

# formulations

Summer 1996

A Publication of the Free Nation Foundation

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## Forum Attendees Explore How to Keep Freedom

Mary Ruwart came from Kentucky and Spencer MacCallum from New Mexico to speak at the sixth biannual FNF Forum, which met on 20 April 1996 in Hillsborough, N.C. In addition to the five speakers who presented papers, the Forum was attended by sixteen, four of whom traveled from out of state.

The topic of the Forum was "Constitution or Contract: When We Get a

## Next FNF Forum to Address Business in a Free Nation

The next FNF Forum will meet on 19 October 1996. We will explore how business in a free nation would differ from business as we know it in Western democracies where acts of state distort the business environment.

We solicit papers on this subject for the next issue of *Formulations*, writers' deadline 15 August 1996.

More specifics about the Forum, including the location, will appear in the

## Foundation News Notes

- The New Country Foundation and the Free Nation Foundation now have a home page on the World Wide Web, maintained by Marc Joffe of NCF. The new website, which contains selections from NCF and FNF publications, can be accessed at <http://www.freenation.org>, or simply <http://freenation.org>.
- Our Forum on 20 April was advertised in *Reason* magazine, with a 1/3 page ad. The ad used our picture of Liberty hitchhiking, headlined the names of our promi-

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Free Nation, How Can We Keep It Free?" The other speakers were: Roderick Long, Philip Jacobson, and Richard Hammer.

The papers presented by four of the speakers appeared in the previous issue of *Formulations* (Vol. III, No. 3, Spring 1996). The talk given by Spencer MacCallum drew upon two of his papers, one which appeared in the previous issue, and one, "Politics Versus Proprietorship," which appears in this issue.

The pictures in this issue were taken at the Forum, thanks to Bobby Emory. Δ

next issue of *Formulations*.

In exploring this topic, we hope to learn answers to questions such as these:

- 1) With no bankruptcy law (with the state not intervening to protect, and provide comfort to, those who fail, cheat, or pollute), what effect will this have upon investors, managers, customers, and neighbors? What institutions will emerge to ameliorate the problems which bankruptcy laws were intended to satisfy?

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# formulations

Editor: Roderick T. Long

a publication of the  
**Free Nation Foundation**  
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## Statement of Purpose

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

## Board of Directors

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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.

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## 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 (<http://www.freenation.org>).

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## Statement of Purpose

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

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# Life Without Lice!? The FNF Work Plan

by Richard O. Hammer

We in FNF work on a task that few people understand. Even many libertarians hesitate. Questions raised at our recent Forum remind me that, once again, I should lay out the reasoning which shows how our work can advance formation of a free nation.<sup>1</sup>

Most of our work is abstract, philosophical even. It is far removed from the nuts and bolts of leasing land, or building an island, on which to establish our home. Many people lose patience with us because they want to get on with it. But I think our academic work takes us closer to the formation of a free nation.

We have no more strength than cooked spaghetti. But surely, even with our feeble force, we can find some point at which we can apply ourselves. The FNF work plan gives us a fulcrum.

First, to show the context of the FNF work plan, let me lay out a scenario for formation of a free nation.

## A Scenario in Three Steps

I describe the goal (step 3) first, because, by presenting the steps in reverse order, I hope to convince you of the necessity of FNF work (step 1), which I describe last.

### Step 3: The Goal, Creation of a Free Nation

Representatives of the founding organization negotiate a lease for 99 year rental of real estate large enough for our small nation. The host nation, leasing the land, is probably a third-world nation with an impoverished government.

The down payment offered by the founding organization seems huge to the host nation; it is perhaps 30% of their government's budget for a year. The continuing payments, for 99 years, likewise seem big enough to the host nation to make them want to keep friendly terms with the free nation.

The land leased, habitable but sparsely populated, has never been vital to the host country, since the overwhelming majority of its population lives in centers elsewhere in the country. The land leased has never brought any significant tax revenue to the

host. To the host the lease offers free money for no effort.

The founding organization signs treaties, promises of non-aggression, with, not only the host, but also nearby nations and two first-world powers. From the start the



Richard Hammer

founding organization has a national defense, small but respected.

After signing the lease with the host country, the founding organization holds an auction to sublet land in the new free nation. Shares to bid in this auction are issued in proportion to the amount invested in the founding organization. In this capacity, the founding organization has acted like an investment management company. It has helped investors place their assets in what should become a profitable venture.

