#### Anti Blackness and Settler Colonialism are world-breaking forces. Whiteness has conquered every frontier of this planet and seeks to own, privitize, and destroy the universe, WALKER 82

Alice Walker 1982. "Only Justice Can Stop a Curse | Reimagine!." Reimaginerpe.org. n.d. Web. 16 Oct. 2019. <<https://www.reimaginerpe.org/node/946>> Q//H DOA: Feb 19: 2022

This is a curse-prayer that Zora Neale Hurston, novelist and anthropologist, collected in the 1920s. And by then it was already old. I have often marveled at it. At the precision of its anger, the absoluteness of its bitterness. Its utter hatred of the enemies it condemns. It is a curse-prayer by a person who would readily, almost happily, commit suicide, if it meant her enemies would also die. Horribly. I am sure it was a woman who first prayed this curse. And I see her - Black, Yellow, Brown or Red, "aboriginal" as the Ancients are called in South Africa and Australia and other lands invaded, expropriated and occupied by whites. And I think, with astonishment, that the curse-prayer of this colored woman—starved, enslaved, humiliated and carelessly trampled to death—over centuries, is coming to pass. Indeed, like ancient peoples of color the world over, who have tried to tell the white man of the destruction that would inevitably follow from the uranium mining plunder of their sacred lands, this woman—along with millions and billions of obliterated sisters, brothers and children—seems to have put such enormous energy into her hope for revenge, that her curse seems close to bringing it about. And it is this hope for revenge, finally, I think, that is at the heart of People of Color's resistance to any anti-nuclear movement. In any case, this has been my own problem. When I have considered the enormity of the white man's crimes against humanity. Against women. Against every living person of color. Against the poor. Against my mother and my father. Against me . . . . When I consider that at this very moment he wishes to take away what little freedom I have died to achieve, through denial of my right to vote . . . . Has already taken away education, medicine, housing and food. . . . That William Shockley is saying at this moment that he will run for the Senate of my country to push his theory that Blacks are genetically inferior and should be sterilized. . . . When I consider that he is, they are, a real and present threat to my life and the life of my daughter, my people, I think - in perfect harmony with my sisters of long ago: Let the earth marinate in poisons. Let the bombs cover the ground like rain. For nothing short of total destruction will ever teach them anything. And it would be good, perhaps, to put an end to the species in any case, rather than let the white man continue to subjugate it, and continue to let their lust dominate, exploit and despoil not just our planet, but the rest of the universe, which is their clear and oft-stated intention; leaving their arrogance and litter not just on the moon, but on everything they can reach. If we have any true love for the stars, planets, the rest of Creation, we must do everything we can to keep white man away from them. They who have appointed themselves our representatives to the rest of the universe. They who have never met any new creature without exploiting, abusing and destroying it. They who say we poor and colored and female and elderly blight neighborhoods, while they blight worlds. What they have done to the Old, they will do to the New. Under the white man every star would become a South Africa, every planet a Vietnam. Fatally irradiating ourselves may in fact be the only way to save others from what Earth has already become. And this is a consideration that I believe requires some serious thought from every one of us. However, just as the sun shines on the godly and the ungodly alike, so does nuclear radiation. And with this knowledge it becomes increasingly difficult to embrace the thought of extinction purely for the assumed satisfaction of—from the grave—achieving revenge. Or even of accepting our demise as a planet as a simple and just preventative medicine administered to the universe. Life is better than death, I believe, if only because it is less boring, and because it has fresh peaches in it. In any case, Earth is my home—though for centuries white people have tried to convince me I have no right to exist, except in the dirtiest, darkest corners of the globe. So let me tell you: I intend to protect my home. Praying—not a curse—only the hope that my courage will not fail my love. But if by some miracle, and all our struggle, the earth is spared, only justice to every living thing (and everything alive) will save humankind. And we are not saved yet. Only justice can stop a curse.

