### 1AC - Plan

#### Plan: The appropriation of outer space through asteroid mining by private entities should be banned.

#### We’ll defend normal means as the signatories of the OST adding an optional protocol under Article II.

Tronchetii 7[Fabio Tronchetti is a professor at the International Institute of Air and Space Law, Leiden University, The Netherlands, 2007, <https://iislweb.org/docs/Diederiks2007.pdf>, 12-15-2021 amrita]

ARTICLE II OF THE OUTER SPACE TREATY: A MATTER OF DEBATE The legal content of Article II of the Outer Space Treaty is one of the most debated and analysed topic in the field of space law. Indeed, several interpretations have been put forward to explain the meaning of its provisions. Article II states that: “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”. **The text of Article II represents** the final point of a process, formally initiated with Resolution 1721, aimed at conferring to outer space the status of res communis omnium, namely a thing open for the **free exploration** and use by all States **without the possibility of being appropriated**. By prohibiting the possibility of making territorial claims over outer space or any part thereof based on use or occupation, Article II **makes clear that** the customary procedures of **i**nternational **law allowing** subjects to obtain **sovereignty rights over un-owed lands**, namely discovery, occupatio and effective possession, **do not apply to** outer **space.** This prohibition was considered by the drafters of the Outer Space Treaty the best guarantee for preserving outer space for peaceful activities only and for stimulating the exploration and use of the space environment in the name of all mankind. What has been the object of controversy among legal scholars is the question of whether both States and private individuals are subjected to the provisions of Article II. Indeed, **while Article II forbids** expressis verbis the national **appropriation by** claims of **sovereignty**, by means of use and occupation or other means of outer space, **it does not** make **a**ny explicit **mention** **to** its **private** appropriation. Relying on this consideration, some authors have argued that the private appropriation of outer space and celestial bodies is allowed. For instance, in 1968 Gorove wrote: “Thus, at present an individual acting on his own behalf or on behalf of another individual or private association or an international organisation could lawfully appropriate any parts of outer space…”6 . The same argument is used today by the enterprises selling extraterrestrial acres. They base their claim to the Moon and other celestial bodies on the consideration that Article II does not explicitly forbid private individuals and enterprises to claim, exploit or appropriate the celestial bodies for profit7 . However, it must be said, that nowadays there is a general consensus on the fact that **both national appropriation and private** property rights **are denied** under the Outer Space Treaty. Several way of reasoning have been advanced to support this view. Sters and Tennen affirm that the argument that Article II does not apply to private entities since they are not expressly mentioned fails for the reason that they do not need to be explicitly listed in Article II to be fully subject to the non-appropriation principle8 . **Private entities are allowed to carry out** space **activities but**, according to Article VI of the Outer Space Treaty, they **must be authorized** to conduct such activities **by the** appropriate **State** of nationality. But if the State is prohibited from engaging in certain conduct, then it lacks the authority to license its nationals or other entities subject to its jurisdiction to engage in that prohibited activity. Jenks argues that “States bear international responsibility for national activities in space; it follows that what is forbidden to a State is not permitted to a chartered company created by a State or to one of its nationals acting as a private adventurer”9 . It has been also suggested that **the prohibition of national** appropriation **implies prohibition of private** appropriation because the latter cannot exist independently from the former10. In order to exist, indeed, private property requires a superior authority to enforce it, be in the form of a State or some other recognised entity. In outer space, however, this practice of State endorsement is forbidden. Should a State recognise or protect the territorial acquisitions of any of its subjects, this would constitute a form of national appropriation in violation of Article II. Moreover, it is possible to use some historical elements to support the argument that both the acquisition of State sovereignty and the creation of private property rights are forbidden by the words of Article II. During the negotiations of the Outer Space Treaty, the Delegate of Belgium affirmed that his delegation “had taken note of the interpretation of the non-appropriation advanced by several delegations-apparently without contradiction-as covering both the establishment of sovereignty and the creation of titles to property in private law”11. The French Delegate stated that: “…there was reason to be satisfied that three basic principles were affirmed, namely: the prohibition of any claim of sovereignty or property rights in space…”12. The fact that the accessions to the Outer Space Treaty were not accompanied by reservations or interpretations of the meaning of Article II, it is an evidence of the fact that this issue was considered to be settled during the negotiation phase. Thus, summing up, we may say that **prohibition of appropriation of outer space** and its parts is a rule which **is valid for both private and public entity**. The theory that private operators are not subject to this rule represents a myth that is not supported by any valid legal argument. Moreover, it can be also added that if any subject was allowed to appropriate parts of outer space, the basic aim of the drafters of the Treaty, namely to prevent a colonial competition in outer space and to create the conditions and premises for an exploration and use of outer space carried out for the benefit of all States, would be betrayed. Therefore, **the need to protect the non-appropriative nature o**f outer **space emerges** in all its relevance.

### Advantage – Asteroid Mining

#### Private companies are making their own rules through patchwork which creates conflict—an international body is key

Foster 16 – Craig, J.D., University of Illinois College of Law, “EXCUSE ME, YOU’RE MINING MY ASTEROID: SPACE PROPERTY RIGHTS AND THE U.S. SPACE RESOURCE EXPLORATION AND UTILIZATION ACT OF 2015”, *JOURNAL OF LAW, TECHNOLOGY & POLICY*, No. 2, page 428-430, http://illinoisjltp.com/journal/wp-content/uploads/2016/11/Foster.pdf

There are many reasons to be excited about the prospect of mining resources from space. Hopes are high that these mining efforts will provide an economic boon by producing jobs and injecting more money into the economy. 214 Additionally, the negative impact of mining natural resources on Earth is widely reported215 and might be mitigated by space mining. If mining precious resources from space can minimize the burden on Earth, then this would lend even greater support for asteroid mining. Finally, little enchants the human mind and propels innovation more than sending people and manmade objects into space. For good reason, there is much enthusiasm about the prospect of space mining. On the other hand, it is troublesome to some that private, commercial entities will be paving the way and making up many of the rules as they go. Might this lead to repeating many of the mistakes humans have made on Earth? Might there be unforeseen problems that could spell trouble if mining efforts are not properly regulated? The answer to these questions is likely “yes” as well. It will be important in the coming years to balance the former excitement against the latter caution. Space might seem limitless and impossible to affect in any significant fashion; but, history must be a major voice for the spacemining industry.216 It must be remembered that humans can make an impact that will be felt for generations to come. Thus, it will be important that lawmakers and the international community be as proactive as possible—both in outlining property rights and protecting the final frontier from being harmed by an industry that might become overzealous if left unchecked. Specifically, it will be vital for countries to enter into some sort of international agreement. One option is to create an agreement similar to UNCLOS, which would regulate how individual states and their citizens interact with resources mined from space.217 Such an agreement should recognize not only the property rights of the extracting commercial entities but also the rights of non-spacefaring countries to benefit from the minerals as well. This might include the creation of an international body, much like the ISA, that will ensure that the interests of all nations are maintained by distributing funds and technology to less wealthy or non-spacefaring nations. The U.S. would do well to help create and ratify such an agreement— something they have failed to do with UNCLOS. If the U.S. and other countries are uneasy about entering into such a restrictive agreement, they might also consider an international regulatory body and scheme much like the one used for satellites. The International Telecommunications Union (ITU) is a United Nations agency that, among other services, provides the international community with uniform satellite orbit oversight and regulatory guidance.218 Currently, 193 countries follow the ITU regulations and utilize their services, which have been likened to domain name registration.219 In the same way, spacefaring countries could form an international body that helps create and maintain a uniform space-mining legal framework.220 Without some sort of international framework as described above, the U.S. and other space-mining countries leave themselves open to great conflict and will be required to patch together a multitude of treaties between themselves as problems inevitably arise.221 V. CONCLUSION The idea of mining resources from celestial bodies is something that has always been relegated to video games and sci-fi movies. But as technology continues to progress at an exponential rate, such mining is starting to come within the realm of possibility. A number of companies are currently creating prospecting technologies that will allow them to determine exactly what an individual asteroid holds. They hope to eventually harvest these resources and sell them for lucrative profits. Fortunately for these companies, the current legal regime governing property rights to space resources is undergoing rapid change at the national level. The U.S. recently passed the Space Resource Exploration and Utilization Act of 2015, which explicitly entitles U.S. citizens to property rights over any space resources they obtain. This is certain to induce confidence in U.S. investors. The situation at the international level is different. Current international space agreements are vague, lacking in consensus, and provide little precedent for ownership of space resources. This has led the international community to move in the direction of creating a better regulatory framework, but this movement is still in discussion stages and is likely to take a while to come to fruition.

