



## Upcoming Topics

by Richard Hammer

### Property Rights – April 1998

In our next Forum we will address the topic of "Property Rights in a Free Nation." We seek to learn the origin and nature of property rights, and how those rights will be enforced. The Forum will meet on a Saturday, not yet scheduled, in April.

We solicit papers on this subject for the next issue of *Formulations*, which has a writers' deadline of 1 February 1998. We will invite some or all of the writers of these papers to present their papers at the Forum. Roy Halliday has already submitted a paper on this subject, which you can find in this issue, starting on page 11.

With this topic, as usual, we strive to build the vision of institutions in a free nation. We assume, for the sake of our discussions, that our free nation will be created by libertarians. Thus, we have no need for arguments intended to convert statist to libertarianism. We only need to clarify our own vision.

(Concluded on page 10)



# formulations

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## Forum Report

Fifteen people gathered on Saturday, 18 October 1997, for the ninth semi-annual Forum of the Free Nation Foundation. The topic was "International Relations." Six speakers presented papers, during this 9AM–5PM event which met at Oliver's Restaurant in Hillsborough, N.C.

Five of the six papers presented at the Forum were printed in the previous, Autumn 1997, issue of *Formulations*. These papers were by: Gordon Diem, Roderick Long, Richard Hammer, Roy Halliday, and Phil Jacobson. The sixth paper, by Michael van Notten and Spencer MacCallum, was presented by Spencer MacCallum, and is printed in this issue, beginning in the column to the right.

On Friday evening before the Forum, we held a social gathering at the home of Rich Hammer. Roderick Long and Bobby Emory told of their recent excursion to the ISIL conference in Rome (see the story on page 3). This gathering had been announced in an invitation mailed to all local names on the mailing list, as well as to all FNF Members and Friends. On Saturday evening after the Forum many returned to Rich's house (which it turns out is also the headquarters of FNF), graciously attempting to finish off the snacks and drinks left over from the previous night.

Thanks to Bobby Emory, the pictures in this issue were all (except for the picture on page 3) taken at the Forum.△

## Notes on Foreign Relations Concerns in a Hypothetical Entrepreneurial (Landlease) Community

by Michael van Notten and Spencer H. MacCallum

A mixed use, multiple tenant income property operated as a long-term, managed investment is not the picture many libertarians have of a libertarian nation or community. Yet it is a community, and so far as it is not subject to control by a political state, and assuming businesslike management and well-drawn leases that protect the interests of all parties, it has many or all of the characteristics that libertarians advocate for a free society. Familiar examples of such entrepreneurial communities, or "entrecoms"—also called proprietary communities—include shopping malls, hotels, rental apartment communities, medical and research centers, and mixed-use real estate complexes for which Rockefeller Center was an early prototype. None are

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# *formulations*

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[outdated street address]  
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<http://www.freenation.org/fnf>

## **Statement of Purpose**

The purpose of the Free Nation Foundation is to advance the day when coercive institutions of government can be replaced by voluntary institutions of civil mutual consent, by developing clear and believable descriptions of those voluntary institutions, and by building a community of people who share confidence in these descriptions.

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FNF is a 501(c)(3) federal income tax exempt organization.

Send correspondence to the postal address above. Or email to: [roh@visionet.org](mailto:roh@visionet.org).

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## **Subscription or Membership**

Subscriptions to *Formulations* may be purchased for \$15 for four issues (one year). Membership in the Free Nation Foundation may be purchased for \$30 per year. (Members receive: a subscription to *Formulations*, invitation to attend regular meetings of the Board of Directors, copies of the Annual Report and Bylaws, more inclusion in the process.)

Send orders to the postal address above. Checks should be made payable to the Free Nation Foundation. Additional contributions are welcome.

## **Information for Authors**

We seek columns, articles, and art within the range of our work plan. We also welcome letters to the editor which contribute to our debate and process of self-education.

Our work plan is to work within the community of people who already think of themselves as libertarian, to develop clear and believable descriptions of the critical institutions (such as those that provide security, both domestic and national) with which we libertarians would propose to replace the coercive institutions of government.

As a first priority we seek formulations on the nature of these institutions. These formulations could well be historical accounts of institutions that served in earlier societies, or accounts of present institutions now serving in other societies.

As a second priority we seek material of general interest to libertarians, subject to this caveat: We are not complaining, we are building. We do not seek criticism of existing political institutions or persons unless the author uses that criticism to enlighten formulation of an improved institution.

Submissions will be considered for publication if received by the first of the month preceding the month of publication. So our deadlines are: February 1, May 1, August 1, and November 1. All submissions are subject to editing.

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## **JOINT PUBLICATION ARRANGEMENT**

*Formulations* sometimes carries articles obtained through Marc Joffe of the New Country Foundation. These articles are distinguished by the line "for the New Country Foundation" under the author's name. Marc Joffe may be contacted at: [joffe@aptech.net](mailto:joffe@aptech.net), or c/o The New Country Foundation, P.O. Box 7603, FDR Station, New York, NY 10150.

The web site <http://freenation.org> maintained by Marc Joffe carries Free Nation Foundation documents, along with numerous other new country documents and pointers.

*report*  
**International Conference in Rome**

by Bobby Emory

The 1997 conference of the International Society for Individual Liberty (ISIL) was held in Rome, from 28 September to 3 October. Two Directors of FNF, Roderick Long and I, attended. And I took along my friend Suzanne. The conference program lasted four days and there was a post-conference sightseeing trip. A good time was had by all.

For the libertarian movement the most important event was a speech by a Randian suggesting that libertarians and Randians could get along. In his talk titled "Building bridges between libertarians and Objectivists," Bob Bidinotto, of the Institute for Objectivist Studies (<http://ilhawaii.net/~ios/>), suggested we make common cause in those areas where we already agree. I feel this might be an important turning point for the movement. Recently I found a paper that Vince Miller (chair of ISIL) wrote in 1986 discussing the schism, so it is very fitting that he have a hand in bringing us back together.

For FNF the most important speech was given by Rigoberto Stewart ("The REAL Limon project"). He is from Costa Rica and has a plan to turn his province (Limon) into a free region. He is the director of a think tank and will be using his institute to educate the people of his province. Once he has a significant number of people agreeing that the province should be free, he will go to the central Government and ask for their agreement. I feel that this is unlikely to be successful but he knows his country better than I do (I've never even been there while he graduated from North Carolina State University, so he knows my country better than I know his). In 1999 the ISIL conference will be held in Costa Rica.

The only big name libertarian speaker at the conference was Walter Block, who was enjoying himself by "Defending the Undefendable." He has updated his message somewhat but hasn't changed his basic thrust at all.



*Suzanne Sullivan and Bobby Emory at ISIL banquet outside Rome*

The speaker that was the biggest name outside libertarian circles was the Deputy Minister for Foreign Affairs (for Italy) Antonio Martino ("Euro: an Insider's View"). His daughter was one of the conference organizers. His speech was very libertarian. In a discussion with other attendees, someone suggested that he had tailored his message to the audience. Another attendee assured us that he was well-known for being libertarian.

Roderick Long's speech ("Building a Free Nation from the Ground Up") was well received and provoked discussion. Roderick took sixty packets, almost as many as there were attendees at the conference, to introduce FNF. All of these packets, which included the Autumn issue of *Formulations*, were picked up. Several people brought up FNF in discussions with me, so I feel we have made a good start at taking FNF international.

The sightseeing (Naples, the Amalfi coast, Capri, Pompeii) trip was fun, but not much libertarian content.

All and all, we had an enjoyable week. So much so that Suzanne agreed to go to the next conference. If you have considered going to one of these conferences, I would highly recommend it. The next one is in Berlin in August 1998.△

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ISIL may be contacted at:  
836-B Southampton Rd., #299  
Benicia, CA 94510

<http://www.isil.org>.

## Dialog: The Benefits of Writing about a Free Nation

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Roy Halliday:

As a libertarian, I enjoy writing about a free nation for *Formulations* because: (1) the primary audience is presumed to be fellow libertarians, which frees me from having to devote time, space, and effort in rehashing the arguments against statism; and (2) the secondary audience consists of statist who have some libertarian sympathies and who, therefore, can be shamed into giving up their coercive ways. Writing for *Formulations* allows me to address decent people who do not wish to impose their beliefs on others by force unnecessarily. It allows me to concentrate on developing a vision of what a free society would be like, instead of complaining about the abridgments of freedom in America and sounding like a whiner who does not appreciate the difference between living in the USA and living in most other countries.

The contrast between the picture of a free nation that is emerging in *Formulations* and what passes for a free society in the world today is so stark that it should make our limited-government readers have second thoughts about the morality of their position. There is moral power in this approach of simply describing how free people might handle their affairs if the statist let them alone. It puts statist, even mini-statist, on the defensive.

When we in the Free Nation Foundation present plausible descriptions of how free adults might make arrangements to provide for their own needs, we implicitly challenge our secondary, limited-government audience to show that our depictions are not only questionable, but so wrong that violence is justified to prevent us from trying to implement these

peaceful, voluntary solutions. We put our statist friends into the position of not only disagreeing with our depictions of social possibilities, but of justifying the initiation of violence against people in a hypothetical society who are admittedly peaceful.

We in the Free Nation Foundation admit that we may be incorrect in our predictions about what free men and women would agree to do. The difference between us and those who oppose a free nation is that we are willing to accept whatever voluntary order evolves, but our opponents are not. For example, I wrote an article about family structure in a free nation in which I predicted that the bourgeois family ideal would predominate. If my prediction is wrong, and some other form of family structure, or no particular structure, would predominate in a free nation, I would not, therefore, abandon freedom. Instead, I would accept the free choices of my fellow countrymen as long as they respect my right to choose my own peaceful life-style. On the other hand, a statist would impose his preferred life-style or, at least, prohibit some of the voluntary life-styles that others would prefer.

I recommend that libertarians join the Free Nation Foundation in shaming our limited-government friends by writing plausible descriptions of the possibilities for social life that statist refuse to allow their fellow human beings to try. This helps us to clarify our own vision, and it encourages sympathetic statist to switch over to the morally consistent, libertarian side.

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Richard Hammer:

Among libertarians, we in FNF march to a different drummer. But most libertarians still do not get it. So I appreciate Roy's help in beating this FNF drum.

But still, I notice a difference between my ideal beat and the stride which Roy describes here. I aspire, in my FNF work, to write only to other libertarians. Whereas Roy thinks of a second audience: some statist who might be swayed.

Imagine this scene. You are having a discussion with your spouse. The two of you, alone where no one else can hear, struggle to clear up some difference.

Now alter the scene slightly. Suppose you are having this discussion face to face across a table in one corner of a large, but otherwise empty and quiet, dining hall. At the opposite corner, someone enters and sits down quietly at a table, evidently waiting for something which has nothing to do with you. You both notice the newcomer. The newcomer can hear, clearly, every word you say.

So, does the discussion between you and your spouse proceed as if the newcomer had never entered?

In my experience the entry of the third party changes the discussion so much that it cannot be the same discussion. With each of you knowing that the third party hears, you start talking, not directly to each other, but for the record, or for the sympathies of some broader society.

If you and your spouse care more about your relationship with each other than you care about your image in the broader society, you will seek a place where once again you can carry on your discussion in privacy.

What I try to get libertarians to see is that we, without statist, can go ahead and create our own zone of liberty. But, since we live dispersed among statist, most libertarians have formed a habit—of trying to sell liberty to statist. Please join me. See this habit.