### Step 2: The Founding Organization

An organization, intending to form a free nation somewhere on earth, assembles assets and commitments from people. The assets are placed in escrow, callable by the founding organization upon execution of a suitable lease. Investors entrust the specific terms of the acquisition to the founding organization.

The founding organization stands as a respectable force. It includes, for instance, either:

- a handful of people of vast wealth and power, such as multibillionaires, retired heads of state of first-world nations, world-famous military generals; or

- a million people of middle class means, each having committed perhaps \$20,000 in assets (for a total of \$20 billion).

Thus we see that the founding organization, when mature, has the strength of a little nation already, in terms of financial backing, diplomatic connections, and ability to defend itself.

The action of this founding organization, in the overall scheme, mimics the way a couple shops for a house in America. The couple knows that houses can be purchased by qualified buyers who show evidence of ability to pay. So, before starting to shop, the members of the couple work to get themselves qualified; they do things like get jobs and save money. Similarly, before starting to shop, the founding organization must command enough assets to attract the interest of sellers.

### Step 1: FNF Work, The Gathering of a Movement

A group of people work to advance the day when the founding organization, of step 2, will start of cohere, by working to clarify the vision of a free nation. These people discuss, debate, and publish, proposals which describe all important aspects of the free nation. The most vital aspect which these people study and describe is security, since few people will take the idea of a free nation seriously until they know that they and their investments will be safe in the free nation.

Eventually, many people who read the proposals begin to believe that indeed a free nation can be formed. Doubt recedes. Those who know that they would like to live with strictly limited government begin to believe that they can get it for themselves.

### **Life Without Lice!? — Doubt Holds Us Back**

Apes, from what I learn watching nature shows, spend many of their hours picking lice off one another. Our early ancestors, I assume, also lived with lice. They took for granted these things on their skin. Part of life.

Who, in those years of yore, would think there might be such a thing as life without lice?

"Yes!" proclaimed the prophets.

But most people did not join. They did not believe it. They could not imagine life

without lice.

The FNF work plan stands upon this thesis: it is possible. We just need to learn new habits of hygiene. These habits seem alien at first, because they differ from any discipline we have ever practiced.

"What will I do with myself, with my time, my hands and my eyes," one doubter asked, "if not fill my leisure with this ritual [nitpicking] which my ancestors have practiced since the beginning of time?"

Yes, I admit, it could be tough.

### **Doubt, The Need For Step 1**

I believe that steps 2 and 3 should be possible — if only people believed that they were possible. When I ask myself what keeps people from starting step 2, I conclude that not enough people take the idea of a "free nation" seriously. People who might join a founding organization are held back by questions, such as:

- how will borders be defended?
- will some big country, like the U.S., invade and crush the free nation?
- how will dangerous criminals be corraled?
- how will I make a living?
- will the familial structure which I desire be sustained by the larger social fabric?
- will there be schools for my children?
- if things do not go well in the new country, will I be able to return to the country of my prior citizenship?
- where will I go to party?

These questions add up to doubt. And doubt is a job for a think tank, for the Free Nation Foundation. As we subdue the doubt, I believe we set the stage for step 2 to proceed.

### **But Is Step 1 Necessary?**

Last year an organization called *Laissez Faire City International Trust* broke into the news. They announced plans to form a free nation. It seemed to me that if they had substantial financial backing, as they claimed, they might advance to their goal. And they might do it without lingering over step 1. Their announced plan, in my view, started with step 2.

I tend to believe that a group of sufficiently wealthy and powerful people could start with step 2. I think such a group would discover as it proceeded that it needed some work of the sort I suggest for step 1.

But much of this step-1 work could probably be completed on the fly. And the group, if it had sufficient strength, could patch up its errors as it proceeded.

But for me, and perhaps for you, I must recognize that I am in no position to start work on step 2.

### **The Flexibility and the Necessity of Step 3**

In step 3, I described one way that the founding organization might acquire land. That way, of all the ways I have considered, seems most plausible to me.