#### Current space treaties have zero authority and lack clarity—which creates ineffective regulations

MacWhorter 16 – Kevin, J.D from William and Mary College and Contributor to the William & Mary Environmental Law and Policy Review, “Sustainable Mining: Incentivizing Asteroid Mining in the Name of Environmentalism”, *William & Mary Environmental Law and Policy Review,* 2016, <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1653&context=wmelpr>

Although an academic debate at this point, the legal status of property in space is necessary for any future exploration and exploitation of natural resources in space. Until then, private exploration is severely disincentivized. Further, the technology behind asteroid mining is fast becoming a reality.108 The law must respond. In order to evaluate what the international community needs to accomplish to ensure future exploration, one must explore the international agreements already in place that speak to the issue of property rights. To begin, the United Nations (UN) established the UN Office of Outer Space Affairs (UNOOSA) in 1958 109 to promote international cooperation in space and promote its peaceful use.110 UNOOSA oversees the UN’s Committee on the Peaceful Uses of Outer Space (COPUOS) and implements its decisions.111 The UN founded COPUOS to avoid international rivalries in space.112 The OST, the Liability Convention,113 and the Moon Agreement114 are all within the jurisdiction of COPUOS. There are five international agreements that lay a framework of space law and, more importantly, ownership of objects and celestial bodies in space: • The Treaty on Principles Governing the Activities of Space, Including the Moon and Other Celestial Bodies (OST); 115 • The Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Space Objects Launched into Outer Space(ARRA); 116 • The Convention on International Liability for Damage Caused by Space Objects (Liability Convention); 117 • TheConvention on RegistrationofObjectsLaunched intoOuterSpace (Registration Convention); 118 and • The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (Moon Treaty). 119 As with all international law, however, the actual authority of these treaties is debatable, because countries often ignore their precepts or disagree on the meaning of their substance.120 International custom, therefore, is the major indication of what international law exactly is.121 The Law of the Sea is an instructive analogy on that point, and as Lyall and Larsen explain, The practice need not be wholly uniform, but must be undertaken in the belief it is binding and required by law as opposed to being merely convenient or mutually beneficial. 122 Further, international law in general was conceived to deal with relations between States, not to deal with private claims of property. 123 International.

#### Disputes and misperceptions create cascading effects towards space weaponization and an arms race—an international framework solves BUT unilateral action causes escalating space wars