#### We are told that space travel is for our greatest minds, obscuring the original frontier. For the conquering of the stars requires the conquering of the mind. The *tabula rasa* mind is the original battlefield, violently securing the empty interiority of the enlightenment body. Ownership of the earth secured ownership over one's mind, MOTEN and HARNEY 1

Moten and Harney 21, Fred Moten and Stephano Harney, “The Theft of Assembly”, All Incomplete, Minor Compositions, 2021, pg(16), [HTE] <https://monoskop.org/images/d/df/Harney_Stefano_Moten_Fred_All_Incomplete_2021.pdf> DOA: Feb 19: 2022

If this is true, we should be worried. In its origins, and its contemporary mutations, logistics is a regulatory force standing against us, standing against the earth. Logistics begins in loss and emptiness. And it begins in a fundamental misapprehension called spacetime. The loss that marks ownership, specifically the ownership of private property, the loss of sharing, the loss of the earth and the consequent making of the world, is simultaneously the misapprehension that what is privatized is empty and will be filled by ownership itself, by properties, by properties placed into it. This emptiness will be filled with an interior. This emptiness is confirmed by logistics, by the mobilization, the colonizing drive, of this interior – where properties are imported into empty space. This begins, again, with Locke or, at least, we can begin again through him. His concept of the mind as tabula rasa – often portrayed as an Enlightenment move away from predetermination – is a projection of this emptiness that must be owned and filled. For this emptiness to become private property it must be filled with and located in the coordinates of space and time. Space emerges as the delimitation of what is mine, and time begins with the theft and imposition when it became mine. The individual mind and its coming to maturity out of the tabula rasa mark this first conquest. Enlightenment interiority emerged from this emplotment of time and space – to borrow from Hayden White – this separation from what is shared. But interiority is only for the owning mind. Because what allows this mind to take possession of itself is its ability to grasp property, which is something it now posits as beyond itself. It takes what it is taken from for what it needs to create itself, and not just needs but compulsively, interminably, voraciously seeks without end. In other words, the emplotment of time and space in the mind takes place through the emplotment of time and space on earth, in a conversion of emptiness into world, and is simultaneously taken as a fulfillment of mind, its interior appointment in and of what can now be conceptualized as body. Is it a leap to say logic and logistics start here inseparably?

#### The European colonial project begins and begins and begins through property. For as many means in enlightenment thought, there are no ends on the frontier of conquest. The privatized appropriation of outer space is racial capitalism's continual drive towards death. The Martian frontier lays as only one stop on logistics’ intergalactic assembly line of domination. And thus I affirm that the appropriation of outer space by private entities is unjust.

#### Whiteness globalizes itself through property. To own and improve the Earth is to separate oneself from all. Only the mythically differentiated subject can own the land, animals, and resources that offer its relation to it, MOTEN and HARNEY 2

Moten and Harney 21, Fred Moten and Stephano Harney, “Usufruct and Use”, All Incomplete, Minor Compositions, 2021, pg(28-30), [HTE] <https://monoskop.org/images/d/df/Harney_Stefano_Moten_Fred_All_Incomplete_2021.pdf> DOA: Feb 19: 2022

What does it mean to stand for improvement? Or worse, to stand for what business calls a ‘commitment to continuous improvement‘? It means to stand for the brutal speciation of all. To take a stand for speciation is the beginning of a diabolical usufruct. Improvement comes to us by way of an innovation in land tenure, where individuated ownership, derived from increasing the land’s productivity, is given in the perpetual, and thus arrested, becoming of exception’s miniature. This is to say that from the outset, the ability to own – and that ability’s first derivative, self-possession – is entwined with the ability to make more productive. In order to be improved, to be rendered more productive, land must be violently reduced to its productivity, which is the regulatory diminishment and management of earthly generativity. Speciation is this general reduction of the earth to productivity and submission of the earth to techniques of domination that isolate and enforce particular increases in and accelerations of productivity. In this regard, (necessarily European) man, in and as the exception, imposes speciation upon himself, in an operation that extracts and excepts himself from the earth in order to confirm his supposed dominion over it. And just as the earth must be forcefully speciated to be possessed, man must forcefully speciate himself in order to enact this kind of possession. This is to say that racialization is present in the very idea of dominion over the earth; in the very idea and enactment of the exception; in the very nuts and bolts of possession-by-improvement. Forms of racialization that both Michel Foucault and, especially and most vividly, Robinson identify in medieval Europe become usufructed with modern possession through improvement. Speciated humans are endlessly improved through the endless work they do on their endless way to becoming Man. This is the usufruct of man. In early modern England, establishing title to land by making it more productive meant eliminating biodiversity and isolating and breeding a species – barley or rye or pigs. Localized ecosystems were aggressively transformed so that monocultural productivity smothers anacultural generativity. The emergent relation between speciation and racialization is the very conception and conceptualization of the settler. Maintenance of that relation is his vigil and his eve. For the encloser, possession is established through improvement – this is true for the possession of land and for the possession of self. The Enlightenment is the universalization/globalization of the imperative to possess and its corollary, the imperative to improve. However, this productivity must always confront its contradictory impoverishment: the destruction of its biosphere and its estrangement in, if not from, entanglement, both of which combine to ensure the liquidation of the human differential that is already present in the very idea of man, the exception. To stand for such improvement is to invoke policy, which attributes depletion to the difference, which is to say the wealth, whose simultaneous destruction and accumulation policy is meant to operationalize. This attribution of a supposedly essential lack, an inevitable and supposedly natural diminution, is achieved alongside the imposition of possession-by-improvement. To make policy is to impose speciation upon everybody and everything, to inflict impoverishment in the name of improvement, to invoke the universal law of the usufruct of man. In this context, continuous improvement, as it emerged with decolonization and particularly with the defeat of national capitalism in the 1970s, is the continuous crisis of speciation in the surround of the general antagonism. This is the contradiction Robinson constantly invoked and analyzed with the kind of profound and solemn optimism that comes from being with, and being of service to, your friends

