

# formulations

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## Forum on Constitutions a Success

On Saturday, October 2, 1993, the Free Nation Foundation held its first Forum, at the Courtyard by Marriott, near the Raleigh-Durham Airport. The subject was constitutions. The daylong event, which featured presentations by the three FNF directors, Richard Hammer, Roderick Long, and Bobby Emory, was also attended by four people who had pre-registered. The topics of discussion were: the Basics of Constitutions, the Articles of Confederation, a Virtual-Canton Constitution, and the Constitution of Oceania.

The day overflowed with lively and educational discussion. Opening the meeting at 10 a.m., Richard Hammer noted that there could be some flexibility in the schedule, since the four presentations (roughly an hour each) and lunch (an hour) demanded only five of the six hours till the scheduled completion at 4 p.m. However, the extra hour was gone before lunch, since discussion during the first topic filled two hours. And even though the remaining presentations took no more than their allotted hours, discussion did not stop when the scheduled was concluded at 4 p.m. Everyone stayed and continued till about 5:30 p.m.

Proceedings of the Forum are being published. These will contain the papers presented, as edited to reflect the discussion of the day, and will be distributed to members of the Foundation and to those who attended the Forum.

The presentation by Richard Hammer, on the Basics of Constitutions, dealt with eight questions which, at this stage in his learning, seemed important to him. After he presented each question and suggested his own answer, others in the group contributed their insights and knowledge. The eight questions were: 1. What is the history of constitutions? 2. What is a constitution? 3. What are the essential differences between written and non-written constitutions? 4. Do we subscribe to the theory of natural rights, and

(continued on page 3)

## Directors Attend Libertarian National Convention

Free Nation Foundation Directors Richard Hammer and Bobby Emory attended the Libertarian National Convention in Salt Lake City, September 2-5, 1993. In addition to attending morning-to-night sessions and parties, they promoted FNF, describing it at each opportunity.

Before the convention, Editor Roderick Long sent 800 copies of *Formulations* to convention contractor Bob Waldrop. These copies were distributed to all participants, being included in a shopping bag of materials picked up by conventioners upon registration.

During the convention Bobby and Rich posted notices around the convention hall, inviting all who were interested to find them at the table for the North Carolina delegation. This outreach found a handful of people ready to join the work of the Foundation, a small but solid addition to our numbers. Δ

## Walter Williams Suggests Secession

In one of his columns Walter Williams has suggested the possibility that those of us who want liberty should organize and prepare to secede from the union. His column objects to the continued socialization of America, and apparently the Clintons' plan for medicine is about the last straw. He recognizes that the last attempt at secession from the U.S. was bloody, and hopes that a future secession could be peaceful.

Walter Williams is a professor of economics at George Mason University, author of several books including *The State Against Blacks* and *South Africa's War Against Capitalism*, and a nationally syndicated columnist. The column was spotted by one of our members in the October 30, 1993, *Times-News* of Burlington NC. Richard Hammer has corresponded with Dr. Williams informing him about our Foundation and inviting his participation. Δ

## FNF Announces Second Forum Subject: Systems of Law

The Free Nation Foundation will hold its second Forum on Saturday, April 30, 1994, at the Days Inn near the Raleigh-Durham Airport, NC (Interstate 40, exit 284). The Forum will run from 10 a.m. until 5 p.m. The subject will be Systems of Law.

Registrants will receive a package of materials, lunch, and proceedings printed after the Forum. Registration fee: for nonmembers, \$25 until April 22, \$35 thereafter; for members of the Free Nation Foundation, \$20 until April 22, \$28 thereafter. Δ

## Inside

- Let the Wookiee Win**  
by Richard Hammer ..... 2
- Who's the Scrooge?**  
by Roderick Long ..... 3
- Social Programs: Whose Values Do They Serve?**  
by Richard Hammer ..... 4
- Imagining a Free Society: Wealth and Immigration**  
by Mary Ruwart ..... 5
- Charity Without Force: The Bishop's Storehouse**  
by Bobby Emory ..... 6
- Punishment vs. Restitution**  
by Roderick Long ..... 7
- Circles of Support: A Libertarian View of Charity**  
by Richard Hammer ..... 8
- Health Insurance that Worked**  
by Roderick Long ..... 16

## Let the Wookiee Win

by Richard Hammer

I love the *Star Wars* movies, created by George Lucas. Often I recall scenes and lines. In one scene Chewbacca, the wookiee, and Artoo Detoo, a droid, are playing a game like chess. Artoo Detoo seems to be winning. But this should not surprise us; Artoo is a computer. The wookiee, a huge apelike creature, screams with exasperation.

Artoo Detoo's friend See Threepio is watching the game. At first See Threepio protests that the wookiee should stop his screaming; after all, the move was fair. But See Threepio changes his tone after being reminded that wookiees, when they lose, sometimes tear arms out of sockets. See Threepio turns to Artoo Detoo and suggests a new strategy: "Let the wookiee win."

We libertarians might identify with Artoo Detoo. In the game of debating economics, most of us probably believe that we can whip our statist rivals in every fair contest. But unfortunately, as in Artoo Detoo's game, our game of astute debate is set within a larger game—a game of majoritarian populist appeal. And in that larger game physical power prevails. So should we take the advice of See Threepio?

As you probably know, the work plan of the Free Nation Foundation grows out of the belief that we should acknowledge what seems to be happening to us in the larger game. It seems to me that we are spending perhaps 80% of our political energy trying to convince the majority of our neighbors to disavow statism. And it seems to me that we are losing. Many libertarians respond to this threat with an obvious strategy: increase the energy invested in the fight to 90% or 99%. But what if even this increment will not stem the tide? Will another row of sandbags confine the Mississippi River? Maybe. But is it wise for us to spend the last 20% of our energy this way?

Maybe we should acknowledge that in the game of democratic-decisions-about-government-controls the statist enjoy a most awesome record of wins to losses. Maybe, rather than throw everything we have got into one more attempt to teach Austrian economics to the masses, we should reserve some of what we have for use in another game. Maybe we should invest a fraction on

(continued on page 4)

# formulations

Editor: Roderick T. Long

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[outdated-address]  
Hillsborough NC 27278

## Statement of Purpose

The purpose of the Free Nation Foundation is to advance the day when coercive institutions of government can be replaced by voluntary institutions of civil mutual consent, by developing clear and believable descriptions of those voluntary institutions, and by building a community of people who share confidence in these descriptions.

## Board of Directors

Richard O. Hammer, President  
Bobby Yates Emory, Secretary  
Roderick T. Long

Subscriptions to *Formulations* may be purchased for \$10 for four issues (one year). Membership in the Free Nation Foundation may be purchased for \$30 per year. Members receive: a subscription to *Formulations*, 20% discount on conference registration fees, invitation to attend regular meetings of the Board of Directors, copies of the Bylaws and Annual Report. Additional contributions are welcome.

An application has been filed with the IRS for 501(c)(3) tax-exempt status.

## Information for Authors

We seek columns, articles, and art, within the range of our work plan. We also welcome letters to the editor which contribute to our debate and process of self-education.

Our work plan is to work within the community of people who already think of themselves as libertarian, to develop clear and believable descriptions of the critical institutions (such as those that provide security, both domestic and national) with which we libertarians would propose to replace the coercive institutions of government.

As a first priority we seek formulations on the nature of these institutions. These formulations could well be historical accounts of institutions that served in earlier societies, or accounts of present institutions now serving in other societies.

As a second priority we seek material of general interest to libertarians, subject to this caveat: We are not complaining, we are building. We do not seek criticism of existing political institutions or persons unless the author uses that criticism to enlighten formulation of an improved institution.

All submissions are subject to editing.

Submissions will be considered for publication if received by the 15th of the month preceding month of publication.

Address correspondence to: Free Nation Foundation, [outdated street address], Hillsborough NC 27278.

## Constitutions (from p. 1)

therefore seek only a system which protects those rights? 5. To restrain the power of the state, is it better to rely on the design of the political structure, or on textual statements which demand certain restraints? 6. Is it wiser to list rights to be retained by the people, or to enumerate the specific (and hopefully limited) powers of the state? 7. Can we specify a constitution which allows local eccentricities, and might even offer socialists an opportunity to try their dream — in their own realm? 8. What is the power of a constitution to bind what happens in the future?

Bobby Emory, in his presentation on the Articles of Confederation, discussed the history, context, and lessons to be learned from this early document. It proved itself worthy in that it survived for eleven years, and allowed the new nation to fight a successful war of independence against the most powerful nation on earth. It had some features that libertarians now favor, including a weak federal government, and the requirement for a super-majority vote on major issues. However, it had some surprising omissions: it had no bill of rights; no recognition of the rights of Indians; and it allowed slavery to continue. Mr. Emory said that one lesson we can learn from the experience of the Articles of Confederation is that slow deliberations will exasperate people who are waiting for federal action. Another lesson is that a structure such as this can be expected to survive only if the people who want it work constantly to defend it.

