formulations

Autumn 1998 A Publication of the Free Nation Foundation Vol. VI, No. 1

Forum Announcement
Law in a Free Nation
10 October 1998

Come to our next Forum. This will meet on Saturday, 10 October 1998, from 9 AM till 5 PM, at Oliver's Restaurant in Hillsborough, North Carolina. The topic is law in a free nation. Six or seven speakers will present papers.

You can find the papers which will be presented at the Forum in this issue of *Formulations*. These are: "Law and Violence" by Roy Halliday, "Gateway to an Altered Landscape: Law in a Free Nation" by Richard Hammer, "Draft Constitution for a Reviving or New Nation" by Michael Darby, "Law as Property in a Free Nation" by Philip Jacobson, "The Philosophy of Law and Justice Necessary to Sustain a Free Nation" by Gordon Diem, and "Why Objective Law Requires Anarchy" by Roderick Long. Additionally, Adrian Hinton may come to present his paper in this issue.

You may pay ($15 general admission or $12 for FNF Members) at the door. But if you plan to attend you might let Rich Hammer know ahead of time, and he will reward you with a computer-printed nametag. You could let him know by: sending a check to preregister; calling 919-732-8366; or emailing roh@visionet.org.

During the day we will break for lunch. Note that the Forum admission fee does not include lunch, but you may of course buy lunch at Oliver's.

Oliver's Restaurant is on South Churton St., about 0.5 mile north from Interstate 85, exit 164.△

A Note About Roads

by Richard Hammer

We in FNF have not yet written much about roads, even though we intend to formulate the critical institutions in a free nation. For two reasons I have felt little interest in formulating how markets would provide roads.

First, I assume that markets would do the job to my satisfaction.

Second, we already seem united on this question. It seems that most libertarians share my confidence about roads, so no doubt or dissension on the subject deters our progress in a significant way.

We have faith. But, according to a recent article by Carl Watner ("The Road to Hell Is Paved with Good Intentions: Voluntaryism and the Roads," *The Voluntaryist*, June 1998), we cannot base our faith upon experience. Watner studied the history of roads, and he concludes:

> "...it turns out that 'private' roads and highways have never really been allowed to function because they have always been hedged with special State restrictions. ...there has never been an opportunity to see how completely voluntary systems might work."

He explains:

> "Once trade routes were established by the market, it was not long before they were used as highways of conquest. The ancient rulers of the world, whether in China, Persia, or Rome, all recognized that the unity of their empires depended on their ability to move troops in order to subdue rebellious areas or conquer new territories."

The history of states, as I have come to view it, shows that states grow as soon

(Concluded on page 3)

Foundation News Notes

- On July 8, FNF President Richard Hammer received a call from Eric Rittberg, telling of a vacant island and seeking collaborators in some undertaking to homestead the island. Rittberg's name will be familiar to many libertarian readers, as he was for a time the moving force behind the Republican Liberty Caucus.

  According to intelligence Rittberg gained while he was working of the staff of Congressman Ron Paul, the

(Continued on page 12)

Inside

formulations

a publication of the
Free Nation Foundation
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http://www.freenation.org

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.

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

Send correspondence to the postal address above. Or email to: roh@visionet.org.

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

Subscription or Membership

Subscriptions to *Formulations* may be purchased for $15 for four issues (one year). Membership in the Free Nation Foundation may be purchased for $30 per year. (Members receive: a subscription to *Formulations*, invitation to attend regular meetings of the Board of Directors, copies of the Annual Report and Bylaws, more inclusion in the process.)

Send orders to the postal address above. Checks should be made payable to the Free Nation Foundation. Additional contributions are welcome.

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.

Submissions will be considered for publication if received by the first of the month preceding the month of publication. So our deadlines are: February 1, May 1, August 1, and November 1. All submissions are subject to editing.

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

announcement

Book Study Group

by Richard Hammer

This autumn FNF's book-reading-and-discussion group will study ***The Structure of Liberty: Justice and the Rule of Law***, by **Randy E. Barnett**, Clarendon Press, 1998. We will meet on three Sunday evenings: September 27, October 18, and November 8.

In a recent email message, Roderick Long said this about the book:

> "This book is definitely of the same status as Hayek's *Law, Legislation, and Liberty*, Leoni's *Freedom and the Law*, or Benson's *Enterprise of Law*. And although his debt to Hayek, Leoni, and Benson is obvious, he definitely has a very original approach and some quite new ideas. His background in law (both as a public prosecutor and as a law school professor) gives him a lot of insights that the rest of us ordinarily wouldn't think of. This book would be an indispensable guide to designing a legal framework for a free nation."

Each of the meetings will begin at 7:30 PM. The first meeting will be at my house (111 West Corbin St., Hillsborough, N.C. Call 919-732-8366 for directions). The second and third meetings will be at Stephen Foerster's house (101 Ellen Drive, Knightdale, N.C. Email invisible_hand@geocities.com for directions.)

In the first meeting we will cover chapters 1–6; in the second meeting chapters 7–10; in the third meeting chapters 11–15.

Since I intend these meetings to be serious, at least during the first few hours when we work to understand the main points made by the author, I prefer that the meetings be attended only by people who have read the assigned chapters.△

Michael van Notten to Visit FNF in Early September

by Richard Hammer

At press time, we expect FNF Member Michael van Notten, of Addis Ababa, Ethiopia, to visit us here in the Research Triangle area of North Carolina, sometime during September 10-13. We expect to organize a meeting in which all who want can learn of Michael's current proposal for a free-nation project in Somalia.

For readers not familiar with Michael van Notten, FNF has published a few of his papers in *Formulations*, most recently "Bill of Law" in the Summer 1998 issue. A Dutchman by birth, and a lawyer by training, he has illuminating knowledge of the culture and politics in Somalia. His wife is a high-ranking member of a Somali tribe. To date, he has produced two or three proposals which promise to lease land in Somalia, under a libertarian constitution, if business interests can be found which will provide a financial backbone.

Early this summer an 80-page spiral-bound book from Michael, titled *The Juno File*, was distributed upon his request to a small list of FNF's supporters. It collects letters and reports form several sources (but primarily from Michael) which outline new-country proposals in Somalia.

When plans become specific, we will mail an announcement to all FNF Members and Friends, as well as to all on the mailing list who live within reasonable driving range.△

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WWW.FREENATION.ORG

You can now renew your Membership or subscription on-line. We are set up to accept either Visa or MasterCard.

Furthermore, almost everything that FNF offers for sale can be obtained on the site. In addition to renewals, browsers can buy new Membership or subscription. Browsers can order paper copies of earlier issues, since we now have a complete catalog of our prior publications on-line. And, last but not least, browsers can make contributions to FNF.

We owe thanks for this facility to **Candi Copas** who, through her company Networking Enterprises, volunteered programming and site development. The system uses several security features, so you do not need to worry about theft of your credit card information.△

Note About Roads

(Continued from page 1)

as there is sufficient wealth to feed them. And, given Watner's observation, it seems that the amount of wealth which is required to make road improvement a viable enterprise is also sufficient to feed a state. Since states have vital interests in roads, they soon usurp the building, or at least the regulation, of them. So, while we can find examples in experience to prove to ourselves that almost all critical needs can be filled by voluntary institutions, we will not find good examples of comprehensive networks of voluntary roads.

I find this instructive. But I am still not worried.

In the plans which FNF Member Michael van Notten has prepared for freeports in the former nation of Somalia, roads will be provided, along with many other services, by the entrepreneurial company which negotiates the lease for, and subdivides the land within, the region. It sounds to me like that could work.△

Announcing the Topic of our April 1999 Forum

Mythology in a Free Nation

a call for papers — an explanation of the topic

by Richard O. Hammer

In my journey, of trying to understand what we libertarians would need to do to establish a new free nation, I have come to this question. What mythology could make a free nation work?

First I had better digress to explain what I mean by "mythology." I use a meaning which was put into my head by my twelfth-grade English teacher, Mrs. Southern. A myth is something that people like to believe. The mythology of the ancient Greeks had this trait.

Now often, when we hear someone label an idea as a myth, they are saying that the idea is false. But this is not what I mean. A myth in my usage could be true. Whether it is true or false is not the main issue. An idea merits the label "myth" if people like to believe it.

For examples of the myths of a nation, I would say that Americans generally like to believe these:

- America is prosperous;
- America is a great country;
- America has a superior form of government;
- An American should feel lucky to be an American;
- An American can be a good citizen by participating at the grassroots level in the development of public policy;
- Other countries would do well to learn the American way.

So the question for our Forum is: if we libertarians can succeed in creating a new free nation, what will the people in that nation like to believe about their nation? What will be the mythology of the nation?

We seek papers on this topic, especially for publication in the upcoming Spring issue of *Formulations*, which has a writers' deadline of 1 February 1999. For each paper which seems directly relevant to our purpose, we will probably invite the author to present this paper at our Forum, which will be held here in the Research Triangle area of North Carolina, on a Saturday not yet specified in April 1999. In some cases we are able to help authors with travel expenses.

The topic for this Forum seems important to me because I have almost concluded that we need more than just libertarian values to succeed in our desire to create a new free nation. Libertarians, I have often complained, share a common complaint: too much government. But we do not have a positive image, or myth, that draws us together, to do anything except complain about government.

I believe that if we libertarians did have a positive national myth, then we would not hesitate to act upon it. Indeed, we would not have waited till today to create the nation; the nation would already exist. And, looking to the future, this suggests a work plan. If we build the myth then the nation will follow. This belief (for another example of myth) drives my work in FNF.

Amish Example

In February of this year I had the opportunity to spend about four hours conversing with an Amish man, as I picked him up for a shapenote singing convention that we both attended, and then returned him home. It turns out, I decided upon hearing his descriptions, that the Amish are libertarian. Of course they do not think of themselves this way. But as pacifists they will not employ coercion in any circumstance, even in self-defense. As such, I characterize them as "libertarian plus." They do not even vote, since to vote would be to proclaim their citizenship in a community other than God's community.

And in spite of all the ways in which their beliefs seem odd, their communities grow as converts join. They are constantly looking for new locales in which to seed new communities—and their main criterion seems to be the extent to which they can escape overbearing regulation from the state.

I was fascinated by this successful cohesion. They have a rounded, functioning community, in which people live, work, play, and raise families. Unlike the libertarian movement, they have women in reasonable proportion. Realizing that they must have something which the free nation movement lacks, something which holds them together, I asked what is the positive force that draws the Amish together. "Jesus Christ" was the answer, which seemed obvious when I heard it.

I will not start trying to sell Jesus Christ to you. But I believe the free nation movement must have something like that, some positive faith which makes us willing to make sacrifices for the cause.

The Cost of Cohering

To me this subject also touches upon the economics of organizations. Because the state runs a negative sum game, its victims lose more than its beneficiaries gain. So you might think at first that the victims could organize and throw off the state, since all together they have more at stake. But generally the victims of any given statute are spread out more thinly than the beneficiaries. The victims lose only a little bit, not enough to make it worth their while to organize.

So I ask, what are the circumstances in which victims do successfully organize to fight off the state? Well, obviously it helps if the core of people, those who risk most, believe in their effort. If they have a myth, that is.

Here is one more point that I think worth touching. Beliefs seem to come in several shades. Sometimes upon observing another person I might form one of these three opinions. That person: *likes* to believe, *wants* to believe, or *does* believe. These distinctions can be crucial in some discussions. But I mean generally to sweep them all together when I say "myth." Although I frequently accent the first, the "*likes* to believe."△

A Time for Prototypes

A call to action for members to join and participate in a series of subcommittees working on documents important to the Foundation.

by Bobby Yates Emory

THE NEED

The Free Nation Foundation needs to be prepared, when approached by potential users of our research, to give them a representation of what we will eventually recommend and some of the alternatives being explored. We are not yet prepared (and given the variety of opinions in the libertarian movement, we may never be) to give the final answer to the questions facing us. For example, if we are asked about military defense, a minarchist member will give a distinctly different answer than an anarchist.

We may improve our internal workings if we put a series of proposals on the table. There are probably potential contributors to our work who would be more comfortable making improvements to a concrete proposal rather than being part of a theoretical discussion.

Not Prepared to Give Final Result

The Foundation is not prepared to come to a final conclusion in any large area of our work. We do not have one constitution to recommend as the best choice for a free country. We have not concluded what would be the best possible legal system. So, in a sense, we are not yet prepared to offer output from our research.

Much Work Done

The Foundation has made some progress and has produced some alternatives. Even if we are unable to choose between three alternatives, having developed those alternatives will be of use to people facing the problem of implementing a new country. Providing the results achieved so far in an easy-to-use form would be a positive service to potential users.

BUILDING PROTOTYPES

One solution to this situation is to begin constructing prototypes. Then we can have some results to show and yet not be creating a stumbling block where we later have to retract and repudiate a prior position. We need to begin working toward our eventual output. By starting now, we can begin to prepare all the elements of our eventual output. As our vision jells, each element will have been previously developed.

What Prototypes Are Not

Prototypes will not be expected to be our final answer. Any particular prototype may not be supported by a majority of the members of the Foundation. Especially when it is first under development, a prototype may not be complete. Prototypes are not comprehensive plans for the entire new country but may be restricted to a small scope of subject matter. Prototypes are not exclusive. Several may cover the same subject and some may include others. For example, a constitution might include a legal system yet there could be separate subcommittees working on each.

What Prototypes Are

Prototypes are serious attempts to delineate the methods to be used in a free society. Prototypes are in enough detail to let the reader understand how the proposal would work. Prototypes are restricted to the subject matter of their subcommittee charter (which the subcommittee defined).

Current Subcommittees

Among the currently existing subcommittees are:

- Constitution—based on U.S.
- Constitution—non-written
- Short stories and novels

Create More

Would you like to work on a subject not mentioned? Please let us know. We can start a new subcommittee or match you with an existing subcommittee.

METHODOLOGY

Many members of the Foundation are users of the Internet, so we will use it for our work. We are trying to think of a method to use for people who do not have ready access to the Internet. This work is just beginning, so we welcome innovations to our proposed work plan. Prior experience with similar efforts would be valuable.

Techniques

The initial method being used is to send email messages to the subcommittee members with documents attached. The documents are currently just plain ASCII. The next level will be to put the documents into SGML. After that is working well, probably we will establish newsgroups and move the discussion to the newsgroups. After the documents are well developed, we may move them to our website (FREENATION.ORG).

Output

Each subcommittee will define its own charter. The ultimate output is envisioned as a hypertext document that will include the basic document, a separate explanation of the reason for each provision, and a log of the email discussion of each provision.

Call For Volunteers

Additional contributors are needed for each of the current subcommittees, and additional subcommittees are needed. If you have questions or would like to join a subcommittee, please contact the author at:

BYEmory@FreeNation.org.△

GLOSSARY

ASCII (simplistic) The normal way computers code words—no special format codes.

GML Generalized Markup Language—a method of putting format codes in a document.

HTML Hypertext Markup Language—the way documents are coded for the WWW. Based on and a superset of SGML.

Hypertext The concept of including in a document a way of going to the definition of a term or an article about a phrase.

Newsgroups (should really be called discussion groups) A facility on the Internet to which a user subscribes and then messages sent to that group will be sent to the user. Often used by people working on a project or interested in a specific subject.

SGML Standardized Generalized Markup Language—based on and an improper set of GML.

Law as Property in a Free Nation

by Philip E. Jacobson

Introduction

A society based on individual liberty should be founded on an ethical system which recognizes individual acts of choice as its basic structural unit. Any "law" established within such a society must be consistent with this structure. This is more than libertarian rhetoric. It should be seen as a sociological requirement by those who would found a free community, and by those who would live as its citizens. The legal structure of a statist society operates in a manner which constrains individual liberty. A libertarian society must reject many key statist legal concepts on this basis. A useful way to isolate and discard such concepts is to view them as "property rights" or simply "properties" which have been confiscated by the State. These property "rights" can then be re-allocated on the basis of individual choice, or simply abandoned—never to be recognized as valid forms of property by citizens of the new society.

Rights as a Form of Property

The late libertarian thinker Murray Rothbard had a useful perspective on the notion of property. Rothbard observed that the concept of "property" could be applied to a wide range of behavioral options, as well as material items. Thus he argued that the right of an individual to perform specific actions like "the right to paint a building a specific color" might be a "property", distinct from "the ownership of the building in all other respects." One might, given Rothbard's approach, sell all of a house to someone, save "the right to paint it red". Then one might sell "the right to paint it red" to another owner. These two separate rights or "properties" might never again come into the same hands.

Many societies with advanced division of labor economies already have similar, though less sweeping versions of this perspective. For instance, a right-of-way across a piece of land might be owned by someone who does not own the land in other respects. Mineral rights are often isolated from other landowners' rights. But Rothbard proposed using this approach much more broadly, conceiving all possible uses of a piece of matter as separate "properties" which might be distinct from "ownership" of the right to dispose of the item in other ways. In other words, any behavior towards any material object might be seen as a "property right". Thus, with Rothbard's approach, all human rights can be seen as "property rights": the "right" to dispose of an item of "property" as the "owner" sees fit. What are often called "civil rights" are simply rights derived from a person's ownership of their own body. "Intellectual property" is a variation on this approach, where a "property right" to dispose of any material object in a particular way—say using it as a means of selling a copy of a piece of copyrighted literature—are owned separately from all other rights to the material object.

While I do not like Rothbard's micro-division of house ownership, and I agree with Roderick Long's objections to the concept of intellectual property, I see great value in Rothbard's effort to define all claims about "rights" as claims to "property rights". Using Rothbard's system, which I will call Rothbardian Property Calculus (I know of no name by which Rothbard himself referred to this descriptive system), it is possible to describe how a given society allocates freedom and control using the concept of "property" as a term which transcends cultural differences. Even when viewing a kind of "property right" or "property claim" with which libertarians generally disagree (such as the claim of a "right" to own another person as a slave), it is possible to clearly describe the belief in such a "right" using Rothbard's approach. Any discussion of "legal rights" (in or out of the context of a free nation) can thus be placed within a notion of "property rights", which I will do for most of the rest of this essay.

But I want to explore the concept of property more fundamentally, before applying it to the concept of "law".

"Property" More Precisely Conceived

The notion "property" is often viewed as the "right" of a "propertyholder" to dispose of an "item of property" as that "propertyholder" wishes, combined with the absence of such a "right" being accorded to anyone who is not the "owner" of that "item of property". This generality is true no matter how finely or by what means one may care to divide the "item of property" into smaller "properties". But what is the actual social mechanism involved when a "property" is said to exist?

Property involves—property *is*—a particular kind of respect which individuals give to other individuals.

Phil Jacobson

To say that someone may consider something as their "property" is to say little or nothing about the "propertyholder" or the "item of property". The essence of the status "property" lies in the fact that other individuals (not the "propertyholder") view the item of "property" as "belonging" to the "propertyholder". The "propertyholder" may use the "property", neither the respecter nor anyone else may use it (unless given permission by the "propertyholder"). It is this respect, given by individuals who do not claim the item as their "property", which counts—a respect which is given to the "propertyholder", not to the "item of property". Such respect may or may not be given by all the individuals who have access to the "item of property". And to the extent that those who are not the "owner" of the "item of property" fail to recognize the item as the "propertyholder's" possession, the property "right" does not exist in practice. We may discuss at length whether the

property "right" ought to exist, but this is irrelevant to whether or not it does exist. A property "right" only exists to the extent that some "respecter" thinks it does.

