

CONTRACTS - NOTES

[31] From: Chris Whitten <lfb@panix.com> at INTERNET 11/21/94 9:32PM (16395 bytes: 367 ln)
To: N. Stephan Kinsella at SHSL-PH2
cc: Chris Whitten <lfb@panix.com> at INTERNET
Subject: Re: Contracts 1 of 2

----- Message Contents -----

Text item 1: Text Item

Stephan:

Finally, my response! Sorry I didn't reply sooner, don't take it as any indication of my interest. ;-)

I'm not cc'ing the guy that you cc'd (Jack Criss?), but if you think he's interested you're welcome to forward this to him.

I'll just try to respond to your points. This will be easiest for me, and it might help you clarify your position. (For this reason I'm going to have to break this into two parts, as you did.) Sorry if it rambles.

On Tue, 8 Nov 1994 N._Stephan_Kinsella@shsl.com wrote:

> By the way, I can think of plenty
> of topics that might be interesting to discuss at a CLO meeting, if
> you ever need help planning things for the agenda.

Sure, I can always use help and advice.

> Another thing that would be interesting would be a discussion of
> *what* rights are. I am telling you, I think there is something
> very powerful in this line of inquiry.

Do you know about the Ayn-Rand mailing list? If you don't, definitely check it out. It's got the highest level of discussion, and the least noise, of any discussion list I've seen. They had a long discussion about rights, with some real interesting insights. I wish I had had time to follow it more closely.

I think now they are discussing "epistemology of measurement" but maybe they have an archive.

Let me know if you need the addresses.

> The very definition of
> rights is elusive and very hard to grasp. In fact I do not believe
> I have ever heard a good definition of a "right". If you think of
> it you'll see what I mean. This is related to the difficulty in
> defining other normative/valuative concepts like "should" and
> "ought", and "must", and "good" and "bad." I believe ultimately
> Rand had a good insight (related to Hoppe's theories) into the fact
> that anyone who is still alive has chosen to live, and thus value
> life. We can't show that someone "should" choose to stay alive,
> because "should" implies value, which implies valuing something.

> If someone chooses to commit suicide they don't value life, so it
> makes no sense to tell them they should. Anyway, this is a
> "hypothetical" imperative, and there are no categorical ones

>--but

> it doesn't matter, because the only people this question could
> matter for are choosing to live, so the "hypothetical" nature is
> effectively categorical. So you could find a descriptive basis in
> reality for values: IF you want to live (and everyone alive does),
> THEN you should do X. This is a hypothetical imperative that no
> one can deny, so it's categorical. Anyone alive does value life,
> and this is the fundamental *value*--this is what, I think, you can
> build "good" and "bad" from. And from these, you can build
> "shoulds" "oughts" and even "musts". E.g., IF you value some
> things, then you SHOULD do X to get it. This way the should sounds
> hypothetical, but you can always reduce it down to the ultimate
> value of life, which cannot be denied.
>

I agree that "should's" must always follow "if's". That's a good point.

But I'm not sure that "valuing life" is a very well-defined thing. It doesn't make a very specific "if" on which to base your statement. Just because I value my life--enough to do what is required to continue living--that implies very little about what sort of life I value. I don't think you can make many categorical statements about what furthers life, since the definition of "life" is still subjective. You haven't defined "life" as anything other than what it means to each individual, and if you did, your "proof" wouldn't be valid.

Maybe this isn't so much an argument with the Hoppe/Kinsella view as with Objectivism. I'm not sure. What do you think?

> And I believe you can build rights out of shoulds--but even this is
> very difficult.

But can you build any "shoulds" from the fact that I value life?

> A right to do X means more than that B "should
> not" prevent it. It has something to do with the use of force by
> A, and its legitimacy (and legitimacy is just another normative
> term).

> My point is that I don't think rights have been carefully defined,
> and when they are you see lots about their nature. But I think I
> must start at the beginning to figure these things out.

I agree that rights aren't very clearly defined (at least to anybody I've seriously discussed this with) but I don't follow your exact reasoning here. But, I don't think this is relevant to what you have below, so we need not pursue it.

> Before
> starting with my contract idea, let me mention one more thing.
> Given the fact that we end up regressing to fundamentals in these
> meetings anyway, wouldn't it be good to directly start there, at
> least sometimes, and clear away the obstacles from the very

> foundation and then build from there.

If it were so simple!

I've had dozens of these meetings, and sometimes we have talked about foundations, and maybe it's time to have another discussion on it, but I wouldn't expect much foundation-building for the group. I might expect individuals to develop and clarify their philosophies, but to expect everyone to agree is asking way too much.

I do like to get to essentials, and that's what I hope for every meeting. The method I commonly use for the group discussions is to pick a topic where we will disagree, or we are personally troubled (preferably both). Then we can explore what we don't understand, seek out the conflict in our own understanding, and try to resolve it.

To me, that's a way to build a foundation. Only it's not really building one, it's more like discovering one that already exists. You take something you know is right, a corner of a building that you are leaning on--to extend the metaphor, then you see where that leads, you feel along the wall. You discover what the rest of the building is like by extending out from that corner. Eventually you'll know the shape of the whole building.

Conrad

I think the truth is out there to be discovered, not created. There is such a thing as natural law, and that's what we're trying to understand. And what better way to understand than to feel out from what we already know?

> Related idea: it might be
> interesting for one of us to provide a written essay (published or
> not, just carefully written at least) for others to read and to
> provide basis for discussion at the next meeting. Obviously from
> my point of view I'm thinking, for example, of my estoppel article.
> But I'd enjoy doing that with others too, and not just on
> foundational issues, even more mundane things and applications,
> current events etc.

I like the idea of reading a paper. I've tried that in the past, and most people felt like they didn't need another homework assignment (many of us were in school) but I'd be willing to try it again.

> I think my ideas at the last CLO meeting that
> were difficultly (a word?) received would have been accepted and
> understood more had I first explained my estoppel view from the
> beginning.

That could be a big part of it. I read your papers on estoppel, and I got quite a bit out of them, I like that idea quite a bit. But I didn't understand how that connected with your idea of contracts at all until I read through the second part of this message. Even now I don't fully understand how it connects.

> But on the other hand if we do that it might just be
> like me lecturing to people, which I don't think would be
> interesting anyway, from a dialogical point of view.

I agree. I'd like to keep it a discussion group. There are other forums

for lectures.

That doesn't mean we couldn't *discuss* your idea of estoppel.

> But then what
> can I say? Phil, I think, was asking me my view on children's
> rights. I think I have an approach, but it's only comprehensible
> if you start from a commonly-understood foundation and build from
> there. You just can't start mid-stream because others will
> eventually disagree with your conclusions because they haven't
> accepted your bases yet. So to do that you must have a long, drawn
> out discourse from first principles. I don't think others would be
> interested in that so maybe some things are just not suited for
> discussion in such a context.

