

formulations

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A Publication of the Free Nation Foundation

Vol. II, No. 1

The Plan of the Free Nation Foundation

Note from the author: In this publication, and in this Foundation, we pursue a goal which seems clear to us. But our dialogues with our readers often remind us that many do not grasp how the goal of FNF differs from other libertarian activism. In my booklet "Toward a Free Nation," first printed in January 1993, I describe the goal of FNF and contrast this goal with other libertarian activism. While we have published bits of this information in articles in Formulations, still some aspects of our goal have not been explained.

Therefore with this issue of Formulations, which marks the beginning of our second year of publication, we think it appropriate to reprint the whole of the original plan.

Toward A Free Nation

by Richard O. Hammer
first printed January 1993

A free nation?

A thought recurs — as government encroaches more on me and as I meet with others who suffer under the encroachment of government — I think again:

We who want liberty should build our own nation.

This idea will stun some, and make others laugh. But it seems possible to me.

We have the resources. On this planet there are enough people who want liberty to populate a nation. And there is enough capital — held by investors who want the benefits of free markets, but who need to be assured of the security of their investment.

This booklet says more about pursuing the goal of a free nation, and comments upon the movement I hope will unfold.

How?

Nations come and go. World events show this. How could a libertarian nation be

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Forum on Security to be held in October

The Free Nation Foundation will hold its next Forum on Saturday, 15 October 1994, at Days Inn near the Raleigh-Durham Airport, NC (Interstate 40, exit 284). The forum will run from 10 AM to 5 PM.

We will discuss security, both national and domestic. Topics developed will include: insurance, defense agencies, and ostracism. Speakers are Scott McLaughlin, Richard Hammer, Bobby Emory, and Roderick Long.

To register for the Forum return the enclosed card. Registrants will receive a package of materials, lunch, and proceedings printed after the Forum. Registration fee: for members of FNF, \$20 until 7 October, \$28 thereafter; for nonmembers, \$25 until 7 October, \$35 thereafter. Student prices are available. For information call 919-732-8366. A

Tax Exempt Status Achieved

At the end of August we received a letter from the IRS saying "... we have determined you are exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3)."

Earlier this summer, in June, seven months after submitting the application, we finally received the first substantive communication from the IRS regarding our application. This was a letter asking 21 questions. Some of the questions seemed invasive. Throughout the letter the IRS tax law specialist mixed up big-L and small-l libertarians, and supposed all kinds of nonexistent links between the libertarian agenda of FNF and the Libertarian Party. Our reply strove to answer, giving unto Caesar what is Caesar's, without humbling ourselves unduly.

In early August, Richard Hammer phoned the IRS to inquire about the application. The specialist said that she had completed her review, recommended a favorable ruling, and passed

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Atlantis Project Ends

In our first issue we reported on a plan by the Atlantis Project to start a libertarian country, to be named Oceania, on a manmade floating island to be constructed in the Caribbean. Because this project appeared to share many of the goals of the Free Nation Foundation, we watched its progress with interest, and the Constitution of Oceania, drafted by Eric Klien and Mike Oliver, was one of the three model constitutions studied at our first FNF Forum in October 1993.

Over the summer we have heard, second-

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Foundation News Briefs

• Roderick Long, Editor of *Formulations* and Director of FNF, has spent this past summer once again serving as Director of Studies for the Hume Residential Fellowship Program at the Institute for Humane Studies (IHS) at George Mason University in Fairfax, Virginia.

Over the summer he also lectured: on individual rights at an IHS-sponsored Liberty and Society Seminar at Bryn Mawr College in Pennsylvania (25 June-1 July 1994); on the differences between Aristotle's and Ayn Rand's theories of knowledge at the Institute for Objectivist Studies Summer Seminar on Rationality at Oberlin College in Ohio (9-16 July); and on the origins of Greek philosophy at a Program in the Humanities and Human Values Vacation College Seminar at the University of North Carolina at Chapel Hill (18-20 July 1994).

This semester Dr. Long will serve as Visiting Assistant Professor of Philosophy at the University of Michigan in Ann Arbor, and will return to Chapel Hill in the spring.

• In July we published the Proceedings of our recent Forum on Systems of Law. These were mailed to registrants in the Forum and to FNF members.

• We have produced a flyer to promote FNF, a single sheet tri-folded, on heavy glossy paper. We will mail this with future promotions, and distribute it at meetings of libertarians. Dr. Mary Ruwart has offered to mail it with sales of her book *Healing Our World*.

In bold headlines the flyer summarizes the work of FNF: "Libertarians, Do you want to live in a free country? Then join us in building the vision"; and "Stop Complaining — Start Building." The flyer tells more in a few hundred words of smaller text, and it contains photos of the three Directors. Δ

Tax Ruling (from p. 1)

the application on to the next person — who happened to be on vacation.

She also said that she had read it all. This included: "Toward a Free Nation," the first three issues of *Formulations*, and the packets of materials which were distributed at our two forums. She said it was "very interesting and educational," and that she hoped our approval would be forthcoming. A friend in the IRS?! Δ

formulations

Editor: Roderick T. Long

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[outdated street 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

Formulations is published quarterly, on the first of March, June, September, and December.

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.

FNF is a 501(c)(3) federal income tax exempt organization.

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. Thus, the deadlines for writers are: February 15, May 15, August 15, and November 15.

We consider material in *Formulations* to be the property of its author. If you want your material copyrighted, tell us. Then we will print it with a copyright notice. Otherwise our default policy will apply: that the material may be reproduced freely with credit.

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

Plan of FNF (from p. 1)

started? Surely there are many ways, but here, to tempt you to believe that it might be possible, I will tell one scenario.

1. A movement comes together and, over time, builds credibility. It gathers a long list of supporters. It collects options on assets to invest in the new country. Then it watches and waits for the right opportunity.
2. The government of some poor, third-world country, struggling to stay in control, indicates willingness to deal: to lease an underpopulated, but habitable, corner of itself. The lease provides for sovereignty as a separate nation, for 99 years, and includes promises of mutual non-aggression. The new nation signs treaties with neighboring states, and with a few major powers. From its birth the new nation has a small but respectable national defense.
3. On start-up day an auction is held for real estate within the new nation. Shares to bid in this auction are issued in proportion to the assets contributed in payment of the lease.

If this is done properly it should be possible to gather the assets to pay the lease, because these assets are not given away, but rather invested in what should become a strong business climate.

While this scenario seems to me as likely as any, we can envision other scenarios if we take a broader view. Most governments, it seems, have lives which someday end. But the death of a government does not mean that the land has sunk into the ocean, or that the people have all died.

Some new political order always comes in on the old piece of land. During this time it often happens that boundaries change, and it often happens that the number of nations on a given piece of land changes.

We libertarians can aim to influence this process. After we have organized and done our homework, I believe, in the right moment, we can negotiate for some land on which we establish our own style of self government.

The biggest problem — credibility

Most people will not buy these ideas. Naturally they doubt that this can be pulled

off.

But take a little trip of the imagination with me:

Imagine that you have just seen, on the evening news, that a poor, third-world country has signed a lease to cede, for 99 years, land to create a tiny, autonomous country. The report tells that the new country has signed treaties with two of the world's major powers, and with neighbors.

The report describes the constitution of the new country as "more libertarian than ever before." Finally it tells that the new nation is open to people who may want to buy property there, or move there.

Imagine this has happened. Do you think there would be a shortage of people to move to the new country, or a shortage of money to buy property in it?

If you believe, as I do, that there would be an ample supply of both settlers and investors, then you may agree with my point here. This movement does not lack either people or capital. It lacks credibility, believability. If credibility can be built, people and capital will follow.

To build credibility, I propose to create and manage the Free Nation Foundation, a forum for meeting, publishing, debating.

Why so radical a proposal?

Imagine you are on a ship and there are no lifeboats. A hole breaks in the hull. Water gushes in. Many people bail. They yell to you, "bail, bail!" But you can not tell if bailing will save the ship. You look around and see materials which might be made into crude lifeboats. Do you bail, or build?

Albert Jay Nock, in *Our Enemy the State*, foresees unstoppable growth of the American government. This growth, he says, brings corruption, enfeeblement, and eventual collapse. I do not know if he is right, but in my view the evidence seems to support his pessimism.

To bail, to save our present state, one has to work within existing political institutions. Somehow one has to convince a majority of the electorate that it is in their best interest to surrender most of the powers that majority rule gives them over their neighbors. But it seems to me that people almost never surrender real power over one another.

People seem willing to surrender power only when the "power" is so feeble as to be

useless: as a parent might give up trying to steer a strong-willed teenager; as Russian people gave up on centralized planning only when they finally believed that their state, in spite of its might, had no power to improve the economy.

In contrast, Americans, it seems to me, still believe that their government has power to do anything it wants. I fear that they will try harder, ever more desperately, to apply that "power" to fix an ever worsening situation. I fear they will not see the folly till they see that the "power" is empty. That will be when, I fear, the state is near collapse, and not before.

Many good people are bailing, working to turn the tide in the way Americans cast their votes. I also spend time bailing — it seems such a natural thing to do.

But whether bailing will succeed I do not know. To me there is enough doubt that it seems prudent to start designing a lifeboat.

Hasn't this been tried before?

There have been several attempts to start small, libertarian countries. All have failed. A book, *How to Start Your Own Country*, by Erwin S. Strauss, tells about these attempts.

It seems to me that none of these attempts had a significant chance. Not enough groundwork had been done before the flags were hoisted.

The approach of the Free Nation Foundation differs. It proposes, for the time, to do nothing but groundwork. It would not suggest trying to obtain real estate till the force of a nation — people, assets, treaties — were in place.

This is a "Front Door" approach. We would seek what we want openly, through negotiations in good faith, from a position of practical and financial strength.

How does the Free Nation Foundation fit in the libertarian movement?

The market of the Free Nation Foundation will be people who are already libertarian. It will be people who would agree that they would like to live or invest in a libertarian country, if such could be created. Thus, unlike most other libertarian organizations, the Free Nation Foundation will not try to persuade people to adopt the libertarian way of thinking.

Why focus only on people who are already libertarian? First, because the effort to persuade other people is already undertaken by many good individuals and organi-

zations. Second, because we can move directly toward our goal if we avoid the tangle of trying to persuade others.

Most of what we libertarians express, it seems to me, aims to build bridges. As such, this expression does not say clearly what we would build, if we could, at the other end of the bridge. Other expression, produced by theorists within our movement, leads us to new horizons of thought. But this expression usually cannot be translated to a plan which we might expect to work with the people and politics in this day.

As such the libertarian movement, to my knowledge, presently has no forum within which we state clearly what kind of nation we think we could build if we had the opportunity. The Free Nation Foundation proposes to move into this niche.

As a side effect, our definition, of what we want to build, might win converts. Some of our adversaries have resisted our efforts at building bridges because they have mistrusted our motives. But if we develop a clear description of what we want to build, some, who care to study our goal, may stop resisting our effort to get there.

Of course we must recognize that libertarians do not all agree. Some will object, saying that it is wrong to talk about establishing a libertarian government — that there can be no such thing as a government which is libertarian. This may be true. But I want to work now to put together a plan that I am confident can be carried out in the foreseeable future. I am willing to compromise within the range of libertarian ideas.

And other libertarians will object, saying a free nation is doomed to fail because governments always grow, and this one will be no different. I have the same concern. But history shows that nations come and go. The free nation movement can work within this trend, striving not for perfection, but for the best we can build now.

It is said that the United States had a fairly libertarian government during its first century or so. Most Americans (except the slaves) enjoyed many freedoms. I would be satisfied if we, now, could do as well — if we could establish a nation which keeps most of its freedoms for a century.

For libertarians who are not satisfied with the compromises made to create a free nation, that nation could at least offer a place to

live — and within which to plan the next, better society.

How will the Free Nation Foundation relate to others, outside the libertarian movement?

While the Free Nation Foundation will serve libertarians, others will ask about us. We must respond appropriately.

We will be permitted to pursue our goal if we can be accepted. We should aim to be accepted. We probably cannot expect, in the present, to be understood. With luck we will be respected. But respect, to the extent that we gain it, will come because we have acted respectably.

As a model for how we might hope to be viewed, I think of some of the religious communities in early America. I believe that some of these communities did a good job with their public relations because of the way they handled their differences. They respected the rights of their neighbors and asked only to be left free to order their own lives. They did not attempt to press their views on others, though they were willing to explain, and glad to welcome converts. They helped their neighbors through mutually beneficial trade.

The free nation movement offers benefits not only to libertarians — but also to those who have historically been our adversaries. By seeking separation, we are offering to stop resisting their programs. We are bringing nearer the day when they will be able to direct as they choose in their own realm.