Property does not require law, nor does it require philosophy—though these may be influential factors. It simply requires a specific kind of respect on the part of one individual towards another individual. This attitude is often the product of a value system, consciously adhered to by the "respecter". But it may also be the product of a habit or tradition (possibly not consciously considered by the "respecter"). It may be the product of a contract to which the "respecter" is a party. Or it may be the product of an aggressively "possessive" attitude on the part of the "propertyholder" who possesses significant power or influence over the "respecter".

The list of items which might be considered "items of property" is huge, and widely varied. Across human history many things have been considered property. Cultural traditions have differed widely regarding what might or might not be considered potential "property". But because it is possible, with Rothbardian Property Calculus, to describe any system of "rights" recognized by a given culture as that culture's "property code", it will be possible for us to examine and critique the statist cultural tradition of "law" as a specific example of a property code, and to propose alternatives.

Law as Property

Within the general territory of "property", comes a more specific set of "properties" which provide the sociological foundation for the institution of "law" in a statist society.

There is the "property" of legislation. Individuals classified in some manner as "legislators" may "own" the (usually limited) right to make additions to or changes in the "law" (though sometimes a common agreement between a class of such individuals, or perhaps a majority of such a class, is needed).

There is the "property" of the judiciary. Upon request or even on their own initiative, certain individuals might "own" the right to dictate an interpretation of the "law" regarding specific questions raised by disputing parties. This is not usually conceived of as the right to make new law, however.

There is the "property" of the executive. Certain individuals may "own" the right to "enforce the law". They may make on-the-street evaluations of systematically (or even randomly) chosen individuals suspected of violating "laws"—with or without complaints against the suspect from citizens, make serious accusations concerning "lawbreaking" about those "suspects", and if necessary direct physical force at the "suspects" while engaged in "law enforcement".

Most significant, however, is the "property" formed by the conscription of individuals into the jurisdiction of a "legal" domain. Typically, in legal systems, this involves conscripting behavior (including avoidance behavior) from "non-citizens" as well as "citizens". This is hardly unique to statist culture. Even libertarian ethical systems contain an element of conscription, at least most of them do. Libertarians usually insist that an "outsider" who initiates force or fraud is subject to retaliation, even though the "outsider" has not agreed to abstain from initiating force and fraud. But a state usually claims ownership of an unlimited power to conscript, with no permanent limits as to who may be conscripted nor what the conscripts may be ordered to do. In practice, a state usually limits the use of this power by its agents. But all states reserve the right to declare "emergencies" during which times active conscription has virtually no limits.

Only within the state's system of conscription is there any "private property". A state will recognize certain properties as being "owned" by individuals: individuals with no special status within the state's organizational structure—mere citizens. But while a citizen does not have to have special rank in order to own "private property", the property thus described is still a grant by the state to the individual. And the state reserves the right to revoke any citizen property rights at any time, as mentioned above. Further, both citizens and non-citizens are conscripted into this system. If the state decides to award "private property rights", ownership, of for instance a piece of land to one citizen, all other individuals are expected to respect the "owner's" property rights. The state reserves the right to take "private property" from one individual and give it to any other individual at any time. Thus a "private property owner" is merely a kind of state agent. As most "private property" is subject to taxation, the "owner" is *de facto* a renter.

Ownership of the Law in Statist Society

In a statist society, a few persons (granted the status of agents of the State—thus stewards of the State's properties) are given effective control, thus *de facto* ownership, of the various "branches of government". Most citizens are encouraged to believe that law making, law interpreting, and law enforcement are "properties" (though this term is not used), but not properties which they should own. Politics is thought of (or at least subconsciously conceived of) as the system by which it is decided which minority of citizens will be the ones who own the law.

Within a statist society, monopolies on the ownership of "the law" provide the grounds for much "ownership" of the citizen by the agents of the State (government officials). "The Law" becomes a vehicle for creating citizen obligations—citizen servitude to the State—citizen labor as a property owned in practice by agents of the State.

For those who can afford to pay taxes from an inherited estate (a property transfer requiring State sanction), no labor need be granted to the state. But for those who must work for a significant percentage of their time in order to pay their taxes, labor must be expended because of a government property claim against the laborer (most commonly in the form of taxes).

When government acquires the power to regulate business, it has asserted a property claim against the labor of the workers in that business. For those laborers who are working to pay taxes, at least some of such workers' time is thus owned by the government. For the hours such workers dedicate thusly to the government, these workers are the property of the government. As with livestock, various cruelties imposed on the labor force might be prohibited, thus not part of the right to human "property". But to a very real extent, these laborers, these workers—are slaves. Alternative vocabularies are used to avoid overtly recognizing this slavery, but that's what it is.

The vast majority of these workers, certainly, are unwilling slaves—and would change their status if they knew how.

In addition to the laws which mandate specific citizen behaviors, various other laws prohibit specific citizen behaviors. Such laws, then, claim the prohibited behaviors as properties of the State, forbidding their ownership by private citizens. Thus the right to consume a medication which has not been approved by the State is not to be owned by a private citizen. Similarly, while a private citizen may be recognized as owning a home, and owning a particular kind of plumbing fixture, the citizen might be denied ownership of the "right" to personally install that fixture in the citizen's home. These transfers of ownership from the citizen to the State are additional, piecemeal forms of slavery.

Privatizing the Law

Ideally, in a free community, each member of the community will be consciously aware that the member's association with the community is voluntary—that the society condones no slavery. So each member would also be aware that all community members' adherence to the community's norms, whether formally expressed as "law" or not, was voluntary.

Yet many citizens would value the presence of various kinds of stability—including various property rights—within the community. In the absence of a class of privileged specialists who monopolize the ownership of the law, how could this be achieved? Alternative institutions to the socialized law of statist societies should be evolved. Individuals with no state-sanctioned rank can and should be taught how to build and adjust the traditions of property which they value.

Less Law

In statist societies most citizens object to some of the laws. In many statist societies most individuals object to most of the laws. Assuming the principle of non-initiation of force and fraud, we can suspect that there is too much law in these societies. Sometimes the excessive law is a matter of a minor preference being taken too seriously. For instance, a city council may mandate a particular style of architecture for a particular neighborhood—even though many landowners do not wish to adopt this style. Sometimes the excessive law is a matter of forcing the strong feelings of some members of a community on everyone in that community. For instance, an ordinance may ban all alcohol sales within a given municipality.

In the case of a minor preference shared by a group of individuals, but not necessarily shared by the society at large, habit and tradition within that group might be more appropriate than law. Individuals within a libertarian society might wish to encourage various behaviors on the part of their neighbors, and should be free to do so as long as they do not initiate force or fraud. But in most cases, the result would probably take the form of a wider adoption of a preferred habit—which ultimately might become a tradition, but which does not need to be a formally adopted "law".

Modularizing the Law

Other essays in *Formulations* have addressed the concepts of private adjudication and private protection services, which could replace state systems of judiciary and "law enforcement". There is no need to repeat them here. They are usually described as being based on contracts, and as such are voluntary arrangements. Contracts between individuals can be an important way to develop stable patterns of behavior in a libertarian society. But contracts between individuals do not provide the more general standards of ethics which many citizens will want.

To the extent that a group of individuals within some larger community wishes to agree to avoid or to mandate some behavior for themselves, that group of individuals can volunteer to adhere to such a standard. But a libertarian society should not grant them or anyone else the power to conscript others into their ethical or aesthetic preferences (beyond the non-aggression principle). However, various ethical associations could be formed—some likely based on religion, others not—which could establish rules for members. In the absence of laws (and punishments) mandating for the whole society the behaviors preferred by the members of an ethical association, the association might establish an enforcement system for its own rules. A set of property rights regarding legislation, adjudication, and rule enforcement might be set up which would apply only to association members. This property code could have a structure roughly similar to statist "law", excepting that the system would be entirely voluntary.

Would this simply mean that the ethical association was isolating itself from the rest of society—forced to avoid everyone else for the most part? No. Rule systems for ethical associations need not become the basis for segregating the members from the rest of the society. An association might operate on a very narrow basis, which would affect only limited aspects of members' lives. For instance, occupationally based ethical associations might establish rules which only affected the workplace.

To illustrate this with a more specific example, I will describe an imaginary ethical association of auto mechanics. Let's call it the Association of Especially Competent Auto Mechanics (AECAM). Members of AECAM would agree to certain standards of performance. A mechanic's religious preferences could be irrelevant to the association, as might alcohol consumption outside the workplace, opinions about various ethnic groups, hairstyle, etc. An individual mechanic could join this association and also join another ethical association, perhaps a religious group, which might hold that mechanic to other behavioral standards. The mechanic might advertise membership in one or both ethical associations. Potential customers could then either patronize or avoid the mechanic, based on the customers' own beliefs and needs.

Customers, too, might become subject to AECAM rules. A customer membership might be established, perhaps being a requirement in order to get service from AECAM-member mechanics. Or customers might be given discounts for having a vehicle serviced exclusively by AECAM-certified mechanics. Perhaps AECAM would offer an attractive auto insurance policy, based on customer members' adherence to AECAM rules regarding regular maintenance, safe driving, or other auto-ownership related issues. Under these conditions, AECAM customer members would be granting a great deal of the "ownership" of "automotive law" to AECAM.

AECAM could set up its own legislative system for establishing its rules. The association could have special courts to interpret those rules, or could endorse independent adjudication services for use regarding its rules. AECAM could endorse specific bailiff services and/or procedure's for enforcing its rules. AECAM's rules might be stricter than any current law, regarding auto maintenance. Yet AECAM would only "own" automotive (or other) law to the extent that it had established voluntary relationships with various citizens within the libertarian society.

In a libertarian society any citizen would be free to offer repair services, with no endorsement from AECAM and no license from anyone else, on the open market. If some mechanics wished to be in a professional association but were uncomfortable with AECAM, they could form another association, granting "ownership" of "auto mechanic law" to the new association. A number of customers might decide that they should "own" "auto mechanic law" and set up something like an Automotive Owners Consumer Union (AOCU). AOCU, AECAM, and an unlimited number of other organizations would thus "own" separately administered blocks of "auto mechanic law"—in much the same way that the state of France and the state of Spain each own such separate blocks of auto mechanic law today. To the extent customers or professional service providers wished to recognize such law, it could be quite influential. Such modular systems of law would probably be better enforced than similar laws by any state have ever been enforced, because for the most part participants would be motivated to adhere to the law voluntarily.

But to the extent than individuals failed to endorse AECAM's or anyone else's ownership of law, no property would exist regarding this subject—other than the self-ownership of each citizen. The same would be true for all other areas which are now arenas for "law". Much "law" would probably be abandoned, but new "law" would probably be established—as customers and entrepreneurs explored the market for law in various libertarian communities.

Wide Cooperation Between Voluntary Organizations

The only universal ethical belief that a libertarian society should have is the non-aggression principle—the rejection of initiated force and of initiated fraud. The non-aggression principle can be used to deduce a number of specific prohibitions. Further, these prohibitions are seen as universal by most libertarians. That is to say, most libertarians disapprove of initiated force and fraud in every conceivable situation. But it does not follow that most libertarians wish to interfere with, or actively support interference with, each and every case where a suspicion exists that force or fraud have been initiated. If a citizen of a libertarian society chooses not to lock the doors to their home and the home is robbed, for instance, there is no presumption that all other citizens should pay for a detective to track down the thief. In addition, it is clear that just because one citizen defaults on a contract made with another citizen, no burden on a third citizen to help enforce the contract exists automatically.

In a libertarian society characterized by an advanced division of labor and by cultural complexity, it should be expected that citizens will vary widely with respect to their voluntary submission to legal systems. Various associations with distinct property rights in law will probably emerge. Each association will probably own unique pieces of law, based on the voluntary decisions of members. For each association, a unique blend of rules regarding what is to be prohibited, what is to be mandatory, and what is of no consequence will exist. Further, each association will have a unique perspective on how many and what kind of resources should be put into enforcing the law it owns. And individuals will probably be able, within limits, to customize membership in most associations. Indeed, most individuals will probably have unique legal obligations.

Inevitably some conflicts of interest between individual associations will emerge from their differing priorities regarding rules and the enforcement of rules. Libertarian associations will have to respect each others' differences concerning many topics—agreeing to disagree—as long as none initiate force or fraud. But a certain degree of cooperation will tend to emerge as well. When two or more associations have common rules, they may try to ally with regard to enforcement of these rules. It is likely that only a few rules will be agreed to by a majority of citizens, however, and that only rules which oppose initiated force or fraud will be accepted by all. And even within this sphere, it should be expected that cooperation between associations will not always be forthcoming—except perhaps where the "crimes" are extreme. Thus most of the uniform "rule of law" as it is understood in statist societies, will cease to exist—will cease to be anyone's property.

Individual Responsibility

A libertarian society will need citizens who respect situations where few laws apply to their neighbors—where most of these laws can be renounced if a neighbor fails to renew a contract or if the neighbor leaves an ethical association. Citizens must learn to accommodate the fact that they cannot own their neighbors or cause their neighbors to be owned via government conscription programs, as long as their neighbors refrain from initiated force or fraud. Citizens must also learn how to shop for legal systems. They must not expect to rely on the State to tell them what to do. They must learn to shop as consumers in the market for law.

But citizens should also be aware that they can be producers of law. If a citizen wishes to live in a community which adheres to some ethic, but can find no such community in existence, the citizen of a libertarian society has options that statist societies do not allow. The citizen may become a legal entrepreneur—may seek to build a new community, or to alter an existing one. In statist societies citizens are taught that ethics should be universal and imposed on everyone equally. In a libertarian society citizens need to think about establishing small social structures (sometimes with rigid rules, sometimes with just informal guidelines) which provide community to like-minded others even when the larger society does not subscribe to identical ethics.

A libertarian society needs an internal social climate which provides more than the limited tolerance granted in "liberal" societies. There must be an

attitude of total self-reliance regarding ethics. Citizens must know that they live in their community by choice, and that they can choose otherwise—can leave one community and enter or build another. A citizen of a statist society can claim to be a "good citizen" by being "law abiding", yet take very little responsibility in practice for what the law is. This is not so for the citizen of a libertarian society who must choose an ethical system and how to live by it.

Getting There

In some ways, it would be harder to live in a libertarian society than in a statist one—especially for those who do not feel comfortable with so much personal choice. For this reason the transition to the complex legal structure I describe above may take some time, no matter where the idea is first tried on a practical basis. Long before a truly "Free Nation" is expected, libertarians who support this idea should encourage a belief in "the market for law", which is after all, just a variation of "the market for liberty". This should include not only the excellent descriptions of what a Free Nation's legal system might look like, as have been provided in *Formulations*, but also some trial and error in the practical world. This is especially important in the area of legal entrepreneurship. It would be quite valuable for anyone who believes in the value of a free nation to look for opportunities to develop voluntary legal systems in cooperation with other like-minded individuals. In this way the habits of individual responsibility can be fostered sooner rather than later, and a legal culture based on an active pursuit of liberty-within-community can lay the groundwork for a free nation in the real world.△

Phil Jacobson has been an activist and student of liberty in North Carolina since the early 1970s. For a living he sells used books, used CDs, and used video games.

Libertarian Legal Code

a letter from John Ewbank

The Summer, 1998 issue of *Formulations*, includes a three-page "Bill of Law" authored by lawyer Michael van Notten, of Somalia. Millions will disagree about whether "natural rights" exist. However, his formulation of them is unfortunately somewhat gender-biased. The family rights paragraph (5) might well be revised to indicate that a human should have a right to seek to be a member of a voluntary family, which family should be permitted to raise one or more children and to educate them to cherish the culture of their parents.

If the Bill of Law is intended to apply only in areas in which all residents have chosen to assume the responsibilities inherent in being libertarian, then I have no criticism of it. However, I would not choose to live in such an area under modern technology, modern overpopulation, and modern cheap global transportation. For 46 years I have lived in an intentional community which has managed to maintain a 74-household privatized municipality with almost idealistic anarchism and with zero threat of coercion for rule enforcement. Such anarchism has been successful only because applicants learn what their responsibilities are prior to joining the community, and there is no hereditary membership.

The intellectual world desperately needs a legal code deemed to be universally applicable everywhere for everybody, including the psychotic sociopaths, retarded, alcoholics, irresponsible gamblers, etc. The Libertarian Code of Law should be the basic law for the Milky Way Galaxy and the universal default law everywhere. Hence libertarians should not try to impose upon non-libertarians any concepts which would not be manageable among non-libertarians. The Libertarian Legal Code should be deemed to be the "default" law applicable to the extent that coercive government is not effectively administering some other legal code. Almost everything in van Notten's Code fulfills such desiderata, except as noted hereinafter.

The principal criticism of van Notten's code concerns item 3, the right of immigration. Just as a homeowner is entitled to restrict who should be invited into a home, so should the real estate owners of an area be entitled to restrict who is entitled to travel through or live in such area. At a time when world population was a few million, the concept of free immigration might have been appropriate, partly because there were large unclaimed acres. The transportation cost for most of the Europeans coming to the USA corresponded to a laborer's earning for one or several years. Today, such transportation costs correspond to what a laborer might earn in a week. Hence, transoceanic migration is a relatively trivial financial burden. Legal codes must be existential, coping with the complexities currently existing. To the extent that an area chooses to impose immigration barriers, they should be entitled to do so. A free nation may choose to cope with free immigration. Other areas should have the privilege of imposing immigration restrictions.

A free nation might choose to define adulthood strictly on the basis of the maturity of the behavior of a human. Obtaining the evidence to establish adult behavior could easily cost more than $1,000 per dispute. Hence, many areas are likely to prefer to establish some arbitrary standard for adulthood instead of applying the pragmatic test of mature behavior. Most adolescents go through stages in which at certain moments they behave as children and at other moments behave as adults. Society benefits by setting arbitrary standards for qualifying for the phenomenal privileges of adulthood. What those arbitrary standards are is far less important than recognizing the necessity for purely arbitrary standards that are sure to be unfair under particular circumstances. Some societies have used age 14 or 18 or 21 or 25 as the arbitrary standard, any of which is suitable. Greater hellishness is attributable to propensities of politicians to alter the standards than from persistent adherence to any particular standard.△

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John and Marjorie Ewbank are decentralist-federalists at ages 81 and 83 educating globally for subsidiary and sustainable justice.

ECONOMIC GOVERNMENT

by Robert Klassen

Written in gratitude to the ideas of Ayn Rand and Andrew J. Galambos.

Recently I had a very long-winded discussion with my sister's friend Alicia Travest on the subject of economic government. Alicia is a skeptical person who neither likes me nor trusts me, plus she is a well educated and intelligent person who enjoys asking insightful and difficult questions, so I decided that this whole conversation needed to be written down and saved for posterity. For the sake of brevity, Alicia will be A and I will be B.

A: Okay, mister, what is this? I've heard of economics and I've heard of politics and I've heard of political-economy, but I've never heard of economic government.

B: Relax. I'll tell you about it. I coined the phrase *economic government* deliberately in order to clearly contrast it with what we have now, which I call political government.

A: Wait a minute, you made this up?

B: Yes, I put the two words side-by-side.

A: Have you got a degree in economics or political-science?

B: I haven't got a degree in anything.

A: Then by what right ...

B: The same right every person has to learn and to think and to arrive at conclusions.

