

## METALAW: From Speculation to Human*kind* Legal Posturing with Extraterrestrial Life

By George S. Robinson

A very longstanding question, relating to the disciplines of Natural Law Theory,<sup>1</sup> a variety of jurisprudential concepts, and, in the comparatively near rather than far future, an endless variety of positive laws implementing those concepts, is whether and how *Homo sapiens sapiens* should and will interact with extraterrestrial life forms. In certain situations, preparations for answers to this and related questions have been evolving over many decades, indeed, centuries. But first, a current reasonable definition of Metalaw is important to assessing any answer based upon present knowledge of what constitutes an “extraterrestrial.”

### “Metalaw” Defined

Historically, Metalaw has been defined in several different ways in an evolutionary fashion as philosophical analyses regarding potential answers evolved and as empirical data accumulated giving a sharper and more focused understanding of what constitutes an “extraterrestrial”; also whether characteristics of “sentience”<sup>2</sup> are necessary to invoke the properties ascribed to Metalaw. Several relatively recent definition variations of Metalaw include the one Andrew G. Haley, currently referred to somewhat questionably as the creator or founder of Metalaw, introduced as his view of the concept in 1956.<sup>3</sup> Haley considered Metalaw to represent a body of law developed to enable human communication with non-terrestrial life forms. He asserted that Metalaw referred to a basic theoretical legal precept, that is, it was a command meant as a rule of action or conduct applicable to *all* “intelligences,” human and extraterrestrial. The substance of Metalaw was what Haley and subsequently Dr. Ernst Fasan (an Austrian and visionary space lawyer) referred to as the “Interstellar Golden Rule,” namely, “Do unto Others as You Would Have Them Do unto You.” But as noted by the present author back in the late 1960s,

[w]ho, or what, determines that which is “injurious or hurtful to some other being?” If mankind is to make such a determination, it is of necessity one

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<sup>1</sup> Natural Law Theory, or *jus natural*, is defined generally as being “derived from the philosophical speculations of the Roman jurists of the Antonine age and intended to denote a system of rules and principles for the guidance of human conduct which, independently of enacted law or of the systems peculiar to any one people, might be discovered by the rational intelligence of man, and would be found to grow out of and conform to his *nature*, meaning by that word his whole mental, moral, and physical constitution.” See Black’s Law Dictionary (1951), 1177. Clearly, over time from the Antonine age to the present, accumulation of empirical data relating to what constitutes nature and law has led to a more knowledgeable and predictable understanding of what constitutes *jus naturale*.

<sup>2</sup> For the purposes of the instant discussion, “sentience” is defined as having the capacity for feeling or perceiving consciousness; of having the capacity to perceive abstractly. See Webster’s New World Dictionary, Third College Edition (1998), 1223. It is important to realize that this definition can, and frequently does, change almost daily given the extensive research being conducted into psychoneurophysiological pathology.

<sup>3</sup> A. G. Haley, “Space Law and Metalaw – A Synoptic View,” *Harvard Law Record* 23 (1956).

which is anthropocentric in nature. If an alien being is to make the determination, is not man deprived of some rights as an integral party? Or perhaps there is a compromise based on an understanding of all participants of the ultimate laws of nature permitting or tending towards a balanced universal ecosystem? If there is truth in the latter approach, again we must turn to the principle involved in Haley's Interstellar Golden Rule – do not disrupt unilaterally the ecosystem of an alien sentient being.<sup>4</sup>

Further, it was noted by A. C. Korbitz that

[i]t is clear the metalegal precepts Haley and Fasan proposed are squarely rooted in natural law theory and flow from Kant's Categorical Imperative in a largely deductive manner rather than being drawn empirically from actual human legal institutions in an inductive fashion. Despite this, Haley acknowledged the obvious anthropocentric limits of natural law theory but could not ultimately divorce Metalaw from this intellectual construct. This led former Smithsonian counsel... George Robinson to note that the cultural concept of rules or laws is itself anthropocentric... Robinson urged space lawyers, when engaging in metalegal research, to adopt an empirical approach similar to that used by cultural anthropologists. Robinson proposed an empirical analysis of Metalaw by studying human values formed with respect to totally alien concepts and potential situations, in particular "in all bio-ecological and cultural regimes wherein categories of relationships occur and may be distinguished."<sup>5</sup>

