## **1**

Interp: Can’t say no 2N Theory and no rvis

1] Inf abuse – can sever in the 1A

2] Reciprocity –

#### **The interp is a reason to vote negative on substance since it proves we couldn’t engage at all and their model is exclusive.**

#### **Only evaluate the counter interp to the shell – that means reject overview arguments and cross applications. Double bind – either I don’t read theory and I probably lose because of the abuse on the shell or b) these debaters know they will lose to a true combo shell and hedge against that with pre written overviews and extending hidden spikes which forecloses ability to set good norms.**

#### **Combo shells are good, their key to critical thinking – they take debaters off of the document since you can always script 1ar’s against shells like spikes bad or spikes on top but combo shells force you to defend specific tailored norms that you can’t prep out.**

## **2**

#### **Interpretation – If the affirmative reads a truth testing role of the ballot, they must explicitly specify in a its text how the round ought to play out under the role of the ballot. To clarify, they must specify [1] How to weigh between offense under the role of the ballot (ie normative standard and direct links to the truth testing/ a priori v a priori) [2] How the role of the ballot applies to theoretical arguments [3] A definition/brightline for what counts as truth creation under the role of the ballot (ie linguistic, logic, moral, etc).**

#### **Violation – You didn’t spec any of the 3.**

#### **Vote neg –**

#### **[1] Jurisdiction – If the judge’s obligation is to endorse the truth, they can only arrive at that decision correctly with a specification of what counts as truth and how we evaluate it. Either your role of the ballot is correct in which case the shell is a prior question since it is an instance of the judge endorsing their ability to coherently exercise their jurisdiction or your RoB is false in which case you vote neg on risk of offense into my RoB.**

#### **[2] Strat Skew – Without specification of the highest layer of tricks debate it is impossible to form a coherent strategy since you will either go for a prioris, a normative framework that attempts to frame them out, or uplayer and say theory is in the judge’s jurisdiction, which gives you 3 different strategic routes you can go for whereas I’m always a step behind – even if I read theory you will just say the RoB takes it out which proves the abuse; this makes the shell functionally meta-theory since it pre-empts your attempt to answer the shell. Even if I commit to engaging in the substance debate, you can shift what different methods of truth are relevant and make new weighing arguments which is infinite abuse since I can never correctly engage in your position since you have infinite flexibility. And, since you didn’t specify its application to theory, accept mine – it takes out all shells but this one since it operates to improve it.**

#### **[3] Resolvability – Without specification of how the judge carries out their jurisdiction, it becomes impossible for the judge to exercise it, which means any risk of offense on the shell is sufficient to vote on it, since any reason TT is good is a reason the interp is a better way to allow the judge to exercise it. Specifically true with truth testing since it enables multiple competing auto-vote arguments that make the round irresolvable – it’s impossible to test truth when something is both infinitely true and false simultaneously. This means you automatically drop them under truth testing – they prevent the production of truth and create contradictions.**

#### **This specific shell is a voting issue –**

#### **[1] It tests the truth of truth testing which means it is a necessary side constraint for the judge’s ability to make a decision as per your RoB.**

## 

## **Case**

### **OV – Underview**

#### **New 2NR responses to AC spikes, trix, and theory arguments: a) forcing the neg to answer every warrant in every spike and trick in the NC means massive amounts of time of the 1NC is lost and not spent generating offense which means every round gets wasted on theory and I’m super behind, b) implications are hidden which means answering them in the 1NC is uniquely har, c) auto affirm arguemens are bad**

#### 

LBL

### **Turns**

Now negate

#### **1] Spece mandates a market-oriented approach—that negates**

**Broker 20** [(Tyler, work has been published in the Gonzaga Law Review, the Albany Law Review and the University of Memphis Law Review.) **“Space Law Can Only Be Libertarian Minded,”** Above the Law, 1-14-20,<https://abovethelaw.com/2020/01/space-law-can-only-be-libertarian-minded/>] TDI