But other ways suggest themselves. To list just a few:

- establish a freeport with much, but less-than-complete, political separation from the host;
- purchase an existing little democracy by promising to pay every inhabitant of that nation \$10,000 on the day when they use their existing constitutional process to modify their constitution to conform to our specification;
- negotiate for some influence in constituting the new government in an orphaned fragment of a nation-state that is falling apart;
- purchase an island outright;
- build a floating island.

Step 3 is essential. We would be fools to work on step 1 or step 2 if we could not imagine getting past step 3. But personally I worry less about step 3 than about step 1. I believe that if step 1 can be completed, if a clear vision of a free nation can be built, then step 2 will become relatively easy. And I believe that a strong founding organization, as described in step 2, will find a way: it will not be denied its step 3. As such I have not focused on formulating step 3, it seems to me an afterthought.

But many reasonable people do not share my confidence that step 3 would become easy once steps 1 and 2 were complete. These people wait to be convinced of the plausibility of step 3. Therefore, I hope we will start to publish more formulations for step 3. I invite readers to submit their ideas. It would be good for us to know a range of ways that a new nation might be established.

But let us not get ahead of ourselves.

Remember that we are nowhere near starting step 3, or even step 2. We need confidence that we can complete step 3 when we get there. But for now the challenge, unless you are a billionaire, is step 1.

### **The FNF Work of Step 1 Serves Other Purposes as Well**

We in FNF work on step 1 because we have our eye on the goal of step 3. But, I have observed, the work of step 1 serves other purposes. I seem better able now, after a years of immersion in libertarian theory, to connect in conversation with my statist neighbors in America. I have discovered new arguments. This is ironic, since I decided to undertake FNF work because I doubt that persuasion will draw a majority-rule polity, such as exists in America, back to constitutionally-limited government.

So, even though it not our goal, people who participate with us probably become more persuasive to statist. And I believe, if we complete step 1 and thus create, for all who care to look, a convincing vision of life in a free nation, this vision alone seems bound to change things.

### **How FNF Work Differs From Other Libertarian Activism**

Perhaps you now see how FNF work stands out, distinct from almost all other libertarian activism. We do not try to convince statist. And we are not deterred by the distrust of statist. We do not need statist, except as trading partners when we get to step 3.

In the usual paradigm for libertarian activism it is essential to persuade statist to accept libertarian principles, because this paradigm assumes working within an existing majority-rule democracy. I have worked many years myself in this usual paradigm, and continue to support many good organizations which strive to convince statist. It might work. But I am not sure.

If you too doubt that persuasion will work, do not despair, but join FNF. This is the habit of hygiene which I mentioned earlier. You do not need to blow fuses in your brain trying to force sense into statist. Just let them be. Join us who are not

*(continued on page 7)*

# One Nation, Two Systems: The Doughnut Model

by Roderick T. Long

## A Free Nation: Persuading Statists

The idea of forming a new libertarian nation is an attractive one for two reasons: first, as an alternative to persuasion; second, as a tool of persuasion.

Let's start by considering a new nation as an alternative to persuasion. As libertarians, we have been trying to persuade our neighbors and fellow-citizens to choose freedom for the past 350 years. (I date the beginning of the libertarian movement from the English Levellers in the 1640s.) But our neighbors, it seems, do not want the freedom we offer them. We champion personal responsibility — only to have the right wing call us moral nihilists. We attack corporate privilege — only to have the left wing call us apologists for big business. We reject the initiation of force — and both sides call us militant extremists.

With frustration and sadness, many libertarians find they are ready to say: "Enough already. We give up. You win. Brothers and sisters, we have fought for your freedom for many long years, and received in return only insults, incomprehension, and indifference. Very well. Let it be as you wish. If you do not want freedom, if you insist on spiraling ever more quickly downward into the morass of statism, we will, finally, leave you alone. You may proceed happily with your own enslavement, without further pestering from us. But do not drag us down with you. Go your own way, but let us go ours as well. Just leave us one miserable strip of land, in swamp or desert, jungle or tundra, where we can live in the freedom that we, at least, still value. With your own lives, do what you want. Barter your birthright for a leash, if you will. Bow to the jackboot and the gilded crown. But let our people go."

The appeal of a "libertarian homeland," then, is that it would offer a haven for those who have despaired of persuading their fellow-citizens to accept the libertarian ideal. For many libertarians, the odds of convincing the government of some third-world country to lease a portion of its territory to a consortium of libertarian nation-builders, while admittedly slim, seem

a good deal likelier than the odds of convincing 51% of the electorate in their nations to vote libertarian (or engage in massive civil disobedience, or whatever might be needed to bring about the new libertarian regime). To those libertarians who have



Roderick Long

given up on persuasion, the free nation movement offers a new hope.

