

# formulations

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Vol. II, No. 2

## Lively Discussion Fills FNF Forum on Security

On 15 October 1993, the Free Nation Foundation held its third Forum at Days Inn near the Raleigh Airport. The subject of the day-long event was security: how voluntary and market institutions might provide security in a free country, on both a local and national scale. Nine attended, including the four who presented papers. Repeatedly, animated discussion had to be cut short, in order to allow time for succeeding papers.

Of the papers presented, four were printed in the previous issue of *Formulations*. These were: "Devil's Advocate: No Defense Department is Needed," "Providing Defense by Voluntary Means," and "Contra Insurance" by Bobby Emory; and "A Review of Libertarian Ideas about Security," by Richard Hammer. Three papers are printed elsewhere in this issue. These are: "Protective Services in a Free Nation," by Scott McLaughlin; "Defending a Free Nation," by Roderick Long; and "The Power of Ostracism," by Richard Hammer.

Proceedings of the Forum will be published and distributed to those who attended. We will also continue the practice with these Proceedings of mailing a copy to Members of the Foundation (though this is not one of the stipulated benefits of membership). ▲

## Foundation News Notes

• Before our Forum on 15 October the three Directors (Emory, Hammer and Long) met and increased the size of the Board of Directors from three to five, and added as the two new members:

Candice I. Copas, 21, of Durham, NC, active volunteer for the Libertarian Party of North Carolina and organizer of that Party's 1994 state convention. She is an undergraduate at UNC-Chapel Hill majoring in political science and philosophy.

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## Topic for Next Forum: How can government establish self-government? by Richard Hammer

At the conclusion of our recent Forum, I presented a question to those in attendance, and it was generally agreed that this question would be a good topic of our next Forum, to be held in April 1995.

The question looks ahead. It is set in the context of an assumption that we have already gained power.

**Assumption:** We libertarians have gained political power in some realm or country. Thus we no longer have to work to persuade people to allow us this power. We have at our disposal all the apparatus of coercion.

**Question:** How do we use that power to foster reestablishment of voluntary, civil institutions? What is the best, and most compassionate way to dismantle the power we find in our hands?

Clearly we could make mistakes. The scandal in the American savings and loan industry shows this: people zealous to dismantle government deregulated an industry which continued to be insured by government. But I want to know more than this one example. What other examples, good or bad, might instruct us? In addition to the economic view, what is our challenge from a psychological or sociological view? Can we discover a theory?

Some readers, I expect, will debate the assumption. They will say it is a waste of time to talk about how we would use power because at present we seem incapable of getting power. Yes, but I think this is like the chicken-or-the-egg question. Our adversaries resist yielding power to us because they do not believe we could use it appropriately. We may dissolve some of this resistance by developing a plan in which we have con-

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## A New Foundation Enters the Free Nation Movement by Richard Hammer

A respectable new entrant to the movement, The New Country Foundation, was formed in August by investment advisor Courtney Smith and businessman/engineer Mike Oliver. It is dedicated to creation of a libertarian Sea City, and to promotion of other new country projects. Among other things, it carries forward remnants of the Atlantis Project. It is headquartered in Valley Village, California.

The foundation will publish a newsletter, *New Country Report*. The first issue, dated

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## Stand Up by Richard Hammer

In this column I beat the drum for the Free Nation Foundation. For starters, since some readers may be distracted by the recent election in the U.S., let me try to draw attention back to the cause.

The election passed power into the hands of Republicans, a party whose members often speak of limited government. As a consequence I expect that some freedom seekers will shift their attention from the forlorn shores of the free nation movement to the more comfortable hope that majority rule can restrain itself. Is this shift reasonable?

Any levelheaded critic of the plan of this Free Nation Foundation might point out that what we are trying is unprecedented. I agree; as far as I know idealists have never succeeded in a plan which involved first building the vision of a nation and then shopping for location. But, before this critic returns to the usual mode of activism I would hope to hold his attention a bit longer. I would ask:

What historical precedent shows that this usual mode of activism can work? When has freedom been gained by persuading an electorate to stop trying to use government to set direction for society?

So I contend that the usual mode of libertarian activism (convincing voters that the power they possess in the ballot hurts them more than helps them) likewise suffers from a shortage of convincing precedent. Can we know that either mode of activism is possible? Which camp is more crazy? Well, I do not know. So I have one foot in each.

Many libertarians now advise a third approach. They say do what is necessary to survive: innovate; barter; trade goods and services with other libertarians; learn about tax havens from libertarian investment advisers, but pay if cornered by the tax man; arm to defend yourself; but do not provoke a fight with the statists or you will lose; do not attract notice to yourself.

To me this advice suggests accepting the role of mouse in a game of cat and mouse. But I am glad that some libertarians take this approach. It assures that, whatever the future brings, at least one subspecies of our line will survive.

Recently I saw a scene in a TV nature show which reminded me of our situation. A nervous zebra in a herd was looking back

# formulations

Editor: Roderick T. Long

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### Statement of Purpose

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

### Board of Directors

Richard O. Hammer, President  
Bobby Yates Emory, Secretary  
Candice I. Copas  
Roderick T. Long  
Christopher H. Spruyt

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

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

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

### Information for Authors

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

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

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

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

All submissions are subject to editing.

Submissions will be considered for publication if received by the 15th of the month preceding month of publication. Thus, the deadlines for writers are: February 15, May 15, August 15, and November 15.

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

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in the direction where the herd had just been attacked by a pack of hyenas, and where the hyenas were starting their meal on the formerly weakest member of the herd. The commentator put words on the emotion displayed by this nervous zebra: "this is terrifying, but what can we do?"

**WHAT CAN WE DO!?** I can tell you for sure, if I were a zebra in that herd I would be going around saying, "Look, guys. Each of us is five times as big as each of them. And there are ten times as many of us as there are of them. We can go back there and stomp butt. We just have to organize and carry out a plan."

It turns out I am not a zebra. But I do think that we, who resent excessive government, act like that herd of zebras. Look. Von Mises was right: We, not they, know the key to economic power. If we organize we can muster the economic muscle to protect our lives, our property and our freedoms. We just have to believe in ourselves. Join us.  $\Delta$

### News Notes (from p. 1)

**Christopher H. Spruyt**, 34, of Raleigh, NC, a frequent public speaker for libertarian views, serves on the Executive Committee of LPNC. He is self employed as a software engineering consultant.

• This past summer a reading group discussed the lessons taught by Hayek in Volume 1 of his *Law, Legislation and Liberty*. The group, led by Richard Hammer, met on six Monday evenings, each time discussing one of the six chapters. The number attending these meetings ranged from three to nine.

• Conferences attended in recent months by FNF Directors include: the 1994 Liberty Editors' conference, on Labor Day weekend in Tacoma, Washington, by Bobby Emory; the International Society for Individual Liberty conference, October 2-7, in Merida, Mexico, by Richard Hammer; and the American Philosophical Association, December 27-30, in Boston, by Roderick Long.

• Members in the Foundation now number 36. Of these 20 are in North Carolina; two each are in Illinois, Maryland and California. Since more than a year has passed since our first members joined, we have started to mail renewal notices: six have renewed; six not yet. Additionally we have 32 paid

subscribers.

• We mailed 215 copies of the last issue of *Formulations*, about 150 free copies going to prospects, names and addresses gleaned from various sources. With this issue about 500 free copies are going to prospects.

• An Annual Report, summarizing expenditures for the past year and showing a budget for the upcoming year, will be produced and distributed to Members after the end of the fiscal year, which coincides with the calendar year. At this date expenses continue to exceed receipts by about two to one, with the difference being made up by founder Richard Hammer.  $\Delta$

### Next Forum (from p. 1)

fidence.

We seek articles on this question, particularly for the upcoming Spring issue of *Formulations* (writers' deadline 15 February 1995). And we are looking for people who could present a paper on the question at our next Forum. The specific time and place of that Forum will be announced in the Spring issue.  $\Delta$

### New Foundation (from p. 1)

October 1994, provided the information in this account. It is published in West New York, New Jersey.

The Directors of the Foundation include well known libertarians Mike Oliver, John Hospers, and Douglas Casey, as well as (names new to this reporter) Courtney Smith, Richard King and Marc Joffe. Marc Joffe edits the newsletter.

The newsletter has an article by Eric Klien who spearheaded the Atlantis Project. Klien tells of lessons he learned in that effort. In another article Mike Oliver writes about plans to pursue the same floating sea city which was the focus of the Atlantis Project. The newsletter also summarizes a few other ongoing new country projects, and provides contact information for those projects.

The newsletter impressed this reporter as levelheaded and professional. For subscription information write to *New Country Report*, P.O. Box 849, West New York, NJ 07093. Or send electronic mail to Marc Joffe, 71045.142@compuserve.com.  $\Delta$

## Protective Services in a Free Nation by Scott McLaughlin

This paper was presented at our  
15 October 1994 Forum.

*"The Constitution is what the cop on the corner says it is."*

This age-old street maxim regarding law enforcement points to the central problem with typical public police agencies. Despite any libertarian theory underlying a nation dedicated to freedom, the development of a centralized organization vested with a monopoly of police power will eventually erode the reality of libertarian ideals. This presentation will explore the possible role of private security agencies, operating in a competitive market, to replace the present-day reliance upon monopolistic public law enforcement agencies.

### 1. The Agent-Principal Relationship

All protective service organizations — whether public or private — act as agents for certain principals. Under this common-law relationship the principal is responsible for the actions of the agent; while the agent may not perform activities outside the scope or limits set by the principal. According to common-law principles, the principal may remove and/or replace any agent, and may act on his own behalf despite the existence of an agent representing him. For example, most people are familiar with the concept of "citizen arrest." A principal (the citizen) may take an action (an arrest) even when an agent has been established to perform that action on his behalf. However, in North Carolina, recent legislation has ended the citizen arrest. Only government commissioned law enforcement officers are empowered to effect an arrest — even if you, as a principal, witness or suffer a violation and are capable of effecting an arrest yourself. This is a corruption of the basic agent-principal relationship, and is evidence of the exclusive, or monopolistic public police agency.<sup>1</sup> Public law enforcement departments now act as exclusive agents with all of the rights of the principal — the principal having lost or abandoned the right to act for himself. Thus, public law enforcement departments are no longer "agents" under the common-law understanding. As in many

cases of government hegemony, public law enforcement has become detached from its legal basis for existence. The only true agency in the area of law enforcement is the private security industry who are empowered to act only in those areas specified by the principal.

## 2. Public Agents

There are three types of modern day public law enforcement agencies.

The first is a municipal police department. This agency, in theory, has the inhabitants of a municipality as its principal. Again, in reality, town and city police departments are the agents of the city government and — to the extent the local government is controlled by higher governmental units — police are also the agents of all governments in a law enforcement “pyramid” to exact compliant behavior by the hapless inhabitants of their jurisdiction.

The second type is the sheriff of a county. Unlike the typical police chief, the county sheriff is usually an elected official. The sheriff’s department has as its principals the inhabitants of the county. Normally, a county sheriff displays more autonomy than other law enforcement agents, since, in theory, voters will hold the sheriff accountable for the success or failure of the department.

The third group of public law enforcement agencies is the myriad specialized units commissioned to provide enforcement of specific sections of the legal code. Examples include the B.A.T.F. on the federal level, the A.L.E. on the state level, and Animal Control Officers on the local level.

All public agencies take a reactive approach to protective services. Police today spend very little time deterring criminal activity.<sup>2</sup> Instead, police are most often called upon to react after a person’s property rights<sup>3</sup> have been violated. Specialized units spend most of their time monitoring compliance with laws or regulations under their control.

As usually happens in cases of “public ownership,” police agencies no longer represent a flesh-and-blood principal. In each case above, the principal has become a mythological “city,” “county,” “state,” or “federal authority.” For example, if George Smith assaults Brenda Jones and is arrested by public agents, the subsequent adjudication will be styled “The State of North Carolina vs. George Smith.” Under these conditions, the true principal seeking justice

— Brenda Jones — is not considered important, except perhaps as a witness for the State.

## 3. Private Agents

Private protective agencies provide a variety of services to a wide-ranging market. All private agencies share a common trait, however. In each case, the principal is



Scott McLaughlin

an individual client (person, corporation, etc.) who directs the level of activity of the agent, sets policy as to the enforcement of the principal’s property rights, and makes decisions regarding the disposition of a violation of the principal’s property rights. Security guard companies, security motor patrol agencies, private investigators, bail bondsmen, bounty hunters, alarm services companies, and armored car companies are but a few examples of the types of services offered in the private protective marketplace.

Some private agencies are proprietary — employed exclusively by and for the benefit of only one principal. However, most private suppliers are contract agencies — providing one or two specialized services to as many clients as possible.

Most private protective services are “proactive,” since deterrence of criminal activity and protection of the principal’s interests are the paramount concerns. In fact, a violation of the principal’s person or property is evidence of failure by the private agency.

Every private protective service provider is heavily regulated by various government

bureaucracies — especially since private security is increasingly regarded as a threat to public police forces. Some states grant private protective agents a limited power of arrest. Typically, arrest powers are granted to security guards only while employed on the property of a client. This provision is denied to private agents in North Carolina — but would be present in a free society.

