

formulations

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A Publication of the Free Nation Foundation

Vol. I, No. 1

A Letter from the Founder

Dear fellow libertarian,

This newsletter marks the beginning of a new libertarian think tank, the Free Nation Foundation. We will work to describe how a hypothetical libertarian country would work. We will focus on critical institutions such as national security and domestic security, and work to develop practical, believable descriptions of these institutions.

This work plan grows out of a few simple beliefs:

1. I believe what we have been told by our leaders, such as Mises, Hayek, and Rand: that our understanding of humans and their interactions can produce a better society, both more humane and more prosperous, than any which could be produced by competing visions which rely upon use of force.

2. I also believe that we have resources: a good fraction of the people on this planet would gladly move themselves to a realm where freedoms were secured, not stolen, by collective action. And many business interests would gladly invest in such a realm when they knew that their investments were secure.

Since I believe these things, that we are strong with both knowledge and resources, a question keeps returning to me: "So what is stopping us?" I will address two obvious answers.

The first is that we are not coalesced. We share a common complaint, too much government, but not a common vision of what institutions would do critical jobs now performed by government. This first answer motivates the Free Nation Foundation.

The second answer is that we cannot convince the majority of voters in any existing democracy to see things our way. I try to draw others toward our view, and support several organizations working on this front. But I am not as confident as I would like to be that persuasion will one day win our cause. And I think we sell ourselves short if we put all our eggs in the basket of persuasion.

This explains why I address this letter to

Forum on Constitutions to be held October 2

The Free Nation Foundation will hold its first forum on Saturday, October 2, 1993, at the Courtyard by Marriott near the Raleigh-Durham Airport, NC. The forum will run from 10 am until 4 pm. The subject will be Constitutions.

The registration fee, \$25 until September 24, and \$35 thereafter, pays for a package of materials, lunch, and proceedings printed after the forum.

On the agenda:

The basics of constitutions.

Case study: The Articles of Confederation.

Case study: The Constitution of Oceania, copyrighted this year by Eric Klien and Mike Oliver.

Case study: Draft of a Virtual-Canton Constitution by Roderick T. Long.

To register, clip and return the order form on page 8.

If you plan to stay in the hotel, they offer a special rate of \$39.95 for reservations made more than a week in advance. Their phone number is 800-321-2211.

On the subject of constitutions, as on all subjects we will address, we do not expect to reach resolution in a single meeting. Rather, by studying and meeting again and again, we expect to move toward shared confidence in some particular set of proposals. Since a constitution is central, it seems appropriate to start our series of meetings with this subject. Δ

fellow libertarians. The Free Nation Foundation will strive to build shared vision among people who already think themselves libertarian. This will be difficult enough.

In other contexts I will continue trying to persuade non-libertarians, but not in the Free Nation Foundation. In this organization, let us take what we share as a starting point and try to build. I believe we can.

A Short History: The Free Nation Foundation

The Free Nation Foundation reached a milestone on June 7, 1993, when its articles of incorporation were filed with the North Carolina Secretary of State. The articles name the initial board of three directors: Bobby Emory, Richard Hammer, and Roderick Long.

In January and February of this year Richard Hammer contacted about 100 prospective collaborators, using his eight-page booklet *Toward A Free Nation*. While this outreach found little support from nationally famous libertarian individuals and organizations, it found some enthusiastic support from less-well-established libertarians on a local level. With this support the organization proceeds.

In order to achieve tax-exempt status, the articles of incorporation filed with the State include statements which should satisfy the requirements of the federal Internal Revenue Service, when later this year the Foundation applies to the IRS for exemption under section 501 (c) (3).

The Board of Directors will meet in August to approve the bylaws of the Foundation, and to elect officers. Δ

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Apocalypse Anytime

by Richard Hammer

Many people, it seems, have a tendency to foresee apocalypse. Malthus in 1798 foretold famine for our species because of our tendency to reproduce. Others to this day continue to forecast the same doom (in spite of the fact that history to date has rebuked Malthus: now when our numbers are higher than ever before, we are also better fed than ever before). And in recent years awareness of pollution has provided a good environment for forecasts of universal poisoning.

