### Framework

#### The existence of conditionally good things is premised on the unconditional worth of the good will. The goodness of my happiness is conditional because if the reasons for the inclination of pleasure did not exist then their objects would not exist in the first place. The only unconditional good thing is rational willing, which grounds all conditional goodness.

**Korsgaard 86** (Korsgaard, 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] “Kant's Formula of Humanity.” Harvard EDU, 1986, [www.people.fas.harvard.edu/~korsgaar/CMK.FH.pdf.) //](http://www.people.fas.harvard.edu/~korsgaar/CMK.FH.pdf.%20/) Lex CH

In one sense, this question has already been answered in the first section of the book. There, Kant asserts that the only thing that can be conceived to be unconditionally good is a good will. The location of this claim shows us that Kant attributes it to “common rational knowledge of morals.” It is used as a starting point for his analysis. In the remarks that follow, Kant elucidates the claim by explaining that **the good will is the only thing that has its “full worth in itself”** (394/10); **and is the only thing whose value is in no way relative to its circumstances or results. Its value is independent of "what it effects or accomplishes” (394/10); it is in the strictest sense intrinsically good. The good will is also said to be the condition of all our other purposes (396/12).** This follows from its being **the only unconditionally good thing. The value of anything else whatever is dependent upon certain conditions being met.** **Kant mentions talents of the mind, qualities of temperament, gifts of fortune such as power, wealth, and health, and happiness among the things whose value is conditional. If the value of something is conditional, however, an inquiry into the conditions of its value should lead us eventually to what is unconditioned.** This is partly affirmed in these early passages, for Kant tells us that the talents and temperamental qualities must be directed, the advantages used, and the happiness possessed by one with a good will in order that they be good. **The good will is, in all cases, the unconditioned condition of the goodness of other things.** As the inclusion of happiness among the conditional goods shows, although Kant is claiming that the good will is the only thing whose value is intrinsic, he is not claiming that the good will is the only thing that is valuable as an end. Means are obviously conditional goods, for their goodness depends upon the goodness of the ends to which they are instrumental. But **happiness, although clearly an end, and an end under which Kant thinks all of our other ends are subsumed, is also a conditional good whose value depends upon the good will**. So Kant tells us that the good will is not the sole or complete good but the condition of all others, even of the desire for happiness” (396/12). It is for this reason that “an impartial observer” disapproves the sight of a being adorned with no feature of a pure and good will, yet enjoying uninterrupted prosperaty” (393/9). But the impartial observer is equally dismayed by the idea that the virtuous person be without happiness: That virtue (as the worthiness to be happy) is the supreme condition of whatever appears to us to be desirable and thus of all our pursuit of happiness and, consequently, that it is the supreme good have been proved in the Analytic. But these truths do not imply that virtue is the entire and perfect good as the object of the faculty of desire of rational finite beings. For this, **happiness** is also required, and indeed not merely in the partial eyes of a person who makes himself his end but even in the judgment of an impartial reason, which impartially regards persons in the world as ends-in-themselves (Critique of Practical Reason 110/114). A thing, then, **can be said to be objectively good**, either if it is unconditionally good or if it is conditionally good and the condition under which it is good is met. The happiness of the virtuous, for this reason, forms the other part of the “highest good": virtue, and happiness in proportion to virtue, together comprise all that is objectively good. A conditionally good thing, like happiness, is objectively good **when its condition is met in the sense that** it is fully justified and **the reasons for it are sufficient**. Every rational being has a reason to bring it about, and it is this that makes it a duty both to pursue the happiness of others and, in general, to make the highest good one's end. Since **all objective value must come from unconditioned value, the good will is the source of all the good in the world.** The highest good, as virtue and happiness in proportion to virtue; or **the Kingdom of Ends, as** “a whole of rational **beings** as ends in themselves **as well as of the particular ends which each may set for himself**” (Foundations 433/51) **are representations of a system** of ends **which can be said to be "synthesized” by the categorical imperative**. This system is the totality of all that is objectively good under the unconditioned good; **it is** the systematic whole or **unity formed by practical reason**.