#### Ownership is at the heart of colonial logistics feedback loop. The more the enlightenment man owns, the more violence he must commit to protect it. Whiteness developed as an exponential militarized force to protect all he appropriated on the frontier, MOTEN and HARNEY 3

Moten and Harney 21, Fred Moten and Stephano Harney, “The Theft of Assembly”, All Incomplete, Minor Compositions, 2021, pg(16-17), [HTE] <https://monoskop.org/images/d/df/Harney_Stefano_Moten_Fred_All_Incomplete_2021.pdf> DOA: Feb 19: 2022

This is why there is no separating Locke the Enlightenment thinker from Locke the writer on race, the author of the notorious colonial constitution of the Carolinas. Ownership was a feedback loop – the more you own the more you own yourself. The more logistics you apply the more logic you acquire; the more logic you deploy the more logistics you require. As Hortense Spillers says, the transatlantic slave trade was the supply chain of Enlightenment. It was never-ending quest and conquest, because ownership is perpetual loss. Gilles Deleuze said that he would rather call power “sad.” We might say the same of ownership, where lies the most direct sense of loss of sharing. This feeling of loss translates into a diabolical obsession with loss prevention. Logistics emerges as much as the science of loss prevention as the science of moving property through the emptiness, of making the world as it travels by filling it. This is not making the road as we walk, in the anarchist tradition. This is converting everything in its path into a coordinated time and space for ownership. Such seizing, such grasping, and such loss prevention is the mode of operation for the wickedness of the Atlantic slave trade, the first massive, diabolic, commercial logistics. Already this feedback loop of ownership experiences amplified loss, the loss of sharing, with each emplotment. But now, in taking up the European heritage of race and slavery that Robinson identifes as emerging in the class struggle in Europe in the centuries directly before Locke and extending into Locke’s own time, a double loss is experienced, an intensifcation of the ownership feedback loop (and what we call the subject reaction). This evil emplotment of Africans is experienced as the potential loss of property that can flee. It is in this double loss of sharing – given in owning and in the imposition of being-owned – that the most deadly, planet-threatening, disease of the species-being emerges: whiteness. And it is for this reason that we can say logistics is the white science. (This is what many white people – who are the people, as James Baldwin says, who think they are white or that they ought to be – are doing when you see them walk straight past a queue of people and take a seat, or move to the center of a crowded room, or speak more loudly than those around them, or block a sidewalk while discussing ‘choices’ with their toddler. Making theory out of practice, they are emplotted, as they’ve been taught to do, establishing the spacetime of possession and self-possession in ownership. Every step they take is a standing of ground, a stomping of the world out of earthly existence and into racial capitalist human being. It grows more pronounced the more it is threatened, consumed by its own feedback loop, and it produces sharper and sharper subject reactions in the face of this threat. This is the old/new fascism: not the anonymity of following the leader, but the subject reaction to leadership, which can just as easily imagine itself to be liberal dissent from, as supposedly opposed to a lock(e)-step repetition of, its call.