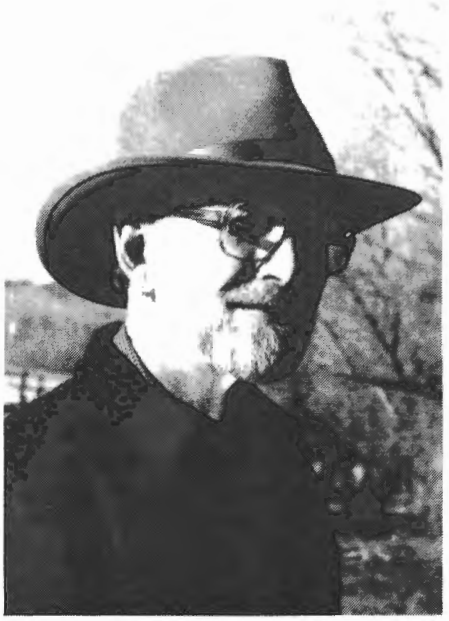
A: How long have you been studying this?

Editor's note: Alicia Travest is a fictional character, created by the author for this purpose.

B: Since I read *Civil Disobedience* at the age of ten in 1950.

A: Who wrote that?

B: Henry David Thoreau, in 1849. The essay begins: "I heartily accept the motto, — 'That government is best



Robert Klassen

which governs least;' and I should like to see it acted up to more rapidly and systematically. Carried out, it finally amounts to this, which also I believe, — 'That government is best which governs not at all;' and when men are prepared for it, that will be the kind of government which they will have."

A: So are you saying that economic government is no government at all?

B: No. Thoreau was using the word *govern* in the sense of *rule by authority*. He did not like the idea of being ruled by anybody other than himself and he refused to acknowledge the authority of the state. However, *govern* also means *to exercise influence*, which is not the same thing as ruling by threat, command, or demand. It is in this sense that I am using the word *government*.

A: So by attaching your use of the word to economics, you are implying that economics can somehow exercise influence over what?

B: Human behavior. The purpose of economic government is to provide absolute security and justice to individuals without the use of coercion.

A: What do you mean by coercion?

B: Any interference with property.

A: You mean force, right? So you're going to influence human behavior without the threat of force? You're crazier than I thought. Force is the only way to keep people in line.

B: So when you move to a job that pays twice as much, somebody forced you to do it?

A: No, no, you know what I mean.

B: You act on your self-interest, right? Nobody has to force you to do that, right?

A: So what? What about muggers and rapists and thieves and killers and all those people? What do you do with them?

B: Life will become very unpleasant for them in this system. In fact, I don't believe they will be able to carry out a coercive act and survive. As the news gets around, I do believe this kind of behavior will become rare, indeed. In economic government, coercers will *pay* for their crimes.

A: I don't like the way you said that and I definitely don't like the grin on your face. Okay, let's get down to business, what is this economic government of yours?

B: It consists of three interrelated human institutions that do not exist at the moment. First, and most important, is an *Innovation Clearing-House*, second is *Banking*, and third is *Insurance*.

A: Who are you trying to kid, here? Banking and insurance have been around forever.

B: Banking and insurance have been around in rudimentary form, but their function has never been extended as it ought to be. In fact, such extensions are

most likely illegal under political government.

A: Illegal, you say? Now you've got me interested. Like what, for instance?

B: How about venture-capital insurance?

A: Like you bet your money on a risky venture and loose your shirt and the insurance company picks up the tab. Right?

B: Right. Then there's marriage insurance and contract insurance and innovation insurance...

A: There you go with that innovation business again. What's wrong with patents and copyrights?

B: Patents are expensive and difficult to get; then, if they are worth anything, even more expensive and difficult to protect. Patents also discourage innovation and competition. Copyrights are cheap and easy to get, all you have to do is write the word on the page, but are also expensive and difficult to protect. And both have time limits.

A: I suppose you have something better?

B: Yes, the Innovation Clearing-House. It begins with a simple Registry where you can list your innovation and have it time and date stamped.

A: Won't that make it easier to steal?

B: You can encrypt it.

A: What if it's something I create while I'm working for somebody else?

B: Then you'd better encrypt your name as well.

A: How much does it cost?

B: One cent per entry.

A: Well, that's cheap enough, but I still don't know why I should do it in the first place.

B: The broader function of the Clearing-House is to create a tree of knowledge to identify each individual innovator who belongs on that tree. Then the Clearing-House will accept royalties from entrepreneurs who have used those innovations to earn a profit and assign those royalties to the innovators.

A: Whoa! Wait just a hot minute here. That tree of knowledge could go back ten thousand years!

B: Further, actually. We have the inventors of the wheel, inventors of stone tools...

A: This is ridiculous! You can't pay people who have been dead for thousands of years.

B: You can't pay the person, but you can create an account for that person and pay into that.

A: What on earth for? I'd like to know.

B: First, because it's the right thing to do. If you use the knowledge that some other person created to earn a profit for yourself, then you owe that person gratitude. Second, you will build up investments that earn money that can be used for education, research and development, and public welfare. And third, it is a tool of justice.

A: Slow down, slow down. Let me examine these one at a time. Are you telling me that every mechanical engineer is going to have to learn and remember the names of thousands of people who created his profession?

B: No, not at all. If the mechanical engineer is merely contracting his time to do a certain job, then he doesn't owe money to anybody. If he is building his

Foundation News Notes

(Continued from page 1)

island of Navassa, a U.S. territory in the Caribbean, just off the western tip of Haiti, once housed the staff of a lighthouse, but is now vacant. Because the US government has not yet decided what to do with the island, Rittberg had reason to believe that it could be occupied, and the occupants would become the *de facto* owners.

- FNF's web site now has a bibliography of links to on-line articles which show the working of voluntary institutions. Thanks to **Roy Halliday** for this work.

- On the evening of August 16, the FNF Board of Directors held a regular meeting at Oliver's Restaurant in Hillsborough. Discussion was informal during most of the three hours that participants lingered around the table. In the one formal action, Directors Roderick Long and Christopher Spruyt were reelected, to serve new three-year terms which will begin on 1 December 1998.

- For those who may be curious about where the readership of *Formulations* lies, here is a description of a typical mailing. The previous issue (Summer) was sent to 208 addresses. Eight of these were outside the United States. Two hundred were bulk mailed to U.S. addresses. Of those 200: 35 went to zip codes here in the Research Triangle Area of North Carolina; 18 to other N.C. addresses; 19 to California; 12 to Texas; 10 to Illinois; and the other 106 to all remaining states, each of which received nine or less.

- An ad, which FNF ordered to be placed in the September *LP News*, was turned away by that publication's Editor, as being "...in conflict with the goals and purposes of the Libertarian Party." The headlines in that ad said, "LIBERTARIANS, If majority rule fails us... We can assemble the resources to lease a new Hong Kong, as soon as we build a vision—*which we believe*—of how that free nation will work....We can purchase what we want through markets, rather than plead for what we want through politics."

  The ad has been resubmitted, hopefully to appear in the October *LP News*, with a new set of headlines. The new headlines read, "LIBERTARIANS, We seek a free nation. But do we have a clear enough vision of how our nation will

own hydraulic pumps and selling them to an aerospace company at a profit, then he does. He does not need to know or remember his antecedents, the Clearing-House will take care of that.

A: I still don't see what's in it for him?

B: For one thing, he can advertise the fact that he pays innovation royalties, thus attracting the highest quality co-contractors to his projects. And for another, he himself will eventually earn innovation royalties as others build upon his work, even after he is dead, so participating in the Innovation Clearing-House is in his own best interest.

A: Who's to say this Clearing-House won't steal his money or his innovation or both?

B: That is the purpose of innovation insurance.

A: Is this Clearing-House one great enormous institution?

B: Not necessarily, there may be thousands, but they will be interrelated like the search engines and directories on the Internet are now.

A: Okay, I get the picture. Now what did you say they do with the money?

B: Invest it in profitable businesses, invest it in individuals with profitable potential, and invest it in research and development of areas which have no apparent application at the moment.

A: I can see the point of the first two, they'll earn money on their investment, but what is the point of the third?

B: Looking back, we see a phenomenon like Maxwell's Equations explaining something that was not known to exist, electromagnetic waves. Today the search is on for the gravitational waves that Einstein predicted. Today the search is on to find new medicines in the tropical forests. Somebody has to finance this research, which may or may not pay for itself some day. Individuals or corporations may pay for it, fine, but the Innovation Clearing-House will take a keen interest in pure research.

A: Okay, okay. Back up a little and tell me what this Clearing-House has to do with justice.

B: In addition to recording and rewarding the positive acts of individuals, the Innovation Clearing-House will also record and punish the negative acts of individuals.

A: I can't believe you are saying this. How can you punish dead people?

B: Two ways; one, by publishing their negative act; and two, by creating a negative account in their name. Men like Stalin and Hitler would have pretty substantial negative balances.

A: What on earth for?

B: Because it's the right thing to do and because it will have a real deterrent effect on any would-be Hitlers or Stalins in the future.

A: And you're going to take that back in history, too?

B: Sure. The murder of Archimedes cries out for justice. We may believe that a delay of two and a third millennia makes the punishment irrelevant, but to the folks living a hundred thousand years from now, it will appear instantaneous.

A: You think big, don't you? Why should I care what they think in a hundred thousand years?

B: Because, if you do anything worthwhile in the time you've got, they will be there to thank you. If you don't, they won't.

A: Is that a threat?

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work when we get it? If we could revise the US Constitution, to make it more durable, how would we do it? ... Join in building the vision of the institutions in a free nation."

The ad features, as usual, our drawing of Liberty hitchhiking. It announces our October Forum, and gives introductory information about FNF.

- A 1/3 page ad has been ordered to appear in the October issue of *Liberty*. This ad is headlined as a call for papers on the topic of mythology in a free nation.

- The on-line archive of FNF's prior publications continues to expand gradually. It now contains most of the papers in the first volume of *Formulations* (1993–94). **Hal Noyes** has joined the team of volunteers, including **Phil Jacobson** and **Earnest Johnson**, who are translating electronic documents to make this posting possible.

- All FNF Members and Friends are invited to list their names on FNF's on-line "Our People" page. The listings can contain a few lines of text (up to 200 characters, to be specific) making any statement of your choice, subject to good taste. The listings may include your email address and a link to a web page of your choosing. Send your listings to our Webmaster, Wayne@FreeNation.org.

- FNF's library continues to acquire relevant texts. Some recent additions are: *The State*, by Franz Oppenheimer, the new edition with an introduction by George Smith; *Robert LeFevre: "Truth is Not a Half-way Place,"* by Carl Watner, 1988; *Conquests and Cultures: An International History*, by Thomas Sowell, 1998; and *Early Christian Ireland: Introduction to the Sources*, by Kathleen Hughes, 1972. Two other additions, contributed by Roy Halliday who regularly scours book sales, are: *Man, Economy, and State* by Murray N. Rothbard, 1970; and *Citadel., Market and Altar*, by Spencer Heath, 1957.

  Members and Friends of FNF may borrow books from the library. And, for those who live too far away, we offer to pay postage one way for any book you might like to borrow. Unfortunately our holdings are not yet sorted or catalogued, as to date no librarian has volunteered help.△

B: No, it's more like a guarantee. Every political government in the history of mankind has turned its monopoly on coercion against its citizens in its attempt to enslave them, or to keep them enslaved, which ultimately destroyed not only the political government but also the civilization that supported it. I perceive history as the rise and fall of one Dark Age after another. We live on the threshold of another one, only this time the technology of coercion is so sophisticated and so powerful that only a mutated version of Homo Sapiens will survive, if any version survives. We have the technical ability to destroy all life on this planet and that technology is controlled by the wrong people.

A: Who should control it?

B: The innovators.

A: How can they?

B: They can't, at the moment. When innovation insurance becomes available, that will become a different matter.

A: Economic government can save the human race?

B: Yes.

A: How?

B: By making the exercise of coercion nearly impossible.

A: And your Clearing-House will do this?

B: Not alone, don't forget Insurance and Banking.

A: Okay, let's talk about insurance.

B: Any perceived act of coercion will be reported to the victim's insurance, which will verify the incident, then pay the victim the agreed-upon indemnity. Insurance then notifies the Clearing-House and the Bank, then seeks to recover the indemnity and damages from the perpetrator.

A: Wait a minute. What if the crook has insured himself against the risk beforehand?

B: This makes things simpler. Insurance X goes to Insurance Y, reveals the evidence against the crook and collects the indemnity and damages.

A: Hold it, what happens to the crook?

B: Well, he's going to have a hard time buying new insurance and he's going to have a permanent blot on his historical record.

A: There is something missing here. What if he didn't have insurance in the first place and what if he murdered you?

B: I have insured myself against this risk, of course, so my estate is protected. The murderer can't use the banking system any longer, the banks have frozen his accounts, so he can't buy anything, food, shelter, clothing, heating, cooling, electricity, plumbing, transportation, nothing.

A: What if he stored up a horde of gold?

B: Gold is only worth what the market will pay for it. In a totally electronic banking and finance system, there will be little market for gold. Sellers of goods and services will not even accept it. It's too heavy, too bulky, and the only use for it is in teeth and jewelry and electronics.

A: So you see the Banking industry going on-line?

B: Certainly. It's only logical and it's only a matter of time before all currencies and trading will be electronic.

A: That's going to leave a lot of people who are not wired out in the cold.

B: Why? People learned to use credit cards easily enough, now they can learn to use debit cards. A stolen debit card won't work for the thief.

A: So what happened to our murderer?

B: That is up to him. He can negotiate with the insurance and banking people to pay for the indemnity and damages or he can walk out into the wilderness and try to live off the land. Maybe some tribe of like-minded savages will take him in; or maybe they will eat him. In an interstellar space vehicle, that would be a life or death choice.

A: What if he saved up enough money in advance to pay for murdering you?

B: I would have to see to it in advance that murdering me would be a very expensive act. Assuming I neglected that, however, he still has his reputation to deal with. So he goes to the grocery store to buy food, sticks in his debit card, and a little amber light comes on; the grocery clerk, owner, robot, or whatever, says, I won't sell you my food. His debit card is intact, he has money in the bank, but nobody will deal with him. He is still bound for the savages, or space, no matter what.

A: There's got to be a loophole here, somewhere.

B: At first, there's nothing but loopholes, but as time goes on, they will be closed, one by one. As more and more people freely buy into economic government, coercion will begin to disappear.

A: And that is your objective.

B: Yes. My objective is to put an end to coercion as viable human behavior.△

For further discussion of the founders of economic government, see Robert Klassen's essays in *Galambos and Rand: New Paradigms.* For a demonstration of economic government, see his novel, *Atlantis: A Novel about Economic Government.* For a complete list of his writing, see <http://www.nugvdigm.com>.

Robert Klassen, 57, lives alone with his books, computer, classical music and classical sculpture in a lovely apartment and gardens on the shore of Clear Lake in Northern California. He works as a cardiopulmonary technician, and has three grown sons working in information technology.

A New Form of Intellectual Property Protection

by Bobby Yates Emory

Synopsis

This article proposes a new form of intellectual property rights protection that attempts to strike a balance between public domain and copyright that encourages contribution and dissemination.

Future Setting

This proposal is addressed to the current needs of the Free Nation Foundation and its authors rather than to the eventual free nation we hope will result. However, this type of need may also exist in a free nation, so this need should be addressed in our plans for intellectual property protection.

HISTORICAL SETTING

If we are going to propose a new form of protection, perhaps we should review the forms currently available.

Pre-US

By the fact that founding fathers were at pains to include copyright in the Constitution, we can assume they were unhappy with intellectual property rights protection provided by English Common Law. There were authors and publishing houses, so English statute law provided some effective protection.

US Constitution

The Constitution explicitly authorizes the Federal Government to assign copyrights.

Copyrights

A system for registering and defending copyrights has been in place for two hundred years. It has been regularly updated and is a recognized legal specialty with substantial case histories, so it is readily available and well established.

Major Provisions:

- The act of original authorship creates an immediate copyright.
- Lasts for 50 years and can be extended.
- Do not need to register unless you are bringing suit.
- Cases have been won defending a work—protection is effective.
- Unless specifically authorized, others are prohibited from copying more than a short passage.
- Unless specifically authorized, others are prohibited from producing an altered version or derived work.

Bobby Emory

Shareware

Shareware is not really a different form of intellectual property protection since it relies on copyright. It is a different method of distribution and payment. It is included here so programmers will not think it has been left out.

Copyleft

In trying to solve some of the problems he saw with the copyright system, Richard Stallman of the Free Software Foundation devised what he called the copyleft. It is primarily designed to allow users to use software for free and to make changes to it. Even if a programmer makes massive changes, he is not allowed to copyright the result, but must pass along the copyleft to subsequent users. Stallman did this because he was concerned that if he put a program in the public domain, a company might make a change to it and then copyright the result. Subsequent users would be charged for using the program he gave for free. Copyleft insures that all derivatives of a free program would remain free. Stallman was more concerned that the user be allowed to modify the program than the program be cost free (he allows a distribution fee). Some programmers and companies have feared they will "contaminate" all of their work with the copyleft if they pass on one program with copyleft. Stallman insists this is not so, the copyleft would only apply to the one program and its derivatives. Recently, Netscape decided to release the program code for Navigator. While they used the copyleft as a model, they were concerned enough about some of these issues to devise a different version.

Major Provisions:

- Based on copyright.
- Creator licenses others to use, copy, and alter.
- Requires those others to pass along copyleft license.

Public Domain

When an author wishes to allow others to use freely his work, he may declare it to be in the public domain. In programs, this is often called freeware. If a copyright expires without being extended, the work becomes public domain.

Major Provisions:

- Author may declare.
- Legal remedies would be difficult.
- Others may use, copy, and alter as they wish.

Problems Awaiting Solution

While there are a variety of forms of intellectual property protection available, none give us an ideal mix of features:

- Encourage others to develop and improve our works.
- Allow our works to be widely copied.
- Provide a method for a publisher to be able to establish copyright.
- Allow potential consumers to compare the different versions.
- Maintain a trail of authorship.
- Make it easy for scholars to trace the development of an idea.
- Discourage others from stealing our ideas without attribution.
- Discourage others from modifying our ideas without changing attribution.

- Allow others to move our ideas to different media.
- Help companies and lawyers to feel more at ease allowing use.

AN ATTEMPT TO WALK THE TIGHTROPE

To facilitate the most rapid development and spread of our ideas, we need a form of intellectual property protection adopted to our needs. RightCopy is an attempt to walk the tightrope of balancing all these contradictory requirements.

To allow people who are interested in our ideas to circulate them to their friends, we need to allow free copying.

To encourage the most rapid development of our ideas we need to allow others to make alterations to our works.

To encourage proliferation of our ideas, we need to allow people to copy our works freely but provide a mechanism where people can create a copyright version, because many publishers will not publish a document if they cannot get a copyright on it.

To maintain a trail of authorship, we need to require the document to refer back to the previous version and to require a version with substantial changes to include the name of the author making changes.

The Provisions of RightCopy

- The document will be copyrighted.
- The document will include a license allowing free use, copying, and alteration.
- The license will require an altered version to include a reference to the original version and the author of the changes.
- The license will allow the author of an altered version to copyright the result but require a reference to the original and that the original author retains their RightCopy in the original.△

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

RightCopy for this Document

(Normally, the RightCopy would be placed at the beginning of a document.)

To my knowledge, not once in all of history has any nation, including America, acquired a free market through the people's understanding of free markets.