### **Refining the Concept of "Metalaw" Even More**

In 1970, Dr. Fasan transitioned Haley's initial view of the concept more definitively, referring to it as the "entire sum of legal rules regulating relationships between different races in the universe." He considered it the "first and basic 'law' between races" that provided the ground-rules for a relationship if and when communications or an actual encounter occurred between humans and another intelligent race in the universe. Fasan envisaged these rules as governing both human conduct and that of extraterrestrial races in order to avoid mutually harmful interactions. Whatever the precise definition relied upon, it was a modern component of Natural Law Theory.

Haley and Fasan may be accredited with revitalizing the concept embraced by the term Metalaw within a more current context, particularly with the advent of the space age and the incipient stages of manned space exploration, migration, and long-term/permanent off-Earth habitation reflected, say, in the early stages of the International Space Station. Nevertheless, it might well be more appropriate to drift a bit farther back in history to find

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<sup>4</sup> G. Robinson, "Ecological Foundation of Haley's Metalaw," *J. British Interplanetary Soc.* 22 (1969): 266-74.

<sup>5</sup> A. C. Korbitz, "A Brief Introduction to Metalaw," Paper and oral presentation at the Sept. 2010 International Institute of Space Law, International Astronautical Congress, Prague, Czech Republic. <http://metalawandseti.blogspot.com/p/brief-introduction-to-metalaw.html>.

the core principle of Metalaw... back to 1788, at which time Immanuel Kant formulated the “Categorical Imperative,”<sup>6</sup> in which he proffered that each person should “act according to the maxim whereby you can at the same time will that it should become a universal law.” But what do the philosophic underpinnings of Metalaw show us in history? And would that history affirm the hint of empirically supported *secular* underpinnings of the intent of Metalaw?

### **“Metalaw” Antecedents: Questioning the Genesis Asserted by Haley**

As noted earlier, the concept of Metalaw embodying certain predecessor aspects of the Interstellar Golden Rule is reflected in Aristotle’s cautionary principle that “We should behave to friends as we would wish friends to behave to us” and even in Confucius, who somewhat cautiously embraced the view that “What I do not wish others to do unto me, that also I wish not to do unto them.” The same urging is infused in very early religious “admonishments,” to wit, the Judaic Talmud asserting that “What is hurtful to yourself, do not unto your neighbor”; in Luke 6.31, the Bible admonishes just as anthropocentrically, without referring to extraterrestrial life for what may be obvious reasons, that “As you wish men to do to you, so also do you to them.” And then as Mohammed counsels, “Do good unto others as God has done unto thee.” In 1532, Francisco de Vitoria, a Spanish theologian, is well-remembered by many for his assertions in defense of the rights of Native Americans and others in the New World when interacting with colonists and explorers, namely, “People have the right to travel to any lands they desire subject to the restriction that they must not do harm to the natives residing therein.”

In more contemporary times, while “alluding” to human exploration of other celestial bodies and the “possibility” of encountering extraterrestrial life forms, the well-known and highly respected award-winning American science fiction novelist, Murray Leinster (1896-1975), stated in *The Aliens* (1949) in an obvious context that “[t]here could be no truce between men and a superior form of life.” In expanding on this concept in a more refined fashion, Andrew Haley’s 1956 publication on Metalaw asserted that in furtherance of the Interstellar Golden Rule “there may be no visitation whatsoever of any inhabited area until intelligible contact will have been made and the Authority has been satisfied that no physical or psychological hazards exists to either the explorer or the explored.” Again, two years later in 1958, Haley reaffirmed the basic tenet of Metalaw, namely, “it is better to destroy Mankind than to violate Metalaw,” a “view,” according to the present author, “that appears to retreat from any recognition of the biological foundations of *Homo sapiens sapiens*... and, indeed, all Earth indigent life forms giving evolutionary rise to modern humans.”

