# 1AC Lex Round 3

## Framing

**Permissibility and presumption affirm:**

1. **Epistemics – we wouldn’t be able to start a strand of reasoning since we’d have to question that reason – means that presuming neg is incoherent because it relies on some presumptive truths about justice and the world in general**
2. [**Unjust**](https://www.dictionary.com/browse/unjust) **is defined as “not just; lacking in justice or fairness:” so if something is neither good or bad, then it is not just which proves it is unjust**
3. **Probability - Logically safer since it’s better to be supererogatory than fail to meet an obligation**
4. **Logic - If everything is permissible so is the aff since nothing prevents us from doing it**
5. **Intuition - we naturally believe statements true e.g. if I told you my name is Shrey, you’d believe me**

**Perspectivism is true–**

1. **Opacity – we can never access another person’s perspective because we can never fully understand who someone else is or what they think. Every truth I create cannot be universalized because I can’t guarantee that they will create the same truth because they do what they want**
2. **Linguistics – Truth is constructed by language, which is completely arbitrary. Nothing tells me that a chair is a chair; I only assign it that name arbitrarily because I want to. Meaning can’t be contained within language if we make it up ourselves, and truth doesn’t exist absent language**

**Truth is not foundational and morality can only gain coherence through intersubjective social norms. Deliberation must be constitutive of normative reasoning since it’s necessary to validate the acceptance of any syllogism–other theories rely on communication to properly interpret and follow them and communicate an obligation**

**Habermas** (Jurgen, Moral Consciousness and Communicative Action, **1983**)

This "fact of reason" cannot be deductively grounded} but 11:can be clarified if we take the further step of conceiving argumentative speech as a special case-in, fact, a pnvlleg~d derivative of action oriented toward reaching understanding. Only when we return to the level of action theory and conceivediscourse as a continuation of communicative action by other means can we understand the true thrust of discourse ethics. The reason we can locate the content of (U) in the communicative presuppositions of argu~en.tation .is that argumentation is a reflective form of communicative action and the structuresof action oriented toward reaching understanding always alreadypresuppose those very relationships of, reciprocity and mutual recognition around which all moral ideas revolve In everyday life no less than in philosophical ethi:s. Like Ka~t'sappeal to the "fact of reason," this thrust of discourse ethics has a naturalistic ring to it, but it is by no means a naturalistic fallacy. Both Kant and the proponents of discourse ethics rely on a type of argument that draws attention to the inescapability of the general presuppositions that always already under the the communicative practice of everyday life and that cannot be picked or chosen like makes of cars or value postulates. This type of argument is made from the reflective point of view, not from the empiricist attitude of an objectivating observer.The transcendental mode of justification reflects the fact that practical discourse is embedded in contexts of communicative action. To that extent discourse ethICS pOInts to, and ltselfdepends upon, a theory of con:municative act~on. We can expecta contribution to the vertICal reconstructIo~ o~ stage~ of moral consciousness from the theory of communIcatlve actIOn, for the latter focuses on structures of linguistically mediated, norm-governed Interaction, structures that integrate what psychology analytically separates; to wit, perspective taking, moral Judgment, and action.

**Thus, the standard is consistency with pragmatic constraints–a method of pluralism that a] hijacks every other framework since only we can situate ideas into habit through practice and b] is self correcting and can build upon itself to infinitely improve and be better than any other framework, which also mean responses don’t link since prag can fix them in the future**

**Serra 09** Juan Pablo Serra. What Is and What Should Pragmatic Ethics Be? Some Remarks on Recent Scholarship*.* EUROPEAN JOURNAL OF PRAGMATISM AND AMERICAN PHILOSOPHY. 2009. Francisco de Vitoria College, Humanities Department, Faculty member. https://journals.openedition.org/ejpap/905

