The Voluntaryist

Whole Number 56 *"If one takes care of the means, the end will take care of itself."* **June 1992**

Voluntaryists And Indians: Proprietary Justice and Aboriginal Land Rights

By Carl Watner

Two remarks will serve to introduce my subject. Several years ago, Rosalie Nichols was asked if the Indians had ever had a title deed to North America. She responded "Who should have issued them one, I don't know, unless it was the buffalo." Secondly, Jonathan Hughes, in his book THE GOVERNMENTAL HABIT, contrasts the allodial and socage forms of land tenure. "Socage tenure was part of the feudal order" and was inevitably carried over by the English to their landholding in North America. It was designed to protect the interests of the feudal donor ("transformed in our time into the state") by forcing "property owners to support the taxing power at all times" regardless of whether they desired or used state services. The property owner could never "withdraw his support" from the state by not paying real estate taxes. If he attempted to discontinue his payment, the state would confiscate his title and auction off his property to someone who would pay taxes. "This form of coercion is a product of history" and ultimately traces itself back to the principle of the Right of Discovery, upon which all European nations based their claims to land in North America.

According to the international law of Europe during the fifteenth century, priority of discovery gave a nation supreme and unlimited right to the discovered territory. Title to lands hitherto unknown to Europeans was based on the union of discovery and possession. This meant that although numerous European nations claimed first discovery, actual sovereignty could only be established by effective colonization. (Since the English, in North America, generally proved themselves the most effective colonizers, succeeding comments will refer largely to the practice of the English.) The rights of the Crown were not merely those of head of state or feudal lord paramount. The King was the immediate owner and lord of the soil and exercised unlimited power in its disposition. Theoretically, no settlement could be made without his consent, and if any settlement took place without his prior approval, then he could force it either to disband or to seek a royal charter to confirm its existence. Once the Crown established sovereignty over an area, it then enlarged its authority to include the right to extinguish any vestige of Indian title.

Under international law, the Indians had only a right of uncivilized occupancy. This meant that the natives had no right to dispose of their title except to the Crown or its proprietary agents. The Indians were consistently held incapable of alienating their lands to private parties. By implication, the Crown took the position that if it cared to recognize any Indian title (to lands occupied by the Indians) at all, such title could be transferred only to the Crown. Any purchase of land made by settlers from the natives without the consent of the Crown was regarded and treated as absolutely void. It was a fundamental principle in the English colonial jurisprudence that all titles to land within the colonies passed to individuals only from the Crown or proprietary authorities. No land title examined in the colonial or early state courts was ever admitted to depend upon any Indian deed of relinquishment.

These views were confirmed by the Royal Proclamation of 1763, in which the territory still occupied by the Indians west of the Appalachian Mountains was disposed of without reference to the

continued on page 3

Rightful Property Ownership and Wrongful Possession

By Carl Watner

In his book PHILOSOPHY OF OWNERSHIP (p. 4), Bob LeFevre describes three categories of property: 1) "unowned property"; 2) "property that is correctly owned"; and 3) "property that is incorrectly owned." Applying these categories to the classic case of a horse owned by A and stolen by B, LeFevre concludes (pp. 76-78) that B, the thief, becomes the new owner, although the property, the horse, is "incorrectly owned." LeFevre then proceeds to determine who owns the horse when B, the thief, sells the horse to C, an innocent purchaser for value, and C sells to D, and D to E. Who rightfully "owns" the horse if A (recognizing the horse) discovers it in E's possession? LeFevre writes that under "our modern [legal] system, based on retributive justice," A remains the owner and that the legal system may use force against E if he does not peaceably turn the horse over to A. Under "the system of responsible individual ownership" which LeFevre champions, E would remain the rightful owner because "A was careless [his protection had failed when the horse was stolen] and hence failed in his responsibility as a property owner."

Before reflecting on LeFevre's solution to this problem and venturing to give a voluntaryist answer to this timeless question, let's see how history has handled the case of the stolen horse.

In the Kentish laws of Hlothhere (who reigned in part of England from 673 to 687 A.D.) and his nephew, Eadric, it is found that "if one man steals property from another, and the owner afterwards reclaims it, he [who is in possession] shall bring it to the king's residence, if he can, and produce the man who sold it to him. If he cannot do that, he shall surrender it, and the owner shall take possession [of it]." Pollock and Maitland in THE HISTORY OF ENGLISH LAW pointed out the recurring concern in Anglo-Saxon law that cattle-buyers conduct their business before good witnesses. "The sole purpose... of these enactments is to protect the buyer against the subsequent claims of any person who might allege that the cattle has been stolen from him." [Bk. I, Ch. II] Some ordinances required that cattle purchases only take place "in open market before the proper witnesses." In the days of Bracton, during the first half of the 13th Century, stolen goods could be recovered by legal action, "not only from the hands of the thief, but from the hands of the third, the fourth, the twentieth possessor, even though those hands are clean and there has been a purchase in open market." [Bk. II, Ch. IV, Sec. 7]

"Cattle-lifting," as the medieval English called it, was of concern to farmers a thousand years ago, just as cattle-rustling is of concern today. If a non-farmer should happen to pick up a current-day farm and ranching catalog, he will be amazed at the number of pages devoted to products designed to identify, ear-mark, and brand, livestock. As LeFevre noted, animals (such as horses and cows) are "individually marked" by nature, but not by brand. The only fool-proof way of establishing ownership of free-ranging stock is to brand the animal in some way. Numbered ear tags, neck straps, leg bands, and lip tatoos are some of the more modern and modest attempts at identifying pastured animals. The more traditional method is by branding, "leaving a mark on the skin with a hot iron" of stainless steel or copper. The modern version employs "freeze branding," a process in which "a super-cold branding iron, chilled in a mixture of liquid nitrogen or dry ice and alcohol, is applied to the animal's hide, killing the pigment-producing cells. This results in growth

continued on page 6

The Voluntaryist

Editor: Carl Watner

Subscription Information

Published bi-monthly by **The Voluntaryists,** P.O. Box 1275, Gramling, SC 29348. Yearly subscriptions (six issues) are $18 or .050 ounce or 1.5550 grams of fine gold or 5 Gold Standard units. For overseas postage, please add $5 or ⅓ of the regular subscription price. Please check the number on your mailing label to see when you should renew. *No reminders will be sent!* Single back issues are $4 each or ⅕ of the regular subscription price.