## 4. The Enforcement Hierarchy

According to LeFevre,<sup>4</sup> law enforcement may be divided into four stages: protection, defense, retaliation, and punishment. Briefly, protection encompasses all passive activities taken to deter criminal activity. Defense includes active steps when one is faced with an aggressor. Retaliation includes the concept of restitution and “getting even.” Punishment is a class of activities whereby an aggressor is punished, or “taught a lesson” for his aggression. LeFevre concludes that protection alone is a viable option in a free nation, since the stages of defense, retaliation, and punishment require compromises of individual autonomy, a “crossing of the boundary” of another. For purposes of this presentation, LeFevre’s hierarchy will be named as follows: protection, self-defense, restoring the victim, and punitive damages.

## 5. The Individual As Principal

*“The armed society is a polite society.”*

— Robert Heinlein

Any discussion of the role of private security agents in a free nation<sup>5</sup> must begin with the individual. An individual is the only “real” entity that exists. All other forms of entities — partnerships, corporations, joint ventures, etc. — are artificial persons formed in a voluntary fashion. Ultimately, each individual is responsible for the protection of his person and chattels. Individuals intuitively practice protective activities when even vaguely aware of a possible threat. Contra to LeFevre, if an individual is granted the ability to take preventative measures, but denied the ability to defend himself when faced with an aggressor, or to seek to be restored from a violation of his property, then one must question the value of the ownership of property or the value one places upon one’s own life. Since crimes are activities conducted by one person against another, an individual acting as a principal is rightfully entitled to LeFevre’s entire hierarchy of enforcement. It is only when an

agent is employed that an unequal or tyrannical "crossing of the boundary" is likely to occur in day-to-day situations. In practical terms, most individuals are not the victims of crime. In the same sense, few individuals are criminals. The vast majority of individuals do not hire agents for individual protection. Those that do, do so for only limited periods of time and for special circumstances. It has been my experience that individuals who feel the need for private protective agents decide to protect themselves when the cost of such services becomes known. This would likely be the case in a free nation as well. It is quite possible that no special protective agency could financially survive if it offered only this type of service, at least on this basic level.

Historically, the individual's right of protection has occasionally been extended, not to an agent *per se*, but to another entity. Family protective organizations have been used in many societies. Another example is the spontaneous group reacting to criminal activity — otherwise known as vigilantism. It is quite possible that these adaptations will occur in the absence of a monopolistic police power. Further, one should not discount the effectiveness or the wisdom of such practices under certain circumstances. Vigilante groups have usually consisted of property owners who have each been a victim of a particular aggressor. Once the aggressor is no longer a threat, the vigilante group breaks up and returns to normal productive activities. Vigilantes have been defamed by government police agents — whose jobs do not consist of normal productive activities.

#### 6. Models for Private Law Enforcement

There are several alternatives for private agents to assist in providing a safe and secure environment, as well as assisting individuals who have been the victims of force or fraud. All models assume that individuals can and do act as principals for their own protective needs — whether or not represented by a security agent. Furthermore, any community based privately supplied protection is assumed to be locally controlled.

Model A. Neighborhood and/or community contract. This is the model being implemented by many small towns — a privatization model. Under this model, a competitive contract would be awarded to a security supplier to act as an agent for an entire community or neighborhood. This

agent would supply the entire enforcement hierarchy for the community. If an individual desires to participate, payment would be made based upon the value of property owned by the individual. However, individuals and corporations would still be able to contract with other suppliers for their own specialized security needs.

Model B. Market Competition and Grand Jury. This model represents a qualified market environment. Each security agency would contract with as many entities as possible in the community. These companies would primarily supply protection alone (in the enforcement hierarchy). If a violation occurs, the victim would present evidence to a grand jury. If the jurors feel a hearing to determine guilt or innocence is necessary, a contracted agent could be given the task of beginning the remaining enforcement hierarchy. The grand jury would contract with a private agent to accomplish these tasks (service of arrest, hearing security, follow-through of restitution and follow-through of punitive damages awarded). Since each security supplier would attempt to gain the grand jury contract for the community, co-operation between protective agents should develop. (See LeFevre's hypothetical situations.) The grand jury could be aided by a type of "sheriff" for the local community — the grand jury chosen by lot and the sheriff elected from among the individuals of the community. Payment to these suppliers could be made as in Model A, above.

Model C. Pure Competition and Specialists (Bounty Hunters). This model represents a market only environment. All entities in the community would be responsible for their own security needs, as principals, with an unlimited ability to contract with any agent. Contracts would be awarded for protection (first level of hierarchy). If a violation occurs, a specialist (rather akin to today's bounty hunter) could be hired to effect the remaining components of the enforcement hierarchy.

#### 7. Indemnification and Insurance

If one considers protection as the only valid "enforcement" activity (after LeFevre), there are several alternatives to the activities of restoring the victim and punitive damage.

The first is an indemnification of the principal, should he suffer loss while em-

ploying an agent for security. It is common for security companies to assess a client's property prior to offering security service. This assessment pinpoints activities or improvements a client should do to fully protect himself and/or his chattels. This assessment limits the security contractor's liability should a loss occur connected with the weaknesses detected in the assessment. This present practice could be easily extended in a free nation. A protection agent could indemnify a client (principal) against any loss suffered during the contract period. It is a valid assumption that part of the contract negotiations would center on the amounts of indemnity to be paid for various possible occurrences. Private agents could also re-insure themselves against possible losses resulting from a violation of a client's person or chattels.

The second alternative is for the principal to insure himself against loss with a specialized insurer. It is a valid assumption that substantial premium discounts would be granted to entities who contract with a security agent. Such insurers would also be able to inform clients of the effectiveness of various security contractors.

#### 8. A Warning

All protective activities should be conducted in as de-centralized a fashion as possible. Current public law enforcement suffered a great decline in community responsiveness and local accountability when the United States federal government began to "assist" local public agencies. If one surveys local police department practices prior to alcohol Prohibition, one finds that police officers conducted foot patrols of neighborhoods and enjoyed personal relationships with residents on their "beat." A simple, inexpensive "call-box" was used for reporting incidents and verifying officer safety. These practices are still the norm for private security companies. However, public departments have suffered from federal interference since Prohibition (many local police refused to enforce the Volstead Act). Since that date, the federal government has mandated standards and practices for local law enforcement officials and extended control of local departments by the use of federal matching funds, property seizures, and grants (bribes). The result is a community alienated from its "protectors" and understandably suspicious of intervention in their private affairs. Police officers have also

suffered a disassociation from those whom they purportedly serve. An entire police sub-culture now exists — the public is now the "enemy."

## 9. Conclusion

Today, the private security industry is growing four times faster than appropriations for public law enforcement. It has been calculated that private agents can supply the same services at one-fourth to one-third of the cost of current public law enforcement. Security in a free nation would be inexpensive, readily available, and very effective.  $\Delta$

## Notes

<sup>1</sup> This same condition applies to the concealed carry of weapons in North Carolina. The "Bayonet Constitution" of 1868 prohibited citizens' ability to carry concealed weapons — only commissioned government law enforcement officers are granted this ability.

<sup>2</sup> "Criminal activity": For the purposes of this presentation, criminal activity includes only those acts which injure or cause the loss of one's person or chattels by the use of force or fraud.

<sup>3</sup> "Property Rights": For the purposes of this presentation, property rights include those rights normally referred to as "personal rights." The term "chattels" is used to denote real or personal property.

<sup>4</sup> LeFevre, Robert, *The Libertarian* (Orange, CA, 1985), pp. 38-49.

<sup>5</sup> "Free Nation": For the purposes of this article, I am assuming no governmental units exist in regards to law enforcement, except for those listed under #6, Model B.

*Scott E. McLaughlin of High Point, NC, is President and CEO of Key Security Services, Inc. Mr. McLaughlin's company provides private security guards and patrol officers to a wide variety of industrial and institutional clients in the Piedmont region of North Carolina. Mr. McLaughlin also serves as the current Chairman of the Libertarian Party of North Carolina, and represented the Party as its gubernatorial nominee in 1992.*

**Libertarians:**  
**STOP COMPLAINING**  
**START BUILDING**  
**Join the**  
**Free Nation Foundation**

# Liberty and Taxes: How Compatible Are They?

by Charles Adams

The Greeks achieved the first major civilized society without despotism, or what we call totalitarianism. The great civilizations of Egypt, Babylon, Persia — even the Greek tyrants — were all developed with an



Charles Adams

absence of any freedom or liberty. Why, asked the astute Greeks, was civilization incompatible with liberty? The answer seemed obvious. Tyranny was the consequence of the wrong kind of taxes; and liberty was the product of the right kind of taxes. What then are the wrong and right kinds of taxes? Or to put it another way, what kinds of taxes are compatible with a free society?

First we have to recognize that taxes are the fuel that makes totalitarianism possible. Big, over-blown, over-regulating, over-policing governments require big taxes. Without large revenues, tyranny cannot live very long. Conversely, as long as governments have big revenues, liberty hasn't a prayer. Libertarians, even so-called conservatives, who hope to reform the United States should realize that their archenemy is the revenue system, and they won't get to first base as long as a huge tax and spending system is in operation. They could almost win their battle by attacking the revenue

system and bringing it down to a moderate size. Simplistic, but true.

According to the Greeks and Romans, the culprit was *direct* taxation; *i.e.*, taxes assessed directly upon the individual — head taxes, wealth and property taxes, and production or income taxes. Adopt these kinds of taxes and liberty will suffer; eventually it will be lost. The great Roman lawyer Cicero put the matter in shocking terms:

"If any government should find itself under the necessity of levying a tax on property, the utmost care has to be devoted to making it clear to the entire population that this simply has to be done because no alternative exists short of complete national collapse."

The Founders of the United States believed the same thing. Madison said a direct tax will only be instituted during an "extraordinary emergency." James Wilson, whom many believe was the real architect of the Constitution, said the same, using the words, "in all cases of an emergency." Another Framers said, "direct taxes should not be used but in cases of absolute necessity." And another wrote, "Nothing but some unforeseen disaster will ever drive the [federal government] to such ineligible expedients." No one ever questioned the wisdom of these remarks.

Unfortunately, even indirect taxes have produced a terrible tyranny in the post-medieval period. The excise tax was invented by the Spanish in the 15th century and it brought about the collapse of the largest empire the world has ever known. The leading Spanish historian of our age observed:

"Spanish industry was strangled by the most burdensome and complicated system of taxation that human folly can devise ... The taxpayer overburdened with imposts was entangled with a network of regulations to prevent evasion ... He was crippled at every stage by the deadly influence of the anomalous and incongruous exactions."

The Spanish excise was an indirect tax of 10% that was paid every time goods, and even real estate, were transferred. It later was adopted by the great Netherlands empire, and it brought down that superpower as well. In 1691, a British visitor to Holland said this:

"Should we in England be obliged to pay the taxes that are here imposed, there would be rebellion upon rebellion. And yet after all that is here paid, no man may bake his own bread, nor grind his own corn, nor brew his beer, nor dare any man keep in his house a

handmill, although it be but to grind mustard or coffee."

It was the good sense of the British to have steered clear of heavy excises, and this kept the price of British goods low on all world markets, permitting the British to replace both the Spanish and Dutch as the leaders in world trade and to become the superpower for the next two centuries. By the beginning of the 20th century, America had become the new superpower, and it did so with a tax system which was about as low as possible for a civilized society. "America was a land of liberty," said Thomas Paine, "because it was a land of low taxes." George Washington had Paine's pamphlets distributed to his troops at Winter Quarters in Valley Forge during the dark days of the Revolution. Paine said, "Government at best is a necessary evil, at worst, an intolerable one." That is as true today as it was then — and people living in the United States ought to know it!

There is no particular form of taxation that will guarantee liberty. It is true that direct taxes have a history of destroying liberty, but, as noted, so have indirect taxes. The common denominator of a tax that is compatible with liberty, is moderation. This ethical principle was given to us by the Greeks, especially by Aristotle in his *Ethics*. We know it as the doctrine of the golden mean. It was also the foundation of the ethics of Adam Smith. Virtue was the middle ground between too much or too little: Courage was the middle ground between being rash or being a coward. So it is with a good tax system in its *rates* of tax, its *means* of enforcement, and its *intrusions* into the lives of the people. And in a democratic society, a law to be just must mete out equal treatment to all, so we have to add uniformity and equality to a tax system, *i.e.*, "common to all" as was expressed at the Constitutional Convention in 1787. Δ

*Charles Adams of Williamsville, N.Y., is an international tax lawyer and an Adjunct Scholar at the Cato Institute. He holds a degree in history and philosophy from Whittier College and a doctor of law degree from UCLA, and is the author of For Good and Evil: The Impact of Taxes on the Course of Civilization (Madison Books, 1993).*

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## The Power of Ostracism by Richard Hammer

This paper was presented at our  
15 October 1994 Forum

In this paper I will introduce a few ideas about ostracism, a social tool which can have great power.

People who have studied libertarian theory more than I often take positions which I



Richard Hammer

question. I may want to believe what they are saying, but I find it difficult. An important example for us has to do with contentions about the way that private legal systems could work. Take, for instance, the idea that defendants, charged with wrongdoing, would come to court voluntarily. This sure does not seem likely. But I must recognize that my expectation, that this would never happen, is rooted in the culture in which I was raised. In this culture that would never happen. Possibly in a different culture, which I may need to work to imagine, it might happen.

About ostracism, there are four points that I want to make. And I will organize this paper around these four points. They are:

- 1) Ostracism can have great force.
- 2) Ostracism works in private spaces, not in public spaces.
- 3) Ostracism gets its power from reality.
- 4) The power of ostracism is limited — by reality.

1) Ostracism can have great force.

1 a) Ostracism can mean death.

