# 1Top of the AC

*All cards are bracketed for grammar and efficiency.*

**Observation 1:** Ought is defined as **logical consequence**[[1]](#footnote-1):

**a)** **Grammar:** The context for my definition, “the result ought to be infinite”, is the only one that doesn’t assume a subject that can act, such as the resolutional case of a right. This means moral obligation is grammatically incoherent since morality is definitionally a guide to action, but rights can’t act, meaning that any other interp assumes a non-grammatical actor. Grammar is key to education since it’s a crucial for writing in the real world and key to fairness since it’s easiest to prepare for arguments that are grammatically correct,

**b)** **Ground:** Only my interpretation exclude the idea of permissibility or equal reasons since things are either logical consequences or they aren’t, allowing for equal distribution of ground. Ground is key since it dictates our ability to argue and win. **And,** other definitions devolve into logical consequence. The way that we justify ethical frameworks is proving them true by logic and saying something coheres with beliefs that we currently hold via logical principles. Thus, all other definitions rely on logical consequence a priori, so *I meet all other T interps*,

**c)** **Resolvability:** Moral properties can’t be debated about coherently since these entities would be too strange. **Mackie[[2]](#footnote-2)**:

Even more important and certainly more generally applicable is the argument from queerness. If there were objective values, then they would be entities or qualitiesor relations of a very strange sort, utterly different from everything else in the universe. Correspondingly, if we were aware of them, it would have to be by some special faculty or moral perception or intuition, utterly different from our ordinary ways of knowing everything else. When we ask the awkward question, how we can be aware of the truth of values, none of our ordinary accounts of sensory perception or introspection or the framing and confirming of explanatory hypotheses or inference or logical construction or conceptual analysis, or any combination of these, will provide a satisfactory answer; ‘a special sort of intuition’ lame answer, but it is the one to which the clear-headed objectivist is compelled to resort**.**

Two impacts: **a)** other definitions collapse to logical consequence—since we don’t have the sensory capability to know objective values, obligations have to be grounded in logical context for us to be aware of their existence and for them to guide our action, **b)** agents can continuously question why morality should have any grasp on them; only logical consequence prevents them from embracing skepticism since logical consequence can’t be questioned whereas hypothetical instances of morality collapse into assertions. Resolvability is key to fairness since it’s necessary to determine a winner.

**And,** logical consequence means that something logically flows if a certain condition is met, so the resolution is definitionally the conditional statement “if civil rights, then right to be forgotten”. Conditional logic dictates that if the antecedent is false, then the entire conditional is true. Thus, affirm if rights-based theories fail or the concept of rights is incoherent.

**Thus**, the resolution questions whether a certain right, the right to be forgotten, logically flows from the context, which is the specification of civil rights. Civil rights are a subset of natural rights, or rights that exist based on our humanity, and are only distinct due to their reliance on government enforcement. **West[[3]](#footnote-3)** summarizes **Paine:**