#### That means we must treat each other as ends in themselves. Precludes other frameworks as they are predicated on conditionally good objects that gain significance from the unconditional goodness of rational nature.

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Now comes the crucial step. Kant's answer, as I understand him, **is that what makes the object of your rational choice good is that it is the object of a rational choice**. That is, since we still do make choices and have the attitude that what we choose is good in spite of our incapacity to find the unconditioned condition of the object's goodness in this (empirical) regress upon the conditions, it must be that we are supposing that rational choice itself makes its object good. His idea is that rational choice has what I will call a value-conferring status. When Kant says: “**rational nature exists as an end in itself.** Man necessarily thinks of his own existence in this way; thus far **it is a subjective principle of human actions**” (429/47), I read him as claiming that in our private rational choices and in general in our actions **we view ourselves as having a value-conferring status in virtue** of our rational nature. We act as if our own choice were the sufficient condition of the goodness of its object: this attitude is built into (a subjective principle of) rational action. When Kant goes on to say: “Also **every other rational being thinks of his existence by means of the same rational ground which holds also for myself**; thus, it is at the same time an objective principle from which, as a supreme practical ground, it must be possible to derive all laws of the will” (429/47), I read him as making the following argument. If you view yourself as having a value-conferring status in virtue of your power of rational choice, **you must view anyone who has the power of rational choice as having, in virtue of that power, a value-conferring status**. This will mean that what you make good by means of your rational choice must be harmonious with what another can make good by means of her rational choice – for the good is a consistent, harmonious object shared by all rational beings. Thus it must always be possible for others to contain in themselves the end of the very same action” (430/48).' **Thus**, regressing upon the conditions, **we find that the unconditioned condition of the goodness of anything is rational nature**, or the power of rational choice. To play this role, however, **rational nature must** itself **be** something of unconditional value – **an end in itself.** This means, however, that you must treat rational nature wherever you find it in your own person or in that of another) as an end. This in turn means that no choice is rational which violates the status of rational nature as an end: rational nature becomes a limiting condition (437–438/56) of the rationality of choice and action. It is an unconditional end, so you can never act against it without contradiction. **If you overturn the source of the goodness of your end, neither your end nor the action which aims at it can possibly be good, and your action will not be fully rational.** To say that humanity is of unconditional value might seem, at first sight, somewhat different from the claim with which the Foundations opens: that the good will is of unconditional value. What enables Kant to make both claims without any problem is this: **humanity is the power of rational choice**, but only when the choice is fully rational is humanity fully realized. Humanity, as I argued in Section III, is completed and perfected only in the realization of "personality”, which is the good will. But **the possession of humanity and the capacity for the good will**, whether or not that capacity is realized, **is enough to establish a claim** **on being treated as an** unconditional **end.** Readers have often been puzzled by the prescription "treat humanity as an end.” Kant's claims that the Humanity formula is closer to intuition (436/54), that the Formula of Universal Law gives the content of the categorical imperative (420-421/38–39 and 425/43), and that the latter ought to be used in actual decision making (437/55), might make it seem as if Kant does not intend this formulation to give definite directions for application, independently of its equivalence with the Formula of Universal Law. In opposition to this is the fact that Kant re-explains his Foundations examples in terms of this formulation; in one case – the suicide example – providing a rather better account in terms of this formulation than he does in terms of universal law. Even more important, however, is the fact that all of the duties described in the Doctrine of Virtue are derived from the idea that Humanity must always be treated as unconditionally valuable. In fact, the argument that reveals the unconditional value of humanity also teaches us how to apply the Formula of Humanity. In order to know what is meant by “treating humanity as an end”, we need only consider this argument, and see how humanity got to be an end in itself. What was in question was the source of the goodness of an end- the goodness, say, of some ordinary object of inclination. This source was traced to the power of rationally choosing ends, exercised in this case on this end. So when Kant says rational nature or **humanity is an end in itself**, it **is** the power of rational choice that he is referring to, and in particular, **the power to set an end to make something an end by conferring the status of goodness on it**) and pursue it by rational means. The question is then: what is involved in treating your own and every other human being's capacity for the rational choice of ends – that is to say, for conferring value – as an end in itself? There are several things that are important to keep in mind. First, Kant thinks that this end functions in our deliberations negatively - a something that is not to be acted against. The capacity for rational choice is not a purpose that we can realize or something for us to bring into existence. Second, it is an unconditional end, and that has two important implications. The first is that as **an unconditional end it must never be acted against**. It is not one end among others, to be weighed along with the rest. The second implication in a sense gives the reason for the first: as an unconditional end it is the condition of the goodness of all our other ends. **If humanity is not regarded and treated as unconditionally good then nothing else can be objectively good.** As Kant puts it in the Foundations: “the subject of a possible will which is absolutely good ... cannot be made secondary to any other object without contradiction” (437/56). No relative end can be pursued as if it were better or more important than humanity itself without a kind of contradiction.

