# The Kant Neg File

## AT – General Warrants

### AT – Aliens

#### [1] Turn – aliens are also private entities – double bind either [A] they have the ability to reason, so they are able to be considered reasoners in a private entity or [B] they aren’t reasoners, and thus have no control of property rights like how an ant doesn’t own the ground it walks on so appropriation can’t be unjust. Either way that negates – proves that either we need to give aliens the rights they owe or we don’t owe them anything and the aff is arbitrary and restrictive.

#### Private entity defined by Cornell Law

Cornell Law, ND (, No Date, accessed on 12-18-2021, Law.cornell, "Definition: private entity from 6 USC § 1501(15)(A) | LII / Legal Information Institute", https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def\_id=6-USC-625312480-168358316&term\_occur=999&term\_src=title:6:chapter:6:subchapter:I:section:1501#:~:text=(A)%20In%20general%20Except%20as,%2C%20employee%2C%20or%20agent%20thereof.)//phs st

1. In general Except as otherwise provided in this paragraph, the term “private entity” means any person or private group, organization, proprietorship, partnership, trust, cooperative, corporation, or other commercial or nonprofit entity, including an officer, employee, or agent thereof.

#### [2] Even if aliens are reasoners, saying that the appropriation of space by private entities is just doesn’t mean that the appropriation of space by aliens is unjust – the second statement can still be true if the first statement is true, proving that the resolution is false doesn’t mean that we deny aliens property rights.

#### [3] No impact – no proof that aliens exist or that they matter

### AT – Aliens V2 👽👽👽

#### [1] Turn – aliens are also private entities – double bind either [A] They have the ability to reason, so they are able to be considered reasoners in a private entity and they should also be allowed to appropriate outer space, causing the aff to limit their rights or [B] They aren’t reasoners, and thus have no control of property rights like how an ant doesn’t own the ground it walks on so appropriation can’t be unjust. Either way that negates – proves that either we need to give aliens the rights they owe or we don’t owe them anything and the aff is arbitrary and restrictive.

#### If aliens are also reasoners, saying that appropriation is just means that every private entity has the right to appropriate space, but that also means that they have to respect the rights of others because anything else would cause a contradiction – saying that appropriation is good doesn’t greenlight stealing from other people because that’s not an action inherent to appropriation – stealing is a different action altogether that isn’t part of the aff’s maxims.

#### [2] Sorry to crush your dreams, but aliens don’t exist, and it doesn’t matter if they do –

#### [A] Off Shostak – this is pretty consequentialist for a Kant framework – we can’t rely on science and research if induction really fails + L

#### [B] You lost Pascal’s Wager – if we don’t allow private entities to appropriate, we know for sure that it will violate the rights of agents we know to exist, as per Feser. If we do allow private entities, we don’t know if aliens exist to have their rights violated. Their logic doesn’t assume that restricting appropriation is unjust which means it’s flawed.

#### [C] Probability – a risk of aliens existing doesn’t justify violating the rights of things we know to exist – that was done above

#### [D] I didn’t know alien realism was true – this is predicting the future based off the past experiences of entities with each other which is what your framework indicts.

### AT – Contracts/iLAW

#### [1] The NC is a prior question to contracts – it determines what contracts can be made in the first place. If I prove that property rights are inalienable and that all private entities have a right to it, then contracts that would violate that right wouldn’t be legitimate in the first place. If I promise you to murder someone, it still isn’t a legitimate contract even if you agree because the creation of the contract itself would bind me to violate someone’s freedom.

#### [2] You aren’t fiating that appropriation is unjust – the resolution is just declaring whether it’s good or bad. Existing laws don’t necessarily prove something just or unjust, just like how being able to get the death penalty for laughing in authoritarian regimes doesn’t mean that laughing is unjust. Regardless of current laws if I win my offense it proves that it’s just and that these laws should be changed.

#### [3] iLaw negates – private entities are allowed to appropriate space according to the Moon Treaty and parts of the OST.

### AT – Equally Divided Resources

#### Resources aren’t equally divided –

#### [1] Without the concept of ownership there is no one to value resources in the first place, which creates a contradiction – things like market prices which require ownership create value, but this is impossible if everyone owns the same things

#### [2] There’s no way to measure resources equally – hold them to a high burden of proof and assume that they’re wrong if they can’t provide a coherent explanation of how to divide resources.

Feser, (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 for gen lang]//phs st

Another, and at first sight more promising, interpretation of common ownership is to suppose that we do not “collectively own everything” so much as we each own our own individual and equally divided portions of external resources, a construal Cohen calls “equal division” owner- ship.13 But which portions exactly does each person own, and why those? Do we all get equal amounts of zinc and copper, for instance, or does one person get the copper, another the zinc, and so forth? And how are “resources” individuated in the first place? Is my backyard one resource or many, since it might include not only a lawn and a couple of trees, but also hidden oil and mineral deposits? For that matter, is a can of oil itself one resource or many, since I could use part of it for fuel, another part for lubrication, a third to make paint, etc.? (And why a can of oil, rather than a barrel or a thimbleful?) Do resources get gathered up again and redi- vided every time a new person is born, so as to maintain equality in distribution? Do we move people’s homes periodically so that we can carve up the land again every so often to guarantee equal plots for new- borns? (Why land, anyway? What if I want to live on a houseboat? Do we all get equal portions of the surface of the oceans, so as to leave this option open for everyone?) To avoid these problems, do we simply divvy up the “cash value” of all resources? How do we know what that value is independently of a system of market prices, which presupposes private ownership and the inequalities that go along with it? And since, given changing needs and circumstances, that value is itself perpetually chang- ing, do we need constantly to re-collect and redistribute wealth so as to reflect the “current” economic value of resources? Yet if a demand for equal outcomes is what motivates the equal-division model in the first place, even such periodic “resetting” of the system would not be enough to satisfy such a demand; for as Cohen observes, given inequalities in persons’ (self-owned) natural endowments, even an initial equal distri- bution of basic resources will still result in significant inequalities of wealth.14 In this case, what is the point of insisting on initial equal-division com- mon ownership?15 (There seems to be little point, at any rate, if one grants the thesis of self-ownership, or at least grants that the thesis is plausible enough that the critic of Nozick is best advised to look else- where for a way of undermining his anti-egalitarian and anti-redistributive conclusions.)16 These questions seem unanswerable, perhaps even in principle unanswer- able. But even if one insists otherwise, the issue here is not (or is not primarily) whether some scheme of common ownership can after all be made coherent and practicable. Rather, the issue is that given the diffi- culty of seeing how this can be done—given the work, intellectual and physical, required to institute a common-ownership scheme—it is coun- terintuitive in the extreme to suggest that the world just starts out com- monly owned, to suggest that the assumption of common ownership is the natural default assumption to make. Nor are taking resources as initially unowned and taking them as initially commonly owned even on a par as starting points in the theory of property. Nozick’s opponents accuse him of being “blithe” in his assumption that resources are initially unowned,17 but their assumptions are, if anything, more glib. Nozick, however, has good reason for his facile assumption: We clearly need to do something to get ownership started, and the “we” who do it are typically specific individuals acting on specific and isolated bits of the extra-personal world. The natural conclusion to draw from this is that the world starts out unowned, and that it is precisely and only the people who actually do something to change this fact who come to own the particular parts of the world on which they act.18 At the very least, this, I suggest, is the natural default position to take, with the common-ownership advocate being the one who needs to justify his moving off of it. But then, as I have argued, the natural default position to take on initial acquisition is also that it is never unjust.19

### AT – Initially Commonly Owned Resources

#### Resources can’t be commonly owned –

#### [1] That assumes that resources are already appropriated and owned, which means that appropriation must not be unjust since it is inevitable and we can’t think otherwise

#### [2] It is impossible to appropriate already-owned resources, so there is no initial acquisition to be unjust in the first place

#### [3] It collapses – if we all own it nobody owns it since we have the same rights as if it was no one’s property

#### [4] Worst case means you err neg on presumption since their theory of ownership requires more justification.

Feser, (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 for gen lang]//phs st