We will be saying to them:

Let us respect the choices we would each make for ourselves. We will endorse your right to establish the order under which you would feel comfortable — if you will endorse our right to establish a separate realm, with our own style of self government.

We can all benefit from the movement to allow small new nations. Let us test various schemes of government. This way all can have more choices about the political environment in which to live, and all can learn from the experiences of each.

The movement to form a free nation might get attention in the media. Some of this attention might win converts. As a side

effect this would be good. But I believe it would be wrong to be distracted by this side effect. The movement would lose integrity if it let news become its goal. The best news will follow real progress.

What will the Free Nation Foundation do?

Early activities will include:

- Organize forums to discuss practical solutions to the numerous problems which can be foreseen. Participants will be scholars, business men and women, journalists.
- Publish a newsletter and proceedings of meetings.

Eventual activities will include:

- Continue forums.
- Design the building blocks of a nation. Draft and debate:
 - constitution,
 - treaties,
 - leases,
 - plans for a system of law,
 - contracts with settlers and investors,
 - plans for indigenous populations.
- Publish a journal for scholars, a magazine for consumers. Δ

Copies of the original "Toward a Free Nation" booklet may be purchased by mail from the FNF office. Send \$2 for one copy, and \$1 for each additional copy in an order.

Contra Insurance by Bobby Yates Emory

A diversion for morality

I would feel bad if I implicitly endorsed a product about which I have serious reservations. (A forum discussing insurance as a vehicle for security in a libertarian society raises questions about whether we are endorsing a product to which there could be objection.) Such is the case with most insurance products available today.

Current insurance overpriced
Risk can be evaluated

Most risks that are covered by insurance policies can be evaluated on an actuarial basis to determine the cost of bearing the

risk. For example, if a vehicle is worth \$10,000 and the risk of it being stolen in a year is 1 in 1,000, the actuarial cost of this risk is \$10. Actuarial studies are not trivial and often require the processing of large data files and the exercise of professional judgment but there are people who can answer these questions.

Prices exceed value

When we compare the price charged (the premium) to the value received (the actuarial cost) we find that the price is usually at least double the cost. One example is airline travel insurance. Many credit card issuers now provide accident coverage if the credit card holder uses the card to buy a scheduled airline ticket. In their accounting systems they allow 17 to 20 cents for the actuarial cost of providing \$150,000 coverage. To buy equivalent coverage at the airport costs \$5.00.

Prices must exceed actuarial cost

The reason price usually exceeds the actuarial cost is: for the insurance company to remain in business it must cover all its costs and make a profit. The company must pay salesmen, record keepers, taxes, office space, a multitude of other costs and pay claims to its policy holders. After meeting all these costs, it must make a return for its stockholders.

Reason for concern

So the reason for concern is: Insurance premiums usually greatly exceed the actuarial costs of the risk to the consumer.

But — Values are subjective

Austrian economics teaches us that all values are subjective. Knowing the real cost of production of any good or service does not tell us what it will be worth to any individual. Only that person can judge what it will be worth to them. One example, of many possible, is to consider a travelling salesman's need for auto theft insurance. If a salesman's job is dependent on his vehicle, he has no monetary reserves, and auto theft insurance is a small fraction of his income; his individual subjective valuation of insurance may place a much higher valuation on the insurance than the actuarial risk cost.

If a purchaser in the free market, whose access to information is not prevented by force, wishes to make a purchase at a price higher than someone else deems proper, the

purchaser should be free to do so.

Proposals are for speculative uses of insurance

FNF proposals are speculations on future solutions

These proposals are intended to stimulate thinking and discussion about the perplexing problem of how, in the future, we might provide what some economists have chosen to call public goods. Goods and services are only valued because they benefit individuals. We have been challenged by the public goods categorization to propose a method for paying for goods in which most people in a society share the benefit and thereby have (supposedly) no incentive to pay to have the good or service produced.

Not an endorsement

Any proposal or speculation we formulate is in no way an endorsement of any currently available insurance policy.

Insurance may be less overpriced than government

Government services routinely overpriced

We are well aware that most of the services provided by government are usually overpriced if we add to the user fee, if any, the cost of subsidies. When fire protection services are provided by private companies the cost is usually one fifth the government cost.

Insurance still a better buy than government

Even if we conclude that using insurance to provide a good or service will cost citizens at least double the actuarial risk cost, insurance may still have a significant cost advantage over government. We might improve our overall efficiency if we shifted from government to insurance.

Insurance morally preferable to government

Insurance provided by private means does not entail the use of force. Government almost always involves the use of force (if it didn't we probably would argue that it is not really a government). So even if the cost of insurance is higher, we would still find it preferable since it does not have to involve the use of force.

Bottom line

Even though there may be concerns about endorsing current insurance policies, advocating insurance as part of a future method

to deliver goods or services may be preferable to advocating government. Δ

Bobby Yates Emory of Raleigh, North Carolina, 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.

Comments upon Security, National and Domestic

by Richard Hammer

1. Introduction

I have never had a clear concept of how we libertarians would defend the borders of the realm in which we would like to live. My desire to learn more of this subject led me to suggest that in our next forum we address a related question: "How, and to what extent, could the inhabitants of a free country rely upon private institutions, insurance and defense agencies, to satisfy their needs for security, both domestic and national?" In this article I will use the term "security companies" to name these hypothetical institutions which combine insurance and defense.

During the past few months I have asked several people where I might find information on this question. I have followed many leads. But I have not found solid fare; all available material seems to be speculation. It is good speculation to be sure, but I had hoped to find a developed theory. In this article I will present some of what I have found, and contribute some of my own speculation.

1.1 The subject of national security is both important and unpleasant

Incidentally, this is I believe the most critical subject faced by the free nation movement. On the one hand, I expect that few sensible people would be willing to invest their lives or property in a free realm unless they felt secure from international invasion. And on the other hand, if somehow there were created a free realm in which somehow all felt secure from invasion, I believe libertarians and many others would flock into this realm without pausing to worry about any of the other services which

they may be accustomed to expect from government. In the recipe for a free nation, national security is probably the critical ingredient which can make everything else jell.

But I find national security to be an unpleasant subject for two reasons. First, it is about war and violence. And second, it is not easy, when talking about fighter bombers and armies, to escape realizing how impossible it seems that our small and disorganized movement could ever wield a respectable defense.

Naturally we experience the impulse to put this onerous subject aside. In this regard our instincts may serve us well. It makes sense for us to do today what we can, and to hope that the tasks which we put off today, because they look impossible, will come within reach tomorrow. But we can do more than hope. Looking toward the seemingly impossible goal, let us ask what we might achieve today so that, come tomorrow, that goal might begin to look possible.

1.2 Can a formulation for domestic security stretch to cover national security as well?

Discussion in this article emphasizes national security, and treats domestic security as a side issue. Let me explain. Recall that the question which drives this discussion, as written in the first paragraph above, includes both domestic and national security. Regardless of the scale of a threat, whether from an individual or from a state, we can think in general terms of the means we might use to defend ourselves. These means include, for instance: amity, diplomacy, counterattack, and preemptive strikes. For the sake of simplicity, it would be good if we could produce one general formulation for a set of institutions which could span all our needs for security, both domestic and national.

But a theory has limits, and can comfortably span only certain instances. For my part at least, my research thus far has left me believing that security on a domestic scale can be achieved through private means. See for instance Chapter 2 in *The Enterprise of Law* by Bruce Benson. Therefore my desire to stretch my understanding leads me to ask questions about national security.

2. Ideas about security in general

While searching for material on the question of whether security companies

could provide national defense, I found little that addressed my question directly. But I came upon many ideas which addressed the broader subject of security. In this section I



Richard Hammer

will tell some of these ideas. Then, in section 3, I will tell things which relate more directly to my question.

The reader may notice that some of these ideas beckon us to think of security in new ways. If we ask, "how are we going to finance an air force and induct an army?" we may be asking the wrong question.

2.1 Free people cannot be conquered in one fell swoop

It is hard to conquer a free people, because there is no government or single power which has the authority to surrender on behalf of other people. An invasion may overwhelm one region, and the people in that region may surrender, but their surrender does not bind anyone else in the remainder of the nation. An invader wanting to control the whole nation may well have to conquer each and every house.

The history of Ireland provides an example. As Murray Rothbard tells, for a thousand years until the seventeenth century, Ireland had no state or anything like it. The conquest of Ireland by England was bloody and difficult, and seems not to be over yet.

2.2 Free people may be heavily armed

We could expect many of the inhabitants of a free nation to be heavily armed. This

would make conquering the country much more difficult. We have a present day example in Switzerland where, as I understand it, many householders have automatic weapons in their closets. This is understood to be a principal ingredient of their national defense. I have heard that Hitler planned to invade Switzerland, but decided against it when advised by his generals that the populace was heavily armed.

2.3 Free trade provides incentives for peace

If goods are being traded between the free nation and the potential aggressor, then because of this trade, some people in the potential aggressor will stand to lose should war start. If this point seems unclear, recall that free trade by its very nature benefits both parties to each ongoing relationship of exchange; since participation is voluntary each trading partner must perceive himself as winning, otherwise he would cease entering such bargains. If many goods are being traded across the border then the traders within the potential aggressor might put considerable pressure on their government to avoid war.

2.4 Potential aggressors can be discouraged from even trying

Kevin Cullinane draws a distinction between protection and defense that is worth repeating. Protection, as he describes it, is what you do to discourage an aggressor from even trying. Examples are: locks, fences, camouflage, credit checks, mine fields. Defense, on the other hand, is what you do to respond to an aggressor who is attacking. Examples of defense are: fighting with an aggressor, and counterattacking into the aggressor's territory. Cullinane says that if your protection is good enough then you do not need defense. Defense involves violence and you want to avoid it if possible. So he advocates focusing on protection.

2.5 People naturally want to avoid war

As I have frequently heard Phillip Jacobson argue, there are great incentives to avoid violent conflict. War is costly. If it starts each party tries to destroy the valuables of the other. War is a negative sum game. Whereas peace with free trade is a positive sum game. We can normally expect potential antagonists to be willing to invest heavily in avoiding war.

2.6 Security companies would attend to the needs of their customers

Writing primarily about defense agencies on a local scale, Murray Rothbard shows how private agencies satisfy the needs of their customers better than government agencies. For instance a private security company will emphasize restoring stolen loot to its owner, the customer. Whereas a government agency on learning of a theft emphasizes catching and prosecuting the criminal, and sees the loot only as evidence to be guarded and not as property to be returned. And as Bruce Benson recounts, government agencies are so intent on doing their thing, prosecution, that they treat the victims of crime not as customers to be served, not as people who need help, but as evidence to be presented at the right time in court.

These failings of government policing on a domestic scale make me think it likely that government policing on the national scale also falls short of what could be achieved by a market system. In many ways that we should be able to imagine large-scale security companies should serve us better than government agencies.

2.7 A national defense can be mounted in the traditional way

If we libertarians compromise, and admit limited government, then we may assume taxes and a strong national defense of the traditional sort. But as evidenced by this article, I do not want to make this compromise unless I am convinced it is necessary.

3. Ideas about security companies

On a domestic scale, in a free market, it is natural to expect the formation of security companies, that is to expect merger of functions we may now, by habit, consider separate: insurance and defense. Both involve security. A customer might sign a contract with a security company to purchase security in certain defined categories. As we are accustomed, the insurance aspect of this contract would pay unrecovered losses, probably with a certain deductible. But as we are not accustomed, the security company would not only pay losses, but to prevent losses from occurring in the first place it would also police and provide protections (of the sort suggested by Cullinane).

I expect the most successful companies would minimize their expenses, and thus reduce the charges to their customers, by

intelligently balancing their mix of expenditures on policing, protections and payments.

Some risks they might choose not to protect at all, planning simply to pay in case of loss. This would apply if the potential cost of the risk were low but the cost of the protection high.

Other risks might be secured through heavy investments in protection or policing. This would occur in a risk category where the cost of protection is low relative to the expected cost of payments should protection fail and a claim for payment be made.

3.1 Private security companies would allocate police in response to market incentives

This private industry in security would differ in some notable ways from the state-sullied mess we experience now in the United States. In some cases we can predict; we would see either less policing or more policing. In other cases we can expect changes in the nature of the policing, but it is difficult to predict the nature of those changes.

3.1.1 Where we would expect less policing

Customers would be willing to pay for their own security, and to pay for prudent policing toward that end. But few customers would be willing to pay more to have police beat up unpopular minorities such as Rodney King, David Koresh, prostitutes and drug dealers.

