

# Space Property Rights:

## An Activist's Approach

By Glenn H. Reynolds

*"A goat owned in common always starves."* Despite pre-dating the space age by centuries, this African proverb speaks volumes about the reasons for having private property rights in outer space. And, after what seems like centuries sometimes, but is really just a few decades, we stand on the threshold of an era when space-based private property rights will be a reality.

### Some History

Getting to this point hasn't been easy. At the beginning of the Space Age, the first instinct of many scientists and government officials was to outlaw private property rights in space resources, making space a sort of giant Antarctica where scientists could do research but where no economic activity could take place. Part of this was the spirit of the age: when people in the 1960s imagined space activity taking place, they assumed that governments would be doing it. Governments, during that Cold War era, were doing everything important, people assumed, so naturally they would be doing everything that was done in a place as important as outer space. And the most important space-related legal document of the 1960s, the 1967 Outer Space Treaty, reflects this assumption: it doesn't actually forbid nongovernmental activity in outer space, but it doesn't take much account of it, either.

In the 1970s, things got worse. The "Moon Treaty" of 1979 did forbid private property rights in outer space. Instead of privately financed space development, and the prospect for space "homesteading," it substituted a mam-

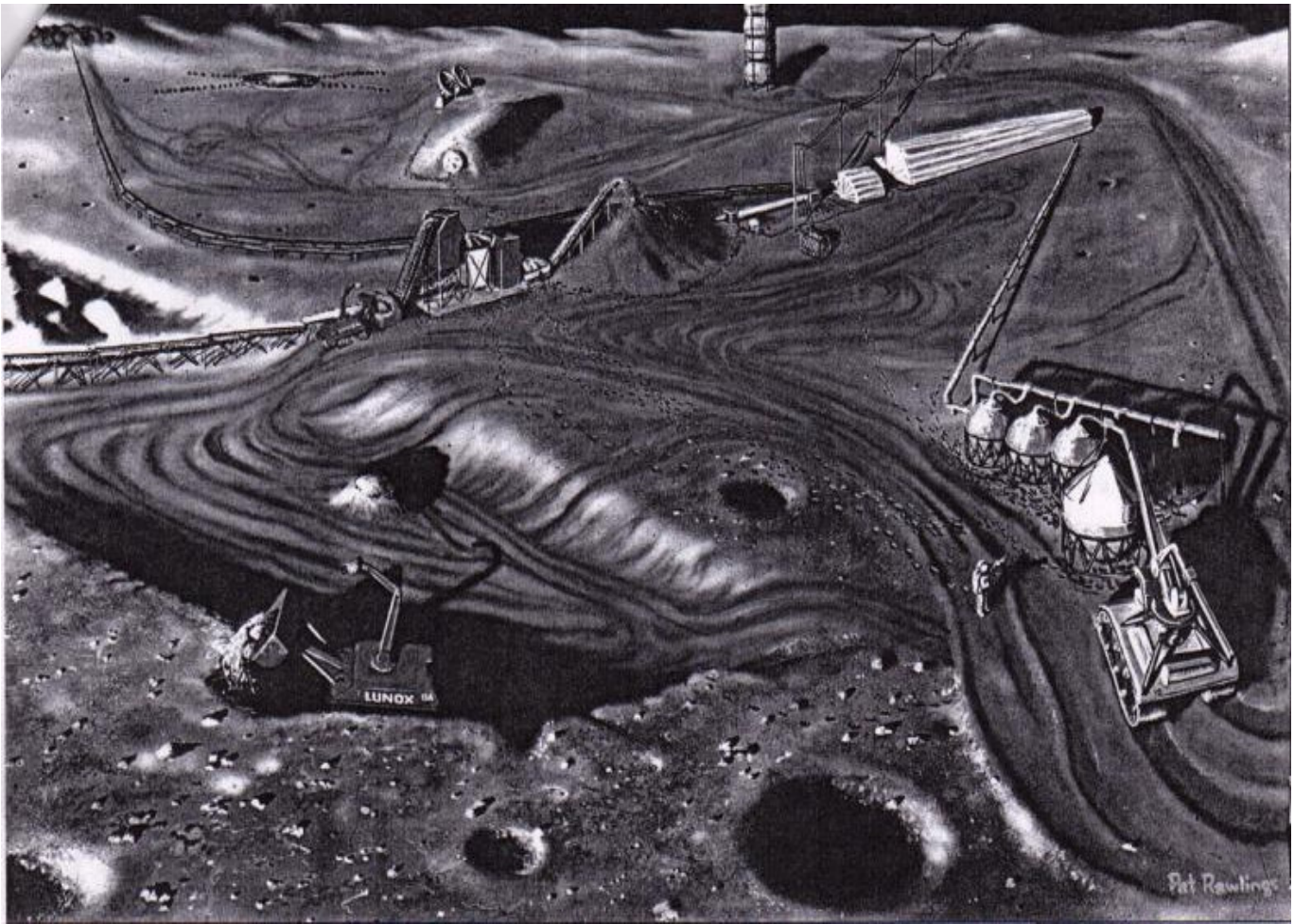
moth multinational consortium that would have a monopoly on economic activity in outer space. The Moon Treaty did have one beneficial effect: it galvanized the space community (in particular one of NSS's predecessor organizations, the L-5 Society), which organized and successfully blocked U.S. ratification of the treaty, making it a dead letter for all practical purposes.