Richard J. Maybury
in *Whatever Happened to Justice?* 1993

Gateway to an Altered Landscape: Law in a Free Nation

by Richard O. Hammer

INTRODUCTION

In this paper I use a metaphor of travel. I will try to bring you along as I tell of my journey from the landscape of law in America to a radically different landscape, law in a free nation. At the start of our journey, where we were raised, the legal landscape is shaped by features such as those enshrined in the Bill of Rights. These are huge mountains which shape our feeling of where we fit and which make us feel comfortable and safe. But these are institutions of state.

If you would journey with me your desire must be strong enough to enable you to turn your back on those comforts which our ancestors in law have assumed for hundreds of years. We must travel away from those mountains, trusting that we will find a legal landscape with better prominent institutions, with a different sort of mountains which will confine human behavior to safe limits, with valleys in which our individualistic human spirits can build happy homes.

Somewhere in the middle of this journey there is a gate, at the frontier between the two nations. Now most of the travel that we must take consists of one long trek to arrive at the gate and then another long trek after passing through the gate. Passing through takes only a few steps. But I mention the gate as a symbol of transition. Any traveler who passes through shows a strong desire to find a new legal homeland.

Our trip must take place in our imaginations, because none of us have ever been in a free nation. I wish I had more snapshots and citations with which I could convince you that those better mountains and valleys exist. Fortunately I can point out some evidence in our shared experience. But each of you, in your individual journeys, might come to barriers which you cannot pass because you are not convinced.

So perhaps you will have something to teach me. Much of what I present here is more of a question than a statement. I have traveled frequently into the free nation which I imagine. It seems plausible to me. But I may be deceiving myself. So take this journey as a suggestion. I ask, could this be true?

Richard Hammer

You are probably aware that we libertarians differ on whether the state needs to perform law enforcement. I sympathize with those who insist that the state must perform this function, because my picture of anarchistic law still fails to comfort me completely. But I sympathize with anarchists too. While pursuing my libertarian journey I have formed a habit: I mistrust arguments that the state must fill some human need because markets could not possibly be trusted to fill the need. This habit causes me to mistrust the minarchist arguments that the state must provide law. As such the drift of my arguments in this paper will go toward voluntary and away from state institutions, because I have the impression that minarchists have not yet considered the whole picture.

But, if opportunity comes knocking, please do not think that I would insist upon voluntary law. If I am offered a take-it-or-leave-it chance to get a 90% reduction in the role of the state, I will take it before I will spend time arguing about the remaining 10%. But, until opportunity comes knocking, I think it serves FNF's purpose to promote discussion over the whole range of libertarian possibilities. We are nowhere near consensus. I believe it will help if we listen to each other.

SECURITY AGENCIES

Before we start out on our journey, let me tell about one feature of the landscape where we are bound. Protection of many things dear to you, such as your life, property, and safety, will be provided by private organizations for which we need to invent a name, because there is nothing like these organizations in America. I will call them "security agencies." These will combine a number of functions that we in America get from separate entities such as: insurance companies, police forces, courts, regulatory bureaucracies, and parents.

For an example, you might sign up with a security agency to protect your home from fire, burglary, and natural disaster. As with an insurance company in America, the security agency would promise to restore your property (or the value of it) in the event of loss. But the similarity ends there. The security agency would do much more, because it would be free of the regulations which cripple entrepreneurship in America.

It might provide armed policing for your property. Or it could give you a discount if you and your neighbors were armed and capable of policing your own neighborhood.

Like a fire marshal in America, it would surely want to know about your smoke detectors, fire extinguishers, exits, and practices of storing flammable materials. And, if you want to qualify for the lowest rates, it would probably ask you to submit to whatever inspections it deemed necessary. Like a government building inspector in America, it would provide strong incentives to use materials and practices which enhance safety in new construction.

Thus we see that wise practices, which in America might be required by the state or recommended by parents, will be encouraged by the price structure of security in a free nation. We will be talking more about security agencies as we get closer to the free nation. But, with this taste of what is to come, let's go.

MURDEROUS OSTRACISM WILL REPLACE COERCION TO ENFORCE LAW

Early on, in one of my first journeys toward the free nation, I picked up some new ideas: that there would be competition among courts; and that two contesting parties would agree upon which court to use.

Now I had a little trouble with that, because I could not imagine at first why someone who was obviously guilty of a crime would ever agree upon any court. If courts are voluntary, how could wrongdoers possibly be brought to justice?

Well, it must be I wanted to pass through the gate into the free nation. Because eventually I succeeded in convincing myself that institutions could exist which would impel wrongdoers into court. In a nutshell: I believe that ostracism could induce lawful behavior, because in a free nation ostracism would have much more force than it has in America. To try to hammer this point home I've decided to call it not just "ostracism" but "murderous ostracism." I have described the institutions of murderous ostracism a number of times here in *Formulations*. But let me review the highlights again.

Admission to Streets Will Be a Private Choice

First, notice that the state in America, by giving itself monopolies in both providing streets and policing streets, has established an environment in which someone who is known to intend murder can travel virtually unchallenged through the streets up to the door of their intended victim. The state generally does not restrain the travel of anyone unless that person is presently imprisoned by the state.

As I think of it, there is something unnatural and bizarre in the grid of streets and thoroughfares, public spaces, which connect almost every private property in America with almost every other private property, and which can be used by all comers, generally without charge or certification. Please do not misunderstand me. I find this convenient. I enjoy benefits which appear free. But I believe this fundamental feature of the American landscape differs in profound ways from the network of private streets and thoroughfares which would come to exist in a free nation.

For a comparison, consider the access to telephone lines in America. The owners of these privately owned lines generally do not admit any user unless that user's ability to pay has been established. Naturally the owners of any business want to know at least this much about each of their customers. And sometimes the owners reasonably demand to know more.

To develop an example, start with the observation that most people want to feel safe in their homes. I believe many (or most) street-operating companies would compete for customers by advertising safe neighborhoods, and by making some effort to exclude known or suspected muggers and burglars. The most efficient solution for the street-operating companies may be to join forces with security agencies, offering insurance for customers in the event of a loss, and policing as much as prudent to minimize total expenditures.

So notice that one consequence of private property in streets and thoroughfares is that no one is guaranteed admission to any given street. A private owner may decide to admit only those whose trade offers sufficient promise of profitability. Any traveler who is suspected of being dangerous may be required to pay more for admission or to post bond before entering. And I would not be surprised if street-operating companies found it in their interest to form a league, in which they each reduced their policing costs by mutually denying service to travelers against whom charges had been filed (but not yet answered) by a credible authority.

So in a free nation, as I am building the picture, wrongdoers could find themselves confined to their own property, unable to travel anywhere—except perhaps to the courthouse—until the charges against them have been satisfied. And this radical difference in the legal landscape of the free nation will come about—not because someone has designed the ideal system of law—but as a consequence of free markets in the provision of streets and security.

Basic Essentials May Be Denied to Suspects

To take the next step down our path, to see how much more power ostracism would have in a free nation than in America, notice that in America the state controls who may purchase most essential goods and services. The state regulates or owns vital utilities such as electricity, water, telephone, and sewer, and determines who must be granted service and who may be denied service. Generally, everyone who pays the basic price must be granted service, including dangerous psychopaths. But this would not be true in a free nation. In a free nation business owners may decide for private reasons to deny service to a customer, or to place extra constraints upon the provision of service.

Here again notice that market forces, when freed of regulation by the state, will tend to place more shackles upon criminals. Suppose that the provider of some service, such as local delivery of water, wanting the benefits of pooled policing and insurance, approaches a security agency to negotiate a policy. Now the security agency faces real market forces, one of which is that at times, in order to fulfill its contracts with its customers, it must spend a lot of money trying to bring to justice some person who has been accused of a crime. The security agency will naturally search for ways to reduce this sort of expenditure. One of the obvious tools at its disposal is to negotiate with its other customers the insertion of clauses such as this: "In order to qualify for Reduced Rate B, the insured promises to discontinue all trading with any persons who have outstanding charges against them, as posted by the Consolidated Arbitrators Association." So, I expect market forces to pressure the owners of utility companies to ostracize suspected criminals.

There is another way in which the state in America cripples the power of ostracism. The state runs the system of courts. Since these courts answer to political forces rather than to market forces, they become agents in the attempt to eliminate unfair discrimination on the basis of race, sex, or anything else. As a consequence many business owners dare not exercise private discretion. Although the business owners might have locally available information which would cause

them to shun certain customers or to require more security from some customers than from others, they may fail to employ this information because a court might punish them if the court supposes that they discriminated for the wrong reason. Known criminals, vagabonds, and cheats, hold this threat against honorable business owners. But in a free nation business owners would be free to exercise their own discretion. And customers who wanted the best terms of trade would experience incentives to build and maintain good reputations.

So, with a little imagination, we can see that in a free nation someone charged with a serious crime by a well-respected authority may be denied all benefits of trade until she brings herself to account. Through risk-sharing-and-reducing contracts, which I expect truly free markets to produce in profusion, she may be denied food, water, telephone, toilet, banking services, employment, and passage on roads. *But no one, you understand, is forcing her to go to court. If she goes, that will be her choice.*

Suspects Can Be Stripped of Protection

And finally, if my picture of free-nation ostracism does not yet appear to deserve the label of "murderous," consider this. We know from accounts of earlier systems of law that a person may be declared "outlaw" by his support group. This occurred when a group, which under normal circumstances would come to the defense of any of its members who came under attack, decided that one of its members had violated the rules of the group to such an extent that the group would no longer defend that member. That individual, thus expelled, was outside the protection of the law and, as the accounts are told, may have been murdered by anyone with impunity.

I believe similar institutions would evolve in a modern free nation. Each security agency, knowing that it might find itself insuring the person or property of a person who is accused by another security agency of committing a crime, and desiring to minimize its costs by entering the best possible contracts with its customers, would be motivated to offer discounts to those customers who would agree to present themselves voluntarily to answer charges from a credible authority. And I expect that almost all customers who regard themselves as law-abiding citizens would routinely accept these terms and take the discounts.

Thus I think it would come to pass that most citizens in a free nation would face the threat of losing their first line of defense: they could become outlaws, and could become vulnerable to violent retribution from anyone whom they might have offended. When ostracism takes this form we can call it "murderous."

Having thus convinced myself that wrongdoers could be expected to come to court voluntarily in a free nation, I felt confident that this vital aspect of the legal landscape beyond the gate would be safe. So I continued my journey.

THE STATE BECOMES A STATE OF MIND

As I traveled hopefully I came to believe that voluntary institutions could perform better than state institutions on issue after issue. So I was compelled to ask how it was that I, and all my neighbors in America, had ever come to have so much blind faith in the institutions of the state.

I observe that the state seems to grow gradually upon the minds of its subjects. To illustrate, consider four stages.

1. Before the state takes over a function, most people in a society will be comfortable with the existing institutions in which the function is performed privately. For example, most Americans are now comfortable with the ideas that parents can decide for themselves how many children to bear, and that people can decide for themselves what qualities are necessary in a spouse.
2. Shortly after the state takes over a function, most people in the society will probably agree with state control of that function, but almost all of them will remember that there had been a debate, and some will acknowledge that there had been plausible arguments against state takeover. For example, the regulation of what tobacco companies say in their advertisements.
3. A few generations after state takeover of a function, probably 80% or more of the population will assume that the state must perform that function, and only libertarians will be aware that there had ever been a debate. For examples, compulsory schooling and zoning of land in cities.
4. Hundreds of years after state takeover of a function, virtually everyone in the society will assume without question that the state must perform that function. Even the history of private performance of the function will be forgotten by all but a few academics. Examples of functions in this category are: streets, criminal law, and defense from external attack.

Now I propose that this tendency, to grow mentally addicted to state performance of a function, applies to every function that the state might usurp, and it applies to all persons whose lives the state touches. So I offer this explanation for why libertarians divide upon whether the state must perform the most ancient of its functions, notably national defense and criminal law. Not all libertarians have traveled equally far down the road toward the imagined free nation. Some, it seems to me, have not yet had reason to confront the evidence at the far end of the journey.

Thus speculating, on the whole process of journey toward the free nation, I passed through the gate at the frontier. Now finding myself among the first features of the legal landscape of a free nation, I continued making discoveries which seem likely to surprise the people back in the land of my birth.

A BILL OF RIGHTS WILL HAVE NO EFFECT IN A FREE NATION

No Freedom of Speech

In this new landscape, with the state almost forgotten, I notice the lack of a power, vested in a government agency, to protect my freedom of speech. And I notice that no one spends their wind proclaiming that individuals have a right to free speech.

Back in America I had noticed that people could not always speak freely, in spite of that land's purported freedom of speech. A man could not say anything at all to his wife without having to face some consequences. And anyone who

went into the showroom of a Ford dealership and tried to give speeches about the virtues of Chevrolets could expect to encounter resistance. So freedom of speech did not apply everywhere. The "freedom of speech" in America was in fact only a notion that the state could not regulate speech.

In the free nation, private property owners will be within their rights to restrict the speech of any visitors within their property. And since I believe almost everything will be private, there will be nowhere in a free nation where an individual can enjoy freedom of speech except within his own property. And even there he must watch his tongue if he hopes to keep his friends. Hopefully you now see that freedom of speech, as cherished by Americans, applies to public spaces (as I have defined "public space" in previous articles, as being delimited more by choices than by property lines) but not to private spaces.

This freedom is important in America because the state controls so much public space in America. If you start with the assumption that there are vast public spaces, and if you note that the state has the power (and the only power) to police in public spaces, then you have reason to fear abuse of this power. The holders of political power could crush transmission of a truth which they found inconvenient. Freedom of speech is a bulwark needed against this potential abuse.

But the state's declaration of a right to free speech, in any spaces which have been seized by the state, shrinks in importance as the amount of space controlled by the state shrinks. In the extreme, in a totally private nation, a state-declared right to free speech will be meaningless. And further, assuming the private space can remain private, a state-declared right to free speech will be useless.

This line of thinking converged with another line of thinking, about the way that the state grows. When statists call for a new act of state, to address some problem that they perceive, often it seems to me that the problem about which they are concerned has been created or aggravated by something that the state has done before. So I often concur that a problem does indeed exist. But rather than join the statists in calling for a new act of state, I prefer to point out the prior act of state which has created the problem, and to call for repeal of that prior act.

Now, in that framework, notice that a Bill of Rights is an act of state. It is a proclamation by the state, about what the state vows to do or not do. And I tend to interpret calls for a Bill of Rights the way I interpret calls for other acts of state. Yes, there is a problem that needs to be addressed: The state can become overbearing. I agree that something needs to be done about this. But rather than concur in the call for a new act of state, a Bill of Rights, I incline to find the prior act of state that has caused this problem in the first place, and to call for repeal of that prior act.

Let us consider what this means, in terms of its effect upon some other familiar mountains in the legal landscape of America.

No Right to Trial by Jury

We libertarians often cite with favor clauses in contracts which stipulate that arbitration, of a certain sort or by a particular arbitrator, will be used in the event of a dispute. So, in the free nation, freely contracting parties may make arrangements which include no juries.

In a historical context, in nations where the state has taken over law, it makes sense to desire the protection of trial by jury, because this offers some defense against an overbearing state. Back in America the state—and only the state—can prosecute criminal cases. But, on this side of the gate, where the administration of law is in private hands, the need for trial by jury is less. Indeed, I think trial by jury will be a rarity in the free nation, because few litigants will be willing to pay for it. In the free nation, trial by jury will not be free, as it appears in America. The expense of all legal proceedings will fall upon the litigants, their security agencies, and their collaborators.

No Right to Remain Silent

This right also seems reasonable—but only in a nation where the state runs the law. I believe it will vanish, for the most part, in a system of voluntary law.

In the free nation I expect some security agencies will offer discounts to customers who promise to provide all information requested by an arbiter, should a dispute arise. And I expect that most people, wanting the discount and not planning in any case to profit from deception, will sign such a contract. Thus most people will find themselves contracted to supply information which may prove them guilty of some offense. And in the free nation there will be no state to intervene, to break this contract, to protect one of the parties from being expected to testify against himself.

Now of course a person could always chose to lie to the arbiter, or refuse to give information in spite of having contracted to do so. But then he may face all the consequences of ostracism which can be murderous.

If a person did not want to sign a contract with a security agency in which he promised to testify against himself, he might find a contract without this provision. But probably, assuming prices in free markets reflect costs, the person would have to pay a premium for this sort of protection.

No Presumption of Innocence Until Proven Guilty

Markets in a free nation will respond to probabilities. Just as the price of the stock of an oil company rises as the perceived probability that the company will strike new oil rises, the prices paid by a customer for various permissions and protections in a free nation will rise as perceived probability that the customer is a crook rises.

For example, the free market in street services will start to encumber the travels of a suspected child molester long before any court proclaims a verdict of guilty. But if you think this is wrong, and if you operate a street company, you will be free to admit, without any added security, a suspect whom most reasonable people believe to be guilty. Good luck with your other customers, and with your security-insurance premiums.

Thus we see that, in the free nation, market forces will respond to the reputations of traders. Traders who desire the best possible terms will face positive obligations to maintain the best possible reputations.

No Right To Be Informed of the Charges Against You

In a free nation, all contracts will be private and voluntary. Thus any person

will be able to decline to do business with any other person. And the declining person will face no requirement to tell why. But of course the declining person may choose to tell, and may be motivated to do so by the hope of shaping a favorable future.

No Equality Before the Law

In the free nation which I am describing here, law will be supplied to the humans who need it through market forces—just as all other needs are filled. And, as with the satisfaction of all other needs, there is no guarantee, and no reason to pretend, that all humans receive equal protections through law.

In America, as I have experienced it, a rich person gets better protection from the system of law than does a poor person. Of course the rich person has to pay more for this better treatment. But equality can be at best a pretense because market forces will find outlets. People with more money will find ways to purchase more of what they desire, in spite of attempts by any state to counteract this tendency.

You may naturally feel a shiver of fear, as you look back in the direction of the legal environment in which you were raised. We can no longer see the mountains which made that place seem safe when we were young. But look ahead.

NEW MOUNTAINS RISE UPON THE HORIZON

Some "Equality Before the Law" Does Exist

Lest it seem that I am calling you toward a nation with no moral structure or guidance (a nation completely lacking in what we libertarians would desire), let me point again to the force which I trust to organize civil society. When law is voluntary there is one way, at least, in which everyone, in spite of their wealth, is equal before the law.

> *Everyone who commits what libertarians would call a real crime, everyone who injures or cheats a trading partner, will have to pay.*

This works because in a free nation the injured party, and all who network with the injured party, will be less willing in the future to trade with the offender. They will feel an impulse to ostracize. And entrepreneurs will provide an outlet for this impulse. A multifaceted industry in punishments and protections will grow to satisfy a demand. (In America this demand is served only by the state monopoly in law, which fails to do its job.) With the efficiency of a free market in protections, every offense bigger than the trifling level will generate a defense or a counterattack.

Since people who are rich stand higher above the floor of bankruptcy than people who are poor, people who are rich are able to commit more offenses against trading partners, should they set upon such a course, than people who are poor. But such people will probably not be rich for long. As we libertarians understand, people who are rich usually got that way because, and as long as, they serve their trading partners well.

The Rock of Reality Anchors Free Nation Law

Let me review here why the system of law in a free nation should work to the satisfaction of libertarians. The ostracism which drives wrongdoers toward court will be strong only if those wrongdoers have committed what libertarians consider to be a real crime.

