



## Episode 1,218: The Legal Framework of a Stateless Society

Guest: Jamin Hübner

**WOODS:** All right, we have a big project of yours that we're going to talk about, and I'm not sure exactly where this is going to go, but I am going to get the ball rolling and we'll just see what happens. The project is Creative Common Law. Can you explain what the purpose of it is?

**HÜBNER:** Yes, Creative Common Law is a legal system for stateless societies. A lot of your listeners are familiar with the idea of private governance, and court systems, legal systems, transportation, rights protection services that are all privately owned. And this is one of a number of different projects in this space. The big difference is this is kind of the first time that some people have sat down and really hammered out what it would look like to have an articulation of property rights, nonaggression, and contract law in a way that's kind of turnkey ready for a group or a former nation state or whatever that wants to move in that direction.

And so what's also a little bit distinctive about Creative Common Law — well, there's a lot of things that are distinctive, but I think one of the big ones is that it's explicitly based on the principle of nonaggression and property rights and things like that, which is not really the case with a lot of other projects, which is sort of interesting. Because I think if Murray Rothbard and other people were alive today, they would be really, really excited to see all the different kinds of projects going on, from seasteading to different cryptocurrency projects and so-called blockchain nations, and you had Tom Bell on not too long ago and Ulex and Bitnation and the technology and just all these different areas. This discussion is now part of regular and popular discourse. And now there's two monographs out, one by Cambridge and another by Oxford, on this type of thing, like living without government. And so this isn't really a utopia anymore, and this is part of popular discourse.

But the thing is there's a lot of confusion about it. Just because people talk about stateless nations or stateless societies and a world without politicians and things like that doesn't mean that they necessarily have anything to do with libertarian principles. A good indication of that, for example, is the Bitnation project, which is sort of a competitor but not really. It's mainly in the tech space and marketing, and it's an app that you can download on your phone today and you can create your own nation. But it's sort of interesting how it works, because it's like an oversight project that looks over any kind of nation you want to create. And in their white paper, they actually say you can create a communist country if you want. Obviously, I don't think that's going to lead to the type of peace that they describe and that you really can't have a free society when you have a monopolized economy, for example.

And so Creative Common Law is specifically based on particular philosophical principles, but we're bridging that gap that's so necessary, because we can argue about nonaggression and property rights until we're blue in the face, but until lawyers have something in their hands that they can use, some kind of articulation that they can use to actually prosecute crimes and aggressions, well, then all of our theory is sort of worthless, as far as I'm concerned.

**WOODS:** Now, given that you've — in fact, is it linkable what you sent me? Because I've got the whole thing.

**HÜBNER:** Yeah —

**WOODS:** Is that document available somewhere?

**HÜBNER:** Yeah, CreativeCommonLaw.com is the website. We have the latest draft, which is version .67. Version 1.0 will be complete, the first draft, and anyone can go on there and look at it. And honestly, this is something that I've been working on for years, but what kind of spurred me along was the massive response of Trey Goff's little constitution document on Mises. There's like over 200 or 300 comments, and this was just like a two- or three-page document. And I'm like, wow, I mean, I know I can do better than this and a lot of other people have too. I can't believe that no one has come to articulate something to this level, because we've been talking about it for so long.

And so really, the hope is to get more public input through comments and through — it's a WordPress site, so you can comment on different updates and things like that. Since it's so new — this was just launched a few months ago — we haven't yet got that traffic, but I suspect we're going to get that. But we have a lot of interesting people involved, a lot of lawyers and others, mainly because I'm not an attorney myself, so I need to rely on some others, but I definitely am learning a lot as the process goes on. But yeah, everything is there on the website, and I explain — there's a Q&A section, what it is, what it would look like.

And like for some readers who have read that book by Edward Stringham on private governance, he gives the analogy throughout his book of, in contrary to David Friedman, we don't have to imagine what a free society would look like. Freedom is everywhere. Private governance is everywhere. It's in families, it's in businesses, it's in clubs, it's in organizations, it's in societies. It's everywhere. We don't have to pretend like, oh, what would a free society look like? I mean, we don't have to imagine that, so it's not really a theory, because free markets are the default. It's a phenomenon of nature. It's not something that we have to impose upon the world; it's just kind of the way things go through spontaneous organization and things like that.

**WOODS:** Let me jump in and ask a question. I think some people would look at something like this and say: isn't this superfluous? Why would a free society need in effect a constitution, even though that's not quite what this is? But you know, more or less this would all be resolved by private parties and so on and so forth, but I presume that we would want something we could point to as a point of general understanding shared by everybody that could inform our daily activities and inform our expectations.

