



**Rigoberto Stewart  
Leader of REAL Limón  
Project in Costa Rica  
Visits FNF**

On 9–10 February 1998 Rigoberto Stewart of Costa Rica visited the Free Nation Foundation and discussed his project to achieve independence for the Limón Province of Costa Rica.

On Monday evening, 9 February, FNF held a meeting at the Omni Chapel Hill Hotel, in which Dr. Stewart described the project. About fifteen people attended.

The REAL Limón project, which Stewart promotes as "Finally a Galt's Gulch!" and "A New Hong Kong in Central America," will start with a program of education, and be followed by a movement at the grassroots. The project hopes to have the people of Limón declare the Province an autonomous and free region, governed by libertarian principles.

The Province, one of seven in Costa Rica, is located on the eastern, Atlantic coast. It covers about 9200 Km<sup>2</sup> and has a population of about 260,000 people.

Readers will find a more complete description of the project in Stewart's report "The REAL Limón Project," starting on page 12 in this issue.

Following the Monday evening meeting at the Omni, Stewart and Richard Hammer held ten hours of discussions on constitutions, law for a newly forming nation, and conditions in Costa Rica. These discussions lasted into the night,

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# formulations

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**FNF Updates Its Web  
Site  
<www.freenation.org>**

by Richard Hammer

FNF's web site has improved during the early months of this year. We have modernized and redesigned our home page, added a few pages, and reorganized the directory structure. And FNF now has a Webmaster: **Wayne Dawson** <jongalt@pinn.net> fills this role.

**Site Transfer**

While visitors to the site may not notice this, the biggest change, from the standpoint of FNF's workers, is that control of the site has been transferred to FNF from the New Country Foundation. NCF is a collaborating organization which is headquartered in New York City. During the first few years of our web presence, until February of this year, **Marc Joffe**, Director of NCF, provided hosting for the site, pursuant to the joint publication arrangement between FNF and NCF. But now Marc has contributed ownership of the URL (the name "freenation.org") to FNF. And the site has been moved to a new Internet service provider, Networking Enterprises, which has offices in nearby Carrboro, N.C.

Networking Enterprises offered FNF a bargain price, as well as free help with some site-development tasks. For this generosity we thank **Candi Copas** who, in addition to serving as Director of FNF, is President of Networking Enterprises. Additionally, Candi acquired a backup URL <www.fnf.net> for FNF. This backup is working, so browsers can access our site through <www.fnf.net> as well as <www.freenation.org>.

**The Archive**

Progress continues on FNF's web-based archive of prior publications. This

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**Foundation News Notes**

- On Saturday, 11 April 1998, FNF held its tenth semiannual Forum. The topic of the daylong meeting was "Property Rights in a Free Nation." Four speakers presented papers. These were: Roderick Long, Gordon Diem, Richard Hammer, and Roy Halliday. Twelve people attended the event, at Oliver's Restaurant, in Hillsborough, N.C.
- In February, FNF's Annual Report was prepared and mailed to Members and Friends of FNF. ("Friends" of FNF are people who have contributed as much or more as Members, but who have never indicated desire to be enrolled as Members.) The seven-page booklet, modeled upon the annual reports of business corporations, details how FNF raised and used \$10,013 during 1997. It lists by name twelve donors of \$100 and more who have not requested confidentiality. It also proposes a budget, with a modest increase, for 1998.

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# *formulations*

a publication of the  
**Free Nation Foundation**  
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Hillsborough NC 27278  
<http://www.freenation.org>

## **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.

## **Board of Directors**

Richard O. Hammer, President  
Roderick T. Long, Founding Scholar  
Bobby Yates Emory, Secretary  
Philip E. Jacobson  
Candice I. Copas  
Christopher H. Spruyt

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

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*Formulations* is published quarterly, on the first of March, June, September, and December.

## **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.

We consider material in *Formulations* to be the property of its author. If you want your material copyrighted, tell us. Then we will print it with a copyright notice. Otherwise our default policy will apply: that the material may be reproduced freely with credit.

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## Foundation News Notes

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- On Sunday, 8 March 1998, the Board of Directors held a regular meeting at supper time, from 6–8 PM, at Oliver's Restaurant. Five Directors and eight others attended this meeting, to which all Members and Friends received invitations. Topics discussed included: FNF Member John Kingman's February trip to Kismayo, Somalia; Rigoberto Stewart's REAL Limón project; our web publishing activities; and the 1997 Annual Report.
- FNF Member Bruce Benson presented a paper "An Economic Theory of the Emergence of Governance and the Rise of the State," at the recent Austrian Scholars Conference, sponsored by the Ludwig von Mises Institute. Since Richard Hammer attended this conference, he was able to renew contact with Bruce. Bruce, who is Distinguished Research Professor in the Economics Department at Florida State University, told that one of his main agendas, in research and publishing, is "undermining the myths of the state."

Also at the conference was *Formulations* subscriber N. Stephan Kinsella, an attorney from Houston, who presented a paper "Constitutional Structures in Defense of Freedom." The conference met on 3–4 April 1998, at Auburn University in Alabama.

- FNF can now accept credit-card payments, for Visa and MasterCard. The account has been established with Central Carolina Bank, and the necessary software has been installed and tested in the FNF office. Complete implementation awaits production of a new set of ordering forms, which ask purchasers for credit-card information. But anyone who wants to charge a renewal or a contribution, to Visa or MasterCard, can do so now by communicating the following information to the FNF office: credit-card number; date of expiration; your name as it appears on the card.△



*The property rights Forum on 11 April 1998. Photo thanks to Chris Spruyt.*

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### Rigoberto Stewart Visit

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since Stewart stayed at Hammer's house in Hillsborough, as well as all through the next day. On Tuesday evening Stewart met Roderick Long for consultation, over dinner at a Chapel Hill restaurant.

Stewart represents the International Society for Individual Liberty (ISIL) in Costa Rica, and has charge of planning the 1999 ISIL World Convention in Costa Rica.

At about the time of his visit to FNF, the libertarian party in Costa Rica, of which he is a founder, won election to one seat in the national legislature in San José.

Our Monday-night meeting was announced with a mailing to all on the FNF list within driving range, as well as to all FNF Members and Friends regardless of where they live. As a result one FNF member traveled from Philadelphia, Pa. Also, thanks to Candi Copas, the notice was distributed to libertarian mailing lists on the internet. At the meeting a sandwich buffet was provided.

Stewart has served as Professor at the Latin American University of Science and Technology, in Costa Rica. He has written many books, chapters, and articles in professional journals. Two of his forthcoming titles are *Creating Hunger and Misery: Agricultural and food policies in Latin America*, and *How to Achieve Economic Prosperity in Latin America*. He publishes a steady stream of articles in Costa Rican magazines and newspapers, and regularly appears on cable TV there.

Prior to visiting FNF, he had attended a conference organized by the Atlas Economic Research Foundation, in Orlando, Florida. After our meetings he went on to the Washington, D.C. area, where he has many contacts.△

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# Bill of Law

by Michael van Notten

We, the founders of the free nation, in order to guard the freedom of those who visit or settle in the free nation, do hereby affirm the following principles, rights, and rules of procedure. We expect every person in the free nation to abide by these fundamental laws.

The procedural rules given here are intended as a starting point for the development of rules for maintaining and enforcing natural rights. These rights do not change, but the procedures for maintaining and enforcing them can be continually improved.

Any person offering judicial or police services in the free nation shall be free to specify more detailed rights, obligations, and procedures than those included here, provided they are consistent with the natural law described hereinafter.

## NATURAL LAW

Natural law describes the natural, voluntary order of human society. This law is timeless, unchangeable, and universal. It takes priority over any other law, including constitutions and contracts. It acknowledges the right of every person to live a life that is governed by his own goals and opinions. Natural law serves to prevent and resolve conflicts between people pursuing contradictory goals. It stipulates that every person shall be free to dispose of his rightfully acquired property and shall refrain from disposing of the property of others without their permission. It permits all activities that do not violate someone else's person or property.

As a matter of principle, a society based on natural law should be maintained by means consistent with that law. These means will then generate—under the disciplines of profit and loss, supply and demand, and peaceful competition in the free market—the information required for discovering the optimal way of protecting natural rights.

## LEGAL PRINCIPLES

### I (natural rights)

Every person shall be free to:

1. form his own opinions;
2. control the actions and labour of his own body;
3. use any object not belonging to others and make it his property;
4. make voluntary agreements with others; and
5. defend these freedoms.

### II (natural obligations)

Every person shall respect the rights of others, and therefore refrain from:

1. using force or threats thereof against peaceful persons or their rightfully obtained possessions; and
2. disposing otherwise of other people's property without their permission.

### III (remedies)

Every person who violates someone's natural rights shall:

1. immediately cease violating them;
2. return the goods thereby alienated;
3. compensate the victim for damage inflicted and profits foregone;
4. pay fines to the victim for willful infringement of his rights.

### IV (fines)

If the parties concerned fail to agree on the nature or extent of the fine, it shall be determined by an independent and impartial court of law on the basis of the seriousness of the crime and the circumstances under which it was committed.

### V (sanction)

Every person who refuses to remedy the rights he violated loses, to the benefit of his victim and to the extent required for remedy, his right to dispose of his freedom and property, as long as he persists in his refusal.

### VI (force)

Every person shall be free to defend his natural rights by using force against his attacker and to call upon police to restore them. In the absence of an impartial judiciary and police, every person shall be free, subject to his liability for

his own violations, to use force himself to restore his violated rights.

### VII (the police)

The police, including the military, shall not use force save when an independent and impartial court of law has verified that it is used:

1. at the request of a person whose rights have been violated;
2. against the person who violated them;
3. for the sole purpose of remedying such violation;
4. with the least violent means available; and
5. after the violator has refused to comply voluntarily.

### VIII (the judiciary)

Every person shall be free to exercise the profession of judge. Judges shall judge only on the basis of facts as presented, not on a person's opinions, achievements, or bodily characteristics. Judges shall only authorise the imposition of obligations that are derived from natural rights.

### IX (government)

Government shall consist of all the courts of law and police forces, including the military, that operate in a free market. Its function shall be to adjudicate and enforce natural rights, including the right to compete in the business of supplying government services.

### X (government rules)

The rules made by government are either: (1) contrary to natural law and therefore null and void, (2) identical to natural law and therefore superfluous, (3) compatible with natural law and binding only upon those people who knowingly and voluntarily accepted them.

## RIGHTS

From these legal principles, the following rights are derived. First, a set of rights that apply to adults. Then the rights pertaining to children and one special right pertaining to women. Rights not listed shall be upheld only if they are consistent with the principles set forth above.

Every person shall be free:

1. to live according to his own, peaceful beliefs;
2. to express, in his own language and manner, his thoughts and opinions;
3. to reside in any country, and to move in and out of it along with his possessions, provided he poses no physical danger;
4. to enjoy the privacy of his home, business, papers, and effects, including his mail and telecommunications;
5. to found a family and to raise and educate his children according to his own insights, if he finds a willing mate;
6. to assemble with any others and to join and resign from any voluntary association;
7. to offer his services to people of his choice;
8. to break any employment contract as long as he honours its performance bond;
9. to undertake any economic activity, including the adjudication or enforcement of natural rights, and to keep its profits;
10. to sell, buy, lease, rent, lend, borrow, retain, or give away property by mutual agreement;
11. to exploit his land and waters, and any material in them;
12. to repossess the land, buildings, and other property taken from him in violation of natural rights;
13. to prevent others from spoiling his property by polluting it;
14. to criticise or petition any government institution and avail himself of any services it offers;
15. to keep and bear arms, excluding weapons of mass destruction;
16. to use force himself when his rights are in clear and present danger;
17. to dissolve any government institution which systematically violates natural rights.

Children shall enjoy the same freedom as adults except for restrictions imposed by their parents in the interest of their safety, health, and development. Children become adults when they behave as adults. Children are entitled to receive from their parents: food, cloth-

ing, shelter, health care, and education. Parents shall not be liable for the activities of their children unless they could have prevented them. Contracts concluded by a child may be dissolved by a court of justice at the request of the child or any of its parents. When parents are unable or unwilling to care for their child, the child or others acting on its behalf may appeal to a court to appoint a legal guardian who will assume the parental rights and responsibilities.