>

Some things aren't suited for group discussion. In the end, most of these things will have to be worked out by every individual, at his own pace, in a way that makes sense for him.

(Perhaps more can be accomplished in a one-on-one discussion, like we are having right now.)

In a group discussion, sometimes the most you can hope for is to bring up a lot of intriguing ideas for people to mull over later.

> But let me try here to get the ball rolling with you. If you see
> any false or dubious assumptions or conclusions I'm making (and you
> may because I recall you saying you are somewhat of a
> consequentialist, which I am not, I don't think) stop me there.

>

Some of your arguments below do sound "consequentialist", at least as I understand the term.

> I will assume your at least partial familiarity with Hoppe's
> argumentation ethic and my estoppel argument.

I think I understand them OK, though now I feel I should read over the Hoppe position you summarize. I don't have time right now, but I'll do it soon.

> By the way, I just
> finished the draft of an article on legislation versus common law,
> but there's a long section in there summarizing Hoppe's and my
> estoppel theory, in more detail than I do in my St. Mary's piece on
> Hoppe. If you want a copy, of at least that portion, let me know
> and I'll get it to you.

>

Please!

> I believe Hoppe's argument soundly establishes self-ownership and
> ownership of property. I believe my estoppel approach does this
> too, but in a different way, but my approach lends itself to

> looking at punishment and retaliation, and the operation of rights,
> more. However, my estoppel approach as I've presented it so far
> justifies only self-ownership, I have not yet completely worked out
> the property-ownership aspects of it. But no matter, I believe
> Hoppe has shown both very well. So I will take his argument for
> granted, as being valid, here. And I will resort to my estoppel
> argument mainly when focusing on retaliation etc. because it lends
> itself to that.

>
> So, the only things we have rights to are our bodies and property
> we acquire. But property rights has a specific meaning, it means
> rights in *scarce resources*. The whole reason, according to
> Hoppe, that we need ownership principles, is to have rules that
> determine who can use a resource that there might otherwise be
> physical conflict over. I find the apple first; another may take
> it away from me. We live in a physical world, and we must live off
> of it and control it to survive.

This isn't a consequentialist argument? It sounds utilitarian to me.

It just sounds like a very broad and categorial way of saying we like
the end results of having property rights. Its not the means, it's the ends.

I don't understand how this fits with the argumentation ethic and the
estoppel idea. Those don't seem to depend on the outcome at all. Maybe
I better read them over.

> We must control it to survive.
> But if there is no ownership then all control is precarious, so we
> must have ownership (I'm assuming Hoppe's argument as background
> here--I summarize it in the St. Mary's piece). But then it must be
> determined either objectively or not.

Ohhhh... we need property rights, so we must find a way to justify them.
Hence, we create our theories.

I'm not sure I'm comfortable with this (for reasons sketched above,
natural law, etc) though I'm also not sure I disagree!

> Ultimately, Hoppe shows,
> there are only two ways to assign ownership to property: by
> letting the first acquirer (the homesteader) own it--this is very
> objective and "intersubjectively ascertainable", i.e. visible and
> thus respectable by all. Plus this way is the only way compatible
> with the already-accepted ownership of one's self (the only reason
> you own yourself is because you were the "first" possessor).
>

You don't mean this last part, right? (The *only reason*?)

> The only other alternative is essentially to allow mere verbal
> decree to determine ownership. But this allows any number of
> competing parties to simultaneously declare their ownership of any
> given property, which does not resolve conflicts in the use of
> scarce resources, which any property theory must do, since the
> whole point of property rights is to allow scarce resources to be
> owned and controlled.

If the whole point of our theories (and therefore the whole point of "rights") is to arrive at a goal we already have in mind, I definitely call that "consequentialist". Maybe I don't understand the word.

I'd like to hear what you think about this.

> Further, if people could own things by mere
> decree, they could decree others' bodies to be theirs, which
> contradicts self-ownership.
>
> Now this is basically Hoppeian, but notice that the libertarian
> non-aggression axiom of course flows naturally from this. To own
> your body and other alienable property means others have no right
> to physically interfere with/invoke it. The important thing here
> is to realize how and why property was justified in the first
> place: because it is a *scarce resource*. This is important in
> the contract rights issue and other issues, discussed below.
>

Interesting.

> Now briefly examine the estoppel argument. It says that if you go
> to use violence against a rapist, to punish him for example, we
> only have a moral issue if the rapist *objects*. But if he has
> initiated force (he has), it makes no sense for him to object,
> because this is inconsistent. He claims that he believes it is
> wrong to use force (what else can he mean to tell you that you
> should not attack him?); yet he obviously does not believe this
> because otherwise he would not have raped your sister etc. So he
> must contradict himself to object; yet in objecting he is
> attempting to establish a discourse or dialogue with you, the
> object of which is to discover truth. But contradictions are
> always untrue, and thus have no place in discourse. Thus we do not
> allow him to utter a statement that would cause a contradiction,
> because it cannot help to establish the truth; no one can be
> inconsistent and be correct, because contradictions cannot be.
> Anyway, intuitively, how can anyone legitimately complain if they
> are assaulted, if they themselves just assaulted someone? It's
> common sense.

I like all this, and think I agree completely. This is what I got out of the writings you sent.

> Further, take for granted for now Hoppe's
> establishing of both self-ownership and ownership in other scarce
> resources: clearly aggression against one's body or other property
> are all species of coercion, to which an estoppel-based retaliation
> is justified.
>

OK, I think I could go from there.

Hmmm... I don't think I'm going to be able to go on the next message right now. Sorry. Hopefully I can reply tomorrow, but if I can't, it may have to wait until next week.

Talk to you soon,

Chris

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[10] From: Chris Whitten <lfb@panix.com> at INTERNET 11/22/94 7:20PM (16655 bytes: 418 ln)
To: N. Stephan Kinsella at SHSL-PH2
cc: Chris Whitten <lfb@panix.com> at INTERNET
Subject: Re: Contracts 2 of 2

----- Message Contents -----

Text item 1: Text Item

Stephan:

OK, here's the rest of my response. Most of the meat is in here.

I'm still not able to formulate clear concise answers, mostly because I still don't understand your position. :- (So... what you've got here is a bunch of little responses to what you wrote to me. I did delete some of your material to make my answers more concise but there's still a lot of repetition. Sorry.

I'm looking forward to hearing your responses. But don't rush, I'll be real busy after Thanksgiving anyway.

On Tue, 8 Nov 1994 N._Stephan_Kinsella@shsl.com wrote:

> Threats can be dealt with I think in this way. If you point a gun
> at my head and threaten to kill me, and you really do intend to
> kill me and you convey this understanding to me, then what have you
> done to me? This is important from the estoppel point of view.
> Notice that estoppel can apply to more than force. If you eat
> sunflower seeds and tell me you think people should not eat
> sunflower seeds, perhaps a good case could be made that you are
> estopped from arguing this--i.e., you are *incorrect* in
> maintaining a contradictory thing. For you can't help but maintain
> that "people should not eat sunflower seeds" is untrue (for you are
> eating them!), at the same time you say "people should not eat
> sunflower seeds". Thus you are contradicting yourself, and are
> just plain wrong since A and not-A can't be true at the same time.