The impact on human daily life from a transition to the virtually unlimited resource reality of space cannot be overstated. **However, when it comes to the law, a minimalist, dare I say libertarian, approach appears as the only applicable system.** In the words of NASA, “2020 promises to be a big year for space exploration.” Yet, as Rand Simberg points out in Reason magazine, **it is actually private American investment that is currently moving space exploration to “a pace unseen since the 1960s.”** According to Simberg, due to this increase in private investment “We are now on the verge of getting affordable private access to orbit for large masses of payload and people.” The impact of that type of affordable travel into space might sound sensational to some, but in reality the benefits that space can offer are far greater than any benefit currently attributed to any major policy proposal being discussed at the national level. The sheer amount of resources available within our current reach/capabilities simply speaks for itself. However, although those new realities will, as Simberg says, “bring to the fore a lot of ideological issues that up to now were just theoretical,” I believe it will also eliminate many economic and legal distinctions we currently utilize today. **For example, the sheer number of resources we can already obtain in space means that in the rapidly near future, the distinction between a nonpublic good or a public good will be rendered meaningless. In other words, because the resources available within our solar system exist in such quantities, all goods will become nonrivalrous in their consumption and nonexcludable in their distribution.** This would mean government engagement in the public provision of a nonpublic good, even at the trivial level, or what Kevin Williamson defines as socialism, is rendered meaningless or impossible. In fact, in space, I fail to see how any government could even try to legally compel collectivism in the way Simberg fears. Similar to many economic distinctions, however, it appears that many laws, both the good and the bad, will also be rendered meaningless as soon as we begin to utilize the resources within our solar system. For example, if every human being is given access to the resources that allows them to replicate anything anyone else has, or replace anything “taken” from them instantly, what would be the point of theft laws? If you had virtually infinite space in which you can build what we would now call luxurious livable quarters, all without exploiting human labor or fragile Earth ecosystems when you do it, what sense would most property, employment, or commercial law make? Again, this is not a pipe dream, no matter how much our population grows for the next several millennia, the amount of resources within our solar system can sustain such an existence for every human being. **Rather than panicking about the future, we should try embracing it, or at least meaningfully preparing for it. Currently, the Outer Space Treaty, or as some call it “the Magna Carta of Space,” is silent on the issue of whether private individuals or corporate entities can own territory in space. Regardless of whether governments allow it, however, private citizens are currently obtaining the ability to travel there, and if human history is any indicator, private homesteading will follow**, flag or no flag. We Americans know this is how a Wild West starts, where most regulation becomes the impractical pipe dream. **But again, this would be a Wild West where the exploitation of human labor and fragile Earth ecosystem makes no economic sense, where every single human can be granted access to resources that even the wealthiest among us now would envy, and where innovation and imagination become the only things we would recognize as currency. Only a libertarian-type system, that guarantees basic individual rights to life, liberty, and the pursuit of happiness could be valued and therefore human fidelity to a set of laws made possible, in such an existence.**

#### **3] Space appropriation and exploration originates from private companies such as Space X and Blue Origin. Preventing such is a restriction on the ability of companies to set and pursue their ends and these companies gain contracts with the government for projects which turns promise breaking offense.**

#### **Kant Negates –**

#### **1] Injustice requires someone wronged, but initial acquisition doesn’t violate any entity’s rights– therefore, private appropriation of outer space cannot be unjust, Feser 05:**

Edward Feser, [Associate Professor of Philosophy at Pasadena City College] “THERE IS NO SUCH THING AS AN UNJUST INITIAL ACQUISITION,” 2005 //LHP AV

The reason **there is no such thing as an unjust initial acquisition** of resources is that there is no such thing as either a just or an unjust initial acquisition of resources. The concept of **justice**, that is to say, simply **does not apply** to initial acquisition. **It applies only after initial acquisition has already taken place**. In particular, it applies only to transfers of property (and derivatively, to the rectification of injustices in transfer). This, it seems to me, is a clear implication of the assumption (rightly) made by Nozick that **external resources are initially unowned**. Consider the following example. **Suppose** **an individual** **A seeks to acquire some previously unowned resource R**. **For it to be** the case that A commits an **injustice** in acquiring R, it would also have to be the case that **there is some individual** **B** (or perhaps a group of individuals) **against whom A commits the injustice**. **But for B to have been wronged** by A’s acquisi- tion of R, **B would have to have had a rightful claim over R,** **a right to R**. By hypothesis, **however**, **B did not have a right to R, because no one had a right to it—it was unowned, after all**. So B was not wronged and could not have been. In fact, **the very first person who could conceivably be wronged by anyone’s use of R would be, not B, but A himself, since A is the first one to own R**. Such a wrong would in the nature of the case be an injustice in transfer—in unjustly taking from A what is rightfully his—not in initial acquisition. **The same thing, by extension, will be true of all unowned resources: it is only after some- one has initially acquired them that anyone could unjustly come to possess them, via unjust transfer**. It is impossible, then, for there to be any injustices in initial acquisition.7