But of course the most fertile environment for growing forecasts of doom flourishes, now as in ages past, in consumption of natural resources: "in 25 years we will be out of oil"; or, "if we keep on at this rate using up the flint around our cave, in another 5 years we will not be able to make any more hand axes."

I think we can see here a formula for forecasts of apocalypse. Just assume that anybody doing anything will continue. They will continue in spite of any signals they might receive: that they have done enough already; that they are starting to make a mess; or that they might better satisfy their need some other way. If someone driving straight down a road continues driving straight, heedless of signals from the environment, at the end of the road there will be calamity. It is easy to forecast apocalypse.



Richard Hammer

And easy with this insight to see through most such forecasts.

Shortly after I had this insight I realized that I too am prone to forecast apocalypse. I see the large majority of Americans voting for politicians who expand the role of government, and I foresee a repetition of the experiment already tried by the Soviets. This fear motivates the Free Nation Foundation and this publication *Formulations*.

So is my forecast of apocalypse as foolish as others? Is it as faulty as the forecast given during the energy crisis of the nineteenth century, when depletion of whales induced fear that soon there would be no oil to light an ever-increasing number of lamps? Of course I do not know for sure. Each person must decide.

Out of Russia comes a common news story that sustains my fears. There are many

Russians today who want a return to the old system. Most people do not understand our arguments for liberty. The greatest moral and economic philosophers of this century have shown that socialism cannot work. But among the Russians, whose lives and spirits have been crushed by this system, there live a large minority who do not comprehend what caused their problems. It hit them over the head and they do not know what it is.

If these Russians do not get it, I question whether we can teach a majority of voters in western democracies to see an even more abstract cause-and-effect relationship. Our neighbors must first believe the evil of socialism. And then they must perceive that their votes are recreating socialism, one step at a time. I do not know when or if we can complete this education.

Perhaps the tide will turn in America. I hope so. But my limited powers of perception leave me fearing apocalypse. It seems worthwhile to put a few eggs in another basket. Join us. Working together, we can formulate a future more secure. Δ

Richard O. Hammer, 45, owns a small business building houses in Hillsborough, North Carolina. He writes frequent columns, interpreting political events in a libertarian frame. On three occasions he has run for local political office. In the past he worked as an engineer and management scientist.

The Articles of Confederation

by Bobby Emory

Why Consider?

If we are to design a new government, we can probably benefit from studying prior attempts to start new governments. One of the most dramatic changes in human history occurred with the founding of the United States. We tend to take our relative degree of freedom, representative government, and individual rights for granted, but until then, most major countries had a monarch who gave or withheld rights. It was a radical departure to suggest that ordinary people could govern themselves without help from their "betters." The Articles were a dramatic break with the past by eliminating the elite that the average citizen was forced



Bobby Emory

to support — rather like the task we face today.

Historical Context

The United States had declared independence from the most powerful nation on earth and had the task of establishing a

government that could defeat England and then defend the freedom they had won. In the heat of battle (the writing of the Declaration of Independence and the subsequent Revolutionary War) the Articles of Confederation were created. The Articles proved equal to the challenge and the war was successful. After several years of operating under the Articles, Shays' Rebellion (led by people who called themselves "Regulators") arose. The moneyed interests panicked over the fear that people might authorize paper money and delay foreclosure proceedings against small debtors. The cultural, educational, and economic elite demanded a new Constitution to protect their commercial interests. Thus ended one of the peaks of individual liberty in the history of man.

