

formulations

Winter 1995-96

A Publication of the Free Nation Foundation

Vol. III, No. 2

Conferees Discuss Voluntary Means for Achieving Order

FNF held its fifth semiannual Forum on Saturday, 14 October 1995, at Oliver's Restaurant in Hillsborough, NC. Twelve people attended the day-long event, including four speakers who presented papers. The Forum topic was "Free Market Mechanisms for Organizing Collective Action."

Of the five papers presented at the Forum, two were published in the previous

Publications Merge: New Country Foundation and Free Nation Foundation Combine Efforts

by Richard Hammer

This issue of *Formulations* is augmented with material from the New Country Foundation, headquartered in New York City, and is the first of a new series of combined publications. Marc Joffe, Director of the New Country Foundation (NCF) and

FNF Forum on 20 April: Constitution or Contract?

The next FNF Forum, in April, will address the topic "Constitution or Contract: When We Get a Free Nation How Can We Keep It Free?" We invite readers to contribute their ideas on this subject, in articles or letters to the editor. Also, we are looking for people to present papers at the Forum. We need these submissions by the 15 February writers' deadline for the next issue of *Formulations*. The Forum will meet on Saturday, 20 April 1996, from 9 AM to 5 PM, at Oliver's Restaurant, in Hillsborough, NC. Δ



issue of *Formulations* (Autumn 1995). These were: "Good and Bad Collective Action: Can We Nourish One and Squelch the Other?" by Roderick Long; and "Might Makes Right: An Observation and a Tool" by Richard Hammer.

The remaining three papers from the Forum are published in this issue. These are: "Free Accord Law: Ethical Communities" by Philip Jacobson; "A Primer on Deliberate Collective Action" by Earnest Johnson; and "Toward Voluntary Courts and Enforcement" by Richard Hammer.

Proceedings of the Forum, which present all five papers together, will be supplied to

Publisher of its *New Country Report*, and Richard Hammer, President of the Free Nation Foundation (FNF), have arranged this merger.

The two foundations, NCF and FNF, take somewhat different but complementary approaches, in the effort to attain political freedom. By merging publications each foundation will give its readers additional material.

FNF will continue publishing in the paper medium, producing *Formulations*. NCF will publish in the electronic medium, distributing a newsletter via electronic mail and also developing a joint

(continued on page 20)

(continued on page 20)

Inside

Roll Back U.S. Government? Not Ths Time
by Marc Joffe 3

Voluntary Courts and Enforcement
by Richard Hammer 5

Deliberate Collective Action
by Earnest Johnson 10

Intellectual Property Rights as Contracts
by Richard Hammer 13

Dismantling Leviathan From Within, Part III: Is Politics Self-Defeating?
by Roderick Long 14

Waldrop on Complexity
by Richard Hammer 20

Free Accord Law
by Philip Jacobson 21

After Atlas Shrugs
by Richard Hammer 27

Do Constitutions Protect?
by Randy Dumse 29

Our Readers Write 31

formulations

Editor: Roderick T. Long

a publication of the
Free Nation Foundation
[outdated street address]
Hillsborough NC 27278

Statement of Purpose

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

Board of Directors

Richard O. Hammer, President
Bobby Yates Emory, Secretary
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 \$15 for four issues (one year). Membership in the Free Nation Foundation may be purchased for \$30 per year. Members receive: a subscription to *Formulations*, 20% discount on conference registration fees, invitation to attend regular meetings of the Board of Directors, copies of the Bylaws and Annual Report. Additional contributions are welcome.

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

Information for Authors

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

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

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

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

All submissions are subject to editing.

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

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

Address correspondence to: Free Nation Foundation, [outdated street address], Hillsborough NC 27278. Or e-mail to: 102153.222@compuserve.com.

JOINT PUBLICATION AGREEMENT

Pursuant to agreement between Marc Joffe, Director of the New Country Foundation (NCF) headquartered in New York, NY, and Richard Hammer, on behalf of the Free Nation Foundation headquartered in Hillsborough, NC, *Formulations* carries material from NCF as well as from FNF.

Material in *Formulations* from NCF is distinguished by a line "for the New Country Foundation" under the author's name.

In reciprocation NCF publishes material for both Foundations in electronic media, the Internet and World Wide Web.

About the New Country Foundation

Postal address: P.O. Box
7603, F.D.R. Station, New
York, NY 10150-7603.

E-mail address: e-mail
should be addressed to
Marc Joffe at 71045.142
@compuserve.com.

Statement of Purpose

The purpose of the New Country Foundation is to establish a libertarian nation.

Board of Directors

Courtney Smith, President
Douglas Casey
John Hospers
Richard King
Mike Oliver
Marc Joffe

Information for Authors

Material for publication through the New Country Foundation should be submitted to Marc Joffe, at either the postal address or the e-mail address above.

Roll Back U.S. Government? Not This Time

by Marc D. Joffe

for the New Country Foundation

Soon after we started the New Country Foundation late last year (1994), a libertarian friend suggested that our efforts were unnecessary. After all, he argued, with the Republican revolution sweeping the nation, we could achieve most of our objectives right here at home.

This opinion appeared to have merit. While libertarian purists have reason to quibble (they always do), the fact is that many of the Republicans who control the 104th Congress are really trying to radically shrink the federal government. And, at least at the beginning of the year, they seemed to have the power to make a serious dent.

I and other NCF members were skeptical, and, as the year comes to a close, I believe our skepticism is being validated. At the time of this writing, the budget showdown between the President and Congress was still underway, so the shape of the final budget was not yet known. But even at this juncture, the case for long term pessimism is once again strengthening.

Limited Objectives

As *The Economist* observed in early November, the final Republican budget was not all that radical. While initial versions of the plan called for the elimination of numerous governmental functions (including three whole cabinet-level departments), most of these programs were restored during the committee process. The Republicans maintained the same spending totals by substituting across-the-board budget cuts for the targeted elimination of whole programs.

The practice of maintaining government activities with the same mandates, but reduced funding, is a familiar budget balancing tactic. It is also one that doesn't work in the long term.

The rationale for making small across-the-board cuts in government programs is that since all programs contain some waste, it should be possible to reduce their funding without affecting the quality of service provided. While possible, this outcome is

unlikely. Government programs are not businesses, and bureaucrats are not businessmen. When Congress reduces the appropriation for a particular program, the bureaucrats who administer that program are not prone to look for ways to work smarter or harder. The more common response is to translate the funding reductions into service reductions.

At some point, the decline in program service begins to annoy the constituency for that program. They then pressure political leaders to restore funding, and, more often than not, spending levels are restored.

One of the more celebrated examples of this was the "hollow" armed forces of the 1970s. After Vietnam, Democrats found it easy to cut back on defense spending. Unfortunately, these spending reductions were not accompanied by a concomitant reduction in the Pentagon's mission. America remained the world's policeman, with forces deployed on three continents and a charter to intervene almost anywhere at the drop of a hat.

In order to fulfill this mission, the Pentagon required a large number of troops, and lots of well-maintained high-tech weapons systems. When the Democrats cut back funding, the Pentagon responded by cutting back on troop strength, procurement and maintenance. This gave military advocates the opportunity to complain that the Defense Department lacked the manpower and equipment to carry out its mission. Republicans capitalized on these arguments in the 1980 campaign. And once in power, the Reagan administration sharply increased military spending.

Government programs are like fat cells. When you go on a diet, you don't kill fat cells, but merely shrink them. As soon as you stop dieting, your fat cells grow back and you rapidly become overweight again. If you could somehow remove these fat cells — by liposuction, for example — you are more likely to remain thin.

This is what the Republican Congress needs to do. It needs to suck these fatty government programs out of our economic system. Instead, it is merely putting us on a short-term diet — one whose beneficial effects can be easily reversed by the next Democratic binge.

Power to the States, Not to the People

Of course, the Republicans are trying to get the Federal government completely out

of certain areas — most notably welfare. In fact many Republicans have joined libertarians in criticizing the New Deal and Great Society on Tenth Amendment grounds.

The Tenth Amendment states that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

Unfortunately, the Republicans always opt to delegate powers back to the former, rather than the latter. From the individual's point of view, shifting the responsibility for welfare and Medicaid from Federal to State government may not make very much difference. He or she must still pay taxes to a bureaucratic authority that administers these programs. And, if this individual is unfortunate enough to live in a liberal state, this decentralization of federal programs may actually prove detrimental.

Republicans argue that states can administer welfare programs less expensively than can the Federal government. Moreover, because of the competition among states for taxpaying businesses and citizens, there may be a so-called "race to the bottom" in which states try to outdo one another to cut program costs.

This phenomenon may occur, but the final result might well be a return of the affected programs to Federal control. With all states racing to the bottom, the quality of services and quantity of benefits will fall. Program advocates can then focus public attention on the inadequacy of benefits under state administration, and thereby create political support for renewed Federal control. To achieve lasting reductions in the burden of government, there simply is no substitute for convincing the vast majority of people that government (at any level) should not get involved in certain aspects of life.

Waning Support

Despite their relatively limited objectives, Republicans are still seeing public opinion turning against them. Although the political winds shift quickly, polls taken at the time of this writing show growing support for President Clinton and declining support for the Republican Congress. The consensus seems to be that we want a balanced budget and lower taxes, but we don't want too many "harsh" budget cuts to achieve them.

If these public opinion trends persist, Clinton will be re-elected in 1996 and the Republican Congressional majority will be diminished. Clinton will be able to take credit for steadily declining deficits during his administration — the result of cyclical economic growth rather than any of his initiatives. His campaign will use this record as evidence that lower deficits are possible without the pain offered by the Republicans.

Once re-elected, and without having to worry about a future campaign, Clinton will be free to shift back to the left (where he feels most comfortable), and may actually be able to push new spending initiatives through a divided Congress.

1994: Just Another 1980

In the end, I believe libertarians will look back on the 1994 election as another false hope, not unlike 1980. Back then, Reagan promised a lot more than he could deliver. While he did make some improvements — most notably the reduction in marginal tax rates — his administration failed to arrest, let alone reverse, the relentless growth in government spending and power. In the final analysis, the Republican 104th Congress will probably achieve similar results.

It seems that the popularity of smaller government is a cyclical phenomenon. After some period of government expansion, the public becomes fed up and votes in advocates of spending reduction. The small government people hack away for a while until they're seen as too harsh or too aligned with the wealthy. Public opinion then turns against them, and pro-government politicians are returned to office.

Over the long run, this cycle takes us toward bigger government. Advocates of greater spending have more time and more incentive to push toward their objectives than do their opponents. The strongest opponents of spending are typically business people, whose primary focus can never be on Washington for too long; after all, they have businesses to run. The lobbyists and bureaucrats who want greater spending are always around, since they don't have anything better to do. They can afford to be patient, to refine their arguments and wait for opportunities to develop. Ultimately, they can outlast the budget cutters.

Libertarian Party: Nowhere Fast

In the first issue of *New Country Report* (September 1994), I argued that the Liber-

tarian Party had virtually no chance of ever electing a libertarian President or Congress. It thus came as something of a surprise when, shortly after I wrote that article, Harry Browne — the famed opponent of libertarian activism — announced his candidacy for the LP Presidential nomination, and went on to suggest that he had a serious chance of actually winning!

His rationale was that the 1994 election represented a libertarian watershed. He suggested that the majority of the electorate had finally realized that the time had come for significant cutbacks in government spending, that the Republicans would be unable to deliver and that they would turn to the LP in 1996 for greater spending cuts. I believe that Browne has mistaken a cyclical fluctuation in the public's mood for a long-term trend. The vast majority of Americans are simply not ready for the radical libertarian approach, and will not be any time in the foreseeable future.

As far as I can tell, Browne's campaign is running well below initial expectations, and will not be a significant factor next year either in New Hampshire or nationwide. Once the results are in, perhaps Harry will come to agree with us in the New Country Foundation that the best prospects for liberty remain somewhere outside the United States. Δ

Marc D. Joffe is a self-employed computer consultant based in northern New Jersey. He is also a founding member of The New Country Foundation. He holds an MBA in Finance from New York University.

New Country Briefs

by Marc D. Joffe

for the New Country Foundation

Conference

On July 15th, the New Country Foundation held its first conference at the Gramercy Park Hotel in New York. About 25 people attended the full day of lectures and discussions. Among the presenters were Randy Dumse (see article elsewhere in this issue) who presented his plan for a libertarian compact. Compact members would agree to move en masse to a mutually acceptable country with a relatively small population. *Formulations* editor Roderick Long presented his libertarian constitution based on the concept of virtual cantons. Other speakers included *Atlantis Papers* author Jim Davidson, FNF President

Rich Hammer, Sea Structures, Inc. Founder Richard Morris, veteran new country activist Mike Oliver and international tax expert Adam Starchild.

New Country Foundation organizers Courtney Smith and David Mayer concluded the conference with an NCF plan for establishing a libertarian nation. This program has two facets. The first part of the plan calls for either the acquisition or construction of a very small piece of land in a relatively unpopulated area. A small group of occupants would declare this land sovereign. The new mini-state would then have the right to flag ships. Among these ships would be one or more large-scale barges floating in international waters just off the U.S. coast. These barges, most likely constructed from SeaCells®, could be several square miles in area and may be clustered together to achieve greater potential population densities. They would be operated as condominiums, and would provide tax-free living and business opportunities for their residents.

Current Foundation Activities

New Country Foundation activists are currently focusing their attention on the opportunity to create a new country in the horn of Africa. This potential country could either be a simple flagging state, or it may be able to develop into a viable economic entity in its own right. Because actual negotiations are underway, we cannot reveal many details at this point. However, we do hope to publish further information in a future issue of *Formulations*.

Web Pages

In the near future, NCF and FNF will begin to operate a home page on the World Wide Web. The web page will include back issues of New Country Foundation publications, as well as links to other pages that will be of interest to libertarians who are oriented toward creating a new country.

Currently, the following Web pages may be of interest to *Formulations* readers:

- The Atlantis Project at <http://www.oceania.org>. Operated by Eric Klien, this page carries on the Project's high-profile activities of 1993-1994. The page offers virtual reality renderings of Oceania, the square-mile libertarian Sea City proposed by Atlantis Project members, as well as back issues of Klien's

(continued on page 9)

Toward Voluntary Courts and Enforcement

by Richard O. Hammer

This paper was presented at our
14 October 1995 Forum.

1. INTRODUCTION

When I first encountered the idea that courts might be voluntary^{1,6} I was taken aback. How could that possibly work? Why would someone guilty of a crime come to court voluntarily? Well, I have been piecing together an answer. I can start to imagine a society with voluntary courts.

At first you may not believe the picture I draw, because voluntary society differs so radically from this society with which we are familiar. The picture of voluntary society starts to make sense only when you have substantially revised the image of society which you formed growing up in America.

The power of voluntary enforcement grows from our central value, voluntary interaction. Since no one is compelled to trade with anyone, mutual self interest could induce traders to boycott wrongdoers. Assuming entrepreneurs invent high-tech ways to share information among traders, an accused may find himself unable to buy food, water, electricity, communication on a telephone, or passage on a road.⁴ Recall that all these essential services are provided by private parties who may voluntarily withdraw from trade.

Complete boycott may threaten the life of an outlaw within days or even hours. So this suggests why even a guilty person might come to court voluntarily: because it is better there. Once an accused accepts participation in the voluntary process of justice, he may once again be offered a chance to use a bathroom and get a drink of water.

2. IF PRIVATIZATION CAN CLEAN UP ENVIRONMENTAL POLLUTION IT CAN ALSO CLEAN UP CIVIL POLLUTION

Here I digress to draw a parallel between two kinds of pollution, environmental and civil. By "civil pollution" I mean crime and social problems created by the nanny state.

I assume that most of my readers already

know the argument that government deserves blame for most environmental pollution. Therefore I will repeat that argument only briefly:

- For pollution emitted by government-run facilities obviously government gets the



Richard Hammer

blame. But in America this adds only a minor part of the pollution.

- For other pollution, emitted by private concerns, government unwittingly licenses this pollution. Private concerns dump almost all of their pollution into public spaces, such as air, bodies of water, and roadways. These public spaces, being policed only by government, are policed badly, if at all.

On the other hand, if private concerns dumped pollution into other private spaces the owners of those spaces would confront the polluters with fierce battle, sometimes at a life-or-death pitch. This protection of private interest through private policing of private space would end most of the worst pollution.

Thus government causes, directly or unwittingly, almost all environmental pollution.