#### **2] Original Acquisition doesn’t impose new obligations, but restriction of unilateralism is contrary to freedom, Sage 12:**

Sage, Nicholas W., [Assistant Professor of Law, London School of Economics and Political Science Law School, teach and write about private law, especially contract, property, and tort, particularly interested in theoretical questions about how to understand and justify these areas of law, as well as related issues in moral and political philosophy.] “Original Acquisition and Unilateralism: Kant, Hegel, and Corrective Justice” (January 1, 2012). Canadian Journal of Law and Jurisprudence, Vol. 25, No. 1, pp. 119-36, January 2012, Available at SSRN:<https://ssrn.com/abstract=2033518> // LHP PS

**Consider how** the **unilateralism problem is formulated**. **Original acquisition is called ‘unilateral’ because the acquirer’s action ‘limits’ other persons’ ‘freedom’**—**it imposes a new ‘constraint,’ ‘duty’ or ‘obligation,’ it ‘changes their normative situation.**’64 If those terms have their ordinary meanings then original acquisition is indeed ‘unilateral.’ **One person’s action means that a certain object is no longer available for others to access**. To that extent, the freedom of those persons is limited, they are under new constraints, duties or obligations, and their normative situation is changed. In an all-things-considered moral universe this would be troubling. **But in the Kantian right, unilateralism in this sense is irrelevant.** A specific conception of freedom carries the “justificatory burden of [Kant’s] entire argument”.65 **Limitations, constraints, duties, and obligations are immaterial unless they contravene this conception**. Likewise, **normative change matters** **only** if **it implicates Kant’s singular norm of freedom**. Recall that **for Kant ‘freedom’ means only that each person’s action must be their own**—**it cannot be chosen by any other person**. **This conception of** **freedom is purely relational and strictly negative**. That is brought out in the contrast between, on the one hand, **a person’s purposive action, and on the other, the ‘context’ for their action or their ‘mere wishes’**. **A person has no right to any particular context for the exercise of their action.** Moreover, **a person’s mere wish for something creates no entitlement to it.** Indeed, even a desperate need for a particular resource **does not bind anyone else**. Why does Kant insist that, while a person’s action necessarily commands respect, their mere wish or need never binds others?66 One answer is that **Kant’s system concerns only relations between persons, and wishes and needs are non-relational: they bear no necessary relation to any other person**. **A person can wish for or need something even though no other person could get it for them.** But what about wishes or needs that can be realized with others’ help? Most of us think that people ought to respect each other’s needs and at least some wishes when this is practicable. **Kant’s answer is that if my wish or need bound you as a matter of right then I would be choosing your action for you. Even if you did not want to, you would have to direct your action toward satisfying my wishes or needs. I would thus be using your purposiveness to achieve my ends.** That would be inconsistent with your freedom—your right that you alone choose how you exercise your purposiveness.67 Thus, one way that I could violate your freedom—**one way I could choose your action for you—is by forcing you to satisfy my wish, thereby using your purposiveness to achieve my end**. There is also another way I could choose your action for you: by acting myself such that I foreseeably interfere with your action. When my action interferes with yours, your exercise of your purposiveness does not produce the end that you intended. Instead it produces some other end, which I have effectively substituted and thereby chosen for you. (Since it is not always obvious whether an interference that happens to result from my action is properly regarded as my choice, sophisticated systems of private right develop objective tests to decide.)68 **Under the Kantian conception of freedom, original acquisition is unproblematic because your taking control of an unowned object is just your own action**. To take **control of the object is to subject it to your action. You do not, in taking control of an object, choose any other person’s action for them.** **You do not use anyone else’s purposiveness to achieve your end, you just exercise your own purposiveness**. **Nor does your action interfere with anyone else’s action—by definition, the object in question, which you are originally acquiring, is not yet subjected to any other person’s control or action.** **Thus, the object is at most the target of others’ potential action—in other words, of their mere wishes.** **That is irrelevant for Kant**. We can see the same point by recalling that, for Kant, the categories of private law entitlement embody ‘freedom’: they reflect the ways in which persons extend their action or purposiveness in the world.69 A person acts through their body, so they have an entitlement to bodily integrity. **A person can also acquire a property right over an object that is separate from the body, by subjecting the object to their action through taking control**. **Now, prior to original acquisition an object is clearly not part of any person’s body, nor is it any person’s property. No person has any entitlement to the object**. Which is just to say that **no person has yet subjected it to their action. Therefore the object is** as yet **unconnected** **to any person in a way that is recognized by the Kantian right.