Reprints of THE VOLUNTARYIST are available on audio cassette for $4.50 each. Order from: American Eagle Productions, 126 Falligant Avenue, Savannah, Ga. 31410. Checks payable to: Nelson A. Sevier, Jr.

Potpourri From The Editor's Desk

1. "Consider the Source"

"When government tries to serve as a parent or a teacher or a moral guide, individuals may be tempted to discard their own sense of responsibility, to argue that only government must help people in need. If we've learned anything in the past quarter century, it is that we cannot federalize virtue. Indeed, as we pile law upon law, program upon program, rule upon rule, we actually can weaken people's moral sensitivity. The rule of law gives way to the rule of the loophole, the notion that whatever is not illegal must be acceptable. In this way great goals go unmet."

—President George Bush
At the University of Michigan
Commencement on May 4, 1991.
Quoted in the WALL STREET JOURNAL, May 10, 1991.

2. "Custom vs. Law"

"For custom rises out of the people, whereas law is forced upon them from above; law is usually a decree of their master, but custom is the natural selection of those modes of action that have been found most convenient in the experience of the group. Law partly replaces custom when the State replaces the natural order of the family, the clan, the tribe, and the village community; it more fully replaces custom when writing appears, and laws graduate from a code carried down in the memory of elders and priests into a system of legislation proclaimed in written tables. But the replacement is never complete; in the determination and judgment of human conduct custom remains to the end the force behind the law, the power behind the throne, the last magistrate of men's lives."

—Will Durant
OUR ORIENTAL HERITAGE,
(1935, pp. 26-27).

3. "On the Outbreak of the U.S. Civil War"

'You cannot conquer ideas with bullets."

—Wendell Phillips, April 9, 1861.

4. "On Snakes and Roses"

"Good ends cannot be attained by evil means. This is because the end pre-exists in the means, just as in the biological field we know that the seed of continued likeness pre-exists in the parent. Likewise in the moral realm, there is a similar moral reproduction wherein like begets like. This precludes the possibility of evil means leading to good ends, any more than snakes can beget roses."

—F.A. Harper, in "Morals and Liberty"
from THE FREEMAN, July 1971.

5. "Free Or Easy"

"A free action is by no means synonymous with an easy action: freedom deprives a man of the comfortable support of ready-made decisions imposed from without, which save him the pains of an inner struggle; it leaves him naked in the sight of his conscience, burdened with the unshared responsibility for the consequences of his actions, which no kindly authority can conceal or disguise. The joy of being the sole author of his actions is inseparable from the torment which preceded it: both alike are equally elements in his spiritual progress."

—Guido de Ruggiero,
THE HISTORY OF LIBERALISM (1927, p. 354).

6. "Chains on the Brain"

In a "Profile" of Polly Williams ("the architect of Milwaukee's first-in-the-nation school voucher program") in INSIGHT Magazine of August 26, 1991, Ms. Williams concluded that the 20th Century descendants of slaves "no longer have chains on (their) ankles; the chains are on (their) brains now." Specifically, she was referring to the "Great Society programs, which...imprison blacks by robbing them of motivation and dignity." Her remarks are reminiscent of LaBoetie's "Discourse on Voluntary Servitude," available from The Voluntaryists for $7.95 postpaid.

7. "Private Property in Land: A Historical Observation"

"Take away the right of private property in land, and you introduce, as an infallible consequence, tyranny, slavery, injustice, beggary and barbarism; the ground will cease to be cultivated and become a wilderness;... . It is the hope by which a man is animated that he shall retain the fruits of his industry, and transmit them to his descendants, that forms the main foundation of everything excellent and beneficial in this world; and if we take a review of the different kingdoms of the globe, we shall find that they prosper or decline according as it is acknowledged or condemned: in a word, it is the prevalence or neglect of this principle which changes and diversifies the face of the earth."

—Francois Bernier, VOYAGES, I,
Amsterdam, 1710, pp. 313, 319-20,
translated by Archibald Constable as
TRAVELS IN THE MOGUL EMPIRE
(Oxford: 1934, pp. 234, 238) and quoted in Perry Anderson, LINEAGES OF THE ABSOLUTE STATE, London: NLB, 1974, pp. 399-400.

8. "Freedom Is a Two-edged Sword"

"But true freedom is a two-edged sword. The freedom to succeed automatically requires the freedom to fail. Take away the latter and you have destroyed the former."

—Warren T. Brookes, "Have We Seen the End of Banks?"
DURRELL JOURNAL OF MONEY AND BANKING,
May 1991, p. 19.

9. "Think About It a Minute!"

"Shakespeare, Leonardo da Vinci," Galileo, Newton, "and Benjamin Franklin never saw a movie, heard a radio, looked at a television or a VCR. They had loneliness and knew what to do with it. They were not afraid of being lonely because they knew that was when the creative mood in them would work."

—Carl Sandberg

10. "Our Brave New World"

"As political and economic freedom diminishes, sexual freedom tends compensatingly to increase. And the dictator (unless he needs cannon fodder and families with which to colonize empty or conquered territories) will do well to encourage that freedom. In conjunction with the freedom to daydream under the influence of dope and movies and the radio, it will help to reconcile his subjects to the servitude which is their fate."

—Aldous Huxley,
"Foreword" to BRAVE NEW WORLD,
(New York: The Modern Library, 1946, p.xiii).

11. "Back Issues Galore!"