Now I ask you to make a leap with me: from three-dimensional space in which environmental pollution is badly policed because government has seized a monopoly in policing, to decision space in

which civil pollution is badly policed because government has likewise seized a monopoly in policing.

The civil decision space which has been seized and mismanaged by government includes decisions such as:

- what constitutes crime,
- when to initiate response to an alleged crime,
- who has committed a crime,
- allocation of resources to prevent crime before it happens,
- allocation of resources to prosecute crime,
- means of punishment or restitution.

The tragedy of the commons afflicts not only three-dimensional spaces. Any space which government purports to manage may predictably suffer tragedy of the commons. This includes decision spaces guarding civil order.

3. A FIRST SKETCH OF VOLUNTARY ENFORCEMENT

The picture is vague. At this point in my education, I can write only in general terms about the restraints in a nation freed of state-monopoly justice.

3.1 What Would Not Be

It is easy to point out major features which would not exist. Notably all roads and streets would be private, not public. In the U.S., government maintains virtually all thoroughfares, offering unrestrained travel over vast expanses to threatening persons. A person known to intend murder, if not presently imprisoned by the state, can travel unchallenged through that public space almost to the doorstep of every private property. This would not be.

Also, in the U.S., government restricts communication of knowledge of wrongdoing. Information which potential victims obviously need, for which they would gladly pay, cannot travel to these potential victims because of barriers erected by the state. This would not be.

Generally speaking the public space in the U.S. offers anonymity and untraceability to all manner of villains. After committing a crime a criminal can use that public space to escape notice the way a convict can walk through a stream to shake off bloodhounds. This would not be.

3.2 What Would Be

Businesses would spring up to carry information about threatening people to the potential victims of these threatening people. Competition would lead these businesses to employ the latest technology. Customers of these businesses would express strong preference for information which protects them from real crime (as opposed to victimless crime), and their purchasing decisions would cause this industry to get better and better at providing just this vital information and little else.

Driven by self interest, people would form associations to share information useful to their security.

- Merchants would associate to share information on suspected shoplifters and bad-check writers. If one shop owner has charged a suspect with shoplifting, and if that suspect has not yet appeared to face the charge, all other shop owners may deny this suspect entry to their shops.
- Women might associate to share information on date rape or spousal abuse. A man accused of date rape may find himself unable to get another date.

Free markets would increase security by sharing risks. Those who pose a threat would be offered a chance to get what they want by reducing the threat. Here are examples.

- A discount market with a history of crippling losses to shoplifters may offer entry only to shoppers who consent to on-demand search for store property.
- The street-security company in a given town may admit someone with a handgun if that person: posts bond; agrees to carry only serial-numbered bullets traceable back to him; and possibly even agrees to have a radio transponder implanted in his body for the duration of his armed visit.
- An entire city, being run by private contract, may admit to residence only persons who submit to a range of bonding, insurance, and arbitration services.

Abuse of the power of boycott will be limited by competition. Boycott of a suspect helps a trader only if the suspect

actually threatens real crime. Otherwise, misguided boycott hurts a trader by denying the gain of a win-win exchange. As most libertarians understand, misguided boycott indicates, by definition, an opportunity for an entrepreneur to profit by trading with the victim of misguided boycott. Bonding companies may profit by assuming risk for a class of unfairly stigmatized people.

Indeed an industry of bonding may arise, offering such a diverse portfolio of bonds that wrongdoers or victims of bias (the distinction being blurred here) face not a harsh yes-or-no edge between imprisonment and liberty, but rather a continuum of bond contracts imposing increasingly more expense and more restrictions upon increasingly threatening individuals.

Formal, predictable, and fair procedures for settling disputes would evolve. These procedures would often be part of the package offered in a sale, with contracts having clauses such as, "in case of dispute the parties to this trade agree to be judged by" Businesses hoping to attract customers will be motivated to offer, for this part of the package, the most sterling adjudication service available.

4. AN EXAMPLE: BILLING FOR ELECTRONIC MAIL SERVICE

Here I tell a recent experience of mine which illustrates private security. During the past few years, wanting to get "on line" so I could exchange electronic mail through the internet, I have tried accounts with service providers such as Compuserve and MCI mail. To open an account with one of these service providers it seemed to me that I had to give my credit card number. My only other option appeared to be to hang up and forget about it. I do not like giving power to charge unspecified amounts to my card. But eventually I capitulated and gave my card number, deciding to trust the idea that my credit card company would treat me fairly if I complained that I had been wrongly charged.

Having thus been converted, even though against my will, I now find myself able to defend the service providers' demand that customers give a credit card number:

- It seems evident that this gives service providers a measure of protection from bad-apple customers. It may be the most effi-

cient way for them to attain an acceptable level of confidence in me.

- In agreeing to the credit card method of payment, I gather both the service provider and I have agreed to settle minor disputes about billing through the arbiter of the credit card company. This, I accept, is probably efficient for both me and the service provider.
- It could be that these service providers can charge rates as low as they do because they save money in their billing operation. They never have to print or mail bills, but do it all with electronic connections to credit card companies. Though I still prefer to receive an itemized bill in the mail monthly, which I then pay by mailing a check, it could be that the service providers would need to double their charges to do business in that way.

Wrapping up this example I point out that this arrangement was in major respects voluntary. It included a competitive offer with strings attached. I accepted, giving the service provider extra security by surrendering some of my power to judge each charge.

5. MORE CHARACTERISTICS OF VOLUNTARY ENFORCEMENT

In this section I speculate more about a system of law which may evolve in a free nation.

5.1 Civility

Civility, I propose, can be extended by people who feel secure. And since free market security should work better than government-feigned law, traders should find themselves feeling more confident that terms of contract will be fulfilled (that cheaters and frauds will be effectively cut off). As a consequence I believe traders would find themselves tolerant of language and cultural differences, patient with misunderstandings, and gracious in the face of accidents.

The opposite, incivility, is, I propose, a natural response to the opposite kind of environment, in which people assume that cheaters can get away with their cheating. Indeed, incivility itself is a little sort of cheating more common in public spaces than in private spaces. Perpetrators of in-

civility typically expect that no sanction for rude behavior will ever find its way back through the public space to haunt them.

We can see another reason to expect civility in my contention that private space offers very little anonymity. In private space either you are known or something about you is known, because private owners protect themselves by trying to know what they feel they need to know about all who enter their spaces. Knowledge of your deeds will follow you. You had better be polite.

Professional adjudicators, or judges, would seek to please all parties concerned in any ways that did not damage their reputations of professionalism and fairness. Adjudicators are, after all, business persons whose continued business relies upon acceptance by both parties in future disputes. Thus adjudicators would balance realities. For instance, they would recognize that each side needs sufficient time to prepare, while also knowing that resolve needs to be reached as soon as possible.

And finally I expect free market courts would allow certain freedoms to accused persons whose cases had not yet been decided — once sufficient bond was posted.

5.2 No Nonsense

While I expect that enforcement in voluntary society would tolerate many deviances, it would not play games. Indeed, innovation in enforcement methodology being freed from state monopoly, entrepreneurs could get rich inventing ways to discover and corral cheaters.

Rules, I suspect, cannot exist without being tested. Whatever the stated rules, opportunists will toy with the limits to see how much deviance it takes to trigger enforcement. With government in the role of enforcer, and with enforcement thus competing with welfare babies for budget dollars, only high-profile rules get significant enforcement. However the ball game changes with private enterprise in the role of enforcer. Rule-testing opportunists will face, not legislative budgeting decisions, but entrepreneurs looking to make money by catching them. As such, in voluntary society, I expect that most of the energy which goes into cheating and rule testing in the U.S. would soon find itself directed back into the permissible channels of productive work.

With voluntary enforcement corrective action could start immediately, as it would not be detained by something so slow as a government-court calendar. Security companies would probably compete based upon how fast they could act. But this raises a concern. What about false charges? The answer: no-nonsense voluntary enforcement cuts both ways. In a free nation I expect it would be judged a crime to detain someone wrongly, and people who instigated this detention would be liable for restitution. So it is risky to initiate certain corrective actions without confidence in the truth of the charge.

5.3 Sharing the Costs and Risks of Policing

Elaborating on an idea introduced in section 3.2, I expect that people who feared crime would work out win-win exchanges with potential criminals to reduce the cost of policing. My experience with internet service providers, described in section 4, gives an example.

For another example, purchasers of copyrighted intellectual property may be offered a discount if they:

- post a bond, or give credit card numbers, guaranteeing that they will not reproduce the material,
- consent to certain monitoring, and
- consent to judgments by specified arbitrators in case of a claimed infraction.

Free market mechanisms for discovering truth would favor efficient means and would, I expect, seek reliable information from all sources — including the accused. As such the principle "innocent until proven guilty," needed as a check against abuse of monopoly government power, may not restrain free-market punishments (boycotts).

I understand that gestures such as handshake and salute may have originated as a way to assure the absence of a weapon in the right hand. This sort of voluntary display of otherwise private information characterizes voluntary exchange. We want to draw partners into trade with us, but if we are smart we understand that our partners need to defend themselves from our potential misdeeds. So we volunteer assurances.

5.4 Bonding in Communities

I think bonding would play a more important role in free-nation civil order than it plays now in America. To digress about the

origin of bonding, I think people are naturally suspicious of one another. We are aware that others might cheat us, or turn upon us. Thus, when dealing with a stranger, or any trading partner with whom we want more assurance, we want something like bonding. This seems as instinctive as breathing.

One of the common sorts of bonding is membership in a community in which the members all feel mutual gain from their relationships in the community and in which members fear loss of those productive and supportive ties. Here to illustrate bonding I offer a few stories from my experience running a business in residential remodeling and building.

- When I was starting out most people who hired me were people who knew me from another context. In particular, I was a member of a church which felt like a large extended family. I was invested in that community and it was evident. The people in that community who hired me had heard recommendations from others in the community, and I assume they got some confidence from knowledge that if I wronged them they could report the wrong in the community. I likewise felt confidence that I would be paid because I knew that, if cheated, I could besmirch their reputations in the community. I felt confident that they did not want to risk that loss.
- Within the local residential building industry I developed connections of trust with those with whom I traded regularly. If I asked my regular electrician if he knew of any good roofers (from his continuously being around other building sites), I could trust that he would give me a straight answer. This trust stood partly on my belief that he valued a good continuing relationship with me, but more importantly it stood upon evidence that he valued his reputation among all people in the town as an upright citizen. He would not steer me wrong.

I am sure everyone who thinks about it will discover that they have such stories to tell. To me this provides evidence of natural bonding, of the sorts of relationships which people form instinctively, following their own self interest.

But whenever government enters the

bonding arena, gives commands about whom we must trust, and restricts what information we can share about the trustworthiness of others, it destroys the value of bonding which happens naturally.

5.5 Evolving System

As with common law, I expect that voluntary systems of law would evolve as circumstances evolve. During stable times

others will see chaos as an opportunity, as a necessary condition before new, and probably better, order can take root.

Courts, in a free nation, might be viewed as a tool for managing chaos. In stable conditions partners entering contracts will not have much need for courts. They will know that contracts will be enforced if broken so, overwhelmingly, will comply voluntarily with their contracts. But when

- informally sharing information with others in the same uncertain situation,
- formally sharing risk as in insurance,
- sharing commitments to mutual retaliation in boycotts, raiding parties, or armies,
- minimizing risk by trading in smaller increments,
- establishing ties which transcend usual business deals, such as intermarriage.

6. WHY WOULD THIS WORK? YOU HAVE VALUE

Naturally you may mistrust an assumption which underlies this paper, that law can be entrusted to enterprise. Indeed I am not fully comfortable with the assumption. Probably I share with others, who were raised in the relative security of white middle-class America, a naive trust in the ultimate force in the land, government law. And anyone exposed to the leftist media has been taught to imagine that business freed from government restraint will sell us all into slavery tomorrow.

But I am inclined to trust enterprise and to mistrust government. So I reach to understand the limits of private law. In theory I do not see a limit. Private law stands on solid ground: the economic might of the free individual.

As I understand economics, the organization which makes the best use of information should become the wealthiest and thus should be able to equip itself to fight off all less-well-financed would-be encroachers. And that organization, maximizing use of information, is one that gives individuals discretion to act upon information which becomes available to them.³ This is an organization of self ownership, of individual rights.⁵

Sometimes I describe society with voluntary law as a downflowing river. In the river each unit of water, driven by gravity but restrained by the riverbed and by surrounding water, typically travels long distances horizontally to gain only slightly in the downward direction. In voluntary society each person, driven by self interest but restrained by physical reality and by surrounding people, often travels a roundabout route to gain only slight reward. In the downflowing river of voluntary human society a person is never compelled to move uphill, against his own interest. A person may refrain from choosing till one choice offers gain.



precedents would become established, well-known, and stable. As conditions change, however, judges would dislike applying old precedents to new conditions which those precedents did not fit. Judges therefore would look for, and eventually find, ways to modify precedent.

Contracts offer another way to change inappropriate old precedent. Traders who see that existing precedent does not suit their circumstances can write into their contracts new and more appropriate expectations.

Note that voluntary law evolves more freely than codified government law. To change government law requires an act of the legislature, but to change voluntary law requires only the mutual consent of all parties involved in particular instances. This flexibility limits the damage that can be done by mistaken law.

During times of change there will be confusion when old precedents clearly no longer apply but new precedents have not yet been established. And the greater or more rapid the change, the greater will be this confusion. Many people will call this "chaos," meaning "evil uncertainty." But

conditions change, making the meanings of contracts unclear, courts help, through their judgments, to establish new order.

5.6 More Risk at the Margins

Well within the borders of a free society which has had time to establish predictable property law, I expect wealth-creating businesses would trade with ease and efficiency. However, some free nation businesses would need to trade with outsiders in other societies where the rules are different or not established. The risk, in trading with someone outside your usual circles who does not fear your ability to seek redress, necessitates extra precautions.

But this uncertainty at the margins describes an opportunity for entrepreneurs. Profits may be high for those who can cross barriers of language, culture, and notions of what it means to cheat. (Surely the ability to cross this latter barrier explains why certain professions, such as lawyers and political lobbyists, can do so well in the U.S.)

Instinct, it seems to me, suggests means which entrepreneurs will try at the margins of the understood order. These means include:

7. QUESTIONS THAT REMAIN

For me, as I wrestle to understand how free society works, several important questions remain. Some of these are:

- Why is the land surface of the earth, where there were no states until recent history (perhaps 5000 years ago), now almost entirely covered with states? Oppenheimer⁷ presents the best theory of which I know.
- If, as I assert, markets should organize the economic might of free individuals into a force which should overwhelm all coercive schemes of organization, why has that not happened?
- Do free individuals really work more productively (as I assume in section 6) than individuals who are somewhat enslaved?
- Does reticence play a role? By reticence I mean that instinct or training which tells us to put up with a certain minimal amount of grief before we object.
- Admitting that some bigots will discriminate unfairly, and that some will organize around particular unfair biases, how far can this unfairness go, how large will the unfair organizations grow, before economic reality limits further unfair discrimination?
- How can we spray economic weed killer on any state which tries to grow where we might settle?
- What do we need to know to help guide the civil dismantling of a state?

To answer these questions I think we need economic theory. This theory would include: transactions costs attendant to both trading and communicating, productivity of individuals, productivity of firms, origin of states, and perhaps various schemes of property rights. In my limited knowledge Eggertsson² provides the best summary of work that leads in this direction.

8. CONCLUSION

You may now agree with me that society with private courts and enforcement dif-

fers radically from society as we know it. I find the picture frightening, it is so different. But I hope you will also agree that this picture results from libertarian values. It follows from shrinking the power of government and expanding the power of private choice and private property rights.

People need secure environments just as surely as they need food. And, just as surely as people work out ways to get food for themselves, people work out ways to secure a civil order for themselves. They do this in every culture in every time, whether or not a state claims for itself a monopoly in coercing order. While I admit that state-free law falls short of my ideals, I believe that seizure of the process of law by the state almost always makes things worse, not better.

I hope, in our envisioned free nation, that we can unleash entrepreneurial zeal to compete to satisfy our human need for security. Then we could relegate most crime, including notably street crime of the sort which terrorizes American cities, to our (private) museum of natural history. There crime could offer company to dinosaurs, pharaohs, czars, and presidents. Δ

References

- ¹ Bruce L. Benson, *The Enterprise of Law: Justice Without the State*, Pacific Research Institute for Public Policy, 1990.
- ² Thrainn Eggertsson, *Economic Behavior and Institutions*, Cambridge University Press, 1990.
- ³ Friedrich Hayek, *Law, Legislation and Liberty*, Volume 1, University of Chicago Press, 1983.
- ⁴ Richard O. Hammer, "The Power of Ostracism," *Formulations*, Vol. II, No. 2.
- ⁵ Richard O. Hammer, "Might Makes Right: an Observation and a Tool," *Formulations*, Vol. III, No. 1.
- ⁶ Roderick T. Long, "Anarchy in the U.K.: The English Experience With Private Protection," *Formulations*, Vol. II, No. 1.
- ⁷ Franz Oppenheimer, *The State: Its History and Development Viewed Sociologically*, originally published in 1908, Arno Press reprint, 1972.