**Civil rights [are]** were not, however, viewed by Paine and his contemporaries as coterminous with the natural rights which man possesses by virtue of his humanity, when both phrases were part of the ordinary vocabulary of lawyers and constitutionalists. Rather, they were **a subset [of natural rights],** with two characteristics differen[ces]tiating them from the larger class of natural rights, of which, again, they are a part (all civil rights are natural rights, all natural rights, however, are not civil rights). First, civil rights, unlike other natural rights, are rights that attach by virtue of one’s “member[ship] in society,” rather than solely by virtue of one’s humanity. But second, **although civil rights originate as natural rights,** Paine explained, unlike some of those natural rights, such as rights to the mind and conscience, or rights to behavior that does not harm others, “**civil rights**” are those rights that **cannot be perfected by individuals standing alone**, so to speak, **or outside civil society and law**: Natural rights are those [rights] which appertain to man in right of his existence**.** Of this kind are all the intellectual rights, or rights of the mind, and also all those rights of acting as an individual for his own comfort and happiness, which are not injurious to the natural rights of others. Civil rights are those which appertain to man in right of his being a member of society. Every civil right has for its foundation, some natural right pre-existing in the individual, but to the enjoyment of which his individual power is not, in all cases, sufficiently competent. Of this kind are all those which relate to security and protection.31 Civil rights, then, to the founding generation, at least if Paine’s understanding was representative, were natural rights that require, distinctively, civil society, including positive law and legal institutions both, for their perfection. Unlike other natural rights, we can’t enforce civil rights on our own. **We need the affirmative assistance of positive law.** So defined, “civil rights” included, for Paine, quintessentially, those rights pertaining to protection of the physical security of the individual. The **security** of and protection of the physical body are **[is an] example**s, then, of foundational rights that are only imperfectly, at best, enforceable through self-help**. We “trade in” our natural right**s **to** self-protection and **security**, so to speak, **for the “civil right” of** the **protection of our physical security by the state.** How does Paine’s **[This] account of “civil rights”**—penned long before the civil rights acts of either of the two centuries following, and before the idea of antidiscrimination as an actionable wrong had gained traction—as “natural rights” that “appertain to man in right of his being a member of society” but “of which his individual power is not, in all cases, sufficiently competent”—32 **stand[s] up**, as a jurisprudential account of civil rights, both those passed into law fifty years ago, and in various statutory provisions both before and since? **better**, I think, **than** our current lawyerly equation of “civil rights” with **“antidiscrimination rights.”** At least **echoes of** Paine’s **[this] definition can be heard** not only in the Civil Rights Act of 1964, but **in** virtually **all of the** various **civil rights acts and movements**, **of both the nineteenth and twentieth centuries [and is most consistent with]**. Thus, according to **the framers** and advocates **of** **the** seminal **Civil Rights Act** of 1866, “civil rights” include rights to enter and enforce contracts; to buy, hold, rent, and sell property; to sue, be parties, or give evidence in judicial proceedings; and to enjoy the protection of the state and its laws pertaining to the security of persons and property33—all of which fit readily Paine’s description of civil rights as that subset of natural rights that should attach by virtue of membership in society, and that require legal definition and institutions to perfect.

Prefer this definition for field context since it reconciles the different ways the term is used historically in context and is most consistent with the way the term is used in literature. Field context is key to fairness since it determines the basis of pre-round prep and is key to education since it fosters critical thinking, real world education, and research.

**Next,** the only way to conceptualize natural rights is through rights that could exist in a state of nature. **Beitz[[4]](#footnote-4):**