#### Politics pathologizes the general antagonism in order to prescribe more and more politics. We refuse this prescription and embrace a metaphysics of incompleteness, MOTEN and HARNEY 4

Moten and Harney 21, Fred Moten and Stephano Harney, “We Want a Precedent”, All Incomplete, Minor Compositions, 2021, pg(23-26), [HTE] <https://monoskop.org/images/d/df/Harney_Stefano_Moten_Fred_All_Incomplete_2021.pdf> DOA: Feb 19: 2022

Our President, our deluded and degraded and demonic sovereign, in whatever form this abstraction of our abstract and wholly fictional equivalence will have taken, is a featureless point on a long and hopelessly straight line of knock-offs. It’s like how Richard of Bordeaux, who can do whatever he wants except stop himself from doing whatever he wants, carries around his own deposition (disguised as the serial murder that constitutes the peaceful transition of power and its vulgar ceremonies) like a genetic faw, as the illegitimate but inevitably heritable Bolingbroke-ass ambitions that leave him with ever increasingly etiolated capacities for self-refection. So that in all its singularly focused limitation and qualification, in the relative nothingness of the prison that it calls a world, the all-encompassing and all to be settled sphere that it stomps all over all the time, posing for an impossible arc of deadly and impossible pictures, our President, whichever one you ever wanted or didn’t want, each one after the other in noticeable imperial decline, is just a sick, uneasy head in a hollow crown, making us watch it talk about how it’s gonna kill us and then making us watch it kill us. 2. What we want is usually said to be all bound up with what we don’t have. Zoe Leonard’s been talking about what we want, though, slantedly, in the dimensionless infinity room we can’t even crawl around in when we cruise the rub and whirr of the city as a grove of aspen in late fall, in the mountains, held and unheld at the bottom of the sea. She’s talking about what we want in relation to what we have when what we have is all this experience of not having, of shared nothing, of sharing nothingness. She speaks of and from a common underprivilege, from the privilege of the common underground, in and from the wealth of a precarity that goes from hand to hand, as a caress. Look at all the richness we have, she says, in having lost, in having suffered, in having been suffered, in suffering one another as if we were one another’s little children, as if we were in love with one another, as if we loved one another so much that all one and another can do is go. We want a president, Zoe says, who’s loved and lost all that with us, who’s shared our little all, our little nothing. Such a thing, the general and generative nothingness that is more and less than political, would be unprecedented. Maybe she doesn’t want a president; maybe she wants a precedent, the endlessly new thing of the absolutely no thing, its Zen xenogenerosity, its queer reproductivity, which keeps on beginning in beginning’s absence as ungoverned and ungovernable care(ss). 3. Is it possible to want what you have become in suffering, both in the absence and in the depths of suffrage, without wanting what it is to suffer? Can you want what it is to be all, and want what it is to be whole, without wanting to be complete? Is it possible to crave the general incompleteness without that seemingly unbearable desire to be pierced, ruptured, broken? In lieu of the president we want and don’t want, we have Cedric Robinson, whom just a little while ago we lost. He says: If, in some spiteful play, one were compelled by some demon or god to choose a transgression against Nietzsche so profound and fundamental to his temperament and intention as to break apart the ground on which his philosophy stood, one could do no better than this: a society which has woven into its matrix for the purpose of suspending and neutralizing those forces antithetic to individual autonomy, the constructed reality that all are equally incomplete. A logic is being jousted here. Is it not so that the emergence of power as the instrument of certainty in human organization is seen by many to be the consequence of and response to the circumstances of inequality and sensed social entropy? Is it not so that individual autonomy, rare enough in the first condition and imperiled by the second, is in the final construction made foreign? And does not, logically, even autonomy require for its nurturance a hothouse of certitude similar to that required for the evolution of power – autonomy being to a degree a variant of power? Then the principle of incompleteness – the absence of discrete organismic integrity, if it were to occupy in a metaphysics the place of inequality in political philosophy, would bring to human society a paradigm subversive to political authority as the archetypical resolution, as the prescription for order.5 How can we come more accurately to understand American democracy – the brutality of our improvement, the viciousness of the ways we are put to use – as the praxis of privatized interest in inequality, expressed in the theory of the abstract equality of every complete individual, whose constant recitation brutally regulates the general interest in an equality given in and as an absolute incompleteness that defies individuation? How can we come to understand that the interinanimation of our bondage and our freedom – and, therefore, of our liberalism and our protest – is the metaphysical foundation of a national political philosophy that we have come to claim in violation of the precedent we want. How can we disavow that claim, having learned to want to want the order from which our forced desire is derived to be drowned in the disorder of all (the nothing) we have? How can we more intensely feel the physics of our surround, our social aesthetic, the gravity of our love and loss, our shared, radically sounded, radically sent incompleteness? What would it mean to say we cannot take a position on politics – even the old and honorable ‘I don’t vote because I’m Marxist‘ position? What if we said we have no options, that here we don’t even have the option of no option? We think that would be good. Zoe gets us started: to think off of what we want is lightly to inhabit not being and not having, here.