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

New Country Briefs (from p. 4)

Oceania Oracle newsletter. This technically sophisticated home page does not seem to have been updated in recent weeks.

- The Millennial Project: Colonizing the Galaxy in 8 Easy Steps at <http://www.csn.net/~mtsavage/project/>. While not explicitly libertarian, the First Millennial Foundation calls for the creation of sea-based — and later space-based — cities that would be independent of existing governments and that would provide a large measure of individual freedom. Back issues of the Foundation's newsletter can be found at <http://www.csn.net/~mtsavage/news/>. The Foundation's web pages also seem to have not had any recent updates.
- Indexes of other libertarian web sites may be found at World Wide Web Libertarian Pages (<http://www.libertarian.com/wwlp/index2.html>) and on Free Market.COM (<http://www.free-market.com/index.html>). Both indexes are current. Δ

Laissez Faire City Distributes Founders' Kits

by Richard O. Hammer

In early October we received five packages, one for each FNF Director, from Laissez Faire City International Trust (LFCIT). For those readers who may have missed my account in the last issue of *Formulations* (Autumn 1995), LFCIT announces plans to lease underpopulated territory from a host state and there create a new little nation free of government rule.

The packages contained several papers, an audio tape of LFCIT promotions, and a copy of *Atlas Shrugged*. This copy of *Atlas Shrugged* (the second we have each received) has had its original paper cover replaced with an LFCIT cover, the front of which has these words: "Founder's Handbook, Laissez Faire City, Ayn Rand, Historically Published as *Atlas Shrugged*."

One of the papers in the package was written by our Roderick Long. Roderick wrote this 10-page paper, which outlines

(continued on page 12)

A Primer on Deliberate Collective Action

by Earnest E. Johnson II

This paper was presented at our
14 October 1995 Forum.

Collective Action Defined

Imagine this scenario. I go down to Ebenezer Point on Lake Jordan, find a piece of chert and begin chipping away at it. In time I fashion a spear point that I can attach to a wooden shaft that I had also made from a branch. Taking my new instrument of destruction over to a shallow area, I wade quietly in and watch for a fish to appear. I soon spear a nice fat catfish, skin it with a sharp flake of waste chert, cook it over a fire I made from some dry wood and pine needles, and eat it. I have succeeded in feeding myself by myself — this was entirely an individual action.

I might be so successful that I can feed a few other people as well. However, unless they help, it is still individual action at work. Soon people gather around this great humanitarian and form a camp. Each person makes his/her own lean-to shelter and grass skirt while I go out and fish all day. A small nexus of human activity has formed, seeded by my willingness to give away the fruits of my labor but otherwise involving no cooperation whatsoever.

Imagine a day much like any other; I'm fishing and others are doing whatever they do during the day. Dark clouds roll in, a fierce wind arises, and the heavenly buckets tip. Everyone heads for their shelters to ride out the storm. Then one man closest to the lake notices the water rising. He watches helplessly as his camp floods and he is left standing in knee deep water. His neighbor offers to share his lean-to and for a time all are happy again. But the rain continues to fall and the water continues to rise. A woman tries to hold back the water by building a dam of sticks and earth. However, she cannot build one large enough before the lake claims her home as well. The lake rises still further and all are worried now. The kin-hearted camper notices that the small dam did slow the flooding and enlists his guests' help in constructing a larger one. More people catch on to the activity and pitch in realizing that a larger mound built before the lake reaches it may save their camps. Indeed, this is the case. The flood waters recede, the sun comes out, and they begin to clean up and

rebuild. But this time they begin helping one another. Sometimes the help is charitable and sometimes the help is in exchange for help in the same or other activities. For instance, I acquire a grass skirt and a lean-to for some



Earnest Johnson

extra fish. The campers have discovered collective action.

This very short story illustrates three concepts I would like to present and discuss. The first is individual action (IA) or activity that an individual alone may undertake and succeed in. Next is collective action that is the net result of a multiplicity of individual activities but not planned in advance nor consciously executed in a collective manner that I will refer to as non-deliberate collective action (NCA). Collective action that is planned in advance and consciously executed in a collective manner and which either would not arise spontaneously as would NCA or which people are too impatient to wait for will be termed deliberate collective action (DCA). It is the third concept, DCA, that I wish to focus on in more detail.

Individuals Organize Individual Action

Individual action (IA) is what individuals do in pursuit of their enlightened self-interest. Obtaining food, clothing or shelter are fundamentally IA. Writing, painting, or other leisure activity is also largely carried out through IA.

True IA is necessarily limited in scope. It is an IA to drive a car but to make a car, refine the gas to fuel it, or build the road to drive it on is beyond the means of most

individuals (not to mention the need to reinvent the wheel if no use is made of the knowledge of previous generations).

I think IA, with its limitations, is a concept most libertarians are familiar with as is the next one and, since it is unnecessary to elaborate on for current purposes, I will leave the topic here.

The Free Market Organizes NCA

Non-deliberative collective action (NCA) is probably what most libertarians think about when we speak of the free market doing something. In other words, when individuals go about pursuing their enlightened self-interests through IA, a social and economic system self-organizes to accommodate and facilitate those pursuits. An excellent modern day example of this is the Internet.

Except for the start it received several decades ago from the government, the World Wide Web of today is largely the work of individuals and corporate entities pursuing their self-interest. While many "cyberpunks" have envisioned one or another version of an online society, the WWW has largely evolved from the desires of those wishing to be online and those wishing to provide the access but has not been engineered with a predetermined goal. Because the Internet is enormous in scale, it is also perhaps the best example of how the free market can do something that many would think only an organization as large and pervasive as the government could accomplish since much of what is occurring involves private Internet providers and software developers. This is likely one of the reasons Vice-President Al Gore's attempt to have the federal government build the "information superhighway" crashed and burned as it did. It was viewed as wholly unnecessary — everything was already under construction.

Examples of such free market accomplishments abound in the literature of economics and libertarian political thought. So much so that it fosters the faith that the free market, operating in the manner that generates NCA, will ultimately accomplish everything that needs to be done. That may be. However, suppose there are social and economic equivalents to the laws of thermodynamics. There may be a kind of social and economic entropy that, unless deliberately countered, leaves few immediately available resources for some people

to take advantage of or some tasks to be done. Or it may be that a self-organized system will form but the consequences of waiting are widely considered to be unacceptable. Examples of such situations include helping the homeless, funding some kinds of medical research, protecting wilderness areas from development, disaster relief, etc. Because there are instances where NCA is not timely or sufficient to meet the current needs it is usually assumed that the free market cannot do the job — market failure. At this point, a governmental solution is sought.

Deliberate Collective Action: Is The State Necessary?

In thinking about why government is sought out to perform collective activity, three questions come to mind:

- 1 What is so special about the state that makes it the obvious choice for organizing collective action?
- 2 What does the state do to organize and carry out the collective action?
- 3 How can we emulate the state to achieve the same results without it or its defining trait — coercion?

By answering these questions, I hope to progress towards a better understanding of what it takes to successfully initiate and carry through deliberate collective action without the state.

Question #1

The state in our young nation is already a deliberate collective action. Our systems of government, as imposing as they are now, were not necessarily imposed upon us at their creation. When Europeans colonized North America, the various state and local governments were built from scratch, albeit based upon existing and familiar models. At the federal level we rebelled against an existing governing body and deliberately formulated a new one. Furthermore, it is easy to view governments that were built and maintained by the people as beneficent — the essence of democracy. So there are two elements, I think, to the immediate selection of the state to do collective things. First, the state is convenient. By virtue of being an extant deliberate collective action, why not have it do a

little more (see "Ideas on Taking Apart Government" by Richard O. Hammer, April 29, 1995 Proceedings)? Second, because the government is built or perpetuated by the people through democratic representation, there is a tendency to view it as an extension of themselves. When enough people feel the need to do something collectively, not a small number of them are inclined to do so by lobbying the legislature. I have recently learned that this is the prevalent view of government in the Netherlands and that for Americans to complain so bitterly about American government, or to want it doing less, is unthinkable because it is "our government."

Question #2

Let us set aside the issue of force for the moment and consider what the state does to perform collective action. Usually it creates a department dedicated to that purpose. Essentially it forms a corporation within itself, or occasionally outside itself, to accomplish the task. It then hires the staff needed or may contract out most of the work to a private company and only supervise. For the most part, in the nuts and bolts of executing collective action, it does nothing spectacularly different from what free market players would do except that it usually does it badly.

The difference lies in at least three aspects. One, since the state is already a DCA, its existing bureaucratic structures can seed new ones either by placing the new function in an existing department until it grows large enough to warrant separation or the existing structure may act as a template for the design of the new bureaucracy. However, as I will address in answering question 3, this way of doing things need not be unique to the state. Two is where the issue of force comes into play because the state has no problem funding the collective action. It simply takes the money it needs. Coercion also allows the government to evade difficulties encountered when dealing with the private sector (e.g., eminent domain seizure). Three, any effort at persuasion to accomplish the goals need go no further than a few congressmen. It is certainly easier to persuade a few legislators rather than thousands of individuals and, except for the special interest ringleaders, I don't think most supporters immediately appreciate the element of force involved. Once a program is in place, the rest is

simply to secure compliance and/or participation (force again).

Those familiar with the work of Ronald Coase may notice something here. For activists, the government acts as a firm serving to reduce their transaction costs. One-stop activism. What kinds of firms would exist in a free nation to reduce the transaction costs of activists?

Question #3

It seems to me that the first step is to realize that the job itself is not altered by the involvement of the state. Fundamentally, the entity called the state does nothing — people do. When people go about doing their government jobs, they work much the same as business people do. The state relief worker must deliver food and water to the hurricane victim the same way the private worker does. The government contractor paving a government road does exactly the same work needed to pave a private road. When Boeing builds a military transport jet, it uses the same techniques that it does to build a passenger airliner. When a nurse in a government health clinic treats a child's wound, she applies an adhesive bandage just like the one the private nurse does. When a leukemia researcher at a federally funded research facility characterizes a new protein he uses methodology shared by colleagues at St. Jude's, a private children's hospital and research facility. All the state does in its endeavors is order that it be done and that it be paid for. How, then, would free market entities perform DCA?

Next, since the involvement of the state usually inflates the costs of the DCA either by meeting whatever price is demanded thereby encouraging budget overruns or by mandating higher costs that the government must then cover (e.g., the Davis-Bacon Act), the private DCA agency may lower costs by honestly looking for the better deal. It will certainly be held more accountable by those who consciously put their money there. By lowering costs, funds raised by persuasion, not force, may be sufficient. Free market agencies are also generally more flexible than state agencies and so more likely to avoid an obstacle than to force their way through. A private climbing access agency, for instance, might work a deal with a land owner to save or open a rock wall to climbers without interfering with the owner's use of the land or

seizing it by force. Such a group, The Access Fund, exists today. However, I am unsure about the extent to which it involves government to achieve its ends.

Organizing a large scale DCA is often so daunting that only the state is perceived as capable of doing it. A free market agency, though, might break it down into smaller, more autonomous units and simply coordinate their activities at the appropriate time. The American Red Cross (ARC) is already capable of coordinating some aspects of disaster relief. Beginning with the existing ARC structure, why not emulate the state and add a function that would coordinate local police, volunteer fire departments, hospitals, homeless shelters, etc. for immediate disaster relief? During rebuilding its attention would shift toward coordinating insurance companies, banks, and charitable services. It is not hard, then, to envision a private FEMA.

Sometimes organizing a DCA is as simple as deciding to do it (this is not to say that the work involved is easy). It is certainly true that some individuals find themselves in circumstances where they are not as well off as they would be in a group, the self-employed for example. There was a time when leaving a job to become self-employed meant losing group health insurance, dental coverage, etc. The mid-1980's was a time when many people found themselves in just this predicament. A number of them chose to neither endure their situation nor seek a government program to solve it. Rather, they formed a DCA called the National Association of the Self-Employed (NASE) and began negotiating for group health coverage, dental plans, discounts on business services, etc. The NASE currently serves over 400,000 members. Many of the benefits are indistinguishable from those offered by businesses, which are pressured by government into offering. Yet the task of arranging those benefits was no different for the NASE; they just did it on their own initiative. Most of the lobbying done by the NASE is not to get the government to do something, but to stop making it so hard for the NASE to do it.

In a free nation the NASE could serve as a model for unions to provide similar services for labor. Unions could negotiate their own health plans, training programs, child care, etc. Such an organized labor force would make their members highly valuable to employers.

Conclusion

There are three fundamental ways the free market can satisfy the needs of a free nation. Individual action is the foundation. The individual is best positioned to know what is in his or her own best interest. IA is how most people accomplish what they do on a daily basis. IA requires an environment of liberty, the free market, if it is to be flexible enough to meet any challenge because only when all possible options are allowed does the individual have the opportunity to choose the appropriate one.

Social and economic systems then self-organize as a result of the activities of individuals. Stepping back, one can see collective action that appears spontaneously and without premeditation — non-deliberate collective action. NCA is fluid and adapts to changing conditions when it is free to do so. Because of its evolutionary nature, NCA only arises and works in a free market.

Deliberate collective action, whether state-run or free market, requires premeditation. Free market DCA uses all the same fundamental mechanisms as state-run or state-mandated DCA except the force. The job skills required are the same and negotiation with contractors still takes place. Goods and services are delivered the same way for both, the state just imposes an unnecessarily large bureaucratic structure on it.

Even in the state-run society we have today, we can see non-state models of deliberate collective action that would serve the free nation. The American Red Cross allows for the possibility of an existing agency acting as a seed crystal for expanded disaster relief organizations. The National Association for the Self-Employed is a model that could work for virtually any group from the self-employed to organized labor to home-schoolers. If free market DCA requires no more effort than a state version

— then why not adopt a Nike philosophy and "Just Do It"? ▲

Earnest Johnson is a self-employed technical writer in Carrboro, NC. He has worked as an accounting analyst, plumber, and molecular biologist.

Laissez Faire City (from p. 9)

his virtual canton proposal for a constitution, on commission from LFCIT representative Rex Houston. The cover sheet on this paper says, "Draft version of the LFC Political White Paper, Options for the Body Politic, Laissez Faire City, By Dr. Roderick T. Long, Ph.D." (To receive a list of errata for this document, contact Dr. Long at BerserkRL@aol.com.)

Another of the papers, an organizational plan for "independent braintrusts," invites LFCIT Founders, people credited with contributing the equivalent of \$100 or more, to apply to participate in one of seven leadership teams. Each of the seven teams focuses on a subject, such as: foreign policy, finance, and public relations.

According to this plan, members of leadership teams will be paid in silver at about \$18 per hour. But only 10%, or about \$1.80 per hour, will be paid before establishment of Laissez Faire City, with the remaining 90% held till after that event.

Most of the pages in this plan, the last six, present what seems like a sales pitch for investing in silver. It has charts and makes forecasts, including this: "... we fully expect the value of silver to, at least, double in the coming months."

This observer of LFCIT remains wary while continuing to be open to the possibility LFCIT might make a worthwhile contribution to the free nation movement. LFCIT may be contacted at: P.O. Box 407017, Oakland Park, FL 33340. ▲

(advertisement)

Optionality®

The voice of our Vision

A policy magazine issued monthly since Jan. '91.

Read why the Government will disappear into history as an institution that was amoral, inefficient and illogical!

Write to: **Quintessence, PO Box 50 Caboolture 4510 Australia.**

Intellectual Property Rights Viewed As Contracts

by Richard O. Hammer

While we libertarians wrestle with the rectitude of intellectual property rights, I suggest that we think of contracts, and the limits of the enforceability of contracts. Suppose Scribbler has written a book that you want to read. Scribbler offers you a contract. For \$10 you may take the volume — but only if you promise not to copy it.¹

While some libertarians argue persuasively against the legitimacy of intellectual property as granted by state power,² I think that most of us would agree that the state should not intervene to void a contract between two freely consenting parties. You and Scribbler have a right to enter into a contract which gives Scribbler a right, of sorts, to intellectual property.