This all made sense to me before, but something just hit me.

I can smoke cigarettes, and maintain that "people should not smoke cigarettes", can't I? It's just that I'm willing to take the risk involved in smoking. I guess the key here is the *should*, as you touched on in another context. "Should" for what end? The statement "people *should* not smoke cigarettes" is not really complete. Maybe you could say "should not smoke if you want to be 100% sure of being healthy", (and then if we both agree on that *if*, estoppel applies.)

Is the whole idea of using estoppel susceptible to this argument?

Maybe I'm way off here, this all just occurred to me.

> It's only in the
> context of discussing force (e.g. where you hit me and then seek to
> evade punishment by claiming that hitting is wrong) that estoppel
> has any meat.

Let's try the above right here. I hit you, and then claim "hitting is wrong". What exactly am I saying?... "Hitting is wrong in any situation"? I might not be saying that. Aren't there positions that I could maintain without contradicting myself?

Maybe I'm forgetting something very simple.

>
> But what about a threat. If Evil (E) threatens me, what has E done
> to me? He has done more than just chew sunflower seeds! He has
> done at least this: he has intended to physically harm me, and he
> has made me *believe* it. Clearly, I am entitled to do "the same"
> to E, by estoppel.

Again, what if E makes a more conditional statement, something like:
"It is wrong to threaten someone unless you have a really good reason."

It's not that the statement isn't "universalizable", because you could claim the same thing, you'd just have to justify your reason (which may even be subjective, i.e. determined by E)

> (Similarly, in the sunflower seed case, I would
> be entitled to "do the same" to you--but what is this? Eat
> sunflower seeds while uttering nonsense?

: -)

> But for the threat
> to be real, I must have the right to do it so I can truly intend
> to, and so he can really believe I might do it.

Very interesting point. This makes sense to me. (Given the validity of estoppel)

>
> If we can own property, clearly this is different from possession.
> I can hand you my wallet and still own it. So there's a way to own
> something even though not possessing it; and there's a way to
> deliver possession to another and for him not to own it. Further,
> if we have the right to acquire ownership we can at least abandon
> it; and we also can abandon it "in favor" of another. I.e., we can
> alienate our property, we can give or sell it to others. But this
> cannot require physical deliver/transfer of the item. Delivery
> might be one way of giving another ownership of something, provided
> other factors are there, like your intent to give it. You abandon
> something by intending to do so; clearly it is your expressed
> intent to let ownership go, in favor of another, that is the way we
> give/sell things to others. So I can give you ownership of
> something, like my car, even while I still possess it; just like I
> can still own it while I loan it to you temporarily and you possess
> it for a little while.

This all makes sense to me.

>
> I think you can alienate property conditionally too;

This seems to complete the elements of my understanding of contracts.

(But are saying "there are conditions to conditionality"? Is that the essence of your contracts view? That if you put conditions, the conditions are not enforceable?)

> why not, it's
> just a formal way of expressing your will to relinquish the
> ownership of certain property. Instead of saying "you now own
> this" you can say, "you own this only if X is true" or "only if you
> also pay me \$100". Similarly, conditions take time to verify so a
> simultaneity requirement is not required; i.e. I can make the
> conditional transfer effective in the future: "On day X you will
> own this car IF Y has occurred." In this way you can have
> bilateral or even multilateral webs of these conditional property
> transfers form most of the typical agreements we see today.
>

But they're not contracts? The key difference is that your conditional transfer agreements are not enforceable? (Only the actual transfers are enforceable?) Once you start making condition, the whole thing becomes unenforceable?

> If I say, "Tomorrow this goat becomes yours, if you today pay me
> \$200", then tomorrow the ownership of the goat is yours. And if I
> *refuse* to give it to you I am stealing your goat and you can use
> force to retrieve it, and even to collect damages from me or punish
> me for coercing you (by stealing from you).

So you're saying the above isn't an agreement, it's only a *conditional* agreement? And that's not enforceable because we both understood that it would only be binding if *all* the conditions were met?

In the conventional view of contracts, we only ask that one of the conditions is met, because the agreement itself is considered enforceable. (e.g. I say "I'll give you my shirt, if you give me \$10". You say "yes, I'll give you \$10, if you give me your shirt". In your view that's not enforceable, unless both conditions are met?)

Am I way off here?

> Now a lot of this way
> to view contracts is already in Rothbard's Ethics of Liberty, so I
> wonder why the CLO group was so unimpressed by this theory of
> contracts; surely it's not that easily dismissed, unless Rothbard
> is just amateur?

Well, I don't think anything up to here was controversial. (Only the "conditional transfer" stuff.)

> But I disagree with Rothbard in part. He says,
> suppose I don't have the goat the next day, for whatever reason.
> Well, then I am "stealing" the goat, he says. But I disagree.

You say that we only had a "conditional" agreement. The conditions weren't met, so there's no binding agreement. (Right?)

> There is no goat to steal. It's just like I said, "here, this pile
> of gold [pointing to an empty yard] is yours if you give me your
> cow." Now, there is no pile of gold, so what exactly am I
> stealing? It makes no sense.

This case is very different. A normal man would not consider that an agreement, he would think you're crazy for pointing at nothing, and know immediately that there's nothing to agree upon.

The goat case is one in which an agreement is made, but it is made for the future. (In my view contracts.) But you don't accept this. (Why not? Why can't we make agreements for the future?)

> So I think that even if I
> intentionally kill and eat the goat the night before, and thus
> there is no goat the next day, then still I have stolen nothing.
> It is merely impossible for me to perform, to give you a
> nonexistent goat.

It's impossible because you knowingly made it impossible! (And even if you didn't, I still think you're liable, though as you know, our current legal precedent does not. But that's besides the point.)

In my understanding, the agreement would only be not-binding if at the time of the agreement, we both knew it would be impossible to fulfill. Then we really weren't agreeing to anything at all, so no agreement was made. (Like with the pile of nothing.)

But we want people to be able to trade. You seem to be setting an unnatural limit on how people can agree to alienate their property.

> Certainly, though, you could imply warranty-
> terms (which are also conditional property transfers) in the
> contract: "And if I have no goat to give you tomorrow, then \$250
> will be refunded to you; and if I have not \$250 tomorrow in this
> case, then \$250 plus interest at X rate becomes yours as it enters
> my possession from my salary from that day forward."

"...and if I don't want to give you the money then, then..., etc., etc."

Are you saying that these conditions are enforceable or not? You'll have to end somewhere, either with an enforceable contract, or with a worthless piece of paper (and a sever limit on trade.)