We libertarians are not alone in our impulses. Both an overwhelming majority of humans and, which is roughly the same thing, an overwhelming majority of the economically productive forces within humanity, feel a natural revulsion to the acts which libertarians consider to be real crimes. So, given a free market in law, ostracism can be organized effectively to counter these acts. However, for those acts which statists but not libertarians consider to be crimes, a large enough percentage of the population sees no harm in those acts, so effective ostracism cannot be organized against those acts.

The Economics Which Take People to Court

On this side of the gate, since force will not impel litigants into court, both litigants will agree to go to court only in special circumstances. In these circumstances some harsh and uncomfortable reality must propel each litigant to desire resolution of their disagreement. And each litigant must anticipate that his or her circumstances will improve when resolution is reached. So the litigants would agree that they need to reach resolution. But, assuming resolution might be reached in a number of possible ways, the litigants may not yet agree upon which way to conclude their dispute.

We can imagine that there is a pie of benefits which will result from resolution. The litigants, unable to agree how to divide this pie, agree to present their case to a mutually acceptable judge. Since the judge will probably want to be paid, the litigants will do this only when the pie is bigger than the judge's bill, and when they each expect to get at least a sliver of pie after the judge takes his piece.

The Power in Precedent Shrinks As the Power in Contract Grows

Law in our new home will be simple, not complex. I believe that the law back in America has become complex and incomprehensible to ordinary citizens because the state has given itself a monopoly in law. Even though the lawyers for the two sides are adversaries, and even though the courts appear neutral between the two teams of lawyers, still all three together stand to gain from the aggrandizement and increased complexity of the system. The lawyers for both sides and the courts can grow all together, becoming continuously more costly at the expense of the remainder of society, because the remainder of society cannot detach this three-headed parasite.

But where courts are voluntary no such species of parasite will be able to survive. Since there will be competition among courts, litigants would almost never agree to employ a court which would burden both sides with expensive legal research and maneuvering. Instead the litigants, hoping to divide most of the pie between themselves, will tend to agree upon a court which advertises a simple and comprehensible set of rules.

Precedent is important in American legal tradition only because the state has given itself arbitrary power to overturn contracts. Since the state can arbitrarily overturn contracts between parties, it becomes important to know the circumstances, the precedent, which will help you guess what rules the state will impose upon you. Luckily for lawyers in America, those circumstances are complex and evolving, and the rulings are

like asteroids which might fall from the sky upon you.

But in a free nation the basis of law will be contract, not precedent. In the free nation the people who give law enforcement its power, through ostracism, care mostly about their own self-interest. Naturally, they want confidence that their contracts will be honestly enforced. And they can increase their chance of getting this if they support honest enforcement of the contracts of others. Thus the power of ostracism will thrust toward simple enforcement of contract.

Now there will be instances where precedent has power in a free nation. When a judge rules a particular way in a dispute, that ruling will become part of the expectation of all who learn of it. So newly contracting parties who know of that ruling but who do not bother to mention it, in either their negotiations or their contract, implicitly accept the precedent of the ruling.

However, if one of the newly contracting parties thinks the precedent of the ruling would damage her interest, then she can negotiate a clause in the contract which will set a different expectation, should similar circumstances arise. Here we see the limit on the power of precedent. Any issue which is important enough for newly contracting parties to raise during their negotiations will be ruled by their new understanding. The only issues which will fall to the judgment of precedent will be those which were not recognized as being worthy of attention at the outset.

In a sense precedent will have a large scope, in that it will include all the assumptions made but not explicitly negotiated. It will include, for instance, the meanings of all words in the contract except for those few which are explicitly clarified. But since it can be overridden at the whim of newly contracting parties, we see that precedent will serve free enterprise as a cost-saving standard. It will not be an expensive tyrant.

Law Expressed Through Gradations of Permissions

Law, as I picture it, will be expressed as the reluctance of people to trade with others whom they perceive as dangerous, or who have some stigma attached to them. In the extreme this reluctance will be expressed as black-and-white, yes-or-no decisions on the part of all trading partners. It can reach the extent of murderous ostracism.

But, before any boycott reaches that extent, trading partners will surely find smaller ways to express dissatisfaction; trading partners can informally add little costs to an exchange. And, on a larger scale of organization, surely there will be an industry in bonding, which will make it possible for people who have stigmas to obtain additional permissions by making certain concessions or paying added security.

We can trust free markets to make this work properly. For an example, suppose you think this is not working, suppose you know of people who you think are unfairly stigmatized. Then you have just described the niche where you can start a business. If the stigma is wrong, then you can provide fairly-priced bonding to that unfairly stigmatized class, and make money for yourself too.

As one hint of the free market activity which may ensue in the free nation, I notice the aggressive marketing of credit cards in America. Banks make a business of trying to identify people who are good credit risks and of trying to get the business of those people by offering better terms. This example shows us half the picture: that people who are good risks tend to get better deals. Unfortunately the other half of the picture, that people who are bad risks tend to get worse deals, does not have so many illustrations in common experience in America, because there is not a free market in punishments. The state in America, by attempting to give itself a monopoly in administering punishments, has contorted this industry to the extent that we can only imagine what it would be like if free.

CONCLUSION

I have tried to lead you most of the way into the new legal landscape of a free nation. With some trepidation, we have left behind the mountains (the legal assumptions) in America. But we have tried to believe that our libertarian instincts are true. We have tried to believe that we will find better mountains if we set our course steadfastly to reduce the role of the state.

Back in America we had always believed that those familiar mountains gave us our only protection, from vaguely shaped evils. But we learned that those very mountains had been placed there by our enemy, the state. We learned that the public space created by those mountains, where the state has given itself a monopoly in enforcing law, has caused most of the social ills in America. Because in America markets cannot fill the need for law.

Now we have arrived where we can start to see the shape of our new homeland. Ahead of us the major mountains are in view. They are a different kind of mountain. They look humane.△

Authors whose work has influenced this development:

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(Concluded on page 24)

The Importance of Objective Law: Why I Support Limited Government

by Adrian C. Hinton

Among other things, this paper explains why I am not in favor of anarchy.

Introduction to Limited Government

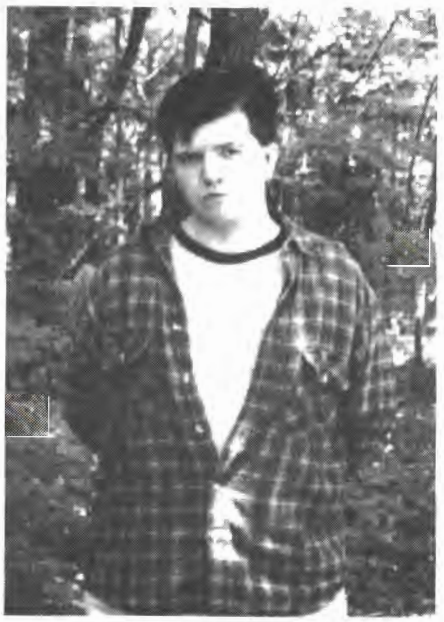
Most libertarians have at least some familiarity with the novels and ideas of Ayn Rand. Rand was, of course, an advocate of strictly limited constitutional government, and her own philosophy upholds the concept of objective law. Human beings exist in an objective reality, and must therefore be left free to function on the judgments of their own minds. And as one can infer from Rand, force and mind are opposites. Therefore, we who are libertarians agree that the initiation of physical force is morally wrong, and that it must be banned in all social relationships. The question then becomes, "How?"

If one believes that it is evil to rule people by means of physical force, then it would follow that anarchy is the only defensible political system. But under anarchy, everything would be completely subjective. There would be no way to objectively validate rights, objectively demarcate property, objectively define anything. Thus, libertarians should support the kind of political system where everything is completely objective. And it is through her philosophy that Miss Rand shows us something: the only way to achieve such a system is through strictly limited constitutional government.

Anarchy Equals Subjectivism

Like Nietzsche, anarchy is also subjectivist. Whatever has been said about anarchy in theory, there are two things that anarchy would certainly mean in practice: to have no government, and to let anybody "do his thing."[1] This logically leads us to the conclusion that under anarchism, private individuals, groups, gangs, etc. can subjectively do whatever they feel like doing, with people like Jeffrey Dahmer and Adolf Hitler not excluded. Anarchy invariably leads to chaos, destruction, and killing.

If any reader doubts what I have just said about anarchy, imagine if the United States provided no organized governmental protection against individuals like Jeffrey Dahmer or Adolf Hitler. Every single person living in America would have to either carry a gun at all times, or else join a private militia composed of such people. In other words, America would look rather like the Wild West. But my point is perhaps broader than having no police or no armies; problems are inherent in any variety of anarchy.



Adrian Hinton

One particular variant of anarchistic theory I have heard numerous times before is a weird absurdity known as "competing governments." But remember that the use of force is the only service a government actually has to offer. Libertarians should ask themselves what a competition in the use of force would necessarily have to mean.

Suppose Smith, a customer of Government A who is protected by Police A, suspects that his neighbor Jones, a customer of Government B who is protected by Police B, has robbed him. A squad of Police A proceed to Jones' house, where they are met on Jones' driveway by a squad of Police B. The squad of Police B loudly declare that they do not recognize the authority of Government A.[2]

What occurs next? Intelligent libertarian readers should take it from there. But again, please keep in mind that anarchism is inherently subjectivist. While, like Rand, limited government is purely objectivist. Anarchism, a doctrine that is based upon subjectivity, is not compatible with the principle of objectivity that underlies individual liberty and individual rights. Those who protest that anarchy doesn't mean chaos are simply blind to the nature of anarchy. The ethics of amoralism and the epistemology of subjectivism simply cannot lead to a political system of absolute individual rights.[3]

Subordination of Might to Right

The protection of absolute individual rights is the only justifiable function of any government. However, this is also the reason why people require a government of some type. Government is the only agent by which people may (objectively) restrain or combat the initiation of force (subjectively) by others, and therefore, government has to hold a monopoly on the validation of rights, as well as the use of force.

For that very same reason, such a government's actions have to be rigidly defined, delimited, and circumscribed, and no touch of whim or caprice can be allowed in any government's performance. Rather, a country's government should be like an impersonal robot, with the laws as its only motive power.[4] Under a proper social system, a private individual enjoys absolute freedom within the sphere of his or her own selfishly possessed rights, while a government official is bound by law in every official act. Private individuals may do

[1]Ayn Rand, during an interview with Jerry Schwartz about *America's Future* (New Milford, CT: Second Renaissance Books, 1996).

[2]Harry Binswanger on the absurdity of "competing governments." *The Ayn Rand Lexicon* (New York: Penguin Books, 1988), pp. 21-22.

[3]Peter Schwartz in *Libertarianism: The Perversion of Liberty* (New York: The Intellectual Activist, 1986). Although he is essentially hostile to Libertarians, Peter Schwartz is also against the creed of anarchism, for exactly the same reasons I am.

[4]Following Ayn Rand's arguments in *The Virtue of Selfishness* (New York: Penguin Books, 1964), page 128.

anything save that which is legally forbidden; government officials may do nothing save that which is legally permitted.

Strictly limited constitutional government is the means of subordinating might to right, the originally American concept of "a government of laws and not of men."[5]

Contrast this with the anarchist approach to legality, where the use of force is not defined, delimited, or circumscribed. Private courts could freely dispense with such niceties as procedure or rules of evidence, while private mobs could freely lynch or murder any person they feel is threatening them. Violent criminals could also roam the streets freely under anarchy, since [as the anarchists argue] no government may monopolize the use of force and declare such actions illegal.

Picture a punk-rock militia, comprised of Red Communists wearing Fugazi shirts, with loaded submachine guns at the ready. As they walk down Wall Street singing the *Internationale*, they are stopped by the New York City police. The young Comrade leading the punk militia says to the police sergeant, "Me and the proletarians are only here to complete the class struggle and restore power to the people, so you have no right to interfere with us." According to the anarchists, it is the police who would be morally bound to withdraw from such a confrontation, because the police are monopolizing the use of force, and because the Commie punks should have the freedom to do whatever they feel like.[6]

Can anything more clearly demonstrate the anarchists' opposition to liberty?

Why I Am Against Anarchism

Unlike other libertarians, I do not consider anarchists to be friends of liberty. This is especially true of those who support anarchism from a Christian or other irrationalist perspective, for in addition to being a Randian, I am also an atheist.

If one attempts to build a system under which individual rights are objectively defined, validated, demarcated, and protected, one discovers laissez-faire capitalism and limited government. But if one attempts to concoct a system whereby anybody can just subjectively "do his own thing", one unearths nihilism and anarchism. The concept of anarchy is a naive floating abstraction that cannot even be tried in practice.

> "I disapprove of, disagree with, and have no connection with, the latest aberration of some conservatives, the so-called 'hippies of the right', who attempt to snare the younger or more careless ones of my readers by claiming simultaneously to be followers of my philosophy and advocates of anarchism... Anarchism is the most irrational, anti-intellectual notion ever spun by the concrete-bound, context-dropping, whim-worshipping fringe of the collectivist movement, where it properly belongs."[7] △

[5]Ibid.

[6]Harry Binswanger in *The Ayn Rand Lexicon*, page 22. Though the concretes I present are slightly different, his abstraction is the same.

[7]Ayn Rand, as quoted in *The Ayn Rand Lexicon*, page 253.

Adrian C. Hinton is a twenty-one-year-old individualist from Cincinnati, Ohio. Three major influences upon his social and political thought are the writings of Ayn Rand, Robert Heinlein, and J. Neil Schulman. When not working his way out of debt slavery, he enjoys biking, watching Japanese animation, and thinking about libertarianism. Not presently active with the Party, he hopes to have it all figured out by 1999...

Gateway to Altered Landscape

(Continued from page 22)

Prior articles in *Formulations* by the author which have developed similar themes:

"The Power of Ostracism," Vol. II, No. 2, Winter 1994-95.

"Might Makes Right: An Observation and a Tool," Vol. III, No. 1, Autumn 1995.

"Toward Voluntary Courts and Enforcement," Vol. III, No. 2, Winter 1995-96.

"Locks in Layers," Vol. III, No. 4, Summer 1996.

"A Theory for Libertarianism" and "Nineteen Propositions About Property," Vol. V, No. 3, Spring 1998.

Richard Hammer, founder of FNF, has worked in the past as an engineer and residential remodeling contractor. Now he spends most of his time writing for, and editing, Formulations.

Why Objective Law Requires Anarchy

by Roderick T. Long

"I see no ethical standard by which to measure the whole unethical conception of a State, except in the amount of time, of thought, of money, of effort and of obedience, which a society extorts from its every member. Its value and its civilization are in inverse ratio to that extortion."

Ayn Rand

While libertarians all agree on the need for a drastic reduction in the size and power of the state, the libertarian movement has long been divided between the anarchists, who believe that the state should be done away with entirely, and the minarchists, who wish to reduce it to a few functions regarded as essential. This dispute also goes on within the Free Nation Foundation, whose membership (including the Board of Directors itself) is split on the issue of anarchism (also known as anarcho-capitalism, or market anarchism) vs. minarchism (also known as limited government). I welcome Adrian Hinton's contribution as an opportunity to advance this discussion.[1]

What is Objective Law?

For Hinton, the chief defect of anarchism is its incompatibility (as he sees it) with objective law. Unfortunately, Hinton does not define the notion of objective law, but he gives us a few clues. He contrasts objective law with a system in which "anything goes;" in which individuals or groups can act in accordance with rules they simply happen to take a fancy to, unconstrained by the need to give rational justification.

I gather, then, that objective law is reliable and principled. Under a system of objective law, legal requirements will not simply arise or vanish with the whims of particular legislators or the shifting fortunes of pressure groups. There is some predictability to the law, with regard both to content and to enforcement; one can count on it. And the reason for this is that the requirements of objective law are grounded on reasons that are accessible and justifiable to rational human minds generally, regardless of personal emotional biases and idiosyncrasies.

Roderick Long

If this is what objective law is, then I agree that objective law is a good thing. But is it true that objective law can be provided only by a governmental monopoly?

Objective Law Requires Competition

Consider the parallel case of objective science. Objectivity is a good thing in the sciences too; but how do we achieve it? We do not suppose that the way to get objective science is to put all scientific research into the hands of a single governmental monopoly; on the contrary, we recognize that it is only through allowing competition among scientific theories and scientific research programs that scientific objectivity is possible. As John Stuart Mill argued in *On Liberty*, we learn the worth of our ideas by seeing how well they can withstand challenge, whether in the form of intellectual arguments or in the form of alternative experiments in action. A view that is insulated from critique is less well grounded, since we cannot tell whether it would have survived had critique been permitted. Nothing would be more deadly to scientific objectivity than monopoly control.

And as Austrian economists Ludwig von Mises and Friedrich A. Hayek have shown, this argument applies to the market for goods and services just as much as to the market for ideas; competition is a discovery procedure, a crucial source of information, but one whose data grow steadily less reliable as it falls under the direction and control of a centralized state. If this is true for ideas, goods, and services, why not for law as well?

Law Without the State

Hinton says that "anarchy would certainly mean in practice ... to have no government." If by "government" Hinton means the state, i.e., an agency holding a monopoly (or near-monopoly; no institution has ever held a genuine monopoly) on the use of force within a given territory, then it is trivially true that anarchism means having no government. Anarchy just *is* the absence of a government.

But Hinton's phrasing—saying that the absence of government is what anarchism would mean "in practice"—leads me to suspect that he regards the absence of government as a *result* of anarchy rather than the same thing under another name. This suspicion is confirmed by his use of Ayn Rand's phrase "competing governments" (a phrase rarely used by anarchists themselves) to describe the anarchist system; obviously by "competing governments" Hinton cannot mean competing states. My guess, then, is that by "government" Hinton means something like: an institution or set of institutions governing human activity through the application of rules. In short, by government he means something rather like law.

But does Hinton really mean to maintain that there would be no law, no legal system, in the absence of a centralized state (i.e., a territorial monopoly)? That would be a remarkable claim, for the overwhelming preponderance of historical and anthropological evidence verifies that law is far older than the state. Until recently, states were the exception, not the norm, in human society; and stateless societies have enjoyed quite sophisticated and long-lasting legal codes.

Of course, the fact that stateless legal systems exist does not show that they are

[1] This article was written in response to "The Importance of Objective Law: Why I support Limited Government" by Adrian Hinton, on pages 23–24 in this issue.

particularly good. Admittedly, none of these stateless legal systems represents the libertarian ideal. Neither, however, does any state known to history. Which is better?

It might be thought that a monopoly system is better if only in virtue of being more reliable and predictable. If a single agency is charged with legislating and enforcing the rules of conduct in a given area, one can expect those rules to be reasonably uniform; whereas if many different agencies are producing law, one has little to count on.

But the historical record suggests otherwise. For example, the Law Merchant—the stateless system of commercial law that evolved during the late Middle Ages and early Renaissance—was able to compete successfully with government courts precisely because it offered a *more* reliable and uniform system than could its state competitors. The reason is not difficult to find: a competitive, voluntarily funded system needs to please its customers, while a government monopoly, which forbids competition and extracts its revenues by force, faces no such incentive. (To offer a contemporary analogy: the reason no company offers triangular credit cards is not because card shape is regulated by the government but because customers would not purchase a card that would not fit in standard ATM machines. Standardization emerges because of market pressure, not at the barrel of a governmental gun.)