Women shall be free to abort their pregnancies, at their own discretion and expense.

### RULES OF PROCEDURE IN CRIMINAL MATTERS

The following rules shall guide the actions of those who provide judicial or police services.

1. Every person accused of having violated a natural right shall be presumed innocent until proven guilty by an impartial court of justice. Until then, he shall be entitled:

- 1.1 to agree with the plaintiff on initiating, interrupting, and terminating any litigation before a judge of their choice;
- 1.2 to refuse to submit to a judge who is forced upon him as long as the judge's impartiality is not assured and his request, if any, for a jury has not been granted;
- 1.3 to be informed, in writing and in a language which he understands, of the nature and cause of the charges against him;
- 1.4 to try to refute those charges (but no plea of ignorance of natural law shall be accepted);
- 1.5 to be assisted and represented by counsel of his choice and to keep his communications with that counsel confidential;
- 1.6 to be allowed adequate time for the presentation of his defence;
- 1.7 to resist interrogation, to decline to supply evidence against himself or his organisation, and to refuse confession;
- 1.8 to inspect the evidence brought against him and to cross-examine his accusers and their witnesses;
- 1.9 to bring in his own witnesses to testify under the same conditions as the witnesses against him;

- 1.10 to be given a prompt trial, without undue delays, and to receive a copy of its proceedings;
- 1.11 to reject procedural and evidentiary rules which infringe upon the principle of presumed innocence;
- 1.12 to decide whether to permit friends, family, the press, and others to attend his trial.
- 1.13 to present his defense in writing and to elucidate his defense orally at his trial.

2. Every person arrested shall:
  - 2.1 be informed immediately of the reasons for his arrest, his right to remain silent, and the consequences of making statements;
  - 2.2 be given proper food, clothing, shelter, and accommodation as well as instant communication with legal advisors and those who could assist with posting bail;
  - 2.3 be spared torture, assault, mutilation, sterilisation, and other cruel or inhumane treatment;
  - 2.4 be brought without undue delay before a grand jury or impartial court of justice, failing which he shall be entitled to instant release;
  - 2.5 be instructed, in writing and in a language which he understands, of the reason and nature of the charges against him;
  - 2.6 be released from detention when the court finds the charges lacking in credibility or when sufficient guaranty has been given to insure that he will appear at the trial and obey the judgement, and his release would not frustrate the investigation;
  - 2.7 be permitted to receive mail and visitors.
3. Every person convicted of having violated a natural right shall be entitled:
  - 3.1 to be informed, in writing, and in a language which he understands, of the reasons for his conviction;
  - 3.2 to appeal once against his verdict and to have its interpretation of rights reviewed by a separate court;
  - 3.3 to avoid forcible execution of his verdict by complying voluntarily.

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# Normal People Believe in Natural Rights

by Roy Halliday

In this paper I try to convince those who say they do not believe in natural rights that they are mistaken about their own beliefs. This sounds presumptuous. How can I know what someone else believes better than they do? The answer is that I am not questioning that they know better than I what they consciously believe. Instead, I contend that, whether they are aware of it or not, all normal people believe in natural rights at an emotional level.

I make this point in four different ways:

**1. Proof by Denial:** I explain what it would mean to not have an emotional belief in natural rights. It would lead to responses that all normal people would find unacceptable.

**2. Your Conscience Implies That You Believe in Right and Wrong:** I argue that normal people are aware (through introspection) that they have consciences and that a person's conscience constitutes his emotional belief in right and wrong.

**3. Physical Evidence for the Moral Sense:** There is some physical evidence that normal people have what I call a moral sense.

**4. Belief in Morality Preceded Human Reason and Made Reasoning Possible:** I argue that the human belief in morality at the emotional level (our moral sense) is not derived from society or from reasoning. Instead, our moral sense came first, and it made society and, eventually, abstract reasoning possible.

**Note:** In this paper, I use *natural rights*, *natural law*, *right and wrong*, and *morality* almost interchangeably to stand for norms that a person believes (at an emotional level) are higher than the laws, customs, and traditions of the particular society in which the person lives.

## 1. Proof by Denial

One way to prove the existence of something is to show that the denial of its existence leads to unacceptable conclusions. Suppose that all laws are man-



Roy Halliday

made and there are no absolute legal principles and no natural rights. Then we could only raise procedural and practical objections to the actions of those in power. This was the position that German jurists found themselves in under the Weimar Republic (1918–1933) when:

The greatest obstacle to recognition of natural law was the doctrine of positivism which equated right and might to begin with and, hence, assigned to the legislator full discretion as to the detailed content or provisions of the law, to the point of injustice, indeed to the point of complete, high-handed arbitrariness.<sup>1</sup>

Any action taken by the established authorities in accordance with their own formal rules and procedures was beyond reproach. The regime of Adolf Hitler and the Nazi party, which followed the Weimar Republic, could only be opposed on technical grounds. Did they follow the established procedures for putting people in concentration camps? Was it done efficiently? Could money and other resources have been managed better while still purging the same number of undesired people? These would be

legitimate questions, if the law allowed them. But the German jurists could not object to the killing or imprisoning of people or the confiscation of their property when these things were done by the legal authorities.

To object to legal activities on moral grounds is nonsensical, unless we believe there is a natural law that is of higher authority than man-made law. Without natural law, there could be no basis for moral objections to killings and destruction done by authorized agents of the state. We could only object when these acts are performed by private individuals on their own initiative, without legal licenses. Hitler, Stalin, and other legal authorities would be above moral criticism while they were in power. If we were subjects of one of these leaders, and he decided he needed our property, or even our lives, we could be unhappy about his decision, but, unless we believed in natural rights, we would have no basis for feeling unjustly served.

If we do not believe in any principles of justice higher than man-made law, then we must believe that slavery, for example, is neither right nor wrong in itself and that slavery in the U.S.A. was right when it was legal, became wrong when it was outlawed, and could be made right again tomorrow if the U.S. Supreme Court so decreed.<sup>2</sup>

If the conclusions that result from denying the belief in natural rights are unacceptable to you, then you should admit that you already believe in natural rights. If the state of mind that is implied by the denial of natural rights accurately represents the way you make moral judgments and the way you react emotionally to such things as slavery and genocide, then, and only then, can you honestly say that you do not believe in natural rights.

Perhaps the only good consequence of the horrors of the Nazi regime and the world war that overthrew it has been the revival of natural law:

From the middle of 1946 on, a revival of natural law thinking took hold of the intellectual world, especially the jurists and the members of the constituent assemblies of the *Länder*. ... Naturally the 'system of injustice' had produced conversions, as it were, to natural law much earlier; but the Nazi authorities would not permit an open discussion. At the same time, all at-

tempts at passive and active resistance to the regime were necessarily grounded on natural law ideas or on divine law, for legal positivism as such could offer no foundation.<sup>3</sup>

## 2. Your Conscience Implies That You Believe in Right and Wrong

Another way to determine whether you believe in natural law is to consider your conscience. If you have a conscience, you will be able to recall having experienced guilt, shame, obligation, and righteousness. If you have no conscience, you will not be able to experience these emotions, and you will probably have difficulty understanding what these words mean.

Most human beings have consciences, and they experience the emotions associated with consciences. Most people feel that some actions are intrinsically right and others are intrinsically wrong. In other words, they believe in natural law. They may disagree about what is right and what is wrong. Some may think it is right to obey the laws of the state at all times, and they will feel guilty if they break any law. The guilt they feel implies that they have a conception of justice that is higher than the state, but that morally obligates them to obey the state's laws. This is a particular belief about natural rights and duties rather than a disbelief in their existence.

The question, "Why should a person do his duty or respect the rights of others?" cannot be answered to the satisfaction of skeptics. If we answer that you must do your duty because of X, the skeptic can ask, "Why is it necessary to uphold X?" which can only be answered by saying either X is self-evident (which the skeptic can deny) or that we must uphold X because of Y, which leads to the same question about Y. Thus, we find ourselves in an endless loop with no way out until we can agree on a self-evident truth. So instead of answering this way, natural law advocates should simply say, "You should do your duty because it is your duty." The skeptic can then correctly point out that this is merely circular reasoning and playing with the definitions of words. He could say that, "It is true, by definition, that Martians live on Mars. But this does not prove that Martians exist. Similarly, a duty is, by defini-

tion, something that we ought to do, and a natural right is, by definition, something that we ought to respect. But this does not prove that duties and natural rights actually exist." This gets us nowhere.

So the fundamental question of justice is not "Why should a person do his duty or respect the rights of others?" but rather, "How do we know that natural rights and duties exist?" The natural rights advocate believes it is self-evident that justice is meaningful. But justice cannot be meaningful if natural rights and duties do not exist. Therefore, there must be natural rights and duties. This argument will not persuade the persistent skeptic. He will cheerfully deny that justice has a meaning other than as a mode of expressing the preferences of the person who uses moral terminology. The skeptic's point is that there is no such thing as objective justice.

If the skeptic is not lying when he says that he does not believe in moral rights and obligations, there is no way to convince him otherwise. The skeptic, apparently lacks the moral sense. Trying to persuade him to believe in justice is as futile as trying to seduce a eunuch or trying to get milk from a bull. The skeptic simply lacks the capacity for it. He has the rational faculty, but he has no moral emotions, no conscience, and no way to understand the psychology of normal people when they are motivated by moral considerations. He doesn't realize that he is abnormal, so when he observes other people claiming to make moral judgments, he thinks they are deluding themselves about their own motives. He thinks they have been duped or brainwashed, because he assumes that if he has no moral sense, then no one else can have a moral sense. It's as if part of his brain is missing or doesn't work.

## 3. Physical Evidence for the Moral Sense

Depending on how the moral sense is implemented in the human brain, it might be possible one day to locate the part of the brain where the moral sense resides. If we could do this, the skeptic might be persuaded that the moral sense is as real for most people as the sense of smell or sight, and we might be able to pinpoint the brain deficiency of amoral people and find a cure for it. There is

some scientific evidence to support this possibility.

Michael Gazzaniga reported tests he performed on a patient whose left and right brain lobes were surgically separated. He showed her a series of photographs of faces and asked her to rate their attractiveness on a scale from 1 to 10, first with one eye covered and then with the other eye covered, each eye being controlled by the opposite side of her brain. The ratings that she came up with using the right side of her brain closely matched the ratings that other normal people had previously assigned to the pictures. But when she rated the pictures with the left side of her brain, her assessments were wildly uneven. She was unable to distinguish a beauty from a beast.<sup>4</sup> This could be an indication that

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<sup>1</sup>Von Hippel, *The Role of Natural Law in the Legal Decisions of the German Federal Republic*, p. 109.

<sup>2</sup>Consider the following supporting argument of Samuel Clarke (from *British Moralists* Volume 2 p. 8):

...if there be no such thing as Good and Evil in the Nature of Things, antecedent to all Laws, then neither can any one Law be better than another, nor any one thing whatever, be more justly established, and enforced by Laws, than the contrary; nor can any reason be given, why any Law should ever be made at all: But all Laws equally, will be either arbitrary and tyrannical, or frivolous and needless, because the contrary might with equal Reason have been established, if before the making of the Laws, all things had been alike indifferent in their own Nature.

Here is a more recent supporting argument from Leo Strauss (from *Natural Right and History* p. 2):

To reject natural right is tantamount to saying that all right is positive right, and this means that what is right is determined exclusively by the legislators and the courts of the various countries. Now it is obviously meaningful, and sometimes even necessary, to speak of "unjust" laws or "unjust" decisions. In passing such judgments we imply that there is a standard of right and wrong independent of positive right and higher than positive right: a standard with reference to which we are able to judge of positive right.

<sup>3</sup>Heinrich Rommen, *The Natural Law in Decisions of the Federal Supreme Court and of the Constitutional Courts in Germany* p. 5.