(continued on page 3)

Confederation (from p. 2)

Chronology

5 Sept 1774 - 26 Oct 1774

First Continental Congress creates the Continental Association

10 May 1775

Second Continental Congress convenes

12 June 1776

John Dickinson appointed to head a committee to draw up a confederation

4 July 1776

[Declaration of Independence endorsed]

12 July 1776

The Articles of Confederation presented

2 Aug 1776

[Declaration of Independence formally signed]

15 Mar 1777

Congress endorses Articles

9 July 1778

Seven states have endorsed Articles, bringing them into effect; the rest endorse over the next 11 months

14 Jan 1784

[Official end of Revolution]

21 Feb 1787

Congress endorses Constitutional Convention

22 May 1787

Constitutional Convention begins

28 Sept 1787

Congress sends Constitution to States for ratification

21 Jan 1788

New Hampshire ratifies — enough for adoption

2 July 1788

Ratification formally announced

1 Nov 1788

Congress under Articles of Confederation adjourns

1 Apr 1789

House of Representatives under Constitution reaches a quorum

Philosophical Context

Let's examine the state of philosophy at the time and the points we see included in the Articles.

Developments in Philosophy

The Wealth of Nations had just been published, giving a theoretical foundation for the overthrow of mercantilism (although I have no evidence members of Congress saw *The Wealth of Nations*). The intellectual (the Enlightenment) environment was beginning to give importance to the Individual and removing the rationalizations for the primacy of the collective over the Individual and of force over logic. *Cato's Letters* had been published. Tom Paine's *Common Sense* was published in numbers equal to 1/20 of the population of the colonies.

Philosophy Imbedded in Document

A dedication to liberty. Concern for freedom given higher importance than providing commercial advantage or making government easy. Implies that putting up with a difficult and lengthy legislative process is preferable to trampling on the rights of in-

dividuals or states. Allows states to address their own situations. Equal suffrage for all economic classes without built-in control of local government by elites in control of the central government. Implies a confidence in the citizens governing themselves.

Major Features

A weak central government. A unicameral legislature with one vote per state. Major actions require more than a simple majority. A president but without strong powers. Taxation only through the states. A free market in currency. Leaving most powers to the states meant that government was relatively close to the people.

Summary

This is a short summary of the provisions of each Article.

Article 1

Name to be United States of America.

Article 2

States retain all rights not expressly delegated.

Article 3

States enter into league of friendship and mutual defense.

Article 4

Citizens of any State have same rights as

(continued on page 4)

Virtual Cantons: A New Path to Freedom?

by Roderick T. Long

The Problem of Structure

What would the constitution of a free nation look like? In trying to answer that question we immediately think in terms of a Bill of Rights, restrictions on governmental power, and so forth. And any constitution worth having would certainly include those things. But if a constitution is to be more than a wish list, it must also specify the *political structure* necessary to ensure that these freedoms are not eroded or ignored. Consider the old Soviet Constitution, which guaranteed all sorts of fine-sounding freedoms for its citizens — but which in practice



Roderick Long

proved only an empty promise, since its interpretation and enforcement lay in the hands of an unfettered monolithic centralized state.

Framing a constitution is an exercise in

public-choice economics; politicians react to incentives, and so the political incentive structure must be designed in such a way that those in authority cannot profit by the aggrandizement of state power.

Such was the intent of the Framers of the U.S. Constitution when they established the Federal system. Each branch of government was expected to be jealous of the others, and so to be motivated to serve as a check on their expansion. At the same time, the broad base of representation was expected to ensure that no special interest could succeed in manipulating the government.

As we have since learned all too well, the

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Confederation (from p. 3)

residents of any State. Extradition allowed. Each State shall recognize court proceedings of other States.

Article 5

Authorizes Congress. Delegates picked by State Legislature for one year and may be replaced at will. Two to seven members per State — one vote per State. Rotation in office (no more than three years of six). Delegates may not hold other paid U.S. offices. Each State maintains its own delegates. Freedom of speech and debate in Congress — delegates cannot be arrested.

Article 6

States may not enter into separate treaties with other nations or each other. No State may levy duties that interfere with U.S. treaties. No warships or standing armies may be kept by any State unless authorized by Congress. Each state shall keep a militia and keep arms and provisions for it. No State shall engage in war unless attacked, authorized by Congress, or threatened by Indians.

Article 7

Each State can appoint officers (through colonel) for land forces raised by the State.

Article 8

All costs of war and all other expenses, shall be defrayed out of a common treasury. Each State shall contribute to the treasury in proportion to real estate value of each State. Taxes will be levied by the State Legislatures.