But what about libertarians who are not ready to give up on persuasion? Have they any reason to participate in the free nation movement? After all, few libertarians would be content with achieving freedom for themselves alone, knowing that the rest of the human race was dooming itself to penury and servitude. Is it too soon to give up the hope of winning through persuasion, of achieving liberty, security, and prosperity, not only for libertarians but for our fellow-citizens as well?

As libertarians, we have all felt, from time to time, the frustration expressed in the "enough already" speech I recited above. Yet we all persist in the task of persuasion. For example, the Free Nation Foundation's own writers and speakers, despite their commitment to the new country idea, regularly engage in more traditional libertarian activism as well, be it through education, electoral politics, or both. We are not, most of us, ready to surrender the dream of freedom for everyone.

So if we haven't really given up on persuasion, on outreach, on the project of working for freedom in our own home countries, why pursue what some have called

the "Libertarian-Zionist" notion of a new free nation?

One answer is that, as Rich Hammer puts it, we should not put all our eggs in the basket of persuasion:

"It seems to me that we are spending perhaps 80% of our political energy trying to convince the majority of our neighbors to disavow statism. And it seems to me that we are losing. Many libertarians respond to this threat with an obvious strategy: increase the energy invested in the fight to 90% or 99%. But what if even this increment will not stem the tide? ... is it wise for us to spend the last 20% of our energy this way? ... Maybe we should invest a fraction on planning a refuge."

(Richard Hammer, "Let the Wookiee Win," *Formulations*, Vol. I, No. 2 (Winter 1993-94).)

In other words, even as we persist in the effort to free our neighbors, we have to face the possibility that we may fail. We need an insurance policy. And we have a responsibility — to ourselves, to our families, to our fellow libertarians — to ensure that those who do value liberty can experience it now, in our lifetimes, without having to wait for everyone else to see the light.

That, then, is part of the answer. But I think there is still another answer. We do not necessarily need to look at the persuasion-and-outreach effort and the new-nation effort as competing goals, pulling us in different directions, with time spent on one counting as time stolen from the other. They can instead be seen as complementary.

Every contribution to the conventional persuasion effort also forwards the free-nation movement. Why? Because as the number of libertarians increases, the number of potential participants in the free-nation movement increases too. Successful libertarian outreach brings in that many more people to invest money in the free-nation effort, to contribute ideas to the process of constitutional design, to settle in the new nation, and, if necessary, to take up arms to defend it.

But the converse is also true: every contribution to the free-nation movement also counts, in the long run, as advancing the project of persuasion. That is why I opened this article by describing the free-

nation effort not only as a possible alternative to persuasion, but also as a possible tool of persuasion.

How so? Consider: when we tell non-libertarians how a libertarian society would work, they generally do not believe us. They're convinced that the rich would rule, that the poor would starve, that crime and pollution would be rampant. In response, we often appeal to economic, political, and sociological theorizing that, we feel, supports the libertarian position. But our opponents have their own statist theories which, thanks to successful governmental indoctrination, they generally find more plausible.

So theory isn't enough. They don't believe our theories. We need to show them that libertarianism works in real life, not just in theory. To do this, we generally appeal to historical examples of societies with successful libertarian policies and institutions.

The problem with this approach is that none of these societies was purely libertarian. Each was a mix of libertarian and non-libertarian elements. And so it is open to our libertarian opponents to claim that the positive aspects of those societies were the result of the non-libertarian elements rather than the libertarian ones; instead, the libertarian elements get the blame for the negative aspects. We, of course, respond that they've got things backwards: for example, in discussions of 19th-century America our opponents seek to blame the depredations of the Robber Barons on unfettered capitalism, while giving government intervention on behalf of labor the credit for rising wages — while we, armed with our dusty tomes and dreary charts, insist that unfettered capitalism must be given the credit for rising wages, while blaming the depredations of the Robber Barons on government intervention on behalf of big business.<sup>1</sup>

We know we're right, of course! But the only grounds we can give for accepting our interpretation of history rather than theirs is an appeal, once more, to theory — the same theory they reject.