In addition to frugality the financiers of the police forces — that is the customers — would experience the usual motives of civility. These are:

The positive motives for civility — desire to continue receiving the benefits of friendly, trusting, relationships. In relationships free of state-sponsored coercion people are naturally willing to tolerate all differences in others which they do not perceive as invading their own private space.

The negative motives for civility — fear of reprisals and counter attack provoked by assault into a space that someone else considers their private business.

3.1.2 Where we would expect more policing

It is easy to think of places where a sensible private security company would invest

more, by comparison with government, in protections and policing. Generally speaking, just think of any situation which regularly scares you. Probably you would be willing to pay to feel more safe from this predictable threat. If you ask why there is no company prepared to profit by selling you such protection, you will probably find some action of the state which bars or discourages this protection from being marketed.

Think, for example, of a frightening street in an inner city. If the street were private, the customers of the street, that is the residents, would have an economic relationship with the owner of the street through which the customers could express their desires and expect to be heard. Consider the parallel of private shopping malls. Owners of malls police their corridors because they need revenue from their customers, the operators of the shops, who can stay in business only if you drop by. And you will drop by only if you feel safe. The magic of free markets satisfies your demand for safety.

3.1.3 Where we would expect changes in policing, but cannot predict whether more or less

There is also a category in which it is not clear to me whether security company agents would be more or less evident in our day-to-day affairs. Consider motor vehicle laws regarding drunken driving, seat belts, and speed limits. Do these laws save life and property sufficient to justify the cost of policing of their enforcement? A free market in security would answer this question more honestly than any legislature.

Private companies would calculate, using some statistics I expect, ways to minimize their total costs, for both payments and protections. I expect their contracts would offer options. A customer might save money by signing a contract which stated that he would buckle his seat belt. But should he be tempted not to bother with his seat belt, he would be wise to know what the contract stipulates in this regard. We can certainly expect the security companies to protect their interests; they may demand the right to snoop, or police if you will.

3.2 Security company protections in larger zones

I have outlined a few of the reasons why I trust that security on a local, domestic scale can be handled by private enterprise. Here I present arguments, pro and con, on the

question of whether private enterprise could likewise provide national security.

There is a fundamental similarity between large-scale and small-scale security companies. Both have a base of customers that they charge rates sufficient to cover expected costs. Both employ both protections and policing. Both need arms sufficient to their risks. Both need to be prepared to pay should their protection and defense fail. Both rely on good relations with their customers, and thus both are constrained to provide a real and valued service. Both are in the same sort of business, just on a different scale.

3.2.1 Optimistic argument

I know that insurance companies share their risks in a business called reinsurance. And I recall hearing boasts from this industry:

- 1) that Prudential life insurance was prepared even for nuclear war, in its policies which did not exempt for war.
- 2) that when Hurricane Andrew tore a swath across Florida the insurance companies paid up without so much as twitching.

This last example should show us that a small country, no bigger than the swath across Florida, should be able to trust private security. Of course this assumes an international business in reinsurance, that the residents of a ravished small country could expect payments from a pool beyond their borders.

3.2.2 Pessimistic arguments

Leading libertarian light David Friedman regards national defense as a daunting problem, and offers little hope for private provision.

Also my novice's scan of *Limits of Insurability of Risks* by Baruch Berliner, has shown me that:

- 1) insurance is a business of statistical calculation;
- 2) insurance companies calculate the probability of their losses, and in the worst case calculate the probability of their big losses all happening at once; and
- 3) they judge whether they can safely assume new risks by calculating

whether loss might threaten their margin of safety.

This book, by showing the science of deciding what risks are too big, implies, in not too subtle a way, that some risks are too big. I am disappointed, but I should not have been surprised.

It is possible, I would like to believe, that either I misunderstand this book, or that this book misunderstands reality. For my taste Berliner kowtows too readily to the state and "public policy" when his analysis displays limits. Some economists, I know, see the work of the invisible hand, while others see only a need for state action. Possibly a specialist in insurance who favors free enterprise would write quite a different book.

4. Conclusion

Our quest to formulate security is just beginning. We welcome input from any readers who have it to offer. Δ

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Richard O. Hammer, of Hillsborough, NC, to advance the work of the Free Nation Foundation, is giving himself sabbatical leave from his small business of building houses one stick at a time. He is active in local politics in Orange County, North Carolina, writing columns in the local paper and, at present, running for County Commissioner.

Devil's Advocate: No Defense Needed by Bobby Yates Emory

Editor's note: As the title indicates, Bobby Emory is not himself a proponent of the position set out in this article, but he believes the position deserves to be presented and considered.

Defense is not needed, just an excuse

National defense is not a real requirement of a modern nation. It has been used as an excuse for increasing the power and scope of the state. Each state uses its neighbor's military as an excuse to build its own military.

Military is its own excuse

Each state's military creates a rationalization for each of its neighbors to create a larger military. That larger military creates a rationalization for the first state to increase its military and around we go in a repetitive cycle until the productive energies of each state are used up in producing goods that do no one any good.

No military — no response

If we do not create a military then we will not provoke a response from our neighbors. All that is necessary is to break the repetitive cycle. Even if other states have or acquire a military, if we do not other states will not be pushed into further escalation. If we do not have a military, we will not cause others to be fearful and we will not push them to conclude that a military is necessary.

Don't bother them, they won't bother us

Most wars are started by some state attacking another. If we can restrain ourselves from attacking our neighbors, we greatly reduce our chances that we will be attacked. Some wars have started because one nation thought another was going to attack. If we have no military, no one can think we might attack. None of Costa Rica's neighbors will ever decide Costa Rica is about to attack and launch a preemptive strike at Costa Rica because Costa Rica has no military.

Couldn't take over anyway

If we didn't make it easy for aggressors, they would not be able to conquer and rule a territory.

If no structure in place — no one can take over

If there is no governmental structure in place for ruling the residents of an area, aggressors will have a doubly difficult task. They will not only have to overcome the resistance of the residents, but also will have to create a structure from scratch. This caused the English hundreds of years delay in their attempt to conquer Ireland.

The aggressor's nightmare: an armed citizenry

Usually conquerors do not want to capture just a barren plot of ground. They want to capture the people and the material resources those people have created. If the residents are armed and prepared to defend their property, the aggressor is faced with a game that even statisticians can see is negative sum. This realization has led to the two most successful militaries in the world today. Switzerland has not been attacked in seven hundred years. Israel has never lost a war. Both require military training of most citizens and give them arms to take home. If we do not prevent our residents from acquiring arms, many of them will and we will have a voluntary defense based on the most successful models available.

Relations with others

The best we can do to try to help other nations is to set them a good example and trade with them, not send troops to invade and to kill their residents. The best way we can deal with others is neutrality.

Example will spread to others

Just as we will be following the lead of other nations, so others will be inspired by our example. Most statisticians will not voluntarily give up any of the prerogatives of power, so the number following will be dependent on the ability of citizens to wrest control away from governing elites.

Export goods not war

If a nation trades widely with other nations, they will be hesitant to attack it. "World peace through world trade" may be a little overstated, but by helping each other economically, a side benefit will be less war. (This assumes no exclusionary tariffs and trade barriers, part of the causes of World War II.)

Neutrality

The smartest thing the founding fathers said was "Friendship with everyone, entangling alliances with no one." They realized the tragic consequences of being dragged into European wars and wanted to avoid it. Our foreign policy

should be founded on their sterling example. If we do we eliminate one more reason the statisticians have for saddling us with an overbearing government and we greatly reduce our risk of being attacked. It has worked for seven hundred years for Switzerland in the middle of war after war.

Fewer excuses

If we will eliminate a government controlled military and allow our residents to defend themselves, we can eliminate an enormous burden on our society and simultaneously eliminate one of the statisticians' favorite excuses for destroying our freedoms. Δ

Anarchy in the U.K. The English Experience With Private Protection by Roderick T. Long

Among the aims of our upcoming Forum is to consider the extent to which private insurance might, in a free society, take over the functions we currently assign to government. The principles of laissez-faire economics may convince us that private insurance could indeed play this role, but we will undoubtedly feel more confident if this theoretical conclusion can be backed up by concrete examples from history.

In an earlier issue I have discussed how one particular form of insurance, the *mutual-aid association*, acted as an effective private substitute for government welfare programs, particularly in the area of medical care. ("How Government Solved the Health Care Crisis," *Formulations*, Vol. I, No. 2.) In this issue my concern is with the role of mutual-aid associations in providing security; and I shall focus on two historical cases from England, which has a long history of private provision of "government" services.

Law Enforcement by Mutual Aid: The *Borh*

Before the Norman Conquest in 1066, government in England was radically decentralized. The King had little or no role in setting domestic policy; this was left to the *moots*, local courts that passed judgment in accordance with customary law. The King's authority lay primarily in the area of foreign policy, and here he acted simply as a war leader, a kind of military entrepreneur, whose followers supplied financial contributions and military service *voluntarily*. England possessed neither a police force nor a standing

army; law enforcement and national defense alike were the prerogative and responsibility of the armed citizenry.

For purposes of security, the most important social unit was the *borh*. A *borh* was an association, typically of twelve people, who stood surety for one another's good behavior. If a member of a *borh* committed a crime, the other members were committed to bringing him to justice — but also to helping him pay restitution for his crime. (Financial restitution rather than retribution was the normal sentence for most crimes; those who refused to pay restitution were outlawed, that is, placed outside the law — meaning that anyone could kill them with impunity.)

The *borh* may have originated as a kinship group, but if so, its kin-based aspects soon dwindled; at the height of the Anglo-Saxon system, *borhs* were purely contractual arrangements. Individuals were free to apply to a *borh* of their choosing, and members of that *borh* were likewise free to accept or refuse the applicant; once accepted, an individual was free to leave, and could also be expelled. Since the members of the *borh* would be held responsible for one another's actions, there was a strong incentive to police members' behavior. Likewise, there was a strong incentive to belong to a *borh* and not be kicked out, because few were willing to deal with someone who belonged to no *borh*; such a person was in effect an uninsured risk, since he had no fellow *borh*-members standing surety for him. The *borh* system thus created powerful incentives for responsible behavior.

As Tom Bell notes:

"Such reciprocal voluntary agreements have a certain timeless appeal. Consider the modern parallels: like insurance agencies, the surety groups [*borhs*] helped members to spread risk by pooling assets; like credit bureaus, they vouched for the good standing of their own members and denied access to outsiders who had demonstrated their unworthiness; like credit card companies, they stood behind the claims and acts of their members."

("Polycentric Law," p. 4.)

It might be objected that such a system could not work in today's vast, impersonal, and highly mobile society, where the close ties and personal knowledge required for effective *borh* membership are often absent. Reputation, it might seem, can serve as an effective incentive only in a small community where everyone knows everyone else. But

the experience of the Law Merchant suggests otherwise: this vast system of private mercantile law that operated via reputation, credit, and economic boycott, was able to regulate commercial transactions across all Europe in the late Middle Ages, among merchants of different nations, without the benefit of either face-to-face interaction or government enforcement. And in the modern information age of instantaneous electronic communications, credit reports, and the like, one might well expect reputation to serve even more effectively as a tool for maintaining social order privately.

What ultimately destroyed the *borh* system was the subjection of England in 1066 by the Norman invader William the Conqueror, who sought to consolidate his victory by completing a centralization of royal power that had actually begun as early as the ninth century with Aelfred the Great. William and his successors sought to bring the *borh* system under royal supervision and control, in part so that a healthy slice of the financial compensation administered by the *borhs* could be diverted to the royal coffers.

Whatever the reason, the Norman conquerors introduced the Frankpledge system, which replaced the *borhs* with *tithings*, ten-person groups that served the same function as the old *borhs* — with the crucial exception that membership in a *tithing* was *not* voluntary. Without the right of free entry and exit, and the correlative right to refuse admittance or to expel, the Frankpledge system could not reproduce the *incentives* of the former system. The *borh* system penalized irresponsible behavior; but under the Frankpledge system, a *tithing* had no comparable leverage over its members, who could now misbehave with impunity. The element of *competition* had been eliminated — with predictably bad results.

Law Enforcement by Mutual Aid: The Thief Takers

In the late eighteenth and early nineteenth centuries, the mutual-aid approach to law enforcement was active in England once again. England had no police force in the modern sense before 1829, when Home Secretary Sir Robert Peel (whence the term "Bobby") established Scotland Yard for the London area; similar police administrations for other areas followed in the 1830s and 1840s. The classical liberal feminist and social reformer Josephine Butler responded with alarm, penning a ringing denunciation

of the budding police state in her book *Government by Police*.