Article 9

Congress shall have rights to: determine war and peace, foreign affairs (but may not exempt foreigners from taxes levied by States against their citizens), grant letters of marque and reprisal, establish courts for trial of piracy, shall be the court of last appeal in boundary disputes between states, fix the standards for coinage (no provision for paper money), fix standards of weights and measures, regulate affairs of Indians (but States' rights may not be infringed), establish an interstate Post Office, appoint officers above colonel in the ground forces, appoint all naval officers, make rules for the military and direct their operations, appoint a "Committee of the States" to run the country when Congress is not in session. Most of

the important actions, including borrowing money, require nine (of the thirteen) States to agree. The Committee of the States has many warmaking and executive powers.

Article 10

The Committee of the States has powers delegated to them by the nine States — but cannot do anything that would require a majority in the regular Congress.

Article 11

Canada can join the Confederation. Other new States require the approval of nine States.

Article 12

All debt contracted by Congress before the assembly of the U.S. is accepted.

Article 13

Every State shall abide by the determinations of the Congress. The Union shall be perpetual. Any alteration requires the approval of Congress and of every State Legislature. The Articles become effective when approved by the State Legislatures and ratified by their delegates in Congress.

Reasons for Success

Most powers were left to the States. Most Federal action required a consensus of the States. There was no large and autonomous federal bureaucracy. The Federal government could not declare State laws invalid. By not allowing a Federal override of local action, often localities or states were able to respond to local needs, even if the power elites did not approve.

Achilles' Heel

Philosophically, no solution to the slavery problem, no recognition of Indian rights (in fact, no guarantee of any individual rights), and the Confederation would only be a defender of individual liberty if the individual States were (in the historical case this was not a problem, but if we use it as a model, we must remember this prerequisite). In practical politics, an amendment process that allowed the original to be subverted and replaced by a Constitution that allowed a government more easily manipulated by individuals and groups wishing to use force to create benefits for elites. To defend the Articles, the amendment process was made difficult and the Confederation could not be replaced except on unanimous

consent of the States. Unfortunately, the friends of the Confederation were unable to defend themselves in even one State, so it fell to misplaced trust in centralized power.

Conclusions

An inspiring model for the structure of a free country. Would require supporting constitutions for the member states. Does not get around the need for eternal vigilance. Could be organized a little better. Probably has too much emphasis on preparations for war and on resolving boundary disputes. Δ

Annotated Bibliography

The following were used in the preparation of this article. If any reader knows of a more appropriate reference, please inform the author through this newsletter.

The Almanac of American History; Arthur Schlesinger, Jr.

Used for dates. Since Schlesinger is no friend of liberty, I would hesitate to trust his reportage and especially his analysis.

Colonies into Nation: American Diplomacy 1763-1801; Lawrence S. Kaplan; Macmillan.

Provides a good sense of the buildup to the revolution and England's missed opportunities to avert it.

The Vineyard of Liberty; James Macgregor Burns; Knopf.

Primarily covers the beginnings of the Constitution. It comments on the alleged defects in the Articles. It includes an account of the ratification process (of the Constitution) which includes actions by the Anti-Federalists who wanted to stay with the Articles. The name comes from a letter by Richard Henry Lee of Virginia to Samuel Adams of Massachusetts urging opposition to the Constitution.

America Confronts a Revolutionary World: 1776-1976; William Appleman Williams; Morrow (1976).

Interesting approach to American History. One of the few sources that includes the text of the Articles. Caution: the author is thoroughly socialist, but he is willing to look beyond the usual myths to attempt to understand the motivations of political actors.

Bobby Yates Emory, 54, has worked a career as a programmer and systems analyst at IBM. A longtime libertarian activist, he has run for offices from County Commissioner to U.S. Senator, and held political party offices from Precinct Chairman to Regional Representative to the National Committee.

Problem X

by Richard Hammer

In most of my discussions about politics it seems I am attempting to convince someone that it is not necessary for government to do X. Most people believe that we must have government — because only with government can they imagine that X will get solved to their satisfaction.

