

The Voluntaryist Constitution, an Oxymoron?

Trey Goff had an interesting article published at Mises.org outlining what he is calling a “voluntaryist constitution.” Can such a thing even exist? I don’t believe it could exist as anything more than an ideological creed. To expect it to be adopted and enforced by a central political authority is to expect the impossible. Any central political authority would itself be a violation of voluntaryist principles.

In Goff’s defense, he does write that, “[the] document is completely agnostic as to what institutional structure of governance will occur under its jurisdiction. Although I am hopeful that this constitution will be utilized in a polycentric common law legal order a la Rothbard and Barnett, I have intentionally left the document open to be useful for any governance structure that may wish to adopt it. Only competition between governance structures can lead to the discovery of the most efficient, judicious, and efficacious governance institutions.”

Good and well, I suppose.

I thought it’d be fun to scrutinize the so-called voluntaryist constitution from my particular voluntaryist perspective. I won’t comment on every part, just those I find worthy, with added emphasis in the original. Here goes!

The preamble:

*This Constitution is hereby ordained as **the preeminent contract** outlining the fundamental legal principles and foundational legal framework of a truly free society. This document is meant to ensure that **the right to property**, being the most powerful of all encouragements to the multiplication of wealth, shall absolutely not be abridged, and further, that **the right to self-ownership, being inherent in the existence of human**, shall likewise be respected. This document further aims to ensure the creation of a peaceful and harmonious society predicated on voluntary cooperation such that the tranquility, prosperity, and happiness of all can be ensured. This Constitution is only applicable to those who have explicitly, voluntarily, and of their own free will and accord signed it, as well as*

their children, guests, and visitors. This is a free society where coercion is absolutely prohibited, meaning that no individual, group of individuals, and no entity including any state, government, organization or group of people in general, under any circumstances whatsoever may exercise or invoke any rights other than common property rights specifically stipulated herein.

Not a big fan of the “contract” language. I am a big fan of enforceable and explicit contract practices, but this is not a contract with anybody specific, which tells me this has a “social contract” aire about it, which is unfortunate for the simple reason that it dilutes the meaning of the term “contract” to an abstraction.

I’m also not a fan of phrases like “the right to property” and “the right to self-ownership, being inherent in the existence of human.” I don’t believe these things exist. Rights are internally a mental construct and externally a social construct. Which property norms will develop and evolve is a matter of spontaneous order, not social contracts. I have doubts that any two free societies will look exactly alike on the property norms that develop and evolve over time. Some may grant children greater self-ownership rights than others, for example. Others may place heavier social burdens on absenteeism than others.

Article I, Def. 2:

*Def 2. A previously unowned or **abandoned scarce resource** is one meeting all the criteria of Def. 1 that is not being actively utilized by an individual or group of individuals for the completion of a particular project, or has not been claimed to be owned, in **the time scale of human action**, and in compliance with adverse possession common law.*

I very much dislike the ambiguity here on an abandoned scarce resource “not being actively utilized” in “the time scale of human action...” Again, this should be a matter of property norms by spontaneous order, on what constitutes “abandoned” property, available for re-appropriation. Maybe that’s what he meant.

Article I, Def. 4:

*Def 4. A **coercive act** is any act involving the use of private property*

on which a cognizable property right already exists, without the free and voluntary consent of the legitimate owner.

This should be an “aggressive act” not “coercive act.” Why? Because I do not consider coercion to be confined to the physical realm. Blackmail is a form of coercion, but it is not aggression, and therefore not a violation of the libertarian non-aggression principle. But as an act of coercion, it is a violation of the voluntary principle. As are certain uses of social ostracism and shaming. Although I consider these ideas less than satisfactorily developed, I have written on “social coercion” [here](#). Another discussion by two friends can be found [here](#).