Ostracism can have great force. To show this I will start by repeating the account that Roderick Long has given us in the previous issue of *Formulations*. ("Anarchy in the U.K.: The English Experience With Private Protection," *Formulations*, Vol. II, No. 1 (Autumn 1994).) In England, before the Norman conquest, ostracism could mean death:

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

Outlaws then were people who were outside the protection of the law.

Bruce Benson gives a similar example in his book, *The Enterprise of Law* (page 18). Describing a primitive tribe in New Guinea:

"... when the offender would not accept a judgment that the group considered to be just, the offender could be declared an outlaw. His reciprocal arrangements for protection were no longer in force, so anyone in the confederation was obligated to pursue him, either killing him or driving him from the area (which presumably would also lead to his death)."

I have one more story which shows that the ultimate strength of ostracism could mean death, in primitive, pre-state societies. This comes from fiction, from the novel *The Clan of the Cave Bear*, by Jean Auel. The clan, which was a group of cave-dwelling Neanderthals, could punish members by banning them from the clan for a period of time, after which the offender could return. In extreme cases the banishment would be permanent. The assumption was that this would mean death; that a person cut off from the mutual supports of the clan could not survive alone in that environment.

In the story this happened to the heroine.

She had committed an unforgivable offense; she had used a weapon, and weapons were supposed to be touched only by men. So the clan's ruling council of men met to decide her fate. It was not an easy decision for them, because, if I recall the story correctly, she had used the weapon, a sling, to kill a hyena which was carrying away the infant son of the clan leader. And the infant was still alive, so she had saved his life. But nonetheless, rules are rules, and they banished her — expecting that would be the end of her. I will return to this tale when I am making my fourth point, later on.

1 b) But ostracism can also have lesser force, scaled to the infraction.

These examples show, I believe, that ostracism can have the power to inflict the punishment which we normally consider the ultimate punishment, death. If you accept this, then it should be easy to believe in the possibility of lesser punishments, which also might be meted out by ostracism. Thus I would assert, the power of ostracism can adjust to the scale of the infraction.

It seems to me that life is full of examples that illustrate the lesser powers of ostracism. An example is references: a person applying for a job typically is asked to supply references, and often enough those references are checked. Someone who burns their bridges behind them will soon find less avenues open before them.

We have an example in what happened to Tonya Harding. For her involvement in the attack on a rival figure skater, she was expelled from future participation in much of the sports world.

I have a story which I can tell from my personal experience, running a business. In my business of remodeling houses and building additions, there were a few times early on, when I was just getting started, when I wanted more work, so I advertised. But I never got a single customer from these ads. Because, as I now see looking back, people who are looking for a contractor to work on their house do not trust advertisements, which could be purchased by anybody. What they do is they ask around, among people they know and whose judgment they trust, and ask if anyone knows of someone who would be good for this kind of work. After I had been in business for several months I found that I had a steady stream of people calling me, asking me if I could do some work on their houses. All of

these came from referrals.

My story I suppose illustrates not ostracism, but the other side of the coin, the building of trust. I believe I could not have gotten into business if I had not left my customers satisfied. I think almost all business transactions assume trust at some level. Our willingness, in our interactions with others, to extend somewhat more trust than we have extended before, depends upon the trust which has been built thus far. And we have all kinds of ways we can cut each other off if ever the trust we have extended is violated.

One final example of the power of ostracism in business is given by the way merchants in mediaeval Europe policed themselves. They developed for themselves a system of law called the law merchant. Ostracism was the threat that made merchants comply with the judgments of the law merchant. If they wanted to stay in business they had to comply, because others would stop trading with them. A merchant who spurned a ruling of the merchant court stood to lose his customers, suppliers, or even his passage home — a ship owner who relied upon his reputation for his future business might be reluctant to accept the fare of a scofflaw.

No doubt each of us can think of many more examples of how ostracism works. But to wrap up this point, ostracism can have all the power it needs: from the minimal frowns with which we police mispronunciation of words, to refusals to come to the defense of one being attacked for committing murder or rape. I believe ostracism, in the right cultural environment, could conceivably be the only force necessary for enforcement of social rules.

**2) Ostracism works in private spaces, not in public spaces.**

This second point is something that I have been thinking about during the past few years. My ideas are still evolving, so I can not claim that I know I am right about all this, but it does seem to fit with other theory which I have been learning. So I assert: ostracism works in private spaces, not in public spaces.

Let me start with an example. Consider the way you behave when you are in a private restaurant. This is a private space. You know that your behavior must conform to certain standards. Although people rarely talk about this, almost everyone who fre-

quents restaurants knows it without needing to talk about it. The owner can kick you out, and probably will kick you out if your behavior deviates from acceptable norms. And it works quite well, I would say. Behavior in private restaurants is, for the most part, policed satisfactorily.

Now, let me give definitions of what I mean here by private space, and public space.

*Private space* is a space where some individual (or single clearly defined authority) can judge and decide what will happen in regard to that space. That is, the individual has clear property rights.

*Public space*, on the other hand, is space in which rules are made and enforced collectively, either through direct democracy or through some scheme of representation, legislation, and delegation of policing power.

Now for an example of a public space, consider the public street outside the restaurant. In the public street, behavior is policed, if at all, by collective process or government police.

Public spaces are not only spacial or geographic, but extend wherever law might extend. A class of behavior becomes public space, I believe, when it is regulated by legislation. For instance, practices such as hiring and firing are now regulated so that employers often are restrained from exercising either ostracism or (the other side of the coin) trust. Control over employment practices, when legislated, becomes public space, a space in which the power of ostracism can no longer act effectively.

What causes the creation of public spaces? I am aware of three causes:

1) Government prohibits private property rights outright by declaring public ownership. An example is the public roads.

2) Government overrides private property rights, piecemeal, through regulations which take from private parties the choices which formerly characterized private ownership. Examples are laws regarding employment practices and building codes. Decisions constrained by government, such as the placement and number of electrical outlets in private residences, become public space.

3) Private property rights are uneconomic, too expensive to establish and maintain. This is true, for example, in frontiers not yet populated.

Now I am not saying that public spaces go completely without control. Policing does happen in public spaces. And commonly most citizens understand the ways that antisocial behavior in public space can be policed. Three of these ways are: 1) They can take upon themselves the role of public enforcer. But this is normally risky, unsupported and ineffective. 2) They can call the police. 3) They try a longer term approach such as phoning their elected representative or writing a letter to the editor of their newspaper. But, when it comes to policing behavior in public spaces, few if any people have clear authority of the sort found in private spaces, of the sort that the owner of a restaurant has.

We can see the difference between public spaces and private spaces in another light if we consider anonymity, the condition in which the identity of a person is not known. Anonymity is for the most part, I think, a feature of public spaces. Private property owners always have the right to know who you are if you are in their space. Or, they may be willing to accept not knowing your identity provided they have some other assurance that your behavior in their space is somehow constrained. Public spaces are spaces in which a person can escape being known. Public spaces, by their very existence, provide wrongdoers, people who would suffer ostracism in private spaces, with a way to escape a history of wrongdoing. And public spaces provide wrongdoers a way to travel into a new community where they might receive, once again, the benefit of the doubt as honest persons.

Another example here has to do with body language and rude behavior regarding pressing into the space of another person. I am sometimes annoyed by the behavior of some drivers on the public roads. This might be tailgating, or flashing lights to demand passage, or cutting me off. But notice that this is happening in a public space which has, by virtue of being public, these two features:

1) *Anonymity* — the offender probably expects never to face the person who is the brunt of their rude behavior, and expects that no memory of the offence will ever

come back to burden him.

2) *Honest ambiguity* about the rules and uncertainty about enforcement of the rules. I may think the person I call the offender is breaking a rule, but that person may think the same of me.

In a private space such rules could be set simply and efficiently, by the proprietor. In a public space the amount of civic energy, which would be required to decide and enforce such rules, frustrates those who might favor such rules. Thus this particular aspect of the public space will probably remain completely unpoliced.

To wrap up this point, I assert that ostracism fails as a tool in enforcing social behavior only where the existence of some public space strips ostracism of its power. Now I believe this enough that I challenge you to tell me of an example where you believe ostracism would fail to police unwanted behavior. And then I will take the challenge to try to show that, in the circumstances you describe, you must be assuming the existence of some public space.

3) Ostracism gets its ultimate power from reality.

Just as reality limits what any one of us as an individual can do (I cannot expect to run a four-minute mile), reality likewise limits what any group of individuals, or society, can do (I would maintain that the United States could not have landed a man on the moon during the decade of the 1940's). This limit gives ostracism its ultimate power.

I will try to establish this point by giving a few examples. First consider restraints on violence, perhaps the most obvious need of social order. This ostracism is sustained by reality because, in the competition to survive, a society which did permit unprovoked violence may not survive. Now the individuals ostracized for their violence could try to live alone, not a happy prospect, or could try to form a new society which did permit unprovoked violence, but, my point is, that would not work either. External, extra-societal reality backs up this ostracism.

My next example is less obvious, and therefore I think is more likely to be a subject of debate. Consider a society which values honesty, uprightness in contract, and which therefore ostracizes liars and cheaters. It will prosper better than other societ-

ies, I contend, because of economics. These economics regard the benefits of being able to plan, and the cost of policing. Regarding planning: the most beneficial projects which may be undertaken in a society often require a long time frame, and it makes sense to undertake these projects only if that society offers some certainty in the future, if an investor can have confidence that contracts will be fulfilled. Regarding the cost of policing of promises: this is achieved with the least expense if people police themselves. Therefore ostracism of liars and cheaters is backed up by economic reality.

Incidentally this sustenance of honesty and contract may explain in part, I think, the economic success of Western civilization.

4) The power of ostracism is limited — by reality.

When a society tries to impose rules upon an individual who does not agree with the rules, then the individual may decide to relinquish membership in that society. If the individual can then live successfully outside the society (carrying on in ways that would violate the rules within the society) this proves that the rules were not necessities imposed by external reality, but rather were matters of taste or values incidental to the requirements of life. If a society becomes foolish in the rules it tries to impose, then many members will exit and live quite successfully outside that society. Here we see a limit on the power of ostracism.

For an example, consider prohibition, the attempt by the American government in the early 1900's to prohibit the drinking of alcoholic beverages. A great many people who chose to ignore the rule were able to continue their lives successfully. This limited the power of those who attempted to enforce the rule.

And I find another example in the novel *The Clan of the Cave Bear*. The heroine was a woman of exceptional capability. In spite of being banished by the clan she was able to carry-on, alone for a few years, till she found new society.

## Conclusion

Now, pause a minute to look at these last two points: that ostracism gets its power from reality, yet its power is limited by reality. We see that reality empowers only certain types of ostracism. Reality, I suggest, empowers ostracism of acts which libertarians would call real crimes, crimes

which have victims. But it does not empower ostracism of victimless crimes. Ostracism has just the power which libertarians would like a law enforcement agency to have.

Ostracism is a tool which most of us do not think of when we think of public problems. And this is reasonable because public space can be policed only by public action. But I would encourage you to learn to recognize public spaces, which are not only pieces of real estate but are also any domains, of choice or action, regulated by government law. And once you recognize that a mismanaged space is public, ask how behavior in that space might differ if the space were private, and if therefore the power of ostracism were returned. Δ

*Richard O. Hammer, of Hillsborough, NC, to advance the work of the Free Nation Foundation, is giving himself sabbatical leave from his small business of building houses one stick at a time. He is active in local politics in Orange County, North Carolina, and writes columns in the local paper, interpreting political events in a libertarian frame. In the past he worked as an engineer and management scientist.*

## Slavery Contracts and Inalienable Rights: A Formulation by Roderick Long

### Liberty vs. Self-Ownership?

Libertarianism stands for maximum individual liberty — and thus against any kind of slavery. Yet libertarianism also stands for self-ownership; and what I own, I have a right to sell. Apparently, then, libertarianism countenances the legitimacy of selling oneself into slavery, and enforcing the slavery contract against those who change their minds. Thus it seems that the ideals of self-ownership and sanctity of contract can come into conflict with the ideal of maximum liberty and the rejection of slavery. How can this conflict be resolved?

On this issue, libertarians are divided. Robert Nozick, in *Anarchy, State, and Utopia*, maintained that slavery contracts were permissible and indeed enforceable. Since Nozick is the only libertarian most academic philosophers have ever read, many of my colleagues, knowing my libertarian sympathies, assume that I too favor slavery contracts.

Yet the idea that there are *inalienable* rights — that is, rights of which one cannot voluntarily divest oneself — is one of long standing in the classical liberal tradition, from Richard Overton and John Locke in the



Roderick Long

17th century to the Declaration of Independence in the 18th; and the doctrine of inalienable rights was taken to rule out slavery contracts.

My own view is that we do have inalienable rights, and so that slavery contracts are *not* legitimate, and should not be permitted, much less enforced, by the laws of a Free Nation. But I need to explain why this should be so, and why I do not think it a departure from the icy-pure libertarianism I cherish to deny people the "freedom" to sell themselves into slavery. Let me try.

### Supply-Side Virtue Ethics

Moral theorists are fond of dividing ethical theories into two varieties: *consequentialist* theories, according to which the rightness of an action is a matter of its having beneficial *consequences*, and *deontological* ("duty-centered") theories, according to which the rightness of an action is a matter of its falling under the appropriate *rule*. But in recent years, many moral philosophers have begun to revive a different approach to ethical questions, one with roots in Greek antiquity. For the Greek moralists, the central question of ethics was not "What rules should I follow?" or "What consequences should I promote?" but rather "What kind of person should I be?" For the Plato-

nists, Aristoteleans, Stoics, and their modern admirers, the rightness of an action is a matter of its expressing the *virtues* — that is, those attitudes and dispositions of character that best exemplify what it means to be truly human. This ethical approach is known as Virtue Ethics — and I might as well confess immediately that it represents my own ethical convictions as well.