It is not a bad habit. I am not saying that you should stop it entirely. Indeed, to the extent that you believe your political fate will be decided by majority rule in the polity in which you now live, this habit gives you your only hope. And, when you want to exercise this habit, you have at your disposal every other libertarian organization and publication. I support many of these organizations, and subscribe to many of the publications.

But please see that you have a choice. You do not need to put all your eggs in the basket of majority rule. Another path lies wide open before us. When enough libertarians loosen their ties with statist, enough to allow them to turn and face into the libertarian circle, you will see, with me, that we can easily assemble the resources to create a new free nation.

We do not need to win the sympathy of one more statist. We only need to organize ourselves. Please reach to me—and not to the statist—with your arguments.

I started FNF to shine a light on this other path. You will see it, if I can just get your attention away from the habit of trying to please statist.△

## Foreign Relations for Entrepreneurial Community

*(Continued from page 1)*

subdivisions, but are lease arrangements, in which the land is leased but the improvements on the land may be separately owned and maintained. The nature of the enterprise in every case is to build land value—as measured by revenue flow—by creating optimal human environment. Differences among the specialized types reflect differences in the market each tries to attract.

"Newland" is the name of a hypothetical community of this kind of such size and complexity that it bears some resemblance to a "free nation." Hence we have been invited to talk about Newland at this conference on "Foreign Relations" sponsored by the Free Nation Foundation, which seeks to understand how free nations of the future might be constituted and how they might be expected to function.

Newland actually is a proposed real estate development on leased tribal land in northwest Somalia. Its promoters will seek free port status for Newland amounting to a waiver of jurisdiction by the Republic of Somaliland for the 99-year lease period. The subject property consists of an extensive upland valley approximately the area of Luxembourg, sparsely inhabited, with access to the sea. The expectation is that it will be developed and managed by a private consortium as a long-term investment property for income.

For the purpose of this conference and for the simplicity of speaking in the present tense, Newland will be represented as already established and operating. Fourteen items commonly considered under the heading of "foreign relations" will be briefly discussed in no special order. It will be seen that the very notion of "foreign relations" is a political concept whose meaning normally is to be found in the context of national governments and, as such, has little applicability to Newland. The format will pose each item as if it were a question being answered by a resident of Newland.

### Border Control

Insurance companies operating in Newland maintain service offices at our points of entry, offering visitors the various types of liability insurance they are required to have during their stay. The companies offer a variety of information services about Newland, it being very much in their interest to promote travel and residence here.

In addition to these service points, however, some border protection has been required to stop malicious infiltrators. This again is handled by the insurance companies, in whose interest it is to protect the lives and properties of their customers in Newland. They act through an insurance consortium which includes the management of Newland. The consortium in turn contracts out to one or more proprietary police forces which operate plainclothes surveillance and, when called upon, physically deport any who have entered without insurance and are unwilling or unqualified to obtain it. For public relations purposes, of course, both for the management of Newland and their own business reputation, these police are nearly invisible and have cultivated gentility and persuasion to a high degree in all their dealings—without, however, losing sight of the primary goal

of the consortium and the management of Newland which is to make Newland a safe place to live.

### Foreign Policy

In Newland, all "foreign policy" matters are the province of private individuals and associations of business people, sports people, arts people and the like, who relate independently to their counterparts abroad.

### Passports

As a private venture, Newland can't issue passports in the narrowly accepted sense of the word. But something similar is being discussed here. There always has been and always will be need for letters of introduction, as it were, enabling people to know with whom they are dealing and whether they are credible and credit-worthy. This could be an enlargement upon credit rating services such as we already have, and it wouldn't require a physical document but could be entirely electronic. Such a rating service could greatly facilitate people doing business. A company located here in Newland might dress up its rating of individuals by arranging with the management of Newland to let it be called a passport of Newland and carry its seal. This would



*Spencer MacCallum (left)*

no doubt add some prestige—some window dressing—but it would amount to no more than that.

Since living in Newland doesn't require giving up citizenship in another country, many Newland residents find it convenient to retain the citizenship of their country of origin and to use that country's passport for travel abroad. Those without that option use a passport issued by our host country, the Republic of Somaliland.

### **Extradition**

Extradition is not an option here in Newland, nor could it be in any other stateless nation organized on the landlease principle. It is not that extradition would be refused; there is simply no mechanism for it. By way of illustration, let's say that the United States Attorney General sought to extradite Mr. X from Newland. To whom would he appeal? The Newland proprietary authority? An adjudication company? A police agency? Any private resident or visitor to Newland?

Let's suppose he appealed first to the ultimate proprietary authority of Newland, represented by the Newland Management Company. NMC would reply that its authority does not extend beyond that spelled out in the Newland master lease agreement. The most it could do would be to expel a resident for a lease violation if such occurred. NMC might add that in this particular case the individual in question, Mr. X, isn't even its tenant. Its customers tend to be very large business organizations and investment groups. It would have to refer the matter to a sublessee, and that to a sub-sublessee, until it found someone who had a contractual relationship with Mr. X. If that someone investigated and found Mr. X satisfactorily in compliance with his lease agreement, that would end the matter. Only in the event of a specific violation could Mr. X be evicted. And even if he were evicted, he would be perfectly free to find other lodgings in Newland provided that he could maintain his several kinds of liability insurance required by the Newland master lease. Well, suppose his insurance company did cancel on him and no other was willing to write a new policy. Even in that extremity, Mr. X would still, in all likelihood, have some days of grace in which

to try to satisfy the insurance requirement, and in that time he would be free to exit Newland when and how he chose—and to whatever destination.

Suppose the Attorney General then appealed to one of our private adjudication companies. He might do so, assuming their role to be similar to those of political courts in the United States, which have enforcement powers. The adjudication company would reply that judges in Newland, being merely arbitrators, are limited to making judgments; they have no authority to order or authorize that anything be done to anyone. The company of course would be glad to try the case and render a judgment, since that was its business. If the judgment were adverse, it might cause Mr. X to lose his insurance coverage, with the same result as above. The judge might well add that he could try the case only if someone brought a complaint, and the U.S. Attorney General was not a valid plaintiff. Because Newland courts don't recognize statutory law, the Attorney General could not be a party to the dispute; he had merely interposed himself between the disputants where he had no business. Mr. Y in the United States would be the one to bring the complaint.

The Attorney General, seeing himself no closer to gaining physical custody of Mr. X, might finally appeal to a private policy company doing business in Newland. The company would reply, however, that its lease, consistent with the Newland master lease, discourages the use of force in interpersonal relations and expressly forbids initiated force. Newland's first responsibility to its residents, after all, is the physical safety of all in Newland. The company would therefore face eviction for a lease violation. Moreover, since the individual it sought to constrain, Mr. X, had not harmed the company, the company, would, in addition to facing almost certain cancellation of its insurance, incur severe legal liabilities. The Attorney General would get the same answer from any other company or individual it approached in Newland.

The only way that Mr. X could be physically removed from Newland would be by his own action, if he were to place himself outside the law and protection of the community by repeatedly ignoring the court and its judgments. Only then, as a trespasser and, literally, an "outlaw," could he with impunity be abducted by anyone in Newland.

### **United Nations**

Newland, as a private real estate development, has not asked nor has it been invited to join the United Nations. Any advantage such membership might confer on us, as residents, could be had, presumably, through our host, the Republic of Somaliland.

### **Defense**

Defense is not a big issue here in Newland. One reason is that there is not any central control point of power that a military force could capture, since everything consists of voluntary arrangements and private agreements. The insurance consortium, which includes the management of Newland, does have a mutual defense agreement with Newland's host, the Republic of Somaliland. Now that Newland is established, however, this affords more protection to the host than it does to Newland.

### **Government Agency**

Newland has no governing agency in the sense of a taxing or legislative body. The owner of all Newland real estate is a private corporation which, in the interest of escaping unwanted attention from the political nations of the world, has avoided taking on any of the appearance or trappings of a political government—even though, in its functional or public service aspect and in the fact that its jurisdiction is territorially defined, it bears some natural resemblance to a government.

### **Embassies, Consulates**

Newland has no need of embassies or consulates. Their function is served by the public relations department of the management of Newland as well as by the Newland Chamber of Commerce. Should an unforeseen need arise, we Newlanders could use the services of the ambassadors and consuls of our host government, the Republic of Somaliland.

## **The Worldwide Libertarian Movement**

Libertarian pursuits are left to individuals and voluntary associations in Newland. It would be inappropriate for the management of Newland to endorse or promote such activities—which could be construed by the nations of the world as political interference in their internal affairs.

## **International Arms Control**

For the management of Newland to make a treaty with any nation would be for it to attempt to collectivize its residents and speak for them, and there is no provision for that in the structure of an entrecom. As to international arms control, insurance companies decide whether, or to what extent, trafficking in arms endangers the peace and security of its clients in Newland and whether to insure such activities.

## **Diplomatic Immunity**

In a "free nation" there are no diplomatic immunities; natural law makes no exceptions for states and statesmen. On the contrary, natural law regards politicians as criminals. A Newland resident or visitor, while free to invite an employee of a foreign state, cannot guarantee that someone who believed himself to have been injured by that state would not summon the visitor into a Newland court, where he could be judged for crimes committed directly or as an accessory before or after the fact. This would, at the very least, cut short an otherwise pleasant visit.

## **Secession**

A resident or group of residents could pull out of Newland's rule of natural law only by repudiating lease agreements, in which case they would face eviction. So long as we respect our lease agreements, we are obliged to respect natural law on which the lease agreements of Newland are based. Ultimately all in Newland, including the management of Newland, are subject to standards of reasonable behavior developed on a case by case basis by independent arbitration companies for whom a major consideration and guide is customary behavior.

On the other hand, if a group of people saw an entrepreneurial opportunity to provide superior management for an area within Newland than is now being provided, it would be to their advantage to acquire that property by lease from Newland or anyone else holding it from Newland, and to the advantage of the holders to offer it to them. "Secession" of this sort is to the advantage of all concerned. This mode of "secession" happens in Newland all the time and is the very premise of Newland's operation as a business enterprise. This is the reason why land management is highly dispersed in Newland.

## **Conclusion**

It should be evident from the foregoing that the subject of "foreign relations" has little relevance for a private business, which has neither citizens nor subjects but only customers and whose sole concern is how best to serve those customers. When a community is organized entirely along business lines so that community services are provided exactly as any other services in the market place, then the irrelevancy of politics extends to a community or even to a "nation."△

*Michael van Notten and Spencer H. MacCallum are respectively a lawyer in Somaliland and a theoretical anthropologist in Tonopah, Nevada. Mr. van Notten is Dutch born and, through his wife, Fleury, a member of the Samaron Tribe of Somalia. Mr. MacCallum is the author of The Art of Community and has contributed to many professional journals.*

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Bibliography and information on proprietary community administration is available from:

Heather Foundation  
Box 180  
Tonopah, Nevada 89049

(702) 482-2038; 482-5897FAX  
<HeathFdn@Sierra.net>

# Property and United Action in a Natural Government

by Jack Coxe

The term “united action” implies leaders who make plans, and followers who cooperate with the plans. Property, on the other hand, suggests to most people the idea of individual self-government—each person being in charge of their own property. Yet, further analysis suggests that no one can own property unless there is a prevailing agreement on how to acquire property and how to settle disputes over who owns what. And if that agreement involves an authority with the coercive power to enforce decisions, then the door is wide open for power strugglers who would try to acquire property by manipulating the agreed-on procedures to coerce.

