# Harvard R2

## 1NC – Kant

#### Agents are practical reasoners –

#### First, inescapability – the exercise of practical rationality requires that one regards it as intrinsically good – that justifies a right to freedom.

Wood [Allen W. Wood, (Stanford University, California) "Kantian Ethics" Cambridge University Press, 2007, https://www.cambridge.org/core/books/kantian-ethics/769B8CD9FCC74DB6870189AE1645FAC8, DOA:8-12-2020 // WWBW]//rct st

Kant holds that the most basic act through which people exercise their practical rationality is that of setting an end (G 4:437). To set an end is, analytically, to subject yourself to the hypothetical imperative that you should take the necessary means to the end you have set (G 4:417). This is the claim that you rationally ought to do something whether or not you are at the moment inclined to do it. It represents the action of applying that means as good (G 4:414) – in the sense of “good” that Kant explicates as: what is required by reason independently of inclination (G 4:413). Kant correctly infers that any being which sets itself ends is committed to regarding its end as good in this sense, and also to regarding the goodness of its end as what also makes application of the means good – that is, rationally required independently of any inclination to apply it. The act of setting an end, therefore, must be taken as committing you to represent some other act (the act of applying the means) as good. In doing all this, however, the rational being must also necessarily regard its own rational capacities as authoritative for what is good in general. For it treats these capacities as capable of determining which ends are good, and at the same time as grounding the goodness of the means taken toward those good ends. But to regard one’s capacities in this way is also to take a certain attitude toward oneself as the being that has and exercises those capacities. It is to esteem oneself – and also to esteem the correct exercise of one’s rational capacities in determining what is good both as an end and as a means to it. One’s other capacities, such as those needed to perform the action that is good as a means, are also regarded as good as means. But that capacity through which we can represent the very idea of something as good both as end and as means is not represented merely as the object of a contingent inclination, nor is it represented as good only as a means. It must be esteemed as unconditionally good, as an end in itself. To find this value in oneself is not at all the same as thinking of oneself as a good person. Even those who misuse their rational capacities are committed to esteeming themselves as possessing rational nature. It also does not imply that a more intelligent person (in that sense, more “rational”) is “better” than a less intelligent one. The self-esteem involved in setting an end applies to any being capable of setting an end at all, irrespective of the cleverness or even the morality of the end setting. Kant’s argument supports the conclusion, to which he adheres with admirable consistency throughout his writings, that all rational beings, clever or stupid, even good or evil, have equal (absolute) worth as ends in themselves. For Kantian ethics the rational nature in every person is an end in itself whether the person is morally good or bad.

#### Second, value theory – the existence of extrinsic goodness requires unconditional human worth.

Korsgaard (Christine M., “Two Distinctions in Goodness,” The Philosophical Review Vol. 92, No. 2 (Apr., 1983), pp. 169-195, JSTOR) OS \*bracketed for gen lang\* //rct st

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

#### Third, practical reason – ethical principles must be derived from the structure of reason:

#### [1] Regress – we can always ask why we should follow a theory, so they aren’t binding because they don’t have a starting point. Practical reason solves – When we ask why we should follow reason, we demand a reason, which concedes to the authority of reason itself, so it’s the only thing we can follow

#### [2] Action Theory – every action can be broken down to infinite amounts of movements, i.e. me moving my arm can be broken down to the infinite moments of every state my arm is in. Only reason can unify these movements because we use practical reason to achieve our goals, means all actions collapse to reason

#### Fourth, epistemology – ethics must begin a priori, meaning they can’t be derived from our experience.

#### [A] Representations of space – we can only access our experiences if we can interpret the space around us, but that requires the a priori. Thinking of the absence of space is impossible – we can think of empty space but never the lack of space itself. Imagining space through a priori thoughts is the only way we can even begin to have a conception of interpreting experience; we need to be able to construct space through our minds.

#### [B] Separateness – if space is based on experience, it must be formed from objects separate to us outside of our reasoning abilities. But to represent objects as separate from us, we would already need to assume space exists in the first place to have a concept of “separateness,” so to represent space as something separate from us would be incoherent.

#### [C] Uncertainty – every person has different experiences so we can’t have a unified perspective on what is good if we each have different conceptions of it – even if we can roughly aggregate it’s not enough because there’ll always be a case when it fails so the framework o/w on probability.

#### [D] Is/Ought Gap – experience in the phenomenal world only tells us what is, not what ought to be. But it’s impossible to derive an ought from descriptive premises, so there needs to be additional a priori premises within the noumenal world to make a moral theory.

#### Practical reason means we all have a unified perspective: What can be justified to me can be justified to everyone who is a practical reasoner. If I can conclude that 2+2 is 4, then I understand not only that I know 2+2 is 4, but that everyone around me can arrive at the same conclusion. These things are temporally consistent: I know that me adding two numbers now and taking that sum will not result in me adding the same two numbers in the future and getting a different sum. Our unified perspective does not change but rather stays consistent.

#### But, willing an action that violates the freedom of others is a contradiction: If I decide to kill someone, that action is not universalizable because that would justify other people killing me too. If I die, I cannot exercise my freedom to kill someone else. This is a contradiction: I both justify extending my freedom to kill others and limiting my own freedom.

#### Thus, the standard is respecting freedom.

### Offense

#### Negate:

#### Acquisition of property can never be unjust – to create rights violations, there must already be an owner of the property being violated, but that presupposes its appropriation by another entity.