** **An unacquired object may be connected to persons only in ways that are irrelevant**. (For example, as the target of a wish, or as the anticipated context for their actions.) We might say, then, that prior to its acquisition an object—which does not have any normative standing of its own—is invisible to the Kantian right. An object appears for the very first time upon acquisition, already incorporated into some person’s sphere of external purposiveness. Or more accurately, **since rights are always relational,** we could say that the **Kantian right sees just the interrelation between two persons’ spheres of externalized purposiveness**—one or both of which may have already extended over objects. **The formulations of the unilateralism problem obscure all this**. **Original acquisition** does diminish ‘freedom’ in one sense: it **shrinks the domain of objects that are available for others to access in the future**—the domain of objects **that could potentially be subjected to others’ action**. But that **has nothing to do with Kantian freedom**. Likewise, as a pragmatic matter original acquisition imposes a constraint, duty or obligation: others are now obligated not to deal with a certain object. But **in Kantian terms obligations are unchanged: each person must respect each other’s action; one person’s action now happens to extend over the object in question.** Finally, original acquisition changes others’ normative situation, conceived as a sort of catalog of options they might pursue or objects they could potentially subject to their action. But from **Kant’s perspective, their normative situation remains the same.** **The object remains unsubjected to their action, and they remain obligated to respect the acquirer’s.** That an object other persons could have extended their action over is now unavailable to them has no significance for Kant. It is **only if we see the world i**n terms irrelevant to Kantian right—not as a world of purposive agents related to each other through their external actions and choices, but as **a world of physical objects or resources and creatures with wishes and needs for them—that original acquisition is problematically ‘unilateral**.’ That a non-Kantian conception of freedom is required to render original acquisition problematic is brought out by Ripstein’s discussion of property rights. **Ripstein argues** that **original acquisition** is uniquely problematic 18 because one person’s **unilateral act imposes “new obligations**” **on others**.70 To show that this problem is unique to original acquisition, Ripstein contrasts the purchase of an object with its original acquisition. Based on his examples, we can contrast two scenarios: 1. (1) Just before another person enters the stamp dealer’s store, you buy the rare stamp they had been saving to purchase. 2. (2) The stamp is on an envelope discarded in the gutter. Just before another person grabs the envelope, you take it for yourself. Ripstein claims that in (1), the purchase scenario, you do not unilaterally impose a “new obligation”,71 but in (2), the original acquisition scenario, you do:72 Purchasing things that others had hoped to buy narrows the range of things that those others might do, but does not place any new obligations on them. Others were already under an obligation to refrain from interfering with the stamp that you [purchased]; they face no new obligations as a result of your acquisition of it. Only their hopes have been dashed. They are in the same position as against you that they were in as against the previous owner: they can still try to make you an offer to convince you to sell it to them, even if you do not actively invite offers. The original acquisition of property remains distinctive because it does not simply change the world: it places others under new obligations.73 **Concerning the purchase scenario, Kant** should **agree with Ripstein that the fact that others’ “hopes have been dashed**”—that their wishes have been thwarted—**is irrelevant**. **They had not yet subjected the stamp to their action, so in obtaining it for yourself you commit no wrong against them.** **For Kant, that should be the end of the matter**. However, Ripstein supplements this explanation in non-Kantian terms. He says that, following your purchase of the stamp, there is no “new obligation” because others are “in the same position as against you ... that they were in as against the previous owner”.74 In other words, the stamps’ changing hands creates no ‘new obligation’ because, following the sale, the scope of others’ potential action with respect to the object is unchanged.75 But others’ potential actions are at most their mere wishes. Thus, just after Ripstein has purportedly excluded the relevance of wishes, his supplemental explanation invokes them again. On this approach, whether your action creates a ‘new obligation’ effectively turns on whether others’ abilities to satisfy their wishes with respect to the object remain the same after your action as beforehand. **That is not a valid consideration in Kant’s system.**