#### The role of the ballot is to vote for the debater with the best method for partial education. The way they link back to the ROB is to describe the best method for resisting individuation and the call to order by capital. Racial capitalism calls us into individuation through a total education that demands a call to order through instruction and self-improvement, MOTEN and HARNEY 5

Moten and Harney 21, Fred Moten and Stephano Harney, “A Partial Education”, All Incomplete, Minor Compositions, 2021, pg(62-67), [HTE] <https://monoskop.org/images/d/df/Harney_Stefano_Moten_Fred_All_Incomplete_2021.pdf> DOA: Feb 19: 2022

Now Foucault stressed that because this instruction represented the reform of ‘perverted‘ bodies – bodies that previously had no such discipline – any call for reforming the modern prison was a call for more instruction. Reform produced more instruction. Instruction produced more constraint, or discipline. Discipline only confirmed the underlying perversion of these bodies, and called forth more reform, which called forth more instruction to reform the perversion discipline confirmed. This process is reflected in Foucault’s use of the oxymoron “perverted individual,” an oxymoron that is nonetheless the source of total education. Perversion violates the principle of the individual by failing to accede to its proper boundaries and comportments, and thus the perverted individual is an ongoing violation that calls total education into being. In Foucault’s account, perversion appears as a turning aside (from the truth) that is, somehow, prior, already existing. A prior turn. An already given turning that requires straightening, that summons reform. Instruction is how we get straightened out insofar as it is how one is straightened out. Correction begins with the ascription of the body itself, the imposition of body onto flesh; the attribution of perversion to the specific body, which justifies its correction, follows from its isolation and manifests itself as the theft of the body that has been imposed by those who assert a right to instruct insofar as theirs are bodies that they have supposedly both claimed and transcended. The ascription of body, the imposition of bounded and enclosed self-possession, of a discrete self subject to ownership, of ownership activated and confirmed either in theft or trade, might be said to be the first reform, the first improvement, insofar as it is the condition of possibility of reform, or improvement. The assignment of body to flesh is the first stripe of the long, hard, torturously straight, tortuously straightened row. Instruction is the setting in order, the straightening out. Instruction thereby reveals the essential relationship between improvement and impoverishment, between the private and privation at the heart of total education. Perversion’s wealth becomes education’s profit. Today there would appear to be few examples of Foucault’s total education in prison regimes. The program of reform, the program of prisoner improvement, has been replaced almost everywhere by one of punishment alone, or what Foucault calls simply the deprivation of liberty. At the same time, in pointing out that the current prison program of ‘slow-motion genocide’ has long been the global norm in racialized regimes, abolitionist scholars refuse to countenance reform of the exception, alerting us to the fact that reform of the prison and reform of the prisoner are as much modalities of genocide as the interplay of privation and privatization that racial incarceration relentlessly innovates.29 But what if? What if perversion is placed under constraint in the very idea of individuation, which projects improvement’s subject as improvement’s object? Then the figure of the perverted individual is always already in the system. Conversely, if perversion’s location in the individual body is a form of imprisonment and instruction, then perversion is an already given anti-/ante-individuation. If prison/school are two sides of a common institutional structure that operates by way of individuation, then perversion is a pre-carceral breaking out of prison, a pre-scholarly dropping out of school, that continually reveals the ubiquity of the total education that hunts it down and puts it to work. Insofar as it is the case that in prison and in school one’s job is to learn, to get it straight, to straighten out, then it is also the case that every citizen and non-citizen, every person and non-person, every worker who is in or out of work – even the enemy combatant, the prisoner, and the supposedly unemployable – is subject to a total education

#### Whiteness is anti-thetical to relationality and community formation, abolition requires working against the subject, HARNEY 17

Stefano Harney (part 2), by [Michael Schapira & Jesse Montgomery](http://www.full-stop.net/author/michael-schapira-and-jesse-montgomery/), August 10, 2017Jesse Montgomery is an editor at Full Stop and a graduate student in the English department at Vanderbilt University. Michael Schapira is an Interviews editor at Full Stop and teaches Philosophy at Hofstra University. A version of this conversation originally appeared in the Full Stop Quarterly Issue #5.<http://www.full-stop.net/2017/08/10/interviews/michael-schapira-and-jesse-montgomery/stefano-harney-part-2/> DOA: Feb 19: 2022

