

formulations

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FNF Directors Speak at First Conference of Sister Foundation NCF

FNF Directors Richard Hammer and Roderick Long were among nine speakers at the first conference of the New Country Foundation (NCF), on Saturday, 15 July 1995, in New York City. About 25 attended the daylong event. NCF, which organized in 1994 and is headquartered in New York City, shares several ideas with FNF about how to approach formation of a free nation.

Among the speakers, Courtney Smith, investment advisor and NCF president, told of a book about new country formation that he and veteran new country organizer Mike Oliver are writing. Smith also told of the NCF goal to develop a business plan, practical and complete, for taking a step toward sovereignty by starting an offshore floating business near some coastal city. Mike Oliver, who also spoke, expressed confidence that one or more new country efforts should be able to succeed soon, especially in the form of freports, trading cities with limited sovereignty.

Richard Morris, an engineer from Florida, spoke of his design for floating islands which might hold a business, or even eventually a city. Made of hexagonal concrete sections, the islands would float on air trapped beneath them in cells, and could, as Morris told, cost less per acre than onshore real estate. He showed photos of a prototype floating in his swimming pool and distributed flyers advertising small applications such as bridges and dive platforms.

Among the remaining speakers, David Mayer talked on the law of the sea and international law as they would affect new country efforts. Randy Dumse told how people can be expected to coalesce around a promise, or a covenant, and ended with a specific suggestion that NCF look at Belize as a candidate site. Jim Davidson, who participated with Eric Klien in the now

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Laissez Faire City, Another New Country Venture, Makes News, Exchanges with FNF

news and opinion
by Richard Hammer

A full page ad in *The Economist* of 10 June 1995 announced Laissez Faire City International Trust (LFC), and started a series of exchanges between LFC and FNF. The ad, which referred repeatedly to Ayn Rand and her work, told the aim of LFC: to lease one hundred square miles from an underdeveloped host country and there administer a fifty year free reign without government rule.

FNF Directors Roderick Long and I have interacted several times with LFC representative Rex Houston, who telephones and FAXes from an office in Costa Rica. Houston has commissioned, and received from Roderick, a paper on Roderick's Virtual Canton Constitution. LFC evidently intends to include this paper in a package of plans which it will distribute. Houston has also talked tentatively with me about the possibility of my serving on the editorial staff of the LFC newsletter.

LFC's debut has generated skepticism among all in the libertarian community from whom I have heard comment. LFC's presentation flashes promise without giving evidence of careful planning or of solid, committed backing. I expect that outside observers, those not disposed by ideology to grant LFC the benefit of the doubt, see LFC as a hoax or scam. LFC gives little to refute this impression.

But at present I, being disposed by ideology to grant LFC the benefit of the doubt, can imagine behind the unprofessional interface an organization with integrity and financial backing. They persist and to this date uphold their end of ex-

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FNF Forum on 14 October: Free Market Mechanisms for Organizing Collective Action

Our next forum will be held on Saturday, 14 October 1995, from 9AM till 5PM, at Oliver's Restaurant in Hillsborough, NC. The topic is: Free Market Mechanisms for Organizing Collective Action. To register clip and return the order form on page 18.

Speakers who have committed to participate are: Phil Jacobson, Earnest Johnson, Roderick Long, and Richard Hammer.

Registrants receive: admission, the package of papers being presented, and Proceedings printed after the Forum. Those who register on or before 5 October get a discount and will receive their package of

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NCF Conference (from p. 1)

defunct Atlantis Project, told some stories from his experience in that project. Financial privacy expert Adam Starchild, though not one of the official speakers, was invited to contribute an impromptu presentation, in which he talked about the advantages of building a community around a floating university. Richard Hammer, after introducing FNF to the conferees, spoke about economic constraints in formation of a new nation. Roderick Long described his Virtual-Canton Constitution and discussed similarities and differences between the virtual-canton approach and other approaches to constitutional design for a free nation, such as the proprietary-community approach. Marc Joffe, NCF Director and Editor of NCF's newsletter *New Country Report*, presided at the meeting.

In the evening after the meeting, Courtney Smith and his wife, cryonics activist Brenda Peters, hosted a gathering in their eastside apartment. They also provided lodging for two of the out-of-town speakers, Mike Oliver and Roderick Long.

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Laissez Faire City (from p. 1)

changes. I hope their dream comes true, and am prepared within bounds to work along with them.

LFC has extended some credit to FNF. They have placed a FAX machine in Roderick's office to facilitate communication with him. And they have sent packages, including copies of *Atlas Shrugged*, to FNF's Directors, all five of whom LFC has assigned a status equivalent to having paid \$100, in exchange for LFC membership in FNF.

The LFC idea originated, as Houston told me, when a group of entrepreneurial millionaire friends were drinking and talking together somewhere in South America. Evidently these people shared enthusiasm for the work of Ayn Rand. The idea of forming a free market city, a new Hong Kong, took root and LFC Trust was born. Until their advertisements brought notice, apparently none of the founders had con-

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formulations

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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
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Roderick T. Long
Christopher H. Spruyt

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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.

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Dismantling Leviathan From Within, Part II: The Process of Reform

by Roderick T. Long

This paper was presented at our
29 April 1995 Forum.

The Problem of Libertarian Reform

In the previous installment, I asked you to imagine that libertarians have come to power in the tiny, hitherto-statist country of East Zimiamvia. My question, then as now, is: What can the new libertarian régime do to transform East Zimiamvia into a free nation without departing from libertarian principles in the process?

According to one point of view (which I've been calling the Principled Objection), nothing. One version of this objection maintains that the mere holding of political power, even by those with the purest libertarian intentions, constitutes aggression and so is impermissible. That's the position I attempted to refute last issue.

But there's a more sophisticated version of the Principled Objection, one that goes like this: Any successful dismantling of the state must be gradual (where any process lasting longer than immediate overnight abolition counts as gradual). If the East Zimiamvian state is eradicated overnight, before market-based alternatives have had time to develop, the result will be chaos, and a populace as yet unused to freedom will most likely respond to this chaos by repudiating the libertarians and at once building a new state, perhaps worse than the old one. Hence a libertarian government, in order to succeed in its goals, must adopt a policy of gradualism. But this is precisely what it cannot do, if it is to remain consistent with libertarian principles. A government that is merely phasing out taxes and regulations is a government that is continuing to tax and regulate. If libertarian officials enforce the laws they have not yet repealed (and not enforcing them would count as repealing them *de facto*), they are engaging in aggression, contrary to their moral duty, and so have become simply a new brand of thieves and thugs, however well-intentioned. Hence, the argument concludes, there is nothing a libertarian government can do that is *both* practicable and permissible.

Is this argument sound? Let me explain

why I'm not convinced.

Services: Abolish or Phase Out?

The government does primarily three things: it taxes, it regulates, and it provides services. (Among services I include not



Roderick Long

only things like courts, highways, and mail delivery, but also subsidies to the rich and welfare payments to the poor.)

Of these three, the one whose abrupt termination would cause the greatest amount of social dislocation is services. Note, however, that the provision of government services is not *in itself* a form of aggression. The aggressive aspect lies in the fact that the services are funded by stolen money (taxation), and that competitors are often prohibited or severely restricted (regulation). Hence a gradual phase-out of government services (as opposed to immediate abolition) involves no violation of libertarian principle, provided some solution can be found to the problems of taxation and regulation. (How these services are to be funded is a question I shall take up shortly.)

Regulation: Abolish or Phase Out?

Let's turn to regulation, then. Most of the harmful effects of deregulation are caused by *incomplete* deregulation—in particular, by deregulating X while neglecting to deprive X of special governmental privileges that consist of regulations or taxes on everybody else. Three examples leap to mind: First, there are cases in which governments, invoking "free market" values, have "de-

regulated" (i.e., permitted a broader range of pricing and other options to) industries that are either monopolies (*e.g.*, power companies with a legal guarantee of freedom from competition) or near-monopolies (*e.g.*, industries dominated by powerful corporations who are insulated from competition through regulations and tax codes that make it more difficult for newcomers to enter the market).

Second, there is the notorious S & L scandal, when the Reagan Administration gave Savings and Loans greater freedom to make decisions with depositors' money, while at the same time retaining federal deposit insurance and so ensuring that the taxpayers, rather than the lenders, would bear the costs of the lenders' mistakes.

Third—in an example that shows that big government is no friend to the environment—politicians have given loggers greater freedom to log on federal lands, at a fraction of the cost that a private landholder would demand. In all these examples, partial deregulation amounts in fact to a fascist grant of quasi-governmental privilege, without accountability, to private entities—a practice that can only lead to skewed incentives and abuse of power. (Governments are *socialist* to the extent that they seek to exercise *direct* control over the economy, and *fascist* to the extent that they delegate this task to the powerful "private" beneficiaries of state privileges and protection. Socialism means rule by bureaucrats; fascism means rule by plutocrats. The current American system seems to be a mixture of the two.) Those who complain of the harmful effects of deregulation are quite correct, if they are referring to what passes for "deregulation" under a statist régime. (The statist have similarly appropriated the term "privatization" to refer to the fascist process of "contracting out," *i.e.*, of granting to private companies an exclusive monopoly to perform services usually monopolized by government directly—as opposed to the original libertarian meaning of "privatization," which was that such services were to be turned over to the competitive market free and clear.)

The dislocative effects of genuine and complete deregulation would be far smaller. That is not to say that they would be nonexistent, of course—*e.g.*, one would expect to see a fair number of layoffs as hitherto-protected industries are suddenly

exposed to competition; abolition of minimum-wage laws, while it would help to alleviate unemployment, would also mean that initially many families would have a harder time making ends meet; and so on.

But two things should be said here. First, government regulations have the same effect on economic growth as molasses does when poured into a clockwork mechanism. The more regulatory hurdles one must leap in order to start up a new enterprise or expand an old one, the fewer such enterprises will be started up or expanded. As a result, the whole economy slows down. Abolishing all regulations would increase productivity enormously, and this can only benefit the initial victims of dislocation — the poor and unemployed. A rising tide does lift all boats — except when some of the boats are anchored to the bottom by short chains. Unfortunately, governments specialize in the short-chain business. This is another pernicious result of government regulations (including everything from licensing laws to state control of the money supply): while such regulations harm the economy in general, they have a disproportionately negative impact on the least affluent members of society. (For a defense of this claim, and an argument that "a free society would see the virtual elimination of poverty," see my "Who's the Scrooge? Libertarians and Compassion," in *Formulations*, Vol. I, No. 2 (Winter 1993-94).) The more quickly the economy is deregulated, the sooner the poor will benefit from the explosion of wealth that genuine deregulation would bring. Swifter deregulation might make social dislocation more acute, but it would also make it much shorter.

Those who seek to dismantle Leviathan can derive both instruction and inspiration from the model of the Czech Republic (the only nation-state I know of whose leader is a member of ISIL!):

"There are, at bottom, just two ways to bring economic rationality to a state which has seen none of it. One is to carefully analyze the situation, to call high-level conferences and consult with international experts, to measure each tentative step, to be cautious of doing the wrong thing — of going too far, of giving away too much. The other path is to decide that speed is the very essence of reform and that the great catastrophe lies

not in doing the wrong thing but in doing nothing.

Most of Eastern Europe has chosen the cautious route. Alone among the former satellites of the Soviet Union, the Czech Republic has elected to go fast. Now as Hungary, Poland, and Russia struggle to emerge from the abyss of the planned economy, as Romania and Bulgaria and Ukraine bobble in a post-socialist/pre-capitalist never-neverland, a thriving marketplace is flashing its sparkle in the Czech Republic, a modern experiment in radical capitalist transformation. ...

The Czech model was not how the Western experts had charted the East European reform era. ... surely the task of privatizing the Czech Republic's 2,700 state-owned firms could not be done overnight. ... By March 1995, however, the assets of the Czech Republic ... were 80 percent owned by private persons or corporations Czech living standards are increasing rapidly. Inflation ... is now under 8 percent a year; indeed, the currency has held its ground against the U.S. dollar since 1991. Exports are booming and the federal budget is in surplus. Unemployment is at 3.5 percent The expanding service center is swallowing up thousands of 'workers' from the 'industrial' sector"

(Thomas W. Hazlett, "The Czech Miracle: Why Privatization Went Right in the Czech Republic," *Reason*, April 1995, pp. 28-29.)