Once again, what weakens our empirical case in their eyes is the fact that the societies we laud for their libertarian elements generally had statist elements as well, giving statist an opening to claim that the statist elements were necessary for the society's success. And their interpretation

of history seems plausible to them, because it fits in so well with their economic, political, and sociological theories — just as our own background of theory leads us to find our interpretations of history natural and obvious.

If, however, there were a successful libertarian country we could point to, one from which statist elements were entirely purged, this tactic would not be available to the statist. We would finally have a real-world test of the entire libertarian theory all at once, not just bits and pieces of it scattered across different societies in different eras. An actually existing, fully libertarian country that was socially and environmentally responsible, safe, prosperous, and humane would be the best possible tool of persuasion we could ever hope for.

It worked once before. In the 17th and 18th centuries it was a commonplace to argue that a constitutional republic, with widespread suffrage, periodic elections, a strict balance of powers, and no hereditary element, was an impossible dream. The argument of such critics was not the prophetic one that a constitutional republic would eventually develop, over the centuries, into a bureaucratic welfare-warfare state, but rather the short-sighted one that it would collapse, within a decade, into mob rule, anarchy, or dictatorship. As I said, this latter argument was common before 1776. It has not been much heard since. The advocates of constitutional republics won their argument — by creating the system they advocated, and thereby demonstrating to the world its feasibility. Constitutional republics dominate Europe today, in large part because people in those countries were inspired by the American model to work for similar changes at home. This is the precedent that a libertarian nation should seek to emulate.

### **Two Free Nations in One: Persuading Libertarians**

I've talked about the role of persuasion in disputes between libertarians and statist. But the libertarian camp itself is divided by the dispute between anarchists and minarchists. Although my own sympathies lie with the anarchist camp, throughout my work for the Free Nation Foundation I have promoted the idea that the free-nation movement should be aiming neither at a strictly anarchist nor at a strictly minarchist free nation, but rather at some sort of com-

promise between the two camps.

My reasons for this position have been two. First, I see no point in delaying the foundation of a free nation until the anarchists have convinced the minarchists or vice versa. That dispute is not going to be resolved any time soon. If a free nation is to be established, the work must be done by the libertarian movement as it currently exists, containing both anarchists and minarchists. But anarchists may be reluctant to sacrifice time and effort to found a minarchist nation, just as minarchists may be reluctant to sacrifice time and effort to found an anarchist one. After all, each side thinks the other's favored political system is unstable and unlikely to work. The fledgling free-nation movement cannot afford to dispense with the services of either its anarchist or its minarchist supporters, so it needs to envision a goal that can attract both sides — namely, a constitutional structure that combines minarchist and anarchist elements.

My second reason for favoring such a compromise between minarchism and anarchism is as follows. As an anarchist, I think anarchist institutions are likely to be more successful than minarchist ones; hence my desire to see anarchist elements in the free nation's political structure. As a political realist, however, I realize that other nations are more likely to recognize the legitimacy of a minarchist free nation than of an anarchist one, and a libertarian country just starting out cannot afford to give the world powers any excuse to invade to "restore order" (and in addition, if the free nation holds its territory via a long-term lease from some other country, there has to be some single agency representing the free nation that can be identified as the lessee); hence the need for minarchist elements as well.

Until recently, then, I have seen this compromise between anarchism and minarchism as a matter of combining anarchist "elements" with minarchist "elements" together in a single constitution. This was the motivation behind my Virtual-Canton Constitution (see my "Imagineering Freedom: A Constitution of Liberty" series, in *Formulations* I. 4, II. 2, II. 3, and II. 4), which combines a centralized, territorially-based, balance-of-powers national government (the free nation's foreign-policy interface) with competing, non-geographical "local" associations (the virtual cantons).

I still defend the merits of my virtual-canton system. But now I also see a different, perhaps complementary, way in which minarchist and anarchist aspirations might be harmonized. Minarchists want some place in which to try out their minarchist ideas; anarchists want some place in which to try out their anarchist ideas. Why not divide the free nation in two, turning one half over to the minarchists, and the other half over to the anarchists?