The authors quote Frank Wilderson on the way blackness can never be disimbricated from the violence of slavery. Then they say: ‘Those who would risk extending solidarity across racial boundaries would find themselves the recipient of exemplary violence in order to instill fear of constant consequence for this treason. Ever after, meaningful cross-racial affinity can only be found in moments of revolutionary violence.”  (I[Stefano Harney (part 2) | Full Stop](http://www.full-stop.net/2017/08/10/interviews/michael-schapira-and-jesse-montgomery/stefano-harney-part-2/)talics in the original.) Now this is an historical observation on their part, but to some extent it is also programmatic for the authors. As an observation, well, they have just convinced me of its validity in the last 250 pages, and as program, well, I’m not a pacifist. I’m for self-defense, and that can be violent.But do words like solidarity, affinity, to say nothing of the unlovely term allyship, accidentally preserve something we want to abolish? And I feel bad using Shirley and Stafford to make this point because theirs is such a good book, but maybe that’s why I feel compelled to say, ‘even here’ this question comes up. What I mean is who is this someone in solidarity with blackness, who is this ally of blackness, who is this someone with affinity to black struggle?I think this means that this someone has his or her own struggles and is indicating that now she or he wants to join not in common struggles, but in the struggles of blackness. Because in a sense you have to have your own thing to be an ally or to be in solidarity. Ok, but what are your own struggles from which you would be offering solidarity, allyship, affinity? Are you organizing in the white community, is that it? I think that is the implication, that you have been working in white communities, and/or on the environment, or feminist issues, etc**.** But the problem is, there’s no such thing as a white community. A white community is a contradiction in terms, an oxymoron.You can’t organize an oxymoron. The only thing you can do with a white community is work to abolish it. Moreover at that point of abolition we may be able to say there is no such thing as a community, that a community is an oxymoron. You can’t commune and have a community. Communing is anti-community. It’s undercommon. Maybe the only kind of community that is possible is the maroon community, because it is by definition not a community, and when in some historical instances (of necessity even) it became one, it took on the same murderous qualities of any community. **Okay, so then the question arising,** if you doabolish the white community, **what of** the people **who were** marked as white**, and in many cases who dwelt in the supremacy of whiteness, what becomes of them? Well, in the practice of abolition they will** move closer to the only thing they ever had that was about life and not death, about love and not hate, blackness. **This is to say,** people who present as white are not allies, **or in solidarity, or showing affinity,** because they have nothing of their own, **no place from which to show this, no resource to bring, unless and until they embrace the one thing of their own they disown.** The thing that can’t be owned born(e) of the owned, blackness. Now white people aren’t coming with much blackness, by definition. And this is why the underlying humility motivating terms like ally, solidarity, and affinity is not misplaced, if that is indeed what underlies their use in practice. In any case, whiteness is either absence or violence, and in either case, not much to offer as an ally. **But on the other hand white people have a big role to play in the revolutionary violence Shirley and Stafford speak of because the act of abolition of white communities is a monumental task.**

#### “Appropriation of outer space” by private entities refers to the exercise of exclusive control of space, TRAPP 13

TIMOTHY JUSTIN **TRAPP**, JD Candidate @ UIUC Law, **’13**, TAKING UP SPACE BY ANY OTHER MEANS: COMING TO TERMS WITH THE NONAPPROPRIATION ARTICLE OF THE OUTER SPACE TREATY UNIVERSITY OF ILLINOIS LAW REVIEW [Vol. 2013 No. 4] <https://www.illinoislawreview.org/wp-content/ilr-content/articles/2013/4/Trapp.pdf>, DOA: Feb 19 2022

The issues presented in relation to the nonappropriation article of the Outer Space Treaty should be clear.214 The ITU has, quite blatantly, created something akin to “property interests in outer space.”215 It allows nations to exclude others from their orbital slots, even when the nation is not currently using that slot.216 This is directly in line with at least one definition of outer-space appropriation.217 [\*\*Start Footnote 217\*\*Id. at 236 (“**Appropriation of outer space**, **therefore, is ‘the exercise of exclusive control or exclusive use’ with a sense of permanence, which limits other nations’ access to i**t.”) (quoting Milton L. Smith, The Role of the ITU in the Development of Space Law, 17 ANNALS AIR & SPACE L. 157, 165 (1992)). \*\*End Footnote 217\*\*]The ITU even allows nations with unused slots to devise them to other entities, creating a market for the property rights set up by this regulation.218 In some aspects, this seems to effect exactly what those signatory nations of the Bogotá Declaration were trying to accomplish, albeit through different means.219

#### Private appropriation of extracted space resources is distinct from appropriation “of” outer space. Despite longstanding permission of appropriation of extracted resources, sovereign claims are still universally prohibited.