Of course, when Hazlett speaks of "overnight" privatization, he is being metaphorical; the Czech Republic's journey toward a market economy has taken years, not hours, and it is far from complete. Still, the Czech experience gives us reasons for optimism. Hence I see no particularly strong case, even on pragmatic grounds, for a gradualist (as opposed to an abolitionist) approach to deregulation — so long as some non-coercive means can be found of supplying the services, welfare payments, *etc.*, that will enable the citizens to survive the transitional period without excessive hardship. (I will deal with the funding issue shortly.)

Second, there are in any case some cases of dislocation caused by rapid deregulation where a gradualist approach might even be ethically justified. Suppose Amalgamated Widgets holds a grant of monopoly privilege in the field of widget production, and

also is subject to strict price controls (specifically, a price cap). There are conceivably three ways deregulation might proceed.

Option One: Remove the price controls now, and the monopoly privilege later. There are both rights-based and pragmatic objections to this approach. On rights-based grounds, the grant of a monopoly privilege constitutes governmental aggression for as long as it lasts, and justice demands that it be terminated immediately. Pragmatically, if the price controls are lifted while Amalgamated Widgets remains a monopoly, then Amalgamated Widgets will be able to charge arbitrarily high prices for widgets, and customers who need widgets will be at its mercy. Hence Option One is a non-starter.

Option Two: Remove the price controls and the monopoly privilege at the same time. This option is clearly preferable to Option One, but it is not without its problems. If Amalgamated Widgets' monopoly privilege is abolished overnight, it may take some time for competitors to gear up to produce and distribute rival widgets, and in the meantime Amalgamated Widgets can still cause economic hardship by charging monopoly prices, exploiting to the fullest its last fading shreds of state privilege.

Option Three: Remove the monopoly privilege now, and the price controls later. This is arguably the most attractive solution from a pragmatic perspective, as it would ease the transition process. (The price controls in question are *only* on Amalgamated Widgets, not on its competitors.) Too low a price ceiling would probably not be a good idea — we want to encourage private organizations to form in competition with Amalgamated Widgets, after all — but a temporary price cap of *some* kind would prevent undue hardship during the period before competitors have arisen.

But is it ethical to continue imposing price controls on what is now a private company, one competitor among others? Perhaps it is. Consider the fact that Amalgamated Widgets' privileged position in the marketplace is the result neither of its own efforts nor of mere chance; rather, it is the result of systematic aggression by government in its favor. It might be argued, then, that a temporary cap on the company's prices could be justified in order to prevent it from taking undue advantage of a position it gained through

unjust violence against the innocent.

(One has to be careful here, however. Sometimes the beneficiaries of governmental privilege are *also* the victims of governmental aggression, and it can be very difficult to figure out who are the net winners and who the net losers. For example, cable TV services in Chapel Hill are supplied by Cablevision, a company under contract to the city government. Cablevision thus enjoys a coercive monopoly on cable TV in Chapel Hill, and local complaints about its high fees and slipshod service suggest that it abuses its power. On the other hand, Cablevision's contract comes up for periodic renewal, and the company can never be quite sure whether the city government will in fact renew it. If the city decides instead to award the contract to a competitor, Cablevision loses all its Chapel Hill business in one fell swoop. In a competitive industry, a company can notice a slow drain of its customers to a competitor, and can accordingly take steps to improve its own service; but Cablevision, insulated from market forces, has no way of determining the preference strengths behind the various customer complaints it receives. Moreover, the uncertainty over upcoming contract renewal decisions makes it extremely risky for Cablevision to engage in long-term planning or investment. So is Cablevision exploiting Chapel Hill, or is Chapel Hill exploiting Cablevision?)

Taxation: Abolish or Phase Out?

I've argued, then, that a gradualist approach to deregulation may be both practical and permissible in some areas; where this is not the case, immediate deregulation is quite in order, so long as government services are maintained to ease the transition. I would further argue that a gradualist as opposed to an abolitionist approach to government services is superior not only on pragmatic but also on rights-based grounds. In most cases, those who are in need of government help are in such need primarily neither through chance nor through their own fault, but rather because of government policies that keep people needy, and also throw impediments in the way of private-sector satisfaction of those needs. It only seems fair that the government should be forced to undo the damage it has wrought. I recall an apposite comment several years ago in a libertarian

newsletter published in New York state (I forget the author's name, and the precise wording): "Government has pushed people out onto tightrope wires; and all libertarians can think to do is to call for the abolition of safety nets?"

But if government services are to be phased out gradually rather than abolished overnight, how are such services to be funded in the meantime? This brings us to the third activity of government: taxation. On pragmatic grounds, it seems as though the most successful course would be to phase taxes out gradually; while tax revenues lasted, they would be used to fund the gradual phase-out of services, thus giving the market a chance to catch up. But on rights-based grounds, taxation is aggression, and those who tax are morally required to cease and desist immediately.

What, then, are the morally permissible revenue options for a libertarian-minded government? It seems to me that there are six. As we consider them, keep in mind that most of what government does has no redeeming aspects and could be cut at once, so the funding needs of our new East Zimiamvian régime should be fairly modest.

Option A: Raise money by selling off government assets. This is fairly obvious. There are some problems with it, though. The privatization scheme that seems both the fairest and the most effective is the Czech Republic's voucher system:

"[One of the] key elements to the Czech economic reforms [was] 'mass privatization.' ... Adult citizens would bid for companies with voucher coupons, with each entitled to buy one booklet of 1,000 'points' for a nominal sum. The idea was appealing because simply transferring assets to private citizens is equitable and democratic. It also had a very practical aspect to recommend it: Assets could be privatized with minimal payment. That's a fairly important feature when you are dealing with 15 million near-penniless survivors of communism. So on philosophical grounds — 'you deserve a break today' — as well as pragmatic ones — 'no cash? no problem!' — turning over state enterprises to the citizens, one man, one share, seemed the right thing to do. ...

Privatization projects included various means for transferring state assets to

private owners: direct sales, tender offers, restitution, auctions, and voucher coupons. All told, about half of the book value of large-scale privatization was distributed via vouchers — \$10 billion. ... Czechoslovakian citizens over the age of 18 were invited to purchase their 1,000-point booklet to use in the voucher privatization auction. These coupons were officially registered for 1,000 Czech Crowns (\$35, about one week's wages) at over 650 outlets across the country. ...

[Initially] Western consultants and bankers pooh-poohed the idea in great spasms of laughter. ... Yet some 8.54 million citizens — 71 percent of eligible purchasers — bought and registered voucher coupons. Enthusiasm was spurred by the spontaneous emergence of investment privatization funds (IPFs), some of which guaranteed 20,000 Crowns for those willing to turn over their 1,000-Crown investments. ... Some 72 percent of all the coupon points were entrusted to such funds The mere existence of private assets spontaneously created — as if by an 'invisible hand' — the means needed to manage capital shares.

Western experts had warned that giving away stock shares to citizens was doomed to failure because [when] stock ownership is so widely distributed ... no one party has an incentive to monitor the value of firms or the performance of managers Yet the Czechs again relied on a bottoms-up strategy: Simply hand off equity ownership to individuals and allow markets to find a solution." ("The Czech Miracle," pp. 31-34.)

This, I think, is clearly the example that a budding free nation should follow. But it's not a method calculated to swell the coffers of the East Zimiamvian state treasury.

On the other hand, the Czech model does reduce some of the need for government revenues, by providing a route for getting cash quickly into the hands of citizens. The IPFs described by Hazlett might be characterized as a private-sector welfare program formed in response to the incentives created by the privatization voucher scheme.

Option B: Charge user fees for government services. So long as the government permits competition, there is nothing particularly un-libertarian about the

government's offering various services and charging for them. If the market has not yet produced competitors offering such services, there will be plenty of demands for the government's services, and revenue will come in. (The government will need to impose some price controls on itself, however, for the same reason as in the Amalgamated Widgets case.) And once enough competitors have arisen to cut significantly into the government's revenue, the government's services are no longer needed anyway.

One service in particular that the government will need to offer is passports. A free nation will naturally have open borders with no passports needed for entry or exit; but other nations will not. Natives of East Zimiamvia may be unable to travel abroad if they cannot obtain an East Zimiamvian passport. Likewise, foreigners who seek to escape excessive taxation in their home countries by renouncing their native citizenship in favor of East Zimiamvian citizenship will no longer be able to use their old passports and will need new ones. The East Zimiamvian government may permit competition in passport production, as it permits competition in everything, but the odds are that foreign countries will choose to recognize only those passports issued by the official East Zimiamvian government, and so it is only the official government passports that citizens will be willing to purchase — for a price.

Option C: Solicit voluntary contributions. The government needs money? Hold a telethon! If it works for Jerry's Kids, it might work for us too. And the international free nation movement might be able to contribute as well (depending on how well-funded it is).

Option D: Use non-coercive measures to get people to pay their taxes. This is something like Option C, but with a bit of a twist. Continue to assess taxes as before — even call them "taxes" — but don't enforce them. That way, such "taxes" don't run afoul of libertarian scruples. Would people still pay taxes if they knew nothing would happen to tax "cheats"? Most probably wouldn't; but some would, whether from a sense of civic duty or as a result of conformist social pressure. (A helping hand could even be given to this latter influence by publishing the names of those who paid their taxes and those who didn't. Sure, it's tacky, but it's better than coercion!)

Option E: Tax the beneficiaries of state privilege. Call this one: How to soak the rich with a clear libertarian conscience. It can be argued that it is permissible to impose coercive taxes, temporarily at least, on *some* people and *some* businesses — namely, those whose wealth is to a great extent the product of state protection and subsidy. Isn't it simply an act of just restitution to take back some of these ill-gotten gains and return them to the people in the form of government services or even direct payments?

Option F: Restrict the franchise to taxpayers. Is the franchise a right or a privilege? It depends. When the government holds a monopoly on legal services (legislation, adjudication, and enforcement), then it seems to me that its customers are justified in demanding the right to exercise some control, in the name of self-defense against this monopoly, over its decision processes, by means of the franchise or some analogous mechanism. (Here, accordingly, I disagree with those libertarians who say that an absolute monarchy would be a just form of government if the monarch were a libertarian, and that pragmatic considerations alone count against such a system.) But that to which one has a right, one need not pay for. So where government holds a monopoly on legal services, it has no right to charge its customers for the right to vote.

But of course the government also has no right to hold a monopoly on legal services in the first place. And once it relinquishes that monopoly (in which case it is strictly speaking no longer a government — but it may very well find it politic to continue calling itself a government), it is simply a service provider like any other, and its customers no longer have any grounds for demanding to participate in its decisions. At this point the franchise becomes a privilege, not a right, and the "government" becomes justified in charging for it.

This is the approach taken in my Virtual-Canton Constitution, which is structured as a genuine "social contract":

"The Citizens of the Free Nation shall be any persons who, being competent, shall have signed and assented to this Constitution. Citizenship carries with it the right to vote and eligibility for public office, which are denied to non-Citizens; it carries with it also the liability to taxation by the Federal Administration and

by the Citizen's Virtual Canton, from which liability non-Citizens are exempt. Thus the Government of the Free Nation is a voluntary cooperative association, with free exit and entry, and taxation is thus likewise voluntary, being conditional on Citizenship. Citizens may renounce their Citizenship at any time, and reclaim it later as they choose."

("Draft of a Virtual-Canton Constitution: Version 5," section 1.1.3.)

The rationale for this provision is elaborated in my commentary:

"This form of 'taxation' is consistent with libertarian scruples, amounting to no more than a fee to which one is liable only so long as one remains a member of the group.

Given that Citizenship brings taxation in its wake, why would any resident choose to become a Citizen? Well, as the foreign policy interface (and holder of the lease, if any) among other things, the Federal Administration has the potential for significant impact, positive or negative, on the lives of the Free Nation's residents. Those residents will have an incentive to influence the Federal Administration's policies through voting or seeking public office, and so will be willing to become Citizens. Thus the Free Nation is assured a source of revenue.

("Imagining Freedom: A Constitution of Liberty. Part I: Between Anarchy and Limited Government," *Formulations*, Vol. I, No. 4 (Summer 1994).)