In the 1980s, the Challenger explosion put an end to notions that the space shuttle was going to hold a monopoly on American space launches. And a less-heralded, but important, initiative from the Reagan Administration opened up the field to private communications satellite systems, making today's Iridium, Teledesic, GlobalStar and so on possible.

### What Kind of Property Rights?

Now, at the end of the 1990s, the idea of private for-profit activity in space seems neither impossible nor threatening. And a number of activists have begun to explore the idea of space property rights not as an academic exercise but with near-term applications in mind.

That turns out to pose some problems. After all, while it's pretty obvious that property rights are better than government control, things become much less obvious when the question changes from "property rights or not?" to "what kind of property rights?" Following are some of the ideas that are being kicked around by space lawyers and space activists, along with some thoughts on what can



Artwork: Pat Rawlings/NASA

be done to make these ideas become a reality sooner, rather than later.

**Homestead Rights:** This, as you might imagine, is very popular with space activists. Put a base on the Moon (or Mars, or an asteroid, for that matter). Explore the vicinity. Get property rights to the area you actually occupy plus a "buffer" zone big enough to accommodate future expansion. NSS Director Alan Wasser has been a leading exponent of such an approach, and argues that the United States should undertake such a program first, as a means of encouraging the international community to move swiftly toward a regime that recognizes such rights, instead of simply talking the issue to death. The way to do this, says Wasser, is "for the United States to pass a law directing American courts to grant recognition to an extraterrestrial land claim made by any private entity that has established a true space settlement."

**Telepresence:** Wasser's approach stresses human settlement. Everybody likes that, but some feel that it is better to "jump start" things before human settlement becomes feasible—and, in fact, as a way to make human settlement feasible faster. As a shorter route, some activists argue that a claim might be awarded for robotic exploration.

For example, a company that visited an asteroid with a robotic spacecraft and returned minerals to Earth would

have an exclusive claim to the asteroid's mineral resources. Space entrepreneur Jim Benson has such plans on the books now. According to Benson, "If the U.N. doesn't like it, they can send a tank up to my asteroid—which, of course, they can't." Talk of tanks aside, there is some precedent for this sort of claim: in maritime salvage law, courts have recognized claims based on telepresence. On the plus side, such an approach would get the ball rolling much sooner on property rights, and thus perhaps ignite a space "land rush" in the near future. The downside, of course, is that it might be a robot land rush, without many berths for humans any time soon.