Hinton maintains that under anarchism, every individual "would have to either carry a gun at all times, or else join a private militia composed of such people. In other words, America would look rather like the Wild West." To begin with, this might not be so bad; contrary to the Hollywood stereotype of lawlessness and violent shootouts, the reality of life on the frontier, today's historians are discovering, was relatively peaceful and civilized—certainly a good deal more so than America today. An anarchist society could do worse than to imitate the so-called "Wild" West.

Leaving that aside, however, why should we assume that the options Hinton describes are the only ones? If shoes are not provided by a centralized governmental agency, we do not infer that everyone will either have to become his own cobbler or else join a shoe-manufacturing commune. Instead, we foresee a division of labor: some people will specialize in the making of shoes, which other people will purchase from them. Why not expect a similar development in the market for law?

Perhaps Hinton is assuming that an anarchist society could not afford a division of labor in the production of law, because the application of law typically requires the use of physical force, and if only some members of society are specializing in the use of physical force, then everyone else in society will be at their mercy. But if this is an objection to anarchy, why is it not a still stronger objection to the state, since the state, unlike a security agency under anarchy, is unchecked by any rivals and so is in an even better position to abuse its power?

Is Limited Government a Genuine Alternative?

Hinton envisions a minarchist utopia in which governmental actions are "rigidly defined, delimited, and circumscribed," while the government itself is "like an impersonal robot," operating free from any "touch of whim and caprice." This sounds nice, but after all, the state is an institution with a definite nature, and the actions to be expected from it are determined by that nature and not by our wishes and fantasies. So the real question is whether it is realistic to expect this kind of automatic and impartial operation from a centralized monopoly.

But surely the verdict of public-choice economics is in the negative. The state is a human institution, peopled by individuals who respond to incentives. And, as Madison and Hamilton pointed out in *The Federalist*, in our choice of political institutions we cannot afford to assume that those we place in charge can be counted on to be wise and just. Power corrupts, because it attracts the corruptible. And the incentive system of a governmental monopoly is truly perverse. Imagine a state official who controls a million dollars in tax money. How is he motivated to spend it? In a competitive market he would be motivated to spend it in such a way as to please his customers (in this case, the taxpayers), but as things stand they have nowhere else to go. (If he is an elected official, perhaps they will have a chance to vote against him in a few years, but the franchise, with its all-or-nothing character, is a rather less effective mechanism for the expression of preferences than the market.) But if he is offered favors or bribes by special-interest groups, then he has an incentive to divert that money to their favored cause; after all, it isn't *his* money, so he has nothing to lose.

Hinton may well reply that such problems are to be solved by a constitutional structure incorporating checks and balances. I agree. But I see anarchism as the logical conclusion of the checks-and-balances approach. The point of checks and balances is to put a brake on the tendency of political institutions to aggrandize power by arranging it so that a power grab by one part of the system will trigger opposition by other parts of the system. This was the idea behind the U. S. Constitution, with its federalism and division of powers. Unfortunately, it failed, as the supposedly antagonistic parts learned the benefits of working together to oppress the people. From an anarchist perspective, the problem with the minarchist version of checks and balances is that it does not go far enough; the opposing parts are too few in number, and too closely linked together in a single overarching institution.

I once opposed anarchism precisely because I was so convinced (largely as a result of reading Isabel Paterson's *The God of the Machine*) of the importance of constitutional structure. I assumed (as Paterson had) that there is no constitutional structure under anarchy. But it now seems to me that precisely the opposite is true: the competitive market provides a much more sophisticated and complex constitutional structure than any state monopoly.

Hinton worries that, in an anarchist system, private courts "could freely dispense with such niceties as procedure or rules of evidence." So they *could*. So could government courts (as indeed they often do). So long as humans possess free will, nothing can guarantee that they will act as they should. The fundamental question is this: under which system—market competition or government monopoly—is abuse of power more likely?

But the problem is not one of evil motivations alone. Even a state run by saints would face an informational prob-

lem. Just as the most well-intentioned central planner would be unable to make objective decisions about economic production, consumption, and distribution, because the information generated by the spontaneous market order would be inaccessible to him, so without the competitive, evolutionary process through which law originated and developed before the state, a centralized legislature would be unable to make objective decisions about which legal rules and procedures work best.

Resistance is Feudal

The history of Europe offers an instructive example. At the beginning of the Dark Ages, the Roman Empire had collapsed in the West, while still surviving in the East in the form of the Byzantine Empire. For the next thousand years, Europe was divided between these two regions. An observer at the start of this period might well have predicted that the East, not the West, would be the most successful. After all, the East had retained much of the classical learning that had been lost in the West; moreover, the institution of Roman law had been maintained in the East, while the West had become politically fragmented and decentralized. But this is precisely why the next step forward in civilization was taken by the West and not by the East. In the East, the state grew steadily more powerful, more centralized, more bureaucratic, and more oppressive. No rivals to its authority were permitted; even the Church was absorbed into it. Inefficient, stagnant, ossified, the Byzantine Empire became a brittle structure unable to withstand the steady advance of Turkish migrations. Even the classical heritage of Greco-Roman thought did the East no good, when the Emperor successfully issued an edict closing the schools of philosophy.

In the West, by contrast, there was no political monopoly. Power was divided among kings, nobles, free communes, and the Church. An adverse decision in the manorial court could be appealed to the royal court, or the merchant court, or the ecclesiastical court, and so on. (For details, see Harold Berman's *Law and Revolution.*) Competition created the trial-and-error process through which common-law systems evolve and progress and adapt to the needs of the time. And it is because of the spaces of freedom that were opened up through this decentralized, competitive system that trade and culture began to flourish again in the West. (By contrast, in the East, Roman law—which originally had contained competitive, evolutionary elements, as Bruno Leoni shows in *Freedom and the Law*—became codified and static.)

Anarchy and Gang Warfare

Hinton offers two scenarios as a challenge to the defender of market anarchism. In the first scenario, Smith asks his security agency A to impose legal sanctions on Jones for an alleged robbery, and Jones asks his security agency B to protect him. Mustn't such a situation inevitably lead to violent conflict between security agencies?

Perhaps, but it seems unlikely. Security agencies are not governments with a guaranteed supply of tax revenues. They depend on their customers, and so are much more responsive to customer demands. War is an expensive means of settling disputes, and even the most belligerent customer may think twice on receiving his monthly bill. Security agencies that settle their disputes by force rather than through arbitration will have to charge higher premiums, and so will lose customers to their competitors.

Does this guarantee that a system of competitive security agencies will never break down into warfare? No, nothing can guarantee that. All I am making is a comparative claim: competitive security agencies are far less *likely* than monopoly governments to resort to force.

Hinton's second scenario concerns a demonstration by a Communist punk-rock militia, armed with submachine guns and singing the *Internationale* (that old punk-rock standard). Hinton asks what response, if any, the anarchist would regard as legitimate.

The first thing the anarchist would want to know is who owns the street where the demonstration is taking place. If the demonstrators have not obtained permission to be there, the owners would be within their rights to call in a security agency to eject the trespassers.

But perhaps the demonstration is taking place on public property. (I regard public property as a legitimate concept, though many market anarchists do not.) At that point, the question is whether the demonstrators are violating anyone's rights. Certainly there can be no libertarian objection to their exercise of the right to bear arms, a right endorsed by minarchists and anarchists alike. The question is whether the demonstrators are threatening aggression. If so, it is legitimate to call in security forces to restrain them—and again, this is so both on anarchist and on minarchist premises. The anarchist position is *not* that "the Commie punks should have the freedom to do whatever they feel like." Rather, anarchists hold that the Commie punks should have the freedom to do whatever they feel like *so as long as they do not initiate force*—whereas the minarchists wish to restrict not merely the use of initiatory force, but the use of defensive and rectificatory force as well. I do not see how this additional restriction can be morally justified. And in practical terms, granting one agency the right to use forms of defensive and rectificatory force denied to everyone else is extremely dangerous.

We welcome debate.△

Bibliographical Note

To those interested in a more detailed defense of market anarchism, or in an examination of historical examples of successful stateless legal systems, I recommend starting with the following works: David Friedman's *The Machinery of Freedom*; Bruce Benson's *The Enterprise of Law*; Friedrich Hayek's *Law, Legislation, and Liberty* (particularly Volume One); Randy Barnett's *The Structure of Liberty*; William Wooldridge's *Uncle Sam, the Monopoly Man*; Murray Rothbard's *For a New Liberty*; and John Sanders and Jan Narveson's *For and Against the State*.

Roderick T. Long teaches philosophy and writes poetry when he can get away with it. He likes to be pestered with idle chatter at BerserkRL@aol.com.

Draft Constitution for a Reviving or New Nation

by Michael Darby

INTRODUCTION

The purpose of a Constitution is to protect individuals against the government.

Constitutional Monarchy is chosen as the theme of this Draft Constitution, on the grounds that in the nineteenth and twentieth centuries constitutional monarchy has had a much better record at preserving individual liberty than other forms of government. It is technically possible to achieve similar results with a republican constitution, provided that a very high degree of care is taken in limiting the power of the president.

This Draft Constitution is suggested as a starting point for nations escaping from the tyranny of a domestic despot (whether an individual or a political party), or from the barbarity of a foreign invader.

In either case, a freedom-seeking population will generally need outside help, and securing the necessary external assistance may be easier if the freedom seekers can present a document which clearly shows how the new nation will conduct itself when freedom is achieved.

Note that if the population exceeds four million, or if there are clear differences of geography, language or ethnicity within the nation, then we should favour a federal or provincial system which keeps political power close to the people. The constitution here is most suitable for a small, homogenous nation. An expanded constitution will be required for a federal or provincial system.

This Draft Constitution breaks new ground in two important areas. Firstly it excludes the risk that a government may levy taxation.

Secondly, the Draft Constitution emphasises the principle that government owns nothing, but holds in trust for the citizens the National Asset. The corollary of this principle is that the income from the National Asset, known as the National Dividend, is shared among all citizens. Provision exists for the distribution of a greater proportion of the National Dividend to individuals unable to provide for themselves.

The existence of the National Dividend means that there is no need for social welfare, as all the people receive a share in the income of the Nation.

Another feature of the Draft Constitution is that it sets a new standard for outsourcing, with contractors invited to tender for a wide range of services, which include even the Courts.

CONTENTS

DRAFT CONSTITUTION

1. ESTABLISHMENT OF THIS CONSTITUTION

This Constitution may be established by an absolute majority of all Citizens of the Nation, voting optionally at a Referendum.

2. AMENDMENT OF THIS CONSTITUTION

This Constitution may be amended by the passage through the House of Proposal and the House of Approval, of a Constitution Amendment Bill, which is further endorsed by a two-thirds vote of a Joint Sitting of the two Houses, which receives the assent of the Sovereign, and which is then approved in toto by an absolute majority of all Citizens of the Nation, voting optionally at a Referendum.

3. THE NAME OF THE NATION

The name of the Nation shall be:

.....

4. THE TERRITORY OF THE NATION

The territory of the Nation shall be:

.....

5. CITIZENS OF THE NATION

The Citizens of the Nation shall constitute:

- Persons conceived and born in the Territory of the Nation.
- Persons born of not less than one indigenous parent or not less than two indigenous grandparents.
- Persons who have purchased National Citizenship on terms laid down by the Government.

6. PERMANENT RESIDENTS OF THE NATION

All Citizens of the Nation are entitled to be Permanent Residents. Persons other than Citizens of the Nation may purchase the right to Permanent Residence on terms laid down by the Government.

7. NATIONAL ASSET

The National Asset is the total non-private wealth of the Nation. It includes:

- Minerals in the ground within the territory of the Nation.
- Minerals under the seas within the territorial zone of the Nation.
- Minerals dissolved within the seas within the territorial zone of the Nation.
- The right of exploration for minerals.
- Fish and fisheries in the rivers, estuaries and territorial waters of the Nation.
- Land not in private ownership and rights over such land.
- Rivers, dams and estuaries not in private ownership.
- The right of conducting military exercises on the territory of the Nation.
- The right of overflying the Nation.
- The right to launch atmospheric, sub-orbital, orbital and trans-orbital vehicles from the territory of the Nation.
- The right of broadcasting from the Nation.
- The right to generate electricity using the resources of the Nation.
- The right of using the name of the Nation.
- The geothermal resources of the Nation.
- The right to visit the Nation.
- The right to dispose of or store waste on the territory of the Nation.
- The right to pollute the waters, air or soil of the territory of the Nation.
- The right to establish detention and correction facilities on the territory of the Nation.
- The right to become a Permanent Resident of the Nation or a Citizen of the Nation.
- Equity vested in the Nation by business firms in return for enjoying the tax-free commercial environment of the Nation. Companies which vest in the Nation a prescribed percentage of their equity, in the form of non-voting stock, are exempt from taxation of the company income. The percentage of equity prescribed from time to time by the Government may not exceed 7½% of the stock of each company.
- Payments received for purchase of Citizenship.
- Proceeds of the sales of any part of the National Asset.
- Other assets which may be claimed by the Government for the National Asset, subject always to the requirement that the Government shall not make any acquisition for the National Asset by force, fraud nor coercion, nor by means other than agreement freely reached and freely made.

The Government holds the National Asset in trust equally for each citizen of the Nation. It is the obligation of the Government to maintain and preserve the National Asset and to use the National Asset to build the National Dividend.

8. NATIONAL DIVIDEND

The National Dividend is the annual non-private income of the Nation which includes:

- Fees from Flag of Convenience (FOC) registration of shipping.
- Dividend income from company equity which has been vested in the Nation.
- Payments for the right to explore for minerals, based on certainty of tenure.
- Royalties on mining within the territory of the Nation, which shall not exceed 2% of the value of minerals won.
- Royalties on mining within the territorial seas of the Nation which shall not exceed 2% of the value of minerals won.
- Royalties on fishing within the territorial seas of the Nation.
- Payments for the right to advertise on non-private land.
- Royalties from concessions or monopolies properly granted by the Government.
- Income from fines.
- Payments received for the right of Residence.
- Visa fees.
- Broadcasting licence fees.
- Payments for the tenancy of diplomatic and defence facilities of other nations.
- Payments for the right to operate detention, correctional and rehabilitation facilities within the Nation.
- Payments for the operation of military training and exercise facilities.
- Payments for the right to husband or harvest native fauna and flora.
- Income from investments.
- Landing and launching fees.
- Fees paid on a quantity basis for pollution discharged into the air, water or soil of the Nation.
- Payments for the use of components of the National Asset, not elsewhere listed.

The Government may direct a maximum of five percent of the National Dividend to the administrative costs of Government. Recipients of National Dividend Payments are Citizens of the Nation who are residents of the Nation; and their dependants who are residents of the Nation. National Dividend Payments are calculated by dividing the total National Dividend by the number of recipients, subject to each Recipient being eligible to receive a share proportionately for that part of the year for which the Recipient is eligible. Not earlier than 15th October each year and not later than 15th December each eligible Recipient shall receive the appropriate share of the National Dividend for the year ending on the previous 30th June.

9. THE FRANCHISE

All adult Citizens of the Nation are entitled to vote to elect the Council of Wisdom.

All adult Citizens of the Nation are entitled to vote at a Referendum.

All adult Citizens of the Nation are entitled to vote for the House of Approval.

All adult Citizens of the Nation, who during the past ten years have lived four years within the territory of the Nation and who have enrolled as electors for a constituency, are entitled to vote for the House of Proposal.

Voting is voluntary and secret, and may be performed electronically.

10. THE GOVERNMENT

The aim of Government is to protect the rights of the people of the Nation.

10.1 The Functions of Government

- To make laws for preserving the life, liberty and property of the people of the Nation.
- To make laws for enhancing the opportunities of the people of the Nation for health, education and welfare.
- To hold in trust, equally for all of the people of the Nation, the National Asset.
- To make laws administering the National Asset and the National Dividend.
- To make treaties which contribute to preserving the territorial integrity of the nation.
- To raise the minimal revenue required for discharging the functions of government.
- To grant exploration licences and maintain a register of such licences.
- To grant licences for mining and the extraction of minerals and maintain a register of such licences.
- To invite and award tenders for the performance of administrative functions including:
  - Census.
  - Electoral Roll creation and maintenance.
  - Conduct of elections.
  - Governmental accounting.
  - Policing functions.
  - Operation of civil courts to resolve disputes of contract and provide compensation for torts.
  - Operation of criminal courts, the principal aim of which shall be compensation of the victims of crime at the expense of the perpetrators.
  - Maintenance of registers of licences for minerals exploration and extraction.
  - Revenue collection.
  - Administration of the National Asset.
  - Distribution of the National Dividend.
  - Representation abroad of the Nation's interests.
  - National Defence.
  - Evaluation of tenders.
  - Insuring fragile components of the National Asset against natural or human-induced disaster (for example protecting forests against fire).
  - Training citizens in the techniques of resisting and defeating an invader.

10.2. Organs of Government

The functions of Government are vested in a Parliament consisting of:

10.2.1 The Sovereign

The first Sovereign is chosen by the Council of Wisdom. On accession the Sovereign nominates an Heir who requires the approval of the Council of Wisdom. The Sovereign serves until demise or abdication or incapacity, whereupon the Sovereign is succeeded by the Heir.

The Sovereign is provided with an official residence, such residence being part of the National Asset, and receives ten shares of the National Dividend. The Sovereign may not also be a Member of the House of Proposal or the House of Approval. The Sovereign is the sole person in Government who is expected to work full time in the interests of the Nation.

10.2.2 The Council of Wisdom

The functions of the Council of Wisdom are the appointment of the first Sovereign, and approval of the Heir and subsequent Heirs. The Council of Wisdom consists of ten persons elected for life by proportional representation. When the membership of the Council of Wisdom shall be reduced by death or incapacity to five persons, a new election is held by proportional representation to restore the number of the members of the Council of Wisdom to ten.

10.2.3 The House of Approval

The House of Approval has equal numbers of male and female members, elected by proportional representation by all eligible voters, voting as a single electorate, with each subsequent election being held on the fifth anniversary of the previous election.

At the first election of the House of Approval, two categories of members are elected. The first category, comprising half the total membership, is elected for ten years. The second category, comprising half the total membership, is elected for five years. The number of members of the House of Approval is half the number of members of the House of Proposal. Half the members of the House of Approval retire at each election and may offer themselves for re-election.

Members of the House of Approval may attend and vote at meetings of the House of Approval, in person or electronically. Each Member of the House of Approval receives three shares of the National Dividend.

10.2.4 The House of Proposal

A Term of the House of Proposal shall not exceed four years. Not less than seventy-five percent and not more than eighty-five percent of Members of the House of Proposal represent single-member constituencies, which are constructed where possible to incorporate geographical entities. The numerically largest constituency shall not exceed double the number of voters of the numerically smallest constituency. In allocating boundaries of constituencies, the aim is a judicious balance between equality of representation and equality of access to representation. The balance of Members, not more than twenty-five percent and not less than fifteen percent, are elected by proportional representation by the whole electorate voting as a single constituency.

Members of the House of Proposal may attend and vote at meetings of the House of Proposal, in person or electronically. Each Member of the House of Proposal receives three shares of the National Dividend.