There is also another reason for expecting many of East Zimiamvia's indigenous residents to sign up as Citizens and so undertake a contractual obligation to pay taxes, at least initially. Under a libertarian constitution, the government will be so tightly restricted that its importance — and consequently the importance of the vote — will be minimal. But the inhabitants of our fledgling libertarian nation, being accustomed to a statist régime where the state, and consequently the vote, are all-important, will initially be unwilling to surrender the franchise; and since the taxes charged by this government will presumably be much lower than what the residents are used to paying, they will initially be unlikely to see the cost of the franchise as

excessive. As the libertarian régime progresses, and the East Zimiamvian natives discover that all the important action is in the private sector, revenues may well drop to a point at which the government is forced into bankruptcy; but if that happens, it will be a sign that the government is no longer needed anyway. I am concerned primarily with the acquisition of revenue during the transitional period.

On this whole question of voluntary taxation and constitutional reform, the advice of Machiavelli may be relevant:

"He who desires or proposes to change the form of government in a state and wishes it to be acceptable and to be able to maintain it to everyone's satisfaction, must needs retain at least the shadow of its ancient customs, so that institutions may not appear to its people to have been changed, though in point of fact the new institutions may be radically different from the old ones. This he must do because men in general are as much affected by what a thing appears to be as by what it is, indeed they are frequently influenced more by appearances than by the reality.

For this reason the Romans, on acquiring freedom, recognized the need of this from the start; and when in place of a king they appointed two consuls [the chief executive officers of the Roman state], they decided that the latter should not have more than twelve lictors [the consuls' attendants], so as not to exceed the number which had ministered to the kings.

Furthermore, since when a commemorative sacrifice was offered it could only be offered by the king in person, and they did not wish the absence of the kings to arouse in the people a desire for anything pertaining to the past, they appointed a 'master of ceremonies' whom they called the 'sacrificial king' and put him under the high priest. It thus came about that the populace were content with this sacrifice, and had no occasion, for lack of a king, to desire that he should return.

This should be noted by all who contemplate abolishing an ancient form of constitution in a city and setting up a new and free form; because, since novelties cause men to change their minds, you should see to it that changes retain as

much as possible of what is old, and that, if changes are made in the number, the authority and the period of office of the magistrates, they should retain the traditional names."

(Niccolò Machiavelli, *Discourses on Livy* I. 25; in *The Discourses*, trans. Leslie Walker (Penguin, London, 1983), pp. 175-176.)

This is good advice to free nation founders in general, and should guide them in everything from the naming of offices and the choice of flag to the design of constitutional structure. And it is one reason that it may well be advisable to retain terms like "government," "taxes," and "franchise," at least initially, even though strictly speaking a security agency that permits competition is no government, revenues that are collected by non-coercive means are no taxes, and a voting process unconnected with a state is no franchise. Retaining statist terminology during the transitional phase may offer a sense of comforting familiarity, and help to prevent the East Zimiamvian population from feeling that it is being plunged into anarchy. In addition, the retention of statist terminology may serve to bring in more revenue. People may feel: "This is my *government*, of course I want citizenship and the right to vote, and taxes are only to be expected." Much less probable is the sentiment: "This is temporarily the largest security agency, of course I want to be its customer, participate in its deliberative process, and pay its fees."

Here, then, is my neo-Machiavellian suggestion for obtaining Option F revenues as soon as possible, even before the transition process is completed:

1. Have a new libertarian constitution ready to put into effect the minute you take power. Your new government's transitional powers can be built into the constitution with sunset clauses, while the more anarchic elements in the constitution are postponed, *i.e.*, written in but specified as coming into force at a later date. (The U.S. Constitution has two "postponements," one in Article I, Section 9, and the other in Article V.)

2. Be sure to include somewhere in that constitution a provision — not one of the "postponed" ones — forbidding all coer-

cive monopolies, including monopolies on legal services. (See sections 2.2.11-13 of my Virtual-Canton Constitution for an example.) Casuistically speaking, this step is a precondition for the moral legitimacy of the rest of the plan.

3. Make sure the constitution also includes language (again, not in the "postponed" section) equivalent to my "social contract" provision (see 1.1.3 above) restricting taxation and the franchise to citizens, and citizenship to signatories of the constitution.

4. Announce early elections, to some offices at least (perhaps those least able to interfere with the transitional government's program).

5. Hold a voter registration drive, announcing that only those registered since the adoption of the new constitution will be eligible to vote in the upcoming election.

6. Make sure the voter registration process includes an Affirmation of Citizenship, involving a signed agreement to the constitution. This can be presented as simply a more formal version of the "oath to uphold the Constitution" traditionally required when registering to vote. If the Affirmation can incorporate language similar to such an oath administered under the preceding régime, so much the better.

7. Tax the folks who sign!

This approach seems the one likeliest to bring in the greatest number of voluntary taxpayers, by exploiting their allegiance to traditional forms without actually deceiving them in any way (any more than the ancient Romans were deceived into thinking the "sacrificial king" was a genuine king with traditional monarchical authority).

**Next time:
Is Libertarian Political
Action Self-Defeating?**

Roderick T. Long is Assistant Professor of Philosophy at the University of North Carolina at Chapel Hill. A frequent lecturer on libertarian topics, he is currently completing a book tentatively titled Aristotle on Fate and Freedom.

Education in a Free Nation

Children Can Learn Without State-Forced Schooling

by Liz Hanson

How would children in a free nation be educated? Our answer to this concern lies in how we define "education," and how we determine what learning is and how, and where it takes place.

Most of us, because we are products of a government school system (any private or home school that is regulated by government is in this category), have an unnatural bias toward equating the terms "school" and "education." We have been taught that school is where you go to get educated, and that the more schooling you have, the more educated you are. We have been indoctrinated by our own personal experience, as well as government and the media, to accept without question that it is normal, good, and right for us to send our children off to school at the age of five, and to keep them there five days a week, nine months a year, for the next twelve years.

When we start seeing or experiencing problems with the education system, our immediate course of action is to expend time and energy trying to fix it. Either individually or banded together in all manner of groups and organizations, we try all kinds of things hoping to alleviate the problems and meet our needs and those of our children: we advocate different curriculums, smaller class sizes, more discipline, less structure, higher pay for teachers, vouchers, privatization, alternative schools, home schooling, and more, depending on what is in vogue at the moment; we petition the state school board and the local school district, trying to convince them that our ideas have merit; we run for office in hopes that we can change things by passing some new law; we become certified teachers, thinking maybe we can make a difference from the "inside"; we home school or put our kids in private school, and wonder why we still don't feel quite satisfied. In our government-schooled ignorance, we stumble along, unable to recognize that the institution we are trying to fix is inherently and irreparable defective, and that schooling is not the same as education.

I consider "education" as being synonymous with "learning" rather than "school." I believe that school as an institution more often than not destroys the very thing (learning) that it is supposed to foster.

Parents who have been involved in nurturing their children since birth find it easier to understand and accept that learning is a natural process, and trust their children to take the lead in their own education. If you are a mother who has had your children in day care, pre-school, or with baby-sitters from a young age, or if you are a father who is away from home most of the day while your partner is with your children, you will probably have more trouble trusting in the natural process, simply because you haven't been around your children enough to really experience how they learn over time. Also, if your children are or have recently been in school, your difficulty in trusting in the natural process of learning will be compounded by the fact that the school experience has usually hampered their natural abilities and inclinations. To understand how education could take place in a free nation we have to overcome our years of conditioning. We have been taught to accept that the way things are, government-regulated coerced schooling, is the only way.

Regardless of their upbringing, most children develop from completely dependent infants into five-year-olds who have learned a language and developed a vocabulary, learned to walk, to feed themselves using utensils, to dress themselves, and to use the bathroom, to name just a few of the most common accomplishments. Now consider that they learned these things (and much, much more) without ever setting foot in a classroom or having to be sat down and "taught" any of it. We have allowed ourselves to be convinced that this normal, natural, and fully automatic process will suddenly stop unless we put our kids in school at five years old.

The fact is, the entire organism of the child is geared toward learning and growing, and children accomplish this by observing and doing. And, as those of you who nurture your children yourselves know most profoundly, each one of them does their observing and doing in a highly personal and individual way. Learning is an activity that takes place most easily in an atmosphere in which people are free to pursue their interests and encouraged to use

those resources that are best suited to their own abilities, needs, and desires. The more that we integrate our children into our everyday lives of work, play, family, and community, the more opportunity we give them to develop in their own unique ways, utilizing their inherent abilities and natural inclination to learn and grow.

Since the emergence of human beings on earth, people have lived in families, clans, and tribes—always in groups of adults and children of varying ages who live and interact with each other throughout their lives. In this setting, children grow up emulating and learning from the more mature members of the society, and from their interaction with people of all ages on a daily basis.

Putting large groups of age-mates together with only one or two adults, as in government schools, is highly unnatural and detrimental to children. When our children spend most of their day with only their age-mates, who are at the same level of immaturity mentally and emotionally, what can they learn to emulate?

In the natural order of things, our children belong (especially prior to adolescence), in their rightful place within the family that loves, respects, and nurtures them, and where they are most able to learn and grow in a way that human beings were designed to. The more that you observe non-school children who live real lives and acquire knowledge and expertise through the use of their inherent abilities, the more convinced you will be that the very notion of school as we know it is an absurdity.

Unfortunately, we are hampered by our inability to imagine society without school as we know it. We don't know anyone who hasn't gone to school, so we have no role models to emulate. There isn't a generation alive today from whom we can get a first-hand account of what life and people were like in the absence of government-coerced schooling.

In a free nation we have no guarantees of what life and people might be like if learning were to take place in a natural way from childhood through adulthood. Some might fear the worst, that schools would disappear overnight. But in time schools will simply become regulated, as they should be, by the people who use and pay for them. Schools will take their place among the many alternatives that will eventually be

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Review

The Secret of the League

by Ernest Bramah.
Specular Press, 1995

Daniel Jencka, publisher
\$15.95 from Specular Press,
5555 Roswell Rd. NE, Suite Q14,
Atlanta, Georgia, 30342
287 pages, paperback

reviewed by Sean Haugh

When the literature of capitalism is called to mind, one's thoughts would naturally turn to works of politics, philosophy or economics. There is almost no conception of a capitalist art movement. There is Ayn Rand, and there are an assortment of science fiction writers, and little else.

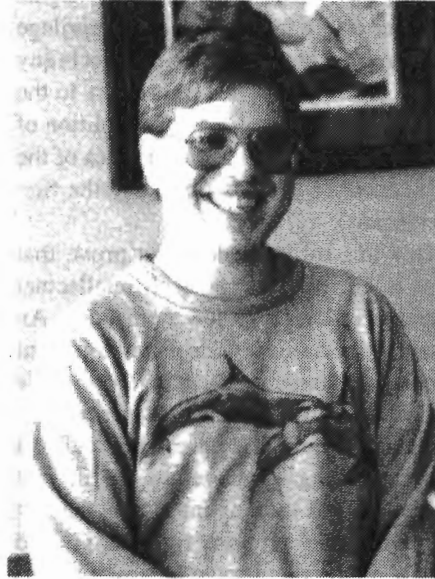
Enter Daniel Jencka and Specular Press. *The Secret of the League*, written by Ernest Bramah, promises to be the first in a series of capitalist fiction. Jencka envisions the series as mostly comprised of forgotten works from earlier times, while also including modern works that develop the genre.

The Secret of the League is a future history novel that tries to do several things at once, and mostly succeeds. I doubt it contains the power to convert the masses (or even a majority of the upper class) to the gospel of capitalism. But it is written thoughtfully and entertainingly enough that it would appeal to lovers of adventure stories, science fiction or turn-of-the-century British literature, as well as capitalists and historians.

From Bramah's vantage point in 1906 England, he projects what his country might well be like by 1916 if the Socialist Party took power. From my view here in America in 1995, it seems he has far more hits than misses. Writing about the near future is one of the more dangerous options a writer can take. Sadly, most fail in accurately predicting much of anything. Except for a few bizarre wrong turns, if Bramah has erred in his predictions of technological advancement, he posited too much too soon. For instance, he describes a rather cumbersome yet elegantly efficient fax machine. It is clear that if he had an inkling of the invention of computers, he would have predicted the Internet. On the other hand, his vision of

how flying machines would take form is so off the mark it's delightfully goofy. But I won't spoil the joke.