The four features are as follows. First, **natural rights** are requirements whose force **do**es **not depend on** the moral conventions and **positive laws of** their **society.** They are critical standards for a society’s conventional and legal rules. Second, natural rights are pre institutional in a logical (rather than a historical) sense: **their content is [by definition] conceivable** independently of any reference to the structural features of institutions. Thus we might say that natural rights are the rights (or a subset of the rights) that exist **in a pre political state of nature.** Taken together, the first two elements describe standards that reside at a deep level of our normative beliefs and operate as comprehensive constraints on human conduct in whatever realm this con duct may occur—in interpersonal relations, domestic society, and inter national life. They are in this sense “fundamental.” Third, natural rights are possessed by persons “at all times and in all places,” regardless of the stage of development of a society and its productive forces, the details of its political structure, or the content of its religious traditions and political culture. This is one way in which natural rights might be said to be“universal.” Finally, human rights belong to persons “as such” or, in the customary phrase used by Simmons, “simply in virtue of their humanity.” Human rights are grounded in considerations that apply to all human beings, regardless of their spatial locations or social relationships. This is another (and a distinct) sense in which natural rights might be described as “universal.” The first feature, that natural rights are independent of a society’s moral conventions and positive laws, is the least problematic for human rights. This is true, at least, if the idea is stated in its simplest form, for in this form it holds only that the content of natural rights is not determined by the moral and legal rules that actually prevail in any particular existing society. Natural rights have some other basis than conventional belief or enactment in law. This is essential if natural rights are to function as critical standards: it must be possible to say, for example, that a slave holding society violates the natural rights of those whom its laws classify as slaves, and moreover, that the violation occurs even when the society’s laws track the content of its moral conventions. Contemporary human rights plainly share this feature of natural rights. Within the natural rights tradition, the feature of independence of positive law and convention has sometimes been conflated with another feature of natural rights. This is usually framed as an ontological property, as when it is said, for example, that natural rights “exist” independently of positive law. This latter idea—that natural rights have some sort of permanent existence in a separate normative order—is difficult to render clearly. Perhaps it is an elliptical way of stating a view about the justification of natural rights—for example, that they are based on or derivable from the natural law conceived as God’s law, knowable by human beings through the right use of reason.10 If we take this idea as part of the natural rights model, then we have arrived at one point at which the model diverges from contemporary human rights practice, for it is explicit in the origins of this practice that human rights doctrine does not incorporate any view about the justification of human rights in an independent order of natural rights, in the natural law, or in God’s commands. To repeat Maritain’s characterization of international human rights, they are “practical conclusions which, although justified in different ways by different persons, are principles of action with a common ground of similarity for everyone.”11 Human rights are like natural rights in being critical standards whose content is not determined by the moral conventions and legal rules of any particular society, but they are unlike natural rights in not presupposing any one view about their basis or justification. In that sense it cannot be said—and in any case, it is not part of international doctrine—that human rights are “out there,” existing in some separate normative order. Now consider the idea that human rights are pre institutional—that they are rights one would have in a pre political state of nature. The most influential natural rights theorists for modern thought imagined that **political society developed by means of a social contract from a** pre political (although socialized) “**natural state**” or condition **in which people had certain rights** which it was everyone’s responsibility to respect**.**13 Locke, for example, holds that the “fundamental law of nature” recognizes rights to “life, health, liberty, [and] possessions.”14 These rights express moral protections upon which people are entitled to insist regardless of their institutional memberships and which, therefore, no political institutions may infringe. **The idea of a state of nature** models this fact: it **imagines that individuals establish institutions in a** pre-institutional **situation already constrained by certain** moral **requirements**. Because persons have no power to abrogate these requirements,**[and] any institutions they establish must respect them.** If natural rights are pre institutional then it should be possible to conceptualize them as existing in a condition where there are no institutions. It is not difficult to conceive of the Lockean rights in this way. The same cannot be said of some of the rights found in the contemporary human rights documents. Consider, for example, human rights to political asylum, to take part in the government of the country, or to free elementary education. Because the essence of these rights is to describe features of an acceptable institutional environment, there is no straightforward sense in which they might exist in a state of nature**.**

**Thus,** natural rights exist solely as a function of our humanity, independently of any external constraints including specific moral systems or practical issues. Since civil rights are just a subset of natural rights, regardless of how the right to be forgotten is defined, the resolution is not a prescriptive question of whether a government ought to guarantee people get a certain kind of treatment, but rather a prima facie descriptive question about whether a certain right is consistent with an already existing set of rights. **This also means** **a)** counterplans don’t negate – even if an alternatives are better for some reason, they don’t deny the claim that the right to be forgotten fulfills the criteria of fitting into a certain set of existing rights, **b)** all prescriptive frameworks reliant on the effects of any specific policy fail since the resolutional question is whether any policy’s teleological justification is included in a certain subset of rights.

**Observation 2** is ***Point Blank***. The neg has the **proactive burden** of proving that the right to be forgotten is not consistent with a set of natural rights, and the **aff burden** is to prove that it could reasonably be consistent. Prefer this burden:

**First,** we assume that individuals have rights unless there’s a proactive conflict or claim to violate them. Nobody would consent to a system that did otherwise since there would never be any guarantee that rights would be protected if every right required a proactive justification. Consent is a prerequisite to any ethical system since nobody would follow a system that they didn’t consent to.

