“Injustice anywhere is a threat to justice everywhere.” This famous quote from the Reverend Dr. Martin Luther King Junior applies in new and interesting ways to today’s resolution, which I affirm: Resolved: The appropriation of outer space by private entities is unjust.

In order to clarify the debate I offer the following definitions

**Private entity means any natural person, corporation**, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, **nonprofit entity, or other business entity.**

[**https://www.lawinsider.com/dictionary/private-entity**](https://www.lawinsider.com/dictionary/private-entity)

**“Appropriation of outer space” by private entities refers to the exercise of exclusive control of space. I**

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]

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 it.”) (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

The topic is fundamentally a question of *property distribution.*

My value is justice, as indicated in the resolution.

First, all persons are fundamentally morally equal. No natural distinction justifies giving some persons or groups of persons arbitrary power over others.

Thus, all people have an equal initial claim to access naturally existing resources. **Roark:**

**“**The notion that **moral agents have an initially equal moral claim** in respect **to natural resources** is highly plausible because **an agent cannot appeal to anything [they have]** that she has **done** or any sort of hereditary right that she has **to establish a greater initial claim over natural resources than any other** agent can legitimately claim. All agents stand in the same initial moral relationship to natural resources. **No agent is** morally, or for that matter causally, **responsible for creating** or establishing in any way whatsoever **land, fresh water, the oceans, the atmosphere,** crude oil, wild berries **or any other natural resources.** Natural resources are simply established or given by Nature or God. **Appealing to** an agent’s **industriousness,** labor, or other aspects of her agency **cannot demonstrate** that she possesses **any greater initial claim to** natural **resources** than any other agent **because natural resources are not brought about as a result of labor** or any aspect of agency**.”**

Roark, Eric. *Removing the Commons.* Lexington Books, August 28, 2013. P. 3.

This right of equal access is no respecter of generational distinctions. One does not have a greater right to use common resources solely because of the arbitrary characteristic of having been born earlier. **Weiss:**

**“**The second fundamental relationship is that between different generations of the human species. **All generations are** inherently **linked** to other generations, past and future, in using the common patrimony of earth. To define intergenerational equity, it is useful to view **the human community** as **[is] a partnership** among all generations. In describing a state as a partnership, Edmund Burke observed that ‘as the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only **between those who are living** but between those who are living, those who are dead, **and those who are to be born.’** The purpose of human society must be to realize and protect the welfare and well-being of every generation. **This requires sustaining the** life-support systems of the planet, the ecological processes, and the environmentalconditions necessary for a healthy and decent human **environment.** In this partnership, **no generation knows** beforehand **when it will be** the **living** generation**,** how many members it will have, **or** even **how many generations there will** ultimately **be.** It is useful, then, to **[So] take the perspective of a generation** that is placed somewhere **along the spectrum of time, but does not know** in advance **where it will be located. Such a generation would want to inherit the earth in at least as good condition as it had been in for any previous generation** and to have as good access to it as previous generations. **This requires each generation to pass the planet on in no worse condition than it received it in and to provide equitable access to its resources** and benefits**. Each generation is thus** both **a trustee for the planet** with obligations to care for it and a beneficiary with rights to use it**.”**

Since all people have a legitimate and equal claim to a proportional share of the natural commons, any action that degrades the commons such that others either present or future have access to a degraded commons constitutes an arbitrary taking. Since all property derives from a commons, the individual’s right to exclusion requires justification. Thus, the criterion is **consistency with the Lockean proviso.**

If property is acquired in a way that creates scarcity that denies others the means of similarly obtaining property, then an unjust taking has occurred and the property claim of the appropriating agent is illegitimate.

And adherence to the proviso is fundamental to ethical interaction.  **Ronit Kedar [brackets for clarity and gendered language]:**

**“[A human is] fundamentally**, then, the *homo contractus* is essentially **a self-interested ‘I,’ who has internalized the contractualist ethos and is** genuinely **interested in forming a** decent, **peaceful mechanism to interact with others.** He **[They]** therefore **wish**es **to be licensed to act in accordance to [their]** his **own ends by forming** an **agreed upon** regulative set of **rules for cooperating with everyone.** Given that the *homo contractus* has refined his basic self-interestedness and sincerely values decency, **the governing ideal** in his interpersonal relations **is fair reciprocity.** He **therefore** believes that **others have an equal right to common resources** (and in the moral world, one’s willingness to be moral is a primary asset) insofar as they contribute to the production of these common resources (acknowledging the reasons to be moral.) Under the moral scheme, then, other persons who are basically **potential adversaries become parties to the contract.** Thought of as parties to the moral agreement, they are **measured by their ability to contribute to** it, that is, to **the cooperative system** (agreeing on the principles for regulation.)**”**

Kedar, Ronit. “Reciprocity in morality and law.” *Law & Ethics of Human Rights,* vol. 6. issue 2, 2012.