**HÜBNER:** Right, and that's kind of the point. It is not a constitution and it doesn't function like that. It functions as the terms of a contract, or it functions as the rules of a club or society. If you become a member of the American Economic Association, if you become a member of a country club, you're voluntarily entering that group and you're bound by their rules. You agree to adhere to them and to be under their disciplinary action, and there's different kinds of membership for different levels and different purposes. And that's just what it is. That's all that this is. It's the free society club.

But the thing is when we're talking about a free society, we're talking about something that's scalable, something that's meant for the long haul and something that applies to all your properties and to as many people as possible. And so we're talking about rules that apply 24/7. They apply to all of your property, and then they involve, of course, legitimate uses of force. And so it's just a large-scale voluntary society, which is what a free society — I mean, by definition that's what it is.

But what this does is it actually establishes protocols, policies, and procedures that provide the necessary framework for how, say for example, the enforcers interact with adjudicators, with judges or private arbiters. How all of that gets managed in a property record keeping system. How different levels of membership apply — and this is some of the secret sauce of Creative Common Law, is that there's four or five different levels of membership, which solve a lot of the notorious problems that are always in the journals and the blogs, you know, what about abortion and children and children's rights, and what about for those who are mentally disabled, and what about criminals? What do we do with criminals? What rights do they have? All of this is addressed unlike any other project of its kind through membership. And so there's certain contingencies with each level of membership and things like that.

And there's a lot of other differences. I've read Benson and Stringham and Rothbard and all the different people in this space, and I've taken all of their work and kind of refined it into the best that I could. They don't always agree, but — and then of course addressed issues that they just haven't yet, that are really important. Like if you read Benson's book *The Enterprise of Law*, it is an excellent book; I agree with the vast majority of it. But I think it's a little bit optimistic about how to manage prisons and prisoners and what that would look like and how to protect prisoners' rights to the extent that they have rights. If you read Stringham's book on private governance, he talks about membership. Well, we need to be pessimistic about all this and be realistic and say people are going to want to block membership. They're going to want to preclude membership. If you have a monopoly over membership of a voluntary society, you'd no longer have a kind of voluntary society that you want.

So there's a lot of different issues that are ironed out in Creative Common Law that haven't been in anything else, and that includes Ulex as well. Tom Bell's project is very similar to Creative Common Law, probably the closest thing. But the biggest difference is he kind of begins with existent legal system, like uniform commercial code and the current contract law. It's basically an annotated bibliography. And he tries to then kind of start with all of that as it exists and then redefine some things where they appear to be contradictory and then sort of leave it at that, make some harmonizations.

Creative Common Law is the other way around. We start with property rights, nonaggression, and contract law. We articulate those things in a way that is legally enforceable and that makes sense, and then it defaults to other legal systems, the commercial code or the tort law and product liability and things like that, where Creative Common Law may be deficient. So

either way, they're both really great projects in that respect, and I have reasons for why I chose that approach rather than others, but I don't want to get ahead of this interview too much.

**WOODS:** All right, so let me try and articulate exactly what's going on here. What you have produced is something that is informed by the common law as we've understood it. That is to say, there are many no doubt principles that go back quite a long time in the history of Western civilization, but you've also informed it by theory, by a libertarian theory. And now there's plenty of libertarianism that comes through in the ordinary course of the common law, but the common law is not *For a New Liberty* by Rothbard, so you've sharpened it a bit so as to clarify certain libertarian parameters, and the result is the Creative Common Law.

**HÜBNER:** Yeah, and you know, the name is probably slightly misleading in that respect, because it's really – it's hard for me to say how much it really is launching off of British common law and that tradition that goes back all the way to the 1300s or whatever, because this is –

**WOODS:** But I say that just in the sense that libertarianism itself is derived at least partly from – it's not like we just developed everything from whole cloth. We have some ideas that are shared in common by everybody, and then we just apply them really rigorously.

**HÜBNER:** Right, yeah, and that's true. Yeah, so I guess – I mean, I'm –

**WOODS:** So in other words, what makes it common law then? So why do you use the term?

**HÜBNER:** Well, mainly it's marketable, because people think of Creative Commons and it's –

**WOODS:** Oh, yeah, I like Creative Common Law, yeah, that was exactly what I thought when I first saw it. I thought that was a nice play on words, but also it does sound like that's more or less what you're doing.

**HÜBNER:** Well, it generally is, yes, but the thing, though, is this is viewed as sufficient, right? So it's not like when adjudicators, judges, arbiters, and others are using this, that they're going to have to – like ordinary lawyers or whatever, if they want clarification on somethings or if they want certain, I don't know, enforceability on certain things, they're going to go back to their library and they're going to look through this history of common law and these different things. The document itself is viewed as sufficient, and it defines all the different types of aggressions based on modern legal dictionaries.