Roderick Long presented and discussed a Virtual-Canton Constitution he had drafted. This constitution features a loose federal system of cantons defined by voluntary membership rather than by territory; thus any citizen living within the geographical boundaries of the federation could switch between political districts, and thus between representatives in the federal legislature, without physically relocating. Dr. Long argued that this feature would make government more accountable to its citizens by introducing the element of competition among political jurisdictions. Moreover, such a radically decentralized system might help to solve the following problem: Since history and economics alike teach us that governments tend to seize any pretext to aggrandize power, a libertarian constitution will naturally hedge its government in with

numerous restrictions. Unfortunately, in politics as in engineering, a structure that is too rigid and inflexible runs the risk of breaking under pressure, rather than bending; an inflexible legal structure may simply be ignored and bypassed as power seeks new channels. Yet relaxing constitutional restrictions opens the door to Leviathan. Dr. Long suggested that a virtual-canton system could serve to relieve political pressure on the necessarily rigid (because severely restricted) national government by channeling such pressure down to the more flexible competitive canton system. Dr. Long also expressed hope that the virtual-canton system, a compromise between limited government and free-market anarchism, might be better able than either extreme to attract a consensus among libertarians of both persuasions.

In the final topic of the day, the three presenters of the Forum held a panel discussion on the draft Constitution of Oceania (a country which libertarian entrepreneurs Mike Oliver and Eric Klien propose to build on a manmade floating island in the Caribbean; see news story last issue). The members of the panel expressed philosophical agreement with this constitution. They were impressed by some of its innovations, but also were disappointed by many features which seemed to have been written too hastily. On the positive side, the constitution contains several provisions requiring a larger vote to increase government power than to decrease it, and the authors made a laudable effort to make their document understandable and usable, with definitions in the front and an index in the back. On the negative side, one clause states that the constitution is a contract between the government and the citizens, while another well-intentioned clause limits to ten years any contract entered by the government — but the combination (evidently an oversight) limits to ten years the terms of citizenship. In another shortcoming, the constitution provides that permissible levels of pollution be set by a democratic process of national referendum; this unfortunately seems to overlook much of what we have learned about free market environmentalism. Finally, concern was expressed that the Oceania constitution emphasizes rights, with long and detailed lists — but neglects to devote sufficient attention to the political structure needed to provide the incentive to preserve and implement these rights. Δ

## Who's the Scrooge? Libertarians and Compassion

by Roderick T. Long

*"At this festive season of the year, Mr. Scrooge," said the gentleman, taking up a pen, "it is more than usually desirable that we should make some slight provision for the poor and destitute, who suffer greatly at the present time. Many thousands are in want of common necessities; hundreds of thousands are in want of common comforts, sir."*

*"Are there no prisons?" asked Scrooge.*

*"Plenty of prisons," said the gentleman, laying down the pen again.*

*"And the Union workhouses?" demanded Scrooge. "Are they still in operation?"*

*"They are. Still," returned the gentleman, "I wish I could say they were not."*

*"The Treadmill and the Poor Law are in full vigour, then?" said Scrooge.*

*"Both very busy, sir."*

*"Oh! I was afraid, from what you said at first, that something had occurred to stop them in their useful course," said Scrooge. "I'm very glad to hear it."*

*"Under the impression that they scarcely furnish Christian cheer of mind or body to the multitude," returned the gentleman, "a few of us are endeavouring to raise a fund to buy the Poor some meat and drink, and means of warmth. We choose this time, because it is a time, of all others, when Want is keenly felt, and Abundance rejoices. What shall I put you down for?"*

*"Nothing!" replied Scrooge.*

*"You wish to be anonymous?"*

*"I wish to be left alone," said Scrooge. "Since you ask me what I wish, gentlemen, that is my answer. I don't make merry myself at Christmas, and I can't afford to make idle people merry. I help to support the establishments I have mentioned: they cost enough: and those who are badly off must go there."*

*"Many can't go there; and many would rather die."*

*"If they would rather die," said Scrooge, "they had better do it, and decrease the surplus population. ... It's enough for a man to understand his own business, and not to interfere with other people's. Mine occupies me constantly. Good afternoon, gentlemen!"*

— Charles Dickens, *A Christmas Carol*.

To many critics of libertarianism, the foregoing portrait of Scrooge perfectly captures the libertarian attitude to the poor: "I mind my own business; they should mind theirs. If they can't support themselves, let them starve."

We libertarians know better, of course. Yet even we tend, all too often, to let our

(continued on page 13)

planning a refuge.

But I do not suggest a mournful retreat, in which, with heads bowed, we mumble submission: "Let the wookiee win." Were not Adam Smith and Friedrich Hayek right? Did not Milton and Rose Friedman show us that we hold the strongest cards in the deck? We can identify not only with the subtlety of the droid, but also with the muscle of the wookiee.

As events are unfolding now in western democracies, we try to draw our adversaries into our preferred game, economic debate. But they defeat us by simply refusing to acknowledge the legitimacy of our game. They switch instead to the greater game which they can win. But now it is our move. And it seems to me that we too can switch games. Why should we think that we have to play this game of no-property-rights with them? If our economic theories are correct, there must be a way that we can buy our way out — and even leave our socialist rivals richer for the trade.

In my efforts to organize this Foundation I have been learning that libertarians are an individualist lot. Probably I should not be surprised. But as individuals we may each do well to make use of the few rights that we still retain from the Constitution written by the founders of America. We can still communicate, gather, and plan together. We still have this advantage over the poor souls in old East Berlin who, all alone, had to plan their individual attempts on the wall.

Do you believe in that invisible hand? Then join us. If we organize I believe we can get that hand working for us. Let the wookiee win! △

## Social Programs: Whose Values Do They Serve?

by Richard Hammer

(Originally published in the *Chapel Hill Herald*, 1 January 1991.)

This Christmas season, a season of giving, I suggest we reflect on the nature of giving, particularly of the sort that governments do, through social programs. I expect many may call me Scrooge — but take that chance in hope that others will see this as a step in our learning, both to give more effectively and to live more compassionately.

Imagine with me for a moment that you are on a street in a big city. A disheveled



Richard Hammer

person who smells of alcohol approaches you and asks for a dollar for — as the person says — a hamburger. Suppose that you would gladly give a dollar to get a hamburger into this person's stomach. But, if your reaction is like mine, you may doubt whether the person would actually spend the dollar on a hamburger; it seems possible that the dollar will help buy another bottle of wine.

So at this point some people would say, "walk with me to the fast food store, where I will buy you a hamburger." In this scenario, the giver cannot give money with confidence that it will be spent as the giver would desire, so the giver gives — not money — but a good which the giver wants the recipient to have.

Whenever giving takes this shape it shows that the giver and the recipient have different values. If the values were the same there would be no reluctance about giving money; money in the hands of the recipient would be spent just as the giver would desire. But, since the values differ, the giver cannot satisfy his goals by giving money.

Most government social programs have this shape. With education, housing, food stamps (the list goes on and on) government gives not money, but a restricted good or service. Evidently the values of the recipients must differ, in most of these cases, from the values of the givers — or else the giving could be achieved more simply by giving money. The givers want the recipients to have things that the recipients, given money, would not buy for themselves.

This difference of values makes me think

of missionaries going to foreign lands to save natives from native religions. The missionaries, along with those who send the missionaries, presume that their values are correct, are the values by which others should live. Some see this as an expression of compassion; others see it as an expression of arrogance.

When we as individuals or we as a society are considering giving, I think it worthwhile to ask why the prospective recipient lacks what we propose to give. Consider two causes for this lack: circumstance and motivation. By circumstance I mean forces and events outside the recipient that leave the recipient wanting. By motivation I mean the recipient's motives do not jibe with the giver's motives; the recipient and the giver have different values. Of course in most cases of lack we will notice a mix of causes: circumstance and motivation. But, for the light it will shed, let us consider these two causes separately.

When circumstance alone has brought about the lack, then the recipient has motivation, and will be working in whatever ways possible to achieve the condition which we want for him. In this case we could donate money with knowledge that the recipient would direct it to our satisfaction. And, in this case, our gifts will definitely help the recipient toward where we want him to be, because the recipient will have more resources to apply toward the shared goal.

In this case, however, the recipient may achieve the desired end without a gift. This society still offers many avenues from destitution to comfort; a destitute person, with the same values as a comfortable person, may find his way to comfort. A gift may accelerate arrival of the end, but not necessarily change the character of the end.

When motivation alone has brought about the "lack" (I use quotation marks to remind the reader that this lack exists in the eyes of the giver, not the recipient), effective giving becomes a greater challenge. Giving money will not work. Only giving particular goods and services will enrich the recipient with more of those goods and services — and not because those goods and services were valued by the recipient, but more because they were free. Giving in this case will be plagued with inefficiency and waste: inefficiency in the effort (or bureaucracy) to deliver the

(continued on page 11)

## Imagining a Free Society Part I: Wealth and Immigration

by Mary Ruwart

Although the United States is often referred to as "The Land of the Free," we are so far from this ideal that it takes a great deal of imagination to picture what a free society would really look like. During my lecture tour for my book, *Healing Our World: The Other Piece of the Puzzle*, I was often asked to describe what a free society would be like.

Probably the most obvious characteristic of a free society would be its large annual wealth creation in relation to what it would otherwise be. Free markets mean more wealth, which is why the U.S., with more liberty than other nations of the world, became the richest nation on earth. Freedom is such a large part of the equation, that it wouldn't take a free nation, even a resource-poor one, long to become the dominant economic power.

Many people believe that free markets mean that the rich get richer and the poor get poorer. In fact, just the opposite is true. Studies show that the more wealth a country creates, the more even its distribution of wealth. Why does this happen? Regulations that restrict entry into business hinder the disadvantaged the most, resulting in cartels and concentration of the wealth creation in the hands of the privileged few.

When regulations are less restrictive, the disadvantaged have a chance to create wealth without excessive start-up costs. They have great incentive to put in long, hard hours and undersell their competition to get business. Thus, a free society allows the disadvantaged to become middle-class market leaders quite rapidly.

