

formulations

Spring 1996

A Publication of the Free Nation Foundation

Vol. III, No. 3

New Country Foundation Status Report

by Courtney Smith

for the New Country Foundation

About one year ago, we set the following objectives for the New Country Foundation for the coming year:

- Sponsor a conference on new countries.
- Submit a book project to a major publisher.
- Develop a business plan for establishing a new country.
- Establish a newsletter for communication of new country ideas.

Our scorecard is mixed. We achieved some of our goals, did not achieve others and even achieved one objective not on our original list.

Our first conference held last July in New York was quite a success. We had about 30 people on a hot day. The presentations were thoughtful and insightful. The crowd was enthusiastic. It was a great opportunity to meet with fellow new country enthusiasts. There was a lot of cross fertilization of ideas. We believe that the success of the conference will continue to ripple for some time.

Part of our strategy is to put together a business plan for establishing a new country. This business plan would outline in realistic detail the key factors necessary to create a new country. It should be relatively easy to raise the money to found the country with a comprehensive business plan.

However, it costs a lot of money to create such a business plan. Our strategy is to sell a book proposal to a mainstream publisher. We would use the advance from this book contract to fund the research necessary to produce the business plan. The advance would primarily be used to compensate researchers, so that it will be possible for

(continued on page 13)

If We Get Freedom, How Can We Keep It?

**Come to Free Nation
Foundation's Forum
on 20 April**

by Richard Hammer

Spencer MacCallum and Mary Ruwart will speak at the next FNF Forum, on Saturday, 20 April 1996, in Hillsborough, NC. We also plan presentations by Roderick Long, Philip Jacobson, and Richard Hammer. The Forum will meet at Oliver's Restaurant, and will run from 9 AM to 5 PM.

The Forum focuses on this question: "Constitution or contract: when we get a free nation how can we keep it free?"

The admission charge for the Forum, \$10 general admission, \$8 for FNF members, may be paid either in advance or at the door. Those who pay in advance will be assured a place to sit, and will receive an *official* FNF computer-printed nametag. To pay in advance, return the enclosed envelope and card by 15 April.

During the day we will break for lunch. Oliver's, a steak and seafood restaurant, gives us the room for the Forum with the understanding that many of us will buy lunch, or something. The all-you-can-eat buffet costs \$7.

For more information on the Forum, and directions to Oliver's restaurant, see our ad on page 40. _

Foundation News Notes

- FNF rolls are bigger than ever before. With the full page ad in the November '95 issue of *Liberty* magazine, and with a fund-raising letter mailed in December, dozens of checks came in during late December and early January. We now have 52 paid-up members, and 76 subscribers. Overlapping these catego-

(continued on page 15)

New Country Briefs

for the New Country Foundation

Hospital Ships

In 1993 and 1994, The Atlantis Project heightened interest in the idea of creating a new libertarian country at sea. More recently, Richard Morris's Sea Structures, Inc. (see below) has been coming to grips with the technical challenges of creating large amounts of floating real estate.

(continued on page 15)

Inside

Keeping Our Freedom
by Mary Ruwart 3

**Can a Stateless
Society Survive?**
by Bruce Benson 5

Dismantling Leviathan, IV
by Roderick Long 9

Designing the State to Shrink
by Richard Hammer 14

A Model Lease for Orbis
by Spencer MacCallum 16

Education in a Free Society
by Philip Jacobson 24

The Return of Leviathan
by Roderick Long 27

Children and Liberty
by Danielle Woodrich 32

Auerbach on Justice
by Sean Haugh 34

In Defense of Public Space
by Roderick Long 36

Browne's New Optimism
by Marc Joffe 37

Intellectual Property Debate
by George Winborne 39

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 es-
tablish 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 sub-
mitted to Marc Joffe, at ei-
ther the postal address or
the e-mail address above.

Keeping Our Freedom in an Unfree World

by Mary Ruwart

Let's imagine we were indeed able to obtain a tract of land, build an ocean platform, or otherwise obtain a place to create a free nation. How would we — could we — keep it free?

A free nation would be threatened by internal and external aggressors. Effective defense against both would be necessary.

Dealing With the Internal Threat

The United States has succumbed to the internal threat. No nation has subjugated us; we have given away our freedom. After avoiding military conquest, Americans began to slowly acquiesce to government aggression, believing it would benefit them (or their chosen interests). The belief that aggression against others benefits us more than honoring our neighbors' choice underlies the internal threat. Our human nature makes us selfish, seeking to improve our lot. As long as we believe that aggression benefits us, we will acquiesce to big government and forfeit our own freedom.

Even individuals who believe that aggression violates individual rights will sometimes rationalize aggression in the name of a greater good. I have personally witnessed such deviations from principle on more than one occasion. We are only free from such temptation when we become convinced that aggression backfires every time.

Even if we were to establish a free nation and avoid military subjugation, we would face this internal threat. As our free nation prospered, immigration would accelerate. Unless the immigrants really understood what freedom was and how aggression backfires, some would eventually lobby for government aggression. The more successful the free nation, the more immigrants there would be. Eventually, the perspective of the immigrants would overwhelm that of the free nation's founders. A constitution, as we've seen with the United States, provides little real protection. Only a belief that aggression harms, not helps, the aggressor will ever lay the internal threat to rest.

Limiting immigration by law would be a

form of aggression and would backfire in several ways. By keeping the free nation small, it would make it more vulnerable to external threats. Requiring some sort of oath-taking by prospective immigrants



Mary Ruwart

(photo: Owen Touster)

would hardly be effective, since an unprincipled person could simply say whatever was required of them and do as they pleased.

The key to preventing internal aggression would probably be continuous education and debate, both within and without the free nation. In the U.S. today, 95% of restaurant customers tip their servers because it's the cultural norm. If the cultural norm of the free nation was continuing education and discussion of the nature and benefits of freedom, immigrants would experience considerable social pressure to explore their own feelings in these matters. As they became convinced that aggression would not serve them, they would have no incentive to turn to it. Ultimately, showing that aggression doesn't work is the only lasting defense against it.

(The reasoning behind my statement that aggression backfires and harms the aggressors is detailed in *Healing Our World*. Briefly, however, aggression inhibits the creation of wealth so much that aggressors are poor compared to what they would have in a free world; a belief in aggression triggers biochemical cascades that are harmful to individual health and lower life expectancy; our human nature requires us to reject

aggression in order to enjoy lasting happiness.)

How would a free nation create a society that engaged virtually all its citizenry in continuing debate and education about the virtues of liberty? One possibility might be to declare the date of the nation's founding as a day of celebration. On that date every month, it might be customary to have several neighbors gather to dine together and debate the viewpoint of the speaker's chosen topic. Every month, a different neighbor might be assigned to spearhead the discussion. If the nation's founding citizens established this as custom, immigrants would be invited, become involved, and carry on the tradition. Although these meetings would be attended voluntarily, the founders might agree to commit themselves to such an endeavor in order to preserve what they had established against internal threats. If such a tradition became part of the nation's culture, considerable social pressure would be brought to bear on those who didn't wish to participate.

Of course, many other forms and forums for continuing education and debate about the benefits of freedom are possible. We lost our culture of liberty in the U.S. and forgot how it worked to serve us. Some way must be found to counter that internal threat for a free nation to survive.

Dealing With the External Threat

The external threat to the free nation also springs from the belief that aggression is a useful means to an end. Invasion from outsiders could occur because a foreign government wished to steal the wealth of a free nation. However, I believe that foreign governments would see the free nation more as a threat to their own power. After all, the example of how well the U.S. fared without a king inspired citizens of other countries to take political power away from their own royalty. Certainly, any far-sighted aggressor government would fear the example of a free nation prospering without much political oversight. Most Western governments today get their power from the consent, however begrudging, of the governed.

If a Western government or coalition decided to attack, blatant military force could effectively overpower a small country. Even if the free nation could recruit the brainpower and the money to defend itself, the might of the U.S. government, acting

with the United Nations, would be likely to out-muscle any attempts at traditional defense.

The United States itself survived its infancy in large part due to its relative isolation from the superpowers of the day. The cost of sailing across an ocean to attack the free nation was prohibitive over the long term. The colonists had only to survive long enough to exhaust Great Britain's treasury.

Today, such a strategy just isn't feasible. Technology has made the world much smaller. A fledgling free nation would not be likely to hold out long enough to bankrupt the aggressors.

However, much can be learned from watching how Switzerland, with only a part-time national government, manages to maintain its relative independence from the world's superpowers. The Swiss refuse to join the United Nations or participate in a common European currency. The Swiss now enjoy a higher per capita income than U.S. citizens. Since the production of wealth and freedom are linked, this indicator suggests that, over the last few decades, the Swiss have gained freedom (or lost less of it) relative to North Americans. Why haven't aggressive governments seen Switzerland as a threat and tried to bring her to her knees with military might?

The Swiss Strategy for Survival

The survival of Swiss sovereignty in today's world isn't primarily due to the fact that every Swiss man is a trained soldier with a weapon in his home. I rather doubt that an armed citizenry would deter determined modern invaders with nuclear weapons and missile-bearing aircraft at their disposal, especially if their primary purpose was to destroy an example of how wonderful freedom is.

Ground wars are only fought when an aggressor wants to loot. An aggressor government would be most likely interested in crushing a free nation just to keep it from serving as an example to the aggressor's oppressed populace. There needn't be anybody or anything left to serve that purpose. Surrender is not even necessary if the object of the attack is to simply render the other country dysfunctional.

So how has Switzerland avoided attack? Isn't it a threat to all Western governments with its small central government and gold-

backed currency that prevents the massive inflation that politicians are so fond of?

I speculate that there are two factors that have protected Switzerland thus far. First, those who fear the example of Switzerland as a free nation are counting on the internal threat to destroy it from within. Although national government is part-time, the local governments of the cantons are often quite oppressive.

Second, Switzerland, by accident or design, provides a service to those who profit from aggressive governments. Switzerland gives government-associated plunderers a place to stash their cash. Those secret numbered bank accounts in a stable, secure nation are one of the safest places in the world to protect their ill-gotten gains (remember where the Iran/Contra profits ended up?). Government aggression is concentrating the world's wealth in the hands of the few. Once confiscated, the aggressors must protect it. What better way than to place it in a relatively free nation that protects a person's right to secrecy and backs its currency with gold to preserve its value? This service outweighs, in the aggressors' minds at least, the threat that a relatively free nation poses. Ironically, Switzerland is able to provide this service better than other nations because it is relatively more free than the aggressor nations it serves! Thus, an attack on Switzerland or these specific freedoms would be an attack on the aggressors themselves!

Aggressors, therefore, find themselves in a quandary with Switzerland. They want to (and do) violate the banking secrecy laws and right to privacy to find out which of their citizens are evading their taxes and confiscation tactics. On the other hand, they want to safeguard these freedoms and rights to protect their ill-gotten gains. This schizophrenic attitude, I believe, is largely responsible for Switzerland's survival.

The free market (such as it is) has survived to a large extent for the same reasons. Governments and their special-interest support groups want total control of the economy. However, when they have it, such as they did in the Soviet Union, little wealth is created. When there is nothing to seize any longer, they must loosen their hold and allow some freedom, so that wealth creation -- and their looting -- can continue.

If a free nation is to survive subjugation by another country or world coalition, such as the United Nations, it may very well need

to position itself to take advantage of freedom's attractiveness, even to those who seek to take it from others. A nation wishing to stay free might need to provide an indispensable service to aggressors, one that only freedom permits.

One might legitimately ask how moral it would be to deliberately try to serve the enemy. As long as there is an "enemy," someone who believes that aggression serves them, our free nation is threatened. Somehow, we need to teach the enemy that liberty serves them too. Once this realization occurs for our enemy, he or she becomes a friend. Real-life examples may provide the best instruction. Providing a service for would-be aggressors helps them understand how aggression will hurt them and stays their hand -- at least temporarily.

During that moment of hesitation, the free nation prospers. Immigration swells the ranks of those who believe in liberty, thanks to continuing education that pervades the free nation's culture. In today's world of rapid communication, the success of the free nation becomes common knowledge. Other citizenries clamor for this better way and start to withdraw the power of legitimacy from their governments. Attacking the free nation becomes less politically sound and does little good, because the example and its truth have already "infected" the oppressed peoples of the world. People who understand and want liberty begin to network and share ideas of how to counter aggression. Internet communications is rapidly linking them into a virtual community that cannot be bombed out of existence.

Something similar helped contribute to the break up of the Soviet Union. With modern communications beaming satellite pictures of what was happening in other countries and phone lines supplying fax messages, the Soviet citizens realized they were being ripped off. They withdrew their support from a government that couldn't give them what liberty could. Unfortunately, they are still in a state of confusion, as much of their information about freedom comes from Western governments that don't understand it either!

Ultimately, the survival of a free nation, whether geographically contained or not, depends upon education. As long as people believe that aggression serves them, they

(continued on page 13)

Can a Stateless Society Survive?

by Bruce L. Benson

Competition over the use of scarce resources is inevitable (Hume 1751; Benson 1994b, 1995b, 1996). Competition will take violent forms in the absence of rules and institutions of governance to establish and induce recognition of obligation to respect property rights, resolve disputes over those rights by non-violent means, and facilitate changes in those rules as conditions change. It is widely believed that governance is impossible without a concentration of power in the coercive institutions that typify nation-states (e.g., one widely used definition of a state is that it is "a monopoly in coercion"), but this is clearly not true. The fact that institutions of governance evolve in a stateless society (e.g., ordered anarchy such as that which would characterize a truly "free nation") has been demonstrated over and over again, throughout history.¹ But most examples of geographically bounded stateless societies have given way to states.² Does this mean that the institutions of governance in stateless societies are inevitably unstable — that states inevitably arise? This is the question considered here. The answer proposed, somewhat tentatively, is that: (a) the internal institutions of governance in stateless societies are inherently stable; and (b) while historically, stateless societies have been unable to stand against invaders who then establish state institutions, there are some reasons for expecting that this threat can also be mitigated in the future.

I. Governance to Support Cooperation Or Takings?

One difference between a stateless and state-based society is that the governance in the former evolves from the bottom up, primarily through voluntary agreements, while governance in the latter involves top-down coercive command. Perhaps an even more important difference, however, is in the purpose of the rules themselves. A primary motivation for developing rules and institutions, whether they are accepted voluntarily or out of fear, is that individuals are attempting to find ways to expand personal wealth in the face of scarcity, but

there are two ways that an individual can expand personal wealth. One is through what Oppenheimer (1908) has labeled the "economic" means: cooperative voluntary interaction, including team production



Bruce Benson

through the division of labor, and voluntary exchange. The second involves taking wealth produced by others through the use of force and/or guile: what Oppenheimer calls the "political" means. Rules and institutions can be developed to facilitate either of these means of wealth enhancement.

Governance to Support the Economic Means

Because the underlying source of conflict is scarcity, the development of cooperation requires establishing rules of behavior that focus on property rights (Benson 1994b). Security of each individual's property claims can be increased by agreeing to respect property rights of others in the cooperative cluster, given that other individuals cooperate by doing the same. Indeed, rules that arise through cooperative governance create a system of evolving private property rights (Rider 1993; Benson 1994b, 1996). Wealth is enhanced for everyone involved in such trust relationships by making property relatively more private and relatively more secure. As this occurs, individual's time horizons are lengthened, they can plan better, and resources can be allocated in ways that are more likely to maximize the potential for wealth creation over the long run. This provides a powerful

motivation for cooperation in governance, of course.³ Such cooperation arises when the opportunity cost of investing in the economic means of wealth creation are low, relative to investments in violence to generate wealth transfers (Umbeck 1981; Skapaderas 1992; Rider 1993; Benson 1994b, 1996).

Governance to Support the Political Means

Someone who has a relatively low opportunity cost for violence (e.g., a high opportunity cost for productive activities) may choose Oppenheimer's political means of wealth enhancement. This may involve one-shot efforts such as theft and pillage, but an alternative is the establishment of institutions of extortion to subjugate and extract tribute from a relatively productive individual or group. This means that a productive individual does not have property rights to all of the fruits of his labor. Tribute is "extorted" as the payment is for "protection" from the individual receiving the payment, rather than from other threats. Nonetheless, the subjugated individual chooses to yield to such extortion because it produces greater personal wealth than is expected through violent conflict (e.g., perhaps some retention of the wealth generated through the economic means, since an extortionist must allow some, albeit relatively insecure, private property rights to create incentives for production of a steady stream of wealth), given a comparative disadvantage in violence. As explained in Benson (1996), such an extortion racket is likely to evolve as the extortionist establishes an organization employing other specialists in violence (strong-arm enforcers, police, military personnel), buys off other potentially powerful rivals by directing some wealth transfers to them and by recognizing and protecting some of their property rights (e.g., the extortion racket turns into a protection racket which combines extorting from some and protecting others), and so on. Such organized extortion can evolve into a state if it gains sufficient control over a geographic area (Oppenheimer 1908). How might such control be obtained?

II. Internal Factors That Prevent the Development of Extortionist Institutions

First let us consider the potential for an extortionist to arise *within* and gain control of an existing voluntary group (a

stateless society). Note that for most members at least, entry into such groups is voluntary because everyone expects to be better off through cooperation than they anticipated being through the alternative - using violence to claim property and expand wealth. Thus, turning to extortion after first adopting cooperative behavior would have to involve some change in incentives. Many forces beyond the control of individuals can lead to changes in the opportunity costs, of course. As a cooperative group develops and property rights are increasingly privatized, for instance, some individuals are likely to gain considerable wealth while others, due to their lack of skills, mistakes, bad luck, the harshness and uncertainty of the weather, natural disasters, man-made disasters (e.g., fires), or disease, may not enjoy the same kinds of gains. Thus, a class of relatively poor people can be expected to develop even in a free nation, and their opportunity cost of living up to promises to respect others' property rights will be relatively low. That is, they will have strong incentives to engage in theft, extortion, or other takings. Indeed, without help, they could be forced into such activities to survive. But while there are reasons to expect theft and efforts to extort even in a voluntary society, there are also a number of reasons to expect that such events will not culminate in the internal rise to power of an extortionist.

First, institutions develop within cooperative groups to sanction non-cooperative behavior. Indeed, a thief or extortionist known to the voluntary group will be accused of wrongdoing, tried before an arbitrator or mediator, and if found guilty, sentenced to pay restitution to cover damages.⁴ Refusal to accept a fair trial, or to pay trial-determined restitution will lead to social ostracism. Furthermore, the incentives of members of such a group to cooperate in pursuit and prosecution are much stronger than the similar incentives under the institutions of the state (Benson 1994a). Therefore, long before an individual (or even a gang) would be able to amass sufficient power to call himself a "god-father" or "king" and develop institutions of governance that impose extortionary rules on other members of a cooperative group, he would be cast out of the group.

Second, groups are likely to develop institutions that reduce individuals' incen-

tives to turn to extortion and/or theft in the first place. Since some changes in the opportunity cost of violence are predictable, for instance, a cooperative group can establish mutual insurance arrangements against these probabilities, thereby encouraging people to continue to recognize the cooperatively-produced property rights system even when their circumstances change. Johnsen's (1986) analysis of the potlatch system of the Southern Kwakiutl Indians provides one of many examples. Johnsen (1986: 42) explains that "In order to provide the incentives of would-be encroachers to recognize exclusive property rights, and thus to prevent violence, those Kwakiutl kinship groups whose fishing seasons were relatively successful transferred wealth through the potlatch system to those groups whose seasons were not successful.... Although potlatching thereby served as a form of insurance, the relevant constraint in its adoption and survival was the cost of enforcing exclusive property rights rather than simple risk aversion." In effect, a Kwakiutl group with a poor harvest had property rights to some portion of the harvest of a relatively successful group. If the flow of payments is always in the same direction it is analogous to a tax induced by the threat of violence, of course, but in fact, such transfers are often expected to involve reciprocities. One Kwakiutl kinship group may have a poor harvest of salmon in one year, and therefore receive a transfer, but the next year the other group could have the poor harvest so the transfer goes in the opposite direction. Thus, mutual insurance is a more appropriate description.

Individuals need not actually anticipate reciprocal treatment in the future to voluntarily establish a mutual insurance arrangement. Some individuals may not expect to ever become destitute themselves, for instance, but if they expect that some others will, they recognize that the transactions cost of maintaining property rights could rise in the future. After all, property rights will remain relatively insecure in the face of continual potential for thievery or extortion due to individuals' opportunity costs changing, and besides, trials are costly. Furthermore, ostracism or violent eradication of the destitute class would involve a never-ending "war" between the wealthy and the poor, so a peaceful solution to the problem becomes desirable. A mutual insurance arrangement, backed by ostracism

of non-contributing free riders, may therefore be a low cost alternative (Solvason 1991: 72). Solvason (1991) discusses such an arrangement in medieval Iceland [a stateless society governed by a well developed system of law (Friedman 1979; Solvason 1991)] that provided for those who suffered due to uncontrollable events. The members of voluntary neighborhood groups helped rebuild and restore property destroyed by fire, orphans or individuals who were destitute were taken in by others who were able to provide for them, those without property but able to work were given work by those wealthy enough to employ others' labor, and revenues were even collected to provide for the poor directly. Such an arrangement has the ring of "charity" of course, but there is also a very straight-forward self-interest explanation for the development of such altruistic behavior: property rights are made more secure.⁵

Several other developments within voluntary groups could also be cited that tend to prevent the development of an extortionist system of governance. The fact is that institutions to establish and secure private property rights within a stateless society, including cooperative policing, participatory dispute resolution, restitution, ostracism, freedom of contract, mutual insurance, and so on, are apparently very effective in this regard. The internal dynamics of a free nation appear to be quite stable (Benson 1994b). Indeed, there are few if any verifiable examples of coercive institutions of government evolving to set and enforce extortionary rules *within* cooperative groups. Instead, as Hume (1739: 540) explained over two and a half centuries ago, coercive institutions of government "arise from quarrels, not among men of the same society, but among men of different societies." If one group invades another's territory with the intention of subjecting the other group in order to collect a time-series of extortion payments, the invaders will have to impose rules for the continual redistribution of wealth from those who produce to those in power, and establish institutions to carry out the redistribution. This is why coercive institutions of states are formed in the first place [e.g., see Blair (1956) or Benson (1990) regarding the development of the Anglo-Saxon Kingdom]. The real threat to a stateless society is the external threat of invasion then, rather

than any internal process of concentration of power.