This separation of theory and practice runs parallel to another split, namely, that of ethics and morals or, better put, of ethical theory and moral practice. Peirce denies that morality is subject to rationality and thinks that ethics is valuable as a science in a broad sense. But he also regards ethics as a science which bears on human conduct only indirectly, through the examination of past actions and the self-correction of the self in view of future action. In addition, ethics would be a normative knowledge only in so far as it analyzes the adjustment of actions to ends and in so far as it studies the general way in which a good life can be lived. In morals Peirce appeals to instinct and sentiment, and in ethics he recommends the use of logical thinking —just as scientists do. However, even within the framework of his system, it’s not obvious that scientists may so easily set aside their instincts —in fact, instinct (or ‘rational instinct’ as he called it in 1908) plays a significant role in the economy of re- search. Moreover, the statement that in moral issues there may be no possibility of carrying out an inquiry that is truth-oriented is not an uncontroversial one. After all, moral inquiry is performed in a deliberative way, weighing up argumentations, beliefs and principles, and comparing them either with their probable or conceivable consequences or with lived as well as possible experiences that can be forceful or impinge upon the deliberative subject in such a way as to acquire the compulsory resistance due to reality. As Misak puts it succint- ly, “the practice of moral deliberation is responsive to experience, reason, argument, and thought experiments... Such responsiveness is part of what it is to make a moral decision and part of what it is to try to live a moral life” (2000: 52)3. Likewise, this same deliberative activity implies an effort to acquire habits, beliefs and principles that contribute to a truly free deliberation which, in turn, can result in creative conclusions. For Peirce, as you get more habit-governed, you become more creative and free, and your selfhood acquires plas- ticity and receptiveness to experience4. Vincent Colapietro has referred to Peirce’s description of human reason in terms of a deliberative rationality (1999: 24). Also, in another place he has explained that deliberation for Peirce is a process of preparation for future action which has to do with the checking of previous acts, the rehearsal in imagination of different roads to be followed by possible conduct and the nurturing of ideals (Colapietro 1997: 270, 281). It is precisely this experi- ment carried out within imagination that generates habits, because, as Peirce says in “A Survey of Pragmaticism”, “it is not the muscular action but the accompanying inward ef- forts, the acts of imagination, that produce the habit” (CP 5.479, 1907). Habits are regular ways of thinking, perceiving and interpreting that generate actions. As such, habits have a huge influence on human behavior, manifest themselves in the con- crete things we do and, at the same time, are formed within those same activities. Even more, according to Peirce, the activity takes the form of experimentation in the inner world; and the conclusion (if it comes to a definite conclusion), is that under given conditions, the interpreter will have formed the habit of acting in a given way whenever he may desire a given kind of result. The real and living logical conclusion is that habit (CP 5.491, 1907). Much more evidence could be given to support the view that habits are virtually decided (CP 2.435, c.1893) and also that intelligence comprises inward or potential actions that in- fluence the formation of habits (CP 6.286, 1893). Suffice it to say that, according to Peirce, deliberation is a function of the imagination, and that imagination is in itself an experiment which may have unexpected consequences that impose themselves upon the deliberative subject.

**Impact calc:**

1. **Deliberation plays a procedural, not substantive role in pragmatic tradition. It doesn’t say which impacts matter the most nor is it an impact to weigh, but tells us *what* questions to ask and how we determine the answers to them. This is a sequencing question - we are first concerned with the decisionmaking procedure to evaluate whether other metrics such as consequences even matter**
2. **Consequentialism fails - a] Aggregation fails – there’s no way to weigh between different forms of pain and pleasure e.g. 5 headaches vs a migraine b] Butterfly effect – each consequence has a future consequence and so on so we never know if it really did net good**
3. **Use epistemic modesty - no framework is 100% true which means we have to weigh between the correctness of each framework since 45 minutes isn’t enough to resolve thousands of years of debate. Offense under pragmatism outweighs - a] pragmatism is definitionally epistemic modesty since we include a pluralism of frameworks, so offense under my framework is procedural offense under epistemic modesty itself b] my framework encompasses the values of infinite different frameworks through deliberating between them which has infinite magnitude by incorporating offense from under every theory**
4. **Because we cannot know whether moral judgements are infinitely true, we need to solve problems in our specific context. Therefore, if I prove the res affirms in the context of my framework, any reason to negate functions in a different context and isn’t a reason not to affirm**

**Prefer additionally–**

1. **Performativity–responding to my framework concedes it because you are deliberating against it – outweighs because morality must prevent opting out which only constitutivism solves**
2. **Probability - disagreement is rife in the squo so most theories are wrong - prefer relative reliability. The law of large numbers proves when we test more it gets closer to true probability so when we test theories under this fw we’ll get the best calculus. This means a] even if my framework is wrong, its non-unique since it also encompasses their framework so if ours is wrong, then every framework is wrong and b] we take the premises of many theories’ claims into practice and use them in the best instances which non-uniques any net benefits to other theories**
3. **Rule Following Paradox - There is nothing inherent to a rule that tells us how we ought to follow it, which proves no internal motivation or direction to follow a particular rule, regardless of how correct the rule is. Since only our interpretation can tell us how to follow the rule, there can be no incorrect application. Only deliberation accounts for the diversity of interpretations of our norms - any other theory is illegitimate since it hasn’t been socially accepted by the people yet**
4. **Limits–ethics are limited to how we conceptualize them–the way we cohere and understand ethics changes as we learn more about the world–only a theory that can account for new unforeseen circumstances create the most ethically rigorous solution**