One distinctive feature of Virtue Ethics is that, to borrow a distinction from Douglas Den Uyl, it represents a *supply-side* rather than a *demand-side* approach to ethics. According to a demand-side ethics, the way that A should treat B is determined primarily by facts about B, the *patient* of moral activity; but for a supply-side approach like Virtue Ethics, the way that A should treat B is determined primarily by facts about A, the *agent* of moral activity.

Let's apply this distinction to the special case of *justice*, that virtue which determines the proper sphere for the use of violence among human beings. My having a right consists, at least primarily, in other people having an obligation to act toward me in certain ways; those others act *justly* insofar as they respect my rights. The rights-bearer is thus defined as the *patient* of just activity. A demand-side conception of justice, then, would focus on the rights-bearer; its primary concern would be to determine the features of human beings in virtue of which they *possess* rights.

It seems to me — though not all Virtue Ethicists agree — that a Virtue Ethics approach should reverse this direction of scrutiny. In questions of justice, the focus should be, not on the person *qua* moral patient, the *bearer* of rights, but on the person *qua* moral agent, the *respector* of rights. In other words, from the supply-side perspective of Virtue Ethics, the moral agent's main question in matters of justice should be, not "What it is about other people that requires me to respect their rights?" but rather "What is it about me that requires me to respect the rights of others?"

Virtue Ethicists, particularly those in the Aristotelean tradition, see the aim of the moral life as one that best expresses what it means to be truly human, as opposed to erring on the side of either the subhuman or the superhuman; for example, Aristotle counsels us to live the life of a human being, not the life of a beast or a god. The cowardly, the stingy, the sensualistically self-indulgent, pay too much respect to their animal

side, their vulnerable embodiedness, and neglect the divine spark within them; the rash, the spendthrift, the ascetically self-restrained, pay too little respect to their animal side in their quest to divinize themselves. Only the courageous, the generous, the temperate find the distinctively human path, the Golden Mean between less-than-we-can-be and more-than-we-can-be.

### Justice for Humans

How does this apply to justice? Well, just as courage, generosity, and temperance are the virtues that define the appropriately human attitudes toward danger, giving, and bodily pleasures respectively, so the virtue of justice defines the appropriately human attitude toward violence. A maximally human life will give central place to the distinctively human faculty of *reason*; and one's life more fully expresses this faculty to the extent that one deals with others through *reason* and persuasion, rather than through violence and force. To choose cooperation over violence is to choose a human mode of existence over a bestial one.

Hence the virtuous person will refrain from initiating coercion against others. But what will the virtuous person's response be to the initiation of coercion on the part of others? In this case, cooperation is not an option, and so the moral agent is not faced with a choice between cooperation and violence. Still, it might be thought that the most human response would be one that forswore self-defense in favor of continuing attempts at persuasion, even in the face of implacable aggression. But this, in my judgment, would make the opposite error from the one the initiator of violence makes; to submit passively to aggression is to try to live a superhuman life, and to value our vulnerable embodiedness too little. Forswear the initiation of violence, but employ violence when necessary to repel the initiatory violence of others; this TIT-FOR-TAT approach seems to me to best strike the Golden Mean balance between the subhuman aggression of the criminal and the superhuman aspirations of the pacifist. Our obligation to abstain from the initiation of coercion translates into a right, on the part of others, not to be aggressed against. On the other hand, since we have no obligation to refrain from self-defense, no right is generated on the part of others to aggress against us. In short, libertarianism. (For more on the issue of self-defense, see my "Punishment vs.

Restitution: A Formulation," in *Formulations*, Vol. I, No. 2 (Winter 1993-94).)

### Sticky Rights

So what has any of this got to do with slavery contracts? Well, if a person's rights consist primarily, not in moral facts about the rights-bearer, but in moral facts about other people, then the rights-bearer cannot simply dispose of his or her rights. You cannot, by a simple act of will, release me from my obligation not to coerce you, since that obligation depends on my calling as a human being, something that is not in your control. Hence, on the supply-side conception of justice, no one can divest him or herself of the right not to be coerced. In short, the right to liberty is inalienable.

In forbidding A to sell him or herself into slavery (or, more broadly, any kind of indentured servitude) to B, then, we do not in any way infringe upon A's liberty; for what A is offering to do is to transfer to B the right of decision over A's life and actions; but in fact this right *cannot* be transferred, as it is not under A's control. Thus A's offer to sell this right is fraudulent; A is trying to sell something that is not hers to sell.

### How are Contracts Possible?

One objection that is sometimes raised against the defenders of inalienability is this: If slavery contracts are impermissible, how can any room be made for ordinary contractual obligation? After all, suppose I have contracted with you to perform some service — say, to paint your dog. If I break our contract and refuse to paint your dog, can you — or the law, acting on your behalf — legitimately *force* me to paint your dog? It seems not. For in ordinary circumstances, forcing me to paint your dog would be a morally unacceptable act of aggression. How can the fact that I *agreed* to paint your dog make any difference? After all, on the view I've been defending, no mere act of will on my part can free you from your obligation not to aggress against me. But if I cannot legitimately be *forced* to fulfill my side of the contract, it seems that contracts in general are unenforceable, and so legally void. This seems to present an unpromising prospect for a political philosophy like libertarianism, committed as it is to the free-market economy — which relies so crucially on the principle of contract.

Here I adopt the solution offered by libertarian legal theorist Randy Barnett. Sup-

pose I offer to paint your dog for 200 drakhmas. You give me the 200 drakhmas, whereupon I pocket the money and skip town. On my view, you cannot legitimately force me to paint your dog; that would be involuntary servitude. But you *can* force me to give back the money; for you only transferred it to me *on condition* that I paint your dog; since the condition has not been met, the transfer has not gone through, and so I am holding on to your property without your consent. (I also think I can be required to pay you damages, as restitution for the value I have destroyed by depriving you of the use of your money during the intermediate period; for more on restitution, see my article cited above.) Thus, contracts can legitimately be "enforced" in the sense that a person who has received some consideration in exchange for an unperformed service can be required to pay back the consideration. Even "slavery contracts" could be enforced in that sense; for example, if, in exchange for 2000 drakhmas, I agree to do whatever you want, for the rest of my life, then if I ever back out of the contract (which I am free to do at any time), I have to pay you 2000 drakhmas (plus damages) — but I may not legitimately be forced to fulfill the contract. (If I do not presently have the money to pay, then I simply have a debt, like any other.)

### Down with Slavery!

All this has been pretty abstract and theoretical. But what it boils down to is that nothing can release us from our obligation to behave like human beings toward one another, rather than like animals. Our classical liberal forebears fought a long hard battle against slavery, that disgrace upon human civilization. Two centuries ago, a newborn Free Nation's compromise with slavery started it down the path that eventually destroyed its freedom. As for our future, a Free Nation that undertook to enforce slavery contracts would not be a Free Nation worth fighting to build or to defend.

We welcome debate. Δ

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

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## Review:

# The Spontaneous Order of Money

by Eric-Charles Banfield

A review of

## Monetary Evolution, Free Banking, & Economic Order

by Steven Horwitz  
Westview Press, 1992

Most people, even some libertarians, accept that the functions of government include "things the market cannot provide." Anarchists quickly cite the many scholars who have demonstrated that, indeed, markets can and do provide charity, roads, schools, and even courts and defense. Recently, economists have addressed the more-difficult issue of free banking and competitive note issue. Apparently, we don't really need government to provide money, either. The market can and has provided it.

Prominent free-banking theory architects include Friedrich Hayek, Richard Timberlake, Lawrence H. White, George Selgin, Richard Salsman, and Kevin Dowd, each welding more solid girders to the free-money framework. Now Steven Horwitz weighs in with *Monetary Evolution, Free Banking, & Economic Order* (1992, Westview Press, Inc., 5500 Central Avenue, Boulder, CO 80301-2877, 201 pp., \$63 publisher's list, but \$24.95 from Laissez Faire Books at 800-326-0996). Horwitz politely and professionally shatters the fundamental basis on which people believe only government can provide money. To Horwitz, money evolves via a Mengerian process of creative adaptation into an institution, a social function that helps people coordinate their actions and deal with complexity. Horwitz shows that government-provided money must be inherently unstable, and that a free market in money allows the highest degree of order.

Written from his doctoral thesis and rich with references, Horwitz's book starts off developing a solid theoretical foundation, resting on the role of individuals in developing social mechanisms, much like language, that allow institutions like money to communicate knowledge. Only with this

understanding, Horwitz argues, can we establish what money means; only then can we understand money's "centrality to economic order" [p. 2]. That crucial step is omitted by all theorists who in the past have proposed



Eric-Charles Banfield

increased government control over money.

Chapter One explains what's wrong with current monetary economic orthodoxy. Classical and neoclassical economists attempt a "scientific rendering" of the invisible hand [p. 16], using Walrasian and Marshallian general-equilibrium models that assume perfectly liquid markets and inherently imply no need for money! Those models ignore

1) that all things have a degree of "moneyness," [p. 22]; 2) why certain goods do become money [p. 26]; 3) how monetary feedback affects choices [p. 25]; and 4) the possible imperfections of government [p. 37].

To Horwitz, money reduces the information needed to communicate [p. 27], providing information about excess supplies [p. 28] and allowing more complexity to be coordinated [p. 30].

Chapter Two focuses the reader on the evolution of order instead of on the attainment of "equilibrium" (always a questionable economic modeling requirement.) Economic conventions such as money are natural processes, and so should not be compared against some non-existent ideal standard, but rather on how well they provide order [pp. 49, 66]. People in a society develop behavioral rules as recognizable modes of behavior that allow players to

interact [pp. 51-54]. "Successful rules become crystallized and regularized" [p. 55]. Order evolves as people use *creativity* to institute *coordinating* mechanisms to deal with increasing *complexity* [p. 59]. Those three "C's" provide the basis for much of the analysis throughout. Horwitz also cites Hayek's distinction about law (open-ended guides about what not to do) versus legislation (closed-ended dictates of what one must do), noting wryly that America's current product-liability system has lots of formal "laws" (legislation) but no real rules or order [pp. 68, 71].

Chapter Three beautifully compares the evolution of money to that of language -- a communicative processes arising naturally out of an "unconscious power of adaptation" [p. 91] that "expands the range of freedom available to an individual" [p. 94]. More than a tool, money is an institution, a "tradition" [p. 98]. Both money and language make private information socially available" [p. 97]; markets are the text, and money is the context [pp. 102-104].

Chapter Four examines how money can evolve spontaneously. He points out, to the surprise (or dismay?) of gold bugs and 100%-reservers, that some degree of fractional-reserve banking is a *natural* and perhaps necessary part of the evolution of the market process. Banks evolve because people want more than just gold warehouses. The free market theoretically and empirically allows deposit expansion and permits the money stock to exceed the existing stock of "specie" (the underlying commodity, e.g., gold) [p. 115]. As he puts it later, opportunity cost, not central banking *per se*, is the driving force behind the evolution toward fractional-reserve banking [p. 136]. Not all of the "inflation" of money (via central banks' artificially-low reserve requirements) is without economic basis, Horwitz implies here.

As part of this monetary evolution, "brand names" and clearinghouses perform valuable social functions by reducing information costs. They unintentionally help increase the general acceptability of notes. Among banks, refusal to clear mutually each other's currency notes would be harmful to both parties. [pp 118-119].

Horwitz shatters the "false dichotomy" (false choice) between central bank rules and central bank discretion in monetary policymaking [pp. 126-133]: Neither can work well. He follows with a clear explanation of how free banking would work in the context of the "monetary equation of

exchange," or  $MV=PY$ . In that tautology (true by definition), money (M) times its turnover (V, for velocity) must equal the prices of all goods (P) times the quantity sold (Y). A free-banking system holds the quantity  $MV$  constant (adjusting one to offset the other). Since  $MV$  must equal  $PY$ , as the economy (Y) moves, prices move the other way [p. 134]. Growth would lead to lowering prices. But then wouldn't downturns accompany inflation? Horwitz doesn't say. But his illustration is still an exercise in clear thinking.

Free banking, notes Horwitz, has built-in safeguards against excessive note issuance, as the clearing system internalizes the costs of overissuing notes to the specific offending bank. Clearings and redemptions offer an immediate, condensed indicator of how the market values a bank's notes [pp. 138-139]. All of this natural, harmonious balance comes from "the polycentric actions of multiple note issuers" [p. 140].

Chapter Five shows in good detail how the banking panics of 1893 and 1907, which led to the creation of the Federal Reserve and fiat money, are shining examples of how increased legal restrictions created currency shortages and how the "unplanned and fragmentary coordination of the private sector" [p. 149] worked to ameliorate the problems. State bond-collateral requirements, reserve requirements, and branching prohibitions prevented the system from providing currency as the market demanded [pp. 150-154]. Much of that demand was stoked by the *Sherman Silver Purchase Act of 1890*, which, by introducing silver-backed notes, dramatically increased the money supply, and, in Horwitz's terms, "created uncertainty about the future of the money standard" [p. 156].