The potential for creating wealth is what attracted immigrants to our country in earlier years. "Only in America" became the phrase that exemplified the possibility of going from rags to riches in one lifetime. Thus, a free society would attract immigrants readily. Would the country be overrun by the hungry hordes?

Fortunately, a truly free society would be protected by the fact that all property would be private. Only an immigrant who had permission to occupy the property of another could even enter the country. Even roads and sidewalks would be privately owned and would probably require some type of fee for entry. Even if a foreigner paid



Mary Ruwart

(photo: Owen Touster)

such a fee, they would probably not be allowed to camp out there. Only those who came with enough money to rent an apartment or could convince someone to put them up until they were financially independent could cross the border without facing a charge of trespass by the irate property owner.

Of course, some charitable organizations would probably set up temporary lodgings for the poorer immigrants. If Mexicans entered this way, for example, and were not able to earn their keep, they might face eviction back to their native land unless the charity was willing to support them.

Foreigners trying to enter the country by water would have an even more difficult time, since coastal oceans and waterways would be privately owned as well. Some type of transit fee might be necessary to cross, and thus a charity attempting to evict someone who refused to work might have to pay another transit fee to send them home. Naturally, this would deter the charity from accepting anyone who might become a liability.

Thus, the marketplace ecosystem would select only those immigrants who could earn their keep. They would have to convince an individual or charitable organization or a for-profit immigration service of their worthiness before they could even enter the country.

Given the aggression of most governments, one can readily imagine that much of

the world's population could in fact meet the "can you earn your keep?" test. Wouldn't a free country become so densely populated that the quality of life would suffer?

Once again, the marketplace ecosystem would likely protect against such an eventuality. As the population density rose, land prices and rents would also rise. Fewer immigrants could earn their way, unless they were skilled. Thus, the economic barriers to immigration would increase as the population density rose. At some point, equilibrium would be reached.

Where would this equilibrium be? How dense would a free nation's population be? I think it would largely depend upon how aggressive other countries were. After all, competition would still operate, even in a world not entirely free!  $\Delta$

*Mary Ruwart is author of the acclaimed book Healing Our World: The Other Piece of the Puzzle. A frequent speaker at conferences, she is a prominent force in the Libertarian Party. In 1992 she contended for the nomination for Vice-President, and is considering running for President in 1996. She holds a Ph.D. in Biophysics, and works as Senior Scientist at a major pharmaceutical firm in the midwest.*

### **Healing Our World: The Other Piece of the Puzzle**

**by Mary Ruwart**

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## Charity Without Force: The Bishop's Storehouse

by Bobby Yates Emory

### Why I Went There

While in Salt Lake City for the Libertarian National Convention, one place I wanted to visit was the Bishop's Storehouse. The Church of Jesus Christ of Latter Day Saints (commonly called Mormons, although they seem to prefer LDS as a short form) has established a welfare system that does not depend on the use of force. FNF member Craig Springer and I wanted to see if this was possible and how it worked.

### How to Get There

Although the LDS is secretive about some parts of their religion (non-members of LDS may not go inside their Temple), they are eager to help outsiders learn more about most aspects of their religion. The Bishop's Storehouse in Salt Lake City is a little hard to find because an interstate highway was placed between Temple Square (where most outreach efforts are centered) and the Storehouse. So if you want to visit the Storehouse, merely ask at one of the service desks in Temple Square, and they will send a van over to pick you up and bring you back.

### About the Tour

Usually the tour begins with a film that explains the Bishop's Storehouse, but we happened to arrive just as the leaders had preempted the theatre for a meeting. After our tour, the meeting was still going on, so we were given a copy of the manual the LDS uses to train its leaders in the Welfare Plan: *Providing in the Lord's Way: A Leader's Guide to Welfare*.

The tour emphasizes the physical aspects of the Bishop's Storehouse rather than the ideas behind the LDS Welfare plan. The "retail" aspect includes a grocery store, a recently added clothing store, a second-hand store, and an employment office. They attempt to provide to their clients whatever services or goods are needed. Until recently, they even had a barber shop. I believe the second-hand store merchandise is available to Welfare plan clients at no charge (with item by item approval by the Bishop) and to others for the marked price. The grocery store seemed rather small until I realized they carried only one brand and only one size of each item. Also there are no alcohol or tobacco products. There are no



Bobby Emory

convenience foods (no TV dinners or microwave popcorn), just basic foods. Correcting for these factors would make it a sizable operation.

The "wholesale and manufacturing" aspect was quite extensive. A dairy processed milk into both liquid milk and cheese. A cannery processed vegetables. In a separate area, powdered products such as sugar, dried milk, and chocolate were broken down into "retail" size packages. At least 5000 square feet of what looked like manufacturing space, complete with conveyors and workbenches, was devoted to processing donated goods and preparing them for the second-hand store. Items needing repair were pulled aside to a repair workbench. A separate room was set aside for repairing TVs and VCRs.

Many of the people working in the Storehouse are clients of the Welfare Plan. They get the psychological boost of contributing to the help they are receiving and they learn skills that may be useful in getting a job. Some of the workers appeared to be handicapped. The tour guide we had was very friendly and tried to be helpful. Although he was not the ideal person to be answering the philosophical questions we wanted to ask, he did answer many of our other questions for us. The ward is the smallest unit of LDS organization (analogous to a Catholic parish) and the Bishop is the person (I believe always a man) appointed to administer the ward; he is more analogous to a parish priest than to a Catholic Bishop. The Welfare Plan is used to help not just LDS members, but anyone requesting aid. Some of the donations to the Storehouse are in the form of

manufacturer's overruns or discontinued merchandise. Some of the milk is from LDS members who are dairy farmers making a contribution of a portion of their production. Milk also comes from farms that are established just to contribute to the Storehouse. While the Storehouse in Salt Lake City is one of the largest, they will exist wherever there are many LDS members. The Welfare Plan is successful in getting about 30 percent of its clients off the plan each year (our guide was apologetic that the number was so low; I assured him it was probably much better than government's results).

### The Welfare Plan

Part of the reason the Welfare Plan is able to work is that LDS almost requires contributions to the needy and self-reliance as conditions of membership in the Church. The New Testament is quoted in support of helping the needy. Prophet Joseph Smith in the Doctrine and Covenants said, "And remember in all things the poor and the needy, the sick and the afflicted, for he that doeth not these things, the same is not my disciple" (D & C 52:40). With doctrine that clear-cut, LDS members are expected to help the needy. The Welfare Plan then merely needs to be a conduit for the help. Similarly, self-reliance and shouldering of individual responsibilities is encouraged in many ways: by quotation from the Bible, by quotation from the Mormon additions to the Bible, and by making it a part of the work of most LDS institutions.

Many of the distinctive features of LDS contribute to this: the taboos against alcohol and tobacco, and the encouragement of home storage of basic foodstuffs.

LDS members are encouraged to fast for two meals, one day per month, and to donate to the Storehouse the equivalent to the cost of those two meals. I believe most adult LDS males are members of the Aaronic priesthood; they are given specific tasks in helping the Welfare Plan, such as collecting the fast offering, but also may be asked to help the needy in direct fashion such as home repairs. Likewise, I believe many women will be members of the Relief Society; they are charged with helping the needy become self-reliant.

The primary responsibility for administering the Welfare Plan falls on the Bishop. That may be why even though the

(continued on page 11)

## Punishment vs. Restitution: A Formulation

by Roderick T. Long

### Kinds of Coercion

How should criminals be treated in a libertarian polity? Is it permissible to punish them? Why or why not? In what follows I'd like to outline the answers I personally have reached to these questions, stressing that I speak only for myself, and would be happy to receive comments and criticism.

Let's define *coercion* as *the forcible subjection, actual or threatened, of the person or property of another to one's own uses, without that other's consent*. In light of this definition, it is possible to distinguish three kinds of coercion:

- a. **Defensive coercion:** I use coercion against you, but only to the extent necessary to end your aggression against me (or someone I legitimately represent).
- b. **Retaliatory coercion:** I use coercion against you, but while you are aggressing against me (or someone I legitimately represent), my coercion exceeds the extent necessary to end such aggression on your part.
- c. **Initiatory coercion (or aggression):** I use coercion against you, although you are not using coercion against me (or anyone I legitimately represent).

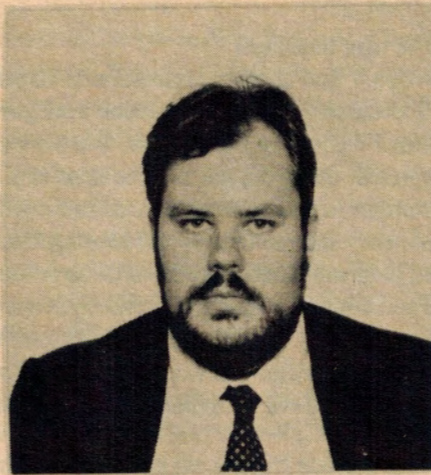
### The Justification of Coercion

Given these definitions, there are four possible positions one might take on the justification of coercion:

1. Coercion is never justified.
2. Defensive coercion is justified, but retaliatory and initiatory coercion are not.
3. Defensive and retaliatory coercion are justified, but initiatory coercion is not.
4. Defensive, retaliatory, and initiatory coercion are all justified.

The libertarian principle of non-aggression clearly rules out option (4): the initiation of coercion is not permissible. But each of the remaining three options appears to be compatible with libertarianism's ban on aggression; and in fact each option has some libertarian defenders.

