# 1NC Lex r2

## 1

**TW – There is a mention of death good in the Benatar Evidence – but for clarity it is used as indict of utilitarianism**

#### The safety of the space is prima facie – we don’t know who’s winning if people can’t engage. Anything that doesn’t immediately denounce atrocities excludes people who have and can experience them.

**Teehan** Ryan Teehan [NSD staffer and competitor from the Delbarton School] – NSD Update comment on the student protests at the TOC in 2014. //Massa

Honestly, I don't think that 99% of what has been said in this thread so far actually matters. It doesn't matter whether you think that these types of assumptions should be questioned. It doesn't matter what accepting this intuition could potentially do or not do. It doesn't matter if you see fit to make, incredibly trivializing and misplaced I might add, links between this and the Holocaust. **All** of the **arguments that talk about how** debate isa **unique** space for questioning assumptions **make** an assumption of safety. They say that this is a space where one is safe to question assumptions and try new perspectives. **That is not true** for everyone. When we allow arguments that question the wrongness of racism, sexism, homophobia**, rape**, lynching, etc., we make debate unsafe for certain people. The idea that debate is a safe space to question all assumptions is the definition of privilege, it begins with an idea of a debater that can question every assumption. People who face the actual effects of the aforementioned things cannot question those assumptions, and making debate a space built around the idea that they can is hostile. So, you really have a choice. Either 1) say that you do not want these people to debate so that you can let people question the wrongness of everything I listed before, 2) say that you care more about letting debaters question those things than making debate safe for everyone, or 3) make it so that saying things that make debate unsafe has actual repercussions. On "**debate is not the real world**". **Only for people who can separate their existence in "the real world" from their existence in debate.** That means privileged, white, heterosexual males like myself. I don't understand how you can make this sweeping claim when some people are clearly harmed by these arguments. **At the end of the day, you have to figure out whether you care about debate being safe for everyone** involved. I don't think anyone has contested that these arguments make debate unsafe for certain people. If you care at all about the people involved in debate then **don't vote on these arguments**. If you care about the safety and wellbeing of competitors, then don't vote on these arguments. If you don't, then I honestly don't understand why you give up your time to coach and/or judge. The pay can't be that good. I don't believe that you're just in it for the money, which is why I ask you to ask yourselves whether you can justify making debate unsafe for certain people.

#### 1] Util justifies horrific conclusions, since no state of affairs could be intrinsically bad from its standpoint – it also literally doesn’t believe in rights.

**Vallentyne**, Peter. *Against Maximizing Act-Consequentialism*. **2006**, mospace.umsystem.edu/xmlui/bitstream/handle/10355/10174/AgainstMaximizingActConsequentialism.pdf?sequence=1. //Massa

If core consequentialism is true, then any action with maximally good consequences (in a given choice situation) is permissible. The main argument in favor of this claim is the following: P1: An action is **morally** permissible if **it is best** supported by insistent moral reasons for action. P2: The value of consequences is always an insistent moral reason **for action.** P3: The value of consequences is the only insistent moral reason **for action. C:** Thus, an action is **morally** permissible if it maximizes **the value of** consequences**.** This is the same argument given in the previous section for the impermissibility of actions that do not have maximally good consequences, except that (1) the appeal to insistent reasons has been made explicit, (2) the necessary conditions of the original P1 and C have been converted to sufficient conditions, and (3) the qualification in P3 that allowed the possibility of some prior constraints has been dropped. P1 is highly plausible. An action that is best supported by insistent moral reasons is surely permissible. P2 can be challenged, as I did earlier, on the ground that beyond some point the value of consequences ceases to be an insistent moral reason (once consequences are good enough, their value may only be a non-insistent reason). For the present purposes, however, we can grant this claim. The crucial claim is P3. It is implausible, because there are insistent moral reasons other than the value of consequences. There are also deontological insistent reasons, and these, or at least some of these, are lexical prior to the value of consequences. In particular**,** individuals have certain rights that may not be infringed **simply because the consequences are better.** Unlike prudential rationality, morality involves many distinct centers of will (choice) or 15 interests**, and these** cannot simply be lumped together and traded off **against each other.**16 **The basic problem with standard versions of core consequentialism is that** they fail to recognize **adequately** the normative separateness of persons**.** Psychological autonomous beings (as well, perhaps, as other beings with moral standing) are not merely means for the promotion of value. They must be respected and honored, and this means that at least sometimes certain things may not be done to them, even though this promotes value overall. An innocent person may not be killed against her will, for example, in order to make a million happy people slightly happier. This would be sacrificing her for the benefit of others.