Feser 1, (Edward Feser, 1-1-2005, accessed on 12-15-2021, Cambridge University Press, "THERE IS NO SUCH THING AS AN UNJUST INITIAL ACQUISITION | Social Philosophy and Policy | Cambridge Core", Edward C. Feser is an American philosopher. He is an Associate Professor of Philosophy at Pasadena City College in Pasadena, California. [https://www.cambridge.org/core/journals/social-philosophy-and-policy/article/abs/there-is-no-such-thing-as-an-unjust-initial-acquisition/5C744D6D5C525E711EC75F75BF7109D1)[brackets](https://www.cambridge.org/core/journals/social-philosophy-and-policy/article/abs/there-is-no-such-thing-as-an-unjust-initial-acquisition/5C744D6D5C525E711EC75F75BF7109D1)%5bbrackets) for gen lang]//phs st

There is a serious difficulty with this criticism of Nozick, however. It is just this: There is no such thing as an unjust initial acquisition of resources; therefore, there is no case to be made for redistributive taxation on the basis of alleged injustices in initial acquisition. This is, to be sure, a bold claim. Moreover, in making it, I contradict not only Nozick’s critics, but Nozick himself, who clearly thinks it is at least possible for there to be injustices in acquisition, whether or not there have in fact been any (or, more realistically, whether or not there have been enough such injustices to justify continual redistributive taxation for the purposes of rectifying them). But here is a case where Nozick has, I think, been too generous to the other side. Rather than attempt —unsatisfactorily, in the view of his critics—to meet the challenge to show that initial acquisition has not in general been unjust, he ought instead to have insisted that there is no such challenge to be met in the first place. Giving what I shall call “the basic argument” for this audacious claim will be the task of Section II of this essay. The argument is, I think, compelling, but by itself it leaves unexplained some widespread intu- itions to the effect that certain specific instances of initial acquisition are unjust and call forth as their remedy the application of a Lockean proviso, or are otherwise problematic. (A “Lockean proviso,” of course, is one that forbids initial acquisitions of resources when these acquisitions do not leave “enough and as good” in common for others.) Thus, Section III focuses on various considerations that tend to show how those intuitions are best explained in a way consistent with the argument of Section II. Section IV completes the task of accounting for the intuitions in question by considering how the thesis of self-ownership itself bears on the acqui- sition and use of property. Section V shows how the results of the previ- ous sections add up to a more satisfying defense of Nozickian property rights than the one given by Nozick himself, and considers some of the implications of this revised conception of initial acquisition for our under- standing of Nozick’s principles of transfer and rectification. II. The Basic Argument The reason there is no such thing as an unjust initial acquisition of resources is that there is no such thing as either a just or an unjust initial acquisition of resources. The concept of justice, that is to say, simply does not apply to initial acquisition. It applies only after initial acquisition has already taken place. In particular, it applies only to transfers of property (and derivatively, to the rectification of injustices in transfer). This, it seems to me, is a clear implication of the assumption (rightly) made by Nozick that external resources are initially unowned. Consider the following example. Suppose an individual A seeks to acquire some previously unowned resource R. For it to be the case that A commits an injustice in acquiring R, it would also have to be the case that there is some individual B (or perhaps a group of individuals) against whom A commits the injustice. But for B to have been wronged by A’s acquisi- tion of R, B would have to have had a rightful claim over R, a right to R. By hypothesis, however, B did not have a right to R, because no one had a right to it—it was unowned, after all. So B was not wronged and could not have been. In fact, the very first person who could conceivably be wronged by anyone’s use of R would be, not B, but A himself, since A is the first one to own R. Such a wrong would in the nature of the case be an injustice in transfer—in unjustly taking from A what is rightfully his—not in initial acquisition. The same thing, by extension, will be true of all unowned resources: it is only after some- one has initially acquired them that anyone could unjustly come to possess them, via unjust transfer. It is impossible, then, for there to be any injustices in initial acquisition.7

#### To own yourself and use your own freedom is to be able to interact with external objects. Anything else makes you unable to exercise your own freedom on other things and creates a contradiction.

Feser 2, (Edward Feser, 1-1-2005, accessed on 12-15-2021, Cambridge University Press, "THERE IS NO SUCH THING AS AN UNJUST INITIAL ACQUISITION | Social Philosophy and Policy | Cambridge Core", Edward C. Feser is an American philosopher. He is an Associate Professor of Philosophy at Pasadena City College in Pasadena, California. [https://www.cambridge.org/core/journals/social-philosophy-and-policy/article/abs/there-is-no-such-thing-as-an-unjust-initial-acquisition/5C744D6D5C525E711EC75F75BF7109D1)[brackets](https://www.cambridge.org/core/journals/social-philosophy-and-policy/article/abs/there-is-no-such-thing-as-an-unjust-initial-acquisition/5C744D6D5C525E711EC75F75BF7109D1)%5bbrackets) for gen lang]//phs st