One friend of mine, a staunch opponent of intellectual property rights, on hearing this idea, asserted that he would simply ignore the contract. To which I suggested the possibility that Scribbler, given foresight, had also gotten bonding, \$50,000 plus legal expenses, secured by my friend's house, in the fine print of the contract. And here starts the chase. Is such a contract enforceable?

I propose for our consideration this free-nation answer to the question of intellectual property rights: intellectual property rights will exist where contracts securing those rights are practicable.

Notice that contracts will work better in the free nation than in America. Contracts for small values, even less than \$1, the suggestion of which will produce only laughs in America, will often work in the free nation. In America government has seized and debilitated many of the means of enforcing contracts; if you want to enforce a contract you probably have to get a lawyer and go to court. This means it is silly for you to try to enforce any contract of small value, say \$1000 or less.

Since we have been raised in this government-diseased environment, many of us have come to believe that our decision to conform to a low-valued contract may be motivated by honor, but not by practicality. And, by and large, experience upholds this ethic in America.

But, as I argue elsewhere,³ in a free nation the cheater faces an opponent more formidable than a government court system. The cheater faces free enterprise. A cheater can get away with a 50-cent theft only until an entrepreneur invents a 40-cent way to catch him. If you violate a contract by photocopying page 1 of an article, some electronic wizardry, as authorized by your contract, may seize a \$50 penalty from your checking account before you copy page 2. But do not worry about this too much. I am sure that you, and other inhabitants of the free nation, will learn the new ethic quickly.

And, free enterprise being capable of the trick of seizure just described, it could also do another, friendlier trick: on the copy machine there might be a button which you could push to signal your request to transfer the agreed-upon payment to the owner of the copyright.

Technology, I am sure, could easily do this. But it does not happen in unfree nations because government strangles the evolution of institutions. In America, an entrepreneur who tried to offer this service would encounter crippling obstacles: both regulatory agencies and private recipients of government-created "rights" could get government thugs to halt this innovation.

So, in a free nation, I believe that systems of contracts would evolve which would effectively protect the income of many creators of intellectual products. Exactly what would evolve is, of course, impossible to predict. But we can speculate.

The system sketched thus far would limit copying of an item by all who acquired that item through contract, but it leaves unregulated all who might acquire a copy some other way. If a tornado rips through your house and drops your copy of Scribbler's volume into my hands, it might seem I could go into business, selling thousands of copies of Scribbler's work for \$9 a copy.

But other kinds of contracts might limit my ability to do this. For instance, the contract I signed to join a jazz CD-of-the-month club (Watch out for that fine print!) might have bound me to honor the copyright not only of the musicians on the CDs which I purchased, but also of all members of the Intellectual Creators Guild, of which Scribbler is a member. Or perhaps the contract I signed when joining the nationwide Mutual Defense League bound me to respect the property, as described in the fine print, of all other members in the league,

and Scribbler is among the members.

Now, my friend who opposes the idea of intellectual property rights may make it a point to join a CD-of-the-month club and a defense league which do not impose these limits on copying intellectual products. But would that work in practice? Would these communities which agreed not to regard any rights in intellectual property become deprived of new, good intellectual work? I do not know.

The answer is blowing in the wind of the enforceability of contracts. In our free nation I propose that contract and technology will limit some, but not all, copying of intellectual products. Even though contract and technology will work at their best in a free nation, some efforts to restrict the copying of intellectual products will not pay for themselves. This economic reality, I suggest, will determine the extent of intellectual property rights.

I am inclined to believe that the resultant amount of protection of intellectual products will be optimal, in some measure of abundance, for the society as a whole. If we are lucky perhaps one of our Austrian economist friends will build this argument.

This system of contracts will, I expect, step around some of the problems created by government-granted intellectual property. For instance, the government system can seem arbitrary in giving exclusive patent to the first inventor to get to the patent office even though another inventor independently invested a lifetime completing the same invention. But with contracts both inventors can profit, their rewards depending upon their success in marketing. And consumers will benefit from the competition.

Before departing this subject, I want to address an objection which we may expect: that this system would protect the intellectual product of wealthy corporations, but it would fail to protect the intellectual product of the little guy who lacks financial resources to insure enforcement. But the little guy should be able to work out a win-win contract with a big guy who, for a share of the profits, will take on the cost of enforcement.⁴ This happens in the present legal environment when an author publishes through a large publishing company. ▲

Footnotes

¹ This idea, that contract might limit copying of intellectual products, received attention 100

(continued on page 20)

Dismantling Leviathan From Within, Part III: Is Libertarian Political Action Self-Defeating?

by Roderick T. Long

This paper was presented at our 29 April 1995 Forum.

The Pragmatic Objection to Political Action

Libertarians who oppose the project of seeking political power in order to dismantle the state offer both a Principled Objection — that libertarians inside government cannot achieve their aims without violating people's rights — and a Pragmatic Objection — that such a project, even if morally permissible, is self-defeating.

In previous installments (see the last two issues of *Formulations*) I've argued, albeit cautiously, that the Principled Objection can be met with an ethically *and* pragmatically sound state-dismantling program that is (qualifiedly) abolitionist with regard to eliminating taxes and regulations, yet gradualist with regard to eliminating government services. But the Principled Objection is only one half of the libertarian case against libertarian government. The other half is the Pragmatic Objection that even if the project of dismantling Leviathan from within *were* morally permissible, it would not be practically feasible. Trying to establish a libertarian society through governmental action, the proponents of this perspective argue, is not only bad morals but bad strategy.

Now some of the problems of feasibility and strategy have already been dealt with in the two preceding installments, in the course of trying to show that a state-dismantling scheme need not abandon morality in its quest for practicality. But I do still want to consider what I take, from my reading and conversation, to be the four main prongs of the Pragmatic Objection to libertarian political action.

First Pragmatic Pitfall: Top-Down Reform

Anti-political libertarians sometimes pose the following query: "Look, we libertarians all agree that, no matter what the problem, top-down, government-based

solutions — the 'political means' — are bound to be less effective than bottom-up, market-based solutions — the 'economic means.' Right? So when it comes to the



Roderick Long

problem of dismantling the state and achieving a libertarian society, why should we suddenly reverse ourselves and place our confidence in a top-down political approach, like electing libertarian congressmen and passing libertarian legislation? If government is so lousy at everything else it attempts, why should we expect it to be any good at creating a free society? Why not remain true to our fundamental insight — the practical superiority of the market sector over the state sector — and abandon political campaigning in favor of a bottom-up, grass-roots campaign to undermine political authority from below, through a combination of education and counter-economics? Once enough people simply withdraw their support and obedience, the state will collapse. If there is widespread grass-roots support for libertarian ideas, top-down reform is ineffective; on the other hand, if there is *no* such widespread grass-roots support, top-down reform is doomed to fail. Thus top-down reform is bound to be either unnecessary or insufficient."

George Smith, for example, speaks for the Voluntarist position when he asks:

"Hasn't it ever struck you as paradoxical how libertarians who are innovative when it comes to free-market alternatives, can

be so pedestrian and orthodox in the area of political strategy. I mean, libertarians never tire of outlining plans for free-market roads, sewers, utilities, charities, schools, police forces, and even courts of law... But now comes the issue of political strategy, and the imaginative libertarian suddenly turns slavishly orthodox. 'How can we change things,' he asks, 'without political action? ...'" ("Party Dialogue," p. 25; in Carl Watner, et al, ed., *Neither Bullets nor Ballots* (Pine Tree Press, Orange CA, 1983).)

What can be said to this kind of objection? I agree that no libertarian reform that is *completely* top-down has any hope of succeeding; there must be a bottom-up component. I also agree that the ideal scenario for establishing a libertarian society would be *completely* bottom-up. Thus far, then, I am in sympathy with the objection.

So where do I disagree? Well, it seems to me that in situations where a bottom-up component does exist, but still falls far short of being powerful enough to undermine the state unaided, a top-down component can serve to fill the gap, to make up the difference.

"But wait," the critic may protest. "This is just another version of the soft-socialist argument that the market can do some good, but where it falls short it needs to be 'corrected' by government intervention. How can a libertarian sign onto this? What happens to our faith in the free market?"

My answer is that my faith in the power of the free market is undiminished — but in case you haven't noticed, we don't *have* a free market. What we have is a deeply regulated and crippled market, and it is *that* in which the Voluntarists are asking us to have faith. Grass-roots education to undermine allegiance to the state is hampered by the fact that most of our audience has been indoctrinated in state-run schools. Counter-economic strategies to build alternatives to the state are hampered by the fact that most of them are illegal, and prospective participants are not unnaturally afraid of being sent to prison. (Even those that *are* legal are so severely regulated that many are discouraged from participating, and the ardor of those who do participate is somewhat quelled by the knowledge that Big Brother is looking over their shoulders.)

Surely it would be absurd to argue as follows: "We libertarians claim to recognize the superiority of private over public solutions, but when we drive to work in the morning we use the public roads. How unimaginative! When we are so boldly and consistently libertarian in other areas, why do we pick such an un-libertarian strategy for getting to work? Don't we know that private roads are better than public ones? All right then, from now on, if we really believe what we preach, we should use only private roads for driving to work." Of course private roads are a superior strategy for getting to work — but the power of government has created a severe shortage of private roads, and has thus *prevented* us from making use of the best strategy. The same applies to purely non-political strategies for dismantling the state.

I do not wish to underestimate the power of bottom-up strategies; they are vitally important, and no liberalization program can possibly succeed without them. I support and participate in a number of such bottom-up projects; and I have little patience for those who criticize anti-political libertarians for "doing nothing." Moreover, I agree with the Voluntarists that a purely bottom-up approach *could* succeed, whereas a purely top-down approach *could not*. Where I part company with the Voluntarists is in thinking, *first*, that a mixed approach — partly top-down, partly bottom-up — could also succeed, and *second*, that this mixed approach is more likely than the purely bottom-up approach to be practicable in the foreseeable future.

The Voluntarists seem to assume that top-down and bottom-up approaches to libertarian activism are in competition, even in conflict, rather than being essentially complementary. Yet throughout history, every successful liberatory movement I can think of — from the abolition of the slave trade and the end of British rule in the American colonies to the emancipation of women and the triumph of the Anti-Corn-Law league — has won the day through a *combination* of top-down and bottom-up strategies. I see no reason to expect the triumph of libertarianism to be different.

Indeed, I see the libertarian movement as a multifaceted phenomenon. Consider the various forms libertarian activism can take:

- *A. Pressuring the existing power structure to reform itself in a more*

libertarian direction. This is the approach taken by lobbying groups like the Cato Institute and Reason Foundation.

- *B. Taking over the existing power structure.* This is the approach taken by the Libertarian Party, which proposes to proceed peacefully and legally via the electoral process. (If there are other libertarian organizations pursuing the same goal — a libertarian take-over — through a strategy of revolutionary violence, they've wisely kept quiet about it.)

- *C. Undermining the existing power structure from below.* Here the idea is to withdraw support from the state and create alternative, counter-economic institutions that will gradually supplant the functions of government. This is the approach taken, *e.g.*, by Terra Libra (as well as by Samuel Konkin's Agorist Institute, if that still exists). It is also the approach most favored by libertarian science fiction writers (sometimes combined with B or D); see, for example, J. Neil Schulman's *Alongside Night*, F. Paul Wilson's *An Enemy of the State*, and Ayn Rand's *Atlas Shrugged*.

- *D. Starting a new libertarian country of our own.* This is the option explored, in somewhat different ways, by the Free Nation Foundation, the New Country Foundation, and Laissez Faire City.

- *E. Convincing more people to become libertarians.* This strategy of education, persuasion, and outreach is the approach adopted by most libertarian organizations; it also forms a significant part of the activity of organizations pursuing other approaches, like Cato and the LP. Some educational organizations seek to educate the general public directly; others adopt a more leveraged approach, as in the Institute for Humane Studies' attempt to influence the climate of opinion by supporting the careers of libertarian academics. Another leveraged approach, pursued by many libertarian periodicals, is to provide intellectual ammunition to fellow libertarians. Most educational efforts are aimed both at fellow libertarians and at the general public.

I see no conflict among these various strategies, and I support groups pursuing

each of them. E is obviously an omnistrategy; any of the other strategies will be rendered more likely of success to the extent that strategy E succeeds. As for the other four strategies, once again I regard them as complementary; I see the libertarian movement as attacking on many different fronts at once.

Another criticism one sometimes finds directed against libertarian political activism should perhaps also fall under the classification of this first pitfall. I recall reading some anti-political libertarian argument — perhaps by Samuel Konkin — to the effect that libertarians in power could accomplish little, simply because there are so many federal laws that even if a libertarian Congress were to repeal fifty laws a day, it would still take a hundred years to repeal them all. (Or something like that; I forget the exact figures.) But this problem seems easily solved; rather than taking up individual laws one by one, the sensible thing would be to pass new legislation invalidating the old. Example: "Henceforth everyone shall have the legal right to do X. Any provision of existing federal legislation that is inconsistent with this right is hereby repealed."

Second Pragmatic Pitfall: Dancing with the Devil

The second pitfall is closely related to the first, but I believe it can be distinguished as a separate concern. Both pitfalls concern the alleged ineffectiveness of libertarian political activism, but the emphasis is somewhat different. The theme of the first pitfall is *government as inert*; the idea is that government is a clumsy, ponderous tool that cannot be wielded effectively. The theme of the second pitfall is *government as subversive*; the idea here is that government, like Frodo's Ring, has an internal dynamic of its own that will tend to undermine any attempt to make use of it for libertarian ends. In particular, those who charge into Washington with high ideals and anti-establishment sentiments soon become accustomed to wielding the reins of government power, and "go native."

"Should the wise maxim often quoted by libertarians, 'Power corrupts,' now be amended to read, 'Power corrupts — unless you are a libertarian?' It is not clear to me why libertarians are any less susceptible to the temptations of power

than the ordinary mortal."
("Party Dialogue," p. 11.)

I think this objection is right as far as it goes. One might think that libertarianism by its very nature would be less likely than other ideologies to attract power freaks. But empirically, the libertarian movement has been a battleground for so many power freaks and "authoritarian personalities" over the past several decades that such optimism would be naïve.

But still there are a few reasons, if not for optimism, then at least for a somewhat less stark pessimism.

For one thing, the corruption process can take time. If the liberalization process proceeds fast enough, then by the time the libertarian politician has weakened enough to succumb to the temptations of power, the power he or she was tempted to use may have largely dwindled away. Advocates of statist political strategies need to assume that susceptible politicians can be held in check *indefinitely*; advocates of libertarian political strategies need only assume that susceptible politicians can be held in check *for a while*, until the eventual impotence of the state makes the issue moot.

David Friedman makes a related point. He too believes, with the Voluntaryists, that libertarian politicians will eventually be corrupted, and so he is skeptical about the value of electoral success as a libertarian goal; but he argues that a libertarian political movement can work to change the political climate in such a way that once libertarian politicians have indeed been corrupted, it will be too late for them to do any harm:

"We should regard politics not as a means of gaining power but as a means of spreading ideas. ... If this strategy is successful it will, in the long run, self-destruct. If we are sufficiently successful in spreading libertarian ideas, eventually even a consistent libertarian will be able to get elected. When that begins to happen, the Libertarian Party will finally become a major party — and promptly begin to pursue votes instead of libertarianism. The transition may be a little difficult to recognize, however, since at that point pursuing libertarianism will finally have become the best way of getting votes. It is a defeat we should all look forward to."

(David Friedman, *The Machinery of Freedom: Guide to a Radical Capitalism*, Second Edition (Open Court, La Salle, 1989), pp. 228-229.)

Second, libertarians will have a more difficult time than other politicians in rationalizing their abuses of power, to themselves or to others. This is not because libertarians are inherently more honest and less prone to self-deception (something I believe in my more optimistic moods, but not always); rather, it has to do with the nature of libertarianism itself. There are other political movements in the past that have fought for liberty, or some aspect thereof; but their commitment to liberty was always just one facet of the total constellation of goals to which they were committed. There's nothing intrinsically wrong with that, of course; there are many other good things besides liberty. But the unfortunate result was that there was always an apparently reasonable temptation, when the chips were down, to sacrifice liberty (oh, only partially and temporarily, of course!) in order to promote one of the other goals. That is how classical liberalism became welfare liberalism, how feminism changed from a predominantly individualist to a predominantly collectivist movement, and how principled anti-communism became Cold War McCarthyism. Libertarians, on the other hand, are fanatically single-minded; considered as a political movement, they share only *one* goal — liberty. To what cause can they betray it, and still pretend — to themselves and others — to be faithful to their libertarian principles?