#### 2] Utilitarianism is the logics of eugenics---ableist notions of health determine the value of life that was used to justify the holocaust

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In regard to disability, the ableism that puts on a compassionate mask in milder times now reveals its brutal face. While laws like the Americans with Disabilities Act acknowledge human rights and subjectivities involved in disabled identity, a pandemic brings into play a war of survival whose rules are simpler and deadlier. Limited resources and pressured levels of triage create a situation in which medical decisions have to be made quickly and almost reflexively. When those kinds of pressured judgments occur, health practitioners must rely on a wartime gut reaction as well as a combination of health ethics templates and **cost-benefit analyses** **assessing** **whose life is worth saving and whose is less so**. Any metric used for determining who should get limited resources will inevitably be drawn into a eugenics sinkhole. It is here that biopolitics and thanatopolitics display a unity that might have seemed to have been in opposition. The urge to let live and the urge to let die morph nicely into each other. In order to let live, doctors must let die. An unenviable choice arises at every tension point in every hospital in every country. This proliferation of life/death decisions blunts the emotional response to what might be seen as **programmed executions or even annihilations**. While biopolitics and thanatopolitics have been drawn to dramatic personae like the comatose patient and the concentration camp prisoner, the more mundane bit players—the person with mobility impairments or the cognitively disabled person—barely get attention. Those in disability studies are well aware of this minor role assigned by the majority to the minority. Yet the actuality is that the disabled or Deaf person experiences the effects of communitas and immunity on a rather consistent and, to others, undetectable basis. Bare life can be translated to equate with various physical and mental states, but it rarely includes, nor should it, people with what I might call routine disabilities. The driving out of the homo sacer seems dramatically if not historically sound; but the social and political sequestering of disabled people, while far less dramatic, is far more widely practiced, even by people whose goal is to be intersectional and liberatory. Enter the pandemic, which, like a skilled taxidermist, **lifts off the skin of this kind of discrimination to find the invidious structural armature that gives it shape and form.** Now there seems to be a greater availability of ventilators (but only in richer countries in the global north) and a realization that some other life-saving techniques might work as well. With a free-market vision of limited supply and expansive demand, not only did the price of such equipment skyrocket, but the cultural capital, one must ultimately call it, of each individual determined their power to secure a machine, skilled nursing, and trained technicians. I say individual, but in reality, protocols were being developed to group individuals into risk groups. Those who were older, disabled both physically and cognitively, were seen to have reduced buying power to claim treatment. Those with underlying conditions (read: disability) who were less healthy (read: normal) were also to be triaged. Who is worth more than whom? Medical ethicists, and I use the word advisedly, have tried to quantify this worth. There is a WHO metric called “disability adjusted life years [DALY].”1 This measures years lost to disability and compares those years to those of someone in “ideal” health. One can calculate the difference between your and my DALY and see, in effect, whose life has more value. Currently in the US a human life is calculated to be worth ten million dollars.2 In **poorer countries that worth could plummet to colonial chump change.** It may seem logical and even obvious that in pandemic settings, as on the battlefield, there must be triaging. Many states have adopted such utilitarian guidelines, including the state of Washington, cited in a complaint by disability groups because Washington’s official guidelines recommended giving limited resources only to younger, healthier people, not to older patients. Alabama has specified that people with intellectual disabilities “are unlikely candidates for ventilator support,” while Tennessee has excluded from critical care people with spinal muscular atrophy who need assistance with activities of daily living.3 As with the social and political critiques of utilitarianism, one might want to be skeptical of any “greatest good for the greatest number” argument. While **founding texts of utilitarian philosophers usually grounded their arguments on economic principles**, current applications fall prey to simple analogies. Disease is translated to discussions about health. Health is notoriously hard to define, but healthier patients become the priority. **The ideology of health is deeply imbued with ableist notions of the normal and the abnormal**. In contrast to the utilitarian approach, the Disability Rights and Education Defense Fund (DREDF) suggests: “When dealing with patients with a similar level of treatment urgency, providers should maintain their existing practice of ‘first come, first serve,’rather than prioritizing people who would require the fewest resources.”4 Ezekiel Emmanuel and others, while recognizing certain well-worn aspects of triage note in the New England Journal of Medicine: “Limited time and information during an emergency also counsel against incorporating patients’ future quality of life, and quality-adjusted life-years, into benefit maximization.”5 Some have suggested a lottery system in which the health identity of the person is not a factor. In the battle between letting live and letting die, there really is only one grand loser—the person with a disability or two. You can throw in old people, people who are overweight, people of color, poor people. Yes, they are there, but **the calculus within the hospital walls is basically over disability**. Race will factor in dramatically, and its combination with disability is an accelerant to any eugenic decision-making process. Social politesse, charitable involvement, religious concern all crumble in the face of the grand bargain of choosing those who appear normal—not those who are seen as weakened, abnormal, debilitated, less than. There is a term for this demographic, and **the Nazi’s used it with abandon**: Lives Unworthy of Living. The T4 Project, **which gathered disabled people into institutions and then gassed and cremated them, provided the template for the death camps in Poland for Jews and other minorities**. It is easy for us to blame the Nazis for these egregious and unimaginable deaths, but the current calculus about which lives are worth living provides a sobering if less overtly dramatic parallel. In some sense, the discussion over the healthy person is a discussion about the formation of the modern citizen. As Michel Foucault and others have noted, the development of a medical system is of course also a system of control. If it works well, it is hidden and undetectable—powered by self will rather than heavy-handed regulation. And the system has worked very well, until now when the evolution of the word health suddenly becomes more clearly a way of talking about power and setting one group over another. Enforcement now becomes a matter of medical metrics in a time of necessity. This can be shown through a simple thought experiment. Choose any identity—gender based, income based, race based—and put it into the sentence “[People with this identity] won’t be given ICU beds during a time of pandemic shortage.” While there is still clearly sexism, homophobia, racism, and neoliberalist capitalism, no one can publicly make that statement. But include the term disability and the statement is being made without much embarrassment or consequence around the US and the world. As the pandemic waxes and wanes, its tidal undulations will continue to affect populations and policies. While ventilators may be in better supply, a new spike in cases could counteract that advantage. Even now, as I write, Texas is facing a shortage of hospital beds.6 Countries in South Asia, Latin America, and parts of Africa are unable to secure and provide even the basics for treatment, including ventilators and oxygen tanks.7 When the time comes for an effective vaccine to be distributed, again we will see shortages—and metrics to determine distribution—in the push to provide immunity to a staggering number of people worldwide. If herd immunity requires 80 percent of the population to be vaccinated, in the US alone that would be somewhere around 260 million doses (if only one dose per person is required), and worldwide that would be six billion doses. Issues around cost (read: profit for the pharmaceutical industry), class (read: global north versus global south), and minority status will be crucial. There will more life and death decisions about who is first in line. In this case, vaccine delayed could be vaccine denied. And now we are seeing remnants of discrimination based on health status in institutions like nursing homes. **These for-profit institutions are uniquely suited to make decisions about who lives and who dies**. Recently nursing homes have begun evicting elderly people with disabilities so that they can bring in more lucrative patients with COVID-19. 8 When cognitively disabled people contract COVID-19, they die at a rate 2.5 times higher than other patients.9 The social and medical forces at work clearly have placed these lives at the bottom of lives worth living. **Until critical theory and social justice advocacy recognize this form of devaluing human life, a liberatory approach will only be partial**—and far from impartial.