While Bramah scores well on the test of predicting the future, any book must still



Sean Haugh

stand or fall on the strength of the narrative. This is a fine yarn with a dramatic flair about a mysterious fellow named George Salt (fans of *Atlas Shrugged* take note) who joins forces with a retired and still widely respected independent politician, Sir John Hampden. The Socialist Party has been in control for a few years and has drastically changed how England does business. The workers are deified and the middle and upper classes are taxed (sometimes literally) to death. Together Hampden and Salt form a union of the upper classes, the Unity League. Over the course of two years, the League prepares for and ultimately launches an economic war against the Socialist government. (It is worth noting here that the novel was originally published under the title *What Might Have Been; The Story of a Social War*.)

All the elements of a good story are present. The plot is strong and free from continuity flaws. The author gives you only as much information as you need to know, encouraging speculation as to what comes next and delivering many surprises, by turns frightening and delightful. The characterization is competent enough, despite the characters having to serve double duty as stereotypes of a particular philosophical outlook. Sometimes this causes a few to

devolve into cartoonish figures. But this is overcome by the fascinating ways in which these characters interact, and in the understanding of the subtle and far-reaching minds of our two heroes. Occasionally the text is strewn with odd bits of dialect that escape my comprehension and interfere slightly with my understanding of events, but the publisher comes to the reader's assistance with an appended three page glossary.

Capitalists will be pleased to see an accurate portrayal of capitalist economics woven into the fabric of the novel. Bramah's predictions of future economic history exceed his accuracy in the realm of invention, and again if there is error it most likely is because he is almost too prescient. What takes but ten years in his story has taken socialist governments in the real world decades to construct. No wonder there was an uprising!

The order of the oppressive socialist economic policies is amusingly different from reality. It begins with a variety of labor laws and heavy taxation directly on production and on the rich. Social welfare programs that destroy lives as often as they save them are established. Predictable enough so far. Only later do the socialists attempt to pass a property tax, and the last straw is the minimum wage law. Bramah discusses minimum wage laws as if anyone can see just what deleterious effect they would have on production and employment.

The primary weapon employed by the Unity League in their economic war is a mass boycott of coal, one of the most heavily state subsidized industries. I have long advocated the boycott as a tool which can effect major social change in a manner consistent with libertarian principles, so I was most intrigued by Bramah's choice. In this case, it creates fatal problems for the socialist government on many fronts. I don't mind letting you know that of course the good guys win, but to describe this pertinent aspect of the book any further would be to give away even more of the plot than I already have. That's how well Bramah weaves economics into the fabric of his story.

The Unity League can not, however, be mistaken for libertarians. In the course of conducting their economic war, our heroes

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The Libertarian Case Against Intellectual Property Rights

by Roderick T. Long

It would be interesting to discover how far a seriously critical view of the benefits to society of the law of copyright ... would have a chance of being publicly stated in a society in which the channels of expression are so largely controlled by people who have a vested interest in the existing situation.

— Friedrich A. Hayek,
"The Intellectuals and Socialism"

A Dispute Among Libertarians

The status of intellectual property rights (copyrights, patents, and the like) is an issue that has long divided libertarians. Such libertarian luminaries as Herbert Spencer, Lysander Spooner, and Ayn Rand have been strong supporters of intellectual property rights. Thomas Jefferson, on the other hand, was ambivalent on the issue, while radical libertarians like Benjamin Tucker in the last century and Tom Palmer in the present one have rejected intellectual property rights altogether.

When libertarians of the first sort come across a purported intellectual property right, they see one more instance of an individual's rightful claim to the product of his labor. When libertarians of the second sort come across a purported intellectual property right, they see one more instance of undeserved monopoly privilege granted by government.

I used to be in the first group. Now I am in the second. I'd like to explain why I think intellectual property rights are unjustified, and how the legitimate ends currently sought through the expedient of intellectual property rights might be secured by other, voluntary means.

The Historical Argument

Intellectual property rights have a tainted past. Originally, both patents and copyrights were grants of monopoly privilege pure and simple. A printing house might be assigned a "copyright" by royal mandate, meaning that only it was allowed to print books or newspapers in a certain district; there was no presumption that

copyright originated with the author. Likewise, those with political pull might be assigned a "patent," *i.e.*, an exclusive monopoly, over some commodity, regardless of whether they had had anything to do with inventing it. Intellectual property rights had their origin in governmental privilege and governmental protectionism, not in any zeal to protect the rights of creators to the fruits of their efforts. And the abolition of patents was one of the rallying cries of the 17th-century Levellers (arguably the first libertarians).

Now this by itself does not prove that there is anything wrong with intellectual property rights as we know them today. An unsavory past is not a decisive argument against any phenomenon; many worthwhile and valuable things arose from suspect beginnings. (Nietzsche once remarked that there is nothing so marvelous that its past will bear much looking into.) But the fact that intellectual property rights originated in state oppression should at least make us pause and be very cautious before embracing them.

The Ethical Argument

Ethically, property rights of any kind have to be justified as extensions of the right of individuals to control their own lives. Thus any alleged property rights that conflict with this moral basis — like the "right" to own slaves — are invalidated. In my judgment, intellectual property rights also fail to pass this test. To enforce copyright laws and the like is to prevent people from making peaceful use of the information they possess. If you have acquired the information legitimately (say, by buying a book), then on what grounds can you be prevented from using it, reproducing it, trading it? Is this not a violation of the freedom of speech and press?

It may be objected that the person who originated the information deserves ownership rights over it. But information is not a concrete thing an individual can control; it is a *universal*, existing in other people's minds and other people's property, and over these the originator has no legitimate sovereignty. You cannot own information without owning other people.

Suppose I write a poem, and you read it and memorize it. By memorizing it, you have in effect created a "software" duplicate of the poem to be stored in your brain. But clearly I can claim no rights over *that*

copy so long as you remain a free and autonomous individual. That copy in your head is yours and no one else's.

But now suppose you proceed to transcribe my poem, to make a "hard copy" of the information stored in your brain. The materials you use — pen and ink — are your own property. The information template which you used — that is, the stored memory of the poem — is also your own property. So how can the hard copy you produce from these materials be anything but yours to publish, sell, adapt, or otherwise treat as you please?

An item of intellectual property is a universal. Unless we are to believe in Platonic Forms, universals *as such* do not exist, except insofar as they are realized in their many particular instances. Accordingly, I do not see how anyone can claim to own, say, the text of *Atlas Shrugged* unless that amounts to a claim to own every single physical copy of *Atlas Shrugged*. But the copy of *Atlas Shrugged* on my bookshelf does not belong to Ayn Rand or to her estate. It belongs to me. I bought it. I paid for it. (Rand presumably got royalties from the sale, and I'm sure it wasn't sold without her permission!)

The moral case against patents is even clearer. A patent is, in effect, a claim of ownership over a law of nature. What if Newton had claimed to own calculus, or the law of gravity? Would we have to pay a fee to his estate every time we used one of the principles he discovered?

"... the patent monopoly ... consists in protecting inventors ... against competition for a period long enough to extort from the people a reward enormously in excess of the labor measure of their services, — in other words, in giving certain people a right of property for a term of years in laws and facts of Nature, and the power to exact tribute from others for the use of this natural wealth, which should be open to all."

(Benjamin Tucker, *Instead of a Book, By a Man Too Busy to Write One: A Fragmentary Exposition of Philosophical Anarchism* (New York: Tucker, 1893), p. 13.)

Defenders of patents claim that patent laws protect ownership only of *inventions*, not of *discoveries*. (Likewise, defenders of copyright claim that copyright laws protect

only *implementations* of ideas, not the ideas themselves.) But this distinction is an artificial one. Laws of nature come in varying degrees of generality and specificity; if it is a law of nature that copper conducts electricity, it is no less a law of nature that this much copper, arranged in this configuration, with these other materials arranged so, makes a workable battery. And so on.

Suppose you are trapped at the bottom of a ravine. Sabre-tooth tigers are approaching hungrily. Your only hope is to quickly construct a levitation device I've recently invented. You know how it works, because you attended a public lecture I gave on the topic. And it's easy to construct, quite rapidly, out of materials you see lying around in the ravine.

But there's a problem. I've patented my levitation device. I own it — not just the individual model I built, but the universal. Thus, you can't construct your means of escape without using my property. And I, mean old skinflint that I am, refuse to give my permission. And so the tigers dine well.

This highlights the moral problem with the notion of intellectual property. By claiming a patent on my levitation device, I'm saying that you are not permitted to use your own knowledge to further your ends. By what right?

Another problem with patents is that, when it comes to laws of nature, even fairly specific ones, the odds are quite good that two people, working independently but drawing on the same background of research, may come up with the same invention (discovery) independently. Yet patent law will arbitrarily grant exclusive rights to the inventor who reaches the patent office first; the second inventor, despite having developed the idea on his own, will be forbidden to market his invention.

Ayn Rand attempts to rebut this objection:

"As an objection to the patent laws, some people cite the fact that two inventors may work independently for years on the same invention, but one will beat the other to the patent office by an hour or a day and will acquire an exclusive monopoly, while the loser's work will then be totally wasted. This type of objection is based on the error of equating the potential with the actual. The fact

that a man *might* have been first, does not alter the fact that he *wasn't*. Since the issue is one of commercial rights, the loser in a case of that kind has to accept the fact that in seeking to trade with others he must face the possibility of a competitor winning the race, which is true of all types of competition."

(Ayn Rand, *Capitalism: The Unknown Ideal* (New York: New American Library, 1967), p. 133.)

But this reply will not do. Rand is suggesting that the competition to get to the patent office first is like any other kind of commercial competition. For example, suppose you and I are competing for the same job, and you happen to get hired simply because you got to the employer before I did. In that case, the fact that I *might* have gotten there first does not give me any rightful claim to the job. But that is because I have no *right* to the job in the first place. And once you get the job, your rightful claim to that job depends solely on the fact that your employer chose to hire you.

In the case of patents, however, the story is supposed to be different. The basis of an inventor's claim to a patent on X is supposedly the fact that he has invented X. (Otherwise, why not offer patent rights over X to anyone who stumbles into the patent office, regardless of whether they've ever even heard of X?) Registering one's invention with the patent office is supposed to *record* one's right, not to *create* it. Hence it follows that the person who arrives at the patent office second has just as much right as the one who arrives first — and this is surely a *reductio ad absurdum* of the whole notion of patents.

The Economic Argument

The economic case for ordinary property rights depends on scarcity. But information is not, technically speaking, a scarce resource in the requisite sense. If A uses some material resource, that makes less of the resource for B, so we need some legal mechanism for determining who gets to use what when. But information is not like that; when A acquires information, that does not decrease B's share, so property rights are not needed.

Some will say that such rights are needed in order to give artists and inventors the financial incentive to create. But most of the great innovators in history operated

without benefit of copyright laws. Indeed, sufficiently stringent copyright laws would have made their achievements impossible: Great playwrights like Euripides and Shakespeare never wrote an original plot in their lives; their masterpieces are all adaptations and improvements of stories written by others. Many of our greatest composers, like Bach, Tchaikovsky, and Ives, incorporated into their work the compositions of others. Such appropriation has long been an integral part of legitimate artistic freedom.

Is it credible that authors will not be motivated to write unless they are given copyright protection? Not very. Consider the hundreds of thousands of articles uploaded onto the Internet by their authors everyday, available to anyone in the world for free.

Is it credible that publishers will not bother to publish uncopyrighted works, for fear that a rival publisher will break in and ruin their monopoly? Not very. Nearly all works written before 1900 are in the public domain, yet pre-1900 works are still published, and still sell.

Is it credible that authors, in a world without copyrights, will be deprived of remuneration for their work? Again, not very. In the 19th century, British authors had no copyright protection under American law, yet they received royalties from American publishers nonetheless.

In his autobiography, Herbert Spencer tells a story that is supposed to illustrate the need for intellectual property rights. Spencer had invented a new kind of hospital bed. Out of philanthropic motives, he decided to make his invention a gift to mankind rather than claiming a patent on it. To his dismay, this generous plan backfired: no company was willing to manufacture the bed, because in the absence of a guaranteed monopoly they found it too risky to invest money in any product that might be undercut by competition. Doesn't this show the need for patent laws?

I don't think so. To begin with, Spencer's case seems overstated. After all, companies are constantly producing items (beds, chairs, *etc.*) to which no one holds any exclusive patent. But never mind; let's grant Spencer's story without quibbling. What does it prove?