#### A rational will must practically regard itself as a free will, otherwise it freezes action. Only the categorical imperative solves regress – it is already the law of the free will, and acting upon a principle you have willed is a manifestation of the formula of autonomy that is binding to agents.

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Kant argues that **when you make a choice you must act "under the idea of freedom**." (G 4: 448/66) He explains that "we cannot conceive of a reason which consciously responds to a bidding from the outside with respect to its judgments." (G 4: 448/66) **You may of course choose to act on a desire, but insofar as you take the act to be yours, you think you have made it your maxim to act on this desire.** If you feel that the desire impelled you into the act, you do not regard the act as a product of your will, but as involuntary. **The point is not that you must believe that you are free, but that you must choose as if you were free.** It is important to see that this is quite consistent with believing yourself to be fully determined. To make it vivid, **imagine that you are participating in a scientific experiment, and you know that today your every move is programmed by an electronic device implanted in your brain.** The device is not going to bypass your thought processes, however, and make you move mechanically, but rather to work through them: it will determine what you think. Perhaps you get up and decide to spend the morning working. You no sooner make the decision than it occurs to you that it must have been programmed. We may imagine that in a spirit of rebellion you then decide to skip work and go shopping. And then it occurs to you that that must have been programmed. The important point here is that efforts to second guess the 5 device cannot help you decide what to do. They can only prevent you from making any decision. **In order to do anything, you must simply ignore the fact that you are programmed, and decide what to do - just as if you were free**. You will believe that your decision is a sham, but **it** makes no difference.viii Kant's point, then, **is not about a theoretical assumption necessary to decision, but about a fundamental feature of the standpoint from which decisions are made.ix** It follows from this feature that we must regard our decisions as springing ultimately from principles that we have chosen, and justifiable by those principles. We must regard ourselves as having free will.Kant defines **a free will as a rational causality that is effective without being determined by an alien cause.** Anything outside of the will counts as an alien cause, including the desires and inclinations of the person. **The free will must be entirely self-determining.** Yet, **because it is a causality, it must act on some law or other**. "Since the concept of a causality entails that of laws … it follows that freedom is by no means lawless…" (G 4: 446/65) **The free will therefore must have its own law.** Alternatively, **we may say that since the will is practical reason, it cannot be conceived as acting and choosing for no reason**. Since **reasons are derived from principles, the free will must have its own principle**. Kant thinks that **the categorical imperative is the free will's law or principle**. But it may seem unclear why this more than anything else should be the free will's principle. If it is free to make its own law, why can't it make any law whatever? To see why, imagine an attempt to discover the freely adopted principle on which some action is based. I ask to know why you are doing some ordinary thing, and you give me your proximate reason, your immediate end. I then ask why you want that, and most likely you mention some larger end or project. I can press on, demanding your reason at every step, until we reach the moment when you are out of answers. You have shown that your action is calculated to assist you in achieving what you think is desirable on the whole, what you have determined that you want most. The reasons that you have given can be cast in the form of maxims derived from imperatives. From a string of hypothetical imperatives, technical and pragmatic (G 4: 416-417/34), you have derived a maxim to which we can give the abbreviated formulation: "I will do this action, in order to get what I desire." 6 According to Kant, this maxim only determines your will if you have adopted another maxim that makes it your end to get what you desire. This maxim is: "I will make it my end to have the things that I desire." Now suppose that I want to know why you have adopted this maxim. Why should you try to satisfy your desires? There are two answers which we can dismiss immediately. **First,** **suppose you appeal to a psychological law of nature that runs something like "a human being necessarily pursues the things he or she desires."x To appeal to this causal law as an answer would be to deny your freedom and to deny that you are acting under the idea of freedom. The answer does not have the structure of reason-giving: it is a way of saying "I can't help it."** Second, suppose you claim that you have adopted this maxim randomly. There is nothing further to say. You think could have adopted some other maxim, since you regard your will as free, but as it happened you picked this one. As we know, Kant rejects **this**, as **being inconsistent with the** very **idea of a will**, which does what it does according to a law, or for a reason. It seems as if the will must choose its principle for a reason and so always on the basis of some more ultimate principle. We are here confronted with a deep problem of a familiar kind. If you can give a reason, you have derived it from some more fundamental maxim, and I can ask why you've adopted that one. If you cannot, it looks as if your principle was randomly selected. Obviously, **to put an end to a regress like this we need a principle about which it is impossible, unnecessary, or incoherent to ask why a free person would have chosen it**. Kant's argument must show that the categorical imperative has this status. Although Kant does not think that a free will exists in time, we may imagine that there is a "moment" when the free will is called upon to choose its most fundamental principle**. In order to be a will, it must have a principle, from which it will derive its reasons. The principle it chooses will determine what it counts as a reason. But precisely because at this "moment" the will has not yet determined what it will count as a reason, it seems as if there could be no reason for it to choose one principle rather than another. Kant calls this feature of the will its "spontaneity."