There is. An alternative, soft-line approach could acknowledge that the initial acquirer who abuses a monopoly over a water hole (or any similar crucial resource) does commit an injustice against those who are disad- vantaged, but such an approach could still hold that the acquirer never- theless has not committed an injustice in acquisition —his acquisition was, as I have said, neither just nor unjust. Nor does he fail to own what he has acquired; he still cannot be said to have stolen the water from anyone. Rather, his injustice is an unjust use of what he owns, on a par with the unjust use I make of my self-owned fist when I wield it, unprovoked, to bop you on your self-owned nose. In what sense does the water-hole owner use his water unjustly, though? He doesn’t try to drown anyone in it, after all— indeed, the whole problem is that he won’t let anybody near it! Eric Mack gives us the answer we need in what he has put forward as the “self-ownership proviso” (SOP).28 This is a proviso not (as the Lock- ean proviso is) on the initial acquisition of property, but rather on how one can use his property in a way that respects others’ self-ownership rights. It is motivated by consideration of the fact that the talents, abilities, capac- ities, energies, etc., that a person rightfully possesses as a self-owner are inherently “world-interactive”; that is, it is of their very essence that they are directed toward the extra-personal environment.29 Your capacity to use your hand, for instance, is just a capacity to grasp and manipulate external objects; thus, what you own in owning your hand is something essentially grasping and manipulating.30 Now if someone were to cut off your hand or invasively keep you from using it (by tying your arm against your body or holding it behind your back), he would obviously be violating your self-ownership rights. But there are, Mack suggests, other, noninvasive ways in which those rights might be violated. If, to use an example of Mack’s, I effectively nullify your ability to use your hand by creating a device that causes anything you reach for to be propelled beyond your grasp, making it impossible for you ever to grasp or manip- ulate anything, I have violated your right to your hand as much as if I had cut it off or tied it down. I have, in any case, prevented your right to your hand from being anything more than a formal right, one that is practically useless. In the interests of guaranteeing respect for substantive, robust rights of self-ownership, then, “[t]he SOP requires that persons not deploy their legitimate holdings, i.e., their extra-personal property, in ways that severely, albeit noninvasively, disable any person’s world-interactive powers.” 31 The SOP follows, in Mack’s view, from the thesis of self-ownership itself; or, at any rate, the considerations that would lead anyone to accept that thesis should also, in his view, lead one to accept the proviso.32 A brief summary of a few of Mack’s thought experiments should suffice to give a sense of why this is so.33 In what Mack calls the Adam’s Island example, Adam acquires a previously uninhabited island and later refuses a shipwrecked Zelda permission to come ashore, as a result of which she remains struggling at sea (and presumably drowns). In the Paternalist Caging example, instead of drowning, Zelda becomes caught offshore in a cage Adam has constructed for catching large sea mammals, and, rather than releasing her, Adam keeps her in the cage and feeds her regularly. In the Knuckle-Scraper Barrier example, Zelda falls asleep on some unowned ground, whereupon a gang of oafish louts encircles her and, using their bodies and arms as barriers, refuses to let her out of the circle (accusing her of assault if she touches them in order to climb over or break through). In the Disabling Property Barrier example, instead of a human barrier, Adam constructs a plastic shield over and around the unowned plot of ground upon which Zelda sleeps, accusing her of trespassing upon his property when she awakens and tries to escape by breaking through the plastic. And in the (similarly named) Disabling Property Barriers example, seem to suggest an Aristotelian-Thomistic conception of natural function, and though this by no means troubles me, it might not be what Mack himself has in mind (nor, of course, is it something every philosopher is going to sympathize with). Mack’s view nevertheless seems to require something like this conception. And something like it —enough like it to do the job Mack needs to be done, anyway—is arguably to be found in Larry Wright’s well- known reconstruction, in modern Darwinian terms, of the traditional notion of natural function. See Larry Wright, “Functions,” Philosophical Review 82, no. 2 (1973): 139–68. Adam, instead of enclosing Zelda in a plastic barrier, encloses in plastic barriers every external object that Zelda would otherwise be able to use — thus, in effect, enclosing her in a larger, all-encompassing plastic barrier of a more eccentric shape. In all of these cases, Mack says, although Zelda’s formal rights of self-ownership have not been violated—no one has invaded the area enclosed by the surface of her skin —her rights over her self-owned powers, and in particular her ability to exercise those powers, have nevertheless been nullified. But a plausible self-ownership- based theory surely cannot allow for this. It cannot, for instance, allow the innocent Zelda justly to be imprisoned in any of the ways described! If Mack is right, then it seems we have, in the SOP, grounds for holding that a water-hole monopolist would indeed be committing an injustice against anyone he refuses water to, or to whom he charges exorbitant prices for access. The injustice would be a straightforward violation of a person’s rights to self-ownership, a case of nullifying a person’s self- owned powers in a way analogous to Adam’s or the knuckle-scrapers’ nullification of Zelda’s self-owned powers. It would not be an injustice in initial acquisition, however. The water-hole monopolist still owns the water hole as much as he ever did; he just cannot use it in a way that violates other individuals’ self-ownership rights (either by drowning them in it or by nullifying their self-owned powers by denying them access to it when there is no alternative way for them to gain access to the water necessary for the use of their self-owned powers). Is Mack right? The hard-liner might dig in his heels and insist that none of Mack’s examples amount to self-ownership-violating injustices; instead, they are merely subtle but straightforward property rights violations or cases of moral failings of various other sorts (cruelty, selfishness, etc.). The Adam’s Island case, for starters, is roughly analogous to the example of the water-hole monopolist, so that it arguably cannot give any non-question- begging support to the SOP, if the SOP is then supposed to show that the water-hole example involves an injustice. The Disabling Property Barriers case might also be viewed as unable to provide any non-question-begging support, since Adam’s encasing everything in plastic might plausibly be interpreted as his acquiring everything, in which case we are back to a water-hole-type monopoly example. The Knuckle-Scraper Barrier and Dis- abling Property Barrier examples might be explained by saying that in falling asleep on the unowned plot of land, Zelda in effect has come (at least temporarily) to