

JESSICA DEN OUTER



RIGHTS OF THE MOON:
A NECESSARY PRECAUTIONARY APPROACH?

*The moon is distant from the sea,
And yet, with amber hands
She leads him, docile as a boy,
Along appointed sands.*

*He never misses a degree;
Obedient to her eye,
He comes just so far, toward the town,
Just so far - goes away.*

*Oh, Signor, thine, the amber hand,
And mine - the distant sea,
Obedient to the least command
Thine eyes impose on me.*

Emily Dickinson

Recent discussions in the Rights of Nature movement have started to take a more outward look, exploring possible rights of the Moon and even of the entire Universe. A recent webinar by the Office of Other Spaces discussed whether the Moon should have legal personhood. The battle to recognise the rights of Nature as we understand it on Earth is already a difficult one. Nonetheless, with increasing interest in mining and extraction of natural elements of the Moon, this discussion becomes highly relevant. In light of the impact that humans have (had) on Earth, what can we now do to prevent the same thing happening to the Moon?

So, what is happening on the Moon?

Commercial interest in space is rising. As we speak, lots of private (unregulated) activities are happening in space. No one stops SpaceX to launch more and more satellites in orbit. And since the beginning of space activities in 1957, rockets, spacecraft and other instruments have been launched into space.

Besides the issue of space debris, there is increasing interest in mining the natural elements of the Moon, including water, gold, platinum and other rare minerals (I refrain from calling these 'natural resources': they are not here for human purposes). There is even talk of using water of the Moon as fuel for a mission to Mars (check out the quite realistic Netflix series 'Away').

Space law

International space law has referred to two interesting legal concepts: outer space as the 'province of all mankind' (1967 Outer Space Treaty) and the term 'common heritage of all mankind' (1979 Moon Treaty, as well as the Law of the Sea Convention). Ever since the '70s and '80s, these concepts have met controversy as to the right of a nation to explore and to share the benefits from space or high seas with the rest of the nations. Although efforts have been made on the clarification of their meaning, the articulations of these principles are still vague.

In the meanwhile, countries are still in the process of developing (international) laws and policies regarding the Moon. The US has issued the Executive Order on off-Earth mining, in which it indicates that 'lunar resources' are there for the taking. According to today's understanding of international space law, it is allowed to use 'resources' of the moon for scientific research without international agreement. Here we come across the same issue as we have seen earlier with whaling: when is an activity considered 'scientific research'?

If countries cannot come up with an international agreement on the regulation of the Moon, excessive exploitation of the Moon's natural elements is bound to happen. Besides the need of countries deciding on some international custom regarding the extraction of natural elements, it is even more important to start thoroughly regulating commercial activities. In this regard, I believe that Earth is the best example of what can happen if we let multinationals go unrestricted on about their activities, without any regard for the health of the planet.

The role of Rights of Nature

The Rights of Nature are slowly but steadily taking its place in national and international environmental law. According to this legal concept, Nature in all its life forms has the intrinsic right to exist, persist, maintain and regenerate its vital cycles. Humans are assigned as guardians for these rights. Earth systems currently have no voice in our anthropocentric systems.

With current legal frameworks providing no certainty and in the midst of a highly politicised international debate on the Moon, it might be too early to claim that the Moon should have her own rights. But what is clear at this point is that the Moon needs a (legal) voice, and a guardian to stand up for her interests. This one approach could provide an opportunity to bring a new dimension to nature (and other planets') conservation.

Since the '60s and '70s, it has been common belief that the Moon is a dead planet. Recent news has claimed otherwise, showing new ridges have been forming on the lunar surface. Regardless of how far science is at, I believe we should take a precautionary approach in allowing extractive activities on the Moon. We failed to do so in many instances here on Earth. Let us learn from the mistakes we made on Earth and respect other planets in this Universe. The guardian of the Moon should cooperate with science to formulate the interests and needs of the Moon. We might not understand yet what impact human activities will have on the health of the Moon.

The Moon has orbited around Earth in peace for billions of years. Who are we humans to now claim ownership over the Moon? Who are we humans to start exploiting her, without listening to what she needs through science? Let us reflect back on what we have done to the Earth and take a precautionary approach this time.