But while options (1) through (3) may all be compatible with the *letter* of libertarianism, it does not follow that they are also all equally compatible with its *spirit*. Indeed, I wish to argue that (2), and only (2), expresses the spirit of libertarianism, and consequently



Roderick Long

that libertarian principles, properly understood, permit self-defense against the criminal, but prohibit his or her punishment (at least in any ordinary sense of punishment).

### Why Not Pacifism?

Option (1) might initially seem the most attractive. If coercion is evil, why not forswear it altogether? Doesn't the use of violence, even in self-defense, reduce the victim to the moral level of the aggressor? For many people, radical pacifism resonates with such deep religious and cultural values as Christ's advice to turn the other cheek, the doctrine of *ahimsa* (non-violence) in many Indian religions, and even the familiar maxim that "two wrongs don't make a right." Further, we admire such preachers and practitioners of non-violence as William Penn, Tolstoy, Thoreau, Garrison, Gandhi, and Martin Luther King. Within the libertarian movement itself, many have been inspired by the writings and personal example of anarcho-pacifist Robert LeFevre.

Yet from a libertarian point of view, there seem to be drawbacks to the radical pacifist position. Libertarians see themselves as defenders of *rights*; but the difference between rights and other sorts of moral claims lies in the fact that rights are legitimately *enforceable*. Suppose I gratuitously insult one of my neighbors, and steal the car of another. Each of my neighbors thereby acquires a moral claim against me: the first neighbor has a claim to an apology, the second a claim to his car. But only the second claim can properly be described as a *right*. My second neighbour has a *right* to have his car returned, and may legitimately use coercion to enforce his claim. But my first neighbor has no *right* to an apology; I

ought to apologize, but no one may legitimately force me to do so. Not all sins are crimes.

But if coercion is *never* justified, even against aggressors, then the distinction between the two sorts of moral claim vanishes: neither of my unfortunate neighbors may legitimately use coercion to enforce his claim against me. But what makes a moral claim a *right* rather than something else is precisely the fact that coercion may be used to enforce it. Whoever endorses radical pacifism, then, is committed to *denying that anyone has any rights* — a rather odd position for a libertarian to be in!

### Spheres of Authority

Libertarians generally see rights as setting boundaries around people. Each person has a sphere of authority within which they may do as they please, without external interference; but they may not cross beyond their own boundary and engage in actions within someone else's sphere of authority (except with that person's permission). The classic expression of this idea is: "Your right to swing your fist ends where my nose begins."

The libertarian pacifist, however, can no longer consistently endorse this picture. Suppose I grab onto your nose, thus invading your sphere of authority. Before I did so, you were free to scratch your nose whenever you liked. But now that I have a firm grip on your nose, you cannot scratch your nose without first knocking my hand away. Yet if the radical pacifists are right, it would be immoral for you to knock my hand away. It follows that, under those circumstances, it is no longer morally permissible for you to scratch your nose. Through no fault of your own, because of *my* immoral action, your own nose is now no longer within your sphere of authority.

But this seems unfair. Why should *my* aggression be allowed to constrict *your* domain of legitimate activity? Why should my grabbing your nose make you lose your rights over it? It seems more in accordance with the libertarian conception of justice to say that by grabbing your nose I have put myself *into* your sphere of authority, rather than taking your nose out of it; and as a result, you can now coerce me without exceeding your just authority. What's wrong with initiatory coercion is that it exceeds the

(continued on page 12)

## Circles of Support: A Libertarian View of Charity

by Richard Hammer

### Why Formulate a Libertarian View of Charity?

Guess what happened to me, outspoken libertarian that I am, in June 1992. I got appointed to the Orange County (North Carolina) Board of Social Services. This was a strange twist of fate — and one with a sense of humor.

While I was being considered for the appointment I told a friend, the fellow Republican whose contacts got me appointed, that I did not know of anything done by the Department of Social Services that I thought government should do. Now, after participating on the board and voting "nay" for a year and a half, the same is still true. None of what this department does — which includes local implementation of Medicaid, aid to families with dependent children (AFDC), food stamps, child protective services, and a score more of programs — is anything that I think government has any business doing.

Nonetheless I must recommend the experience of "serving" on such a board to other libertarians who might have such an opportunity. It is a great test of one's ability to remain calm — while sitting in the front lines of socialism's advance on self-responsibility.

And it has made me think. On a few occasions, after I have voted "nay" on a motion that the other board members thought was obviously better than motherhood and apple pie combined, a few of these members have been interested and open-minded enough to ask why I voted that way. My answers to these questions have been good enough, I think, to keep them from trying to remove me for reasons of insanity. But I have not been fully satisfied.

The other members have not asked the toughest questions; they have not known the areas where I have felt my theory was incomplete. Now I know that my soul is not entirely covered with calluses, because there are times when I give, mostly to relatives or to close friends. And I know that I stand willing to help strangers in certain situations, even to risk my life. But between the extremes, where clearly I would give or clearly I would not give, there were instances of doubt. In case the other members ever questioned me in this range of doubt I wanted

to be able to answer.

Also, I find another motivation to sketch a libertarian view of charity in the work plan of the Free Nation Foundation. We work to approach our goal, the replacement of institutions of government with institutions of voluntary interaction, by developing clear and believable descriptions of those voluntary institutions. And while charity is not a burning issue among us, still I believe it worthwhile for us to develop descriptions of how we believe voluntary charity could work.

### The Formula: Three Conditions

What I have formulated here is my own personal view of charity. I have always had an instinct about giving: sometimes it is right, other times it is wrong. But I have never until now tried to describe that instinct. Since this is the result of introspection, and not of research, I cannot claim that it speaks for anyone else. But I hope that others might find it familiar and plausible. And I believe that many should be able to use the framework I suggest here by simply plugging in their own values.

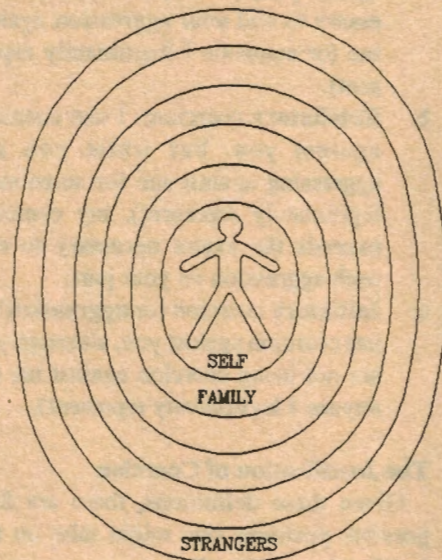
I have surmised that my instinct about charity requires three conditions. I call these: circumstance, motivation, and relationship. I give to an applicant who passes each of these three.

1. **The circumstance** of the applicant:  
When the applicant has a need which I consider real, with which I empathize, such that if I were in a similar circumstance I too might apply for aid.
2. **The motivation** of the applicant:  
When I am convinced the applicant and I share similar values in relation to the aid being considered. Thus I can be assured that the applicant will employ my aid in a way I find appropriate, to move toward a goal which I value. (For a further development of this theme, see the column "Social Programs: Whose Values Do They Serve?" elsewhere in this issue.)
3. **The relationship** of the applicant to me:  
When the applicant has approached and exhausted all donors closer to the applicant than myself. When I think about what I would do if I were in need I realize that I think in terms of circles of support: I would approach prospective donors in a certain sequence, starting first with the inner-

most circle, myself.

The order of the outer circles depends upon the particular situation, but normally I would expect the circles to be arranged something like this: self, immediate family, close friends, church community, extended family, co-workers, friends, voluntary charities, neighbors, strangers in my community, strangers farther away.

An application to me might pass even if the applicant has a closer source of support. It may be that the closer source has different values, and thus faulted the applicant's circumstance or motivation. But I might give if I determine that I am the closest source which could be expected to empathize.



(Graphic: Eric McDonald)

### Examples to Illustrate Use of the Three Conditions

To clarify what I mean by these conditions, I will now give a few examples telling how I would respond to a few imaginary applications.

*Example 1: While I am walking on a street in a city, a disheveled stranger who smells of alcohol approaches me and asks for a dollar for a hamburger.*

This applicant fails on all three conditions. First, I do not empathize with this person's circumstance. If I were hungry and on the street I would look for work, or perhaps offer to exchange work for food.

(continued on page 9)



## Circles of Support (from p. 8)

Second, I do not trust the motivation of the applicant. I lack confidence that my dollar will help buy food, rather than wine. And even if my dollar did help give this person food energy to carry on for another day, he may spend that energy on panhandling, rather than on looking for work or getting a shave and a bath.

And third, perhaps the worst part of this application is the relationship between the applicant and myself. If somehow I found myself in this person's condition I would not approach a stranger for aid until I had gone through all the closer circles of support. And while I do not know this person, and whether he has or could have all the circles of support such as those that I feel I have, I have reason to believe he has not exhausted all the closer circles because I know there are soup kitchens, and private charities and government "charities," which I would approach before approaching a stranger.

*Example 2: Hearing calls for help I see a person drowning in a lake. Even though there is some risk to me, it looks to me as though I probably can get the person out if I dive in. No other means of rescue are on hand.*

This application passes all three conditions. In that circumstance I would seek help. Obviously the person is motivated to live, and I empathize. In relationship to me this person is a stranger, but obviously no closer circles of support are on hand. Every time I jump.