> But there is
> never stealing, unless the debtor

The person is a "debtor"? How can you be a debtor if the agreement you had is not recognized as a valid, enforceable "contract"?

> *has* possession of the property
> and refuses at that instant to deliver it.

I have to catch you with the property in order to claim it?

Are you saying there is a difference between hiding your property and stealing it?

> Much more detail is
> swimming in my head here, but enough for now.
>

At this point I'm so confused we'd better hold off on the detail for quite a while! ;-)

> But where does "contract" come into this?

In my understanding, a contract is just what we call a binding agreement. (I still don't understand which of your agreements are binding.)

> Think of the right to
> free speech. Uttering words simply does not initiate force.

But we *can* bind ourselves with words, and if we can bind ourselves, we can commit ourselves to real action. (If I tell my employee, "go kill that Kinsella guy" I'm at least partially responsible for your death.

What's wrong with words? We're rational animals, our words are just as much products of our minds as what our hands and feet do.

> Thus
> if I say something, I am not estopped from objecting to your
> physical force against me. That is why there's a right to free
> speech.

I don't think there is a right to free speech. Like most (if not every) other right, it comes from the right of property. (I think)

Is that relevant to the discussion at hand? It could, if you're getting hung-up on the difference between words and actions.

> But what is different about a "promise"? "I promise to
> paint your barn". So what? Does this initiate violence? No; so
> it doesn't justify retaliatory force. So it's not "binding".

If I promise to paint your barn, that *isn't* necessarily binding. But it can be, if it has the elements of a contract.

What you write below does seem to be a contract, not a promise.

> Now
> if I say, "IF you give me \$100 now, and IF I do not paint your barn
> tomorrow, THEN \$150 of my property will become yours on the next
> day." Rothbard would say that if you don't paint the barn, then
> you have "stolen" the \$100; but I disagree, the \$100 might be gone.
> How can you steal that which does not exist?
>

Are you just arguing about the semantics of it? I'm not sure that Rothbard would be correct to say \$100 was stolen, but I would say that the painter owes the barn-owner \$150 or a paint-job.

Are you saying the painter owes the \$150? Is *that* enforceable? Or are no conditions enforceable? (See above.)

> This way of constructing "contracts" out of mutual bilateral
> conditional property transfers can achieve things similar to
> today's "enforceable" or "binding" contracts. But where's the
> difference, then?
>

Where is the difference? I'm lost.

If the conditions are enforceable, then it seems to me there is no difference between your position and the traditional view of contracts.

> If promises can somehow be "binding", then that means you are
> justified in using force against someone merely because of what
> they said--yes, because of "mere words". But why would this be
> true?

Why *shouldn't* it be true?

You can initiate force with something you say. Does that mean that "words are weapons"? Of course not. But when you use words to control physical property, as we frequently do, then "mere words" can initiate violence, and bind us to agreements.

(Below you do say that words can bind you to a transfer, and I can't understand why it isn't inconsistent with what you wrote here.)

> The CLO group didn't buy this, but think about it--if you
> say "mere words" can somehow justify force, where does freedom of
> speech go?

I never let it hang around in the first place. ;-)

> What is the principle here? Further, if you can "bind"
> yourself by mere words, you could sell yourself into slavery, and
> a court could enforce specific performance--i.e., they could order
> you at gunpoint to paint the barn.

I think you're right here. That's why I've never understood why more libertarians aren't in favor of both. My understanding of rights does allow for voluntary slavery, and requires specific performance where

necessary.

> Indirectly
> only: "mere words" can indeed transfer title to alienable
> property; and if I then withhold it I am an aggressor/thief. Force
> can be used against me now because I have done something more: I
> have used physical force to deny someone their property (which,
> admittedly, became "their" property by "mere words").
>

Once again, I'm entirely confused. It seems to me that right here you are saying that contracts are OK after all.

Unless what you are saying is that agreements for the future are unenforceable. (See above.)

If not, explain to me how this fits with everything else you have said. If it doesn't conflict, what have you said? (In one paragraph!)

(BTW, I hope I don't sound rude at any point, it's just my debating style.)

> And note that the comment that you can "sell your labor" is
> confused. Labor isn't a tangible, corporeal existent thing that is
> a scarce resource that can have an owner. You don't "own" it any
> more than you own your thoughts or emotions. You only own your
> body and your alienable, tangible property, and have a right to do
> anything you want with them provided others' rights are respected.
>

Good point.

> Well, that's enough for now. Perhaps you see where I'm coming from,
I'm afraid I still don't, but please don't give up. I'm getting closer.

> and maybe can point out something I've missed. I also think there
> are interesting related points concerning voluntary conscription in
> the army (I think, unlike slavery, this might be enforceable in
> certain circumstances); intellectual property; defamation; selling
> body parts and whether changing one's mind is stealing your own
> liver... etc.
>

We'd better save those!

Talk to you soon,

Chris

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Comments on Kinsella, "A Theory of Contracts: Binding Promises, Title Transfer, and Inalienability"

Alvin

Pepper ASC 1999

- Godfather joke
- Nice job explaining the Rothbard-Evers "title-transfer" theory of contract and comparing it to the traditional "bargain" theory
- Wish he could extend the argument by critiquing the modern L&E approach to contracts, based on "efficiency" rather than justice
 - Title-transfer theory treats contracts as *exchanges*, not promises
 - Why, then, has it been ignored by modern L&E?

Answer: title-transfer theory is about *rights*; modern L&E is about "efficiency" (e.g., breach is efficient if cost of performance to promisor exceeds benefits of performance to promisee), which effectively relies on interpersonal comparisons of utility

- - Title-transfer-based / Austrian critique of the modern economic theory of contracts *Also rejects the bargain theory*
- What promises should be enforced? Those that the parties wanted enforced at the time they made them (get rid of the consideration requirement — OK)
 - Enforceability removes the uncertainty surrounding deferred exchange — I know for certain you will have the incentive to perform when the time comes for you to fulfil your part of the bargain, because otherwise you'll be punished, and this makes *you* better off
- However, if this is so, then you should be willing to stipulate that explicitly, in the contract
- Breach remedy: expectations damages, the value of the promisee's benefit from performance (how to measure?)

- Remedies are like prices, incentives for future actors

– Parts that need further development

- Distinction between promises to give and promises to do

Title-transfer theory

Claims promises to do aren't enforceable unless explicit damages are provided in the contract.

w/ specific performance
If not, how are damages to be awarded

Can't this be resolved by defining promises to do as promises to give services? The employer exchanges the title to money (wages) for the title to the employee's specified services.

(common response)

Granted that your property right in your body isn't alienable (hence no slavery), why can't you transfer title to your labor services?

- How does the title-transfer theory deal with non-performance?