These considerations may give us some breathing space; but libertarian politicians will of course remain corruptible. That is one reason that any top-down strategy must be accompanied by a bottom-up strategy, to keep the top-downers honest. But I cannot see that worries about corruptibility oblige us to forswear the top-down component entirely. Trusting libertarian politicians is risky; but it's worth a try. And despite what one sometimes hears to the contrary in libertarian circles, it is *not* true that no government has ever voluntarily decreased its own power. That's one reason that Andrew Jackson, despite his horrific treatment of the Cherokee, has some claim to be considered a libertarian hero.

Third Pragmatic Pitfall: Loss of Credibility

The third pitfall against which anti-political libertarians warn us is that participation in political action will damage libertarians' credibility in the eyes of the public, who will see such participation as inconsistent with libertarian principles.

Those who press this version of the Pragmatic Objection are typically proponents of the Principled Objection as well. They thus assume that the public will be *correct* in convicting libertarian politicians of inconsistency. But if my critique of the Principled Objection in Parts I and II has been correct, then this third pitfall really involves a *misperception* of libertarian politicians on the part of the public; the danger is that they will believe, *falsely*, that political activism is a betrayal of libertarian principles, and so will *erroneously* condemn libertarian politicians as hypocrites.

But if that is the problem, then it seems to be simply one more facet of a general public misperception of libertarianism, of a piece with such more common errors as the misperception of libertarian economic proposals as cold and heartless toward the poor, or the misperception of libertarian opposition to victimless-crime laws as stemming from a commitment to moral relativism. And the way to correct such misperceptions is through education.

Voluntaryists often argue that by engaging in political action libertarians are sanctioning the state:

"To run for or support candidates for political office is to grant legitimacy to the very thing we are attempting to strip of legitimacy. ... The hypocrisy is there for all to see. ... Political power is legitimized through the electoral process. ... The vote sanctifies injustice. ... The vote is the method by which the State maintains its illusion of legitimacy. There is no way a libertarian organization can assail the legitimacy of the State while soliciting votes."

("Party Dialogue," pp. 19-20.)

But this critique is ambiguous. Does it mean that political action counts as an *actual* endorsement of the state by libertarians, or only that it is likely to be *misperceived* as such? The former alternative, that political action signifies genuine

Back issues of formulations available — Collect them all!

Volume I

No. 1 (Autumn 1993)

"A Letter from the Founder," "Apocalypse Anytime," "Problem X," & "Serbia & Bosnia," by Richard Hammer • "The Articles of Confederation," by Bobby Emory • "Virtual Cantons: A New Path to Freedom?," by Roderick Long • (8 pp.)

No. 2 (Winter 1993-94)

Report on Forum on Constitutions • "Imagining a Free Society, I: Wealth & Immigration," by Mary Ruwart • "Let the Wookiee Win," "Social Programs: Whose Values Do They Serve?," & "A Libertarian View of Charity," by Richard Hammer • "Charity Without Force: The Bishop's Storehouse," by Bobby Emory • "Who's the Scrooge? Libertarians and Compassion," "Punishment vs. Restitution," & "How Government 'Solved' the Health Care Crisis," by Roderick Long • (16 pp.)

No. 3 (Spring 1994)

"Government Grows: True or False?" & "Law Can Be Private," by Richard Hammer • "Notes on the History of Legal Systems," by Bobby Emory • "Private Law in Iceland," "University Built by the Invisible Hand," & "Nature of Law, I: Law & Order Without Government," by Roderick Long • "Restitutive Justice & the Costs of Restraint," by Richard Hammer & Roderick Long • (12 pp.)

No. 4 (Summer 1994)

Report on Forum on Systems of Law • "A Limited-Government Framework for Courts," by Richard Hammer • "Agreed Ground, Version 0," by Bobby Emory • "Nature of Law, II: Three Functions of Law" & "Constitution of Liberty, I: Between Anarchy & Limited Government," by Roderick Long • Review of David Friedman's *The Machinery of Freedom*, by Wayne Dawson • (16 pp.)

Volume II

No. 1 (Autumn 1994)

"Plan of the Free Nation Foundation," "Comments upon Security, National and Domestic," & "Liberty Hitchhiking," by Richard Hammer • "Contra Insurance," "Devil's Advocate: No Defense Needed," & "A Service Provision Alternative," by Bobby Emory • "The English Experience With Private Protection," "Can We Escape the Ruling Class?," "Funding Public Goods," & "Nature of Law, III: Law vs. Legislation," by Roderick Long • Review of Richard Maybury's *Whatever Happened to Justice?*, by Chris Spruyt • (24 pp.)

No. 2 (Winter 1994-95)

Report on Forum on Security • "Protective Services in a Free Nation," by Scott McLaughlin • "Liberty and Taxes: How Compatible Are They?," by Charles Adams • "Stand Up" & "The Power of Ostracism," by Richard Hammer • "Defending a Free Nation," "Slavery Contracts & Inalienable Rights," & "Constitution of Liberty, II: Defining Federal Powers," by Roderick Long • Review of Steven Horwitz's *Monetary Evolution, Free Banking, & Economic Order*, by Eric-Charles Banfield • (24 pp.)

No. 3 (Spring 1995)

"Glorious Revolution for an American Free Nation," by Phil Jacobson • "Elections, Libertarians, and State Power," by Stacy Powers • "Protection from Mass Murderers: Communication of Danger," by Richard Hammer • "Banking in a Free Society," by Bobby Emory • "Murray Rothbard, R. I. P.," "Religious Influence on Political Structure," & "Constitution of Liberty, III: Virtual Cantons," by Roderick Long • Review of Charles Adams' *For Good and Evil: The Impact of Taxes on the Course of Civilization*, by Robert Mihaly • (20 pp.)

No. 4 (Summer 1995)

Report on Forum on Self-Government, by Chris Spruyt • "Three Voluntary Economies" by Phil Jacobson • "We Huddle for a Purpose" & "'Liberty' is a Bad Name," by Richard Hammer • "Electronic Democracy & Prospects for a Free Nation," by Richard Hammer & Phil Jacobson • "Dismantling Leviathan, I: Can We? Should We?" & "Constitution of Liberty, IV: Rights of the People," by Roderick Long • "Inalienable Rights & Moral Foundations," by Maribel Montgomery & Roderick Long • "Taxation: Voluntary or Compulsory?" by F. W. Read & Benjamin Tucker • Review of Franz Oppenheimer's *The State*, by Candice Copas • Review of Henry Hazlitt's *Foundations of Morality*, by Richard Hammer • (28 pp.)

Volume III

No. 1 (Autumn 1995) • Report on First NCF Conference • "Education in a Free Nation," by Liz Hanson

"More on Hazlitt and Morality," by Maribel Montgomery • "The Libertarian Case Against Intellectual Property Rights," "Good and Bad Collective Action," & "Dismantling Leviathan, II: The Process of Reform," by Roderick Long • "Might Makes Right: An Observation and a Tool," by Richard Hammer • Review of Ernest Bramah's *Secret of the League*, by Sean Haugh • (24 pp.)

(See order form on reverse.)

Clip this order form and return to:

Free Nation Foundation
[outdated street address], Hillsborough, NC 27278

YES, sign me up for:

_____ Subscription to *Formulations*, \$15
four issues, published once per quarter

_____ One Year Membership, \$30
Members of the Free Nation Foundation receive: a subscription
to *Formulations*, 20% discount on conference registration fees,
invitation to attend regular meetings of the Board of Directors,
use of the Library, and copies of the Bylaws and Annual Report.

Additional contribution: _____

Total enclosed: _____

Make checks payable to the Free Nation Foundation.
The Free Nation Foundation is a 501 (c)(3) tax-exempt
organization.

Name: _____

Address: _____
(unless we already have it)

Phone: _____
(if you want us to have it)

Please send a free issue of *Formulations* to:

Name: _____

Address: _____

Back issues of *Formulations*:

- Volume I, No. 1 (Autumn 1993) _____ copies @ 1.00 each = _____
- Volume I, No. 2 (Winter 1993-94) _____ copies @ 2.00 each = _____
- Volume I, No. 3 (Spring 1994) _____ copies @ 2.00 each = _____
- Volume I, No. 4 (Summer 1994) _____ copies @ 2.00 each = _____
- Volume II, No. 1 (Autumn 1994) _____ copies @ 2.00 each = _____
- Volume II, No. 2 (Winter 1994-95) _____ copies @ 2.00 each = _____
- Volume II, No. 3 (Spring 1995) _____ copies @ 2.00 each = _____
- Volume II, No. 4 (Summer 1995) _____ copies @ 2.00 each = _____
- Volume III, No. 1 (Autumn 1995) _____ copies @ 2.00 each = _____

Proceedings of Forums:

- Constitutions _____ copies @ 5.00 each = _____
- Systems of Law _____ copies @ 10.00 each = _____
- Security in a Free Nation _____ copies @ 5.00 each = _____
- How Can Government Establish Self-Government? _____ copies @ 10.00 each = _____
- Free Market Mechanisms for Organizing Collective Action _____ copies @ 5.00 each = _____

Other publications:

- Booklet: Toward a Free Nation _____ copies @ 2.00 each = _____
- Working Paper: Win-Win Society is Possible _____ copies @ 2.00 each = _____

Handling = 1.00
Total enclosed = _____

Ship to: Name: _____
Address: _____

Clip this order form and return to: **Free Nation Foundation**, [outdated street address], Hillsborough, NC 27278

endorsement, is reminiscent of those tacit-consent theories for which Voluntarists ordinarily have only contempt. Lysander Spooner, one of the Voluntarists' own favorite authorities, disposes of this notion nicely:

"To take a man's property without his consent, and then to infer his consent because he attempts, by voting, to prevent that property from being used to his injury, is a very insufficient proof of his consent to support the Constitution." (Lysander Spooner, *No Treason No. VI: The Constitution of No Authority*, p. 75, in George H. Smith, ed., *The Lysander Spooner Reader* (Fox & Wilkes, San Francisco, 1992).)

On the other hand, if the worry is that the public will *misperceive* libertarian political action as sanctioning the state, I reply with a *tu quoque*; for the public is equally likely to misperceive the strategy of the anti-political libertarians, mistaking their principled renunciation of electoral politics for apathy and defeatism.

Indeed, the anti-political strategy may even be perceived, perversely enough, as yet another sanction of the state! As Herbert Spencer trenchantly observed, regarding the theory of tacit consent:

"Perhaps it will be said that this consent is not a specific, but a general one, and that the citizen is understood to have assented to everything his representative may do when he voted for him.

But suppose he did not vote for him, and on the contrary did all in his power to get elected someone holding opposite views — what then? The reply will probably be that, by taking part in such an election, he tacitly agreed to abide by the decision of the majority.

And how if he did not vote at all? Why, then he cannot justly complain ... seeing that he made no protest

So, curiously enough, it seems that he gave his consent in whatever way he acted — whether he said yes, whether he said no, or whether he remained neuter! A rather awkward doctrine, this." (Herbert Spencer, *Social Statics: The Conditions Essential to Human Happiness Specified, and the First of Them Developed* (Robert Schalkenbach Foundation, New York, 1970), p. 190.)

Since both the political and the anti-political libertarian strategies are open to misperception and misrepresentation, the solution, it seems to me, is once more education — a bottom-up strategy, to be sure, but one that in this instance may serve to vindicate the top-down approach as well. What is called for, I think, is an up-front approach. We should tell the public: "We libertarians are all committed to changing society through education and the like. But some of us also seek to work through the political process. There is a friendly disagreement, both ethical and strategic, among libertarians as to the legitimacy of this approach. Some libertarians condemn any association with the state as inappropriate. Others consider it a permissible defensive option to try to take over the state and dismantle it from within. We invite you to join us in this conversation."

Voluntarists insist that libertarian political action sends the wrong message:

"You wish to work directly through the political process. I maintain that this reinforces the legitimacy of that process. You tell people, in effect, that the way to assert their natural rights is to ask the government's permission. When the government gives you permission to keep your earnings, or to teach your children, or to live a particular lifestyle, then it's O.K. to do so. It's all very proper; the game is played by the State's own rules.

I maintain on the contrary, that libertarians should breed a thorough and uncompromising disrespect for the government and its laws. ... We wish people to look elsewhere than government for their freedom. We wish them to view government with contemptuous indifference. This cannot be achieved through political action."

("Party Dialogue," pp. 26-28.)

Well, maybe so and maybe not. Political action on the part of libertarians can send a message. But what libertarians *say* as they engage in such action can send a message too, and the content of this second, verbal message can influence the reception, and guide the interpretation, of the first, non-verbal message.

Voluntarists may protest that "actions speak louder than words." But those who make this reply are still assuming that political action has an intrinsically state-san-

tioning meaning, that it cannot have the meaning of legitimate defense of the innocent. If this is wrong, as I've argued, then political action taken in its own right is genuinely ambiguous, and words by libertarian politicians expressing contempt for the government and rejection of its authority can help the public acquire the appropriate conceptual framework for interpreting libertarian political action as legitimate defense rather than a sanction of the state. (I must add that I've never met anyone, *outside the libertarian movement itself* (where many still adhere to the strange and much-abused Randian notion of "sanction"), who interpreted libertarian political action as a sanction of the state; on the contrary, it is those libertarians who *reject* political action that are most likely, in my experience, to be misinterpreted.)

One version of the credibility objection appeals to the fact that libertarian politicians may have to take an oath of office committing themselves to upholding the authority of the state. I don't think there is any moral problem here — any more than Lana (in my example in Part I), infiltrating the Minions of Moloch in order to protect her hometown, compromises her integrity or undertakes any undesirable obligation by mouthing the Oath to Moloch. The oath of office, as taken by a libertarian, may simply be a justifiable lie.

But there may well be a public-relations problem. If a libertarian running for office is asked by a potential voter whether she intends to lie or not when taking the oath of office, what is she to say? If she answers "Yes," people's reaction may be: "Oh, so she thinks it's okay to lie when taking a solemn oath before the people! No way am I going to vote for her!" On the other hand, if she says "No," the reaction may be: "Oh, so she really intends to uphold the authority of the state! So much for her commitment to libertarianism. No way am I going to vote for her!"

If I were a libertarian politician, and someone raised with me the issue of the oath of office, I would answer as follows: "When I am sworn in, I will take the oath of office honestly and sincerely, and will fulfill it to the best of my ability. Naturally, however, I will also respect the common consensus, universally acknowledged since the Nuremberg trials, that no oath to up-

(continued on page 28)

Review

Complexity: The Emerging Science at the Edge of Order and Chaos

by M. Mitchell Waldrop

Touchstone, 1993
360 pages

reviewed by Richard Hammer

This nonfiction book reads like drama, and educates its reader in the new science of spontaneous order. Waldrop tells the tale through the eyes of participating scientists, whom he introduces by tracing development of their important ideas, going back as far as the 1940s. But most of the action occurs during recent years, 1985-90, at the Santa Fe Institute in New Mexico. The reader gets caught in the excitement of meetings at that new Institute, as scientists from several disciplines meet and discover their mutual hunger for this science.

This book updated my education in the science of life in a few important ways. Notably, researcher Stuart Kauffman has shown a way that self-replicating molecules can originate in primordial soup. Kauffman's way, autocatalytic sets, is more believable than an earlier theory which relied on random recombination of ions following lightning jolts. Under certain circumstances, in the presence of catalysts, it is likely that molecules will be created in self-sustaining cycles, as $A \rightarrow B \rightarrow C \rightarrow D \rightarrow A$. He also showed that the complexity and size of the molecules created in these cycles is likely, in favorable circumstances, to increase. This shows a plausible origin for life.

Another important new concept for me was that these self-replicating cycles can start only in a specific environment. As explained by researcher Christopher Langdon, artificial life occurs where matter is neither solid, with all molecules bound in rigid order, nor fluid, with all molecules moving independently, but rather in a special state in between in which molecules can cluster and maintain patterns of relationship with some high degree of probability—but not with certainty—because fluidity, the possibility of change, is the source of novelty, including self-replication.

The action of simple artificial life was

demonstrated by a computer model of flocking birds. Each spot on the screen of the computer model, called a "boid" by creator Craig Reynolds, followed three simple rules (p. 241):

1. It tried to maintain a minimum distance from other objects in the environment, including other boids.
2. It tried to match velocities with boids in its neighborhood.
3. It tried to move toward the perceived center of mass of boids in its neighborhood.