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The first concern is establishing clear regulations regarding asteroid mining. With an intent to establish clear regulations with respect to asteroid mining and to legalise material extraction from the moon and other celestial bodies by private companies in the US, the US government legalised space mining in 2015 by introducing the US Commercial Space Launch Competitiveness Act, 2015.[xxvii] This move was heartily welcomed by the private companies as it provided legitimacy to their planned activities. Subsequently in 2017, Luxembourg followed suit.[xxviii] While the US has been a spacefaring nation for many decades now, Luxembourg aspires to become a global leader in the nascent race to mine resources in outer space. In the 1980s the tiny European nation arose out of almost nowhere to become a leader in the satellite communications industry; today it is looking to the skies again, hoping to be the Silicon Valley of asteroid mining.[xxix] In the backdrop of a thriving steel industry that faced trade recession during the oil crisis of 1973, Luxembourg is trying to capitalise on the potential of space mining. As Prime Minister Xavier Bettel put it, “We realized it wouldn't be forever, the steel, so we decided to do other things.”[xxx] Similarly, looking beyond oil, the UAE is framing its policy approaches to make advances in two key areas: human space exploration, and commercial activities of resource extraction through mining.[xxxi] The two formal pieces of legislation (passed by the US and Luxembourg) provide an answer to the complex question of ownership in outer space; the two-word answer appears to be, “finders, keepers”. The US Commercial Space Launch Competitiveness Act, 2015 states: “A US citizen engaged in commercial recovery of an asteroid resource or a space resource shall be entitled to any asteroid resource or space resource obtained.”[xxxii] This legislation gives US space firms the right to own, keep, use, and sell the spoils of the cosmos as they deem fit. Luxembourg’s legislation is fairly analogous to the US Act, giving mining companies the right to keep their plunder. However, unlike the US law, Luxembourg’s does not require a company’s major stakeholders to be based in the country to enjoy its safeguards; the only requirement is for that company to have an office in the country.[xxxiii] In 2017, Japan entered into a five-year agreement with Luxembourg for mining operations in celestial bodies. Japan today appears a step closer to realising its objective of asteroid mining with two Japanese rovers, Minerva II-1, of JAXA landing on the surface of the asteroid named Ryugu in September 2018.[xxxiv] Earlier, Portugal and the UAE signed similar cooperation agreements with Luxembourg.[xxxv] Meanwhile, a few other countries—which have been critical of the US and Luxembourg, at the forefront of the space mining efforts**—**have also decided to join the field. The increasingly competitive and contested nature of outer space activities is spurring major spacefaring nations to push the boundaries in their space exploration. Asteroid mining could possibly become the next big thing and is already seeing a race among the space powers. The US and Luxembourg are at the forefront in space resource extraction in terms of the policy frameworks and funding.[xxxvi] Even as the US has clarified that the US Space Act 2015 is being misunderstood and that there is no change in the US policy towards national appropriation of space, the reality is that it has already spurred a major debate**.[xxxvii]** China and Russia are among those countries that are following on the path of the US and Luxembourg in undertaking mining missions in space. According to media reports, Ye Peijian, chief commander and designer of China’s lunar exploration programme has stated that China would send the first batch of asteroid exploration spacecraft around 2020.[xxxviii] Speaking to China’s Ministry of Science and Technology-run newspaper, Science and Technology Daily, Ye said that these asteroids have a high concentration of precious metals, which could rationalise the huge cost and risks involved in these activities as their economic value could run into the trillions of US dollars. Therefore, extraction, mining and transporting them back to Earth through robotic equipment will be a significant activity. Chinese scientists are working on missions to “bring back a whole asteroid weighing several hundred tonnes, which could turn asteroids with a potential threat to Earth into usable resources**.**”[xxxix] Ye was also quoted as saying that China has plans of “using an asteroid as the base for a permanent space station.”**[xl]** Helium mining on the moon is also part of China’s goals.[xli] Russia, for its part, is also responding to the space-mining developments of the last decade. For one, it plans to have a permanent lunar base somewhere between 2015 and 2020 for possible extraction of Helium.[xlii] Even as Russia’s official position on asteroid mining is that it is forbidden under the 1967 OST—which states that space is the “province of mankind”—the Russian industry players are of the view that they must follow the lead taken by the US and Luxembourg.[xliii] In early 2018, the director of the Scientific-Educational Center for Innovative Mining Technologies of the Moscow-based National University of Science and Technology MISIS (NUST MISIS), Pavel Ananyev, spoke about the Russian ambitions and proposed activities including space drilling rigs, water extraction on the Moon and 3D printers at space stations.[xliv] Russia’s private space companies including Dauria Aerospace, one of the first Russian private space companies, also hold the opinion that they must go forward in the same direction and call for a larger space to private sector to engage in extracting space resources.[xlv] Moscow may not have yet actively pursued space mining and resource extraction, but it is likely to pick up pace in the coming years alongside global efforts. Moscow clearly has a capacity gap in terms of funding because its earlier plans to have a permanent base in the Moon by 2015 is yet to happen. India, too, has ambitions in extraterrestrial resource extraction. In fact, a year after the US legislation, Prabhat Ranjan, executive director of Technology Information, Forecasting and Assessment Council (TIFAC), a policy organisation within the Department of Science and Technology, made a case for India to push ahead with lunar and asteroid mining. He said, “Moon is already being seen as a mineral wealth and further one can go up to the asteroids and start exploiting this. This can be a big game changer and if India doesn’t do this, we will lag behind.”[xlvi] More recently, Dr. K Sivan, Chairman of the country’s civil space organisation, Indian Space Research Organisation (ISRO), talked about ISRO’s plans for helium-3 extraction and said, “the countries which have the capacity to bring that source from the moon to Earth will dictate the process. I don’t want to be just a part of them, I want to lead them.”[xlvii] However, gaining proficiency in such missions is not easy – the NASA and ESA (the European Space Agency) have been discussing these possibilities for a longer time, albeit quietly. The ISRO Chairman’s response was characterised by an Indian commentator as “aspirational” and “emotional”, clearly conceding that the country’s technological wherewithal is yet to be adequate.[xlviii] Importantly, it is not clear how the legal and regulatory aspects of space mining operations are being dealt with. There was one instance, though, when Luxembourg and Japan in a joint press statement said, “The exchange of information may cover all the issues of the exploration and commercial utilization of space resources, including legal, regulatory, technological, economic, and other aspects.”[xlix] Whether such legalisation is truly legal is arguable. Space Mining: Legal or Not? The Outer Space Treaty (OST) of 1967, considered the global foundation of the outer space legal regime, along with the other four associated international instruments have provided the fundamental basis for outer space activities by prohibiting certain activities and emphasising aspects such as the “common heritage of mankind”. These agreements have been useful in highlighting the global common nature of outer space. At the same time, however, they have been insufficient and ambiguous in providing clear regulations to newer space activities such as asteroid mining. Based on the premise of ‘res communis’, the magna carta of space law, the OST, illustrates outer space as “the province of all mankind”.[l] Under Article I, States are free to explore and use outer space and to access all celestial bodies “on the basis of equality and in accordance with international law.”[li] Although the OST does not explicitly mention “mining” activities, under Article II, outer space including the Moon and other celestial bodies are “not subject to national appropriation by claim of sovereignty” through use, occupation or any other means.[lii] Furthermore, the Moon Agreement, 1979, not only defines outer space as “common heritage of mankind” but also proscribes commercial exploitation of planets and asteroids by States unless an international regime is established to govern such activities for “rational management,” “equitable sharing” and “expansion of opportunities” in the use of these resources.[liii] Slipping conveniently through the loophole in the OST, both the US and Luxembourg have authorised companies to claim exclusive ownership over extracted resources (but not of the asteroid itself). Proponents argue that since no sovereign nation is actually asserting rights over an area of outer space, instead, it is only a private unit claiming rights over singular resources, the treaty norm, “national appropriation by claim of sovereignty”, is not being violated. In the words of renowned space lawyer, Frans von der Dunk, “In terms of the law, yes it’s true that no country can claim any part of outer space as national territory — but that doesn’t mean private industry can’t mine resources.”[liv] Quoting reference from maritime law, Luxembourg regards space resources as appropriable akin to fish and shellfish, but celestial bodies and asteroids are not, just like the high sea. It is noteworthy that out of the only 18 nations that have ratified the Moon Agreement,[lv] none are major spacefaring nations, thereby giving themselves a convenient leeway to not abide by the same. These unilateral initiatives have set off a critical response from the international community. Applying literal interpretation of the OST, there is certainly room to construe that space mining may be legal, compared to the Moon Agreement whose prohibition is absolute. However, taking into consideration the letter and spirit of the OST, strengthened by the Moon Agreement, the argument that “national appropriation” only extends to appropriation of territory and not appropriation of resources is a far reach. That resource extraction is contemplated, albeit implicitly, in the OST, is nothing but logical. Not only have such claims of possessory rights not been recognised in the past, there is also global consensus regarding its illegality.[lvi] It therefore forms a part of customary international law, despite the Moon Agreement not having been widely ratified. In this light, the legalisation of space mining is a sheer violation of the elemental principles of international space law. Yet, there is no clarity on what activity is allowed and what is prohibited in outer space under the existing law.[lvii] There is ambiguity around most issues—from “who would license and regulate asteroid mining operations” to the legality of these activities as per the existing international space law.[lviii] When comparing it to the law of the seas, resource appropriation in the high seas and deep seabed is governed by the United Nations Convention on the Law of the Sea (UNCLOS), 1982, and that in Antarctica, as per the Protocol on Environmental Protection to the Antarctic Treaty, 1991. While the former is strictly regulated under Part XI of UNCLOS, the latter is completely forbidden but for scientific purposes. The law of the sea argument—“owning the fish, not the sea”—cannot be applied to outer space primarily because fish are living resources that can reproduce and therefore are renewable. Outer space resources, on the other hand, are depletable: once harvested, they cannot be replenished. The analogy with fish and seas, therefore, is not a fair one and its transposition to outer space and celestial bodies would be inaccurate. Perhaps a more comparable regime is the deep seabed, which contemplates property rights over mineral extraction. The utilisation and ownership of the deep seabed’s resources are exclusively structured around the International Seabed Authority (ISA), which is responsible for organising, carrying out and controlling all activities in the seabed.[lix] Not only must State parties seek sanction from the ISA before beginning resource exploitation, but the fiscal benefits from seabed mining must also be shared among all.[lx] Evidently, even the UNCLOS upholds State ownership and fair distribution over individual ownership and self-centred gains.[lxi] By allowing private ownership, the US and Luxembourg are once again in contravention of the very same law they are relying on. The touchstone principle, “province of all mankind” is also being defeated. Therefore, to even reap the limited benefits as under UNCLOS, at least the derivation must be made alike. This argument too falls flat. The Way Ahead Undoubtedly, growing technological adeptness has made space mining inevitable and, therefore, the question is no longer “if” but “when”. Nevertheless, a scenario where companies can, solely based on domestic laws, steadily exploit mineral resources in outer space, would be universally unacceptable. Minus regulations, the realisation of space exploitation will create great disparity between nations and disrupt dynamics of the world economy. Regulations are particularly important in the context of the space debris problem. We definitely do not wish for a future, befittingly described by renowned engineer and inventor Graham Hawkes, thus: “Space exploration promised us alien life, lucrative planetary mining, and fabulous lunar colonies. News flash, ladies and gents: Space is nearly empty. It’s a sterile vacuum, filled mostly with the junk we put up there.”[lxii] Therefore, it is extremely important that resource appropriation is carried out in an ethical manner, without interrupting safe and secure access to outer space, simultaneously allowing all countries a share in the proceeds. Technological advances and financial readiness are pushing both, states and non-state players towards new ventures in outer space. Yet, the rules of engagement especially dealing with the new commercial activities are far from ideal. There is a clear and urgent need to debate and come up with either a new regulation or accommodate the space mining activities within the existing international legal measures. Experts have articulated that these could possibly be addressed under the existing property law principles or old mining law principles.[lxiii] However, given the scale of activities that states and non-state parties will engage in, the ability of the existing regime to address space mining could be highly inadequate. The second option would be to develop a new instrument including an institutional architecture that would set out the parameters for activities related to resource extraction and space mining. Since there are a good number of commercial players playing a formidable role in asteroid mining, there has to be space for commercial players in the new gig, which might be a big departure from the earlier era institutions that saw states being the sole authority in regulating activities in outer space. A clear role for commercial players has been articulated for some time but the global space community has yet to reach a consensus in how they can be incorporated into the global governance debates. The apprehension on the part of a number of states is driven by the fact that private sector participation is still largely a western phenomenon. This trend may be undergoing change in other parts of the world but until there is a sizeable private sector community in other major spacefaring powers, there is a fear that the western bloc of countries may stand to gain from the industry being represented in the global governance debates. A third possible option is to get a larger global endorsement of the Moon Treaty, which highlights the common heritage of mankind. The Moon Treaty is important as it addresses a “loophole” of the OST “by banning any ownership of any extraterrestrial property by any organization or private person, unless that organization is international and governmental.”[lxiv] But the fact that it has been endorsed only by a handful of countries makes it a “failure” from the international law perspective.[lxv] Nevertheless, efforts must be made to strengthen the support base for the Moon Agreement given the potential pitfalls of resource extraction and space mining activities in outer space. Signatories to the Moon Treaty can take the lead within multilateral platforms such as the UN to debate the usefulness of the treaty in the changed context of technological advancements and new geopolitical dynamics, and potentially find compromises where there are disagreements. Pursuing a collective approach is ideal. An example is UNCLOS, which demonstrates that the international society possesses the capability of regulating mining quarters deemed to be the “province of mankind”. However, a sui generis legal framework must be crafted because the difference between the marines and outer space and their resources is wide, and the regulations are too region-specific to permit a superimposition of the oceanic regime to outer space. A sound legal environment will protect both the company performing operations and its beneficiaries, while ensuring even-handed resource allocation. In addition, regulations spelling out safety standards and identifying safety zones around mining operations could be useful in ensuring safe and secure operations in outer space. It would be wrong, however, to say that the international community has not debated over this. In fact, one of the main agenda points of the fifty-seventh session of UNCOPUS Legal Committee held in April 2018, was especially devoted to “general exchange of views on potential legal models for activities in the exploration, exploitation and utilization of space resources.”[lxvi] Upon evaluation, it is clear that countries are not against space mining as such; rather the contentious points are vis-à-vis authorisation, regulation, and where to place responsibility. There also appears to be concurrence regarding the need for international coordination efforts of some sort. Over the last two years, The Hague Space Resources Governance Working Group,[lxvii] established with the purpose of “assess[ing] the need for a regulatory framework for space resource activities, has identified 19 “building blocks”,[lxviii] encompassing subject matters that could be included in such a regulatory framework. Although this leaves a lot of hope for the legitimate mining of space resources, its status is still pending. Also, several questions need to be agreed upon by the global space policy community before the establishment of a framework. First, there must be an agreement among all the space powers on the need for a global governance framework for the use of space resources. This must be followed by detailed deliberations on the scope, mandate and objectives of such a framework. Can and should there be safety zones and exclusive rights be recognised under such a framework and how one can ensure equitable sharing of the resources, and lastly, the role of industries and how the interests of the industry as pioneers in this area can be secured. These are all pertinent questions that need to be considered and debated before an international regime for extraction and use of space resources can be established.[lxix] Even legal space mining activity could have serious impacts in two ways. For instance, any technological spinoffs that a country might have could add to the space weaponisation debate. Two, the erosion of norms with regard to space mining could have a cascading effect on other norms in the same issue area such as weaponisation of space. It is imperative for nations to actively combine their efforts to ensure that this activity transpires in the most globally acceptable manner and not one which stirs anarchism. The ancient Roman maxim, ‘Quod omnes tangit ab omnibus approbatur’ (What touches all must be approved by all) gains due traction in this kind of a scenario. Therefore, a universal activity like space exploration mandates an international guideline; or else, the first haul from mining, instead of earning admiration and exultation, will only be enmeshed in litigation.