acquire it, and (by virtue of walking) to acquire also the path she took to get to it, so that the knuckle-scrapers and Adam violate her property rights (not her self-ownership rights) in not allowing her to escape. The Paternalist Caging example can perhaps be explained by arguing that in building the cage, Adam has acquired the water route leading to it, so that in swimming this route (and thus getting caught in the cage) Zelda has violated his property rights and, therefore, can justly be caged. Accordingly, the hard-liner might insist, we can explain all of these examples in a hard-line way and thus avoid commitment to the SOP. Such a hard-line response would be ingenious (well, maybe), but still, I think, ultimately doomed to failure. Can the Paternalist Caging example, to start with, plausibly be explained away in the manner that I have suggested? Does Adam commit no injustice against Zelda even if he never lets her out? It will not do to write this off merely as a case of excessive punishment (explaining the injustice of which would presumably not require commitment to the SOP). For suppose Adam says, after a mere five minutes of confinement, “I’m no longer punishing you; you’ve paid your debt and are free to go, as far as I’m concerned. But I’m not going to bother exerting the effort to let you out. I never forced you to get in the cage, after all —you did it on your own —and you have no right to the use of my self-owned cage-opening powers to fix your mistake! So teleport out, if you can. Or get someone else —if you can find someone —to let you out.” Adam would be neither violating Zelda’s rights to external property nor excessively punishing her in this case; nor would he be invasively vio- lating her self-ownership rights. But wouldn’t he still be committing an injustice, however noninvasively? Don’t we need something like the SOP to explain why this is so? The barrier examples, for their part, do not require Zelda’s walking and falling asleep on virgin territory, which thus (arguably) becomes her prop- erty. We can, to appeal to the sort of science-fiction scenario beloved of philosophers, imagine instead a bizarre chance disruption of the structure of space-time that teleports Zelda into Adam’s plastic shell or into the midst of the knuckle-scrapers. There is no question now of their violating her property rights; yet don’t they still commit an injustice by nullifying her self-owned powers in refusing to allow her to exit? Consider a parallel example concerning property ownership itself. If your prized $50,000 copy of Captain America Comics number 1, due to another rupture in space-time or just to a particularly strong wind that blows it out of your hands and through my window, suddenly appears on the floor of my living room, do I have the right to refuse to bring it back out to you or to allow you to come in and get it? Suppose I attempt to justify my refusal by saying, “I won’t touch it, and you’re free to have it back if you can arrange another space-time rupture or gust of wind. But I refuse to exert my self-owned powers to bring it out to you, or to allow you on my property to get it. I never asked for it to appear in my living room, after all!” Would anyone accept this justification? Doesn’t your property right in the comic book require me to give it back to you? The hard-liner might suggest that this example transports the SOP advocate out of the frying pan and into the fire. For if the SOP is true, wouldn’t we also have to commit ourselves to a “property-ownership proviso” (POP) that requires us not to nullify anyone’s ability to use his external private property in a way consistent with its “world-interactive powers”? If I build a miniature submarine in my garage, and you have the only swimming pool within one thousand miles, must you allow me the use of your pool lest you nullify my ability to use the sub? If (to take an example of Cohen’s cited by Mack) I own a corkscrew, must I be provided with wine bottles to open lest the corkscrew sadly fail to fulfill its full potential?34 Mack’s response to this line of thought seems basically to amount to a bit of backpedaling on the claim that his proviso really follows from the notion of self-ownership per se —so as to avoid the conclusion that a (rather unlibertarian and presumably redistributionist) POP would also, in par- allel fashion, follow from the concept of property ownership. His response seems, instead, to emphasize the idea that the considerations favoring self-ownership also favor, via an independent line of reasoning, the SOP.35 In my view, however, a better response would be one that took note of some relevant disanalogies between property in oneself and property in external things. Note first that the self-owned world-interactive powers, the possible use of which the SOP is intended to guarantee, are possessed by a living being who is undergoing development, which involves passing through various stages; therefore, these powers are ones that flourish with use and atrophy or even disappear with disuse.36 To nullify these powers even for a limited time, then, is (very often at least) not merely temporarily to inconvenience their owner, but, rather, to bring about a permanent reduc- tion or even disablement of these powers. By contrast, a submarine (or a corkscrew) retains its powers even when left indefinitely in a garage (or a drawer). This difference in the effect that nullification has on self-owned powers versus extra-personal property plausibly justifies a difference in our judgments concerning the acceptability, from the point of view of justice, of such nullification in the two cases; that is, it justifies adoption of the SOP but not of the POP.37 Second, there is an element of choice (and in particular, of voluntary acquisition) where extra-personal property is concerned that is morally relevant here. One’s self-owned powers, along with the SOP-guaranteed right to the non-nullification of those powers, are not something one chooses or acquires; one just has them —indeed, to a great degree one just is the constellation of those powers, abilities, etc.—and owns them fully. By contrast, extra-personal property is something one chooses to acquire or not to acquire, and as we have seen, one always acquires property rights in various degrees, from partial to full ownership—and this would include the rights guaranteed by a POP. If one chooses to acquire a corkscrew under conditions where wine bottles are unavailable, or are even likely at some point to become unavailable, one can hardly blame others if one finds oneself bottle-less. To fail to acquire POP-like rights regarding the corkscrew (by, say, contracting with someone else to provide one with wine bottles in perpetuity) is not the same thing as to have those rights and then have them violated. Someone who buys a corkscrew and then finds that he cannot use it is like the person who acquires only partial property rights in a water hole that others have already acquired partial use rights over. He cannot complain that his co-owners have violated his rights; he never acquired those other rights in the first place. Similarly, the corkscrew owner cannot complain that he has no bottles to open; he never acquired the right to those bottles, only to the corkscrew. If full ownership of a corkscrew requires POP-like rights over it, then all that follows is that corkscrew owners who lack bottles are not full owners of their corkscrews.