Recall that the companies who rejected Spencer's bed in favor of other uses for their capital were choosing between *pro-*

ducing a commodity in which they would have a monopoly and producing a commodity in which they would not have a monopoly. Faced with that choice, they went for the patented commodity as the less risky option (especially in light of the fact that they had to compete with other companies likewise holding monopolies). So the existence of patent laws, like any other form of protectionist legislation, gave the patented commodity an unfair competitive advantage against its unpatented rival. The situation Spencer describes, then, is simply an artifact of the patent laws themselves! In a society without patent laws, Spencer's philanthropic bed would have been at no disadvantage in comparison with other products.

The Information-Based Argument

Though never justified, copyright laws have probably not done too much damage to society so far. But in the Computer Age, they are now becoming increasingly costly shackles on human progress.

Consider, for instance, Project Gutenberg, a marvelous non-profit volunteer effort to transfer as many books as possible to electronic format and make them available over the Internet for free. (For information about Project Gutenberg, contact the project director, Michael S. Hart, at hart@vmd.cso.uiuc.edu.) Unfortunately, most of the works done to date have been pre-20th-century — to avoid the hassles of copyright law. Thus, copyright laws today are working to restrict the availability of information, not to promote it. (And Congress, at the behest of the publishing and recording industries, is currently acting to extend copyright protection to last nearly a century after the creator's death, thus ensuring that only a tiny fraction of the information in existence will be publicly available.)

More importantly, modern electronic communications are simply beginning to make copyright laws unenforceable; or at least, unenforceable by any means short of a government takeover of the Internet — and such a chilling threat to the future of humankind would clearly be a cure far worse than the disease. Copyright laws, in a world where any individual can instantaneously make thousands of copies of a document and send them out all over the planet, are as obsolete as laws against voyeurs and peeping toms would be in a

world where everyone had x-ray vision.

First Tolkien Story

Here's a story that illustrates some of the needless irritation that intellectual property laws can cause.

Several years ago the avant-garde film animator Ralph Bakshi decided to make a movie of J. R. R. Tolkien's classic fantasy trilogy *The Lord of the Rings*. Or rather, he decided to split the trilogy into *two* movies, since the work is really too long to fit easily into a single film.

So Bakshi started off with *Lord of the Rings* (Part One). This movie covered the first volume of the trilogy, and part of the second volume. The second movie was to have covered the rest of the second volume, and then the whole of the third volume. To make the first movie, then, Bakshi needed to buy the rights to the *first two* volumes, and this is what he (or, presumably, his studio) did.

But Bakshi never got around to making the second movie (probably because the first movie turned out to be less successful financially than had been anticipated). Enter Rankin-Bass, another studio. Rankin-Bass had made an animated TV-movie of Tolkien's earlier novel *The Hobbit*, and they were interested in doing the same for the second part of *Lord of the Rings*, left unfiled by Bakshi.

But there was a problem. Bakshi's studio already had the rights to the *first two volumes* of the trilogy. Only the rights to the third volume were still available. So Rankin-Bass' sequel (released as *The Return of the King*) ended up, of necessity, covering only the third volume. Those events from the second volume that Bakshi had left unfiled were simply lost. (Not even flashbacks to events in the first two volumes were permitted — although flashbacks to *The Hobbit* were okay, because Rankin-Bass had the rights to that.)

Video catalogues now sell *The Hobbit*, *The Lord of the Rings*, and *The Return of the King* as a unified package. But viewers unfamiliar with the books will be a bit puzzled. In the Bakshi film, the evil wizard Saruman is a looming force to be reckoned with; in the Rankin-Bass sequel, he is not even mentioned. Likewise, at the end of the Bakshi film, Frodo, Sam, and Gollum are traveling together; at the beginning of the Rankin-Bass sequel we find them split up, without explanation. The answers lie in the unfiled portion of the second volume,

which deals with Saruman's defeat, Gollum's betrayal of Frodo, Sam's battle with Shelob, and Frodo's capture by the Orcs. Not unimportant events, these. But thanks to intellectual property laws, the viewer is not allowed to know about them.

Is this a catastrophe? I suppose not. The aesthetic unity and continuity of a work of art was mangled, pursuant to the requirements of law. But it was just an animated TV-movie. So what?

So what, perhaps. But my story does serve to cast doubt on the idea that copyright is a bulwark of artistic expression. When a work of art involves reworking material created by others (as most art historically has), copyright laws can place it in a straitjacket.

Alternatives to Intellectual Property Rights: Some Formulations

I may have given the impression, thus far, that intellectual property rights serve no useful function whatever. That is not my position. I think some of the ends to which copyrights and patents have been offered as the means are perfectly legitimate. I believe, however, that those ends would be better served by other means.

Suppose I pirate your work, put my name on it, and market it as mine. Or suppose I revise your work without your permission, and market it as yours. Have I done nothing wrong?

On the contrary, I have definitely committed a rights-violation. The rights I have violated, however, are not yours, but those of my customers. By selling one person's work as though it were the work of another, I am *defrauding* those who purchase the work, as surely as I would be if I sold soy steaks as beef steaks or vice versa. All you need to do is buy a copy (so you can claim to be a customer) and then bring a class-action suit against me.

There are other legal options available to the creators of intellectual products. For example, many software manufacturers can and do place copy-protection safeguards on their programs, or require purchasers to sign contracts agreeing not to resell the software. Likewise, pay-TV satellite broadcasters scramble their signal, and then sell descramblers.

None of these techniques is foolproof, of course. A sufficiently ingenious pirate can usually figure out how to get around copy protections or descramble a signal.

And conditional-sale contracts place no restriction on third-party users who come by the software in some other way. Still, by making it more difficult to pirate their intellectual products, such companies do manage to decrease the total amount of piracy, and they do stay in business and make profits.

But what if I do go ahead and market your work without your permission, and without offering you any share of the profits? Is there nothing wrong with this? Can nothing be done about this?

In the case described, I don't think what I've done is *unjust*. That is, it's not a violation of anyone's rights. But it's *tacky*. Violating someone's rights is not the only way one can do something wrong; justice is not the only virtue.

But justice is the only virtue that can be legitimately *enforced*. If I profit from pirating your work, you have a legitimate moral claim against me, but that claim is not a *right*. Thus, you cannot legitimately use *coercion* to secure compliance. But that doesn't mean compliance with your claim can't be secured through other, voluntary methods.

A good deal of protection for the creators of intellectual products may be achieved through voluntary compliance alone. Consider the phenomenon of shareware, in which creators of software provide their products free to all comers, but with the request that those who find the program useful send along a nominal fee to the author. Presumably, only a small percentage of shareware users ever pay up; still, that percentage must be large enough to keep the shareware phenomenon going.

There are more organized and effective ways of securing voluntary compliance, however. I have in mind the strategy of boycotting those who fail to respect the legitimate claims of the producers. Research conducted by libertarian scholar Tom Palmer has turned up numerous successful instances of such organized boycotts. In the 1930's, for example, the Guild of Fashion Originators managed to protect dress styles and the like from piracy by other designers, without any help from the coercive power of government.

A voluntary boycott is actually a much safer tool than government for protecting the claims of intellectual producers, because, in the course of trying to strike a pragmatic balance between the economic power of producers and the economic power

of consumers, a private effort is more likely than a government monopoly freed from market incentives to strike an analogous balance between the legitimate moral claims of the two groups — the producers' moral claim to remuneration, and the consumers' moral claim to easily accessible information.

Something more formal can easily be imagined. In the late Middle Ages a voluntary court system was created by merchants frustrated with the inadequacies of governmentally-provided commercial law. This system, known as the Law Merchant ("law" being the noun and "merchant" the adjective), enforced its decisions solely by means of boycott, and yet it was enormously effective. Suppose producers of intellectual products — authors, artists, inventors, software designers, *etc.* — were to set up an analogous court system for protecting copyrights and patent rights — or rather, copyclaims and patent claims (since the moral claims in question, though often legitimate, are not rights in the libertarian sense). Individuals and organizations accused of piracy would have a chance to plead their case at a voluntary court, but if found guilty they would be required to cease and desist, and to compensate the victims of their piracy, on pain of boycott.

What if this system went too far, and began restricting the free flow of information in the same undesirable ways that, I've argued, intellectual property laws do?

This is certainly a possibility. But I think the danger is much greater with coercive enforcement than with voluntary enforcement. As Rich Hammer likes to point out: ostracism gets its power from reality, and its power is limited by reality. As a boycotting effort increases in scope, the number and intensity of frustrated desires on the part of those who are being deprived by the boycott of something they want will become greater. As this happens, there will also be a corresponding increase in the number of people who judge that the benefits of meeting those desires (and charging a hefty fee to do so) outweigh the costs of violating the boycott. Too strenuous and restrictive a defense of copyclaims will founder on the rock of consumer preferences; too lax a defense will founder on the rock of producer preferences.

Second Tolkien Story

Let me close with a second story about Tolkien and his famous trilogy. The first

edition of *The Lord of the Rings* to be published in the United States was a pirated edition from Ace Books. For reasons which I now forget, Tolkien could not take legal action against Ace. But when Ballantine came out with its own official author-approved American edition of *The Lord of the Rings*, Tolkien started a campaign against the Ace edition. The Ballantine edition was released with a notice from Tolkien in a green box on the back cover stating that this was the only authorized edition, and urging any reader with respect for living authors to purchase no other. Moreover, every time he answered a fan letter from an American reader, Tolkien appended a footnote explaining the situation and requesting that the recipient spread the word among Tolkien fans that the Ace edition should be boycotted.

Although the Ace edition was cheaper than the Ballantine, it quickly lost readers and went out of print. The boycott was successful.

It might be objected that Tolkien devotees tend to be more fanatical than the average readers, and so such a strategy of boycott could not be expected to succeed in ensuring such loyalty generally. True enough. But on the other hand, Tolkien's boycott was entirely *unorganized*; it simply consisted of a then-obscure British professor of mediæval language and literature scribbling hand-written responses to fan letters. Think how effective an *organized* boycott might have been! ▲

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Might Makes Right: An Observation and a Tool

by Richard O. Hammer

This paper will be presented at our
14 October 1995 Forum.

1. The Thesis

Libertarians, I am sure you know, can get into debates about rights. While we all generally believe that government, coercion, is wrong, we differ in the ways we come to that belief. And we disagree on specific questions such as, is there a right to intellectual property?

Over the years I have pieced together a thesis which sometimes helps me answer questions about rights. To complete the introduction, and to let the cat out of the bag, here it is:

- a. As we humans live, we constantly propose new rights and test old rights. What determines which rights survive this continual struggle? Force. Those rights that survive are those backed up with the greatest force — by which I mean both ability and willingness to police.
- b. In the long run, the amount of force which people can bring to bear to defend any right depends upon how much that right helps those people survive in their environment. This limits the extent to which humans can invent rights to serve their whims. Generally, rights which survive contribute to the survival of the human animal in its environment.

What do I mean by "rights?" I use the definition common in libertarian literature: rights are negative, not positive. Thus if you possess a right then there are some things that other people must not do in relation to you or your property.

As we enter this discussion, be on the lookout for the distinction between rights which are merely claimed and rights which are backed by force. Through tricks of language, wishes often advance in status to rights. But one point of my writing this paper is to help us see the difference between wishes and rights.

2. Disclaimers

Before proceeding I had better write a whole section of disclaimers, since I fear that the thesis, which can be paraphrased "might makes right," will upset some fel-



Richard Hammer

low libertarians who believe that rights come from other sources.

Let me make it clear that I am not saying that I want might to make right. In many instances this thesis runs contrary to the values by which I live. But I observe that the thesis makes sense, like it or not.

I admit that I might be wrong about this. As you will see, I do not make any tight argument for the thesis. I merely observe and point out that at this time I could not refute the thesis.

Let me admit that my presentation here is not well organized. As I write, every thought wants to keep running off in its own direction, getting away from any outline. And since I have not followed enough of those thoughts to conclusion, I doubt that what I wrap up here is the whole thing. So be aware that in reading this you are joining me in the middle of a process of exploration. I appreciate your patience, and will value your reactions.

3. Circumstantial Evidence Supports the Thesis

In this section I offer scattered examples which tend to support the thesis.

3.1 In real estate law, law has evolved which favors one who actively uses land

even if someone else holds title to the land. Following this principle, if someone uses land for a number of years, 5-20 depending upon local law, openly and without being challenged by the holder of title to the land, then a court will block the titleholder's attempt to reclaim the land. The active user becomes in effect the owner.