My first thought was to slice the free nation's territory right down the middle, as in Figure A. But that would leave the anarchist section exposed to the outside world, which as we've seen is extremely risky, at least in the free nation's early years when it is still struggling for international recognition. My suggestion, then, is to

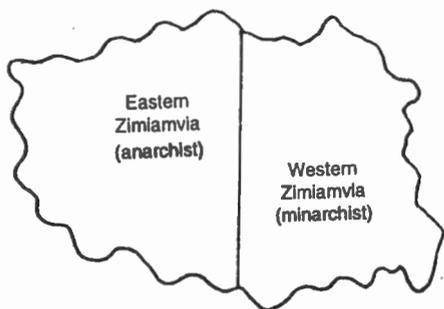


Figure A

place the anarchist region entirely within the territory of the minarchist region, thus forming a kind of political doughnut, as in Figure B — a free nation suitable for dunking, as it were.

Under the constitution of Outer Zimiamvia, Inner Zimiamvia would be regarded as an independent anarchy, not under Outer Zimiamvia's jurisdiction. But to the outside world, Inner Zimiamvia would simply be an internal province of Outer Zimiamvia, and so not a stateless region begging to be invaded. An analogous situation might be that of the internal republics within the borders of South Africa, which are regarded as part of South Africa's territory by everyone except South Africa itself. Placement within Outer Zimiamvia's borders would allow Inner Zimiamvia to free-ride on the national defense provided by Outer Zimiamvia, thus freeing the fledgling anarchy from the burden of having to solve the national-defense problem instantaneously, before market alternatives to government have had time to evolve.

Thus the doughnut model, like the virtual-canton model, allows the free nation to turn a governmental face to other nations. In addition, however, the doughnut model does a better job than the virtual-canton model of satisfying both the minarchist and the anarchist camps. The virtual-canton system might well be too anarchistic to satisfy all the minarchists, yet not anarchistic enough to satisfy all the anarchists; the doughnut model, by contrast, gives both the minarchists and the anarchists everything they want. Better still, those who fear that one of the systems might be unstable will be cheered by the proximity of the other system that they trust more, a system that could in principle intervene in an emergency to prevent the deterioration of its sister system.

With minarchy and anarchy side by side,

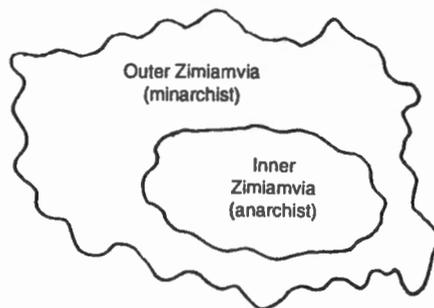


Figure B

each could serve as a safeguard against any un-libertarian tendencies the other might be feared to have.

The doughnut model is not necessarily an alternative to my earlier virtual-canton model, of course. Outer Zimiamvia might very well have a constitution closely similar to the one I proposed; indeed, that is what I would advocate. But if minarchists prove uncomfortable with some of the more anarchistic provisions of my Virtual-Canton Constitution — like my prohibition on a monopoly in the enforcement of rights — they can eliminate those provisions and still keep the anarchists happy, so long as Inner Zimiamvia remains off-limits.

But the doughnut model offers yet another benefit; and this is where I return to my original point about persuasion. One reason minarchists and anarchists can't convince each other is that we don't believe each other's theories. Anarchists fear that a minarchist state would eventually develop into Leviathan; minarchists fear that an anarcho-capitalist regime would degenerate into gang warfare between private associations until the

wealthiest and toughest won out. Neither minarchism nor anarcho-capitalism has ever been tested, as a whole, in the real world (although various aspects of minarchism and various aspects of anarcho-capitalism have been tried out at various points in history). The doughnut model offers the best prospect for collecting the sort of empirical evidence that could resolve this dispute.

For all these reasons, then, I think there is a strong case for designing our free nation (once we get one) along the lines of the doughnut model, allowing free-market anarchism to take its first infant steps within the sheltering circle of the minimal state.  $\Delta$

#### Notes

<sup>1</sup> This dialectic goes on all the time. For years the statists held up the Wild West as evidence that the absence of gun control leads to social chaos. Now that historical research has established that the American frontier was in fact relatively peaceful, and that the violent land of shootouts and lynchings is an invention of Hollywood, some statists are beginning to take a new line, saying that if the West was peaceful it's because they did have gun control after all — citing Wyatt Earp's disarmament campaign (and making no attempt to compare violence statistics for the regions that had gun control with the many regions that relied for crime control entirely on the armed citizen, as well as ignoring the evidence that the historical Earp, unlike his many cinematic incarnations, was a murderous thug arguably more dangerous than the criminals he was supposed to be protecting people from).