III. Invasion and Subjugation: The Development of States

No group is likely to develop its rules and institutions in complete isolation from other groups. Thus, inter-group interactions become probable, including legal emulation, and competition for membership, since a group with the "best" system of governance and the largest membership has the greatest opportunity for mutually beneficial interaction. Furthermore, a group does not necessarily have to expand to extend opportunities for beneficial interaction. Indeed, if individuals want to interact, but only on some dimensions, or if they want to maintain different sets of rules for different dimensions of interaction, then parallel "localized" mutual support groups may be maintained while a "second order of clustering" (Vanberg and Buchanan 1990, p. 189) is established, facilitating a relatively limited scope for interaction. Networks of institutions to facilitate cooperation between members of different groups can evolve. There are many historical examples of dispute resolution hierarchies, bonding or surety arrangements, and other inter-group institutions that expand the potential for trade and other forms of voluntary interaction (Benson 1992b, 1995b; Pospisil 1971).

Another potential form of inter-group "interaction" also arises, of course. If one group has accumulated a lot of wealth and/or is very productive, members of another group may decide to employ violence in order to take the wealth or to extort part of the stream of income from productive activity. Indeed, many stateless groups that have established and enforced private property rights within their own territories have simultaneously been in a state of war with other groups, either as invaders or defenders (Bailey 1992). One function of cooperative groups in maintaining secure private property rights is defense against invaders, of course, but if the invaders have a lower opportunity cost of violence, the defenders may choose to surrender. Historically, this has been the process through which states have been formed [e.g., see Blair (1956)]. Can this be prevented?

One potential function of cooperative clusters is that of defense against invaders (Jasay 1995, p. 11). Indeed, as Jasay (1995)

forcefully explains, while the typical Hobbesian assumption is that a "confederacy" is formed to invade, there are also strong incentives to form defensive confederacies. He poses the following challenge to theorists: "incentives work both ways, they may attract coalitions on both sides of a conflict, and the tacit supposition of an asymmetry, giving a natural advantage to the attacking coalition, must be justified. Failing that, it must be rejected." Historically, however, invaders seem to ultimately win, subjugating those who were members of a stateless society. Why?

There clearly are limits to how extensive a network of cooperation can be (Vanberg and Buchanan 1990, pp. 189-190), of course, but the limits are not fixed. They depend on the relative costs and benefits of interactions with and information about other people and groups. As economic conditions change the costs and benefits of information can change, so new relationships may evolve over time. Certainly, a growing threat of invasion raises the benefits of cooperative defense, so a defensive confederacy might expand. Therefore, as Jasay suggested, the transactions costs of forming a defensive confederacy do not appear to be any higher than the transactions costs of forming an offensive one, *ceteris paribus*. Unfortunately, at least historically, the *ceteris paribus* has not held. Those who choose to be invaders have different opportunity costs for violence than those who are defenders. This is a key to Oppenheimer's (1908) explanation of state formation. Invaders tend to be people who control relatively unproductive resources and therefore, have strong incentives to invest in violence as a means of wealth enhancement. Defenders have something of value to defend, of course, but the more time and effort they invest in defense the less time and effort they have to invest in production. Their opportunity costs of investing in violence are high, and at some point they may simply choose to acquiesce, yielding extortion payments to the invaders in exchange for the opportunity to produce. Just like the merchant who is better off paying the mafia for "protection" than he is resisting, the relatively productive defenders of the fertile valleys ultimately yield to the invaders from the mountains rather than investing all of their time and effort in defense, and a state is eventually formed (Oppenheimer 1908). This leads to a pretty pessimistic prognosis for survival

of a free nation, of course. However, there are at least two factors that may temper this pessimism.

First, while Oppenheimer's story is quite compelling as an explanation of the historical development of the state, it does require that the important productive assets are immobile: the defenders' interests are tied to the fertile valley, for instance. And indeed, historically, most wealth has been tied to land. However, over the last century or more, this fact has changed dramatically. While land certainly remains an important source of wealth in much of the world, it is increasingly less important. Wealth is increasingly tied to capital, which is increasingly mobile. If the defenders can escape and take much of their wealth with them, the expected gains from invasion are reduced. Note what has been happening to Hong Kong as the date for China's takeover of the city approaches, for instance. Much of the city's wealth has been relocated to Vancouver, San Francisco, Singapore, Sydney, and elsewhere, as entrepreneurs and capital owners seek relatively free societies where their property rights will be more secure. Furthermore, voluntary institutions of governance for groups bounded by non-geographical characteristics are clearly less susceptible to state takeover. The institutions of the international business community that govern international trade remain relatively free from state controls even today (Benson 1989a, 1992b), for instance. Indeed, some economists are predicting the end of the nation state as we know it, because of the increasing power of the market and mobility of capital (Ohmae 1995).⁶

The second, even more tentative factor that might temper the pessimistic outlook suggested by history is that the technology of warfare has been changing. The tremendous scale economies that supported the growth of empires during the last few centuries have been unable to maintain those empires. Indeed, the successful resistance against super-power invasions by the Viet Cong and the Afghans, suggests that powerful invaders can be defeated by an armed and determined confederation of local "militia." As the benefits of invasion have fallen with the increasing mobility of wealth, the cost of invasion appears to be rising with the potential adoption small local resistance efforts of the tools of violence developed by the nation-states'

military-industrial complexes. Beyond that, today, many statist shudder at the thought of a small "terrorist" group building or stealing some of the even more powerful weapons developed by states, because of the truly devastating impact such a small organization might have, but the fact is that such technology can also be used by free individuals in a stateless free nation to defend against invading armies. The leaders of extortionist states might be effectively deterred by the fear of such weapons in the hands of freemen.⁷

IV. Conclusions

A free nation will become a relatively wealthy nation. Others who observe this wealth will have strong incentives to attempt to take it. Therefore, the bottom line seems to be that if a free nation is to survive, its members must be willing to fight to maintain it, just as Thomas Jefferson explained a few centuries ago. That willingness, as evidenced by investments in effective tools for violent defense against invaders, both by individuals and by voluntary confederations, might be sufficient to deter invasions. It may even convince outsiders that a better way to enhance their own wealth is to emulate the institutions of the free nation and produce wealth directly. History does not support such a prediction, but perhaps conditions will change or have changed sufficiently so that history will not repeat itself. △

Notes

¹ For a few examples, see Peden (1971), Friedman (1979), Umbeck (1981), Solvason (1991), Bailey (1992), or Benson (1989a, 1989b, 1990, 1991a, 1991b, 1992a, 1992b, 1994a, 1995a).

² Institutions of governance that are not associated with geographically bounded groups are clearly less susceptible to state takeover. Consider, for example, the institutions governing international trade, which remain relatively free from state controls even today (Benson 1989a, 1992b).

³ Indeed, as Buchanan (1993: 1) explains, the most widely offered "defense" of private property is this "Aristotelian" one: that private property instills incentives that lead to greater efficiency in production. Buchanan (1993: 2) forcefully argues for a second, complementary defense, however: that private property also allows for "maximal independence" or individual liberty. Indeed, private property is the social form that makes individual liberty possible, so roughly speaking, one might say that liberty equals private property.

⁴ See the references in note 1 for evidence, and Benson (1994b, 1996) for theoretical explanations of the development of such institutions.

⁵ If the same charitable institutions can be explained by assuming unrestricted altruism or personal self-interest, does it really matter what the true motivation is? Yes. After all, if self interest in preserving a private property arrangement is even a significant part of the motivation for voluntary wealth transfers, then it follows that preventing the evolution of or undermining the stability of private property rights will also prevent the evolution of or undermine voluntary charity. A theory of charity based on an assumption of altruism alone implies that the institutional environment does not matter.

⁶ This does not necessarily mean the end of the state, however. Extortionist institutions may collapse, as they have in Eastern Europe, but they may also collude to form bigger states, as they have in Western Europe with the formation of the EEC. Cartels, even among governments, are difficult to maintain, however, so it remains to be seen whether the mega-states can survive.

⁷ While I am certainly not advocating the use of such weapons to overthrow the state, I am reminded of one of my favorite science fiction stories — Vernor Vinge's (1991) "The Ungoverned." While the free individuals in his story, who were facing an apparently overwhelming force of an invading state's army, did employ some fictional technology in their defense, the most compelling part of the story (along with the well developed presentation of the principles of a free market in competitive/contracting defense services) involved a single free farmer who, after his conventional defenses were overrun, went deep underground and then exploded a small nuclear device in the air above the invading forces, wiping out a large number of army personnel. The potential of untold numbers of other freemen with similar defenses helped convince the statist that the potential costs of invading the free territory were not worth the gains, so they declared victory and retreated.

References

Bailey, M. J. "Approximate Optimality of Aboriginal Property Rights." *Journal of Law and Economics* 35 (1992): 183-198.

Benson, Bruce L. "The Spontaneous Evolution of Commercial Law." *Southern Economic Journal* 55 (January 1989): 644-661.a

_____. "Enforcement of Private Property Rights in Primitive Societies: Law Without Government." *Journal of Libertarian Studies* 9 (Winter 1989): 1-26.b

_____. *The Enterprise of Law: Justice Without the State* (San Francisco: Pacific Research Institute for Public Policy, 1990).

_____. "An Evolutionary Contractarian View of Primitive Law: The Institutions and Incentives Arising Under Customary American Indian Law." *Review of Austrian Economics* 5 (1991): 65-89.a

_____. "Reciprocal Exchange as the Basis for Recognition of Law: Examples from American History." *Journal of Libertarian Studies* 10 (Fall 1991): 53-82.b

_____. "The Development of Criminal Law and Its Enforcement: Public Interest or Political Transfers." *Journal des Economistes et des Etudes Humaines* 3 (March 1992): 79-108.a

_____. "Customary Law as a Social Contract: International Commercial Law." *Constitutional Political Economy* 2 (Winter 1992): 1-27.b

_____. "Are Public Goods Really Common Pools: Considerations of the Evolution of Policing and Highways in England." *Economic Inquiry* 32 (April 1994): 249-271.a

_____. "Emerging From the Hobbesian Jungle: Might Takes and Makes Rights." *Constitutional Political Economy* 5 (Spring/Summer 1994): 129-158.b

_____. "An Exploration of the Impact of Modern Arbitration Statutes on the Development of Arbitration in the United States." *Journal of Law, Economics, & Organization* 11 (October 1995): 479-501.a

_____. "Competition Among Legal Institutions: Implications for the Evolution of Law." in *Competition Among Institutions*, Luden Gerken, ed. (London: Macmillan Press, 1995), 153-175.b

_____. "Endogenous Morality." Florida State University Working Paper, February 1996.

Blair, Peter Hunter. *An Introduction to Anglo-Saxon England* (Cambridge, England: Cambridge University Press, 1956).

Buchanan, James M. *Property as a Guarantor of Liberty* (Aldershot, England: Edward Elgar, 1993).

Friedman, David. "Private Creation and Enforcement of Law: A Historical Case." *Journal of Legal Studies* 8 (1979): 399-415.

Hume, David. *A Treatise of Human Nature*, 2nd ed., Nidditch, P. H., ed. (Oxford: Clarendon Press, 1739[1978]).

_____. *An Inquiry Concerning the Principles of Morals*, Hendel, Charles W., ed. (Indianapolis: Bobbs-Merrill Educational Publishing, 1751 [1957]).

Jasay, Anthony de. "Values and the Social Order." *International Journal on the Unity of Sciences* 5 (1992): 361-390 [also in *Values and the Social Order*, Volume I, Radnitzky, Gerard, and Bouillon, Hardy, eds., Avebury, Aldershot, England].

_____. "Conventions: Some Thoughts on the Economics of Ordered Anarchy." *Lectiones Jenenses* (1995 mimeo).

Johnsen, D. Bruce. "The Formation and Protection of Property Rights Among the Southern Kwakiutl Indians." *Journal of Legal Studies* 15 (1986): 41-68.

Ohmae, Kenichi. *The End of the Nation State* (New York: The Free Press, 1995).

Oppenheimer, Franz. *The State: Its History and Development Viewed Sociologically*, translated by John M. Gitterman, (Indianapolis: Bobbs-Merrill Co., 1908[1914]).

Rider, Robert. "War Pillage, and Markets." *Public Choice* 75 (1993): 149-156.

Skaperdas, Stergios. "Cooperation, Conflict, and Power in the Absence of Property Rights." *American Economic Review* 82 (1992): 720-739.

Solvason, Birgir Thor Runolfsson. "Ordered Anarchy, State, and Rent-Seeking: The Icelandic Commonwealth, 930-1264." George Mason University, Ph.D. Dissertation, 1991.

Umbeck, John. "Might Makes Right: A Theory of the Foundation and Initial Distribution of Property Rights." *Economic Inquiry* 19 (1981): 38-59.

Vanberg, Viktor J. and Buchanan, James M. "Rational Choice and Moral Order." in *From Political Economy to Economics And Back?*, Nichols, James H., Jr. and Wright, Colin, eds. (San Francisco: Institute for Contemporary Studies, 1990).

Vinge, Vernor. "The Ungoverned" in *Across Realtime* (Riverdale, N.Y.: Baen Publishing Enterprises, 1991).

Bruce Benson is Distinguished Research Professor in the Department of Economics at Florida State University, and author of The Enterprise of Law: Justice Without the State, 1990.

Dismantling Leviathan From Within, Part IV: The Sons of Brutus

by Roderick T. Long

This paper was presented at our
29 April 1995 Forum.

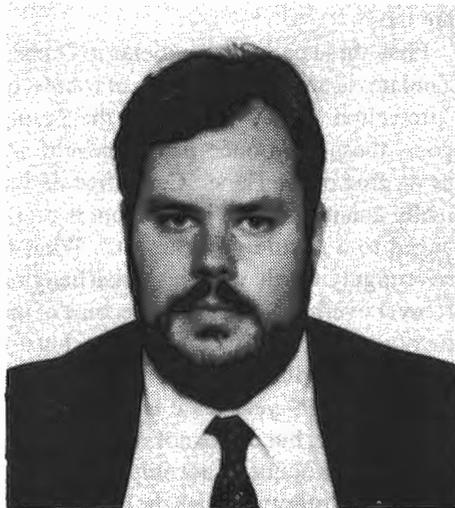
I began this series by asking you to imagine that libertarians had come to power in the tiny country of East Zimiamvia, and were preparing to dismantle the apparatus of state power and create a free society. What practical barriers would they face? What moral barriers would they face?

In the first installment ("Can We? Should We?," *Formulations* Vol. II, No. 4), I considered what I called the Principled Objection, according to which, since political power is inherently a form of aggression, it is immoral for libertarians to exercise political power, even with the intention of decreasing or abolishing that power. In response, I argued that seizing political power could be justified as a form of self-defense.

In the second installment ("The Process of Reform," *Formulations* Vol. III, No. 1) I considered a more subtle version of the Principled Objection. According to this version, no program of dismantling the state from within can be *both* moral and effective, since morality requires that government activities be terminated immediately, whereas pragmatic considerations suggest that the liberalization process must be gradual if it is to be effective. In response, I argued that those aspects of government whose immediate cessation is ethically mandatory are *distinct* from the aspects which must for practical reasons be phased out over time, so that an effective state-dismantling program can take an abolitionist attitude toward the former and a gradualist attitude toward the latter, consistent with both libertarian moral scruples and pragmatic requirements.

In the third installment ("Is Libertarian Political Action Self-Defeating?," *Formulations*, Vol. III, No. 2), I turned from the Principled Objection to the Pragmatic Objection, the argument that dismantling state power from within, even if morally permissible, is simply not practically feasible. I considered three "pragmatic pitfalls": first, that reliance on political rather than educational solutions flies in the face of the libertarian recognition that the bottom-up ap-

proaches are more effective than top-down ones; second, that trying to put libertarians in power ignores the fact that power tends to corrupt its holders, even if those holders are libertarian; and third, that by engaging in political action libertarians would be per-



Roderick Long

ceived as hypocritical and so would undermine their own effectiveness. I argued that each of these objections was mistaken. In this final installment, I shall deal with a fourth difficulty for libertarian state-dismantlers.

Fourth Pragmatic Pitfall: Reactionary Backlash

The fourth pitfall is the threat that those who stand (or believe they stand) to lose from the establishment of a libertarian régime will be able to mount a successful policy of obstructionism unless there exists sufficient bottom-up grass-roots support for libertarian ideas to hold the reactionaries in check.

This objection is correct as far as it goes, I think, but it is more effective against a purely top-down approach than against a mixed approach. Still, it's worth considering who the enemies of the new régime are likely to be, and what power they can be expected to wield.

One important threat to consider, if the new free nation (say, East Zimiamvia) has been ceded its territory by a parent nation (say, Greater Zimiamvia), is that parent nation itself. Once the cession has been made, what incentive does the Greater Zimiamvian government have to abide by

it? In *How to Start Your Own Country*, a study of the new-country movement, Erwin Strauss presented the problem as follows:

"One approach ... is buying the territory in question from the nation that currently has it. This is a sound approach, and one I would recommend wherever the incumbent nation can be induced to enter into such a bargain. But this is basically a secondary matter, meaningless until the military situation has been provided for. If the new country lacks the willingness or ability to defend the purchased territory by force of arms, the selling country will have a strong incentive to repudiate the sale as soon as the purchaser's check clears. Or perhaps the seller would wait until after the next coup d'état or election or revolution (or however governments are changed in the selling country) to act. If it waited too long, neighboring countries might decide that the seller truly had no further interest in the territory, and move in themselves. In any case, without being backed up by force of arms, any bill of sale or title deed held by the new country would be a worthless scrap of paper.

Furthermore ... there are reasons for existing countries to be reluctant to sell sovereignty over pieces of their territories. ... there is only so much land a nation has to which to sell sovereignty (even if it is willing to weather the emotional reaction among the population to selling off part of the sacred soil of the Motherland); and once it's sold, there is no further income to be had

There is also the great-power factor. In past centuries, there were corners of the world that the great powers were not interested in and/or were unable to influence. ... Nowadays, the interests of the great powers extend worldwide and even into space. They have networks of grants-in-aid, favorable trade terms, military assistance programs, etc., to make it worth any small country's while to accommodate [*sic*] one or more of them. These great powers tend to want to see the status quo maintained. Especially, they want to see the number of countries held down, because the fewer the players there are in the international game, the easier it is for the great powers to manage things to their own advantage. A country selling

sovereignty would face being cut off from the aid, trade, etc., that the great powers can offer. Thus they are only interested in doing such things if there's a large, ongoing profit to be realized The small countries really aren't interested in taking the grief that would be involved in selling sovereignty just for a few, one-shot payments from buyers" (Erwin S. Strauss, *How to Start Your Own Country*, Second Edition (Loompanics, Port Townsend WA, 1984), pp. 11-13.)

To this problem there is, as I see it, a three-pronged solution. First, the Libertarian Republic of East Zimiamvia must have a credible national defense in place as quickly as possible. (For suggestions about the organization and character of such defense, see my "Defending a Free Nation," in *Formulations*, Vol. II, No. 2 (Winter 1994-95).)

Second, the negotiations for territory in which to create a "libertarian homeland" should be constructed with as much publicity and P. R. as possible, in order to win sympathy and support in the forum of world opinion and thus discourage other nations from hindering us.

Third, we need to make it worth Greater Zimiamvia's while both to cede sovereignty in the first place and then to continue to respect that cession later on. This is where a 99-year lease of sovereignty, with *continuing* payments on the installment plan, might prove more feasible than a permanent cession of sovereignty for a one-time fee. The prospect of a continuing source of revenue — assuming we can make this credible to the Greater Zimiamvian politicians — might tempt them into agreeing to cede sovereignty. (We had better sweeten the deal, and lessen the financial risk for Greater Zimiamvia, by making the down payment fairly substantial.) The temporary character of the cession should make it easier for the Greater Zimiamvian government to sell the deal to its own citizens. And Greater Zimiamvia will have less incentive to repudiate the deal afterward if the lease proves a continuing source of revenue.

But how will the libertarian government (or at any rate, the organization that *calls* itself a government) in East Zimiamvia be able to afford these periodic payments? Well, payoffs to the Greater Zimiamvian

government will form a crucial part of East Zimiamvia's national defense; and I have discussed elsewhere ("Funding Public Goods: Six Solutions," *Formulations*, Vol. II, No. 1 (Autumn 1994)) how sufficient revenues for national defense can be raised by voluntary means.

Two obvious objections to this scheme are these:

First, these periodic payments to Greater Zimiamvia are in effect a form of tribute, or "protection money"; and, as the saying goes, those who once pay Danegeld are never free of the Dane. Can a free nation really count as free if its freedom is mortgaged to a hostile government? What is sovereignty worth, with this threat hanging forever overhead? What has become of the patriotic cry: "Millions for defense, but not one cent for tribute!"

Second, a 99-year lease is all very well for the living, but do we not want to secure the blessings of liberty not only to ourselves but to our posterity? When the lease expires in 99 years and sovereignty reverts to Greater Zimiamvia, will the East Zimiamvians of tomorrow be in the same helpless position as the residents of Hong Kong today, forcibly repatriated from freedom into bondage?

To both these objections I answer simply that if even half of what we libertarians believe about the capacities of a free society for production, innovation, and growth is true, then within a few decades of its inception a libertarian nation should be in a much better position — economically, diplomatically, and militarily — to renegotiate its contract and win more favorable terms.

But what of domestic threats to the fledgling libertarian régime? Machiavelli offers the following warning:

"... the government of a state which has become free evokes factions which are hostile, not factions which are friendly. To such hostile factions will belong all those who held preferment under the tyrannical government and grew fat on the riches of its prince, since, now that they are deprived of these emoluments, they cannot live contented, but are compelled, each of them, to try to restore the tyranny in order to regain their authority. Nor, as I have said, will such a government acquire supporters who are friendly, because a self-governing state assigns honours and rewards only for honest and determi-

nate reasons

If then one desires to remedy these difficulties and to cure the disorders which the aforesaid difficulties bring about, there is no way more efficient, more sure, more safe or more necessary, than to kill the sons of Brutus, who, as history shows would not together with other Roman youths have been induced to conspire against their country if it had not been that, under consuls, they could not attain to an outstanding position, as they could under the kings; so that the freedom of the people was, from their point of view, but servitude.

He then who sets out to govern ... in a free state ... and does not secure himself against those who are hostile to the new order, is setting up a form of government which will be but short-lived." (Machiavelli, *Discourses on Livy*, I. 16 (pp. 153-155).)

"It should be borne in mind that there is nothing more difficult to handle, more doubtful of success, and more dangerous to carry through than initiating changes in a state's constitution. The innovator makes enemies of all those who prospered under the old order, and only lukewarm support is forthcoming from those who would prosper under the new. Their support is lukewarm partly from fear of their adversaries, who have the existing laws on their side, and partly because men are generally incredulous, never really trusting new things unless they have tested them by experience. In consequence, whenever those who oppose the changes can do so, they attack vigorously, and the defence made by the others is only lukewarm. So both the innovator and his friends come to grief." (Machiavelli, *The Prince*, VI; trans. George Bull (Penguin, London, 1985), p. 51.)

In the case of the newborn free nation in East Zimiamvia, who are "those who prospered under the old order"? There are several such: first, the politicians and bureaucrats of the previous régime; second, the private beneficiaries of government protection, privilege, and largess; and third, the forces of organized crime. "Those who would prosper under the new," by contrast, are the common people in general.