In 1962, Aldo Armando Cocca offered a refined ambivalence regarding an objective of Metalaw, namely, “[a]ny idea of aggression or conquest should be discarded – the mission of man when visiting other planets should evidence a high degree of civilization and a sense of legality.” Yet, again... even more homespun ambivalence to be applied

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<sup>6</sup> For excellent, but relatively abbreviated, discussions of what constitute variations of meanings of Kant’s Categorical Imperative, refer to [http://www.qcc.cuny.edu/socialsciences/ppecorino/MEDICAL\\_ETHICS\\_TEXT/cha](http://www.qcc.cuny.edu/socialsciences/ppecorino/MEDICAL_ETHICS_TEXT/cha).

to an entity whose entire existence is based upon the biophysics of biochemistry. But this ambivalent admonishment of wishful thinking was addressed the following year by Haley when he stated that when exploring outer space and other celestial bodies, “[w]e may find inferior beings, and these we may keep from harming us by purely protective means.” This, of course, could mean anything from an “intelligent localized entity, or an infectious agent, such as certain equivalents of an Earth-indigent virus or bacterium. At this point, a careful and precise definition of “intelligent” in an equally precise context becomes critical.

In 1960, Julian G. Verplaetse seemed to embrace biological realism embodied in the fright, flight, or fight properties of the autonomic nervous system when he professed that

[i]f the planets are inhabited, sovereignty may be established only in two ways: By a victorious war or by agreement. War is and always will be the first origin and the *ultima ratio*. Sovereignty means power and ultimately military and technical power; whatever may be the means and ways. Agreement would be acceptance by inhabitants of the rule of the conquerors. The hypothesis of mutual sovereignty is practically excluded as the superior group would necessarily dominate... if the planets are not inhabited, the law would be accomplished by virtue of occupation. The planets would then be *res nullius* and the venerable custom and general principle of the law, according to which the effective possession and continuous occupation establishes sovereignty, would govern.<sup>7</sup>

This view has the appearance of a modern science fiction theme out of Hollywood, but it is a fair expression of the realities of the biological underpinnings of all societies. As noted in 1973 by Michael Michaud, former U.S. Deputy Assistant Secretary of State for Science and Technology and prolific author of space law related topics,

[o]ur basic interest will be to protect ourselves from any possible threat to Earth’s security. Our second concern would be to assist in developing or participate in a stable system of interstellar politics that provides an acceptable level of security for all. Our third concern would be to learn from the aliens in order to advance our knowledge of the universe and to add to the tools of civilization.

And then, in a somewhat surprising and ambivalent tone, R. A. Frietas, Jr., an attorney and researcher at the Xenology Institute in California and a strong supporter of the biological foundations and biochemical underpinnings of human behavior, seems to think “[w]e should leave other cultures entirely alone – let them evolve naturally, with no help or interference by outsiders.” That approach certainly has not been pursued in the evolution of interspecies cultures and civilizations (pre- and proto-hominid entities) on Earth. And who is to say that the ecosystem of Earth does not incorporate the

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<sup>7</sup> For this observation and other discussions regarding Verplaetse’s views relating to first contact with alien life forms, see R. Frietas, Jr., *Xenology: An Introduction to the Scientific Study of Extraterrestrial Life, Intelligence, and Civilization*, 1st ed. (Sacramento, CA: Xenology Research Institute, 1979).

ecosystems off-Earth... a kind of grand unity theory. The fact remains that several of the so-called lower orders of animals on Earth, such as the cetaceans, etc., have advanced forms of what even humans might call sentience.