#### 3] Utilitarianism would justify that death is good.

David Benatar summarizes in, Professor of Phil at University of Cape Town, Better Never to Have Been: The Harm of Coming into Existence, pub Oxford University Press, USA, Year: 2006, ISBN: 0199296421 ///AHS PB As a matter of fact, bad things happen to all of us. No life is without hardship. It is easy to think of the millions who live a life of poverty or of those who live much of their lives with some disability. Some of us are lucky enough to be spared these fates, but most of us who are, nonetheless suffer ill-health at some stage during our lives. Often the suffering is excruciating, even if it is in our final days. Some are condemned by nature to years of frailty. We all face death.²⁰ We infrequently contemplate the harms that await any new-born child—pain, disappointment, anxiety, grief, and death. For any given child we cannot predict what form these harms will take or how severe they will be, but we can be sure that at least some of them will occur.²¹ None of this befalls the nonexistent. Only existers suffer harm. Optimists will be quick to note that I have not told the whole story. Not only bad things but also good things happen only to those who exist. Pleasure, joy, and satisfaction can only be had by existers. Thus, the cheerful will say, we must weigh up the pleasures of life against the evils. As long as the former outweigh the latter, the life is worth living. Coming into being with such a life is, on this view, a benefit. The asymmetry of pleasure and pain However, this conclusion does not follow. This is because there is a crucial difference between harms (such as pains) and benefits (such as pleasures) which entails that existence has no advantage over, but does have disadvantages relative to, non-existence.²² Consider pains and pleasures as exemplars of harms and benefits. It is uncontroversial to say that () the presence of pain is bad, and that () the presence of pleasure is good. However, such a symmetrical evaluation does not seem to apply to the absence of pain and pleasure, for it strikes me as true that () the absence of pain is good, even if that good is not enjoyed by anyone, whereas () the absence of pleasure is not bad unless there is somebody for whom this absence is a deprivation.

#### This puts the affirmative in a double bind: Either A) we intuitively know killing people is wrong in which case you reject util out of principle or B) they condone death as good in which case their advantage would flow neg

#### Thus the alt is to vote neg – it’s as simple as not to vibe with oppression – as an educator it’s your job to dismiss racist, sexist, homophobic, and ableist discourse that kills the spirit of marginalized debaters.

## 2

#### The meta-ethic is procedural moral realism - substantive realism holds that moral truths exist independently of that in the empirical world. Prefer–

#### [1] Uncertainty – our experiences are inaccessible to others which allows people to say they don’t experience the same, however a priori principles are universally applied to all agents.

#### [2] Naturalistic fallacy – experience only tells us what is since we can only perceive what is, not what ought to be, this means experience may be generally useful but should not be the basis for ethical action.

#### [3] Induction – it’s logically incoherent because it’s own method presupposes it’s justification which proves predictions fail - fails

#### Practical Reason is that procedure. To ask for why we should be reasoners concedes its authority since it uses reason – anything else is nonbinding and arbitrary. Aggregation is nonsensical since a] it impedes on one persons ends for another and b] assumes everyone values the same thing.

#### Moral law must be universal—our judgements can’t only apply to ourselves any more than 2+2=4 can be true only for me – any non-universalizable norm justifies someone’s ability to impede on your ends.

Korsgaard ’83 (Christine M., “Two Distinctions in Goodness,” The Philosophical Review Vol. 92, No. 2 (Apr., 1983), pp. 169-195, JSTOR) // [brackets for gendered language]

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

#### Thus the standard is consistency with the categorical imperative. To clarify, consequences don’t link to the framework.