Each issue of THE VOLUNTARYIST results in a pile of extra copies. If you have a legitimate use for a quantity of back issues, please write. Advise how many copies you could use and state your purpose in requesting them. ▣

Indians

continued from page 1

natives. The Crown's assumption was that the aboriginal tribes had neither title to the soil nor sovereignty. The Royal Proclamation reserved to the British government the exclusive right to purchase and extinguish the rights of the Indian tribes as occupants of the soil. Furthermore, it forbade European settlement on Indian territory, until permission was granted by the Crown and until after the Indian right had been extinguished by conveyance to the Crown.

The first European in North America to challenge the principle of the Right of Discovery and to uphold the native rights to the soil was Roger Williams. In 1633 he became an ardent proponent of the idea that King James had no right or power to claim ownership of North American lands occupied and used by the Indians. The King was granting things beyond his power to grant when, for example, he issued royal patents to Plymouth, Massachusetts Bay, and other colonies. From Williams' point of view, these patents were invalid. The English could justly occupy lands in North America only by purchasing those lands from their rightful owners, the Indians. Undoubtedly these claims caused alarm among the royal patriots, for they struck at the very foundations of the colonial governments which King James had authorized. Williams was banished from Massachusetts and left to establish his colony in Rhode Island, where he began by purchasing the land from the Indians.

Williams asserted that the rights of the Indian stood upon the original principles of the law of nature, which meant that the lands they had occupied and used could not be alienated from them without their free consent. Roger Williams pointed out that a modified form of private ownership of land did exist among the Indian tribes and that they did not simply live in a state of nature. They had improved the land by burning the underbrush and had cleared the land where they lived, and their woodlands were no less useful than the King's parks in England. John Winthrop, one of Williams' detractors, maintained that the unimproved lands of North America belonged to no one, and that whoever labored on unimproved and unclaimed land thereby made it his own. According to Winthrop, land became private property only through cultivation, manuring, and enclosure. Since by English standards the Indians had not noticeably improved their land or enclosed it, it was not rightfully theirs, but simply lay ownerless in the state of nature. Even though the Indians had not cultivated or enclosed their lands, Williams insisted that the colonists first purchase the right to the land from its original users and occupants, the Indians. Williams demanded that the Indians be dealt with on the principle of equality and maintained that so-called civilized states have no right, however nomadic or savage they (the Indians) might be, to divest the title to the soil from them.

Misunderstanding arising from their differing concepts of property in land was one of the main causes of disputes between the Europeans and the Indians. The Indians did not recognize land appropriation by individual members of the tribe, and even Roger Williams recognized that land ownership among the Indians was usually held by the tribe. Nevertheless, among the Indians articles of personal property were owned by the individual. Each Indian tribe was perfectly well acquainted with the limits and bounds of its landholding, even though these holdings were not enclosed in the normal European fashion. Indian land tenure has been characterized 1) as a right of beneficial use and occupancy, rather than an exclusive ownership, and 2) as a group right rather than an individual one. It was probably difficult for the Indians to think of land as individual, private property, which could be sold or permanently alienated.

Besides Roger Williams, there were others concerned with respecting Indian rights. In 1626 the West India Company instructed its New Netherlands' agents to formally acquire title to lands, by purchase from the Indians. As early as 1623, records indicate that the Hollanders had purchased land of the Indians. Thus Manhattan Island was purchased by the Dutch in 1626, for goods valued at 60 guilder. This was a sum probably representing the real value of the land in that day, and the Indians made a good trade. The Dutch probably initiated the practice of purchasing lands from the Indians in order to counter the claims of the other European powers. They had little chance of sustaining themselves under the principle of Right of Discovery. They decided to argue, against the claims of the English, that the Indian tribes or nations were the true owners of the land discovered by the English and that title could be obtained from the natives only by gift or purchase. Interestingly enough, when the Swedes arrived in 1638, they recognized the claims of the Dutch to lands purchased by the Indians. Likewise, the Dutch formally admitted the validity of Swedish titles, when a deed or transfer from the Indians could be produced. The only English colonists to emulate the Dutch and Swedish practice were the Quakers in Pennsylvania; practically all the other English settlers refused to recognize Swedish or Dutch claims since the Indian title had no standing in English law.

The Quakers were the only group of European settlers to have their hands free from the blood of innocent Indians. They never deliberately schemed for the extermination of the Indians and were nearly always concerned to do full justice to Indian claims. They were an unimaginative, pecuniary people, who thought that justice to the Indian consisted in doing him no harm, paying him for his land, and letting him go.

The curious aspect of William Penn's approach was that his chief object seems to have been to extinguish Indian claims and to give satisfaction to the natives for their possessory rights, rather than to fix definite and accurate boundaries of the land purchased. The wording of the deeds implies that the intent was to cover all possible claims of those making the grants to Penn. Hence it was of little importance that these deeds overlapped and included areas obtained from other claimants. Thus, practically the whole of Pennsylvania was purchased of the Indians, and some of it several times over. The price of these land

Some FREE LIFE Sayings

Majority voting and universal suffrage simply give the people the choice of whether they will be ridden by a Conservative faction, a Liberal faction, or a Socialistic faction. The people obtain the privilege of "choosing their masters" and deciding with which particular stick they are to be beaten. To be ridden by one set of masters or another is the eternal penalty of despising the rights of the individual, and trying to make force the instrument of progress.

Of all the barren occupations ever invented—if anything in the world is barren—the occupation of the politician is the most barren. It consists in making some men do what they don't want to do, and setting others to make them do it; it consists in inventing restrictions, which either are defeated by the cunning acquired by the restricted, or which inflict on large masses of men that gravest injury—the weakening of their will and judgment and self-direction; it consists in bribing some men by taking the property of others; it consists in rendering uncertain and confused the results which belong to successful industry, and in making it doubtful whether a man can better his condition more easily by hard work, or by engineering his vote in such a fashion as to win gifts and favours from the State.

The politics of to-day represent one of those phases of intellectual and moral topsey-turveydum, which occasionally afflict the world for a season. Nature having given to each individual a body and mind to look after and to direct, the politician and socialist straight-way step in and direct that no man shall look after himself, but only after his neighbour. It is as if the human race were suddenly commanded to transact all their business walking on their heads instead of on their feet. But normal and intellectual topsey-turveydum is all part of the world's education. We must go through it in order to discover the better way.