10.3 The Legislative Process

10.3.1 Acts of Parliament

Acts of Parliament are Bills passed by the House of Proposal and the House of Approval, and which receive the assent of the Sovereign. Representatives of the Government derive their decision-making power only from Acts of Parlia-

ment. An Act of Parliament is required for the establishment of significant public policy, or a change therein, in matters including, but not necessarily limited to:

- The prescribing of a percentage of equity which Companies vest in the Nation.
- The number of constituencies or their size or boundaries.
- The price or other requirements of citizenship or permanent residence.
- The calling of tenders.
- The ratification of the award of tenders.
- The establishment of a humanitarian system of granting an additional part-share or share of the National Dividend to individuals who for reason of age or incapacity are unable to contribute with their initiative or labour to their own sustenance.
- Any proposal which involves a charge on the people.
- The provision for the creation of any offence and the imposition of any fine or penalty.
- Guidelines for penalties for crimes.
- Treaties or agreements with other nations.
- Acts of hostility towards other nations.

10.3.2 Invalidity of Acts of Parliament

An Act of Parliament is invalid to the extent that it purports to:

- Increase the proportion of the National Dividend which may be applied to the expense of Government.
- Increase the number of shares of the National Dividend which may be paid to Parliamentarians.
- Create an advantage for an individual at the expense of another individual, with the exception that an additional part-share or share of the National Dividend may be granted to individuals who through age or incapacity are unable to contribute to their own sustenance.
- Impose a tax on the income of an individual.
- Authorise the imprisonment without trial of any individual.
- Compel the opinion of an individual.
- Establish martial law.
- Establish ownership by the Government of any land, artifact or chattel.
- Cancel the right of self-defence.
- Institutionalise, recognise or prohibit a political party.
- Impose capital punishment.
- Pay to an individual any salary other than as a payment under a contract for the supply of services.
- Conceal from public view any process of government.
- Cancel unilaterally any contract entered into by the current Government or by a prior Government.

10.4 Powers, Responsibilities and Rights

10.4.1 Sovereign

The Sovereign has the obligation to assent within one calendar month to legislation which is passed by the House of Proposal and the House of Approval. If the Sovereign does not within one month assent to legislation passed by the two Houses, the two Houses in joint sitting may propose to the people a referendum for the abdication of the Sovereign. If an absolute majority of adult citizens supports the proposal, the Sovereign is obliged to abdicate.

The Sovereign has the responsibility of calling an election of half the members of the House of Approval each five years and an election of the members of the House of Proposal each three years or at such earlier interval as recommended by the Chief Minister.

The Sovereign has the responsibility of inviting, to form a Government as Chief Minister, the Member of the House of Proposal who is able to command majority support of that House. If the House of Proposal nominates from among its number a Chief Minister, the Sovereign must confirm that nominee within seven days, or abdicate.

The Sovereign must within fourteen days confirm each of the Chief Minister's nominations of Ministers, or abdicate. The Sovereign has the right to order a joint sitting of both Houses in order to resolve differences between the Houses. If after a Joint Sitting of the two Houses, a dispute between the two Houses still persists, the Sovereign has the right to dissolve the Parliament and order new elections.

10.4.2 House of Approval

The House of Approval has the obligation to receive and consider each Bill passed by the House of Proposal.

The House of Approval may pass a Bill unamended for transmission to the Sovereign for assent.

The House of Approval may return a Bill to the House of Proposal with recommended amendments.

The House of Approval may reject a Bill and return it to the House of Proposal.

The House of Approval has the right to require the attendance of Ministers for the purpose of answering questions.

10.4.3 House of Proposal

The House of Proposal has the right to nominate to the Sovereign, from among its members, a Chief Minister, who has the right to nominate to the Sovereign from among the members of the House of Proposal other Ministers responsible for identifiable functions of Government.

The total number of Ministers including the Chief Minister shall not exceed in number one sixth of the membership of the House of Proposal.

The Chief Minister receives five shares of the National Dividend and the other Ministers each receive four shares of the National Dividend.

The House of Proposal has the right to initiate legislation in the form of Bills for transmission to the House of Approval.

10.5 Resolving Differences between the Houses

If the House of Approval should twice return to the House of Proposal a Bill, either rejected or with amendments unacceptable to the House of Proposal, the House of Proposal may resolve that the Sovereign be asked to convene a Joint Sitting of the two Houses. The Joint Sitting may then consider and pass the Bill, amended or otherwise, for assent by the Sovereign.

(Concluded on page 33)

The Philosophy of Law and Justice Necessary to Sustain a Free Nation

by Gordon Neal Diem

The survival of the Free Nation partly depends on the successful implementation of a justice system able to resolve disputes without resorting to legislative acts as the foundation for law. The current American experience is primarily one of courts of law basing decisions on statutory, codified law. But the philosophy-of-law literature supports the possibility of a system of justice based on principles, rather than on statutes and on the statism necessary to enact statutes.

The historic literature identifies three alternative foundations for judicial systems. First, the historical, philosophical and "pure science of law" alternatives focus on higher principles as the foundation for law. Second, the positivist and utilitarian alternatives focus on statute. And third, the sociological and functional alternatives focus on the needs of human litigants.

ALTERNATIVE LEGAL PHILOSOPHIES

Based on Higher Principles

Historical or "common law" legal philosophy believes judicial action develops from mankind's intuitive feelings about what is right and wrong. Common law descends from the "folk moot" of First Century Germany. Early German kings merely administer an already existing, uncodified body of common law existing within the collective mind of the community. Even after conquest, victorious kings enforce the local "folk moot" common to the conquered people rather than impose the legal code of their own home territory. Justice is the rule of law in accordance with the established and traditional "folk moot," not the statutory will of kings. The common "libertarian" beliefs of the Free Nation founders are the "folk moot," "volksgeist" (Georg Hegel, 1770-1831), "organic connection" (Carl von Savigny, 1779-1816), or "ancient moral tradition" (Edmund Burke, 1729-1797) upon which the Free Nation's common law can be based.

Philosophical legal philosophy believes judicial action is a means to attain society's primary *a priori* goals. Justice

Gordon Diem

is the extent to which judicial decisions approximate these ideals. In the Free Society, the primary goals of "freedom of action," "freedom from coercion," and the guarantee of those "absolute rights of individuals... that appertain and belong... to men... in a state of nature" (William Blackstone, 1723-1780) establish the ideals to be protected and promoted in judicial decisions. Society's primary goals, not statutes, serve as the basis for legal decisions.

"Pure Science of Law" philosophy combines the historical and philosophical philosophies. Law in human society is derived from a "grundnorm," (Hans Kelsen, 1881-1965?) or basic norm, from which all other legal norms are developed. Justice is adherence to the "grundnorm," or "highest general value and general world view" (Gustav Radbruch, 1878-1949). The "grundnorm" provides the legitimacy for all other legal norms and all judicial decisions. A "grundnorm" or "highest general value" may be the libertarian principle prohibiting the using force or fraud against another. With this "grundnorm" in place, no statute law is necessary.

Based on Statute

Positivist and utilitarian legal philosophy believes judicial action reinforces the purposeful will of the sovereign. Assuming the purposeful will of the libertarian founders is codified in a constitution or minimal set of statutes, positivist jurists use their "coercive power to compel men equally to perform their covenants" (Thomas Hobbes, 1588-1679) in accordance with the constitution or enacted statutes. But, should the constitution or statutory law be "amended" to become more statist and utilitarian—perhaps to insure the "happiness of society" rather than the happiness of each individual (David Hume, 1711-1776) or to insure the "greatest happiness of the greatest number (Jeremy Bentham, 1748-1842)—future judicial decisions reinforce this new statist will of the new sovereign, and abandon the older, and more libertarian, will of the founding sovereign. With this change in focus, freedom in the Free Nation is threatened or lost.

Based on Needs of Litigants

Sociological legal philosophy sees law as a means for society to direct its own destiny; law serves the needs of society (R. von Jhering, 1818-1892). The sociological law is a "living law" (Eugen Ehrlich, 1862-1920) legitimized by popular acceptance. Sociological law is based on what current society needs and desires, rather than based on transcendent ideals. Justice is a decision that has popular support. If the flesh becomes weak, support for the libertarian ideals of the founders also becomes weak. A Free Nation momentarily frightened by external aggression, internal disruptions, or human frailties, may find its legal system also twisting in the winds of human vagaries and will find its legal system unable to defend the "libertarian" ideals upon which the Free Nation was founded. Freedom may collapse in the face of a panicked citizenry demanding a suspension of some or all of the ideals of freedom—perhaps to implement a military conscription program in the face of war.

Functional legal philosophy sees the law simply as "what courts decide" (Oliver Wendell Holmes, 1841-1935). Functionalism emphasizes the consequences or effects of judicial decisions (Roscoe Pound, 1870-1964). Justice is "distributive justice" or "fairness to all;" justice involves adjustment of losses and benefits, and the distribution of risks among those best able to bear risks. The aim of adjudication is not reflection of the "folk moot," reinforcement of society's primary goals, or conformity with the "grundnorm;" instead, the aim is fairness for all competing interests before the law. In the quest for fairness, first principles may be lost. Thus, functional legal philosophy also threatens the "libertarian" ideals of the Free Nation.

THE "BEST" LEGAL PHILOSOPHY FOR A FREE NATION

Which philosophy of law is best for a Free Nation? A legal system based on functional, sociological, positivist or utilitarian legal philosophy should be avoided. The best assurance for a continuing Free Nation is a legal system based on historical ("common law"), philosophical, or "pure science of law" philosophy.

Unfortunately, Western lawyers, jurists, juries and citizens have training and experience in more functional, sociological, positivist and utilitarian judicial systems; few have the training or experience in the historical, philosophical or "pure science of law" systems necessary to insure the long-term survival of the Free Nation. There is, therefore, an immediate need to educate and re-educate lawyers, judges and prospective jury members in philosophical-based law to insure a fully functioning judicial system for the newly founded Free Nation.△

Readings:

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Draft Constitution

(Continued from page 31)

10.6 Limitations on Government

10.6.1 Currency

The Government shall not impose legal tender, nor impose any restrictions upon the use of currency legally obtained or the movement of such currency. This clause shall not restrict the obligation of Government to guard against fraud and deception.

The Government shall not print paper money.

The Government may licence the minting of metal coins and may seek to profit the Treasury by the sale of coins of the Nation, on the condition that coins minted shall be denominated not in terms of any currency, but by weight and assay.

All governmental contracts for supply of services to the Nation shall be expressed in gold or platinum.

10.6.2 Borrowings

Total of Governmental Borrowing may not exceed the maximum permitted figure for one year of governmental expenditure, namely five percent of the estimated National Dividend.

10.6.3 Commerce

The Government shall not enter into commerce, beyond the acceptance of the prescribed percentage of non-voting stock in corporations which register within the territory of the Nation.

Beyond the responsibility of protecting its citizens from force, fraud and coercion, the Government shall not seek to regulate dealings among corporations and individuals.△

Michael Darby's home page is: http://www.geocities.com/CapitolHill/Lobby/8881/mdarby.html

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Michael Darby, born in Sydney in 1945, is a former Australian Army Officer who has been writing and broadcasting on politics and economics since 1972.

An accomplished public speaker and scriptwriter, he is a comic entertainer and performance poet at the leading edge of the revival of the Australian bush poetry tradition.

He is a free-trader and campaigner for the rights of miners and pastoralists, and his claims to fame include: Darby's Law of Taxation Futility: "All taxation, by whatever means it is levied, automatically generates a demand for governmental expenditure greater than the amount of revenue received", and Darby's Law of Bureaucracy: "In any hierarchy, all goals become subordinated to the aim of preserving the hierarchy."

Law and Violence

by Roy Halliday

What laws should be enforced in a free nation? How should the laws be enforced? When, if ever, is it lawful to use violence? Who has the authority to enforce the laws? Libertarians do not all agree on the answers to these questions. In fact, libertarians hold several mutually exclusive views on legal principles. In this paper I describe the fundamental legal principles of various libertarian schools of thought, then I argue for using the non-aggression principle as the fundamental law in a free nation.

I tend to regard laws, whether I approve of them or not, as rules that are enforced in a society at the point of a gun or with the threat of violence looming in the background if the lawbreaker offers resistance to the police. Some others interpret law more broadly so that it also includes the customs, traditions, and rules of etiquette that are enforced nonviolently by various ethnic groups, religious communities, and social classes. Whether you define law narrowly or broadly, your views about when it is morally legitimate to use violence will effect your opinions about which laws are legitimate and what methods are appropriate for enforcing legitimate laws.

LIBERTARIAN VIEWS ON VIOLENCE

The following chart lists six libertarian philosophies with regard to the legitimate use of violence. Each group approves of the level of violence of the groups below it in the chart plus violence for the purpose listed for the group itself. Each group disapproves of violence used for the purposes listed higher in the chart. The four least-violent groups do not condone the use of force against people who have not committed a crime or a tort, which is the sine qua non of the State, so they are anarchists. The two most violent groups believe we need the State to protect our rights and freedoms, so they approve the use of violence against non-aggressors to prevent them from competing with the government, but they recognize that the role of the State must be limited so that it does not take away all of our liberty. Only three of these six groups actually have more than a handful of adherents. I can't think of a single person who is a minarchist in the strict way that I have defined minarchism.

Roy Halliday

After the chart, I describe the six groups in more detail—from the least violent to the most violent. I use their views toward the non-aggression principle as a way to compare them. My explanation of the non-aggression principle is in the sidebar on the opposite page.

Pacifists

At one extreme are the Christian libertarians and the followers of Robert LeFevre who are opposed to all violence. They deny the right to self-defense as most people understand that right. For example, they regard forcible rape as a crime, but unlike other libertarians, they also regard violent resistance to forcible rape as a crime. To support this view they argue that you cannot use brute force to make a person virtuous, because if virtue is not chosen voluntarily it is not really virtue. So when a woman is attacked, she has the right to use moral reasoning to persuade her attacker to repent, but she has no right to use violence to impose her desire not to be raped.

There isn't much point in distinguishing between criminal and non-criminal behavior if you can't respond differently to them. In the non-violent legal system, the concepts of crime and law have no practical significance.

On the other hand, the pacifists are the only ones who believe that all relations between people should be voluntary and that it is always wrong to use violence to impose your will on others. My own view comes close to this, but I must concede that these extreme pacifists win the prize for being the purest and only consistent voluntaryists.

(Continued on page 36)

Violence Condoned by Libertarians

Group	Approves violence	Exemplar
Limited-Government Libertarians	for whatever they think only the State should do	Ayn Rand
Minarchists	to maintain the State's monopoly on retaliation	(?)
Free-Market Retributionists	to punish criminals	Murray Rothbard
Free-Market Reparationists	to compensate victims	Randy Barnett
Self-Defense Libertarians	for self-defense	Roy Halliday
Pacifists	never	Robert LeFevre

The Non-Aggression Principle

Most libertarians make a moral distinction between violence used to invade someone's rights and violence used in retaliation against someone who has invaded someone's rights. We call the former kind of violence *aggression*. We regard the latter kind of violence, if it is not excessive, as a legitimate form of self-defense, reparation, or punishment, depending on its purpose. The fundamental law for most libertarians is called the *non-aggression principle*:

> *No man or group of men may aggress against the person or property of anyone else.*

Libertarians use the word *aggression* in a special way. For us, *aggression* is the initiation of the use, or threat, of physical force or violence against the person or property of anyone else.

A whole system of criminal law is packed into the single sentence that expresses the non-aggression principle. To make it clear what libertarians mean by it, let me briefly list the kinds of actions that it prohibits and some of the kinds of actions that it allows.

Crimes against a Person: The non-aggression principle prohibits the initiation of violence against another person. It prohibits murder, rape, battery, kidnapping, imprisonment, enslavement, and torture. The non-aggression principle also prohibits the initiation of *threats* to use violence against another person, which is called *assault*. It is not necessary to physically touch someone to commit an assault. For example, it is an assault to point a gun at someone who is not aggressing and then demand something from him.

A more indirect, but still prohibited, kind of assault against someone who is not aggressing is to demand something from him in such a way that it is understood that, if he does not comply, you or your agents will use violence against him. For example, it is an assault when a goon from the Mafia demands a store owner to pay protection money, or when the State enacts a tax law or a victimless-crime law.

Crimes against a Person's Property Rights: The non-aggression principle prohibits the initiation of physical force or violence against another person's property rights. It prohibits destroying, damaging, taking, selling, or using the property of a non-aggressing person without his permission. Destroying or damaging someone's property may be considered violent acts, but it seems a stretch to classify selling, taking, or using someone's property as a violent act, especially when this is done by stealth so that the property owner is unaware of it and is not physically threatened by it. That is why we include "physical force" in our understanding of the non-aggression principle. Selling, taking, and using someone's property are physical acts. They might not involve violence, but they do require some physical force.

Actions That Are Not Crimes: The non-aggression principle permits: (1) all peaceful actions that do not involve the use or the threat of physical force against another person or his property and (2) actions the *do* involve the use or the threat of physical force or even violence against another person or his property as long as the action is not the *initiation* of force or the threat of the initiation force against that person or his property.

Actions that fit in the first, peaceful, category include doing things with your own property such as consuming meat, vegetables, drugs, alcohol, or even poison; decorating or mutilating your own body with jewelry, tattoos, scars, make-up, and hair-dos; discriminating against other people based on their race, gender, religion, or any other category whether it is rational or nor; donating your wealth and services to help others, spending it on yourself, or hoarding it; telling the truth, lying, speaking kindly about others, or slandering and libeling them; trading, renting, and making voluntary contracts; having sexual, financial, friendly, or other relationships with consenting adults; and so on.

Actions that fit in the second, more violent, category include using physical force to defend yourself from an attacker or to repossess stolen property. You can also use physical force to defend someone else who is being attacked or to help someone else repossess their property, if they consent to your help.

(Continued from page 34)

These extreme pacifists, or voluntaryists, also deserve the prize for being the world champions of self-ownership. No other philosophy is completely consistent with the idea that each individual has the absolute right to own himself.

Pacifists believe that laws should be enforced voluntarily. They are one of the four libertarian anarchist groups in my classification scheme.

Self-Defense Libertarians

The nearest group to the pacifists is the group that I belong to. This group avoids the absurdities of extreme pacifism by accepting the common-sense view that the individual has the right to use brute force to defend himself against invasion. In other words, we believe in the right to self-defense, and we believe this right justifies the use of violence when the following three conditions are met:

1. The violence is directed only against someone who is invading someone's rights (aggressing).
2. The purpose of the violence is to stop that invasion.
3. The violence is necessary to stop the invasion.

We believe violence against a person without his consent is morally justified when all three of these conditions are satisfied, and only when all three of these conditions are satisfied. Since the distinguishing characteristic of this view is the absolute right to self-defense against aggressors, I have chosen to call this view *self-defense libertarianism.*

Even though self-defense libertarianism occupies one of the few logical positions on the libertarian-violence spectrum, and even though it seems like a view that most people would find more acceptable than total pacifism, I have never seen self-defense libertarianism described anywhere. As far as I know, I am the first person to describe it, and I may be the only one who accepts it.

The fundamental law of the self-defense libertarians is the non-aggression principle. In this legal theory, intentional and unintentional violations of the non-aggression principle can be legally met by violent resistance. All other acts of violence imposed on someone without his consent are illegal.[1]

Free-Market Reparationists

The next group of principled libertarians on the violence spectrum consists of those who oppose violence against people without their consent except for self-defense and to extract reparation from criminals and tortfeasors. I call them *free-market reparationists* because they believe the free-market can completely replace the State and because their belief in using violence to obtain reparation is their only deviation from the non-aggression principle.[2]

Like the self-defense libertarians, the free-market reparationists believe it is legitimate to use violence against a criminal to stop him from committing a crime. However, unlike the self-defense libertarians, the free-market reparationists do no regard the right to self-defense against aggressors as an absolute right. Instead they believe criminals and tortfeasors lose this right to some extent and do not get their right to self-defense back in full until they have paid for their crimes and torts by compensating their victims. Consequently, in addition to condoning violence against a criminal to stop him from committing a crime, free-market reparationists condone the use of violence against criminals and tortfeasors to force them to make reparations.