#### Thus, self-ownership justifies the appropriation of property – our freedom necessitates being able to set and pursue external things as our ends, including exercising our rights on property. Restricting this arbitrarily limits our freedom which is unjust.

Feser 3, (Edward Feser, 1-1-2005, accessed on 12-15-2021, Cambridge University Press, "THERE IS NO SUCH THING AS AN UNJUST INITIAL ACQUISITION | Social Philosophy and Policy | Cambridge Core", Edward C. Feser is an American philosopher. He is an Associate Professor of Philosophy at Pasadena City College in Pasadena, California. [https://www.cambridge.org/core/journals/social-philosophy-and-policy/article/abs/there-is-no-such-thing-as-an-unjust-initial-acquisition/5C744D6D5C525E711EC75F75BF7109D1)[brackets](https://www.cambridge.org/core/journals/social-philosophy-and-policy/article/abs/there-is-no-such-thing-as-an-unjust-initial-acquisition/5C744D6D5C525E711EC75F75BF7109D1)%5bbrackets) for gen lang]//phs st

V. Some Implications If what I have argued so far is correct, then the way is opened to the following revised case for strongly libertarian Lockean-Nozickian prop-erty rights: We are self-owners, having full property rights to our body parts, powers, talents, energies, etc. As self-owners, we also have a right, given the SOP, not to have our self-owned powers nullified —we have the right, that is, to act within the extra-personal world and thus to acquire rights to extra-personal objects that the use of our self-owned powers requires.39 This might involve the buying or leasing of certain rights or bundles of rights and, correspondingly, the acquiring of lesser or greater degrees of ownership of parts of the external world, but as long as one is able to exercise one’s powers to some degree and is not rendered incapable of acting within that world, the SOP is satisfied. In any case, such rights can only be traded after they are first established by initial acquisition. In initially acquiring a resource, an agent does no one an injustice (it was unowned, after all). Furthermore, [they] has mixed [their] labor with the resource, significantly altering it and/or bringing it under his control, and is himself solely responsible for whatever value or utility the resource has come to have. Thus, [they] has a presumptive right to it, and, if his control and/or alteration (and thus acquisition) of it is (more or less) complete, his own- ership is accordingly (more or less) full. The system of strong private property rights that follows from the acts of initial acquisition performed by countless such agents results, as a matter of empirical fact, in a market economy that inevitably and dramatically increases the number of resources available for use by individuals, and these benefited individuals include those who come along long after initial acquisition has taken place. (Indeed, it especially includes these latecomers, given that they were able to avoid the hard work of being the first to “tame the land” and draw out the value of raw materials.)40 The SOP is thus, in fact, rarely, if ever, violated. The upshot is that a system of Lockean-Nozickian private property rights is morally justified, with a strong presumption against tampering with exist- ing property titles in general. In any case, there is a strong presumption against any general egalitarian redistribution of wealth, and no case what- soever to be made for such redistribution from the general theory of prop- erty just sketched, purged as it is of the Lockean proviso, with all the egalitarian mischief-making the proviso has made possible.

# Case

## Case

#### Collisions now are good---they spur international momentum for STM standards which solves future, deadlier debris and a slew of external impacts

—Sustainable deep spaceflight, GNSS normsetting, GEO orbital slots, and avoiding collisions in LEO and in the air

Larsen 18 – Professor of air and space law for more than forty years at SMU and Gtown

Paul B. Larsen, taught air and space law for more than forty years respectively at Southern Methodist University and at Georgetown University, co-author of Space Law: A Treatise which is THE foundational & ubiquitous space law textbook, ARTICLE: SPACE TRAFFIC MANAGEMENT STANDARDS, 83 J. Air L. & Com. 360, 2018