#### Inevitable market expansion guarantees wars over property rights—governments get quickly involved

Funnell 18 – Anthony, Writer for Future Tense News Citing Dean of Law at University of Adelaide, “War in space 'inevitable' because there's so much money to be made, expert warns”, ABC News, 8/23/2018, https://www.abc.net.au/news/2018-08-24/conflict-in-space-is-inevitable-expert-warns/10146314

A leading Australian space law expert has warned conflict over space assets is "inevitable", and more needs to be done now to avert the potential for hostility. Professor Melissa de Zwart, the Dean of Law at the University of Adelaide, says growing commercial interest in the mining of precious minerals on asteroids and planets has heightened the danger. "I think you have to be a realist about that," she said. "Where you have resources, where you have competition for those resources, where you have investment of money in the extraction of those resources ... there will be an expectation of security around that investment." While full-scale mining is yet to be tried, there is significant international interest. Japanese aerospace agency Jaxa has already successfully landed a robotic craft on an asteroid and taken samples. It currently has another probe hovering over an asteroid named Ryugu. Artist's impression of Hayabusa 2 PHOTO: Artist's impression of Jaxa's robotic craft flying above Ryugu. (Source: JAXA) Two American companies — Deep Space Industries and Planetary Resources — are thought to be the leaders in the field, but in May this year a UK firm called Asteroid Mining Corporation also entered the race. "Those corporations will be looking to the nation-state to say, well, are you going to protect our investment in this business?" Professor de Zwart said. A very crowded space The US Government and American firms continue to play a dominant role in more traditional space technology development and deployment. SpaceX, for example, is a major private supplier of rockets, while the US Air Force currently coordinates international satellite traffic, providing advanced warnings about potentially dangerous space debris. Listen to the episode Are we moving away from the notion that space is for all humankind? And is conflict in space inevitable? But the number of players is rapidly increasing. The OECD's Space Forum says more than 80 countries now have some form of space program, mostly concentrated on rockets, satellites and satellite-related services and technology. They estimate the global industry is worth somewhere around $US400 billion and growing quickly. And that figure could skyrocket if, and when, asteroid mining kicks off. Eric Stallmer, the president of the US-based Commercial Spaceflight Federation, a consortium of 85 space-related organisations and businesses, believes that moment is fast approaching. "I think we are looking at a five to 10-year timetable for developing that technology. It makes for an exciting time," he said

#### Asteroid mining furthers tensions between the US, China and Russia and escalates

Jamasmie 21 Cecilia Jamasmie [Cecilia has covered mining for more than a decade. She is particularly interested in Corporate Social Responsibility (CSR), Diamonds and Latin America. Cecilia has been interviewed by BBC News and CBC among others and has been a guest speaker at mining conventions, including MINExpo 2016 and the World’s Copper Conference 2018. She is also member of the expert panel on Social License to Operate (SLO) at the European project MIREU (Mining and Metallurgic Regions EU). She holds a Master of Journalism from the University of British Columbia, and is based in Nova Scotia.], 2-2-2021, "Experts warn of brewing space mining war among US, China and Russia," MINING, <https://www.mining.com/experts-warn-of-brewing-space-mining-war-among-us-china-and-russia/> DD AG

A brewing war to set a mining base in space is likely to see China and Russia joining forces to keep the US increasing attempts to dominate extra-terrestrial commerce at bay, experts warn. The Trump Administration took an active interest in space, announcing that America would return astronauts to the moon by 2024 and creating the Space Force as the newest branch of the US military.It also proposed global legal framework for mining on the moon, called the Artemis Accords, encouraging citizens to mine the Earth’s natural satellite and other celestial bodies with commercial purposes. The directive classified outer space as a “legally and physically unique domain of human activity” instead of a “global commons,” paving the way for mining the moon without any sort of international treaty. Spearheaded by the US National Aeronautics and Space Administration (NASA), the Artemis Accords were signed in October by Australia, Canada, England, Japan, Luxembourg, Italy and the United Emirates “Unfortunately, the Trump Administration exacerbated a national security threat and risked the economic opportunity it hoped to secure in outer space by failing to engage Russia or China as potential partners,” says Elya Taichman, former legislative director for then-Republican Michelle Lujan Grisham. “Instead, the Artemis Accords have driven China and Russia toward increased cooperation in space out of fear and necessity,” he writes.Russia’s space agency Roscosmos was the first to speak up, likening the policy to colonialism. “There have already been examples in history when one country decided to start seizing territories in its interest — everyone remembers what came of it,” Roscosmos’ deputy general director for international cooperation, Sergey Saveliev, said at the time.China, which made history in 2019 by becoming the first country to land a probe on the far side of the Moon, chose a different approach. Since the Artemis Accords were first announced, Beijing has approached Russia to jointly build a lunar research base. President Xi Jinping has also he made sure China planted its flag on the Moon, which happened in December 2020, more than 50 years after the US reached the lunar surface.

#### Competition -- Resources in space explodes geopolitical tensions, escalates through satellite use and posturing, and detracts from public interest

Skibba, 18, Nautilus, “Mining in Space Could Lead to Conflicts on Earth”, Ramin Skibba is a science writer and astrophysicist based in Santa Cruz and San Diego. URL: <https://nautil.us/mining-in-space-could-lead-to-conflicts-on-earth-2-7300/>, KR

Major space-faring nations are not among the 16 countries party to the treaty, but they should arguably come to some equitable agreement, since international competition over natural resources in space may very well transform into conflict. Take platinum-group metals. Mining companies have found about 100,000 metric tons of the stuff in deposits worldwide, mostly in South Africa and Russia, amounting to $10 billion worth of production per year, according to the U.S. Geological Survey. These supplies should last several decades if demand for them doesn’t rise dramatically. (According to Bloomberg, supply for platinum-group metals is constrained while demand is increasing.)

Palladium, for example, valued for its conductive properties and chemical stability, is used in hundreds of millions of electronic devices sold annually for electrodes and connector platings, but it’s relatively scarce on Earth. A single giant, platinum-rich asteroid could contain as much platinum-group metals as all reserves on Earth, the Google-backed Planetary Resources claims. That’s a massive bounty. As Planetary Resources and other U.S. and foreign companies scramble for control over these valuable space minerals, competing “land grabs” by armed satellites may come next. Platinum-group metals in space may serve the same role as oil has on Earth, threatening to extend geopolitical struggles into astropolitical ones, something Trump is keen on preparing for. Yesterday he said he’s seriously weighing the idea of a “Space Force” military branch.

NASA’s increasing collaboration with space mining companies could distort and divert efforts previously focused on space exploration.

Moreover, the technology that might enable this free-for-all—versatile “nanosatellites,” no larger than a loaf of bread—is relatively inexpensive. While reporting for a story about these tiny satellites, also known as CubeSats, I came across some missions applicable to mining asteroids. In November, NASA will launch a satellite for a mission called Near-Earth Asteroid Scout, for example. It will deploy a solar sail, propel itself with sunlight, and journey to the asteroid belt, where it will scope out a particular asteroid and analyze its properties. NASA has also awarded grants to Planetary Resources to advance the designs of spectral imagers and propulsion systems for CubeSats, and other missions will develop the satellites’ abilities to communicate and network with each other. NASA also awarded Deep Space Industries contracts to assess commercial approaches for NASA’s asteroid goals, which may involve hosting DSI’s asteroid-prospecting equipment on its missions.

Like all forms of mining, it will be dangerous. If space-mining activities break up asteroids, the resulting debris could be hazardous for satellites, other spacecraft, and astronauts nearby. On the other hand, in a best-case scenario, space mining could be environmentally safe, capture only necessary minerals and water, and, in the more distant future even lead to the construction of a far-flung space station led by NASA and other space agencies, orbiting 200 million miles from Earth and serving as both a mining depot and a pit-stop for passing spacecraft.

But it’s not clear that a pact between the commercial space mining industry and NASA would align with the public’s interest. NASA’s increasing collaboration with space mining companies could distort and divert efforts previously focused on space exploration and basic research, and discourage public interest and engagement in astronomy.

For example, Seager advocated for space mining at a science writing conference I attended in 2015. She’s part of a motley group of advisors for Planetary Resources, including the movie director James Cameron, a lawyer for a prominent Washington D.C. firm, and Dante Lauretta, another astronomer whom I respect. Seager seems to believe that encouraging private space mining will lead to more investments and technological innovation that would enable more scientific research. In a 2012 interview with The Atlantic, for instance, she said, “The bottom line is that NASA is not working the best that it could for space science right now, and so in order for people like me to succeed with my own research goals, the commercial space industry needs to be able to succeed independently of government contracts.”

But if the U.S. and U.S.-based companies lay claim to the richest and most easily accessible prospecting sites, not allowing other companies and nations to share in the wealth, economic and political relations could be damaged. That’s why this seems to be a dangerous path for space explorers. Once you’re on board with the commercial space industry, then you as a researcher must accept, if not support, everything that comes with it. Seager and a few other researchers may be willing to take this risk, but what about the rest of the space science community? Moreover, to succeed, these businesses will seek profitable missions, while science, exploration, and discovery—goals that stimulate public interest—will inevitably have lower priority. (Other commercial spaceflight companies, like Elon Musk’s SpaceX, do generate public interest, but they’re not directly involved in mining asteroids.) NASA may have its shortcomings, but at least its missions and research goals answer to the public. It’s not exactly a welcome thought to imagine more and more of our presence and activity in space being ceded, with NASA’s help, to private industry.

