

Book Review:

New Space Capitalism Gets the Property Question Right, and Stops One Step Short



A privately built lunar settlement, the kind of outpost a single company could now fund. Turning it into a self-sustaining society is the part current law leaves unresolved.

Rainer Zitelmann, *New Space Capitalism: The Entrepreneurial Path to the Stars*.

Skyhorse Publishing, 2026. Foreword by Newt Gingrich.

A note on perspective: The reviewer co-authored, with the late Alan Wasser, the [Journal of Air Law and Commerce](#) article on which the book's property-rights chapter substantially draws, and is cited in the book. Readers can weigh what follows accordingly.

Of all the questions raised by the new space age, the one Rainer Zitelmann places at the center of *New Space Capitalism* is the one most writers leave at the margins. Rockets, reusability, asteroid wealth, and orbital tourism dominate the conversation. The question of who will own the land a Moon or Mars settlement stands on, and on what legal basis, is treated as a distant technicality, when it is treated at all.

Zitelmann puts this first. He tells the reader plainly that his final chapter, the one about property, is the most important in the book, and that the nine chapters before it exist to prepare the ground.

He is right to rank it that way, and his core claim deserves to be stated in its strongest form. A permanent lunar or Martian settlement is an economy before it is anything else, and an economy requires ownership.

Not ownership of resources; that question is largely settled. The United States and the Soviet Union brought back lunar samples decades ago, and their title has never been seriously disputed. The 2015 Commercial Space Launch Competitiveness Act now grants U.S. companies the right to possess, use, and sell the resources they extract from

celestial bodies. That same Act expressly disclaims any U.S. national sovereignty or ownership over the celestial bodies themselves, the land as distinct from the resources taken from it.

The open question is thus the land itself: the ground beneath the habitat, the strip a lunar mass driver runs along, the crater rim with near-constant sunlight. A mining operation can carry its property home. A settlement cannot. It is fixed to land it cannot yet legally own, and everything a community needs to grow, including mortgages, land sales, collateral, capital for businesses that do not yet exist, depends on tenure that no current law provides. Without that, the most ambitious lunar or Martian city remains what Antarctica's research stations have been for seventy years: an outpost, supplied and temporary, not a civilization.

That argument in favor of private space property rights is correct, and Zitelmann defends it across a readable survey of the entire commercial space age. What has changed is not whether the argument holds but why it matters. For decades, the case for property rights in space was a case about incentive. The value of recognized land was proposed as the reward that would draw private capital into the enormous cost of the first missions. It answered the question the world was asking: how could building a permanent settlement on the Moon or Mars ever be financially viable for a private company.

The book's own pages document how that question has since been answered another way. A single company, SpaceX, funded by its own revenues and the determination of its founder, is building the transportation anyway, and has announced a self-sustaining lunar city as its goal for the coming decade. The property-rights-as-incentive argument has not been refuted. It has been overtaken.

What remains is the harder half of the case, and the more urgent one. Once settlement stops being a proposal and becomes a schedule, the question is no longer what motivates the journey but what governs the place: who writes the rules of ownership for ground that no nation may claim, as barred by the 1967 Outer Space Treaty, and whether those rules are written deliberately, in advance, or improvised later by whoever happens to be standing on the land. That is the question *New Space Capitalism* arrives at, and its treatment of it is both the book's greatest contribution and the place where it stops one step short.

The survey that fills the first nine chapters is genuinely useful, and a reader who picks the book up knowing little about the commercial space industry will come away well oriented. Zitelmann writes as an economic historian, and the book is strongest where that training shows. The opening chapters trace how the United States went from landing twelve men on the Moon to paying Russia for seats on Soyuz capsules, and locate the cause not in a failure of engineering but in a failure of incentives: cost-plus contracts that rewarded contractors for driving costs up, programs designed around congressional districts rather than missions, an agency, NASA, whose goals shifted with successive administrations. The account of NASA's 2006 decision to buy transportation services rather than dictate vehicle designs, the quiet policy shift that made SpaceX possible, deserves to be more widely understood.

