly. To be sure, the best way to understand a text is to read it in context. **Hence, if the Grounding is read within the context of the critical philosophy, the tools for a deconstruction of the text are provided by its context and the tensions within the text.** Gates is right to suggest that the Grounding must be deconstructed. However, this deconstruction requires much more than reading the Observations on the Feeling of the Beautiful and Sublime against the Grounding. It requires a complete engagement with the critical philosophy. Such an engagement discloses some of Kant’s very signiﬁcant claims about humanity and the practical role of reason. With this disclosure, deconstruction of the Grounding can begin. **What deconstruction will reveal is not necessarily the inconsistency of Kant’s moral philosophy or the racist or sexist nature of the categorical imperative, but rather**, it will disclose **the disunity between Kant’s theory and his own feelings about blacks and women. Although the theory is consistent and emancipatory and should apply to all persons, Kant the man has his own personal** and moral **problems. Although Kant’s attitude toward people of African descent was deplorable, it would be equally deplorable to reject the categorical imperative without ﬁrst exploring its emancipatory potential.**

#### [3] Abstract ideals are inevitable and good.

Shelby 13 [Tommie Shelby, “Racial Realities and Corrective Justice: A Reply to Charles Mills,” *Critical Philosophy of Race*, Vol. 1, No. 2 (2013), pp. 145-162] AG

On the Rawlsian view, injustices are conceptualized as deviations from the ideal principles of justice, in much the same way that fallacious reasoning is conceived as a deviation from the rules of logical inference. An injustice is a failure on the part of individuals or social arrangements to satisfy what the ideal principles of justice demand. Thus, charges of injustice presuppose ideals of justice, which particular individuals and institutions can and often do depart from. Such deviations can be small or great, minor or serious, and depending on the size and nature of the gap between ideals and practice (and also on whether these deviations are avoidable or blameworthy), different remedies will be required. Nonideal theory specifies and justifies the principles that should guide our responses to such deviations from ideal justice.17 Within nonideal theory (and here I focus on domestic rather than global justice), we should distinguish at least four sets of principles: 1. Principles of reform and revolution: the principles that should guide efforts to bring an unjust institutional arrangement more in line with justice such that the society’s members have a more just (though not necessarily perfectly just) society within which to live. 2. Principles of rectification: the principles that should guide the steps a society takes to remedy or make amends for the injuries and losses the oppressed have suffered as a result of past injustice. 3. Penal principles: the principles that should guide the policies a society relies on when responding to individual noncompliance with what justice requires (e.g., principles for punishment, detention, and deportation). 4. Political ethics: the duties and permissions individuals have under unjust social conditions, that is, the principles that should guide their response to injustice. Rawls’s theory provides some direction for (1) and (4), and some limited guidance for (3). But he provides almost no help with (2). And it is (2)—principles of rectification—that is Mills’s chief concern and the main concern of many black radicals. Most of my work has focused on principles of reform and revolution and political ethics (particularly the political ethics of the oppressed), and on the relationship between the two. Yet I certainly see value in work defending principles of rectification Indeed, we can view the principles of reform and revolution and the principles of rectification as jointly constituting a theory of corrective justice. Principles of type (1) have to do with altering the basic structure of a society so that it better approximates a well-ordered society. Type (2) principles address the need to make amends to those burdened and harmed by unjust basic structures. Type (1) principles are forward looking, oriented toward establishing a just society. Type (2) principles are backward looking, oriented toward settling unpaid moral debts. To see that (1) and (2) are distinct it is enough to observe that one could fully pay reparations to the victims of past racial injustice and yet their society remain unjust, including racially unjust. Rawls is concerned with corrective justice, but he thinks of it as encompassing more than laying down principles for making amends to the victims of past injustice. He conceives of it as also including the philosophical arm of reform or revolutionary efforts to establish a society regulated by a mutual commitment to justice, a well-ordered society. When the principles of justice function as a goal of reform or revolution, what the reformers and revolutionaries are ultimately aiming at is this: a society in which the principles are fully realized in its institutions and citizens support and comply with institutional rules because these are in accord with their shared conception of justice. It is in this way that ideal theory serves as a guide for nonideal theory. Mills might accept this more expansive conception of corrective justice and even concede that Rawls’s ideal theory can aid us in its development. But I suspect he would still have doubts about ideal theory’s helpfulness in developing the rectificatory dimension of nonideal theory. After all, Rawls’s two principles are supposed to provide a basis for citizens to judge the validity of their claims of justice on their social system. One kind of claim citizens may make (on their own behalf or on behalf of others) is that they or others are due reparations for harms they have incurred as a result of serious injustice. Does Rawls provide any guidance for judging the validity of such claims? Mills is skeptical. He asserts, “Surely forty years is long enough—especially in a society to whose creation racism has been central—for there to be a significant body of work by now showing how one derives principles of rectificatory racial justice (a “pressing and urgent matter” [Rawls, Theory, 9] if ever there was one) from the idealtheory principles!” (23, note 6) In reply I would note that serving as a guide for nonideal theory is not the same as serving as a set of axioms from which theorems of rectification can be directly deduced. I doubt that ideal theory could play this latter justificatory role. And it should not surprise us if auxiliary precepts of justice were required for a fully adequate theory of compensatory justice. (The same would presumably be true of penal principles. After all, one cannot strictly derive a principle of proportionality in punishment from the two principles of justice either.)18 What ideal theory can provide, however, are evaluative standards for judging when such rectification is prima facie called for—namely, when culpable violations of the principles of justice have caused serious and identifiable harm. The ideal principles (particularly the equal liberty principle) help to explain what was wrong with, say, Jim Crow and Apartheid and why the damage they did to their victims warrants various corrective measures, perhaps including reparations. The trouble with Mills’s view is that he regards nonideal theory as independent of ideal theory, indeed as an alternative to it. But nonideal theory—the study of the principles that should guide our responses to injustice—cannot succeed without knowing what the standards of justice are (and perhaps also what justifies these standards). It is not clear how we are to develop a philosophically adequate and complete theory of how to respond to social injustice without first knowing what makes a social scheme unjust. When dealing with gross injustices, such as slavery, we may of course be able to judge correctly that a social arrangement is unjust simply by observing it or having it described to us, relying exclusively on our pre-theoretic moral convictions. We don’t need a theory for that. But with less manifest injustices, or when our political values seem to conflict, or when we’re uncertain about what justice requires, or when there is great but honest disagreement about whether a practice is unjust, we won’t know which aspects of a society should be altered in the absence of a more systematic conception of justice. Without a set of principles that enables us to identify the injustice-making features of a social system, we could not be confident in the direction social change should take, at least not if our aim is to realize a fully just society.