#### Space wars go nuclear

Grego 18 – Laura, Senior Scientist in the Global Security Program at the Union of Concerned Scientists, Postdoctoral Researcher at the Harvard-Smithsonian Center for Astrophysics, PhD in Experimental Physics at the California Institute of Technology, Space and Crisis Stability, Union of Concerned Scientists, 3-19-18, <https://www.law.upenn.edu/live/files/7804-grego-space-and-crisis-stabilitypdf>

Why space is a particular problem for crisis stability For a number of reasons, space poses particular challenges in preventing a crisis from starting or from being managed well. Some of these are to do with the physical nature of space, such as the short timelines and difficulty of attribution inherent in space operations. Some are due to the way space is used, such as the entanglement of strategic and tactical missions and the prevalence of dual-use technologies. Some are due to the history of space, such the absence of a shared understanding of appropriate behaviors and consequences, and a dearth of stabilizing personal and institutional relationships. While some of these have terrestrial equivalents, taken together, they present a special challenge. The vulnerability of satellites and first strike incentives Satellites are inherently fragile and difficult to protect; in the language of strategic planners, space is an “offense-dominant” regime. This can lead to a number of pressures to strike first that don‘t exist for other, better-protected domains. Satellites travel on predictable orbits, and many pass repeatedly over all of the earth‘s nations. Low-earth orbiting satellites are reachable by missiles much less capable than those needed to launch satellites into orbit, as well as by directed energy which can interfere with sensors or with communications channels. Because launch mass is at a premium, satellite armor is impractical. Maneuvers on orbit need costly amounts of fuel, which has to be brought along on launch, limiting satellites‘ ability to move away from threats. And so, these very valuable satellites are also inherently vulnerable and may present as attractive targets. Thus, an actor with substantial dependence on space has an incentive to strike first if hostilities look probable, to ensure these valuable assets are not lost. Even if both (or all) sides in a conflict prefer not to engage in war, this weakness may provide an incentive to approach it closely anyway. A RAND Corporation monograph commissioned by the Air Force15 described the issue this way: First-strike stability is a concept that Glenn Kent and David Thaler developed in 1989 to examine the structural dynamics of mutual deterrence between two or more nuclear states.16 It is similar to crisis stability, which Charles Glaser described as ―a measure of the countries‘ incentives not to preempt in a crisis, that is, not to attack first in order to beat the attack of the enemy,‖17 except that it does not delve into the psychological factors present in specific crises. Rather, first strike stability focuses on each side‘s force posture and the balance of capabilities and vulnerabilities that could make a crisis unstable should a confrontation occur. For example, in the case of the United States, the fact that conventional weapons are so heavily dependent on vulnerable satellites may create incentives for the US to strike first terrestrially in the lead up to a confrontation, before its space-derived advantages are eroded by anti-satellite attacks.18 Indeed, any actor for which satellites or space-based weapons are an important part of its military posture, whether for support missions or on-orbit weapons, will feel “use it or lose it” pressure because of the inherent vulnerability of satellites. Short timelines and difficulty of attribution The compressed timelines characteristic of crises combine with these “use it or lose it” pressures to shrink timelines. This dynamic couples dangerously with the inherent difficulty of determining the causes of satellite degradation, whether malicious or from natural causes, in a timely way. Space is a difficult environment in which to operate. Satellites orbit amidst increasing amounts of debris. A collision with a debris object the size of a marble could be catastrophic for a satellite, but objects of that size cannot be reliably tracked. So a failure due to a collision with a small piece of untracked debris may be left open to other interpretations. Satellite electronics are also subject to high levels of damaging radiation. Because of their remoteness, satellites as a rule cannot be repaired or maintained. While on-board diagnostics and space surveillance can help the user understand what went wrong, it is difficult to have a complete picture on short timescales. Satellite failure on-orbit is a regular occurrence19 (indeed, many satellites are kept in service long past their intended lifetimes). In the past, when fewer actors had access to satellite-disrupting technologies, satellite failures were usually ascribed to “natural” causes. But increasingly, even during times of peace operators may assume malicious intent. More to the point, in a crisis when the costs of inaction may be perceived to be costly, there is an incentive to choose the worst-case interpretation of events even if the information is incomplete or inconclusive. Entanglement of strategic and tactical missions During the Cold War, nuclear and conventional arms were well separated, and escalation pathways were relatively clear. While space-based assets performed critical strategic missions, including early warning of ballistic missile launch and secure communications in a crisis, there was a relatively clear sense that these targets were off limits, as attacks could undermine nuclear deterrence. In the Strategic Arms Limitation Treaty, the US and Soviet Union pledged not to interfere with each other‘s ―national technical means‖ of verifying compliance with the agreement, yet another recognition that attacking strategically important satellites could be destabilizing.20 There was also restraint in building the hardware that could hold these assets at risk. However, where the lines between strategic satellite missions and other missions are blurred, these norms can be weakened. For example, the satellites that provide early warning of ballistic missile launch are associated with nuclear deterrent posture, but also are critical sensors for missile defenses. Strategic surveillance and missile warning satellites also support efforts to locate and destroy mobile conventional missile launchers. Interfering with an early warning sensor satellite might be intended to dissuade an adversary from using nuclear weapons first by degrading their missile defenses and thus hindering their first-strike posture. However, for a state that uses early warning satellites to enable a “hair trigger” or launch-on-attack posture, the interference with such a satellite might instead be interpreted as a precursor to a nuclear attack. It may accelerate the use of nuclear weapons rather than inhibit it. Misperception and dual-use technologies Some space technologies and activities can be used both for relatively benign purposes but also for hostile ones. It may be difficult for an actor to understand the intent behind the development, testing, use, and stockpiling of these technologies, and see threats where there are none. (Or miss a threat until it is too late.) This may start a cycle of action and reaction based on misperception. For example, relatively low-mass satellites can now maneuver autonomously and closely approach other satellites without their cooperation; this may be for peaceful purposes such as satellite maintenance or the building of complex space structures, or for more controversial reasons such as intelligence-gathering or anti-satellite attacks. Ground-based lasers can be used to dazzle the sensors of an adversary‘s remote sensing satellites, and with sufficient power, they may damage those sensors. The power needed to dazzle a satellite is low, achievable with commercially available lasers coupled to a mirror which can track the satellite. Laser ranging networks use low-powered lasers to track satellites and to monitor precisely the Earth‘s shape and gravitational field, and use similar technologies. 21 Higher-powered lasers coupled with satellite-tracking optics have fewer legitimate uses. Because midcourse missile defense systems are intended to destroy long-range ballistic missile warheads, which travel at speeds and altitudes comparable to those of satellites, such defense systems also have inherent ASAT capabilities. In fact, while the technologies being developed for long-range missile defenses might not prove very effective against ballistic missiles—for example, because of the countermeasure problems associated with midcourse missile defense— they could be far more effective against satellites. This capacity is not just theoretical. In 2007, China demonstrated a direct-ascent anti-satellite capability which could be used both in an ASAT and missile defense role, and in 2009, the United States used a ship-based missile defense interceptor to destroy a satellite, as well. US plans indicated a projected inventory of missile defense interceptors with capability to reach all low earth orbiting satellites in the dozens in the 2020s, and in the hundreds by 2030.22 Discrimination The consequences of interfering with a satellite may be vastly different depending on who is affected and how, and whether the satellite represents a legitimate military objective. However, it will not always be clear who the owners and operators of a satellite are, and users of a satellite‘s services may be numerous and not public. Registration of satellites is incomplete23 and current ownership is not necessarily updated in a readily available repository. The identification of a satellite as military or civilian may be deliberately obscured. Or its value as a military asset may change over time; for example, the share of capacity of a commercial satellite used by military customers may wax and wane. A potential adversary‘s satellite may have different or additional missions that are more vital to that adversary than an outsider may perceive. An ASAT attack that creates persistent debris could result in significant collateral damage to a wide range of other actors; unlike terrestrial attacks, these consequences are not limited geographically, and could harm other users unpredictably. In 2015, the Pentagon‘s annual wargame**,** or simulated conflict, involving space assets focused on a future regional conflict. The official report out24warnedthatit was hard to keep the conflict contained geographically when using anti-satellite weapons: As the wargame unfolded, a regional crisis quickly escalated, partly because of the interconnectedness of a multi-domain fight involving a capable adversary. The wargame participants emphasized the challenges in containing horizontal escalation once space control capabilities are employedto achieve limited national objectives. Lack of shared understanding of consequences/proportionalityStates havefairly similar understandings of the implications of military actions on the ground, in the air, and at sea,built over decades of experience. The United States and the Soviet Union/Russia have built some shared understanding of each other‘s strategic thinking on nuclear weapons, though this is less true for other states with nuclear weapons. But in the context of nuclear weapons, there is an arguable understanding about the crisis escalation based on the type of weapon (strategic or tactical) and the target (counterforce—against other nuclear targets, or countervalue—against civilian targets). Because of a lack of experience in hostilities that target space-based capabilities, it is not entirely clear what the proper response to a space activity is and where the escalation thresholds or “red lines” lie. Exacerbating this is the asymmetry in space investments; not all actors will assign the same value to a given target or same escalatory nature to different weapons.