While none of these rules said "form a flock" nonetheless flocks did form. And the flocks behaved in ways remarkably reminiscent of flocks of real birds. In flying past obstacles, for instance, a flock would sometimes divide and then recombine after flowing past the obstacle.

Waldrop's book maddened me when it got into economics. A few of the major characters were economists—but not of libertarian flavor. Waldrop portrays these economists as leading a revolution as, in the 1980s, they challenge mainstream economics by questioning its mathematical modeling and assumptions of equilibrium. Of course the Austrian economists favored by libertarians have been challenging these assumptions and preaching spontaneous order for sixty years or more—a contribution which Waldrop and his economists overlooked almost entirely. Among economists credited I recognized only one Austrian, Schumpeter, who received a brief passing nod.

In my view the economists at the Santa Fe Institute seemed to be doing what leftists always try to do: justify state action. They could do some things right: acknowledge the fallacy of economic equilibrium; explain how state-induced economic stagnation toppled the Soviet Union; marvel at the power of spontaneous order. But they could not, for the most part, bring themselves to acknowledge that *laissez faire* is better than state planning. They clung relentlessly to the notion of a mix of government planning and private choice, the way a tick clings to a dog. As the book closed they had not yet found their justification for state action. But they had hope as they were receiving continuations of their federal grants.

Optimistically now, we libertarians can find

confirmation of our basic principles in this book. Life, it seems, emerges and flourishes, not in response to any central plan, but when individual agents are constrained by simple rules governing only themselves and their interactions with others. This smacks of self responsibility and property rights.

It seems possible that this new science may someday produce a proof that our ideal, bottom-up rule-based action, is an optimal scheme for life. It promises to strengthen our hand. Δ

Intellectual Property (from p. 13)

years ago in an extended debate about intellectual property published in a periodical named *Liberty*. See: Wendy McElroy, "Intellectual Property: The Late Nineteenth Century Debate," *Libertarian Heritage* No. 14, c. 1995, a publication of Libertarian Alliance (25 Chapter Chambers, Esterbrooke Street, London SW1P 4NN, U.K.).

2 Roderick T. Long, "The Libertarian Case Against Intellectual Property Rights," *Formulations*, Vol. III, No. 1 (Autumn 1995).

3 See "Toward Voluntary Courts and Enforcement," starting on page 5 of this issue.

4 This possibility, of a weak party protecting itself against overwhelming odds by working out a win-win exchange with a strong party, receives inspiration from the practice in Iceland 1000 years ago: a victim of crime could sell his claim for compensation to someone with enough power to collect it. Thus big villains found themselves facing big adversaries. See: Roderick T. Long, "The Decline and Fall of Private Law in Iceland," *Formulations*, Vol. I, No. 3 (Spring 1994).

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

Conferees Discuss (from p. 1)

those who attended, or may be purchased using the order form on page 18.

Several photos taken at the Forum appear in this issue. Thanks to Bobby Emory. Δ

Publications Merge (from p. 1)

home page for the two Foundations on the World Wide Web.

Material from NCF writers will be noted as such in *Formulations*, with a line of text, "for the New Country Foundation." under the author's name. For instance, see the article by Marc Joffe starting on page 3. Δ

Free Accord Law: Ethical Communities

by Philip E. Jacobson

This paper was presented at our
14 October 1995 Forum.

Preface

As a college student majoring in social science, I began to take an interest in the natural history of the political system of our civilization, but found that the subject was never treated comprehensively. Now, more than twenty years later, I find myself trying to write such a treatment. Initially I intended this to be only an article, but it keeps growing and threatens to become a book. I'd really rather not go that far, but there is a message here that needs to be written.

So what you have here is only part of the whole. I have developed an outline, and have been filling it in as time passes, but the FNF publication deadline now forces me to stop adding new material. I present several sections here, each of which I hope stands alone fairly well, but which I admit you may have trouble correlating to the central theme, as some connecting sections remain to be written. The feedback in this Forum will help me, both in clarifying the message and in containing it to an appropriate size.

In writing this I draw upon most of a lifetime of reading in a subject which falls under the general heading of "political anthropology." I draw from the eclectic presentations I was exposed to in college, as well as from a continuous diet of self-assigned readings since that time.

The thesis which I intend to develop in the whole work, when complete, is that *statist law is inherently negative sum*, as opposed to *free accord law*, which in humans *is naturally disposed to be positive sum* in the extreme.

Now, having used the terms "negative sum" and "positive sum," I need to explain those terms. We jump in with an excursion into game theory.

Game Ecology

Categorizing Games by the Sums of Their Points

Any activity can be viewed as a game. Each game will have some goal, which can be thought of as being a "point" or quantity

of points which each player seeks to obtain. Different games will have different ways of assigning points. The success of individuals is measured in the minds of players. A



Phil Jacobson

player may not visualize quantities of "points" while playing, but will in some way (perhaps subconsciously) perceive how well the goal is being achieved. Game theory provides a way of categorizing games in terms of "points" regardless of how players see the game. It is especially useful in appraising how the acquisition of points by one player influences the ability of other players to gain points.

Thus we find it informative to categorize games by their sum, which is simply the total of all the scores of all the individual players. The sum gives us a view of the whole — whether the whole loses, holds even, or gains.

Standard Game Types

These first three game types were described as part of Game Theory, a science invented by computer pioneer John Von Neumann in the 1950s.

Negative sum: # points diminishes with play

Thus someone must lose points, even if no one wins.

Example: most human wars.

Zero sum: # points stays constant during play

Thus in order for someone to win points, someone must lose.

Example: the game of poker, when the players are forced to limit their bets to what was on the table at the beginning of play.

Positive sum: # points rises with play

Though some may lose points, some must win.

Example: a healthy economy.

Additional Positive Sum Types

Even in "positive sum" games a lot of players can lose a lot of points. For them the entire experience can be negative. It is useful therefore to note the possibilities of positive sum games which are not at all negative. For this purpose I have added (with the help of Robert Bass) the following categories of games.

Superlative sum = no losers

though some may not gain.

Supreme sum = all winners

though some may win more than others.

Questions of Player Perspective

What are points for player?

Individuals interacting with one another may each use a different type of point.

Example: one individual may join an activity thinking of it as a way to get money, while another individual may join the same activity seeking power over other people during the course of play.

Which game type does player see as best way to get his points?

What seems positive sum to one individual may seem negative to another individual. Objective appraisals can be difficult.

Does player see other types of games or other types of points as part of his ecology?

In the last example, both players may (or may not) be aware of one another's perspectives, yet continue to consciously pursue different kinds of points.

Mixed Interactions

Players with different x-sum approaches

A player may have a personal philosophy which values a particular "x-sum" (one of the summation types: negative sum, zero sum, etc.) over the others. That player may set personal limitations beyond the

rules of the game or violate others' concepts of the rules of the game in order to be able to play the particular x-sum.

Players with different scoring (point) systems

As noted above, two players may play with each other but use separate rules — especially scoring rules.

Competition within a positive-sum system

"Zero sum within positive sum": a player may adopt a zero-sum perspective even though the players as a whole operate in a positive sum context.

Cooperation within a zero or negative sum system

"Positive sum within negative sum": an individual is able to play positive sum, even though others around them are playing negative or zero sum.

Ethical Communities

The most basic social institutions which foster coordination are those which sustain and develop community ethics. A community's system of ethics provides the foundation for cooperation in all other areas. For most of humanity's time on the earth there were no legal systems as we now know them. Stateless ethical systems flourished throughout the world amidst a wide variety of climates and customs. Today it is commonly assumed that ethical enforcement requires a special social institution dedicated to law enforcement, provided by a state.

But state institutions of justice are neither necessary nor desirable. The systems of early man are still alive, well, and in the absence of interference from the state, capable of dealing with modern conditions.

For most of the time humans have been on the earth, people have been hunters and gatherers. Only after the last ice age, which ended a little over 10,000 years ago, did other forms of subsistence evolve. Hunting and gathering peoples do not have different kinds of communities. There were no special community types devoted to various kinds of productivity, or recreation, or religion, or political affiliation. The skills known to the culture were practiced, with varying degrees of proficiency, by each individual. A given society's cul-

ture could be contained entirely within a small group of people varying in size from perhaps 10 to 50 individuals. While many such communities might exist for a given culture, they were all pretty much the same. There were no distinct institution groups devoted to religious or political orientation. Everyone within a community had the same religion. Everyone participated in enforcing ethics without recourse to governmental organization.

The state began as a tribute relationship between an army and a conquered people. Successful states began to take a greater interest in the affairs of the conquered. The military elite of these states usually came from herding peoples who saw the conquered population as cattle to be cultivated. Over time the state's leaders assumed judicial authority over the conquered population and began to assign elements of its army to serve as police. Though institutions described as promoting "self-government" have been established in some societies, citizen participation in them is minimal and largely limited to conforming to decisions made by state officials; the state's law enforcement officials still behave as herdsmen.

A society with a state apparatus is composed of many communities at war (usually "cold war" but sometimes "guerrilla war") with one another. The state will enact a set of laws and encourage propaganda in support of the notion that there is a moral code which is applicable to all individuals and all communities within the society. Indeed, the state will endorse the notion that there is in fact only one community and that any conflicts with its laws are merely the reflection of the immorality of individuals. In fact, states occur only in societies with economies with a system of division of labor based largely on membership in many separate communities. These communities will inherently have differing ethical standards. The effort by the state to conscript all the communities into a single standard may not be an endorsement of morality. It is probably the opposite. When a state promotes a single set of standards it fosters conflict. It sets itself up as an arbiter between conflicting parties, playing them off against one another. This tactic is primarily useful during times of peace and prosperity. During times of conflict with other societies or times of general poverty there are plenty of "natural" conflicts.

Levels of Moral Seriousness

In modern societies the moral perspective of hunter-gatherers has been supplemented by that of the state. But the collective emotions through which modern people approach the ethics of given behavior are similar to those of hunter-gatherers. People still choose from among the same options when assigning importance to moral issues. With respect to the seriousness of a specific issue, people within a given group will react to the issue with varying degrees of concern when another group member violates the ethic.

Morality differs greatly from culture to culture. What is a serious matter in one group may be of little or no consequence in another. Within a given culture important issues can remain very casual affairs, while issues with very little physical significance can provoke extreme concern from group members. As children modern individuals often receive their most severe scolding for walking too near to street traffic. But jaywalking is among the most trivial of offenses for an adult. Similarly, one is taught in an unlicensed (though cautious) situation how to light a match as a child, and needs no permit to use fire as an adult, though fire is one of humanity's deadliest weapons. Yet the use of emotionally charged words may become so controversial that laws are proposed to protect citizens from them. And a food or drug accepted as harmless or even beneficial by one culture may become among the most contraband of substances in a neighboring culture.

The level of seriousness with which an ethic is taken is not correlated with the physical importance of the ethic. It is correlated with the type of reactions of the community when the ethic is violated. It is useful to examine this variable when considering the way groups use ethics to coordinate the behavior of individuals.

Habits

At some point, repeated behaviors tend to take on a "life" of their own, and members will tend to follow the ethical standards and expect other members to follow them out of *habit*. Indeed many of the standards of behavior may not even be "rules," may not even be spoken of officially. Patterns of behavior which work for an individual in the community context

will be repeated thoughtlessly and may be copied by others just as thoughtlessly.

In a study of the sociology of ethics, it is useful to categorize a group's patterns of behavior by the level of moral seriousness they are accorded by the members of a group. The categories used here are based on observations made by the sociologist William G. Sumner in his book *Folkways* (1906).

Folkways

Beyond mere habits, Sumner noted the existence of *folkways*, standards of behavior that are socially approved but not considered to be of moral significance. Folkways are the preferred behavior, the customary way of doing things. Group members may be uncomfortable when folkways are not adhered to. They may even mention their discomfort. But failure to adhere to folkways is not "wrong" and does not call for sanctions.

Mores

The next serious kind of standard Sumner noted were *mores* (pronounced "morays"; singular: "mos"). Failure to adhere to mores is deemed "wrong" by the group, but has not been made unlawful. Group members feel strongly about mores and usually consider them essential to the group's welfare. Therefore some sanction against anyone violating a mos is usually undertaken. But because the morality is not a part of the law the sanctioning will be informal and may be limited to ostracism and/or serious criticism.

Law

Sumner focused his discussion on informal morality, but most cultures recognized the existence of *law* as well. Law (which may be a product of tradition, legislation, or decree) is not only a standard of behavior, but also involves standards of enforcement. When one is accused of breaking a law, the community expects a procedure to be initiated which includes some mandatory form of judgment and, in the case of one found guilty, of punishment. However, many communities do not have any formal moral structure and thus have no laws.

Taboo

The most severe form of moral standard is the *taboo* (not discussed by Sumner). A taboo involves unthinkable behavior and

can be considered an extreme form of law. A member in good standing of a group simply would not commit a taboo. Thus if someone does commit a taboo, they are no longer considered a part of the group. The minimum punishment is banishment, which may be supplemented by other punishments, possibly by execution. In Western Civilization the notion of a taboo is found in the concept of the outlaw. Anyone branded an outlaw has offended the community so much that they are literally outside the law. They may be killed on sight without a trial by any community member.

The Standard for Appraising the Level of an Ethic

Generally, if an ethic is readily accepted by individuals it will not be imbued with a great deal of socially charged emotion. Thus it will be low on the scale of moral seriousness. To rate highly on the scale of moral seriousness an ethic must be associated with a behavior which is both important and controversial. That is, the members of the group subscribing to the ethic must feel both that the issue is important and also that a serious risk of deviant behavior exists.

Hunter-Gatherers Don't Need Lawyers

The most important point to be made regarding levels of moral seriousness for various community standards is that *most of the behavioral controls are not a matter of law*. Most community standards are adhered to because the individuals who abide by them believe in the standards or conform to them out of habit. No society could function if its morality was strictly a matter of law. Nor could it function if most of its members required constant prodding and complaints from their neighbors (folkway style enforcement) in order to get them to conform its standards.

Only when there is serious disagreement with regard to the community's standards, when significant factions within the community seriously disagree on the ethic, is there a need for a sizable institution for enforcing the standards.

For hunter-gatherers this probably happened rarely. Their small communities relied mostly on habit — to a lesser degree on folkways and mores. If a hunter-gatherer band had a significant internal disagreement, a respected individual not party to the dispute could arbitrate it, but would

not need a special rank to do so. If this did not work individuals could and did stop associating with their opponents. Perhaps the band would split into two bands. Perhaps one or more individuals would join a neighboring band.

Larger Populations

Multiple-Community Societies

After a relatively large number of people began to live near each other in permanent dwellings, that is to say in large villages, societies began to fragment into a number of separate communities. As economic specialization became common, both within and between villages, the specialized communities operating within a larger economy and society became possible. People still preferred to associate in small groups of individuals with common interests. But a single society required the economic coordination of a large (by hunter-gatherer standards) group of people. Therefore small communities within each urban area continued to provide the basis for social organization — and to provide for the formulation and enforcement of ethics.

At first these communities were based on common residence, as neighborhoods emerged in towns. But soon ethnic background provided a further distinction between communities, as individuals from different cultures began to fill cities. Differing ethnic backgrounds often meant differing religions as well. But as religious beliefs spread between people, there came to be recognizable "communities" composed of common believers in a given religion who might have differing ethnic backgrounds.

The Impact of Increased Population on Ethical Systems

In the earliest villages, it would still have been possible for rival factions to move away from one another to avoid hostile contact. The hunter-gatherers' methods of enforcing ethics could still be used. The experiences of each small community still provided a context for a unique set of habits and traditions. These habits were still taught to children in informal settings, mostly simply by example. But as populations grew, town dwellers became relatively immobile. Increasingly, diplomacy between factions and the use of arbitration

were required tools of resolving moral questions. These tools would later be appropriated by the state. But stateless communities could and did live in peace beside one another.

Social Complexity in Modern Times

Technological innovations have enabled the number of people living within one urban area to become much larger. Technology has also improved communications and transportation over great distances. Various interest groups associated with these economic factors have tended to form



communities in themselves. So there are communities made of merchants, of seamen, of various kinds of craftsmen, etc. These groups might tend to associate not only with locals of the same occupation, but also be able to see themselves as belonging to communities which transcend local residence. Increased communication also lets individuals of common ethnic or religious background associate with others like themselves in other towns, and thus to develop or maintain a sense of community.