### Plan

#### Plan: The appropriation of outer space by private entities is unjust.

#### Private entities are non-governmental.

Dunk 11 – Frans G. von der Dunk, 2011, [“The Origins of Authorisation: Article VI of the Outer Space Treaty and International Space Law,” University of Nebraska] Justin

4. Interpreting Article VI of the Outer Space Treaty One main novel feature of Article VI stood out with reference to the role of private enterprise in this context. Contrary to the version of the concept applicable under general international law, where “direct state responsibility” only pertained to acts somehow directly attributable to a state and states could only be addressed for acts by private actors under “indirect,” “due care”/“due diligence” responsibility,18 Article VI made no difference as to whether the activities at issue were the state’s own (“whether such activities are carried on by governmental agencies” . . .) or those of private actors (. . . “or by non-governmental entities”). The interests of the Soviet Union in ensuring that, whomever would actually conduct a certain space activity, some state or other could be held responsible for its compliance with applicable rules of space law to that extent had prevailed. However, the general acceptance of Article VI as cornerstone of the Outer Space Treaty unfortunately was far from the end of the story. Partly, this was the consequence of key principles being left undefined.

#### Outer space is

**Betz 21** [Eric Betz, 3-5-2021, "The Kármán Line: Where does space begin?", Astronomy, https://astronomy.com/news/2021/03/the-krmn-line-where-does-space-begin, date accessed 1-22-2022] //Lex AT