Abigail D. **Pershing**, J.D. Candidate @ Yale, B.A. UChicago,**’19**, "Interpreting the Outer Space Treaty's Non-Appropriation Principle: Customary International Law from 1967 to Today," Yale Journal of International Law 44, no. 1, <https://openyls.law.yale.edu/bitstream/handle/20.500.13051/6733/Pershing.pdf?sequence=2>, DOA: Feb 19: 2022

II. THE FIRST SHIFT IN CUSTOMARY INTERNATIONAL LAW’S INTERPRETATION OF THE NON-APPROPRIATION PRINCIPLE Since the drafting of the Outer Space Treaty, several States have chosen to reinterpret the non-appropriation principle as narrower in scope than its drafters originally intended. This reinterpretation has gone largely unchallenged and has in fact been widely adopted by space-faring nations. In turn, this has had the effect of changing customary international law relating to the non-appropriation principle. Shifting away from its **original blanket application** in 1967, States have carved out an exception to the non-appropriation principle, allowing appropriation of extracted space resources.53 This Part examines this shift in the context of the two branches of the United Nation’s customary international law standard: State practice and opinio juris. **A. State Practice** The earliest hint of a change in customary international law relating to the interpretation of the non-appropriation clause came in 1969, when the United States first sent astronauts to the moon. As part of his historic journey, astronaut Neil Armstrong collected moonrocks that he brought back with him to Earth and promptly handed off to the National Aeronautics and Space Administration (NASA) as U.S. property.54 Later, the USSR similarly claimed lunar material as government property, some of which was eventually sold to private citizens. 55 These first instances of space resource appropriation did not draw much attention, but they presented a distinct shift marking the beginning of a new period in State practice. Having previously been limited by their technological capabilities, States could now establish new practices with respect to celestial bodies. This was the beginning of a pattern of appropriation that slowly unfolded over the next few decades and has since solidified into the general and consistent State practice necessary to establish the existence of customary international law. Currently, the U.S. government owns 842 pounds of lunar material.56 There is little question that NASA and the U.S. government consider this material, as well as other space materials collected by American astronauts, to be government property.57 In fact, NASA explicitly endorses U.S. property rights over these moon rocks, stating that “[l]unar material retrieved from the Moon during the Apollo Program is U.S. government property.”5 The U.S. delegation’s reaction to the language of the 1979 Moon Agreement further cemented this interpretation that appropriation of extracted resources is a **permissible exception** to the non-appropriation clause of Article II. Although the United States is not a party to the Moon Agreement, it did participate in the negotiations.59 The Moon Agreement states in relevant part: Neither the surface nor the subsurface of the moon, nor any part thereof or natural resources in place, shall become property of any State, international intergovernmental or nongovernmental organization, national organization or nongovernmental entity or of any natural person.60 In response to this language, the U.S. delegation made a statement laying out the American view that the words “in place” imply that private property rights apply to extracted resources61—a comment that went **completely unchallenged**. That **all States seemed to accept this point**, even those bound by the Moon Agreement, is further evidence of a shift in customary international law.62 B. **Opinio Juris:** Domestic Legislation Domestic law, both in the United States and abroad, provides further evidence of the shift in customary international law surrounding the issue of nonappropriation as it relates to extracted space resources. Domestic U.S. space law is codified at Section 51 of the U.S. Code and has been regularly modified to expand private actors’ rights in space.63 Beginning in 1984, the Commercial Space Launch Act provided that “the United States should encourage private sector launches and associated services.”64 The goal of the 1984 Act was to support commercial space launches by private companies and individuals.65 It did not, however, specifically discuss commercial exploitation of space. The first such mention of commercial use of space appeared in 2004, with the Commercial Space Launch Amendments Act.66 This Act specifically aimed at regulating space tourism but did not explicitly guarantee any private rights in space.67 The most significant change in U.S. space law came with the passage of the Spurring Private Aerospace Competitiveness and Entrepreneurship (SPACE) Act in 2015. As incorporated into Section 51 of the Code, this Act provides: A United States citizen engaged in commercial recovery of an asteroid resource or a space resource under this chapter shall be entitled to any asteroid resource or space resource obtained, including to possess, own, transport, use, and sell the asteroid resource or space resource obtained in accordance with applicable law, including