I believe that a logical analysis reveals natural procedures which people in a free nation might agree on, for determining who owns what. And I believe that most people, once they understand those procedures, would naturally cooperate with them. But this cooperative majority is naturally individualistic—reluctant to organize, especially in any effort to manipulate the procedures for coercion.

Can this silent majority offer any real competition to collectivist-minded people who naturally seek leaders to organize their manipulation of the procedures to coerce?

So far, in this world, the collectivists almost always wield the preponderant influence on the use of coercion. Even though almost any man on the street might be able to offer a reasonably natural and fair opinion as to who ought to own what, those who have struggled their way into the actual positions of making those decisions often seem to have little use for such simple common sense. It takes only a very small group of well-organized and skillful power strugglers to out-manuever a large majority of individualists in a struggle for the power to coerce.

It is the power struggle that is the culprit. And power struggles are possible only to the extent that options to

make deliberate use of coercion do exist—that there are agreed-on procedures for the deliberate use of coercion. Those agreed-on procedures might involve the election of government officials, or they might simply be for any offended person to reach for his gun. No matter what those procedures are, as long as they provide people with options to make deliberate use of coercion, there will be people who struggle to manipulate them, just as surely as a gold mine attracts gold miners.

Even our American Constitution, so skillfully designed with checks and balances on positions of power, was out-manuevered by people who skillfully subverted its original intent and re-interpreted it for their power-struggling purposes.

My article entitled “Natural Government versus Artificial Government” in the Autumn, 1997 issue of *Formulations*, suggests that logically the only way to eliminate power struggles is to arrange a system which makes the option to resort to coercive arbitration readily available, but completely uncontrollable. Such a system of coercive arbitration, designed to be an option which every person has good reason to avoid, would involve arbiters selected completely at random for each case of unresolved conflict, and then prohibiting any attempt to place any artificial controls or restrictions on the decisions of the arbiters. The effect would be for everyone, including arbiters, policemen, leaders and followers of every description, to be faced with the perpetual choice—either truly seek genuine voluntary agreement with all adversaries, or risk coercive arbitration by arbiters who they have no way of controlling or pressuring. For more information on how this random arbiter system might work, you could refer to the above mentioned article.

The following are a few suggestions on how people might naturally react to their pressing need to seek voluntary agreement. The natural reaction to this need is what *natural government* is.

If you imagine yourself faced with the perpetual choice of either seeking true agreement or risking uncontrollable coercive arbitration, isn't it likely that you and everyone else would very soon realize that you might often be carelessly or unnecessarily offending someone

without realizing it, and that it is therefore likely for that offended person to call for a coercive arbitration concerning your offensive action? How can you be sure that your actions are not offending anyone? Isn't it likely that you and everyone else would realize the pressing need for some kind of agreed-on guidelines to help people to know how to act without offending each other?

Logically, in order to agree on guidelines, people must communicate on a large scale. There needs to be an agreed-on procedure to provide options for people who have ideas for cooperative action, to make proposals, and for everyone else to pledge their monetary and/or moral support for the proposals of their choice. In this way, people could discover and agree on various guidelines and procedures to meet whatever needs arise.

“Proposal planning systems” would be needed. A proposal planning system might involve a proposal bulletin of some kind. It might be a weekly magazine—maybe also on the computer internet. To enter a proposal in the proposal bulletin, maybe the requirement would be for a person to produce a petition signed by 50 people in support of the proposal. Then the proposal bulletin might publish the proposal, maybe for a maximum of 30 days. Then subscribers to the proposal bulletin could respond with pledges of support for the proposal, if they agree with it. Proposals that receive considerable support, might be published in guideline books. Guideline books might become as popular as dictionaries or encyclopedias. There would, of course, be no law books.

The guidelines might not be universally accepted. But the amount of support they received in the proposal bulletin would give a person a clue as to what a random selection of arbiters might decide, if the guideline was ignored and someone called for coercive arbitration. In order to make practical use of the guidelines as a means of avoiding offending anyone, people would need to use honest common sense—a sincere effort to apply the true spirit of the guidelines, instead of an attempt to manipulate the letter of the guidelines.

People might propose guidelines for acquiring land, for land zoning, for how long a person might reserve a plot of land

for future use, for sharing water, for garbage disposal, for dealing with offensive actions, for foreign relations and national defense, for dealing with natural disasters, for assisting disabled or disadvantaged people, for protecting the environment, for ownership of inventions and publications, even for how a person ought to respond to the proposal bulletin and how they ought to be treated if they don't, and so on.

Proposals could also be designed for organized action, such as charity organizations, public parks, road building, fire departments, police departments, voluntary arbitration organizations (as a much-preferred alternative to coercive arbitration), planning organizations (probably becoming the source of most proposals), marketing new inventions, advice and inspection organizations, and so on.

You might be thinking that responding to all these proposals would be way too much of a burden for most people. But so is cement work too much of a

burden for most people. And as we know, any demand invites a market to supply it. Professional proposal watchers might offer their services of responding to the proposal bulletin. Busy people might simply choose their proposal watchers and pay them for their services—sort of like paying taxes (completely voluntary, of course). Some people might prefer to do their own proposal watching. College students might offer their services as proposal watchers. Or organizations such as churches or clubs might publish recommendation sheets on which proposals to support.

It would be completely voluntary, no matter which method a person used to deal with this need for large scale communication and cooperation. Yet, for every person, the need would be real and pressing, as a means of avoiding being called for uncontrollable coercive arbitration. Natural circumstances would be compelling.

A random arbiter system would make it impossible for anyone to deliberately control the use of coercion, thereby providing everyone with pressing personal motivation to find a way to agree with all adversaries. But first a prevailing agreement on the validity of a random arbiter system would need to be built.

In order to build it, a more specific proposal would need to be formed and somehow published. Other people might then improve on the proposal, and eventually arrive at a proposal that more and more people will agree with. And there would need to be some way for people who agree, to tell each other of their agreement—some way that they might respond with notices of their agreement.

*Formulations* might be a step in that direction.△

*Jack Coxe is a cement contractor who lives near Ione, California.*

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## Upcoming Topics

*(Continued from page 1)*

### Law

I regularly solicit suggestions for topics for future Forums. Recently Roy Halliday suggested "law." Roy noted that FNF had addressed this topic before (April 1994), but had hardly settled the issue. I agree. This may become the topic for October 1998.

### Constitutions and Compromises

The idea of writing a constitution for a free nation seems paradoxical, because the writer of a constitution must, I believe, compromise some libertarian ideals. And, even though I have been studying for years now, I still feel ignorant of how best to manage compromises in formation of a present-world nation.

The U.S. Constitution should provide an excellent starting point for study, as the authors of that document did well. But they were launching into the dark, and they had to write a document which they could sell to a population which was only partially libertarian. We now have 210 years of experience with their creation. And we in FNF suppose that we need to sell a constitution only to those

other libertarians who join us in founding a nation. So we should be capable of making some intelligent improvements upon the U.S. Constitution. Yet, apart from Roderick Long's work,<sup>1</sup> our movement has produced little that has impressed me.<sup>2</sup>

I have started to formulate opinions of what would be good and bad in a constitution,<sup>3</sup> but my understanding has not yet matured to the point where I can draft a constitution which I would recommend for our purpose.

Recently a subscriber solicited my comments upon a new constitution which she and others are drafting for a county in Washington state. This exercise proved educational. And, before long, I hope likewise to work through the U.S. Constitution, pencil in hand, from my present vantage. I hope others might join in this. The topic may prove worthy of study again in a FNF Forum.

### The Meanings of Our Words

Phil Jacobson has suggested that we might do well to compile a glossary of terms. This would be useful because our disagreements often grow from our different interpretations of key words such

as: "right," "nation," and "law." I am all for it. Whether this grows enough to become the topic of a Forum remains to be seen.△

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<sup>1</sup>See Roderick Long's four-part "Constitution of Liberty" series in *Formulations*: Vol. I, No. 4, and Vol. II, Numbers 2, 3, and 4. Or see his FNF Working Paper, *Draft of a Virtual-Canton Constitution: Version 5*.

<sup>2</sup>We do have some good works which address similar but different purposes. See, for instance: Frances Kendall & Leon Louw, *Let the People Govern*, 1989; Spencer Heath MacCallum, *The Art of Community*, 1970; and Bernard H. Siegan, *Drafting a Constitution for a Nation or Republic Emerging into Freedom*, 1992.

<sup>3</sup>See my "A State Can Be Designed to Shrink," *Formulations*: Vol. III, No. 3, and "Thoughts on Dismantling Government," *Formulations*: Vol. V, No. 1.

# A Theory of Property Rights for a Free Nation

by Roy Halliday

Private property is essential for a free nation. It gives meaning to the concept of freedom. It clarifies the libertarian principles of justice. And it is a prerequisite for trading in a market economy. If the founders of a free nation are to have any chance of succeeding, they must have a moral theory of property rights.

## Property and Freedom

Freedom and property rights are tightly related. Freedom means doing what you want to do rather than what someone else tells you to do. The right to do as you please with your own property makes up a large part of your freedom. On the other hand, other people's property rights limit your freedom. Each person's freedom ends where another person's freedom begins. A free nation would be a place where each person is free to acquire property and do whatever he wants with it without interference, as long as he does not trespass on the rights of others.

Freedom of the press, freedom of religion, freedom of assembly, and freedom of speech cannot be fully realized without private property. For example, there cannot be freedom of the press in a society where all printing presses are owned and controlled by the state. Even if the rulers do not want to practice censorship, unless they are willing to publish absolutely everything, which could require them to devote almost all resources to the publishing industry, they must decide, somehow, what to publish and what not to publish. They must also decide how many copies they will print of each publication, how to distribute them, what price to charge (if any) for each copy, and many other things that can affect the impact that the publication will have on society.<sup>1</sup>

There cannot be complete freedom of religion in any society. Some religious

sects require holy wars to eliminate non-believers. If one of these sects is allowed to be practiced, then no other religion can be freely practiced in the same society. Antisocial, criminal sects that inter-



Roy Halliday

fere with peaceful religious (or non-religious) practices must be suppressed in order to maximize religious freedom. But in a communist society, freedom of religious expression is restricted even for peaceful religious practices. In a communist society, the government owns and controls all the capital that could be used to construct temples, churches, mosques, golden calves, shrines, and other material expressions of religious beliefs. The state rather than the religious devotees decides which kinds and how many houses of worship to build, if any.

Even so-called free countries, whose governments do not directly interfere with religious practices and which permit private property, impose general regulations and taxes that limit religious activity more than a truly free nation would. Local governments restrict religious freedom indirectly through zoning laws and building codes. All levels of government that collect taxes thereby limit the resources that taxpayers can spend on religion. By demanding tax payments under penalty of the law, all states imply that what they want is more important than what any god or religious community or individual wants.

Freedom of speech is the right to say whatever you want on your own property

and the right to stipulate the rules that others must obey when they speak on your property. It is not the right to speak at the same time as everyone else, to interrupt, to shout down, or to disregard the rights of others. You should always get permission from the owner before using his property as your stage. If the streets and parks and town halls and theaters and all other meeting places are owned by the state, the state must decide whether to permit assemblies, protest marches, and speeches. The state has the right to say how the public property may be used, including who may speak there and what they may say. Under communism there is likely to be less freedom of expression and freedom of religion than in a private property system. Any freedom allowed in these areas under communism is at the pleasure of the ruling class and they can end it whenever they choose.