**Second,** logical consequence doesn’t imply 100% probability, but merely a reasonable expectation. For example, the statement “if there are clouds, it ought to rain” doesn’t imply a 100% chance of rain, but a reasonable expectation of rain given that there are clouds. Textuality is key to fairness since it’s the only stable basis of pre-round prep. **And,** the aff having to prove a 100% link explodes neg ground since all they need to do is prove a tiny flaw with the aff advocacy, while I have to win it in its entirety. Cross-apply ground.

**Third,** civil rights can overlap – if something is a right, another right can still override it. For example, a right to protection of personal property could be and is consistently overridden when it comes into conflict with other rights such as the right to life. Thus, unless there is a proactive reason not to include the right to be forgotten in our set of civil rights, we’d always assume it is a civil right since it could always still be overridden by another right.

**Fourth,** the right to be forgotten can have reasonable exceptions. **Andrade[[5]](#footnote-5):**

As mentioned above, the exercise of **the right to oblivion may clash with other rights, generating conflicts with other protected interests that demand a delicate balancing of rights.** It is important to see that, in the same way that the right to be forgotten is not novel, neither is balancing its application with other rights and interests. In fact, a number of important criteria have already been developed in jurisprudence or enshrined in legislation to resolve some of these conflicts. This is the case of criminal law, where the right was first developed. In cases of conflict between the right to oblivion of the judicial past (deletion of information regarding references to one's past criminal actions and convictions) and the right to information (accessing it), the time factor has been used as a decisive criterion. If the information is considered newsworthy (given its recent occurrence), then the right to information prevails, if not the latter is overwritten by the right to oblivion (the legal sentence can still be accessed but the party's names are no longer included). In addition, two further **exceptions** are foreseen in which the right to information overwrites that of oblivion. They **concern facts** pertaining to history or **considered of historical relevance, and facts linked to the activities of public figures** (whose behaviour, due to their role and public responsibilities, need to be transparent for society**). Data** protection **laws have formulated a** number of **principles for** legal **processing of** personal data, as well as **exemptions**, **and may** alsobe used to **solve** eventual **conflicts involving the right to be forgotten.** Respect for the purpose principle (according to which only data relevant to the defined purpose may be lawfully processed), and the proportionality principle (which prohibits processing of excessive data for the previously established purpose), are important criteria that may indeed contribute to the resolution of cases of conflict involving the right to oblivion. Moreover, **data protection law** also **establishes** repeal procedures or **safeguards for processing of** personal data. This is the case of the appropriate safeguards that member states will have to lay down for personal **data stored for** longer periods for **historical, statistical or scientific use** (Article 6 (e), DPD). This is also the case, as already mentioned, of data saved solely for journalistic purposes or artistic or literary expression (article 9, DPD). These exemptions should also be taken into account in balancing the right to oblivion with the right to freedom of expression. This balancing process should, moreover, take into consideration the newsworthiness of the information (as in criminal law jurisprudence) and the conceptualization of the right to be forgotten from an identity perspective. This conceptual twist is important, as it may enhance the applicability of the right to be forgotten to the detriment of other rights (as in the case of the household exemption, in which the right to oblivion is applied from an identity not a privacy perspective). **Furthermore,** in particular cases, it is important to acknowledge that the right to be forgotten should not always prevail. As Werro explains, **when “information about the past is needed to protect the public today, there will be no right to be forgotten.** This could be the case, for example, when a person who has abused his managerial position to gain financial advantages in the past seeks employment in a comparable position.” The right to oblivion will also face difficulties regarding certain members of society (politicians, public figures) whose transparency is important from a point of view of political credibility and democratic accountability

Any other definition or interpretation of the right to be forgotten is unfair since it **a)** is inconsistent with every single interpretation in the real world and the literature, cross-apply field context, and **b)** kills quality of aff ground since it would force the aff to prove 100% solvency as well as defend scenarios where the right to be forgotten wouldn’t be waived even if it meant the end of the world, which is impossible to defend. Cross-apply ground. **Thus,** unless there’s no reasonable positive reason to implement the right, exceptions solve potential harms to the aff and we affirm.