**WOODS:** I see.

**HÜBNER:** And so it kind of starts there and then, yeah, it's more modern in that respect.

**WOODS:** Okay, and also, so it doesn't conceive of itself as being part of an ongoing evolution, but rather –

**HÜBNER:** Well, I mean, that's inevitably the case. I use the terms plaintiff and defendant. Well, these are French terms that go a long ways back, you know what I mean? So stuff like that is there, but it's not explicitly having its origins and roots in that, even though it sort of

does. That's just not necessary for interpretation or application of it. And it would probably cloud things, because then there's going to be confusion about what has more weight than other things, and of course if this is viewed as a contract, what matters is what's in the contract itself, if this is being enforced as a contract. So I don't know if that helps clarify things a little bit, but it is a unit, and —

**WOODS:** Can —

**HÜBNER:** Yeah.

**WOODS:** I was going to ask: can you take one section of it on some topic and walk us through what we learn reading it?

**HÜBNER:** Um, yeah, I think I could. I can just describe the way the current draft is, and maybe I'll —

**WOODS:** Yeah, because I'd like people to get the flavor — now that they get the contours of it, I'd like them to get the flavor of it.

**HÜBNER:** Sure, sure. Well, there's four sections in the current draft, which is version .67. I hope to get version 1.0 done by about after Christmas. The first section is *prolegomena* which is your first principles, so it says, "About Creative Common Law"; it says what this is; it's based on three theoretical foundations: property rights, contract law, and nonaggression. Then it talks about the text itself, and this is something unfortunately a lot of comparable projects don't do. They don't really talk about how translation can affect the legal process and the extent that translations of this are applicable and how, for example, footnotes function and literary devices function, like etc. and example, because I define a lot of examples. I want this to be, again, complete and workable in the hands of people, so I have to really flesh out some things, but then I have to of course say how these examples work.

So that's kind of the introductory phase, and then I talk about hermeneutics and how it should be interpreted or can be interpreted and all of that. Then we get into chapter three is on property rights. I basically define property rights very shortly, talk about riparian rights, which have to do with water passing through your land or space. And then something that's sort of innovative is a new application of riparian rights, which is atmospheric rights, which is that people have the right to natural air flow beside or through their property. And this actually I think would take care of most air pollution and all of that, but I don't have time to talk about that. And then there's spatial rights and the geospatial frontier, something in our world; now we have Trump launching Star Wars or whatever the heck it is, we're going to keep going up and up and how is this going to work. How is homesteading going to work with orbits? How is — you know what I mean? There's these new questions that people didn't have to ask a hundred years ago. I address all of that there. And then I talk about easements.

And then we get into chapter four, which is on liberty and aggression. And so here you have kind of the whole overhaul of crime. Like what is a crime? What is illegal? And it's all based on aggression. But when you get to define these terms and you talk about the types, there's two major division: personal aggression, which is initiating force against a person, or property aggression, which is against a person's property. Now, there's different subsets underneath each of these in this encyclopedia. There's initiative and there's excessive. So initiative, if you

initiate force against a person, if you walk up to someone and punch them, that's wrong. Well, there's also excessive force. If someone comes in and steals your sock on the table and you shoot them, that's excessive force. So each section there is divided up according to those types of categories. And then we talk about consent and levels of consent, enforceability and what all that means.

And then we get to membership, and there's five kinds of membership. The first is just adult membership, and that would apply to most people to most cases. And then there is corporate membership, which is for groups or legal corporations. And then there is minor membership, which addresses basically children. And there's a lot of hairy issues there that go into it, and I actually do put in there that the positive rights of the child in certain conditions need to be upheld or provided for for those who are the legal guardians of the minor. And then there's special membership for those who maybe have some kind of mental disability or condition where they can't make decisions on their own and they need legal help. And then there's criminal membership, which talks about how criminals can and cannot be treated, what rights they have, the terms for their bondage, which can be bought and sold like mortgage on the free market and things like that.

And then chapter seven is how to settle disputes, and that talks about basically the justice process, which goes from reconciliation to arbitration to litigation and then to a jury trial. And I won't go into too many details there. And then after that are unwritten sections yet that have to do with the CCL digital network, which is basically the blockchain of some kind that will store permanent records of property titles, of committed crimes, of court procedures, of property records, of violations of the law, and different things like that. And yeah, after that, some appendices and reference material. So that's basically it.