But before the reign of the Bobbies, English law enforcement relied heavily on organizations known as Associations for the Prosecution of Felons — also known as thief-takers' associations. Imagine a cross between a Neighborhood Watch group, an insurance agency, and an Old West style posse. People in a particular neighborhood would pool their resources, and supply their own labor, to support their local thief-takers' association. The association would keep its eyes open for robbers (particularly those who robbed houses displaying the plaque of association membership!). If a crime (against an association member) did occur, the association would hunt down, or pay to have hunted down, the wrongdoer, often cooperating with similar associations in other districts — and then use the pooled resources to pay for the felon's prosecution in a government court. (Criminal justice was not free in those days.)

The traditional English system — with its roots in Anglo-Saxon antiquity, but extending as recently as the nineteenth century — is worlds away from the modern system of centralized police and gun control. Under the old system, every able-bodied male citizen was in effect a policeman, and the behavior of these policemen was regulated not by government edict but by the laws of economic self-interest. Despite important differences in details, both the *borhs* and the thief takers operated according to the principle of *mutual assurance*: individuals pooled their resources and effort for the purpose of mutual protection.

Is insurance for security a libertarian fantasy? On the contrary — it's history. Δ

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Liberty Hitchhiking: The Search for Visual Imagery by Richard Hammer

I wish that the Free Nation Foundation had a logo, or some picture which would tell our motive and plan. A few months ago an image occurred to me: the Statue of Liberty hitchhiking to get out. I hired local artist Peggy Combs to attempt the translation of my words into a picture. She created the two drawings shown (on pages 11 and 12).

The lack of visual imagery afflicts not only FNF, but also the larger libertarian movement. To me our libertarian value seems compelling and simple. Often I think we should be able to tell it in a picture. But I have not seen the picture. We do have some images which we use commonly: the Statue of Liberty, a chain which is breaking, a minuteman with his musket, and the coiled rattlesnake with the caption "Don't tread on me." But all these fall short. These are employed by other movements with different aims, and these conjure up only a fraction of our overall value.

For the picture of Liberty hitchhiking, which I imagined might express the aims of FNF, I gave the artist a brief description of our aims, and these additional guidelines:

- Liberty could be battered, showing evidence of beating.
- Liberty's attitude, as shown in her face and posture, should express self assurance. Now in this circumstance one might expect Liberty to show hopelessness, anger or despair. But to express the attitude of FNF, Liberty should project confidence that she is doing the right thing. And the statement could be strengthened further if Liberty appears calm. Although battered and seeking transit away, this lady knows what she is about.

A well known saying holds that a picture is worth a thousand words. When the artist showed me her first draft of Liberty hitchhiking, which differed from the picture in my head, I learned that this saying has a corollary: specification of a picture may require fully a thousand words. I had written less. The artist's first draft, on page 12, showed a form slight and feminine. This was not what I had expected. The miscue provided food for thought, which I share

here. I would be glad hear what others might think on these subjects.

Firstly, regarding Liberty's sex: I recall being surprised when I was told, at age ten or twelve, that Liberty was a woman. From earlier boyhood I guess I had assumed that Liberty was a man. Liberty has a huge neck, and a strong pose which I am more apt to associate with a man than with a woman. The statue shows, I think, few indicators of femininity. Thus the person shown in the first draft, clearly feminine, seemed like a different person.

This reminded me of a continuing frus-

tration felt by most libertarians — most libertarians being men who wish there were more women in the movement. I wonder if more women might join the movement if our art were to portray more feminine forms. I doubt it. But we publish the first draft so that others can see it and offer remarks.

So I asked the artist to draw a form which, although we know it is a woman, could be mistaken for a man, and might therefore find empathy among more men. The result is shown here.

We will continue our search for art to express our values. I hope that one day we

might sponsor a contest for artists, or students of art, with prizes going to the top finishers, and rights to use the winning image going to FNF. Δ

Can We Escape the Ruling Class? by Roderick T. Long

Nature of a Ruling Class

We tend to think of the "ruling class" as a Marxist concept; but the notion has a long history before Marx, particularly in the ancient Greek and Roman historians, and class analysis played a central role in 18th and 19th century classical liberalism as well. Whenever the decisions and actions of the political machinery are largely controlled by a particular group, and serve to advance the interests and reinforce the power of that group, such a group is properly called a *ruling class*. A ruling class is, obviously, a bad thing to have. This raises two questions:

- How does a ruling class operate and maintain its power?
- Is it possible to construct a political system that will not fall prey to a ruling class?

With regard to the first question: I do not believe that a ruling class needs to exercise its will or advance its interests *consciously*. That does often happen, of course. But what more usually happens, I think, is that as various policies are proposed or adopted in the governmental arena, those that adversely affect powerful, influential, and concentrated interests will get noticed and vigorously attacked, while those that affect the average person — too busy to keep track of what the government is doing, too poor to hire lawyers and lobbyists, too dispersed to have an effective voice — will be largely unopposed. This creates a kind of filter mechanism, that strains out legislation that harms the powerful, while allowing legislation that harms the weak to pass unhindered. The result, whether intended or unintended, is that government power tends to be turned more and more, by a kind of malign invisible hand, in the direction of advancing the interests of the powerful at the expense of the interests of the weak.

Bureaucrats and Plutocrats

A ruling class need not be monolithic, however. In fact, most ruling classes are





artist's draft © Peggy Combs

divided into two broad factions, which we may call the *political* class and the *corporate* class. The political class comprises those who are in direct control of running the state — politicians, civil servants, and the like; the corporate class, on the other hand, comprises the wealthy quasi-private beneficiaries of state power — the collectors of subsidies, government contracts, and grants of monopoly privilege. These two groups might be called the Bureaucrats and the Plutocrats.

These two wings of the ruling class have similar interests, and they work together. But their interests are not identical, and each side strives to become the dominant partner in the relationship. When the political class gains the upper hand, the polity tends toward socialism; when the corporate class gets the upper hand, it tends toward fascism. In the United States today, each of the two major political parties works (mostly unintentionally, through the invisible hand process discussed above) to advance the interests of *both* wings of the ruling class — but the Democrats tend to lean more toward the Bureaucrats, while the Republicans lean more to the Plutocrats.

This model serves as a remarkably good predictor of Republican and Democratic policies. High taxes on the poor are in the interest of both ruling parties, and so both parties in practice enact these, whatever their rhetoric. But high taxes on the rich benefit the political class at the expense of the corporate class, so Republicans support and Democrats oppose a capital gains tax cut. On the health care issue, Democrats favor socialized medicine — giving the political class control over health care — while Republicans favor the status quo — keeping health care largely in the hands of quasi-private beneficiaries of state privilege, like insurance companies and the AMA. (A genuine free market in health care is the last thing either faction wants to see.) Both sides have an interest in gun control, in order to keep the subject population disarmed and docile, but for the corporate class this interest is partly offset by the interest that weapons manufacturers have in keeping guns available; thus Democrats are strongly for, and Republicans are weakly against, gun control. And so on. Thus most of the major political debates in this country are merely squabbles within the ruling class.

Once again, let me stress that very few Republicans or Democrats are consciously

scheming to advance class interests; most, I imagine, are sincere and well-meaning. But consider that, according to polls (see Maddox and Lillie's book *Beyond Liberal and Conservative*, published by the Cato Institute), only about half of the American voters share either the Republican or the Democratic ideologies. However sincere this half may be in its views, its views get heard, its proponents win political advancement, only because the interests of the ruling class are served thereby. (And again, by the ruling class I do not have in mind a conscious conspiracy — though such conspiracies do sometimes occur, being made easier by concentrations of power — but rather a coincidence of interests that tends almost automatically to perpetuate itself.)

Reasons for Optimism

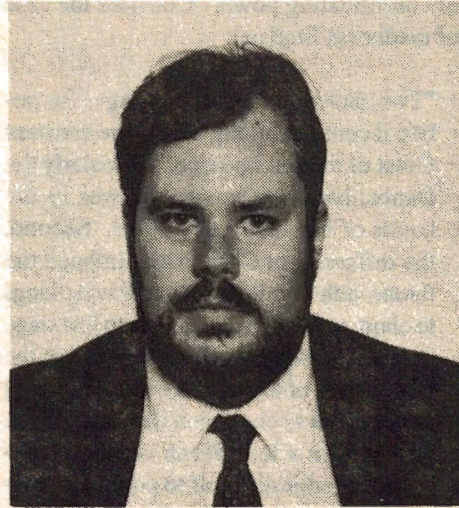
If we abolish the state, will the ruling class vanish along with it? Or will the ruling class survive (or a new ruling class emerge) and succeed in reestablishing the power of the state?

The political class would certainly perish together with the state; but what of the corporate class?

It is generally agreed that a ruling class and a powerful state are mutually reinforcing influences; a powerful state bolsters the power of the ruling class, while the ruling class uses its power and influence to maintain the state. But are these causal connections ironclad laws of natural sociology, ones that we can do nothing about, or are they mere tendencies that can be kept in check by sufficient vigilance?

Class analysis has traditionally taken two forms. The socialist version, pioneered by Jean-Jacques Rousseau, Henri de Saint-Simon, and Karl Marx, holds that the ruling class is the dominant factor; the ruling class does not need a powerful state in order to arise, but will arise spontaneously from free competition; once it has arisen, it creates or

captures the state apparatus in order to pursue its goals. Once socialist radicals get their hands on the state apparatus and use it to abolish free competition, the ruling class



Roderick Long

will vanish, and the state will have no tendency to breed a new ruling class, but can instead be used for enlightened ends.

The classical liberal version of class analysis, pioneered by Adam Smith, Charles Comte, Charles Dunoyer, Augustin Thierry, Benjamin Tucker, and Lysander Spooner, holds a diametrically opposed position. A ruling class does not arise through free competition; it is created by state power. So long as a powerful state remains in place, abolishing the ruling class will do no good, since it will simply be replaced by another. Thus the socialists attempt to resolve the problem by focusing their attack on private economic power, while the classical liberals tend to focus their attack instead on centralized political power. For the socialists, we do not need to worry too much about the state, so long as we eliminate socioeco-

omic stratification; for the classical liberals, we do not need to worry too much about socioeconomic stratification, so long as we severely curtail the power of the state.

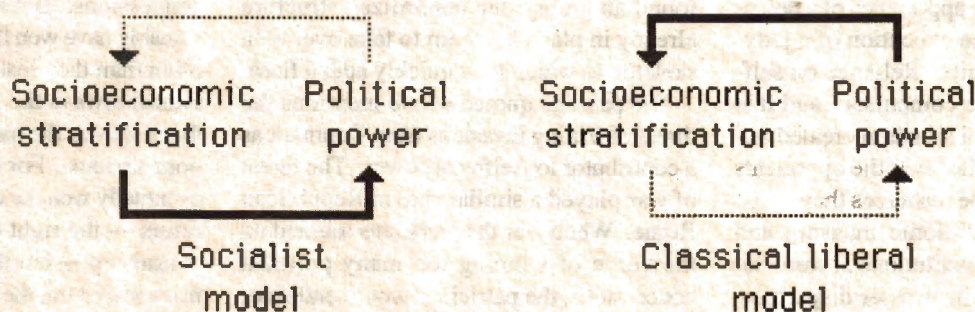
On the model below, a thick dark arrow between A and B suggests a strong causal correlation (*i.e.*, A makes B overwhelmingly likely, and B is heavily dependent on A), while a thin dotted arrow suggests a weak correlation. (A more optimistic analysis would make both arrows weak, suggesting that the feedback between socioeconomic stratification and political power is not much of a problem at all; a more pessimistic analysis would make both arrows strong, suggesting that the problem is basically insoluble.)

I think there are good reasons to accept the classical liberal model. Political power *magnifies* the influence of the wealthy, thus turning them into a powerful élite (see my "Who's the Scrooge," *Formulations*, Vol. I, No. 2, and "The Decline and Fall of Private Law in Iceland," *Formulations*, Vol. I, No. 3); but in the absence of a state, competition would serve to keep such power in check. I would thus draw a strong arrow from political power to socioeconomic stratification, but only a weak arrow from socioeconomic stratification to political power.

Now a weak arrow is not the same thing as no arrow at all; the tendency is there, and needs to be guarded against. Still, economic analysis suggests that the ruling class is primarily a creation of the state and not vice versa.

Reasons for Pessimism

Yet there is a fly in the ointment. The city-states of the ancient world — I am thinking of Greek cities like Athens, Sparta, and Corinth, as well as Rome during the early Republican period — had surprisingly weak and decentralized governments, with nothing we would recognize as a police force. (A regular police force was not introduced in



Rome until the time of Augustus, the first Emperor.) Yet these city-states were class societies, with a powerful and effective ruling class. Where did the power of the ruling class come from, if not from a powerful state?