**LaFollete 2K** "Pragmatic Ethics" [Hugh LaFollette](http://www.hughlafollette.com/index.htm) In [Blackwell Guide to Ethical Theory](http://www.hughlafollette.com/papers/b-guide.htm) 2000. Hugh LaFollette is Marie E. and Leslie Cole Professor in Ethics at the University of South Florida St. Petersburg. He is editor-in-chief of The International Encyclopedia of Ethics. Dulles AS

Pragmatic ethics takes a more aggressive approach, insisting that mankind is responsible for determining the best ethical system possible, which will be refined as new discoveries are made. Put simply; truth does not exist in some abstract realm of thought independent of social relationship or actions; instead, the truth is a function of an active … Pragmatism, according to William James, is derived from the Greek word pragma, which means action and serves as the basis of our English words practical and practice. Pragmatism originated in the United States around 1870, and now presents a growing third alternative to both analytic and Continental philosophical traditions worldwide. 1 - Acceptance . Ethics is a branch of philosophy that is responsible for studying the principles that govern the conduct of an individual. Employs criteria, but is not criterial The previous discussions enable us to say more precisely why pragmatists reject a criterial view of morality. Pragmatism's core contention that practice is primary in philosophy rules out the hope of logically prior criteria. Any meaningful criteria evolve from our attempt to live morally – in deciding what is the best action in the circumstances. Criteria are not discovered by pure reason, and they are not fixed. As ends of action, they are always revisable. As we obtain new evidence about ourselves and our world, and as our worlds changes, we find that what was appropriate for the old environment may not be conducive to survival in the new one. A style of teaching that might have been ideal for one kind institution (a progressive liberal arts college) at one time (the 60s) may be wholly ineffective in another institution (a regional state university) at another time (the 80s). But that is exactly what we would expect of an evolutionary ethic. Neither could criteria be complete. The moral world is complex and changeable. No set of criteria could give us univocal answers about how we should behave in all circumstances. If we cannot develop an algorithm for winning at chess, where there are only eighteen first moves, there is no way to develop an algorithm for living, which has a finitely large number of "first moves." Moreover, while the chess environment (the rules) stays constant, our natural and moral environments do not. We must adapt or fail. While there is always one end of chess -- the game ends when one player wins – the ends of life change as we grow, and as our environments change. Finally, we cannot resolve practical moral questions simply by applying criteria. We do not make personal or profession decisions by applying fixed, complete criteria. Why should we assume we should make moral decisions that way? Appropriates insights from other ethical theories Nonetheless, there is a perfectly good sense in which a pragmatic ethic employs what we might call criteria, but their nature and role dramatically differ from that in a criterial morality (Dewey 1985/1932) . Pragmatic criteria are not external rules we apply, but are tools we use in making informed judgements. They embody learning from previous action, they express our tentative efforts to isolate morally relevant features of those actions. These emergent criteria can become integrated into our habits, thereby informing the ways that we react to, think about, and imagine our worlds and our relations to others. This explains why pragmatists think other theories can provide guidance on how to live morally. Standard moral theories err not because they offer silly moral advice, but because they misunderstand that advice. Other moral theories can help us isolate (and habitually focus on) morally relevant features of action. And pragmatists take help wherever they can get it. Utilitarianism does not provide an algorithm for deciding how to act, but it shapes habits to help us "naturally" attend to the ways that our actions impact others. Deontology does not provide a list of general rules to follow, but it sensitizes us to ways our actions might promote or undermine respect for others. Contractarianism does not resolve all moral issues, but it sensitizes us to the need for broad consensus. That is why it is mistaken to suppose that the pragmatist makes specific moral judgements oblivious to rules, principles, virtues, and the collective wisdom of human experience. The pragmatist absorbs these insights into her habits, and thereby shapes how she habitually responds, and how she habitually deliberates when deliberation is required. This also explains why criterial moralities tend to be minimalistic. They specify minimal sets of rules to follow in order to be moral. Pragmatism, on the other hand, like virtue theories, is more concerned to emphasize exemplary behavior – to use morally relevant features of action to determine the best way to behave, not the minimally tolerable way