The army — if one comes with the ter-

ritory, which of course it may not — represents a special case. In most countries of the world, the army plays an active and public political role, a situation relatively unfamiliar to Americans. Is the army under civilian control, or is it fairly independent? Is it unified in its outlook, or divided into factions? Do its members come from and identify with the common people (in which case they may fall under Machiavelli's second category), or do they constitute a privileged élite (in which case they probably fall under the first)? Will the army be weakened or strengthened by new plans for a libertarian defense force? Can its members be counted on to fight against Greater Zimiamvians if necessary? The army can play either a constructive or an obstructive role; sufficient opposition from the armed forces will make any plans to establish a libertarian society doomed from the start.

Machiavelli advises wiping out the old guard as quickly as possible — "killing the sons of Brutus"¹ — and goes on to praise Clearchus, the reformer of Heraclea, who, faced with "an arrogant upper class which he could in no way satisfy or correct," chose a "suitable opportunity" and proceeded to "cut to pieces all the nobles to the immense satisfaction of the popular party." But even if this option were feasible, it would be unlikely to appeal to libertarian scruples.

Instead of killing the vested interests off, another possibility is to buy them off; but with what? A libertarian government can hardly offer them much in the way of political power or privilege, and is presumably going to be strapped for cash. Perhaps one could try to placate them with British-style titles of nobility conferring no actual power — but exactly how dumb are these folks?

Those in Machiavelli's other category, the common people who stand to prosper under the new régime, also pose a problem, since it may be far from obvious to them that the new order will benefit them. It seems advisable to reassure them, and at the same time promote economic productivity, by getting sound currency into their hands — as much as possible, as fast as possible — through privatization vouchers, massive "tax refunds," or what have you. In F. Paul Wilson's libertarian science-fiction novel *An Enemy of the State*, a key element in the free nation movement's

strategy is to build up a hoard of gold over the years, for rapid distribution to the populace of the prospective free nation when the hour of transition arrives. But this approach is not exactly cheap.

Another potential problem, especially acute in proportion as the transition process is top-down rather than bottom-up, is that a long-governed population that has built up habits of dependence may panic or flounder at the prospect of genuine responsibility and self-reliance:

"How difficult it is for a people accustomed to live under a prince to preserve their liberty, should they by some accident acquire it as Rome did after the expulsion of the Tarquins, is shown by numerous examples which may be studied in the historical records of ancient times. That there should be such a difficulty is reasonable; for such a people differs in no wise from a wild animal which, though by nature fierce and accustomed to the woods, has been brought up in captivity and servitude and is then loosed to rove the countryside at will, where, being unaccustomed to seeking its own food and discovering no place in which it can find refuge, it becomes the prey of the first comer who seeks to chain it up again. ... It should be assumed, then, as a basic and established principle that to a state which has been under a prince and has become corrupt, freedom cannot be restored even if the prince and the whole of his stock be wiped out. On the contrary, what will happen is that one prince will wipe out another It is on account of all this that it is difficult, or rather impossible, either to maintain a republican form of government in states which have become corrupt or to create such a form afresh."

(*Discourses on Livy*, I. 16-18 (pp. 153-164).)

Yet Machiavelli is not always so pessimistic. In nearly the same breath, he is uncharacteristically sanguine about the prospects for liberal reform:

"[A political reformer] will find that a small section of the populace desire ... authority over others, but that the vast bulk ... desire but to live in security. For in all states whatever be their form of government, the real rulers do not amount

to more than forty or fifty citizens and, since this is a small number, it is an easy thing to make yourself secure in their regard either by doing away with them or by granting them such a share of honours, according to their standing, as will for the most part satisfy them. As for the rest, who demand but to live in security, they can easily be satisfied by introducing such institutions and laws as shall ... make for the security of the public as a whole. When a prince does this, and the people see that on no occasion does he break such laws, in a short time they will begin to live in security and contentment."

(*Discourses on Livy*, I. 16 (p. 156).)

Here, though, Machiavelli fails to consider two facts. First, citizens who have been taught from birth that they have the right to impose their will on their neighbors through the vote have had inculcated into them a good many more political desires than merely the desire to be left alone, and they may well be reluctant to surrender this power over others.

Machiavelli may be forgiven this oversight, since he is not considering democratic régimes. But a second oversight is less excusable, since it applies to every form of government: Machiavelli is ignoring the fact that governments customarily operate by a system of patronage designed to convince their subject populations that they have a stake in the existing despotic régime. In this respect Machiavelli seems surprisingly un-Machiavellian;² for a greater insight into the realities of power politics, we must turn to the analysis offered by Étienne de la Boétie, born three years after Machiavelli's death:

"It is not the troops on horseback, it is not the companies afoot, it is not arms that defend the tyrant. This does not seem credible on first thought, but it is nevertheless true that there are only four or five who maintain the dictator, four or five who keep the country in bondage to him. Five or six have always had access to his ear, and have either gone to him of their own accord, or else have been summoned by him, to be accomplices in his cruelties, companions in his pleasures, panders to his lusts, and sharers in his plunders. ... The six have six hundred who profit under them The six hundred maintain under them six thousand,

whom they promote in rank, upon whom they confer the government of provinces or the direction of finances And whoever is pleased to unwind the skein will observe that not the six thousand but a hundred thousand, and even millions, cling to the tyrant by this cord to which they are tied."

(Étienne de la Boétie, *The Politics of Obedience: The Discourse of Voluntary Servitude*, trans. Harry Kurz (Free Life Editions, New York, 1975, pp. 77-78.)

Through this sort of patronage device, the entire populace is conned into believing that they benefit from the existing power structure, and this may lead them to resist any attempt to dismantle Leviathan. Of course, what La Boétie is describing is actually a typical pyramid scheme, in which only the top few levels are net winners; the vast bulk of the participants are net losers, and if they could be convinced of that, their allegiance to the old order might dissipate rather quickly.

Once again the Czech privatization model (described in Part II, "The Process of Reform") offers reasons for optimism. Emerging from decades of communist rule, the Czechs were faced with the very problems we've been discussing: on the one hand, an entrenched old guard, committed to statism, and reluctant to yield their power; on the other hand, an impoverished populace, eager for change — but habituated to dependence, and distrustful of any reform policies that might plunge the all-too-fragile economy into a period of dislocation and austerity it could ill afford.

The Czech reformers' solution was the famous privatization voucher scheme, and the spontaneous IPF system it inspired. (See Part II.) Privatization, as we've seen, brought swift improvements in living standards, while the IPFs (investment privatization funds) got cash quickly into everyone's hands; all this served to reassure the common people and win their allegiance to the new régime. But not only did the Czech approach win the masses over — but it also managed, incredibly, to defuse the opposition of the old guard:

"Most phenomenal ... is the electoral payoff of what the government still resists calling the "Czech Miracle." While reformers all across the formerly communist nation-states are in hurried re-

treat, as former *apparatchiks* turned populists steam back into power, the classical-liberal government headed by Prime Minister Klaus enjoys no serious political challenge from left or right. Prague is in full bloom and the Czechs are far too busy tending garden to launch the *dirigiste* backlash which swirls violently just beyond. ...

[T]he Czech liberals believed that the only way to keep the reform flame on high was to overwhelm the public with so much opportunity that Czechs would not have time to quarrel over details. Dumping massive amounts of state property into private hands would not only achieve efficiency — production goes up as socialism goes down — but create a feeding frenzy on the corpse of the socialist state. This frantic cleansing process channeled society's political energy in a most productive way. Instead of decades-long maneuvers to position this or that interest group for the next well-considered round of privatization, the most calculating men and women snatched their opportunities to become vested in the property now (briefly) available. ... The gold rush was on, and Czechoslovakians were given one brief shining moment to either become capitalists or to sit on the sidelines of history. Entrepreneurs overwhelmed the political fixers, and the Czech Miracle was born. ...

The instant the process began in earnest, thousands of prospective entrepreneurs ... began to push hard for privatization. Since state managers were intimately involved in *this* competitive process, it removed them from the ranks of another competitive process: obstruction. In every post-communist country, these *apparatchiks* form the core of opposition to reform: Why help privatize what you (as a state manager) can pilfer? The Czech answer: If you don't help us privatize, someone else will. ...

Workers or others knowledgeable about a business were typically high bidders, and entrepreneurial talents were immediately unleashed. Managers who had adroitly pilfered state assets were turned into profit-minded capitalists in the stroke of a winning bid. Resources became efficiently utilized, and consumers gained a new importance. ... "

(Thomas W. Hazlett, "The Czech Miracle: Why Privatization Went Right in the

Czech Republic," *Reason*, April 1995, pp. 29-33.)

The experience of the Czech Republic thus offers a promising way of avoiding the fourth pragmatic pitfall.

The Czech model may also provide a solution to the troubling problem of land reform. In most nations, a substantial proportion of private land has been redistributed either directly to the government or indirectly to the government's cronies. In trying to solve this problem, libertarians are pulled two ways. On the one hand, libertarian justice demands that stolen property be returned to its rightful owners. On the other hand, endless litigation over property titles going back decades or even centuries can condemn the current occupants (who may themselves be relatively innocent) to perpetual uncertainty about their rights to the land — and often there may be no *one* obvious candidate for the rightful claimant. (Fred's land was seized by the bank over a default on a debt Fred disputes; the land in question was originally sold to Fred by Anna, who now claims she was swindled out of it, and Anna in turn received the land as a grant from the government, which expropriated it earlier from Michael, whose ancestors stole it from the Apache Indians, who in turn stole it from the Navajo.) In situations like this, where the *absolute* right may be impossible to determine, the Czech Republic's approach may be the *nearest* right:

"While establishing the most far-reaching restitution program in the Eastern bloc, the law set lightning-fast deadlines — those who wanted to file claims to "reprivatize" property expropriated by the communists after 1948 had less than a year The government did not want properties in limbo for years of wrangling over historic ownership rights." ("The Czech Miracle," p. 30.)

The "most far-reaching restitution program" aspect of the Czech approach satisfies libertarian scruples about restitution, while the deadlines ensure the economic certainty to which current holders are entitled.

Welcome to East Zimiamvia!

Over the course of this four-part series I have argued that the top-down project of

dismantling Leviathan from within, while both morally risky and practically difficult, is nevertheless permissible *and* possible. It must, however, be accompanied by a robust bottom-up approach as well. I would simply add, in closing, that if ever Leviathan is successfully dismantled, the bottom-up libertarian movement will still be needed as much as ever — to make sure the people retain the freedom they have won. [△]

Notes

1 The reference is not to Marcus Junius Brutus, the famous assassin of Cæsar, but to the much earlier Lucius Junius Brutus, who led the overthrow of the tyrannical rule of the Tarquin monarchs, and established the Roman Republic. When his own sons plotted to betray the fledgling Republic and restore the old order, Brutus sat in judgment on them and sentenced them to death.

2 Throughout his writings Machiavelli is strangely blind to the phenomenon of patronage. For example, when Machiavelli tries to explain why the plebeian class of ancient Rome, having finally after many long struggles won the right to elect members of their own class to the consulship (the chief executive power of the Roman Republic, shared between two men), nevertheless continued to pass over plebeian candidates in order to elect patricians to the office of consul, he writes:

"... men make quite a number of mistakes about things in general, but not so many about particulars. In general the Roman plebs thought that they deserved the consulate But when it came to deciding which particular members of their party to elect, they recognized their weakness and judged that no one of them was worthy of that of which all of them, taken together, had seemed to be worthy; so that being ashamed of their own people, they had recourse to those who were worthy of the office [*i.e.*, patricians]. It is no wonder Titus Livy is astonished at this decision, and remarks: 'Where today will you find in anyone that modesty, fairness and highmindedness which the whole people then displayed?'"
(*Discourses on Livy*, I. 47 (pp. 225-226).)

Here we find Machiavelli displaying the kind of romantic sentimentality and political naïveté we would expect from any other thinker rather than him. As I have mentioned elsewhere, the plebeians supported patrician candidates, not because they recognized their own inferiority, but because the patricians paid them off:

"The city-states of the ancient world — [including] Rome during the early Republican period — had surprisingly weak and decentralized governments, with nothing we would recognize as a police force. ... Yet these city-states were class societies, with a powerful and effective ruling class. Where did the power of the ruling class come from, if not from a powerful state?"

The historian M. I. Finley has studied this question, and come to the conclusion that the

ruling classes maintained their power through the device of patronage In effect, the wealthy classes kept control by buying off the poor. Each wealthy family had a large following of commoners who served their patrons' interests (e.g., supporting aristocratic policies in the public assembly) in exchange for the family's largess. ...

Even the patricians' losses were seldom serious. For example, the plebeians eventually won ... the right to elect plebeians to the consulship — but thanks to an effective patronage system, the plebeians almost always elected patricians to the office anyway."

("Can We Escape the Ruling Class?," *Formulations*, Vol. II, No. 1 (Autumn 1994).)

Roderick T. Long is Assistant Professor of Philosophy at the University of North Carolina at Chapel Hill. He holds an A.B. from Harvard and a Ph.D. from Cornell. A frequent lecturer on libertarian topics, he is the author of a book manuscript tentatively titled Aristotle on Fate and Freedom.

Roderick Long can be reached
by e-mail at BerserkRL@aol.com

Keeping Our Freedom (from p. 4)

will fight for it every bit as hard as libertarians fight for freedom. We will always be at war, always be in danger. As necessary as military defense might be at times, we must not lose sight of the most effective defense of all. We must invite our enemies to truly act in their best self-interest by abandoning the aggression that boomerangs back to them. We must address their self-interest to serve our own. Naturally, the place to start is with those who understand at least some of the principles of freedom.

The best defense of our free nation is the creation of a free world. [△]

Mary Ruwart is author of the acclaimed book Healing Our World: The Other Piece of the Puzzle. A frequent speaker at conferences, she is a prominent force in the Libertarian Party., and a member of the Board of Directors of the International Society for Individual Liberty. She holds a Ph.D. in Biophysics, has worked as a Professor of Surgery, and until recently served as a senior research scientist at Upjohn. She has been honored in Who's Who and Outstanding American Men and Women of Science.

NCF Status Report (from p. 1)

them to work on the project full time.

We submitted a book outline to a major agent to represent us but were turned down. We are currently submitting the book proposal to other agents and book publishers.

Lacking a book contract, we nonetheless continue to research the issues necessary to found a new country. We feel we have the greatest knowledge base of any projects started to date.

Finally, we aimed to have a newsletter to promote new country ideas. We founded and produced four issues of *New Country Report* before merging it with *Formulations*. We feel that this merger will help both publications while still achieving the goals of the New Country Foundation.

Perhaps the most exciting development of the New Country Foundation in our first year has been the beginning of negotiation with a country for the creation of at least an autonomous zone. This zone would be independent in all areas but foreign affairs. In effect, it is somewhere between a freeport and a truly sovereign nation. However, the prospective host country is willing to discuss full sovereignty in the future.

Let's be realistic. The chances of success of creating this autonomous zone are small. Hurdles are high. At the same time, the opportunity is large. We have a man on the spot and will likely be making a trip there in the near future.

Our objectives for the coming year are similar to the last year. The main goal will be to continue the negotiations with this country. Our second goal will be to complete the business plan.

We hope that you will join with us to create a new free country. [△]

New Country Foundation President Courtney Smith has published several books on investing and produces his own investment newsletter, World Investment Strategic Edge.

*

*

*

A State Can Be Designed To Shrink

by Richard O. Hammer

Governments grow. This seems inherent. But why not design a government to shrink? I propose that we can.

Consider the idea that Roderick Long put into his Virtual-Canton Constitution: the idea that one house in the legislature might have power only to repeal legislation (while the other house has power only to pass legislation). Roderick adopted this idea from Robert Heinlein's science fiction novel *The Moon is a Harsh Mistress*.

I propose that we can take this idea, generalize it, and build upon it. A part of the government which has power to repeal laws is my favorite part. So why should we limit ourselves to designs for governments with just one of these wonderful parts? Maybe we could build in lots of powers to repeal laws.

This insight, if it is one, is my contribution to our discussion on how we can keep a nation free. Assuming we must set up a government, we can set up one in which the privatizers have more powers than the regulators.

I have the impression that the founders of America knew that they were creating something that they feared, the power to legislate. So they built into the U.S. Constitution ways to limit that power. And perhaps, in this one regard, government in the U.S. runs as the founders intended: sometimes the legislature gets away with its attempts to pass new laws, and other times those attempts are blocked. But the result is probably something that the founders did not intend: government grows. The checks they built in keep it from growing rapidly, but it does grow slowly. It probably did not occur to them to take the additional step of building in ways to dismantle power.

To illustrate, join me in thinking of these powers in government as numbers, the number 1 (one) and the number 0 (zero). Think of the power to legislate, the power to pass new laws, as the number 1. And think of the power to block new legislation as 0. In America sometimes 1 happens, sometimes 0 happens. But on average we must expect the result to be somewhere between 0 and 1 — a government which is growing. The U.S. Constitution, I assert,

constitutes a government bound to grow.

I propose that we libertarians might constitute some powers in government which would be represented as the number minus 1. Minus 1 is the power to



Richard Hammer

repeal legislation. Thus, with the powers existing in government ranging from minus 1 to plus 1, the result over time does not have to be greater than 0, and might be less than 0, depending upon the relative powers of the branches, and upon how the electorate votes.

Objections Which Will Be Raised

Detractors might say that this in nothing new, because legislatures in the U.S. now have power to repeal laws. That is true. But I think there might be something new in constituting branches which have only the power to repeal laws. If the people holding office in these branches want to appear to be doing something, they must repeal laws. Also, I imagine, numerous incentives may be constituted to hearten the forces of privatization. For instance, we might pay them in proportion to the number of laws they repeal.

Detractors might also say that this idea has never been tested. This concerns me too. It seems possible that special interests could buy the favors of deregulators (to do nothing), just as they buy the favors of regulators (to pass the pork). But I think we can adjust our design to counter this shortcoming. For instance, one mighty power which we could put into the hands of our

friends would be power to repeal laws through national referendum, a power which would require only X% of the vote. And we could set X as low as we dare, as low as we think we could without threatening the constitution (by which, in this usage, I mean the glue) of the nation.

Also, I would assert that the idea has been tested in part in the U.S., in that the U.S. system constitutes many powers to block, if not exactly repeal, legislation. The President can veto; the executive can neglect to prosecute. The Supreme Court and juries can nullify. So, using my little numbers again, the U.S. Constitution gives some officeholders the power of 0. And they use the power of 0, at least some of the time, to our benefit. This suggests that officeholders might also use the power of minus 1, to our benefit, if just we create those offices.

Possible Devices

What are the ways that this power to repeal laws might be built into the constitution of a free nation? In passing I have mentioned two: a house of elected representatives with power only to repeal; a provision allowing repeal through referendum.

I do not claim, in this paper, to present a good list of possible devices to repeal legislation. But I can think them up, and so can you. Here are a few:

- Provide a way for minorities to define themselves, and then give those minorities power to repeal legislation, by referendum, requiring Y% of only the minority.
- Give juries the power not only to nullify, but to actively repeal legislation.
- Give rewards to activists who lead successful campaigns to repeal legislation. If taxes cannot be raised, allow for the private financing of these rewards.
- Penalize legislators, from the regulation-creating branch, who vote to pass laws which are then repealed within one year.
- Provide for repeal of legislation during sporting events, if the half-time crowd responds to a such proposal with an ovation exceeding Z decibels.

Perhaps this could be overdone. But I mean to point out that we can find constitutional tools with all the power we want, and more. In general, if detractors complain that a particular minority might fall victim to unfair legislation, then we can respond by constituting a power for that minority to repeal legislation.

Say It: We Trust Voluntary Order, We Mistrust Government

This is my main idea, that we take the step which the founders of America did not take: We should announce that we have greater faith in voluntary order than in coerced order, and that therefore we constitute ways to dismantle coerced order.

To illustrate, here I suggest a preamble for the constitution of a new free nation.

We, the founders of Emergonia, believe that the voluntary and spontaneous order which forms naturally within society almost always serves human needs better than an order which might be coerced by a state. Yet, impelled by the following three circumstances, we find it wise at this time to constitute a state.

First: To secure our independence from the other states which presently cover Earth, Emergonia must receive recognition as a peer among states.

Second: At the outset the populace of Emergonia will rely upon some institutions of state to fulfill certain of their needs; they have no other experience. While we desire to see these institutions of state replaced by institutions of civil mutual consent, we recognize that growth of voluntary institutions requires time.

Third: We recognize that, for reasons beyond our understanding or desire, human society may require some few powers vested in state.

Therefore we constitute the State of Emergonia which incorporates, in initial code, those institutions of state to which the populace are initially inured, but which possesses more powers to repeal old code than to enact new code.

The Flexibility of this Power

An advantage of this idea is that it could conceivably be applied to any existing

nation or populace. There need be no sudden change. A nation adopting new constitutional powers to repeal laws could keep, for starters, all its familiar institutions of state. And, by adopting a timetable of decreasing percentages required to repeal laws, the shrinkage of government could be gradual at first.

The paradigm we in FNF most frequently mention for attaining a free nation, that of leasing an underpopulated area and then populating it with like-minded souls, would not need this constitutional power to repeal laws as much as would a paradigm which included a population of non-libertarians. But still this idea might be useful for a nation composed almost entirely of libertarians, because, heaven knows, even most of us rely in ways upon familiar state institutions. —

References

Roderick T. Long. I can no longer sort out how many of these ideas originated with Roderick. For starters see his papers in the Proceedings of our first Forum, on Constitutions, which met on 2 October 1993.

Frances Kendall & Leon Louw, *Let The People Govern*. Amagi Publications, 1989.

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

Foundation News Notes (from p. 1)

ries, we have 87 who will receive one or more issues of *Formulations*, pursuant to our merger-of-publications agreement with the New Country Foundation.

- Where are our readers? For bulk mailing the U.S. Post Office requires bundling into particular categories. Since this bundling was done in house (or more specifically, on kitchen counter) for the first time with the previous issue of *Formulations* (Winter), we have these statistics available: total bulk mailing, 281 copies; including 27 to local North Carolina zip codes which encompass Chapel Hill and Raleigh; 28 to elsewhere in North Carolina; 38 to California; 20 to New York; 14 to Pennsylvania; 14 to Washington state; 12 to Texas; 10 to Illinois. Additionally 8 were sent to international addresses. —

New Country Briefs (from p. 1)

Although substantial work has now been done on the Sea City idea, little financial support for this concept has appeared. Sea City advocates, including those of us who are involved with NCF, have yet to convince potential investors that they can profit from a floating, free market enclave. To make this dream a reality, someone will have to formulate a compelling business case for it. And the essential element of this case must be money making enterprises uniquely suited to a floating locale.