<sup>4</sup>Michael Gazzaniga, *The Social Brain: Discovering the Networks of the Mind*, p. 156.



our sense of beauty resides in the right lobe of the brain.<sup>5</sup> If the sense of beauty can be located, the moral sense, which can be thought of as the sense of beauty in actions, might also be locatable.

The effects of a bizarre accident that occurred to Phineas Gage in 1848 indicate that the moral faculty may reside in the ventromedial frontal region of the brain. When Phineas was the foreman of a crew of workers who were leveling ground for a railroad track in New England, he inadvertently triggered a blast while leaning over a hole filled with explosive powder. Here is what happened:

The pointed tamping iron that he held in his hands was hurled like a rocket straight through his left eye, brain, and skull. Incredibly, Gage was only briefly stunned. He instantly regained consciousness and was able to walk and talk immediately afterward. The meter-long iron lay in the sand, meters away.

The 25-year-old foreman recovered completely, retained all elementary mental functions, and remained able-bodied for the rest of his life. His speech was normal, he absorbed new information as before, and he showed no lapses of memory. However, his personality changed. From a pleasant and reliable fellow, popular among his peers, he turned into someone who could not hold a job because he had lost all respect for social conventions. He would lie and curse uncontrollably. Perhaps the greatest change was that his sense of responsibility vanished: he could not be trusted to honor commitments. According to his physician, the equilibrium between intellectual faculties and lower impulses had been disturbed by the accident.<sup>6</sup>

Phineas' reaction to the accident can be interpreted in more than one way. I can't blame him for feeling grumpy, bitter, and cynical after such a horrible event. Maybe he would have reacted similarly if the accident had left his head intact but had torn off his right arm. Would we then conclude that the moral sense resides in the right arm? I don't think so.

It is possible that our moral faculty is not confined to an isolatable part of the brain and that it results from the com-

bined functions and processes of many different parts. If this is the case, then those people who do not know by first-hand experience (through introspection) that the moral sense is real will never be able to perceive it.

Even if we cannot show them where the moral sense resides, skeptics should be able to deduce that most people are social and have empathy for their own children. How else could skeptics explain the survival of human infants who are born practically helpless and who require the longest and most laborious period of parental care among all living creatures? Human society had to precede the development of human reason and language. Human society, therefore, must be based on social instincts, empathy, or a moral sense. Even though skeptics may lack empathy or a moral sense, they should be able to figure out that they owe their own existence and the existence of all human societies to the fact that most other human beings do not lack these social instincts.<sup>7</sup>

People who do not have consciences are not typical of our species—they are psychopaths:

Most clinical descriptions of the psychopath make some sort of reference to his egocentrism, lack of empathy, and inability to form warm, emotional relationships with others—characteristics that lead him to treat others as objects instead of as persons and prevent him from experiencing guilt and remorse for having done so.<sup>8</sup>

True psychopaths are as rare as people who do not have the same reasoning processes as the rest of mankind. The existence of lunatics does not make us doubt that logic comports with reality. Similarly, the existence of psychopaths should not lead us to doubt that our moral faculty comports with reality.

Normal human beings raised by loving mothers develop a belief in justice and develop the ability to use logic, because that is the way we are. The seeds of the moral faculty and the rational faculty are built into our nature. We are moral and rational creature by nature, not in the sense that we naturally behave morally or rationally, but in the sense that normal people have the natural capacity to appreciate morality and rationality and the potential to be guided by moral values

and to follow logical arguments. A truly amoral person who has no conscience at all is as uncommon as a blind man and is more severely handicapped.

The ultimate basis of our belief in natural rights is an innate feeling or moral sense. We are the kind of creatures who naturally develop a sense of justice and the emotions that go with it.

Though the emotions are popularly depicted as mere holdovers from some sort of primeval, animalistic side in our psychology that spring forth and get in the way of our more civilized, rational selves, the emotions are actually part of an incredibly sophisticated social intelligence—one that is most highly developed in humans and our close primate cousins. ... Indeed, the emotions that show in someone's face play a crucial role in how we judge a person's goals, intentions, mood, and reliability. ... Emotional cues are so important to human survival that a "universal grammar" has evolved in human facial expressions. The human facial expressions that spring from feelings of grief, sadness, anger, disgust, surprise, fear, and happiness are universal among all human societies. These emotional expressions are hardwired into the brain.<sup>9</sup>

These natural human characteristics begin to show themselves in us while we are children, before we reach the age of reason.<sup>10</sup> In other words, we naturally develop empathy and an emotional belief in justice and fairness or right and wrong before we are mature enough to rationally work out a theory of justice. So, reason is not the basis for our belief in natural rights. Reason can only give us practical arguments for believing in rights. It cannot make us believe in doing the right thing as an end in itself. We already have the emotional basis for this belief before we develop the ability to reason.

Evidence for the physical reality of the effects of conscience or the moral sense in normal human beings comes from the results of polygraph ("lie detector") machines. These machines measure changes in a person's pulse rate, breathing, and skin conductance. Normal people cannot tell lies without spontaneously feeling anxiety that is physically detectable by polygraph machines, because



lying changes a person's pulse, breathing, and skin conductance rates. Some people are able to act as pure calculators and can tell lies without showing emotional or physical changes, but these people are rare, and they are generally psychopaths.

In some but by no means all studies, psychopaths have had diminished resting levels of skin conductance, or diminished spontaneous fluctuations in skin conductance, or diminished reactivity or habituation to stimuli. There seems to be much more, though still not complete, agreement in the data that psychopaths' skin conductance responds especially weakly to adverse stimuli, such as electric shocks or injection by hypodermic needle,

whether they themselves are, or anticipate, being stimulated, or they are witnessing someone else pretending to be adversely stimulated. Experts have yet to agree on precisely how to characterize the psychopath's atypical performance, but despite a mixed set of findings, the overall evidence suggests diminished autonomic functioning as expressed in skin conductivity. Lie-detection tests are, it seems, least effective with the very people we may most want to catch lying.<sup>11</sup>

Our belief in the categories of right and wrong is part of the moral faculty given to us by nature. It is natural for us to be concerned with right and wrong.

<sup>1</sup>William F. Allman, in *The Stone Age Present* p. 216, notes:

Further evidence that the brain is specially wired to enjoy music comes from people who suffer brain damage from a stroke and are afflicted with "amusia" — an inability to recognize familiar melodies and loss of musical ability—even though other mental abilities are left unimpaired. The wiring up of the brain's musical knowledge begins very early in life and, like language, is "tuned" to a particular culture. Six-month-old infants possess a rudimentary ability to perceive that a musical chord contains a "sour" note that is atonal. By age one, North American children are better at remembering a melody when the tune is created from notes in a scale found in conventional Western music, as opposed to melodies written from a more exotic scale used in Indonesia.

<sup>6</sup>Frans de Waal, *Good Natured: The Origins of Right and Wrong in Humans and Other Animals*, p. 216.

<sup>7</sup>Similarly, homosexuals who feel no sexual attraction toward the opposite sex should be able to figure out that they owe their existence to the fact that most people are heterosexuals who do feel sexually attracted to the opposite sex. Homosexuals should not regard heterosexuals as brainwashed dupes of cultural mythologists. And amoralists should not regard people who have consciences as victims of delusions.

<sup>8</sup>Robert Hare, *Psychopathy*, p. 7. Cited in *The Brighter Side of Human Nature*, p. 308 by Alfie Kohn.

<sup>9</sup>William F. Allman, *The Stone Age Present* pages 93–95. Allman continues on p. 95 with the following facts:

For most people, the facial muscles involved in shaping the face when they are experiencing emotions are not under conscious control. Only 10 percent of us, for

instance, can voluntarily pull the corners of the mouth down to make the prototypically human "sad" face. The rest of us can make this face only while also moving the muscles near the chin, which is a giveaway for a phony expression. Likewise, only 15 percent of people can voluntarily raise their eyebrows at the center of their forehead to duplicate the forlorn look of grief and distress.

<sup>10</sup>In children raised under their mother's care, empathy develops between 15 and 18 months of age. In children raised from infancy by a series of strangers, as in a daycare center, the capacity for empathy may fail to develop. See "New Light on Daycare Research" by Barbara Hattemer in *Who Will Rock the Cradle?*

<sup>11</sup>James Q. Wilson and Richard J. Herrnstein, *Crime and Human Nature*, p. 200.

<sup>12</sup>Adam Smith expressed it this way (*British Moralists* Volume 1 p. 257):

How selfish soever man may be supposed, there are evidently some principles in his nature, which interest him in the fortune of others, and render their happiness necessary to him, though he derives nothing from it except the pleasure of seeing it. Of this kind is pity or compassion, the emotion which we feel for the misery of others, when we either see it, or are made to conceive it in a very lively manner. That we often derive sorrow from the sorrow of others, is a matter of fact too obvious to require any instances to prove it; for this sentiment, like all the other original passions of human nature, is by no means confined to the virtuous and humane, though they perhaps may feel it with more exquisite sensibility. The greatest ruffian, the most hardened violator of the laws of society, is not altogether without it.

<sup>13</sup>Frances Hutcheson likened benevolence to gravity in this respect (*British Moralists* Volume 1 p. 130):

We have benevolent instincts that urge us to minister to the helpless and that cause us to empathize with other people when they are in distress.<sup>12</sup> These benevolent instincts are strongest toward those who are close to us.<sup>13, 14</sup>

You don't have to be as insightful as Frances Hutcheson or Adam Smith to see evidence of benevolence, gratitude, and sympathy. Even modern scientists are discovering it.<sup>15</sup> Our sympathy with people who are suffering has scientifically observable effects. Our heart rates increase when we see other people in distress. In some cases we unconsciously mimic the facial expressions and physical movements of a victim.<sup>16</sup> Babies will start crying if they hear another baby cry.

This universal Benevolence toward all Men, we may compare to that Principle of Gravitation, which perhaps extends to all Bodys in the Universe; but, like the Love of Benevolence, increases as the Distance is diminish'd, and is strongest when Bodys come to touch each other.

<sup>14</sup>It is fortunate that our emotions operate this way. As Frances Hutcheson explained op. cit. p. 129:

Now because of the vast Numbers of Mankind, their distant Habitations, and the Incapacity of any one to be remarkably useful to vast Multitudes; that our Benevolence might not be quite distracted with a multiplicity of Objects, whose equal Virtues would equally recommend them to our regard; or become useless, by being equally extended to Multitudes at vast distances, whose Interests we could not understand, nor be capable of promoting, having no Intercourse of Offices with them; Nature has more powerfully determin'd us to admire, and love the moral Qualities of others which affect our selves, and has given us more powerful Impressions of Good-will toward those who are beneficent to our selves. This we call Gratitude. And thus a Foundation is laid for joyful Associations in all kinds of Business, and virtuous Friendships.

<sup>15</sup>Denise Foley, "The Hero in All of Us" in *Prevention* August 1985 p. 76:

Research indicates that the distress of another person elicits a response 80 to 90 percent of the time in children in their first years of life. In the earliest years, most children will simulate the distress themselves, often seeking comfort from a parent. Later—as young as 18 months old—the child will try to help, touching the distressed person, offering advice, a favorite toy or bring a parent to help.

<sup>16</sup>Ibid p. 78.

They do not cry as much in response to equally loud nonhuman sounds.<sup>17</sup>

Often these caring instincts have nothing to do with the merit of the other person or with our own self-interest.<sup>18</sup> Without these caring instincts our species would have become extinct long ago. Human infants are totally helpless and would die if they were neglected.

#### 4. Belief in Morality Preceded Human Reason and Made Reasoning Possible

It was not until human societies had existed for many centuries by following rough, unwritten rules of justice and benevolence that we developed languages to the point where we were finally able to state principles of justice in words. It was not until then that people were able to think about the long-range benefits of justice.<sup>19</sup>

People who claim to be motivated to make moral decisions exclusively or primarily by rational considerations are deluding themselves. The impetus toward moral behavior in prehistoric man is better described by terms such as moral sense or moral intuition than by reason. Reason, language, and culture play a role in modern man's development of moral principles, but they cannot explain the fact that something very much like moral rules had to be obeyed for thousands of human generations before anything that we would recognize as reason, language, or culture could have developed.