#### Prefer additionally –

#### [1] Kantian theory has the best tools for fighting oppression through combatting ethical egoism and abstraction

Farr 02 [Arnold (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 // LEX JB]

One of the most popular criticisms of Kant’s moral philosophy is that it is too formalistic.13 That is, the universal nature of the categorical imperative leaves it devoid of content. Such a principle is useless since moral decisions are made by concrete individuals in a concrete, historical, and social situation. This type of criticism lies behind Lewis Gordon’s rejection of any attempt to ground an antiracist position on Kantian principles. The rejection of universal principles for the sake of emphasizing the historical embeddedness of the human agent is widespread in recent philosophy and social theory. I will argue here on Kantian grounds that although a distinction between the universal and the concrete is a valid distinction, the unity of the two is required for an understanding of human agency. The attack on Kantian formalism began with Hegel’s criticism of the Kantian philosophy.14 The list of contemporary theorists who follow Hegel’s line of criticism is far too long to deal with in the scope of this paper. Although these theorists may approach the problem of Kantian formalism from a variety of angles, the spirit of their criticism is basically the same: The universality of the categorical imperative is an abstraction from one’s empirical conditions. Kant is often accused of making the moral agent an abstract, empty, noumenal subject. Nothing could be further from the truth. The Kantian subject is an embodied, empirical, concrete subject. However, this concrete subject has a dual nature. Kant claims in the Critique of Pure Reason as well as in the Grounding that human beings have an intelligible and empirical character.15 It is impossible to understand and do justice to Kant’s moral theory without taking seriously the relation between these two characters. The very concept of morality is impossible without the tension between the two. By “empirical character” Kant simply means that we have a sensual nature. We are physical creatures with physical drives or desires. The very fact that I cannot simply satisfy my desires without considering the rightness or wrongness of my actions suggests that my empirical character must be held in check by something, or else I behave like a Freudian id. My empiri- cal character must be held in check by my intelligible character, which is the legislative activity of practical reason. It is through our intelligible character that we formulate principles that keep our empirical impulses in check. The categorical imperative is the supreme principle of morality that is constructed by the moral agent in his/her moment of self-transcendence. What I have called self-transcendence may be best explained in the following passage by Onora O’Neill: In restricting our maxims to those that meet the test of the categorical imperative we refuse to base our lives on maxims that necessarily make our own case an exception. The reason why a universilizability criterion is morally signiﬁcant is that it makes our own case no special exception (G, IV, 404). In accepting the Categorical Imperative we accept the moral reality of other selves, and hence the possibility (not, note, the reality) of a moral community. The Formula of Universal Law enjoins no more than that we act only on maxims that are open to others also.16 O’Neill’s description of the universalizability criterion includes the notion of self-transcendence that I am working to explicate here to the extent that like self-transcendence, universalizable moral principles require that the individ- ual think beyond his or her own particular desires. The individual is not allowed to exclude others as rational moral agents who have the right to act as he acts in a given situation. For example, if I decide to use another person merely as a means for my own end I must recognize the other person’s right to do the same to me. I cannot consistently will that I use another as a means only and will that I not be used in the same manner by another. Hence, the universalizability criterion is a principle of consistency and a principle of inclusion. That is, in choosing my maxims I attempt to include the perspective of other moral agents. … 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.

#### [2] Enterprise – we are composed of different practical identities, but reason unifies them and allows us to shift and act upon different enterprises. Consequentialist frameworks cannot produce unified moral actions.

#### I negate the resolution

#### 1] Libertarianism mandates a market-oriented approach to space—that negates

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

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

#### 2] In order to self-actualize you may not nullify someone’s external property right – its key to world interaction

Feser 05

Feser, E. (2005). THERE IS NO SUCH THING AS AN UNJUST INITIAL ACQUISITION. Social Philosophy and Policy, 22(1), 74-75. doi:10.1017/S0265052505041038 // js69 \*SOP = self-ownership proviso

The hard-liner might suggest that this example transports the SOP advocate out of the frying pan and into the fire. For if the SOP is true, wouldn’t we also have to commit ourselves to a “**property-ownership proviso**” (POP) that **requires** us **not to nullify anyone’s ability** **to use** his **external private property** in a way **consistent with** its “**world-interactive** **powers**”? If I build a miniature submarine in my garage, and you have the only swimming pool within one thousand miles, must you allow me the use of your pool lest you nullify my ability to use the sub? **If** (to take an example of Cohen’s cited by Mack) **I own a corkscrew**, **must I be provided with wine bottles to open** lest the corkscrew sadly fail to fulfill its full potential?34 Mack’s response to this line of thought seems basically to amount to a bit of backpedaling on the claim that his **proviso really follows from the notion of self-ownership** per se—so as to avoid the conclusion that a (rather unlibertarian and presumably redistributionist) POP would also, in parallel fashion, follow **from the concept of property ownership**. His response seems, instead, to emphasize the idea that the considerations favoring self-ownership also favor, via an independent line of reasoning, the SOP.35 In my view, however, a better response would be one that took note of some relevant disanalogies between property in oneself and property in external things. Note first that **the self-owned world-interactive powers**, the possible use of which the SOP is intended to guarantee, are possessed by a living being who is undergoing development, which involves passing through various stages; therefore, these powers are ones that flourish with use and atrophy or even disappear with disuse.36 **To nullify these powers even for a limited time**, then, **is** (very often at least) **not merely temporarily to** **inconvenience their owner**, **but**, rather, **to bring about a permanent reduction** or even disablement of these powers. By contrast, a submarine (or a corkscrew) retains its powers even when left indefinitely in a garage (or a drawer). This difference in the effect that nullification has on self-owned powers versus extra-personal property plausibly justifies a difference in our judgments concerning the acceptability, from the point of view of justice, of such nullification in the two cases; that is, it justifies adoption of the SOP but not of the POP.37