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#### Life Without Lice (from p. 4)

caught in that tangle. Join us libertarians who, hindered only by our own doubt and disorganization, are moving directly toward our goal.

By supporting the free nation movement you hedge your bets. You increase the likelihood that the future will hold, somewhere on earth, a free-nation home for you.  $\Delta$

#### Notes

<sup>1</sup> Many of the ideas in this article were expressed in "Toward a Free Nation," the eight-page booklet which I used in early 1993 as a prospectus in seeking collaborators to form the Free Nation Foundation.

*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.*

# Politics versus Proprietorship:

Remarks Prefatory to Discussion of the *Orbis* Constitution for Proprietary Communities

by Spencer Heath MacCallum

This paper was presented at our 20 April 1996 Forum

I sense that many of you here today are, like myself, libertarians only in a very limited sense. Important as it is to see an end to the state with its tragic effects on the human body, spirit and society, that's but a small part of the whole picture. The far greater part of the picture has to do not with freedom from but with freedom to. We're interested, and rightly and necessarily so, in freedom from the predation of dangerous animals — including the most dangerous of all, the bipedal ones. But much more than that we're interested in the freedom of individuals to become creative artists in the cosmos.

That's a new kind of freedom. From the beginning of life on this planet, through all our animal past, we've had to be concerned with freedom from the threats of environment. But beyond that — which is a need shared by all life forms — humans have the option of a new kind of freedom that animals know nothing about. That's the freedom to create — first by understanding the rationale (the numbers, or ratios) of the universe in which we live, and then acting in accord with that rationale to remake the universe in our own image — our own imaging or imagination — of what we would like it to be.

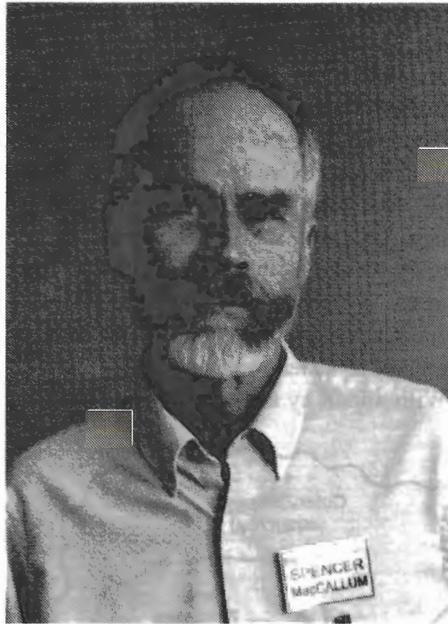
But we can't do this as isolated individuals, only in cooperation. The progress of scientific knowledge depends on there being a community of researchers. Any significant application of that knowledge then requires a developed market economy with full specialization of services. In other words, it is society that confers on the individual all of the possibility of creative freedom that he or she enjoys.

## Uniqueness of Human Society

Despite all blessings, society remains mysterious to us. We have as yet developed no science for understanding it as we have our natural world, and that is our greatest need. Clearly society is spontane-

ous, has its own logic. It arises out of and is the result of, but not the reason for, human actions.

Society is evolving. It's immature still; we don't have very much of it. But we have enough to know the nature of it, that it arises



Spencer MacCallum

out of people voluntarily exchanging services with one another. Such exchange is not automatic but requires a social technology — in this case a uniquely human technology because it is conceptual. It consists first in people entering into a tacit covenant whereby they entertain an abstraction, namely, an exclusive authority over the disposition of the scarce resources of life. Then they divide that up among themselves and observe it. This practice of ownership of property is not a creature of positive law; it never needs to be legislated into existence. The proclivity to create systems of ownership is as instinctual in humankind as the proclivity to create language, art and music. It not only enables people to consume the bounties of nature without fighting over them; it does that, yes, but it does much more than that. It enables people to use the resources of nature peaceably to serve one another — and in ways that are valued and induce a recompense. This is the beginning of society.