#### Nuclear war causes extinction.

Starr ’17 (Steven; director of the University of Missouri’s Clinical Laboratory Science Program, senior scientist at the Physicians for Social Responsibility, Associate member of the Nuclear Age Peace Foundation, expert in the environmental consequences of nuclear war; 1/9/17; “Turning a Blind Eye Towards Armageddon — U.S. Leaders Reject Nuclear Winter Studies”; <https://fas.org/2017/01/turning-a-blind-eye-towards-armageddon-u-s-leaders-reject-nuclear-winter-studies/>; Federation of American Scientists; accessed 11/24/18; TV) [AV]

The detonation of an atomic bomb with this explosive power will **instantly ignite fires** over a surface area of three to five square miles. In the recent studies, the scientists calculated that the **blast**, **fire**, and **radiation** from a war fought with 100 atomic bombs could produce **direct fatalities** comparable to all of those worldwide in World War II, or to those once estimated for a “**counterforce**” **nuclear war** between the superpowers. However, the **long-term environmental effects** of the war **could** significantly disrupt the global weather for at least a decade, which would likely **result in** a vast **global famine**. The scientists predicted that **nuclear firestorms** in the burning cities would cause at least five million tons of **black carbon smoke** to quickly rise above cloud level into the stratosphere, where it could not be rained out. The smoke would circle the Earth in **less than two weeks** and would form **a** global **stratospheric smoke layer** that **would remain for** more than **a decade**. The smoke would absorb warming sunlight, which would **heat the smoke** to temperatures near the boiling point of water, producing **ozone losses of** 20 to **50 percent** over populated areas. This would almost double the amount of UV-B reaching the most populated regions of the mid-latitudes, and it would create UV-B indices unprecedented in human history. In North America and Central Europe, the time required to get a painful sunburn at mid-day in June could decrease to as little as six minutes for fair-skinned individuals. As the smoke layer blocked warming sunlight from reaching the Earth’s surface, it would produce the **coldest** average **surface temperatures** in the last 1,000 years. The scientists calculated that global **food production would decrease** by 20 to **40 percent** during a five-year period following such a war. Medical experts have predicted that the shortening of growing seasons and corresponding decreases in agricultural production could cause up to **two billion** people to perish from **famine**. The climatologists also investigated the effects of a nuclear war fought with the vastly more powerful modern **thermonuclear** weapons possessed by the United States, Russia, China, France, and England. Some of the thermonuclear weapons constructed during the 1950s and 1960s were 1,000 times more powerful than an atomic bomb. During the last 30 years, the average size of thermonuclear or “strategic” nuclear weapons has decreased. Yet today, each of the approximately 3,540 strategic weapons deployed by the United States and Russia is seven to **80 times** more powerful than the atomic bombs modeled in the India-Pakistan study. The smallest strategic nuclear weapon has an explosive power of **100,000 tons of TNT**, compared to an atomic bomb with an average explosive power of 15,000 tons of TNT. Strategic nuclear weapons produce much larger nuclear firestorms than do atomic bombs. For example, a standard Russian 800-kiloton warhead, on an average day, will ignite fires covering a surface area of 90 to 152 square miles. A **war** fought with hundreds or thousands of U.S. and Russian strategic nuclear weapons would **ignite immense** **nuclear firestorms** covering land surface areas of many thousands or **tens of thousands** of square miles. The scientists calculated that these fires would produce up to **180 million tons** of black carbon soot and **smoke**, which would form a dense, **global stratospheric smoke layer**. The smoke would remain in the stratosphere for 10 to **20 years**, and it **would block** as much as **70 percent of sunlight** from reaching the surface of the Northern Hemisphere and 35 percent from the Southern Hemisphere. So much sunlight would be blocked by the smoke that the noonday sun would resemble a full moon at midnight. Under such conditions, it would only require a matter of days or weeks for daily minimum **temperatures** to **fall below freezing** in the largest agricultural areas of the Northern Hemisphere, where freezing temperatures would occur every day for a period of between one to more than two years. Average surface temperatures would become colder than those experienced 18,000 years ago at the height of the last Ice Age, and the prolonged cold would cause average rainfall to decrease by up to 90%. Growing seasons would be completely eliminated for more than a decade; it would be **too cold and dark** to grow food crops, **which would doom the** majority of the **human population.** NUCLEAR WINTER IN BRIEF The profound cold and darkness following nuclear war became known as nuclear winter and was first predicted in 1983 by a group of NASA scientists led by Carl Sagan. During the mid-1980s, a large body of research was done by such groups as the Scientific Committee on Problems of the Environment (SCOPE), the World Meteorological Organization, and the U.S. National Research Council of the U.S. National Academy of Sciences; their work essentially supported the initial findings of the 1983 studies. The idea of nuclear winter, published and supported by prominent scientists, generated extensive public alarm and put political pressure on the United States and Soviet Union to reverse a runaway nuclear arms race, which, by 1986, had created a global nuclear arsenal of more than 65,000 nuclear weapons. Unfortunately, this created a backlash among many powerful military and industrial interests, who undertook an extensive media campaign to brand nuclear winter as “bad science” and the scientists who discovered it as “irresponsible.” Critics used various uncertainties in the studies and the first climate models (which are primitive by today’s standards) as a basis to criticize and reject the concept of nuclear winter. In 1986, the Council on Foreign Relations published an article by scientists from the National Center for Atmospheric Research, who predicted drops in global cooling about half as large as those first predicted by the 1983 studies and described this as a “nuclear autumn.”

### 1AC – Framing

#### The standard is maximizing expected well-being. Prefer –

**1 -- Pleasure and pain are intrinsically valuable**

**Moen 16** [Ole Martin Moen, Research Fellow in Philosophy at University of Oslo “An Argument for Hedonism” Journal of Value Inquiry (Springer), 50 (2) 2016: 267–281] SJDI

Let us start by observing, empirically, that **a widely shared judgment about intrinsic value and disvalue is that pleasure is intrinsically valuable and pain is intrinsically disvaluable.** **On virtually any proposed list of intrinsic values and disvalues (we will look at some of them below), pleasure is included among the intrinsic values and pain among the intrinsic disvalues.** This inclusion makes intuitive sense, moreover, for **there is something undeniably good about the way pleasure feels and something undeniably bad about the way pain feels, and neither the goodness of pleasure nor the badness of pain seems to be exhausted by the further effects that these experiences might have.** “Pleasure” and “pain” are here understood inclusively, as encompassing anything hedonically positive and anything hedonically negative.2 **The special value statuses of pleasure and pain are manifested in how we treat these experiences in our everyday reasoning about values.** If you tell me that you are heading for the convenience store, **I might ask: “What for?” This is a reasonable question, for when you go to the convenience store you usually do so**, not merely for the sake of going to the convenience store, but **for the sake of achieving something further that you deem to be valuable.** You might answer, for example: “To buy soda.” This answer makes sense, for soda is a nice thing and you can get it at the convenience store. I might further inquire, however: “What is buying the soda good for?” This further question can also be a reasonable one, for it need not be obvious why you want the soda. You might answer: “Well, I want it for the pleasure of drinking it.” **If I then proceed by asking “But what is the pleasure of drinking the soda good for?” the discussion is likely to reach an awkward end. The reason is that the pleasure is not good for anything further; it is simply that for which going to the convenience store and buying the soda is good.**3 As Aristotle observes**: “We never ask [a man] what his end is in being pleased, because we assume that pleasure is choice worthy in itself.**”4 Presumably, a similar story can be told in the case of pains, for if someone says “This is painful!” we never respond by asking: “And why is that a problem?” We take for granted that if something is painful, we have a sufficient explanation of why it is bad. If we are onto something in our everyday reasoning about values, it seems that **pleasure and pain are both places where we reach the end of the line in matters of value.**

**2 -- Lexical pre-req: Threats to bodily security and life preclude the ability for moral actors to effectively utilize and act upon other moral theories since they are in a constant state of crisis that inhibit the ideal moral conditions which other theories presuppose**

#### 3 -- Actor-specificity -

#### a. Aggregation – every policy benefits some and harms others, which also means side constraints freeze action.

#### b. No act-omission distinction – choosing to omit is an act itself – governments decide not to act which means being presented with the aff creates a choice between two actions, neither of which is an omission

#### c. No intent-foresight distinction – If we foresee a consequence, then it becomes part of our deliberation which makes it intrinsic to our action since we intend it to happen

#### 4 -- Degrees of wrongness—if I break a promise to meet up for lunch, that is not as bad as breaking a promise to take a dying person to the hospital. Only the consequences of breaking the promise explain why the second one is much worse than the first. Intuitions outweigh—they’re the foundational basis for any argument and theories that contradict our intuitions are most likely false even if we can’t deductively determine why.