Like other social species, man has social instincts. But, unlike other species that we know about, man has developed the ability to engage in abstract reasoning. It is man's application of his reasoning ability to his innate social values that has enabled him to consciously develop principles of justice.

The rationalists are correct when they say that the principles of justice can only be thoroughly understood and applied after rigorous analysis. But they do not realize that human reasoning on such a highly abstract level would not have been possible if mankind did not have an innate moral sense. First came the moral sense. Then came human societies. Then, much later, came human languages and abstract reasoning at the level required for men to develop moral philosophies.

The moral sense is similar in some ways to the human sex drive. Both are given to us by nature—they are not man-made. Both take a while to develop. Both can be manifested in different ways depending on the individual and his personal experiences. Both promote sociability. Both tend to promote the survival and perpetuation of the species, and in both cases these are side-effects rather than motives.

Primitive man did not know there was a cause-and-effect relationship between sexual intercourse and reproduction. Some people today still don't know the facts of life, but this does not mean they don't enjoy sex. A man's basic motive in sexual activity is natural pleasure, not perpetuation of the species. Similarly, man's basic motive in moral conduct is to have a clear conscience, not to promote his rational self-interest or the greatest good of the greatest number. Man's body and mind are so constituted that sexual activity and moral activity are gratifying in themselves.

Other natural impulses are similar to the moral sense in some of the same ways as the sex drive. The maternal instinct, for example, is not the product of man-made reason, yet it motivates behavior that is essential to the survival of our species. It is natural for mothers to derive satisfaction from nurturing their offspring and to be sad when their children suffer. Man-made laws and utilitarian considerations have no more to do with the creation of conscience than they do with the creation of maternal love or the female breast.

Natural rights exist for no man-made purpose. In this respect they are like the laws of the physical sciences. There is no reason to suppose that nature has any more purpose for the laws of justice than it has for the laws of physics. Does this mean that natural rights are totally arbitrary and indefensible? Not at all. Nature is the ultimate standard against which everything else must be judged. What is arbitrary is what goes against nature. If a judge makes a decision without considering natural rights, it is the judge who is arbitrary. To say that natural rights do not exist because they have no purpose is like saying the sun doesn't exist or gravity doesn't exist because they have no purpose.

We are not born with all the knowledge needed to survive, nor are we born with all the knowledge we need to be morally responsible. We must learn a lot before we can take care of ourselves and before we reach "the age of reason" when we attain the full status of responsible adults. It would not be possible for us to learn these things unless we were predisposed to do so. The needed predisposition is provided by our instinct for self-preservation in the first case and by our moral sense in the second.

It is natural for us to be interested in moral questions, because we are social beings. To survive we have to get along with our fellows. We are born helpless and dependent upon some form of society (usually a family) until we develop strength and coordination and enough knowledge to make our own way in the world. We learn the benefits of social cooperation implicitly from our early upbringing. After we reach the age of reason, we are able to understand the principles that make society possible.

A just man uses his intelligence to figure out how moral principles apply to each situation in his life. Then he follows his moral principles because he is governed by his conscience. His conscience motivates him to choose to do right. No other motive is needed. The just man does the right thing because justice is intrinsically valuable to him. This is part of his nature—the best part.

Morality, like love-making, is good for the survival of our species. Were this not so, the moral and the sexual drives would have been eliminated from our constitution through natural selection. Although these drives promote the survival of the species, the individual man is not usually concerned with the survival of the human race each time he exercises his moral faculty or makes love. For the individual man, morality and love-making are ends in themselves. We are so constructed that we can enjoy sex even when it does not result in offspring and we can derive satisfaction from leading moral lives even if our lives have no significant impact on the survival of our species.

The fact that the moral sense is not the product of reason does not mean it is arbitrary or unreal. Like the rest of human nature, the moral sense is the result of natural forces operating over millions



of years. The instincts that have survived the natural selection process have stood the test of time. Other species with different instincts that did not promote social cooperation have not been able to develop languages with which to manipulate abstract ideas. If highly intelligent creatures exist in other parts of the universe, they probably have consciences too, because the moral sense and sociability are prerequisites to language which, in turn, seems to be a prerequisite to high intelligence.

While the belief in justice for its own sake is based on an innate feeling, the content of our theory of justice is not necessarily emotional, it can be rational. Our nature is such that we develop a conscience and moral emotions in the normal course of maturing, but nature does not implant in our minds any particular theory of justice. If it did, we wouldn't have so many disagreements about our rights. Our strong emotional belief in morality impels us to search for justice and gives us the motive to do the right thing for its own sake, but it does not supply the explicit principles of justice that we need. So we have to use our much less reliable and much more error-prone rational faculty to discover these principles. The inept and amateurish way in which most of us use our reasoning ability is the cause of the different conclusions that we come to in developing our theories of justice.

Whether we are aware of it or not, we believe in natural rights. Appeals to conscience and natural rights are appeals to things we have in common rather than to things that divide us. So we can use moral arguments as well as practical arguments to build a free nation. This is fortunate because some questions that people have about a free nation can be answered more readily by moral arguments than by practical ones.<sup>20</sup> △

<sup>17</sup>Ibid p. 77.

<sup>18</sup>Ibid p. 75:

We take care of infants who certainly do nothing to deserve it. They're not attractive. They wake you in the middle of the night. They urinate on you. They vomit on you. And yet we love and care for them.

<sup>19</sup>F. A. Hayek pointed out (in *Law, Legislation and Liberty* Volume 1 p. 72) that moral action has historically preceded moral philosophy:

Long before man had developed language to the point where it enabled him to issue general commands, an individual would be accepted as a member of a group only so long as he conformed to its rules. Such rules might in a sense not be known and still have to be discovered, because from "knowing how" to act, or from being able to recognize that the acts of another did or did not conform to accepted practices, it is still a long way to being able to state such rules in words.

<sup>20</sup>For example, as I pointed out in my article "A Theory of Property Rights for a Free Nation" (*Formulations* Vol. V, No. 2), the free market cannot establish the initial property rights in a free nation, because initial property rights must be established before the free market can begin to function. So we need a moral theory rather than an economic theory to determine how property rights come into existence in the first place.

*Roy Halliday, who serves FNF as copy editor for Formulations, would use this as a classified ad in the men-looking-for-women section:*

**Capricorn Couch Potato**

52YO DWM 5'10" 210lbs green eyes gray hair. Retired. College educated. Dislikes camping, travel, dancing, spirituality, pets, concerts, theater, arts, crafts, NASCAR, exercise, shopping, beaches, outdoor activity, and nature in general. ISO D/SF 30-45YO financially secure with similar disinterests to share roof, couch, bed, and LTR.

<royhalliday@worldnet.att.net> △

### Call for Papers FNF Forum on Law in a Free Nation

We seek papers on "Law in a Free Nation," the topic of our next Forum. The Forum will meet on a Saturday not yet scheduled in October. But we need to receive the papers by August 1, since the papers will be published in the Autumn issue of *Formulations*.

When a submitted paper is relevant to our topic, typically we invite the writer to present the paper at our Forum. In some cases we are able to help offset the travel expenses of these speakers.

We need to understand law from its foundations to its practice, because we seek to see a good system of law established (or grow spontaneously) in a free nation. We first considered this topic in FNF's second Forum, in April 1994. But many questions remain.

# The REAL Limón Project

by Rigoberto Stewart

*[A note from Rich Hammer: Before Rigoberto Stewart visited FNF earlier this year, I asked if he could email a document which would introduce his project. He sent the following. It is the text from which he spoke in Rome at the 1997 World Conference of the International Society for Individual Liberty (ISIL). It includes some chapters (in draft) of a book which he is preparing to promote the REAL Limón project.]*

Ever since Ayn Rand and *Atlas Shrugged* there have been talks and attempts to form a libertarian paradise; a place where we could live as free individuals, according to the libertarian tenet, free of government, coercion, and the use of force. I understand that there have been many such projects, but none successful so far. Within ISIL we have heard and talked about Michael van Notten's effort in Somalia and Laissez Faire City, currently headquartered in Costa Rica, but functioning in cyberspace. There are others.

Today, I have the distinct pleasure of bringing to your attention yet another such effort, but with its own unique features: the REAL Limón project, where REAL stands for autonomous and free region, in Spanish. Let me start by providing you with some basic information about the country and the region.

## Salient Features of Costa Rica

Size	19,730 sq.mi.
Population	3.4 million
Language	Spanish
Religion	Catholic
Race	Mestizo
Seasons	Dry & Rainy
Rainfall	75"- 180"
Average Temp.	77°F
GDP/capita	US\$2,685

## THE COUNTRY

Costa Rica is a small potential tropical paradise, located in Central America, between Nicaragua and Panama, the Caribbean Sea (Atlantic) and the Pacific Ocean. It is located in the tropics, about 10° north of the equator, but because it is very mountainous, in the central region where most of the population lives, the temperatures are just right: between 68°F and 82°F all year round.

The country is only 51,100 km<sup>2</sup> (19,730 sq.mi.), divided into seven provinces, and it harbors a population of about 3.4 million. The official language is Spanish, although many speak English, especially the black segment. The state's religion is Catholic (Can a state have religion?), but there are numerous and growing Protestants.

Costa Rica is still considered agricultural, although that sector provides only about 18% of GDP. The main exports are coffee, bananas, sugar, beef, and manufactures (maquilas). Tourism is high and growing. The inhabitants are relatively poor, with GDP per capita of about US\$2,685 in 1996. The distribution is bad and worsening.

The political system is a two-party democracy, highly presidential, with alternation in power between what is known as the social-democrats and the social-Christians. It is a socialist society in which individuals rights are scorned. Despite relatively high ratings from Freedom House and the Heritage Foundation, economic freedom is limited. The government monopolizes crucial economic activities, import/export bans can occur at any time, inflation is high, and property rights are often violated.

## THE REGION

The region comprises the whole Province of Limón, which is one of the seven, and is located on the east side, along the Atlantic coast. It covers about 9,184 km<sup>2</sup>; and holds about 260,000 people, among which you find: mestizos, blacks in a much higher proportion than countrywide, Chinese, and native Indians.

The region is essentially low land, tropical rain-forest type, with over 180" of rain per year. It is hot and humid, rich in natural resources: forests, jungles, incredible fauna, beaches, canals, minerals, and even petroleum, it is suspected.

The main economic activities are: agriculture; bananas, cocoa, ornamental plants, beef; fisheries; forestry; tourism services; and some industry, like petrochemicals. It is the main port of the country.

Not all is rosy, however. The province is impoverished and riddled by unemployment, drugs, and other problems. Currently, it presents a very disheartening picture. The housing deficit and unemployment and sub-employment are very high. Household income is among the lowest in the country. A study determined that in July, 1995 the average monthly income of a household of 4.2 members was about US\$100; which makes it difficult for the members to satisfy their basic nutritional needs. Health services are inadequate: 26% of the population are not covered by social security, and infant mortality is about 40% in Talamanca, the area inhabited by Bri-Bri Indians. Schooling is low: among the population age 10 and older, illiteracy is around 11%; 77% of the population of 12 years and older have a maximum achievement of grade school (6 years); 30% of the population of the Canton of Talamanca have received no instruction whatsoever. The communication system is deplorable: in 1988, only 9% of the road system was paved; 57% are dirt roads. The railroad, once the backbone of the transportation system and the economy of the province has been paralyzed since 1994. The infrastructure for tourism is wanting.

## THE PROJECT

Through a growing grass-roots movement, the project hopes to have the Limón people declare the whole province an autonomous and free region, governed by libertarian principles.

**Why the Project?** The project was conceived with three main objectives in mind. First to prove to Latin Americans that liberty is not only morally correct, but it also works. Bear in mind that the Latin American countries, in general, are statist, interventionist, antiliberal and, obviously, poor states, in which individual rights are violated on a daily basis. Economic freedom that leads to prosperity is hindered in many ways: high inflation; elevated trade barriers; government monopolies in the areas of telecommuni-



cation, insurance, oil imports, refining and distribution; forced payment for services that are not rendered; compulsory health care (managed by the Social Security Administration); compulsory savings (taken from one's paycheck by a "People's Bank"); selective consumption tax (e.g. automobiles, air conditioning); and a self-sufficiency policy.