Virtual communities: hunter-gatherer ethical systems re-emerging

As communications systems continue to advance, we see the emergence of "virtual communities" composed of individuals whose primary interaction is via electronic media. These communities have an unparalleled flexibility to add or drop members. Single communities can be formed by persons with a wide variety of interests across huge distances. They provide a way

for modern persons with limited physical mobility to leave their local communities (sometimes temporarily) and join new communities with behaviors and perspectives which are rare. As a result, individuals who participate in these new groups have a group membership flexibility like that of hunter-gatherers.

Characterizing Community Size

Herding cultures measure the esteem of an individual or group by the number of animals in their flock or herd. To the

leaders of a state, this means that the larger the population under the state's control the better. This virtue may be supplemented by advantages of large armies over small ones in battle. But to field a large army the leader must control the productivity of many times as many civilians. The effective limits are those of civilian control.

However, even hunter-gatherers seem to have had some concept of group beyond the small hunting band. Family connections, especially tended to be recognized. Anthropologists have noted patterns in pre-literate organizational hierarchy which seem to repeat themselves and may be biologically based.

Peer Group

The smallest group is the peer group. This corresponds to the nuclear family. Peer groups may also be formed in other contexts, such as work, recreation, etc. as mentioned above. Even in pre-literate cultures, an individual may be a member of

more than one peer group. The family unit might be supplemented by a hunting (or gathering) peer group. An individual might even have friends from other tribes.

Peer ethics tend to be the most informal. Yet a peer group can debate and consciously adopt standards which are in effect laws, and taboos may exist.

Clan

The next size of group is the extended family or clan size, formed from several peer-sized groups. One example of a non-family clan sized group is the religious "congregation"; usually composed of several families. In some agricultural cultures, the "hamlet" is a residentially based clan sized group. Several peer groups within a relatively small business might form, but the business as a whole be a clan-sized grouping.

As with peer groups, the full range of ethical seriousness is possible for a clan. But because communication between clan members may take more time, a moral issue may be resolved more slowly. If possible, clan ethics will be addressed within the peer groups which make up the clan. But clan-wide enforcement mechanisms may also exist. Gossip becomes an important vehicle for assessing moral issues, and may become the basis for ostracism or praise.

Tribe

The next sized group in pre-literate cultures is the tribe, composed of several clans. Usually tribes have extensive intermarriage and common culture, but the people may not all live together, or even very near to one another. In pre-literate societies it is common for the peoples of a tribe to believe that they are all descended from a single ancestor, though intermarriage may be the only true kin bond.

The notion of being "good children" of the common ancestor might be a basis for discussion of ethics amongst pre-literate tribe members. This or other common experiences would provide a foundation for a common spoken literature. Stories, especially moral tales, become a vehicle for communication across clan and peer group lines, and also across time.

As urban populations grew and occupational specialties multiplied new kinds of tribes emerged. Tribal sized organization is found in small communities which sup-

port several religious congregations. A religious denomination may organize at tribal size across a large geographic area. An industrial organization may also be organized at the tribal level with several departments organized as clan-sized operations. Tribes can come together in one physical location occasionally, but usually remain dispersed most of the time, though in communication via individual or group contacts which cut across clan and peer group lines.

Nation

The next sized group in preliterate cultures is the nation. A nation is usually recognized as speakers of a common language. Nations usually have a number of distinct tribal level groups within them. It is extremely rare that all the peoples of a nation would come together in one place, though various forms of communication will be made easier by their common language which will tend to keep them in contact. As a result, even if there are no formal ethical systems that extend across the whole nation, at least some common culture will be maintained which will encourage common values.

Literary tradition and overlapping membership in kin or other groups provided the common ethical link for pre-state communities. There was no effort to promote a morality for the whole nation except through these ways of sharing experiences. The fact that the local communities within a nation would have somewhat varying traditions and thus varying ethical traditions was readily accepted. Notions of "law" would probably be a matter for clan or tribal affairs even if they existed across a whole nation. Of course, diplomacy remained a major tool for resolving inter-tribal issues.

A nation-sized grouping might form across traditional "nationalities" amongst the practitioners of a single profession or the enthusiasts of a single recreational pursuit. Individuals within such groups would tend to adopt a lingo of their own which, while pursuing the profession or hobby, would give them greater affinity to others knowing this lingo than to kinsmen or neighbors.

Civilization

The largest sized grouping is the civilization. A civilization is a cultural pattern

which transcends several nationalities. It may be based on a common religion, or a common economy. It may, but need not, have a common political system. If it is dominated by one political entity, then it is properly termed an empire. Even in the absence of a single political regime, ideas and world views will tend to travel within a civilization more easily than between the peoples of two or more civilizations. While language barriers will make the establishment of common customs and values more difficult than within single nations, there will still be some commonality of ethics.

The recognition of distinct civilizations (as opposed to nations) probably did not occur amongst hunter-gatherers. It may not even have occurred for years after town-dwelling became common. The perspective needed to observe civilizational differences requires contact with highly varied cultures across a wide geographic area.

Multiple Ethical Systems Within Single Societies

While families still provided a basic environment for moral instruction, the new peer associations of the new communities also contributed to the formulation and promoting of ethics. Indeed, the new groups began to provide important ethical reference points, even for morality taught in the home. The ethical differences between cultures had previously been traceable to local geography and the common experience of the specific bands of hunter-gatherers. The new environments which fostered the new types of groups also encourage a change of ethical perspective. Desert dwellers might find it expedient to punish a water thief, while people living in a very wet climate might not even consider the concept of water theft. Similarly, a merchant community would value a certain kind of cleverness in deal making while a farmer would see this as abusive.

Typically, each individual in the new complex societies would initially have learned an ethical tradition in a single small group, probably a family group. But as that individual made additional contacts in the society, they would have come into contact with other communities with other traditions. This would not necessarily have strained human nature, as differing cultures had made peaceful contacts even when all humans were hunter-gatherers. Indeed, it

has been observed that hunter-gatherers, not usually needing to defend land, do not tend to have wars, but rather to be able to make friendly contact with other traditions from time to time. A hunter-gatherer might even be granted honorary membership in a "foreign" band.

Similarly a citizen in a complex society might be a member of more than one community, especially as an adult. So in complex societies, adults came to find it necessary to shift ethical perspectives rapidly when moving from group to group. This capacity, a variant of the hunter-gatherers' relationship with neighboring bands, is still with us. We have evolved to institutions which tend to argue for "universal" morality, the state and many religious organizations. Religion, in particular is often thought of as being the primary institution for ethics. Yet we continue to be highly flexible in practice.

There is a high correlation in civilized societies between religion and ethics. Yet while all religions do have ethical concerns, many ethical concerns are supported by non-religious interests. For instance a ball player may agree to abide by the rulings of an umpire, but then argue when he is judged to have violated the rules. From a religious point of view the player's honesty or integrity might be questioned. But the rules of the ball game have no religious significance. Other players and fans of the game form a community which understands the rules and supports them as valuable to the game. The "game community" is the foundation of the ball game ethics, not a spiritual belief. Indeed players and fans may have little or no agreement on spiritual matters yet still support the ethics of the game.

Enforcement of Community Standards

The herdsman needs to understand the nature of his animal, especially as it behaves in a social context. When state leaders seek to herd humans this problem is complicated by the flexibility of human culture. The would-be herder of a large, complex society cannot hope to understand the varieties of lifestyle of the many communities which make up his herd. It is much easier to order the foreign cultures he has conquered to adhere to the leader's own culture. But people naturally adapt their habits to the particulars of their situations.

They also enjoy being recognized as members of distinct groups, and are inclined to adopt symbolic ways of displaying group identity such as clothing styles. No elite culture, no matter how repressive, can fully suppress group differences. Yet too much pride by a group might lead it to rebel.

Informal Enforcement

Negative informal

Enforcement of community standards which are merely habits or folkways is primarily a matter of (usually) *informal* training of new members by example. Humans naturally tend to try to fit into a new group. Children naturally try to copy the older members of the group. Some explicit reference to group behaviors may be made, but usually when reference to group habits or folkways occurs, it can be done indirectly or through oral or written literary traditions. Perhaps the term "enforcement" does not even apply, as the major effect of these activities is simply to make the habit or folkway more comfortable than alternative behaviors.

Positive informal

Informal enforcement can also include positive incentives.

Overt Enforcement

Overt negative incentives

When community standards reach the level of mores, practical enforcement issues become *overt*. If a group member is rude or conducts themselves in an otherwise "immoral" way, the remaining group members feel a need to react. Again, for the most part, there is no organized effort for enforcement. Those who observe the immorality will be critical of it both to the offender and to others. Even if an offender is not confronted directly they will "get the message" through ostracism and the knowledge that others tend to criticize. All individuals will know about the gossip system of the community through direct participation when they are not offending parties, so they can assume that even when they are not directly confronted, that criticism is being made behind their back. A particularly offensive behavior may provoke a physical attack on the offender's person, properties, or perhaps their friends and family. However, to the extent that the

community is harmonious, such punishments will tend to be matters of law.

Overt positive incentives

These are also possible.

Organized Enforcement

Organized negative

Particularly serious offenses may provoke *organized* efforts to punish the offender. At this point we may say that the matter has become "political," especially if there is not agreement amongst the community on the need for or type of punishment. If possible, the accuser(s) will try to invoke law against the accused. If the accuser succeeds in invoking law then the matter falls within the community's established traditions and the results will not appear custom tailored to the particular offense or offender. This will make the community much more accepting of the proceedings. Failure to invoke law may embroil the community in factional disputes with possibly disastrous results.

Invoking the law

In some groups there may be no formal process for *invoking* law. However, individuals who are members of such groups will have experiences in other groups where laws do exist, if only via tradition. When a group with no law is faced with a serious crisis, these experiences can be called upon as models for precedents within the lawless group — especially if the alternative is a feud. Similarly, a new law may result from tensions which have no precedent in a group with laws.

The invocation of law involves a number of very specific steps. The details and names of these steps will vary from group to group, but all group invocation requires them in some form. It is interesting to note that these steps are also required when the group reacts to an external threat, such as a war.

• Trial

The first step is the establishment that an ethic has been violated which requires the group's coordinated reaction. This involves a "trial" of some sort. The "trial" may be of varying length and may or may not involve the accused. The only factor common to all groups is that a "satisfactory" case is made that the accused has

violated law. For some groups this will be a matter of getting a consensus. In other groups a leader or arbiter may be granted the power to make the determination. In others a formal vote of some or all group members may be taken to establish guilt. If there is no law, a prior step must be taken enacting one, although for practical purposes this act may be merged with the "trial." Again, the method will vary from group to group and may be borrowed from another group's tradition.

• Alerting enforcer agents

The second step in the invocation of law is "alerting" the appropriate enforcement body of its duty to act. Some specific group member or members will be empowered to act in the group's name to punish the violator. In small groups this may be the whole membership, but in many cases it is useful to delegate the punishment responsibility, perhaps to ensure fairness, perhaps to select a leader of the enforcement effort, perhaps because of special skills, perhaps just to make sure someone gets the job done.

• Mobilizing

The third step is "mobilizing" the enforcement body, getting it organized. If the enforcer is just one person, this step is minimal. But when coordinating a team of enforcers, the leader needs to actually assemble the team, to make sure that each member is on the right schedule and that they know what is expected of them. Even if the enforcement team is a permanent force (police or military) it needs to be oriented to the particular task at hand.

• Marshaling

The fourth is "marshaling" the enforcement body, directing it in its duties.

State as Defender of Public Morality

A society which is impoverished can be plagued by squabbles over limited supplies of essential products like food and shelter. The state is often portrayed as a force which can contain these conflicts and prevent them from becoming violent. Libertarian thinkers have presented a number of sound economic arguments to the effect that the state's interference in a society

generally discourages prosperity, thus adding to the economic sources of conflict. But it is also true that in a prosperous society the efforts of the state to "promote morality" only serve to encourage conflict.

Overlapping Membership
by Individuals

As has been noted, it is especially important to remember that an individual may be a member of more than one group of the same size. That individual's sense of ethics will vary somewhat as they find themselves in different group contexts. What may be of critical importance in one group may be of little or no consequence in another. Behavior appropriate to one group might be absolutely unacceptable in another. The need for most individuals in civilized societies to adjust to different ethical standards as they move between groups is one of the most important facts of life for these individuals.

Clashes between group standards within a single society are difficult to avoid. Much of the culture of civilized societies is devoted to accommodating the differing standards of groups with overlapping membership. In a society based on mutual self interest and individual liberty, this concern must be of paramount importance. For a society based on at least limited endorsement of initiated force as a means to resolve interpersonal conflicts, the job is much simpler. ▲

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

Libertarians:

**STOP
COMPLAINING**

**START
BUILDING**

**Join the
Free Nation
Foundation**

Review

Atlas Shrugged

by *Ayn Rand*

first copyright 1957
Signet, 1084 pages

by **Richard Hammer**

This past summer I read *Atlas Shrugged*, Ayn Rand's magnum opus, for the second time. This is perhaps the most influential book in the libertarian movement, and I wanted to experience it again, since twenty years of living and learning had passed since my first reading.

I really enjoyed it. Perhaps this delight was permitted by my certainty at the outset that I disagreed with Ayn Rand in significant ways and was not likely to be convinced. Nonetheless, since I wanted to read her book, she was pre-forgiven. And I was free to enjoy.

Perhaps because I knew the overall plot I noticed subtlety which escaped my first reading. I found it a work with masterfully interwoven plot and carefully executed character development.

Readers already familiar with Rand will know that she was an opinionated lady with a definite philosophy, which she expressed in her novels. While I do not agree with her philosophy I do agree with most of her conclusions. The ideal society toward which she drove seems compatible to me.

I suspect that Rand felt vulnerable, uncertain in her philosophy. For evidence I offer Rand's obstinate rigidity and quickness to discard anyone who disagreed. Someone who feels secure, I contend, can take challenges without losing her cool. For other evidence I offer the 57-page length of John Galt's famous speech. Someone once said that you do not have an idea unless you can express it on a piece of paper no bigger than a matchbook cover. That someone was not Ayn Rand.

For both heroes and villains, Rand treats her readers to insightful exploration of the characters' motives and thought processes. Often she seems to be right on target, with damning exposure of weakness and spite in those who whine for state action. But I doubt that she is entirely accurate in these speculations. I too spend a lot of time trying to figure out what goes on in the heads of

leftists. And I find Thomas Sowell's theory, that statists believe that mankind can be coerced to near perfection, which he presents in *A Conflict of Visions*, to be generally more believable, as well as more kind.

Rand was correct, I believe, in the ratio of men to women in her cast of characters committed to a free society. Heroine Dagny Taggart attended a dinner meeting on her first evening in Galt's Gulch. Ten people were there and she was the only woman. Sadly this disproportion seems common.

Of course I evaluated the novel in light of the project we have undertaken in FNF. Unfortunately Ayn Rand does not offer much help here. *Atlas Shrugged* shows the evils of statism, and the plot shows one farfetched method of rebelling against the state. But I find almost nothing in it to help us, we who have already decided to work toward formation of a free society. I am not sure that the hero, John Galt, had any clear idea of how to confront and limit state power, except to go hide.

As the novel ends we are left at a supposedly hopeful juncture: Galt and the good guys are preparing to move back into a chaotic world which has been impoverished by their abdication and which supposedly will welcome them and their philosophy back with open arms. But, I wonder, how long will that last? What will Galt's response be the first time that some city council claims power over "their city's resources," by which they mean someone else's property?

We have a few hints to answer this. Galt, much to my surprise, turns out to be a sniveling statist. In his speech he says:

"The only proper functions of a government are: the police, to protect you from criminals; the army, to protect you from foreign invaders; and the courts, to protect your property and contracts from breach or fraud by others ... "
(page 987.)

Now, from my position as one who has spent the past few years questioning the limits of privatization, and testing every assumption of necessity of state action, Galt seems hasty in his willingness to give so much power to government. Galt probably has not encountered the arguments and examples which tell that human society can exist quite successfully without

surrendering, as he suggests, all these powers to the state.

So Rand's answer to my question about how the heroes will meet usurpations evidently lies in her faith in the biggest government in the land. Galt and the good guys evidently plan to entrust some Janet Reno the Second with a terrible swift sword, which she can swing from Washington, D.C.

Further evidence that Rand wants a centralized state can be found on the next-to-last page of the book. Judge Narragansett, jurist for the good guys, planned a new clause for the Constitution: "Congress shall make no law abridging the freedom of production and trade ..." (page 1083.)

Certainly I agree with the spirit of that clause. And I may one day join the good Judge in believing that protection of such a right can come only from a central government. But, before I argue for any given size of government, I want to understand and discard the best arguments for other sizes, both bigger and smaller. I have not yet settled on a size for which I am prepared to argue because, as I encounter arguments for smaller sizes, those arguments almost always win, in my mind.