1. **Actor Spec - Only a radical democracy that constantly questions its own foundations can ever be open to radical revision – other systems insist on their own foundation even when that’s exclusionary or illegitimate. The aff is a better model for constructing a political institution that must secure its own legitimacy over time and to changing groups of citizens.**
2. **Ethical Uncertainty - If you’re unsure what the good is, allow for deliberation because it allows people to pursue their conception of the good and discuss it.**
3. **Ethics must be based on experience–learning and verifiability**

**Papineau 7**, David Papineau, “Naturalism,” Stanford Encyclopedia of Philosophy, 2007//SS

However, any such non-naturalist view of morality faces immediate difficulties, deriving ultimately from the kind of causal closure thesis discussed above. If all physical effects are due to a limited range of natural causes, and if moral facts lie outside this range, then it follow that moral facts can never make any difference to what happens in the physical world (Harman, 1986). At first sight this may seem tolerable (perhaps moral facts indeed don't have any physical effects). But it has very awkward epistemological consequences. For beings like us, knowledge of the spatiotemporal world is mediated by physical processes involving our sense organs and cognitive systems. If moral facts cannot influence the physical world, then it is hard to see how we can have any knowledge of them.

1. **Social relations are dynamic and constantly being decentered from normative systems of knowledge; only pragmatism’s understanding of interactive knowledge production can mitigate entrenched violence.**

**Kadlec 8**, Alison. "Critical pragmatism and deliberative democracy." Theoria 55.117 (2008): 54-80. (doctorate in political science from the University of Minnesota and bachelor's degrees from Michigan State University in political theory, constitutional democracy and English literature.)//Dulles AS

Social Intelligence: The Critical Potential Lived Experience Though human nature is intersubjectively generated on an ongoing basis, we are not merely the products of Platonic conceptions of ourselves. Individuals are cultivated in and by society through experiential processes in which we are acted upon, and act back upon a dynamic environment. For Dewey, 'experience' connotes a very specific process that stands in stark contrast to the traditional conception of experience as a matter of private consciousness. Because Dewey's notion of experience is social, active, and educative, what he calls the 'experiential continuum' is the process by which we are best able to develop social intelligence. The 'experiential continuum' is characterised by our enduring and undergoing the consequences of our actions, and intelligence is to be understood as the self-conscious and ongoing process of adjusting our attitudes in light of these consequences.25 In The Public and Its Problems , Dewey gives this view of intelligence a decidedly deliberative spin when he says, 'we lie, as Emerson said, in the lap of an immense intelligence. But that intelligence is dormant and its communications are broken, inarticulate and faint until it possesses the local community as its medium'.26 In 'Ethical Principles Underlying Education', Dewey is more explicit in explaining his view of the relationship between social intelligence and the normative commitment to democracy in his declaration that 'ultimate moral motives and forces are nothing more nor less than social intelligence the power of observing and comprehending social situations and social power trained capacities of control at work in the service of social interest and aims'.27 Dewey's unflagging faith in the transformative potential of social intelligence intrinsic to democracy as a way of life is not Utopian, nor is it based on a belief that all problems are finally solvable. Rather, it expresses a moral commitment that suggests that a working faith in social intelligence is our best shot at crafting habits and institutions that will further encourage us to identify new opportunities for the expansion of our capacities moving forward. The upshot here is that democracy as a way of life means, above all, that we stop thinking of democracy as a thing and start thinking about it as a way. Democracy is belief in the ability of human experience to generate the aims and methods by which further experience will grow in ordered richness. . . . Democracy is the faith that the process of experience is more important than any special result attained, so that the special results achieved are of ultimate value only as they are used to enrich and order the ongoing process. Since the process of experience is capable of being educative, faith in democracy is all one with faith in experience and education. All ends and values that are cut off from the ongoing process become arrests and fixations. They strive to fixate what has been gained instead of using it to open the road and point the way to new and better experiences.28 On this account, social intelligence is not a possession, it is a de-centred and educative process of ordering our experiences through manifold communication. The guiding principles, then, of social intelligence are 1) the protection and expansion of our capacity for free and communicative inquiry and 2) the protection and expansion of our capacity to perceive the shared consequences of our habits and policies. We judge the goodness or badness of these consequences by evaluating the way they act back on and impact our individual capacities for free inquiry that inform the ongoing development of social intelligence In turn, the 'proper conditions' for social intelligence then are those that increase our ability to perceive the complex shared consequences of our choices and practices. Intelligence is social in pragmatism because it requires the development of both firstand second-order attitudes that can only take place in an ongoing process of communication. Free inquiry is not just a matter of having the opportunity to seek information that will allow for the generation of thoughtful attitudes about issues, it is also a matter of appreciating and harnessing the democratic potential of second-order attitudes (attitudes about our attitudes). We are not passive receivers of information, but dynamic interactors, and therefore intelligence is intrinsically communicative. Free inquiry is the engine of social intelligence, which is in turn based on our willingness to have our firstorder attitudes adjusted in light of our second-order attitudes.29 The ongoing mutual adjustment of our first-order and second-order attitudes through a back and forth process between the two emerges only to the extent that we have the opportunities to communicate freely with others, and this is none other than the 'method' of social intelligence. The goal of communicative inquiry then is to build an ever richer context for the ongoing development of our ability to perceive the relationship between our beliefs, practices, and institutions. By taking a principal focus on increasing our ability for evermore sophisticated perception of the consequences of our habits of thought and action, we will be better equipped to distinguish between those habits that improve and those that impede our capacities for free inquiry. This is the material of problem-solving, as it is just this capacity for free inquiry that makes it possible to identify common problems in a way that they may be productively addressed. Turning back to the challenges leveled by radical democratic theorists, we can begin to see the opportunities made possible by critical pragmatism. Tapping into the critical potential of lived experience under conditions of unalterable changefulness begins with the therapeutic recognition that there is no such thing as a unified field of power directed entirely by stable and fixed interests. The first implication here is that there are always new opportunities to exploit cracks and fissures in various structurally entrenched forms of power. Second, the essentially complexity and flux of our world is always producing new opportunities for transformative resistance and for the development of more creative approaches to meaningful deliberation. Critical pragmatism pivots on the notion that under such conditions what we most need are not fixed and static foundations, we need the flexible habits of inquiry and communication that make it possible to both identify pernicious obstacles to deliberation and to challenge, circumvent, or neutralise their impact.