Now someone might object that if resources are in fact initially com- monly owned, this argument would not work. But this objection fails for two reasons. First, the argument would in fact still work even if resources are initially commonly owned; second, resources are in any case not ini- tially commonly owned. The first point is actually a fairly trivial one. If resources start out commonly owned, then for this very reason they do not start out unowned, in which case there is no initial acquisition of any sort to speak of, unjust or otherwise. We all (somehow) just own everything. Thus, anyone who takes R without the consent of the rest of us would be committing (if he is committing an injustice at all) an injustice in transfer rather than acqui- sition. This is perfectly in line with my claim that injustices in holdings can take place only after someone already has ownership of resources, either through initially acquiring them from their unowned state or because the resources are “just owned” from the start; it has no tendency to show that initial acquisition itself can be just or unjust. Of course, this raises the question of how exactly we come collectively to own all resources, which leads us to the second point. Those who object to Nozick’s assumption that resources start out unowned8 typically rest content with noting that there are alternative possibilities, especially the possibility that resources start out commonly owned, as if the mere exis- tence of this alternative casts doubt on Nozick’s assumption—indeed, as if merely noting the possibility of common ownership were enough to establish its actuality. But why is the assumption of common ownership of resources any less in need of justification than the assumption that resources are unowned? Why should we regard the former assumption, and not the latter, as the default assumption to make? Surely the reverse is true: the claim that we all own everything is more in need of justification than the claim that no one initially owns anything. Surely such a claim is not merely unjustified, but counterintuitive, even mysterious. Consider the following: a pebble resting uneasily on the sur- face of the asteroid Eros as it orbits the sun, a cubic foot of molten lava churning a mile below the surface of the earth, one of the polar icecaps on Mars, an ant floating on a leaf somewhere in the mid-Pacific, or the Andromeda galaxy. It would seem odd in the extreme to claim that any particular individual owns any of these things: In what sense could Smith, for example, who like most of the rest of us has never left the surface of the earth or even sent a robotic spacecraft to Eros, be said to own the pebble resting on its surface? But is it any less odd to claim we all own the pebble or these other things? Yet the entire universe of external resources is like these things, or at least (in the case of resources that are now owned) started out like them—started out, that is to say, as just a bunch of stuff that no human being had ever had any impact on. So what trans- forms it into stuff we all commonly own? Our mere existence? How so? Are we to suppose that it was all initially unowned, but only until a group of Homo sapiens finally evolved on our planet, at which point the entire universe suddenly became our collective property? (How exactly did that process work?) Or was it just the earth that became our collective prop- erty? Why only that? Does something become collective property only when we are capable of directly affecting it? But why does everyone share in ownership in that case —why not only those specific individuals who are capable of affecting it: for example, explorers, astronauts, or entrepre- neurs? It is, after all, never literally “we” collectively who discover Ant- arctica, strike oil, or go to the moon, but only particular individuals, together perhaps with technical assistance and financial backing pro- vided by other particular individuals. Smith’s being the first to reach some distant island and build a hut on it at least makes it comprehensible how he might claim —plausibly or implausibly —to own it. This fact about Smith gives some meaning to the claim that he has come to own it. But it is not at all clear how this fact would give meaning to the claim that Jones, whom Smith has never met or even heard of, who has had no involve- ment in or influence on Smith’s journey and homesteading, and who lives thousands of miles away (or even years in the future), has also now come to own it. Still less intelligible is the claim that Smith’s act has given all of us—the human race collectively, throughout all generations—a claim to the island. Whatever objections one might raise against Locke’s “labor-mixing” theory of property,9 it at least provides the beginnings of a story that makes it clear how anyone can come to own something. Locke’s initial acquirer does, after all, do something to a specific resource, and does it with something he already owns (his labor), so that it is at least not mysterious why one might suppose he comes to own the resource, whether or not one thinks that this supposition is ultimately defensible. The common- ownership assumption, by contrast, appears to suppose that we can, all together, simply and peremptorily come to own everything without hav- ing to lift a finger — or worse, that we don’t come to own it at all, but just do own it—the pebble on Eros, Andromeda, and all the rest. Surely it is the common-ownership advocate who has the greater burden of proof! There is another problem with the common-ownership assumption besides its lack of support, namely, that it seems irremediably indetermi- nate. Indeed, at first sight it appears vacuous. If everyone has an equal right to every part of the world, how does this differ exactly from Nozick’s assumption that everything is initially unowned —an assumption on which, too, everyone has an equal right to everything (since no one, at the start anyway, has any right to anything in particular at all)? Ownership, that is to say, seems to imply exclusion. Your (or even our) owning something implies that there are others who do not own it; thus, it appears that we cannot intelligibly all own something, much less everything. This is no doubt (part of) why Locke, though he held that God initially gave the world to mankind in common, also held that individuals can acquire portions of it for their exclusive use. Initial common “ownership” in the Lockean sense entails only that the various resources constituting the world are initially “up for grabs”; for these resources truly to become anyone’s property in any meaningful sense, specific individuals actually have to go out and do something with them. The problem, then, is that if everyone owns everything, no one owns anything. This remains true if we take not a Lockean construal of com- mon ownership, but a construal on which one must get the permission of every other human being, as co-owners of the world, to use any part of the world —what Cohen calls the “joint ownership” interpretation of com- mon ownership.10 In what sense do you own something if no one is in principle excluded from it, if everyone has a say over everything and anything you seek to do with it?11 One’s “ownership” becomes purely formal and practically useless. This joint-ownership construal also has the difficulty that it is incompatible with any substantial (as opposed to for- mal) form of self-ownership, since, given that I cannot so much as move without using parts of the external world, it entails that I cannot do anything with my self-owned powers without the permission of everyone else.12 And it is, of course, for this reason wildly impractical. These con- siderations would seem to tell decisively against the assumption that resources are initially commonly owned (in the joint-ownership sense at least), even if there were some reason to believe this assumption, which (as I have suggested) there is not.

