



Illustration by JOHN HENDRIX

Who Owns the Moon?

Could allowing lunar property rights lead to a “moon rush”? Sure. But that’s a *good* thing.

By GLENN HARLAN REYNOLDS

The moon has been in plain view for all of human history, but it’s only within the past few decades that it’s been possible to travel there. And for just about as long as the moon has been within reach, people have been arguing about lunar property rights: Can astronauts claim the moon for king and country, as in the Age of Discovery? Are corporations allowed to expropriate its natural resources, and individuals to own its real estate?

The first article on the subject, “High Altitude Flight and National Sovereignty,” was written by Princeton University legal scholar John Cobb Cooper in 1951. Various theoretical discussions followed, with some scholars arguing that the moon had to be treated differently than earthbound properties and others claiming that property laws in space shouldn’t differ from those on Earth.

With the space race in full flower, though, the real worry was national sovereignty. Both the United States and the Soviet Union wanted to reach the moon first but, in fact, each was more worried about

what would happen if they arrived second. Fears that the competition might trigger World War III led to the 1967 Outer Space Treaty, which was eventually ratified by 62 countries. According to Article II of the treaty, “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.”

So national appropriation was out, along with fortifications, weapons and military installations. But what about private property rights, personal and corporate? Some scholars argue that property



Above: A kindergarten class poses with the NASA and 50th Anniversary logos at a celebration in Barstow, California.

Right: Educators Elysee Bell and Heather Burgess with Cosmo, an inflatable alien figure, display a chocolate portrait of NASA's 50th Anniversary logo. The entirely edible portrait was created for a Space Week at the Robert M. Beren Academy in Houston, Texas.



50 Years of NASA

On October 1, the National Aeronautics and Space Administration (NASA) will celebrate 50 years of scientific innovations and discoveries that are viewed as icons of human achievement around the globe. In recognition of five decades of space exploration and future challenges, NASA has put on air shows, art exhibits, open houses at its field centers, film festivals and discussions on space exploration. Space enthusiasts, students, scientists, teachers and art lovers have participated.

NASA was established by the U.S. Congress in 1958 "to provide for research into the problems of flight within and outside the Earth's atmosphere, and for other purposes." The agency is headquartered in Washington, D.C., with 10 field centers and other facilities across the United States.

For more information:

NASA's 50th anniversary

<http://www.nasa.gov>

rights can exist only under a nation's dominion, but most believe that property rights and sovereignty can be distinct.

In something of an admission that this is the case, nations that thought the Outer Space Treaty didn't go far enough proposed a new agreement, the Moon Treaty, in 1979. It explicitly barred private property rights on the moon. It also provided that any development, extraction and management of resources would take place under the supervision of an international authority that would divert a share of the profits, if any, to developing countries.

[President Jimmy Carter's] administration liked the Moon Treaty, but space activists, fearful that the sharing requirement would subjugate American mineral claims to international partners, pressured the U.S. Senate, ensuring that the United States didn't ratify it. Although the Moon Treaty has entered into force among its 13 signatories, none of those nations is a space power.

So property rights on the moon are still the subject of international discussion. But would anyone buy lunar land? And what would it take to establish good title?

The answer to the first question is clearly "yes." Lots of people would buy lunar land—and, in fact, lots of people have, sort of. Dennis Hope, owner of Lunar Embassy [which "sells"

property on celestial bodies], says he's sold 200 million lunar hectares as "novelties." Each parcel is about the size of a football field and costs \$16 to \$20. Buyers choose the location—except for the Sea of Tranquility and the *Apollo* landing sites, which Hope has placed off limits.

To convey good title, Hope essentially wrote the United Nations to say he was going to begin selling lunar property. When the U.N. didn't respond with an objection, he asserted that this allowed him to proceed. Although I regard his claim to good title as dubious, his customers have created a constituency to recognize his position. If he sells enough lunar property, it may become a self-fulfilling prophecy.

So there's demand, even for iffy titles. But what would it take to establish title, rather than Hope's approximation? That's not so clear. In maritime salvage law, which also deals with property rights beyond national territory, actually being there is key: Those who reach a wreck first and secure the property are generally entitled to a percentage of what they recover. There's even some case law allowing that presence to be robotic rather than human. Traditionally, claims to unclaimed property require long-term presence, effective control and some degree of improvement. Those aren't bad rules for lunar property, either. But who would recognize such titles?

Individual nations might. In the 1980 Deep Seabed Hard Mineral Resources Act, the United States recognized deep-sea mining rights outside its own territory without claiming sovereignty over the seabed. There's nothing to stop the U.S. Congress from passing a similar law relating to the moon. For that matter, there's nothing to stop other nations from doing the same.

Ideally, title would be recognized by an international agreement that all nations would endorse. The 1979 Moon Treaty was a flop, but there's no reason the space powers couldn't agree on a new treaty that recognizes property rights and encourages investment. After all, the international climate has warmed to property rights and capitalism over the past 30 years.

I'd like to see something along these lines. Property rights attract private capital and, with government space programs stagnating, a lunar land rush may be just what we need to get things going again. I'll take a nice parcel near one of the lunar poles, please, with a peak high enough to get year-round sunlight and some crater bottoms deep enough to hold ice. Come visit me sometime!



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