#### **3] If they win unilateralism is problematic, vote neg on permissibility – that would undermine all notions of justice, Sage 2:**

Sage, Nicholas W., [Assistant Professor of Law, London School of Economics and Political Science Law School, teach and write about private law, especially contract, property, and tort, particularly interested in theoretical questions about how to understand and justify these areas of law, as well as related issues in moral and political philosophy.] “Original Acquisition and Unilateralism: Kant, Hegel, and Corrective Justice” (January 1, 2012). Canadian Journal of Law and Jurisprudence, Vol. 25, No. 1, pp. 119-36, January 2012, Available at SSRN:<https://ssrn.com/abstract=2033518> // LHP AV

This brings us to a further set of difficulties with the view that original acquisition is problematic. **If ‘unilateralism’ is a problem** for the original acquisition of property, **it is also a problem throughout private law**. **First** of all, note that **if the objection** to an individual’s act of original acquisition **is that it restricts others’ potential action**, then **there is no reason to limit the objection to** those acts of the individual that implicate **legal** entitlements (i.e., ‘**obligations’**).76 If other **persons’** legitimate grievance about original acquisition is its impact on their potential action, they **should have the same right to complain about anything that affects their potential action**, whether this happens through the creation of a legal entitlement or otherwise. For example, from others’ perspective, **your damaging or destroying an object is at least as bad as your acquisition of it**.77 Even within the context of legal entitlements over objects, original acquisition cannot be singled out. Following the original acquisition of an object, concerns will continue to arise regarding the supposedly ‘unilateral’ nature of entitlements to that object. (It is not as if original acquisition takes the object ‘out of circulation,’ so to speak, so that if that act can be legitimized, all subsequent acts by the owner, and subsequent owners, will be legitimate.) For instance, **your continued possession** of an object **is just as problematic as your original acquisition. Every moment you continue to control an object—rather than, say, abandoning it or ceding to adverse possession—you maintain your property right and thereby exclude others**. Your **alienation** of the object **is also problematic**: **why can you decide to pass the object on to a particular third party, when that will entail that other persons cannot access it**? Moreover, considered within the context of the creation of legal entitlements generally, the original acquisition of property is in no way unique**. The creation of any legal entitlement is ‘unilateral’ in that it changes the scope of others’ ‘freedom,’ creates ‘constraints,’ ‘duties’ or ‘obligations,’ and alters their ‘normative situation’**—in the non-Kantian sense of those words. **Take** the right to **bodily integrity. When your body grows, it occupies new space that I can no longer access. I face new constraints with respect to that space**. The same happens when you immigrate to my country, or when you are born and move out into space as a separate personality for the first time.78 The supposed **unilateralism** **problem** **also arises for contract** rights. When you contract, you have the other party’s consent, so your change to that person’s normative situation is arguably unproblematic.79 But your contract also alters the rights of non- consenting third parties who now have a duty not to induce breach.80 Likewise, the creation of a fiduciary relationship imposes a duty on third parties not to assist breach.81 Previously, we noted that it was odd, given Kant’s rigorous systematicity, that the problem of unilateralism arises only for the initial creation of property rights.**82 As it turns out, if unilateralism is a problem for original acquisition, it is a problem that is common to all private law rights**.