1. **Best studies prove our framework is inescapable**

**Polzler and Wright 19**[Thomas Pölzler and Jennifer Cole Wright- “Empirical research on folk moral objectivism” <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6686698/> NCBI. Published July 5th 2019] Dulles AS

Examining these studies' results more closely, however, makes it less clear whether this interpretation is appropriate (Pölzler, 2018b). Take again Goodwin and Darley's study. In this study, almost 30% of subjects' responses to the disagreement measure and almost 50% of their responses to the truth‐aptness measure fell on the option that the researchers took to be indicative of subjectivism (Goodwin & Darley, 2008, pp. 1347, 1351). Moreover, while some moral statements were dominantly classified as objective (e.g., the above statement about robbery), many others were dominantly classified as nonobjective (e.g., the stem cell research statement). This suggests that subjects in Goodwin and Darley's study may have actually favored what Wright, Grandjean, and McWhite (2013) called **“metaethical pluralism**,” i.e., they sometimes sided with objectivism and other times with nonobjectivism. More recent studies have by and large confirmed this hypothesis of folk metaethical pluralism. Wright et al. (2013) and Wright, McWhite, and Grandjean (2014), for example, replicated Goodwin and Darley's results, using the exact same measures, but letting subjects classify the presented statements as moral and nonmoral themselves. Objectivity ratings for statements that were dominantly self‐classified as moral **varied between as little as 5% and as much as 85%.** Research based on different measures yielded high proportions of intrapersonal variation as well (e.g., Beebe, 2014; Beebe, Qiaoan, Wysocki, & Endara, 2015; Beebe & Sackris, 2016; Fisher, Knobe, Strickland, & Keil, 2017; Goodwin & Darley, 2012; Heiphetz & Young, 2017; Wright, 2018; Zijlstra, forthcoming.