** xi As the argument stands now, it looks as if the will could adopt any maxim we can construct. If you have a free will you could adopt a maxim of pursuing only those things to which you have an 7 aversion, or perhaps all and only the things your next-door neighbor enjoys. For us human beings, however, these are not serious options, for reasons that come out most clearly in Religion Within the Limits of Reason Alone. Kant uses the term "incentive" (Triebfeder) to describe the relation of the free person to the candidate reasons among which she chooses. **An incentive is something that makes an action interesting to you, that makes it a live option. Desires and inclinations are incentives; so is respect for the moral law.** An inclination by itself is merely an incentive, and does not become a reason for action until the person has adopted it freely into her maxim. (Rel. 6: 23-24/19; 44/40) **Although incentives do not yet provide reasons for the spontaneous will, they do determine what the options are - which things, so to speak, are candidates for reasons.** And having an aversion to something is not, for us human beings, an incentive for pursuing it, and so will not become a reason. In the Religion, Kant claims that it is impossible for a human being not to be moved at all by incentives; our freedom, rather, is exercised in choosing the order of precedence among the different kinds of incentives to which we are subject. (6: 30/25; 36/31) So the real choice will be between a maxim of self-love, which subordinates the incentives of morality to those of inclination, and the moral maxim, which subordinates incentives of inclination to moral ones. The maxim of self-love says something like: "I will do what I desire, and what is morally required if it doesn't interfere with my self love." and the moral maxim says something like: "I will do what is morally required, and what I desire if it doesn't interfere with my duty." More specifically stated, of course, **the moral maxim is the maxim derived from the categorical imperative: "I will act only on a maxim that I can will as a universal law."** It looks at first as if the problem here is to show that there is some reason for the spontaneous will to choose the moral maxim rather than the maxim of self-love. Yet this seems impossible, since the spontaneous will by hypothesis has not yet determined what it counts as a reason. But on reflection we will see that this problem can be circumvented. We need only consider the standpoint of the spontaneous will, and the content of the categorical imperative. 8 **At the standpoint of spontaneity, the will must, in order so to speak to commence operations, choose a principle or a law for itself. Nothing provides any content for that law. All that it has to be is a law.** Suppose that it chooses the categorical imperative, as represented by **the Formula of Universal Law**. This formula merely **tells us to choose a law**. Its only constraint on our choice is that it have the form of a law. **Nothing provides any content for that law**. All that it has to be is a law. By making the Formula of Universal Law its principle, the free will retains the position of spontaneity. Or, to put it a better way, the argument shows that the free will need do nothing to make the Formula of Universal Law its principle: it is already its principle. **The categorical imperative** is thus shown to be the law of spontaneity. In a sense, the Formula of Universal Law simply **describes the function** or task **of an autonomous will**. The moral law does not impose a constraint on the will; it merely says what it has to do in order to be an autonomous will at all. It has to choose a law. On the other hand, suppose the will chooses the maxim of self-love. In that case, it departs from its position of spontaneity and puts itself in the service of inclination. A constraint on its choice is acquired. The important thing to see is that there is no incentive for the spontaneous will to do this. Since we are just talking about the will itself right now, and not the whole person, the incentives of inclination cannot provide a temptation to adopt the maxim of self-love. **Incentives of inclination cannot move the will to abandon its position of spontaneity**, since they cannot move the will at all until it has already abandoned that position by resolving to be moved by them. This argument, which I will call the Argument from Spontaneity, shows that there are not really two choices, morality and self-love, on an equal footing. **The will that makes the categorical imperative its law merely reaffirms its independence of everything except law in general.** Its dependence on law in general is not a constraint, for that is just a consequence of the fact that it is a will. **Making the categorical imperative its principle does not require the spontaneous will to take an action - it is already its principle.** Adopting the maxim of self-love is surrendering the position of spontaneity, and does require an action. (Rel. 6: 31-32/26-27) And it is an action for which there could be no reason. Thus, not only are the two options not on a footing, but the choice of the maxim of self-love over that of morality is unintelligible. 9 **Morality is the natural condition of a free will**. The free will that puts inclination above morality sacrifices its freedom for nothing.