These days, spacecraft are venturing into the final frontier at a record pace. And a deluge of [paying space tourists](https://astronomy.com/news/2020/08/six-ways-to-buy-a-ticket-to-space-in-2021) should soon follow. But to earn their astronaut wings, high-flying civilians will have to make it past the so-called Kármán line. This boundary sits some 62 miles (100 kilometers) above Earth's surface, and it's generally accepted as the place where Earth ends and outer space begins. From a cosmic perspective, 100 km is a stone's throw; it's only one-sixth the driving distance between San Francisco and Los Angelas. It’s also well within the clutches of Earth's overpowering gravitational pull and expansive atmosphere. So, how did humans come to accept this relatively nearby location as the defining line between Earth and space? The answer is partly based on physical reality and partly based on an arbitrary human construct. That's why the exact altitude where space begins is something scientists have been debating since before we even sent the first spacecraft into orbit. What is the Kármán Line? [Experts have suggested](https://books.google.com/books/about/The_Never_Ending_Dispute.html?id=fG4_AQAAIAAJ) the actual boundary between Earth and space lies anywhere from a mere 18.5 miles (30km) above the surface to more than a million miles (1.6 million km) away. However, for well over half a century, most — including regulatory bodies — have accepted something close to our current definition of the Kármán Line. The Kármán line is based on physical reality in the sense that it roughly marks the altitude where traditional aircraft can no longer effectively fly. Anything traveling above the Kármán line needs a propulsion system that doesn’t rely on lift generated by Earth’s atmosphere — the air is simply too thin that high up. In other words, the Kármán line is where the physical laws governing a craft's ability to fly shift. However, the Kármán line is also where the human laws governing aircraft and spacecraft diverge. There are no national borders that extend to outer space; it’s governed more like international waters. So, settling on a boundary for space is about much more than the semantics of who gets to be called an astronaut. The United Nations has historically accepted the Kármán line as the boundary of space. And while the U.S. government has been reticent to agree to a specific height, people who fly above an altitude of 60 miles (100 km) typically earn astronaut wings from the Federal Aviation Administration. Even the Ansari X-prize chose the Kármán line as the benchmark height required to win its $10 million prize, which was claimed when Burt Rutan’s SpaceShipOne became the first privately-built spacecraft to carry a crew back in 2004.

### Offense

#### 1] Appropriation of mineral resources in outer space constitutes property rights.

**Leon 18** (Amanda M. Leon, Associate\*, Caplin & Drysdale, Chtd., ’18, Virginia Law Review [“MINING FOR MEANING: AN EXAMINATION OF THE LEGALITY OF PROPERTY RIGHTS IN SPACE RESOURCES” Vol. 104:497 2018]

Furthermore, state practice relevant to the question of property rights under the OST goes beyond these examples and analogies of ownership of resources taken from commons. State practice regarding property rights in general must be considered. For example, Professor Fabio Tronchetti disagrees with the oft-cited notion that state practice affirms the SREU Act.

214 According to the professor, “under international law, property rights require a superior authority, a State, entitled to attribute and enforce them.”215 By granting property rights in the SREU Act, the United States impliedly claims that it has the authority to confer property rights over space resources—an authority traditionally reserved for the owner of a resource. This notion clashes with the nonappropriation principles of the OST. Though there is no consensus regarding whether the nonappropriation principle prohibits claims of sovereignty over resources, a strong consensus at least exists that the principle prohibits states from claiming sovereignty over real property in space.216 In some traditional systems of mineral ownership, however, ownership over resources ran with ownership over land.217 For example, under Roman law, property rights over subsurface minerals belonged to the landowner.218 Thus, if the United States cannot have title in space lands under the nonappropriation principle, it cannot have title to the space resources in those lands either. Without title to the resources, the United States cannot bestow such title to its citizens under traditional international property law; by claiming that it can bestow such title, the United States is abrogating Article II of the OST. One could also argue that the in situ resources the Act grants rights in are actually still part of the celestial bodies; thus, the resources are real property prior to their removal, and are off limits under the Treaty.219 Given the limited import of the cited examples of state practice (limited quantity and scientific versus large-scale and commercial), the traditional practice of property rights being conferred from a sovereign to a citizen become incredibly compelling and suggest the SREU Act may abrogate the United States’ treaty obligations.

#### Property rights assume a government to enforce them which means original acquisition in space is unjust, and cosmopolitan rights trump acquired rights like property.