The book's freshest contribution comes in its third chapter, which draws on the work of NASA's first chief economist, Alexander MacDonald, to argue that privately funded space exploration is not a novelty but a return to form. The great American observatories of the nineteenth century, the most expensive scientific instruments of their day, were financed almost entirely by private wealth. Government dominance of space exploration, on this reading, was a Cold War anomaly, and the current era is a reversion to the older pattern.

The middle chapters survey SpaceX's Starship engineering, the case for Mars, asteroid resources, tourism, and Earth's satellite economy that already generates hundreds of billions of dollars a year. Zitelmann is careful, more careful than some of his allies, to distinguish the space economy that exists from the one being promised. He concedes that the billionaires funding today's ventures made their fortunes elsewhere, and that space tourism remains a marginal

business. He also engages his opponents by name, including the most prominent skeptical work of recent years, Kelly and Zach Weinersmith's *A City on Mars*, granting some of its points while contesting its conclusions.

Readers should know the engagement is spirited: Zitelmann writes as a committed advocate of free enterprise, and the combative tone toward academic critics will energize sympathetic readers and may cost him skeptical ones. But the sourcing is extensive, the history is solid, and the argument is never hidden.

All of it funnels into the final chapter, and the final chapter rests, in significant part, on the legal framework developed by Alan Wasser.

Zitelmann gets that framework right where he engages it. The chapter's central legal question is whether the 1967 Outer Space Treaty, which bars national appropriation of celestial bodies, also bars private property. Zitelmann answers no, and for the right reasons.

He quotes the distinction at the heart of the Wasser and Jobes article in the *Journal of Air Law and Commerce*: to recognize a claim means to acknowledge its existence and validity, while to confer one means to grant it. A nation that grants title to lunar land might well be appropriating the Moon. A dozen nations that merely recognize a settlement's claim to the land it occupies are appropriating nothing. He likewise reproduces the article's answer to the argument that states cannot authorize their citizens to do what states themselves cannot do, citing the baseball coach who gives his players authorization and continuing supervision yet may not run onto the field to catch a fly ball.

These are the load-bearing arguments for the legality of private property under the existing treaty, Zitelmann presents them accurately, and he credits their source. For an argument that spent decades at the margins of space policy, seeing it carried to a general audience by an internationally published author is no small thing.

What the chapter does not carry forward is the foundation those arguments stand on. Recognition answers the question of what nations may lawfully do. It does not answer the prior question of where a settler's claim comes from in the first place, on a world where no sovereign exists to grant title.

The journal article devotes a full section to that question. The answer lies in the civil law tradition of countries like France. Civil law, descended from Roman law, separates property from sovereignty, so that ownership can exist where no sovereign does. On that foundation the article roots a private claim in the natural-law principle of use and occupation: settlers who mix their labor with the land create a right that government recognizes rather than confers. The common law habit of tracing every title to a sovereign grant cannot operate on the Moon or Mars, where sovereignty itself is barred by treaty. Use and occupation can. It is the doctrine that makes recognition coherent, the reason a settlement's claim is something real that nations can acknowledge rather than a fiction they would have to invent.

The book quotes the conclusions this civil law use-and-occupation foundation supports while leaving the foundation unmentioned. The phrase "use and occupation" surfaces in the chapter only inside the treaty's own prohibition on national appropriation, where outer space is barred from being claimed "by means of use or occupation," and never as the affirmative doctrine that would ground a private claim.

The omission matters because of where the chapter goes next. Having established that the treaty permits private property, Zitelmann turns to how ownership should actually come about, and reaches for a new treaty. Ownership of Martian land, he suggests, should go first to whoever develops it, with SpaceX receiving a parcel the size of Singapore, the holding listed as a real estate investment trust so that markets on Earth could price it; the same logic, he adds, could extend to the Moon. It would be prudent, he writes, to negotiate a new space treaty before it is clear who wins the race to Mars.

In fairness, he presents this as a thought experiment rather than a program, conceding that no one can know whether these ideas are realistic. The hedge is honest. But the direction of the reasoning is unmistakable: the path to space property runs through renegotiation.

The difficulty is that the same chapter has already explained why that path is closed. A few pages earlier, Zitelmann observes that the moment for revisiting the 1967 Outer Space Treaty came and went with the end of the Cold War, that Xi Jinping's China is not Deng Xiaoping's China and Putin's Russia is not Gorbachev's, and he quotes the head of the Russian space agency declaring that any attempt to privatize the Moon is illegal and will not be accepted.