Before this precedent evolved, I speculate that there were violent confrontations over such competing claims, and that the active users generally won. In a given confrontation it is easy to imagine that a lazy landowning baron could awaken to crush a squatter who had used a corner of his claim for many years. But I bet the squatter would not be alone. And the number of the squatter's sympathizers would increase with the number of years of his occupancy because, at any given time, numerous active users of land would be threatened by a precedent of reviving long dormant claims.

Thus, I hypothesize, judges decided in favor of the side that would normally have won had it come to blows. The judge's decisions normally were accepted peacefully because the contestants could calculate the balance of potential force without going to the expense of testing it in reality.

3.2 Behind my house there is a barn which I use for storage. Even though I would say that I hold title to that barn, I am aware of a competing claim. Squirrels live there, chew away at the wood, and sometimes munch on old textbooks. No doubt there are squirrels who would tell that their fathers, and their fathers' fathers before them, lived and ate thus in that barn — in *their* barn. My claim vis-a-vis the squirrels has no more reality than my willingness to apply force, to work to keep them out, and no court will come to my aid. The squirrels have a *de facto* right.

3.3 In the country in which I live, most members of the population seem to believe that they have a right to share in the fruits of other people's labor, just so long as that sharing is passed by the legislature. And, as I am developing the point, they do in fact have that right, since it is backed with willingness and ability to prevail in use of force. Of course I favor the alternate claim, to keep all the fruits of my own labor, but this claim diminishes to the status of a wish; it lacks force.

3.4 Many claims of rights are decided in war. Hitler claimed a right for more living space for the German people. He didn't get it, and force was the reason. Native Americans had claims for rights to the North American continent. These claims did not stand either, for the same reason. The smallpox virus once had a right, of sorts, to roam freely among homo sapiens. This right perished in a show of force.

3.5 The right claimed by socialists "from each according to his ability, to each according to his need" survived in the Soviet bloc, for as long as it did, because it was backed with military might. And this right collapsed in the Soviet bloc when its supporters were no longer able or willing to prevail with force.

3.6 In a sense the right of workers to keep the fruits of their own labor was sustained by force in the cold war victory of the U.S. over the U.S.S.R. The system of property rights embraced in the U.S. gave the U.S. economy more surplus, more ability to manufacture weapons of force. And when the race was accelerated by Ronald Reagan the Soviet idea of rights, weaker by the laws of economics, could not amass as much force, and it fell.

3.7 Experience with copyright protection gives another example in contrast between rights which are asserted and rights which are enforced. Copyrights tend to be respected in those instances where the prospective thief knows that a violation might bring down a punishing force of law. However, small violations of copyright law seem to go almost universally without policing; no publishing house, no matter how wealthy, seems willing to prosecute violators who photocopy single pages.

3.8 Once I had a landlord who, after the term of the lease, evaded his obligation to return my security deposit. This happened while I was in Pittsburgh, for a two-year graduate program. The problem was with the landlord I had during my first year there. During the second year I went to small claims court, but he evaded successfully for almost the whole year. Finally, in the week when I was packing to move out of Pittsburgh (he did not know this) we settled in court. But during that second year I learned that my "right" to a return of

my security deposit was no better than the system of enforcing that right, which would have been worthless to me had I not been there in Pittsburgh to carry the action forward.

Learning about these rights in reality, as my second year's lease closed I recouped my security deposit by withholding my last month's rent. This second landlord huffed and puffed, as I had huffed and puffed at the first. It was his only tool, because in reality the courts would not stand for his evicting me with less than a month's unpaid rent. Thus I came to believe that the rights of the parties to a lease are not those avowed in the written contract, but rather are only those which happen to be backed up by force.

4. Can You Prove the Thesis Wrong with a Counterexample?

Here I ask you to refute the thesis with a counterexample. If the thesis is wrong, then you can show me an example of a right which has survived even though a contrary claim was supported by greater willingness and ability to use force.

5. Ownership: A Definition

Philip Jacobson has shown me a way to think about ownership that seems relevant to this paper. Keep this definition in mind: *Ownership is the power to decide how to use the thing owned.* This definition separates claims of ownership which are nominal, in name only, from real ownership. For instance if government will not allow the owner of a piece of land to use that land for any but a few narrowly-defined purposes, then a substantial part of real ownership, power to decide, has been seized by government.

Since ownership of an item can confer power to make numerous decisions about how to use the item, and since these decisions can come under government control one at a time as new regulations are imposed, notice that real ownership can shift undetected to the state while nominal ownership remains with a private citizen. In this we can see an example of one set of rights displacing another set of rights. The rights of socialism, being backed by willingness and ability to use force, gradually displace the rights of private property.

6. Economic Arguments

6.1 Rights can be viewed as ways to

economize, ways to save the cost of battle. Now if a contest over rights actually comes to blows, we should expect, by my definition, that the contestant with the most force will win. But since each contestant can observe the strength of the other and can predict the outcome of a fight, most such fights never start. The weaker usually surrenders at the outset, thus minimizing its loss.¹

6.2 If right and might get out of balance, right cannot stand long against might. If the side with might does not get what it wants because of an avowed right, then that side will be motivated, in subtle and perhaps unconscious ways, to find a new way of thinking about things. The side with might is likely to discover a new right which wants enforcement.

6.3 Rights guide behavior within a dominant community. Among a group of people who have won, and who are in process of harvesting (or looting), rights limit counterproductive struggle within the group. Rights guide each individual member of the group to seek to satisfy his wants by harvesting from outside the group rather than from another member within the group. Rights, in this view, are rules for dividing spoils. Consider four examples. Rights are found among: reapers harvesting a crop; hunters dividing their grounds; vikings raiding a village; legislators gathering pork.

What defines a dominant community, in this case, is a balance of force among the members: each member having capacity to inflict more damage upon the others in the group than the others might gain in attempting to harvest from him. For this definition, the damage that one group member can inflict upon another includes the withdrawal of benefits from voluntary exchanges within the group.

Continuing development of this point we can see that a community loses the luxury of practicing rights when it loses its dominance. If a community comes under threat of famine, invasion, or plague, when each member fears the external force more than the force which might come from other members of the community, then recognition of rights among the members of the community falls by the wayside.

7. The Kindness of This Thesis

Many readers will think this harsh. But

let me try to convince you that it is a kindly view — at least for you and me.

7.1 If you believe the evolutionary account of formation of life, then you may observe that we, presently surviving humans, find ourselves here as the present culmination of a long history of evolutionary struggle. And if you believe my thesis, that there is a competitive survival-of-the-fittest among systems of rights, then you may observe that we, in Western Civilization, find ourselves here, in a position which seems to dominate other cultures, because we are the beneficiaries of evolutionary struggle and selection of rights.

Survival has brought us thus far. Our ancestors have fought with and dominated predators, livestock, disease, and other human civilizations. If you argue for a different mode of selection, you argue against the process which brought you and me here. We enjoy life, health, and leisure to discuss this subject because of the process which has brought us here.

7.2 This thesis is kind in that it allows us to express kindness and generosity, so long as we maintain our position of dominance. We can care for our elderly past the time when they can maintain themselves. We can decide that fetuses have rights, that animals have rights, that species should be preserved.

But notice that a right, granted out of kindness, by some members of the community to others who lack force to enforce it themselves, presents a direct cost (as opposed to a direct benefit) to those who advocate the right. The right must either be purchased in voluntary exchange or backed by willingness and ability to use force. Thus the total cost of rights granted out of kindness will be limited by the surplus of the granting community.

However, history shows that we in Western civilization have enjoyed ever-increasing surplus. And economic reason² gives us optimism that the surplus will continue to increase. We should thus find ourselves able to grant more and more rights out of kindness.

7.3 Some will damn this thesis as amoral. But it depends upon how you look at it. As I am presenting it, rights minimize violence and bloodshed among us humans who dominate the ecosystem in which we

live. To argue that rights have a different basis argues, I believe, either against our dominance or for more violence and bloodshed.

7.4 Finally, as we libertarians should see, this thesis promises our salvation. Our system should prevail for Hayekian information-processing reasons.

All information about the environment which enters into humanity enters through an individual. And each individual will share or employ information available to him only when and if it is in his best interest to do so. Thus information from the environment will most reliably find beneficial employment in a system which gives the individual power to both make decisions and own the consequences of those decisions. Capitalism employs information which socialism throws away.

This reality of existence bestows more material abundance upon a community which practices private property rights. And with its surplus this community should be able to purchase force for security.

When will the day of our salvation come? Unfortunately, the process of rights selection can take a long time, as it took generations for the Soviet system to fail. I hope eventually to gain more understanding of the parameters that affect the speed of rights selection.

The work plan of the Free Nation Foundation can be viewed as an attempt to employ this thesis to gain freedom for ourselves. If the forces of property rights can coalesce, I believe there should be nothing that can stop us.

8. Applications

This thesis informs my view of situations in life. If I find myself pondering a question of rights, I ask where the force lies. And if my first look at the forces in a situation does not produce the answer I might like, I can look at the bigger picture, considering not just the forces here at this moment, but those that I could expect to come to bear in a longer time frame.

To work through one example, consider the situation described by David Friedman:³ A madman about to commit mass murder can be stopped only by stealing a rifle from its owner who refuses to loan it for this or for any purpose (and then using the rifle to shoot the madman).

I have no qualms about stealing the rifle under this duress. I accept that the owner of

the rifle has a right — but this right has an origin, a context and a meaning.

In normal circumstances private property rights emerge as the dominant system because this is the most productive, most forceful system. Normally we are all better off respecting the property rights of others. Normally property rights are given reality by a system of policing, so that someone planning to steal some thing can expect to meet a punishing force. Normally the punishment surpasses the value of the thing by enough to discourage theft.

Stealing the rifle I expect to encounter sanction proportioned in some way to the value of the rifle. Fine. This is as it should be. The owner has this right. I will accept judgement when I return in a few minutes with the rifle.

References

¹ For a deeper analysis see. Bruce L. Benson, "Emerging from the Hobbesian Jungle: Might Takes and Makes Rights," *Constitutional Political Economy* 5 (1994): 129-158.

² Richard Hammer, FNF working paper, "Win-Win Society is Possible," 1994.

³ David Friedman, *The Machinery of Freedom*, second edition, Open Court, 1989, pp. 171-2.

David Hume expressed many of these ideas. Particularly relevant is the third chapter "Of Justice" in *An Enquiry Concerning the Principles of Morals*, first published in 1751.

Richard O. Hammer, of Hillsborough, NC, for the time being works full-time on his hobby, the Free Nation Foundation. In the past he has worked as a residential builder and engineer.

Education (from p. 8)

available to parents and their children.

Children will not all be educated in traditional or uniform ways. But this is necessary if "education" is to finally realize its full and true meaning. With government totally removed from the business of education, we will, I believe, be able to reexperience the uniqueness, diversity, and freedom that is our human heritage.

Liz Hanson is an entrepreneur domiciled in Nevada. She has the pleasure of helping guide two young people on their journey to self-responsible adulthood.

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More on Hazlitt and Morality by Maribel Montgomery

I am the subscriber who recommended to Mr. Hammer the reading and discussion of Henry Hazlitt's book *The Foundations of Morality* (1st ed. 1964; 2nd ed. 1972, Nash Publishing). He and Dr. Long both gave their opinions of the book in the last issue of *Formulations* (Vol. II, No. 4, Summer 1995, pp. 14 and 20 respectively). Both were more negative than I anticipated, and I am now taking advantage of Mr. Hammer's gracious suggestion that I submit my own comments for publication in this issue. I am happy to do so as I believe that Mr. Hazlitt accomplished his purpose, as stated in the preface, to "present a unified theory of law, morals, and manners." (1972, p. viii.) I will try to summarize this below. I am not going to refer here to any of the extensive analysis Hazlitt made of the work of previous moral philosophers except to say that his system of "cooperatism" cannot properly be categorized with any of them. I think the author's insights can be valuable particularly in recruiting new libertarians.

Hazlitt is best known for his small (218 page) book *Economics in One Lesson* (1st ed. 1946; 2nd ed. 1962, Arlington House Publishers). He was well aware from his work as a journalist that the average person is easily confused by technical jargon and abstract, convoluted explanations, so he condensed into one sentence the single lesson to which he said the whole of economics could be reduced, and illustrated it with numerous examples.