Sea City advocates have focused substantial attention on the idea of a floating casino. The operator would be free of all the taxes and regulation associated with legalized casino gambling in the United States, and would enjoy great flexibility in locating this enterprise. Indeed, the casino could even be relocated on a seasonal basis to maximize patronage.

On the negative side, the floating casino would have to compete with an increasing number of land-based facilities in Las Vegas, Atlantic City, and on Indian reservations and riverboats around the country. In addition, a 1949 federal law forbids offshore gambling ships, and even forbids Americans from transporting passengers between American shores and such vessels. Because this legislation conflicts with certain elements of the international Law of the Sea, it should be possible to convince a judge to strike it down. Nonetheless, this legal issue adds an element of uncertainty inimical to a successful business plan.

An alternative floating money spinner is a hospital ship. This idea was put forth last year in a number of articles in Eric Klien's *Oceania Oracle*, which may be found on his web site <http://www.oceania.org>. (A letter from Mark Laughlin in *New Country Report* #2 contained the related idea for a medical island.)

Klien points out that even a hospital ship could be of profitable, unlike a casino ship which would have to be big to be useful. The ship could provide a variety of medical treatments that are currently illegal in the United States. Klien believes that the demand for breast implants, now virtually illegal in the United States, could finance

(continued on page 23)

A Model Lease for Orbis

by Spencer Heath MacCallum

Working Draft 10-15-95

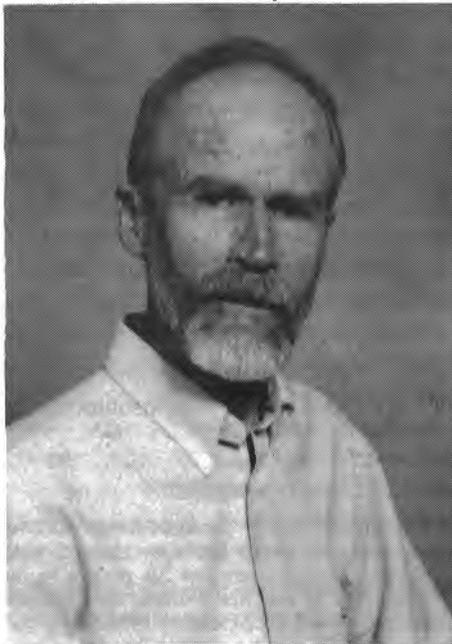
Copyright © 1995 by Spencer H. MacCallum

Prefatory Note: Long-time libertarians and followers of the new-nation movement may recall hearing of Atlantis, the attempt by Werner Stiefel to found a proprietary community on a coral formation in the Caribbean outside the territorial limits of Haiti during the mid-1960s. The following article began as a commission in exchange for equity in Atlantis. Unfortunately, Stiefel's efforts came to nought when he was chased off the site by Duvalier's gunboats. Although nothing remains of Atlantis, the master lease for this proprietary community has survived and has been revised during the intervening years. Since Stiefel wanted to retain a low profile while he was building Atlantis, when the lease was published it was promoted as being for ORBIS, the name of a hypothetical proprietary community in outer space.

The author, Spencer MacCallum, is a social anthropologist who has specialized in the study of proprietary communities. He has followed in the footsteps of his grandfather, Spencer Heath (1876-1963), who originated the idea of proprietary administration of all public services, such as roads, common areas, and police protection. Both Heath, in his major work, Citadel, Market and Altar: Emerging Society (1957), and MacCallum, in The Art of Community (1970), have explored "the rationale of a community in which all matters of common concern would be administered contractually, according to voluntary agreements, without recourse to taxation or other institutionalized coercion."

Proprietary administration of public services is not some "pie-in-the-sky" idea. In his book, Public Goods and Private Communities (1994), Dr. Fred Foldvary offers empirical evidence for and theoretical justification of proprietary communities. In addition, there is a growing body of practical experience in this area embodied in what the real estate industry labels "multiple-tenant income properties," such as hotels, shopping centers, marinas, industrial parks, residential apartment communities, medical and professional centers, and combinations of all of these. Their

significant structural feature is found in the fact that the land on which they are established remains in undivided ownership with the component parts leased or rented instead of sold. "The developer's intact inter-



Spencer MacCallum

est in the whole, i.e., the single title under which he planned and built the development, survives to become the basis for the ongoing administration of the community." The proprietors of such communities are in the "business of manufacturing and marketing 'optimal human environment'." The proprietor creates land value by manufacturing and merchandising the "environment" of the community he has built. His "interests are directly aligned with the general well-being and prosperity of his tenants" because his rental or lease income can only be generated out of their productive efforts.

In a lengthy introduction titled, "Drafting a Constitution for Orbis," the author of this contract has identified the basic principles he has used to formulate the lease provisions. In no special order, they include the following:

1. Public services amply provided through exclusively free-market enterprises without resort to taxation.
2. Community administrators exercising little or no police function.
3. Personal interests of the owners and administrators aligned with the public interest, the common good of

the whole community.

4. Flexibility of land uses, permitting changes to take place incrementally over time without prejudice to contracted rights.
5. An exact standard by which to determine and measure quantitatively the "good of the community."
6. A cultural bias toward settling differences creatively by means that do not include resorting to physical force.
7. A competitive market free of any and all coercive restraints on trade.

Voluntaryists should find these ideas exciting, as they offer a non-political and non-electoral method for maintaining social cooperation and peace. The following draft of the lease is appended with explanatory notes (numbered in sequence) which indicate how it has taken on a life of its own during the last 30 years. Reader comment is invited "to lessen the weaknesses and build on the strengths of this first attempt at a [non-statist] constitution for a permanent community in space," or anywhere else for that matter.

MacCallum's lengthy and highly informative preamble to the lease, including a bibliography of the proprietary community, is available without charge from him at Box 21, Pine Hill, New Mexico 87357 (Tel. 505-775-3750). Those who write rather than phone should include a phone number (which Mr. MacCallum promises to keep confidential) since it is his policy to speak with people and be informed of the nature of their interest before sending out material to them. (This unusual policy has been highly successful, he says, not only in terms of self-education but also in terms of the friendships that have resulted.) Earlier versions of the lease were delivered as a lecture at the Twenty-third Annual Meeting of the American Astronautical Society, Airport Hilton Hotel, San Francisco, CA, October 20, 1977; and published in Rampart Individualist, Winter & Spring 1981.

This "Prefatory Note" was prepared by Carl Watner in conjunction with Spencer MacCallum. It will appear in a forthcoming issue of Watner's publication The Voluntaryist, "the only pure free-market newsletter to eschew electoral politics and violent revolution." (Sample issues available for \$1: Box 1275, Gramling SC 29348.)

For permission to recopy "A Model Lease for Orbis," please contact Spencer MacCallum. He will always give permission, but he wants to know who is copying it, who is interested.

A MODEL LEASE FOR ORBIS

I. WHEREAS ORBITAL COMMUNITIES ("ORBITAL"), owner of the proprietary community known as Orbis, is engaged in the business of developing, maintaining and promoting the growth of human environments conducive to the fullest enjoyment of community living, and of marketing such environments by leasing to its members exclusive sites through the occupancy of which they can obtain full access to and enjoyment of same, and

WHEREAS PERSON ("P") desires membership in the community of Orbis for the purpose of residing and/or engaging in business there,

NOW THEREFORE ORBITAL, for the consideration set forth below, conveys in perpetuity to P, his heirs and assigns, subject only to the terms and conditions of this agreement, full membership in the community of Orbis, which membership conveys equal access with all other members to its common areas and facilities and, in addition, exclusive occupancy of a space, which in this case shall be that space, or space of equivalent character and utility, known as [property description follows, reserving sub-surface rights and air rights above 000 meters].

Note 1. The absence of a fixed date of termination is for several reasons. With a safeguard clause that permits Orbital to move the occupant to another site under certain conditions (II.D), the community retains planning flexibility — a consideration of ever greater importance in a culture of accelerating technological change. At the same time, the individual gains the security of permanent membership in a community, provided only that he continue to observe the terms of that membership. Such tenure without specified term is the functional equivalent of citizenship, which is likewise without term, in the established nations of earth. Although no longer recognized under Anglo-American law, such perpetual leaseholds are traditional and customary in many parts of the world.

II. ORBITAL FURTHER COVENANTS AND PROMISES:

- A. To guarantee P quiet possession of the space reserved for his exclusive use and, subject only to the terms and conditions of this agreement, freedom to make full and undisturbed use of that space and of the public portions and facilities of Orbis enjoyed in common with others. ORBITAL promises not to impose or permit to be imposed within Orbis any tax on the person or property of P or of anyone else in Orbis. The word "tax" shall be understood to mean any imposition of any levy, fine or assessment other than as provided for by the terms of this or other agreements voluntarily entered into.**
- B. To act at all times with utmost diligence to secure the safety of persons and property in Orbis, including specifically but not limited to the following:**
- 1. Promotion of research into and wide public dissemination of information concerning:**

Note 2. The membership/lease agreement does not forbid specific kinds of behavior that might endanger or be a nuisance to others, since this would call for policing — inspections and enforcement — by Orbital. As the community proprietor, Orbital is already such a big fish in this pond that it seems wise to avoid or minimize situations that could lead to confrontations with members. Instead, the member covenants (III.C) to exercise all due diligence to avoid creating a nuisance. In the event a dispute arises between members, it will go first to mediation and then to arbitration (IV.E), and a private arbitrator will determine whether one or the other acted unreasonably. If the arbitrator finds that a member has acted otherwise than reasonably, then Orbital will be free to act on that information, which will then be public knowledge. The issue of reasonable behavior turns partly on the question of whether the defendant was sufficiently informed to have known how to behave in the situation, or whether he acted in ignorance and could not reasonably have had access to such information. Conse-

quently, a fundamental role of Orbital, a basic public service, will be to ensure that up-date technical information about the "how" of community living is readily and easily available to everyone in the community.

- a. Health and safety.**
- b. Available insurance coverage of all kinds.**
- c. Available technologies of all kinds for the abatement of measurable nuisance effects such as noise, smoke and other particulate matter, vibration, noxious gases, odors, glare and heat, fire and explosive hazards, traffic, and waste effluent.**
- d. Private means of dispute resolution.**

- 2. Reimbursement, through rent remission or otherwise, of uninsured losses resulting from fire, theft, or bodily injury suffered in the public areas of Orbis, or in the private areas when said fire, theft or attack originated outside those areas and was not caused by negligence of P or his tenants, guests or invitees. Provided, however, in the case of property loss, that P has apprised ORBITAL beforehand of any unusual amounts of property in his possession and has taken reasonable precautions for its safety.**

Note 3. This provision has long precedent at common law, where an innkeeper is held to be insurer of the safety of persons and property of his guests.

- C. To promote the systematic collection and public dissemination of marketing statistics and related data and in other ways to encourage and assist members to make informed land-use decisions.**

Note 4. In lieu of zoning, building codes or other land-use restrictions, this clause seeks to achieve the same end by an ex-

tension of the public-information services of Orbital noted earlier (II.B.1). The assumption is that inappropriate land-use decisions generally result from inadequate information, and that if such information is readily available, the nonconforming land uses will be small enough in number and in kind that the community will be able to live with them. They will be a small price for avoiding the inspection/enforcement syndrome of duties under the conventional restrictive approach.

D. If, in the judgment of ORBITAL, its own interest and those of the members in general would be served by ORBITAL resuming possession of all or any portion of the leased site and allocating it to a different category of use, such as from industrial use to residential or commercial use, and if ORBITAL for this reason elects to make such a land-use change, then ORBITAL promises to:

Note 5. This right of Orbital might never have to be exercised for a variety of reasons. A common misapprehension is that nonconforming land uses cannot be tolerated, when actually they seldom hurt an over-all plan; the classic hold-outs, such as the brownstone tobacconist at Rockefeller Center, do little more harm than offend our sense of symmetry. Nor do such nonconforming uses very often last beyond a person's lifetime, if that long, personal circumstances being as changeable as they are. Moreover, where people have all the facts they need to make a rational decision, they will generally do so. That being the case, in Orbis, where information will be more available than elsewhere, holdouts will be even more exceptional. In Orbis, also, in the absence of tax and regulatory features that elsewhere tend to "freeze" existing land uses (by creating incentives, for example, to hold onto property to avoid capital gains tax liability) the market as a whole will be more responsive to changing conditions. Nevertheless, it is of fundamental importance to the community that Orbital reserve the right to move a member from one site to another of equivalent character and value. The conditions it would have to meet, however, assure that such a right, if exercised at all, would not be exercised lightly.

1. **Give P not less than two years written notice.**
 2. **Grant P a right of first refusal, during the period of notice, to himself undertake the land use envisioned for that site.**
 3. **Offer P, at the same rent for the balance of the unexpired rental period, alternative space in Orbis equally well situated and otherwise suited for the purpose for which P was using the space originally allocated.**
 4. **Reimburse the full appraised market value of P's fixed improvements on the site, constructed prior to the time of receiving notice, or, at the election of P, to reproduce the same or comparable improvements on the new site.**
 5. **Assume the full cost of moving P and his personal and business belongings from the old site to the new site or elsewhere in Orbis.**
 6. **Compensate P for any business loss due to closure or disruption during the move, except any that might have been caused by carelessness or neglect on the part of P.**
- E. To conduct its business always in a manner calculated to maximize the total value, as income property, of its basic productive capital consisting of the site of Orbis.**

Note 6. The ultimate protection of the members is that Orbital will be operated as a business and hence more rationally than if it were not. If it were operated for any other reason — ideological, charitable or whatnot — there would not be this protection. The impersonal, rational pricing mechanism of the market is the ultimate safeguard of justice in a civilized community. The rental income from a proprietary community affords a quantitative measure of its success as a community and a yardstick by which to measure proposed improvements. It introduces into community planning a

rationality that has hitherto been lacking; for it offers in principle a quantitative measure and feedback for ascertaining whether and by how much a given undertaking adds to or detracts from the common good — the success of the community qua community.

F. To have in effect at all times adequate insurance or reserves specifically to compensate P for any loss or inconvenience that P might suffer as a result of ORBITAL violating any of the terms of this agreement.

Note 7. This was suggested by a similar provision in the constitution of Ciskei, south Africa, and is intended as a further protection against tyranny—the main protection being the business nature of the public enterprise (II.E). This provision bonds Orbital to perform its promises to the members, in effect insuring the constitution of Orbis.

III. P COVENANTS AND PROMISES TO ORBITAL:

- A. To pay the annual ground rent of the leasehold, exclusive of improvements thereon, to ORBITAL or its successors or assigns, in equal amounts on or before the first of January and July of each year.**
- B. To exercise due diligence to avoid endangering the health, safety and property of others, this and the following covenants C, D, F, G, H, I and J to run to the benefit of the present and future members of Orbis, their tenants, guests and invitees.**

Note 8. This would include actions not only within Orbis, but also while traveling abroad, actions that might compromise the security of Orbis or be considered provocative by one or more governments on earth, leading to the possibility of sanctions or retaliatory action against Orbis. In other words, members would have to observe the strict political neutrality of Orbis. "Reasonable behavior" again would be the criterion or test.

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 • "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 • "Decline & Fall of 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.)

No. 2 (Winter 1995-96)

Report on Forum on Collective Action • "Roll Back U.S. Government? Not This Time," by Marc Joffe • "A Primer on Deliberate Collective Action," by Earnest Johnson • "Free Accord Law: Ethical Communities," by Phil Jacobson • "Constitutions: When They Protect and When They Do Not," by Randy Dumse • "Toward Voluntary Courts and Enforcement," & "Intellectual Property Rights Viewed as Contracts" by Richard Hammer • "Dismantling Leviathan, III: Is Libertarian Political Action Self-Defeating?" by Roderick Long • Review of Mitchell Waldrop's *Complexity*, by Richard Hammer • Review of Ayn Rand's *Atlas Shrugged*, by Richard Hammer • (32 pp.)

(See order form on reverse.)

And don't miss the Proceedings of our earlier Forums:

Forum Proceedings: Constitutions (Autumn 1993)

"The Basics of Constitutions," by Richard Hammer • "An Analysis of the Articles of Confederation," by Bobby Emory • The Articles of Confederation (1781) • "The Rationale of a Virtual-Canton Constitution" & "Draft of a Virtual-Canton Constitution: Version 4," by Roderick Long • "Analysis of the Constitution of Oceania," by Richard Hammer, Bobby Emory, & Roderick Long • "The Constitution of Oceania: Draft 0.80," by Eric Klien & Mike Oliver • (75 pp.)

Forum Proceedings: Systems of Law (Spring 1994)

"Basic Questions About Law," by Richard Hammer • "Law & Order Without Government" & "Implementing Private Law in a World of States," by Roderick Long • "Notes on the History of Legal Systems," by Bobby Emory • "(22 pp.)

Forum Proceedings: Security in a Free Nation (Autumn 1994)

"A Review of Libertarian Ideas About Security" & "The Power of Ostracism," by Richard Hammer • "Protective Services in a Free Nation," by Scott McLaughlin • "Protection, Defense, Retaliation, Punishment," by Robert LeFevre • "Defending a Free Nation" & "Insurance for Security: History & Theory," by Roderick Long • "Devil's Advocate: No Defense Department is Needed," "Providing Defense by Voluntary Means," & "Contra Insurance," by Bobby Emory • (60 pp.)

Forum Proceedings: How Can Government Establish Self-Government? (Spring 1995)

"Ideas on Taking Apart Government," by Richard Hammer • "Viewing This Subject in Light of Public Choice Theory" & "The Theory of Market Failure & Economic Analysis of Government Bureaucracies," by Roy Cordato • "You Can't Do That," by Bobby Emory • "Dismantling Leviathan from Within," by Roderick Long • "When the Revolution Comes" & "Glorious Revolution for an American Free Nation," by Phil Jacobson • (80 pp.)

Forum Proceedings: Free Market Mechanisms for Organizing Collective Action (Autumn 1995)

"Good & Bad Collective Action," by Roderick Long • "Free Accord Law: Ethical Communities," by Phil Jacobson • "A Primer on Deliberate Collective Action," by Earnest Johnson • "Might Makes Right: An Observation and a Tool" & "Toward Voluntary Courts & Enforcement," by Richard Hammer • (53 pp.)

[After Autumn 1995, the Proceedings series was merged into *Formulations*.]

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 =	_____
Volume III, No. 2 (Winter 1995-96)	_____	copies @ 3.00 each =	_____

Proceedings of Forums:

Constitutions	_____	copies @ 5.00 each =	_____
Systems of Law	_____	copies @ 5.00 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

C. To exercise due diligence to avoid causing any public nuisance, including observing reasonable performance standards when processing materials or disposing of wastes.

D. To carry liability insurance against any loss or injury he or his tenants, guests or invitees might cause others in Orbis.

Note 9. John Yench, of Long Beach, California suggested this and the following insurance clauses to eliminate any need for health and safety inspections and policing by Orbital.

E. To insure against loss of his own life, property or earning capacity due to fire, sickness, accidental injury or acts of God, including natural disasters and the effects of war.

Note 10. This clause insures the member against loss of membership from inability to pay rent because of accident, injury or other calamity. By the same token, it protects against the member or his dependents becoming a burden on the community, and it protects other members who might be creditors or contractual partners of the member in question.

F. To insure against loss or injury to others specifically resulting from P's violation of any part of this agreement, including especially but not limited to Paragraph III.B.

Note 11. Here P insures his word as Orbital does its word in II.F. This provision shifts from Orbital to the insurance provider(s), in whose interest it now is, the burden of inspections and policing with respect to security (see III.B and accompanying explanatory note 8). The insurance providers in turn are closely monitored by the consumer rating services (III.G). To complete the picture, no one — rating services included — escapes the eye of the ever watchful equities market.

G. To purchase insurance in conformance with this agreement only from firms carrying the highest certification from a ma-

for consumer rating service, and in all such policies to name ORBITAL as co-insured.

Note 12. Because insurability is the foundation stone on which the security of Orbis rests, it is essential that the insurance firms relied upon be real and reputable. Emalie MacCallum suggested consumer rating as an alternative to Orbital maintaining a list of approved companies. The market could then operate more freely, whereas certification by Orbital would be tantamount to licensing, which would be in restraint of trade.

H. To refrain absolutely from engaging in collusion in restraint of trade in Orbis or aiding or abetting persons or organizations so engaged.

Note 13. This provision is responsive to Mançur Olson's thesis in *The Rise and Decline of Nations* (Yale University Press, 1982) and is intended to forestall the formation in Orbis of cartels in restraint of trade and of special-interest groups that would restrict occupational entry. The profound importance of this provision is impressively developed by Olson. It also harmonizes with E.C. Riegel's thesis in *The New Approach to Freedom* (Heather Foundation, 1976) that competition is the touchstone of individual dignity. It is a premise underlying this model constitution for Orbis that unrestricted competition will help to promote an energetic and prosperous population, and that this, in turn, is the basis of healthy land values.

I. To seek every means of avoiding the use or threat of physical force against any person, for whatever reason, in Orbis.

Note 14. The test, again, is reasonable behavior. This explicit rule confers a psychological and cultural benefit in Orbis: By removing any and all violent action from the category of "right and justified behavior," the individual is challenged in every case to look for peaceful means of resolving differences. The working assumption is that there are always peaceful solutions to differences. The challenge is to find them. While such an assumption cannot be proved, it is like the scientist's working assumption

that the universe is rational and understandable; such an assumption is productive of discovery. Physical harm inflicted in any situation whatever is, in this view, considered tragic. The person who was unable to avoid inflicting it is not to be condemned, any more than the unsuccessful seeker after scientific truth. He is rather to be looked on with sympathy and compassion for his shortcoming in a situation that resulted in tragedy for a fellow human being. It is hoped that this view will become a part of the cultural outlook of the new community.

As for Orbital itself, it is the proprietary organization's contractual duty to make Orbis safe for its members. If Orbis or any part of it is threatened and Orbital can think of no alternative but to use force to protect it, then it will be up to Orbital to protect it forcibly. But this will be looked upon as a failure, necessary only because Orbital knew no other way to handle the situation. It will be considered improper means and consequently will establish no precedent for using force in the future. A worse failure, of course, would be to fail in its prime responsibility of protecting life and property in Orbis. We must not forget Gandhi's pragmatic injunction: "He who cannot protect himself or his nearest and dearest or their honour by non-violently facing death, may and ought to do so by violently dealing with the oppressor. He who can do neither of the two is a burden. He has no business to be the head of a family [read "community"]. He must either hide himself, or must rest content to live forever in helplessness and be prepared to crawl like a worm at the bidding of a bully." (*Young India*, November 10, 1928)

J. To be responsible at all times for the actions of his tenants, guests or invitees as if those actions were his own.

IV. ORBITAL AND P FURTHER MUTUALLY AGREE:

A. That this leasehold shall be P's property to sell, sublet, encumber or otherwise deal with as he sees fit, subject only to the terms and conditions of this agreement and to ORBITAL's approval, which shall not be unreasonably withheld. If this leasehold is to be

transferred to a third party or parties, then this original agreement should be returned to ORBITAL with the proposed transfer endorsed thereon. When and if the transfer is approved, a new agreement will be issued to the transferee. In the event P rents or sublets any or all of his space, his agreement(s) with his guests or tenants must agree with and in no way be inconsistent with any of the provisions of this agreement.