#### A free will must regard itself as a moral will which is will under the categorical imperative. When we recognize ourselves as autonomous, we are bounded by the categorical imperative. Ethics must start from the noumenal world that contains the ground for laws of nature and is independent of our subjectivities.

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**A** crucial point in the Argument from Spontaneity is that the **spontaneous will is not tempted by incentives of inclination**. Now, we human beings are not so situated with respect to the incentives of inclination, because we are imperfectly rational beings. Or rather, this is what makes us imperfectly rational beings. Our inclinations may be alien to our purely rational wills, but they are not alien to us, and they do tempt us. Letting our wills serve our happiness therefore does not seem pointless to us. So although the Argument from Spontaneity **explains why a purely rational will would have the moral law as its first principle, it does not show us exactly why we should do so.** In Kant's language, **it does not explain "the interest attaching to the ideas of morality."** (G 4: 448/69) **Without an account of moral interest**, Kant complains, **there will be a circle in our explanation of moral obligation**. (G 4: 449-450/67-69) Now, what exactly this circle is rather difficult to see. Kant has already claimed that, **as creatures who must act under the idea of freedom, we are bound by the laws of freedom**. (G 4: 448/66) But he thinks this does not yet explain how "the worth we ascribe" to moral actions (G 4: 449/68) can so completely outweigh the worth of our condition - that is, our happiness or unhappiness. **We are willing to grant the importance of the autonomy we express in moral conduct only because we already think that morality is supremely important.** But it is still unclear why we think so. **What is needed is an incentive for us to identify with the free and rational side of our nature**. To provide this, Kant introduces the distinction between the intelligible and sensible worlds, or noumena and phenomena.xii This distinction introduces two new elements into the argument. **The first element is** the emphasis on complete **causal determination in the phenomenal world**. Up until now, I have spoken of the will that adopts the maxim of self-love as adopting an unnecessary constraint. But **the addition of the two-worlds** **picture** **makes the** consequence of adopting the **maxim of self-love look** even **worse**. The will that adopts self-love as **its maxim is determined by inclinations, and inclinations, in the world of phenomena, are completely determined by natural forces**, by the nexus of 10 causal laws. So such a will becomes a mere conduit for natural forces. The person who acts from self-love is in a sense not actively willing at all, but simply allowing herself to be controlled by the passive part of her nature, which in turn is controlled by all of nature. From the perspective of the noumenal world, **ends we adopt under the influence of inclination rather than morality do not even seem to be our own.** The other element is introduced with the claim that **"the intelligible world contains the ground of the sensible world and hence of its laws."** (G 4: 453/72)xiii Although we can know nothing of the noumenal world, it is what we conceive as lying behind the phenomenal world and giving that world its character. **To conceive yourself as a member of the noumenal world is therefore to conceive yourself as among the grounds of the world as we know it.xiv** And if you hold this position in so far as you have a will, then that means that the actions of your will make a real difference to the way the phenomenal world is.Combining these two new elements we can generate a very stark contrast between choosing the maxim of morality and choosing that of self-love. We can think of the noumenal world as containing our own wills and whatever else forms part of "the ground of the sensible world and its laws." In particular**, the noumenal world contains the ground, whatever it might be, of the laws of nature** (for these are not objects of our wills).xv We can influence the phenomenal world, and these other forces do so as well. Of course, **nothing can be known about the nature of this influence or its mechanisms, or of how these various agencies together generate the world of appearances.