The historian M. I. Finley has studied this question, and come to the conclusion that the ruling classes maintained their power through the device of *patronage*:

"The ancient city-state had no police other than a relatively small number of publicly owned slaves at the disposal of the different magistrates [and] the army was not available for large-scale police duties until the city-state was replaced by a monarchy. ... The ancient city-state was a citizen militia, in existence as an army only when called up for action against the external world. [Yet] a Greek city-state or Rome was normally able to enforce governmental decisions If Greek and Roman aristocrats were neither tribal chieftains nor feudal war lords, then their power must have rested on something else ... their wealth and the ways in which they could disburse it."

(M. I. Finley, *Politics in the Ancient World* (Cambridge: Cambridge University Press, 1994), pp. 18-24, 45.)

In effect, the wealthy classes kept control by buying off the poor. Each wealthy family had a large following of commoners who served their patrons' interests (e.g., supporting aristocratic policies in the public assembly) in exchange for the family's largess.

Finley offers the following example from Athens:

"[Solon established] the right given to a third party to intervene in a lawsuit on behalf of someone who had been wronged No classical state ever established a sufficient governmental machinery by which to secure the appearance of a defendant in court or the execution of a judgment in private suits. Reliance on self-help was therefore compulsory and it is obvious that such a situation created unfair advantages whenever the opponents were unequal in the resources they could command. The Solonic measure and [similar] Roman institutions ... were designed to reduce the grosser disparities, characteristically by a patronage device

rather than by state machinery." (Finley, p. 107.)

This aristocratic device of offering to defend the suits of the poor and weak has been used in more recent societies too as a means of consolidating power. Consider the case of mediæval England:

"Two factors prepared the stage [for political centralization]. First, the constant threat of foreign invasion, particularly the Danes, had concentrated power in the hands of England's defenders. Second, the influence of Christianity imbued the throne with a godly quality, allowing kings to claim a divine mandate. Onto this stage strode Alfred, king of Wessex, during the last quarter of the ninth century. [Alfred] volunteered to champion the cause of the weak — for a fee. Weak victims sometimes found it difficult to convince their much stronger offenders to appear before the court. Kings balanced the scales by backing the claims of such plaintiffs. This forced brazen defendants to face the court, where they faced the usual fines *plus* a surcharge that went to the king for his services. [This] made enforcing the law a profitable business. King Alfred, strengthened by threat of invasion and emboldened by his holy title, assumed the duty of preventing all fighting within his kingdom. He did this by extending the special jurisdiction which the king had always exercised over his own household to cover the old Roman highways and eventually the entire kingdom."

(Tom Bell, "Polycentric Law," *Humane Studies Review*, Vol. 7, No. 1, 1991/92, p. 5.)

By beginning the process of political centralization in England, King Aelfred (or Alfred) paved the way for the loss of English liberty; for when the Norman invaders conquered England two centuries later, they found an embryonic centralized structure already in place for them to take over — a skeleton to which they quickly added flesh.

The passage quoted above mentions the threat of Viking invasions from Denmark as a contributor to Aelfred's power. The threat of war played a similar role in Republican Rome. Whenever the plebeians seemed on the verge of winning too many political concessions, the patricians would endeavor to involve Rome in a war. This gave the

patricians an excuse to put off the plebeians' demands in the name of national unity. The Roman historian Livy describes a typical instance:

"[The tribunes advanced] a bill by which the people should be empowered to elect to the consulship such men as they thought fit The senatorial party felt that if such a bill were to become law, it would mean not only that the highest office of state would have to be shared with the dregs of society but that it would, in effect, be lost to the nobility and transferred to the commons. It was with great satisfaction, therefore, that the Senate received a report ... that troops from Veii had raided the Roman frontier the Senate ordered an immediate raising of troops and a general mobilization on the largest possible scale ... in the hope that the revolutionary proposals which the tribunes were bringing forward might be forgotten Canuleius [the tribune] replied ... that it was useless for the consuls to try to scare the commons from taking an interest in the new proposals, and [declared] that they should never, while he lived, hold a levy [for military service] until the commons had voted on the reforms"

(Livy, *The Early History of Rome*, trans. Aubrey de Sélincourt (London: Penguin, 1988), p. 269.)

As Livy indicates, involving Rome in a war also gave the plebeians some leverage; for they could refuse to march to war until their demands were satisfied. Such situations often deteriorated into chicken games between the patricians and the plebeians: the patricians would refuse to yield, and the plebeians would refuse to arm, while the enemy marched closer and closer. Eventually one side or the other would lose nerve first; the patricians would give in and accept the tribunes' reforms, or else the plebeians would agree to fight off the enemy without having gained the desired concessions. But the patricians must presumably have won these chicken games more often than they lost them — because it was almost always the patricians who initiated them. (Even the patricians' losses were seldom serious. For example, the plebeians eventually won the concession to which Livy refers — the right to elect plebeians to the consulship — but thanks to an effective patronage system, the plebeians almost always elected patricians to the office anyway.)

States fight wars because those who make the decision to go to war (or create the climate that makes other nations likely to go to war against them) are distinct from those who bear the costs of the war. (The internal class structure of states thus makes it a mistake to treat potentially adversarial states as if they faced incentives to cooperate analogous to those faced by potentially adversarial individuals.) We've seen in the Roman case that the ruling class can use war to advance its agenda even in the absence of strong centralized power.

Even in the modern nation-state, which does *not* suffer from a lack of centralized power, the influence of the ruling class depends at least as much on old-style patronage as on the direct use of force. As the sixteenth-century classical liberal Étienne de la Boétie, in his classic *Discourse on Voluntary Servitude*, pointed out, no government can wield enough force to subdue an unwilling populace; thus even the absolutist monarchy of Renaissance France rested in the end on patronage:

"It is not the troops on horseback, it is not the companies afoot, it is not arms that defend the tyrant. This does not seem credible on first thought, but it is nevertheless true that there are only four or five who maintain the dictator, four or five who keep the country in bondage to him. Five or six have always had access to his ear, and have either gone to him of their own accord, or else have been summoned by him, to be accomplices in his cruelties, companions in his pleasures, panders to his lusts, and sharers in his plunders. ... The six have six hundred who profit under them The six hundred maintain under them six thousand, whom they promote in rank, upon whom they confer the government of provinces or the direction of finances And whoever is pleased to unwind the skein will observe that not the six thousand but a hundred thousand, and even millions, cling to the tyrant by this cord to which they are tied." (Étienne de la Boétie, *The Politics of Obedience: The Discourse of Voluntary Servitude*, trans. Harry Kurz (New York: Free Life Editions, 1975), pp. 77-78.)

The question, then, is this: Since economic inequalities would no doubt arise under libertarian anarchy — and since patronage appears to be an effective tool for maintain-

ing class privilege even in the absence of a powerful state — would the rich not be able, in a market anarchist society, to attain the status of a ruling class by buying off the poor, thus enabling the rich to reestablish a powerful state?

Cautious Optimism

I do not feel that I have reached a completely satisfactory solution to this problem; and I welcome suggestions and debate on this topic. But it strikes me that patronage might pose less of a threat to a stateless legal order in a modern, industrialized, commercial society than in ancient Rome or mediæval England. Perhaps such earlier stateless or nearly-stateless societies failed to develop in a libertarian direction because there was only a fixed pie of resources to fight over. My hope is that the release of creative energy made possible by the Industrial Revolution, together with the rapid increase in standard of living which resulted for the working classes, and the accompanying social mobility that upset traditional hierarchies, has made a ruling class impossible without the aid of a centralized state.

The increasing pluralization of society may be a positive factor as well. In the passage on King Aelfred quoted earlier, Tom Bell noted that religious ideas about royal authority helped the English kings to centralize their power. Religion was a similar factor in Rome, where the patricians were also the priestly class, being the only ones permitted to take the auspices. We find a similar development in mediæval Iceland, where the *godhar* who ruled by patronage were also priests — first pagan and later Christian. In a society characterized by religious uniformity, it is much easier for a single group to claim a religious (or other traditional) sanction for its authority. By contrast, in modern society, with its religious, ethnic, and cultural diversity, it would be much harder for any single group to demand allegiance — except for the state, which remains the one universally accepted god. Once faith in the state falls, perhaps a would-be ruling class will be unable to find a cultural base on which to reestablish monocentric law. Δ

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Review

Whatever Happened to Justice?

by Richard J. Maybury
Bluestocking Press, 1993

reviewed by Chris Spruyt

Many free-market advocates assume that if Americans can be taught enough economics they will again become dedicated to free markets To my knowledge, not once in all of history has any



Chris Spruyt

nation ... acquired a free market through people's understanding of free markets. ... Adam Smith's ... WEALTH OF NATIONS was not published until 1776 Yet America became the most free and prosperous land ever known. How did people who did not understand economics know to create free markets? They didn't, but they were dedicated to the principles of the old common law.

— from the introduction

Rick Maybury dedicates his book "To my parents. They taught me that right and wrong are not matters of opinion." In it he argues that the basic principles of old common law can be summarized in 17 words: "Do all you have agreed to do. Do not encroach on other persons or their property." He discusses two kinds of law which

he refers to as scientific law and political law.

Scientific law is based on principle and is assumed to exist whether or not it has been recorded. It is the law of right and wrong. It is discovered rather than being created. Scientific law includes old common law.

Political law is the more arbitrary law that is created at the whim of those who have the power to impose laws on others. He lists some political laws that amuse him: "A Texas law says that when two trains meet at a railroad crossing, each shall come to a full stop and neither shall proceed until the other has gone." His favorite one is: "The Arkansas legislature once enacted a law forbidding the Arkansas River to rise higher than the Main Street bridge in Little Rock."

Maybury describes the gradual shift in this country from common law (scientific law) to political law, citing the depression as the time when the biggest shift occurred. Part of the reason, according to Maybury, is that common law was not perfect. What is right and what is wrong was still being discovered.

While common law is largely ignored by our government today, it is still of interest to people who want to live in a just society. In nine of the last ten chapters of the book, the author discusses some areas in which common law has not been well developed. Some examples are: capital punishment, the environment, drugs, war, and consumer protection.

After the summary chapter there are several useful appendices including: a table comparing scientific and political law, a chart showing systems of law, and written agreements between parent and child and between teacher and student that are based on the principles of common law and may be used by readers of the book. There are also lists of movies, videotapes and books that may be of interest to the reader.

The book is written in such a way that it will appeal to a wide audience, including teenagers, parents, and readers of *Formulations*. I found it useful for the knowledge I gained and also for showing me a way of clearly explaining its concepts. Δ

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The Nature of Law Part III: Law vs. Legislation by Roderick T. Long

Socrates on Law

In one of Plato's philosophical dialogues, called the *Minos*, Socrates asks an unnamed comrade for a definition of law. The comrade complies, offering the following definition: "Law is what is legislated." But Socrates objects: just as sight isn't *what* we see, but rather that *by* which we see, so likewise law is not *what* is legislated but that *by* which we legislate. The comrade accepts this criticism and retracts his definition. This might surprise us: surely law is the product of legislation, not vice versa. But in saying that law is that *by* which we legislate, Socrates is in fact appealing to a very old and deep-seated idea, as we shall see.

The comrade's second definition is this: "Law is the judgment of the state." But through repeated questioning Socrates quickly proves that this definition clashes with other things the comrade believes; thus the comrade is committed to an inconsistent triad of beliefs:

- Law is the judgment of the state.
- Lawfulness is just.
- The judgment of the state is sometimes unjust.

If the comrade accepts any two, he must reject a third.

Clearly, Socrates' comrade is attracted both to a positivist conception of law (according to which law is whatever the government says, be it just or unjust) and to a moralized conception of law (according to which law is inherently just); and Socrates exploits this tension.

So Socrates suggests a revision: "Law is the *correct* judgment of the state." Thus only those judgments of the state that are correct count as genuine laws. This may seem odd to us; when state decrees are incorrect, we tend to say that they are bad laws or unjust laws, not that they aren't laws at all. Being a law is a purely descriptive fact with no evaluative weight: anything the legislature cooks up, whether good or bad, is *ipso facto* a law.

Why would anyone think otherwise? Well, consider the distinction between *power* and *authority*. What's the difference between a

command issued by a legislature, and a command issued by a mugger with a gun? Both have the *power* to enforce their demands; but the legislature, unlike the mugger, is presumed to have *authority*. Yet the legislature's authority is conditional; if Congress were to pass a bill outlawing Methodism, it would be overstepping its constitutional authority, and so its decree would not have the force of law. But if the Congress derives its authority from the Constitution, where does the Constitution get *its* authority? At this point we can only conclude that the Constitution's authority, if any, must be moral in character, deriving from natural justice. Only something with intrinsic normative weight could serve as the Unauthorized Authorizer that transforms all lesser decrees into laws.