The diagnosis is correct. A renegotiation requiring consensus among Washington, Beijing, and Moscow is not a plan. The book thus identifies the right problem, legal certainty for the investors and settlers who will build the first permanent communities, and then commends a remedy (treaty renegotiation) its own analysis has ruled out.

The *Journal of Air Law and Commerce* article Zitelmann cites confronted this exact dead end. Its closing sections address what it calls a chicken-and-egg problem: many experts have proposed amending or replacing the Outer Space Treaty, but none has proposed a realistic way to make a new treaty happen, because no diplomat will spend capital on space property rights while settlement remains hypothetical.

The way around it is to invert the sequence. A single spacefaring nation, acting alone and entirely within the existing treaty, could pass legislation committing in advance to recognize the land claim of any true private settlement, of any nationality, that establishes a permanent base and transportation open to all paying passengers. No land is granted. No sovereignty is asserted. The claim arises from civil law's use and occupation; the law merely promises recognition. There is a working precedent in the Deep Seabed Hard Mineral Resources Act, by which Congress licensed seabed mining under the high seas while expressly disclaiming U.S. sovereignty over the seabed itself.

Draft legislation modeled on these principles, the [Space Settlement Prize Act](#), has existed for two decades. It would cost nothing, violate nothing, and require agreement from no one but the nation enacting it. And if other nations objected, its passage would force the multilateral conversation Zitelmann hopes for, this time with a concrete alternative on the table rather than a blank page. Zitelmann adopts the article's reading of the treaty but not its solution. That solution, use and occupation paired with a recognition law, is the one element of the framework his space property rights chapter leaves untouched, and it is the element built for precisely the impasse the chapter describes.

None of this diminishes where the book lands, because where it lands is close to home. If the United States fails to do so, Zitelmann writes in closing, private companies will have to try to create a *fait accompli*. He closes the property chapter on the same note: settlers on the Moon or Mars will not care much about a treaty signed on Earth a century before their arrival, they will establish property among themselves because survival requires it, and Earth's governments will face the choice of acquiescing or attempting enforcement against settlers a quarter-million miles away on the Moon, or forty million on Mars, by war or by sanctions.

He is right, and the observation is older than he may know. The same journal article he cites carries it to its conclusion: sooner or later, colonists will claim the land they occupy, and the nations of Earth will have no real choice but to accept some reasonable property regime after the fact. On the diagnosis there is no disagreement. Settlement will produce property rights regardless of what Earth decides, because no community can function without them.

The disagreement concerns only what follows. For Zitelmann, the *fait accompli* is the fallback if law fails to act. The better conclusion is that it is the reason law must act. Rules improvised by the first settlement to survive will harden into precedent before anyone on Earth has voted on them.

Ultimately, settlers on the Moon or Mars cannot be stopped from claiming land. The alternative is not to try, but to decide in advance what a legitimate claim looks like: permanent habitation, genuine private character, transport open to all comers, limits on size, the conditions that turn a land grab into a land system.

They will want their land claims recognized on Earth, especially by the U.S., because a claim acknowledged by one or more leading nations is worth more than one merely held: it can more easily be sold, mortgaged, defended, passed on. That desire is the lever a recognition framework pulls, and the reason rules set in advance would bind even people Earth cannot reach.

The window in which Earth's law can still shape what happens off Earth is open now. On the book's own evidence, with a lunar city planned by SpaceX within the decade, it may be measured in years.

New Space Capitalism deserves readers, and it deserves them now. It tells the story of how private enterprise revived a stalled space age, makes the case that space property rights are the unfinished half of that revival, and brings to a general audience an argument that has waited a long time for one. That it stops one step short of the use-and-occupation mechanism is the kind of shortfall that matters only because the rest of the argument is sound.

The race it describes is real. The legal vacuum it identifies is real. The remedy has been drafted for twenty years. What remains is for some legislature, in some spacefaring nation, to read past the diagnosis to the cure.

Douglas Orion Jobes is President of The Space Settlement Institute.

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