### AT – Labor Mixing Bad

#### Labor mixing is the most justifiable theory of property --

Feser, (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

III. Labor-Mixing and the Lockean Proviso Even many of those who are inclined to grant that there is something to the argument of the above section might find their confidence shaken when recalling Nozick’s own discussion of Locke’s theory of property. Doesn’t Nozick show the whole notion of labor-mixing to be dubious as a means of acquiring property? Doesn’t he show that others are dealt an injustice if one acquires unowned resources in a way that violates the Lockean proviso? I answer: no, and no. Nozick famously asks: Why does mixing one’s labor with something make one the owner of it? . . . [W]hy isn’t mixing what I own with what I don’t own a way of losing what I own rather than a way of gaining what I don’t? If I own a can of tomato juice and spill it in the sea so that its molecules (made radioactive, so I can check this) mingle evenly throughout the sea, do I thereby come to own the sea, or have I foolishly dissipated my tomato juice?20 The answer to this question is obviously (and obviously intended to be) that the tomato juice has been dissipated foolishly. But how does this cast doubt on the idea that one can come to own something by mixing his labor with it? If the example had instead involved my dumping my tomato juice into a puddle of (unowned) water, the plausible conclusion to draw would be that I have come to own that water. Of course, there are going to be cases that are intermediate between the puddle and sea exam- ples, where we are not sure whether to say I have come to own the water or have simply lost the tomato juice within it. Nevertheless this is no special problem for the notion of acquiring property by labor-mixing. What we have here is just one more example of the sort of vagueness classically illustrated by the paradox of the heap. A million grains of sand constitute a heap of sand, and ten grains do not, but at what precise point in removing grains from a heap are we no longer left with a heap? There is no principled way to answer this question, but that fact casts no doubt on the existence of heaps of sand. We can make do with paradigm cases of heaps. Similarly with labor-mixing: there are paradigm cases where mixing one’s labor (or tomato juice, or whatever) plausibly results in ownership, and there are paradigm cases where one has merely frittered away one’s labor (or juice) to no effect. Whittling a piece of driftwood that has washed up on the beach seems a good example of the former; gently blowing in the direction of the driftwood as it floats by fifty yards off shore seems a good example of the latter. That there are intermediate cases where it is unclear how to apply the labor-mixing principle does not cast doubt on the principle itself. Furthermore, if I had dumped in the sea, not an ordinary can of tomato juice, but a lake-sized can of it, or a lake-sized can of soda pop, or nuclear waste that makes the sea glow green, it seems it would not be implausible in such cases to say that I have come to acquire the sea. This suggests that the key idea behind the labor-mixing principle is that of significantly altering a resource, at least by coming to control that resource, hence the intuition that by building a house on a plot of land, I have plausibly come to own that plot, but not the valley, mountain range, or continent in which the plot is situated. To acquire those (unowned) things, I would have to do something dramatically to affect them, too, or to bring them under my control—for example, by sending out herds of my cattle to graze on an expanse of unowned land, or by building a fence around it, or by sending an army out to secure the borders of the territory I want to claim. To take a real-world example, it would not be absurd for the United States gov- ernment (whether or not one would approve of this) to claim ownership of the area of the moon’s surface on which Apollo 11 landed, where part of the spacecraft remains to this day and is accessible to astronauts who could be sent there again with relative ease. It would, however, be dubi- ous for the government to claim ownership of the entire moon, and absurd for it to claim ownership of the surface of Pluto, to which the government has never sent a spacecraft. Less easy to settle is the question of whether the government could claim ownership of a distant asteroid on which it lands a probe, but which is traveling in such an orbit that it could not within the next few hundred years be reached again by a spacecraft. The difference in the intuitive plausibility of claims to own- ership in these cases clearly reflects a difference in how much effect or control we have had or could have on these various extraterrestrial regions. Thus, Locke’s labor-mixing criterion seems to capture a deep and wide- spread intuition about how ownership comes to be established, embodied in a set of paradigm cases that form the conceptual starting point for thinking about less clear cases (such as the ownership of patents). The basic idea is that the first person to come across a previously unowned item and do something significant with it has a rightful claim over it. And not only does this in fact serve as our working model of property acqui- sition (Locke hardly took his labor-mixing principle from thin air), it is hard to imagine what an alternative model would even look like. It must be remembered that the claim is not that one’s having a signif- icant effect on or exerting control over a resource makes one’s initial acquisition of it just, for I claim that initial acquisitions are neither just nor unjust; the claim is, rather, that such effort or control makes it an acqui- sition, period. Still, one might wonder how such effect or control can give rise to a claim of justice against others who might seek unjustly to transfer the resource once initial acquisition has occurred. “You just happen to have been the one who got there first. Why should you have a right to it?” But this ought not to be mysterious to anyone who accepts the thesis of self-ownership or at least takes this thesis to be coherent (as even Cohen, who rejects it, does). For in owning my body parts, I also “just happen” to be the one to own them. I just “got there first,” as it were —I did not do anything particularly special to get the body parts—yet I still clearly own them (perhaps, to appeal again to the notion of having a significant effect or degree of control, because I have as much control over and effect on them as one could possibly have). I certainly have, at the very least, more of a claim to them than anyone else does, as even someone who rejects the thesis of self-ownership would presumably acknowledge. But why can’t the same be said for the initial acquirer of an external resource? “Why shouldn’t I have the right to it?” he can plausibly retort. “After all, who else has a better claim to it? I’m the first to do anything with it!” Why is the burden of proof on the initial acquirer of an external resource to justify his claim, any more than it is on the initial “acquirer” of your arm (i.e., you) to justify the claim to the arm? Why isn’t the burden instead on the person who wants to deny such a claim—a person who himself didn’t do any- thing at all to acquire the resource, not even show up first?21 These considerations suggest that the notion of rights to external resources may be a conceptual extension of (and parasitic upon) the idea that one has a right to one’s body parts, talents, abilities, labor, and the like. In both cases, one establishes such rights by just “showing up” and being the first to “take possession”—in the latter case by simply being born with certain things, and in the former case by incorporating into what is unowned part of what one is born with. One transfers one’s sense of what is “mine” from one’s body to the things one’s body significantly interacts with. This would certainly account for the intuitive sense of the justice of the “finders keepers” principle even among children, and also for the sense of personal violation one feels when his property is taken from him without his consent. It accounts as well for why egalitarians such as John Rawls and Ronald Dworkin, seeing, as Cohen notes,22 that personal endowments are just as “arbitrary” as the initial distribution of external resources, conclude that (the fruits of) these personal endow- ments are as ripe for redistribution as (they claim) the external resources are. The fact that who initially gets to acquire which external resources depends largely on chance is, in the final analysis, no more noteworthy than the fact that who gets born with which personal endowments is also a matter of chance. Thus, self-ownership and (some form of) Nozickian property ownership appear ultimately to stand or fall together. The “arbi- trariness” of the former is really no different in principle from the arbi- trariness of the latter, so that if one wants to eliminate the “arbitrariness” in the one case, he ought to have no scruples about doing so in the other as well. Rawls and Dworkin thus opt to do away with self-ownership, and do so rather casually; Cohen (to his credit) does so only with reluc- tance. To understand his reluctance, however, is to understand why Nozick takes the violation of property rights to be of a piece with the violation of rights to one’s own person.23 I will return to these themes (in Sections IV and V). Before doing so, however, I need to consider the claim that violations of the Lockean proviso constitute clear examples of injustices in initial acquisition. This is, I suggest, only half right. Such violations do (very often, at least) embody injustices; they are not, however, injustices in initial acquisition. Locke’s proviso on the initial acquisition of resources was that the acquirer had to leave “enough and as good . . . in common for others” to acquire,24 and Nozick’s gloss on this proviso is that it “is meant to ensure that the situation of others is not worsened.”25 The standard example of a purported violation of the proviso involves someone appropriating for himself a resource that others had previously held in common—a water hole in the midst of a desert, say, which is the only source of water for those living in the surrounding area. Doesn’t the person who appropri- ates this water hole commit a clear injustice against those who had been using it (since he now, say, charges them for water that they previously took for free, or even forbids them to use the water, in either case clearly leaving them worse off )? Doesn’t such an example serve as a counterex- ample to the claim that there are no unjust initial acquisitions? Yes and no: yes, this person’s behavior is an injustice; no, it is not a counterexample, because the person who takes possession of the water hole is not an initial acquirer, but a thief. The correct interpretation of this sort of case is, I suggest, as follows: The water hole is not unowned in the first place when the person in question tries to acquire it. After all, other people had been using it, and their use (especially since it is presumably regular, continuous use) itself amounted to initial acquisition of the water hole. Their use counts as a kind of labor-mixing, a bringing of the resource under their control. Thus, they have every right to object to what the would-be acquirer tries to do, precisely because they have already acquired it. His act amounts to what Nozick would call an “unjust transfer” of the resource, an attempt to take it from its rightful owners without their consent.26 One might object that in this case we are dealing with a community of users of the water hole, not a single individual who came across an unowned resource; doesn’t this conflict with what I said earlier about individuals, rather than “all of us collectively,” being the ones who come to own resources? It does not, because nothing in what I said above rules out cases where a number of people together initially acquire a resource. Indeed, historically, this probably has happened quite often, as families and tribes moved into virgin territory. What I denied above was that “all of us collectively,” that is, the human race as a whole, ever appropriated all unowned resources as a whole in a way that gave rise to common own- ership of them. It is quite easy to see how a (relatively) small group of individuals might together acquire, say, a discrete tract of land, so that they all come to have common ownership of it, perhaps because they all know one another and are consciously devoted to a common purpose, and because their efforts are intertwined in such a way that it is hard to sort out exactly who has done what. This is very different from claiming that some much larger group (of perhaps thousands or hundreds of thou- sands of people or more) has “collectively” initially acquired a continent, where the “group” is not consciously working together as a whole, where its members largely do not know each other and are separated by geo- graphical and communal boundaries, and where it is easy to demarcate which bits of territory have been worked by which individuals and/or subgroups. It is not plausible to say in this sort of case, much less in the case of the human race as a whole, that “all of us collectively” have acquired resources. Rather, it is a matter of many discrete individuals and groups engaging in many discrete acts of initial acquisition. Another objection to my interpretation of the water-hole case would be that those who were previously using the water hole might not claim it as their property; they might claim only the right to use it for certain pur- poses. As many property theorists have pointed out, however, any “prop- erty right” to something is really a bundle of rights: the right to use something (perhaps in certain ways but not others, perhaps for a certain period of time), the right to sell it or lease it, the right to exclude others from it, the right to destroy it, and so forth. Full ownership of something entails having all of these rights to it; having only some of these rights entails having (one of a number of degrees of ) partial ownership. Since the right to use the water hole just is one among the bundle of rights consti- tuting ownership of it, anyone who claims the right to use thereby claims partial ownership. The correct thing to say about the water-hole example, then, is that the users are not claiming full ownership of it, but they are, whether they realize it or not, claiming partial ownership (even, at least, temporary ownership) of it. The violation of their property rights by the newcomer thus consists in his taking over the water hole in such a way that they are no longer able to use it as they once did. If he treated it in some other way, however —acquiring other rights over it that the previous users neither claimed nor wanted to claim, in a way that would allow them to continue using it as they always had —then he could presumably become a partial owner of the hole as well, “initially acquiring” those aspects of it that no one had yet claimed. This raises the question of whether our paradigmatic individual initial acquirer of an unowned resource fully owns what he has acquired. The right answer seems to be that he does if (unlike the water-hole users) he claims he does after mixing his labor with it in such a way that he has had a significant effect on or taken control of it in all the ways relevant to all the various rights one could claim over it. If he comes across a water hole that no one has ever used, and if he only bathes in it from time to time, perhaps he has only acquired in effect the right to use it; if instead he builds a fence around it, posts guard dogs, and so forth, he has acquired full ownership. The situation is really, in essence, no different from what it was when we were considering initial acquisition as acquisition of a single amorphous “property right.” Whether it is one right or a bundle of them, if an individual mixes his labor with a resource in such a way that he takes control of or significantly affects a resource in ways covered by all the relevant rights in question, then he has acquired that resource. His acquisition is neither just nor unjust; it is those who would seek without his consent to deprive [them] of the rights [they] has so acquired who are the first who could be said to act unjustly. And if he has (by having a very significant effect on the resource) indeed so acquired all the rights that one could acquire to the resource, then his ownership of it is full ownership.

### AT – No Rights in Space

#### [1] Outer space means anything above Earth’s Karman line. Prefer our definition – it’s more contextual to the words in the topic

Dunnett 21 (Oliver Tristan, lecturer in geography at Queen’s University Belfast). Earth, Cosmos and Culture: Geographies of Outer Space in Britain, 1900–2020 (1st ed.). Routledge. 2021. <https://doi.org/10.4324/9780815356301> EE //rct phs st

In such ways, this book argues that Britain became a home to rich discourses of outer space, both feeding from and contributing to iconic achievements in space exploration, while also embracing the cosmos in imaginative and philosophical ways.2 INSERT FOOTNOTE 2 2 This book primarily uses the term ‘outer space’ to describe the realm beyond the Earth’s atmosphere, conventionally accepted as beginning at the Kármán line of 100km above sea level. Other terms such as ‘interplanetary space’, ‘interstellar space’, ‘cosmos’, and ‘the heavens’ are used in specific contexts. END FOOTNOTE 2 Cognisant of this spatial context, a central aim is to demonstrate how contemporary geographical enquiry can provide specific and valuable perspectives from which to understand outer space. This is an argument that was initiated by Denis Cosgrove, and his critique of Alexander von Humboldt’s seminal work Cosmos helped to demonstrate geography’s special relevance to thinking about outer space.3 The key thematic areas which provide the interface for this book’s research, therefore, are the cultural, political and scientific understandings of outer space; the context of the United Kingdom since the start of the last century; and the geographical underpinnings of their relationship.

#### [2] If there’s no conception of space, property rights are incoherent so appropriation can’t be unjust and it’s logically impossible for you to affirm.

### AT – Public Appropriation Contradiction

#### [1] If everyone appropriated space, appropriation would still be private because it is not done through the state. Public appropriation is through a governmental entity, which is uniquely distinct because they are two different actions.

#### Private entity defined by Cornell Law

Cornell Law, ND (, No Date, accessed on 12-18-2021, Law.cornell, "Definition: private entity from 6 USC § 1501(15)(A) | LII / Legal Information Institute", https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def\_id=6-USC-625312480-168358316&term\_occur=999&term\_src=title:6:chapter:6:subchapter:I:section:1501#:~:text=(A)%20In%20general%20Except%20as,%2C%20employee%2C%20or%20agent%20thereof.)//phs st

1. In general Except as otherwise provided in this paragraph, the term “private entity” means any person or private group, organization, proprietorship, partnership, trust, cooperative, corporation, or other commercial or nonprofit entity, including an officer, employee, or agent thereof.

#### [2] No contradiction – even if private appropriation stops and the public starts to appropriate it, that doesn’t mean that it creates a contradiction – private appropriation would still be just. That’s like saying that if everyone died, murder would no longer be unjust. Truths under Kant are atemporal and are moral facts regardless of the circumstances.