The fundamental law of the free-market reparationists is a modified version of the non-aggression principle:

> *No man or group of men may aggress against the person or property of anyone else, except to force him to make reparations to the victims of his crimes and torts.*[3]

Free-Market Retributionists

This group, like the self-defense libertarians and the free-market reparationists, opposes the use of violence against anyone who has not violated someone's rights, so this group is still within the anarchist camp, along with the pacifists. But with regard to invaders, the free-market retributionists condone three reasons for violence: (1) for self-defense, (2) to force a criminal or tortfeasor to compensate his victim, and (3) to punish a criminal for his crime. The leading exponent of this point of view in the 20th century was Murray Rothbard. The Rothbardians probably constitute a majority of the individualist-anarchist wing of the libertarian movement. I have chosen to call them *free-market retributionists* to emphasize that they deviate from the non-aggression principle on the issue of punishment (as well as on the issue of reparation).

Like the free-market reparationists, the free-market retributionists do not believe in the absolute right to self-defense. They believe that criminals lose this right until they have compensated their victims and been punished for their crimes.

I contend that the pacifists and the self-defense libertarians are the only ones who consistently uphold the principle that it is wrong to initiate violence. The free-market reparationists and the free-market retributionists try to reconcile their views with the non-aggression principle by arguing that forcing a criminal to make reparation and imposing physical punishment on a criminal are not examples of the initiation of force, because the criminal is the initiator of force, and reparation or retribution, like self-defense, is a response to aggression. The problem with this argument, as I see it, is that the violence used in legitimate self-defense occurs while a criminal or tortfeasor is initiating aggression, whereas the violence used for reparation or punishment generally takes place after the criminal or tortfeasor has stopped his aggression. Therefore, violence used to compel compensation to a victim or to punish a criminal constitutes a new round of aggression and violates the non-aggression principle.

The free-market retributionists appeal to our innate feeling that criminals deserve to be punished for their crimes. Few of us can deny that we derive satisfaction from seeing harm come to bad people. However, the pacifists, the self-defense libertarians, and the free-market reparationists reject coercive punishment. Instead, they say we should restrain our desire for retribution rather than inflict physical punishment on criminals without their consent.

In addition to the moral objections from the less violent libertarians, the free-market retributionists have to face the argument from the more violent libertarians who say that we need government to administer punishments.

What is the objectively correct punishment for stealing a car? A whip lashing, a prison sentence, community service, a fine—are all incommensurate and

arbitrary. There is no conclusive answer. But surely to whip, imprison, enslave, or fine someone more than he deserves is a crime. That is why most retributionists agree that we need a government to select one schedule of punishments and impose it impartially on all criminals in society. (I believe that the free-market reparationists have a similar problem. There is no way to prove conclusively that any particular form or amount of compensation to a victim of a crime is exactly correct. So free-market reparationists risk violating the rights of criminals and tortfeasors by using violence to extract reparation without the criminal's or tortfeasor's consent.)[4]

The fundamental law in the legal system of the free-market retributionists is a modified version of the non-aggression principle:

No man or group of men may aggress against the person or property of anyone else, except to force him to make reparations to the victims of his crimes and torts or to punish him for his crimes.

Minarchists

The minarchists are the next group on the scale of increasingly more violent libertarian legal theorists. They are called *minarchists* because they believe we need a very small State, whose functions are limited to enforcing justice and protecting us from criminals. Minarchists are morally opposed to the initiation of violence against people without their consent except as follows:

1. It is legitimate for anyone to use violence against aggressors in self-defense.
2. It is legitimate for designated government officials to use violence against convicted criminals (and tortfeasors) to force them to pay reparation to the victims of their crimes (or torts).
3. It is legitimate for designated government officials to use violence against convicted criminals to administer government-designated punishments.
4. It is legitimate for designated government officials to use violence against anyone to prevent him from competing with the government in assessing and enforcing reparations and punishments for crimes.

Unlike the anarchists, the minarchists condone the use of violence against people who have not violated anyone's rights. The fundamental legal principle of the minarchists is a highly modified version of the non-aggression principle:

No man or group of men may aggress against the person or property of anyone else, except for authorized agents of the State who may use aggression to (1) force a person to make reparations to the victims of his crimes or torts, (2) punish a person for his crimes, or (3) prevent anyone from competing with the State in administering punishment of criminals.

Limited-Government Libertarians

The most violent legal theory on the libertarian spectrum is the limited-government theory. The limited-government libertarians have the same view of violence as the minarchists, except that the limited-government libertarians believe the government needs to provide more functions and has to forcefully interfere in the lives of peaceful people more than the minarchists believe is necessary. The difference between the minarchists and the limited-government libertarians is that the highest legal principle of the minarchists is a uniform system for protecting rights and enforcing reparations and punishments, whereas the highest legal principle of the limited-government libertarians varies from one person to the next, depending on which services the individual wants the government to provide.

Because limited-government libertarians have a variety of reasons for holding their views, and because this is the least radical of the natural-rights-based libertarian groups, it is the largest libertarian group. It overlaps the non-libertarian mainstream of society. It includes principled libertarians who have not thought through their principles, and it includes people who place practical considerations above moral principles.

The fundamental legal principle of the limited-government libertarians, if they can be said to have any, could be the following version of the non-aggression principle, which is modified to such an extent that it might better be named *the tyranny principle*:

No man or group of men may aggress against the person or property of anyone else, except for authorized agents of the State who may force a person to make reparations to the victims of his crimes and torts or to punish a person for his crimes or to prevent a person from doing anything at all that the State has decided to prohibit or to compel a person to do anything at all that the State has decided to make mandatory.

This is a bit unfair to the limited-government libertarians, because they generally favor placing restrictions on the State, such as those listed in the Bill of Rights. But history has shown that such restrictions can be overcome, especially when the State insists on having the authority to interpret what the restrictions mean.

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[1]I do not regard tortfeasors as criminals, because tortfeasors do not intentionally invade anyone's rights. Nonetheless, in some emergency situations I regard it as legitimate to use violence in self-defense against a tortfeasor. Consequently, I cannot strictly claim to be opposed to the use of violence against non-criminals. Logically, there is room for another category of self-defense libertarians who regard it as legitimate to use violence in self-defense against criminals but not tortfeasors. However, since I know of no one who holds this view, I omit it from my classification scheme.

[2]In "Punishment vs. Restitution" (*Formulations* Vol. I, No. 2), Roderick Long makes a case against punishment and a case for restitution. He argues that restitution is a form of self-defense and that forcing criminals and tortfeasors to compensate their victims is not a violation of the non-aggression principle. For a longer description of the reparation theory and its advantages see "Restitution: A New Paradigm of Criminal Justice" by Randy E. Barnett in *Assessing the Criminal: Restitution, Retribution, and the Legal Process*.

[3]Another position that someone could advocate is that it is legitimate to force criminals but not tortfeasors to compensate their victims. But, since I don't know of anyone who holds this position, I omit it from my classification scheme.

[4]For an analysis of the punishment problem as a rationale for the State, see the sidebar on Ayn Rand or read my article "The State As Penalizer" in *Formulations* Vol. III, No. 4.

HOW CAN WE RECONCILE THESE DIFFERENT PHILOSOPHIES OF LEGAL VIOLENCE?

We can safely ignore the pacifists, because they don't believe in imposing their legal philosophy on others by force. But how could a mixed society of libertarians from the other camps be acceptable to any of them when each group believes they have the right to use violence to enforce their own particular legal principles and each believes they have the right to use violence in self-defense against the others? If the free-market reparationists and free-market retributionists try to open private courts and penal institutions, the minarchists and the limited-government libertarians will try to shut them down. Each group would regard the others as criminals.

Roderick Long has devised a clever solution to this problem in a free nation consisting of minarchists and anarchists. He proposes the nation be partitioned geographically into two regions: an anarchist region in the center (Inner Zimiamvia) surrounded by a minarchist region (Outer Zimiamvia). Inner Zimiamvia and Outer Zimiamvia would be regarded by the rest of the world as a single country with two provinces, but internally they would have separate legal systems and would not interfere with each other. Because Inner Zimiamvia is surrounded by Outer Zimiamvia, Outer Zimiamvia, by providing a governmental interface to the rest of the world and by providing national defense for itself, would ipso facto provide these same services to Inner Zimiamvia at no additional cost. This arrangement would allow both minarchists and anarchists to test their systems and provide empirical evidence that they work.[5]

Roderick's proposal solves the problem of the incompatibility of minarchy and anarchy, but the problem of the incompatibility between the self-defense, reparation, and retribution anarchists remains and so does the problem that minarchists have many different opinions about what the limits on government should be.

I have another solution. I suggest that we reach a compromise. The compromise that I suggest is that we do it my way.

LET'S USE THE NON-AGGRESSION PRINCIPLE AS THE FUNDAMENTAL LAW!

The pacifist philosophy is not viable because it does not allow enough protection against criminals. A legal system based on non-violence would quickly be abused by criminals who would take over society, eliminate political freedom, and replace the pacifist legal system (which is a vacuum) with a legal system that institutionalizes predation.

Each of the other libertarian legal theories can support a viable society that allows a great deal of personal liberty.

The pacifist philosophy and my theory (that the only legitimate use of violence is for self-defense) are the only theories that are completely consistent with the non-aggression principle. Therefore, my theory is the only *viable* libertarian legal theory that is consistent with the non-aggression principle.

Since it is the only viable legal theory that is compatible with the non-aggression principle, it is the best libertarian legal theory because it allows the most freedom.

How would it work?

In a society where people recognize the right to self-defense against aggression, the law is enforced privately by whoever chooses to enforce it. Private individuals and organizations offer to arbitrate disputes and assess compensations. There is no definitive repository of laws or legal rulings. The non-aggression principle is the only law. All other legitimate laws such as the laws against murder, assault, and theft are already contained in the non-aggression principle. Everyone is free to expostulate on the meaning of the non-aggression principle, as I do in the sidebar. But no one's written laws need to be regarded as authoritative.

Arbitration companies might choose to publish their procedural rules, rules of evidence, and rules for assessing compensations. This would help disputants to decide which arbitrator to go to, if any.

Arbitrators will probably find it useful to study prior legal rulings, but they will always retain the option of reasoning directly from the non-aggression principle in each case. They will succeed or fail in their legal careers based on the reputations they earn for the wisdom of their decisions.

If I were involved in a contract dispute, I would prefer to use a judge who was familiar with the principles of contract law that were developed over the years in common-law courts. I imagine that other people might feel the same way. Consequently, arbitration compa-

Ayn Rand's Justification of the State

Any Rand was one of the most influential libertarians in the 20th century. She remained attached to the idea of the State because of her belief in the justice of retaliation. She called her philosophy *Objectivism*, because she believed in objective truth, objective values, objective justice, and objective control of retaliation. She defined government as follows:

> A government is the means of placing the retaliatory use of physical force under objective control—i.e., under objectively defined laws.[1]

This explains what it is about government that appealed to Ayn Rand. If you believe in retaliation, the only alternative to a State which (ideally) retaliates against people in accordance with laws that are written down and enforced equally on everyone, is a system with competing retaliation agencies. These agencies would retaliate against criminals in different ways, which would be unfair. If retaliation were permitted in the absence of State penal laws, criminals would suffer unequal punishments for similar crimes, and some would suffer more for minor crimes than others would for major ones, depending upon the whim or arbitrary punishment theory held by the ones assessing the punishment. This was unacceptable to Ayn Rand because it is not objective enough.

Only a State, which enjoys a monopoly on the right of retaliation in a geographic area, can lend a sense of impartiality and uniformity to the administration of punishment and, by so doing, make retaliation seem objective.

[1]Ayn Rand, *The Virtue of Selfishness* page 109.

nies would probably hire legal scholars to sort through case law and legal treatises. Instead of merely looking for legal precedents and loopholes, they would look for sound arguments developed in previous cases that might be useful in the future. They might compile their own databases and select their own rules of procedure from the best procedures used in the past. Competition among arbitration companies would encourage them to find and adopt legal principles and procedures that enhance their reputations for fairness and professionalism.

The free market will produce better methods of enforcing the non-aggression principle and settling disputes than any individual theorist could hope to do on his own.

OBJECTIONS TO SELF-DEFENSE LIBERTARIANISM

The two main objections that I anticipate people to raise against my theory of self-defense libertarianism have to do with the fact that it prohibits using coercion to punish criminals and to force criminals and tortfeasors to compensate their victims. The first objection is that these restrictions would make society impossible. The second objection is that these restrictions violate our sense of fairness.

Objection 1. It Won't Work

One argument against self-defense libertarianism goes like this:

1. If criminals are not punished and not even forced to compensate their victims, they have nothing to lose by committing crimes.
2. Since they have nothing to lose by committing crimes, more people will become criminals and each criminal will commit more crimes.
3. Society will fall apart.

My response to this argument is that the first premise is false. I admit that fear of punishment deters many people from committing crimes. I know this is true because fear of punishment works for me. It not only inhibits me from committing real crimes, it also inhibits me from committing victimless crimes that the State has decided to prohibit. I also admit that forcing criminals to compensate their victims would discourage many people from committing real crimes. But fear of punishment and forced compensation are not the only means to deter crime.

Remember that I named my theory *self-defense libertarianism*. In this system everyone has the right to use violence if necessary to defend his rights. We also have the right to help each other to defend our rights and to hire professionals to defend us. So it is not true that under this system people have nothing to lose by committing crimes. They could lose their lives.

Under my system of law people can own weapons. They can hire bodyguards, watchmen, and private investigators. They can install burglar alarms, keep their valuables in vaults, purchase insurance policies, and so on. As I wrote in an earlier paper:

> Protection agencies might be hired by individuals or by insurance firms acting on behalf of their clients. Insurance companies would have a vested interest in returning stolen property to its rightful owners if they are obligated by contract to pay compensation for stolen goods not returned. Insurance firms might hire detectives to retrieve stolen goods. They might hire guards and watchmen to prevent crime. They might finance the development of new methods to prevent or stop crime. They could hire scientists to invent methods for identifying insured property and even finding it when it is lost or stolen. Perhaps a device could be invented that could distinguish any particular registered piece of property from all others and make it easier to track it down.
>
> If possible, the insurance companies should return the same physical item that was stolen. If this is not possible, or if the property can only be returned in a damaged condition, then the insurance policy should spell out the method for determining compensation.[6]

In addition to these measures for fighting crime, anyone who is deciding whether to commit a crime should also consider the effects on his own conscience, the effects on his reputation, the possibility that he might be ostracized or boycotted, and the possibility that the victim or the victim's family will start an illegal vendetta against him to exact revenge. All of these considerations will tend to reduce the number of premeditated crimes.

Objection 2. It Isn't Fair

I don't have a clear definition of fairness, but self-defense libertarianism does not always fit with what I regard as fair. For example, I don't think it is fair to discriminate against people on the basis of their race or on any other irrational basis, but I believe we have the right to do it.

The non-aggression principle permits many inhumane, cowardly, perverted, and unfair acts. For example, it is inhumane and cowardly to see a person in distress, a drowning child for example, and do nothing to save him. But it is not a crime. No one has the right to force you to be a hero.

Aborting her baby is possibly the worst thing that a woman has a right to do. But, even though an innocent human life is taken, no one has the right to use violence to prevent a woman from ridding her body of a human parasite, even if we assume the fetus has all the rights of an adult.

It isn't fair that some children in disease-ridden, third-world countries, or crime-ridden ghettos in American cities have little hope for prosperity. But these inequities do not justify redistribution of wealth by the State.

Except for abortion, these examples of differences between justice and fairness are not controversial in libertarian circles. But self-defense libertarianism has more differences between justice and fairness than the more violent libertarian theories.

According to the ordinary man's idea of fairness, a criminal should compensate his victims and should be punished for his crimes. I think this is fair too. I admit that my legal system is not fair. However, as I interpret the non-aggression principle, it is unjust to impose this kind of fairness by violence.

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[5]Roderick Long, "One Nation, Two Systems: The Doughnut Model" in *Formulations* Vol. III, No. 4.

[6]"The Anticrime Industry in a Free Nation" *Formulations* Vol. IV, No. 1.

Some moral questions do not have provably correct answers. These issues fall outside the scope of justice, which means we do not have the right to use violence to impose any particular answers to these questions. One of these questions is: "What is the proper punishment for a particular crime?"

Justice demands that the exact same property that was taken without the owner's permission be returned to him: nothing more, and nothing less. When this cannot be done, justice cannot be done. Principles of fairness or retribution should not be imposed by brute force as a substitute for justice. *The principles of justice are, by definition, the only principles that may legitimately be imposed by violence.*

A criminal has the same basic rights as anybody else. He does not gain or lose any rights by committing a crime. Because a thief does not gain any rights by stealing, it is OK to take back what a thief has stolen, whether the thief agrees or not. But, because a thief does not lose any rights by stealing, if you want to do more than take back what was stolen, if you want to punish the thief or make him pay, you must restrict your actions to those that you have a right to do to anybody. No matter how much you think the criminal deserves to suffer, you have no right to directly harm him or his property without his permission, except to stop his crime.

With a little ingenuity and effort, you can get some satisfaction without violating anyone's rights. For example, you could make those who offend you feel ashamed by publicizing their crimes. Or you could organize a boycott or try to persuade others to isolate a criminal from society. If you really wanted to be mean, you could lure someone into a trap, get him to commit a crime, and then jump in with superior force to stop him. The force you use must be for defense, but you might enjoy it while it lasts—you might get lucky and leave a scar or other permanent damage.

If a thief loses or destroys property that he stole, he cannot possibly return it. Justice cannot be achieved in such cases. I think it would be fair to take some of the thief's property and give it to the victim as compensation, but it would be unjust to do this without the thief's consent.

If you have an insurance policy you can get compensation from your insurance company. So, it is possible for the market to provide some compensation beyond mere repossession, without having to coerce criminals more than is allowed by the non-aggression principle.

Nature is not fair. It does not allow a murderer to restore his victim's life. A murderer cannot possibly make reparation to the victim. He should try to compensate the victim's family. It would be extremely unfair if he refused to offer any reparation, but he has the right to refuse, which means no one may force him to pay for his crime. The same goes for many other serious crimes. Rape, for example, is a crime for which reparation is impossible. It was not fair of nature to make reparation impossible in the most serious crimes. It is also not fair that my system of justice allows criminals to refuse to compensate their victims.

Justice deals with specific rights. It gives us the authority to demand what belongs to us. But justice must be exact. Reparation and punishment cannot be determined by principles of justice—by appeals to rights. Reparation and punishment are concerned with fairness rather than justice. Therefore, they must be agreed to voluntarily according to whatever principles of fairness the parties share.

Justice is not the only kind of morality, but it is the primary kind, and it should not be bypassed. The only way for morality to make sense is to allow people to make moral decisions. For this they need the freedom allowed by the non-aggression principle.

Fairness fosters cooperation and concern for the individual. It has helped us to survive as a social species. But the morality of fairness is lost when it overrides justice. Forced reparation and punishment deny the individual's right to govern himself.

The non-aggression principle is essential for morality because it allows everyone to make moral decisions. So the non-aggression principle, not fairness, must set the limits to the use violence.△

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