Notes

\*\* only way to understand ethics is through an Omnilateral will resolve unilateral wills – outer space lacks any sort of govnt then any claim to outer space that came in a form of property rights would be unjust

\*\* Common owner ship of the earth -

**Walla 16** [(Alice Pinheiro, Department of Philosophy at Trinity College Dublin) “Common Possession of the Earth and Cosmopolitan Right” Kant-Studien Volume 107 Issue 1, 2016] TDI

Similarly to Grotius and Pufendorf, Kant tells us how external objects of choice can become the property of persons, that is, how the original suum can be extended to external objects. For Kant, this is far from being obvious. He assumes that we are born with a right to be free from unjustified interference in the exercise of our agency. This innate right also entails our physical integrity, but does not originally extend to objects outside us. The fundamental assumption which Kant shares with Grotius and Pufendorf is that rights can only be derived from something the person already has, that is, from the suum. Kant’s argument for the inclusion of external objects under the notion of right is that we must assume a legal capacity to become owners of objects, in order to avoid a contradiction. External freedom (and with it pure practical reason) would be depriving itself of the possibility of using objects of choice and thus contradicting itself (ein Widerspruch der äußeren Freiheit mit sich selbst). We must thus introduce a postulate of practical reason, assuming the possibility of becoming legal owners of objects.

Once it has been established that external objects can become the matter of rights (i.e., that the suum can be extended to external objects), the next question Kant’s theory must address is the problem of acquisition of external objects. Acquisition is the empirical deed through which an external object is incorporated into a person’s suum. First or original acquisition is when an object becomes for the first time the possession of someone. Explaining the possibility of original acquisition is extremely important since all further acts of acquisition are derived from it. Interestingly, Kant argues that acquisition of land must be conceived as prior to the acquisition of objects. Possession of anything on a territory presupposes the possession of the territory itself, since objects are regarded as mere accidents of the substance on which they “inhere”, i.e. the land on which are located. Kant’s claim relies on the ontological dependence of accidents on the substance: just as the accidents cannot exist independently of the substance, movable objects cannot be acquired without the prior acquisition of land on which they are located. However, one may wonder if this ontological dependence can be extended to the relation between land and movable objects. Is it not possible to possess movable objects without possessing the land on which they are located? Katrin Flikschuh argued that unless one has some control over the land on which one’s possessions are situated one’s right to those possessions would be easily compromised. One would be at the mercy of others while pursuing one’s ends. While possession of external objects does not require that I myself possess the land on which these objects are placed, I must at least be able to enter some form of agreement with someone who owns or has control over the land lest I be in the situation of a squatter: someone who can be permanently pushed away with one’s possessions from one place to the other. If so, some kind of ownership of land or at least a right to control the land is necessary to secure one’s right to things. Because I can in principle occupy the space on which your object is situated by displacing your object from its location, displacing your object without your consent would be in principle no infringement upon your possession. We could think of a scenario where you would have to look for your car every time you leave work because it keeps being moved around from where you parked it in the morning. The car would still be yours, but you have no control over its location. However, secure possession of objects must entail the possibility of determining the location of one’s possessions.

Although this is certainly correct, it seems to miss Kant’s fundamental point, which is not merely about the empirical conditions necessary for securing possession of objects, but about the normative priority of acquisition of land over acquisition of objects. Acquisition of land must be understood as normatively prior to acquisition of objects due to the spatial character of Kant’s theory of property and of his legal theory in general. Right has to do with external freedom, an aspect of freedom which would be irrelevant if we were not embodied rational beings, not only in space, but also confined with each other to the limited surface of the earth. The limited dimension of the planet (which also defines the limits of human expansion) renders the interaction and the possibility of impact on the mutual exercise of external freedom inevitable. Our agency can have, and will most likely have, an impact on the agency and rights of others. Nowadays we do not even need to travel to distant lands to do this: climate change proves that my external deeds can have a considerable impact on your agency and way of living wherever you are. In other words, we are globally interconnected, whether we want it or not. Therefore, there would be no problem of Right without the possibility of interaction which arises from our embodiment and the limited space to which we are confined. The problem of Right in Kant’s theory is thus essentially a spatial problem: we must bring the external exercise of freedom of a plurality of persons under a system of external freedom, that is, in accordance with universal laws which can regulate these interactions. Without universal laws, that is, a priori principles, there can be no necessity and consequently no rights and obligations that deserve the name. Therefore, although the problem of Right has an empirical component, namely the facts about the human condition mentioned above, the solution to the problem of right must nevertheless be provided by rational principles. The project of Kant’s legal philosophy in the Doctrine of Right is to provide the a priori principles capable of addressing the problem of right, taking into account the different levels of possible interaction and institutionalization of right: within individuals in a common polity (state right), between polities (international right) and as citizens of the world (cosmopolitan right).