– Rothbard: promisor *must* perform, even if he can't deliver the good (otherwise he goes to debtor's prison)

– Kinsella: promisee bears the risk of non-performance; if promisor physically can't deliver the good, then the contract is per se null and void (can't promise to deliver a square circle)

borrower

lender

Problems:

- Moral hazard: Promisor's ability to perform is endogenous, based on the liability rule. Kinsella rule encourages non-performance
- Rothbard's rule isn't so silly; typically the promisee won't want to send the promisor to debtor's prison; would prefer (voluntary) renegotiation instead. (Indeed, most commercial contract disputes are renegotiated privately)

not exogenous like death

- Underdeveloped theory of long-term, complex, incomplete contracts

WEDNESDAY JULY 31
THE THEORY OF CONTRACTS (CH. 19, PP. 133-148)



- LIFEBOAT SITUATIONS (CH. 20, PP. 149-154): COVERED ON MONDAY.
- DRAWS ON WILLIAMSON EVERS' 1977 JLS ARTICLE "TOWARD A REFORMATION OF A LAW OF CONTRACTS."

PROPERTY TITLE V. PROMISE

- MOST PEOPLE THINK OF CONTRACTS AS ENFORCEABLE OR "BINDING" PROMISES.
 - EXPECTATIONS THEORY
 - MERE PROMISE IS NOT ENFORCEABLE. AT MOST IS A MORAL OBLIGATION.
- TITLE-TRANSFER THEORY OF CONTRACTS: CONTRACT IS ***SIMPLY EXCHANGE OF TITLE TO ALIENABLE PROPERTY.***
- RIGHT OF CONTRACT IS DERIVABLE FROM RIGHT OF PRIVATE PROPERTY.
 - IF YOU OWN PROPERTY YOU CAN USE IT, ABUSE IT, OR SELL IT (TRANSFER ITS TITLE) TO ANOTHER.

REHASH FROM TUES:

- **CONTRACTS**: ONLY THOSE THAT INVOLVE ***IMPLICIT THEFT*** ARE ENFORCEABLE. THAT IS, ONLY IF *FAILURE TO ABIDE* BY THE CONTRACT *IMPLIES THE THEFT OF PROPERTY FROM THE OTHER PARTY.* (133)
 - OTHERWISE, IT'S A MERE PROMISE. A PROMISE DOES NOT VIOLATE RIGHTS.
 - R SAYS THAT **DEBT CONTRACTS** ARE ENFORCEABLE, NOT BECAUSE THE ***CREDITOR'S PROPERTY*** IS STOLEN—IF THE DEBT IS NOT PAID.
 - FOR EXAMPLE, BROWN LENDS GREEN \$1000 NOW, IN RETURN FOR \$1100 NEXT YEAR. IF GREEN FAILS TO PAY, GREEN HAS "STOLEN" \$1100 OF SMITH'S PROPERTY.
 - **PROBLEM**. YES, IF GREEN HAS THE \$1100, HE HAS TO REPAY IT. IT IS SMITH'S PROPERTY HE IS IN POSSESSION OF. BUT WHAT IF GREEN CANNOT REPAY, I.E. IS PENNILESS? R STILL CALLS IT THEFT. SO DOES EVERS (1977, P.11 N.5): "ONCE THE MONEY FALLS DUE, THE DEBTOR WHO DOES NOT PAY UP IS DEFRAUDING THE CREDITOR AND IS UNJUSTLY DETAINING HIS PROPERTY . . . ***EVEN IF THE DEBTOR DOES NOT HAVE THE FUNDS ON HAND TO PAY THE CREDITOR***"
 - **BUT HOW CAN GREEN STEAL SOMETHING THAT DOES NOT EXIST?**
 - UNLIKE THE CAR-PURCHASE SCENARIO, (1) THE \$1000 IS NOT GIVEN CONDITIONALLY, BECAUSE OTHERWISE GREEN COULD NOT USE THE LOANED MONEY; AND (2) THE \$1100 "IN EXCHANGE" IS A ***FUTURE*** SUM, AND THUS ITS EXISTENCE IS UNCERTAIN. IF THE TIME ARRIVES AND IT ***DOES*** EXIST, THEN TITLE TO IT DOES TRANSFER. IF IT DOES NOT EXIST, ***THERE IS NO THEFT***. THERE IS NOTHING TO STEAL.
 - ROTHBARD FORMULATES IS CORRECTLY WHEN HE SAYS, OF A DEBT CONTRACT WHERE SMITH GIVES \$1000 TO JONES NOW IN EXCHANGE FOR AN IOU FROM JONES AGREEING TO PAY SMITH \$1100 IN ONE YEAR: "WHAT HAS HAPPENED IS THAT ***SMITH HAS TRANSFERRED HIS TITLE TO OWNERSHIP OF \$1000*** AT PRESENT IN EXCHANGE FOR ***JONES AGREEING NOW TO*** TRANSFER TITLE TO SMITH OF ***\$1100-ONE-YEAR-FROM-NOW.***"
- NOTE: THE TRANSFER OF TITLE TO THE LOANED FUNDS (\$1000-NOW) IS

UNLATERAL OR
GRATUITOUS
GIVE EXAMPLE
OF BOX
SALE OF HOPE

NOT CONDITIONAL ON THE \$1100-IN-ONE-YEAR *EXISTING*. IT CANNOT BE CONDITIONED ON ANY FUTURE EVENT, BECAUSE TITLE TO THE LOANED FUNDS EITHER TRANSFERS NOW, OR IT DOES NOT. INSTEAD IT IS CONDITIONED ON JONES AGREEMENT NOW, TO TRANSFER TITLE LATER, TO \$1100-IN-THE-FUTURE-IF-IT-EXISTS.