Second, to provide a haven for libertarians or freedom seekers from all over the world. This project will not compete with all the other current efforts to develop a "Galt's Gulch;" it is complementary, since there will never be an excess supply of free areas. And thirdly, to develop the province and make available standards of living the Limónese could never have imagined—not even in their wildest dreams

**Why Limón?** The province of Limón was chosen for four reasons. First, it was chosen because of its poverty and abandonment. In this regard, the objective of the project is to show that you can apply libertarian principles to the worst of areas and turn it into something wonderful in no time. The power of liberty is unlimited. Also, because of the current situation, we anticipate less resistance from the central government, and from the Limónese who, presumably, have little to lose.

Second, it was chosen because of the characteristics of the population. More than a 100 years ago, the province was settled by immigrants from Jamaica who traveled at high perils in search of freedom and prosperity. A large part of the population is also made up by immigrants from Nicaragua, other Central American countries, and other parts of Costa Rica, who are essentially seeking better economic opportunities. Native Indians comprise the third-largest group. They have lived in the southernmost part of the province for thousands of years. For a long time they have been demanding their right to self-determination and the end of interference from the central government.

Third, it was chosen because of its potential. Limón is overwhelmingly rich; all it needs is some freedom, a different set of rules, a different incentive structure. It has all the ingredients necessary to become another Hong Kong or Singapore. Let us take a look. The city-state

of Singapore, separated from peninsular Malaysia by a causeway, is a tropical island of only 622 km<sup>2</sup> (less than 7% the size of Limón; Limón is 15 times larger). It is inhabited by 2.6 million people (10 times the population of Limón), of which 75% are of Chinese descent, 15% are Malays, and 6% are of Indo origin. Despite its lack of natural resources and its complete dependence on the international market, it has become a prosperous industrial economy, and its inhabitants have achieved standards of living that are the envy of many developing countries that are rich in natural resources.

Between 1960 and 1984, per capita income in Singapore grew at an average annual rate of 8.3%. It went from US\$600 in 1950 (equivalent to that of Costa Rica) to US\$17,700 in 1992 (about 8 times that of Costa Rica). It is projected that in the year 2000 its per capita income will be \$25,500, about 20 times that of Limón.

What is the basis of this economic miracle, almost unprecedented in the tropics? Remember, we are talking about a tiny island devoid of natural resources, whose only asset is its strategic location. It all rests on the vision of Prime Minister Lee Kuan Yew who, in 1965, designed a development strategy based on the *free market*. He stimulated a massive inflow of capital, know-how, management skills, engineers, and marketing specialists. This strategy (implemented precisely when Latin America was embracing protectionism and import substitution) generated employment and spectacular increments in the standards of living. Limón has great potential for tourism, agriculture, and forestry. It could also provide financial, telecommunication, transport (road and rail), port, and airport services.

The fourth reason for choosing Limón is its strategic location. It has 300 km of coastline and it is located in an area that makes conveyance by ship to or from the rest of the world very easy. It can provide port services not only to the rest of the country, but to Nicaragua and Panama as well. By air, it is only 2.5 hours away from Miami. It can serve as an alternate landing site for San José (Costa Rica's capital city), Panama, and Nicaragua.

## THE CHARTER

According to the project, the region or province will continue to be a part of Costa Rica, but will be totally autonomous and governed by an utterly different set of rules. Following is a selection of the statutes contained in the Declaration of Autonomy. They cover four areas: individual rights, national government, local government, and the protection of individual rights.<sup>1</sup>

### CHAPTER 1 Individual Rights

**Article 1.** The Province of Limón is a totally free zone dedicated to preserving, protecting, and encouraging freedom within its boundaries. Individual liberties are absolute and are limited only by the rights of other individuals.

**Article 2.** All Costa Ricans are citizens of Limón, but only those over 18 years of age residing in Limón can participate in any election.

**Article 3.** Every citizen has the right of peaceful and nonviolent assembly and of petition for any matter.

**Article 4.** Every citizen has the right, either alone or jointly with others, privately or in public, to practice and profess any religious or atheistic faith, dogma, or belief.

**Article 5.** Every citizen and domestic corporation has the right to express and disseminate information, opinions, and beliefs by word, writing, or picture; and to receive, gather, and have access to obtain information and ideas.

**Article 6.** Every citizen has the right to academic freedom and research and to engage in the arts.

**Article 7.** Every citizen is equal before the procedures and processes of the law.

**Article 8.** Every citizen has the right of residence and movement throughout the

<sup>1</sup>Many of these ideas come from Bernard H. Siegan, *Drafting a Constitution for a Nation or Republic Emerging into Freedom*. Fairfax, Virginia: George Mason University Press, 1994.

province and to the rest of the country and foreign countries.

**Article 9.** Every person and corporation has a right to secrecy in personal correspondence and communication, whether by post, telephone, telegraph, facsimile, electronic mail, or any other such facilities. Under no circumstance will this right be violated.

**Article 10.** Every individual and corporation has the right to purchase, acquire, rent, own, use, mortgage, sell, lease, transfer, bequeath, and inherit private property, or any part or portion thereof. Private property includes any asset or thing of value, whether tangible or intangible, real or personal. There will be no restriction of this right on the part of the local or national government.

**Article 11.** Every individual and domestic corporation has the right freely to practice the occupation, profession, or trade of choice, freely to establish and maintain a commercial enterprise, and freely to produce and distribute goods and services.

**Article 12.** Every individual and domestic corporation has the right to enter into binding agreements containing any and only provisions of their choice.

**Article 13.** Every individual has the right of free association and to join with others and form corporations, associations, unions, and any other organizations as long as the objective is peaceful and nonviolent.

**Article 14.** In addition to the rights enumerated in this Declaration of Autonomy, the courts shall have the power to determine and protect unenumerated rights, according to the principles which follow.

**Article 15.** (a) No government entity shall deprive any person of the rights herein enumerated or of other rights of life, liberty, and property not enumerated, except as a sanction for the violation of other individuals' rights. (b) The rights of "life, liberty, and property" comprehend only self-inspired or self-initiated actions and not liberties, rights, privileges, positions, immunities, entitle-

ments, or subsidies created by the political process.

**Article 16.** All rights and freedoms provided herewith are guaranteed to foreign nationals and persons without citizenship residing within the territory of this region.

**Article 17.** The local government has no obligation to support, advance, or otherwise subsidize any private activities, even when the absence of funds may limit the enjoyment of protected rights.

## CHAPTER 2 The National Government

**Article 1.** The autonomous region will be a part of Costa Rica, and Costa Rican laws will be applicable in the region so long as they do not violate the aforementioned individual rights.

**Article 2.** No national laws that create monopolies in education, mail service, health, insurance, port services and others, or that restrict the freedom of press, communication, religion, or association will be applicable in Limón.

**Article 3.** The national government can maintain representatives of its institutions and continue to operate them under a voluntary scheme, but cannot dictate policies in any matter. It can operate the existing national ports, but will not have jurisdiction over any other port that might be built. It can collect taxes on goods whose destination is the rest of the country, but not on the goods coming into Limón.

**Article 4.** It cannot levy taxes on any person or business residing or operating in Limón.

**Article 5.** Its officials will not enjoy any immunity while in the territory of Limón.

**Article 6.** Its representatives will have free access to and movement within the territory of Limón, as long as they do not violate individual rights as specified above.

## CHAPTER 3 The Government of the Autonomous Region

**Article 1.** The autonomous region will be governed by a small regional or provincial body, whose maximum representative is the Governor. The Governor will be elected by the permanent residents of the region, for a six-year term. Any Costa Rican, of at least 40 years of age, who is a permanent resident of Limón for at least three years or was born in Limón is eligible for the post.

**Article 2.** (a) The most important function of the local government is to protect the life, liberty, and property of all persons or corporations in the region. (b) The government cannot violate any of the rights it is supposed to defend.

**Article 3.** The local government will not limit private activity in any way. It will not demand from any individual or corporation permits of any kind to operate; but it will have the power to intervene when someone's right is being violated.

**Article 4.** The regional government cannot collect taxes of any kind. It will be financed through non-coercive means.

**Article 5.** The regional government cannot dictate any measure that goes counter to these statutes or violates individual rights.

## CHAPTER 4 Protection of Individual Rights

**Article 1.** The police and judiciary system will be charged with the upholding and defense of individual liberties. The police corps must be well trained and educated for this delicate function.

**Article 2.** The local judiciary system will differ from the national system in various important respects: it will abide by these statutes; its employees will not receive a salary but payments for services rendered, and all trials will be by jury.

**Article 3.** There will be no victimless crimes. There must be a violation of someone's rights before any citizen is arrested and tried.



**Article 4.** When found guilty of a violation of someone's right, priority will be given to restitution of the victims over incarceration or other types of punishment. The victim will participate as actively as he or she wishes in the restitution process and even in the determination of punishment, within limits.

**Article 5.** No individual will be arrested or detained by the police or any other government representative in the absence of clear evidence that a crime was committed.

**Article 6.** The right of every individual to be safe in his or her own home and to have secure their belongings against entry, registration and confiscation will not be violated except when there is clear evidence that a crime was committed.

**Article 7.** Any individual who was detained, arrested, or incarcerated illegally should have the right to an indemnity for any lesion or loss suffered during the process. The perpetrator will be the main person redressing the victim.

#### THE APPROACH TO IMPLEMENTATION

Traditionally these types of projects are negotiated with governments. This is what happened in the case of Hong Kong. It is the approach currently being followed in Somalia and by the fellows of Laissez Faire City. In Nicaragua, autonomy was granted through legislation, by the Sandinista Government, to two regions on the Atlantic coast. The case of Singapore was different. After a lot of intense skirmishes, the Singaporeans decided to separate themselves from Malaysia (without too much opposition), and later to implement a free market system.

The REAL Limón project will follow a bottom-up approach. That is, instead of negotiating with the Government of Costa Rica, which would take forever and have very little chance of success, we "sell" the idea, the project, to the Limón people. How do we do it? Very elaborately. We are designing a plan of action (and we can use help) which will include, but not be limited to, the dissemination of written material (project description, booklets, pamphlets), meetings with all types of organized groups (churches, clubs, unions), appearances on radio and television, including the project's own weekly television program; seminars and conferences (Walter Williams has agreed to speak), and workshops.

We have contemplated taking charge of a specific operating task in the province, like forming (within the project) a Road Authority, which would take the road system away from the central government and manage it. The same can be done with the railroad, which is now closed down.

Once the project is sold enough or embraced to a crucial point, the next step will be to inform the central government of the sovereign decision of the Limón people. The next and final step will be to open up the region for business. Invite investors for banking, railroads, ports, airports, telecommunication, and everything else.

#### OPEN INVITATION

We would like to make the following invitations. First, to come and visit us in Costa Rica and specifically in the province of Limón, the site of this historical undertaking and of the 1999 ISIL convention. Second, we invite you to join in the project, to become a member. The project itself will be a legal, incorporated body, with board members and associates. Third, we invite you to make specific donations, now or in the future, to the project. The money received will be used to promote (sell) the project in Limón and abroad. The first task is to publish the document containing the project description.△

*Rigoberto Stewart, who comes originally from the Limón Province, has roots in North Carolina as well. In 1984 he received a Ph.D. in economics at N.C. State University in Raleigh. He is President and founder of Institute for Liberty and Public Policy (INLAP), in Alajuela, Costa Rica.*

#### A Formulation from Roderick Long

Thourioi, an ancient Greek colony in Italy, had the following policy: anyone proposing a new law in the assembly had to stand with a noose around his neck during his proposal speech and the subsequent voting. If the measure failed to pass, he was instantly strangled.

Unfortunately, Thourioi had precisely the same measure for proposals to *repeal* laws.△

# How to Limit Power And Protect Rights

by Jack W. Coxe

I believe that people have a natural reason to cooperate with each other, and therefore they naturally have many common interests. As a result, I believe that there is always a tendency for routines and procedures to evolve which motivate mutual cooperation. Many of the articles in *Formulations* show various ways that people naturally tend to cooperate.