### **AT: Universality**

1] Misunderstands universality – it’s a consequence of universalizing, con concieve of a world in which everyone tries to make a claim to property in outer space. Otherwise kant is homophobic –

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### **AT: Aliens**

#### **1] Private entities are things managed by non state affiliates.**

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

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

#### **Aliens are non earth state affiliates and thus private entities. Them owning land is appropriating so the aff violates their rights by now allowing them to own land.**

2] Proving appropriation land on which aliens exist is bad is NOT sufficient grounds for banning all outer space appropriation – any appropriation in and of itself is not bad because it does not entail taking lands from aliens. They have to prove all appropriation is intrinsically bad not appropriation that takes from aliens is bad, that’s the grounds for banning. It’s the same reason that all property on earth isn’t bad just because some property was stolen, property that is rightfully acquired is a right.

3] No solvency – this offense is just appropriation bad but states inevitably appropriate

#### **4] No aliens – err towards humans**

**Greene 19**,Tristan. “NASA research shows alien life is far less likely than previously thought.” Next Web. June 12, 2019.<https://thenextweb.com/science/2019/06/12/nasa-research-shows-alien-life-is-far-less-likely-than-previously-thought/>

**Scientists just threw a monkey wrench in the search for intelligent extraterrestrial life by redefining what a “habitable planet” is. A team of researchers led by NASA astrobiologist Edward Schwieterman recently published a study indicating that the habitable zone (HZ) for life includes far fewer planetary systems than scientists thought.** Rented shoes are gross But bowling is fun! Join us for Bowlr, Amsterdam’s best networking event YEAH! According to the paper: Here we show that the HZ for complex aerobic life is likely limited relative to that for microbial life. We use a 1D radiative-convective climate and photochemical models to circumscribe a Habitable Zone for Complex Life (HZCL) based on known toxicity limits for a range of organisms as a proof of concept. **Basically the scientists used the only model for life we have – Earth life – and came up with a solution for determining whether anything intelligent could evolve in the expected conditions of systems in the HZ. They concluded that a large number of planets thought capable of supporting life have toxic atmospheres unlikely to support any lifeforms beyond the most rudimentary organisms. According to study co-author Timothy Lyons, distinguished professor of biogeochemistry at the University of California, Riverside, previous ideas on what makes a planet habitable haven’t taken such a specific view.** He told NASA: **This is the first time the physiological limits of life on Earth have been considered to predict the distribution of complex life elsewhere in the universe.** So what does it actually mean? Well, that depends on your belief system. Scientifically speaking, the search for alien life is based on faith. There’s no more evidence for alien life than there is for the various gods and goddesses of Earth‘s religions. Though there are mountains of evidence to support the idea that humans believe in aliens for the exact same reasons they believe in religion. That’s not to say that intelligent **alien life is** impossible. It’s just **highly improbable**. We know that the evolution of complex beings took billions of years on Earth, and we know our planet is so fragile that it almost surely wouldn’t have survived long enough to support that life were it not for Jupiter and Saturn out front blocking asteroids for us. And there’s countless other instances of conditions in our planet’s history so improbably perfect that **life itself, even on a single planet, only seems possible because we’re experiencing it.** Supposedly, anyway. **This research shows that when you strip away our yearning, burning desire to find something to help us make sense of our own existence: you’re left with a universe that probably can’t support complex life anywhere but on Earth.** As Schwieterman told USA Today: **Showing how rare and special our planet is only enhances the case for protecting it. As far as we know, Earth is the only planet in the universe that can sustain human life.** Sure, intelligent aliens could be deliberately concealing themselves to watch us from afar; they could be invisible to our senses and existing beside us in spiritual form, or simply beyond the reach of our current technology. The absence of evidence isn’t the evidence of absence. But **climate crisis, war, disease, hunger, and poverty are demonstrably real. With no evidence for ET, maybe it’s time we made helping humans our new religion instead of seeking out neighbors we ought to be embarrassed to invite over.**

### **AT Property Bad**

#### **This requires a system of property – mere empirical possession is insufficient and contrary to freedom, Hogdson 10:**

Louis Philippe Hogdson, 2010, “Kant on Property Rights and the State”<http://www.yorku.ca/lhodgson/kant-on-property-rights-and.pdf> //LHP AV