*Example 3: In the mail I receive a solicitation from an official-sounding organization, but I have never heard of it before. They are asking for money to help feed starving people in Somalia.*

This application is more complicated because it comes through an intermediary. As far as I know, starving Somalis would pass my first two conditions, and possibly my third condition. But I know nothing about this intermediary. It could be a complete fraud. If I were in an organization approaching strangers on behalf of starving people, I would try hard to establish my credibility in the eyes of those whom I approached; for starters I would tell where I got their names and addresses, by whom they were referred. It fails.

*Example 4: A neighbor whom I trust, who served in the Peace Corps in Somalia, has received a communication from a family in*

*Somalia that she knew and trusted. They are starving. But a \$500 dollar bribe would get them across a border where they could find sustenance. My neighbor has no immediate family, no one closer than me who might help in this circumstance, and since she is living on the fare of a graduate student she has only a few dollars herself. No private charity that I know of helps with this sort of thing. No government helps with this sort of thing.*

I empathize with both the family and the intermediary. This evidently is not a ploy; if this family is to get to food and safety, it is up to me. I get my checkbook.

*Example 5: A member of my extended family asks for money to help finance a trip to a third-world country so that he can help the people in that country start using computers to manage their agriculture.*

This application passes on relationship, but fails on the other two conditions. I know the applicant a little bit, and I know a little about computers and managing processes, and I think it unlikely that this person, attempting the plan described, can achieve something that I would believe worthwhile.

### **But This Formula Is Hard-Hearted, Is It Not?**

I expect that some readers may think this sounds hard-hearted, relying on these three rigid conditions. Here I will offer a few defenses.

Consider the opposite. Suppose these conditions did not apply. What would that mean? If the condition of circumstance did not apply, I might wind up giving aid to people better off than myself, or to an applicant who drives a luxury automobile and is trying to raise \$50 to buy textbooks. If the condition of motivation did not apply, I might be giving money which gets spent on harmful drugs or lottery tickets. If the condition of relationship did not apply, I would be unable to screen applicants based upon what I knew about them as persons, and unable to monitor, after the fact, how my aid was applied.

Another objection to this formula might be presented as the question, "Do you mean you would let someone starve?" I have an answer in two parts. First, I stand willing to help anyone who, in my judgment, is doing all that they can for themselves; no one would starve unless, in my judgment, it was a consequence of their own folly.

Second, since my paper tiger (the person

asking the question) must evidently have lofty intentions, I would give the plea back to that person for his or her more compassionate consideration: I would admit that my system would let some fall through the cracks (those capable of helping themselves), and ask, "Do you mean that you, if you lived in a free society and thus could spend only your own money, would let these people starve?"

Under the formula I have outlined, most giving would take place between people who knew each other, within families or between friends. And while ongoing support would be provided for people who were permanently disabled, most supports would cover only emergencies and short-term needs. This system assumes that recipients are working toward self-sufficiency, and that they will succeed within a reasonable timeframe. If self-sufficiency does not develop within reasonable time, then the donor could be expected to reexamine the giving, to see if it still satisfies the second condition, motivation.

### **Inherent Uncertainty, the Central Problem in Giving**

Sometimes, when we give, it seems clear that we are helping the recipient. But at other times it is not clear. A model I think of is that of a parent bird which nurtures its young fledgling in the nest up to a certain point, but eventually pushes it out of the nest. In that moment the fledgling must find its wings or plummet to the ground. I expect the parent bird is almost always right: the fledgling discovers that it can fly, and is better off for having been denied another day in the nest. But I expect there are times when the parent errs, when another day might have afforded the fledgling maturity to fly.

It seems likely to me that any design of a system for giving will face this sort of uncertainty. There will always be some applications which test the boundary. And this uncertainty is made worse by the fact that the applicants have intelligence. If we were sorting stones we might come up with a definition which we could publish and maintain for a long time. But we are sorting people who probably experience an incentive to be classified one way or the other. When they learn the rules, likely they will see what they can do to fit into a category

(continued on page 10)

## Circles of Support (from p. 9)

they prefer.

I make this point to counter the objection that some deserving applicants will fall through the cracks. Every design, including government-run systems, will unavoidably let some deserving applicants fall through the cracks. There is no foolproof way for humans to judge the motives and abilities of other humans.

### The Role of Charities, Organizations for Voluntary Giving

I must recognize a limitation in the system I have described so far. There might be people whose need would satisfy all three of my conditions, but about whom I would never learn, because of their distance from me. This, as I see it, shows a need for organizations serving as intermediaries.

In a free society I expect numerous organizations would form, each serving a particular niche, to match the needs of recipients with the values of donors. I would give to an organization which screened applicants on the basis of my three conditions. But I would not want the existence of a charitable organization to weaken the basic social structure of circles of support. I would still expect applicants to try first to obtain support from their closer circles, and I would give only to an organization which did screen on this basis.

In this whole picture of charity, if I have a lingering doubt about whether I have succeeded in describing a system which would satisfy my sense of moral obligation, it relates to the question: How much of an obligation do I have to try to find strangers who would satisfy my three conditions? As I live I do not learn of them or invest much energy in trying to find them. And I do not feel guilty about this. But I am open to the argument that a more saintly person than I might try harder to connect with them.

### The Impact of Government-Run Redistribution

You may have noticed, when I listed circles of support, that I did not include systems of government-run redistribution, such as those overseen by the Orange County Board of Social Services. This is because I doubt that the system I describe can coexist with systems of government-run redistribution.

When a government program makes distributions available, people start to see those distributions as entitlements, and this seems

to destroy the whole idea of circles of support. I have two examples from my own experience.

Example A: An adult member of my family, being handicapped, relied on support from others most of his life. One time, when he asked me for money to upgrade his living quarters, I did not have it to give, but I did live in a house with empty rooms. Instead of money I offered a room in my house. However, he declined my offer because he had other resources including, notably, regular payments from a government redistribution program. He was, after all, only hoping to use my aid to get a better apartment than the one which he could afford with the government aid alone.

Here the government system undermined the circles of support which make private charity work. If a family member of mine gets into trouble, I think it is appropriate for me to try to support that member in a safety net which I erect. But in this case it turned out that government had erected a safety net higher than mine, which caught my family member before he could fall into my net. Thus, I think, the government-run system erodes the expectation that families should hang together and support one another.

Example B: Last year, when it came time for me to get a tetanus booster shot, I was dreading the thought of fighting my way through the "private" health care system. (The "private" system may retain some of the form of a free market system, but that form is so overgrown with regulation that one almost has to employ imagination to perceive it.) Just to get a simple shot, which I guess might cost \$5 in a deregulated system, I thought I would probably have to pay for, and wait through, \$50 worth of paperwork and other baloney.

Then it occurred to me to check out the local government-run Health Department. I got my shot, free and surprisingly easy. Now I know that sometimes a libertarian on a moral streak will decline to accept a value which has been taken forcibly from others. At times I decline. And I feel proud when I do. But this time I admit I just took it.

And that is the point I want to exemplify. When the government runs a system of redistribution and offers a value for free to the recipient, it creates a new innermost circle of support. Normally I would pay for my own shot. But when government offers a handout many will take it even in preference to relying on themselves.

I mentioned in the previous section that I

am unsure how hard I should try to find strangers in need. My reluctance to help strangers stands, in part, upon my knowledge that governments run dozens of handout programs. To most strangers in need I think I could justifiably say, "I gave at the office," meaning I paid taxes, and "I expect the government runs at least one program which you could fit into if you tried." I feel that I might be a sucker if I give to this stranger — and thus give twice. The existence of government-run programs makes me mistrust the prospect of giving out of my own pocket to strangers in need.

### Sociology: The Search for a Moral Application

I would like to wrap up this article with an affirmative note, with a positive observation in applied sociology. I have noticed that interesting things happen in groups when they vote with their voices, saying "aye" or "nay."

In small groups, it seems to me, people tend to vote together, unanimously. Perhaps the closeness of the people to each other, facing one another, pretending to understand one another, creates an atmosphere in which all want to believe that together they hold the right opinion. When it comes to a vote in these small groups the Chair often expects no dissent, and charges ahead without pausing after asking for votes of "nay." But if one dissenter votes "nay" this tears at the comfort in the group, and people feel uneasy in their seats. In contrast, I have noticed that in larger groups, such as a legislature, they get used to hearing dissent, and the fun of ruling is not ruined.

In one particular small group, the local Board of Social Services, the discomfort that can follow that single "nay" still persists, even though we have had a year and a half to get used to the pattern. So I would like to tell what pleasure it brings me when I am able to vote with the majority. I look forward to those votes when we all feel comfy and together, such as when we approve the minutes of the previous meeting. But my favorite time to sing my "aye" in unison with the other four voices comes in the ritual at the end of each meeting, when we vote on the motion — to adjourn. Δ

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## Social Programs (from p. 4)

goods and services directly into the lives of the recipients who are not motivated to receive them; waste when the goods and services go unused or unappreciated by the recipients.

Where motivation has caused the "lack," my socialist friends will say that this shows a failure of education — that our poor companions have not been educated to know that they should want for themselves what we, educated middle-class folk, want for ourselves. I share many values with my friends: education, safety, housing, nutrition, health. But this is where we differ: I am comfortable with the evidence that others live by values different from my own. I do not assume that the world would be a better place if everyone were educated to live by my values.

In spite of all this, those of us who want to influence our poor companions should not despair. Influence abounds; humans imitate one another if they respect what they see. If we, educated middle-class folk, enjoy the fruits of a truly better set of values, then we can trust that before long our poor companions will want the same. We can lead by letting them see in us what we believe best. But I believe, in the end, we should trust their own self-determination.