**Observation 3** is ***Rights on Rights on Rights***. Our existing set of natural rights implies a right to be forgotten for three reasons:

**First** is **right to** **privacy:** Privacy is an essential natural right. **Konvitz[[6]](#footnote-6):**

To **mark[ing] off** the limits of the public and the **private realms** is an activity that **began with [hu]man[kind]** himself and is one that will never end; for it is an activity that **[and] touches the [its] very nature** of man; and man's nature is, to a considerable degree, made and not given**. [Hu]man[s] constantly transcend**s **[themselves]** himself, **and in the process** of transcendencehe **discover**s in himselfnew dimensions, new heights, and **new depths.** He reaches eminences never before dreamed of, and debasements to which no one before had fallen. The Chorus in Antigone and the Psalmist thousands of years ago noted the wonder that is man17-man in tension, man in the process of becoming, emergent man. For our purpose, the figure of speech used by Locke to describe **this process** may be helpful; for in his description of the phenomenon of transcendence Locke saw and projected **[leads to] the** distinction between public and private, which, despite disguises, can be detected in the **rationale of privacy.** In the state of nature, Locke wrote, the earth and all the fruit produced by nature [everything is] belong to mankind in common. "The fruit or venison which nourishes the wild Indian . . . must be his, and so his-i.e., a part of him-that another can no longer have any right to it before it can do him any good for the support of his life."18 "**Every[one]** man **has** a '**property**' **in** his **[their] own 'person.'** This nobody has any right to but himself."'9 **But** a **[hu]man[s]** is **[are] more than** his **skin and bones.** A man works with his body and his hands. He thus transcends his skin. His very sweat, as he works, reaches out beyond his skin. By labor, man extends "his own person." That with which he mixes his labor becomes a part of his person. Since a man has "a property in his own person," that with which he mixes his labor becomes "his property."20 But if "property" is that which pertains to a **[our]** man's **"own person**,**"** then the term **encompasses** his **life and liberty as well** as that with which his sweat has mixed**.**21 **What is important** here, in the context of our discussion, **is** Locke's view ofeach manbeing and making his "own person," so **that all [humans]** that he **become**s **and** all that he **makes are part of** "his **[their] own person.**"

The right to be forgotten is the logical extension of a natural right to privacy – in the state of nature, destroying or removing what could potentially be harmful is an extension of natural rights. **Locke[[7]](#footnote-7):**

And that all men may be restrained from invading others rights, and from doing hurt to one another, and **[In the state of nature,] the [execution of the] law of nature** be observed, which will[s]eth the peace and preservation of all mankind, the execution of the law of nature **is**, in that state, **put into every man's hands,** whereby **every one has a right to punish the transgressors of that law** to such a degree, as may hinder its violation: **for the law of nature would [otherwise]**, as all other laws that concern men in this world '**be in vain**, if there were no body that in the state of nature had a power to execute that law, and thereby preserve the innocent and restrain offenders. And if any one in the state of nature may punish another for any evil he has done, every one may do so: for in that state of perfect equality, where naturally there is no superiority or jurisdiction of one over another, what any may do in prosecution of that law, every one must needs have a right to do. Sec. 8. **And thus, in the state of nature, one man comes by a power over another**; but yet no absolute or arbitrary power, to use a criminal, when he has got him in his hands, according to the passionate heats, or boundless extravagancy of his own will; but only **to retribute to him**, so far as calm reason and conscience dictate, what is proportionate to his transgression, which is so much as may serve for reparation and restraint: for these two are the only reasons, why one man may lawfully do harm to another, which is that we call punishment. **In transgressing the law of nature, the offender declares himself to live by another rule than that of reason** and common equity, which is that measure God has set to the actions of men, for their mutual security; **and** so he **becomes dangerous to mankind**, the tye, which is to secure them from injury and violence, being slighted and broken by him**.** Which being a trespass against the whole species, and the peace and safety of it, provided for by the law of nature, **every man** upon this score**, by the right** he hath **to preserve mankind in general, may** restrain, orwhere it is necessary, **destroy things noxious to them**, and so may bring such evil on any one, who hath transgressed that law, as may make him repent the doing of it, and thereby deter him, and by his example others, from doing the like mischief. And in the case, and upon this ground, every man hath a right to punish the offender, and be executioner of the law of nature.