In a section of Notes at the end of *The Foundations of Morality*, Hazlitt stated (for Chapter 7, p. 365) that the single-sentence lesson for economics could "be widened to apply to conduct and policy in every field. As applied to ethics it might be stated thus: *Ethics must take into consideration not merely the immediate but the longer effects of any act or rule of action; it must consider the consequences of that act or rule of action not merely for the agent or any particular group but for everybody likely to be affected, presently or in the future, by that act or rule of action.*"

It might appear from this single sentence that the rules of ethics could be framed only by a supernatural being with the pow-

ers of omniscience — *i.e.*, the God of most religions. But Hazlitt concluded (p. 358) that "Morality is autonomous. ... the appropriate moral rules ... and the nature of our duties and obligations, have no necessary dependence on any theological doctrine or religious belief." He said, also, that "It is a confusion of thought to think that ethics consists of the rules 'society' imposes on the 'individual.' Ethics consists of the rules that we all try to impose *on each other.*" (p. 104.) "... social moral values are a product of the interplay of many minds — including the minds of our long-dead ancestors. The individual is born into a world in which there already exists a Moral Law, which seems to stand above him" (p. 165.)

The first rules that a child must learn are how to get along in his family unit and other groups small enough to maintain personal conduct among the members. These are the rules of good manners. Hazlitt said that "manners and morals rest on the same underlying principle. That principle is *sympathy, kindness, consideration for others.*" (p. 75.) Manners are, "in fact, the ethics of everyday life." (p. 77.) "Manners developed, not to make life more complicated and awkward ... but to make it in the long run smoother and simpler" (p. 75.)

The rules of manners generally are passed on to new generations without being written down. But written rules and then laws emerge as individuals interact within larger and larger groups of people. The attitude of consideration for others, equal to what one expects for oneself, must be retained somehow to substitute for the more powerful positive feelings based on personal knowledge of others. Hazlitt illustrated the transition from manners to laws by referring to traffic laws.

Crowds of pedestrians generally display manners spontaneously by the way potential collisions are avoided or resolved. If one accidentally bumps into another, he apologizes. The young and able-bodied give way to the elderly and infirm. Order is established at public events by the lines that form at entrances and exits, and those who try to get ahead of others already waiting are rejected, *etc.* Traffic laws for motor vehicles are based on the greater need to avoid collisions. Signs and lights are all placed with the goal of maximizing the safety of all, at the same time trying to minimize frustrations and leave each driver as free as possible to choose what he sees as

the best and quickest route to his destination. Hazlitt said that "We may look with horror on another car speeding directly toward us on *its* left side of the road, though there is nothing *inherently* wrong with driving on the left side of the road, and the whole danger comes from the violation of a general rule." (p. 58.)

Would society be better off without this arbitrary rule? No, it is for everyone's good *in the long run*. If every driver obeyed the laws, there would be no need for law enforcement, but because there are always those who lose sight of their long-run interests while experiencing the emotions of immediate frustrations, some agency must be established to apprehend traffic law violators to protect the rest of us motorists. Hazlitt accepted this as the legitimate use of police power in our present systems of government.

Hazlitt believed that the end purpose of all law should be to preserve and enlarge individual freedom, and that laws of restraint should be consistent with the negative Golden Rule: "Do not do unto others as you would not want others to do unto you." The laws against aggression, theft, lying, *etc.*, qualify as good laws, and government power to enforce them is limited to coercion only against those persons disruptive of the social order achieved by freely interacting persons. Hazlitt said that the difficulty with trying to use the positive Golden Rule as a guide for laws ("Do unto others as you would have others do unto you") is that "there is practically no limit to the benefits most of us would be willing to accept from others, at whatever cost to them." (p. 105.) In a Welfare State, the costs are hidden by the tax system.

Hazlitt said that "Morality can exist only in a free society Only to the extent that men have the power of choice can they be said to choose the good." (p. 268.) He championed free economic markets operating on the principle of the division of labor. He said that corresponding to the division of labor, there is a specialization of duties. "Because we have to assume the full duties and responsibilities of our particular job, we are unable to take over the duties or responsibilities of other jobs." (p. 201.) It is, therefore, *not* the duty of each individual himself to attempt to promote directly the maximum general hap-

(continued on page 23)

Good and Bad Collective Action

Can We Nourish One and Squelch the Other?

by Roderick T. Long

This paper will be presented at our
14 October 1995 Forum.

A Problem for Libertarians

How easy, or difficult, would collective action be in a free nation?

This is a question to which we, as libertarians, might seem committed to giving inconsistent answers. When the collective action in question is something good or desirable, we're confident that market incentives and natural human sympathies would unite to bring the collective action about without the need for coercive coordination from government. But when it comes to harmful or unpleasant collective action, this, we are sure, can flourish only with the help of state intervention, and will quickly wither and die when exposed to the light of freedom and economic rationality.

Consider the problem of racial and sexual discrimination. Discriminatory hiring practices represent a form of collective action, in that a pattern of discrimination against the same groups occurs throughout society. (If discrimination didn't follow a common pattern, it would be far less problematic. That is, if it were a purely *random* matter which groups were discriminated against by any one employer, then those who experienced discrimination from a given employer could be sure of finding plenty of other employers who lacked that particular prejudice. The prejudice might still be a vice, to be sure, but it would at least be a harmless vice. It's only when there's a consistent and widespread prejudice throughout society against certain groups that members of those groups find themselves *systematically* disadvantaged across the board. This result is what makes discrimination so especially objectionable.)

Discrimination in hiring is a problem we like to think would be solved by the free market. Firms that choose their employees on the basis of race or gender, instead of on the basis of merit, will end up with a less capable workforce, and so the firm's over-

all performance will suffer, thus exposing it to the risk of being edged aside by their competitors. Thus, rational firms, in their pursuit of the Bottom Line, will have to abandon their discriminatory practices on pain of losing out to the competition. Thus *homo oeconomicus* comes to our rescue: racism and sexism are simply too expensive. They represent costly luxuries in which a competitive firm cannot afford to indulge.

This argument assumes that economic self-interest is likely to be a more powerful motive than such purely emotional motives as racial and sexual prejudice. But libertarians do not always make this assumption. When it comes to the provision of public goods, we suddenly start to heap scorn on the narrow *homo oeconomicus* conception of human motivation that served us in such good stead in the prejudice case. Now we want to insist that economic self-interest is not the only human motive, that incentives such as conscience and solidarity can override the quest for profit. The relentless concern for the Bottom Line that turned up so conveniently to impede harmful collective action, now just as conveniently drops out so as not to impede beneficial collective action. What entitles us to this double standard?

Love, Hate, and Greed

All human motivations can be divided into three categories, which I shall label, rather simplistically, *love*, *hate*, and *greed*. Under *love* I rank all those motives that have as their end the satisfaction of the legitimate interests of other people. Under *hate* I rank all those motives that have as their end the frustration of those interests. And under *greed* I rank all those motives whose ends make no essential reference to the interests of others one way or another. (A person acting from greed may harm or benefit others, but only insofar as doing so happens, under the circumstances, to advance his ends. Greed *as such* is indifferent to the interests of others.)

The first thing we should recognize is that motives of all three varieties are available in plentiful supply. Any account of human nature that emphasizes just one of these motives at the expense of the other two can safely be dismissed as unrealistic.

Now we can see that the libertarian responses we gave to the public-goods and prejudice problems seem to assume that greed is stronger than hate but weaker than

love. When the racist employer hires the minorities he despises because it's good for business, greed is conquering hate. When the public-spirited citizen contributes to a public good out of a sense of moral duty or communal solidarity, although he could get away with free riding, love is conquering greed.

It would be delightful, of course, if greed could be counted on to be strong in its conflicts with hate and weak in its conflicts with love. But we know, all too well, that motives of hate can often conquer motives of love; so there is no guarantee that love is always strong and hate is always weak. Thus it's not implausible that hate should often be strong enough to conquer beneficial greed, or that love should often be too weak to prevail against harmful greed.

Long-term vs. Short-term Greed

A similar tension can be found in libertarian discussions of conflicts between different kinds of greed. Consider the many cases in which it's in my long-term interest to acquire a reputation as a cooperator, while it's in my short-term interest to renege on cooperation just this once. Which are people in a free society more likely to do?

When the cooperation is a beneficial one, we rush to say that long-term greed will win out. Citing such works as Robert Axelrod's *The Evolution of Cooperation*, we point out that cooperators, by developing a reliable reputation, will attract a cluster of like-minded cooperators to them, whereas habitual defectors will be shunned and excluded from the benefits of cooperation, so that both market competition and natural selection will tend to make cooperation prevail as a strategy. Actors in the market will realize that the benefits of keeping to a consistent policy of cooperation outweigh the meretricious short-term gains of opportunistic defection.

But sometimes cooperation is not so nice, and then we tend to have a different attitude. Consider the standard libertarian response to the problem of cartels. In an unregulated free market, what would prevent profit-minded firms from joining together and agreeing to keep prices high, or wages low? We usually answer that once the cartel is in place, it's in the interest of any individual member to break the agreement by selling at a slightly lower price or hiring at a slightly higher wage, so as to win all the other members' business for oneself. Soon, we like to predict, all the members

will be tempted into trying the same strategy, and the cartel will collapse.

But what has now become of the idea that rational individuals will choose to maintain a system of cooperation rather than defect for the sake of immediate gain? Axelrod has been thrown to the winds! Short-term greed, so fragile a hindrance to beneficial cooperation, now proves itself a formidable bulwark against harmful cooperation. Long-term greed, on the other hand, has dwindled from its former glory as guardian angel of cooperation, and now is nowhere to be seen.

This now-you-see-it-now-you-don't act proves particularly embarrassing for libertarians trying to defend market anarchism. What ensures that, in the absence of government, private protection agencies will choose to resolve their differences through arbitration rather than violent conflict? Long-term greed, which recognizes that the value of maintaining a system of cooperation outweighs the value lost by submitting to arbitration. But what ensures that these protection agencies won't merge into a giant cartel, thus in effect bringing back government? Short-term greed, which undermines cartel agreements in the usual way. The balance of motivational power between long-term and short-term greed keeps swinging back and forth, as needed by our libertarian arguments.

This is cause for worry.

Reality Check

The problems I've been pointing to should make us uncomfortable. But they shouldn't necessarily drive us to despair. Perhaps we can make ourselves feel a little better by noticing that all the mechanisms we like to trumpet have actually proven successful in the real world in many, many cases.

Consider first the case of prejudice. It's no coincidence that there were Jim Crow laws in the pre-civil-rights South. White racists were unwilling to rely on voluntary compliance alone to keep blacks "in their place." And this reluctance on their part was a shrewd one. The famous segregated buses in Montgomery, Alabama, were segregated by law, not by the choice of the bus company. In fact, the bus company had petitioned, unsuccessfully, to get the law repealed — not out of love but out of greed. So we're quite right in thinking that racism can be undermined by a concern for the Bottom Line (though it would be naïve

to assume that it must *always* be so undermined; people do care about things other than money, and some of those things can be pretty repugnant).

It's also true, of course, that people voluntarily contribute to good causes all the time. The amount of money given to charity every year in this country (over and above taxes!) is staggering.

Similar remarks apply to the issue of long-term vs. short-term greed. Beneficial collective action occurs all the time without coordination by government; our cooperative impulses are the product of evolution, and are reinforced by our social environment. To pick just one example mentioned by Axelrod, soldiers on opposite sides of World War I trench warfare found it in their mutual interest to coordinate their firing patterns in such a way that each side would know when and where the other was going to fire and so could avoid injury. Score one for Axelrod. On the other hand, history is full of cartels collapsing because of members' breaking the agreement in order to reap the benefits of underselling; one such defection (by Kuwait against oil partner Iraq) triggered the recent Gulf War. Score one against Axelrod.

These examples should serve to reassure us that our analyses of collective action problems aren't simply drawn from some fantasy world unconnected to reality. But can we say anything more than this?

I think perhaps we can.

Reasons for Optimism

We would have stronger reasons for optimism if we had some reason to think that the motives for harmful cooperation had some weakness, some fatal flaw, that the motives for beneficial cooperation did not share. I think there is at least one such weakness.