**Claims Registries:** An even shorter-term approach is the claims registry. This is a system that establishes priority without guaranteeing the right to exclude others. There is already a space claims registry operating at the Archimedes Institute, run by NSS policy committee member Professor Larry Roberts ([www.permanent.com/archimedes](http://www.permanent.com/archimedes)). Its guidelines establish different classes of claims, based on effort. Human-visited claims are the strongest, those established by remote sensing the weakest. The problem is that the claims are valid only to the extent that some future regulatory scheme recognizes them. Again, this might be enough to ignite a land rush, but it might not.

# The Space Property Rights Market Test

For years, whenever I talked about space property rights, I always dreaded The Question: "Who would want to own property on the Moon anyway?" To a space activist the answer seems obvious—we would!—but to the kind of people who ask it, the question seems to answer itself.

Not anymore, California entrepreneur Dennis Hope has been selling 1800-acre plots of land on the Moon for over a year now, and he's doing, well, a land-office business. At \$15.99 a plot, plus 'lunar tax' and shipping, he's selling over a hundred a day.

Hope's marketing chutzpah won him the coveted "Rosie" award for shameless promotion, but he's doing more than just making some easy green. Better than any focus group or marketing survey, Hope has proved that there is a market for lunar land. The fact that tens of thousands of people are forking out hard cash for a title—even a rather dubious title—to land on the Moon proves that the market is there. Hope's claim is based on the fact that he wrote a letter to the UN claiming the Moon and no one wrote back to object. Imagine what people might pay for a title that had real legal backing!

And Hope is doing something else: he's creating a constituency. Although you'd have to be fairly dumb to think that he's providing good and marketable title to lunar land, each of Hope's customers now has at least a symbolic stake in a settled and subdivided Moon. Nor are they just space activists: they include such luminaries as Harrison Ford, David Letterman, Tom Hanks and Ronald Reagan. Indeed, that's Hope's strongest claim that the titles may someday be worth something. Within ten years, he expects to have sold over 3 million plots of lunar land. That, he claims, is a constituency big enough to make the world take notice.

Of course, it's not all a bed of roses for Hope. Space lawyer and activist Declan O'Donnell is threatening a lawsuit to bar further sales. O'Donnell fears that Hope's scheme might chill interest in more legitimate lunar property rights schemes. But from my perspective, that just makes things better. Now when I get The Question, I just say: "What do you mean? Tens of thousands of people have bought land on the Moon already. And they're even suing each other over title!"

## Growing Interest

During the Bush Administration, there was an abortive move toward establishing a space property rights regime that partook of all of the above approaches. It fizzled when some bureaucrats feared that the "giggle factor" was too high. But it appears that interest in some sort of space property rights regime is again growing, pushed by this decade's explosive growth in commercial space opportunities and by a greater openness to such previously giggle-inducing ideas as space tourism and space-based solar power. After all, when ventures like Teledesic, Iridium, and Ellipsat can raise billions of dollars in private investment capital—and when smaller scale ventures like space "cemetery" services can make money—the giggle factor is less of an issue.

Of course, there is one serious objection to many of these space property rights schemes: according to academic economists, the award of property rights to those who are first to develop resources tends to attract "superoptimal" levels of investment. That is, homestead-type rights tend to produce development that occurs too

fast. I suspect, however, that space activists will echo the old computer programmer's reply: "It's not a bug. It's a feature!" For most of us, there is no such thing as "too fast" development. It's certainly the kind of problem we'd like to face.

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## Further Reading

Robert P. Merges & Glenn H. Reynolds, *Space Resources, Common Property, and the Collective Action Problem*, 6 NYU Environmental LJ. 107 (1997)

Lawrence D. Roberts, *The Law of the Commons: A Framework for the Efficient and Equitable Use of the Lagrange Points*, 6 Conn. J. Int'l L. 151 (1990)

Alan Wasser, *Staking Claims in Space*, Space News, April 13-19, 1998.