Although we can conceive possession of objects as separate from possession of land, this independence is only normatively possible through the idea that the first proprietor of land can dispose of the objects acquired via his acquisition of land. The idea is that persons were able to enter contractual relations with whoever first possessed the land and thus acquire movable objects independently of possessing the land themselves. Kant’s point is to explain where acquired rights to movable objects come from, normatively speaking. Once acquisition of objects becomes independent from possession of land, we need contracts regulating the location of objects, that is, agreements between possessors of land or those with jurisdictional rights over land and proprietors of movable objects. I can park my car in the street, even though the street does not belong to me, provided I satisfy certain requirements (I might need to pay a parking ticket or refrain from parking at certain areas at certain times and so on).

Acquiring land for the first time must be regarded as a realization or “particularization” of innate right. But this is the beginning of another problem. First acquisition of a piece of land involves both singling out a specific part of land as my “dominion” and excluding others from access to it. However, Kant’s legal theory does not assign a right conferring function to empirical acts. If acquisition is to have a legal quality, its lawfulness cannot be grounded on an empirical act. Further, if empirical acquisition justified possession, we would have to regard possession as a legal relationship between a thing and a person. This is not an option in Kant’s theory, according to which legal relations pertain only between persons as beings capable of obligation and consequently as subjects of rights. Therefore, the legal foundation or title (Rechtsgrund, titulus possessionis) enabling the acquisition of land must be understood as follows: it must precede the empirical act of acquisition and is not created by it; is a relation between persons in regard to external objects, and finally it is able to impose an obligation on all others to respect one’s acquisition. The idea of the original community of the earth is what constitutes this Rechtsgrund:

All human beings are originally in common possession of the land of the entire earth (communio fundi originaria) and each has by nature the will to use it (lex iusti) which, because the choice of one is unavoidably opposed by nature to that of another, would do away with any use of it if this will did not also contain the principle for choice by which a particular possession for each on the common land could be determined (lex iuridica) But the law which is to determine for each what land is mine or yours will be in accordance with the axiom of outer freedom only if it proceeds from a will that is united originally and a priori (that presupposes no rightful act for its union). Hence it proceeds only from a will in the civil condition (lex iustitiae distributivae), which alone determines what is right (recht), what is rightful (rechtlich), and what is laid down as right (Rechtens). But in the former condition, that is before the establishment of the civil condition, but with a view to it, that is provisionally, it is a duty to proceed in accordance with the principle of external acquisition. Accordingly, there is also a rightful capacity of the will to bind everyone to recognize the act of taking possession and of appropriation as valid, even though it is only unilateral.

A unilateral will cannot impose an obligation on others. It is a contingent exercise of freedom and has no authority to impose an obligation. For this, we would need the consent of all others whose exercise of freedom is restricted by that unilateral act. Omnis obligatio est contracta: all obligation must be self-imposed. The idea of a united will of all therefore extends the scope of Kant’s reason based legal philosophy, introducing what seems to be a voluntaristic element in his theory. A unilateral will can only impose an obligation on others if it is the will of everyone that it be so. However, for Kant it is not enough that this be the will of all (as a contingent matter of fact), but that it is a priori the will of all. In Kant’s reason based legal theory, only reason can impart necessity. The necessity of respecting unilateral acts of acquisition is thus derived not from the unilateral acts themselves (which are empirical and therefore contingent), but from the united will of all, which is a priori and therefore necessary.

But how can he assume that we all want a priori that objects be appropriated to the exclusion of others? How could I possibly want to be excluded from using an object I might be interested in? The notion of a united will a priori follows from the fact that intelligible possession is a priori necessary and for this, acquisition of objects to the exclusion of others must be permitted from the perspective of pure practical reason. Since on pain of contradiction practical reason must allow appropriation of objects, it must be the case that it is our will to be able to use objects of choice. This is why the general will is said to be united a priori, independently of actual consent. It is important to note that the same rational principle that allows the use of external objects as an extension of innate freedom is the one that makes it necessary to assume an a priori united will. This idea ensures the compatibility of Kant’s theory of acquisition with the principle of right. Because acquisition of objects to the exclusion of others would mean an unjustified impediment on their freedom, only the assumption of an a priori united will can make acquisition rightful. However, Kant also stresses that a united will is only realized in a condition of public justice, that is, in the civil condition. Possession of objects thus commits us to the implementation of a system of distributive justice under which the a priori united will can be realized.