This article is about the need for space traffic standards. It specifically focuses on international space traffic standards. Space traffic is currently tracked by radar. But, many objects - mainly space debris - moving in outer space are too small to be [\*361] tracked and are still dangerous. The Kessler Syndrome predicts frequent collisions with increasing space debris in outer space in the near future. A four-fold increase in navigable outer space objects is likely. Therefore, organization of space traffic is urgently needed. INTRODUCTION: INTERNATIONAL MINIMUM SPACE TRAFFIC STANDARDS Existing space traffic management is linked to existing space law, primarily the Outer Space Treaty, the International Telecommunications Union (ITU) legal regime, and the Inter-Agency Space Debris Coordination Committee (IADC) space debris guidelines. Currently, there are no "rules of the road" in outer space. Even if one country adopts unilateral space traffic rules of the road, it cannot thereby control the traffic from other countries. Only international traffic rules can establish effective rules of the road for space objects. The premise of this paper is that international minimum space safety regulations will be implemented through domestic laws and regulations, and that international uniformity can be achieved. The minimum space traffic standards would apply to civilian traffic only. There are very successful models for international minimum standards in international civil and maritime transportation. 1Link to the text of the note There are equally successful international standards in international satellite telecommunication. 2Link to the text of the note All these regimes - air, sea, and space - concern safety, control, and management of traffic in territory that is not sovereign and thus not subject to regulation by national states. Besides the International Civil Aviation Organization (ICAO) and ITU models, this article also discusses models based on the current Committee on the Peaceful Uses of Outer Space (COPUOS)'s work on sustainable action guidelines, the IADC space debris guidelines, the COPUOS efforts to coordinate Global Navigation Satellite System (GNSS) services, and on traffic data coordination by the Space Data Association. [\*362] These six models should be considered only insofar that any of them or any of their parts suit new space technology. Because of the extreme speed with which objects move, 3Link to the text of the note outer space is inherently ultrahazardous. It is difficult to keep space objects from colliding. The outer space environment is unforgiving. It cannot be repaired. It does not have Earth's capability of constant reconstitution. Thus, huge amounts of dangerous space debris from past space activities have accumulated. For example, the Cosmos-Iridium collision in 2009 and the Chinese destruction of a defunct satellite in 2007 resulted in great increases of space debris. 4Link to the text of the note It is not yet possible to clean outer space. Moreover, outer space is inherently fragile. There is no tolerance of collisions and accidents. At this time, it is as if the world is waiting for major traffic collisions to occur in outer space in order to be motivated to establish international rules of the road. Space traffic management is a public safety issue. This will become evident as outer space collisions begin to multiply. As space traffic is changing from being predominantly military to being mostly civilian, the nature of space traffic management is changing from having a predominantly national security purpose to predominantly addressing the civil issue of public safety. Outer space traffic is expected to increase four-fold in the near term. 5Link to the text of the note The explosive growth of small satellites during the next few years plus the increase in space debris without any immediate prospect of significant debris removal will intensify the dangers. The collision prospects described by the Kessler space debris syndrome are looming. One expert predicts that "from 2036 collisions [will] start to occur regularly[.]" 6Link to the text of the note After that time, it will be increasingly difficult to maneuver satellite traffic adequately to avoid collisions. The greatest traffic danger will be in [\*363] low Earth orbit (LEO) because of the rapid increase in small satellites orbiting in LEO. The Outer Space Treaty, Article VI, 7Link to the text of the note places the duty on the individual states to license and continuously supervise their nongovernmental outer space operators to ensure that they comply with the Outer Space Treaty and other international space law. There are no international space traffic navigation standards and procedures. Currently space traffic management occurs through individual states. There is only negligible international coordination of space traffic such as through the UN space debris guidelines and the ITU regulation of satellite orbits. The great speed with which all objects orbit in outer space makes their coexistence more tenuous. Moreover, the kinds of objects in orbit differ greatly. One of those orbiting objects is the International Space Station with astronauts on board. Fortunately, the space station is constantly being navigated to avoid objects threatening it in orbit. In the future, more inhabited space vehicles aimed for deep space will pass through the earthly orbits of other objects. A major incentive for establishing order in space traffic is that the operators do not want to endanger their satellites in collisions or be subject to interferences. Thus, the operators are practicing maximum space situational awareness. But devastating accidents are beginning to occur. The 2009 Iridium collision with a defunct Cosmos satellite in LEO was a warning. The Chinese annihilation of one of their spent satellites by an anti-satellite weapon (ASAT) in 2007 in LEO illustrates how one collision will result in thousands of additional uncontrolled small space [\*364] debris objects in outer space. 8Link to the text of the note The launching states are responsible for negligent acts in accordance with the Liability Convention, Art. II. 9Link to the text of the note Thus, each satellite operator and its launching state incurs a huge liability exposure by negligently causing debris. In addition to traffic hazards, there are considerable hazards in outer space caused by transit of deorbiting live and defunct space objects requiring coordination with air traffic management. Outer space traffic could safely be managed much more intensely so as to allow more traffic in outer space similar to the way air traffic is managed in air space. 10Link to the text of the note International space flight rules could result in greater efficiency. Space traffic in Geostationary Orbit (GSO), in Mid Earth Orbit (MEO), and in LEO differ in kind and intensity. The GSO is so unique and narrow that the ITU early identified GSO orbital slots as being scarce and requiring special management, including special consideration for the developing countries. 11Link to the text of the note MEO is used by GNSS satellites, 12Link to the text of the note and LEO is used by a variety of small remote sensing communication satellites. Prospectively there will be visits by tourists. 13Link to the text of the note A complication of a different nature is the extensive use of all these orbits by diverse military satellites and weaponry. All these space objects tend to be navigable. International space flight rules would greatly improve space traffic management in GSO, MEO, and LEO.

**A] GEO slots---they creates multiple scenarios for conflict in space**

--Overcrowding GEO makes miscalc more likely – unclear who is responsible for what andn how to decide responsibility

--takes out communication satellites which provide essential early warning

**Klotz 99**—Commander, Air Force Global Strike Command, Barksdale Air Force Base [Lt. Gen. Frank G. Klotz, Jan 1999, Space, Commerce, and National Security, Council on Foreign Relations, p.23-4]

The scramble for geosynchronous slots and frequency allocations may in fact intensify as even more telecommunications satellites are launched and space becomes even more "crowded." For the most part, the ITU has resolved most conflicts. Nevertheless, the occasional breakdowns in the process for managing and regulating this competition give pause for concern. Interference--inadvertent or deliberate--could in fact pose a more immediate threat to U.S. military and commercial interests than any nascent capability on the part of potential adversaries to deliberately attack American space systems in crisis or conflict. The possible interruption of the GPS signal by commercial communications satellites-with all its implications for military operations and the global information infrastructure-is a case in point.