#### 5 -- Reject calc indicts and util triggers permissibility arguments:

#### a. Empirically denied—both individuals and policymakers carry out effective cost-benefit analysis which means even if decisions aren’t always perfect it’s still better than not acting at all

#### b. Theory—they’re functionally NIBs that everyone knows are silly but skew the aff and move the debate away from the topic and actual philosophical debate, killing valuable education

#### c. They prove utilizing util is hard, not impossible

**6 -- Use epistemic modesty: that means compare the probability of the framework times the magnitude of the impact under a framework. Prefer:**

**a. Substantively true: it maximizes the probability of achieving net most moral value—beating a framework acts as mitigation to their impacts but the strength of that mitigation is contingent.**

**b. Clash: we don’t know if our frameworks are true, but we can debate the topical question. That incentivizes debating both layers instead of solely focusing on framework.**

#### 7 -- Extinction comes first!

**Pummer 15** [Theron, Junior Research Fellow in Philosophy at St. Anne's College, University of Oxford. “Moral Agreement on Saving the World” Practical Ethics, University of Oxford. May 18, 2015] AT

There appears to be lot of disagreement in moral philosophy. Whether these many apparent disagreements are deep and irresolvable, I believe there is at least one thing it is reasonable to agree on right now, whatever general moral view we adopt: that it is very important to reduce the risk that all intelligent beings on this planet are eliminated by an enormous catastrophe, such as a nuclear war. How we might in fact try to reduce such existential risks is discussed elsewhere. My claim here is only that we – whether we’re consequentialists, deontologists, or virtue ethicists – should all agree that we should try to save the world. According to consequentialism, we should maximize the good, where this is taken to be the goodness, from an impartial perspective, of outcomes. Clearly one thing that makes an outcome good is that the people in it are doing well. There is little disagreement here. If the happiness or well-being of possible future people is just as important as that of people who already exist, and if they would have good lives, it is not hard to see how reducing existential risk is easily the most important thing in the whole world. This is for the familiar reason that there are so many people who could exist in the future – there are trillions upon trillions… upon trillions. There are so many possible future people that reducing existential risk is arguably the most important thing in the world, even if the well-being of these possible people were given only 0.001% as much weight as that of existing people. Even on a wholly person-affecting view – according to which there’s nothing (apart from effects on existing people) to be said in favor of creating happy people – the case for reducing existential risk is very strong. As noted in this seminal paper, this case is strengthened by the fact that there’s a good chance that many existing people will, with the aid of life-extension technology, live very long and very high quality lives. You might think what I have just argued applies to consequentialists only. There is a tendency to assume that, if an argument appeals to consequentialist considerations (the goodness of outcomes), it is irrelevant to non-consequentialists. But that is a huge mistake. Non-consequentialism is the view that there’s more that determines rightness than the goodness of consequences or outcomes; it is not the view that the latter don’t matter. Even John Rawls wrote, “All ethical doctrines worth our attention take consequences into account in judging rightness. One which did not would simply be irrational, crazy.” Minimally plausible versions of deontology and virtue ethics must be concerned in part with promoting the good, from an impartial point of view. They’d thus imply very strong reasons to reduce existential risk, at least when this doesn’t significantly involve doing harm to others or damaging one’s character. What’s even more surprising, perhaps, is that even if our own good (or that of those near and dear to us) has much greater weight than goodness from the impartial “point of view of the universe,” indeed even if the latter is entirely morally irrelevant, we may nonetheless have very strong reasons to reduce existential risk. Even egoism, the view that each agent should maximize her own good, might imply strong reasons to reduce existential risk. It will depend, among other things, on what one’s own good consists in. If well-being consisted in pleasure only, it is somewhat harder to argue that egoism would imply strong reasons to reduce existential risk – perhaps we could argue that one would maximize her expected hedonic well-being by funding life extension technology or by having herself cryogenically frozen at the time of her bodily death as well as giving money to reduce existential risk (so that there is a world for her to live in!). I am not sure, however, how strong the reasons to do this would be. But views which imply that, if I don’t care about other people, I have no or very little reason to help them are not even minimally plausible views (in addition to hedonistic egoism, I here have in mind views that imply that one has no reason to perform an act unless one actually desires to do that act). To be minimally plausible, egoism will need to be paired with a more sophisticated account of well-being. To see this, it is enough to consider, as Plato did, the possibility of a ring of invisibility – suppose that, while wearing it, Ayn could derive some pleasure by helping the poor, but instead could derive just a bit more by severely harming them. Hedonistic egoism would absurdly imply she should do the latter. To avoid this implication, egoists would need to build something like the meaningfulness of a life into well-being, in some robust way, where this would to a significant extent be a function of other-regarding concerns (see chapter 12 of this classic intro to ethics). But once these elements are included, we can (roughly, as above) argue that this sort of egoism will imply strong reasons to reduce existential risk. Add to all of this Samuel Scheffler’s recent intriguing arguments (quick podcast version available here) that most of what makes our lives go well would be undermined if there were no future generations of intelligent persons. On his view, my life would contain vastly less well-being if (say) a year after my death the world came to an end. So obviously if Scheffler were right I’d have very strong reason to reduce existential risk. We should also take into account moral uncertainty. What is it reasonable for one to do, when one is uncertain not (only) about the empirical facts, but also about the moral facts? I’ve just argued that there’s agreement among minimally plausible ethical views that we have strong reason to reduce existential risk – not only consequentialists, but also deontologists, virtue ethicists, and sophisticated egoists should agree. But even those (hedonistic egoists) who disagree should have a significant level of confidence that they are mistaken, and that one of the above views is correct. Even if they were 90% sure that their view is the correct one (and 10% sure that one of these other ones is correct), they would have pretty strong reason, from the standpoint of moral uncertainty, to reduce existential risk. Perhaps most disturbingly still, even if we are only 1% sure that the well-being of possible future people matters, it is at least arguable that, from the standpoint of moral uncertainty, reducing existential risk is the most important thing in the world. Again, this is largely for the reason that there are so many people who could exist in the future – there are trillions upon trillions… upon trillions. (For more on this and other related issues, see this excellent dissertation). Of course, it is uncertain whether these untold trillions would, in general, have good lives. It’s possible they’ll be miserable. It is enough for my claim that there is moral agreement in the relevant sense if, at least given certain empirical claims about what future lives would most likely be like, all minimally plausible moral views would converge on the conclusion that we should try to save the world. While there are some non-crazy views that place significantly greater moral weight on avoiding suffering than on promoting happiness, for reasons others have offered (and for independent reasons I won’t get into here unless requested to), they nonetheless seem to be fairly implausible views. And even if things did not go well for our ancestors, I am optimistic that they will overall go fantastically well for our descendants, if we allow them to. I suspect that most of us alive today – at least those of us not suffering from extreme illness or poverty – have lives that are well worth living, and that things will continue to improve. Derek Parfit, whose work has emphasized future generations as well as agreement in ethics, described our situation clearly and accurately: “We live during the hinge of history. Given the scientific and technological discoveries of the last two centuries, the world has never changed as fast. We shall soon have even greater powers to transform, not only our surroundings, but ourselves and our successors. If we act wisely in the next few centuries, humanity will survive its most dangerous and decisive period. Our descendants could, if necessary, go elsewhere, spreading through this galaxy…. Our descendants might, I believe, make the further future very good. But that good future may also depend in part on us. If our selfish recklessness ends human history, we would be acting very wrongly.” (From chapter 36 of On What Matters)

#### 8 -- Science proves non util ethics are impossible

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(The Secret Joke of Kant’s Soul published in Moral Psychology: Historical and Contemporary Readings, accessed: www.fed.cuhk.edu.hk/~lchang/material/Evolutionary/Developmental/Greene-KantSoul.pdf)