### AT – Space Exploration Non-Universalizable

#### [1] Going to space doesn’t violate anyone’s freedoms so it can’t create a contradiction in conception. For example, by getting the last jug of milk at a store, nobody else can, but since I’m not interfering with their ability to set and pursue ends, I am not blocking someone’s freedom. Otherwise, everything is immoral under their framework since resources will always be limited.

#### [2] If we can’t rely on our experiences we can’t know if this is true – there is no distinction between going to the store or going to Earth since it is just functionally property. If everyone decided to book a plane to China, there would also be nobody to take care of the means to get there but since it is not a freedom violation it is still a permissible action.

### AT – Space vs Earth

#### [1] Space is inherently no different from Earth – there isn’t even a brightline for when the Earth becomes Space which proves their model of property is incoherent and fails.

#### [2] Space doesn’t change anything except the location – the need for freedom to be respected is still the same since we are all still reasoners on space, only the location changes but that doesn’t affect how we derive rights. That’s our Feser card – it says that space is no different from other unowned resources.

## AT – Author Specific

### AT – Cordelli/Communalism

#### Cordelli is wrong – hold the line on 2AR explanations of this because the 1AR was just an assertion that we need a state to resolve disputes, but they have not warranted why a state is necessary or why property rights are formed through the state. Our Feser evidence proves that property is an extension of your use of your own body and that when you mix your labor with something, it becomes yours, which does not require the state. If I win my theory of property, that proves that there is nothing intrinsically incorrect about appropriation because a state isn’t necessary for rights.

#### [A] Private entities must be allowed to appropriate property – anything else limits their freedom, which is bad. If you have no freedom over yourself, you have no freedom in the first place to violate – their offense presupposes that there is agency to violate, so ours outweighs because it’s a sequencing question.

#### [B] It’s illogical for the state or an omnilateral will to make property rights – it is inherently in your own self-owned powers to take advantage of things around you. For example, when I breathe, I have to appropriate the air around me that I am using for oxygen to stay alive. When I breathe, you are restricted from using that air, but obviously that is not unjust because you also possess the ability to pursue your own resources. Under their model, if there was no state to regulate air, I would be prohibited from exercising my freedom to exist and I would die – their model unjustly limits my freedom over myself and is ridiculous, which means you should have a high burden of proof for the 2AR when they explain how property is formed. To set and pursue any end, I have to first have autonomy over myself.

#### [C] We don’t need the state to determine property rights – we can still have a coherent explanation of ethics absent an institution – our framework warrants why reason is intrinsic to us, so even if there were no state we would still be able to form a coherent brightline and hold us all under an omnilateral will. Just like how a triangle still has 3 sides if I’m space or Earth regardless of the presence of a state, we can figure out property rights absent a mechanism.

#### [D] Kantian ethics evaluates justice as categorical, i.e. entirely based on what ought to be not the way the current situation is. This entire contention rests on the fact that we currently do not have a governing body in space capable of resolving property conflicts. That doesn’t prove via the Kantian ethic that it is unjust categorically, just that currently it would be unjust to perform appropriation, but in answering the abstract question of the resolution, Kant would say that assuming the ideal world where there is a functioning governing body, then appropriation of property is a necessary right. Whether there is a state or not in space is irrelevant – that’s something we only know through our experiences, which our framework rejects.

#### [E] Their model fails – all of their Cordelli offense is based on the fact that people form property rights between each other where property is a relation, so a state is necessary. However there’s no way to determine who owns what if property relations are only created between people. If they don’t use labor mixing like we do, then whether someone owns something is completely arbitrary since there’s no line for when control over something becomes ownership of it.

### AT – Huber

#### Resources can’t be commonly owned –

#### [A] That assumes that resources are already appropriated and owned, which means that appropriation must not be unjust since it is inevitable and we can’t think otherwise

#### [B] it is impossible to appropriate already-owned resources, so there is no initial acquisition to be unjust in the first place

#### [C] it collapses – if we all own it nobody owns it since we have the same rights as if it was no one’s property

#### [D] Worst case means you err neg on presumption since their theory of ownership requires more justification.

Feser, (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 for gen lang]//phs st

Now someone might object that if resources are in fact initially com- monly owned, this argument would not work. But this objection fails for two reasons. First, the argument would in fact still work even if resources are initially commonly owned; second, resources are in any case not ini- tially commonly owned. The first point is actually a fairly trivial one. If resources start out commonly owned, then for this very reason they do not start out unowned, in which case there is no initial acquisition of any sort to speak of, unjust or otherwise. We all (somehow) just own everything. Thus, anyone who takes R without the consent of the rest of us would be committing (if he is committing an injustice at all) an injustice in transfer rather than acqui- sition. This is perfectly in line with my claim that injustices in holdings can take place only after someone already has ownership of resources, either through initially acquiring them from their unowned state or because the resources are “just owned” from the start; it has no tendency to show that initial acquisition itself can be just or unjust. Of course, this raises the question of how exactly we come collectively to own all resources, which leads us to the second point. Those who object to Nozick’s assumption that resources start out unowned8 typically rest content with noting that there are alternative possibilities, especially the possibility that resources start out commonly owned, as if the mere exis- tence of this alternative casts doubt on Nozick’s assumption—indeed, as if merely noting the possibility of common ownership were enough to establish its actuality. But why is the assumption of common ownership of resources any less in need of justification than the assumption that resources are unowned? Why should we regard the former assumption, and not the latter, as the default assumption to make? Surely the reverse is true: the claim that we all own everything is more in need of justification than the claim that no one initially owns anything. Surely such a claim is not merely unjustified, but counterintuitive, even mysterious. Consider the following: a pebble resting uneasily on the sur- face of the asteroid Eros as it orbits the sun, a cubic foot of molten lava churning a mile below the surface of the earth, one of the polar icecaps on Mars, an ant floating on a leaf somewhere in the mid-Pacific, or the Andromeda galaxy. It would seem odd in the extreme to claim that any particular individual owns any of these things: In what sense could Smith, for example, who like most of the rest of us has never left the surface of the earth or even sent a robotic spacecraft to Eros, be said to own the pebble resting on its surface? But is it any less odd to claim we all own the pebble or these other things? Yet the entire universe of external resources is like these things, or at least (in the case of resources that are now owned) started out like them—started out, that is to say, as just a bunch of stuff that no human being had ever had any impact on. So what trans- forms it into stuff we all commonly own? Our mere existence? How so? Are we to suppose that it was all initially unowned, but only until a group of Homo sapiens finally evolved on our planet, at which point the entire universe suddenly became our collective property? (How exactly did that process work?) Or was it just the earth that became our collective prop- erty? Why only that? Does something become collective property only when we are capable of directly affecting it? But why does everyone share in ownership in that case —why not only those specific individuals who are capable of affecting it: for example, explorers, astronauts, or entrepre- neurs? It is, after all, never literally “we” collectively who discover Ant- arctica, strike oil, or go to the moon, but only particular individuals, together perhaps with technical assistance and financial backing pro- vided by other particular individuals. Smith’s being the first to reach some distant island and build a hut on it at least makes it comprehensible how he might claim —plausibly or implausibly —to own it. This fact about Smith gives some meaning to the claim that he has come to own it. But it is not at all clear how this fact would give meaning to the claim that Jones, whom Smith has never met or even heard of, who has had no involve- ment in or influence on Smith’s journey and homesteading, and who lives thousands of miles away (or even years in the future), has also now come to own it. Still less intelligible is the claim that Smith’s act has given all of us—the human race collectively, throughout all generations—a claim to the island. Whatever objections one might raise against Locke’s “labor-mixing” theory of property,9 it at least provides the beginnings of a story that makes it clear how anyone can come to own something. Locke’s initial acquirer does, after all, do something to a specific resource, and does it with something he already owns (his labor), so that it is at least not mysterious why one might suppose he comes to own the resource, whether or not one thinks that this supposition is ultimately defensible. The common- ownership assumption, by contrast, appears to suppose that we can, all together, simply and peremptorily come to own everything without hav- ing to lift a finger — or worse, that we don’t come to own it at all, but just do own it—the pebble on Eros, Andromeda, and all the rest. Surely it is the common-ownership advocate who has the greater burden of proof! There is another problem with the common-ownership assumption besides its lack of support, namely, that it seems irremediably indetermi- nate. Indeed, at first sight it appears vacuous. If everyone has an equal right to every part of the world, how does this differ exactly from Nozick’s assumption that everything is initially unowned —an assumption on which, too, everyone has an equal right to everything (since no one, at the start anyway, has any right to anything in particular at all)? Ownership, that is to say, seems to imply exclusion. Your (or even our) owning something implies that there are others who do not own it; thus, it appears that we cannot intelligibly all own something, much less everything. This is no doubt (part of) why Locke, though he held that God initially gave the world to mankind in common, also held that individuals can acquire portions of it for their exclusive use. Initial common “ownership” in the Lockean sense entails only that the various resources constituting the world are initially “up for grabs”; for these resources truly to become anyone’s property in any meaningful sense, specific individuals actually have to go out and do something with them. The problem, then, is that if everyone owns everything, no one owns anything. This remains true if we take not a Lockean construal of com- mon ownership, but a construal on which one must get the permission of every other human being, as co-owners of the world, to use any part of the world —what Cohen calls the “joint ownership” interpretation of com- mon ownership.10 In what sense do you own something if no one is in principle excluded from it, if everyone has a say over everything and anything you seek to do with it?11 One’s “ownership” becomes purely formal and practically useless. This joint-ownership construal also has the difficulty that it is incompatible with any substantial (as opposed to for- mal) form of self-ownership, since, given that I cannot so much as move without using parts of the external world, it entails that I cannot do anything with my self-owned powers without the permission of everyone else.12 And it is, of course, for this reason wildly impractical. These con- siderations would seem to tell decisively against the assumption that resources are initially commonly owned (in the joint-ownership sense at least), even if there were some reason to believe this assumption, which (as I have suggested) there is not.