A free nation would need to depend on this natural tendency to cooperate, and therefore the founders of a free nation might naturally seek some way to limit power and protect rights—thereby allowing natural cooperation to take place. In this article, I will suggest how and why any attempt by influential people in a society to deliberately place defined limits on power, is self-defeating. And any attempt to define and protect rights, would give influential people the opportunity and therefore the motive to protect “wrongs” and call them “rights.” And I will suggest a solution to the problem.

The basic problem is that it takes power to limit power. And in order for any person to have rights, everyone else must be denied any infringement on those rights. This means that no matter what arrangement for protecting rights and limiting power that a society might agree on, there will be opposing interests. Those who seek power to limit power are a potential threat to those who seek to retain their rights. And those who seek to retain their rights are a potential threat to those who seek power to limit power. Opposing views of power result in power struggles which tend to evolve into coercive governments. As you will see, the solution that I propose would give everyone a common motive to avoid offensive action of any kind.

The founders of the American Constitution tried very hard to limit power and protect rights. They tried to establish a power to limit power and to protect rights—a government of diffused powers with built-in checks and balances. They wrote a constitution intending to define what the government had the power to

do, meaning that the government could not do anything that the Constitution did not say that it could. And in effort to make extra sure that the government did not abuse its power, it defined a bill of rights which specifically listed things that the government could not do.

But their government was like a boat with a leak in it. The power to limit power was itself a power, and therefore an opportunity for skillful manipulators to find loopholes in the system and to use that power for personal advantage. Their personal advantage in turn enabled them to gain more influence in government policies, thereby enabling them to further manipulate the workings of government to their advantage. Like a leaky boat, the system is gradually sinking with constitutional amendments and reinterpretations which give government more and more power than was originally intended.

Whenever power exists, “right” and “wrong” is determined less by reason and more by the status of the power struggle. Reasonable fairness, instead of being the goal, is used more as a weapon in the power struggle. Logic can be very impressive, but it is no more valid than its assumed premises.

The problem of how to establish the power to limit power might be approached by reasoning as follows:

If you and I disagree on what is right, then at least one of us will be compelled to submit. How can it be determined which of us has the “right”?

We might respectfully debate with each other, each of us sincerely seeking common ground—that oneness of Mind which we might reflect—which would enable a true voluntary agreement. But what about the option to coerce? We might both be tempted by it—especially if either of us suspects that the other might resort to coercion. Our sincere debate would be thereby interrupted and put on hold indefinitely while we attempt to counter each other’s temptation to coerce.

Maybe you and I might know and trust each other enough not to worry about the temptation to coerce. But in dealing with other people, suppose maybe one in a thousand people might resort to coercion. One person with a gun could cause a lot of trouble for 999

people who don’t believe in guns. This would especially be true if 10 gun-slingers joined forces against 9990 peace-minded people.

I think that most people find it obvious that there must be some agreed-on procedure for dealing with those who would resort to coercion. But once a procedure has been agreed on, what about the temptation for a person, or an organization of people, to manipulate those procedures for personal gain, at the expense of other people?

For example, the agreed-on procedures for coercion might involve elected officials for making and enforcing laws. Then a skillful, resourceful, and dedicated organization might succeed in getting some of their sympathizers elected, thereby making and enforcing laws which enable the organization to acquire vast amounts of property and influence, which in turn enable them to get more of their people elected and make more laws favorable to themselves. Becoming aware of this possibility, wouldn’t everyone be greatly tempted to organize for self-defense against such manipulation? Wouldn’t the result be a power struggle to manipulate the procedures to coerce? Wouldn’t sincere debate take second place and be used mostly as a weapon in the power struggle?

The problem is the very existence of the option to coerce. As long as that option exists, some people will be tempted to resort to it, thereby giving everyone reason to struggle over the use of it, both in self-defense and for personal gain. And the more centralized and potentially threatening is the option to coerce, the more efforts and resources are diverted away from seeking true right, toward the more immediate and pressing power struggle.

As long as people act like mortals in a material world, there will always be the option to coerce. It can’t be eliminated. *But the option to coerce could be made to be unusable.* An option is unusable for a person if the person cannot confidently control its result. The option to coerce could be made to be uncontrollable by agreeing on a system which would give every person the standing option to call for coercive arbitration by arbiters who are selected completely at random for each case, and by prohibiting any means of controlling or manipulating



the arbiters.

Lacking the ability to make predictable use of the option to coerce, every person would have his own personal pressing reason to avoid coercive arbitration by sincerely seeking true voluntary agreement. A random arbiter system was explained in my article "Natural Government versus Artificial Government" in the Autumn 1997 issue of *Formulations*.

In order avoid the leak which would sink the boat, there must be no door open for anyone to in any way pressure or control the randomly chosen arbiters. Such an open door—another attempt to use power to limit power—would give people opportunity and therefore motivation to find ways to control or manipulate the arbiters. Also, whatever agreed-on procedure was used to define the limits to the power of the arbiters, would be an opportunity for those who would use those procedures to establish more limitations, more procedures, more powers and centers of power, eventually evolving into another coercive government. We who seek a free nation would have to struggle with them. And in a struggle for coercive power, the most skilled and resourceful coercers have the advantage. Our chances would be slim and become slimmer as power became more centralized and the struggle intensified.

Yet, the idea of uncontrollable, randomly chosen arbiters might naturally seem terrifying to anyone who automatically assumes that power cannot be limited without society agreeing on defined limits to that power. Based on this assumption, it would appear that uncontrollable randomly chosen arbiters would have unlimited power. But I challenge this assumption by considering the following distinctions between what might be called "official power" and actual power, and between artificial limits to power and natural limits to power.

In the random arbiter system that I propose, it is true that the randomly chosen arbiters would have unlimited "official power," which means that any panel of randomly chosen arbiters would have the official authority to make any decision that they choose.

But if you can really imagine yourself in the position of being a randomly chosen arbiter—whether you imagine yourself to be intelligent and capable, or whether you imagine yourself to be un-

educated and terrified by a responsibility that you know you are not qualified for—all concerned people would have reason to remind you and emphasize the fact that when you are finished with your case, anyone who alleges that you in any way abused your temporary authority, could call for another random arbitration to settle the allegation. And if that happens, you will find yourself on the other side, facing a panel of randomly chosen arbiters with unlimited authority to decide what to do about the alleged abuse of your temporary power.

Imagining yourself in such a position, isn't it reasonable to conclude that you as an arbiter, would voluntarily limit yourself to taking every available step to assure that the actions you take and the decisions you make could not reasonably be construed to be an abuse of your temporary official power? And wouldn't you honestly seek that standard of "reason" which is as universally acceptable as possible? These self-imposed limits are based on the natural need for people to avoid offending each other, which is the basis of natural government, and the principle of the random arbiter system.

Could an arbiter have a greater motive than this—the motive to avoid having to face a subsequent panel of uncontrollable arbiters who have unlimited official power to decide what to do about his abuse of his temporary official power? If a random arbiter system would provide anyone in any position, any motive contrary to the natural motive to avoid any kind of offensive action, I would appreciate it very much if someone would explain it to me.

It takes power to limit power. But the trap is the temptation to keep our hands on that power, fearing that without our artificial control and limitations, it might become a terror. Natural limitations are flawless. But they cannot function until and unless we understand and agree to let go of it by eliminating all options for anyone to deliberately control any use of power, whether offensively for personal gain, or defensively to limit an opposing power. The trap is compounded by the fact that opposing power strugglers usually see themselves as the defenders and each other as aggressors. It is very easy for people to disagree on who is the aggressor and who is the

defender. The practical effect is that power is power, no matter how it is categorized.

When you learned to ride a bicycle, you had to take both feet off the ground, and then pedal. Similarly, in order to rely on our natural motive to cooperate, we need to take our hands off of both power and the power to limit power, and then deal with the resulting compulsion to survive without coercion. As the system becomes understood, people would lose their fear of each other, knowing that everyone is motivated to avoid any offensive action. Everyone could then confidently seek true right, knowing that everyone else has the same predominant motive.

To sum it up, any attempt to define a controllable power to limit power, defeats its purpose by enabling and therefore motivating potential manipulators of that controllable power. All such attempts are artificial counterfeits to the natural limits on power which can function only to the extent that we agree to limit power with power that is completely uncontrollable—power that cannot be countered by some other power, but which can be avoided only by true cooperation.△

*Jack Coxe was raised as a Christian Scientist and still considers himself in agreement with what he understands Christian Science to be. He works mostly alone as a cement contractor near Lone, California.*

– DIALOG –

## On a System Which Gives Unlimited Power to Randomly Selected Arbiters

between Richard Hammer and Jack Coxe

Richard Hammer:

I would like to express two concerns with Jack Coxe's proposal for a system which employs randomly selected arbiters given unlimited power.

### First Concern:

**That the proposal overlooks other potent, and readily available, forces which can be applied to achieve civil society.**

Mr. Coxe seems to believe, and I agree, that the bad effects of state grow in human society because of the existence of two temptations: controllable positions of power and manipulatable procedures.

And his proposal, if I understand it, would counteract the evil of those temptations by making virtually everyone afraid to act upon those temptations. The proposal would restrain potential villains by threatening to overpower them with a greater force, the power given to randomly selected arbiters.

Thus I conjecture that Mr. Coxe believes that, in order to achieve restraint, a greater power is needed. On this point I tend to differ. I think deterrence can be achieved even when the deterring force is much smaller than the offending force.

Consider this example. On a two-lane highway two motorists, traveling in opposite directions, approach one another. There is great danger of head-on collision. But the motorists, by keeping in their own lanes, enter into a voluntary exchange. And they do this even if they enter this exchange with an imbalance of power, even if one is driving a ten-ton truck and the other is driving a motorcycle.

Mr. Coxe, if I am correct, might say that the truck driver, in order to be induced to keep his part of the bargain, must be threatened with calamity of magnitude equal to or greater than the calamity which the cyclist fears. But

truckers do what they can to avoid colliding with cyclists, even where they face only minor inconvenience.

If we need a system of law which will deter person A from injuring the interests of person B, generally there is no need for equal measure in the loss felt. Generally any threat of real loss will deter person A.

Notice that the definition of "loss" here is important. I mean net loss, after all losses have been subtracted from all gains. This could become subtle, because we have to step into the value system of a person to know whether that person will feel net loss or net gain. We have to sum their psychological as well as their physical gains and losses.

Civil relations, I argue, require no more than that both parties to an exchange gain, or that both parties lose. The gross imbalance, between the penalties felt by the two drivers should the exchange fail, does not destroy our confidence in predicting that both drivers will try to fulfill their end of the bargain.

### Regarding escalation of a power struggle:

Mr. Coxe points out that a power struggle can escalate, thus becoming increasingly threatening to the inhabitants of a nation. I agree. But I think the escalation of a power struggle happens only in special environmental circumstances. Otherwise, in more natural circumstances, power struggles dampen, decrease in size, and soon disappear from view.

The circumstances in which a power struggle escalates are, I believe, those in which one or both of the parties perceive that they might gain enough through victory to overcome the cost of the struggle. This happens, as I suppose Mr. Coxe will agree, where an existing apparatus of state power can use coercion (where there are manipulatable procedures).

Mr. Coxe's formulation, for an institution which could overpower even the worst consequences of an escalating struggle for power, seems reasonable to me—if I assume that the environment exists in which power struggles tend to escalate. But I am not prepared to concede that such an environment must exist. I want to believe that smaller institutions might be established, which counteract aggression closer to the source. One of my papers, "Hit 'Em, But Not Too Hard: Institutions for Giving Negative Feedback in Small and Manageable Increments" (*Formulations*, Vol. IV, No. 2), dealt with this question explicitly.

As I imagine a free society functioning, people would be guided into the channel we desire, of responsible exchange, by daily application of little, nuisance-sized, forces. And, since enough nuisances can bring down even a giant, a power struggle would never escalate to the size where correction could be achieved only by a single unlimited power. I have the impression Mr. Coxe's formulation overlooks this possibility.