(THE FREE LIFE was an English journal edited by Auberon Herbert from the late 1880s till the early 1900s. This "Saying" was taken from the issue of March, 1895.)

purchases seems as nothing now, but it was a fair price in those days in the minds of both parties. It took centuries for the white people to learn the value of land in America. In every instance when Penn dealt with the Indians, so long as the bargain was fairly made,the Indians returned to their wigwams satisfied.

What seems to have impressed the Indians was the fact that Penn insisted on purchase at the first and all subsequent agreements as being an act of justice, to which both parties were to give their assent voluntarily. They also felt that the price was ample to extinguish their claims, and that no advantages were taken by plying them with drink or cheating them with false maps. The treaties were open and honorable contracts, and not characterized by sharpness and chicanery. As the Indians reflected on them at their leisure, they saw nothing to repent of and everything to admire in the conduct of Penn, and they preserved inviolably the terms to which they had solemnly agreed.

Even before Penn arrived in his colony, land was purchased of the Indians, under his instructions, as early as 1682. As a Quaker and quasi-pacifist, and as a proprietary of the Crown, Penn had a dual role to fulfill as colonial leader. As in many of the other colonies, to resort to buying the lands of the natives may have been an act of expediency, for it must have been much cheaper and easier to purchase the lands of the Indians than to attempt to take them away by force. Liberty and peace were the two main elements of Penn's Holy Experiment and could be obtained only if no aggression were made on the rights, real or supposed, of the native inhabitants. Penn's Quaker conscience inspired him to buy not only the Indian lands, but those of all claimants in order to quiet all possible land disputes. It should be noted, however, that regardless of Penn's concern for justice, Pennsylvania law prohibited purchase of Indian land by individual Quakers or other settlers. Quieting title was a government monopoly which Penn held for himself.

It has been urged by Penn's critics that neither he nor any other European colonist could with perfect integrity and honesty purchase the land of the aboriginal natives of America, for several reasons. First, savages can never, for any consideration, enter into contracts obligatory upon them. They stand by the law of nations, when trafficking with the civilized part of mankind, in the situation of infants, incapable of entering into contracts, especially for the sale of their country. Second, should this be denied, it may then be asserted that no monarch or chief of a nation has the power to transfer by sale the soil of the nation over which he rules. Neither William Penn nor any other European since made a purchase of lands from any Indian nation other than through the agency of their sachems or head men, who certainly could have no more right to sell their country than any European monarch has to sell theirs. Third, should these objections be overruled, then it may be safely asked, what could William Penn or at least what did he give which would be considered from any point of view as a consideration or a compensation to those aborigines for their land?

Before dealing with these critical points, let it be said that the Indian land issue ought to be viewed from the standpoint of man's natural and inalienable rights to life, liberty, and property. This means that, since the Indians were human beings, they had the same rights as Caucasians. This means they had the right to control their own minds and bodies free of coercive interference and to own the land on which they and their ancestors had lived since time immemorial. Thus, when "discovered" by the Europeans, parts of the North American continent were not ownerless. The American Indians, by virtue of being first users and occupiers of parts of the continent, were its rightful owners. Since legitimate property owners have an unrestricted right to make arrangement for the disposition of their property, this effectively disposes of the first argument that savages cannot enter into obligatory contracts.

Since the Indians did not hold the land as individuals, but as collective tribal entities, it is difficult to determine whether or not land allocations (under the tribal regime) were more just than the English land grab which took place under the guise of discovery. However, it is plain that private collective ownership is perfectly valid and moral, as long as it is voluntary and there is no violation of individual rights. Private collective ownership must originate in the ability of the individual to own property, which he then cooperatively pools with the property of others. However, in the case of the Indians, it has never been asserted that tribal title rested on the agglomerating of individual titles. The actual settler—the first transformer of the land—whether white or Indian—had to fight his way past a nest of arbitrary land claims by others. Were the tribes, in effect, voluntary associations of individuals who consented to their collective ownership of the land? The fact that no form of tribute or taxes was ever collected among the Indian tribes inhabiting what is now the United States lends some credence to the view that the tribes were voluntary organizations.

As voluntary associations, the tribes could, and in fact did, historically, sell their rights to the soil by allowing their chiefs to represent tribal interests. These chiefs were authorized to make and execute deeds on behalf of the tribe, to receive for the tribe the consideration for the deeds, and to divide such consideration among the individuals of the tribe. The authority of the chiefs, so acting for the whole tribe,is attested by the presence and assent of the individuals composing the tribe and by their receipt of their respective share of the price. Thus could the Indian tribes deal with the Europeans for the sale of their lands,

Anarchy Is Where You Find It

By George Woodcock

What Kropotkin did in MUTUAL AID was to sketch out a way of escape for anarchists from the impasse of revolutionary hopes delayed and defeated precisely because they were hopes with nothing concrete to support them. Anarchism, he thought, was not made of good thought, or good intents or good plans. It was made out of the recognition (which is growing fast in the in the late twentieth century) that government is not merely unjust and tyrannical. It is also unnatural in the sense that viable human organization does not come from autocratic superstructures planning and dictating and organizing how men should live, but from voluntary action among people in the practical affairs of life which we all share.

So he set out to show how, despite the inroads of the State in appropriating functions once carried out by voluntary institutions, society was kept alive and running by whatever mutual aid groups survive, and without them would quickly collapse. Implicitly, if not explicitly, Kropotkin's final message was that our energies as anarchists should be devoted primarily to recognizing, sustaining and replicating mutual aid institutions and in this way creating the network of organized voluntaryism that will sustain a society in the process of transformation. Without such preparation he realized that the long-awaited revolution would be frustrated and perverted.