**Second** is **right to property:** Property rights are among the most basic of natural rights, as they’re what let people be free individuals. **Sun**[[8]](#footnote-8)**:**

This passage shows that, while property rights can be asserted and exercised by persons through their acts of taking possession of things, they are not fully actualized in the social world unless recognized by others. In the Philosophy of Right, Hegel emphasizes this point: ‘**The concept of property requires that a person should place his will in a thing, and** the next state is precisely the realization of this concept. My inner act of will which says that something is mine must also become recognizable by others’. The recognition of property rights, as Hegel points out, is mutually and reciprocally achieved in a way to fulfill the second part of the imperative set out by him for the commandment of property right: ‘be a person and respect others as person.s’37 This two-part imperative can only be realized as a whole, and each part should be fulfilled simultaneously. **With** the **exclusive control over** certain **things, one will to be a free person with his own distinctive individuality** (to be a person). **Yet** Hegel thinks that one’s personal freedom needs to be recognized by others. **Without** this kind of **recognition, personal freedom is**, in fact, **not realizable** in the social world**. Since property constitutes a person’s external sphere of personal freedom, the recognition of his control over property from others is the way in which he is recognized** and respected **as** a **free** person**. In reciprocity, he recognizes others’ control** over their properties **and thereby recognizes** and respects **others as persons as well.** In Hegel’s earlier works, he repeatedly emphasizes the requirement of mutual recognition when he talks about property. For example, he points out that ‘Taking possession is the empirical act of seizure, and this is to be justified through recognition. It is not justified merely by virtue of its having occurred’.38 Moreover, he even concludes that ‘The essential being of ownership is the determinate existence of its right-governed absolute aspect, namely that in ownership persons recognize one another as persons’.

In fact, property rights preclude on a moral level since all argumentation presupposes a conception of private property rights. **Hoppe**[[9]](#footnote-9)**:**

Alternatively, in the second case of universal and equal co-ownership, the requirement of equal law for everyone would be fulfilled. However, this alternative would suffer from an even more severe deficiency, because if it were applied, all of mankind would instantly perish. (Since every human ethic must permit the survival of mankind, this alternative must also be rejected.) **Every action of a person requires the use of some** scarce **means** (**at least of the person’s body and its standing room**)**, but if all goods were co-owned** by everyone**, then no one**, at no time and no place, **would be allowed to do anything unless he had previously secured every other co-owner’s consent to do so.** Yet how could anyone grant such consent were he not the exclusive owner of his own body (including his vocal chords) by which means his consent must be expressed? Indeed, **he would first need another’s consent in order to be allowed to express his own, but these others could not give their consent without having first his, and** so it would go on. This insight into the praxeological impossibility of “universal communism,” as Rothbard referred to this proposal, brings me immediately to an alternative way of demonstrating the idea of original appropriation and **private property** as **[is] the only correct solution to the problem** of social order.3 Whether or not persons have any rights and, if so, which ones, can only be decided in the course of argumentation (propositional exchange). **Justification** - proof, conjecture, refutation - **is argumentative justification. Anyone who denied this proposition would become involved in a performative contradiction because his denial would itself constitute an argument. Even an ethical relativist would have to accept this** first proposition, which is referred to accordingly as the apriori of argumentation. From the undeniable acceptance - the axiomatic status - of this **apriori of argumentation**, two equally necessary conclusions follow. First, it follows from the apriori of argumentation when there is no rational solution to the problem of conflict arising from the existence of scarcity.

This means denying property rights concedes its value.

