I affirm the resolution

“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. Trapp:**

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.

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.

In outer space, there is no governing authority and thus claiming property imposes your will over others.

**Stilz 2** (Anna Stilz, Anna Stilz is Laurance S. Rockefeller Professor of Politics and the University

Center for Human Values. Her research focuses on questions of political membership, authority

and political obligation, nationalism and self-determination, rights to land and territory, and

collective agency. , 2009, accessed on 12-18-2021, Muse.jhu, “Project MUSE - Liberal Loyalty”, https://muse.jhu.edu/book/30179)//phs st

It might seem, then, that Kant, like Simmons, would hold that although our acquired rights are initially indefinite, our private acts of appropria- tion in a state of nature can function to more clearly delimit their contours. Once I appropriate an external object—for example, my piece of land in the state of nature—the boundaries of my right to external freedom might simply be equivalent to those of the things and spaces that I have appropriated. If this were so, then individuals could succeed in more precisely defining property without the help of the state, and simply by coordinating expectations based on their private acts. In order to respect and acknowledge my external freedom, on this view, you would just have to cede me the spot I have rightfully occupied and to refrain from infringing on my choices within that sphere. Yet Kant does not take this position: he argues that the rights made possible by the postulate of practical reason are problematic. Whatever rights **our private acts of appropriation outside the state** confer upon us can only be understood as provisional rights, that is, they are not conclusive and settled (peremp- torische): indeed, for him, “It is possible to have something external as one’s own only in a rightful condition, giving laws publicly, that is, a civil condition” (MM, 6:255). What is the problem with these private methods of defining our rights to property? Why are they so unsatisfactory, from Kant’s perspective? The essential problem with acquiring property rights **in a state of nature**, for Kant, seems to be that we **cannot unilaterally**—through private will— **impose a new obligation on other persons to respect our property** that they would not otherwise have had.30 “By my unilateral choice I cannot bind another to refrain from using a thing, an obligation he would not otherwise have; hence I can do this only through the united choice of all who possess it in common” (MM, 6:261).31 Even **claiming** to interpret the a priori general will on another person’s behalf, says Kant, **is at- tempting to impose a law on them on my own private authority**, since every act of appropriation is “the giving of a law that holds for everyone” (MM, 6:253).32 And he worries that this claim to private authority over others is a potential source of injustice: “Now when someone makes ar- rangements about another, it is always possible for him to do the other wrong; but he can never do wrong in what he decides upon with regard to himself (for volenti non fit inuria)” (MM, 6:314). **My will to appro- priate**, in the belief that my appropriation is justifiable to others, **cannot yet serve as a (coercive) law** for everyone else, because **it cannot put them under an obligation**. Kant suggests, in other words, that figuring out how to carve up shares of the external world consistently with everyone’s freedom does not ex- haust the entire problem of justice involved in acquiring rights to prop- erty. We might appeal to criteria of salience or convention to help coordi- nate our expectations on which of the many possible property distributions to choose. But we face an additional difficulty: how do we impose one of these distributions without at the same time arrogating to ourselves the private authority to lay down the law for an equally free being, one who has an innate right not to be constrained by our private will? In coercing someone to respect our view of our property rights, we are also necessarily claiming the right to impose our private will upon that person. If it is to really respect everyone’s freedom, Kant thinks, a property distribution cannot be unilaterally imposed in this way. This additional dimension of the problem of justly acquiring rights— the problem of unilateral imposition—is rooted in each person’s basic “right to do what seems right and good to him and not to be dependent upon another’s opinion about this” (MM, 6:312). This right to do what seems right and good to him derives from the moral equality of persons: no one has an innate right to decide in another person’s behalf. And be- cause **each person is an equally authoritative judge, it is** therefore impossi- ble—**in a state of nature—to put [them] under an obligation of justice that [they]** himself **do**es **not recognize**. The will of all others except for himself, which proposes to put him under obligation to give up a certain possession, is merely unilateral, and hence has as little lawful force in denying him possession as he has in asserting it (since this can be found only in a general will). (MM, 6:257) In conditions of equal authority—such as those that exist in any state of nature—one is obligated only by what one recognizes, by one’s own lights, as an objectively valid requirement of justice. For that reason, no other person’s merely unilateral will can bind one in the face of one’s own disagreement. Kant concludes from this that “no particular will can be legislative for the commonwealth” (TP, 8:295), since no private person’s will can effec- tively claim to impose an obligation on others. Instead, Kant says that “all right,” that is to say all claims that impose binding duties on others, “depends on laws” (TP, 8:294). **Law overcomes the problem of unilater- alism** inherent in imposing new obligations on others on one’s own au- thority, by substituting an omnilateral will in place of a unilateral one: “Only the concurring and united will of all, insofar as each decides the same thing for all, and all for each, and so only the general united will of the people, can be legislative” (MM, 6:314). But why is law—imposed from a public perspective—consistent with everyone’s freedom in a way that particular wills—based on our private judgments—are not? Fundamentally, Kant argues that **defining** and enforcing both our rights over our bodies and **our rights to external objects through public** and nonarbitrary **laws is the only way to secure ourselves against** the **coercive interference** of other private persons in our affairs. For Kant, then, the only sort of **property distribution** to which we could all hypothetically consent **must** necessarily **be** one that is **defined and enforced by the state**, since all privately enforced distributions have the inevitable side-effect of subjecting us to the wills of others. To show this in more detail, Kant points out two different ways that unilateral private enforcement under- mines our right to independence: first, through unilateral interpretation— a particularly pervasive problem in the enforcement of property rights, since these rights are fully conventional in a way our rights over our bod- ies are not; and second, through unilateral coercion, which threatens in- terference by others in all our rights, both our rights over our bodies and our rights over external things.

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.