** But we can still say this: **if by choosing the maxim of self-love you allow the laws of nature to determine your actions, then you are in effect surrendering your place among "the grounds of the sensible world and its laws." The existence of your will in the noumenal world makes no difference to the character of the phenomenal world. For your will is determined by the laws of nature, and those in turn can be accounted for by other forces in the noumenal world. Although you are free, you could just as well not have been. Your freedom makes no difference. But if you will in accordance with the moral law, you do make a difference. You actually contribute - we might say to the rational, as opposed to the merely natural, ordering of the sensible world. The choice of the moral maxim over the maxim of self-love may then be seen as a choice of genuine activity over passivity; a choice to use your active powers to make a difference in the world.** 11 Recall that all of this is supposed to solve the problem of moral interest. Kant thinks of the idea of our intelligible existence as being, roughly speaking, the motivating thought of morality, and so what makes morality possible. In the Religion, Kant tells us that **one who honors the moral law cannot avoid thinking about what sort of world [they] would create under the guidance of practical reason, and that the answer is determined by the moral idea of the Highest Good**.(6: 5/5) In the second Critique, Kant says in one place that our intelligible existence gives us a "higher vocation." (5: 98/91) **This vocation is help to make the world a rational place, by contributing to the production of the Highest Good**.xvi This argument also explains why Kant thinks that **unless the Highest Good is possible the moral law is "fantastic, directed to empty imaginary ends, and consequently inherently false."** (KpV 5: 114/118) The difficulty arises in this way. We have explained moral interest in terms of a stark contrast between being a mere conduit for natural forces on the one hand and making a real difference in the world through one's intentions on the other. But in between these two possibilities we discover a third - that our intentions and actions will make a real difference in the world, but that we will have no control over what sort of difference they make - because the consequences of our actions will not be what we intend. This can happen because we are not the only elements of the noumenal world and the various forces it contains combine, in ways we cannot comprehend, to generate the world of appearances. **The forces of nature and the actions of other persons mediate between our intentions and the actual results of our actions, often distorting or perverting those results**. This possibility then makes the appeal of freedom seem like a fraud. If the motivating thought of morality is that freedom means that we can make a difference in the world, but we then find that we have no control over the form this difference ultimately takes, then the motivating thought is genuinely threatened. **Postulating God as the author of the laws of nature is a way of guaranteeing that other noumenal forces will cooperate with our good intentions, and leaves our moral interest in place**. In the Foundations, Kant says: … the idea of a pure intelligible world as a whole of all intelligences to which we ourselves belong as rational beings … is always a useful and permissible idea for the purpose of a rational faith. This is so even though all knowledge terminates at its 12 boundary, for through the glorious idea of a universal realm of end-in-themselves (rational beings) a lively interest in the moral law can be awakened in us. (4: 462/82) The two-worlds argument is worked out better in the Critique of Practical Reason than in Foundations III. In Foundations III, Kant wants to argue that **the idea of our existence in the intelligible world suggests our freedom to us: our capacity for pure spontaneous activity, which reveals itself in reason's production of ideas, makes us members** of the intelligible world. As such **we may regard ourselves as free**. In the second Critique, Kant develops the reverse argument that freedom leads us to the conception of our existence the intelligible world. It is morality, in turn, that teaches us that we are free. So morality itself "points" us to the intelligible world. (KpV 5: 44/43) The argument of the Critique of Practical Reason is superior because freedom requires not just that we exist in the intelligible world, but that we exist there insofar as we have wills - that we can be motivated from there, so to speak. The Foundations argument places our theoretical capacity to formulate pure ideas in the intelligible world, but that by itself doesn't imply that we can be moved by them.xvii And the latter is what the argument must show. The second Critique argument starts firmly from the fact that we can be motivated by pure ideas. That we can be so motivated is what Kant calls the Fact of Reason.