Agents have a private property right to their personal data. **Victor**[[10]](#footnote-10)**:**

“Property” is a notoriously nebulous concept, and Schwartz (as well as other theorists of data property) has declined to adopt a cohesive definition, understanding “property as a bundle of interests rather than despotic dominion over a thing.” Proponents of a regulated data property regime all focus on the ways that **personal information is already treated as a commodity by corporations** and argue that protecting such data with a legally cognizable property entitlement, vested in data subjects and regulated in various ways, provides necessary protections that are absent in the status quo. Rather than arguing that the free market can do all the work of protecting privacy, as Lessig does, they instead seize on some of the other rights and remedies commonly associated with property regimes and explore how **conceiving of data as property** for certain purposes **might** in fact **offer the best option for protecting** consumer **privacy while still enabling individuals to share** their **data** with data usersunder certain circumstances. For example, Schwartz especially seizes on one of the features commonly associated with property regimes: under some property schemes, “the burden of a property right ‘runs with the asset’” in question.26 **This** feature **allows for property rights to create burdens that bind third parties**—third parties with whom I have no explicit legal relationship nonetheless have a duty to respect my property rights in an asset—in contrast to contract rights, which bind only the specific parties in privity.27 This is particularly important in the context of data privacy, **because it allows a data subject to retain** some **rights in her data, even in transactions between** data **users** to which the subject is not a party.Schwartz uses this definition to argue that crafting a regime in which consumers have legally enforceable property interests in their data would “enable[] certain interests to be ‘built in’” to personal data.28 **Such a regime would “allow[] individuals to share, as well as to place limitations on, the future use of their personal information”** and is property-like in that data subjects’ interests “follow the personal information through downstream transfers and thus limit the potential third-party interest in it.”29 Schwartz’s model, in this respect, is predicated on the assumption that free alienability is not “an inexorable aspect of information-property.”30 Indeed, Schwartz argues that a propertized data scheme, even while treating data as a commodity for certain purposes, should place limits on a consumer’s right to fully sell her personal information on an open market

The right to be forgotten is most consistent with the individual’s property right to personal data by granting default entitlements to personal information. **Victor 2:**

**The** various **requirements imposed on data users by the** draft **Regulation are** all **predicated on the notion that** the data subject maintains the default entitlement to her personal information. Article 6 outlines a limited set of circumstances in which the collection and processing of data is lawful, the clearest of which is explicit “consent” by the data subject. Under this framework, **a data subject must explicitly opt in to granting a** data **user access to her information in order for** future **processing to be lawful.** Article 6 also lists specific (though seemingly rare) circumstances where no explicit consent has been proffered but the data user has some obligation that necessitates the data processing. For example, if “processing is necessary for the performance of a contract to which the data subject is party,” it is lawful even without the explicit consent of the data subject.45 However, even in these special situations where the data subject has not explicitly consented to processing, she must still be explicitly informed that her data has been collected and that she maintains the prerogative to end any data processing by requesting that her data be erased from the databases in which it is currently being held.46 **The data subject may exercise a** right of exit—namely, her “right to erasure” (or **“right to be forgotten”**)—**at any time**, with restrictions based on the original grounds under which the data was collected. For example, **if the data processing was originally lawful only because the data subject had expressly consented**—the most likely scenario—**the** data **subject may withdraw that consent and demand erasure** at any time.47 But if the processing was based on one of the circumstances in which explicit consent is not necessary (for example, the “processing is necessary for the performance of a task carried out in the public interest”48), the data subject may still object to the processing.49 **Unless the** data **user can demonstrate “compelling legitimate grounds for the processing,”** the data user must also erase this data. **In this respect, the** draft **Regulation is predicated on the assumption that although data is a kind of commodity capable of changing hands, the** data **subject always retains the ultimate entitlement to this property. A** data **user may** essentially **receive a “license” to use the subject’s data**, since the data subject has temporarily waived her right to exclude it from using her information. **But the** data **subject maintains the discretion to terminate this license** and force the data user to cease storing or using her information. The draft Regulation arguably goes a step beyond most real and intellectual property schemes in that it establishes that individuals always maintain the ultimate entitlement to their own personal data and may not forfeit their rights through contract. Like in Schwartz’s proposed model, individuals may never completely sell or forfeit their right to block use of their personal information.52 In this respect, the draft Regulation’s scheme is similar to a more unusual area of intellectual property: the moral rights of artists, which grant an artist a proprietary interest in his own work, even after it has been sold, that prevents others from altering or destroying the work.53 In France, an artist may never contract away this right.