**What turn-of-the-millennium science** **is telling us is that human moral judgment is not a pristine rational enterprise**, that our **moral judgments are driven by a hodgepodge of emotional dispositions, which themselves were shaped by a hodgepodge of evolutionary forces, both biological and cultural**. **Because of this, it is exceedingly unlikely that there is any rationally coherent normative moral theory that can accommodate our moral intuitions**. Moreover, **anyone who claims to have such a theory**, or even part of one, **almost certainly doesn't**. Instead, what that person probably has is a moral rationalization. It seems then, that we have somehow crossed the infamous "is"-"ought" divide. How did this happen? Didn't Hume (Hume, 1978) and Moore (Moore, 1966) warn us against trying to derive an "ought" from and "is?" How did we go from descriptive scientific theories concerning moral psychology to skepticism about a whole class of normative moral theories? The answer is that we did not, as Hume and Moore anticipated, attempt to derive an "ought" from and "is." That is, our method has been inductive rather than deductive. We have inferred on the basis of the available evidence that the phenomenon of rationalist deontological philosophy is best explained as a rationalization of evolved emotional intuition (Harman, 1977). Missing the Deontological Point I suspect that **rationalist deontologists will remain unmoved by the arguments presented here**. Instead, I suspect, **they** **will insist that I have simply misunderstood what** Kant and like-minded **deontologists are all about**. **Deontology, they will say, isn't about this intuition or that intuition**. It's not defined by its normative differences with consequentialism. **Rather, deontology is about taking humanity seriously**. Above all else, it's about respect for persons. It's about treating others as fellow rational creatures rather than as mere objects, about acting for reasons rational beings can share. And so on (Korsgaard, 1996a; Korsgaard, 1996b). **This is, no doubt, how many deontologists see deontology. But this insider's view**, as I've suggested, **may be misleading**. **The problem**, more specifically, **is that it defines deontology in terms of values that are not distinctively deontological**, though they may appear to be from the inside. **Consider the following analogy with religion. When one asks a religious person to explain the essence of his religion, one often gets an answer like this: "It's about love**, really. It's about looking out for other people, looking beyond oneself. It's about community, being part of something larger than oneself." **This sort of answer accurately captures the phenomenology of many people's religion, but it's nevertheless inadequate for distinguishing religion from other things**. This is because many, if not most, non-religious people aspire to love deeply, look out for other people, avoid self-absorption, have a sense of a community, and be connected to things larger than themselves. In other words, secular humanists and atheists can assent to most of what many religious people think religion is all about. From a secular humanist's point of view, in contrast, what's distinctive about religion is its commitment to the existence of supernatural entities as well as formal religious institutions and doctrines. And they're right. These things really do distinguish religious from non-religious practices, though they may appear to be secondary to many people operating from within a religious point of view. In the same way, I believe that most of **the standard deontological/Kantian self-characterizatons fail to distinguish deontology from other approaches to ethics**. (See also Kagan (Kagan, 1997, pp. 70-78.) on the difficulty of defining deontology.) It seems to me that **consequentialists**, as much as anyone else, **have respect for persons**, **are against treating people as mere objects,** **wish to act for reasons that rational creatures can share, etc**. **A consequentialist respects other persons, and refrains from treating them as mere objects, by counting every person's well-being in the decision-making process**. **Likewise, a consequentialist attempts to act according to reasons that rational creatures can share by acting according to principles that give equal weight to everyone's interests, i.e. that are impartial**. This is not to say that consequentialists and deontologists don't differ. They do. It's just that the real differences may not be what deontologists often take them to be. What, then, distinguishes deontology from other kinds of moral thought? A good strategy for answering this question is to start with concrete disagreements between deontologists and others (such as consequentialists) and then work backward in search of deeper principles. This is what I've attempted to do with the trolley and footbridge cases, and other instances in which deontologists and consequentialists disagree. **If you ask a deontologically-minded person why it's wrong to push someone in front of speeding trolley in order to save five others, you will get** characteristically deontological **answers**. Some **will be tautological**: **"Because it's murder!"** **Others will be more sophisticated: "The ends don't justify the means**." "You have to respect people's rights." **But**, as we know, **these answers don't really explain anything**, because **if you give the same people** (on different occasions) **the trolley case** or the loop case (See above), **they'll make the opposite judgment**, even though their initial explanation concerning the footbridge case applies equally well to one or both of these cases. **Talk about rights, respect for persons, and reasons we can share are natural attempts to explain, in "cognitive" terms, what we feel when we find ourselves having emotionally driven intuitions that are odds with the cold calculus of consequentialism**. Although these explanations are inevitably incomplete, **there seems to be "something deeply right" about them because they give voice to powerful moral emotions**. **But, as with many religious people's accounts of what's essential to religion, they don't really explain what's distinctive about the philosophy in question**.

#### 9 -- Action theory – history and science show that we’re not able to access non-natural truth claims. Apriori reason does not exist and cannot be proven to exist by any metric or any study looking at thought processes – rather, all humans can be proven to be able to use is empirical facts, which leads to util as the metric to measure said empirical data. That outweighs -

#### a. Falsifiability – it’s impossible to test the validity of apriori reason claims if there’s no way to tangibly interpret or experience them. This hijacks our epistemology and is a side constraint – if we’ve won naturalism, then you need to use empirical bases to actually determine the validity of reason.

#### b. Probability - the majority of decision makers have to use decisions based on naturalism since its grounded in empirically validated scientific facts, but other philosophies don’t have this level of usage rate.

### 1AC – Underview

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

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

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

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

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

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

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

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

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

But how can he assume that we all want a priori that objects be appropriated to the exclusion of others? How could I possibly want to be excluded from using an object I might be interested in? The notion of a united will a priori follows from the fact that intelligible possession is a priori necessary and for this, acquisition of objects to the exclusion of others must be permitted from the perspective of pure practical reason. Since on pain of contradiction practical reason must allow appropriation of objects, it must be the case that it is our will to be able to use objects of choice. This is why the general will is said to be united a priori, independently of actual consent.

It is important to note that the same rational principle that allows the use of external objects as an extension of innate freedom is the one that makes it necessary to assume an a priori united will. This idea ensures the compatibility of Kant’s theory of acquisition with the principle of right. Because acquisition of objects to the exclusion of others would mean an unjustified impediment on their freedom, only the assumption of an a priori united will can make acquisition rightful. However, Kant also stresses that a united will is only realized in a condition of public justice, that is, in the civil condition. Possession of objects thus commits us to the implementation of a system of distributive justice under which the a priori united will can be realized.

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

III. Community of the Earth as the basis of Cosmopolitan Right

The idea of communio fundi originaria has implications that extend beyond what is required for the justification of a right to external things. This is because the realization of one’s right to occupy space does not start with the occupation of land for the first time, but already with birth. When we are born, our mere “entrance in the world” is already a legally relevant fact. Not only have we come to occupy space in the world, we also have an original right to do so: this is “the right to be wherever nature or chance (apart from their will) has placed them”. The existence of a person in the world entails both her equal legal status among a plurality of subjects of right and her original right to occupy space. Persons are also automatically members of the global community of the earth, which is constituted by the unity of all possible places individuals can occupy within the limited surface of the earth.

Common possession of the earth plays a central role in Kant’s argument for cosmopolitan right. Although the role of cosmopolitan right, I will argue, has an analogous function to Grotius’ right of necessity and Pufendorf’s imperfect rights and duties, Kant’s “revival”of the original community in cosmopolitan right is nevertheless a radical redefinition of the Grotius- Pufendorf tradition.

[It] is not the right to be a guest (Gastrecht) (…) but the right to visit (Besuchsrecht); this right to present oneself for society, belongs to all human beings by virtue of the right to possession in common of the earth’s surface on which, as a sphere, they cannot disperse infinitely but must finally put up with being near one another; but originally no one had more right than another to be on a place on the earth.

This rational idea of a peaceful, even if not friendly, thoroughgoing community of all nations on the earth that can come into relations affecting one another is not a philanthropic (ethical) principle but a principle having to do with rights. (…) And since possession of the land, on which an inhabitant of the earth can live, can be thought only as possession of a part of a determinate whole, and so as possession of that to which each of them originally has a right, it follows that all nations (Völker)stand originally in a community of land, though not of rightful community of possession (communio) and so of use of it (…).

In the Doctrine of Right, Kant derives nations’ original community of the land from the fact that the possession of individuals (to which they have an original right), can be thought as a part of a determinate whole. National borders in connection with an internal civil condition make the extent of individual possessions relatively determinate. Borders delineate the scope of individual acquisition in a way which, although not peremptory until the institution of a cosmopolitan condition of distributive justice, is closer to the idea of right than leaving individuals to determine the limits of their acquisition in a wholly unilateral way (as in the state of nature). Unlike Locke, Kant has no theoretical resources for establishing the content (Inhalt) of occupation; the prior occupans must decide according to her own judgment if her possession is being infringed upon and consequently have a conception of the extent of her possession. Only the civil condition is able to provide relatively legitimate conditions for determining the scope of acquisition. This necessity makes Kant’s theory far more dependent on the institutionalization of right than Locke’s theory. The territorial rights of states can thus be understood as a necessary step towards a cosmopolitan condition of distributive justice.

As Kant formulates in Perpetual Peace, “cosmopolitan rights shall be limited to the conditions of universal hospitality”. This is a right to offer oneself for commerce (Verkehr) with one another, be the subjects of these rights individuals or nations. As cosmopolitan right makes clear, the idea of common ownership of the earth presents itself under two different modes:(1) as basis of the acquired right of host peoples to their territory, enabling them to decline voluntary interaction, and (2) as the basis for the original right of individual citizens of the world or nations to offer themselves for interaction with foreign nations. In Perpetual Peace Kant called this right “right to visit”, which is neither a right to settle (ius incolatus ) nor to be a guest in the foreign land (kein Gastrecht ). As Kant stresses, host nations retain a right to reject the visitor on the condition that this can be done “without causing his destruction”. Although visitors have no claim to enter the foreign territory, they should not be treated with hostility by the inhabitants, if they behave peacefully.

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

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

#### 2 – Presumption and Permissibility affirm -

#### a. 1ar time skew means 1ar has to answer 7 minutes of offense and hedge against a 6 minute 2nr collapse, if the neg can’t prove the aff false you should presume its true

#### b. You presume statements true unless proven false – If I tell you my name is Viren you believe me unless you have evidence to the contrary

#### c. Presuming statements are false is impossible – we can’t operate in the world if we can’t trust anything we hear