#### B] GNSS---absent management, it’ll be hit, causing escalation

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Peter, “Navigation warfare: the battle lines,” International Institute for Strategic Studies, December 21, 2018, https://www.iiss.org/blogs/military-balance/2018/12/navigation-warfare-battle-lines

Military systems are ever more reliant on GNSS for command and control, navigation and precision-guided munition delivery. Such is the importance of satellite navigation systems that they are increasingly the focus of hostile intent to degrade performance or deny access.

One vulnerability is embedded in the space-based nature of the system. The thousands of kilometres between the satellite and the receiver mean the signals are relatively weak compared to most other commercial radio signals, which usually must travel only tens or a few hundred kilometres. Jammers can be used to transmit noise over the frequency band used by GNSS to inhibit reception. Comparatively simple and low-cost jammers aimed at interfering with commercial applications are widely available. Jamming and spoofing States and some non-state actors have developed or acquired more sophisticated high-power jammers, with signal emissions frequently registered in Syria, eastern Ukraine and North Korea. In April 2013, navigation systems of South Korean aircraft and mobile telephone networks in the South Korean capital, Seoul, were severely disrupted by a 50-watt jamming system apparently transmitting from North Korea. Along with simple jamming, spoofing devices that intimate true GNSS data have also been developed to manipulate the position and timing solution determined by receivers. While jamming simply removes the ability to receive GNSS signals, spoofing is more insidious, with the potential to sway decision-making and actions by generating false positioning and timing. Today military and civilian groups have the capability to spoof unencrypted GNSS signals with ease. Conventional spoofing techniques, however, are not effective against encrypted military GNSS systems such as the P(Y) version of GPS without prior knowledge of the encryption key. But these signals could be vulnerable to another form of spoofing known as meaconing (masked beaconing). This technique uses a signal repeater to capture and rebroadcast genuine signals with a time offset. In practice, this effect is challenging to produce against advanced receivers with inbuilt signal integrity checks. Given how cheaply and easily jamming and spoofing can be implemented, GNSS denial could become a potent tool available for organisations fighting asymmetric – or tolerance – warfare.

#### Debris now is self-contained---that means accidents now are better

Park 18

Ye Joo Park, citing NASA studies on orbital debris, How Dangerous is Space Debris?, Research Association for Interdisciplinary Studies, RAIS Conference Proceedings, November 19-20, 2018, DOI: 10.5281/zenodo.1572516, <https://ssrn.com/abstract=3303541>

Other factors to consider concerning collisions in Space While it’s true that there are thousands of space objects directly above Earth in an 800-kilometer band, space is so vast that it’s helpful to pause for a moment and reflect... in the area directly above the entire continental U.S., there are typically only three or four items orbiting above 3.1 million square miles. Therefore, the likelihood of collisions between satellites, spacecraft and orbiting objects is very small (NASA 2018). In fact, in 2013 it was reported that the probability of a collision between an orbiting asset and space debris larger than 1 cm (0.4in.) will be once every 1.5-2 years, according to the Head of the Russian Hall/ History of Space Debris 8 Figure 5 [NASA] Space Agency. This compares with a 2010 estimate giving the likelihood of once every 5 years (Sorokin 2013). The Feasibility of Practically Reducing Space Debris Reducing orbital debris is incredibly difficult. Therefore, the most important action that space experts and policy makers currently recommend is to prevent the unnecessary creation of additional orbital debris. This can be done through prudent vehicle design and operations ((UNOOSA 2014). The International Academy of Astronautics or IAA is a significant, global organization of scientists and space experts from many countries who meet regularly to discuss the importance of space debris as a policy issue. The subject-matter experts of the IAA published their fifth update Situation Report on Space Debris in August 2017 (Bonnal and McKnight 2017). In the executive summary, the IAA reported that if an orbiting satellite impacts with small bits of debris - even as small as 5 mm - the result will be grave, e.g. the collision would likely disrupt or terminate a satellite’s operations (Bonnal and McKnight 2017, 5). The serious warnings expressed in this conclusion are offset by the positive findings of the IAA that there has been a reduction of the space debris created from the two extraordinary satellite destruction events (2007 and 2009) cited earlier in this paper. According to the IAF report, a large amount of debris from the satellite explosions were frictionally burned when reaching the Earth’s atmosphere after gradually sinking due to the scientific principle of atmospheric drag (in the science of Physics), which is a deterioration in the strength of an orbit because of an object hitting gas molecules in space. Small bits of space junk sink as the orbit gets weaker... then they burn. This is a positive trend “for keeping the short-term collision hazard under control at the lower altitudes (i.e., less than 650 km)” (Bonnal and McKnight 2017, 7).