The message that the primary tasks of the anarchists lie in the here and now—letting the future grow naturally out of the present—has persisted in the anarchist movement ever since MUTUAL AID was published. It gave strength—although Kropotkin probably did not intend this—to those who believed that violent means were fatal to libertarian ends; there was an alternative to the false romanticism of the barricades. And its relevance has grown ever since governments have assumed the guise of "welfare states", which means that they increasingly control areas of life better operated by voluntary institutions. Welfare states may help push money around, but they do it in a way that traps individuals in inhumane structures, destroying their pride and independence.

That pride and independence can only be regained by returning control of education, health care, poverty relief, all social services to voluntary groups, organized to give the person helped the awareness that he is helping himself and others as well and not receiving the charity of the state or of individuals.

(Excerpted from Michael Ziesing and Mike Gunderloy (eds.) ANARCHY AND THE END OF HISTORY, (1991), pp. 107-108)]

and granted that the chiefs had this authority, it must be admitted that they were capable of determining what in their opinion would be ample compensation for their lands.

With these preliminary concerns out of the way, it must now be determined whether or not the bulk of Indian-claimed land was actually used and occupied, settled and transformed by the tribes claiming them. If it be admitted that the tribal organizations were voluntary and that Indian land ownership was just, then it is plain that European intervention into the allocation of property was a usurpation and a crime against the rightful Indian owners. If the Europeans settling in North America had operated in a free-market or even semi-free-market framework, then the British government would have refrained from claiming sovereignty over the unused domains of America. It would have denounced the principle of the Right of Discovery, and recognized that true ownership could only be established under the principle of "first ownership by the first user" (whether white or Indian).

What exactly does first occupation and use mean? What are the criteria by which the principle of first ownership by the first user is to be interpreted? The crux of the dispute over whether Indian-claimed lands were truly owned by the Indians or actually ownerless stems from the failure to distinguish between cultivation and other forms of use. If cultivation and enclosure are deemed to be the hallmarks of establishing occupancy and use,then that large portion of the Indian-claimed land which was never "homesteaded" must be viewed as actually ownerless (and thus open to settlement by the actual first user).

Claiming that the American Indians, by virtue of being the first users and occupiers of the continent, were its rightful owners, Rosalie Nichols maintains that "use" is decided upon according to the condition and natural resources of the land,the level and particular type of technology of the occupants, and the desires of the owner. Undoubtedly, the Indians rightfully owned the land that they cultivated and upon which they erected their wigwams and shelters. *The main question to settle is whether they rightfully owned the land upon which they regularly or sporadically hunted.*

Lysander Spooner in the mid-nineteenth century asserted that those lands which the Indians merely roamed over in search of game, could not be said to have been rightfully owned by them. Rightful ownership of unoccupied lands is established by their actually living upon the land, or improving it, or bestowing other useful labor upon it. "Nothing short of this actual possession can give any one a rightful ownership of wilderness lands, or justify him in withholding it from those who wish to occupy it." He based his assertions on the principle that occupation and use meant more than standing upon a portion of the North American continent and claiming possession of it. To establish ownership a person must bestow some valuable labor upon the land. In these cases he holds the land in order to hold the labor which he had put into it. Similarly, Rothbard has written that the bulk of Indian-claimed land was not settled and transformed by the Indians, and that the new European settlers were justified in ignoring the Indians' vague abstract claims because they knew they were the first to actually cultivate and enclose the lands upon which they settled.

The fact that the Indians and Europeans did not share a common technology seems to be of no import in establishing legitimate property titles. To live, all people (regardless of their technology) must occupy certain places on the land, and whoever first establishes a homestead becomes its rightful owner. Unless the Indians bestowed some form of valuable labor over the wilderness areas they hunted, their claims of ownership were unsubstantiated. At most, they could claim the wild animals they killed and the trails that they cleared. The fact that the tribes each had their own hunting areas does not disprove this and indicates that they only wished to live in peace with one another. If and where the Indians attempted to bound off their hunting lands, so that no one else could enter and game could not escape, and where they made efforts to help propagate game, then their ownership would be valid.

Thus, game preserves or wilderness areas could exist in a free society. It is also important to understand that land once cultivated, even if allowed to go wild, does not become ownerless. Once a piece of land has passed into just ownership, the owner cannot be divested of title without his consent. Even though a piece of land is not currently being farmed, but is perhaps being used for cycle racing or as a rifle range, it is still owned, so long as sometime in the past a rightful possession took place. The present owner is the rightful owner so long as he can trace his title through a historical chain of voluntary transfers from the first occupier and user. The fact that certain forest areas, desert lands, and open ranges, even at this late date (five hundred years after the European discovery of the continent) have never been homesteaded or cultivated means that they are still rightfully ownerless and will probably remain so because of their uneconomic value.

Thus, granting that some Indian claims were valid and others invalid, what were the Europeans to do when they discovered America? Even though there were probably few areas which the Indians did not claim, was it necessary for the Europeans to abandon the country and relinquish their own pompous claims established under the principle of Right of Discovery? All unjust claims—by the Indians and the European powers—should have been ignored. "The English who colonized this country had no right to drive the Indians from their homes; but on the other hand, there being here an abundance of unoccupied land, the colonists had a right to come and settle on it, and the Indians had no right to prevent them from doing so." I believe that the history of Quaker settlement proves that this policy was possible, and furthermore believe that until the latter stages of settlement, the Indians were not as concerned to establish their title to hunting lands as we might think.

If Penn had not been a representative of the Crown, but only a private Quaker or the recognized leader of a corporate body of Friends, his conduct toward the Indians would serve as an example of how a libertarian colonization process could have worked. The fact remains that the Indian tribes he dealt with voluntarily relinquished their claims to him. (In this respect, his position as a Crown representative was unimportant). The Europeans did not need to abandon the continent upon discovering that parts of it were inhabited. Individual settlers or groups of settlers could have quieted Indian claims and extinguished Indian titles much as Penn did. It is conceptually possible therefore that the bulk of Indian landholdings could have passed legitimately into non-Indian control. This is not to say that all tribes would have alienated all their lands, but at least historically some Indians did willingly relinquish their land. The historical picture clearly demonstrates that voluntaryists and Indians could have lived peacefully together under a regime of proprietary justice.