But Socrates needn't be relying purely on an argument of this sort. He also has a weighty historical tradition on his side. Socrates' conception of law is arguably the *dominant* one historically, and our positivistic one a mere anomaly; the concept of law as an objective standard to be *declared* or *discovered* (rather than created) by legislators was the dominant notion both in legal practice and in legal philosophy throughout most of history — called *rita* or *dharma* in India, *ma'at* in Egypt, and *torah* in Judea. That's why Socrates can speak uncontroversially of law as not what is legislated but that *by* which we legislate. It was a standard principle of jurisprudence for the next two millennia that *lex injusta non est lex*: an unjust law is not a law. Not until the Enlightenment did the notion of Natural Law degenerate from its original notion, a constraint on what law *was*, to a mere constraint on what law *ought* to be.

Today's positivistic conception of law is thus really something of a historical aberration; though it seems to have had some currency in ancient Greece as well, as is shown by the comrade's resistance, as well as by the fact that the Greek word *nomos* means both "law" and "convention." (A similar tension between positivist and moralized conceptions of law is found in the Greek statesman Pericles' confused responses to Alcibiades' Socratic questioning in Xenophon's *Recollections of Socrates*. Perhaps the fact that Athens was a democracy, and the average Athenian was constantly engaged in passing and repealing

(continued on page 19)

Law vs. Legislation: Documentary Evidence

"Law in the sense of enforced rules of conduct is undoubtedly coeval with society; only the observance of common rules makes the peaceful existence of individuals in society possible. ... Such rules might in a sense not be known and still have to be discovered, because from 'knowing how' to act, or from being able to recognize that the acts of another did or did not conform to accepted practices, it is still a long way to being able to state such rules in words. But while it might be generally recognized that the discovery and statement of what the accepted rules were (or the articulation of rules that would be approved when acted upon) was a task requiring special wisdom, nobody yet conceived of law as something which men could make at will. It is no accident that we still use the same word 'law' for the invariable rules which govern nature and for the rules which govern men's conduct. They were both conceived at first as something existing independently of human will. ... they were regarded as eternal truths that man could try to discover but which he could not alter. To modern man, on the other hand, the belief that all law governing human action is the product of legislation appears so obvious that the contention that law is older than law-making has almost the character of a paradox. Yet there can be no doubt that law existed for ages before it occurred to man that he could make or alter it. ... A 'legislator' might endeavor to purge the law of supposed corruptions, or to restore it to its pristine purity, but it was not thought that he could make new law. The historians of law are agreed that in this respect all the famous early 'law-givers', from Ur-Nammu and Hammurabi to Solon, Lykurgus and the authors of the Roman Twelve Tables, did not intend to create new law but merely to state what law was and had always been."

— F. A. Hayek, *Law, Legislation and Liberty*

"Since it is *by* law that what is legislated is legislated, in virtue of *law's being what* is this legislated? Is it in virtue of its being some awareness, or some showing, as what is learned is learned through the science that shows it? ... Aren't right, and law, most fine? ... And wrong, and lawlessness, most shameful? ... And the former preserves states and all other things, while the latter destroys and overturns? ... So one ought to think of law as something fine, and seek it as good? ... So it wouldn't be appropriate for the wicked official judgment to be law. ... And yet even to me law seems to be some sort of judgment; but since it's not the wicked judgment, isn't it clear that law, if indeed it is judgment, is the worthy? ... And what is worthy judgment? Is it not true judgment? ... Isn't the true, the discovery of what is so? ... Law, then, wishes to be the discovery of what is so but men, who (so it seems to us) do not at all times use the same laws are not at all times capable of discovering what the law wishes: what is so. ... What's right is right and what's wrong is wrong. And isn't this believed by everyone ... even among the Persians, and always? ... What is fine, no doubt, is everywhere legislated as fine, and what is shameful as shameful; but not the shameful as fine or the fine as shameful. ... And in general, what is so, rather than what is not so, is legislated as being so, both by us and by everyone else. ... So he who errs about what is so, errs about the legal. ... So in the writings about right and wrong, and in general about ordering a state and about how a state ought to be organized, what is correct is royal law, while what is not correct, what seems to be law to those who lack knowledge, is not, for it is lawless."

— Plato, *Minos* (5th c. B.C.)

"But what is violence and lawlessness, Pericles? Isn't it when the stronger party compels the weaker to do what he wants by using force instead of persuasion? ... Then anything a despot enacts and compels the citizens to do instead of persuading them is an example of lawlessness? ... And if the minority enacts something not by persuading the majority but by dominating it, should we call this violence or not? It seems to me that if one party, instead of persuading another, compels him to do something, whether by enactment or not, this is always violence rather than law. Then if the people as a whole uses not persuasion but its superior power to enact measures against the propertied classes, will that be violence rather than law?"

— Xenophon, *Recollections of Socrates* (5th c. B.C.)

"I find that it has been the opinion of the wisest men that law is not a product of human thought, nor is it any enactment of peoples, but something eternal From this point of view it can be readily understood that those who formulated wicked and unrighteous statutes for nations, thereby violating their trust and compact, put into effect anything but *laws*. It may thus be clear that in the very definition of the term law there inheres the idea and principle of choosing what is right and true. ... What of the many deadly and pestilential statutes which nations put in force? These no more deserve to be called laws than the rules a band of robbers might pass in their assembly. For if ignorant and unskillful men have prescribed deadly poisons instead of healing drugs, these cannot possibly be called physicians' prescriptions."

— Cicero, *Laws* (1st c. B.C.)

"Jurisprudence is acquaintance with things human and divine, the knowledge of what is right and what is wrong. ... These are the precepts of the law: to live rightly, not to wrong another, and to render to each his own."

— *Institutes of Justinian* (6th c. A.D.)

"The Roman jurist was a sort of scientist: the objects of his research were the solutions to cases that citizens submitted to him for study, just as industrialists might today submit to a physicist or to an engineer a technical problem concerning their plants or their production. Hence, private Roman law was something to be described or to be discovered, not something to be enacted — a world of things that there were, forming part of the common heritage of all Roman citizens. Nobody enacted that law; nobody could change it by any exercise of his personal will."

— Bruno Leoni, *Freedom and the Law*

"The Anglo-Saxon courts, called *moots*, were public assemblies of common men and neighbors. The moots did not expend their efforts on creating or codifying the law; they left that to custom and to the essentially declaratory law codes of kings. ... As in other customary legal systems, the moots typically demanded that criminals pay restitution or composition to their victims The law codes of early medieval Europe consisted largely of lists of offenses and the corresponding schedules of payments. In issuing these, Kings were not legislating in the modern sense: they were rather codifying and declaring already existing custom and practice."

— Tom Bell, "Polycentric Law," *Humane Studies Review* 7, No. 1, 1991/92

"When a case arises for which no valid law can be adduced, then the lawful men or doomsmen will make new law in the belief that what they are making is good old law, not indeed expressly handed-down, but tacitly existent. They do not, therefore, create the law: they 'discover' it."
— Fritz Kern, *Kingship and Law in the Middle Ages*

"As Augustine says, that which is not right seems to be no law at all; wherefore the force of a law depends on the extent to which it is right. ... Consequently, every human law has the nature of law only to the extent that it is derived from the law of nature. But if, in any point, it deviates from the law of nature, it is no longer a law but a perversion of law. ... when an authority imposes on his subjects burdensome 'laws' conducive not to the common good but rather to his own cupidity and vainglory the like are acts of violence rather than laws wherefore such 'laws' do not bind in conscience A tyrannical government is not right ... Consequently, there is no sedition in disturbing a government of this kind Indeed, it is the tyrant, rather, that is guilty of sedition If a thing is of itself contrary to natural right, the human will cannot make it right"
— Thomas Aquinas, *Summa Theologiæ* (13th c.)

"A human legislator does not have a perfect will, as God has; and therefore ... such a legislator may sometimes prescribe unjust things, a fact which is manifestly true; but he has not the power to bind through unjust laws, and consequently, even though he may indeed prescribe that which is unjust, such a precept is not law, inasmuch as it lacks the force or validity to impose a binding obligation."
— Francisco Suarez, *On Laws, and on God as Legislator* (17th c.)

"*Nihil quod est contra rationem est licitum*: nothing which is against reason is lawful. It is a sure maxim in law, for reason is the life of law."
— Richard Overton, *A Defiance Against All Arbitrary Usurpations or Encroachments* (17th c.)

"These are the eternal, immutable laws of good and evil, to which the creator himself in all his dispensations conforms; and which he has enabled human reason to discover, so far as they are necessary for the conduct of human actions. Such among others are these principles: that we should live honestly, should hurt nobody, and should render every one its due; to which three general principles Justinian has reduced the whole doctrine of law. ... [God] has graciously reduced the rule of obedience to this one paternal precept, 'that man should pursue his own happiness.' This is the foundation of what we call ethics, or natural law. ... This law of nature, being co-eval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding all over the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original. ... Those rights then which God and nature have established, and are therefore called natural rights, such as are life and liberty, need not the aid of human laws to be more effectually invested in every man than they are; neither do they receive any additional strength when declared by the municipal laws to be inviolable. On the contrary, no human legislature has power to abridge or destroy them For that legislature in all these cases acts only, as was before observed, in subordination to the great lawgiver, transcribing and publishing his precepts. ... [A judge is] sworn to determine, not according to his own private judgment, but according to the known laws and customs of the land; not delegated to pronounce a new law, but to maintain and expound the old one. Yet if it be found that the former decision is manifestly absurd or unjust, it is declared, not that such a sentence was *bad law*, but that it was *not law*; that is, that it is not the established custom of the realm"
— William Blackstone, *Commentaries on the Laws of England* (18th c.)

"But let the origin of government be placed where it may, the *end* of it is manifestly the good of *the whole*. *Salus populi suprema lex esto* [let the welfare of the people be the supreme law], is of the law of nature To say the parliament is absolute and arbitrary, is a contradiction. The parliament cannot make 2 and 2, 5: Omnipotency cannot do it. The supreme power in a state, is *jus dicere* [to state the right] only: — *jus dare* [to give the right] strictly speaking, belongs alone to God. Parliaments are in all cases to *declare* what is for the good of the whole; but it is not the *declaration* of parliament that makes it so: There must be in every instance, a higher authority, *viz.* GOD. Should an act of parliament be against any of *his* natural laws, which are *immutably* true, *their* declaration would be contrary to eternal truth, equity and justice, and consequently void: and so it would be adjudged by the parliament itself, when convinced of their mistake. Upon this great principle, parliaments repeal such acts, as soon as they find they have been mistaken, in having declared them to be for the public good, when in fact they were not so."
— James Otis, *The Rights of the British Colonies Asserted and Proved* (18th c.)

"... justice is an immutable, natural principle; and not anything that can be made, unmade, or altered by human power. ... It does not derive its authority from the commands, will, pleasure, or discretion of any possible combination of men, whether calling themselves a government, or by any other name.

It is also, at all times, and in all places, the supreme law. And being everywhere and always the supreme law, it is necessarily everywhere and always the only law. Lawmakers, as they call themselves, can add nothing to it, nor take anything from it. Therefore all their laws, as they call them, — that is, all the laws of their own making, — have no color of authority or obligation. It is a falsehood to call them laws; for there is nothing in them that either creates men's duties or rights, or enlightens them as to their duties or rights. There is consequently nothing binding or obligatory about them. ... It is intrinsically just as false, absurd, ludicrous, and ridiculous to say that lawmakers, so-called, can invent and make any laws, *of their own* ... as it would be to say that they can invent and make such mathematics, chemistry, physiology, or other sciences, as they see fit "
— Lysander Spooner, *Letter to Grover Cleveland* (19th c.)

"I deny that legislators make *law*. They create legal Acts, statutes, which may or may not coincide with real Law, and in fact seldom do. ... the great majority of such legislative Acts are intended to prevent or hamper or stop harmless and useful human action, so the enforcement of them has that lamentable effect."
— Rose Wilder Lane, *The Lady and the Tycoon* (20th c.)

Nature of Law (from p. 16)

laws, served to weaken the traditional moralized conception of law.)