Article I, Def. 5:

*Def. 5. Homesteading is the process by which human beings justly acquire property rights in a previously unowned or abandoned scarce resource **by mixing one’s labor with the resource**.*

Ugh. “Mixing labor” should not be the qualifier on homesteading scarce resources. Rather “appropriation” should be. What’s the difference? The “mixing labor” metaphor leads us down two mistaken paths: labor theory of value and intellectual property rights. I know the previous definitions try really hard to focus “property” in the concrete, versus the abstract, but it’s unnecessary to even use this metaphor. Wrote Stephan Kinsella, “Homesteading still results in property because a homesteader, by being the first to emborder or transform some unowned resource *established a better claim to that resource than any latecomer.*” (Emphasis added.) “Mixing labor” is putting things into the weeds where they need not go, and is itself a dangerous place to be.

Article II, Point 5 (et al):

***Every individual** shall have the right to freedom of contract, meaning that a rightsholder’s consent is both necessary and sufficient to transfer alienable title to property.*

Even children, I ask? I can’t find anywhere in this entire constitution the defining of what constitutes an individual in points like this. Maybe that’s as designed. I think the norm on “age of consent” should develop and evolve as a matter of spontaneous order, and will no doubt differ from free society to free society. That’s how it should be, but I found this

omission peculiar where other norms, like property rights, are made explicit.

Article III, Point 3:

*Only legitimate **property as defined in this Constitution** and in accordance with all provisions of this Constitution may be the subject of a title transfer.*

Gack! Major fail, as I've already explained above about property norms by spontaneous order.

Article IV, Point 2:

***Jury trials are to be utilized** in all criminal proceedings or any legal proceedings wherein an arbiter and arbitration method were not specifically stipulated contractually by all relevant parties beforehand.*

The constitution fails to define "jury trials" and so it's easy to assume common usage, which unfortunately includes conscription, which is "outlawed" by this constitution. I suppose that means these must be voluntary juries (ahh, yes, there it is in Point 5). I like that, and I like the idea of a paid professional juror market. But I don't like the finality to this requirement. Many of these points suffer from that. Again, these should be a matter of norms and conventions developed through spontaneous order.

Article IV, Point 4:

*No person shall be tried **more than once for the same crime**.*

I don't care for the doctrine of double jeopardy. If new evidence is brought to light, you can be damn sure I believe it should be used against an offender. Prosecutors will do their best collecting evidence, but these things have limitations. My comment here should not be construed as a belief that double jeopardy should not be a legal principle in our statist context. Anything to keep the state from profiting off of crimes is okay in my book.

Article IV, Point 8:

*Restitutive compensation **may be obtained coercively** if necessary.*

My mind's not yet made up on this. I assume here they mean "aggressively," which is the part I'm still unsure of. If we're talking threats of social ostracism and shame (types of social coercion), then I'm okay with that. I think those threats are justified. Would aggression, or rather, violence, be justified in obtaining restitution from a convicted offender? I'll leave it up to convention, for now.

Article IV, throughout:

"under the purview of this Constitution" "parties to this Constitution" "This Constitution ratifies and adopts"

This is real contract language put in this not-real contract. That's stupid, in my opinion, because all it takes is a disassociation of this "constitution" to exempt oneself of its rules. What's the point, then?

Article V, Point 10:

Any attempt to **establish a monopoly** on coercion and force within the jurisdiction of **this Constitution**.

Oops! "this Constitution" implies the singular, as does "monopoly." Oxymoron? Yes, if it were actually a binding contract, which it's not. So again, what's the point?

Like I said, all good and well if this so-called voluntaryist constitution is meant as an ideological creed. I can agree with most of it, on those grounds, and would hope governance structures that I personally adopt and adhere to would recognize it. Perhaps there are some points I would change in Article V, maybe some practices I would like to see prohibited that are not violations of the non-aggression principle, such as how we educate and discipline our children. Maybe I missed some other things throughout to find objectionable.

In any event, it was a fun exercise to go through it and point out the parts I had issue with.