[Editor's Note: This article first appeared as "Libertarians and Indians,' in VII THE JOURNAL OF LIBERTARIAN STUDIES (Spring 1983). All footnotes have been deleted.] ☒

Letter to the Editor
Taxation vs. Human Nature

People are individuals. Each is a distinct, unique person with different desires and ambitions from any other individual.

Only the free market recognizes this. Only the free market treats people as the individuals they are.

Tax-supported government treats people in groups, not as individuals. For instance: Tax-supported governments put unlike individuals into the same group according to their income or their assets, and taxes them as if they were alike. Isn't this a horrible mistake?

Some individuals are frugal and take care of themselves. Others are not. There are many other differences between individuals.

All tax-supported governments violate the individualistic nature of human beings. As a result, there can never be a tax-supported government which truly permits individual freedom.

The only way tax-supported governments can treat people as the individuals they are is to leave them alone, which they never do.

To do so would be contrary to its existence.

Sincerely,
Harry Hoiles
Colorado Springs, CO.

Rightful Ownership

continued from page 1

of white hair; ...producing a brand site in approximately three months."

As related in THE WESTERN HORSEMAN of June 1990 and January 1991, "almost as long as livestock have been domesticated, men have sought to leave a mark of identification or ownership on their animals. ...Pictures of branding have been discovered on tombs in Thebes dating back to around 9000 B.C. It is believed that the followers of the Spanish explorer Cortez were the first to use brands in North America, shortly after their invasion of Mexico in 1519." Branding has played a colorful part in the history of the American West because in the era before barbed wire, "a man's cattle could drift for miles and join up with cattle owned by other ranchers. Branding was the only way to legally determine which cattle belonged to which rancher. Branding was also, and still is, the best way to deter thieves."

During the late 1800s, all over the western part of this country, cattlemen organized themselves into protective associations in order to combat the rising problem of rustling. For example, the Texas and Southwestern Cattle Raisers Association was started in 1877. "Instead of waiting for government help, the association hired its own brand inspectors" in 1883. According to BRAVE MEN AND COLD STEEL: A History of Range Detectives and Their Peacemakers, their job was "to 'closely, honestly, and impartially' decide whether a person possessing cattle had legal authority to hold or handle them." They were private hands, enforcing the Texas state laws which made cattle-thieving, the driving of cattle to market with improper brands, the killing of unmarked animals without a bill of sale, and the defacing or altering of a brand, all criminal offenses. In order to establish the ownership of range cattle, the inspectors were provided with a brand book by their Association. The purpose of this book was to provide a list of registered brands and the names of the rightful owners. "By 1880, THE STOCKMAN'S GUIDE AND HANDBOOK for Texas contained more than 600 brands of cattle and horses, the names of the owners and the location of each ranch."

Brand registration was begun in Texas in 1832, when Richard H. Chisholm first recorded his "crop and underbit" ear marks and HC brand with Ezekiel Williams, recorder of Gonzales, Texas. A whole tradition and historical lore about branding grew from these beginnings. During the early days in Texas, before cattle hides became valuable, the whole side of a cow might be covered with brands. When a rancher sold an animal, he gave the purchaser a written bill of sale, "and the already decorated animal might receive, one, if not two, additional brands." The brute might receive a "vent" or "counter" brand, which was the seller's acknowledgment of the sale (without the "vent" brand the purchaser could not establish the legitimacy of his possession and ownership) and receive the new owner's brand. Upon such cows, might also be found a "special trail" or "road brand", which was applied when variously branded animals were to be herded beyond the limits of a single county. This brand helped the cowboys identify the stock they were responsible for, which might bear a wide variety of markings. Lastly, a cow might possess a "county brand" on its neck, which was an indication of where its regular brand mark was registered.

"The letters, figures, or designs in a brand commonly bore some relation to the owner's name or to some event of either business or sentimental interest to him ('T M,' in one case, meant twenty miles from a saloon)." Great care was taken to choose brands which could not easily be altered or forged. In some localities, it became the custom that branding be performed only in the presence of men from several ranches. Range inspectors had a demanding and dangerous job. In the case of an altered brand, if they could not ascertain the original brand by external inspection, they might kill and skin the animal in order to examine the scars on the inner side of the hide. The importance of the brand system was such that in Wyoming, "no person might slaughter unbranded cattle," and in every Western state, "butchers were required to retain on public view, for a specified number of days, the hides of all cattle killed by them."

Freeze-branding has begun to replace the hot iron, and modern-day cattle theft may be further reduced by the use of new technology. In her book, A CENTURY OF COW BUSINESS, Mary Clarke refers to a small implant of an electronic chip which can be inserted under an animal's skin. "It clearly identifies the animals, its owners, and can be read by a hand-held scanner from horseback, airplane, or from a pickup." This new electronic system not only establishes positive identification, but can provide supplemental information about the animal, such as its age, pedigree, and medical history.

The history of branding is but one example of how important it is for men on the free market to "protect" and "identify" their property. (Other ways include the use of serial and registration numbers as records of ownership.) This certainly coincides with LeFevre's emphasis on protection and his concept of "responsible individual ownership." In the western states, if a range animal was left unbranded (the original owner not caring enough to do even this), the original owner could not claim or prove his ownership, and the actual possessor of the animal, or the first to brand it, would be recognized as the actual owner. Thus, there was a sort of common law of "caveat emptor," by which purchasers were put on notice that ownership of cattle was determined by brand. Although this historical example may not be free of statist intervention or private violence, it goes far in demonstrating that men who raised animals for a living did not recognize that wrongful possession (of branded animals) by the thief led to ownership. With Western range cattle, ownership has always depended on the brand, not possession. The advantage of this system is that it "prevents the creation of a string of trespasses which cannot be rectified without further trespasses. Even today, seasoned cattlemen still insist on certificates of transfer traced to the original brand holder before purchasing stock from secondary owners."