The transition from common ownership of the earth to a concrete individual possession of land requires a principle of distribution, according to which the earth can be divided. Distribution in this case can only be done by an empirical act: occupation (Bemächtigung, occupatio) through a unilateral act of choice (Act der Willkür). In taking physical possession of a piece of land, an individual is particularizing her original right to be somewhere. However, the only principle available for determining who has originally acquired something is prior in time, strong in right (qui prior tempore portior iure). Unless the right is given to the person who arrived first, no person would ever be able to exercise the right to acquire land, for anyone else would have a claim to the land that person acquired. Being the first to take control over a piece of land must entitle the agent to keep it despite the possible interest of others, as a condition for the possibility of making use of land at all. It therefore follows from prima occupatio that native peoples must be seen as the rightful possessors of their land. All later acquisition of land can only be derived from first possession, that is, it must be transferred to another by means of a contract with the native peoples, which presupposes their free and true consent in order to be valid. Further, this principle of distribution must be understood as contained in the united will of all (who have the will, individually, to use the land).

III. Community of the Earth as the basis of Cosmopolitan Right The idea of communio fundi originaria has implications that extend beyond what is required for the justification of a right to external things. This is because the realization of one’s right to occupy space does not start with the occupation of land for the first time, but already with birth. When we are born, our mere “entrance in the world” is already a legally relevant fact. Not only have we come to occupy space in the world, we also have an original right to do so: this is “the right to be wherever nature or chance (apart from their will) has placed them”. The existence of a person in the world entails both her equal legal status among a plurality of subjects of right and her original right to occupy space. Persons are also automatically members of the global community of the earth, which is constituted by the unity of all possible places individuals can occupy within the limited surface of the earth. Common possession of the earth plays a central role in Kant’s argument for cosmopolitan right. Although the role of cosmopolitan right, I will argue, has an analogous function to Grotius’ right of necessity and Pufendorf’s imperfect rights and duties, Kant’s “revival”of the original community in cosmopolitan right is nevertheless a radical redefinition of the Grotius- Pufendorf tradition. [It] is not the right to be a guest (Gastrecht) (…) but the right to visit (Besuchsrecht); this right to present oneself for society, belongs to all human beings by virtue of the right to possession in common of the earth’s surface on which, as a sphere, they cannot disperse infinitely but must finally put up with being near one another; but originally no one had more right than another to be on a place on the earth. This rational idea of a peaceful, even if not friendly, thoroughgoing community of all nations on the earth that can come into relations affecting one another is not a philanthropic (ethical) principle but a principle having to do with rights. (…) And since possession of the land, on which an inhabitant of the earth can live, can be thought only as possession of a part of a determinate whole, and so as possession of that to which each of them originally has a right, it follows that all nations (Völker)stand originally in a community of land, though not of rightful community of possession (communio) and so of use of it (…). In the Doctrine of Right, Kant derives nations’ original community of the land from the fact that the possession of individuals (to which they have an original right), can be thought as a part of a determinate whole. National borders in connection with an internal civil condition make the extent of individual possessions relatively determinate. Borders delineate the scope of individual acquisition in a way which, although not peremptory until the institution of a cosmopolitan condition of distributive justice, is closer to the idea of right than leaving individuals to determine the limits of their acquisition in a wholly unilateral way (as in the state of nature). Unlike Locke, Kant has no theoretical resources for establishing the content (Inhalt) of occupation; the prior occupans must decide according to her own judgment if her possession is being infringed upon and consequently have a conception of the extent of her possession. Only the civil condition is able to provide relatively legitimate conditions for determining the scope of acquisition. This necessity makes Kant’s theory far more dependent on the institutionalization of right than Locke’s theory. The territorial rights of states can thus be understood as a necessary step towards a cosmopolitan condition of distributive justice. As Kant formulates in Perpetual Peace, “cosmopolitan rights shall be limited to the conditions of universal hospitality”. This is a right to offer oneself for commerce (Verkehr) with one another, be the subjects of these rights individuals or nations. As cosmopolitan right makes clear, the idea of common ownership of the earth presents itself under two different modes:(1) as basis of the acquired right of host peoples to their territory, enabling them to decline voluntary interaction, and (2) as the basis for the original right of individual citizens of the world or nations to offer themselves for interaction with foreign nations. In Perpetual Peace Kant called this right “right to visit”, which is neither a right to settle (ius incolatus ) nor to be a guest in the foreign land (kein Gastrecht ). As Kant stresses, host nations retain a right to reject the visitor on the condition that this can be done “without causing his destruction”. Although visitors have no claim to enter the foreign territory, they should not be treated with hostility by the inhabitants, if they behave peacefully.