#### 3] Private entities utilize their own property and resources to fund and conduct space exploration which means – Prohibition of it is a violation of a) Their ability to use their own property (like their rocketships or fuel) to set their ends in space and b). Their freedom to explore unknown horizons such as space.

## Case

### Advs

#### 1] Solar flares will end satellites inevitably – no defense

Wild 15 (Jim Wild, Professor of Space Physics at Lancaster University, “With So Much Vested In Satellites, Solar Storms Could Bring Life To A Standstill,” July 30, 2015, https://theconversation.com/with-so-much-vested-in-satellites-solar-storms-could-bring-life-to-a-standstill-45204)

These can disrupt satellite operations by depositing electrical charge within the on-board electronics, triggering phantom commands or overloading and damaging sensitive components. The effects of space weather on the Earth’s upper atmosphere disrupts radio signals transmitted by navigation satellites, potentially introducing positioning errors or, in more severe cases, rendering them unusable.

These are not theoretical hazards: in recent decades, solar storms have caused outages for a number of satellites services – and a handful of satellites have been lost altogether. These were costly events – satellite operator losses have run into hundreds of millions of dollars. The wider social and economic impact was relatively limited, but even so it’s unclear how our growing amount of space infrastructure would fare against the more extreme space weather that we might face.

When Space Weather Becomes A Hurricane

The largest solar storm on record was the Carrington event in September 1859, named after the British astronomer who observed it. Of course there were no Victorian satellites to suffer the consequences, but the telegraph systems of the time were crippled as electrical currents induced in the copper wires interfered with signals, electrocuted operators and set telegraph paper alight. The geomagnetic storm it triggered was so intense that the northern lights, usually a polar phenomenon, were observed as far south as the Bahamas.

Statistical analysis of this and other severe solar storms suggests that we can expect an event of this magnitude once every few hundred years – it’s a question of “when” rather than “if”. A 2007 study estimated a Carrington event today would cause US$30 billion in losses for satellite operators and threaten vital infrastructure in space and here on the ground. It’s a risk taken sufficiently seriously that it appears on the UK National Risk Register and has led the government to draw up its preparedness programme.

**2] Probability – 0.1% chance of a collision.**

**Salter 16** [(Alexander William, Economics Professor at Texas Tech) “SPACE DEBRIS: A LAW AND ECONOMICS ANALYSIS OF THE ORBITAL COMMONS” 19 STAN. TECH. L. REV. 221 \*numbers replaced with English words] TDI

The probability of a collision is currently low. Bradley and Wein estimate that the maximum probability in LEO of a collision over the lifetime of a spacecraft remains below one in one thousand, conditional on continued compliance with NASA’s deorbiting guidelines.3 However, the possibility of a future “snowballing” effect, whereby debris collides with other objects, further congesting orbit space, remains a significant concern.4 Levin and Carroll estimate the average immediate destruction of wealth created by a collision to be approximately $30 million, with an additional $200 million in damages to all currently existing space assets from the debris created by the initial collision.5 The expected value of destroyed wealth because of collisions, currently small because of the low probability of a collision, can quickly become significant if future collisions result in runaway debris growth.

#### 3] No miscalc from satellite disruptions or space dust -- empirically denied.

Mazur 12 (Jonathan Mazur, Manager Engineering at Northrop Grumman, writing in Space & Defense, from the Eisenhower Center for Space and Defense Studies. Past U.S. Actions: Redlines in Space. Space & Defense, Volume 6, Number 1, Fall 2012. https://inss.ndu.edu/Portals/97/Space\_and\_Defense\_6\_1.pdf?ver=2018-09-06-135424-147)

U.S. Reactions To Foreign Disruption Of U.S. Capabilities

In the 1970s, it was suspected that a U.S. maritime communications satellite was turned off by the Soviets when it was outside of the range of U.S. tracking stations.25 There does not appear to be any documented U.S. reaction, and I suspect there was none. In the mid-1990s, satellite hackers in Brazil began hijacking U.S. military communication satellite signals to broadcast their own information, though it took until 2009 for Brazil to crack down on the illegal activity with the support of the DoD.26 In 1998, a U.S.-German satellite known as ROSAT was rendered useless after it turned suddenly toward the sun. NASA investigators later determined the accident was possibly linked to a cyber-intrusion by Russia.