- “JONES MUST PAY SMITH \$1100 BECAUSE HE HAD ALREADY AGREED TO TRANSFER TITLE, AND [] NONPAYMENT MEANS THAT JONES IS A THIEF, THAT HE HAS STOLEN THE PROPERTY OF SMITH.” (134)
 - YES—IF JONES *REFUSES* TO PAY \$1100 TO SMITH, HE IS STEALING SMITH’S \$1100 (SMITH NOW OWNS IT, BECAUSE TITLE TO IT HAD ALREADY BEEN TRANSFERRED).
 - BUT, IF JONES IS PENNILESS, *THERE IS NO \$1100 TO STEAL*.
- SO THE REST OF THE QUOTE DOES NOT FOLLOW: “IN SHORT, SMITH’S ORIGINAL TRANSFER OF THE \$1000 WAS NOT ABSOLUTE, BUT *CONDITIONAL*, CONDITIONAL ON JONES PAYING THE \$1100 IN A YEAR, AND THAT, THEREFORE, THE FAILURE TO PAY IS AN IMPLICIT THEFT OF SMITH’S RIGHTFUL PROPERTY.”
 - THE ORIGINAL TRANSFER IS ABSOLUTE. WHAT THEFT IS R TALKING ABOUT: THEFT OF THE ORIGINAL \$1000, OR OF THE NON-EXISTENT \$1100?
 - *IF THERE IS “RETROACTIVE THEFT,” IT MEANS THE MONEY HAD AN INDETERMINATE OWNERSHIP STATE FOR A LONG TIME. OR, IT MEANS THAT INITIALLY THE TITLE DID TRANSFER, BUT LATER ON SOMETHING HAPPENED TO RETROACTIVELY, SO TO SPEAK, MAKE THE ORIGINAL TRANSFER NULL AND VOID. DOES THAT MAKE THE PARTY WHO JONES SPENT THE MONEY ON A RECEIVER OF STOLEN GOODS? HOW CAN ACTIONS IN THE PRESENT CHANGE CHANGE PAST EVENT?*
- CONSIDER THIS EXAMPLE. JONES NEEDS CAPITAL TO START HIS BUSINESS ~~MAKING TRAVEL LUGGAGE~~. SMITH HAS AN ANTIQUE GRANDFATHER CLOCK WORTH \$1000. HE AGREES TO GIVE THE CLOCK TO JONES SO JONES CAN SELL IT FOR \$1000 AND USE THE MONEY AS CAPITAL; IN EXCHANGE FOR JONES AGREEING TO PAY \$1100 OF JONES’ PROFIT IN ONE YEAR.
 - IN ONE YEAR, IF JONES HAS PROFIT, THE TITLE TO \$1100 OF IT TRANSFERS TO SMITH AUTOMATICALLY. JONES IS NOW IN POSSESSION OF \$1100 OF SMITH’S MONEY. IF HE REFUSES TO TURN IT OVER, HE IS A THIEF.
 - IF JONES’S BUSINESS IS KAPUT, AND HE HAS NO MONEY, WHAT HAS HE STOLEN FROM SMITH? THE CLOCK? THE MONEY? THE MONEY DOES NOT EXIST. THE CLOCK WAS SOLD TO A PAWN SHOP, WITH SMITH’S PERMISSION. HOW CAN THAT BE “RETROACTIVE” THEFT? IT WAS NOT THEFT. THEFT IS USE OF ANOTHER’S PROPERTY WITHOUT THEIR CONSENT. JONES HAD SMITH’S CONSENT TO SELL THE CLOCK TO A THIRD PARTY, AND TO USE THE \$1000-MONEY-PROCEEDS TO FUND HIS BUSINESS.
- CLEARER EXAMPLE: SMITH AGREES TO GIVE THE CLOCK (~~VALUED AT \$1000~~) TO JONES IN EXCHANGE FOR JONES’S AGREEMENT TO GIVE

BEING A
PRINTER
EX: JONES TO
WRITE AND START
INTRO TO
ECONOMICS.
NEEDS \$.

1000
PAGE
SC2-F2
NOV 2.

THE ORIGINAL HIS FIRST
PARENTS

SMITH A SET OF LUGGAGE IN A YEAR (WORTH \$1100).

○ IN ONE YEAR, IF JONES'S BUSINESS IS RUNNING AND HE HAS PRODUCED LUGGAGE, THE TITLE TO A SET OF LUGGAGE TRANSFERS TO SMITH AUTOMATICALLY. JONES IS NOW IN POSSESSION OF SMITH'S PROPERTY. IF HE REFUSES TO TURN IT OVER, HE IS A THIEF.

○ IF JONES'S BUSINESS HAS PRODUCED NO LUGGAGE, WHAT HAS HE STOLEN FROM SMITH? THE CLOCK? THE LUGGAGE? THE LUGGAGE DOES NOT EXIST. THE CLOCK WAS SOLD TO A PAWN SHOP, WITH SMITH'S PERMISSION. HOW CAN THAT BE "RETROACTIVE" THEFT. IT WAS NOT THEFT.

■ ANOTHER EXAMPLE: SMITH AGREES TO WORK FOR JONES CORP FOR LIFE. NOT ENFORCEABLE FOR INALIENABILITY REASONS. BUT SUPPOSE HE RECEIVES \$1,000,000 "IN EXCHANGE" FOR THESE "EXPECTED FUTURE SERVICES." (137) R SAYS JONES CORP TRANSFERRED TITLE TO THE \$1,000,000 CONDITIONED ON PERFORMANCE OF LIFELONG SERVICE. IF SMITH CHANGES HIS MIND, HE CAN'T KEEP THE \$1,000,000, AND IS A THIEF IF HE DOES.

● THIS IS TRUE ONLY IF HE STILL HAS THE MONEY. THE TITLE TRANSFER TO THE MONEY WAS NOT CONDITIONED. RATHER, SMITH RECEIVED FULL, UNCONDITIONAL TITLE TO THE PROPERTY (THAT'S WHY HE'S ENTITLED TO SPEND IT—HE'S THE OWNER OF IT). JONES CORP RECEIVED, IN EXCHANGE, A TRANSFER OF SMITH'S-FUTURE-PROPERTY (NAMELY, \$1,000,000 PLUS INTEREST) CONDITIONED ON THE EVENT OF SMITH QUITTING. BUT THIS FUTURE-PROPERTY MIGHT NOT EXIST. NON-EXISTING PROPERTY CANNOT BE STOLEN.

○ **FRAUD EXAMPLE:** A SELLS TO B A PACKAGE SUPPOSED TO HAVE A RADIO. IF HAS ONLY SCRAP METAL, A HAS STOLEN B'S PROPERTY (B'S MONEY). YES. WHY? BECAUSE B TRANSFERRED TITLE TO THE MONEY TO A CONDITIONED ON GETTING THE RADIO AND NOT BEING DEFRAUDED. A KNOWINGLY OBTAINED B'S MONEY KNOWING THE CONSENT WAS NOT REALLY THERE. (143) SIMILAR TO THEFT BY TRICK.

■ THIS IS DIFFERENT FROM THE FUTURE-DEBT CASE. THE CONSENT IS CONDITIONED ON TRANSFER NOW, OF A FUTURE THING. THAT IS FULFILLED, SO THERE IS CONSENT. IN FRAUD, THERE IS ALWAYS FRAUD AT THE TIME OF TRANSFER, OR NOT; THIS IS THE DIFFERENCE.

○ **DEBTOR'S PRISON.** ALTHOUGH IMPRISONMENT FOR FAILURE TO PAY A DEBT IS EXCESSIVE PUNISHMENT, TECHNICALLY FAILURE TO PAY DEBT IS AGGRESSION AND THUS CAN BE PUNISHED. R TRIES TO ESCAPE THE HARSH CONSEQUENCES BY SAYING IT'S EXCESSIVE. IT WOULD BE BETTER TO DISTINGUISH ACTUAL THEFT (REFUSAL TO TURN OVER ANOTHER'S PROPERTY) FROM INABILITY TO PAY BECAUSE OF NONEXISTENCE OF THE SUM DUE (NOT THEFT). (144)

EXAMPLE - PERF. BOND FOR PROMISES TODO

○ "**PROMISES**". ROTHBARD INSISTS THAT PROMISES ARE NEVER BINDING, THAT THERE IS A SHARP DISTINCTION BETWEEN TITLE TRANSFERS AND PROMISES (141). HE DISTINGUISHES BETWEEN "I PROMISE TO GIVE YOU \$10,000 IN A YEAR" AND "I HEREBY AGREE TO TRANSFER \$10,000 TO YOU IN ONE YEAR'S TIME."