#### We’re nowhere near the threshold to trigger Kessler Syndrome – the next collision won’t be the one to trigger their cascades impact but it is sufficient to trigger our turn

Mosher 19 - a journalist with more than a decade of experience reporting and writing stories about space, science, and technology

Dave, “Satellite collisions may trigger a space-junk disaster that could end human access to orbit. Here's how.” Business Insider, September 3, 2019, <https://www.businessinsider.com/space-junk-kessler-syndrome-chain-reaction-prevention-2018-3>

If the space junk problem were to spiral out of control, one collision could beget other collisions, and in turn spread even more debris: a chain of crashes known as a Kessler event. Astrophysicist Donald J. Kessler, who used to work for NASA's Johnson Space Center, penned the idea in a 1978 study. Kessler and his NASA colleague Burton G. Cour-Palais calculated that more and more launches in the coming decades would increase the risks of collisions in space. In the study, titled "Collision Frequency of Artificial Satellites: The Creation of a Debris Belt," they also described important sources of space debris and possible sinks that'd remove dangerous junk from orbit. As Kessler's study explains, the more massive an object, the more space debris it can create if hit. Thus, large objects pose a much higher risk of fueling a cascade of collisions if there are many other satellites in similar orbits. A Kessler syndrome event could create an Asteroid Belt-like field of debris in large regions of space around Earth. These zones may be too risky to fly new satellites or spaceships into for hundreds of years, severely limiting human access to the final frontier. The Kessler syndrome plays center-stage in the movie "Gravity," in which an accidental space collision endangers a crew aboard a large space station. But Gossner said that type of a runaway space-junk catastrophe is unlikely. "Right now I don't think we're close to that," he said. "I'm not saying we couldn't get there, and I'm not saying we don't need to be smart and manage the problem. But I don't see it ever becoming, anytime soon, an unmanageable problem." There is no current system to remove old satellites or sweep up bits of debris in order to prevent a Kessler event. Instead, space debris is monitored from Earth, and new rules require satellites in low-Earth orbit be deorbited after 25 years so they don't wind up adding more space junk. "Our current plan is to manage the problem and not let it get that far," Gossner said. "I don't think that we're even close to needing to actively remove stuff. There's lots of research being done on that, and maybe some day that will happen, but I think that — at this point, and in my humble opinion — an unnecessary expense."

#### It's long timeframe --- this proves that aaccidents now are good to create frameworks to mitigate Kessler before it happens

Their bernat ev says collosins majorly increase in 2050

#### A] Centuries long

Kurt 15 – JD-William & Mary

Joseph Kurt, JD- William & Mary School of Law, BA-Marquette University, NOTE: TRIUMPH OF THE SPACE COMMONS: ADDRESSING THE IMPENDING SPACE DEBRIS CRISIS WITHOUT AN INTERNATIONAL TREATY, 40 Wm. & Mary Envtl. L. & Pol'y Rev. 305 (2015)

A. Practical Considerations: Feasible Solutions to the Space Debris Problem Are on Their Way One key question in assessing whether an international treaty is a requisite for solving the space debris problem is just how difficult it will be to fashion a remedy. The more complex and costly are feasible solutions, the more likely it is that a comprehensive regime is necessary to bind the various actors together. 93Link to the text of the note A good place to begin is to determine just how imminent is the onset of the cascade of exponentially more frequent debris-creating collisions, known as the Kessler Syndrome. 94Link to the text of the note To be certain, no one can be sure--this phenomenon being subject to highly complex probabilities. 95Link to the text of the note Indeed, experts' estimates of when such a cascade will become irreversible vary [\*316] widely. 96Link to the text of the note The National Research Council produced a report in 2011 that suggested that "space might be just 10 or 20 years away from severe problems." 97Link to the text of the note In fact, the cascading effect has already begun, albeit at a modest pace. 98Link to the text of the note However, Donald Kessler, who first described the eponymous effect in 1978, has significantly recalibrated his own outlook over the years. 99Link to the text of the note Originally, Kessler predicted that catastrophe would result by the year 2000. 100Link to the text of the note That date long passed, Kessler now speaks of a century-long process that "we have time to deal with." 101Link to the text of the note

#### **B] Kessler Syndrome is gradual and can take centuries to unfold**

Weeden 17

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"Former US National Aeronautics and Space Administration (NASA) scientist Donald Kessler was one of the first to predict what has since become known as the Kessler Syndrome: as the amount of space debris in orbit grows, a critical point will be reached where the density of space debris will lead to random collisions between space debris. These random collisions would in turn generate more debris at a rate faster than it can be removed from orbit by the Earth’s atmosphere. Unlike the dramatic scenario presented in the movie Gravity, **this process would take place** much more slowly **over decades or centuries.** Space was not a pristine environment before humans began to fill it with satellites, and **there has always been natural debris in space** due to meteoroids. Kessler’s prediction was that these cascading debris-on-debris collisions would result in a human-generated debris population that would pose more of a threat to satellites than the natural debris pose. There is now a general consensus among scientists that this critical point has come to pass, and there is enough human-generated space debris concentrated in the critical region in LEO between 700 and 900 kilometers (430 to 560 miles) to create more debris even if no new satellites were launched. These **debris-on-debris collisions will not lead to an infinite growth** in the debris population. Rather, they will lead to a future equilibrium point that has a larger population of debris than today. The growth of debris will increase the risks—and thus the associated costs—of operating satellites in critical regions such as LEO. These increased costs could result from the need for more spare satellites to replace those lost in collisions, the need for heavier and more-engineered satellites that cost more to build and launch, and increased operating costs resulting from trying to detect and avoid potential collisions. These rising costs will likely hinder commercial development of space and will place additional pressure on government budgets, potentially resulting in the loss of some of the benefits currently derived from space, or preventing discovery of new benefits."