Of course we libertarians are experienced in pointing out that different people expect different things from government. Suppose we had a list of all the things that government does, or could do — a list of all possible X's. We could extract some familiar groupings from the list. One group, of things that regulate economic activities, characterizes the political agenda of the left. Another group, of things that regulate personal lifestyle choices, characterizes the agenda of the right.

We notice with amusement that sometimes there is no overlap between the X's chosen by a person from the left, and the X's chosen by a person from the right. Government might vanish entirely if both the right and the left had to agree to each X.

And even most of us who call ourselves libertarian will pick some items from the list; we have our X's. But unfortunately we too differ considerably among ourselves on the X's. We share a common complaint, too much government, but we do not share a common vision of a society with minimal government. We have no community of agreement on which things on the list could constitute a country that could work.

The Free Nation Foundation will work to build, among those who participate, a shared confidence in the critical institutions of a libertarian country. We will discuss those institutions and develop specifications in which we have faith. Our job will be to discuss among us problem X. Δ

Toward A Free Nation, \$2.00

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

To order, clip and return the order form on page 8.

Entrepreneurs announce project to form new country on manmade island

Mike Oliver, financier of the 1972 attempt to start a country in the New Hebrides, has joined a project to build a floating island city. The Atlantis Project proposes to place its city, Oceania, in the Caribbean, fifty miles east of Panama.

Eric Klien of Las Vegas initiated the project with a full page ad in the April 1993 issue of *Reason* magazine. Joined by Oliver, in May the project distributed the first issue of its newsletter *Chain-Breaker*, which presented the plan of a floating city, outlined the project in phases, and changed the name of the project from the original Galt's Gulch Development, Ltd. The June issue of *Reason* carried a two-page ad for the project.

The Constitution of Oceania has been drafted by Klien and Oliver, and this constitution will be the subject of a case study at the October 2, 1993 forum of the Free Nation Foundation.

For those interested, the Atlantis Project may be contacted at: Dept. F, Suite 388, 4132 South Rainbow Blvd., Las Vegas NV 89103. Δ

The U.S. Constitution: was it good enough?

Naturally the Constitution of the United States will be one of our touchstones as we question what makes a constitution workable — and sustainable.

Roger Pilon, the Cato Institute's expert on constitutions, was asked at a May 1993 Cato forum whether something could have been added to the U.S. Constitution, some amendment or some paragraph, which would have prevented the erosion over two centuries of the Constitution's power to limit government. Mr. Pilon answered that he would have added four words: "and we mean it." Δ

Writers Wanted

We will be searching for material for future issues of *Formulations*. As a first priority we seek material consistent with our goals: formulations on the nature of the critical institutions which constitute a free nation. As a second priority we seek material of general interest to libertarians, subject to the caveat in the following paragraph.

Appropriate humor would be a great addition.

Some subjects we do not seek. This is because we try to do a job distinct from the jobs being done by most other libertarian organizations. We do not seek commentary upon political institutions or persons, either present or past, unless the writer uses that commentary to enlighten formulation of an improved institution. Δ

FNF director runs libertarian summer program

Roderick T. Long, one of the Free Nation Foundation's three directors, served as Director of Studies this summer for the Hume Residential Fellowship Program at the Institute for Humane Studies at George Mason University in Fairfax, Virginia.

The Institute for Humane Studies (IHS), founded by F. A. Harper, is devoted to promoting the cause of classical liberal research. Recently moved to new, larger quarters, it shares an office building with two other free-market groups, the Atlas Economic Research Foundation and the Center for the Study of Market Processes. Through fellowships, seminars, and other programs, IHS furthers the academic careers of young libertarian and classical liberal scholars. The Hume Program, of which Roderick himself is an alumnus, brings graduate students from a variety of fields (e.g., economics, history, law, philosophy, political science) to the Institute for ten weeks to participate in interdisciplinary colloquia and to write publishable papers under the supervision of the Director of Studies.