B. That the starting rent for the site herein leased shall be 0000 valuns per annum,

Note 15. The reference to "valuns" as the unit of exchange merely indicates that a non-political monetary unit, as discussed in E.C. Riegel, *Flight From Inflation: The Monetary Alternative* (Heather Foundation, 1978), undoubtedly will be used. The actual instrument(s) used in exchange will be determined, of course, not by Orbital, but by the consensus of traders — of whom Orbital will be but one.

and that this rent shall be revised every five years to the then market rental value of the site, less a ten-percent reduction to P as a preferred tenant. Market rental value for this purpose shall be appraised by three disinterested parties selected as follows: ORBITAL and P each choosing one of three persons named by the other and the third to be selected by these two. ORBITAL and P shall then each submit to this panel of three their independent appraisals of the rental value of the site for highest and best use together with supporting evidence, and it shall be the duty of the panel to study the appraisals submitted and choose one or the other, as it stands, without modification.

Note 16. This form of arbitration, which is suited to cases where the facts are not disputed, was suggested by the late Dr. F.A. Harper, of Atherton, California. It has the virtue of bringing the parties closer together in their respective claims rather than farther apart, as in the adversarial

system where each takes an extreme and opposite position in the hope that eventual compromise will favor him. Under this arrangement, each party makes his "solution" as close to the other party's claim as possible in the hope that it will become the decision in the case.

ORBITAL will make its leasing records freely available to assist the appraisal process.

Note 17. This small but not-to-be-overlooked provision was gleaned from an intriguing paper, "That We All Might Be Rich: An Investment Proposal for Georgists," privately circulated by its author, Dan Sullivan, Pittsburgh PA (412-621-3499), about 1992.

Should P fail to select an appraiser within 30 days after ORBITAL has submitted three names to him, then ORBITAL may name an appraiser for him from among the names submitted. Should either party fail to submit an appraisal, then that of the other shall obtain.

C. That if rent payments fall into arrears for ten days, P will incur a late penalty of ten percent of the balance due, and that after 30 days of arrears ORBITAL may, upon 24 hours written notice, terminate this lease and resume possession.

Note 18. Property-management experience teaches that rent collections must be handled promptly and strictly. It is no favor to a tenant to allow him to get into arrears, but rather tends to create an unmanageable situation. In some cases advance arrangements might be made for later payment, the leasehold might be financeable in the mortgage market, or insurance might play a role. In any case, rent schedules should be strictly regarded.

In the event of such termination, ORBITAL shall return any rental balance pro-rated to the date of the written notice. Compensation for P's fixed improvements on the site shall be established in the manner set out in Paragraph IV.B, above.

D. That this agreement may be modified or terminated at any

time by mutual consent, or that it may be terminated by either party, alone, upon appropriate notification as follows:

1. P may at his discretion terminate this agreement and quit the leasehold without any further liability for rent, under any of the following circumstances:

a. Upon six months written notice, in which case the removal or sale of any improvements shall be P's responsibility.

b. Upon 20 days written notice following the violation or neglect by ORBITAL of any of the terms of this agreement, and especially the commission of any act or threat of violence upon P, his tenants, guests or invitees, by ORBITAL or its appointed agents, or their entry on the premises without express permission by P, or the imposition of any tax upon the person or property of P, his tenants, guests or invitees. In the event of such termination, ORBITAL shall

1) Return any rents paid ahead by P, pro-rated to the date of the complaint, and shall compensate P for the value of his site improvements, such value to be ascertained in the manner set out in Section IV.B, above.

2) At its own cost safely transport P and anyone else residing at the time on P's premises, together with their personal belongings, to any place of their choosing. If the cost of transportation to said place exceeds that of transportation to P's point of origin before coming to Orbis, P shall pay the excess.

Note 19. This clause is responsive to

David Friedman's fear that the possibly high cost to a tenant of leaving a settlement remotely situated in space might provide a temptation for the proprietors to renege on their agreement by unilaterally raising rents. Insurance provided for in II.F protects P by underwriting his return transportation should Orbital go further and renege on that as well. For Orbital to disavow its agreement, however, would be tantamount to relinquishing its business, so that in practical terms the probability would be remote. Moreover, a poorly managed income property soon attracts the attention of those in a position to buy controlling interest and restore its productivity.

2. **ORBITAL may, at its discretion, resume possession of the leasehold under any of the following circumstances:**
 - a. **Upon 24-hours written notice following P's failure to pay rent in full for a period of 30 days after it has become due and payable. In that event, the compensation for P's fixed improvements shall be established in the manner set out in Section IV.B, above, and shall be paid to P by P's successor, if such there be within a year, and otherwise by ORBITAL.**
 - b. **Upon fulfillment of all the conditions set out in Section II.D, above, when in the judgment of ORBITAL its interests and those of the residents of Orbis generally would best be served by ORBITAL's resuming possession of the leasehold and disposing it to a different category of land use.**
 - c. **At the end of any negotiated rental period following prior written notice of not less than one year, in the event of repeated complaints by other residents of disturbances of the peace. Provided, however, that if in that period no further complaints are re-**

ceived, the notice shall have no effect.

- E. **That any dispute with any person in Orbis that cannot be resolved informally by the parties to it, including any dispute that might arise over the terms of this lease or the performance of either party to it, shall be settled by a mediator or, failing that, a neutral arbitrator in accordance with the rules and regulations of the XYZ Arbitration Association. The parties agree to be bound by the decisions of the arbitrator.**

Note 20. We can assume, whenever there is sufficient market demand, not only that arbitration companies will come into existence equipped to provide a complete dispute resolution mechanism entirely outside of any political system, but that arbitration associations will compete to provide the fairest possible adjudication of disputes. Much of what we call "due process" — the right to confront and cross-examine witnesses, questions about the admissibility of evidence, processes of appeals, and the like, which on earth are handled within the political court systems — might be transferred in space habitats to an arbitration system.

Many people are presently weighing the feasibility of competing private companies offering services of justice outside of any political system. See, for a single example, Murray N. Rothbard, *For a New Liberty* (New York: Macmillan 1973), pages 219-252. For an early treatment of the question, see Francis D. Tandy, *Voluntary Socialism* (Denver: Tandy 1896), pages 62-78. See also the following relevant discussions: A.S. Diamond, *The Evolution of Law and Order* (Westport CT, Greenwood Press 1975); Bruno Leoni, *Freedom and the Law* (Princeton NJ, Van Nostrand 1961); William C. Wooldridge, *Uncle Sam, the Monopoly Man* (New Rochelle NY, Arlington House 1970), Chapter 5, "Voluntary Justice," pages 94-110; and Bruce L. Benson, *The Enterprise of Law: Justice Without the State* (San Francisco, Pacific Research Institute for Public Policy 1990). ☐

Spencer Heath MacCallum is a theoretical anthropologist and author of The Art of Community. He directs the Heather Foundation which administers, among others, the intellectual estates of Spencer Heath and E. C. Riegel.

NCF Briefs (from p. 15)

the entire venture. Another possibility for a hospital ship would be yet-to-be-approved AIDS treatments. Such uses would generate favorable publicity that might forestall government interference with the ship's operations.

The hospital ship operator might also authorize the administration of medical marijuana, or the use of physician-assisted suicide. Obviously, the use of such procedures would increase the risk of federal intervention, and would have to be considered carefully.

Not only would doctors be free to provide a wider range of procedures on a hospital ship, they would also be free of the government-imposed health care bureaucracy. Many doctors who have become disenchanted with their profession because of the amount of paperwork it now involves could achieve new levels of career satisfaction aboard such a vessel.

Kliens suggests raising money for the ship from the doctors who would practice on it. The ship would thus become a floating group practice. Other institutional arrangements can be imagined. A corporation could be formed to operate the ship and then hire the doctors as employees. Or the corporation could act as a lessor, renting its facilities to self employed physicians.

One writer to *Oceania Oracle* even suggests that a hospital ship could be purchased as government surplus from the Department of Defense. Now wouldn't that be something!

Sea Structures

Richard Morris reports that he has received a second patent for his Sea Structures flotation technology. This patent covered work Morris has done on floating concrete platforms that can maintain a high level of stability even in choppy waters. Potential applications for this technology include floating docks and floating air strips.

Eco-Tourist Park in Mozambique

At deadline, we received news of a previously unreported new country project targeting Mozambique. Apparently, a group of investors has raised several million dollars, and has obtained an agreement with the African nation to create a large autonomous region. Although the territory would initially be used as an eco-tourist park, promoters would have the option of using the land for other purposes. We hope to have more information in the next issue of *Formulations*. ☐

Political Curriculum: Education Essential to Keep a Free Society

by Philip E. Jacobson

INTRODUCTION

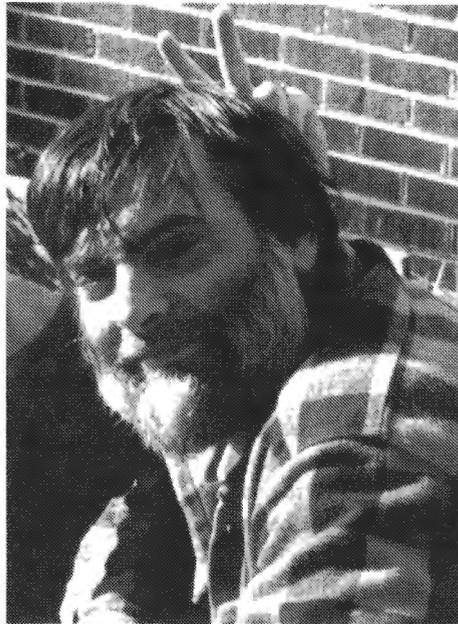
No matter what one's vision of a future Libertarian Society, the key to that society's survival is in the education the society provides to its citizens regarding the society's history and its approach to social change. This, of course, assumes that the Libertarian Society already exists, that it already has what it takes to come into being (and there are a wide variety of possibilities). It is not necessary that it came into being because all its citizens participated in its creation or because all understood what was going on at that time. But in order for the Libertarian Society to have its best chance for survival, it should make sure that its citizens know how it got there, why it still stands, and what kind of flexibility will be necessary for its continued survival.

There are many visions of a Libertarian Society. No effort will be made here to express a preference for one over another. It is conceivable that such an achievement may occur more than once, and in more than one way, or even that many libertarian societies, each with a distinct tradition, might thrive side by side. Yet for each society there will be a system of education, through which that society's citizens learn about it. Many styles of education are conceivable. For instance, the educational system may be strict and formal, or it may be very informal. But style is not a concern of this essay either. The style will be a function of the society's specific nature. What is important here is content — the content of the curriculum regarding the subjects of history and of social change.

No society can remain static in its nature. For any society to survive, it must be able to react to change. The society must be able to adapt to changes in its environment and to changes in its own needs and resources. It must be able to change what is not vital to its survival when necessary, but it must resist changes which will threaten its survival — and its citizens need to know, if only at a gut level, which are which. To meaningfully enact change or

resist it, a society's citizens must have a view of the history of that society and a philosophy of social change.

The level of education on the subject of social change can be relatively poor for



Phil Jacobson

some societies, and yet these societies might survive. It is possible for a society to exist in which the average citizen's view of social change is that it does not happen or that it should not be encouraged. Change will still occur and decisions will be made, if only by default and across a great deal of time. It is possible for a society to exist where only a few citizens, perhaps a nobility, have clear views of social change, and that change is made largely as a product of the decisions of these few citizens.

But a Libertarian Society cannot afford the "luxury" of neglecting the average citizen's education with regard to social change. A Libertarian Society would give the average citizen significant power to influence the course of that society. Any citizen of a Libertarian Society might at any time be motivated to become involved in public affairs as an activist. Though only a few of its citizens may choose to exercise this power at any one time, it is not possible to predict which citizens these might be, so as to make sure those citizens in particular receive an education in the society's tradition of social change. Nor is it wise to attempt to select a favored group in this respect, since that group would immediately be tempted to use that knowledge to gain special privileges.

It may be that many citizens refuse to involve themselves in social change and refuse to take interest in it. This would be their right, and for that reason there should be no conscription into "citizenship" classes of any kind. Yet it would also be the right of these citizens to change their minds and become involved. At that point, there should be in place the means for the citizen to learn about history and social change. In other words, the Libertarian Society needs to provide an opportunity to all its citizens for this education. And it should be done in an interesting way, and in a way that does not require a serious academic commitment before the student can get practical value from it.

In some societies, the objective of education in the subjects of history and social change is to paint a flattering picture of the society itself and of its past, even at the expense of accuracy. Those who develop the curriculum deliberately avoid certain materials or deliberately distort them in order to paint the desired picture. But this strategy of education is useful only when the average citizen's loyalty to authority or to tradition is valued above the citizen's ability to make critical decisions. Such a system is contrary to the needs of a Libertarian Society, where the average citizen's responsibility to make independent decisions which will have real-world consequences is a prime value. Thus the curriculum of a Libertarian Society's educational system should be one which attempts to present the world as it is. Honest disagreement on what the world is like will exist and should be tolerated — even encouraged. But the practice of deliberately misinforming students in order to achieve "desirable social ends" should be condemned.

Having made an argument regarding the desirability of education on the topics of social change and history, I would like to proceed to outline the topics within that education. Since the history of a given Libertarian Society will depend on its real world situation, I cannot itemize the curriculum beyond general topics. But I think the topics listed below should be a part of the average citizen's education in any Libertarian Society.

THE PAST: TEACH HOW THE LIBERTARIAN SOCIETY CAME TO BE

The Prior System

How the prior system came to be

No fully Libertarian Society exists on the earth, as of this writing (Winter, 1996). Therefore any Libertarian Society to come will have replaced an "old regime," or possibly several old regimes. Given the dominance of Statist Societies in the world today, probably the Libertarian Society will have emerged from one or more of these. It is important to the student of the Libertarian Society's history to understand the prior society and its origins. In this way the student understands the root environment and formative period for the Libertarian Society itself.

How the prior system worked: why it survived as long as it did

At least some understanding of the prior Statist Society's mode of survival is useful to the student of the new Libertarian Society's history. Statist Societies, as a type, have been able to thrive for millennia. How did they do it? How was it that they had the strength to suppress individual liberty for so long?

How the prior system became susceptible to change

Given the existence of the Libertarian Society, the society it replaced would have undergone decline before the new Libertarian Society could spring forth. Why did it lose its appeal to the citizens who eventually formed the Libertarian Society? Why was it unable to continue to hold these citizens in its domain by force, or why did it choose to let them go? Did it lose all its appeal or do some still support it, at least in theory?

The New System

How the idea of the new system arose

The idea for the new Libertarian Society would have roots. Perhaps, hopefully, we who are discussing it now will be seen as a part of those roots. The student of the Libertarian Society's history should be shown how the idea for a Libertarian Society first arose and how it came to be adopted by relatively large groups of citi-

zens. The student should get a grasp of the intellectual climate, within which the idea grew, and why it appealed to those who adopted it. The student should also be shown how the idea first shifted from a theoretical to a practical form.

How the new system came to be instituted

If a Libertarian Society has been achieved, then at some point the practical efforts of its advocates would have started to take effect. What were the early years of practical activism like? What ideas were tried? Which practical approaches worked first, and why? Which failed, and why? How did the current form of practical libertarianism begin to take hold, and why?

How did the old regime finally fall? Or did it? How did the sovereignty of the new Libertarian Society finally become established? Were there social forces, movements or ideas at work during the transition which have since been abandoned as unnecessary? Might some of the old experimental ideas be worth reconsideration?

THE PRESENT: TEACH HOW THE LIBERTARIAN SOCIETY WORKS

Basic Institutional Foundations

Military

There has not been a lot of discussion about the nature of military activity which would be sanctioned by a Libertarian Society. But more than one idea on the subject has been advanced. One or more of these (or possibly a pacifist doctrine) will have become the real world approach of the Libertarian Society. The student should know how the society reacts to the threat of initiated force, whether by renegade citizens or by non-citizens. Initiated force, if successful, would change the Libertarian Society for the worse. How does the new society prevent that?

Legal/Ethical

There may be more than one philosophical system practiced within the Libertarian Society. This is because there are many ways to conclude that it is immoral to initiate force. If only one such tradition exists (a condition the author feels highly unlikely), how has it maintained its monopoly, philosophically? How does it enforce its values? If more than one tradition exists,

how does each survive, and how do they relate to one another? How do these systems of political morality relate to other philosophical questions in the respective traditions? How did the tradition or traditions practiced come to predominate in the Libertarian Society? Has there been an evolution of these traditions since the Libertarian Society was formed?

Economic

It is hard (though not impossible) to imagine a static economy within a Libertarian Society. One can easily imagine a militia or other military system which has not changed for many years. It is also easy to imagine ethical doctrines and dispute resolution systems which have not changed for many years. A Libertarian Society such as that of the Amish (who strongly resist technological innovation) might exist, but it is unlikely that all citizens would see a static economy as desirable. Even a minority of economic-change-oriented citizens would have serious impact on the society as a whole. It is likely that economic change would be a major component of any Libertarian Society.

Students should be taught basic economic theory, but also should be shown how the (author's expected) wide variety of economic institutions relate to one another. Students should explore ideas about how economic change comes about, and should be taught some options for personally coping with it. They should be taught the techniques of voluntary boycotts as political alternatives to initiated force when seeking social change. But above all they should be taught that making positive changes is often the best way to avoid negative changes.

Other

Without itemizing, it should be noted that the student should be exposed to other social institutions and the social changes which they cause and which affect them.

How the Social Institutions Relate to Each Other

Students should be taught that social institutions are not isolated from one another. Each institution has an impact on all others, to some degree. Social change caused by a crisis in one institution will inevitably put pressures for social change on the other institutions. No one can monitor all components of society, and students

should not be made to feel that they must do so, or even that it is particularly desirable to do so. Yet students should be able to develop an overall appreciation for each of the social institutions and how they interact. In this way, whenever a citizen wishes to explore a particular social problem or opportunity, that citizen will be able to appreciate the large picture as well.

How the Social Institutions Relate to the "Timeless" Needs of Humanity

Sociologists and anthropologists have attempted to itemize the values that various social institutions are meant to address. This subject can become quite controversial, but it should be addressed by the student's curriculum. The student should (in this author's opinion) be taught that, while it may not always be possible to see what "timeless human needs" a given social institution is addressing, there nevertheless are such needs being addressed. Each student should get at least some exposure to several social theories and be encouraged to engage in independent thought on this subject.

THE FUTURE: TEACH THAT THE LIBERTARIAN SOCIETY MUST BE OPEN TO CHANGE

Little Changes; Minor Reforms; Fine-Tuning

People can often relate better to small changes than to large ones. But it is still a good idea to note the need for fine tuning of social institutions. Examples of how this has been done should be given along with some of the methods for making such changes smooth.

Medium Changes; Major Reforms; Serious Amendments

If students have been given a good grounding on the way the Libertarian Society works they will, hopefully, appreciate which parts of the society are crucial (such as freedom of speech) and which are merely specific types of implementation which might be changed without destroying the society's libertarian character (such as documenting agreements electronically

instead of on paper). Students should also be able to appreciate that major social changes, though ethically and practically acceptable, are expensive and often take a lot of time. Students should also appreciate some of the practical techniques which can be used to advocate and implement reforms. Above all, students should be educated in game theory and the fact that change does not always mean that there must be both "winners" and "losers."

Big Changes: The Next Revolution

As mentioned above, there are many ways to organize a Libertarian Society. The differences between these types can be quite extreme. For instance a fully Communistic society, where all property is held in common, is theoretically possible within a framework of completely voluntary social relations, as is a fully Proprietary society, where everything is owned by private individuals (and no collective ownership is ever recognized). For a given existing Libertarian Society of the future, one or more of these ways will have proven practical. Yet the situation where that society came into being may change with time to the point where the basic type of libertarianism being employed may not work any more. At this point a new kind of libertarianism may need to evolve from the "old reliable" pattern of the then existing Libertarian Society.

This would be very revolutionary to the citizens when it happened. Yet it may be both necessary and vital to the continuation of voluntary relations between the citizens. Thus the student should be exposed to theories of social revolution. Students should be open to the possibility of radical social change in their own lifetimes in such a way that they will be able to critically appraise suggestions for radical change as these are offered. Students should be familiar with doctrines of peaceful revolution, being shown that violent revolution, though common enough to social change in Statist Societies, need not be at all necessary in achieving radical social change. Students should be familiar with the notion of secession and with the techniques of inter-society diplomacy such as extradition. They should be taught different theories of property, including

the fact that different societies can have different (yet still totally voluntary) concepts of property.

CONCLUSION

A Libertarian Society will probably produce a good educational system as a natural byproduct. But education on the topic of social change, including the history of the society itself, is of special importance to a society which is to be "governed" via freely chosen relations between its citizens.

One additional benefit might accrue from a concern about education in social change. Once the Libertarian Society is achieved, what will all the libertarian theorists do? It seems a good way to channel their energies and intelligence for them to concern themselves with providing the citizens with a good education on the topic of social change. ▬

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**

The Return of Leviathan: Can We Prevent It?

by Roderick T. Long

The Three Leviathans

Two years ago, at our Spring 1994 Forum on Systems of Law, I suggested that those seeking to build and maintain a Free Nation would face three problems, which I called "the three Leviathans":

"Leviathan Past (that is, the dangers posed by the state presently occupying the territory within which the Free Nation is to arise), Leviathan Present (that is, the dangers posed, once the Free Nation has arisen, by the threat of other states existing outside the Free Nation's territory), and Leviathan Yet to Come (that is, the dangers posed by the unwanted but all-too-possible emergence of a state within the Free Nation's territory — that is, the possible evolution of the...Free Nation into a [statist régime]."¹

With regard to Leviathan Past, I noted that there are two ways of getting an existing régime to give up its power and turn libertarian: force and persuasion. Arguing that force was impractical, I suggested three possible modes of persuasion: a) convert the rulers of a country to libertarianism (a daunting prospect); b) convert the ordinary citizens to libertarianism and get them to vote in a libertarian system; and c) pay the rulers to relinquish sovereignty over some portion of their territory.