Notice that the motives for harmful cooperation are motives for *selective* cooperation. The white racist who cooperates with other white racists in discriminating against blacks is not taking a cooperative attitude toward the blacks themselves; likewise, those who cooperate to form a cartel are colluding to engage in decidedly non-cooperative behavior toward their customers. The same holds true for protection agencies in a state of nature that combine to form an oppressive government. In all three cases, the cooperation in question is cooperation for mutual advantage *within* a select group, and

is directed *against* the advantage of those excluded from the group. Such cooperative ventures are easier to undermine *when there is free competition*, because they create a large group of excluded people who have an interest in seeing that cooperation end, and this group constitutes an attractive market for any entrepreneur interested in defying the cooperative venture.

To be sure, pressure *within* a selectively cooperative venture of the kind I've described may be strong enough to discourage defections. The racist, tempted by profit to hire the qualified black over the unqualified white, may think again when he realizes he will be subject to severe social sanctions from his fellow racists within the community. The pull of the Bottom Line can be quite limited in the face of social ostracism by one's peers.

But that's precisely why I stress the importance of free competition. The beneficent power of greed in overcoming harmful cooperative ventures lies not so much in its ability to undermine the venture from within, as in its ability to attract rival cooperative ventures to outcompete the bad ones. The white racist who has lived all his life in Kluxville may prefer social conformity to profit, but if the resulting low wages for blacks in the Kluxville area serve as a cheap-labor magnet motivating Amalgamated Widgets to open a new plant in Kluxville, the folks who run Amalgamated Widgets may not care that much if the whites in Kluxville shun them; they already have their own peer group, after all.

The ease with which the greed of outsiders can defeat the hate of the exclusive group (or, switching to the cartel situation, the ease with which the short-term greed of outsiders can defeat the long-term greed of the exclusive group) depends on the degree of competition. If regulations make it extremely difficult to start new ventures or expand old ones, then there will be a smaller number of long-established players, insulated from competition and so free to try their hand at harmful cooperation. (Thus government regulation may be described as *subsidizing* racism and cartelization. That's why large corporations in America during the "Progressive Era," and racists in South Africa at the beginning of apartheid, were such enthusiastic fans of government regulation.) The easier it is for a new venture to start up, the easier it is for

harmful cooperative ventures to be undermined from without. Assuming free competition is present, it is the *selectivity* of harmful cooperation that spells its death knell.

Beneficial cooperation is not selective in the same way. That is not to say that a virtuous cooperator cooperates with everyone equally. Any cooperative venture — be it a family, a business, or a political movement — is focusing *more* on the advantage of its participants than on the advantage of outsiders. But that kind of preferential concern is not the same thing as a concerted *opposition* to the welfare of outsiders. What creates trouble for the bad cooperative ventures is that they create an aggrieved, excluded class which forms the natural market for a competitor to enter the field. Mere preferential concern alone does not do that.

It might be objected that at least one beneficial cooperative venture — the private protection industry in a market anarchist society — creates at least one excluded class — criminals. Doesn't this create an incentive for a competitor to enter the field and offer criminals the wherewithal to fight back against the protection agencies?

It surely does. Hence organized crime might exist in a libertarian society. After all, libertarians are fond of pointing out that governments in effect subsidize organized crime by prohibiting, and thus creating an attractive black market for, such victimless crimes as prostitution and drugs. But a libertarian legal system, whether minarchic or anarchic, would at least prohibit *victimful* crimes (*i.e.*, crimes that *do* have victims) like murder, theft, assault, rape, arson, fraud, and the like, and so, by the same reasoning, would create a black market for these crimes.

Still, cooperative ventures against victimful crimes are likely to be more successful than ones against victimless crimes, precisely because the former have a crucial source of support — namely, the *victims* (and potential victims) — that the latter lack.

This brings to mind a related point that was first brought to my attention by Bryan Caplan. Some boycotts are self-enforcing while others are not. For example, if I have a policy of refusing to do business with anyone who doesn't belong to my religion, this policy will clash with my financial

incentives. The financial incentives may still lose out, of course; but then again they may not. On the other hand, if I have a policy of refusing to do business with people who cheat their customers, my financial incentives are likely to *reinforce* this policy. Choosing criminals as one's target market is risky precisely because people who make a profession out of non-cooperation cannot be relied on to cooperate with you either. (That's one reason that the most successful criminal organizations have been ones whose members shared some ethnic, religious, political, or family connections, making them less likely to defect with each other than with outsiders.)

Who Needs Collective Action?

I should also point out that the need for beneficial collective action may be overstated. As I have argued elsewhere ("Funding Public Goods: Six Solutions," in *Formulations*, Vol. II, No. 1 (Autumn 1994)), collective action on the basis of love or long-term greed is only one way to provide public goods. Another way is to privatize the public good, either absolutely (*i.e.*, by figuring out some way to exclude non-contributors) or else by packaging it with a private good, and using the revenue from the private good to fund the public good (*i.e.*, using advertising to pay for radio and TV broadcasts, or using harbor fees to fund lighthouses). So the fact that beneficial collective action is not 100% reliable is no reason for despair, given that the same ends can often be achieved through non-collective means.

Culture and Collective Action

Let me close by considering some of the ways in which cultural factors can influence the success or failure of collective action.

There are two reasons collective action can fail. One reason, the reason we've been discussing so far, is *motivational*. Collective action can fail because not enough people want to participate in it.

But the other reason is *informational*. Suppose everyone in Shangri-la wants to go on a general strike to protest the actions of the government. There's no motivational problem here; everyone wants the same thing. But there's an informational problem: *when* should the strike begin? If only a few people start on their own, they'll simply be punished and nothing will be achieved. As

in many cases, the acts of resistance must be *simultaneous* in order to be effective.

This is a coordination problem. The key to solving such problems is what rational choice theorists call *salience*.

What is salience? The classic example goes like this. Suppose you and a friend intend to meet in New York City on a specific date. Unfortunately, neither of you will be able to contact the other ahead of time to arrange a time and place to meet. So you have to try to find your friend (and your friend has to try to find you) with no more specific information than the city and the day.

What should you do? Well, you should go wherever you think your friend would go. But your friend is trying to figure out where *you* would go

The answer most people give — which in effect makes it the right answer — is that you should go to Grand Central Station at noon. In New York, Grand Central Station is an "obvious" meeting place, and noon an "obvious" meeting time. That place and that time *stand out* from their competitors. They have *salience*.

Salience is likewise what the Shangri-la strikers need. If there is a tradition in their culture of going on strike on a certain date, that is the date to pick. In the absence of any such tradition, something else is needed to provide the salience. That is one function of a *leader*. If there is some one person whom the strikers all respect, that person can *make* a particular date salient by saying, "let's strike then!"

One might also see salience as a way for people to get themselves from an unproductive cooperative venture into a productive one. After all, resistance to an oppressive government is an instance of collective action, but so is the existence of that government itself. I don't just mean that the rulers in the government are cooperating with each other; in some sense, the ruled have to be cooperating too in order for the government to be effective. Rulers have power only so long as people obey them. And why do people obey them? Partly because they think it's their duty to do so, or else because they think they can benefit from government power; to that extent, overthrowing a tyrannical government runs up against a motivational problem. But partly also because they're afraid to be the *only* person resisting the government. Even if everyone hates the government, there's

still the problem of knowing when and how to resist. In that case, salience can help people escape a trap of their own making. To switch from obedience to resistance is to switch from one mode of collective action to another; and, like switching from driving on the right to driving on the left, people are going to get run over unless the switch is made *en masse* rather than one person at a time.

To the extent that prospective cooperators share a common cultural background, it will be easier for them to overcome both the motivational and the informational obstacles to cooperation. Motivationally, people from the same culture are more likely to have similar values and a feeling of solidarity, and so will be more willing to cooperate with one another. Informationally, it will be easier for people from the same culture to find salient points to build coordination on, since they share either a common tradition or a common set of leaders or both.

Consider a mediæval case of collective action. In the Middle Ages, the Catholic Church promulgated the Peace of God (forbidding warfare during certain months of the year) and the Truce of God (forbidding warfare during certain days of the week). These restrictions on warfare were fairly widely observed, with extremely beneficial results to all parties concerned, since adherence to these rules prevented warfare from becoming all-consuming, and allowed the usual business of life — commerce, agriculture, and so on — to continue relatively undisturbed. But this beneficial collective action was possible only because the warring parties shared a common allegiance to the Catholic Church. Their religious faith gave them a motivation to obey the Church, and the Church's authority made the particular provisions of the Peace and Truce salient. By contrast, when Christians fought Muslims there were no such constraints, because the combatants lacked a shared cultural basis to support anything like a Peace of God or Truce of God.

Having a common culture makes bad collective action easier too, however. As I've pointed out before ("Can We Escape the Ruling Class?," in *Formulations*, Vol. II, No. 1 (Autumn 1994) and "Religious Influence on Political Structure: Lessons from the Past, Prospects for the Future," in *Formulations*, Vol. II, No. 3 (Spring 1995)),

adherence to a common religion on the part of the common people was a large part of what held the ruling classes of ancient and mediæval societies in power, since this religion taught that those in power ruled by divine right. In a more pluralistic society, it would be much harder for any one group to claim a divine mandate, and so such ruling cliques should be easier to oust.

What, then, are the cultural prospects today for collective action, good and bad? That depends on whether we are moving toward or away from cultural unity, and that's not an easy thing to tell. *Within* each society we see a great deal of pluralization and splintering going on. But we also see a great deal of homogenization going on *between* and *among* different societies. So it's difficult to say whether collective action in general is going to become easier or more difficult.

The problem of collective action in a libertarian society is one I don't claim to have worked out fully by any means. I offer this discussion in the hope that it will stimulate debate. For debate, as John Stuart Mill teaches us, is a discovery process that assists us in our search for answers.

Hazlitt (from p. 19)

pininess of all humanity. "... the best way to promote this maximum general happiness may be for each individual to cooperate with, and perform his duties toward, his immediate family, neighbors, and associates." (p. 194.)

Hazlitt believed that in these small groups, individuals learn from the consequences of their actions that "*Social Cooperation* is ... the means by which each of us can most effectively supply his own wants and maximize his own satisfactions. It is only the division and combination of labor that has made possible the enormous increase in production, and hence in want-satisfaction, in the modern world. Society is based on an economic system in which each of us devotes himself to furthering the purposes of others as an indirect means of furthering his own." (p. 356.)

Hazlitt thus called his ethical system "cooperatism" to emphasize both the positive attitudes and actions that must prevail in small groups, the combinations of which, in turn, ensure the harmonious functioning of the total society. He said, "Thus social cooperation is the essence of morality. And morality, as we should constantly remind

ourselves, is a daily affair, even an hourly affair, not just something we need to think about only in a few high and heroic moments." (p. 359.)

Maribel Montgomery is a retired community college faculty member in Psychology. She lives in Albany, Oregon.

Bramah (from p. 9)

have no reservations about buying off the media, conspiring with foreign powers or gutting the bedrock principles of democracy. State power itself remains unquestioned. Bramah clearly believes that the captains of industry are the rightful rulers of a strong government, which many would today consider an aberrant Reaganite fantasy. But these are trifling matters. You shouldn't let them get in the way of your enjoyment of a delightful tale well told.

I am grateful to Specular Press for bringing this book to light, and I look forward to future installments in its Capitalist Fiction Series.

Sean Haugh is a member of the Free Nation Foundation. He is the editor of The Tarheel Libertarian, the newsletter of the Libertarian Party of North Carolina, and has been active in various libertarian and anarchist organizations since 1980.

Laissez Faire City (from p. 2)

tacts within the libertarian community such as I know it.

LFC's ad on 10 June offered four addresses, in the U.S., Switzerland, Russia, and Costa Rica. The U.S. address, for those who may want to contact LFC, is P.O. Box 407017, Oakland Park, FL 33340.

October Forum (from p. 1)

papers in the mail during the week before the Forum. During the day of the Forum we will break for lunch. Oliver's gives us the room with the understanding that many of us will buy lunch.

Directions: the restaurant is located at 300 S. Churton St. You will be on S. Churton St., which is the main north-south street in Hillsborough, if you get off either I-85 at exit 164, or I-40 at exit 261. For more information call Richard Hammer at 919-732-8366.

Ubi libertas, ibi patria.
(Where liberty is, there is my country.)

— *James Otis*

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