The more private property you own, the more ability you have to exercise these freedoms. But what about the poor man who has no property? What difference does it make to him whether all property is in private hands or whether it is in the hands of the state? In either kind of society, he can't do anything or have any freedom unless someone who owns property allows him the use of it. In either case, someone other than he decides what actions he is allowed to perform, if any. This poor wretch is clearly in a bad situation under either system. Even so, he should prefer the private property system, because it offers him more hope of improving his situation. First, in the private property system there are many property owners ranging from struggling poor folks to small businessmen to big tycoons. Somewhere in this range there is bound to be someone looking to hire workers or someone with compassion looking to help people in need. The propertyless man has many different people he can plead with or try to negotiate with to get temporary use of property. If one property owner turns him down, he can try another, and another, and another. But when the state owns all the property, the state is the only one he can plead with or try to negotiate with. If the state turns him down, he is done. Second, if he understands economics or history, our vagrant will realize that a free-market economy produces

<sup>1</sup>In 1986, the Marxist dictator of Nicaragua banned all newspapers and journals. He denied that this was censorship. He simply explained that the government needed to use paper for more important things.

more and more wealth and, consequently, more and more total freedom, whereas a centrally planned economy wastes resources and produces less and less wealth and less total freedom. In a free-market economy there is an increasing amount of wealth available for charity and there are more new business opportunities for people who are looking for work. In a centrally planned economy, the amount of wealth available for distribution constantly shrinks as the planners inevitably misallocate resources. Third, in the private property system, the propertyless wretch has a possibility of someday owning property and, thereby, gaining some freedom and independence. Under the state-ownership system, he has no chance of ever owning property and being free.

### Property and Justice

Justice, as I define it, is the part of morality that we can legitimately impose on one another by force. Property rights play an important role in my theory of justice. It is only a slight exaggeration to say that all rights are property rights. Rights to specific things are property rights. But in addition to our specific property rights, which vary from person to person, we all have general or basic rights, which are the same for all of us. These basic rights are not rights to specific things, so they are not property rights.

The basic rights are: (1) the right to self-defense against invasion, (2) the right to be free from invasion, and (3) the right to do anything that is peaceful (non-invasive). Basic rights (2) and (3) are implied by (1), which makes (1) the most fundamental of these general rights. Each of these rights incorporates the concept of invasion. *Invasion* is a violation of someone's property rights. So, to understand how the basic rights apply in a particular case, we must know the relevant property rights of the parties involved. For example, a person's right to self-defense against invasion is sharpened when we know what particular property he has the right to defend. Our right to be free from invasion obligates others to know what legitimate property rights we have, so they can respect those rights. Similarly, our ability to do anything that is peaceful depends on our knowing the property rights of others,

because those specific property rights define the boundaries of our peaceful actions.

Before we can apply our basic rights, we must have a way to determine who owns what. We need a theory of property rights.

### Property and Economics

The free market that libertarians defend consists of people buying, selling, and trading property rights. The economic argument for the free market is that the market is the most efficient way to satisfy the demonstrated preferences of consumers. So, if you want the most efficient economy, you need a free market. And if you want a free market, you need a private property system. In other words:

Before an economy can operate with any kind of efficiency, Mises demonstrates, it must have some means of evaluating—that is, calculating—production costs; otherwise, production becomes a blind, arbitrary process, in which the resources of the community are certain to be wasted and irrationally developed. But economic calculation is possible only within a society of cooperative exchange—only, that is, within the institutional framework which we refer to as the *market*. The relevance of this contribution of Mises to our subject lies in the fact that private property is the indispensable feature of the market. In purporting to abolish private property in the means of production, socialism would thus deny itself the possibility of operating an economy rationally, that is, efficiently.<sup>2</sup>

The legal rules pertaining to property rights are *crucial*. The initial distribution of property titles might not matter to a value-free economist, but it certainly matters a great deal to a person who finds himself born as a serf or a peasant in a country where all the developed land is owned by a privileged class and the undeveloped land is owned by the state or the king.

It is ironic that, in these numerous cases, the only response of utilitarian free-market advocates is to defend existing land titles, regardless of their injustice, and to tell the peasants to keep quiet and "respect private prop-

erty." Since the peasants are convinced that the property is *their* private title, it is no wonder that they fail to be impressed: but since they find the supposed champions of property rights and free-market capitalism to be their staunch enemies, they generally are forced to turn to the only organized groups that at least rhetorically champion their claims and are willing to carry out the required rectification of property titles—the socialists and communists. In short, from simply a utilitarian consideration of consequences, the utilitarian free-marketeters have done very badly in the undeveloped world, the result of their ignoring the fact that others than themselves, however inconveniently, *do* have a passion for justice.<sup>3</sup>

Murray Rothbard was an exception to the rule that economists are morally blind. When writing as an economist, he was as dispassionate and impartial as any other economist. But when discussing policy, he was not ashamed to make moral judgments and to stand up for justice and freedom. The founders of a free nation will need Rothbard's moral courage and commitment to justice as much as they will need his understanding of market principles.

The founders will need to know more than economic theory, because, in a free nation, they might not have the luxury, enjoyed by utilitarian economists, of endorsing or taking for granted whatever property titles are recognized by the state. There might be no pre-established property rights in the new free nation, so the founders might have to devise a way to allocate initial property rights to get the ball rolling. We can't leave this to the free market, because initial property rights need to be established before the market can begin to function.

If it is ever to have an owner it must have a first owner. But an item can enter the market only if it is already owned. Consequently, no matter how much we may admire the free market or how important it may in fact be, it logically cannot provide the fundamental mechanism of ownership. Unless there is some other way of acquiring property the market will never have a field for operation.<sup>4</sup>

Furthermore, even if there are pre-established property rights in the new free nation, it is quite possible that they are not legitimate. If they are not legitimate, it would be wrong to simply ignore this fact and allow transactions based on fraudulent property titles to be upheld in libertarian courts. If the founders want to establish a free nation for honest men rather than a free nation for thieves, they have to know the difference. If they simply let stand whatever property titles were established by the previous regime, they cannot claim to have created a more free or just nation.

So, we need a theory of justice to determine whether the pre-existing property holdings in the new free nation are legitimate, or, if there are no pre-existing property holdings in the free nation, then we need a theory of justice to determine how property rights can be established.

Once we know who legitimately owns what, we can proceed to exchange property titles following the well understood principles that the free-market economists have written about at length and that have been practiced in real markets for ages.

### A Theory of Property Rights

In the following sections I present my theory of property rights. It is a general theory that applies to all moral agents. A *moral agent* is an individual who is morally responsible for his acts, because he can understand moral principles and can consciously choose between right and wrong as he goes his way through life. The only moral agents we know about are human beings, so I use examples drawn from human life. But, if someday we discover other social creatures who have the intelligence and other characteristics necessary to be moral agents, then my theory would apply to them too, and they would have the same basic rights and responsibilities that we have.

By definition, moral responsibility applies to moral agents and only to moral agents. Private property, justice, and morality have no meaning unless there are moral agents that these principles impose obligations on. So, if a rule is not compatible with the existence of moral agents, it cannot be a valid moral rule. I use this as a test for property rights.

To own property means to have the

right to control its use. To control the use of something, in the relevant sense of the word *control*, means to make decisions about what to do with it. To make such decisions, it is necessary to have a brain. Therefore, plants and inanimate objects cannot own property. To simplify the problem, I will posit (without offering grounds and possibly incorrectly) that even animals with brains cannot own things unless they have the intelligence and other attributes needed to be moral agents.

My procedure is to list the logical possibilities for property rights and draw out the implications of each of these hypothetical rights. Then, since we are looking for rights that we want our fellow men to respect, I rule out any hypothetical rights that would make it impossible for us to live as moral agents. We cannot be morally responsible for respecting rights that fail this test. Another test that I use for property rights is that they must be compatible with the basic rights that I listed earlier. (I don't have space in this paper to explain how I derived these rights, but I think most libertarians will not find them objectionable.) Of course, I also rule out any hypothetical rights that are self-contradictory. The rights that pass these tests are the only ones that could possibly be valid.

### The Right to Own Yourself

At some time in the distant past, the first moral agents appeared. What property, if any, was each of them initially entitled to?

First of all, they must have had the exclusive property right to their own bodies. To be a moral agent means, among other things, to be able to think rationally and to act. For a human being, it is not possible to think or to act without the use of a living mind and body. Therefore, for a person to be a moral agent, he must be alive and he must have the private property right to his own mind and body. Everyone naturally assumes he has this right. It is the basis of all other rights to specific property. The only other logical possibilities are: (1) no one has a right to his own body (in which case moral life and moral action are impossible), (2) some moral agents have a right to use their bodies and others don't (which leads to the contradiction that

some moral agents are not moral agents), and (3) all moral agents have a right to use the bodies of all moral agents (which is unworkable and self-contradictory, because a moral agent cannot use his own or any other moral agent's body without violating every other moral agent's right to use that body). Therefore, moral agents initially must have the exclusive property right to their own bodies.

If someone believes he doesn't even have the right to his own body, it would be hypocritical for him to say so, because he would have to use his body to make the statement. Furthermore, the very condition of believing something requires the possession of a brain. It is physically impossible to believe that you don't own yourself, if you don't own a brain. In what sense can the belief that you don't own yourself be *your* belief if you don't own a brain that thinks such a silly thought?

Nature has formed us so that as soon as we are born we use our bodies without asking permission from anyone. Nothing could be more natural than this freedom. Any scheme of communal ownership that does not allow at least this much private property is absurd.

However, you can temporarily lose the right to your body by committing an act of invasion that requires someone to use violence to defend themselves from you. This must be true, because if the right to one's own body were completely inalienable, there would be an irreconcilable conflict between the rights of the criminal aggressor and his victim. The right of the victim to defend himself against invasion would conflict with the inalienable right of the criminal to his own body. There can be no such conflicting rights. One of these rights has to go. If we give up the right of the innocent victim in favor of the right of the criminal, we will soon have a society ruled by criminals who will prevent innocent peo-

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<sup>2</sup>Sylvester Petro, "Feudalism, Property, and Praxeology," in *Property in a Humane Economy*, p. 163.

<sup>3</sup>Murray Rothbard, "Justice and Property Rights," in *Property in a Humane Economy*, p. 120.

<sup>4</sup>George I. Mavrodes, "Property," in *Property in a Humane Economy*, p. 185.

ple from acting as moral agents by either killing them or enslaving them. The rules of justice cannot be such that they favor an unjust society. So we must have the right to use force in defense against those who are invading us, which means that a person's right to his own body is conditional, and it depends upon his behavior. A person has this right when he is not trespassing on someone else's rights. But when a person is acting as a criminal, he loses this right and others gain the right to force him to stop his criminal activity.

The first of all alienable property rights, the right to one's own body, helps to define the right to self-defense, the right to be free from invasion, and the right to do anything that is peaceful. Since we have established that we have a legitimate property right to our own bodies, we can use this fact to define some of the most serious crimes.

Because moral agents own their bodies and have a basic right to defend what they own, they don't need permission from anyone else to defend themselves against physical attack. Except in the case of legitimate self-defense, it is a violation of a person's right to his own body to kill, mutilate, torture, kidnap, imprison, or have sexual contact with him without his consent.