More recently, I have returned to the topic of Leviathan Past, and argued that the vestiges of the old régime in a fledgling libertarian society might be successfully bought off and so discouraged from engaging in obstructionism.²

With regard to Leviathan Present, I have since argued that this threat can be met through a combination of voluntary contributions and for-profit defense agencies.^{3,4}

What about Leviathan Yet to Come? In my initial Forum presentation¹ I argued that this threat was minimal. My argument relied on traditional libertarian class analysis, which maintains that a ruling class cannot achieve or maintain power except through the mechanism of the state. Thus a ruling class is the product of government-

tal institutions and not vice versa.

More recently, however, I have rethought this point. In fact, ruling classes have managed throughout human history to survive and dominate even in stateless or near-stateless societies, through a combination of economic patronage and religious status.⁵ A state may dramatically increase the power of a ruling class, but it is not an absolute prerequisite for the existence of such a class. Still, I've argued, there are reasons for optimism: modern society cannot sustain the kind of religious climate needed for the moral support of a ruling class,^{5,6} and a genuine free market would eliminate the kind of economic dependence that makes people vulnerable to intimidation by the wealthy.^{7,8} I've also argued that attempts by some groups to form cooperative schemes to oppress other groups are likely to backfire in a completely free market.⁹

So there are reasons for optimism. But there are also reasons for caution. We know from history that the Leviathan virus is a robust one. If it finds a niche, it will cling, and grow. Eternal vigilance is the price of liberty. It is appropriate, then, for those who seek to build a Free Nation to return again and again to the question of how to stay free.

Why Do People Want Leviathan?

Statist régimes exist because people want them. This is not to say that such régimes arise, and maintain themselves in existence, solely through the deliberate choices of individuals. On the contrary, the growth of government is often a spontaneous and quite unintended side effect of human actions pursuing quite different goals. Nevertheless, if the result were entirely unwelcome I do not think it would long survive. Why, then, do people so often desire a powerful coercive state?

There are any number of reasons, of course. Let me mention just four: two reasons that depend on intellectual mistakes, and another two that depend on more intractable facts about human psychology.

One intellectual mistake is the idea that certain desirable goals can be achieved only through coercive authority. Those on the left do not see how people could be protected from poverty, pollution, or discrimination except through the benevolent arm of the state; likewise, those on the right see governmental intervention as a prerequisite for the preservation of moral and cultural

values. People who actually lived in a Free Nation, however, would see these benefits being provided without any government involvement; so this intellectual mistake would be less likely to occur, once freedom was achieved.

A second intellectual mistake underlying statism is bit more slippery, however. Statists generally think that one's willingness to *enforce* a moral claim is a mark of the importance one attaches to that claim. Even if a free-market system does an excellent job of supplying food to the poor, the fact that such a system does not recognize any *right* to be fed shows its insensitivity to the importance of hunger relief. When libertarians claim that we have a right to drive a motorcycle without a helmet, but no right to be protected from starvation or discrimination, the statists conclude (not without justification, in the case of *some* libertarians!) that libertarians regard freedom from helmets as *more important* than freedom from starvation or discrimination. And so the statists, reasonably enough given their premises, dismiss the libertarian position as absurd.

This motivation for statism would not necessarily vanish simply as a result of the statists' seeing that the needs they regard as important are indeed met in a Free Nation. They would still insist that the importance of these needs be underscored by having their provision enforced by an agency speaking for the community as a whole. (Even libertarians have been known to succumb to this sort of reasoning; for example, it was on the basis of considerations rather like these that Robert Nozick was led, in *The Examined Life*, to repudiate the libertarian position he had defended in *Anarchy, State, and Utopia*.)¹⁰

The only cure for this mistake is education. The statist must be brought to see that the libertarian position on the use of force is based on reciprocity, not on assessments of importance. Evils involving force may legitimately be fought by means of force; evils not involving force must be fought by other means. (It would certainly help matters if libertarians themselves would refrain from speaking as though coercion were a *more serious* evil than any other. Stealing a grape is an act of force, persistent emotional and psychological abuse is not, but the latter is a far greater evil than the former.) To some extent, though, this second mistake is supported by the first, in

that statist may find the libertarian position more plausible when they come to recognize that there *are* effective non-coercive ways of fighting evils.

But the hankering after Leviathan also rests on two psychological factors that cannot be so easily eradicated: the desire to control, and the desire to be controlled.

The desire to control can take the form of a love of power for power's own sake. But it needn't. People also seek power as a means to other ends. Whenever we seek some goal that requires the cooperation of others, and those others refuse to cooperate, there is an opening for the temptation to *force* them to cooperate. And when many people succumb to the temptation to compel the cooperation of many other people, we are well on our way to statism. This is probably a permanent aspect of the human condition. The best we can do is:

a) provide a moral climate in which this temptation will be easy to resist, by teaching people to regard it as shameful and ignoble to live by violence rather than persuasion;

b) point out, as well, that any attempt to establish a state is likely to backfire, as people with aims other than one's own may end up holding the reins of power; and

c) for those who prove impervious to moral suasion and politico-economic analysis alike, make it clear to such people that their attempts to control others will not be tolerated.

The desire to govern is easy enough to understand, to the extent that it is the byproduct of a more general desire to see one's ends fulfilled. The desire to be governed is more puzzling. How could such a desire arise?

I suspect that the desire to be governed is the result of an evolutionary trade-off. Animals at the bottom of the evolutionary ladder (insects, fish, and the like) operate almost entirely on instinct. Very little of their behavior is learned; for the most part it is encoded in their genes, and passed from one generation to another through biological reproduction. As we pass to more advanced species, however, we find the ratio of learned to instinctual behavior steadily increasing, until we reach human beings, whose ability to learn is tremendous — and whose repertoire of instinctive behavior is minimal.

Reliance on learning rather than instinct makes for a more flexible and versatile organism; when environmental conditions

change, animals whose behavior is not pre-programmed can adapt more quickly. Moreover, animals with the capacity to learn can acquire new, successful behavioral strategies by imitating one another. They do not have to wait for a random mutation in order to acquire the new behavior; and in addition, knowledge can now be transmitted to all the other members of one's species, not solely one's immediate descendants; cultural reproduction is thus more efficient than biological reproduction. Species that rely heavily on instinct, by contrast, are less flexible, and so rely on quantity rather than quality in their reproductive strategies; rather than raising just one or two offspring and investing time and effort teaching them the skills needed to survive, as occurs in the higher animals, the lower animals produce hundreds of offspring at once, and turn them loose with little or no guidance.

So we're lucky to be human. Hooray for us. There is a downside to all this, though. Because we depend so heavily on learning and are so ill-equipped with instincts, it takes us a long time to acquire the ability to survive on our own. Many insects begin life entirely alone, with the parents long since dead or flown off; the insect knows instinctually how to go about surviving. As we climb the evolutionary ladder, dependence on parenting increases; but even here we find, *e.g.*, that colts can stand and walk, albeit shakily, from the day they are born. Human beings, because of our heavy learning-to-instinct ratio — that ratio that is our glory, that makes us what we are — also have the longest childhoods, the longest period of dependence. Thus we (master learners that we are) learn early that we need someone to take care of us, to make our decisions for us. And what we learn earliest is the most deeply ingrained, the most difficult to unlearn. Hence the desire for the State, as a replacement for the Parent.

So human beings have, all too often, a desire to be controlled. Fortunately, we also have a desire *not* to be controlled, a desire to make our own decisions; and this desire manifests itself very early as well. These two desires conflict, and circumstances may influence the outcome of the conflict. Here too, then, a crucial role of education is to reinforce our libertarian impulses and to discourage our statist impulses. (And to the extent that the desire to

be controlled cannot be suppressed, perhaps it can be channeled into less destructive manifestations; *e.g.*, this desire might be satisfied by joining a religious cult rather than setting up a powerful government.)

As for the intellectual mistakes that support the yearning for Leviathan, perhaps the most important task for educators in a Free Nation (whether parents, teachers, or what have you) is to help people learn how to think straight. I recently had an opportunity to reread the Constitution of North Carolina, and I was struck by the difference, not so much in content as in *language*, between the original 18th-century provisions and the more recent amendments. (As in most state constitutions, the original wording and the later amendments are all jumbled together, rather than clearly differentiated as they are in the U.S. Constitution. Still, it's easy enough to distinguish the earlier parts from the later ones.) The founders of the United States, men of the 18th-century Enlightenment, used words with a grace and precision rarely met with today (and least of all in today's politicians!). They took language *seriously*. They wrote clearly, carefully, incisively. When they set down a sentence, they meant something definite by it, not some vague mush. By contrast, the more recent provisions are full of inanities like "everyone shall have a right to the privilege of education" — a sure sign that the writers are navigating the hallways of thought by touch, not by sight.

Television is often blamed for having shortened people's attention spans and their ability to deal with complex issues; but there is nothing inherent in the nature of television as a medium that requires such a result. Rather, I think public education is the primary culprit here, for making such a boring and painful process out of reading, writing, and thinking that all too often the student's intellectual muscles are crippled, his curiosity deadened, his pilot light effectively snuffed out.

The case for libertarianism is complicated. It rests on very broad generalizations, drawn from history and theory alike. It requires a capacity to think in principled terms, be the principles moral or economic. If the citizens of a Free Nation do not understand the case for liberty, they will not support it. Thus, a libertarian society cannot hope to survive unless the educational system is radically transformed. (I hope to return to this subject in a future article.)

Libertarian Structures

So far I've been talking about how to maintain freedom in "a" libertarian society. But of course there are different possible models for a libertarian society, with different political and legal structures, and the threat from Leviathan Yet to Come may take rather different forms, and so require correspondingly different measures, in libertarian societies differing in structure.

There seem to me to be three main varieties of libertarian structure: the constitutionalist model, the proprietary model, and the pure market model. (There are also subvarieties of each of these.) Do these structures differ at all in their susceptibility to the Leviathan virus?

The Constitutionalist Model

Under the constitutionalist model, a single agency is charged with protecting libertarian rights within a given territory; this agency is then designed in such a way as to make it as difficult as possible for it to transform itself into Leviathan.

The constitutionalist model comes in both minarchist and quasi-anarchist varieties. In the minarchist version, the single agency holds a coercive monopoly over legal services within the territory; no competitors are permitted. In the quasi-anarchist version, competitors are not prohibited, and a few may function around the edges, but the dominant agency nevertheless holds a monopoly or near-monopoly, not through any coercion on its part, but because other nations regard it as the legitimate government and will deal only with it, so that it becomes more important for residents of the Free Nation to influence that agency's policies than to influence the policies of rival agencies. (The dominant agency may, for example, be the holder of a 99-year lease of sovereignty on the Free Nation's territory.)

A constitutionalist model is extremely risky. Nothing is better positioned to transform itself into Leviathan than a government (or quasi-government), however minimal. Being the dominant provider of protective services has been a stepping-stone to governmental power many times in history. In ancient times, that's how Rome and Athens acquired their empires; in mediæval times, that's how Aelfred King of Wessex became Aelfred King of England.

But the constitutionalist model has its advantages as well. While it may be highly susceptible to the virus of Leviathan Yet to Come, it is perhaps the most impervious to the viruses of Leviathans Past and Present. A libertarian society that can turn a governmental face toward the outside world, that *looks* to other nations like a state and can negotiate *as* a state, is more likely to be taken seriously and treated with respect in the community of nations. By contrast, if it looks to outsiders as though "nobody is in charge," hostile powers may take this as an invitation to invade in order to "restore order," and world opinion will put up little protest.

Suppose we do opt for the constitutionalist model; how should we design our minimal state (if we go the minarchist route) or our dominant protection agency (if we go the quasi-anarchist route) so as to minimize the likelihood that it will grow and seize power?

This is a topic I've addressed in a number of earlier articles,^{11,12,13,14} so let me just quickly recapitulate the main points of those earlier discussions:

- The libertarian state must consist of a central government, highly restricted in its powers so as to keep it from mischief, and a large number of competing local cantons, less restricted in their powers, so as to force political pressure down to the competitive canton level lest it otherwise simply shatter the central government, or bypass it, or shape it to its will.
- The cantons should be "virtual" rather than physical; that is, membership in cantons should not be tied to geographical location; thus changing from one canton to another will be costless, thereby limiting the ability of cantons to oppress their members; anyone can change canton membership at will, and any sufficiently large number of citizens can start a new canton.
- Cantons should be almost entirely self-governing, appealing to the central government to solve inter-canton disputes only as a last resort.
- The central government should have a bicameral legislature — one house of canton representatives, empowered to pass laws but only by a supermajority,

and a second house of popular representatives, empowered to repeal laws, with only a superminority being needed for such repeal.

- Laws should also be subject to repeal, and public officials subject to dismissal, by popular referendum.
- A plural executive should be instituted, to provide a check on presidential power. The plurality should be three rather than two, to resolve deadlocks in an emergency.

I've discussed other provisions, but these strike me as the most essential ones.

The Proprietary Model

A different libertarian structure is the proprietary community. In this case, the agency providing protective services is also the owner of the territory in which it will operate. This model too comes in two subvarieties, depending on whether a single person or firm owns all the territory and everyone else leases from the owner, or whether instead the territory is jointly owned by all the inhabitants. (The latter arrangement is called a commune when the inhabitants are hippies, and a condominium when the inhabitants are yuppies.)

This model has some disadvantages from a libertarian standpoint. One of the frustrations of statist society is that individuals have no place to stand on and call their *own*, no private property on which to do as they please without asking leave from others. Yet in a proprietary community, one's home is not really private; it belongs either to the landlord or to the collective. Since the arrangement is contractual, it satisfies libertarian standards of rights and justice — but perhaps not libertarian yearnings for independence.

Of course, it is possible to write the contract, and libertarians forming a proprietary community probably would so write it, in such a way as to make the leaseholds simulate private property as far as possible, to leave ample sphere for individuals to go their own way. But what guarantees that the contract will be respected? After all, the firm offering protective services, presumably including contract enforcement, is itself a party to the contract, and might decide to alter the terms unilaterally to its own advantage — thus turning into an

oligarchic Leviathan. (Or, on the condominium model, the majority might decide to impose their will on the minority in defiance of the terms of the contract, thus turning into a democratic Leviathan.) Proponents of the proprietary model like to appeal to the example of hotels or apartment complexes; but hotel customers do not fear being oppressed by the manager, since they know there is a background of law enforcement to which the hotel manager must answer. But in a proprietary community, the hotel manager is also the chief of police.

Perhaps it will be said that the owners of a proprietary community will be restrained from abusing power by the fear of losing customers. But there is more than one way to prevent losing customers; one thinks of the Berlin Wall, for example.

The proprietary community model is also at a disadvantage, relative to the constitutionalist model, in dealing with other nations, which will treat a for-profit business enterprise with less respect than they would something that looks more like a sovereign state.

But the proprietary model has its advantages as well. Having a single firm control the territory can simplify the decision-making process, and income from leaseholds provides needed revenues to the "state" without the need for taxation. Perhaps most importantly, for those considering building a libertarian community at sea (or in space, for that matter), some kind of proprietary model may be unavoidable, at least for the territorial nucleus.

How can a proprietary community guard against the rise of Leviathan? There are several possibilities. One is to build into the contract something like the political structure of a virtual-canton constitution, as described above. Another is to separate the provision of security from the ownership of the territory; leaseholders might contract individually with a security company (or, preferably, with several competing security companies) rather than purchase their security through the landlord. Above all, it would be extremely foolish for residents in a proprietary community to contract away either the right to communicate freely (both with one another and with the outside world) or the right to own and carry weapons for self-defense. These two freedoms are the essential bulwark of liberty. To be sure,

landlords have the right to place restrictions on the activities of their tenants; they can legitimately demand that everyone on their premises (other than themselves) be disarmed and refrain from unauthorized communication. But any tenant who agrees to live in the proprietary community on those terms is taking an unacceptable risk, in my view.

How is a proprietary community to gain respect in the eyes of other nations? One possibility is to build a community around a research station or a university; in conflicts with aggressor states, such a community would win more sympathy in world opinion than a community built around, say, a casino. Nor would it be the first time that an educational institution has acted as an autonomous political entity; the mediæval University of Bologna, for example, had its own student-run legal system, separate from that of the town of Bologna, and exercised civil and criminal jurisdiction over its own members.¹⁵

The Pure Market Model

The third possible structure for a libertarian society is the pure market model. On this model, there is no central agency in charge — be it a minimal state, a dominant protection agency, or a landlord. Individuals own their own homes, and provision of legal services is not monopolized. I have defended this model in previous articles.^{1,16,17,18}

The pure market model seems more vulnerable to Leviathans Past and Present than the constitutionalist and proprietary models, since it has nothing at all resembling a governmental face to turn to the outside world. Hence a libertarian society following such a model might have to be quite populous and powerful in order to succeed. This seems a serious disadvantage to market anarchism, at least in the short run.

On the other hand, the pure market model seems less vulnerable to Leviathan Yet to Come than does either the constitutionalist or the proprietary model, since those models all involve some monopolistic or near-monopolistic agency that is perfectly situated to turn itself into an oppressive state, whereas the pure market model involves no such agency. Nevertheless, many critics of the pure market model have argued that Leviathan would inevitably re-emerge.

Most versions of the pure market model envision a number of different agencies,

specializing in protective services, and competing for clients. (As we shall see below, this is not the only form a pure market model might take.) Robert Nozick has argued, however, that any system of competing protection agencies would soon collapse into a monopolistic state.¹⁹

Nozick argues as follows: Competing protection agencies operating in the same territory will sometimes have conflicts. They will resolve these conflicts either by arbitration or by force. But in either case, the state will re-emerge.

Suppose two protection agencies resolve their disputes by resorting to force. Then either they are evenly matched, or one is stronger than the other. If one is stronger, then it will defeat the weaker one, either eliminating it or else making it subordinate to the victor. Where there were two agencies sharing one territory, there is now one agency for that territory; we have returned to territorial monopoly.

If instead the two agencies are evenly matched, and yet they continue to fight, clients of different agencies living in the same area will be motivated to relocate for security's sake. Two separate "turfs" will emerge, with one containing mostly clients of agency A, and the other mostly clients of agency B. Where there were two agencies sharing one territory, each agency now has its own territory; once again, we have returned to territorial monopoly.

In the first case, monopoly is achieved by uniting the agencies (or by eliminating one of them); in the second, it is achieved by dividing the territory. As many different protection agencies fight it out, each individual conflict between any two will resolve itself in one of the two ways outlined above, Nozick thinks; and the cumulative result of all the different conflicts will be some number of agencies, each holding a territorial monopoly. In other words, states.

Proponents of the market model generally regard it as unlikely that protection agencies would resolve their disagreement by force. In a competitive market, such agencies need to attract customers, and an agency that settles its disputes by expensive means, such as war, will have to charge higher premiums, and so will attract fewer customers, than a agency that settles its disputes by less expensive means, such as arbitration. Accordingly, such theorists argue, arbitration rather than violence will

predominate.

Nozick denies none of this. But he argues that if protection agencies do opt for arbitration, the state will still re-emerge. For whatever system the agencies set up for resolving their disputes—courts of appeal, or what have you—will amount to the formation of a single legal system for the entire territory, and the individual protection agencies will then become no more than branches of this new structure. Where there were many agencies sharing one territory, there is now a single overarching agency for that territory; here too, then, we have returned to territorial monopoly.

To meet Nozick's argument, market anarchists must maintain that protection agencies could set up a dispute-resolution system that would be effective enough to prevent conflict, but would nevertheless fall short of constituting a new monopolistic agency. But a recent article by Tyler Cowen maintains that this is a vain hope.²⁰ Cowen argues that once competing protection agencies have set up a dispute-resolution network, the members of the network once it is established will be able to collude successfully to put competitors out of business. Ordinarily, such collusion would fail in a libertarian society, because new firms would have free entry into the market. But, points out Cowen, a new protection agency that is not part of the network cannot compete successfully with network members, since being a member of the network ensures that an agency will not have to go to war to secure its clients' claims. Customers will want the assurance of network membership before they sign up with a protection agency. But existing firms can simply choose to exclude from participation in their network any newcomer who doesn't toe the line. Hence, monopoly.

The most convincing reply I've seen to Cowan's argument is from Bryan Caplan.²¹ Caplan makes two points against Cowan. First, Cowan neglects to consider the possibility of competing networks. In the credit card market, Visa providers have to cooperate with one another through the Visa network, and no new firm can succeed in acting as a Visa provider if it is excluded from the network; but the Visa network still has to compete with the Mastercard network and so forth. Likewise, one network of protection agencies might compete with two or three others. Cowan might reply that these networks too will need to cooperate with each other, and that this will lead to a new, meta-network; but Caplan disagrees. Protection agencies need to join a network to cut down on the transaction costs

of contracting bilaterally with all the other agencies individually. But the number of networks is much smaller than the number of agencies, so transactions costs would not be high enough to warrant a new network; and with only bilateral contracts rather than a network, the capacity for collusion is quite small.

Caplan's second objection to Cowan's collusion scenario is that even if there were just one network, Cowan is too quick to assume that its attempts at collusion would be successful. Suppose two protection agencies, Titanic Defense and Hindenburg Security, come into conflict; Titanic is a member of the network, Hindenburg is not. But Hindenburg suggests submitting the dispute to arbitration. What is Titanic to do? The rules of the collusion agreement suggest that Titanic should refuse, that Titanic should resort to force instead. But this is expensive. And Hindenburg is even offering to pay the costs of arbitration. In such a case, Titanic has a strong incentive to defy the agreement and cooperate with Hindenburg. Of course, the other members of the network could boycott Titanic for doing this; but such a boycott is not in their interest either. Thus, Caplan suggests, attempts at collusion among protection agencies are likely to fail. Or, as I would put it, collusion among protection agencies is a form of selective cooperation, and so is likely to be undermined for the reasons I set out in my collective-action article.⁹

Finally, it's worth noting that both Nozick and Cowan think of the pure market model solely in terms of customers purchasing protective services on a competitive market. But this is not the only form that market anarchism can take. Another possibility is for customers to join together to provide for the common defense, rather than delegating this task to an agency. Such an arrangement is reminiscent of the mutual-protection associations common in English history.¹⁸ The advantage of this self-help model is that it decreases the risk that protection agencies will get together to form a Leviathan. The downside, of course, is that self-help is time-consuming and can involve heavy transaction costs. But having such a self-help system in the background, ready to be mobilized if necessary, might help to keep the protection agencies in line, thus achieving the best of both worlds. ²

References

¹ Roderick T. Long, "Implementing Private Law in a World of States," *Proceedings of a Forum on the Subject: Systems of Law* (30 April 1994).

² Roderick T. Long, "Dismantling Leviathan From Within, Part IV: The Sons of Brutus," elsewhere in the present issue.

³ Roderick T. Long, "Funding Public Goods: Six Solutions," in *Formulations*, Vol. II, No. 1 (Autumn 1994).

⁴ Roderick T. Long, "Defending a Free Nation," in *Formulations*, Vol. II, No. 2 (Winter 1994-95).