**Third** is **right to identity:** The right to identity is the right to have the attributes of personality that are unique to a particular person. **Andrade[[11]](#footnote-11) 2:**

**The right to identity can be defined**, in a very basic manner, **as the right to have the *indicia***, attributes **or** the **facets of personality which are** characteristic of, or **unique to a particular person** (such as appearance, name, character, voice, life history, etc.) **recognized** and respected **by others**. The Italian jurisprudence added a more substantive dimension to the right to personal identity**,** describing it as “the right everybody has **to** appear and to **be represented in social life** (especially by the mass media) **in a way that** fits with, or at least **does not** falsify or **distort**, **his or her personal identity.”** According to this assertion, the right to personal identity concerns the correct image that one wants to project in society. At a more general level, the right to identity can be defined as the “right to be oneself”,14 that is, the right to be different from others, the right to be unique. As noted by Neethling, the right to identity reflects a person’s definite and inalienable “interest in the uniqueness of his being.” According to this conceptualization, **a person’s identity is infringed if any of their *indicia* are used without authorization in ways which cannot be reconciled with the identity** (and social image, projection) **one wishes to convey.**

A right to identity is key since it’s what distinguishes individuals, meaning absent identity, all ethical theories *collapse to utilitarianism* since there are no features that would give any individual particular ethical status, meaning we’d always do what was best for the majority.

The right to be forgotten is key to the right to identity; it is only through it that we can deconstruct our identities and create new ones. **Andrade 3:**

**The right to be forgotten**, as the right for individuals to have information about them deleted after a certain period of time, not only concerns a fundamental identity interest, it also **develops and enriches the conceptualization of the right to personal identity. The right to oblivion underlines not only the right to be different from others, but** also **the right to be different from** oneself, namely from **one's past self. This** is an extremely important **nuance** as it **draws attention to the** essential **role played by the right** to be forgotten **in enabling the de-construction of one’s identity before a new, different one can be constructed.**

1. http://www.merriam-webster.com/dictionary/ought [↑](#footnote-ref-1)
2. [Mackie, John Leslie. Fellow of University College, Oxford. Ethics Inventing Right and Wrong. 1977. Chp 1: “The subjectivity of Values”. P 38.] [↑](#footnote-ref-2)
3. Toward a Jurisprudence of the Civil Rights Acts by Robin West (2014)

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   http://ssrn.com/abstract=2363036 [↑](#footnote-ref-3)
4. The Idea of Human Rights (2009)

   Charles R. Beitz

   Oxford University Press - Print [↑](#footnote-ref-4)
5. Noberto Nuno Gomes de Andrade. “Oblivion: The Right to Be Different…from Oneself Reproposing the Right to Be Forgotten.” Monograph «VII International Conference on Internet, Law & Politics. Net Neutrality and other challenges for the future of the Internet». 2012. http://ssrn.com/abstract=2033155 [↑](#footnote-ref-5)
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   http://www.jstor.org/stable/1190671 [↑](#footnote-ref-6)
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8. Haochen Sun. “Designing Journeys to the Social World: Hegel’s Theory of Property and His Noble Dreams Revisited.” Cosmos and History: The Journal of Natural and Social Philosophy, vol. 6, no. 1, 2010 [↑](#footnote-ref-8)
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11. Noberto Nuno Gomes de Andrade. “Oblivion: The Right to Be Different…from Oneself Reproposing the Right to Be Forgotten.” Monograph «VII International Conference on Internet, Law & Politics. Net Neutrality and other challenges for the future of the Internet». 2012. http://ssrn.com/abstract=2033155 [↑](#footnote-ref-11)