Most societies prohibit these activities in the private sector, but the right of each person to his own body also means that some widely condoned actions of police officers, prison guards, and soldiers are crimes. Military conscription, for example, is a crime that entails kidnapping and slavery. The war against drug users often entails the crimes of kidnapping and imprisonment. The real wars that states periodically wage often involve mass murders on both sides.

The right to one's own mind and body, like all other property rights, is alienable. You may voluntarily risk your life or even kill yourself. You may also voluntarily alienate parts of your body such as your blood, kidneys, and other organs. You may bite your fingernails, suck your thumb, disfigure yourself, let your hair grow down to your waist, or pull it out by the roots. Your body is yours.

Since you own your body, you have the right to do anything with it that does not violate anyone else's rights. For example, you can choose to sleep, work, play, sing, dance, make love, or commit

suicide. It is up to you to decide whether to do things that are pleasurable or painful, healthy or harmful, wise or foolish. As a moral agent, you have the right to choose for yourself and a duty to let other moral agents choose for themselves.

### Other Property Rights

Now that we have established that every moral agent has a private property right to his own mind and body, we need to know what else may be claimed as property, and what conditions establish legitimate ownership.

To be physically ownable, a thing must be appropriable and controllable. Some things by their nature, or because of our limited technology, cannot be appropriated and, therefore, cannot be owned by anyone: the sun, the stars, the laws of nature. We can all use and benefit from these things, but we cannot individually or collectively own them. (Since we can never own or control them, the laws of nature place permanent limits on our freedom. No nation, not even the one with the most freedom, can liberate us from these laws.) Also, to be ownable a thing must exist and be known to exist. We cannot now own next year's crops or an undiscovered island.

Before something can be owned, someone has to want to own it, which means it must be the sort of thing that has value to someone, and it must be scarce enough for it to make sense for someone to want to economize or optimize its use. If it is so abundant that no matter how much of it is used there is still plenty more to be had without effort, then no one will care who uses it and it won't cause any disputes. Scarce things that people value are called *economic goods*. These are the things that people will try to own.

If there is no way for anyone to ever legitimately own economic goods, then it is a crime to drink, eat, or even go on living. But, if we don't do these things, we can't be moral agents, because morality consists of taking actions based on

moral decisions, and we can't do that unless we are alive. It is contradictory to say that morality requires moral agents to not be moral agents. There must be a legitimate way to obtain ownership of such things as food and water that we need for life, otherwise, we cannot be moral agents. Since we know there must be some legitimate way for moral agents to acquire property rights to economic goods, let's consider next whether the legitimate right to own one of these goods pertains to individual moral agents or to groups of them. There are three possibilities for ownership of any particular economic good that is legitimately owned: (1) All moral agents share ownership, (2) a particular group of moral agents owns it exclusively, or (3) a particular individual owns it exclusively.

If (1) everybody in the universe or (2) everybody in a particular group has a right to use the same economic good at



the same time, moral judgments about it become illogical. If you and I have the full right to use and control the same thing, then each of us has a duty to allow the other to use and control it, which means we have a duty not to use or control it ourselves, which contradicts the premise that started this sentence. So options (1) and (2) require additional protocols for allocating control of economic goods within the group. This is a big problem for option (1), but it is a manageable problem for small groups.

If the problem of allocation within the owning group is not solved so that one individual in the group gets the exclusive right to use a particular item, then options (1) and (2) are incompatible with life. For example, if all food is fully owned by all moral agents or by everyone in a particular group, then each moral agent has to abstain from eating food, because if one of them eats it, the others can't have it, which violates their

rights. They would all have a moral obligation to starve to death. This is absurd.

Therefore, (3) private property, at least for some consumable goods, is logically necessary (for moral judgments to make sense) and physically necessary (for moral agents to live). Examples of things that must be appropriated by the individual to the exclusion of everybody else, and which must be allowed as private property if human life is to be justifiable, include one's own mind and body, food, air, water, and standing room.

### Private Land

If it were true that all men have an equal right to all the earth's land and resources, it would be wrong for anyone to use any part of the earth without the prior approval of every other living person. If a man in Ohio wanted to start a farm, he would have to get the approval of his neighbors in Ohio, his fellow countrymen, and all the residents of South America, Europe, Asia, Africa, Australia, and everywhere else. Remember, the assumption is that they all have an equal right to the land he wants to use.

Even if we accept the doubtful premise that the State of Ohio represents the rights of all the residents in Ohio, and that it has the right to collect from the would-be farmer the rent due to the citizens of Ohio for their share of the land, the farmer's payment to the State of Ohio would hardly begin to discharge his obligation to the rest of the world's population. He would still owe rent to everyone living outside Ohio. And, if anyone in the world did not approve of his using the land as a farm, by what right could he appropriate the land?

This line of reasoning could be applied to all other natural resources, with the result that universal ownership makes it impossible to morally use any natural resources and makes moral action and moral life impossible.

As nature has made it impossible for one man to think for another by giving each man his own independent mind, nature has also privatized other property rights. Food, for example, is of no use unless it can be eaten, that is, appropriated in such a way as to be the exclusive, private property of an individual. Except when a woman's body nourishes a fetus in her womb and perhaps in some cases of Siamese twins, nature has made it

impossible to share the direct benefits of ingestion and digestion. We are separate individuals with our own digestive systems. We are not part of one political, social, or collective body. What is true of food applies equally to many other goods that are consumed.

Fortunately, hardly anyone believes in universal ownership of everything. Any group that practiced it would soon cease to exist. Almost everybody recognizes the need for private ownership of some consumer goods. Those who do not verbally acknowledge such private property rights, nevertheless, act as though they believe in them. Anyone who eats without shame affirms private property rights. We should admit that we reject the idea of universal ownership of consumer goods, because we reject the idea by our actions every day.

Universal ownership of capital goods (goods used to produce other goods) is also impossible. As we have seen in the case of the Ohio farmer, universal ownership of land makes it impossible to get permission to use land. The same is true about universal ownership of anything.

If we substitute "societal ownership" for "universal ownership," it doesn't solve the problem. This substitution might be a good debating tactic to try to trick a person into thinking that something other than an individual can have rights, but when you realize that society is nothing more than a set of individuals, you will not fall for this trick. Father James Sadowsky showed that the idea of societal ownership is nonsense:

Consider first the ownership of the individuals. In so doing we shall suppose a society made up of two individuals, A and B. There are but two possibilities: A owns A, B owns B, or A owns B, or B owns A. There is no third entity that can own them both. But there must be a third if both of them are to be owned; that is, for them to belong in the literal sense to society. If we suppose that A owns B or the opposite, we still do not have societal ownership but individual ownership. Now since the appropriation of nonhuman goods takes place via the activities of people, it follows that what is appropriated by the individuals will belong to the owners of the individuals. Since it is impossible

that society owns the individuals, it cannot own what they appropriate.

It is true that the two members of our little society can agree jointly to appropriate land of which they will be co-owners. But in this case the initial decision is entirely voluntary, and each one is an individual owner of that property and may abandon his share of ownership at his own pleasure.

Thus we see that the thesis that society is the original owner of land cannot stand up under analysis.<sup>5</sup>

So, individual moral agents can have rights and can share rights, but society, as a separate entity apart from the individuals in it, does not exist, so it cannot have any rights. This means that individualism, but not collectivism, can provide a realistic basis for moral philosophy.

If we make a distinction between universal ownership and communal ownership such that universal ownership means that every moral agent in the universe shares ownership of something (option (1) in the previous section) and communal ownership means that only the moral agents in a specific community share ownership (option (2) in the previous section), then communal ownership of capital goods is not impossible. Some people could survive under a system of communal ownership of all capital goods, although most of those living today would starve to death if a single commune was instituted worldwide, because such a system would be so inefficient that it could not produce enough food to go around.

A major problem with communal ownership of capital goods is that when the commune gets too large for everyone to keep tabs on everything, it often changes into a dictatorship. Instead of a commune in which everyone participates in controlling the common capital resources, we end up with a tyranny in which the state controls the people. It is not private property rights that conflict with human rights, it is communal property rights, administered by so-called representatives of the people, that conflict with human rights.

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<sup>5</sup>James A. Sadowsky, "Private Property and Collective Ownership," in *Property in a Humane Economy*, pp. 95—96.

However, communal ownership of capital goods on a small scale such as within a family, a business partnership, or a joint-stock company can economize on transaction costs and be efficient under the right circumstances (that is, within an overall framework of private property and a free market). Communal ownership of some capital goods is certainly possible and even desirable, but it does not necessarily trump or preclude the possibility of private ownership of other capital goods. Consider this argument:

Now let us suppose that in various manners I deploy my activity upon material nonhuman goods that are previously unowned. By what right does anyone stop me? There are but two possible justifications: either he has the right to direct my activities by using violence (in other words he owns me) or else he owns the material goods in question. But this contradicts the assumptions we have already made: that each human being is self-owned and that the material goods in question are not *previously* owned. This man is claiming either to own me or the property I think I have acquired. The only factor open to question is whether the other man had peacefully acquired the land before me. But to raise this question is to concede the right of private property which is the thing we are trying to establish. Now, if no one man has the right to do this, it follows that no greater number may do so, for the same question that was asked of A may be asked concerning C, and so of all the others. Surely, if this is true of any of them taken singly, there is no reason to suppose that they could properly do this if they banded together.<sup>6</sup>

So a community has no greater right to stop an individual from appropriating unowned economic resources than the individual has to stop the community. How then do we decide who has the right to use these economic resources?

#### How Ownership Is Established

We have already seen that when the first moral agents appeared they must have owned their own minds and bodies. Everything else must have been unowned. Therefore, the first moral agents

were free to use the earth's resources without fear of violating anyone's property rights. They could appropriate anything that was not already appropriated by someone else.

The natural law by which unowned resources become private property is called the *homestead principle*. The homestead principle can be stated as follows:

By mixing your labor with unowned natural resources those transformed resources become your property.

The reasoning behind the homestead principle is that if you use property that you already own, such as your labor, to transform an economic resource that belongs to no one, the transformed resource becomes a mixture of your property and nobody else's property, so it becomes yours. For example, suppose a family of primitive people are foraging for food and they come upon a patch of wild berries. The berries, being wild, are no one's property and are therefore available to this family. As each member of the family picks a berry and eats it, that berry becomes the property of that person and no one else. Who could deny the justice of this? Now suppose the mother is able to reach more berries than her little child and she picks a handful of berries. Are these berries not hers to consume or give away as she chooses? When she gives some berries to her child and keeps the others in her hand, are not the berries the child eats now his property and the berries in her hand still hers? What principle other than the homestead principle can explain her right to keep or give away the berries in her hand?

Consider another example. Suppose the father in this family discovers that by smashing stones against each other they shatter and sometimes break into pieces that have sharp edges. Suppose he does this and uses one of the sharp pieces as a cutting tool. Wouldn't this tool, this capital good, be his property? What principle could explain this better than the homestead principle?

So we see that the homestead principle explains how the first consumer goods (berries for example) and the first capital goods (knives for example) could become legitimate private property. The homestead principle is the most natural way as well as the most logical way to

earn property rights. Prehistoric people took it for granted that they owned themselves and the things they appropriated by their own labor.