**WOODS:** All right, so let's think about how you would take this and apply it in particular cases. Are you in contact with any of the folks out there who are trying to work on some of these micro-level startup societies, for example?

**HÜBNER:** I've reached out to several. I've paid to have my emails read by Roger Ver and his free society project. I have not gotten a response. If anybody's listening that may help that process, that'd be great. But yeah, I am reaching out.

**WOODS:** Well, I'll send it to Roger.

**HÜBNER:** Sure, that'd be great.

**WOODS:** We'll get that SOB to open that email [laughing].

**HÜBNER:** [laughing] You tell him, Tom. Yeah, I am, but it's still early in the game, and like I said, we're hoping to finish up the first draft here in the next few months or half year or so. But yeah, I mean, the only big obstacle after really just hammering out this stuff is figuring out the digital network side, the technology side, which isn't overwhelming, but we're in the Cambrian explosion of cryptocurrency and blockchain projects, and most of them are going to die, a lot of them already are.

And just to have a realistic perspective, we can also expect a lot of these stateless societies to fail as well. That's just the way it is in the business world. 50% of startups fail after the

first five years. So I'm really optimistic on the one hand. I wouldn't be writing this if I wasn't. But on the other hand, we also have to be realistic as much as optimistic, and so we can expect that a lot of seasteading projects, a lot of micronations, and things like this are probably not going to do well, and it has nothing to do necessarily with the principles. It doesn't have to do with whether it can work or not; it has to do with poor execution. That's why a lot of businesses fail, and that's not something I really have control over. So I think that sort of explains sort of the efforts and the nature of what we hope to see happen.

And I just think this is happening way faster than people realize. Like I was hoping that maybe in 20 years we'd start to see the first sort of stateless thing, and it's like, well, we already have it with Royal Caribbean and a bunch of other things. Like there's already functionally non-governmental groups and societies, and so it's just a matter of accelerating this process. And honestly, I don't think we'll have governments in 50 to 70 years, purely for economic reasons, because I don't think the traditional government or nation state can compete with private governance in a globalized world. It was different a hundred years ago when we didn't have the free exchange of information, when we didn't have YouTube and people can see what's going on around the world and what are places that are better to live in, what places have lower tax rates, and all of that.

But now, since this knowledge is just being disseminated so quickly, and people realize, *Oh, I'm living in an oppressive state*, you know, there's going to actually be an incentive for people to move to better places. And that's what I think, you know, a lot of politicians and presidents are struggling with right now. You see it with Trump for example. He's threatened to harm the businesses who are moving overseas or whatever, and it's just supply and demand. I mean it's not something you're going to be able to stop, short of building a wall, to keep people in, you know what I mean? So I think this is on the forefront of it. Unlike Bitnation, we don't have the tech side established yet, but we have the most important part which is actually articulating the policies and procedures for a voluntary society that could work.

**WOODS:** Well, it's very, very interesting. I want to make sure people have the website again, so it's CreativeCommonLaw.com, and when they're there, they can look over the most recent version of what you have for themselves and get a sense of it. Can they support you there in some way?

**HÜBNER:** Yeah, that's a good question. You can donate cryptocurrency, and unlike a lot of other projects, this is not a profit-making scheme [laughing]. Most blockchain nations, whether it's Bitnation, it's all a fee-charging system, and this has nothing of that sort. I'm not doing this to make money. Nobody gets paid anything at this point. Obviously, we're going to have to somehow raise some funds. I'm not much of a fundraiser. I come from a family of ranchers and business owners, so if you want to make more money, you just work harder. Well, there's some things where, it doesn't matter how much I work, I'm not going to have the money to make all these things happen. So yeah, we would really like some private support. And I'm not trying to sound pious or anything, but you know, there's just some sacrifices you've got to make. Like Rothbard, he could have had a professorship and made a lot more money at different places, but he chose not to because there's more important things than that, and we say that as people who are obviously pretty capitalist.

**WOODS:** Right, so I'm glad you're doing what you're doing, and it looks great and it's interesting, and I'm glad Norman Horn alerted me to it. So CreativeCommonLaw.com is the

site to go to. I'll link to that at [TomWoods.com/1218](http://TomWoods.com/1218). Well, I hope you're able to meet your self-imposed deadline with all this, and I hope we're able to crack through and get the attention of people who really need to see what you're doing. And it certainly has my endorsement, for whatever that's worth. So let's you and me stay in touch on this for sure.

**HÜBNER:** Yeah, and you're always definitely invited onto the board of advisors. I know you don't have much time, but if you ever want to, to participate in just providing input in that way, that'd be great. But I really appreciate this opportunity and your support and thank you so very much.

**WOODS:** Thanks a lot.