■ AS R NOTES, THE QUESTION IS: HAS TITLE TO ALIENABLE PROPERTY BEEN GRANTED, OR HAS A MERE PROMISE BEEN GRANTED? THE FORMER IS ENFORCEABLE, THE LATTER NOT.

- CONCEPTUALLY, YES, ONE CAN DISTINGUISH BETWEEN THESE CASES. BUT, A TRANSFER OF TITLE IS A CONSENSUAL ACT. CONSENT CAN BE MANIFESTED IN MANY WAYS.
- E.G. BY CONTEXT. WORDS CAN ACCOMPANY—WRITTEN OR ORAL—BUT NEED NOT. I GRAB A USA TODAY OFF THE RACK IN A STORE AND HAND THE CLERK A DOLLAR. HE GLANCES AT ME, ASSESSES THE SITUATION, TAKES THE DOLLAR, AND GIVES ME MY CHANGE. I WALK OUT WITH THE PAPER. NEVER A WORD SPOKEN.
 - **LA. CIVIL CODE: ART. 1936. REASONABLENESS OF MANNER AND MEDIUM OF ACCEPTANCE.** A MEDIUM OR A MANNER OF ACCEPTANCE IS REASONABLE IF IT IS THE ONE USED IN MAKING THE OFFER OR ONE CUSTOMARY IN SIMILAR TRANSACTIONS AT THE TIME AND PLACE THE OFFER IS RECEIVED, UNLESS CIRCUMSTANCES KNOWN TO THE OFFEREE INDICATE OTHERWISE.
 - **ART. 1939. ACCEPTANCE BY PERFORMANCE.** WHEN AN OFFEROR INVITES AN OFFEREE TO ACCEPT BY PERFORMANCE AND, ACCORDING TO USAGE OR THE NATURE OR THE TERMS OF THE CONTRACT, IT IS CONTEMPLATED THAT THE PERFORMANCE WILL BE COMPLETED IF COMMENCED, A CONTRACT IS FORMED WHEN THE OFFEREE BEGINS THE REQUESTED PERFORMANCE.
 - **ART. 1942. ACCEPTANCE BY SILENCE.** WHEN, BECAUSE OF SPECIAL CIRCUMSTANCES, THE OFFEREE'S SILENCE LEADS THE OFFEROR REASONABLY TO BELIEVE THAT A CONTRACT HAS BEEN FORMED, THE OFFER IS DEEMED ACCEPTED.
- TOO MECHANICAL TO SAY THE USE OF THE WORDS “I PROMISE” CAN NEVER FORM A CONTRACT. I PROMISE TO PAY YOU \$1000 MIGHT BE MEANT AND UNDERSTOOD BY THE PARTIES TO MEAN \$1000 IS TRANSFERRED. A PROMISE TO DO SOMETHING IS NOT ENFORCEABLE, BUT IT MIGHT IMPLY AGREEMENT TO TRANSFER TITLE TO MONEY AS DAMAGES UPON FAILURE TO PERFORM. ETC.

INALIENABILITY

- R SAYS THAT MERE PROMISES OR EXPECTATIONS ARE NOT ENFORCEABLE. ONLY CONTRACTS THE BREACH OF WHICH AMOUNTS TO *THEFT* OF ANOTHER'S PROPERTY, ARE ENFORCEABLE—*BECAUSE PROPERTY RIGHTS ARE ENFORCEABLE*.
- BUT, ONLY ALIENABLE THINGS CAN BE SOLD, OR SUBJECT TO A CONTRACT. YOU CAN GIVE OR TRANSFER OWNERSHIP AND CONTROL OF A PIECE OF PHYSICAL PROPERTY YOU CURRENTLY OWN AND CONTROL. (134)
 - BUT ONE'S WILL IS NOT ALIENABLE; EACH MAN HAS CONTROL OVER HIS BODY AND WILL. IT IS “INALIENABLE”
 - VOLUNTARY SLAVERY CONTRACTS ARE THEREFORE UNENFORCEABLE.
 - **PROBLEM:** WE CAN JAIL OR PUNISH AN AGGRESSOR EVEN THOUGH HE STILL HAS A WILL. WE CAN OWN ANIMALS THAT DO NOT OBEY US SOMETIMES. A CRIMINAL IS IN A SENSE “ENSLAVED”. EVIDENTLY THE FACT THAT ONE HAS A BODY UNDER THE CONTROL OF ONE'S FREE WILL DOES NOT MAKE ENSLAVEMENT “IMPOSSIBLE” OR UNJUSTIFIED. SO IF SLAVERY-FOR-COMMITTING-AGGRESSION IS JUSTIFIED, WHY NOT VOLUNTARY SLAVERY?
 - **ME:** THE PROBLEM IS R SAYS WE ARE “SELF-OWNERS”. THIS MAKES IT SOUND LIKE

OUR RIGHTS RE OUR OWN BODY ARE SIMILAR TO THOSE FOR OTHER THINGS WE OWN. JUST AS WE CAN OWN A HOMESTEADED THING, AND “THUS” CAN SELL IT, WE CAN ALSO SELL OUR BODIES BECAUSE WE ARE “SELF-OWNERS”. BUT R SEES INTUITIVELY THERE ARE PROBLEMS WITH THE LATTER RESULT, SO HE COMES UP WITH THIS “PERSON CAN’T ALIENATE HIS WILL” LIMITATION OF SELF-OWNERSHIP RIGHTS.

- WOULD BE BETTER TO BACK UP AND UNDERSTAND WHY AND HOW THERE IS A RIGHT TO TRANSFER TITLE TO PROPERTY.
- **OWNERSHIP MEANS THE RIGHT TO CONTROL A SCARCE RESOURCE.** THIS DOES NOT NECESSARILY IMPLY THE RIGHT TO “SELL” OR TRANSFER TITLE. IT MEANS THAT IF THERE IS A POTENTIAL CONFLICT—IF TWO OR MORE PEOPLE DESIRE TO CONTROL OR USE THE SCARCE RESOURCE—THE OWNER IS THE ONE WHO GETS TO DECIDE.