All legitimate property rights are ultimately derived by the homestead principle. Even the right to one's own body is consistent with it. Most people who have thought about it at all have assumed that the homestead principle applies only to property external to the individual. But it need not be limited in this way. It is not strictly true that the individual does nothing to earn his natural endowments. The individual is the first person to mix his labor with these previously unowned endowments. Therefore, he is the homesteader and owner of them. The first unowned thing that each person uses, the first thing that each individual homesteads and makes private property of, is his own body. For human beings, this starts while the person is still in his mother's womb.<sup>7</sup> Nothing could be more natural than to grant ownership of a kidney, a heart, a brain, a limb, a tongue, or any other part of the human anatomy to the first user—the individual himself.

The private property right to one's own mind and body is logically and chronologically the first right that every human being acquires by the homestead principle.

The most obvious example of the homestead principle, and the reason for its name, is the clearing of land by settlers for the purpose of building a homestead. The cleared land becomes the property of the person or family who clears it, because they mixed their labor, their private property, with the unowned land.

Exactly how much and what kind of labor must be used to establish title to previously unowned natural resources? I cannot give one simple answer that would cover all situations. This needs to be decided in common law courts, case by case, as new situations and new forms of property arise. But I can list some kinds of claims that are too weak and that should not be upheld in libertarian courts. The principles that have been offered historically as alternatives to the homestead principle are too weak. For example, it is not enough to simply discover unowned land and claim it for yourself. Discovering and claiming do nothing to transform the natural re-

sources. Discovering something is not as strong a claim as mixing your labor with it, it is merely seeing it. Claiming something is not as strong a claim as mixing your labor with it either, it is merely saying something about it. When Balboa "discovered" the Pacific Ocean and claimed title to all the land that it touched in the name of Spain, he established no property rights at all. Even if he had actually been the first person to discover it, Balboa did nothing to transform the entire Pacific Ocean and make its shores his own or Spain's.

Conquest cannot be a legitimate basis for rights, because conquest is a denial of rights. If A holds property as a result of conquest and B conquers him, then B has the same basis to claim the property that A had to claim it. But B's claim denies the legitimacy of A's claim, which means that B's claim, which is based on the same principle as A's, must also be illegitimate. Conquest as a principle for establishing rights is self-contradictory.

Nor can legitimate property claims be established by decree or edict. A king or a pope or a congress cannot legitimately acquire or grant title to resources merely by proclamation. Unless someone has mixed his labor with them, the king's deer are unowned and so is the royal forest.

In 1803, parts of the Louisiana Territory were owned by "Indians" and white settlers, and most of it was not owned by anybody. Napoleon never owned any of it. So when President Jefferson negotiated to pay Emperor Napoleon millions of dollars for it, no legitimate property titles were transferred. What Jefferson got from Napoleon was not property but a promise not to interfere with American homesteaders in the Louisiana Territory. But Napoleon had no right to interfere with homesteaders in the first place, so he gave up no rights.

Legitimate property titles cannot be established by mere discovery, or by making proclamations, or by fraud, or by conquest, or by making protection payments to would-be conquerors. The simplest way to establish a legitimate property title to unowned resources is by being the first one to use and develop those resources with your own labor. This can be done by an individual, or, in some cases, by a family or by a small group. The larger the group, the more

difficult it is to make decisions about what to do with the property and the more likely it is that disputes will erupt over control of the property.

A more complicated alternative for an entrepreneur who already has property that he is willing to trade, is to hire others to do the homesteading labor under terms whereby the laborers agree to give the entrepreneur title to the fruits of their labor, including their homestead title, in exchange for some of the property that the entrepreneur already owns. This can have advantages for the laborers and the entrepreneur. The laborers get paid without having to wait until the crop (or whatever product) is sold, and they get paid even if the crop (or whatever) fails. The entrepreneur takes all the risk. The advantages for the entrepreneur are: (1) He can employ more labor and acquire more property this way than if he had to do all the homesteading labor himself. (2) If the enterprise is successful, he will be able to sell the product for more than it cost him.

There are many more complicated contractual arrangements that could be made, but to be legitimate, they must resolve to voluntary exchanges of property titles that ultimately are established by the homestead principle.

The homestead principle explains how we can obtain the private property right to previously unowned things such as our minds, bodies, labor, land, and other natural resources. After someone has established legitimate title to something, he can transfer the whole title or part of it to another moral agent by giving it away for free or by making a voluntary exchange for someone else's property. Private property may be acquired in any way that does not violate the rights of any moral agents, that is:

1. By the homestead principle: being the first to transform an unowned natural resource, or by using your property and labor to create something new, or by being the first to homestead something that the previous owner has abandoned.
2. By receiving a gift.
3. By voluntary exchange.

Legitimately acquired possessions are yours to do with as you please as long as you do not violate someone else's rights in the process. Things that you

may do with your property include: using it up, giving it away, destroying it, gambling with it, trading it, lending it to someone, and using it as capital to produce other property with which, in turn, you can do any of these same things.

Others have the same right to do things with their property that you have with respect to your property. Consequently, it is your duty to allow them to exercise their property rights, and it would be a crime for you to destroy or take their property without their permission, or to forcibly prevent them from peacefully using it.

Much more could be said about property rights. Volumes have been written about property rights under the law of contracts, and, as I recall from the business law course I took in college, a lot of it makes sense, because it describes rulings made in common law courts. Some topics such as pollution of the environment, tort law, and responsibility within corporations warrant extensive treatment. In the space I have left I will touch upon one topic that I believe the founders of a free nation might have to deal with: land reform.

### Land Reform

Suppose a group of libertarians takes control of the legal system in a country that has a feudalistic system of land ownership. In this feudalistic system, all the land, including the undeveloped land, is "owned" by a small class of noble lords, and all the labor done on the land is done by a large class of ignoble serfs who, traditionally, are not free to leave and who are required to pay an annual fee to their lords for the privilege of laboring and living on their lords' land. Under this system there is no market in land or in labor. The "ownership" of the land by the noble lords does not include the right to sell or bequeath the land at will. The king is the ultimate dispenser of all land. The

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<sup>6</sup>Ibid., pp. 86–87.

<sup>7</sup>More or less simultaneously, the fetus also begins to use property that is already owned: his mother's body. It is not our own body that we have no right to, it is our mother's body that we need permission to use. If a woman decides she does not want a fetus living inside her body as a parasite, she can, in justice, have an abortion. Abortion is, possibly, the least fair of all just acts.

nobles are overlords who have been granted holdings by the king or by other overlords whose authority is derived from the king. The serfs, or tenant farmers, provide material support to their overlords. The overlords, in turn, provide military and material support to the king.

The relationships among the overlords, and between the king and the overlords, and between the overlords and the serfs are based on status rather than contract. This status is largely based on land holdings, which, in turn under feudalism are derived from conquest and land-grants from the king. The system is as complicated as the IRS tax code. There are many different forms of tenure with fancy Latin and French names, and many different kinds of courts for people of different status. Sometimes the jurisdictions of courts overlap. Sometimes new status levels and new kinds of courts are created. Sometimes they change the names in case anyone was beginning to understand the old names. The average, illiterate peasant doesn't stand a chance in this system. The complexity of it is used to defraud the peasants of their rightful property by making law incomprehensible and masking the simple truth that the king's authority, being based on conquest, is not legitimate.

What changes should libertarians make to this system? First of all, the serfs should be granted freedom to leave their homes. This by itself would make little difference to them in a country with no available farm land, when farming is the only way they know to make a living. Second, owners of land should be allowed to sell, trade, rent, or bequeath their land to whoever they choose. These measures would allow labor markets and land markets to develop. This is about as far as most free-market economists can go, because they don't have any moral theory about the justice of original property holdings.

For the most part, those who pay lip service to the market show little desire to question the property arrangements in these areas. This is why they have little to say that would interest the poor and downtrodden in these countries. These people have come to associate the free-market system with the approval of the status quo. They will not be greatly helped by the fact that from now on their oppressors will be

able to exchange with each other on an unhampered basis.<sup>8</sup>

However, there is more to libertarianism than economics. As we have seen, the libertarian prohibition of invasion rests on a moral theory of entitlements to private property, which, in turn, rests on the homestead principle. If libertarians took over the legal system in a feudalistic country, they would use the homestead principle to bring about land reform.

The king's and overlords' claims to own undeveloped land would not be upheld in libertarian courts. All such land would be treated as unowned land that is available for homesteading.

Furthermore, peasants would be able to sue the king and the overlords for title to the land the peasants or their ancestors developed. The king's claim is based on conquest. The overlords' claims are based on land-grants from the king. These claims would carry no weight in libertarian courts. The peasants' claims are based on the homestead principle and inheritance. Libertarian courts would rule in favor of the peasants. If the peasants can prove that they are the heirs of the original homesteaders, the peasants will prevail on that basis. If the identities of the original homesteaders are unknown, the court will rule that the lands belong to the people who live and work on the lands now—the peasants. The result would be that the rightful owners, the peasants, will become the legal owners of their farms. The king and his overlords will lose title to their ill-gotten lands, and they will receive no compensation. If anyone deserves to be compensated, it is the peasants.<sup>9</sup>

### Conclusion

Private property is essential for a free nation. Without a state to establish initial property rights by fiat, the founders of a free nation will need to have a theory of justice based on the homestead principle so initial property rights can be established and the free market can begin to function. If property rights have already been established, the judges in the libertarian court system still need a theory of justice based on the homestead principle to rectify any fraudulent, illegitimate, or oppressive property titles.

Previous issues of *Formulations* have included articles that draw out the implications of property rights for such controversial topics as voluntary slavery, punishment, copyrights, and patents. I hope that more controversial topics will be addressed in future articles. Applying the homestead principle and the other principles of justice is not always simple. Many tough questions remain to be answered. For example, is there any way to establish title to a scenic wonder such as the Grand Canyon so that it can be preserved in its natural beauty? How much air pollution constitutes a criminal invasion? How much and what kind of assistance can you give to a criminal or to a state without becoming a criminal yourself? How much restitution can you forcibly exact from a criminal before you begin to violate his rights?

It is too great a task to answer all such questions a priori. We don't have to figure out all this before we create a free nation. We can wait to resolve some of these issues case by case, as they come up in real life. We only have to establish the principles in advance. When the need arises, the principles can be applied to specific cases by the interested parties.

In a free nation, common law will continue from where it left off, before it was taken over and corrupted by the state.△

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<sup>8</sup>James A. Sadowsky, op. cit., p. 92.

<sup>9</sup>For a more complete explanation of how the principles of justice should be applied to existing property titles, see Murray Rothbard's "Justice and Property Rights" in *Property in a Humane Economy*, especially pages 115–121.

*Roy Halliday is a paleolibertarian, a father, and an alumnus of Grove City College.*

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## Engineer's View of Morality

(Continued from page 24)

wise, it must occasionally recharge its store of certain raw materials from relatively-concentrated sources of these raw materials.

For example, suppose our robots can live on doughnuts, and suppose they find themselves on a planet which has many doughnuts lying about on the surface. About one doughnut can be found in every living-room-sized parcel. But there are lots of rocks lying about too. In fact there are about a hundred times more rocks than doughnuts. And unfortunately, every time a robot tries to eat a rock, it breaks one of its ten teeth.

So, in order to survive, the robots must have some sense which can distinguish rocks from doughnuts and must learn to act appropriately in response to this sense, trying to eat only doughnuts. This is what I mean by "exploiting a pattern in the environment."

For life to be possible:

1. the environment must have patterns, such as concentrations of nourishment;
2. living things must sense these patterns;
3. the living things must choose appropriate actions to enable them to exploit the patterns.