**The thesis of the affirmative is that we all have a positive obligation under justice to ensure that we and all of our descendants have equitable and continuing access to natural resources - on Earth or elsewhere. Private appropriation is inconsistent with this duty.**

I will defend this thesis through the following CONTENTION:

Private appropriation of outer space fails the Lockean proviso. This is because accessible space-based resources are neither renewable nor replaceable. Thus any taking of an outer space resource denies the access of others to “as much and as good” of that particular resource.

**Steiner 1:** Gains and losses are most acceptably shifted when they’re primarily the results of circumstance, and least acceptably shifted when they’re principally the products of choices made by those who incur them. And **what counts as circumstance**, I suggest, **is** pretty adequately **captured by** what we would include under the heading of “**nature**.” “Nature” covers a lot: **there are places where it rains all the time and places where it never rains; places with oil deposits and places with** serious **geological faults**; crowded and less crowded cyberspace locations; and genes that code for Kentucky blue grass, poison ivy, viruses, koala bears, cystic fibro- sis, schizophrenia, Pavarotti-type vocal chords, some elements of human intelligence, and so forth.  **Rights to** natural **resources** - to nature, compendiously construed - **are rights to bits of** all these various, and **variously valued, things.** So if we follow Locke and a number of other thinkers in that tradition, if we hold that **anyone claiming ownership over some bits of nature must leave “enough and as good for others”,** we’re led by a series of plausible steps to the conclusion that, in a fully appropriated world, **[thus]each person is entitled to an equal portion of the value of these bits of nature.** That is, **all owners of natural resources must pool the value of what they own in a fund - ultimately a global fund - to an equal portion of which everyone everywhere has a moral right.**

Steiner, Hillel. “Left libertarianism and the ownership of natural resources.” *Bleeding Heart Libertarians,* April 24, 2012.

And, this right to equitable access can’t be overcome or eliminated by aggregation of resources, because it is an outgrowth of our fundamental natural rights. **Steiner 2:**

And what’s especially important for libertarians to note in this regard is that **we’re owed this** grant not **as a** basic positive right - for on this sort of theory, there are no positive rights which are **basic**, but only **negative [right]** ones**,** with all positive rights being derived solely from antecedent contractual understandings or rights-violations. Rather, **we’re owed it as a matter of redress by those who do not forbear from acquiring** or retaining **more than “enough and as good”** natural **resources** - **a negative duty which they have by virtue of our** ultimately **foundational right to equal freedom.** It’s **this** fundamental **right** to equal freedom that **gives us both our rights to self-ownership and** our rights **to natural resources**.8 And **all our other** just **rights are created by exercises of these two rights** and of the rights successively derived from those exercises**.**

Steiner, Hillel. “Left libertarianism and the ownership of natural resources.” *Bleeding Heart Libertarians,* April 24, 2012.

These resources exist naturally, thus no *a priori* reason exists to assign exclusive ownership of commons to any individual. Access to capital resources is arbitrary, since (A) it depends on a just initial acquisition and (B) it depends on the lottery of birth. Also, since birth *order* is arbitrary, each succeeding generation has an identical claim to the overall quality of common resources. Even if it is possible to obtain exclusive property rights to some specific natural resource, each succeeding generation has a right to an initial store of available resources of equal quality.

Extractive activities which progressively degrade the environment constitute an unjustified taking of common resources from future generations and from nature itself, and no amount of “savings” or “overall benefit” to the current generation can make up for what is taken. Stephen **Bickham:**

**“The idea that each generation’s obligation to the future can be met by** savings - by **salting away a certain amount of ‘capital’** - oversimplifies this obligation through **fail[s]**ing **to take account** accurately **of the diverse ways that a particular generation can injure later ones. No type of savings**, for instance, **could account for a** particular **generation’s obligation to the future with regard to [some kinds of damage]** nuclear war and overpopulation. These have nothing to do with wise utilization of capital, yet they are certainly two of the major threats to the well-being of future generations. There are other problems with this model. In many instances **the cost of** the creation of certain **pollutants cannot be** at all **accurately calculated.** We do not know what the effects of continuing to use fluorocarbons in spray cans would be. Moreover, in this case as in others **a polluting activity might have no effect on several subsequent generations and then a devastating effect on a particular later generation. This would leave one or two generations to pay for the practices of many.** Perhaps this could be handled by some kind of an escrow account, but we would not know how much to pay into it.

Bickham, Stephen. “Future generations and contemporary ethical theory.” *Journal of Value Inquiry,* 15:169-177; 1981.

Space is a finite and fascinating set of resources that we are only beginning to understand. In order to uphold our duties under justice, we have to make sure that private entities are not laying arbitrary claim to these common resources. Affirming achieves this, and thus upholds justice.