However, the original community of the earth also imposes constraints on the acquired right of host nations to control their borders. Kant makes clear that host nations have the right to reject visitors whenever their reason for interaction is voluntary. Similarly to the original right to a place on the surface of the earth, the right to admission in a foreign territory obtains only under the condition of involuntary occupation of space. Just as the occupation of space by virtue of one’s entry in the world is independent of one’s will, rejecting an involuntary visitor when this would harm or destroy her is incompatible with the original community of the earth. As Kant stresses, in principle no one has more claim to a specific area of the earth than another person. The global distribution of land is thus wholly contingent. Today’s nations can be seen as “permitted” to control a certain territory to the exclusion of others because borders are helpful for determining the extent of individual acquisition, at least within that territory. However, to deny life-saving occupation of space to another being, who is in principle just as entitled as anyone else to any place of the earth would be to contradict the very justification for the territorial rights of states. This is because the permission to control territory and the right of the involuntary visitor to be admitted are based on the same legal foundation or Rechtsgrund, namely, the original community of the earth. Kant could easily have insisted that the acquired right of nations to their territory not only has priority but trumps the original right of persons to occupy space. It is worthy of attention that he did not accept this in the case of involuntary occupation of space.

#### In outer space, there is no governing authority and thus claiming property imposes your will over others.

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

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.

#### 2] An exclusive and permanent right to property is not entailed by the categorical imperative. Only conditional use is universalizable which private appropriation of scarce resources contravenes.

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

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

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

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

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

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

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

#### 3] Privatization of outer space runs counter to international law.

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

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

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

Who’s responsible for Elon Musk?

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

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

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

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

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

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

The principle of non-appropriation

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

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

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

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

Mars nullius: A thought experiment

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

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

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

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

Concerns and conclusions

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

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

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

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

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

#### 4] Libertarianism turns don’t apply - privatization of space inherently relies on an anti-libertarian state-based model

**Shammas and Holen 19** [(Victor L. Oslo Metropolitan University, Tomas B. Independent scholar) “One giant leap for capitalistkind: private enterprise in outer space,” Palgrave Communications, 1-29-19, https://www.nature.com/articles/s41599-019-0218-9] TDI

But the entrepreneurial libertarianism of capitalistkind is undermined by the reliance of the entire NewSpace complex on extensive support from the state, ‘a public-private financing model underpinning long-shot start-ups' that in the case of Musk’s three main companies (SpaceX, SolarCity Corp., and Tesla) has been underpinned by $4.9 billion dollars in government subsidies (Hirsch, 2015). In the nascent field of space tourism, Cohen (2017) argues that what began as an almost entirely private venture quickly ground to a halt in the face of insurmountable technical and financial obstacles, only solved by piggybacking on large state-run projects, such as selling trips to the International Space Station, against the objections of NASA scientists. The business model of NewSpace depends on the taxpayer’s dollar while making pretensions to individual self-reliance. The vast majority of present-day clients of private aerospace corporations are government clients, usually military in origin. Furthermore, the bulk of rocket launches in the United States take place on government property, usually operated by the US Air Force or NASA.Footnote13

This inward tension between state dependency and capitalist autonomy is itself a product of neoliberalism’s contradictory demand for a minimal, “slim” state, while simultaneously (and in fact) relying on a state reengineered and retooled for the purposes of capital accumulation (Wacquant, 2012). As Lazzarato writes, ‘To be able to be “laissez-faire”, it is necessary to intervene a great deal' (2017, p. 7). Space libertarianism is libertarian in name only: behind every NewSpace venture looms a thick web of government spending programs, regulatory agencies, public infrastructure, and universities bolstered by research grants from the state. SpaceX would not exist were it not for state-sponsored contracts of satellite launches. Similarly, in 2018, the US Defense Advanced Research Projects Agency (DARPA)—the famed origin of the World Wide Web—announced that it would launch a ‘responsive launch competition', meaning essentially the reuse of launch vehicles, representing an attempt by the state to ‘harness growing commercial capabilities' and place them in the service of the state’s interest in ensuring ‘national security' (Foust, 2018b).