For another example, imagine an exceptionally simple creature. It meets only two types of objects in its environment: food and predator. And it finds itself equipped with two actions which it can perform: it can attempt to ingest or attempt to defend. If it is to live long it must choose appropriately: attempting to ingest when it meets food and attempting to defend when it meets predator.

In this usage you may notice that I intend a broad meaning for "choice." It could be conscious, as in high-level animals, but more commonly it is unconscious. Most commonly, I expect, this choice happens at the molecular level, when a molecule responds in a given way to a given circumstance.

And note that choices need not be perfect. A creature can occasionally make mistakes, and must succeed only often enough to maintain its vital stores of energy and materials.

## Organizations: The Ability of Insignificant Creatures to Exploit Large Patterns

I have tried to show that, in order to have any hope of surviving, individual living creatures must pattern their actions in particular ways in response to patterns that the creatures sense in their external environments. Now I will try to extend this, to show that organizations of creatures can hope to survive only if the organizations (through the actions of their constituent creatures) pattern their actions in response to features which exist in the environment.

Here is an example. Suppose there is a planet which has two continents. The first, a frozen polar continent, gets 99% of the planet's precipitation, but is so covered with glacier that only a few blades of grass grow during the warm week of summer. The second is a vast, warm desert, with fertile soil but no water. Notice the possibility for agriculture, if water can be transported from one continent to the other.

Suppose that this agriculture, if achieved, could support a population of one billion humans for the foreseeable future. But suppose that at present, with no agriculture, only ten thousand humans live on this planet, and they live near starvation in scattered bands.

Now obviously the task which we see, which promises vast wealth in the form of crops, cannot be achieved by any one of the humans. This task requires companies, or whole industries, of ice carvers, shippers, and farmers. But, equally obviously, the humans can achieve it, if they organize and combine their efforts appropriately, each doing a small part of the whole task.

Now, here are three points:

1. The organization of efforts is not arbitrary or random. A human, even though he can act in thousands of different ways, if he aspires to contribute to the success of the whole organization must choose from among only those few acts which contribute to exploitation of the large environmental feature.

2. The life of the vastly-larger population is made possible by exploitation of the noted environmental feature, and this larger population could not exist if it did not exploit this feature (or some other later-discovered feature which produced as much sustenance, or more).

3. If we step back and view this abstractly we could sympathize with an alien who, looking through a telescope from a distant planet, noticed not a billion things, individual humans all struggling to make their best in life, but only one thing, one organization exploiting one environmental feature. The alien might think this organization was one organism. Indeed, this view of life is becoming common in modern science.<sup>4</sup>

For another example consider a green plant, with its millions of cells in roots, leaves, and stem. The environment in which these cells live has a feature: above the ground there is abundant energy in sunlight and below the ground there is abundant water; but the distance between these two necessary resources is too great for any of the cells, acting alone, to exploit. The plant is an organization in which each cell plays a part. Without participating in the scheme of the plant probably few of these cells could have survived in this environment.

## Tabletop Critters

Now I will develop one more example, which will serve to illustrate my points about morality.

Imagine a flat surface, perhaps a tabletop, upon which some tiny, perhaps one-celled, critters live. These critters need both water and sugar to live, and this tabletop upon which they find themselves is basically a desert. The wind blows, and occasionally deposits a few molecules of water or sugar within reach. This just barely enables them to survive and reproduce themselves.

Now suppose that onto this tabletop fate places a drop of water at some spot, and a crumb of sugar at another spot a centimeter from the water. Suppose that this distance, a centimeter, is much further than any one of these critters can travel in its entire lifetime, but suppose that the critters do have ability to pick up raw materials, carry them for small distances, and then drop them again.

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<sup>4</sup>John Stewart reviews this concept in the Introduction to his paper "Evolutionary Transitions and Artificial Life," *Artificial Life*, Vol 3, No. 2 (Spring 1997).

This environmental feature, the pair of reserves of water and sugar, looks like a niche ready to be exploited. If the critters can learn appropriate rules of behavior, millions of them can start to live in a filament of trade between the water and sugar.

The critters who would make up this chain of trade would need to follow some simple rules. Such rules might be:

1. If you see water on the left, carry it to the right and set it down.
2. If you see sugar on the right, carry it to the left and set it down.
3. If you get thirsty or hungry, help yourself to what you need from the materials that pass through your possession.

With this model before us, we can consider two points.

1. The rules (reminiscent of the planet with two continents) are not arbitrary. The rules work because they help the critters exploit an environmental feature which is bigger than any of the critters, and which none of the critters can change. So in a sense the environment in which the critters live determined the rules, more than the critters themselves.

2. The perhaps-surprising fact that millions of critters can live successfully by following only a few simple rules derives from the simplicity of the environmental feature. The rules are simple because the feature (a distance separates the two essential resources) is simple.

#### How Will the Rules Be Learned?

While this much seems obvious, we arrive now at a difficult question: How are the rules to be learned in the first place?

We can imagine one case in which the rules will be relatively easy to discover. This is the case where the whole chain of traders can see, or sense in some way, the significant environmental feature which supports the rules. If each of the critters can see the mountain of water in one direction and the mountain of sugar in the other direction then, if the critters possess some powers of logic, the rules will quickly be discovered.



But in other cases the rules will not suggest themselves to the senses of the critters. This turns out to be a complex field. Hundreds of books could be written on ways to discover rules. For this paper I will introduce just a few ways.

#### Morality: Biased Experimentation

Generally I suppose that the creatures will be programmed to learn from experience. Assuming they have prior experience which seems relevant, they will be biased to favor an act which has previously led to success and to avoid an act which has previously led to failure. But if they lack experience (if they find themselves in a new circumstance) they will be programmed to try something anyhow, perhaps an act selected at random.

Thus programmed we can expect that a community of creatures will, given enough time, eventually stumble onto the combination of actions which constitute a chain of mutually beneficial trade. But of course the length of time required by random experimentation could be too long. So these creatures need clever ways to speed up discovery of rules. Indeed, the species of creatures that survive best will be those who have, encoded in their genes, the cleverest possible strategies for discovering new sets of rules (to exploit new environmental features). Here, I propose, we might find morality.

For example, suppose Sam is one of these critters. At the moment Sam finds himself fat and happy. He lives adjacent to a drop of water, so he will never go thirsty, not in a thousand lifetimes, and

fortunately he has also taken in a full store of sugar, enough for his needs for six months.

Not compelled by circumstance to forage for sugar, Sam has a choice: He can bide his time, or he can do good. He can sit in his living room and watch TV. Or he can, with not much more drain upon his store of sugar, carry units of water outward from the vast wealth with which he is bestowed, and leave them in the nearby desert, in locations which he learns are sometimes visited by thirsty brethren. It costs Sam almost nothing, and it feels good to help those poor critters.

Now, this charity in distribution of water might be named "morality" by one outside observer. But another might name it "investment in research." If the needy critters out there in the desert move about randomly, until they either find what they need or die, Sam may connect with a greater density of wanderers who need water if he carries his gifts of water outward in a particular direction. That direction will probably be toward some nearby crumb of sugar, although Sam may never comprehend this.

As life on this tabletop continues, with Sam sometimes trying to connect with critters who need water, Sam may one day find himself the recipient of a gift of sugar.

Now, recall that Sam was undertaking this charity because, enjoying some reserves, he had a choice. But he continues to be a self-interested critter. Initially Sam felt no expectation that he would receive sugar when he carried wa-

ter out to a particular spot. But, having once received sugar there, he may start to feel some hope upon returning to that spot.

If the probability increases that his offering will be reciprocated, he may start to think of carrying water to that spot as a wise gamble. And if the probability increases still further, to near certainty, he will think of it as a way to get sugar. He can reasonably see himself as possessing a choice to get sugar whenever he wants it. Thus, charity can be an investment that grows to private trade.

Now consider these three points.

1. This example should make it clear to us that many organizations create themselves. Generally speaking, these organizations were not planned. And no plan for these organizations ever existed. The organizations just grow, where capable creatures live within reach of exploitable environmental features.

2. Furthermore, organizations generally exist without any creatures, who are part of the organizations, recognizing that they exist. Indeed, conscious recognition that organizations exist, such as we humans experience, has probably appeared only recently in the evolution of life on Earth.

3. Even if organizations which exist have been planned by some Great Gardener, the powers of the gardener in this model are limited. The gardener cannot create any arbitrary organization, on whim, because the only organizations which hold together are those which enable the constituent critters to live better than they could otherwise. The most that the gardener can do is to foster growth of organizations by bringing together, in appropriate juxtaposition, the necessary resources and a seed of rules.

### Life Advances Through New Rules, New Organizations

When I consider the progress of the human species, it seems to me that most of the rules, which once discovered have enabled the astounding success of the species, are not at all obvious, not to my senses anyhow. For instance:

- the rules for making iron;
- the rules for rotating crops;
- the rule that money is worth something.

Now I will make a pair of statements, which seem to follow from what we have developed so far.

Looking to the past, most of the advances that have been made by life on Earth have consisted of discovery, by creatures, of new rules of behavior which have enabled the creatures, within organizations, to exploit environmental features which the creatures had hitherto been unable to exploit, either as individuals or through existing organizations.<sup>5</sup>

Looking to the future, most of the advances that we living things might make consist, likewise, of discovery of new rules which will enable us to exploit environmental features which we have hitherto been unable to exploit.

### Rules for Testing Rules

Any given organism may possibly live its entire life successfully by following rules programmed into it from birth. But species which survive best will experiment, will seek success in new decision rules. This is because no niche can be expected to last forever. And the possibility normally exists that a species, by altering its behavior slightly, could propagate into a neighboring niche. And the neighboring niche might prove larger or longer-lasting than the original niche.

Surely the species which survive in our present world must, for the most part, be those whose ancestors experimented regularly with new decision rules. Therefore I expect that one of the rules most regularly programmed into surviving species is this: experiment with new rules.

This experimentation need not dominate the behavior of the species. Indeed, in many cases the wise strategy may be conservative: in the vast majority of instances to continue to apply the old and proven rules, and only rarely or in special circumstances to experiment with a new rule.

The propensity to test new rules would be programmed, I believe, at the genetic level. So it is not necessarily conscious.

Here I think we are looking into another subject which is vast and complex. Again, hundreds of books could be written, on ways to challenge established rules. In this paper I will touch just a few more points.

Considering whole populations, probably some populations stand to gain more than others from tolerating, or encouraging, tests of rules. Considering individuals within populations, similarly, probably some stand to gain more than others from launching a test of the rules. And considering the rules themselves, probably some beg to be challenged more than others. I assume that the programmer of my genes figured this out long before I did.

### Specialized Leadership

A species might wisely employ a strategy of sprinkling, among its progeny, a certain proportion of natural-born rebels. Thus, while most individuals might be stalwart citizens, wanting success only within existing norms, a few will feel happier with themselves if they rattle the cage. This is specialization, which we recognize normally increases efficiency in production.

These "rebels" as I have first named them, will in fact be known in history by many different names. What they are called will depend upon their style, and upon whether they succeed. The other names include: prophet, psychopath, loner, laureate, and entrepreneur.

Returning to the tabletop, there may be some few among the critters who are given vision which the others lack, and who try to induce other critters to join them in the initial sacrifices necessary to establish a new line of trade, between as-yet-unexploited deposits of water and sugar.

Of course these visionaries might be wrong. Or they might be not visionaries but frauds—running a scam. As such, critters will rarely find it easy to decide whether to heed a call to self sacrifice.