#### [E] Self-ownership negates – when we have the ability to possess certain things, that must mean that we are able to take and appropriate property, or else we’d limit our own rights. The Huber evidence has 0 justification for why resources become commonly owned which means you should err negative because only we have a coherent theory of property – even if this is the case, people have equal access to claiming resources which solves their offense.

### AT – P.R.O.T.E

#### Off PROTE –

#### [A] Doesn’t affirm – PROTE shows that stealing is inherently bad, not that appropriation is inherently bad. For example, you wouldn’t say property rights are bad because someone could infringe on them – that would show that they are violating YOUR rights of property. If everyone is allowed to appropriate, that means that you must also respect the rights of others. Saying appropriation is just binds you to respect other people’s property rights as well, and taking them would be stealing, which is not appropriation.

#### [B] PROTE negates – we have current international law like the Artemis Accords and the mining act that allow for private appropriation of celestial bodies – anything else is promise breaking of international agreements that everyone agreed to.

### AT – Green/Astrobiology

#### [A] Turn – aliens are also private entities – double bind either they have the ability to reason, so they are able to be considered reasoners in a private entity or they aren’t reasoners, and thus have no control of property rights like how an ant doesn’t own the ground it walks on so appropriation can’t be unjust. Either way that negates – proves that either we need to give aliens the rights they owe or we don’t owe them anything and the aff is arbitrary and restrictive.

#### Private entity defined by Cornell Law

Cornell Law, ND (, No Date, accessed on 12-18-2021, Law.cornell, "Definition: private entity from 6 USC § 1501(15)(A) | LII / Legal Information Institute", https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def\_id=6-USC-625312480-168358316&term\_occur=999&term\_src=title:6:chapter:6:subchapter:I:section:1501#:~:text=(A)%20In%20general%20Except%20as,%2C%20employee%2C%20or%20agent%20thereof.)//phs st

1. In general Except as otherwise provided in this paragraph, the term “private entity” means any person or private group, organization, proprietorship, partnership, trust, cooperative, corporation, or other commercial or nonprofit entity, including an officer, employee, or agent thereof.

#### [B] Even if aliens are reasoners, saying that the appropriation of space by private entities is just doesn’t mean that the appropriation of space by aliens is unjust – the second statement can still be true if the first statement is true, proving that the resolution is false doesn’t mean that we deny aliens property rights.

#### [C] No proof that aliens exist or that they matter so no impact

### AT – Ripstein

#### Ripstein is wrong –

#### [A] It’s illogical for the state or an omnilateral will to make property rights – it is inherently in your own self-owned powers to take advantage of things around you. For example, when I breathe, I have to appropriate the air around me that I am using for oxygen to stay alive. When I breathe, you are restricted from using that air, but obviously that is not unjust because you also possess the ability to pursue your own resources. Under their model, if there was no state to regulate air, I would be prohibited from exercising my freedom to exist and I would die – their model unjustly limits my freedom over myself and is ridiculous. To set and pursue any end, I have to first have autonomy over myself.

#### [B] We don’t need the state to determine property rights – we can still have a coherent explanation of ethics absent an institution – our framework warrants why reason is intrinsic to us, so even if there were no state we would still be able to form a coherent brightline and hold us all under an omnilateral will. Just like how a triangle still has 3 sides if I’m space or Earth regardless of the presence of a state, we can figure out property rights absent a mechanism.

### AT – Segobaetso

#### Segobaetso is consequentialist –

#### [A] Capitalism is not in impact under our framework – if we can only know moral truths and not the consequences, we can’t know if neoliberalism will be extended to space – their evidence assumes that we can rely on our experiences, which we are indicting.

#### [B] Doesn’t prove anything inherent to capitalism – even if some capitalists wish to expand to space, this doesn’t prove that appropriation is inherently unjust, just that it can be used incorrectly. For example, Bill Gates could appropriate and asteroid and mine it to share its resources for free, which shows that appropriation isn’t inherently bad.

#### [C] Turn – aliens are also private entities – double bind either they have the ability to reason, so they are able to be considered reasoners in a private entity or they aren’t reasoners, and thus have no control of property rights like how an ant doesn’t own the ground it walks on so appropriation can’t be unjust. Either way that negates – proves that either we need to give aliens the rights they owe or we don’t owe them anything and the aff is arbitrary and restrictive.

### AT – Shammas and Holen

#### Off Shammas and Holen –

#### [A] This is just a capitalist turn saying that a company is now state-funded and doesn’t prove anything – under our framework capitalism is an impact and doesn’t matter. If we can’t use our experiences as the basis of ethics, we can’t know if NewSpace exists or if it’s going into space.

#### [B] Doesn’t prove anything inherent to capitalism – even if some capitalists wish to expand to space, this doesn’t prove that appropriation is inherently unjust, just that it can be used incorrectly. For example, Bill Gates could appropriate and asteroid and mine it to share its resources for free, which shows that appropriation isn’t inherently bad.

### AT – Stilz

#### Stilz is wrong – hold the line on 2AR explanations of this because the 1AR was just an assertion that we need a state to resolve disputes, but they have not warranted why a state is necessary or why property rights are formed through the state. Our Feser evidence proves that property is an extension of your use of your own body and that when you mix your labor with something, it becomes yours, which does not require the state. If I win my theory of property, that proves that there is nothing intrinsically incorrect about appropriation because a state isn’t necessary for rights.

#### [A] Private entities must be allowed to appropriate property – anything else limits their freedom, which is bad. If you have no freedom over yourself, you have no freedom in the first place to violate – their offense presupposes that there is agency to violate, so ours outweighs because it’s a sequencing question.

#### [B] It’s illogical for the state or an omnilateral will to make property rights – it is inherently in your own self-owned powers to take advantage of things around you. For example, when I breathe, I have to appropriate the air around me that I am using for oxygen to stay alive. When I breathe, you are restricted from using that air, but obviously that is not unjust because you also possess the ability to pursue your own resources. Under their model, if there was no state to regulate air, I would be prohibited from exercising my freedom to exist and I would die – their model unjustly limits my freedom over myself and is ridiculous, which means you should have a high burden of proof for the 2AR when they explain how property is formed. To set and pursue any end, I have to first have autonomy over myself.

#### [C] We don’t need the state to determine property rights – we can still have a coherent explanation of ethics absent an institution – our framework warrants why reason is intrinsic to us, so even if there were no state we would still be able to form a coherent brightline and hold us all under an omnilateral will. Just like how a triangle still has 3 sides if I’m space or Earth regardless of the presence of a state, we can figure out property rights absent a mechanism.

#### [D] Kantian ethics evaluates justice as categorical, i.e. entirely based on what ought to be not the way the current situation is. This entire contention rests on the fact that we currently do not have a governing body in space capable of resolving property conflicts. That doesn’t prove via the Kantian ethic that it is unjust categorically, just that currently it would be unjust to perform appropriation, but in answering the abstract question of the resolution, Kant would say that assuming the ideal world where there is a functioning governing body, then appropriation of property is a necessary right. Whether there is a state or not in space is irrelevant – that’s something we only know through our experiences, which our framework rejects.

#### [E] Their model fails – all of their Stilz offense is based on the fact that people form property rights between each other where property is a relation, so a state is necessary. However there’s no way to determine who owns what if property relations are only created between people. If they don’t use labor mixing like we do, then whether someone owns something is completely arbitrary since there’s no line for when control over something becomes ownership of it.

### AT – Walla

#### Walla is wrong – hold the line on 2AR explanations of this because the 1AR was just an assertion that we need a state to resolve disputes, but they have not warranted why a state is necessary or why property rights are formed through the state. Our Feser evidence proves that property is an extension of your use of your own body and that when you mix your labor with something, it becomes yours, which does not require the state. If I win my theory of property, that proves that there is nothing intrinsically incorrect about appropriation because a state isn’t necessary for rights.

#### [A] Private entities must be allowed to appropriate property – anything else limits their freedom, which is bad. If you have no freedom over yourself, you have no freedom in the first place to violate – their offense presupposes that there is agency to violate, so ours outweighs because it’s a sequencing question.

#### [B] It’s illogical for the state or an omnilateral will to make property rights – it is inherently in your own self-owned powers to take advantage of things around you. For example, when I breathe, I have to appropriate the air around me that I am using for oxygen to stay alive. When I breathe, you are restricted from using that air, but obviously that is not unjust because you also possess the ability to pursue your own resources. Under their model, if there was no state to regulate air, I would be prohibited from exercising my freedom to exist and I would die – their model unjustly limits my freedom over myself and is ridiculous, which means you should have a high burden of proof for the 2AR when they explain how property is formed. To set and pursue any end, I have to first have autonomy over myself.

#### [C] We don’t need the state to determine property rights – we can still have a coherent explanation of ethics absent an institution – our framework warrants why reason is intrinsic to us, so even if there were no state we would still be able to form a coherent brightline and hold us all under an omnilateral will. Just like how a triangle still has 3 sides if I’m space or Earth regardless of the presence of a state, we can figure out property rights absent a mechanism.

#### [D] Kantian ethics evaluates justice as categorical, i.e. entirely based on what ought to be not the way the current situation is. This entire contention rests on the fact that we currently do not have a governing body in space capable of resolving property conflicts. That doesn’t prove via the Kantian ethic that it is unjust categorically, just that currently it would be unjust to perform appropriation, but in answering the abstract question of the resolution, Kant would say that assuming the ideal world where there is a functioning governing body, then appropriation of property is a necessary right. Whether there is a state or not in space is irrelevant – that’s something we only know through our experiences, which our framework rejects.