The fallout? Though there was an ongoing criminal investigation as of 2008; NASA security officials have seemed determined to publicly minimize the seriousness of the threat.27 In 2003, a signal originating from Cuba—later determined to be coming from Iranian embassy property— was jamming a U.S. communications satellite that was transmitting Voice of America programming over Iran, which was publicly referred to as an “act of war” by a U.S. official. 28 Press reporting indicates the U.S. administration was [frozen]“paralyzed” about how to cope with the jamming that continued for at least a month, even after U.S. diplomatic protests to Cuba.29 In 2005, U.S. diplomats protested to the Libyan government after two international satellites were illegally jammed disrupting American diplomatic, military, and FBI communications.30 In 2006, press reporting indicates that China hit a U.S. spy satellite with a ground-based laser. This action was acknowledged by the then director of the NRO, though the DoD remained tight lipped about the incident.31

“We’re at a point where the technology’s out there, and the capability for people to do things to our satellites is there. I’m focused on it beyond any single event.” – Air Force Space Command Commander, General Chilton, 2006 32

In 2009, a U.S. commercial Iridium communications satellite—extensively used by the DoD—was accidently destroyed by a collision with a dead Russian satellite.33 The U.S. company, Iridium, was able to minimize any loss of service by implementing a network solution within a few days.34 As of early 2011, no legal action had been taken by the company either because it is not clear who was at fault or because it might be politically problematic for the United States, which is trying to enter into bi-lateral transparency and confidence-building measures (TCBM) with Russia regarding space activities.35 Since August of 2010, North Korea has been intermittently using GPS jamming equipment, which reportedly has been interfering with U.S. and South Korean military operations and civilian use south of the North Korean border.36 Reportedly, only South Korea and the United Nations International Telecommunications Union—at the request of South Korea—have issued letters to Pyongyang demanding the cessation of disruptive communications signals in South Korea.37

It appears that the only time the U.S. military has responded with force to a disruption in U.S. space capabilities was in 2003, a few days after the start of the Iraq war.38 According to U.S. officials, Iraq was using multiple GPS jammers—which supposedly did not affect military GPS functionality. However, the U.S. military bombed the jammers anyway after a diplomatic complaint to Russia.39 The use of military force against the GPS jamming threat was possibly because the United States was already intervening in Iraq, and the bombing probably would not have occurred if the United States was not at war.

#### 4] Congestion induces restraint, not aggression.

Bowen 18 [Bleddyn, Lecturer in International Relations at the University of Leicester; ELN; 20 Februrary 2018; “The Art of Space Deterrence,” <https://www.europeanleadershipnetwork.org/commentary/the-art-of-space-deterrence/>] brett

Fourth, the ubiquity of space infrastructure and the fragility of the space environment may create a degree of existential deterrence. As space is so useful to modern economies and military forces, a large-scale disruption of space infrastructure may be so intuitively escalatory to decision-makers that there may be a natural caution against a wholesale assault on a state’s entire space capabilities because the consequences of doing so approach the mentalities of total war, or nuclear responses if a society begins tearing itself apart because of the collapse of optimised energy grids and just-in-time supply chains. In addition, the problem of space debris and the political-legal hurdles to conducting debris clean-up operations mean that even a handful of explosive events in space can render a region of Earth orbit unusable for everyone. This could caution a country like China from excessive kinetic intercept missions because its own military and economy is increasingly reliant on outer space, but perhaps not a country like North Korea which does not rely on space. The usefulness, sensitivity, and fragility of space may have some existential deterrent effect. China’s catastrophic anti-satellite weapons test in 2007 is a valuable lesson for all on the potentially devastating effect of kinetic warfare in orbit.

#### 5] Their ev overhypes escalation---be suspect.

Bowen 18 [Bleddyn, Lecturer in International Relations at the University of Leicester; ELN; 20 Februrary 2018; “The Art of Space Deterrence,” <https://www.europeanleadershipnetwork.org/commentary/the-art-of-space-deterrence/>] brett

Space is often an afterthought or a miscellaneous ancillary in the grand strategic views of top-level decision-makers. A president may not care that one satellite may be lost or go dark; it may cause panic and Twitter-based hysteria for the space community, of course. But the terrestrial context and consequences, as well as the political stakes and symbolism of any exchange of hostilities in space matters more. The political and media dimension can magnify or minimise the perceived consequences of losing specific satellites out of all proportion to their actual strategic effect.