The work that I do in FNF seems to me to fit this description. I think that I see a way that we who value liberty can get it, if only we will join our efforts appropriately.

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<sup>5</sup>Rothschild, *op. cit.*, p. 92, tells a part of this history that was new to me. Eukaryotic cells (the constituents of modern plants and animals), which are thousands of times bigger than prokaryotic cells (bacteria), as well as two billion years younger, probably first appeared as "...a collaboration of ancient bacteria."

## Morality: A Means for Settling Public Space

Now I will tell how the view presented in this paper, that morality can be viewed as a practical and necessary search for new rules of behavior, fits with my view of public space, about which I have written a number of times.

To review briefly what I mean by public space: it has to do with who has power to make what choices. The divide between public space and private space follows, not necessarily state-enforced property lines through three-dimensional space, but—more importantly—the power of individuals to effect choices in their own interest. Ownership of the choices which constitute public space has either been claimed by the state (and then in most cases poorly defined and badly policed) or has never been claimed effectively by anyone.<sup>6</sup>

Morality concerns behavior in the public space. To introduce this concept, consider the difference between the words "immoral" and "stupid." Littering your own living room, for instance, we would probably label as "stupid" but not as "immoral." And this extends to choices which injure other people—in those relationships in which rules are clearly defined and policed. Shoplifting—while in full view of the store's armed guard—we would again label "stupid" more than "immoral." If a choice has predominantly private consequences for the person who makes the choice, then I would say the choice had been made in private space. Such a choice falls, it seems to me, outside the scope of what we usually mean by morality.

As I now think of morality, it represents an attempt to privatize some choice, or set of choices, in the public space. Moral choices are examples, of actions which would take place under rules which the actor hopes might become predictable. I would say that a choice had been privatized when rules of behavior have been clarified to the extent that reciprocation on the part of trading partners can be predicted with near certainty.

For instance, when one of the critters described above knows, with confidence, that he can get sugar by depositing water on a certain spot, then I would say that he has private control of a choice to get sugar. In this case I would say that a part of the public space has been successfully privatized, in that certain important behaviors on the parts of other critters, which had been unpredictable, are now predictable.

As I have argued, the advance of life consists of the discovery of new rules. We naturally hunger for order, to know the rules in the environment in which we live. As soon as we do know the rules, we can start to act, productively for our own good, within the context of those rules, without paying the cost of uncertainty.

When we become sure of a set of rules, we can take them for granted. We can decrease our investment in policing that part of our lives. We can increase our investment in searching for new rules to exploit yet-untapped environmental features. We can seek to discover or create new order in a realm that, to our senses, previously had contained only chaos. When we feel secure at one level we typically start to hunger for success at a higher level.

### Reason Can Override Instinct

Let me introduce this topic with an example: A human, knowing that she has a parachute strapped to her back, can choose to jump out of an airplane, overriding the veto of her instincts.

In the evolution of the nervous systems and brains of animals, the higher, reasoning centers grew on later in evolution than the lower, primitive centers. I propose that the higher centers served the animal through the ability of those higher centers to discover environmental features which the lower centers were too simple to detect.

But the lower centers had served the animal thus far, so it must be that these lower centers were able and prepared to make choices: to choose the action, from among the creature's set of choices, which the creature would perform in each situation it might encounter. So, in order for the higher centers, as they grew on, to be of any value, the lower centers had to surrender some control to the higher centers. At a high level, which I

experience in my consciousness, this surrender of control seems to consist of presenting the problem to the conscious reasoning mechanism, and offering that mechanism a chance to select a solution other than the solution which would be selected by the lower center.

It is as if the boss (the older, lower-level center) calls a subordinate (the newer, higher-level center) and says, "Look, a situation has come up. I know what I would do. But I am not sure it is best. You are a bright kid. See if you can recommend something better."

Here are two more examples which illustrate this action:

1. We are able to swallow bad-tasting medicines.
2. An animal with a certain level of sophistication can decide not to take bait which a lower-level animal would take every time.

We can view morality in this light. As I said earlier, I suspect that moral impulses are coded in the lower centers of our beings, probably even in our genes. Thus morality is not a higher-level function, felt only by humans, but is an attitude we can generally expect to find in all life.

So our low-level moral impulses routinely get passed, from the low-level centers to the high-level centers, for review and recommendation. We can consider how to be moral, and we can judge whether blindly following our basic moral instincts will serve in the long run.<sup>7</sup>

If you agree with my arguments so far, you may be prepared to join me in lowering morality from the pedestal upon which we often find it placed. Morality is an instinct which serves survival. As such it is no more noble than our instinctive appetites for food and sex. Survival of the genotype, it seems, is the higher goal. Morality is merely the subordinate, the tool of survival.

## Organizations Which Live Need Not Be Moral

In nature, as I model it here, opportunities abound for living things to cooperate, to form mutually supportive networks in which individuals specialize in tasks for which they are well suited.

If, however, benefits of cooperation with others do not appear, or if attempts to effect cooperation with those others fail, the drive to survive and prosper, having given morality its chance, will "dehumanize" the others and treat them as objects to be harvested or taxed. Unless, that is, those others have enough power, to retaliate with sufficient force to discourage further attempts. In this case coexistence (a mutually-respectful stand-off) ensues, in a relationship which is neither synergistic nor parasitic.

Therefore we should not expect to find morality in all relationships in nature. Life abounds with predators. In fact we survive by eating other living things. And we had better be on the lookout for creatures which see us as their food or tax base, because those creatures will not lament consuming us.

## Life Is Expanding, Dissolving the Hard, Cold Universe

This paper deals mostly with morality. But here I will tell a view of life which meshes with morality. It is a wildly optimistic view. Grand prospects await both life and morality.

It seems probable to me that the amount of life on Earth is growing. Assuming that life started a long time ago as a few organic molecules, and noting the amount of life which surrounds us today, we have two data points, with a definite increase from the first to the second. It looks like a trend to me. With each passing year, I bet, if we could place all of Earth's living matter on a scale and weigh it, we could see, like any proud parent, that it grows steadily. This is the nature and course of life.<sup>6</sup>

Each living thing feeds wherever it can, munching on whatever energy and raw material it can find. Now, for us humans, and for many living things generally, we find energy and raw material to suit our digestion only, for the most part, in other living things. And because it seems that we must eat other things that live, or have lived, I think it is natural for most humans at present to

believe, incorrectly, that any form of life which expands its turf can do so only at the expense of some other form of life which it must exploit. But this is not so. Some creatures in the food chain digest energy and raw material that have never been part of any life since the big bang. These increase the amount of biomass.

The second law of thermodynamics tells us that the universe is changing from centers of concentrated energy and matter to a mixed up, lukewarm pea soup. The observation which I present here suggests that the soup will pass through a phase in which it is, in large part, alive.

Until the dying days of the pea soup (billions of years from now, assuming the second law lasts that long), there will exist environmental features which have not yet been exploited by life. And thus there will exist opportunities for life to expand its turf without stealing habitat from existing life.

Looking to the sky I see the sun. Plenty of energy, almost all of it going to waste, as far as the advance of life is concerned. Also up there I see Jupiter. Plenty of raw material, a snack waiting for an appropriately-scaled organization. Morality, the quest to find new ways to cooperate with other life in settling frontiers not yet privatized, has a bullish future. But we have barely started.△

*Richard O. Hammer worked for one year as a bioengineering research assistant at Harvard Medical School in Boston. This was his first job after completing undergraduate study in 1973.*

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<sup>6</sup>For a more complete description, see my "Hit 'Em, But Not Too Hard: Institutions for Giving Negative Feedback in Small and Manageable Increments," *Formulations*, Vol. IV, No. 2. (Winter 1996-97).

<sup>7</sup>I suggest guidelines for deciding when charitable giving is appropriate in "A Libertarian View of Charity," *Formulations*, Vol I, No. 2. (Winter 1993-94).

<sup>8</sup>Kelly, op. cit., pp. 106-108, expresses a similar view. In this section Kelly cites physicists Erwin Schrödinger and Freeman Dyson, as likewise expressing collaborating views.

# An Engineer's View of Morality Set in a Model of Life

by Richard O. Hammer

## Introduction

I feel moral impulses routinely, sometimes moment to moment. While these impulses suggest what I should do, many of them arrive in my consciousness with tags of doubt attached. I am given, in addition to an impulse, the option to reconsider it.

I have long had the impression that moral impulses are programmed into me, more or less as an appetite for food is programmed into me. Thus I have a practical view of morality, rather than a moralizing view of morality. I feel moral impulses, that something is right or wrong, not because that thing is inherently right or wrong, but because the choice suggested by the impulse serves, perhaps in ways I am not wise enough to see, the needs of me and my community. As sociobiologists might say, the choice serves my genotype in the long run.

Recently, since reading and discussing books<sup>1, 2, 3</sup> which summarize the new science of spontaneous order, my theory has grown to offer new explanations for morality. This theory rests within a larger theory about life in general. As such I will have to tell parts of that larger theory as well.

Some readers will ask, quite reasonably, what this has to do with the work of the Free Nation Foundation. As I have been arguing, I believe that we libertarians should be able to organize and establish a zone of liberty for ourselves. And I believe that we can achieve this through easily-accessible mechanisms. Yet almost all libertarians hang back, waiting and watching. This suggests to me that they do not believe what I believe.

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<sup>1</sup>Kevin Kelly, *Out of Control: The New Biology of Machines, Social Systems, and the Economic World*, Addison-Wesley, 1994.

<sup>2</sup>Michael Rothschild, *Bionomics: Economy as Ecosystem*, Henry Holt and Company, 1990.

<sup>3</sup>M. Mitchell Waldrop, *Complexity: The Emerging Science at the Edge of Order and Chaos*, Simon & Schuster, 1992.



*Richard Hammer (left)*

So I continue describing more of the underpinnings of my belief. This paper tells how I view us, as living, moralizing, and organizing beings. I hope that this attempt, to cover some abstract and far-flung bases, might ease doubts felt by a few more libertarians, and induce them to join the free-nation process with more resources and enthusiasm.

And of course it does not hurt that, apart from our political fate, I find this subject fascinating. I hope you will enjoy it too.

## Robots for a Distant Planet

Suppose you have been given a job, to write the computer program which will go into a population of robots which will settle upon a distant planet. I will start by telling more about this challenge, as it sets the stage for what follows.

The goal which you have been given is simple: to instruct the robots so that they will survive and, if at all possible, flourish. The robots have physical capacities, to sense and move. They have a good memory, which is initially empty. They arrive with a supply of necessities, which will get them started. But before long they have to find ways to sustain themselves, from what exists on the planet. When circumstances permit they can reproduce.

But you, the programmer, know almost nothing about the planet upon which the robots will land. Probably you can bet that it will have gravity. But beyond that you have to give the robots power to discover for themselves whatever behaviors will help them survive.

Now these robots might be complex, having dozens of acts which they perform and thousands of things that they can sense. But, for most of the examples in this paper, we will be looking at simpler creatures, which can act in only a few ways and sense only a few things. Because, when we start to speculate about how the robots must learn from experience, we see that simpler creatures will serve to illustrate many of the problems.

## Life: That Which Exploits Patterns

Living things, in order to survive, must exploit patterns in their environments. This follows from logic, and from the second law of thermodynamics.

Usually we apply the second law to machines, but it applies as well to living things. A living thing necessarily consumes usable energy. In order to keep on living it must occasionally recharge its store of energy from some relatively-concentrated source of energy. Like-

*(Continued on page 19)*