#### [E] Their model fails – all of their Walla offense is based on the fact that people form property rights between each other where property is a relation, so a state is necessary. However there’s no way to determine who owns what if property relations are only created between people. If they don’t use labor mixing like we do, then whether someone owns something is completely arbitrary since there’s no line for when control over something becomes ownership of it.

### AT – Westphal

#### Westphal does not make any claim about whether appropriation is just –

#### [A] Feser takes this out – it is inherently in your own self-owned powers to take advantage of things around you. For example, when I breathe, I have to appropriate the air around me that I am using for oxygen to stay alive. When I breathe, you are restricted from using that air, but obviously that is not unjust because you also possess the ability to pursue your own resources. Under their model, if I could not use exclusive resources, I would be prohibited from exercising my freedom to exist and I would die – their model unjustly limits my freedom over myself and is ridiculous. To set and pursue any end, I have to first have autonomy over myself.

#### [B] Resources aren’t equally divided – their model where there are no exclusive uses of property assumes that we must share resources equally otherwise but:

#### [1] Without the concept of ownership there is no one to value resources in the first place, which creates a contradiction – things like market prices which require ownership create value but this is impossible if everyone owns the same things

#### [2] There’s no way to measure resources equally – hold them to a high burden of proof and assume that they’re wrong if they can’t provide a coherent explanation of how to divide resources.

Feser, (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 for gen lang]//phs st

Another, and at first sight more promising, interpretation of common ownership is to suppose that we do not “collectively own everything” so much as we each own our own individual and equally divided portions of external resources, a construal Cohen calls “equal division” owner- ship.13 But which portions exactly does each person own, and why those? Do we all get equal amounts of zinc and copper, for instance, or does one person get the copper, another the zinc, and so forth? And how are “resources” individuated in the first place? Is my backyard one resource or many, since it might include not only a lawn and a couple of trees, but also hidden oil and mineral deposits? For that matter, is a can of oil itself one resource or many, since I could use part of it for fuel, another part for lubrication, a third to make paint, etc.? (And why a can of oil, rather than a barrel or a thimbleful?) Do resources get gathered up again and redi- vided every time a new person is born, so as to maintain equality in distribution? Do we move people’s homes periodically so that we can carve up the land again every so often to guarantee equal plots for new- borns? (Why land, anyway? What if I want to live on a houseboat? Do we all get equal portions of the surface of the oceans, so as to leave this option open for everyone?) To avoid these problems, do we simply divvy up the “cash value” of all resources? How do we know what that value is independently of a system of market prices, which presupposes private ownership and the inequalities that go along with it? And since, given changing needs and circumstances, that value is itself perpetually chang- ing, do we need constantly to re-collect and redistribute wealth so as to reflect the “current” economic value of resources? Yet if a demand for equal outcomes is what motivates the equal-division model in the first place, even such periodic “resetting” of the system would not be enough to satisfy such a demand; for as Cohen observes, given inequalities in persons’ (self-owned) natural endowments, even an initial equal distri- bution of basic resources will still result in significant inequalities of wealth.14 In this case, what is the point of insisting on initial equal-division com- mon ownership?15 (There seems to be little point, at any rate, if one grants the thesis of self-ownership, or at least grants that the thesis is plausible enough that the critic of Nozick is best advised to look else- where for a way of undermining his anti-egalitarian and anti-redistributive conclusions.)16 These questions seem unanswerable, perhaps even in principle unanswer- able. But even if one insists otherwise, the issue here is not (or is not primarily) whether some scheme of common ownership can after all be made coherent and practicable. Rather, the issue is that given the diffi- culty of seeing how this can be done—given the work, intellectual and physical, required to institute a common-ownership scheme—it is coun- terintuitive in the extreme to suggest that the world just starts out com- monly owned, to suggest that the assumption of common ownership is the natural default assumption to make. Nor are taking resources as initially unowned and taking them as initially commonly owned even on a par as starting points in the theory of property. Nozick’s opponents accuse him of being “blithe” in his assumption that resources are initially unowned,17 but their assumptions are, if anything, more glib. Nozick, however, has good reason for his facile assumption: We clearly need to do something to get ownership started, and the “we” who do it are typically specific individuals acting on specific and isolated bits of the extra-personal world. The natural conclusion to draw from this is that the world starts out unowned, and that it is precisely and only the people who actually do something to change this fact who come to own the particular parts of the world on which they act.18 At the very least, this, I suggest, is the natural default position to take, with the common-ownership advocate being the one who needs to justify his moving off of it. But then, as I have argued, the natural default position to take on initial acquisition is also that it is never unjust.19

### AT – van Eijk

#### [A] The NC is a prior question to iLaw – it determines what contracts can be made in the first place. If I prove that property rights are inalienable and that all private entities have a right to it, then contracts that would violate that right wouldn’t be legitimate in the first place. If I promise you to murder someone, it still isn’t a legitimate contract even if you agree because the creation of the contract itself would bind me to violate someone’s freedom.

#### [B] You aren’t fiating that appropriation is unjust – the resolution is just declaring whether it’s good or bad. Existing laws don’t necessarily prove something just or unjust, just like how being able to get the death penalty for laughing in authoritarian regimes doesn’t mean that laughing is unjust. Regardless of current laws if I win my offense it proves that it’s just and that these laws should be changed.

#### [C] iLaw negates – private entities are allowed to appropriate space according to the Moon Treaty and parts of the OST.

# Cards

These are all kant affirms cards, I was just looking through them to prep them out

## Author Specific Cards

### AT – Cordelli

**This is an unjust state which violates people’s freedoms and violates the categorical imperative.**

**Cordelli 16** Chiara Cordelli [Chiara Cordelli is an associate professor in the Department of Political Science at the University of Chicago. Her main areas of research are social and political philosophy, with a particular focus on theories of distributive justice, political legitimacy, normative defenses of the state, and the public/private distinction in liberal theory. She is the author of The Privatized State (Princeton University Press, 2020), which was awarded the 2021 ECPR political theory prize for best first book in political theory. She is also the co-editor of, and a contributor to, Philanthropy in Democratic Societies (University of Chicago Press, 2016). -- [cordelli@uchicago.edu](mailto:cordelli@uchicago.edu)] “WHAT IS WRONG WITH PRIVATIZATION?”, University of Chicago, Political Science & the College, https://www.law.berkeley.edu/wp-content/uploads/2016/01/What-is-Wrong-With-Privatization\_UCB.pdf

**The intrinsic wrong of privatization**, I will suggest, rather **consists in the creation of an institutional arrangement that, by its very constitution, denies those who are subject to it equal freedom.** I understand freedom as an interpersonal relationship of reciprocal independence. **To be free is not to be subordinated to another person’s unilateral will. By building on an analytical reconstruction of Kant’s Doctrine of Right, I will argue that current forms of privatization reproduce** (to a different degree) **within a civil condition the very same defects that Kant attributes to the state of nature**, or to a pre-civil condition, **thereby making a rightful condition of reciprocal independence impossible.** Importantly, this is so **even if private actors are publicly authorized through contract and subject to regulations, and even if they are committed to reason in accordance with the public good**. The reason for this, as I will explain, derives from the fact that **private agents are constitutionally incapable of acting omnilaterally, even if their actions are omnilaterally authorized by government** through some delegation mechanism, e.g. a voluntary contract. **Omnilateralness, I will suggest, must be understood as a function of 1) rightful judgment and 2) unity. By rightful judgment I mean the capacity to reason publicly and to make universal rules that are valid for everyone**, according to a juridical ideal of right, **as necessary to solve the problem of the unilateral imposition of private wills on others. By unity I mean the capacity to make rules and decisions that change the normative situation of others, as a part of a unified system of decision-making.** The condition of unity is crucial, as I shall later explain, insofar as **there might be multiple interpretations compatible with rightful judgment, which would still problematically leave the definition of people’s rightful entitlements indeterminate.** Further, **the practical realization of the juridical idea of an omnilateral will**, I will contend, **requires embeddedness within a shared collective practice of decision-making.** In practice, rightful judgment can only obtain when certain shared background frameworks that structure practical reasoning and confer unity to that reasoning are in place. The rules of public administration and the authority structure of bureaucracy should be understood as playing this essential function of giving empirical and practical reality to the omnilateral will, as far as the execution of rules and the concrete definition of entitlements are concerned. **Together, these two requirements are necessary**, (whether they are also sufficient is a different question), **to make an action the omnilateral action of a state, which has the moral power to change the normative situation of citizens, by fixing the content of their rights and duties in accordance with the equal freedom of all.** The phenomenon of **privatization thus raises the fundamental questions of why we need political institutions to begin with**, and what makes an action an action of the state. Insofar as private agents make decisions that fundamentally alter the normative situation (the rights and duties) of citizens, and insofar as, **by definition, private agents are not public officials embedded in that shared collective practice, their decisions, even if well intentioned and authorized through contract, cannot count as omnilateral acts of the state. They rather and necessarily remain unilateral acts of men.** Hence, I will conclude, for the very same reasons that **we have, following Kant, a duty to exit the state of nature so as to solve the twofold problems of the unilateral imposition of will on others and the indeterminacy of rights, we also have a duty to limit privatization and to support, on normative grounds, a case for the re-bureaucratization of certain functions.** Therefore, my paper provides foundational reasons to agree with Richard Rorty’s nonfoundational defense of bureaucracy as stated in the opening epigraph, since **only agents who are appropriately embedded within a bureaucratic structure, properly understood, are, in many cases, capable of acting omnilaterally. The “bosses” I am here concerned with are not primarily those who can unilaterally impose their will on us in their capacity as private employers, but rather any private actor who acts unilaterally while in the garb of the state.** This essay is structured as follows. In Section I, I assess and reject what I take to be the most powerful non-instrumental arguments against privatization. In Section II, **through an interpretation of Kant, I explain in what sense the state, defined as an omnilateral system of rules, is a constitutive condition of freedom, rather than merely an instrument to promote it.** In Section III, through an analytical reconstruction, based on a theory of collective action, of the conditions that make a system of rules an omnilateral system of laws rather than an aggregation of unilateral acts of men, **I show that privatization constitutes a regression to the state of nature, understood as a normative condition of unfreedom. I then present some reflections on the broader implications of my argument, as it posits an expansive conception of the juridical order as an appropriate object of analysis for political philosophy.** Before moving to the next section, let me first clarify what I mean by privatization. In a general sense, **privatization can be defined as the devolution of public responsibilities to private actors.** This however entails a baseline against which the idea of public responsibilities must be specified. Here I defend a normative, rather than, as is commonly the case, a historical or economic baseline.11 **I will assume that in a just society government ought to bear, on grounds of justice, the primary responsibility to secure not only a fair distribution of general resources, including income and wealth,** through tax and transfers, but also an adequate provision of particular in-kind goods, including police protection, defense, criminal justice, education and healthcare.12 **This does not per se entail, however, that government should provide these goods directly. Government may fund the production of in-kind goods, while delegating their provision to private actors. I thus define privatization as the implementation of public, justice-based responsibilities through private agents.**