What does it mean to say that property rights are essential for freedom? For our purposes, the crucial feature of **property is the possibility of rightfully excluding others from the use of a certain object.**8 If I own a certain apple, then that means that you wrong me if you use the apple without my permission, and hence that you can forcibly be prevented from doing so. Importantly, this is the case **regardless of whether I am physically holding the apple or not.**9 The point is worth stressing. **I can exclude you from using an apple simply by holding it. I then exclude you physically**, since we cannot both hold the apple at the same time; **I also exclude you normatively, since using force** to wrestle the apple from me **would violate my right to freedom** (assuming that you have no property right in the apple).10 **Still**, **this** form of exclusion falls short of what is required for genuine property, because it **makes my right** to the apple **entirely derivative from my right to bodily integrity**, and hence leaves me with no complaint if I accidentally drop the apple and you pick it up. **Genuine property rights do not depend on physical possession** in that way: if an apple is genuinely mine and I drop it, then you wrong me if you pick it up and walk away with it; that I was not physically holding the apple at the time is irrelevant.11 **The question we need to ask, then, is why freedom demands that it be possible for me to exclude others from using certain objects even though I am not in physical possession** of them. How can freedom place such demands with respect to objects that are external to me – objects that are neither physically connected to my body, nor essentially connected to me in the way my body is**? Kant’s answer has two parts**. **First**, he tells us that the possibility of **property is the** object of the **postulate of private right**: It is possible for me to have any external object of my choice as mine, that is, **a maxim by which**, if it were to become a law, **an object** of choice **would** in itself (objectively) have to **belong to no one** (res nullius) **is contrary to right**.12 Second, he explains the necessity of this postulate as follows: **an object of my choice is something that I have the physical power to** **use**. **If it were** nevertheless absolutely **not within my rightful power to** make **use** of **it**, that is, if the use of it could not coexist with the freedom of everyone in accordance with a universal law (**would be wrong**), **then freedom would be depriving itself of the use of its choice with regard to an object of choice, by putting usable objects beyond any possibility of being used**; in other words, **it would annihilate them in a practical respect** and make them into a res nullius, even though in the use of things choice was formally consistent with everyone’s outer freedom in accordance with universal laws.13 The problem is that this seems to get things precisely backwards. Kant stresses that external freedom demands that the use of some objects be rightful. That seems obvious enough: **there would be no external freedom to speak of if the external world were entirely off limits**. But that hardly establishes a link between freedom and property in the stronger sense that concerns us here. Kant explains why it is not possible for every object to be off limits to all; the question we need to ask is how it is possible for any object that I am not physically holding to be off limits to others. The difficulty I am pointing to can be brought out by considering an alternative to a system of property: a system of mere empirical possession in which everything in the world can rightfully be used, so long as it is not under someone’s physical control. In this system, the ground on which I stand and the objects I carry around with me are off limits to you, but the rest of the world – including objects I put down or dropped a moment ago – is up for grabs. Such a system does not put ‘usable objects beyond any possibility of being used’ in any straightforward sense. Yet, if Kant believes that freedom demands the possibility of full-fledged property rights, he must think that a system of empirical possession unjustifiably restricts freedom. How is that the case? **The problem, in a nutshell, is that a system of empirical possession only allows me to pursue projects taking place within the space I occupy at a given moment and involving objects that I can hold for the entire duration of the project**. Any other project – and this means any remotely complex project – will involve objects whose use I cannot rightfully determine through my choices, and for whose use I am therefore inevitably dependent on the choices of others. Put differently, a system of mere empirical possession makes my (eminently restricted) ability to occupy space and to hold objects the measure of my ability to make objects into my means, and thus to set and pursue ends for myself. This unjustifiably restricts my external freedom, because there is no reason why my having only two hands (to name only one obvious physical limitation) should determine what means I can rightfully secure for myself. To illustrate the point, **suppose that I want to build** myself **a house**. Suppose that one of the means **I need** to pursue this project is **a hammer**, and that I happen to find just the hammer I need. The problem that a system of **mere empirical possession** poses is not that it makes the hammer off limits to me, as Kant seems to suggest in the passage I quoted above, but, rather, that it **makes** **my right to stop you from taking the hammer contingent on my ability to hold on to it**. As soon as I put it down for a