#### 6] No Kessler syndrome.

**Mosher ’19** [Dave; September 3rd; Journalist with more than a decade of experience reporting and writing stories about space, science, and technology; Business Insider, “Satellite collisions may trigger a space-junk disaster that could end human access to orbit. Here’s How,” <https://www.usafa.edu/app/uploads/Space_and_Defense_2_3.pdf>; GR]

The Kessler syndrome plays center-stage in the movie "Gravity," in which an accidental space collision endangers a crew aboard a large space station. But Gossner said that type of a runaway space-junk catastrophe is unlikely. "Right now I don't think we're close to that," he said. "I'm not saying we couldn't get there, and I'm not saying we don't need to be smart and manage the problem. But I don't see it ever becoming, anytime soon, an unmanageable problem." There is no current system to remove old satellites or sweep up bits of debris in order to prevent a Kessler event. Instead, space debris is monitored from Earth, and new rules require satellites in low-Earth orbit be deorbited after 25 years so they don't wind up adding more space junk. "Our current plan is to manage the problem and not let it get that far," Gossner said. "I don't think that we're even close to needing to actively remove stuff. There's lots of research being done on that, and maybe some day that will happen, but I think that — at this point, and in my humble opinion — an unnecessary expense." A major part of the effort to prevent a Kessler event is the Space Surveillance Network (SSN). The project, led by the US military, uses 30 different systems around the world to identify, track, and share information about objects in space. Many objects are tracked day and night via a networkof radar observatories around the globe. Optical telescopes on the ground also keep an eye out, but they aren't always run by the government. "The commercial sector is actually putting up lots and lots of telescopes," Gossner said. The government pays for their debris-tracking services. Gossner said one major debris-tracking company is called Exoanalytic. It uses about 150 small telescopes set up around the globe to detect, track, and report space debris to the SSN. Telescopes in space track debris, too. Far less is known about them because they're likely top-secret military satellites. Objects detected by the government and companies get added to a catalog of space debris and checked against the orbits of other known bits of space junk. New orbits are calculated with supercomputers to see if there's a chance of any collisions. Diana McKissock, a flight lead with the US Air Force's 18th Space Control Squadron, helps track space debris for the SSN. She said the surveillance network issues warnings to NASA, satellite companies, and other groups with spacecraft, based on two levels of emergency: basic and advanced. The SSN issues a basic emergency report to the public three days ahead of a 1-in-10,000 chance of a collision. It then provides multiple updates per day until the risk of a collision passes. To qualify for such reporting, a rogue object must come within a certain distance of another object. In low-Earth orbit, that distance must be less than 1 kilometer (0.62 mile); farther out in deep space, where the precision of orbits is less reliable, the distance is less than 5 kilometers (3.1 miles). Advanced emergency reports help satellite providers see possible collisions much more than three days ahead. "In 2017, we provided data for 308,984 events, of which only 655 were emergency-reportable," McKissock told Business Insider in an email. Of those, 579 events were in low-Earth orbit (where it's relatively crowded with satellites).

#### 7] Kessler syndrome is a process not an event---timeframe is decades and intervening actors check.

Burns Interviewing Kessler **’**13 Corrinne Burns, interviewing Donald Kessler, who made up the concept. [Space junk apocalypse: just like Gravity? 11-15-2013, https://www.theguardian.com/science/blog/2013/nov/15/space-junk-apocalypse-gravity]//BPS

Now? Are we in trouble? Not yet. Kessler syndrome isn't an acute phenomenon, as depicted in the movie – it's a slow, decades-long process. "It'll happen throughout the next 100 years – we have time to deal with it," Kessler says. "The time between collisions will become shorter – it's around 10 years at the moment. In 20 years' time, the time between collisions could be reduced to five years." Fortunately, communications satellites are, in the main, situated high up in geosynchronous orbit (GEO), whereas the risk of collisions lies mainly in the much lower, and more crowded, low Earth orbit (LEO). But that doesn't mean we can relax. "We've got to get a handle on it – we need to prevent the cascade process from speeding up." And the only way to do that is, he says, to begin actively removing junk from space. Charlotte Bewick agrees. She's a mission concepts engineer with the German space technology company OHB System, with special expertise in space junk – specifically, how we can capture it and bring it back to Earth. While agreeing with Kessler that the movie scenario is exaggerated, she remains concerned. "Fragments of junk can naturally re-enter the atmosphere [and so be removed from orbit]. But we're at the stage where the rate of creation of new debris fragments is higher than the rate of natural removal. The orbits most at risk harbour important space assets – satellites for weather forecasting, oil spill and bush fire detection, and polar ice monitoring." Bewick highlights the case of Envisat, a defunct 8,000kg spacecraft circling Earth in an orbit that is very popular with space agencies and, hence, pretty crowded. "If Envisat collides with a piece of debris or a micrometeorite, the fragments could render the whole orbital region unusable." So can we get the junk down, I asked Massimiliano Vasile, part of the Mechanical & Aerospace Department at the University of Strathclyde and co-ordinator of the Stardust network. He told me defunct satellites in the high GEO region have, for some time, been shifted to higher "graveyard orbits" to keep them out of the way. But that's not an option for items in low Earth orbit. For this, he tells me, researchers are looking seriously into active debris removal – in-orbit capture techniques like harpooning, netting and tethering, the use of contactless systems like ion-beams or lasers, and even onboard robotics to position the junk away from high-risk orbital regions. As for middle Earth orbit – well, ideas are welcome, he says. We're in no immediate danger from Kessler syndrome – but it's not a problem that's going away. Despite Gravity's artistic license, Donald Kessler is pleased to see the phenomenon represented on the big screen. "It is very improbable that events would play out as they did in the film," he says. "But if it raises awareness, then that's great."