But markets, skirting the silly laws [p. 124], created currency substitutes to restore order. Small-denomination clearing certificates, cashier's checks, bearer paychecks, and other notes circulated as currency. The informational content of money was enhanced by endorsements, advertisements, editorials, store acceptance policies, and note discounts and premiums. Bank directors even personally endorsed checks at other locations, and some banks refused to accept large bundles of notes if they were drawn on sound banks [pp. 164-166]. Even J.P. Morgan, despite his apparent abuses of political power, played a private-sector role in re-establishing trust in the monetary

system [pp. 168- 169]. In sum, in the real world, markets did what theorists said they wouldn't: provide order out of chaos [p. 168]. That's because "money is what people decide it is" [p. 170], and "order emerges as part of an undesigned process of evolution" [p. 173].

For a work based on a doctoral dissertation, *Monetary Evolution* is remarkably clear and accessible, even to monetary-theory neophytes. Readers encounter only a few minor problems. On page 135, Horwitz explains how, in a free-market process, unclaimed reserves properly become the basis for further loans, or what he calls a natural, internal "pyramiding" of more liabilities (deposits) on current reserves. Later, on p. 156, he says a factor in the 1893 and 1907 panics was the external "domino effect of reserve pyramiding," a process that results, presumably, from artificial legal restrictions. Horwitz did not distinguish clearly these differing phenomena. Also, he uses the term "high-powered money," assuming the reader knows that's reserve money (gold or notes) that can be used to increase the money supply.

Otherwise, readers familiar with some economics will have few problems. It's a great book for any economist, banker, or investor, if they like thinking theoretically or if they seek real-world examples of spontaneous monetary order. *Monetary Evolution* is highly-interdisciplinary, focusing, on social science, economics, evolution, history, and language. Horwitz moves easily among the stylings of Menger, Hayek, Mises, Gadamer, Polanyi, and even Marx, Lange, and Keynes.

For the anarchist, Horwitz's fine work carries a clear, academic, professional tone, politely smashing statist arguments without any of the acid-tongued sarcasm or hatred offered by many anti-government writers. Otherwise, any student of human spontaneous order will benefit from Horwitz's clear and eloquent expositions on how individuals work without central direction to develop ways of making our lives better.  $\Delta$

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*Eric-Charles Banfield, owner of Banfield Analytical Services in Westmont, IL, spe-*

*cializes in writing, speaking, and analysis of financial, economic, and public-policy issues. A former bank assistant treasurer, Eric has spoken before the Federal Reserve Bank of St. Louis and is author of The Bailout of the FSLIC: How The Government Defrauded the Taxpayers.*

## Imagineering Freedom: A Constitution of Liberty Part II: Defining Federal Powers by Roderick T. Long

In this article I continue my presentation of the provisions of my Virtual-Canton Constitution. The last installment (in *Formulations*, Vol. I, No. 4) covered the Preamble and Articles 1.1.1-1.2.10, which dealt with the structure of a hypothetical Free Nation, designed as a compromise between anarchism and minarchism.

Below is an outline of the entire Constitution; the sidebar marks the sections covered in the present installment.

- Preamble
- Part One: Provisions Subject to Amendment
  - 1.1 The Government of the Free Nation [1.1.1-5]
  - 1.2 The Federal Legislature [1.2.1-17]
  - 1.3 The Federal Executive [1.3.1-8]
  - 1.4 The Federal Judiciary [1.4.1-16]
  - 1.5 The Virtual Cantons [1.5.1-9]
- Part Two: Provisions Not Subject to Amendment
  - 2.1 Provision for Amendments [2.1.1-2]
  - 2.2 Bill of Rights [2.2.1-18]
- Part Three: Amendments

To review the last installment: Under this proposed Constitution, the Government of the Free Nation is composed of a Federal Administration and a number of Virtual Cantons. These Cantons are like states for purposes of political representation, but they are not territorial entities. The Federal Administration provides a framework for resolving disputes among Cantons and providing a national defense. Citizenship (a prerequisite for taxation) is completely optional for residents of the Free Nation.

The Federal Administration is divided into Legislative, Executive, and Judicial

branches. The Legislature is bicameral, with one house (the Parliament) representing the Virtual Cantons, and the other (the Negative Council) representing the Citizens as a whole; it takes a two-thirds vote for the Parliament to pass legislation, and only a one-third-plus-one vote for the Negative Council to repeal it.

We now continue the listing of the powers of the Legislature, begun last time.

**1.2.11** All elected officials in the Federal Administration shall, at stated times, receive for their services a compensation to be determined by the Legislature; but such compensation shall be neither increased nor diminished during the period for which they shall have been elected, and shall in any case exceed the average Citizen's income (to be determined as in 1.2.10) by no more than  $m_5$  percent.

(Reminder: the value of variables like " $n_5$ " would depend on conditions in the society in which the Virtual-Canton Constitution was to be implemented.)

This provision, combined with the strict term limits set down in 1.2.2-3, prevents Legislators from raising their own pay; they can only raise the pay of their successors, which they have less incentive to do.

Nor shall any Federal officer receive any compensation in any year in which the Federal budget is not balanced (nor may any budget item be declared "off-budget").

Simply *declaring* that the budget must be balanced may not be sufficient to bring it about; politicians can always insist that an emergency justifies a deficit. This way, the Legislature can approve an unbalanced budget if it so chooses, but must forgo salary in order to do so; this should provide the proper incentives.

**1.2.12** The Federal laws (unlike the Canton laws) shall apply to anyone within the territory of the Free Nation, whether Citizen or not.

The purpose of these laws, after all, is to *protect* the rights of Citizens from aggressors, including aggressors who are not Citizens; so its prohibitions against aggression must apply to non-Citizens. Since various provisions of this Constitution are designed to ensure, first, that there are as few

Federal laws as possible, and second, that these laws are restricted to the enforcement of libertarian rights, this provision does no wrong to non-Citizens.

**1.2.13** The sum total of Federal laws may not exceed one million words. Any Federal laws passed after this limit has been reached, no previous laws having been repealed, are void and unlawful. Also, each Federal law, before being passed, must be read aloud, at normal speed, to a quorum of each house of the Legislature. These provisions may not be evaded by attempting to give the force of law to documents that are not Federal laws by passing Federal laws which merely refer to these documents.

Watching C-Span beats a horror movie any day, as before our eyes our "representatives" in Congress enact, without reading them, one phone-book sized thicket of legislation after another and another — every fine-print line of which is a threat of violence against somebody somewhere. This provision would make such conduct impossible.

**1.2.14** It shall be the duty of the Federal Legislature to refuse their assent to, or to repeal, any laws in conflict with the Constitution of the Free Nation.

**1.2.15** The deliberations of the Legislature shall be open to public view and record.

**1.2.16** The Legislature may not delegate its legislative authority to any other person, body, or bureau.

These last three provisions are self-explanatory.

**1.2.17** Each house of the Legislature, subsequent to the first election, shall be divided by lot into three classes, as nearly equal as possible, with one class retiring at the end of the third year, another at the end of the fifth, and another at the end of the seventh.

This provision, borrowed from the U. S. Constitution, is designed to ensure continuity by preventing all the Legislators from coming up for re-election at the same time.

Temporary vacancies in the Negative Council shall be made up by the Execu-

tive until an election can be held. Temporary vacancies in the Parliament may be made up in such manner as the laws of the relevant Canton may direct.

Since the Members of Parliament are representatives of the Virtual Cantons rather than being elected by popular vote, the method for replacement should be determined by the Cantons. Logically, then, the method of replacement for the popularly-elected Councillors should be determined by the people at large; but I take the people at large to do precisely this by signing this Constitution with the provision as it stands.

### 1.3 The Federal Executive

**1.3.1** The Federal Executive shall be composed of three Citizens: the President of the Parliament, elected by majority (or plurality) vote of the Parliament; the President of the Negative Council, elected by majority (or plurality) vote of the Negative Council; and the President of the Free Nation, to be elected by majority (or plurality) vote of the Citizens. The will of the Executive is to be determined by a two-thirds vote of the Presidents.

After having just freed themselves from subjection to a foreign monarch, many of our nation's Founders were apprehensive about the strong figure of the President in the U. S. Constitution, fearing that in giving so much unchecked power to a single person, the Constitution was simply reestablishing a monarchy. Hence, many of the Antifederalists — opponents of the Constitution — argued in favor of a "plural executive." They suggested that the power of the President should be shared between two people, as in the Roman Republic, so that each could serve as a check on the other. (A slight concession to this worry appears in the U. S. Constitution's original provision, since abolished by Amendment, that the Vice-President should be the President's main rival for office, rather than a "running-mate" selected by the President himself.)

A problem with having *two* Presidents, though, is that there is no way to break a tie. Gridlock is a good thing as a rule, I think, but if there is *too* much the system will simply shatter under the impact of political forces it cannot channel. Hence the attraction of a *three*-person Executive, where one member can always break a tie between the other

two. And if you're going to have three, then it seems natural (in order to ensure some diversity of interests among them) to make them representative of different groups.

Each President shall serve a term of no longer than five years; no President may serve more than one such term consecutively or three such terms non-consecutively.

In other words, term limits — for the usual reasons.

The Executive term of the President of either house of the Legislature shall expire prematurely on the expiration without renewal of said President's Legislative term.

Since two of the Presidents will also be Legislators, some provision needed to be made for cases in which the Legislative term expires before the Presidential term does. This is it.

The President of the Parliament may be recalled as the Parliament's rules of procedure may direct; the President of the Negative Council may be recalled as the Negative Council's rules of procedure may direct; the President of the Free Nation may be recalled by national referendum as detailed in 1.1.4.

This simply requires that each member of the Executive be recalled by the body he or she represents.

**1.3.2** The Executive shall from time to time publicly give to the Legislature information of the state of the nation, and recommend to their consideration such measures as the Executive shall judge necessary and expedient.

This provision, borrowed from the U. S. Constitution, doesn't really give the Presidents any power, and so seems harmless enough.

**1.3.3** The powers of the Executive shall be restricted to the following:

a) to be Commander in Chief of the military, when called into the actual service of the Free Nation (but this shall not be construed

to extend to the Executive the power to initiate military action);

b) to make treaties and to appoint ambassadors and other public officers, by and with the advice and consent of two-thirds of each house of the Legislature, and to commission all the officers of the Free Nation;

c) to receive ambassadors and other public ministers;

I see foreign policy as the principal function of the Federal Administration; the main point of having a Federal Administration at all is to enable the Free Nation to turn a governmental face toward other nations so as to gain in their eyes the crucial legitimacy that a newborn libertarian country would need in order to avoid being trampled by established nations intent on "restoring order." Hence I have assigned the Free Nation's three Presidents a role emphasizing foreign policy, while inserting the restriction in (a) to prevent a repetition of the abuse of the Commander-in-Chief provision by U. S. Presidents.

d) to convene, on extraordinary occasions, either or both houses of the Legislature (but the Executive shall not convene the Legislature at strange or difficult times or locations).

e) to sign or veto legislation as provided for in the section on the Legislature.

The other role of the Executive is to serve as a check on the Legislature; hence (e). As for (d), it seems there should be some procedure for determining quickly when and where the Legislature will meet in cases of emergency.

**1.3.4** In time of war, any President may delegate his or her decision-making authority to any other President, for a stated period revocable only by majority vote of both Presidents, and not to exceed three months (but renewable thereafter).

One objection sometimes raised to the idea of a plural executive is the inconvenience of having three Commanders-in-Chief needing to meet and vote on every military de-

cision. This provision makes it possible for the Presidents to designate a single Commander-in-Chief when necessary.

**1.3.5** Any President shall have power to grant reprieves and pardons for any offenses tried under the laws of the Free Nation, except in cases of impeachment.

**1.3.6** It shall be the duty of the Federal Executive to refuse assent to or execution of any laws in conflict with the Constitution of the Free Nation, and to grant reprieves and pardons to any persons accused of violating such laws.

The purpose of 1.3.5 is to authorize 1.3.6.

**1.3.7** The three members of the Executive, subsequent to the first election, shall be assigned terms by lot, with one retiring at the end of the first year, another at the end of the third, and another at the end of the fifth.

**1.3.8** The Legislature may by law provide for the case of removal, death, resignation, or inability of any member of the Executive, declaring what officer shall succeed to that office, and such officer shall act accordingly until the disability be removed or a new President shall be selected in the usual manner.

These are analogous to the corresponding Legislative provisions in 1.2.17.

## 1.4 The Federal Judiciary

**1.4.1** The Federal Judiciary shall be composed of a Supreme Court and an independent judiciary.

Here is another example of my attempt, in drafting this Constitution, to strike a balance between anarchism and minarchism, in order to produce a document with a higher degree of acceptability to both camps. As will become clear, my compromise solution combines aspects of the U. S. Constitution system on the one hand, and aspects of a private law system on the other.

**1.4.2** The Supreme Court shall consist of  $m_{\text{C}}$  Citizens, and shall judge by majority vote. Appointments to the Supreme Court, barring impeachment, shall be for an indefinite term, or until such age of

retirement as may be specified by law (except that legal changes in the age of retirement shall not affect the term of existing appointments), and shall be made by the Executive and confirmed by a majority vote of both houses of the Legislature.

**1.4.3** The independent judiciary shall consist in a private judicial service or services, under contract to the Federal Administration. Such contracts are to be established and revoked by majority vote of both houses of the Legislature. Such private judicial service shall be considered a division of the Federal Judiciary (and thus of the Government under this Constitution) for the duration of its contract and no longer.

**1.4.4** Cases brought before the Federal Judiciary shall be first heard by the independent judiciary; the Supreme Court shall serve as the final court of appeal, but may refuse to hear any appeal.