### Extra Stuff

#### Morality must be derived a priori:

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

#### 2. Uncertainty – experiences are locked within our own subjectivity and are inaccessible to others, however a priori principles are created in the noumenal world and are universally applied to all agents. Outweighs since founding ethics in the phenomenal world allows people to justify atrocities by saying they don’t experience the same.

#### Enforcement is banning constellations in the LEO by claiming they violate Article II of the OST.

**Johnson 20** [Christopher D. Johnson, 2020, "The Legal Status of MegaLEO Constellations and Concerns About Appropriation of Large Swaths of Earth Orbit", Secure World Foundation, https://swfound.org/media/206951/johnson2020\_referenceworkentry\_thelegalstatusofmegaleoconstel.pdf, date accessed 1-23-2022] // Lex AT

Are Constellations Appropriation? The astronomy community has already voiced concerns about the impact that constellations will have on astronomy (AstronomyNow 2019). Constellations also bring potential risks from space debris and radiofrequency interference, both of which will have an effect on space sustainability. Starlink’s 1584 satellites in the 550 km region would effectively triple the number of satellites in the 400–600 km region, for example. Leaving these important concerns aside, constellations should also be considered in the context of their general legal status – and specifically whether large swaths of Low Earth Orbit are being impermissibly claimed and possessed by individual actors (whether the commercial actor itself, or by the authorizing national government). For example, and as mentioned above, the OneWeb constellation will be in 12 orbital planes at 1200 km. Phase 1 of the SpaceX Starlink constellations will fly 66 satellites in 24 orbital planes, for a total of 1584 satellites in its initial constellation. Do these megaconstellations constitute an impermissible appropriation (or ownership) of particular regions of outer space? Without offering a definitive conclusion, the following sections first argue why, and then why not, these large constellations in LEO constitute impermissible appropriations of sections of outer space. The reader can consider for themselves which of the following opposing arguments they find more convincing. Yes, This Is Impermissible Appropriation Article II of the Outer Space Treaty, discussed above, is clear on the point that the appropriation of outer space, including the appropriation of either void space or of celestial bodies, is an impermissible and prohibited action under international law. No means or methods of possession of outer space will legitimize the appropriation or ownership of outer space, or subsections thereof. Excludes Others The constellations above, because they seem to so overwhelmingly possess particular orbits through the use of multiple satellites to occupy orbital planes, and in a manner that precludes other actors from using those exact planes, constitute an appropriation of those orbits. While the access to outer space is nonrivalrous – in the sense that anyone with the technological capacity to launch space objects can therefore explore space – it is also true that orbits closer to Earth are unique, and when any actor utilizes that orbit to such an extent to these proposed constellations will, it means that other actors simply cannot go there. The Legal Status of MegaLEO Constellations and Concerns About Appropriation... 15 To allow SpaceX, for example, to so overwhelmingly occupy a number of altitudes with so many of their spacecraft, essentially means that SpaceX will henceforth be the sole owner and user of that orbit (at least until their satellites are removed). No other actors can realistically expect to operate there until that time. No other operator would dare run the risk of possible collision with so many other spacecraft in that orbit. Consequently, the sole occupant will be SpaceX, and if “possession is 9/10th of the law,” then SpaceX appears to be the owner of that orbit. Done Without Coordination Additionally, SpaceX and other operators of megaconstellations are doing so without any real international conversation or agreement, which is especially egregious and transgressive of the norms of outer space. Compared to the regime for GSO, as administered by the ITU and national frequency administrators, Low Earth Orbit is essentially ungoverned, and SpaceX and others are attempting to seize this lack of authority to claim entire portions of LEO for itself; and before any international agreement, consensus, or even discussion is had. They are operating on a purely “first come, first served” basis that smacks of unilateralism, if not colonialism. Governments Are Ultimately Implicated As we know, under international space law, what a nongovernmental entity does, a State is responsible for. Article VI of the Outer Space Treaty requires that at least one State authorize and supervise its nongovernmental entities and assure their continuing compliance with international law. As such, the prohibition on nonappropriation imposed upon States under Article II of the Outer Space Treaty applies equally to nongovernmental private entities such as SpaceX. Nevertheless, through the launching and bringing into use of the Starlink constellation, SpaceX will be the sole occupant, and thereby, possessor, both fact and in law, of 550 km, 1100 km, 1130 km, 1275 km, and 1325 km above our planet (or whatever orbits they finally come to occupy). The same is true for the other operators of these large constellations which will be solely occupying entire orbits.