Roderick Long returns in August to his job as Assistant Professor of Philosophy at the University of North Carolina at Chapel Hill. He holds an A.B. from Harvard University and a Ph.D. in philosophy from Cornell University. Δ

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Serbia and Bosnia: A Foreign Policy Formulation

by Richard Hammer

I am a newcomer to foreign policy and cannot claim to understand all that matters. To clarify my own thinking, but also to stimulate discussion, I will outline with regard to the situation in the former Yugoslavia what might be part of a libertarian foreign policy. I assert that the situation has reached its present horrible state because the governments of the world have taken away three freedoms.

1. The Bosnians should be free to buy arms. If they were able to arm themselves, the Serbs would certainly treat them with more deference.
2. The Bosnians should be free to move away. If somewhere on earth there were a libertarian nation, that nation's immigration policy would be a private affair (not national): any private property owner could welcome or turn away anyone. The libertarian country would offer Bosnians (or any outsiders) freedom to buy land in the open market, or to accept a contract which offered shelter for work. Additionally, any property owners feeling sympathy for Bosnians could shelter them as an act of compassion.
3. Private citizens outside Bosnia should be free to help the Bosnians. In a libertarian country anyone willing either to fight, or to finance a fight, in Bosnia on behalf of Bosnians would be free to do so, at their own risk.

I assert that the situation in former Yugoslavia never would have come to our attention, at the present level of violence, if somewhere on earth there were a free country of sufficient size where the citizens had kept such freedoms for themselves, and had not surrendered such freedoms to a collective, coercive authority.

We welcome debate. Δ

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Virtual Cantons (from p. 3)

experiment eventually proved to be a failure. Madison and his colleagues could not foresee the logrolling process whereby government branches and special interests ("factions") that were intended to hold one another in perpetual check instead made concessions to one another's ambitions in exchange for like concessions to their own. Yet some foresaw the danger; one Anti-Federalist poet, bemoaning the recent ratification of the Constitution, wrote:

*In five short years, of freedom weary grown,
We quit our plain republics for a throne;
Congress and President full proof shall bring
A mere disguise for Parliament and King.*

Thus did the streamlined confederation become the swollen imperial Leviathan.

Decentralize!

Thomas Jefferson wrote many stirring passages about the natural rights of man. But when asked to summarize his political philosophy, he replied that he could state it in one sentence: "Divide the counties into wards." In other words: decentralize, decentralize, decentralize!

There are many advantages to political decentralization as a structural limitation on government power. Imagine a country the size of the United States, but consisting of only five states. Now imagine the same region containing 500 states. All other things being equal, the second situation is likely to be much more hospitable to freedom than the first. The smaller the political unit, the greater the influence an individual citizen can have in politics, thus decreasing the lobbying advantage that concentrated special interests have over the diffuse general public. Further, as the number of available alternative political jurisdictions increases, the citizen's exit option becomes more powerful. The freedom to leave one state is small comfort if there are only a handful of others nearby to go to; but with many states, the odds of finding a satisfactory destination are much better.

In addition, competition between states can serve as a check on state power, since if any state becomes too oppressive its citizens can vote with their feet. Also, decentralization softens the impact of government mistakes. If a single centralized government decides to implement some ill-conceived plan, everybody has to suffer. But with many states implementing different policies, a bad policy can be escaped, while a

good policy can be imitated. (Here too, competition can serve as a discovery process.) The Federal structure of the United States, imperfect though it is, may well explain why this country has not plunged as rapidly into socialism as its European counterparts—individual states having free entry while most European countries do not. (Fifty states is certainly better than one—though still a far cry from Jefferson's notion that six square miles was the optimum size for a basic political unit within a republic.) And Switzerland's even more decentralized canton system has doubtless played a similar role in the preservation of Swiss freedom. (Frances Kendall and Leon Louw's book *After Apartheid* has helped to bring to the libertarian community's attention the usefulness of a canton-style system to countries torn by ethnic strife; but its appeal is not limited to such cases.)

Housetrainers and Empty Landscapes

The constitution of a free nation, then, should most likely be characterized by a radically decentralized power structure, along the lines of some sort of canton system. But can the Swiss model be improved on? I think so.