⁵ Roderick T. Long, "Can We Escape the Ruling Class?," in *Formulations*, Vol. II, No. 1 (Autumn 1994).

⁶ Roderick T. Long, "Religious Influence on Political Structure: Lessons from the Past, Prospects for the Future," in *Formulations*, Vol. II, No. 3 (Spring 1995).

⁷ Roderick T. Long, "Who's the Scrooge? Libertarians and Compassion," in *Formulations*, Vol. I, No. 2 (Winter 1993-94).

⁸ Roderick T. Long, letters exchange with Kevin Whiteacre, "Our Readers Write," in *Formulations*, Vol. III, No. 2 (Winter 1995-96).

⁹ Roderick T. Long, "Good and Bad Collective Action: Can We Nourish One and Squelch the Other?," in *Formulations*, Vol. III, No. 1 (Autumn 1995).

¹⁰ Robert Nozick, "The Zigzag of Politics"; in *The Examined Life: Philosophical Meditations* (New York: Simon & Schuster, 1989).

¹¹ Roderick T. Long, "Virtual Cantons: A New Path to Freedom?," *Formulations*, Vol. I, No. 1 (Autumn 1993).

¹² Roderick T. Long, "Imagineering Freedom: A Constitution of Liberty" (Part I in *Formulations*, Vol. I, No. 4; Part II in Vol. II, No. 2; Part III in Vol. II, No. 3; Part IV in Vol. II, No. 4).

¹³ Roderick T. Long, "The Rationale of a Virtual-Canton Constitution," *Proceedings of a Forum on the Subject of Constitutions* (2 October 1993).

¹⁴ Roderick T. Long, "Assets and Liabilities of the Constitution of Oceania," *Proceedings of a Forum on the Subject of Constitutions* (2 October 1993).

¹⁵ Roderick T. Long, "A University Built by the Invisible Hand," in *Formulations*, Vol. I, No. 3 (Spring 1994).

¹⁶ Roderick T. Long, "The Nature of Law" (Part I in *Formulations*, Vol. I, No. 3; Part II in Vol. I, No. 4; Part III in Vol. II, No. 1).

¹⁷ Roderick T. Long, "The Decline and Fall of Private Law in Iceland," in *Formulations*, Vol. I, No. 3 (Spring 1994).

¹⁸ Roderick T. Long, "Anarchy in the U.K.: The English Experience with Private Protection," in *Formulations*, Vol. II, No. 1 (Autumn 1994).

¹⁹ Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), Chapter 2.

²⁰ Tyler Cowen, "Law as a Public Good: The Economics of Anarchy," in *Economics and Philosophy*, Vol. 8 (1992), pp. 249-267. (See also the reply by David Friedman in the subsequent issue.)

²¹ Bryan Caplan, "Outline of a Critique of Tyler Cowen's 'Law as a Public Good'," unpublished manuscript, July 1993.

Introducing Children to Liberty:

A Golden Opportunity for a Free Nation's Survival

by Danielle M. Woodrich

Copyright © 1996 by Danielle M. Woodrich

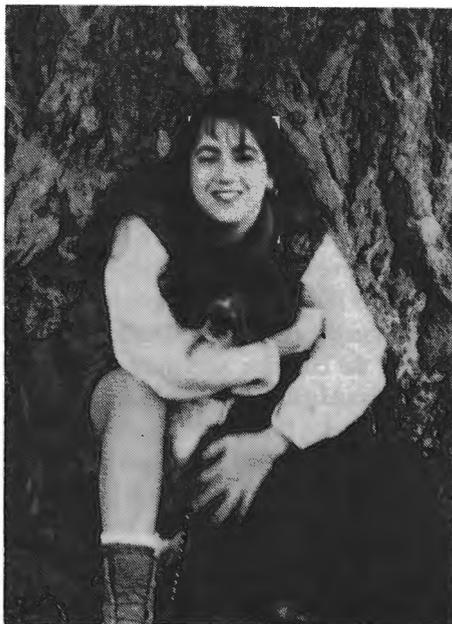
In this article I will attempt to provide a strong incentive to raise free children based on libertarian aspirations and principles. Raising free children creates an opportunity for a culture based on liberty to survive and prosper.

I was one of the lucky children raised in the height of the Summerhill era of the early Seventies. Alexander Sutherland Neill was a child psychologist, teacher and founder of the first international school for free-children, Summerhill. He published several books outlining his teaching and childrearing objectives. Each of his books, *Summerhill: A Radical Approach to Childrearing*, *Freedom Not License*, *The Problem Child*, and *The Problem Family* gained notoriety in the United States by the early 1970s. These books were the parenting guides my mother and father consulted. I consider myself one of the first generation of partially-free-children to reach adulthood. I chuckle as I write this because my childhood is still near. That's one thing about free-children: we have such full, exciting childhoods that we bear no urge to grow up too soon. Now in my mid-twenties, I feel a responsibility to those who were not raised in freedom. I can imagine their frustrations, and hope that they might embrace at least a few of the principles I will discuss; it is for these libertarians and our collective future that I write this article.

Pertinence of Parenting in a Free Society

Protecting the freedoms belonging to children will naturally perpetuate libertarianism. If we raise them in a liberated way, they will create and procreate with ease. Drafting constitutions, questioning manifestations of authority, defining philosophical and legal absolutes, all worthy endeavors, do not have the longevity and relevance of the singular way in which a free nation might perpetuate itself: raise free-children.

Parenting, more so than economics or politics, creates and maintains the current cultural climate in which people live. The most successful economic or political policies may be lost in a single generation. If we



Danielle Woodrich

refuse to set ourselves up to fail in one generation, we might consider parenting a necessary topic of discussion. As the nation of armed citizens is nearly impossible to overthrow, so would the nation advance the reverence and successful application of liberty, if it maintains strong and authentic consideration of children.

In an unfettered financial community all policies are enforced only by willful cooperation and still remain subject to trends and markets; this does not seem a stable situation insuring success. Even a perfect economic picture fails to satisfy the developmental needs of our nation's children.

What would libertarians do? Will our charity compensate for archaic parenting across an entire nation? What safeguards do we libertarians willingly accept to prevent the disastrous repercussions the inevitable disintegrated family units produce?

Three Keys to the Only Door

There are several principles that must be agreed upon in setting strong child rearing foundations as early as possible in a child's life. These principles take the form of simple negotiations between parent and child. The child contributes nothing initially; the contract that benefits the child, the family and the society requires that the

parent make the primary investments. Altruism and sacrifice are not new ideas to parents; the trick is to be selfless without causing the child the anguish of suffering a martyr.

The three keys to libertarian parenting are:

- A. Children are born inherently good;
- B. Children's play is children's purpose;
- C. Children should be empowered to set their own agenda for learning.

A. Children Are Born Inherently Good

The practice of religion seems to demand children's presence and participation, but children do not need religion. Original Sin and similar guilt myths start parents and children off on the wrong foot with one another. I do not claim to know how the sickness of a mother's fear and guilt affects her child in utero, nor do I intend to criticize all organized religion. A healthy family can enjoy the tradition and beauty of religion, but we dare not stop with this assertion. We should tell children which components of religion are metaphorical and which are historical. Until the child is psychologically mature enough to recognize the difference, and evaluate whether he or she wants to participate, there is no value in religion's introduction to a child. As parents, we can prevent a great deal of psychological harm by giving the child what he asks for (intellectually and especially, spiritually) and nothing more. Learning is an intensely personal process; we should try to trust the child's appetite when feeding his mind and spirit.

The guilt myths nearly always stem from misinformation about sex and the body. I must clearly state that religion does not have a monopoly on this tragedy. In the 1950s this was true, but in the 1990s it has evolved to a secularized phenomenon. Our family elders, and therefore we ourselves have not sufficiently recovered from the incorrect assumption that anything and everything is not okay about our bodies and minds. In the reverse of this, when we allow children to know no shame, we finally stop punishing them for being born.

B. Children's Play Is Children's Purpose

Children must be left to play until they are finished playing; adults should not in-

interrupt play for casual reasons. Harmful interruptions happen in several ways: (1) physically removing a child from play, (2) verbally devaluing expressions of imagination and (3) mandatory school attendance. To stop a child from playing with unarmful toys or objects before he is through with them interferes with the natural development of the child. Let me explain why I believe this to be true. Adults try to hush and still children when they threaten to overstep boundaries of consideration. This practice is partially acceptable as the child desires some limits to his behavior, so he may feel confident and never fearful to speak or otherwise express himself. Parents sometimes fall short by not extending this consideration to include the children, not merely apply to the children. The adult must first honor the child's need for uninterrupted play; then the child will naturally learn by the parent's sensitive example that he will have to occasionally honor the adults' need for periods of quiet. In a balanced home, no one person's rights are any more important than another's. We have the power and the responsibility to teach by example this valuable lesson.

Parents can err either accidentally or intentionally. Merely the presence of a parent (at times) can bring a child jarringly back from his imaginary games. An example of accidental interference could be a child playing a game with a friend where they are both superheroes. Tearing around the yard, leaping from a tree or a fence, bath towels billowing out behind; these children might well be defending their homes from all that is evil in the world! Then a mother or father interrupts them to return the towels. There is nothing malevolent about the parent wanting the towels to remain intact, but forcing the child to comply with such a wish is to value the towel (for the moment) above the child. Some examples of intentional interference could involve a sibling revealing Santa Claus' identity prematurely, squashing a couch cushion fort while important diplomatic negotiations take place within or even undressing the family pet of its costume as the Lion King.

C. Children Should Be Empowered To Set Their Own Agenda For Learning

Children will learn with voracious appetite about subjects that intrigue them. To

impose twelve years of mandatory school suggests that children would not learn of their own volition. Though parents have a responsibility to create an environment where many choices are offered, children will need little prodding and testing. Only guidance, once the interest has been expressed, must be present in abundance. We cannot expect children to emerge from school happy, independent and knowledgeable, if we fail to offer opportunities that do not adequately meet their interests.

This validity is the point of the Ministry of Education's Report of British Government Inspectors in 1949. The subject of the evaluation was A.S. Neill's school, Summerhill. The report glowed with praise about the social aspects of Summerhill, but the low academic evaluation was attributed to the teachers' lack of expertise in the subjects offered and the concurrent limitations of ignorance in the field of child psychology. None of the individual students evaluated were labeled lazy, disruptive or intellectually inadequate, yet the inspectors said,

"To have created a situation in which academic education of the most intelligent kind could flourish is an achievement, but in fact it is not flourishing and a great opportunity is thus being lost. With better teaching at all stages, it might be made to flourish, and an experiment of profound interest be given its full chance to prove itself."

To which A.S. Neill replied, referencing the above quoted paragraph verbatim,

"That is the only paragraph in which the two inspectors did not rise above their academic preoccupations. Our system flourishes when a child wants an academic education, as our exam results show. Is it not time that we put academic education in its place? Academic education too often tries to make a silk purse out of a sow's ear. I wonder what an academic education would have done for some of our Summerhill pupils—a dress designer, a hairdresser, a male ballet dancer, some musicians, nurses, mechanics, engineers, artists."

There is an inconspicuous yet important facet to this statement. When adults collectively require students' attendance in school,

they absolve the individual parents of an important responsibility: the consequences of the lives their children choose to lead once independent of the family. Many parents fear that without formal education the children will never become independent.

When parents set expectations too high, the child responds with feelings of inadequacy. The child learns to seek out the parent's approval rather than reflect on his own satisfaction. It is a tragedy for children that they face adult-size obstacles, insurmountable without completing the cycle of practiced co-dependence. I believe that there exists an illogical fear motivating some parents to behave this way. It is the fear that their children might not respect them. Most encroachments on a child's freedom can be traced to the dynamics mechanized around this fear. Common sense, reason and much discussion may alleviate this problem for parents, and stop the hereditary nature of these handicaps from reappearing in their offspring.

A Plea to Parents: Limit Your Expectations, Not Your Affections

The abilities to work joyfully and live positively should constitute success in the eyes of parents for their children. A parent attempting to rear free children might remind him or herself daily, "My child is not a tiny adult." Forced obedience serves a child no practical purpose, except flattering an adult ego or providing convenience, again, for an adult. The child's compliance with certain aspects of family life will occur naturally and without snarling temper tantrums if the child is first not a piece of property, second not an indentured servant, and third respected for his own thoughts and opinions.

Humans enjoy investigating many interests throughout their lives. To demand of a child that they master or perfect what currently interests them is to teach the child apathy, frustration and contempt. This is of no value to the child; I see this practice as a punishment for which no child has ever committed a fitting crime. Children flit from one subject to another, or even to no specific subject. Their attention spans are limited to the momentary experience of wonder, the puerile assessment of the unknown, and the possible inquiry for more

(continued on page 35)

Review

Justice Without Law?

by *Jerold S. Auerbach*

Oxford University Press, 1983
147 pages

reviewed by **Sean O. Haugh**

In a free nation, how can we best ensure justice? Should we follow the example of the country we find ourselves in now, placing our trust in an explicit body of written law? Or should we instead trust ourselves to devise extra-legal methods, rooted in the values of the free nation, which might better serve to safeguard the rights of the individual?

In *Justice Without Law?*, Jerold Auerbach examines this dynamic at work throughout American history. While the text limits its relevance to American legal tradition, there is much for us to learn from Auerbach's observations.

There are, of course, many reasons why we would want to avoid placing all of our faith in law. Our current attempts to address every conceivable social issue with a written proscription has led to a centralized state which attempts to control every facet of our lives, while it slowly and painfully suffocates under the enormity of this task. We see the fruits of excessive reliance upon law in our clogged courts, our overcrowded prisons and in our moribund economy. Perhaps most frightening, we see how the ever burgeoning law has caused the proliferation of lawyers and politicians. In short, the rule of law in America has led not to justice, but to widespread and systematic injustice.

Auerbach takes a look at several communities that recognized this problem and tried to develop alternatives that better suited their indigenous conceptions of justice. Most of these attempts concentrated on various forms of arbitration, mediation or conciliation, and almost all of them have been consumed by the federal government and its legal system. There is still agitation for nonlegal justice, not just from liberal community activists, but also from such establishment organizations as the American Bar Association and the U.S. Justice Department. But it's become all snake oil. As Auerbach puts it, "dispute-settlement processes that traditionally were non-legal

alternatives have now become thoroughly legalized." (p.15.)

Auerbach proceeds in chronological order. The first chapter is devoted to colonial patterns of dispute resolution. Group soli-



Sean Haugh

arity was of utmost importance, so conflicts within the group had to be reconciled swiftly and surely. The great majority of colonists were deeply religious depending on ecclesiastical authority for mediation. Lawyers and litigation, due to their adversarial nature, were explicitly banned in most colonial communities. Auerbach quotes the Rev. John Cotton describing the idea of one church member suing another as "a defect of brotherly love." (p.23.)

Disputes were often heard by two or three men considered understanding and judicious by the community. Mediation procedures were developed to set the disputing parties at ease, and to devise a settlement satisfactory to all concerned. Rarely did people take their disputes to court, since English common law was one of the things they were deliberately escaping from. Dissenters were usually quickly ostracized.

Early American merchants also saw the need for mediation. Private tribunals, staffed by "informed business experts", were deemed superior to ignorant judges and juries. They saw conflict as a hindrance to commerce, and moved quickly to settle their disputes. "Disputes not only disrupted business but, when litigated in public, invited the intrusion of outsiders into private business practices." (p.33.)

Colonial society, however, was bound to change with its rapid growth. Banished dissenters often founded new communities, with different forms of dispute settlement. As trade grew, people became less dependent on the community for survival, and thus began to assert more individual rights. As the original visions of the first colonists faded, so did the cohesiveness of their settlements. People had more reason to pursue their personal advantages. Law, with its enforced adjudication, was ready to fill this void.

As we move into the period covered in the second and third chapters, the federal government and its various states have managed to impose the law in most areas. However, several intentional communities arose that saw the same need for non-legal justice as did the colonists. They ranged from utopian socialists and diverse religious sects (discussed in Chapter Two) to tight-knit immigrant enclaves (examined in Chapter Three). Like the early colonists, they were united by strong leaders and ideologies. From these flowed the authority to resolve internal conflicts without threatening the order of the community. In many cases, once the leader died or lost the faith of his followers, the group would lose its cohesiveness and become more likely to turn to more adversarial processes of resolution. This phenomenon corresponds to the process of assimilation of the immigrants. One notable exception were the Mormons, whose Bishop's Courts dispensed justice relying on voluntary cooperation from disputants or those who transgressed against community principles. This process remained successful until the federal government, emboldened by their success in the Civil War, forced the Mormons to accept government law.

The aftermath of the Civil War also saw the beginnings of arbitration used as a tool of the state to relieve the pressures building up from excessive reliance on the law. The Freedmen's Bureau, charged with solving conflicts arising from the new role of black workers, instituted arbitration panels to hear labor disputes. These largely failed for lack of support from both sides. Often the freed blacks wanted to appoint one of their own to the tribunals, and became disenchanted when this opportunity was invariably denied them. On the other hand, white planters were generally only interested in results that would maintain or

strengthen their control over labor issues.

This pattern has been repeated throughout this century. The common reasons why arbitration enforced from an outside source remains unpopular stem from the power imbalances that have arisen in American society. Disputants see themselves as unfairly matched. The stronger party most often has a keen interest in developing the guidelines and selecting the arbitrators, but if they go too far in exerting their control they risk losing the interest of the weaker parties.

For example, at the hospital where I work, insurance companies will ask patients to sign a form agreeing to arbitration, instead of litigation, to resolve any challenges the patient may have to their course of treatment or billing for these services. When I look at this form, I think about how the insurance company has probably already rigged this system against me, and how I'd be renouncing my "legal rights," and thus decline to sign it. I'd rather take my chances before an ignorant judge or jury.

In Chapters Four and Five, Auerbach fleshes out the emerging duality. Non-legal forms of dispute settlement flourish only under certain conditions. There must be a unity of vision guiding the community, upholding communal goals over aspirations of the individual. The disputing parties have a need to respect the fairness and integrity of the resolution process, and a common interest in a just decision. Mediation relies on people restraining their competitive and acquisitive impulses.

Without these conditions, Americans have turned to the legal tradition. Our law was written to favor individual rights, leading people to use it when their grievances were not placated by an appeal to community values. But most importantly, the value of the law is that it is backed by the power of the government. A disputant who felt on unequal footing with their foe, or who did not trust their opponent to abide by the results of arbitration, had need for an adjudicating disinterested outside force to impose an objective ruling.

Today, the arbitration movement continues to be revived by outside social reformers as an outlet for our clogged courts. Rarely do these reformers recognize that arbitration imposed from the outside is a contradiction in terms. The only times we witness a successful arbitration or mediation project, it has sprung from the grassroots of a given community. The problems created by an ever-growing law continue to escalate at an alarming rate. Yet, Auerbach concludes, the desire for non-legal forms of justice will always remain. As time

and social priorities continually change, special circumstances will again create the political space for justice without law to flourish.

This analysis leaves those of us who wish to develop a new free nation in a bit of a quandary. Do we place our trust in a body of law, or can we rely upon ourselves to develop an attractive and self-enforcing way of settling our differences without law?

Given the horrible example of a society dominated by the law, we would be inclined to avoid it as much as possible in our new free nation. And yet, before we start on the task of ensuring justice without law, we must ask ourselves some hard questions.

First, do we have a shared vision strong enough to create community values? Can this vision be realized without the reliance upon an exalted person or persons, without whose leadership the vision would disintegrate? How can we develop strong community values without coercing conformity?

Those interested in creating the new free nation, at least in this forum, are by and large staunch individualists. Our vision emphasizes individual freedom and free-market capitalism. Given those who have come before us, can we preserve this outlook while trying to live without law? How can we convince people to value social harmony along with personal gain? How can we channel the competitive spirit into agreeability with our shared community values? Can we really become a true nation of individuals?

One trap libertarians should always be careful for is giving too much weight to the needs of the individual over the needs of the society. We rightly perceive that individual liberty is vital to the health of our communities. Free people are more likely to create tolerance and prosperity for the good of all. However, these free people must also forge deep alliances and understandings between each other, not just to maintain social harmony, but even to survive. If our new free nation is to be successful, we not only require maximum independence, we must also develop a healthy system of interdependence.

I thank Auerbach for helping to bring these issues into sharper focus for me. This book is a fine introductory overview to a fascinating aspect of America's quest for justice, citing numerous examples. There were several times where I wished that Auerbach had gone into significantly more detail on the inner workings of all these non-legal dispute resolution systems. My desires are only somewhat mollified by the 28 pages of notes and citations, giving anyone who shares my feelings ample

opportunity to investigate matters meriting further inquiry. —

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

Children (from p. 33)

information. This could take less than a minute with a young child, and may last for years with a much older child.

Childhood is not adulthood. Childhood is a time of play and no child of restricting parents ever gets enough play. Children reared in freedom can tackle any unpleasant duties and do not obsess or resent work; but first it is important that a child be allowed to live through a stage of juvenile flightiness. If this stage is repressed, flightiness may continue into adulthood. For a child, a large amount of fickleness is natural and temporary and in an adult it is not.

Unrealistic expectations and demands serve only to inhibit the child in his natural pursuit of what causes him happiness and satisfaction. Some parents begin their relationship with their children teeming with faith — a faith that the child is good and will turn out fine as long as the child is neither spoiled by unreasonable permissiveness, nor squashed by the psychological hang-ups of Mom and Dad. Child rearing requires a somewhat untroubled conscience; this conserves valuable stamina to continue this faith through to the end of adolescence. It is a difficult challenge for parents and all libertarians to not exercise our freedoms without displacing another's, or to allow another's freedoms to displace ours. If we meet the challenge, the reward is we will have raised children in an environment true to this libertarian principle: All family members and all citizens will have equal rights to explore life. —

Danielle Woodrich, from a home base in Buffalo, NY, writes commentary about libertarianism, rock-n-roll culture, and independent films and video. She operates a small film company called Dog Breath Pictures, whose next work will be "Rock-n-Roll Childhood: A Defense from Imaginicide."

Danielle Woodrich can be reached by e-mail at DWoodrich@aol.com or by regular mail at 64 Kail Street, Buffalo, NY 14207.

In Defense of Public Space

by Roderick T. Long

Nothing to Gain But Our Chains?

In an important series of articles,^{1,2,3,4} Rich Hammer has recently invited us to rethink some of our assumptions about what a libertarian society would be like. We ordinarily think of a libertarian society as one of maximum freedom and maximum privacy: a society where you can do whatever you like (so long as it's peaceful) and no one else can pry into your personal affairs.