Under a pure market anarchism, there would be competing protection agencies and competing judicial services. Astute consumers would be wary, I should think, of a protection agency that provided its own judicial services; a more likely scenario is that protection agencies would contract with an independent judicial service, one that had other customers besides that one protection agency. Such a judicial service would be more likely to render an unbiased verdict. I have incorporated the anarchistic element into my judicial system as far as possible; the vestigial governmental element is the Supreme Court.

**1.4.5** Fees for Federal court services shall be determined by Federal legislation.

Recall that, by Article 1.2.7, Federal tax revenues must be applied to "paying the debts and providing for the common defense of the Free Nation." In other words, no provision has been made for funding the Judiciary through tax revenues; this service is expected to pay for itself, through user fees.

**1.4.6** The power of the Federal Judiciary shall be restricted in the first instance to the adjudication of disputes

- among the branches of the Federal Administration (except disputes to which the Federal Judiciary is a party), or

- between the Federal Administration and a Canton, or
- between the Federal Administration and a Citizen, or
- between the Federal Administration and a non-Citizen, or
- between one Canton and another, or
- between one Canton and members of another, or
- between members of different Cantons, or
- between a Canton and its own members, or
- between a Canton and non-Citizens, or
- between Citizens and non-Citizens, or
- among non-Citizens.

**1.4.7** In addition,

- disputes among members of the same Canton may be adjudicated by the Federal Judiciary if the laws of that Canton grant such jurisdiction to the Federal Judiciary;
- disputes to which the independent judiciary is a party may be adjudicated by the Supreme Court;
- disputes to which the Supreme Court is a party may be adjudicated by the independent judiciary, without appeal to the Supreme Court; and
- disputes between the Supreme Court and the independent judiciary, and disputes to which the Federal Judiciary as a whole is a party, may be adjudicated in such manner as the Legislature may determine.

**1.4.8** Disputes between the independent judiciary and other divisions of the Government are to be adjudicated as provided by contract.

These provisions, while complicated-sounding, are governed by two considerations: First, the Federal Judiciary — and indeed the Federal Administration as a whole

— is meant to be a mere adjunct to a thriving Canton system. The Canton system is basically an anarcho-capitalist competitive system, and the Federal Administration serves as a kind of safeguard — "anarchy with a net" — to resolve disputes if and when the competitive system breaks down. Thus, in the interests of Canton sovereignty and autonomy, the Federal Judiciary is denied jurisdiction in cases of disputes between members of the same Canton (unless the Canton consents).

Second, it is never desirable for any department of the government to be allowed to serve as a judge in its own case. Hence the bars to self-judgment in 1.4.7.

**1.4.9** No person shall be convicted, sentenced, or imprisoned without due process of law, including the right to trial by jury and habeas corpus, and there shall be no detention without trial, nor shall any person either before or after trial be held incommunicado. An accused person shall be assumed innocent until proven guilty. A person who has been arrested, detained, imprisoned, tried, or sentenced either illegally or in error shall receive restitution. At every stage of criminal process, an accused shall be informed of the charges against him or her, and to the privilege of counsel. An accused who does not speak the language in which the proceedings are conducted shall be provided without expense the services of an interpreter.

**1.4.10** The right of the people to be secure in their persons, dwellings, vehicles, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized; nor shall any person be subject for the same offence to be twice put in jeopardy of penalty; nor shall any be compelled in any criminal case to be a witness against him or herself, nor be deprived of liberty or property without due process of law. Where illegally obtained evidence is judged to be admissible in court, those who obtained it remain subject to criminal prosecution.

Most of these provisions are self-explanatory. Let me simply touch on three points

that may require explanation.

First, the final clause of 1.4.10 (inspired by a similar provision in the Oceania Constitution) offers an alternative to the law of evidence in force today. Officially, under the current system, if Officer Eager is shown to have acted illegally in obtaining the evidence that proves Boss Scum is guilty, then both wrongdoers go free. Under this provision, on the other hand, both Officer Eager and Boss Scum would be prosecuted.

Second, much of the language in these Articles is borrowed from the U. S. Constitution, but I have altered that language so as to avoid the endorsement of the death penalty implicit in the original. While I am against the death penalty, and indeed against any punishment beyond forcible restitution to the victim (see my "Punishment vs. Restitution: A Formulation," in *Formulations*, Vol. I, No. 2 (Winter 1993-94)), I have not placed any explicit prohibition of the death penalty in this Constitution (except insofar as 1.4.14 below might be interpreted to exclude capital punishment — but I have left the interpretation of that Article to the Judiciary). In general I have tried to avoid having this Constitution take a stand one way or the other on issues that divide libertarians (capital punishment, abortion, animal rights, intellectual property rights, and so forth) — not because I think these issues unimportant (I have strong stands on all of them), but because I am trying to design a document that can appeal to libertarians across the broad spectrum of our particular differences.

Third, some readers have asked me why the various judicial rights enumerated here are placed where they are, among the provisions subject to amendment, rather than in the Bill of Rights (Section 2. 2), which cannot be amended. I'm somewhat uncomfortable about this myself, but I do have my reasons; however, they can be explained more clearly when we get to the subject of amendments.

**1.4.11 The Judiciary shall have no power of compulsory witness, nor of compulsory jury empanelment.**

There will be a prohibition of involuntary servitude in the Bill of Rights, but since the presence of a similar provision in the U. S. Constitution has failed to prevent these judicial practices here, it seemed worth excluding these forms of involuntary servitude more explicitly.

**1. 4. 12 It shall be the chief aim of judicial**

**adjudication to secure restitution for the victim to the fullest degree possible at the expense of the criminal or wrongdoer. Likewise, the government (whether Federal or Canton) shall as far as possible make full restitution for all loss suffered by persons arrested, indicted, restrained, imprisoned, expropriated, or otherwise injured in the course of criminal proceedings that do not result in their conviction. When they are responsible, government employees or agents shall be liable for this restitution.**

Much of this language is borrowed from the Libertarian Party Platform. Note that I say "chief aim" rather than "sole aim," in order to accommodate those libertarians who desire a role for punishment in the judicial system.

**The claim of a victim (or class of victims) to restitution shall be a marketable claim, which may be acquired through gift or sale (or, in the case of deceased victims, through bequest or homesteading).**

Judicial systems relying on user fees have been criticized for giving no protection to the poor. Likewise, judicial systems emphasizing restitution and victim-directed prosecution have been criticized for providing no incentives for defending the claims of victims who die without close friends or relatives. The provisions in this passage are meant to overcome these difficulties. The marketing of claims to restitution worked fairly well in mediæval Iceland. (See my "The Decline and Fall of Private Law in Iceland," in *Formulations*, Vol. I, No. 3 (Spring 1994).)

**1.4.13 The victim shall have the right to direct the prosecution in criminal cases, so far as is consistent with full respect for the rights of the accused.**

**1.4.14 Excessive bail shall not be required, nor excessive fines imposed, nor torture or other cruel, unusual, or degrading treatment inflicted. Convicted criminals shall not have their liberty restricted except so far as is necessary for the protection of others, nor their property seized except so far as is necessary to make restitution to the victim and to pay the costs of the criminal's capture and trial.**

**1.4.15 It shall be the duty of the Federal Judiciary to strike down as void and unlawful any laws, whether Federal or Canton, in**

**conflict with the Constitution of the Free Nation.**

These are pretty self-explanatory, but 1.4.14 may require some comment. Does this provision rule out punishment? No.

First, it is up to the Judiciary to decide whether punishment as such counts as "cruel, unusual, or degrading treatment." I would vote yes if I were on the Supreme Court; but I haven't forced that decision on others.

Second, those who consider punishment a *deterrent* to crime may treat such deterrence as making punishment pass the test of a restriction on liberty "necessary for the protection of others." Again, that is not how I would interpret it if I were on the Supreme Court; but this is precisely the sort of dispute we may want to leave to the judicial process in order to increase libertarian consensus on the basic political structure.

**1.4.16 The Federal Judiciary shall not construe any part of this Constitution to be without effect, or to be judicially unenforceable.**

The point of this provision is to forestall the sort of shocking neglect that the U. S. Supreme Court and various statist scholars have given to the Ninth and Tenth Amendments. (Chief Justice Rehnquist has referred to the Bill of Rights as "the first eight amendments," and his would-be colleague Robert Bork declared the Ninth Amendment "meaningless" and urged judges to ignore it.) Δ

To be continued

## Defending a Free Nation (from p. 24)

My reasons for this position have been set out in some detail both in FNF Forums and in recent issues of *Formulations*, so I'll just summarize the main points briefly:

First, government is unjust. Government, by definition, requires its citizens to delegate to the ruler all or part of their right to self-defense. (An institution that does not require this is no government, but something else.) But to "delegate" a right involuntarily is no delegation at all; the right has simply been obliterated. And I do not see how this can be justified. By what right does one group of people, calling itself a government, arrogate to itself the right to take away the rights of others? (As for taxation and conscription, I can't see that these are anything more than

fancy words for theft and slavery.)

Second, government is impractical. Government is a monopoly: it prohibits competition and obtains its revenues by force. It thus faces far less market pressure, and its customers are not free to take their money elsewhere. As a result, governments have little incentive to cut costs or to satisfy their customers. Hence governments are, unsurprisingly, notorious for inefficiency, wastefulness, and abuse of power.

So, since I don't want a government, I obviously don't want a government military. However, even in societies that do have a government, I think it's still a good idea not to have a government military. A government which has an *army* that it can turn against its own citizens is a lot more dangerous than a government that doesn't. That's why so many of this country's Founders were so adamantly opposed to a standing army, seeing it as a threat to domestic liberty (see, e.g., the Virginia Declaration of Rights, drafted by George Mason). (A standing navy worried them less because it's harder to impose martial law on land by means of sea power! If the United States had been an archipelago of islands, they might have thought differently.) In this country today, U. S. soldiers are reportedly being asked whether they would be willing to shoot American citizens! A free nation needs to find a less dangerous way of protecting its citizens.

### The Dangers of Centralization

Centralized government poses yet another threat to a nation's liberty. The more that control over a society is centralized in a single command center, the easier it is for an invading enemy to conquer the entire nation simply by conquering that command center. Indeed, invaders have historically done just that, simply taking over the power structure that already existed.

By contrast, a society in which power is decentralized lacks a command center whose defeat or surrender can deliver the entire nation into bondage. For example, during the American Revolution the British focused their energies on conquering Philadelphia, at that time the nominal capital of the United States, on the assumption that once the capital had fallen the rest of the country would be theirs as well. What the British failed to realize was that the United States was a loose-knit confederation, not a centralized nation-state, and the government

in Philadelphia had almost no authority. When Philadelphia fell, the rest of the country went about its business as usual; Americans were not accustomed to living their lives according to directives from Philadelphia, and so the British troops ended up simply sitting uselessly in the occupied capital, achieving nothing. Hence Benjamin Franklin, when he heard that the British army had captured Philadelphia, is said to have replied, "Nay, I think Philadelphia has captured the British army."

### The Dangers of Decentralization?

Having pointed out how excessive centralization can make a nation more vulnerable to foreign domination, let me also point out a respect in which extreme *decentralization* might seem to pose a similar threat.

In the fourth century B.C., the mass murderer we fondly remember as Alexander the Great conquered nearly all of the area we know today as the Middle East. If you want to read a terrifying story, put down the latest Stephen King novel and pick up Arrian's *Campaigns of Alexander*, which in dry and matter-of-fact style records how this erratic psychopath and his tired and aging army somehow swept like lightning across the shattered remnants of the Persian Empire, conquering city after city after city after city ....

Now if the various cities had organized some sort of collective defense, and attacked Alexander simultaneously, they would have destroyed his army. Hundreds of thousands of lives would have been saved, and hundreds of cities would have kept their freedom. Instead, the cities faced Alexander one by one, each confident of its own unassailability. And one by one they fell.

This might seem to show that some sort of centralized defense is needed in order to provide effective security. But I don't think it shows exactly that. It does show the need for *organization* — for collective, concerted, cooperative action. But not all organization should be viewed in terms of a top-down hierarchical model in which a central authority issues directives and imposes order on the lower ranks. The key to defending a free nation is to have a system of security decentralized enough to lack a command center the enemy can capture, but organized enough so that the invader must face a united collective defense, not a series of individual skirmishes.

In other words, the key is:

## ORGANIZATION WITHOUT CENTRALIZATION

Organization Without Centralization, then, is the goal. How to realize that goal is, of course, another matter.

### An Encouraging Note

It is admittedly a difficult balance to strike. Before we despair, however, we should notice that the goal we are trying to achieve is relatively modest. The defense of a free nation will be limited to just that: defense. No military interventions around the globe, no imperialism, no foreign adventuring, no gunboat diplomacy. Which means that a free nation's defense budget will be *much cheaper* than those of its potential enemies. If we put that fact together with the fact that a free nation is also likely to have a much more prosperous economy than its enemies have, we can see some reason for optimism.

### Let the Market Take Care of It

Most libertarians have heard the joke. "How many libertarians does it take to change a lightbulb?" "None, the market will take care of it."

Perhaps we can give the same answer to worries about national defense. As students of Austrian economics (see, e.g., the writings of F. A. Hayek) we know that the free market, by coordinating the dispersed knowledge of market actors, has the ability to come up with solutions that no individual could have devised. So why not let a solution to the problem of national defense emerge through the spontaneous order of the market, rather than trying to dictate ahead of time what the market solution must be?