## Offense

**I defend the resolution as a general principle, which means specific instances that the aff is wrong don’t disprove our general thesis, just as penguins don’t disprove birds fly. Cx and before round check all interps to deter frivolous theory and maximize substance. Affirm:**

**[1] The appropriation of space by private entities isn’t value neutral but is sutured in a discourse of the cosmic elite and unequal IR.**

**Stockwell 20** [Samuel Stockwell (Research Project Manager, the Annenberg Institute at Brown University). “Legal ‘Black Holes’ in Outer Space: The Regulation of Private Space Companies”. E-International Relations. Jul 20 2020. Accessed 12/7/21.<https://www.e-ir.info/2020/07/20/legal-black-holes-in-outer-space-the-regulation-of-private-space-companies/> //Xu]

The US government’s support for private space companies is also likely to lead to the reinforcement of Earth-bound wealth inequalities in space. Many NewSpace actors frame their long-term ambitions in space with strong anthropogenic undertones, by offering the salvation of the human race from impending extinction through off-world colonial developments (Kearnes & Dooren: 2017: 182). Yet, this type of discourse disguises the highly exclusive nature of these missions. Whilst they seem to suggest that there is a stake for ordinary citizens in the vast space frontier, the reality is that these self-described space pioneers are a member of a narrow ‘cosmic elite’ – “founders of Amazon.com, Microsoft, Pay Pal… and a smattering of games designers and hotel magnates” (Parker, 2009: 91). Indeed, private space enterprises have themselves suggested that they have no obligation to share mineral resources extracted in space with the global community (Klinger, 2017: 208). This is reflected in the speeches of individuals such as Nathan Ingraham, a senior editor at the tech site EngadAsteroid mining, who claimed that asteroid mining was “how [America is] going to move into space and develop the next Vegas Strip” (Shaer, 2016: 50). Such comments highlight a form of what Beery (2016) defines as ‘scalar politics’. In similar ways to the ‘scaling’ of unequal international relations that has constituted our relationship with outer space under the guise of the ‘global commons’ (Beery, 2016: 99), private companies – through their anthropogenic discourse – are scaling existing Earth-bound wealth inequalities and social relations into space by siphoning off extra-terrestrial resources. By constructing their endeavours in ways that appeal to the common good, NewSpace actors are therefore concealing the reality of how commercial resource extraction serves the exclusive interests of their private shareholders at the expense of the vast majority of the global population.

**[2] Appropriation is intrinsically exclusive and denies experimentation and guts deliberative procedures by creating permanent, unchanging bounds that exclude communal deliberations over certain regions through exclusivity**

Timothy Justin **Trapp**, JD Candidate @ UIUC Law, **’13**, TAKING UP SPACE BY ANY OTHER MEANS: COMING TO TERMS WITH THE NONAPPROPRIATION ARTICLE OF THE OUTER SPACE TREATY UNIVERSITY OF ILLINOIS LAW REVIEW [Vol. 2013 No. 4]

The issues presented in relation to the nonappropriation article of the Outer Space Treaty should be clear.214 The ITU has, quite blatantly, created something akin to “property interests in outer space.”215 It allows nations to exclude others from their orbital slots, even when the nation is not currently using that slot.216 This is directly in line with at least one definition of outer-space appropriation.217 [\*\*Start Footnote 217\*\*Id. at 236 (“Appropriation of outer space, therefore, is ‘the exercise of exclusive control or exclusive use’ with a sense of permanence, which limits other nations’ access to it.”) (quoting Milton L. Smith, The Role of the ITU in the Development of Space Law, 17 ANNALS AIR & SPACE L. 157, 165 (1992)). \*\*End Footnote 217\*\*]The ITU even allows nations with unused slots to devise them to other entities, creating a market for the property rights set up by this regulation.218 In some aspects, this seems to effect exactly what those signatory nations of the Bogotá Declaration were trying to accomplish, albeit through different means.219

**[3] Deliberation concludes that appropriation is bad**

**van Eijk 20** [(Cristian, finishing an accelerated BA in Law at the University of Cambridge. He holds a BA cum laude in International Justice and an LLM in Public International Law from Leiden University, and has previously worked at the T.M.C. Asser Institute and the International Commission on Missing Persons.) “Sorry, Elon: Mars is not a legal vacuum – and it’s not yours, either,” 5/11/20, Völkerrechtsblog, [https://voelkerrechtsblog.org/sorry-elon-mars-is-not-a-legal-vacuum-and-its-not-yours-either](https://voelkerrechtsblog.org/sorry-elon-mars-is-not-a-legal-vacuum-and-its-not-yours-either%20)] TDI

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.