### Second Concern:

**That the proposal might give too much power to conformists.**

I think I can imagine the system which Mr. Coxe describes producing an undesirable force toward conformity. It could crush tiny minorities, whose numbers were so small that they could not expect to get representation on a board of randomly-selected arbiters.

If for instance, in a nation where everybody goes to church on Sunday, some lone lunatic starts raving that Tuesday is the true Sabbath, a Sunday worshiper could call that lunatic to account before arbitration—and be sure of victory. In general, it seems to me, all innovations which start with an individual but which promise to overturn prevailing interests, could be crushed in their early stages by a board of randomly-selected arbiters.



Jack Coxe:

I thank Mr. Hammer very much for printing my articles, for commenting on them, and for inviting me to reply.

If I thought that the randomly chosen arbiters would actually have unlimited power, I too would be very concerned. The system allows our basic natural motive—the motive to cooperate in order to avoid the resistance to any kind of offensive action—to limit the power of everyone, including the arbiters. This basic natural motive is allowed to function freely when there are no conflicting motives to sabotage it. Conflicting motives are generated by agreed-on procedures to coerce, and by agreed-on procedures for establishing agreed-on procedures to coerce.

If I was to design a way to limit the power of the arbiters, then someone would disagree with my version of limitation. This would be, in my opinion, the special circumstance that Mr. Hammer says is necessary in order for there to be an escalation of a power struggle. People have reason to struggle for power, not only when there is an existing procedure to coerce, but also when there is an existing procedure for establishing and limiting the procedure to coerce. Such procedures generate motives that conflict with our basic natural motive. And as long as a motive and an opportunity exist, someone will eventually respond, even if most people don't. And when one person responds by manipulating a procedure to coerce, other people must find a way to deal with it.

Someone might say that the arbiters ought to be at least 16 years old. Another person might say it ought to be 18. How would we decide? Would we have an election to choose the age limit? Or would we have an election to choose someone to make the decision? Either way, a motive would be generated for people to campaign for their choice.

And if such a procedure was established, then sooner or later someone would argue that the arbiters ought to at least be able to read. And the same procedure that was used to establish age limits, could be used to establish a procedure for determining what constitutes the ability to read, and how to test it. Then someone would argue that no arbiter

ought to be allowed on a case involving a friend or acquaintance which might cause bias. Then we would have to agree on a procedure for determining who is qualified to be an arbiter.

Someone would eventually argue that there ought be laws which the arbiters could not violate. But then we would have to agree on a procedure to choose lawmakers and judges to make and interpret the laws—more motivation for people to manipulate the procedures to over-power, rather than to seek agreement. Then the driver of the ten-ton truck might get drunk, cross over the line, and run over the man on the motorcycle. Then, responding to the offensive action of the drunk, people who are mad at drunks might look for ways to use coercive procedures to stop drunk driving. Then someone will say, "Why stop with drunk driving? Why not coercively regulate the safety features of motor vehicles," and so on and on.

Every man-made attempt to design a limit to power, generates a motive to further centralize the power to assign who has power and how much.

The founders of a free nation might not worry about power struggles since they know that probably none of them are interested in struggling for power. But if they attempt to find ways to limit power, then they would have to agree on a procedure for determining whose version of limits are to be accepted. This procedure would be an opportunity and therefore a motive for someone later to try to change those limits for some reason that seemed good at the time. When coercion is involved, what seems good to one person seems evil to another.

Resistance to offensive action is natural because it doesn't depend on any man-made agreement or procedure. People naturally resist offensive action. If I offend you, the least you would do is wish that I was not doing whatever it is that offends you. If I continue to offend you, you will look for ways to stop me. If you are not able by yourself to stop me, then you will seek help from other people. Any kind of offensive action meets with natural resistance.

What I call "natural government" is the natural response to this natural resistance to offensive action. My natural response is for me to try to avoid offending you. And in order to do that, I must

somehow learn how. This natural motive gives people reason to communicate and agree on routines, rules, customs, procedures, tolerances, and so on, which enable people to go about their business without offending each other.

A random arbiter system uses this natural motive—the motive to seek agreement in order to avoid offending people—and relies on it to limit the police and the arbiters as well as everyone else.

Suppose you were a randomly chosen arbiter. Everyone involved would have good reason to make sure that you were aware that anyone could, when you had finished your case, allege that you abused your temporary power, and call for a new random arbitration to settle the allegation. Knowing this, would you do anything other than bend over backwards to avoid any kind of prejudice, and to seek whatever advice you needed in order to make a decision that no reasonable person could construe as an abuse to your power? I can't think of any contrary motive that could compete with this one.

It is true that my system provides no options for anyone to impose any kind of man-made limits on the arbiters. But all that is necessary to limit them, is to warn them of the natural consequences of any abuse of their power—just like warning a person of the natural consequences of touching a hot stove.

I agree with what Mr. Hammer says about hitting them but not too hard. And it is that kind of reasoning that randomly chosen arbiters would be motivated to seek out, in order to make sure no one accused them of abusing their temporary power. Every case is different. A lawmaker or rule maker can't foresee every possible circumstance. But randomly chosen arbiters trying to be unreproachably reasonable and fair, would be motivated to make the best decision they can, specifically tailored for their own case. They would be motivated to hit only as hard as is reasonably necessary, and there would be no counter motive to sabotage this one.

The designers of a random arbiter system don't need to be concerned with the relative magnitudes of power. The randomly chosen arbiters would be motivated to use only the magnitude of power that they confidently believe to be agree-

able to any random sampling of society. The primary concern is to harmonize motives. Relative magnitudes of power are thereby adjusted naturally.

But far more important than the motives of the arbiters, are the motives of anyone who contemplates calling for random arbitration. In the vast majority of cases, the odds of gaining anything from random arbitration, would be less than alternative options, such as letting go of pride and prejudice and communicating sincerely with the adversary, seeking advice from experts—maybe even paying for the advice. Experience in a random arbiter system would progress toward the time when no one ever calls for random arbitration.

Mr. Hammer's second concern was about pressures for conformity. His example about the person who gets crushed for preaching that Tuesday is the Sabbath implies that everyone who does not be-

lieve that Tuesday is the Sabbath would agree that no one should be allowed to preach it. If this was the case, what hope would any minority have in any kind of society?

There is abundant evidence in our society that many and maybe most people believe in tolerating minority ways of life as long as they don't interfere with the ways of life of other people. If tolerance is a value of a significant portion of a society, then any minority could appeal to that value and have a better chance in a random arbiter system, than in any system that had a procedure which other minorities could manipulate to overpower them. Minorities who are discriminated against, could call for arbitration over and over again, until intolerant people finally realize that the resistance to their offensive actions is too much of a nuisance to put up with.

Conformity and many other issues must be dealt with in any arrangement of a society. A random arbiter system would motivate people to find mutually agreeable ways of dealing with them, whereas any presence of a procedure to coerce, or a procedure to establish a procedure to coerce, would tempt people to seek to overpower each other instead of seeking agreement.△

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## Bill of Law

*(Continued from page 5)*

4. No person finally convicted or acquitted shall be put in jeopardy again, by the same or by another court, for the same activity.

5. Every person falsely arrested, unduly detained, or mistakenly convicted shall be compensated by the responsible parties.

6. Every person in clear and present danger shall be entitled to use force himself in order to:

- 6.1 defend his rights against immediate attack;
- 6.2 stop an attack in progress;
- 6.3 arrest his attacker caught red-handed;
- 6.4 seize his attacker's assets for remedying the rights he infringed whenever these assets risk disappearing before a police or judicial agency can secure them;

6.5 conserve proof or evidence; provided that an impartial court of justice certifies, either before or immediately afterwards that: (1) the proof or evidence is or was at risk of being lost and (2) the least violent means available will be, or were, used.

7. Every person whose natural rights have been violated shall be entitled:

- 7.1 to initiate proceedings against the violator;
- 7.2 to halt such proceedings and to suspend or stop the execution of any verdict in his favour;
- 7.3 to ignore any verdict of acquittal which does not state the reasons for the defendant's acquittal;
- 7.4 to appeal from the verdict in appeal when it overturns the original verdict;
- 7.5 to have a court's interpretation of rights reviewed by a separate court;
- 7.6 to have these rights exercised by his heirs if he died or by his agent if he is unable otherwise to exercise them himself.

8. Every parent whose child's natural rights have been violated shall be entitled to seek justice on the child's behalf. If the violator is one of its parents or legal guardians, the child's nearest relatives are entitled to bring suit.

9. Unless other arrangements are agreed to beforehand by the parties involved, the costs incurred by the courts for dispensing justice, as well as any legal costs of the litigants, shall be borne by the defendant if he is convicted, and by the plaintiff if the defendant is acquitted.△

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## Libertarianism in a Context

*(Continued from page 24)*

bad. The account will show a positive balance only after the rule succeeds.

Thus we see that good rules, which will eventually lead an organization to a reward, will typically look bad during some slices of time.

This establishes, I believe, that an organization which is trying to discover a new rule must sometimes make mistakes. Until the final analysis, a good rule cannot generally be distinguished from a bad rule. So an organization which hopes to discover a good rule must tolerate the test of some bad rules.

In fancy organizations, such as humans, this necessary persistence sometimes gets labeled "belief," or "stubbornness."

### Predation Grows Spontaneously

All organizations, in this model, seek only to promote their own self-interest. Following whatever rules they know, they act as individual opportunists.

With this much reasoning, the model explains predation by individual organizations. As far as each individual organization is concerned, other organizations are patterns in the environment, which might possibly be exploited. Organizations generally exercise no restraint in exploiting other organizations. For example, we humans live by eating plants and animals.

### Deference Grows Spontaneously

Predation can and does occur. But predation is only one kind of relationship. Other kinds of relationships can ensue.

Suppose one organization discovers that another organization can hurt it. Then it will try to find the rules which it can follow to avoid this injury. Among many possibilities, it might learn to strike back in some way. And, if it does learn how to strike back, generally it will do so if it learns that this pattern of action reduces the frequency with which it is injured.

Would-be predators, where they have learned that they may receive a counter strike, learn not to exploit certain other organizations. Thus, in any environment in which many organizations interact regularly, we can expect to find many

instances in which one organization has learned to treat others with deference.

This deference, this learned willingness to respect what other organizations consider to be their own interests, resembles the libertarian value that it is wrong to initiate use of force upon others. And I argue that this learned deference underlies, ultimately, libertarianism.

Actually, I see libertarianism as a subset of this natural deference, because natural deference can apply between interspecies pairs, whereas the libertarian value demands deference only within our species. Notice that a dog does not bite its master, and that a wasp does not sting a human unless provoked.

### Synergy, and Larger Organizations, Grow Spontaneously

In order to survive, you recall, organizations must exploit patterns in the environment. Typically, some of these patterns may be exploited by single organizations, acting alone. For examples of such patterns, think of anything that one person acting alone could hunt or gather. But, in more interesting cases, other patterns may be exploited only if two or more organizations cooperate in some way. In these cases the patterns would be large, too large for any individual organization acting alone to exploit, or complex, requiring more abilities than any individual organization possesses.

In addition to the libertarian live-and-let-live rules which, according to this model, we expect organizations to learn, this model also suggests, in part, how synergy must grow.

Each individual organization perceives other organizations as patterns in the environment; other organizations are there to be exploited, if rules can be discovered which produce gain for the individual.

One of the patterns, which one organization may discover about another, is that giving something may induce the other to return something, either immediately or after some lapse of time. And, in those cases where each organization perceives that it has gained, they will each have discovered a rule which enables them to exploit a pattern. Mutually beneficial exchange becomes possible.

Here is an example of synergy which involves a large number of organizations:

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. These conditions support a population of only a few thousand of these critters, which live near starvation, scattered over the tabletop.

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.

This environmental pattern, 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.

Thus, it seems clear, large or complex patterns of energy and raw materials can be exploited by numerous organizations acting together. This exploitation becomes possible as individual members of the larger organization learn the rules which profit them as individuals, acting within the larger organization. And, since individual organizations act as opportunists, synergy will grow everywhere

it can; larger organizations will grow everywhere they can.