In a sense I think that is the answer, but it's incomplete. As students of Austrian economics (see, e.g., the writings of Israel Kirzner), we also know that the efficiency of markets depends in large part on the action of *entrepreneurs*; and on the Austrian theory entrepreneurs do not passively react to market prices (as they do in neoclassical economics), but instead are actively alert to profit opportunities and are constantly trying to invent and market new solutions. I see our role in the Free Nation Foundation as that of intellectual entrepreneurs; our coming up with solutions is part of (though by no means the whole of) what it means for the market to come up with solutions. We *are* the market.

The lightbulb joke captures the Hayekian side of libertarian economics, and Hayek's insight is an important one. But before following Hayek in a tirade against the evils of "constructive rationalism," we should remember to balance the Hayekian insight against the equally important Kirznerian insight that the working of the market depends on the creative ingenuity of individuals.

I would thus suggest a different ending to the joke: "How many libertarians does it take to change a lightbulb?" "I'll do it, for a dollar."

### The Three Economies

In short, then, although we cannot hope to predict precisely what solutions the market will come up with, it's worth trying to figure out what could work — and indeed, like good entrepreneurs, try to influence the market process in the direction of the solutions we like. (In any case, we'll have an easier time getting people to join the free nation movement if we have something to tell them about how we propose to defend the nation we hope to found!)

In attempting to devise solutions to the problem of national defense, we need to make sure that we're not limiting our search to an excessively narrow range of options. In this context I find extremely useful a distinction that was first explained to me by Phil Jacobson. Jacobson pointed out that one can distinguish three kinds of economy: the Profit Economy, the Charity Economy, and the Labor Economy. (I'm not sure I'm using Jacobson's exact terminology, but never mind.) In the Profit Economy, the people who want some good or service X can obtain X by paying someone else to provide it. In the Charity Economy, the people who want X can obtain it by finding someone who will give it to them for free. In the Labor Economy, the people who want X can obtain it by producing it themselves. As Jacobson notes, when free-market anarchists start looking for voluntary private alternatives to government, they tend to think primarily in terms of the Profit Economy — while left-wing anarchists, on the other hand, tend to think primarily in terms of the Labor Economy. Yet in any real-world market system, all three economies coexist and interact, in different combinations depending on culture and circumstances.

Suppose, for example, that a family emergency arises, and I need more money than

my regular income supplies. How can I get the extra money?

I might take a second job, or get a loan. Both these solutions are available through the Profit Economy; if I take the job, I am paying for the money with my labor; if I get a loan, I am paying for the loan through interest payments. In either case, I solve my problem by finding someone who will help me in exchange for some good or service I can offer.

Or I might appeal to a private charity, or to a government welfare program — or obtain an interest-free loan from a friend. In this way, I would be getting my money through the Charity Economy: I find someone who will help me for free.

Or I might cut down on expenses by growing my own food in my garden; or perhaps I could draw on the pooled resources of a mutual-aid organization like those I have described in "How Government Solved the Health Care Crisis: Medical Insurance that Worked — Until Government 'Fixed' It" (*Formulations*, Vol. I, No. 2 (Winter 1993-94)) and "Anarchy in the U.K.: The English Experience With Private Protection" (*Formulations*, Vol. II, No. 1 (Autumn 1994)). This solution involves the Labor Economy: I find some way of helping myself (perhaps in concert with others who are helping themselves).

In looking for free-market approaches to national defense, then, we should be sure to consider ways in which each of Jacobson's "three economies" might be able to help.

### Defense via the Profit Economy

In the literature of market anarchism, the most commonly offered solution to the problem of *domestic* security is the private protection agency. (I shall assume general familiarity with this theory. For more details, see, e.g., David Friedman's *Machinery of Freedom*, Murray Rothbard's *For A New Liberty*, and Bruce Benson's *Enterprise of Law*.) In this context, the most obvious solution to the problem of *national* security is simply to have the protection agencies (or some of them, or a consortium of them) offer to sell protection against foreign invaders as well as domestic criminals.

Some market anarchists, like David Friedman, are sympathetic to this solution, but pessimistic about its viability. The difficulty is that national security poses a much greater *public goods problem* than domestic security, because it is much harder to ex-

clude non-contributors from the benefits of national security — and if non-contributors can't be excluded, there's no incentive to contribute, and so the agencies selling this protection can't gain enough revenue to make it worth their while.

In previous issues I have explained why I do not regard the public goods problem as a terribly serious difficulty. ("The Nature of Law, Part I: Law and Order Without Government," *Formulations*, Vol. I, No. 3 (Spring 1994); "Funding Public Goods: Six Solutions," *Formulations*, Vol. II, No. 1 (Autumn 1994).) So I won't say much about it here.

There are other problems associated with a Profit Economy solution. A united military defense seems to require some degree of centralization in order to be effective, and there is the danger that a consortium of protection agencies selling national security might evolve into a government, as the Anglo-Saxon monarchs in the Middle Ages, thanks to the pressure of constant Viking invasions, were able to evolve from military entrepreneurs providing national defense in exchange for voluntary contributions, to domestic dictators with the power to tax and legislate.

This danger might be especially pressing if the consortium's soldiers are more loyal to the consortium than to the clients. Political authors from Livy to Machiavelli have warned against the use of foreign mercenaries rather than citizen soldiers, because it is easier for a government to turn foreign mercenaries against its own citizens. A vivid example of this was seen during the Polish government's attempt to crack down on the Solidarity movement in the 1980's; when a crowd had to be crushed and beaten, the government used Russian troops, because they feared Polish troops might be divided in their loyalties. (This perhaps gives us some reason to view with alarm the increasing use of multinational U.N. forces by Western governments.)

But the problem is perhaps not insuperable. A consortium of defense agencies would lack the mantle of legitimacy and authority available to a king or government, which would make a power grab more difficult. Moreover, the citizens of a free nation would presumably be armed; and the freedom of any people against an encroaching government rests, in the final analysis, on their possession of arms and their willingness to use them. (Hence governments bent on

consolidating their power have generally followed Cardinal Richelieu's advice to the French monarchs: disarm the people, disband local militias, and monopolize access to weapons in the hands of the central government. But Machiavelli advised the opposite, since he saw an armed populace as an integral part of national defense; thus, like such earlier political thinkers as Xenophon, he would have regarded today's advocates of gun control as unwisely weakening their nation's security against invasion.<sup>1</sup> In any case, whether a government or would-be government can succeed in disarming the people ultimately depends on the vigilance of the people themselves; and for this I know no automatic formula.)

### Defense via the Charity Economy

People donate money all the time to causes they care about. And the more prosperous they are, the more they donate. Unless libertarian economics is hopelessly wrong — in which case we might as well give up now — people in a free nation would be extremely prosperous. And they would presumably care about national security. So we can predict that a great deal of money could be collected for purposes of national defense by charity alone. Since, as mentioned above, the financial needs of a truly *defensive* national defense are relatively modest, charity could easily be a major source of defense funds.

Let me mention two problems that occur to me. First, there's the matter of determining the appropriate *recipient* of these donations. How could such a recipient be prevented from misusing the weapons it purchases? In essence this is simply the problem of a consortium turning into a government, which was discussed above. The subject of how to prevent libertarian anarchy from evolving into government again — and perhaps a worse government than the one the anarchist system displaced — is a vitally important issue, but one too vast to consider in depth here. (I think this would be an excellent subject for a future FNF Forum.)

The second, related difficulty is this: As I mentioned in "Funding Public Goods: Six Solutions" (*Formulations*, Vol. II, No. 1 (Autumn 1994)), large companies will have a motive — namely, good publicity — to donate large sums to national defense (just as they now improve their image by donating to environmental causes, etc.). That's the

good news. But the bad news, seemingly, is that these contributions might enable such companies to skew national security decisions in their favor (analogous to large corporations like United Fruit / United Brands getting the U.S. military to intervene to promote corporate interests in Guatemala — or oil companies getting the CIA to oust Mossadegh in Iran; for details, see Jonathan Kwitny's *Endless Enemies*).

But I think this would be much less of a problem in a market anarchist society than it is today. Government *magnifies* the influence of the rich, because government decision-makers do not own the money they control, and so are willing to spend a larger sum to promote corporate interests than they actually receive from those interests in the way of bribes and campaign contributions. Private protection agencies' costs would be internalized, and so the corporate class would be deprived of this crucial lever. (This would not make it utterly ineffective; for my worries on this score, see my article "Can We Escape the Ruling Class?" (*Formulations*, Vol. II, No. 1 (Autumn 1994)). But it would significantly decrease its power.)

### Defense via the Labor Economy: An Armed Populace

I think both the Profit Economy and the Charity Economy are viable as providers of defense services. There are admittedly problems about trusting the providers of those services, but I think those problems may be soluble.

But to the extent that it is dangerous to delegate the power of national defense, perhaps a significant degree of *self-help* should be an important ingredient in any national security package. As mentioned above, an armed populace is the ultimate safeguard of a nation's liberties, against threats both foreign and domestic.

A possible drawback to a heavy reliance on armed civilian-based defense is that it cannot take effect until the enemy has already entered the country — at which point it might seem that the cause is hopeless. But Machiavelli, in his *Discourses on Livy*, argues persuasively that it is better to meet the enemy on your own home ground rather than his — *if*, he adds, you have an armed populace. If your populace is *not* armed, he warns, you should engage the enemy as far from your own soil as possible.

I have often heard it said that it takes roughly three times as many troops to in-

vade a country as to defend it; the defender knows the territory better, does not face hostile locals, and has a much shorter and so less vulnerable supply line. Many military theorists have argued that the South might have won the Civil War if they had stayed put and relied on sniping and guerilla warfare against the invader instead of marching forward to meet the Northern troops on equal terms, in regular battle array. The armed citizenry of Switzerland has long posed a powerful deterrent against potential invaders, enabling that country to maintain peace and freedom for what in comparative terms is an amazingly long time. (Of course, having your country surrounded by Alps doesn't hurt!)

An armed populace, then, may be a viable defense. But recall the lesson of Alexander: unless an armed defense is *organized*, an invader can simply pick off individual armed neighborhoods one at a time. What is needed, then, is some kind of citizens' militia. But a militia called up and directed by a centralized government poses difficulties we've mentioned already. The key, remember, is: ORGANIZATION WITHOUT CENTRALIZATION.

The best kind of militia, then, might be one organized along the following lines. Begin with a number of local neighborhood militias, run by their members on a democratic basis — the military equivalent of the mutual-aid societies discussed in previous issues of *Formulations*. A number of these local militias get together to form a county militia, which in turn combines with others to form a statewide militia, and so forth — so the ultimate National Militia would be organized as an "association of associations" (the French anarchist Proudhon's formula for what should replace the state), with power and authority running from bottom to top rather than top to bottom. (As for manpower, although many militias have traditionally relied on conscription, this seems unnecessary; if a nation is genuinely under attack — as opposed to engaging in foreign interventions — there is never a shortage of volunteers. And where the populace is used to bearing and handling arms, the training period required for new recruits would be shorter.) Members of each militia would elect their commanding officers (as American soldiers did during the Revolutionary War), and so on up to the commander-in-chief of the National Militia. This bottom-up approach, replacing the top-down ap-

proach of a traditional military, would make it much more difficult for the supreme military leader to seize power. Such a militia might well be able to achieve the goal of organization without centralization.<sup>3</sup>

This model might have to be changed somewhat in order to be adapted to a minarchist rather than an anarchist society; we would need to think about whether or not to make the commander-in-chief of the militia subordinate to the libertarian government. Both a yes and a no seem to pose dangers. I welcome suggestions on this topic.

### Defense via the Labor Economy: Nonviolent Resistance

Another possible form of organized self-help against an invader is the strategy of nonviolent resistance. This may sound impractical; yet sustained and widespread nonviolent resistance ultimately drove the British out of India, the French and Belgians out of the Ruhr, the Kapp Putschists out of power in Weimar Germany, and racial segregation out of the United States. Nonviolent resistance — "the secession of the plebs" — was also used effectively in ancient Rome by the plebeians against the Senate; and nonviolent resistance by war protestors in this country played an important role in ending the Vietnam War. Nonviolent resistance also had a significant impact against the British in the early phase of the American Revolution, and more recently against totalitarian governments during the Fall of Communism.

Nonviolent resistance often fails, of course, as the blood of Tiananmen should remind us. But violent resistance often fails too. It's worth considering whether, to what extent, and under what circumstances nonviolent resistance could be an effective tool of national defense.

Many theorists of nonviolent resistance — e.g., Tolstoy, Gandhi, LeFevre — advocate it primarily on ethical grounds, because they view the use of violence as immoral even in self-defense. I do not share this view. (For my reasons, see my article "Punishment vs. Restitution: A Formulation," in *Formulations*, Vol. I, No. 2 (Winter 1993-94).) But a recent article by Bryan Caplan ("The Literature of Nonviolent Resistance and Civilian-Based Defense," *Humane Studies Review*, Vol. 9, No. 1 (1994)) defend the superiority of nonviolent resistance on purely *strategic* grounds:

"The ability of the government to use violence greatly exceeds that of the rebels. Indeed, violent rebellion often strengthens oppressive regimes which can plausibly claim that rebel violence necessitates repression. Government's comparative advantage lies in violent action. The comparative advantage of the people, in contrast, lies in their ability to deny their cooperation without which it is nearly impossible for government to persist. Consider the deadliness to a government of tax strikes, boycotts, general strikes, and widespread refusal to obey the law. While these tactics are nonviolent, their universal and unyielding use should terrify any government.