During this season of giving many of us will again face firsthand how often we blunder when we try to give something that a recipient will value and use to advantage. I suggest we take this opportunity to reflect upon all the other giving that we do, at secondhand all through the year, through government. And as we reflect on how best we can give from the heart to firsthand recipients, let us consider how best we can give from the heart to secondhand recipients. Δ

## Bishop's Storehouse (from p. 6)

Storehouse is formally called the Lord's Storehouse, most people refer to it as the Bishop's Storehouse. He is charged with: seeking out the poor and needy; studying their circumstances; making judgments on the assistance needed; assisting them only with necessities; giving the needy the opportunity to work; keeping needs and assistance confidential; administering the Storehouse; directing other ward welfare resources; using services of LDS welfare operations; helping needy members obtain

health care; assisting transients; and coordinating the use of non-LDS services by LDS members.

Most other institutions in the LDS Church have responsibilities in the areas of welfare and self-reliance.

## Conclusions

If you visit Salt Lake City, try to see the Bishop's Storehouse. You'll find the tour interesting and they are not pushy about proselytizing for the LDS Church.

While, in a secular structure, we would not want to or be able to exert as much social control as the LDS is able to exert over its members and the needy it helps, the Bishop's Storehouse and the Welfare Plan do offer a useful model for a welfare institution that does not use force and yet is able to alleviate suffering and even get people off welfare. Δ

## Annotated Bibliography

The following were used in the preparation of this article:

*Providing in the Lord's Way: A Leader's Guide to Welfare.* Published by the Church of Jesus Christ of Latter-Day Saints; publication 32296; last revision 10/90.

Primary resource for this report; gives instructions in the Welfare Plan for all levels of the Church from individual members on up.

The following were referenced in *Providing in the Lord's Way*:

The Old Testament: Genesis, Isaiah.

The New Testament: Matthew, Mark, Luke, John, 1 Corinthians, 1 Timothy.

The Book of Mormon (LDS additions to the Bible): Mosiah, Nephi.

Doctrine and Covenant (the "contract" between God and LDS members).

*Bobby Yates Emory has worked a career as a programmer and systems analyst at IBM. A longtime libertarian activist, he has run for offices from County Commissioner to U.S. Senator, and held political party offices from Precinct Chairman to Regional Representative to the National Committee.*

## Tax-Exemption Application Mailed

In mid-November we completed and mailed the IRS application for 501(c)(3) tax-exempt status. A few weeks later the IRS acknowledged receipt, with a form letter which said they would probably communicate again within 100 days. The application form was formidable, but we are cautiously optimistic that we have correctly satisfied its requirements. Δ

## Recent Grad Volunteers Help With Paperwork

Wendy Johnson, of Durham NC, volunteered to help with the work of the Free Nation Foundation when she learned about our organization last September. She prepared the packets of material for our forum on October 2. And then she combed through the material which relates to the IRS application for non-profit status, and collaborated in the effort to draft our application.

Ms. Johnson manages the office of the Conservative Society of North Carolina. Last year she completed her bachelor's degree in political science at UNC Greensboro, and next year plans to start law school. While she has not previously participated in organizations which identify themselves as libertarian, she has expressed a desire to advance the cause of limited government. Δ

## Writers Wanted

We are seeking submissions for the Spring issue of *Formulations*. Since we will be thinking about systems of law for our Forum on April 30, we will especially welcome contributions on that subject. But we do not intend to limit any issue to a particular theme. We will always welcome good material on any subject within our plan: formulation of institutions in a free society.

This year the Spring issue will be published on April 1, 1994, so submissions for that issue must be received by **March 15**. Future issues, however, will be prepared according to the following schedule:

Spring issue: March 1.

Deadline for submissions: February 15.

Summer issue: June 1.

Deadline for submissions: May 15.

Autumn issue: September 1.

Deadline for submissions: August 15.

Winter issue: December 1.

Deadline for submissions: November 15. Δ

## Toward A Free Nation, \$2.00

This booklet, 8 pages long, explains the context of the work undertaken by the Free Nation Foundation. It was written by Richard Hammer, and used as a prospectus while seeking collaborators in the Foundation. Additional copies, beyond the first in an order, may be purchased for \$1.00 each.

Send to: Free Nation Foundation, [outdated], Hillsborough NC 27278

## Punishment (from p. 7)

bounds of the coercer's sphere of authority; but defensive coercion does not exceed those bounds, and so is legitimate.

(In the case of third-party intervention, defensive coercion is justified to the extent that the intervener is acting as the victim's agent. [Presumably, this involves acting with the victim's actual authorization, when the victim is able to give or withhold consent, or else acting as the victim *would* authorize (so far as can be determined), when the victim is for one reason or another unable to give or withhold consent — perhaps because of unconsciousness, infancy, mental illness, or simply pressure of time.] For example, suppose I attack you, and Martina, acting as your agent, intervenes to defend you. By invading your boundary, I have put myself under your authority. You may exercise this authority directly; but you are equally within your rights in exercising it vicariously, through your agent Martina.)

But the argument that justifies defensive coercion does not justify retaliatory coercion. If I use *more* coercion against you than is necessary to end your aggression against me, then in effect I am going beyond merely exercising my legitimate authority within my own sphere. If each person's freedom may be justly limited only by the equal freedom of others, what could justify me in limiting your freedom by *more* than is necessary to restore my own?

### What Counts as Defense?

I have argued that the principle most consistent with the spirit of libertarianism endorses defensive coercion, but prohibits not only initiatory but also retaliatory coercion. But how much latitude does this restriction allow us? What does this principle allow us to do to criminals, beyond fighting them off at the moment of the aggression?

First of all, remember that we defined coercion as the forcible subjection, actual or threatened, of the person or property of another without that other's consent. If I come running toward you brandishing a sword, you need not wait until I actually cut you before taking defensive measures. By manifesting a murderous intent toward you, I have already placed myself under your authority. Hence it is permissible to imprison or exile criminals, to the extent that they pose a continuing danger to the innocent.

Requiring the criminal to pay compensation to the victim can also be justified on defensive grounds. Consider the following three cases.

#### *Case 1: I break into your house.*

Here I am clearly trespassing on your property, and you have the right to use coercion to get me to leave, since your home falls within your sphere of authority.

#### *Case 2: I break into your house, and slip your radio into my knapsack.*

In this case, you may do more against me than simply kicking me out of your house, because I, by retaining an item of your property on my person, have failed to vacate your sphere of authority. Hence you may use coercion to get the radio back. I remain under your authority until you recover your property.

#### *Case 3: I break into your house, and smash your radio with a hammer.*

The fact that your radio no longer exists does not alter the fact that I remain under your authority until the radio (or its equivalent in value) is restored to you. Thus I may legitimately be coerced into compensating you for your loss.

Note that this justification of defensive coercion has nothing to do with the aggressor's responsibility for his or her actions. If I have been hypnotized into attacking you, you still have the right to fight me off. If a wind blew me onto your property against my will, you still have the right to remove me. And likewise, if I accidentally destroy your property, I still owe you compensation. What matters is that I have entered your sphere of authority and so may be coerced into leaving it; whether I got into your sphere voluntarily or involuntarily is irrelevant. Thus it seems to me that a libertarian conception of rights favors a strict-liability approach: that is, people are liable for the damage they cause, regardless of whether they caused that damage deliberately or accidentally.

### Revenge or Restitution?

Critics of the position I'm defending often ask the following question: "What if someone you loved were murdered? Would you be content with seeing that the murderer paid you back and was locked up, or would you want to see the murderer dead?" In my case, at least, the answer is: yes, I'd want to kill the murderer. And I might be justified in doing so if the government released the murderer while he still posed a danger to

others — for then my action might count as defensive rather than retaliatory (whatever my motivations might be). But suppose I know the government isn't going to release the murderer. Even then, the desire to take revenge by slaying the slayer is a perfectly natural and forgivable reaction. But should the vengeful emotions of victims and their loved ones replace rational analysis as the foundation of jurisprudence? Important questions of rights and justice should not be decided in the heat of anger.

I should point out, incidentally, that under a restitution-based system, victims who *did* take revenge would not be treated harshly. After all, retaliatory coercion is not permissible against them either. If you kill me because I killed your loved one, then you would be required to pay compensation to my next of kin (though as Randy Barnett, another critic of retaliatory coercion, has pointed out, you could discharge this obligation by handing back to my next of kin, as compensation for my death, the very same money I originally gave you as compensation for your loved one's death); but you would probably not be locked up, because you do not appear to pose a threat to others. Hence the danger of revenge by the next of kin would pose a serious deterrent to murder. As Louis XV of France said to one of his courtiers who had committed a murder: "I grant you pardon — but I also pardon whoever will kill you." (In the case of murder victims without a next of kin, the right to compensation might be granted to whoever "homesteaded" it by pursuing the matter in court.)

Might such a system encourage a cycle of revenge, with each side in a dispute claiming a life in return for the life taken previously by the other side, as the two sides pass the same compensation money back and forth? Such does not seem to be the lesson of history. In the stateless societies of pre-Christian Northern Europe, the bloodfeud was originally a pervasive feature of social life; but this began to change with the institution of a restitutive system. *Wergeld* (man-gold; that is, monetary compensation for a human life taken) gave feuding parties a powerful financial incentive to accept compensation and end the cycle of revenge, rather than taking another life. If such economic motives could tame the bloodfeud in a society that glorified revenge as a matter

(continued on page 13)

## Punishment (from p. 12)

of honor, a restitutive system should be even more successful in a society like ours, which at least pays lip service to the condemnation of revenge.