What happens if the thief disappears, leaving the first owner to confront the innocent purchaser? They both cannot own the property in question at the same time. Which one of them should take their lumps and shoulder the cost of the crime? Should it be the owner who failed to protect his property from being stolen, or should it be the innocent purchaser who failed to make sure he did not buy stolen property? LeFevre points out that the owner should have better protected his property so that it was not stolen in the first place. History and a consistent title transfer theory of property answer this question differently. They say that the innocent purchaser should have searched the chain of title more carefully and verified that the property had not been stolen. As we have seen, the answer on the Western range was "buyer beware." The voluntaryist solution would be consistent with this ancient rule of "caveat emptor."

According to a title transfer view of property ownership, a thief is unable to convey title to stolen property because the original owner has not consented to its sale. However, the voluntaryist would not advocate the use of violence to regain possession of stolen property. Instead, the victimized owner might publicly announce his loss and describe how his property was identified and earmarked. He may also try to track the thief down and expostulate with him. He might publicize the thief's or innocent purchaser's wrongful possession; he might organize a boycott in an effort to ostracize the wrongdoer. If the stolen property is sufficiently important, the owner may even wish to go so far as to "buy" it back in order to voluntarily regain possession.* What the voluntaryist owner would not do is resort to the use of force or enlist the aid of public authorities (the police, the courts, or legal system), for "if we expect to gain privately, we must also expect to experience our losses privately." (LeFevre, p. 81) The rightful owner, if he aspires to voluntaryism, must not use aggression. The means he uses must be consistent with the ends he seeks, for as LeFevre wrote: "Aggression is ALWAYS wrong. There can be no justification for it under any circumstances. ...Our problem is to control ourselves. ...We must begin to concern ourselves with the moral recognition that we must not join the ranks of the aggressors, even for what may appear to be (a just) cause." Rose Wilder Lane said it best. "Freedom is self-control, no more, no less."

*An example of this is mentioned in THE WALL STREEET JOURNAL of January 10, 1992, p. B1. A ninth-century religious manuscript stolen from the cathedral in Quedlinburg, Germany was sold to a foundation representing the church for a "finder's fee" of allegedly $3 million. Ⓜ

Natural Law

continued from page 8

then there will be no need either of political organization or direction or legislation, three things which are always equally fatal and inimical to the liberty of the people inasmuch as they impose upon them a system of external and therefore despotic laws. This is so whether they are imposed by a sovereign or a democratically elective parliament.

The liberty of man consists solely in this: that he obeys natural laws because he has himself recognized them as such, and not because they have been externally imposed upon him by any extrinsic will whatever, divine or human, collective or individual.

Suppose a learned academy, composed of the most illustrious scientists, were charged with the lawful organization of society, and that, inspired only by the purest love for truth, it framed only laws in absolute harmony with the latest discoveries of science. Such legislation, I say, and such organization would be a monstrosity, first, because human science is always and necessarily imperfect, since, comparing what it has discovered, it is still in its cradle. So that were we to try to force the practical life of men, collective as well as individual, into strict conformity with the latest data of science, we should condemn society as well as individuals to suffer martyrdom on a Procrustean bed.

Secondly, a society which obeyed legislation emanating from a scientific academy, not because it understood its rational character but because this legislation was imposed by the academy in the name of science which the people venerated without comprehending it, would be a society not of men but of brutes. It would be another version of those missions in Paraguay which submitted so long to the government of the Jesuits. It would surely and rapidly descend to the lowest stage of idiocy.

And there is still a third reason which would render such a government impossible—namely, that a scientific academy invested with absolute sovereignty, even if it were composed of the most illustrious men, would infallibly and soon end in its own moral and intellectual corruption. For such is the history of all academies even today, with the few privileges allowed them. From the moment he becomes an academician, an officially licensed "servant," the greatest scientific genius inevitably lapses into sluggishness. He loses his spontaneity, his revolutionary hardihood and that troublesome and savage energy characteristic of the genius, ever called to destroy tottering old works and lay the foundations of the new. He undoubtedly gains in politeness, in utilitarian and practical wisdom, what he loses in power of originality. In a word, he becomes corrupted. ...

A scientific body to which has been confided the government of society would soon end by devoting itself no longer to science at all, but to quite another matter; and, as in the case of all established powers, that would be its own eternal perpetuation by rendering the society confided to its care ever more stupid and consequently more dependent upon the scientist's authority.

But that which is true of scientific academies is also true of constituent assemblies, even those chosen by universal suffrage. They may change in composition, of course, but this does not prevent the formation in a few year's time of a body of privileged politicians exclusively intent upon the direction of public affairs as a sort of political aristocracy or oligarchy. Witness what has happened in the United States of America and in Switzerland.

Therefore let us have no external legislation and no (coercive) authority. The one is inseparable from the other, and both tend to create a slavish society.

Does it follow that I reject all authority? Perish the thought. In the mater of boots, I defer to the authority of the bootmaker; concerning houses, canals, or railroads, I consult the architect or the engineer. For such special knowledge I apply to such a "savant." But I allow neither the bootmaker nor the architect nor the "savant" to impose his authority on me. I listen to them freely and with all the respect merited by their intelligence, their character, their knowledge, reserving always my incontestable right of criticism and censure. I do not content myself with consulting a single authority in any special branch; I consult several; I compare their opinions and choose that which seems to me soundest. But I recognize no infallible authority, even in special questions; consequently, whatever respect I may have for the honesty and the sincerity of an individual, I have no absolute faith in any person. Such a faith would be fatal to my reason, to my liberty, and even to the success of my undertakings; it would immediately transform me into a stupid slave, the tool of other people's will and interests.

If I bow before the authority of the specialists, willing to accept their suggestions and their guidance for a time and to a degree, I do so only because I am not compelled to by anyone. Otherwise I would repel them with horror and bid the devil take their counsels, their directions, and their services, certain that they would make me pay, by the loss of my liberty and self-respect, for such scraps of truth, wrapped in a multitude of lies, as they might give me.