Nonviolence has other advantages as well. Because it seems less dangerous and radical than violence, it more easily ... wins broad public support. The costs of participation are lower, so more people are likely to participate. Traditional noncombatants like children, women, and the old can effectively participate in nonviolent struggle. It is more likely to convert opponents and produce internal disagreement within the ruling class. It generally leads to far fewer casualties and material losses than violence. And since it is more decentralized than violent action, it is less likely to give rise to an even more oppressive state if it succeeds."

(Caplan, p. 6.)

To those who object that an oppressive government can simply mow down such defenseless dissenters, making nonviolent resistance impractical, Caplan replies that

"... ideology and consent — whether grudging or enthusiastic — rather than brute force are the ultimate basis of political power. If a large enough segment of the population refuses to comply with the government, it will lose its ability to rule. Merely the threat of non-compliance is often serious enough to provoke the government to redress grievances. Moreover, when governments use violence against protesters who are clearly committed to nonviolence, they undermine their ideological foundations and often make uncontested rule even more difficult. ... the very fact that the protesters remain committed to nonviolence even as the government turns to repression to combat them tends to win over previously

neutral groups, and inspire and involve other members of persecuted groups. [Gene Sharp] refers to this as 'political jiu-jitsu' — jiu-jitsu being a style of martial art that uses an opponent's aggressiveness and ferocity against him. ... insofar as it succeeds, it usually does so by converting opponents, making repression too costly to maintain, and threatening the very ability of the government to maintain power."

(Caplan, pp. 4-5.)

The rise of Christianity might be a good example of what Caplan is talking about; through their nonviolent resistance to persecution, the tiny sect won the sympathy and admiration of many Romans, and ultimately secured their conversion. (Unfortunately, after the Christians gained power, their attachment to nonviolence waned ...)

Caplan extends the idea of nonviolent resistance to the arena of national defense:

"... deterrents are not limited to standard military ones. Rather, it is merely necessary to make occupation so difficult that the costs of conquest exceed the benefits. Massive tax resistance, boycotts, incitement of desertion, and strikes might accomplish this. And, if a would-be conqueror realized that nonviolent techniques might make the costs of occupation skyrocket, he might be deterred from trying." (Caplan, p. 7.)

Nonviolent resistance to foreign invasion has had a surprisingly strong history of success, and Caplan cites many fascinating examples. He also notes that nonviolent resistance has sometimes been effective, at least in a limited way, even against the most brutal and totalitarian of invaders: "the nations which nonviolently resisted National Socialist racial persecutions [e.g., Norway, Denmark, Belgium] saved almost all of their Jews, while Jews in other Nazi-controlled nations were vastly more likely to be placed in concentration camps and killed." (p. 10.) But he stresses that nonviolent resistance could be far more effective through *organization*:

"... since most nonviolence has historically been sporadic and unorganized, it might be possible to increase its effectiveness through training and strategic and tactical planning. ... What would happen

if countries spent as much energy preparing for a nonviolent struggle as they do for a military struggle?" (Caplan, p. 6.)

Among possible stratagems for increasing the effectiveness of nonviolent resistance, Caplan suggests

"general education and training in the techniques of nonviolence, as well as a 'West Point' for training specialists; the wide-spread dissemination of publishing and broadcasting equipment to prevent invaders from seizing all of the means of communication; and local stockpiles ... to ease the pain of a general strike." (Caplan, p. 7.)

Caplan's main source for the ideas he discusses is Gene Sharp, who has devoted his career to investigating how the techniques of nonviolent resistance might be applied to the problem of national defense. Among the works by Sharp cited by Caplan are: *The Politics of Nonviolent Action*; *Exploring Nonviolent Resistance*; *Gandhi as a Political Strategist*; *Social Power and Political Freedom: Making Europe Unconquerable*; *National Security Through Civilian-Based Defense*; and *Civilian-Based Defense: A Post-Military Weapons System*. Caplan also cites dozens of other works on the subject; I shall simply mention two of the ones that sounded most interesting: *Civilian Resistance as a National Defense* by Adam Roberts, and *War Without Weapons* by Anders Boserup & Andrew Mack. I have not read any of these books, but I intend to.

I can also recommend two delightful science-fiction novels that illustrate these ideas: Eric Frank Russell's *The Great Explosion* and James Hogan's *Voyage From Yesteryear*. In *The Great Explosion*, a very funny and satirical book, bureaucrats and military brass from Earth attempt to reestablish Earth's control over the planet Gand, a world of anarcho-pacifists who successfully apply the techniques of nonviolent resistance to frustrate and/or win over the would-be invaders. In *Voyage From Yesteryear*, a less satirical, more realistic work, the basic plot is the same, except that the anarchist planet (now Chiron, not Gand)<sup>3</sup> is not pacifist, and its inhabitants are willing and able to use violence to defend their freedom. They do not rely on violence alone, however, but successfully blend violent with nonviolent

techniques to frustrate and/or win over the invaders, with the same result as in Russell's book. (On a rather different note, Vernor Vinge's novel *Across Realtime* tells the story of a government whose invasion of an anarchist society fails because rich crackpots holed up in the anarchist wilderness turn out to have been stockpiling privately owned nuclear weapons! Different strokes for different folks, I guess. All three books are well worth reading.)

I am, I suspect, somewhat less optimistic than Bryan Caplan is about the effectiveness of a purely nonviolent approach to national defense. I'm still inclined to rely on an armed populace, private protection agencies, and an organized but decentralized militia. (For a more cautious assessment than Caplan's of the effectiveness of nonviolent techniques, see Ted Galen Carpenter's "Resistance Tactics: A Review of *Strategic Nonviolent Conflict: The Dynamics of People Power in the Twentieth Century* by Peter Ackerman and Christopher Kruegler," in *Reason*, January 1995.) But Caplan's suggestions deserve our serious consideration. Perhaps the best solution would be one that, rather than either rejecting nonviolence altogether or relying on nonviolence *alone*, managed to integrate aspects of nonviolent resistance into a violent-if-necessary militia framework (thus following the example of Chiron rather than of Gand).<sup>4</sup>

In any case, I strongly endorse Caplan's closing plea for further research by libertarians into this area:

"Despite their distrust of state power and interventionist foreign policy, classical liberals have had a difficult time envisioning specific alternatives to violence to combat tyranny. The literature of nonviolent resistance is filled with penetrating insights in this area. And, while classical liberals frequently long for alternatives to both electoral politics and violence, specific suggestions have been sparse. These are merely a few gaps that the nonviolence literature may fill. On a more aesthetic note, many of the historical examples of nonviolence are beautiful illustrations of the power of voluntary institutions to supplement or replace the role of the state." (Caplan, p. 12.)

Who Will Defend Against the Defenders?  
On surveying the options, then, I would

argue that as libertarians we have reason to place confidence — albeit cautious confidence — in a three-pronged strategy for defending our free nation, should we be fortunate enough to get one.

- First prong: a regular high-tech military defense, supported by paying customers and charitable contributions alike.
- Second prong: an armed citizenry, organized into a decentralized militia.
- Third prong: organized nonviolent resistance.

These prongs might well be combined into a single fearful scimitar: a militia, collecting dues from its combatant members and contributions from noncombatants or nonmembers, and coordinating violent and nonviolent resistance through one and the same democratic structure.

This would be an impressive military force, I think. And it makes me wonder: what will protect other nations from us? As I read more and more ancient and medieval history, I come to realize that anarchic, decentralized, egalitarian, individualistic societies are not necessarily peaceful societies. The Celtic and Viking societies we admire so much as libertarian models were among the most effective raiders and conquerors in history. What is to prevent our free nation from itself becoming a threat to the security of other nations (and thus ultimately a threat to its own security, as those nations are provoked into attacking us)?

This worry might be reinforced by reading Machiavelli's *Discourses on Livy*, a book I have already cited several times now — and a much more interesting and important book, I think, than his more famous (or notorious) work *The Prince*. (The *Discourses on Livy* is not a libertarian book by any means; but it contains much for libertarians to ponder. What strikes a libertarian in reading it is the odd way in which Machiavelli manages to combine the *political* insight and perspicacity of an Isabel Paterson — with the *economic* insight of a log.)

Machiavelli argues that a free nation is the greatest possible threat to the freedom of other nations:

- free nations are more prosperous, and thus better armed;

- they are more politically stable, and thus harder to defeat through treachery;
- there is higher morale among their citizens, thus making them better soldiers;
- equal opportunity and free competition among citizens tend to reward, and thus to foster, what Machiavelli calls *virtù* (by which he means, not "virtue" in our sense, but a combination of self-discipline, boldness, and ingenuity — which are nice things to have in your own nation, but can be dangerous traits in a vigorous and aggressive nation next door);
- and the high standard of living enjoyed by free nations leads to an increase in population, thus creating a pressure to expand into the territory of their neighbors.

Machiavelli cites Rome and Athens as instances (see also the account of Athens in Thucydides' *History of the Peloponnesian War*, in particular comparing Pericles' panegyric to Athenian libertarianism at II. 34-46 with the Corinthian speech on the restless energy and *virtù* of Athenian imperialism at I. 68-71); today Machiavelli might add the United States. Of course there are counterexamples: Switzerland, for instance. And despite Machiavelli's brilliance, he

seems to have little understanding of the free market; his notion of a free society thus does not appear to include the concept of free trade, which nineteenth-century classical liberals favored in part because of its tendency to create ties of mutual dependence that discouraged war. Still, it is true that freedom, together with the technological progress that freedom brings in its train, has the effect of increasing people's options; and one goal one can better pursue when one's options have increased, is the decreasing of one's neighbors' options.

But maybe the solution is that the free nation's neighbors had better become free nations themselves! Δ

Notes

<sup>1</sup> Though Machiavelli may not be consistent on this point. He insists that it weakens a nation militarily to have a *disarmed* populace; but he also insists that it's dangerous in peacetime to have an *armed* populace — since, in the absence of an external enemy, they might turn their arms against the government. (Oh no!) But I suspect Machiavelli's solution would be to keep the nation constantly at war — since his model of an ideal nation is the Roman Republic, which Machiavelli praises precisely for its policy of permanent war, whereby it constantly and unceasingly expanded and gobbled up other people's territory. That way, since pesky peacetime never arrives, you get all the advantages of an armed

populace with none of the disadvantages. Since my aims are rather different from Machiavelli's (I want to *discourage* imperialism and *encourage* resistance to government, not the other way around), I can accept his analysis without sharing his precise recommendations!

<sup>2</sup> Phil Jacobson has pointed out to me that volunteer fire departments have historically succeeded in coordinating their activities with one another without centralized control; an unusually large fire in town A will bring in fire departments from towns B, C, and D as well. This example makes me wonder whether an association-of-associations militia would need a commander-in-chief at all.

<sup>3</sup> Gand is named, of course, after Gandhi. The significance of the name Chiron is harder to guess. In Greek mythology, Chiron was the centaur who tutored Achilles, and Hogan's use of the name may be a reference to the fact that the first generation of his Chironians were reared by robots rather than humans. Another hypothesis (somewhat less likely given Hogan's militant antipathy toward Christianity) is that Chiron is a pun on Chi-Rho, the traditional Greek abbreviation for Christ, signifying that the Chironians embody the true essence of Christianity.

<sup>4</sup> As this issue goes to press, the secessionist rebels in Chechnya are having a surprising, though sadly limited, degree of success in employing a mixture of violent and nonviolent techniques against Russian troops.

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## Defending a Free Nation by Roderick T. Long

This paper was presented at our  
15 October 1994 Forum.

### Defense: How?

How should a free nation defend itself from foreign aggression?

### Defense: Why?

This question presupposes a prior question: would a free nation *need* to defend itself from foreign aggression? Some would answer no: the rewards of cooperation outweigh the rewards of aggression, and so a nation will probably not be attacked unless it first acts aggressively itself.

On the other hand, if this were true, conflicts would never occur — since no one would make the first aggressive move. It's true that the rewards for cooperation are evident enough that most people do cooperate most of the time. That's what makes human society possible. If people weren't basically cooperative, no government could make them so — since the people in gov-

ernment would have as much difficulty working together as all the rest of us.

Still, a small but troublesome minority obviously do believe they're better off not cooperating: we call them criminals. Maybe they do tend to lose out in the long run — but on the way to that long run they cause a heck of a lot of damage to the rest of us.

More importantly, governments face different incentives from those faced by private individuals. Under a government, the people who make the decision to go to war are not the same people as those who bear the greatest burden of the costs of the war; and so governments are much more likely than private individuals to engage in aggression. Thus it's a mistake to model a nation-state as if it were a single individual weighing costs against benefits. It's more like a split personality, where the dominant personality reaps the benefits but somehow manages to make the repressed personality bear the costs. (Hence the superiority of private protection agencies: a protection agency that chooses to resolve its disputes with other agencies through war rather than arbitration will have to charge constantly

rising premiums, and so will lose customers to nicer agencies.)

That doesn't mean governments are completely isolated from the bad effects of war. Certainly the people in power will suffer if they *lose* the war, especially if their country is conquered by the enemy. And they can also share in the prosperity that peace and free trade bring. But the disincentives for war are much weaker for governments than for individuals — which means that it's a dangerous world out there, so a free nation needs a defense.

### Why Not a Government Military?

Most societies, at least in this century, handle the problem of national defense by having a large, well-armed, permanent military force, run by a centralized government, funded by taxation, and often (though not always) manned by conscription. Is this a solution that a free nation can or should follow?

I don't think so. First of all, I don't think there should *be* a centralized government.

(continued on p. 17)

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