the international obligations of the United States.68 Whereas the idea that private corporations might go into space may have seemed far-fetched to the drafters of the Outer Space Treaty, the SPACE Act of 2015 was the first instance of a government recognizing such a trend and officially supporting private companies’ commercial rights to space resources under law. With the new 2015 amendment to Section 51 in place, U.S. companies can now rest assured that any profits they reap from space mining are firmly legal—at least within U.S. jurisdictions. Although the United States was the first country to officially reinterpret the non-appropriation principle, other countries are **following suit**. On July 20, 2017, Luxembourg passed a law entitled On the Exploration and Utilization of Space Resources with a vote of fifty-five to two.69 The law took effect on August 1, 2017.70 Article 1 of the new law states simply that “[s]pace resources can be appropriated,” and Article 3 expressly grants private companies permission to explore and use space resources for commercial purposes.71 Official commentary on the law establishes that its goal is to provide companies with legal certainty regarding ownership over space materials—a goal that the commentators regard as legal under the Outer Space Treaty despite the non-appropriation principle.72 The next country to enact similar legislation may be the United Arab Emirates (UAE). According to the UAE Space Agency director general, Mohammed Al Ahbabi, the **UAE** is currently in the process of drafting a space law covering both human space exploration and commercial activities such as mining.73 To further this goal, in 2017 the UAE set up the Space Agency Working Group on Space Policy and Law to specify the procedures, mechanisms, and other standards of the space sector, including an appropriate legal framework.74 C. Opinio Juris: Legal Scholarship Other major space powers are also considering similar laws in the future, including Japan, China, and Australia. 75 Senior officials within China’s space program have explicitly stated that the country’s goal is to explore outer space and to take advantage of outer space resources.76 The general international trend clearly points in this direction in anticipation of a potential “**space gold rush**.” 7 Mirroring the shift in State practice and domestic laws, the legal community has also changed its approach to the interpretation of the nonappropriation principle. Whereas at the time of the ratification of the Outer Space Treaty the majority of legal scholars tended to apply the non-appropriation principle broadly, most legal scholars now view appropriation of extracted materials as permissible.78 Brandon Gruner underscores that this new view is historically distinct from prior legal interpretation, noting that modern interpretations of the Outer Space Treaty’s non-appropriation principle differ from those of the Treaty’s authors.79 In contrast to earlier legal theory that denied the possibility of appropriation of any space resources, scholars now widely accept that extracting space resources from celestial bodies is a “use” permitted by the Outer Space Treaty and that extracted materials become the property of the entity that performed the extraction.80 Stressing the fact that the Treaty does not explicitly prohibit appropriating resources from outer space, other authors conclude that the use of extracted space resources is permitted, meaning that the new SPACE Act is a plausible interpretation of the Outer Space Treaty.81 However, scholars have been careful to cabin the extent to which they accept the legality of **appropriation**. For instance, although Thomas Gangale and Marilyn Dudley-Rowley acknowledge the legality of private appropriation of extracted space resources, they nonetheless emphasize that “[o]wnership of and the right to use extraterrestrial resources is distinct from ownership of real property” and that any such **claim to real property** is illegal.82 Lawrence Cooper is also careful to point out this distinction: “[t]he [Outer Space] Treaties recognize sovereignty over property placed into space, property produced in space, and resources removed from their place in space, **but ban sovereignty claims by states; international law extends this ban to individuals**.”83 Although there remain some scholars who still insist on the illegality of the 2015 U.S. law and State appropriation of space resources generally,84 their dominance has waned since the 1960s. These scholars are now a minority in the face of general acceptance among the legal community that minerals and other space resources, once extracted, may be legally claimed as property. 85 Taken together, the elements described above—statements made in the international arena, de facto appropriation of space resources in the form of **moon rocks**, the adoption of new national policies permitting appropriation of extracted space resources, and the weight of the international legal community’s opinion— indicate a fundamental shift in customary international law. The Outer Space Treaty’s non-appropriation clause has been redefined via customary international law norms from its broad application to now include a carve-out allowing appropriation of space resources once such resources have been extracted.