### **Does Metalaw Really Matter in the Great Scheme of the Universe(s)?**

Multiple views and arguments relating to Metalaw and its application to human space exploration, migration, and potential off-Earth settlement, have been presented by numerous individuals, both lay people and accomplished individuals representing a broad array of professions. The final expressions attempting to characterize the substance and goal of Metalaw as a unique jurisprudence with equally unique implementing positive laws remain ambivalent and almost less well-defined than what was offered in some ignorance by the likes of Aristotle, Kant, Confucius, Haley, and Fasan.

Interestingly, the U.S. National Aeronautics and Space Administration has supported for decades an Office of Planetary Protection, addressing both outbound and back contamination issues. The primary focus has been on the potential for harmful effects of, or interference with, exploratory programs intended to locate the existence... or *potential* for existence... of former, current, and presently-evolving carbon based life forms on other celestial bodies. Interference, or a compromising potential of related scientific experiments, has been the primary concern... but not exclusively so. Issues of what constitutes extraterrestrial life and what reflects earth-indigent life forms that mutate into harmful biota that are returned to Earth have not been given the kind of very serious consideration they should... more a political posture to avoid embarrassing or fiscally compromising questions from the public at large. Nevertheless, these issues are addressed by appropriate United Nations committees and subcommittees.

In one respect, it might be considered very unfortunate that the concept of Metalaw is not an integral component of the search for extraterrestrial life. As noted by S. W. Greenwood, and quoted by Frietas,

[t]he Great Rule of Metalaw proposed by Andrew Haley appears to have aroused surprisingly little critical comment. It seems to me to be a highly dangerous approach to the problem of how to behave in the presence of an alien intelligence. Literally it appears to direct an Earthman to do whatever an alien desires. What should be done when an alien desires an Earthman to hand over his vehicle, his equipment, and his crew? It is evident that the Rule of Metalaw would often be unworkable.<sup>8</sup>

But what likely will constitute the first “intelligent alien” with which *Homo sapiens sapiens* will interact? Here, yet again, we create confusion and ambivalence by the lack of *precise definitions* in equally *precise contexts*. Will it be an entity totally alien to Earth, with its genesis off-Earth? Will it be a biological entity that exists primarily in a space ambience off-Earth, but which finds its roots in the bush of evolution that took place... is

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<sup>8</sup> See *ibid.*, note 7 for a complete listing of his personally selected signposts regarding the evolution of the principles of Metalaw.

taking place... on Earth? What impact will the re-emergence of the Panspermia Theory<sup>9</sup> have on the presumed genesis of Earth indigent life? Will it be a form of space-indigent humankind? A *transhuman*, perhaps? Even a totally independent biotechnologically-integrated post human of artificial intelligence *in extremis*?<sup>10</sup> In this context, Dr. Rita M. Lauria has defined Metalaw as

an emerging juridical *science* that seeks to discover the basic tenets that can serve as guides to interaction with *any* intelligent life form in the universe. Because technology advances faster than jurisprudence can generally respond, it is reasonable for the global community to prepare fully for the consequences of scientific disciplines... as these may well alter our traditional legal definitions."<sup>11</sup>

*Transhumans*, then, potentially subject to the tenets of Metalaw, might well be defined in a number of different ways. Nevertheless, a *transhuman* is generally treated as a biotechnological intermediary form between a human and the evolving biotechnological, fully independent, post human... both being descendants of humankind, of *Homo sapiens sapiens*, and still subject to evolving principles of Natural Law. For purposes of the instant discussion, a post human may be considered as the point of totally self-contained biotechnological integration having independent accountability under the law with respect to making decisions and commitment to corresponding activities... again, independently of its *transhuman* and human predecessors.