Rich suggests otherwise. A libertarian society, he argues, is one in which public space — both physical space and decision space — has been privatized as far as possible. This is desirable, he says, because it is easier to police irresponsible behavior in private space than in public space. Since no one can be excluded from public space, no one has any incentive to maintain it properly, and so a "tragedy of the commons" is generated. By contrast, in a world where everything is privately owned, we must abide, wherever we go, by the rules laid down by the owners. Rich envisions a society in which no one is allowed access to the means of cooperation with others unless he submits to a multitude of restrictions: bonding, disarmament, full disclosure of finances, and so forth. Those who do not comply with these rules will find themselves cut off from food, drink, communication, transportation, even the use of restroom facilities.

Rich's arguments are a useful corrective to the popular notion that a libertarian society would be a hopeless chaos. But we may feel some discomfort at how far Rich's vision goes in the direction of the opposite extreme. In a famous quote, the 19th-century anarchist Proudhon wrote:

"To be GOVERNED is to be kept in sight, inspected, spied upon, directed, law-driven, numbered, enrolled, indoctrinated, preached at, controlled, estimated, valued, censured, commanded, ... noted, registered, ... taxed, stamped, measured, ... assessed, licensed, authorized, admonished, forbidden, reformed, corrected, punished."⁵

But if to be *free* is also to be inspected, licensed, numbered, stamped, authorized, and so forth, we might wonder whether building a Free Nation is worth the effort.

But is this world of hyper-regulated anarchy the only possible model for a libertarian

society? I don't think so. But to see why it is not, I suggest we need to rethink our assumption that a libertarian society must be a society without public space.

Public Property Without Government

When we think of public property, we think of *government* property. But this has not traditionally been the case. Throughout history, legal doctrine has recognized, alongside property owned by the *organized* public (that is, the public as organized into a state and represented by government officials), an additional category of property owned by the *unorganized* public. This was property that the public at large was deemed to have a right of access to, but without any presumption that *government* would be involved in the matter at all. I have learned much about this idea from excellent recent articles by Carol Rose and David Schmidtz:

"Implicit in these older doctrines is the notion that, even if a property should be open to the public, it does not follow that public rights should necessarily vest in an active governmental manager. ... the nineteenth-century common law ... recognized ... property collectively 'owned' and 'managed' by society at large"⁶

"Public property is not always a product of rapacious governments or mad ideologies. Sometimes it evolves spontaneously as a way of solving real problems."⁷

I have no interest in defending public property in the sense of property belonging to the *organized* public (*i.e.*, the state). In fact, I do not think government property is public property at all; it is really the private property of an agency calling itself the government. (This agency may claim to be holding the property in trust for the public, but its activities generally belie this.) What I wish to defend is the idea of property rights inhering in the unorganized public.

The Economic Argument

Since the days of Aristotle, the traditional argument against collective ownership of any kind has been the tragedy of the commons: if each additional use depletes or degrades a resource, and yet there is no way of restricting access to the resource, then no one will be motivated to use the resource sparingly, since what one person refrains from, another may take, and so the first person is no better off for having refrained. Hence the need to restrict access by privatizing the commons.

What Rose and Schmidtz point out is that this argument works only to the extent that additional use *diminishes* the value of the resource. But this is not always the case; sometimes, adding more users *enhances* the value of the resource: the more the merrier. When that is so, there is no point in restricting access; we then have what Rose calls a *comedy* of the commons (*i.e.*, happy ending rather than sad).

Rose's point is clearest when we consider decision space. Think of the libertarian movement as filling a decision space: which libertarian books and articles will be written, which libertarian projects and causes will be promoted, and how, *etc.* The libertarian movement is a public space; anyone can participate, at any time. And this is all to the good. It would be foolish to restrict access, to make it more difficult for people to participate in the movement, because the movement is not a scarce resource that can be used up; on the contrary, the more additional people start participating, the closer the aims of the movement as a whole will come to being achieved. (Consider how Ayn Rand and Leonard Peikoff have weakened the effectiveness of their own Objectivist movement by trying to make it into their own private property, purging potentially valuable contributors to the cause whenever they resisted the authority of the "owners.")

Intellectual property is another comedy of the commons, I would argue, since one person's use of an idea does not deplete the idea for others, and ordinarily even enhances it. How else, after all, does civilization advance except via some people grabbing other people's ideas and improving on them, to the benefit of society as a whole?

But the clearest case of a comedy of the commons, as Rose and Schmidtz point out, is the market itself. The more people participate in the market, the more everyone benefits. The market is a paradigm of public space. Protectionist laws attempt to turn the market, or portions of it, into *private* property by erecting coercive barriers to access; this sort of "privatization," though, is destructive, and anathema to libertarian ideals.

Of course, these are easy cases of comedies of the commons, because things like markets, ideas, and political movements are not physical, and so are not subject to scarcity. Physical space, though, is always subject to scarcity; so how could there be comedies of the commons *here*? Mustn't any scarce resource inevitably succumb to the tragedy of the commons unless access is restricted?

(continued on page 38)

Review

Why Government Doesn't Work

by Harry Browne

St. Martins Press, 1995, 245 pages

reviewed by Marc D. Joffe

for the New Country Foundation

Harry Browne is running for the Libertarian Party's nomination for President in 1996. In conjunction with his campaign, he has written a book, *Why Government Doesn't Work*. Since *Formulations* is published by an educational foundation, I will neither advocate voting for nor voting against Harry Browne. Instead, my purpose here will be to review the ideas Browne presents, to discuss the evolution of this thought, and to comment on his current strategy for achieving a free society.

Harry Browne is the first libertarian author I ever read. I stumbled across his 1974 best-seller *You Can Profit from the Monetary Crisis* in — of all places — The New York Public Library. I was impressed with the book, and later went on to read *New Profits from the Monetary Crisis*, which appeared in 1978. (Browne's first investment best-seller, *How You Can Profit From the Coming Devaluation*, was published in 1970.)

Browne's investment books contained discussions of his libertarian political philosophy. In *You Can Profit from the Monetary Crisis*, he sketched a fictional European country that gets by perfectly well without any government whatsoever. His writings also contained frequent praise of Switzerland, which he saw as the last bastion of economic freedom and sound money.

In the 1970s, Browne believed that the U.S. government's errant fiscal and monetary policy would most likely cause an acute financial crisis. His 1978 *New Profits* handicapped the ten years through 1988 as follows: a 35% chance of a runaway inflation, a 50% chance of deflation, a 10% chance of continued stagflation and only a 5% chance of a "soft landing" (page 50).

Browne was among a group of extremely pessimistic investment advisers known as the gold bugs. This group believed that the government had done so much damage to the market system that a collapse of American civilization was almost inevitable. All advocated investing heavily in gold and silver, while some suggested purchasing large quantities of guns,

ammunition and freeze dried food, and then fleeing to an isolated cabin in the woods.

Browne was one of the more responsible gold bugs, carefully hedging his advice and allowing for a variety of outcomes. Nonetheless, hindsight shows that he was unduly pessimistic. Like the other gold bugs and their followers (this writer included), he underestimated the underlying strength of the economy, the stabilizing influence of foreign economies, the increasing ability of markets to influence the actions of policy makers, and the ability of government to step back from the precipice when it disrupts the economy too much. All of these factors prevented the stagflation of the seventies from turning into the much ballyhooed economic Armageddon of the eighties.

Another strand of Browne's thought at the time was his strong belief in emotional self sufficiency, as outlined in his 1973 book *How I Found Freedom In An Unfree World*. In this volume, Browne outlined a number of "traps" — or what we might now call "codependency" situations — that the self-assured individualist should avoid. Among these was the political trap — the *mistaken* idea that by getting involved in the political debate one could improve his or her life. To Browne, political involvement was one of many barriers we erect for ourselves in our own search for personal freedom.

How much difference two decades make! Gone from Browne's thinking are the extreme pessimism and anti-politicism of the past. In their place is the belief that through concerted action, libertarians acting through the Libertarian Party can and should move America in the right direction.

The biggest disappointment I experienced in reading *Why Government Doesn't Work* and hearing Browne speak after declaring his candidacy, is not finding out why his thinking has changed. Of course, this is too much to expect. In the book and on the campaign trail, Browne is primarily addressing himself to the uninitiated.

And *Why Government Doesn't Work* does an excellent job of explaining libertarian ideas to newcomers. Browne has retained his simple, clear writing style of his earlier investment books. He divides the material into a large number of short chapters and sections, making it easy to dip in and dip out of the book, or to dive directly into the portions of greatest interest.

His style of argument is logical and patient, and he avoids demonizing those with opposing opinions. Thus, libertarians can give the book to their friends with little risk. While they may not be convinced, they are not likely to be turned off.

Although Browne avoids becoming over-

wrought, he does appeal to the emotions. He offers numerous case studies of innocent, well meaning people whose lives were disrupted by random acts of government. By personalizing the consequences of coercion, he engages readers who might become bored with a more detached presentation.

While Browne's book is definitely geared toward outreach, it will also appeal to libertarian activists. This group tends to be split among advocates of consistency — those who want an uncompromising attack on government coercion — and advocates of pragmatism — those who want to couch libertarian rhetoric in ways that won't alienate potential adherents. Browne does a nice job of bridging this gap within the activist community.

Without admitting the need for government involvement in just about anything, he nonetheless manages to avoid scaring the reader with calls for private police forces and the prospect of kicking everyone off the dole. He does this by largely limiting himself to a discussion of the federal government. Thus, he can call for getting the federal government out of crime fighting, education and welfare without demanding the complete privatization of any of these services. He simply shifts the argument down to a lower level of government.

Near the end of the book, Browne offers his own budget proposals, which should please all but the most radical libertarians. Essentially, he advocates the immediate abolition of all direct taxation, and the reduction of the federal budget to \$100 billion annually by the year 2004. He proposes to use sales of federal assets to retire the federal debt, and to finance private annuities for those currently receiving social security or who will soon begin receiving benefits.

The big question is whether the revenue from the asset sales will cover all of these expenses. Given the government's prior record on liquidating assets (consider the RTC, for example), one cannot be too optimistic. If the asset sales fail to raise the required \$12 trillion, Browne would have to scale down the social security portion of his package — hopefully, by convincing wealthier social security claimants to give up their annuities.

As a libertarian candidate, Browne does about the best one can do in applying radical libertarian ideas to the current political situation. He correctly recognizes that relatively small, piece-meal cuts in government spending will be reversed by future administrations. Thus he suggests rapid implementation of much sharper cuts. But it is precisely this

approach that will make him unelectable (although the mainstream media's policy of ignoring minor party candidates would probably make him unelectable in any case).

It is hard to imagine how more than a handful of people would vote for someone who wanted to pay off social security recipients by selling the "national jewels." The situation in this country is just not bad enough for the average, disengaged citizen to support such a radical change.

Indeed, things can get a lot worse, and the majority will continue to oppose extreme policy shifts. Support for this assertion is available on page 164 of *Why Government Doesn't Work*. There, Browne presents a chart showing the combined employee and employer social insurance tax rates in different countries. In the United States, this figure is 15.3% of income — a seemingly crushing burden. But the tax is a lot higher elsewhere: in Austria the rate is 41%, in Holland 47%, and, in Italy, 56%. Certainly in the first two cases, and arguably in the last, there is no groundswell of support for radical change. In short, things can and will get a lot worse before the natives become restless.

Although Browne doesn't fully explain his evolution from pessimist to optimist, he offers reasons for why he thinks he can get a significant proportion of the vote and possibly even win. First, he cites successful libertarian efforts over the past 25 to 30 years to educate the public about the evils of government. Then, he goes on to point out poll results that suggest that 73% of the people believe that "the federal government is much too large and has too much power," and that 54% of the public would vote for the best candidate "even if he seemed to have no chance of winning."

Unfortunately, we've come to learn that poll results can be very deceiving. Respondents have rarely thought these issues through, and usually try to give the socially acceptable response. Phrase the question properly, and it will be possible to get a majority of people to favor lots of ideas, including some that are diametrically opposed to libertarian thinking.

While educational efforts have brought more people into the libertarian camp, they have most definitely not yet prepared the ground for a radical lurch in our direction. Unfortunately, Browne and his supporters won't realize this until after the disappointing vote totals are tallied. ▽

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.

Public Space (from p. 36)

Not necessarily. There are some cases in which, at least within certain parameters, a physical resource's value is enhanced by increased use. As Rose and Schmidtz point out, this is particularly true when the resource is tied in some way to a *non*-physical comedy-of-the-commons resource, like a market or a town festival; since "the more, the merrier" applies to these non-physical resources, it also applies, to some extent, to the physical land on which the market or festival is held, and to the physical roadways leading there. Since everyone benefits from having more people come to the fair, everyone also benefits from making physical access to the fairgrounds free as well.

Of course there are limits. If *too* many people come, the fair will be too crowded to be enjoyable. But this simply shows that some goods have *both* tragedy-of-the-commons and comedy-of-the-commons aspects, and which one predominates will depend on the circumstances. Public property may be the efficient solution in some cases, and private property in others. (Or a bundle of property rights may be split up, with some public, some private.) Most societies have had some common areas, policed by custom only, without overgrazing problems.

The Ethical Argument

On the libertarian view, we have a right to the fruit of our labor, and we also have a right to what people freely give us. Public property can arise in both these ways.

Consider a village near a lake. It is common for the villagers to walk down to the lake to go fishing. In the early days of the community it's hard to get to the lake because of all the bushes and fallen branches in the way. But over time, the way is cleared and a path forms — not through any centrally coordinated effort, but simply as a result of all the individuals walking that way day after day.

The cleared path is the product of labor — not any individual's labor, but all of them together. If one villager decided to take advantage of the now-created path by setting up a gate and charging tolls, he would be violating the collective property right that the villagers together have earned.

Public property can also be the product of gift. In 19th-century England, it was common for roads to be built privately and then donated to the public for free use. This was done not out of altruism but because the roadbuilders owned land and businesses alongside the site of the new road, and they knew that having a road there

would increase the value of their land and attract more customers to their businesses. Thus, the unorganized public can legitimately come to own land, both through original acquisition (the mixing of labor) and through voluntary transfer.

Public and Private: Allies, Not Enemies

Public space has both advantages and disadvantages. On the plus side, unrestricted access means you can do as you please there, without asking permission, so long as you don't violate others' rights. On the minus side, the difficulty of policing public space means there may well be more irresponsible behavior there. A society that permits both public and private spaces — that has public and private roads competing with each other, for example — allows individuals to make the trade-off for themselves. If you want the freedom to drive your motorcycle in the nude, with a howitzer strapped to your back, and you're willing to put up with a greater risk of irresponsible behavior from others, take the public road. If you prefer greater security, and are willing to obey a few more rules and suffer some invasion of privacy to get it, take the private road. If one option becomes too onerous, the other is still available. Private space can become oppressive if there is no public space to compete with it — and vice versa.

I envision a world of many individual private spaces, linked by a framework of public spaces. The existence of such a framework may even be a prerequisite for complete control over one's own private space. Suppose a trespasser comes on my land and I want to push him off. If all the land around me is private as well, where can I push him, without violating the rights of my neighbors? But if there is a public walkway nearby, I have somewhere to push him. Thus, the availability of public space may be a moral precondition for the right to freedom from trespassers. —

References

- 1 Richard Hammer, "The Power of Ostracism," in *Formulations*, Vol. II, No. 2 (Winter 1994-95).
- 2 Richard Hammer, "Protection from Mass Murderers: Communication of Danger," in *Formulations*, Vol. II, No. 3 (Spring 1995).
- 3 Richard Hammer, "Liberty' is a Bad Name," in *Formulations*, Vol. II, No. 4 (Summer 1995).
- 4 Richard Hammer, "Toward Voluntary Courts and Enforcement," in *Formulations*, Vol. III, No. 2 (Winter 1995-96).
- 5 Pierre-Joseph Proudhon, *General Idea of the Revolution in the Nineteenth Century*, 1851; trans. John B. Robinson (London: Pluto Press, 1989), p. 294. (This quotation is the inspiration for the heading "To be governed ..." on *Cato Policy Report's* back-page horror file.)
- 6 Carol Rose, "The Comedy of the Commons: Custom, Commerce, and Inherently Public Property," p. 720; in *University of Chicago Law Review*, Vol. 53, No. 3 (Summer 1986), pp. 711-781.
- 7 David Schmidtz, "The Institution of Property," p. 51; in *Social Philosophy & Policy*, Vol. 11 (1994), pp. 42-62.

The Intellectual Property Debate

by George Winborne

In the Autumn 1995 issue of *Formulations*, Roderick Long presented several criticisms of legal protection of so-called intellectual property and in particular patent law. These comments are not intended as rebuttal, but to just correct one error in the author's portrayal and otherwise provide some supportive observations.

Professor Long asserted that there was injustice in a system which allowed a person who applied for a patent before another person who was actually the first to invent the thing to get exclusive rights over the product. However, this injustice does not exist in U.S. patent law, and it never has. Unlike most of the rest of the world, we have a "first-to-invent" rather than a first to "first-to-file" system for priority. That is, in theory if I invent a device and then you later invent the same thing or see mine and run to the patent office to apply for a patent before me, I still get the patent instead of you.

There are some complex tests imposed to insure that I did not "abandon" the device or fail to be "diligent" and to insure that you are not trying to patent something which has become public knowledge. Also, in so called "interferences," when two applicants claim the same invention, there is some extra weight given to the first one to file. However, the U.S. still generally says the first person to actually produce something is its inventor and deserves the patent. The resolution of these matters can get complicated since competitors can get into contests over research results from notebooks and testimony all claiming to show who "invented" first.

Most other countries have disposed of these debates by saying that a properly filed application is what proves invention and all else is irrelevant. Under those systems the question of priority reduces in large part to looking at documents on file in the patent office.

The U.S. has negotiated with other countries to try to bring uniformity and harmony to patent laws on the notion that it benefits all economically. However, for various reasons the switch to "first-to-file" has broken down in the U.S.

Note that under either system if I show that you did not "invent" a device but stole the idea from me then you don't get the patent. Under the "first-to-file" system, though, I

might have more trouble in getting the patent myself. At any rate, if the U.S. does move toward complete "patent harmonization," Professor Long's criticism of this particular aspect of the patent law will be more accurate.

Philosophers, economists and legal scholars have for centuries struggled to provide a logical basis for having or not having intellectual property systems. The discourse, in my view, does not reach definite conclusions. I defer an analysis of the philosophical views to Professor Long but present here some comments on the economics and practice of intellectual property law.

Many economic theories have been proposed to explain the patent system in particular. The traditional premise is that by providing the incentive of a limited monopoly to inventors the patent system encourages innovation in a manner which exceeds the costs of the monopolies and on balance increases general welfare. The traditional view is thus utilitarian in nature. The problem is that the premise is unproved and perhaps unprovable. The few empirical studies which have attempted to determine the effect of the patent system on the rate of technological advancement are generally inconclusive.

It is difficult to measure the effect of a patent system where one already exists in a highly developed economy such as the United States'. Researchers face a fairly bad instance of the problem of hypothetical inquiries. Poll respondents may be inventors or potential inventors who are asked to state what inventions they made or were discouraged from making due to the patent system and for which they would have done otherwise in its absence. Predicting what would be done in the complete absence of a patent system requires significant speculation. For those who say they would not have made something without a patent it has to be asked if they can take into account not just their own inability to patent but also everyone else's. Inventors might have less direct incentive but they might have more access to the knowledge of others for use in their own endeavors. However, the absence of patents might encourage more information to be kept secret so there would be less actual dissemination of information. Also, for those who answer that they were deterred by a patent, they can truthfully only respond with what they might have tried to invent. Gauging their hypothetical success is speculative, particularly in light of the countervailing trends for information dissemination mentioned above.

The conclusion which is often reached by scholars of law and economics is that an existing patent system should not be dismantled, but that where one does not exist there are probably not sufficient intrasociety reasons to implement such a system. However, the realities are that most of the major world economies have intellectual property systems and are anxious to make sure that undeveloped economies adopt similar systems. The rationale is two-fold. First, what is good for us must be good for them. This assumes the unproved premise that intellectual property systems are actually good for us. Second, what is "good" for them is good for us. This is a more Machiavellian notion that since the major economies generally have more intellectual property which could otherwise be appropriated without compensation, instilling intellectual property systems in less developed countries allows our firms to collect rents which would otherwise be foregone. Witness our efforts to attack the huge Chinese industry in "piracy" of software and sound recordings. —

The commentary presented in this article is editorial in nature and does not purport to be a complete statement of the relevant law.

George Winborne of Hillsborough, NC, formerly a physicist, is a second-year law student at the University of North Carolina School of Law preparing for a practice in intellectual property law.

Roderick Long responds:

I am grateful to Mr. Winborne for correcting my error. While my remarks on first-to-file were directed to patent law in general, not specifically to the domestic American case, I was indeed under the mistaken impression that American law took a first-to-file approach. (As was Ayn Rand also, apparently.)

I wonder, though, how much difference the distinction in *theory* between first-to-invent and first-to-file makes in *practice*. I asked a friend of mine who specializes in intellectual property issues, and he told me: "In practice, first-to-file is the rule unless chicanery can be shown. And whoever gets the patent gets the full monopoly right. The burden of proof is on the other person to show independent invention, which can be damnably difficult." —

IF WE GET FREEDOM, HOW CAN WE KEEP IT? Come to Our Forum on 20 April

- **Topic:** *Constitution or Contract: When We Get a Free Nation How Can We Keep It Free?*
- **Speakers:** Spencer MacCallum, Mary Ruwart, Roderick Long, Philip Jacobson, Richard Hammer
- **Time:** Saturday, 20 April 1996, 9 AM to 5 PM
- **Place:** Oliver's Restaurant, in Hillsborough, NC
- **Cost:** \$10 general admission, \$8 for FNF members, payable either in advance or at the door

Those who pay in advance will be assured a place to sit, and will receive an *official FNF computer-printed nametag*. To pay in advance, return the enclosed envelope and card by 15 April.

During the day we will break for lunch. Oliver's, a steak and seafood restaurant, gives us the room for the Forum with the understanding that many of us will buy lunch, or something. The all-you-can-eat buffet costs \$7.

Directions to Oliver's:

From Interstate 40: get off at exit 261 (the only Hillsborough exit), and go toward Hillsborough (north). Travel about 1.9 miles. You will pass a Ford dealership on your left. Then on your left you will see the green sign for Oliver's.

From Interstate 85: get off at exit 164, and go toward downtown Hillsborough (you will be traveling north on South Churton St.). Travel about 1/2 mile. You will pass a Ford dealership on your left. Then on your left you will see the green sign for Oliver's.

Planning to attend? Get a head start by reading the papers to be discussed at the Forum (all in this issue):

Spencer MacCallum, **A Model Lease for Orbis** • Mary Ruwart, **Keeping Our Freedom in an Unfree World** • Roderick Long, **The Return of Leviathan: Can We Prevent It?** and **In Defense of Public Space** • Philip Jacobson, **Political Curriculum: Education Essential to Keep a Free Society** • Richard Hammer, **A State Can Be Designed to Shrink**

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

ADDRESS CORRECTION REQUESTED

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