#### Thus, the standard is consistency with the categorical imperative.

#### Prefer it additionally

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

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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.

#### [4] Inductions require prior inductions to verify its truth but that’s circular since the framework of induction presupposes its own method of justification. Also, there is no logical basis for induction – just because the moon came up last night, does not mean there is a sound justification for why it ought to come up tomorrow.

### Contention:

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

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

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.

My view is that cosmopolitan right signalizes a contradiction of the right to occupy space with itself under different modalities: on the one hand as the original right of individuals or nations to “be somewhere” (as belonging to the lex iusti) and on the other, the acquired right of peoples to their land (belonging to the lex iuridica). Kant distinguishes between three leges or conditions of justice: lex iusti, lex iuridica and lex iustitiae . The distinction is essential for understanding the relationship between Right as a system of external laws a priori and the subsequent developments of right. As Byrd and Hruschka stressed, the three leges correspond to three categories of modality in the Critique of Pure Reason: possibility (Möglichkeit), reality (Dasein) and necessity (Notwendigkeit ). They can be seen as different “modes” of the same idea of right: original right as the pure rational concept of right (possibility), acquired right as arising from concrete deeds or relations between agents (reality) and peremptory right as legitimized and enforced by a public court of justice (necessity). Although there is a positive development in the transition from the lex iusti, through the lex iuridica, to thelex iustitaedistributivae in the civil condition, the lex iusti is not made superfluous in the civil condition, but is still the source of the normativity, and consequently, of the legitimacy, of all further developments of right. The need for maintaining the compatibility of the development of right with its a priori normative source is what gives rise to cosmopolitan right. In this sense, cosmopolitan right in Kant’s theory has a similar function to the right of necessity in Grotius and imperfect rights and duties in Pufendorf’s theory. They are needed to avoid scenarios which would contradict the rationale for introducing certain rights.

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

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

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

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

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

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

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

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

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

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

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

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

### Underview

#### 1] Fairness is a voter – it constraints out ability to evaluate the round properly. It’s a gateway issue because if the round is skewed the better debater might not win. It’s the best way to non-arbitrarily decide the round.

#### 2] Aff gets 1AR theory – It’s key to check neg abuse, no 1AR theory means neg can be infinitely abusive because nothing can stop them, which outweighs because it means aff can’t win. Drop the debater on 1AR theory because the aff can’t split the 2ar between both theory and substance. No neg RVIs since the neg can dump on the shell for 6 minutes and make the 2AR impossible.