### The Limits of Defense

Are there limits to what one may do to an aggressor in order to enforce one's rights? For example, if you swallow something belonging to me, does that give me the right to cut you open in order to retrieve my property?

As I have written elsewhere: "The dilemma here is analogous to that in Shakespeare's *The Merchant of Venice*. Antonio owes Shylock a pound of his flesh, but he does not owe Shylock any blood; yet of course Shylock cannot claim his pound of Antonio's flesh without taking some of Antonio's blood as well. Portia reasons that since Antonio does not owe Shylock any blood, Shylock has no right to take Antonio's blood, and so has no right to take the pound of flesh either (since, although he has a right to the pound of flesh, he cannot exercise that right without doing something he has no right to do — namely, take Antonio's blood). Shylock, on the other hand, reasons that since Antonio does owe Shylock the flesh, Shylock has the right to take it, and so has the right to take the blood too (since that follows from something Shylock has a right to)." (Roderick T. Long, "Abortion, Abandonment, and Positive Rights: The Limits of Compulsory Altruism," *Social Philosophy & Policy*, vol. 10, no. 1 (1993), p. 174.)

By analogy, we can distinguish two possible principles to govern defensive coercion:

*Shylock's Principle: If I aggress against you, you have the right to coerce me in whatever way is necessary to remove me from your sphere of authority.*

*Portia's Principle: You have no right to coerce me, even if doing so is necessary to remove me from your sphere of authority.*

Portia's Principle is simply pacifism again, and I've already argued that pacifism is at odds with the spirit of libertarianism; so we can reject Portia's Principle. But what about Shylock's Principle? Although strictly speaking it licenses only defensive coercion, not retaliatory coercion, Shylock's principle nevertheless strikes me as defective in much the same way as retaliatory coercion. If Shylock's Principle is correct,

then I would be justified in shooting a toddler if that were the only way to prevent the toddler from treading on my toe. But such a response would surely be disproportionate to the seriousness of the aggression.

To my mind, then, the most libertarian approach to the legitimation of defensive coercion is the following one:

*Principle of Proportion: If I aggress against you, you have the right to coerce me in whatever way is necessary to remove me from your sphere of authority, so long as your coercion is not disproportionate to the seriousness of my aggression.*

Thus not even all defensive coercion is automatically justified. Coercion, to be legitimate, must pass three tests: first, it must be a response to aggression on the part of someone else; second, it must be necessary in order to end or prevent that aggression; and third, it must be proportionate to the seriousness of the aggression.

Let me guard against a possible misinterpretation of this principle. It might seem that if the defensive response must be proportionate to the threat, then we can never be justified in using greater force than our aggressor (e.g., killing someone to prevent them from inflicting serious but not fatal harm on us). I think that would be a mistaken inference. *An aggressive killing is worse than a defensive killing.* Hence aggression need not be fatal in order for deadly force to be a proportionate defensive response to it.

### Crime Without Punishment

I've argued, in effect, that we may legitimately impose fines or prison sentences on criminals. So haven't I justified punishment? I don't think so. The point of punishment is to impose some sort of suffering on the criminal — either for retributive reasons (the criminal deserves to suffer) or for reasons of deterrence (other criminals will be discouraged when they see how we make criminals suffer). On the defensive model, while fines and incarceration may in fact cause suffering to the criminal, that is not their aim; rather, the aim is to restore the victim's rights. After all, we do not think that those who violate others' rights *accidentally* should be made to suffer; but the only difference between a willing aggressor and an accidental aggressor lies in the contents of their thoughts — a matter over which the law has no legitimate jurisdiction. Hence, I conclude, we may not legitimately

treat willing criminals any differently from accidental criminals (except to the extent that they differ in likelihood of posing a continuing threat). Mandatory restitution to the victim is justified on libertarian grounds as an expression of defensive coercion; but punishment, I believe, constitutes not defensive but retaliatory coercion, and so is not permissible.

We welcome debate. Δ

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## Scrooge (from p. 3)

selves be cast in the role of stingy Scrooges, and to concede that being a libertarian involves some sort of deemphasis on or devaluing of compassion. This is a mistake, and it hurts us not only in our attempts to gain converts to libertarianism, but also in our attempts, even among ourselves, to visualize and formulate the institutions of a free society.

### Let Whom Eat Cake?

The idea that libertarianism and compassion conflict is wrong for three reasons. First, it presupposes that libertarians are invariably to be found among the affluent, rather than among the potential objects of compassion. The libertarian is always portrayed as saying "I should not be forced to help you," rather than "you should not be forced to help me." Yet of course libertarians say *both* these things. To suppose that the rejection of welfare rights evinces a lack of compassion toward the less fortunate is to suppose that libertarians are always well-off and looking for an excuse to avoid giving charity or paying taxes; but in fact libertarians are to be found at every economic stratum. I have known libertarians who were multi-millionaires; I have also known libertarians who weren't sure where their next meal was coming from. Many libertarians are willing to undergo serious hardships rather than seek to gain benefits through what they view as coercion; what is and is not required in this area is a matter of frequent discussion and debate among libertarians. The Marxist view of libertarianism

(continued on page 14)

as a rationalization of the economic interests of the capitalist class does not reflect reality. The "capitalist ruling class" are more likely to be lobbying Washington for special favors, protectionist legislation, and grants of monopoly privilege while their libertarian neighbors struggle to make ends meet.

### Generosity vs. Justice?

But second, suppose it *were* true that libertarians are all rich. Would it follow that the libertarian rejection of welfare rights is at odds with the values of compassion and generosity? No. To begin with, libertarianism is not a comprehensive moral theory; it is simply a theory of *justice* — a theory about what *rights* people have. Generosity is the virtue that guides us in giving what we have a right to withhold; justice is the virtue that guides us in giving what we do *not* have a right to withhold. Hence libertarianism as such has nothing to say one way or the other about generosity or what it requires of us. To blame libertarianism for not dealing with generosity is like blaming physics for not talking about mammals. Physicists have nothing against mammals; by and large, they *are* mammals. But physics is not a theory about mammals.

A libertarian may say with perfect consistency that generosity requires the rich to give to the poor — while saying at the same time that justice requires the poor, or their advocates, to refrain from taking the property of the rich unless the rich consent. Hence libertarians need not be stingy or ungenerous. (If the poor really did have a right to the surplus property of the rich, then libertarianism, in denying this, would be *unjust* — but still not ungenerous.)

Or is the complaint that libertarians are stingy in handing out *rights* — that if they were truly generous, they would "give" welfare rights to the poor? But this seems to assume that rights are matters of social convention. If that were true, then any social convention, even Nazism, would automatically be just if enough people accepted it. That seems absurd. Hence rights must be matters of fact to be discovered through moral reasoning, not something to be "given" in greater or lesser quantities depending on whether the giver is generous or stingy.

It is true that libertarians refuse to be "generous" with *other* people's money; but

whatever may be said for or against the willingness to sacrifice other people's property rather than one's own, "generosity" seems like a singularly bad term for it.

### The State vs. the Poor

But third, suppose it *were* correct to think of rights as objects of distribution, to be handed out on the basis of generosity and compassion. Would libertarianism then stand condemned as stingy? Again, no. The most generous, compassionate system of rights would presumably be one that most improved the lot of the poor and unfortunate. Critics of libertarianism — and, all too often, libertarians themselves — suppose that welfare rights are in the interest of the poor, and that libertarianism requires the poor to sacrifice that interest in the name of property rights.

But *are* welfare rights in the interest of the poor? The poor need *welfare*, all right; but do they need *welfare rights*? A hungry person needs something to *eat*; and you can't eat a right to food. On grounds of generosity and compassion, therefore, a system that guarantees a *right* to food, but isn't too successful at supplying actual *food*, is surely less desirable than a system that reliably supplies *food* but recognizes no *right* to food. Only a belief in the omnipotence of coercive solutions and the impotence of voluntary solutions could justify the assumption that welfare rights are necessary and sufficient for actual welfare.

In reality, the situation is exactly the reverse; it is the coercive system of enforced generosity that keeps the poor poor — while the libertarian system of voluntary cooperation, without any welfare rights, is a welfare system more efficient and beneficent than any socialist's dream.

The principal cause of poverty is government regulations that legally prevent the poor from bettering their condition. Minimum wage laws increase the cost to businesses of hiring unskilled workers, and so decrease the supply of such jobs, causing unemployment. Rent control laws increase the cost to landlords of providing housing, and so decrease the supply of such housing, causing homelessness. Licensure laws, zoning restrictions, and other regulations make it nearly impossible for the poor to start their own businesses. Two examples: urban black teenagers have been prosecuted for braiding hair without benefit of expensive beauticians' degrees; and in many cit-

ies, a taxi license costs as much as \$100,000. Such low-capital enterprises as hair-braiding and taxi service are a natural avenue for people of little means to start earning money and achieving independence; but the coercive power of the state prevents it. (For an example of how medical licensure laws have deprived the poor of low-cost health care, see "How Government Solved the Health Care Crisis" elsewhere in this issue.)

All these laws conspire, whether intentionally or otherwise, to entrench the better-off in their current positions by holding the poor down in their poverty and preventing them from being able to compete. (Similar principles apply higher up the economic ladder, as tax laws and economic regulations entrench the power of big corporations by insulating them from competition by smaller businesses — incidentally helping to ossify these corporations into sluggish, hierarchical, inefficient monoliths.)