As noted previously by the present author,

Metalaw, like all existing and future domestic and public/private international space law, must be based upon the underlying philosophic construct of survival of the "essence," of the purpose and reason, of and for *Homo sapiens sapiens* and its biotechnological and fully technological descendants. Metalaw must always be considered "a work in progress," and not be constrained by humanistic and non-empirically defined principles of "wishful thinking." Humanistic forms of "faith" must always support a realistic embodiment of Metalaw in constant transition... or *Homo sapiens sapiens* and its descendants may well be retired from their secular odysseys in search of reason and purpose, much in the manner that its hominid ancestors became extinct.<sup>12</sup>

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<sup>9</sup> The Panspermia Theory suggests that life on Earth did not originate on Earth. The theory has been revitalized lately given the results of the ongoing search for extraterrestrial life forms.

<sup>10</sup> In this context, see G. Robinson and R. Lauria, "Legal Rights and Accountability of Cyberpresence: A Void in Space Law/Astrolaw Jurisprudence," *Annals of Air and Space Law* 28 (2003): 311-26; R. Lauria and G. Robinson, "From Cyberspace to Outer Space: Legal Regimes under Pressure from Emerging Meta-Technologies," *33 U. La Vern L. Rev.* (May 2012): 219.

<sup>11</sup> See, in this context and generally, R. Lauria, "Metalaw," *Int'l L. J., Los Angeles County Bar Association* (Sept. 2012). Emphases added.

<sup>12</sup> In this context, see generally G. Robinson, "The Biochemical Foundations of Evolving Metalaw: Moving at a Glance to the Biological Basis of Sentient 'Essence,'" *Journal of Space Law, Nat'l Center for Remote Sensing, Air and Space Law, Univ. of Mississippi* (2013).

### **Is Metalaw Simply an Expression of the Rules of an Evolving Cybergame?**

In the final analysis, perhaps Metalaw must embrace the fact that the known universe at present is but one complex interaction of *all* levels of energy, known and those yet to be empirically identified, quantified, and predictable in the form of organized information; and that Metalaw must be invoked when considering the components... carbon-based, organic and/or inorganic... of the universe as a single organism. Perhaps this is the real issue or question for those space jurisprudents seeking to “update and refine” the “game concept” reflected in the rules of Metalaw. Physicist Dr. Lee Smolin, at the Perimeter Institute of Theoretical Physics in Canada, may have a handle on the real motivator behind interacting with, or pursuing a redefinition of, extraterrestrial life and the applicability of the evolving principles incorporated in the concept of Metalaw. He argues in *Unification of the State with the Dynamical Law...* but not without peer criticism... that we must first “address the question of why particular laws were selected for the universe, by proposing a mechanism for laws to evolve.”

Finally, putting aside for the time the unanswered issues and questions regarding humankind's legal posturing with extraterrestrial life, space lawyers focusing on the empirical foundations of Metalaw might give serious thought to the timeliness of Dr. Smolin's introductory observation in *Unification of the state with the Dynamical law* that

Physics has for most of its history been primarily concerned with finding out what the laws of nature are. While we still do not have a completely unified theory of physics, our understanding of the laws of nature has advanced to the point where we are not only interested in what the laws are, but *why* these are the laws, and not others. [Emphasis added.]

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**About the Author:** Dr. George S. Robinson, III is one of the most distinguished Space Law experts in the world. His book, book chapter and professional article publications – over 100 – are found throughout the aerospace and Space literature and continue in 2013. He served as International Relations Specialist for NASA, legal counsel to the FAA, and legal counsel at the Smithsonian Institution in Washington, DC. He serves on numerous Boards of Directors for science research. Dr. Robinson was a strong supporter of the Aerospace Technology Working Group, which was the forum from which Kepler Space Institute and University emerged.



**Editor's Notes:** It has been a privilege to know, and work with, Dr. Robinson over the past ten years. He has been a professional Space Law contributor to the major Space Organizations and leadership. He was an author in the first two issues of the *Journal of Space Philosophy* and repeats here his message to global leadership linking the future of Space to humanity's survival. *Bob Krone, PhD.*