The effectiveness of competition among political jurisdictions is inversely proportional to the costs of changing one's jurisdiction. Massachusetts faces serious competition from New Hampshire, but little from Alaska, since the costs of voting with one's feet are so much higher in the second case. (The same is true at the international level; there's no mystery as to why Cuban and Haitian refugees are trying to get into Miami rather than into Geneva.) And even when the alternative jurisdiction is nearby, the costs of switching are not exactly low. Uprooting oneself and perhaps one's family in order to move to another state can be costly, both financially and emotionally.

The high cost of switching results from the fact that political jurisdictions correspond to geographical regions, and geographical relocation is not always feasible. Yet a decentralized system serves as a more effective check on the growth of state power to the extent that switching costs are low. Therefore, it seems desirable to *decouple* political jurisdiction from geographical location.

David Friedman offers an example: "Con-

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Virtual Cantons (from p. 6)

sider our world as it would be if the costs of moving from one country to another were zero. Everyone lives in a house trailer and speaks the same language. One day, the president of France announces that because of troubles with neighboring countries, new military taxes are being levied and conscription will begin shortly. The next morning the president of France finds himself ruling a peaceful but empty landscape, the population having been reduced to himself, three generals, and twenty-seven war correspondents." (*Machinery of Freedom*, 2nd ed., p. 123.)

If people could switch political jurisdictions without switching location, we would have the functional equivalent of the situation Friedman envisions. Competition among jurisdictions would be higher, and the amount of state interference that people would tolerate without switching would be lower, than in a political system where jurisdiction and geographic location are linked.

The Case of Iceland

There are a number of historical precedents for this idea. To pick one famous example, the Icelandic Free Commonwealth (930-1262) operated on the Thing system. A "Thing" was a court or assembly. (The English word "thing" originally had this meaning also; when Hamlet says "The play's the *thing* wherein I'll catch the conscience of the King," the pun is successful because in Shakespeare's time the word "thing" had begun to have its modern meaning, but also still retained the earlier flavor of a *judicial proceeding* to establish guilt or innocence.) The national legislative assembly, with its attendant national judiciary, was called the All-Thing; beneath it were four Quarter-Things, corresponding to the four geographical regions of Iceland. But here the tie between geography and jurisdiction ended.

Under each Quarter-Thing were three or four Varthings, and assigned to each of these were three Things. Residents of a Quarter were free to choose membership in any of the nine or twelve Things attached (through the Varthings) to their Quarter-Thing. Membership in a Thing determined who your Godhi or chieftain was; a Godhi protected his Thingmen against local threats, appointed judges from his Thing to serve on the judiciary, and represented his Thingmen

in the national legislature. In return, a Godhi's Thingmen paid him fees and did him various favors. One could officially switch one's membership from one Thing to another simply by making the appropriate announcement in front of witnesses. Since the cost of transferring one's allegiance to another Godhi was far smaller than it would have been if the Things had been purely territorial entities, competition put a brake on the ability of any Godhi to oppress his Thingmen too severely or to demand excessive favors or tribute. This decentralized system appears to have been quite effective. The Icelandic Free Commonwealth did eventually succumb to centralization, but it took three hundred years; the United States took much less.

(For more information on the Icelandic system, see Jesse Byock's *Medieval Iceland*, William Miller's *Bloodtaking and Peacemaking*, and David Friedman's "Private Creation and Enforcement of Law: A Historical Case" (*Journal of Legal Studies* 8, 1979). For a historical survey of similar systems, see Bruce Benson's *Enterprise of Law*, and bibliographic essays by Tom Bell and Albert Loan in *Humane Studies Review* 7, no. 1 (1991/92).)

Virtual Cantons

The Icelandic case has been a popular model among libertarian defenders of market anarchism. But it's important to see that it offers valuable lessons to framers of

governments as well. Within the framework of a state, the divorce of jurisdiction from geography is not an option at the *national* level; but it remains a very live option at the *local* level. Just as a nation may be divided into many small geographically distinct cantons for purposes of local government and national representation, so it might also be divided into analogous political units that had *no territorial significance*. These might be called "virtual cantons."