- **BODIES:** IF AN AGGRESSOR ATTEMPTS TO USE THE VICTIM’S BODY, THE VICTIM CAN OBJECT ON THE GROUNDS HE HAS A NATURAL CONNECTION TO HIS OWN BODY AND THUS “BETTER TITLE” TO IT. IF THE AGGRESSOR DENIES THIS, HE HAS NO GROUNDS TO OBJECT TO THE VICTIM DEFENDING HIMSELF, WHICH IS EXACTLY WHAT THE VICTIM WOULD HAVE A RIGHT TO DO IF HE HAD A SUPERIOR RIGHT TO HIS BODY. *↳ YES - FIRST VIEW. ALSO - A PRIOR VIEW.*

- THUS, IF SOMEONE COMMITS AN ACT OF AGGRESSION, FORCE CAN BE USED AGAINST THEM. FOR EXAMPLE TO PUNISH THEM OR ENSLAVE THEM.
- HOWEVER, IF SOMEONE HAS NOT INVADED ANOTHER’S PROPERTY BORDERS, THEIR ACTION IS PEACEFUL AND DOES NOT JUSTIFY FORCE AGAINST THEM.
- **THEREFORE**, ENSLAVEMENT CONTRACTS HAVE NO EFFECT—BECAUSE SAYING “I PROMISE TO BE YOUR SLAVE” **IS NOT AGGRESSION**.

- **HOMESTEADED PROPERTY.** A GIVEN SCARCE RESOURCE CAN BE USED BY ONLY PERSON; HIS USE EXCLUDES THAT OF OTHERS. IF A PERSON IS IN POSSESSION OF PROPERTY THAT HE HAS HOMESTEADED (APPROPRIATED) BY FIRST POSSESSION, THEN IF A TRESPASSER TRIES TO USE IT, THE FIRST POSSESSOR HAS **BETTER TITLE** TO THE PROPERTY BECAUSE OF HIS **STATUS AS ITS FIRST POSSESSOR**. IF THE LATECOMER DOES NOT RECOGNIZE THIS DISTINCTION, HE DOES NOT RECOGNIZE OWNERSHIP AT ALL, BECAUSE IF LATECOMERS CAN TAKE PROPERTY, SOMEONE COULD TAKE IT FROM HIM, AND SO ON. IF HE DOES NOT RECOGNIZE OWNERSHIP, HE HAS NO GROUNDS FOR CLAIMING HE IS ENTITLED TO IT, NOR TO OBJECTING TO THE FIRST POSSESSOR’S USE OF FORCE TO DEFEND IT.

- FOR BODY-RIGHTS, ONE HAS **BETTER TITLE** THAN OTHERS BECAUSE OF THE NATURAL CONNECTION TO ONE’S OWN BODY. NOT EXACTLY “FIRST POSSESSION.”
- FOR HOMESTEADED PROPERTY, THERE IS **BETTER TITLE** BECAUSE ONE APPROPRIATED THE PROPERTY. THIS IS A DISTINCTION. PEOPLE WITH BODIES HAVE A NATURAL CONNECTION TO THEIR BODY; PEOPLE-WITH-BODIES **ACQUIRE** PREVIOUSLY **UNOWNED** SCARCE RESOURCES, BY **FIRST POSSESSION**. THIS IS THE DISTINCTION.
- HAVING BETTER TITLE TO ONE’S BODY, AND PREVIOUSLY-UNOWNED, NOW-APROPRIATED SCARCE RESORUCES, MEANS ONE IS THE OWNER, AND HAS THE SOLE SAY OVER HOW THESE THINGS ARE USED. **BUT**

HAVING RIGHT TO CONTROL DOES NOT NECESSARILY MEAN ONE CAN SELL.

- ACQUIRED THINGS ARE **ACQUIRED**. FIRST POSSESSION IS A PURPOSIVE ACTION BY WHICH AN ACTOR PUTS A THING TO USE FOR A GIVEN PURPOSE, AND INTENTIONALLY ASSERTS HIS DOMINION AND CONTROL OVER IT. JUST AS ONE CAN ACQUIRE A THING, ONE CAN ABANDON A THING. AFTER IT IS ABANDONED IT BECOMES UNOWNED PROPERTY AGAIN.
- HOWEVER, A TRANSFER OF TITLE (SALE) CAN BE ACCOMPLISHED BY SIMPLY ABANDONING THE THING “IN FAVOR” OF A DESIGNATED TRANSFEREE.
 - OWNERSHIP AND POSSESSION ARE SEPARATE.
 - ONE CAN LOAN THINGS TO OTHERS: THAT IS ONE CAN HAVE POSSESSION BUT NOT OWNERSHIP, AND VICE-VERSA.
 - SUPPOSE ONE LOANS PROPERTY TO ANOTHER, SO THAT THEY HAVE POSSESSION, AND YOU HAVE OWNERSHIP. THEN YOU “ABANDON” THE PROPERTY. WHAT HAPPENS? THEY RE-HOMESTEAD IT.
 - CONCEPT OF “**QUITCLAIM**”.
 - THEN, THIS TRANSFEREE HAS “BETTER TITLE” THAN ANYONE ELSE IN THE WORLD, JUST AS YOU DID, BEFORE. VIS-À-VIS YOU, HE HAS BETTER TITLE, BECAUSE AS FAR AS HE IS CONCERNED, YOU “ABANDONED” IT. VIS-À-VIS THE REST OF THE WORLD, HE HAS BETTER TITLE BECAUSE YOU ABANDONED IT IN FAVOR OF HIM, I.E. HE IMMEDIATELY RE-ACQUIRED IT AS SOON AS YOU RELINQUISHED OWNERSHIP, BECAUSE HE WAS IN POSSESSION OF IT AND THUS BECAME ITS NEW “FIRST POSSESSOR”.
- I.E., IN THE CASE OF APPROPRIATED SCARCE RESOURCES, ONE HAS THE RIGHT TO CONTROL (OWNERSHIP), BUT ALSO THE RIGHT TO ABANDON— “IN FAVOR OF” ANOTHER. THEREFORE, OWNERSHIP OF ACQUIRED RESOURCES ALSO INCLUDES THE RIGHT TO ALIENATE TITLE.
- **BUT THIS REASONING DOES NOT APPLY TO OUR BODIES.**
- THIS IS WHY SLAVERY CONTRACTS ARE UNENFORCEABLE; IT SIMPLY MAKES NO SENSE TO SPEAK OF ABANDONING ONE’S BODY, SINCE WE DO NOT “ACQUIRE TITLE” TO OUR BODIES BY FINDING SOME UNOWNED SCARCE RESOURCE AND THEN APPROPRIATING IT FROM THE STATE OF NATURE. ENFORCING A SLAVERY CONTRACT IS SIMPLY AGGRESSION, BECAUSE IT IS USING FORCE AGAINST A NON-AGGRESSOR (SIGNING A PIECE OF PAPER IS NOT AGGRESSION).
- {?? USE BABY O/S EXAMPLE TO SHOW FLAW IN THINKING BODIES ARE PROPERTY IN EXACT SAME MANNER AS HOMESTEADED PROPERTY. WHAT IF INTERNET WAKES UP???

Plus-Direct
Control &
will is inalienable.
So R was in
a sense
Correct
after all

- _____