second, you are perfectly entitled to pick it up and walk away with it. Worse, once you have grabbed the hammer, it is yours in the sense appropriate to the system, and I cannot rightfully take it back so long as you are holding it. The same holds for the land on which I plan to build my house: my right to exclude others from it only extends to the ground on which I am standing at a given time. You are perfectly entitled to move around on the rest of the land I intend to use, regardless of whether I have fenced it off or started building on it. Indeed, if you decide to stand on part of the land that I claim, you make it off limits to me, and thereby make it impossible for me to realize my project without wronging you. **That I would be wronging you is important here: it shows how your interference differs from other unforeseen circumstances** I may face in pursuing my project. An earthquake could destroy most of what I have built, and thereby hamper my pursuit far more than you would by grabbing the hammer. But the earthquake does not raise normative problems for how I may pursue my end. If it destroys my house, then I can just rebuild it; indeed, if I have the means, I am justified in stopping the earthquake from happening altogether. In this way, the earthquake only presents me with an instrumental problem: it requires me to revise my calculations for how I am to achieve my goal. Interference of that kind does not restrict my ability to set and pursue ends; it is simply part of what exercising that ability involves for a finite being. Your interference raises a different problem. As **a rational agent, you are not just some circumstance that I have to work around: your right to freedom means that you can make things off limits** to me simply by holding on to them. If you choose to stand on the ground where I intended to build, you thereby put a stop to my project of building a house there; if you choose to pick up an object I left lying around, you make it impossible for me to use it for my project. **All a system of mere empirical possession allows me to do to avoid such occurrences is to plead with you** not to interfere with my project. In other words, on such a system, it is always partly up to you whether I can rightfully make use of an object that I am not currently holding, or of a piece of land on which I am not currently standing. The only means I can have at my disposal to set and pursue my ends with are objects to which I am physically connected. As I said above, **this** makes my limited ability to hold objects the measure of what means I can have at my disposal, **which arbitrarily restricts my ability to set and pursue ends** for myself.14 Now on Kant’s view, as I said at the outset, such a restriction can be justified, but only if it is required by freedom. In our case, this means that **the restriction imposed by the system of mere empirical possession is acceptable only if my having a full-fledged property right in the hammer** – that is, my being allowed to stop you from using it even when I am not holding it – **would somehow be incompatible with your freedom**. We can easily show that this is not the case. One way to make the point is to stress that **your freedom depends on your ability to set and pursue ends** for yourself, **which does not depend on** your access to **any particular object**; **therefore, I do not restrict your freedom** by making the hammer off limits to you.15 There is also a more direct way to make the point in the present context. One can simply note that, **from the point of view of you**r access to the hammer, **there is no relevant difference between** a system of **full**-fledged **property** rights **and** a system of mere **empirical possession**, since both systems allow me to exclude you entirely from using the hammer. Of course, on the latter system, I can do so only by physically holding on to the hammer for the rest of my life, whereas the former system allows me to set the hammer down while still excluding you. But **from your standpoint the two scenarios amount to the same thing, since what matters is simply that I exclude you** from using the hammer, not how I do it. A full-fledged system of property thus brings about no further restriction on your freedom. **Consequently, any restriction of freedom associated with a system of mere empirical possession cannot be grounded in the need to protect freedom itself and hence must be unjustified on Kant’s view**. Let me close this section by stressing the general character of the conclusion we have reached. We have seen that **freedom requires property**. This is not to say that freedom requires the specific form of private property found in modern capitalist societies. Kant’s argument only requires some system of rights allowing one to exclude others from using a certain object for a certain amount of time, regardless of whether one is holding it or not. That could be achieved by a system under which the means of production are communally owned, so long as it appropriately determines who has the right to use a given object at a given time.16 The considerations presented here thus do not amount to an endorsement of capitalism, or of the sort of absolute private property rights advocated by libertarians.17 They support a broader thesis: that, **if rational agents are to live together without undermining one another’s freedom, then they must have a system that allows them to control certain objects through their choices without having to hold on to them physically**. Nothing more is required for the rest of our argument. objects through their choices without having to hold on to them physically. Nothing more is required for the rest of our argument.