Two Functions of Virtual Cantons

Like the Icelandic Things, the virtual cantons would have two functions: representation at the national level, and government at the local level (with "local" now serving as a *structural* rather than a geographical concept).

In the first case, each virtual canton would send a representative to the national legislature. Citizens would be free to switch their allegiance to another canton whenever they chose, without having to change their residence; so it would be like being able to live in New York and yet choose a Senator from Arizona as one's representative. Also advisable would be a constitutional provision allowing any group of citizens above a certain size to form a new canton. (The lack of this crucial feature proved to be a fatal flaw

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Virtual Cantons (from p. 7)

in the Icelandic system: since Godhordh, or seats on the legislature, were marketable commodities, it eventually became possible for a small number of families (who had acquired their wealth by being recipients of tithe taxes, which, unlike Godhi fees, divorced income from accountability — a result of Iceland's forcible conversion to Christianity) to buy up these Godhordh and monopolize the legislature. The Icelandic constitution had no provision for the creation of new Godhordh to counteract this threat.)

On the "local" level, each virtual canton would pass its own laws and provide its own enforcement. Citizens would be subject to the laws of the national legislature and to those of their own canton, but not to those of other cantons. A principal job of the national government would be to regulate relationships among cantons, laying down guidelines for the adjudication of disputes among members of different cantons, resolving conflicts between laws of different cantons, and so forth. But within that nationally-determined framework, there would be free competition among virtual cantons.

Such competition would have many benefits. The threat of losing "customers" would push taxes and wasteful spending far below their current monopoly levels. The presence of alternatives would also lower

the incidence of government oppression by linking revenue with accountability. (Imagine, for example, how quickly the LAPD would have lost paying customers after the Rodney King beating if rival law enforcement agencies in the same area had been competing for public support.)

A virtual-canton system is also more fair than a purely majoritarian system. Under majority rule, if 51% of the population favors law X and 49% favors law Y, then law X is imposed on everyone, including the dissenting minority. In short, majority rule creates negative externalities for minorities. A system of virtual cantons would help to internalize these externalities: the minority opposed to law X need not be subjected to it, but may instead join a virtual canton offering law Y. Those in the majority cannot conscript the minority into supporting their projects (or vice versa), but must bear the full costs themselves.

Virtual cantons also provide a better check against local tyranny than do other decentralized systems. In a territorial system, those in a given geographical region may find voting with their feet prohibitively costly, and so must suffer whatever the local government decides to impose; the option to change cantons without changing residency offers the functional equivalent of voting with one's feet, at a far cheaper rate. In general, virtual cantons would provide far more effective checks and balances than

those among the three branches of government in the Federal system, because of the competitive potentialities (to which the Federal system has no analogue) of switching between cantons or creating new ones.

The virtual canton system also solves information problems: would cantons tend to divide at all along geographical boundaries, or not? would they vary greatly in size? how many would there be? Competition would allow the market to determine the optimal answers to meet citizens' needs.

National Government

The national government has a vital role to play in providing coordination among the policies of the various cantons. Yet it must be severely restricted in its powers, or the whole purpose of decentralization will be defeated. If the national government, rather than the cantons, becomes the chief locus of decision-making, then the competition among jurisdictions will become otiose, and the cantons will degenerate into special interest blocs vying for centralized power. Hence national powers must be *more* severely constrained (not just by a written wish list, but *structurally*) than canton powers, in order to force most political disputes down to the canton level (and thus onto the competitive market).

There are a number of ways of doing this: severe term limits, supermajority requirements, a plural executive, etc. One promising suggestion, offered by Robert Heinlein in his novel *The Moon is A Harsh Mistress*, would be a bicameral legislature: one house requiring a *two-thirds* vote to pass laws, the other a *one-third* vote to repeal laws. It might be especially useful to compose the former of canton representatives (thus ensuring maximum participation of various interest groups in the legislative process) and the latter of popularly elected representatives (thus accommodating Isabel Paterson's principle, in *God of the Machine*, that any stable political regime must provide an official conduit for the masses to exercise a veto power). A weak central power and thriving virtual cantons could combine the best of anarchy and limited government. Δ

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