### AT – P.R.O.T.E

#### Private appropriation violates the categorical imperative by impeding on the common ownership of mankind.

P.R.O.T.E 21 [Professional Responsibilities of the Engineer], "Is privatised separatism on the horizon for the space age?," March 29, 2021, <https://www.ethicsforge.cc/is-privatised-separatism-on-the-horizon-for-the-space-age/> C.VC

A Kantian argument would revolve around the idea of res communis, that outer space is considered as territory that is under the common ownership of mankind, this idea has influenced the Outer Space Treaty and acts as a categorical imperative. A private entity should not be able to claim jurisdiction over any celestial body for themselves, as they would be altering the open-to-all nature of territory in space. This would also normalise the concept of extraterrestrial real estate – where land on celestial bodies could be bought and sold among private entities. As engineering based organisations, spaceflight companies ought to establish presences on other celestial bodies in the name of humanity as a whole, rather than in their own interest.

### AT – Segobaetso

#### Private space expansion is not universalizable.

Benjamin Segobaetso 18 [Submitted as part of a requirement for an MA in public ethics], “Ethical Implications of the Colonization, Privatization and Commercialization of Outer Space,” May 2018, <https://ruor.uottawa.ca/bitstream/10393/38318/1/Benjamin_Segobaetso_2018.pdf> C.VC

It can be argued through Kantian ethics that our record here on Earth paints a picture of neoliberal and capitalist policies with tendencies to favour the highest bidder at the exclusion of the under privileged and puts profit first at the expense of the environment. For Kantians, there are two questions that we must ask ourselves whenever we decide to act: (i) Can I rationally will that everyone act as I propose to act? If the answer is no, then we must not perform the action. (ii) Does my action respect the goals of human beings? Again, if the answer is no, then we must not perform the action. Kantian ethicists would argue that extending to space neoliberal and capitalist policies is immoral because these systems create economic disparities and life threatening environmental injustices; therefore, they are set up in a way that we could not rationally will everyone to act the way they act either here on Earth or in space. Also, Kantian ethicists would ask whether the action of extending neoliberal and capitalist policies to space would respect the goals of extra-terrestrial intelligent life if any rather than merely using them for humans’ own purposes? If the answer is no, then the participating agent must not perform the action. Kant wrote on the possible existence of extra-terrestrial intelligent species in the final pages of the last book that he published, Anthropology from a Pragmatic Point of View [Anthropologie in pragmatischer Hinsicht] (1978). In this publication, Kant hinted that the highest concept of the Alien species may be that of a terrestrial rational being [eines irdischen vernünftigen ]; however, he argued that it will be difficult to describe its characteristics because there is no knowledge available of a non-terrestrial rational being [nicht irdischen Wesen] which could be used as a reference in regards to its properties and ultimately classify that terrestrial being as rational. This dilemma will continue until extraterrestrial intelligent life is discovered because comparing two species of rational beings has to be on the basis of experience, but that experience has not been possible yet (Kant, 237-238).

In applying Kant’s deontological moral theory, it must first be recognized that Kant visualized a kind of respect in which we all can recognize every rational being exists as an end in itself (1) as being not fully comprehensible by any human understanding, (2) as being an end in him- or herself, and (3) as being a potential source of moral law (Kant, 2012). In this regard, since Kant insinuated that the highest concept of the extraterrestrial intelligent species may be that of a terrestrial rational being [eines irdischen vernünftigen ]; that implies any encounter with extra-terrestrial intelligent life will compel us under the deontological moral theory to recognize that life as being not fully comprehensible by any human understanding, as being an end in itself, and as being a potential source of moral law (Kant, 2012). It must be realized that Kant’s deontology theory does not go without criticism by critical theorists who believe in dismantling all systems of oppression.

### AT – Green/Astrobiology

#### Astrobiology – Out of the possibility of extraterrestrial reasoners, we have an obligation to respect their habitats and not interfere through exploration.

Brian Patrick Green 2014, Santa Clara University, "Ethical Approaches to Astrobiology and Space Exploration: Comparing Kant, Mill, and Aristotle," Scholar Commons, <https://scholarcommons.scu.edu/markkula/5/>

But to assume that Kant has not considered these questions is an enormous mistake. In 1755, quite early in his career, Kant published the book Universal Natural History and Theory of the Heavens, where he described the solar nebular hypothesis (now the accepted theory for how the solar system formed).4 More than that, Kant not only allowed that extraterrestrial intelligences might exist, he believed that if they did not yet exist, that someday they would,5 and that some of these ETIs would be inferior and some superior to humans in intelligence.6 One might wonder if the young Kant’s belief in ETIs continued into his older years, when he was writing on ethics. There is good evidence that it does. Writing his Foundations of the Metaphysics of Morals, 30 years after his work on the nebular hypothesis, Kant is explicit – he is not just discussing humans, but “all rational beings.” 7 So with respect deontology and extraterrestrial intelligent life, Case 1) on the chart, Kant would extend the same full dignity and respect to ETIs which humans owe to each other, in accord with his categorical imperative, which requires the universalizability of moral norms8 and treating all rational beings as ends in themselves.9 For deontology and non-intelligent life, Case 2), Kant argues that animals, as non-rational beings, are of only relative worth. They are not as ends in themselves, not persons, but things.10 If humans discovered non-intelligent life on other worlds (most likely microbes, but if larger then we would have to carefully evaluate what it means to be intelligent, and make sure the discovered life does not qualify), according to Kant, we could do with it as we pleased. While some contemporary moral philosophers have tried to reinterpret or rehabilitate Kant on animals, these works are developments of Kant’s philosophy; they are not his philosophy itself.11 So while Kantianism might be modifiable into a system which is more friendly towards the rest of the living world, without these modifications it is not. For non-life and Kantian deontology, Case 3), there is likewise a simple answer: nonliving things are just things. Non-living things are not a moral concern, they are merely instrumental, and as such intelligent creatures can treat these things as they wish. However, there is an odd exception to this conclusion which is worth mentioning (and which I note with a star in the table). Kant believed that if other planets were not yet inhabited, they someday would be. If this is the case, then what of planets currently without intelligent life but which may someday have it? Ought we to anticipate these intelligent creatures and therefore respect them proactively by respecting their prospective goods? Kant does not say (perhaps because he was not interested in speculating or because humans were, in his time, far from being in a position to affect the futures of these planets). However, given the importance of rational beings in Kant’s system (rationality, teleology, and morality are the purpose of universe) the answer is possibly, or even probably, yes.

### AT – Shammas and Holen

#### Libertarianism turns don’t apply – Privatization of space inherently relies on an anti-libertarian state-based model

Shammas and Holen 19 [(Victor L. Oslo Metropolitan University, Tomas B. Independent scholar) “One giant leap for capitalistkind: private enterprise in outer space,” Palgrave Communications, 1-29-19, https://www.nature.com/articles/s41599-019-0218-9] TDI

But the entrepreneurial libertarianism of capitalistkind is undermined by the reliance of the entire NewSpace complex on extensive support from the state, ‘a public-private financing model underpinning long-shot start-ups' that in the case of Musk’s three main companies (SpaceX, SolarCity Corp., and Tesla) has been underpinned by $4.9 billion dollars in government subsidies (Hirsch, 2015). In the nascent field of space tourism, Cohen (2017) argues that what began as an almost entirely private venture quickly ground to a halt in the face of insurmountable technical and financial obstacles, only solved by piggybacking on large state-run projects, such as selling trips to the International Space Station, against the objections of NASA scientists. The business model of NewSpace depends on the taxpayer’s dollar while making pretensions to individual self-reliance. The vast majority of present-day clients of private aerospace corporations are government clients, usually military in origin. Furthermore, the bulk of rocket launches in the United States take place on government property, usually operated by the US Air Force or NASA.Footnote13 This inward tension between state dependency and capitalist autonomy is itself a product of neoliberalism’s contradictory demand for a minimal, “slim” state, while simultaneously (and in fact) relying on a state reengineered and retooled for the purposes of capital accumulation (Wacquant, 2012). As Lazzarato writes, ‘To be able to be “laissez-faire”, it is necessary to intervene a great deal' (2017, p. 7). Space libertarianism is libertarian in name only: behind every NewSpace venture looms a thick web of government spending programs, regulatory agencies, public infrastructure, and universities bolstered by research grants from the state. SpaceX would not exist were it not for state-sponsored contracts of satellite launches. Similarly, in 2018, the US Defense Advanced Research Projects Agency (DARPA)—the famed origin of the World Wide Web—announced that it would launch a ‘responsive launch competition', meaning essentially the reuse of launch vehicles, representing an attempt by the state to ‘harness growing commercial capabilities' and place them in the service of the state’s interest in ensuring ‘national security' (Foust, 2018b).