#### 8] No Kessler

Drmola and Hubik 18 [Jakub Drmola, Division of Security and Strategic Studies, Department of Political Science at the Faculty of Social Sciences of Masaryk University. Tomas Hubik, Department of Theoretical Computer Science and Mathematical Logic, Faculty of Mathematics and Physics, Charles University. Kessler Syndrome: System Dynamics Model. Space Policy Volumes 44–45, August 2018, Pages 29-39. https://www.sciencedirect.com/science/article/pii/S0265964617300966?via%3Dihub]

The baseline scenario represents a continuation of the current trends, which are simply extended into the future. An average 1% growth rate of yearly launches of new satellites (starting at 89) is assumed, together with constant success rate in satellites’ ability to actively avoid collisions with debris and other satellites, constant lifetime, and failure rate. This basic model lacks any sudden events or major policy changes that would markedly influence the debris propagation. However, it serves both as a foundation for all the following scenarios and as a basis of comparison to see what the impact would be.

Given high uncertainty regarding future state of the satellite industry (how many satellites will be launched per year, of what type and size, etc.), we elected to limit our simulations to 50 years. The model can certainly continue beyond this point, but the associated unknowns make the simulations progressively less useful.

Running this model for its full 50 years (2016–2066) yields the expected result of perpetually growing amount of debris in the LEO. One can observe nearly 2-fold increase in the large debris (over 10 cm) and 3-fold increase in small debris (less than 1 cm) quantities (Fig. 5). The oscillations visible in the graph are caused by the aforementioned solar cycles which influence the rate of reentry for all simulated populations except the still active (i.e. powered) satellites. Also please note that throughout the article, the graphs use quite different scales for debris populations because of the considerable variations between scenarios. Using any single scale for all graphs would render some of them unintelligible.

We can see that this increase in numbers still does not result in realization of the Kessler syndrome as most of the satellites being launched remain intact for their full expected service life. However, it comes with a considerable increase in risk to satellites, which is manifested by their higher yearly losses, making satellites operations riskier and more expensive for governments and private companies alike. This increased amount of debris in LEO combined with the larger number of active satellites makes it approximately twice as likely that an active satellite will suffer a disabling hit or a total disintegration during its lifetime. It should be noted that this risk might possibly be offset by future improvements in satellite reliability, debris tracking, and navigation [17].

### Framing

#### 1] Aggregation fails – a) there’s no brightline for impact weighing – 10 headaches don’t make a migraine b) perceptions of pain and pleasure differ, which is why masochists exist, which disproves motivation and pleasure’s intrinsic goodness.

#### [2] Prediction fails – util relies on predicting the future, but policymakers are worse than monkeys, which takes out all their impacts insofar as they are reliant on predictions.

**Menand 05** Louis Menand, professor of English at Harvard University, “Everybody’s An Expert” 27 November 2005, The New Yorker, accessed 7 September 2021, <http://www.newyorker.com/magazine/2005/12/05/everybodys-an-expert//> FSU SS recut

Tetlock is a psychologist—he teaches at Berkeley—and his conclusions are based on a long-term study that he began twenty years ago. He picked two hundred and eighty-four people who made their living “commenting or offering advice on political and economic trends,” and he started asking them to assess the probability that various things would or would not come to pass, both in the areas of the world in which they specialized and in areas about which they were not expert. Would there be a nonviolent end to apartheid in South Africa? Would Gorbachev be ousted in a coup? Would the United States go to war in the Persian Gulf? Would Canada disintegrate? (Many experts believed that it would, on the ground that Quebec would succeed in seceding.) And so on. By the end of the study, in 2003, the experts had made 82,361 forecasts. Tetlock also asked questions designed to determine how they reached their judgments, how they reacted when their predictions proved to be wrong, how they evaluated new information that did not support their views, and how they assessed the probability that rival theories and predictions were accurate. Tetlock got a statistical handle on his task by putting most of the forecasting questions into a “three possible futures” form. The respondents were asked to rate the probability of three alternative outcomes: the persistence of the status quo, more of something (political freedom, [e.g.] economic growth), or less of something (repression, [e.g.] recession). And he measured his experts on two dimensions: how good they were at guessing probabilities (did all the things they said had an x per cent chance of happening happen x per cent of the time?), and how accurate they were at predicting specific outcomes. The results were unimpressive. On the first scale, the experts performed worse than they would have if they had simply assigned an equal probability to all three outcomes—if they had given each possible future a thirty-three-per-cent chance of occurring. Human beings who spend their lives studying the state of the world, in other words, are poorer forecasters than dart-throwing monkeys, who would have distributed their picks evenly over the three choices.

#### [3] We don’t know if an action is bad until after it happens, which means obligations can’t be formed

#### [4] Infinite consequences – every consequence causes another consequence – when do we evaluate “the consequence?”

#### [5] Induction fails –we know induction works because it has in the past – that relies on induction and is circular.

#### [6] Calculative regress – util requires us to calculate the morality and time spent on calculation, leading to infinite regress and halting action.

### LBL

#### 1] The Blum Evidence is powertagged – just because beings can perceive pain and pleasure does NOT mean that morality ought to be derived from it.

#### 2] 1AR theory doesn’t come first – a] no brightline as to what makes abuse worse b] The 1AR can win multiple layers too – they can read a shell and still cover substance