Socrates argues that only decrees based on knowledge of objective justice and injustice can count as true laws; he adds that all states legislate the just, but they make mistakes about what in fact *is* just. Socrates' point here is reminiscent of an argument by David Lyons that legal interpretation presupposes moral theory:

"Imagine that you and I disagree about the substantive requirements of social justice. We then differ as to how the concept of justice applies; we differ, that is, about the principles of justice. This is possible if the concept of justice admits of different interpretations, or competing conceptions. ... Now consider a constitutional example. ... a court applying the just compensation clause would not necessarily decide a case as the original authors would have done Instead, a court would understand the Constitution to mean precisely what it says and thus to require *just* compensation. A court would need to defend a particular conception of just compensation ... against the most plausible alternatives. ... Contested concepts do not seem confined to morality and law. Their properties are at any rate similar to those of concepts referring to natural substances or phenomena, such as water and heat. On a plausible understanding of the development of science, for example, the caloric and kinetic theories of heat are (or at one time were) competing conceptions of the concept heat. ... If, as most people would agree, 'heat' refers to a determinate physical phenomenon, there can be, in principle, a best theory of heat. This implies that there can be a best conception of a contested concept. This suggests, in turn, that contested concepts in the Constitution might have best interpretations. ... Now if the idea that the Constitution includes contested concepts is correct, then to apply the Constitution in terms of their best interpretation is, in effect, to apply doctrines whose application is called for by the original Constitution. But, just as interpretation of the concept heat requires more than mere reflection, any interpretation of this type inevitable draws upon resources that are neither implicit in the text nor purely linguistic. It requires

that courts applying 'vague clauses' of the Constitution interpret 'contested concepts,' which requires reasoning about moral or political principles."

(David Lyons, "Constitutional Interpretation and Original Meaning." *Social Philosophy & Policy* IV, pp. 85-99.)

If the law says that government employees must be paid in gold, then they may not be paid in iron pyrites, since iron pyrites is not *in fact* gold, even if those who wrote the law were ignorant of the difference. If the law says that fishermen may not hunt mammals, then *in fact* the law says they may not hunt dolphins, even if the lawmakers had thought dolphins were fish. Likewise, if the law says that involuntary servitude is forbidden, then the government may not conscript soldiers, since military conscription is *in fact* involuntary servitude, even if those who wrote the law did not recognize this.

Professor Lyons' point is that precisely the same argument applies to moral terms: if the Constitution demands just compensation for victims of eminent domain, then such victims must receive whatever is *actually just*, not what the framers thought was just, since the Constitution says to give "just compensation" rather than saying to give "what we consider just compensation." (The 19th-century abolitionist Lysander Spooner used similar arguments in his *Unconstitutionality of Slavery*, claiming that slavery was outlawed by various clauses in the Constitution even if the authors of those clauses had no such intention, because such phrases as "republican form of government" and "against domestic violence," when interpreted in accordance with the correct moral and political theory, ruled out slavery.)

The conclusion of Plato's *Minos*, then, might be described as follows: All states legislate both the *concept* of justice, and particular *conceptions* of it. Insofar as they legislate the concept, they all legislate the same thing, and these legislations are genuine laws. Insofar as they legislate different conceptions, their decrees (or most of them) are not genuine laws, and their legislators are simply proving themselves to be ignorant of what the law truly requires.

Two Senses of Law

In Part I of this series of articles on the nature of law, I defined *law* as "that institution or set of institutions in a given society that adjudicates conflicting claims and se-

cures compliance in a formal, systematic, and orderly way." (*Formulations*, Vol. I, No. 3.) It should now be clear that I was there defining *positive* law, not Law in the traditional strict sense discussed here. One of my principal aims in Parts I and II was to argue in favor of a specific kind of positive legal system — market anarchism — as both morally and practically superior to other systems. My conclusion there might now be rephrased as follows: market anarchism is the variety of positive law most in accordance with Law in the proper sense.

But what is the precise relation between positive law and Law proper? To that question I now turn.

Natural Law and Human Law

My account of the traditional conception of Law proper might suggest that the content of this Law is entirely independent of human will. Some legal philosophers in this tradition have indeed thought this. Lysander Spooner, for example, insists that human legislation can neither add to nor remove from the true Law a single provision.

The more common view historically, however, has been that of the great mediaeval philosopher Thomas Aquinas. Aquinas held that the content of true Law included not only Natural Law — that is, the principles of justice requisite to genuine human well-being, and inherent in human nature as created by God — but also Human Law. By Human Law Aquinas does not mean what I have been calling positive law. His idea is rather the following:

Some of the provisions of Natural Law, while absolute and binding, are often lacking in specificity. For example, it might be a provision of Natural Law that cars going in opposite directions on a highway should drive on opposite sides of the highway — but the Natural Law might be silent on the question of whether cars should drive on the left or on the right. Any decision on this latter question is a matter of indifference, from the standpoint of Natural Law, and may be left up to human convention. All the Natural Law requires is that there be *some* decision on the matter, and that whichever convention is adopted should then be obeyed. Thus if a particular nation adopts the rule of driving on the right, this latter provision then acquires the force of Law, and so is morally binding. The rule "Drive on the right" is not part of the unchanging Natural Law, but is rather a provision of mutable

Human Law. Mediæval jurists spoke of such rules as *reducing* (that is, as *making more specific*) the provisions of Natural Law; but they denied that Human Law could ever *contradict* the Natural Law. Law in the strict sense, then, covers both Natural Law and Human Law, the latter being subordinate to the former; but Human Law is narrower than positive law, since only those provisions of positive law that are consistent with justice are to be counted as Human Law. The legislator may have some creative freedom, but only within the bounds of the Natural Law, and it is his or her task to discover those bounds, not to stipulate them by fiat.

Natural Law and Customary Law

I have spoken of the standard to which legislation must answer as Natural Law — a set of immutable moral principles that transcend human will. Such was indeed the view of Plato, Aristotle, Cicero, Aquinas, and indeed most legal philosophers throughout history. (For some representative quotations, see the documentary evidence on pp. 17-18.) But legal historians point to what might seem a different conception of true Law: the practice, in most pre-modern societies, of regarding *traditional custom* as the supreme standard of Law. (Again, see pp. 17-18.) The task of the legislator, in such societies, is seen as the attempt to discover, state, and apply the already existing practices of the tribe or nation — what the British jurists call the "custom of the country" — and not to appeal to some abstract standard of transcendent justice such as Natural Law.

This conflict is largely illusory, however. For we must recall that (Spencer notwithstanding) the true Law comprises not only Natural Law but also Human Law — and Human Law may be enacted not only by an official legislature but likewise, and with equal (if not greater) authority, by spontaneously evolving custom. Indeed, such customary law is probably a more reliable method for "reducing" the Natural Law, because a spontaneously evolved and voluntarily maintained custom is more likely to promote mutual advantage than a decree devised and imposed by a small group in power.

On similar grounds it has been argued, by F. A. Hayek and Bruno Leoni among others, that a common-law system, in which legislation arises through judicial precedent, is

superior to a system in which judges and courts simply apply legislation created by a separate legislature. (The American system is a mixture of these two.) One advantage of the common-law system of judge-made law is that a judge cannot simply start legislating about anything that strikes his fancy, but must respond to particular claims brought by particular people, and so the system of precedents that evolves has been shaped by the needs of individuals.

Such a common-law system works best, however, if there are competing courts and competing jurisdictions, so that courts that make bad decisions will lose out over time to those with better judgment. Under a centralized judiciary with restricted choice in jurisdictions, many of the advantages of common law are lost — though even here there is a sort of competitive element, insofar as different *precedents* may be thought of as competing against one another.

A common-law system will not work well if courts ignore precedents altogether; at that point a judge simply becomes a mini-legislator, rejecting the wisdom embodied in earlier judicial experience. On the other hand, a common-law system will also fail to work well if it adheres too closely to precedent; for if judicial entrepreneurs refuse to innovate or to introduce competing precedents, the invisible hand has nothing to work with. Human Law, unlike Natural Law, is *supposed* to be flexible, adapting itself to changing circumstances. Tom Bethell offers the Islamic legal system as an example of a common-law system that degenerated when it lost its flexibility, thus freezing the once dynamic and progressive Islamic civilization into mediæval rigidity:

"... the decline of Islam began approximately in the 15th century Gradually, Islamic law was 'frozen,' so that the interpreters of the law could no longer apply their independent reasoning to it. They were obliged to live with the interpretation that had been reached when the 'freeze' took place. This event is known to *shari'a* (religious law) scholars as 'the closing of the gate of *ijtihad*' — *ijtihad* meaning 'the struggle for understanding,' or more simply the use of reason. It was replaced by *taqlid*, the submissive acceptance of earlier interpretation. Continued interpretation ceased because it was said to show disrespect for earlier jurists.

Taqlid brought with it serious problems.

... Some Islamic scholars believe that the closing of the gate was a major cause of the decline of Islam. ... With independent thought no longer desired, law in the Muslim world became dominated by people of a subservient disposition who were attracted to the service of power. ... Taha al Alwani denounces the fallen state of the Muslim world 'Muslims and non-Muslims alike are amazed that one of history's most advanced civilizations could fall into such a state of overwhelming wretchedness, ignorance, backwardness and overall decline' He believes that the ingrained deference to authority and the discouragement of reason that began with the 'closing of the gate' is an important part of the explanation." (Tom Bethell, "The Mother of All Rights," *Reason* 25 (April 1994), p. 45.)

In his classic manifesto *On Liberty*, John Stuart Mill pointed out the benefits of *intellectual competition* in reaching the truth. It is by precisely this method that we have achieved the staggering scientific progress of the past four centuries. A judicial system that likewise incorporates the principle of competition — neither forswearing the vast information embedded in the market process, nor prostrating itself before it in such a way as to preclude entrepreneurial innovation — is more likely than any other to succeed in discovering and effectively applying the principles of Natural Law. Δ

Next installment:
The Basis of Natural Law

A Service Provision Alternative

by Bobby Yates Emory

Plan for everything needed

One of the central problems in convincing people of the possibility of a workable libertarian society is that we must show them how each of the goods and services they foresee as being needed will be provided. For goods and services customarily provided through government, people will be concerned about how little or no government could provide the services needed. Different people will have different concerns but we can predict many of the questions likely to be raised. First we must convince libertarians that we have an out-

line of a solution to each troublesome area. Later, when libertarians start trying to convince others that we have a better solution, it will be necessary to catalog each of the concerns raised and document solutions for those raised by more than a few people.

Most goods and services no problem

Most USA residents will not have concerns about most goods and services because they are accustomed to receiving them from the free market. If we take our message to other countries, we will need to customize the message to each country.

Some services are supposed to be a problem

Unfortunately, many people have been convinced that some services will not be provided if the government does not pay for them. If these people believe the services to be necessary, then it follows that we need government to provide them.

Artificial mandate for government

This conviction has been used to create an artificial mandate for government. Statists are able to persuade people "If the government doesn't do it, it won't get done."

Welfare statists think charity is a problem

One prominent example of this thinking is the need for charity. Most people believe that there will always be a need to provide help for some people who are unable to support themselves. Welfare statists used this unfortunate fact as the foundation for building an elaborate bureaucracy in almost every country in the world.

USA generosity

Many of the ideas behind socialism came from Europe, where generosity does not appear to be a strong tradition. The welfare statists and the socialists forgot to adjust their theories to local conditions when they brought them to the USA. USA residents are exceedingly generous. Of all the charitable giving in the world, 80 percent is in the USA.

If need perceived, response follows

When USA residents perceive that a need exists, they have consistently shown they will respond generously. Some charities, such as those providing seeing eye dogs for the blind, receive more money than is required to provide the quantity of help that is needed.

Minor needs funded, certainly more important ones will be

While not belittling the importance of seeing eye dogs for the blind, needing a dog is less life threatening than individuals being destitute or the country being without a



Bobby Emory

defense. We can count on USA residents to be equally generous in more important areas. After the USA sets a good example, other areas may learn to be charitable also.

How to convince

Our problem may not be how to provide the funding for needed goods and services. We have many examples of successful charities to learn from. We merely need to adapt the techniques already developed to the areas where needs exist. Our major concern then becomes: How do we convince people that charitable means are reliable, feasible methods of financing the goods and services they feel are necessary but that will not be acquired by individual purchase?

Same old problem

This is another part of the same old problem libertarians have always faced: how do we convince non-libertarians that voluntary contributions can be counted on to provide for the society's need for charity? The new facet of the problems is: how do we convince libertarians that voluntary contributions can be counted on to provide for the society's need to be defended from other countries (among others)?

Definition is key

The key to convincing libertarians about the viability of voluntary contributions for financing courts, police, defense and similar goods and services may be in the designation of these services as public goods. By creating a special category, economists may have created our problem. If we can show people that "public good" is merely a mental abstraction used to discuss a theoretical economic construct and not a description of something that exists in the real world, we may break this mental log jam. Just as there is no such thing as perfect competition (usually all potential buyers do not have complete and accurate knowledge of all potential sellers), so there are no public goods, only services that provide benefits to many individuals. Any alleged public good one is coerced into supporting can be shown to have direct benefit to many individuals. To a typical resident of some other state, there is a direct benefit of providing a Federal Court for Detroit. If such a court is not provided, the cost of doing business will rise for automakers. Almost everyone has an interest in preventing further increase in the prices of cars. Admittedly, for each of us, our interest in keeping the price of cars from rising is small. If Jerry's Kids can gather together many people's small interest in supporting MD research, then another version of Jerry's Kids can collect our small interest in providing a Federal Court in Detroit. Yes, a United Way may be needed to collect all these contributions to many different needs together, and yes, a United Way introduces its own inefficiencies, but it is much preferable to a large, coercive government.