### AT – Stilz

### AT – Walla

**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.

### AT – Westphal

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

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

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

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

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

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

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

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

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

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

### AT – van Eijk

#### Privatization of outer space runs counter to international law

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On October 28th, Elon Musk’s company SpaceX published its Terms of Service for the beta test of its Starlink broadband megaconstellation. If successful, the project purports to offer internet connection to the entire globe – an admirable, albeit aspirational, mission. I must confess: Starlink’s terrestrial impact is a pet issue of mine. But this time, something else caught my attention. Buried in said Terms of Service, under a section called “Governing Law”, I discovered this curious paragraph:

“Services provided to, on, or in orbit around the planet Earth or the Moon… will be governed by and construed in accordance with the laws of the State of California in the United States. For Services provided on Mars, or in transit to Mars via Starship or other colonization spacecraft, the parties recognize Mars as a free planet and that no Earth-based government has authority or sovereignty over Martian activities. Accordingly, Disputes will be settled through self-governing principles, established in good faith, at the time of Martian settlement.”

CAN HE DO THAT? In short, the answer is a resounding “no”. Outer space is already subject to a system of international law, and even Elon Musk cannot colombus a new one.

Who’s responsible for Elon Musk?

Two provisions of the Outer Space Treaty (OST), both also customary, are particularly relevant here.

OST article II: “Outer space, including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.”

OST article III: “States… shall carry on activities in the exploration and use of outer space, including (…) celestial bodies, in accordance with international law”.

SpaceX is a private entity, and is not bound by the Outer Space Treaty – but that does not mean it can opt out. Its actions in space could have consequences for the United States in three ways. First, the US, as SpaceX’s launch state, bears fault-based liability for injury or damage SpaceX’s space objects cause to other states’ persons or property (OST article VII, Liability Convention articles I, III). Second, the US, as SpaceX’s state of registry, is the sole state that retains jurisdiction and control over SpaceX objects (OST article VIII, Registration Convention article II). Both refer to objects in space and are irrelevant.

According to article VI OST, States “bear international responsibility for national activities in outer space”, including Mars, including those by “non-governmental entities”. The US, as SpaceX’s state of incorporation, must authorise and continuously supervise SpaceX’s actions in space to ensure compliance with the OST (OST article VI) and international law (OST article III). In practice, this task is done by the US Federal Communications Commission, which licenses and regulates SpaceX.

Article VI OST sets a specific rule of attribution, supplementing the customary rules of state responsibility (Stubbe 2017, pp. 85-104). SpaceX acts with US authorisation, and its conduct in space within and beyond that authorisation is attributable to the US (ARSIWA articles 5, 7). In the absence of circumstances precluding wrongfulness, the result is straightforward. If SpaceX breaches a US obligation under international law, the US bears responsibility for an internationally wrongful act.

The principle of non-appropriation

SpaceX risks breaching OST article II, the “cardinal rule” of space law (Tronchetti, 2007). This principle is a jus cogens norm (Hobe et al. 2009, pp. 255-6) establishing Mars as res communis, rather than terra nullius. I must acknowledge, with tongue firmly in cheek, that SpaceX is partly correct – states have no sovereignty on Mars. But that does not leave Mars a “free planet” up for grabs – SpaceX has no sovereignty either.

On plain reading, article II OST lacks clarity on two key points: i) whose claims are prohibited, and ii) what exactly constitutes a ‘claim of sovereignty’. The first has been answered; per the then-customary interpretative rules and travaux préparatoires, there is quite broad academic consensus (Hobe, et al. 2017; Tronchetti, 2007; Pershing, 2019; Cheney, 2009) that sovereign claims include those by private entities. This is consistent with OST article VI; private entities act in space with state authorisation, and thus state authority. It also accords with the law of state responsibility, wherein conduct of entities exercising state authority is attributable to the state, even if ultra vires (ARSIWA articles 5, 7).

The second issue is more complex. Much has been written on whether claims to space resources or space property (Nemitz v United States) are sovereign. In this case, the territorial claim is less clear; is establishing a jurisdiction a sovereign claim “by other means”? SpaceX purports not to create law horizontally via contract, but to establish the only law on Mars – a vertical structure endemic to sovereign legal orders. International caselaw on territorial acquisition agrees; sovereign acts include “legislative, administrative and quasi-judicial acts” (Case concerning sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v. Malaysia), para 148; Decision regarding delimitation of the border between Eritrea and Ethiopia, para. 3.29) with the exercise of jurisdiction and local administration having “particular, probative value” (Minquiers and Ecrehos (France v. UK), p. 22). Also relevant are attempts to exclude other states’ jurisdiction (Island of Palmas (USA v. Netherlands), pp. 838-9). An attempt by SpaceX to prescribe its own jurisdiction on Mars would constitute a sovereign claim in breach of OST article II, and entail US responsibility for an internationally wrongful act.

Of course, as Thom Cheney points out, this is all just words until it isn’t – but there is cause for concern. The Federal Communications Commission (FCC) has been consistently accommodating to commercial space actors, and to SpaceX in particular, preferring to leave regulation up to markets rather than regulatory bodies. As Commissioner O’Rielly said upon granting SpaceX market access: “our job at the Commission is to approve the qualified applications [by SpaceX et al.] and then let the market work its will.” It is not unforeseeable that the FCC would prioritise corporate objectives over principle, and under an administration increasingly dismissive of the international rule of law, might fail to regulate SpaceX in case of breach. Both SpaceX’s actions or FCC inaction risk breaching OST article II, and could leave the US facing reparations claims from injured state(s).

Mars nullius: A thought experiment

But this problem extends beyond the legal. As previously mentioned, the OST, especially article II, designates Mars as res communis. This precludes territorial acquisition by occupation, which can only legitimately occur on terra nullius.

But indulge me for a moment in a half-serious thought experiment. No provision of outer space law explicitly designates Mars res communis. The exploration and use of Mars is the “province of mankind” per OST article I (emphasis added), but that language was specifically diluted in negotiations from the originally-proposed “common heritage of mankind”. The Moon is the “common heritage of mankind” (Moon Agreement, article 5), but only for 18 states. The United States has recently and repeatedly attempted to erode the status of space as res communis, including by treaty and by Executive Order, and it is not alone. If current trends continue, Mars nullius may come sooner than we think.

That line between res communis and terra nullius is the principal legal obstacle to acquiring extra-terrestrial land by the legal process of occupation. In territorial acquisition cases, international law distinguishes between the act of attempting to exercise jurisdiction or sovereignty (called an ‘effectivité‘), and the legal right to do so (sovereign title). The former is a question of fact; the latter is a question of law. Absent other sovereign claims, an effectivité compliant with international law is “as good as title” (Island of Palmas (USA v. Netherlands), p. 839; Frontier Dispute (Burkina Faso v. Mali), para 63). Such an effectivité would contravene international law now, but that law is in flux. What if the current rule proves less-than-robust? As shown above, the elements of successful effectivité, state attribution and a sovereign act with sovereign intention, are satisfied. Slipping this provision on the future Martian legal order into satellite broadband Terms of Service serves little purpose – except as basis for a claim prior to some future critical date.

Crucially, SpaceX is not an international actor. It is an American company subject to US law and continuing US supervision. In both Island of Palmas and the Pedra Branca Dispute, corporations acting under national authorisation and regulation established sovereign titles for their respective states. A future attempt by SpaceX to act on its Terms could be received by other states, either legally or politically, as an American colonisation of Mars.

Concerns and conclusions

Three primary concerns emerge from this picture. First, non-appropriation is cardinal for a reason – if breached, international peace and security in space hangs in the balance. Second, even signalling the implementation of a provision so contrary to US obligations without censure risks the international rule of law. Finally, and most pragmatically, American vulnerability to future claims by other states should concern American citizens; it is their money, their national reputation on the line.

Commercial actors in space present great innovative and developmental potential for all mankind (Aganaba-Jeanty, 2015), but their so-called ‘self-regulatory’ or administrative role should be taken with a healthy scepticism. We already know how that story ends. As Bleddyn Bowen put it, “[t]he continuation of the term ‘colonies’ in describing the potential human future in space should raise political and moral alarm bells immediately given the last 500 years of international relations. Will billionaires run their ‘colonies’ the way they run their factory floors, and treat their citizens like they treat their lowest paid employees?”

As humanity expands into space, we will need new legal rules and understandings of sovereignty to govern the process (Leib, 2015). The current legal order is a critical framework that, without supplement, will someday prove incomplete. The legal governance of Mars is an excellent example. However, those new laws must fit into that framework; they cannot hang suspended in a vacuum. We have seen previously the dangers of rashly governing the global commons based on aspiration and resource hunger (Ranganathan, 2016 and 2019). Martian soil cannot become the manganese nodules of this century. If anything, it is imperative on us to recognise and correct the inequities the current rules have created (Craven, 2019) before proposing new ones.

Space law is an established rulebook likely to undergo some high-octane developments in coming decades. While Elon is welcome to the table, he can’t keep sucking the air from the room. It leaves us space lawyers just shouting into the void.