I bow before the authority of specialists because it is imposed upon me by my own reason. I am conscious of my inability to grasp any large portion of human knowledge in all its details and developments. The greatest intelligence would not be equal to a comprehension of the whole, whence the necessity of the division and association of labor. I receive and I give; such is human life. Each directs and is directed in his turn. Therefore there is no fixed and constant authority, but a continual fluctuation of mutual, temporary, and above all voluntary authority and subordination.

To accept a fixed, constant, and universal authority is ruled out precisely because there is no "universal" man capable of grasping, in that wealth of detail without which the application of science to life is impossible, all the sciences and all the aspects of social life. And indeed if a single man could ever attain such an all-encompassing understanding, and if he wished to use it to impose his authority upon us, it would be necessary to drive this man out of society, because his authority would inevitably reduce all the others to slavery and imbecility. I do not think that society ought to maltreat men of genius as it has done hitherto; but neither do I think it should indulge them too far, still less accord them any special privileges or exclusive rights whatsoever, for three reasons; first, because it would often mistake a charlatan for a man of genius; second, because, through such a system of privileges, it might transform into a charlatan even a real man of genius, and thus demoralize and degrade him; and, finally, because it would establish a master over itself.

To sum up: we do recognize the absolute authority of science, for the sole object of science is the thorough and systematic formulation of all the natural laws inherent in the material, intellectual, and moral life of both the physical and social worlds, which are one and the same world. Apart from this, the sole legitimate authority—legitimate because it is rational and in harmony with human liberty—we declare all other authorities false, arbitrary, and deadly... .

But while rejecting the absolute, universal, and infallible authority of men of science, we willingly accept the respectable, although relative, temporary, and restricted authority of scientific specialists, asking nothing better than to consult them by turns, and grateful for their precious information as long as they are willing to learn from us in their turn. In general, we ask nothing better than to see men endowed with great knowledge, with great experience, great minds, and above all great hearts, exercise over us a natural and legitimate influence, freely accepted, and never imposed in the name of any official authority or established right; for every authority or established right, officially imposed as such, becomes at once an oppression and a falsehood, and would inevitably impose upon us...slavery and absurdity.

In a word, we reject all legislation, all authority, and all privileged, licensed, official, and legal powers over us, even though arising from universal suffrage, convinced that this can serve only to the advantage of a dominant minority of exploiters against the interests of the immense majority in subjection to them.

This is the sense in which we are all anarchists... . Ⓐ

Natural Law and Authority

By Michael Bakunin

(Editor's Note: In 1871, eleven years before the appearance of Lysander Spooner's essay, "Natural Law," the Russian anarchist, Michael Bakunin (1814-1876), was writing on the same theme. While much of Bakunin's ideology is collectivist, anti-theological, and anti-private property, his and Spooner's thinking on this topic largely parallel one another. The full title of Spooner's piece was "Natural Law; or The Science of Justice: A Treatise on Natural Law, Natural Justice, Natural Rights, Natural Liberty, and Natural Society; Showing That All Legislation Whatsoever Is An Absurdity, A Usurpation, And A Crime." Bakunin said it less loquaciously: "(W)e reject all legislation, all (coercive) authority, and all privileged, licensed, official, and legal powers... ." Bakunin also went on to examine the reasons why coercive, political power corrupts those who exercise it. Suppose, he says, the government of society was confined to learned scientists. Would they do a better job than our elected legislators? Read on to discover his answer. The excerpts below are found in Bakunin's GOD AND THE STATE, New York: Mother Earth Publishing Association, 1916, pp. 28-35. Translated by Benjamin R. Tucker. They are more recently reprinted in Sam Dolgoff (ed.), BAKUNIN ON ANARCHY, New York: Alfred Knopf, 1972, pp. 226-231. Dolgoff titled this section "Authority and Science." The title, "Natural Law and Authority" seemed more appropriate to me.)

What is authority? Is it the inevitable power of the natural laws which manifest themselves in the necessary concatenation and succession of phenomena in the physical and social worlds? Indeed, against these laws revolt is not only forbidden, it is impossible. We may misunderstand them or not know them at all, but we cannot disobey them; for they constitute the basic conditions of our existence; they envelop us, penetrate us, regulate all our movements, thoughts, and acts; even when we believe we disobey them, we are only showing their omnipotence.

Yes, we are the absolute slaves of these laws. But in such slavery there is no humiliation, or rather, it is not slavery at all. For slavery presupposes an external master, an authority apart from the subject whom he commands. But these laws are not something apart; they are inherent in us; they constitute our whole being, physically, intellectually, and morally; we breathe, we act, we think, we wish, only in accordance with these laws. Without them we are nothing, we are not. Whence, then, could we derive the power and the wish to rebel against them?

Man has but one liberty with respect to natural laws, that of recognizing and applying them on an ever-extending scale in conformity with the object of collective and individual emancipation or humanization which he pursues. These laws, once recognized, exercise an authority which is never disputed by the mass of men. One must, for instance, be at bottom ... a fool ... to rebel against the law by which twice two makes four. One must have faith to imagine that fire will not burn nor water drown, except, indeed, recourse be had to some subterfuge or, rather, these attempts at, or foolish fancies of, an impossible revolt, are decidedly the exception; for, in general it may be said that the mass of men in their daily lives acknowledge the government of common sense—that is, of the sum of natural laws generally recognized—in an almost absolute fashion.

The great misfortune is that a large number of natural laws, already established as such by science, remain unknown to the masses, thanks to the watchfulness of the tutelary governments that exist, as we know, only for the "good of the people." There is another difficulty, namely, that the major portion of the natural laws connected with the development of human society, which are quite as necessary, invariable, fatal, as the laws that govern the physical world, have not been duly established or recognized by science itself.

Once they are recognized by science, and have then passed into the consciousness of all men, the question of liberty will be entirely solved. The most stubborn authorities must admit that

continued on page 7

The Voluntaryist

P.O. Box 1275 • Gramling, South Carolina 29348

FIRST CLASS-TIME VALUE

Please renew your subscription if the number on your address label is within one digit of this issue's number