Counteracting civics texts

There are other mistaken notions children are indoctrinated with in the government schools that need correcting, but this is an excellent place to start.

Historical examples

During the early years of the USA, at least one warship was purchased through public subscription. Many communities in North Carolina, until recently, had truly voluntary fire departments and in many of them the tradition of voluntary fund raising persists. Many of the early schools in the USA were proprietary, but a significant minority were financed by local subscription.

Building a compelling case

If we wish to convince libertarians to consider voluntary contributions we will need to collect the data to support our case; documentation of historical and current examples, data on charitable giving, and descriptions of the operations of current charities and councils of charities. Then we will need to write a description of how this would work in the critical areas of police, courts, and national defense. To get the ideas widely read we would need to write a science fiction or fantasy story that incorporated the ideas.

A way that works

Voluntary contributions provide us with a solution to many of the dilemmas facing us. We can provide for necessary functions to be performed without creating a framework for building a government which will grow beyond the control of the citizens. It will be flexible and will easily grow as citizens perceive needs and contract when the needs no longer exist. Δ

Bobby Yates Emory of Raleigh, North Carolina, 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.

Atlantis Project (from p. 1)

hand from friends and acquaintances, that the Atlantis Project has closed down. Although the Free Nation Foundation is on the Atlantis Project's mailing list, we have not received any official announcement; we understand that an announcement was made on the Internet, but we have not seen it.

We are curious to learn more details, since the free nation movement can doubtless benefit in the future from a better understanding of its failures in the past. If any readers of *Formulations* have more information about the fate of the Atlantis Project, we would enjoy hearing from you. Δ

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Public Goods (from p. 24)

less so-called "public goods" have been produced through non-coercive means, thus rendering the public-goods problem no more than a bogey from an economist's fantasy. Economists who proclaim, from their ivory towers, that non-coercive solutions to public-goods problems are inconceivable — without ever bothering to examine the empirical facts of private production all around us every day — are in effect demanding that the rest of us be held hostage to their lack of imagination and observation. Perhaps entrepreneurs who stand to make a profit from solving public-goods problems have more incentive to discover solutions than economists whose income is unaffected by their failure to solve such problems!

Leaving governmental coercion aside as both unethical and dangerous, I here offer five other solutions to the funding of public goods. (My list here is not meant to be exhaustive, and I welcome further suggestions.) As I go along I will consider in particular how each solution might apply to what is generally considered the most difficult public-goods problem: national defense.

Solution Two: Conscience

Public goods can be funded through reliance on custom, morality, and non-material rewards. Many public goods are already so funded; volunteer fire departments are an obvious example. A less obvious example, perhaps, is churches: one can walk into a church, listen to the sermon, ignore the collection plate, and walk out. Indeed, everyone who wants to hear the sermon could free-ride in the same way. Hence the economists ought to predict that no churches would ever be built and no ministers paid; yet somehow this is not the case. A still less obvious example of a public good is tipping: waiters and waitresses provide better service in the hope of getting a tip, so the practice of tipping has the beneficial result of producing better service. (At least I'll assume for the sake of argument that this is true; I don't actually know that countries without the practice of tipping really have worse service.) But why should I leave a tip in a restaurant to which I have no plan to return? I benefit from the tips of other diners, and they benefit from mine; but in this case I could free ride, enjoying the benefits without tipping. Why don't I? The

power of custom.

Morality — the conviction that we are obligated to do our part — also plays an important role in overcoming free rider problems. When we consider the millions that are contributed to charity, telethons, etc., there is no reason to doubt that there would be at least as much voluntary support forthcoming for the funding of public goods. Indeed, as Robert Axelrod shows in his book *The Evolution of Cooperation*, both biological and cultural evolution tend to promote the emergence of cooperative dispositions, because those who manifest such dispositions acquire a reputation as a cooperator, and thereby attract other cooperators; as these cooperators flourish by reaping the benefits of increased cooperation, the cooperative impulse is further selected for.

The LiveAid telethon concert generated impressive contributions to feed the starving Ethiopians. Would not people also contribute money to defend their country? (Keep in mind that a military confined to national defense, as opposed to foreign adventuring, would be quite a bit cheaper.) And have not people always volunteered their labor as soldiers in great numbers when their country was attacked? A citizens' militia, manned by volunteers and funded by charity, has been the standard form of national defense throughout human history.

Solution Three: Delegation

The third solution is really a variation on the second, but it is distinctive enough to warrant separate mention. Those wishing to solicit contributions to some worthy cause will raise much more money if they devolve responsibility by assigning local people to collect from friends, family, and co-workers. This strategy is employed with great effectiveness by the United Way. Social pressure, and the desire to look good in front of one's peers, are powerful incentives — incentives that might well serve to motivate contributions to the patriotic defense of one's homeland.

Solution Four: Guarantee

In his book *The Limits of Government: An Essay on the Public Goods Problem*, David Schmidtz suggests offering moneyback guarantees as a way of increasing the incentive to contribute. Remember that a public-goods problem comprises two elements: the Free Rider problem (the temptation to free

ride if others contribute enough) and the Assurance problem (the fear that one will end up a sucker if one contributes and others end up not contributing). If those soliciting funds offer to refund contributors' money if insufficient funds are raised to fund the public good, the Assurance problem is defused. The Free Rider problem still remains, of course; but once the incentive to defect has been cut in half, the non-monetary incentives to cooperate may be enough to overwhelm it. War bonds could be offered in this way.

Solution Five: Privatization

The problem with funding public goods is that non-contributors are not excluded from enjoying the good. An obvious solution, then, is to try to invent some way of excluding those non-contributors — thus privatizing the public good. For example, although highways are supposed to be a paradigm case of a public good, we all know about toll roads: if you don't pay, you can't drive. At one time in this country fire protection was offered in the same way that insurance is now; firemen only saved houses whose owners had paid their premiums. (This obviously works better if houses are not too close together!) Methods of exclusion may also be discovered as technology progresses; it was once impossible to exclude anyone from viewing television transmissions, but we now have cable TV and broadcast scramblers. In addition, any good that can only be enjoyed in a particular location can be turned into a private good by making the location private property.

It is difficult to apply this solution to national defense; if you defend my fellow citizens from foreign invasion, you *ipso facto* defend me too, whether I contributed or not. There's no way to let enemy missiles through to hit just the houses of non-contributors while leaving those of contributors alone.

But there are at least ways of slicing the problem up into more manageable pieces. If we consider defense of the continental United States as a whole, it becomes clear that *local areas* that are net non-contributors can certainly be excluded from that good. So we implement Solution Five by decomposing national defense into a plurality of regional defenses, and then allow the other Solutions to operate within those regions. (Solution Three in particular will naturally work better at the regional than at the national level.)

Solution Six: Packaging

One way to fund public goods is to package them with private goods (from which non-contributors *can* be excluded). In 19th-century England, private roads were built that were not toll roads: they were completely free, and anyone could use them. Why was it in the road-builders' interest to supply this public good, then? Because the road-builders owned property — a private good — alongside the site of the proposed road, and once the road was built, increased traffic brought increased commerce, and the value of their property was increased. (I learned of this example from Stephen Davies.)

Lighthouses are another example. For decades, standard economic textbooks had loftily explained that lighthouses could never be supplied privately, because ships at sea benefit from the light whether or not they pay. But one day free-market economist Ronald Coase decided to do some research, and discovered that in fact lighthouses in Britain had in the past been supplied privately for many years. True, it was impossible to exclude non-contributors from the light of the lighthouse — but it *was* possible to exclude non-contributors from using the harbor, so the lighthouse fees were simply packaged with the harbor fees. Once again, entrepreneurs who stood to make a profit were motivated to devise innovations undreamed of by pessimistic academic economists. (Coase's article may be found in Tyler Cowen's anthology *Public Goods and Market Failures* — also published under the title *The Theory of Market Failure*.)

Broadcast TV is another classic public good: viewers can receive the signals whether or not they pay. If we had never had broadcast TV — if we had started with cable to begin with — economists would no doubt predict the impossibility of broadcast TV (unless financed by tax revenues). But TV broadcasters (and radio broadcasters before them) managed to pay for the broadcasts by packaging them with a private good: advertising. Providers of goods and services value advertising air time — and this definitely *is* a good from which they can be excluded, and for which they are consequently willing to pay. Advertising revenue is then used to fund the broadcasts; a public good for the viewers is funded by being packaged with a private good for the advertisers.

Could the public good of national defense

be funded by advertising as well? Perhaps so. How much money would Coca-Cola be willing to donate to national defense, in exchange for the right to advertise:



COCA-COLA:

WE DEFEND AMERICA!



Quite a bit, I would bet.

Private weapons ownership also represents a kind of packaging, one that operates on its own with no entrepreneurship needed. In a free society, people will have the right to own weapons, and will buy them for the sake of a private good: defense of their own homes and families. But this pursuit of private good brings along with it an important public good: an armed society, formidable to any would-be conqueror, itself represents a powerful deterrent, and thus, to that extent, serves as a means of national defense.

Perhaps another packaging strategy might work as follows. Suppose a group of private protection agencies, individually specializing in domestic law enforcement, were to make binding and enforceable contracts with one another to form a consortium, pooling their resources for the purpose of national defense. These protection agencies could then sell a package of protection services — domestic law enforcement and national defense — and refuse to sell the former to anyone who would not pay for the latter.

At this point, of course, a new entrepreneur in the security field could come along and try to undersell the consortium by charging for domestic law enforcement only. But at this point Solution Six might be combined with Solution Two; just as many people today practice "socially responsible" investing, refusing to invest in companies with bad environmental records or poor employment conditions, many might refuse to deal with any protection agencies other than consortium members.

All these ideas are only armchair speculations, of course. Once again, I expect that entrepreneurs alert for profit opportunities would be a lot more imaginative than I have been here. Thus I am optimistic about the ability of the market to supply even such public goods as national defense. Δ

Funding Public Goods: Six Solutions

by Roderick T. Long

The Argument for Market Failure

A *public good*, as economists define the concept, is any good from whose enjoyment non-contributors cannot be excluded. The theory of public goods is of interest to libertarians for two reasons: first, because a great many things we care about — highways, education, law enforcement, fire protection, national defense, *etc.* — are widely thought to be public goods, or to have public-good characteristics; and second, because the majority of economists are convinced that such public goods cannot be supplied on the free market.

The argument for the inadequacy of markets in this area runs as follows. Suppose there is some good X that 200 people value; but if X is produced, each of those 200 will be able to benefit from it, whether or not they contributed to its production. If you are one of the 200, what is your reaction if you are asked to contribute?

According to the orthodox theory of public goods, you reason as follows: "Either the other 199 are going to raise a sufficient amount of money to fund X, or they aren't. Suppose they do raise enough. Then the good will be funded whether I pay or not, so I might as well not pay, so I can take advantage of the benefits without paying the costs. [This is the Free Rider problem.] On the other hand, suppose they don't raise enough. Then the good won't be funded even if I do contribute, so there's no point in throwing my money away. [This is the Assurance problem.] The chance that my contributing or not will make the decisive difference to X's being funded or not is so minuscule as to be quite properly ignored. So either way, regardless of what others do, it's in my interest not to contribute. So I won't." And you don't.

The problem is that the other 199 people in the group are reasoning the same way, and so X never gets funded — despite the fact that everyone would be better off — by their own standards — if X were funded. It's in everybody's *collective* interest to cooperate, but in everyone's *individual* interest

to defect; and since it is individuals, not collectives, who make decisions, the result is that no one cooperates and the public good is never produced. The market system of voluntary cooperation appears to have failed.

Solution One: Force

There is a way of solving this public goods problem: make contribution compulsory. If everyone is forced to contribute, then the public good will be funded, and everyone will be better off — in respect of that public good, that is. They will of course be worse off in another respect: they will no longer be free. Nevertheless, coercive force is widely endorsed as the sole possible solution to the public goods problem. Forced contribution, whether of labor or of property, is certainly the solution of choice in the modern state: taxation, military conscription, eminent domain, and jury empanelment are among the obvious cases.

But is force the only possible solution? By no means. Throughout history, count-

(continued on p. 22)

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