The Marxists were right in thinking that present-day society is characterized by power relations that systematically impoverish the lower classes while increasing the power of the wealthy. Their mistake, however, was to identify *capitalism* as the culprit. Adam Smith, a more observant social critic than Marx, recognized that capitalists may well be the chief *enemies* of capitalism. The rich

(continued on p. 15)

## Libertarians:

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often prefer to buy special government privileges rather than face the discipline of free-market competition. (The recent debate over farm policy has largely ignored the fact that most agricultural subsidies go to giant agribusiness conglomerates rather than to family farms.)

Indeed, government *magnifies* the power of the rich. Suppose I'm an evil billionaire, and I want to achieve some goal X that costs one million dollars. Under a free-market system, I have to cough up one million of my own dollars in order to achieve this goal. But when there's a powerful government in charge, I can (directly or indirectly) bribe some politicians with a few *thousands* in order to achieve my million-dollar goal X. Since the politicians are paying for X with tax money rather than out of their own pocket, they lose nothing by this deal.

Government regulation — in its *effects*, regardless of its intentions — is Robin Hood in reverse: it robs from the poor and gives to the rich. One of the worst instances of this is inflation, caused by government manipulation of the currency. An increase in the money supply results in an increase in prices and wages — but not immediately. There's some lag time as the effects of the expansion radiate outward through the economy. The rich — *i.e.*, banks, and those to whom banks lend — get the new money *first*, before prices have risen. They systematically benefit, because they get to spend their new money before prices have risen to reflect the expansion. The poor systematically lose out, since they get the new money *last*, and so have to face higher prices *before* they have higher salaries. Moreover, the asymmetrical effects of monetary expansion create artificial booms and busts, as different sectors of the economy are *temporarily* stimulated by early receipt of the new money, encouraging overinvestment that goes bust when the boom proves illusory. The unemployment caused by this misdirection hurts the poor most of all.

"Somaybe in a libertarian society, it would be easier for poor people to rise up out of poverty; but what helps them *while* they're doing that, if welfare programs are eliminated?" The answer is that welfare programs are not eliminated; they are *privatized*. In formulating descriptions of the critical institutions of a free society, we must always remember (for the statisticians will surely

forget) that not all of these institutions must be codified in law.

Private charity is simply more efficient than government welfare, because inefficient charities get bad publicity and lose donations to competing charities, while inefficient government programs collect their income by force, are not subject to the discipline of the market, and so waste most of their revenue on overhead.

Not only would a higher *percentage* of the amount given for welfare purposes actually reach the poor in a libertarian welfare system, but the *original amount itself* would probably be higher too. Why? Because those who give to charity would have *more* money to give, as a result of a freer and consequently more prosperous economy, higher employment, and no taxation. (Since government monopolies with access to tax revenues have no incentive to cut costs — remember the Pentagon paying \$1000 for a screwdriver? — what the government pays for in taxes costs far, far more than it would if private individuals and organizations, spending their own money, were to pay for the same things themselves.)

So people would have more money to give to the poor, and more of the amount they gave would actually reach the poor. In addition, there would be fewer poor people needing the money in the first place, for reasons I've already mentioned. Thus, in the absence of government regulation and redistribution, proportionally larger slices of an absolutely larger pie would be going to absolutely fewer poor people. A free society would see the virtual elimination of poverty.

### "Are There No Prisons?"

Let us consider again our friend Scrooge, taking a second look at the passage I quoted earlier. Scrooge has no use for private, voluntary forms of charity. His solutions to the problem of poverty are all *governmental* solutions: prisons, with their forced labor (the treadmill), and government welfare (the Poor Law), with its Union workhouses. His visitor's plea that these solutions are inefficient at best and maleficent at worst falls on deaf ears; Scrooge regards governmental solutions as sufficient, and dismisses private charity as a waste of time.

And *this* fellow is supposed to be the archetype of *libertarianism*? Hardly. But Scrooge's attitude toward the poor does indeed exemplify an ideology. It's called statism. And we've had enough of it. Δ

cessful; the unintended consequence was that the minimum rates laws made the services of fraternal societies no longer competitive. Thus the National Fraternal Congress' lobbying efforts, rather than creating a formidable mutual-aid cartel, simply destroyed the fraternal societies' market niche — and with it the opportunity for low-cost health care for the working poor.

Why do we have a crisis in health care costs today? *Because government "solved" the last one.* Δ

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## How Government Solved the Health Care Crisis Medical Insurance that Worked — Until Government "Fixed" It by Roderick T. Long

Today, we are constantly being told, the United States faces a health care crisis. Medical costs are too high, and health insurance is out of reach of the poor. The cause of this crisis is never made very clear, but the cure is obvious to nearly everybody: government must step in to solve the problem.

Eighty years ago, Americans were also told that their nation was facing a health care crisis. Then, however, the complaint was that medical costs were too *low*, and that health insurance was too *accessible*. But in that era, too, government stepped forward to solve the problem. And boy, did it solve it!

In the late 19th and early 20th centuries, one of the primary sources of health care and health insurance for the working poor in Britain, Australia, and the United States was the fraternal society. Fraternal societies (called "friendly societies" in Britain and Australia) were voluntary mutual-aid associations. Their descendants survive among us today in the form of the Shriners, Elks, Masons, and similar organizations, but these no longer play the central role in American life they formerly did. As recently as 1920, over one-quarter of all adult Americans were members of fraternal societies. (The figure was still higher in Britain and Australia.) Fraternal societies were particularly popular among blacks and immigrants. (Indeed, Teddy Roosevelt's famous attack on "hyphenated Americans" was motivated in part by hostility to the immigrants' fraternal societies; he and other Progressives sought to "Americanize" immigrants by making them dependent for support on the democratic state, rather than on their own independent ethnic communities.)

The principle behind the fraternal societies was simple. A group of working-class people would form an association (or join a local branch, or "lodge," of an existing association) and pay monthly fees into the association's treasury; individual members would then be able to draw on the pooled resources in time of need. The fraternal societies thus operated as a form of self-help insurance company.

Turn-of-the-century America offered a dizzying array of fraternal societies to choose

from. Some catered to a particular ethnic or religious group; others did not. Many offered entertainment and social life to their members, or engaged in community service. Some "fraternal" societies were run entirely by and for women. The kinds of services from which members could choose often varied as well, though the most commonly offered were life insurance, disability insurance, and "lodge practice."

"Lodge practice" refers to an arrangement, reminiscent of today's HMOs, whereby a particular society or lodge would contract with a doctor to provide medical care to its members. The doctor received a regular salary on a retainer basis, rather than charging per item; members would pay a yearly fee and then call on the doctor's services as needed. If medical services were found unsatisfactory, the doctor would be penalized, and the contract might not be renewed. Lodge members reportedly enjoyed the degree of customer control this system afforded them. And the tendency to overuse the physician's services was kept in check by the fraternal society's own "self-policing"; lodge members who wanted to avoid future increases in premiums were motivated to make sure that their fellow members were not abusing the system.

Most remarkable was the low cost at which these medical services were provided. At the turn of the century, the average cost of "lodge practice" to an individual member was between *one and two dollars a year*. A day's wage would pay for a year's worth of medical care. By contrast, the average cost of medical service on the regular market was between one and two dollars *per visit*. Yet licensed physicians, particularly those who did not come from "big name" medical schools, competed vigorously for lodge contracts, perhaps because of the security they offered; and this competition continued to keep costs low.

The response of the medical establishment, both in America and in Britain, was one of outrage; the institution of lodge practice was denounced in harsh language and apocalyptic tones. Such low fees, many doctors charged, were bankrupting the medical profession. Moreover, many saw it as a blow to the dignity of the profession that trained physicians should be eagerly bidding for the chance to serve as the hirelings of lower-class tradesmen. It was particularly detestable that such uneducated and socially inferior people should be permitted

to set fees for the physicians' services, or to sit in judgment on professionals to determine whether their services had been satisfactory. The government, they demanded, must do something.

And so it did. In Britain, the state put an end to the "evil" of lodge practice by bringing health care under political control. Physicians' fees would now be determined by panels of trained professionals (*i.e.*, the physicians themselves) rather than by ignorant patients. State-financed medical care edged out lodge practice; those who were being forced to pay taxes for "free" health care whether they wanted it or not had little incentive to pay extra for health care through the fraternal societies, rather than using the government care they had already paid for.

In America, it took longer for the nation's health care system to be socialized, so the medical establishment had to achieve its ends more indirectly; but the essential result was the same. Medical societies like the AMA imposed sanctions on doctors who dared to sign lodge practice contracts. This might have been less effective if such medical societies had not had access to government power; but in fact, thanks to governmental grants of privilege, they controlled the medical licensure procedure, thus ensuring that those in their disfavor would be denied the right to practice medicine.

Such licensure laws also offered the medical establishment a less overt way of combating lodge practice. It was during this period that the AMA made the requirements for medical licensure far more strict than they had previously been. Their reason, they claimed, was to raise the quality of medical care. But the result was that the number of physicians fell, competition dwindled, and medical fees rose; the vast pool of physicians bidding for lodge practice contracts had been abolished. As with any market good, artificial restrictions on supply created higher prices — a particular hardship for the working-class members of fraternal societies.

The final death blow to lodge practice was struck by the fraternal societies themselves. The National Fraternal Congress — attempting, like the AMA, to reap the benefits of cartelization — lobbied for laws decreeing a legal minimum on the rates fraternal societies could charge. Unfortunately for the lobbyists, the lobbying effort was suc-

(continued on page 15)