Here is an interesting aside: notice that some advanced populations are able to survive only because they organize themselves to exploit such patterns. Clearly this must be true of the human population now on Earth. The Earth could not support, and did not support, this many people acting alone as hunter gatherers. We survive only because of our specialization and trade.

### Aspects of Larger Organizations

Notice that organizations, acting as opportunists in forming cooperative networks, do not automatically ally with other members of their own species. Indeed, in the general case, the members of an organization differ.

For example, consider the organization of a dog and its master. Typically we might expect the dog to be willing to fight to the death with other dogs, to defend its master. Thus, it seems to me, the interspecies bond, between dog and human, may be stronger than most intraspecies bonds, which the dog might feel with other dogs, or the human might feel with other humans.

So do not think that shared membership within a species automatically creates membership in a larger species-defined organization. In this model, all of humanity taken together does not form one organization, unless somehow that organization enables exploitation of some pattern in the universe.

### Predation on a Larger Scale

On the contrary, if some people can organize in a way that enables them to successfully exploit other people, then generally I believe they will do it. For examples, consider slavery and the state. So would-be predators can and do cooperate; naturally they employ synergy among themselves to their own benefit.

### Deference on a Larger Scale

Notice that defenders can likewise employ synergy. They can learn rules to orchestrate their actions in self-defense, as well as they can learn rules to orchestrate their actions in exploiting any other pattern. Thus, even though an individual organization is weak, it may be safe from attack if it enjoys protection in some network. This explains how weak and

seemingly defenseless humans receive protection, such as they do receive.

Again I see libertarianism as a subset of this kind of induced deference. I suggest that the feeling, which causes us to express the moral value of libertarianism, grows as an expression of the deference which we, in our own self-interest, find ourselves generally inclined to extend to other humans.

### Synergy on a Larger Scale

And finally, I find in this model a possible explanation for the evolution of collectivism. Examples, such as the one-celled tabletop critters above, convince me that some environmental patterns can be exploited only by numerous organizations which have learned appropriate rules of interaction. And, assuming that we live in a universe which has patterns of energy and raw materials which we have not yet exploited, the species that propagate most successfully into the future may be those whose individual members possess some predisposition to seek collective, cooperative action, because these may be the species which first discover new sets of rules which enable exploitation of these patterns. Assuming that human ancestors evolved in such circumstances, we might see an explanation for the collectivist impulse which seems so common in the human outlook.

### **The Rules of an Organization Can Be Either Conscious or Subconscious**

Organizations, in following rules and thereby exploiting patterns, are not necessarily conscious of either the rules or the patterns. I assume that the cells which make up my liver are not conscious of their participation in the work of that organization. Probably only higher-level organizations have anything like consciousness.

And, based upon my experience as a consciousness-possessing person, just because I can be conscious, that I am exploiting a pattern by following rules, does not mean that I always am conscious of this. Even in organizations which have the capacity of consciousness, I suspect that many rules and patterns remain unconscious.

With this dichotomy before us, notice how we use the word "belief." "Belief" can apply to either conscious or uncon-

scious exploitation of a pattern.

Sometimes, for instance, when we are talking about a third person, we will say that person must believe X, because that person acts as though he believes X. That person, when confronted with our observation, may deny it, because his belief may be subconscious. Or we may be wrong in our supposition. But nonetheless, we might continue to employ our conscious belief that the third party believes X, if that rule helps us succeed in our behavior vis-à-vis him.

For another speculation, have you noticed that sometimes a person seems to *want* to believe something? (Not only do they believe it, they want to believe it.) This want might be explained by the notion that conscious beliefs form to support a pre-existing structure of underlying subconscious rules. A person has a large investment in all the underlying rules which have enabled her success thus far in life. As such, only rarely could mere arguments, from another person, provide sufficient basis to challenge underlying rules (subconscious beliefs).

The belief system of libertarianism can be either conscious or subconscious. For those of us who read and talk about libertarianism, probably our belief exists on the conscious level. But there are many subconscious libertarians too. You may recall that "the Quiz," published by the Advocates for Self-Government, is intended to find these.

Likewise, the belief system of statism can be either conscious or subconscious. The state, as I interpret Oppenheimer's account, is an organization which formed spontaneously.<sup>2</sup> I suppose that states existed for a long time before anyone recognized them as such. And still, today, only a small minority recognize the state as the organization which we libertarians see. Indeed, how many of the statisticians in your acquaintance know the meaning of the word "statist"?

While on this point, notice that the resistance of statisticians to listen to libertarian ideas probably shows that statisticians are being served, in fact, by their subconscious participation in the state. To try to convince a statist to abandon the state is like trying to convince a farmer to abandon his relationship with his barnyard animals.



## Synergy in Growth Has the Edge

Relationships between organizations in nature take many possible forms. Here I have described three forms: predation, deference, and synergy. And I have classified libertarianism as a subset of deference.

Initially, when I started drafting this paper, I had libertarianism classified as a subset of synergy. But that turned out to be wishful thinking; I hoped to drape libertarianism in the most favorable garb. But writing forced clarification of my reasoning. As I now see it, we libertarians hope for synergy, but we do not demand it. We demand only deference. Synergy is a separate thing.

I have not, as yet, given any hope for libertarians, or any argument that synergy can outpace predation. Now I will do so. As shown in this model, environment overpowers ambition: the rules of conduct which survive are selected more by the environment in which organizations find themselves than by the ambitions which organizations may feel. And, as I have argued before, the circumstances in which we find ourselves strongly favor synergy among humans.<sup>3</sup> Because our environment is so fertile,

and because our minds are so powerful when unfettered, people who organize themselves in voluntary networks can easily outproduce, and thereby defend themselves against, people who organize in states for the purpose of exploiting other people. History provides numerous examples, such as the cold war.

Furthermore, more people are becoming aware of the state, as the predator that it is. So in the future we can expect to see more conscious cooperation among people who seek defense from the state. Cooperative defense against the state is still in its infancy.

So we libertarians, who want more of the benefits of synergy and less of the insults of predation, can be optimistic. But we can do more than feel optimism. We can act. We can move toward our goal.

However, as I see history, the action which I suggest has no precedent. While there are a few examples in which people have consciously organized themselves in order to enjoy the benefits of a libertarian community, there are no examples in which such conscious attempts have succeeded on the scale of a nation. Although our numbers, as libertarians, are

great enough to populate a nation, few of us seem aware of the possibility that we might coordinate our efforts successfully to that end.

If I have understood the nature of organizations, and the course of developing consciousness, it seems inevitable to me that people will one day organize to protect themselves—in liberty. But, for the most part, we libertarians who might benefit from this organization are not conscious of this possibility. This shows the challenge which we in FNF accept.△

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<sup>2</sup>Franz Oppenheimer, *The State: Its History and Development Viewed Sociologically*, 1908 and later editions.

<sup>3</sup>See, for instance, "Tyrants Always Fall," *Formulations*, Vol. V, No. 1 (Autumn 1997), pp. 23–25.

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## Web Site Update

(Continued from page 1)

substantial undertaking is possible only because **Phil Jacobson** volunteers to create and edit it.

We plan eventually to post all prior publications, with a few exceptions:

- Once we get caught up, we plan to delay posting to the web by about nine months, or three issues of *Formulations*. This delay we hope will be sufficient to reward paying subscriptions to our paper publications.
- We will not post news, and other items, that have lost their relevance because of the passage of time.

In this project **Roderick Long** has helped, by assembling and copying all the issues of *Formulations* which he edited (most of the first four volumes) onto floppy disks.

And **Earnest Johnson** has provided a key translation. Phil's software, based in Windows 95, could not reach across

the gap to read Roderick's disks, from an early Macintosh version of Adobe Page-Maker. Earnest, with his facilities in both platforms, found a way, and provided Phil with a copy which his software could read.

While most of the groundwork, which will enable Phil to load all our early documents to the web, has finally been completed, Phil has not been able to add many documents during the past several months, because his time has been consumed in starting his new bookstore. Nevertheless, at the date of this writing, you can find the full text of about 25 of our early articles and publications on the site. To see which documents are available now, look in the archive's table of contents, and notice that the titles of some documents are shown as links; these are available.

### A Bibliography

**Roy Halliday** has volunteered to run a bibliography on FNF's web site. For a range of topics, which are relevant to the

FNF work plan, this will provide links to on-line documents. The linked documents might be anywhere on the web, including in FNF's archive. While this is not yet installed, we hope it will be available within a few months.

### NCF Site Continues

Marc Joffe still maintains the NCF web page. This resides within our site at <[www.freenation.org/ncf](http://www.freenation.org/ncf)>. On this page a visitor can find links to several free-nation projects.

### Credit Card Ordering Underway

Soon it will be possible for visitors to place Visa or MasterCard orders on our web site. Visitors will be able to purchase: subscriptions to *Formulations*, Memberships in FNF, and prior publications. Thanks again to Candi Copas, who has volunteered to make this possible.△

# Libertarianism in a Context

by Richard O. Hammer

In a few recent articles I have advanced a view which places libertarianism in a context. I see libertarianism as a set of practices and beliefs which I expect to grow spontaneously in certain niches within a larger ecology. But I have not yet stated this view explicitly. So in this paper I make that statement, and attempt to support it. Also, since we libertarians need to understand predation and synergy, I will describe aspects of these.

I will employ a model, of life in the universe, which I first introduced in "An Engineer's View of Morality, Set in a Model of Life," *Formulations* Vol. V, No. 2 (Winter 1997-98). Some readers might find that paper helpful, in understanding this paper, because it gives more examples as well as a different presentation of the ideas.

My model deals with organizations. And you should be warned that, in this discussion, I blur the distinction between organisms and organizations. This blurring occurs commonly in the new science of spontaneous order: an organism (for instance, a person) is one kind of organization; and organizations often act like organisms.<sup>1</sup> In some places here, when I use the word "organization," it may make more sense to you if you substitute "person" or "organism." But I use "organization" because I am trying to state the general case.

And notice, before we start, that small organizations sometimes combine to create larger organizations. In the later sections of this paper, starting with the section on synergy, I will use this model to suggest a few insights into this fascinating process, the formation of larger organizations. But for starters we will use the model to consider single organizations, acting as though they were alone in the universe.

## Organizations Live by Exploiting Patterns in the Universe

I believe that living organizations must follow rules as they navigate through existence. By living they consume energy and raw materials, so they must occasionally refill their stores of these essentials.

In order to find supplies they must follow rules. Rules enable the organizations to find supplies because there are patterns in the universe; there are concentrations of energy and raw materials. If an organization acted randomly (not following rules), it would soon deplete its store of necessities, and die.

There is a special relationship between the rules followed by organizations and the patterns in the universe. In a sense the rules derive from the patterns.



Richard Hammer (right)

Assuming some competition, and survival of the fittest, among rules which an organization may adopt, a rule which survives will be one which enables the organization to successfully exploit some pattern.

## Bias Needed to Discover New Rules

It seems natural to me that many organizations, those of the class which propagate themselves, will possess an evolved bias to seek new patterns to exploit. This means that they must seek new rules, which are the ways to exploit those new patterns.

I can think of two reasons why this bias might evolve. First, because every pattern in the environment is finite, and will eventually be consumed. Thus, for any given species of organization to con-

tinue indefinitely, it must sometimes discover new patterns and rules. Second, because propagation, into new and possibly larger niches, would be enhanced in species of organizations which systematically seek new patterns and rules.

## Rules Restrain Behavior and Require Persistence

Patterns in the environment can be exploited only through a pattern of action. This means that an organization,

which would exploit a pattern by following a rule, cannot make decisions instant to instant, based upon immediate sensations, but rather must persist. It must endure some immediate feedback which is negative.

For example: suppose I see a tasty treat on a counter on the opposite side of the room, and start to act upon the rule that I may eat it if first I walk over to it. But walking requires energy. Step by step as I walk to the treat my body's account, of food energy expended vs. food energy gained, will run negative. During these steps, the rule will look  
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<sup>1</sup>See, for instance, M. Mitchell Waldrop, *Complexity: The Emerging Science at the Edge of Order and Chaos*, 1992.