## ROB

**The role of the ballot is to vote for who best upholds the truth or falsity of the resolution via fair, safe, and educational arguments under an ethically justified framework. To clarify, truth testing w/o a prioris**

**[1] Reciprocity – normative frameworks provide a reciprocal burden of justifying an obligation with the ability to turn them – other frameworks are arbitrarily impact exclusive and don’t articulate a 1-1 burden**

**[2] Philosophy – only our role of the ballot incentivizes nuanced discussions over the interactions of different ethical theories. That comes first – [a] constitutivism - 100% unique to ld [b] collapses - the question of why other arguments are good relies on philosophical justification, ie constitutivism [c] real world - no one applies the resolved a priori in the real world but they can apply philosophy in relation to real political scenarios - outweighs because only 2 months to debate the topic**

## AFC

**Interpretation: The negative must concede the affirmative framework if the aff is topical and the framework is normatively justified–it’s preemptive**

1. **Time skew- Winning the negative framework moots 6 minutes of 1AC offense and forces a 1AR restart against a 7 min 1NC – that outweighs on quantifiability and reversibility – I can’t get back time lost and it’s the only way to measure abuse.**
2. **Topic Ed- Every debate would just be a framework debate which crowds out our ability to have core debates about the topic – that outweighs**
   1. **Time Frame- We only have 2 months to debate the topic**
   2. **Inclusion- Phil and K literature is incredibly dense and requires a vast amount of prior knowledge and experience which excludes novices while topic literature is less esoteric**
   3. **Constitutivism - The only thing intrinsic to debate is the topic so it should be prioritized.**
3. **Prep skew- We can’t predict every single negative framework before round but they know the aff coming into round which makes pre-tournament prep impossible. Especially true since there are millions of K’s and NC’s that could negate, whereas we’re both prepared for the resolution since it’s a pre-round stasis. That outweighs**
   1. **Sequencing- It’s a perquisite engaging in-round since you need prep to debate**
   2. **Engagement- It ruins the quality and depth of discussions that make debate rounds educational.**

**Fairness and education are voters – debate’s a game that needs rules to evaluate it and it teaches portable skills that we use lifelong. Drop the debater--they chose to violate in the 1nc which means it's the only way to hold them accountable, otherwise they’ll violate the shell and it won’t be a big deal if they lose it. No RVI--they would have 7 minutes to answer a minute-long shell and the debate would end right there—the entire 1ac can't be the shell because then they could just choose not to violate it. Competing interps--they have 7 minutes to robustly justify their norm and can choose not to violate**

## Underview

Don’t tank my speaks derek–none of these are offensive violations

**[1] 1AR Theory:**

**[a] AFF gets it to check infinite neg abuse**

**[b] Drop the debater – the short 1AR irreparably skewed from abuse on substance and time investment on theory.**

**[c] No RVI – 6 minute 2n can just dump on a 20 second 1ar shell and win on sheer brute force**

**[d] Competing Interps--6 minutes on a 20 second shell is more than enough to justify their interp**

**[e] No 1NC contestation of paradigm issues because I would need to win 2 things, which is irreciprocal**

**[2] Reasonability w/ a bl of sufficient defense on aff counter interps**

**[a] Time-crunched 1ar can’t generate offense, weigh, and cover all standards - reasonable interps allow for leeway and time for topic ed**

**[b] 6 minute 2n brute force lets them hyper-inflate the abuse - reasonability counteracts that bias**

**[c] Affs speak in the dark and can’t predict their bidirectional shells - means we need leeway since negs always have generics to engage in but we don’t**

**[3] Drop the Arg on neg shells**

**[a] 7 minute NC to spam theory means our time crunched speeches can’t win every layer - dropping the abusive parts of the aff while still letting us win on other layers gives substance ed and resolves the skew**

**[b] They have infinite ways to negate with counter-advocacies while we only have the res - letting us kick abuse gives us infinite routes to affirm that you have to disprove as well, which is key to reciprocity**

**[3] Neg interps are counterinterps since the AC takes a stance and came lexically prior - means you re-evaluate the AC under their interp and evaluate the debate after the 1ar so both of us get one rebuttal**

**[4] Reject neg meta theory**

**[b] They have 2 speeches for non preemptive violations but I only have the 1ar, means 1nc uplayering ensures we can never set the 1ar’s norms**