Of course we in FNF do need to concern ourselves with finding an answer to the question which I used above to trip Galt — how will we meet usurpations. Limited government may be the answer, at least for starters.

Rand's paradigm for achieving liberty in *Atlas Shrugged* seems like the usual paradigm: conflict between two states with one state overpowering or succeeding the other, with the loser brought to unconditional surrender. But I am not convinced that this is necessary.

Surely there must be other paradigms. Perhaps we can strike a deal with them. Also, I keep thinking that there must be some way that liberty can be planted like a seed, that it can grow outward, colonizing with a new and robust species of contract.

Finally, at this point before closing, I want to address a statement to Ayn Rand. "Great story, Ayn. If you are in heaven (which, even though A is A, would be hell for you) I hope you can

hear this. Thank you. We are indebted to you."

And, last but not least, I want to say something to the protagonist in this tale, silent and forgotten, Atlas. "Okay Atlas, you've shown us that you can shrug. Neat trick, as far as it goes. But do you know any others? Can you use your massive strength to secure your rights?" Δ

Foundation News Notes

- The November '95 issue of *Liberty* magazine carried a full page FNF ad designed by Roderick Long and Richard Hammer. The ad uses FNF's drawing of the Statue of Liberty hitchhiking, and beckons attention with a headline "Seeking A Free Nation."

We solicited, and printed in the ad, testimonials from two of our well-



known members. Mary Ruwart says, "FNF fills a void in the libertarian movement by addressing how a free nation could come into being and exactly how it might function." And Bruce Benson says, "Criticizing the state is easy; FNF is moving to the front of the libertarian charge by describing real alternatives."

As of mid-November the ad, which has produced ample praise from our friends, had produced only about ten immediate sales. We had hoped for a faster rate of response, but are glad to have these new contacts.

- To reduce duplication in our publications, starting with the upcoming Forum in April we will print no Proceedings. We have been so proud of our Forum papers that we have found ourselves publishing most of them in *Formulations*, as well as in the Proceedings. By taking the next logical step, printing every Forum paper in *Formulations*, we can drop the Proceedings as they become completely redundant. Also, by soliciting Forum papers early enough we can print these in the *Formulations* issue which precedes the Forum, and participants can read the papers ahead of time.

- We continue to hold supper meetings at which FNF Directors, Members and Friends socialize and discuss any business which may be pressing. Post cards, mailed ten days or more in advance, give notice of these meetings and also invite spouses or significant others. Recently we have met at Oliver's Restaurant in Hillsborough, on weekday evenings from 6 - 8 PM. The dates chosen for the last three meetings of 1995 were 8 June, 28 September, and 11 December. Δ

Dismantling Leviathan (from p. 19)

hold the law can justify any agent of the government in engaging in or sanctioning criminal aggression." This is an honest answer, and the wording strikes me as sufficiently politic: it affirms the sincerity of the oath, as public opinion may require, while at the same time placing on that oath, and on its attendant obligations, a limitation that public opinion is committed to acknowledging. If the voters still don't like it, they'll have to vote for someone else.

I will deal with the Fourth Pragmatic Pitfall in my next and final installment. Δ

Next time: The Sons of Brutus

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 the author of a book manuscript tentatively titled Aristotle on Fate and Freedom.

Constitutions: When They Protect and When They Do Not

by Randy Dumse

How much does a "constitution" weigh? What is its mass, size, texture and color? Is it more sturdy than granite so it is useful as a foundation? Is it stronger than steel, so it can be fashioned into armor to stop bullets? Is it more durable than concrete, so that we can defend our shores with it? Or is it so fragile it takes our constant guard, lest it should be breached? No, a constitution is none of these things — and in another sense, it is all of these things.

While some say a constitution can be a foundation for a nation, they speak only figuratively, and with great inaccuracy. Others would argue a constitution can stop bullets, not only from being fired, but also imply preposterous powers, as if the constitution could somehow allay the bullets' impact. In the same vein, government employees are sworn to defend a constitution as they would defend a castle, or, as they would in earlier times, a bulwark protecting their homes.

Metaphorically, a constitution is treated as matter, substance and idea amorphously intertwined. A constitution is sometimes a physical piece of paper, the foundation of an institution, an institution unto itself, a set of ideas, a commitment or contract, a mythical entity, and a mystical power. It is essentially all of these things at the same time. In short, the word "constitution" as a defining metaphor is differentiated in character from most other defining metaphors (words) by its ubiquitous vagueness.

This condition usually occurs when men talk of spirit, rather than flesh. This looseness of meaning is common in supposed knowledge prior to the application of objective science. Such are the powers and features of the gods. An ancient might speak of the god of harvest in such terms. The god is a spirit to receive blessings from, and yet needs to be blessed by man. The god is a spirit who will protect, and yet deserves our protection. We will fight for the honor of our god.

Kings, often thought of as gods, enjoy many of the same mystical characteristics attributed to constitutions. Kings are individuals, yet stand symbolically for their

land, and the very embodiment of the people. They often physically, as well as metaphorically, defend the inhabitants of the land, and yet need the people of the land to defend them. The historical period of constitutional ascendancy, corresponds with that of monarchical decline. In all respects other than the individual incarnation in flesh, a king and a constitution have very much the same character. Therefore, one might not be far wrong to opine, a constitution is the essence of a king, less the man.

In the case of a constitution, the flesh of the king is replaced with a meme-set (usually) transcribed on paper. To explain, Richard Dawkins in *The Selfish Gene* calls certain kinds of ideas, memes. Ideas, which (can) live longer than their originators and affect the behavior of those who possess them, are memes. Just in the same way a gene would biologically be transmitted from generation to generation, so memes are passed along. Like genes, memes modify behavior. Unlike genes which are relatively fixed in the chemical mechanics of the cell, memes are easily mutable. Therefore memes are analogous to "software" while genes are similar to "hardware." Dawkins describes memes as nature's way of making field modifications to men without remaking a species with every new trial.

Hopefully, any new meme will have characteristics which make it more likely to survive, or in Dawkins' terms, repeat itself in generation after generation. If it can propagate itself to future generations, and do so better than any existing meme, it will be successful. If not, it will fade to extinction. So the change in the master meme of government replaced "king" with "constitution." The chief difference in the change was the removal of investment in a mortal being. As such, the old master meme of kingship caused a change of government with every new king.

The meme-set of the country changed with each new king. If the new king was benevolent, the people flourished. If the king was not, the people suffered. The phrase, "The king is dead, long live the king!" is surely as perplexing a statement as ever uttered. Taken at face value, it makes no sense. It makes a great deal more sense if taken as replacement of one meme-set representing the country, with another. As such it would read, "The old idea-set is dead, long live the new idea-set."

Unlike a physical man, a meme, or meme-

set, can outlive an individual, passing unaltered through generations. Therefore, the change of master meme defining government from "government vested in a man" to "government vested in a constitution," the meme-set of laws could remain relatively constant beyond individual life spans. This clearly states the essence of the popular quote concerning the United States, "We are a government of laws, not of men."

Certainly, there are other memes more fundamental than the master meme of government or the meme-set embodied in the laws of government. For instance, a language is a meme-set which may evolve slowly, but outlives most instances of government. Latin is a prime example. Religion is classically one of the longest term meme-sets, often crossing over language barriers and outliving them, the Judeo-Christian tradition and ancient Hebrew being a fair example. Other customs of the people may be longer term as well. For instance, pasta is more permanent than parliaments in Italy. Let us gather all these superior memes under the name of culture. While culture is a fertile ground for further examination of memes and meme-sets, it is beyond the scope of this article. Let us now return to the memes of governments and constitutions.

In time, the constitutional meme itself can change. When it changes it can take on a new personality. This is a bit like a once good king, later losing his mind to disease or age, beginning to take on a darker character. While constitutions have less of the foibles of mortal men, they too seem to be able to drift into senility. It is not the words on the paper that change, but the meme-set of laws interpreting those words which changes.

In the discussion of the proposed constitution of Oceania, *The Atlantis Papers* reviews the current situation in the United States. It says, "the U.S. is no longer a place that..." and lists the various trampled principles, particularly those in the Bill of Rights. The conclusion is drawn: the U.S. is not a place where constitutional rights have the power to protect, anymore.

Then, *The Atlantis Papers* goes on to detail the Oceania Constitution, with the understanding it is somehow to be better written. By starting over again, it is assumed the new constitution will overcome the shortfalls of the previous constitution, and protection of the people's rights will

this time be maintained. It does so mainly by adding detail to the paper description, where before principle was applied.

This is undoubtedly limited range thinking. First, the U.S. Constitution is not notable for its failure, but instead its unprecedented success. In this historic document is an alternate master meme to "kingship" which lived relatively unaltered through six generations. Being the oldest written constitution in the world, the first new master meme following kingship, gives it venerable clout. Replacing it with a new meme-set should not be considered a light or frivolous task. This issue must be disregarded for a moment, however, to allow the more fundamental problem to be identified. Here is the essence of that problem.

If constitutions do not protect, we don't need a better constitution for it will not protect either.

To draw an analogy, imagine a farmer, who has built a pen to keep his turkeys in, with stone walls three feet high and one foot thick. Next morning he finds half his turkeys outside, and many of them dead. He concludes he needs a better wall, so he makes it twice as thick.

Foolishly, whether he made it twice as thick, or even twice as high, the stone wall will not keep his turkeys in, or more significantly, keep killer hawks out. A wall will never do the trick. It cannot, by its nature, provide the protection needed. What is needed is another kind of structure. When dealing with birds, something with a roof is in order. The thickness of the walls of the coop are not as important as the presence of a roof.

Put another way, what is needed in government is not another meme-set of laws, but a new master meme. What is lacking is not detail, but in definition. No law, in itself, can defend itself from being broken. No constitution is as well suited to defend itself as is a king, for at least a flesh and blood king has life and will. Despite our attempts at anima, referring to our constitutions as "living documents," the inanimate constitution has no such power of self creation or defense. Only when fitting to the animal protected can a constitution be workable. To the degree

the constitution does not fit the nature of the animal protected, is it an unsuccessful meme.

What might this new master meme be? Personally, I cannot say, and am only able to loosely speculate on the future. Such is the purpose and intent of such organizations as the Free Nation Foundation. Undoubtedly, some better master meme may be found through discussions such as this, as ideas are used to stimulate new ideas.

I can, however, point out some of the follies of the current constitutional memes, suggesting a bad match between the "turkeys and the wall around them." Two significant books, *The Myth of Natural Rights* by L. A. Rollins and *Natural Law* by Robert Anton Wilson, poke considerable fun at the current paradigm of natural rights, which most constitutions are based upon. As starting points, the authors' comments are quite enlightening. In different cultures, places and times, the "natural" man has been the starting point for things which we today might think atrocities. The authors start with a viewpoint other than that of the average American, brought up in the American schooling system.

For instance, the Catholic church has a premise about the nature of man, and therefore derives rules about conduct which are quite unsuitable to men of other religions. Yet they start from the identical premise with which the U.S. Constitution starts — the natural rights of man. The natural man in each case is only slightly different in character. The premises make tremendous differences in the outcomes.

The authors point out how a "natural right" will not turn away a knife thrust. Further, they claim a padlock is a much better deterrent to property loss than a "natural right." Just as constitutions are imbued with supposed "mystical" powers, so are "natural rights." Unfortunately, when these powers are put to an actual test, they fail to provide the protection they guarantee.

So, in my opinion, the current memes of government are far removed from mechanics which actually promotes well being and freedom. Ultimately, it is still the threat of retaliation, of naked force, which stands against preemptive violence. Fuzzy thinking about gods, kings and constitu-

tions symbolically stands in for the assurance of retaliation. In a just society, retaliation is assured. Even if the injured is destroyed, others will retaliate in his stead. In a lawless society, violence is usually ignored if not rewarded, and only occasionally punished.

Sadly, as independent individuals, we are unable to secure our freedom. Reflecting on the U.S. Declaration of Independence, we see to "secure these Rights, Governments are instituted among Men, deriving their just powers from the Consent of the Governed." If one stands as an independent individual, his consent to his "self" government only derives power from one individual. The power derived from one is not much power. All other self-governing powers are roughly his equal. Worse, any group whatsoever wields a greater power. There is no reason a greater power should of nature be benevolent, and frankly, it is far more likely any group he does not belong to will be hostile. Therefore, the independent individual is always outnumbered and overpowered by any ambitious group. Consequently, independent individuals are helpless in the face of congresses, and are at best at the mercy of their tolerance.

It is only by uniting with similar minded individuals and pledging ourselves to mutual defense that any honest deterrent to aggression can be achieved. Lacking this social glue, no one is safe. Aristotle said, "The essence of friendship is living together." I say the essence of living together is standing together. The only value in a constitution is the commitment of the people who hold it to assure each other they will come to the defense of the other, should it be breached. Such mutual commitment is the glue of a free nation. There can be no other. △

Randy M. Dumse, of Texas, once served as a Gunnery Officer in the U.S. Navy. Now he owns companies which he has built himself, notably New Micros, Inc., a company in the embedded computers market, with multimillion-dollar sales. He is also involved in breeding and racing Thoroughbreds.

*

* *

Our Readers Write

Dear Dr. Long,

After reading your presentation on "Good and Bad Collective Action" [*Formulations*, Vol. III, No. 1 (Autumn 1995)], I still have one question regarding private protection services. You argue that selective cooperation, such as a private protection agency acting as a pseudo-government, is easy to undermine because a large group of excluded people "have an interest in seeing that cooperation end."

But what if the excluded group lacks the resources necessary to undermine the oppressive cooperative? I believe it would be necessary to own resources like private property, weaponry, and some means of production in order to exert influence in a free market.

It seems that any anarchic state will always revert to some form of government, whether it be private protection agencies, organized crime, or some other regime.

This issue keeps me from committing to the anarchist philosophy.

Kevin W. Whiteacre
Charlotte, NC

Roderick Long responds:

The issue you raise is one of the central topics that will be discussed at our upcoming April Forum. Since I'll be contributing a paper to that Forum (to be published in the Spring issue of *Formulations*), I won't give a detailed response now. So let me simply mention a few points.

In the article you mention, I defined selective cooperation as "cooperation for mutual advantage *within* a select group ... directed *against* the advantage of those excluded from the group." And I noted that such selectively cooperative schemes are "easier to undermine *when there is free competition*, because they create a large group of excluded people who have an interest in seeing that cooperation end, and this group constitutes an attractive market for any entrepreneur interested in defying the cooperative venture."

You are quite right in pointing out that there are two preconditions the excluded group must meet in order for my argument to work. First, the excluded group must possess some resource the entrepreneur will value. And second, the excluded group must not be so defenseless that it is cheaper

to extract the resource by force rather than obtain it by bargaining.

Both of these conditions, of course, are matters of degree. Most excluded groups will have *some* resource worth valuing, even if it is only their ability to labor — although the wealthier they are, the better they will be able to attract the entrepreneurs (or to become those entrepreneurs themselves). And of course it is also true that the wealthier they are, the more they will be able to afford in the way of weapons and protection.

But now perhaps we can point in the direction of a solution. In "Who's the Scrooge? Libertarians and Compassion" (*Formulations*, Vol. I, No. 2, Winter 1993-94), I argued that a free society would see the virtual elimination of poverty. To summarize briefly, this conclusion rests on three claims:

- In a free society, the percentage of poor people who could lift themselves out of poverty by their own efforts would dramatically increase, because the regulatory and other policies that systematically hold down the poor would be removed.
- As for the remaining poor who would still need assistance, the amount of money given to poor relief would be much greater than it is today, because a competitive economy freed from taxes and regulations would see an enormous increase in economic productivity, so that people would simply have more money to give to charity than they do today.
- In addition, with poor relief being handled by private charities competing for donors rather than by the monopolistic welfare state's inefficient bloated bureaucracy, a much greater percentage of the money earmarked for the poor would actually reach them.

In short, I concluded, "proportionally larger slices of an absolutely larger pie would be going to absolutely fewer poor people." If I'm right, then we have every reason to suppose that even the least wealthy members of an anarchist society would have sufficient resources both to attract collusion-busting entrepreneurs and to wield the power to protect those resources. ▲

*

* *

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.

**Join Our Effort
BECOME A MEMBER**

Let my people go.

Free Nation Foundation
[outdated street address]
Hillsborough, NC 27278

ADDRESS CORRECTION REQUESTED

**Bulk Rate
U. S. Postage
PAID
Durham, NC
Permit No. 187**