By serving one another, men avail themselves of the magic of specialization which leads to extraordinary wealth and technology as opposed to what any single person could create doing for himself alone. Note that this depends on the practice of owner-

ship and property. The term "property," operationally defined, is simply anything that can be the subject matter of contract — which in turn is a drawing together (Latin *con-trahere*), a meeting of minds about serving one another. The word "property" in our language comes about because the Latin word for "self" is *proprius*; so that property is whatever pertains to the self — to that individual and to no one else. He is granted an immunity by social convention. This immunity — which is ownership — frees him to use his property for himself alone or, far more productively and significantly, for himself and for others.

In the beginning, this social technology of the proprietary administration of one's life and resources was limited to family and clan groupings, people who knew one another. It operated almost entirely through the idiom of kinship and the gift. For millions of years this was all that mankind knew. But evolution proceeds by plateaus punctuated by quantum movements, treads and risers, as it were, and in the last 300 years there is every reason to believe we've been experiencing one of those risers or quantum leaps to a new level of societal integration. Sir Henry Sumner Maine is famous for his saying that "the movement of the progressive societies ... has been a movement from status to contract." The new social glue, if you will, is no longer kinship status, but free contract made possible — among many other things — by the development of pricing and market accountancy. The advent of numerical accountancy has made possible the extension of contractual networks worldwide, independent of any shared personal attributes such as acquaintance, kinship, culture, religion, gender.

## Its Evolution Still Incomplete

This upsurge of proprietary administration in the last 300 years has progressed to the point where all of our needs which we can enjoy separately and apart from one another, such as food, clothing, shelter, can be and usually are routinely and abundantly met through impersonal business relations in the market. So complete has been this transformation that virtually nothing our great grandparents routinely did would be recognizable by them in today's world. Everything they knew and did has been revolutionized — with one great exception. That exception is how we

conduct our community life.

Proprietary administration is only just beginning, in small and tentative ways, to move into the sphere of community affairs, the sphere of all those things we must enjoy in common, such as safety in a geographic area, streets, parks and public rights of way. Community administration is still carried on in the manner of the Assyrians and Romans, by taxation and regulation, which is ex-proprietorship. This is exactly the contrary of the social, or covenantal, relationship.

The covenantal relationship was the primordial principle upon which tribal communities were long established until the appearance of the state in recent prehistoric times. For reasons of population crowding some six millennia ago, proprietorship — the basic social, or covenantal, principle of organization — lost its ability to adequately structure society in kinship terms. The resulting era of instability and social confusion has been like a stage on which has passed in seemingly endless review all the glorious pageantry, comedy and in all cases indescribably tragic suffering under successive political states.

But this evidently has been merely a transitional period with all the attendant instabilities that characteristically accompany any transition. For the proprietary (covenantal) principle is now recovering dramatically. It has reasserted itself in new ways appropriate to urban densities of population, making possible the industrial "revolution" of the last 300 years. It would seem unlikely in the extreme that this dramatic resurgence of healthy social organization would stop short of revolutionizing the conduct of our public community affairs as it now has all of our private affairs.

### Entrepreneurial Communities

If entrepreneurship is destined to grow into and take over the public sector as it has the private, converting government into legitimate business enterprise, what form will it take? What will be its rationale, its business plan?

A hypothesis advanced by Spencer Heath 60 years ago and derived from the "Philosophy of Freedom" of Henry George, has many attractive features. Henry George believed intuitively that ground rent somehow was nature's provision for financing public services. He proposed removing all taxation across the board except for land

owners and financing government from a "single tax" on land value. He wrote eloquently on freedom and free trade — in everything but land. To George, the landlord was anathema — a parasite. Heath — who opposed taxation in principle, of whatever kind — thought through the consequences of George's proposal and concluded that completely untaxing land use would so liberate the economy that land would come into great demand and its values rise so far that land owners could pay all the costs of government services with a substantial profit left over. So instead of resisting George's program, land owners should be the very ones to put it into effect by themselves voluntarily assuming the whole expense of government. Then none would be taxed and we would live in a voluntary society.

That sounds too good to be true, but Heath supported his case with some powerful theoretical argument. He theorized that the value of the land, or site, component of real estate apart from all improvements was essentially the value of public services (less dis-services!) extended to it by government — streets, fire and police protection, etc. It is these services that make land usable. Unserved and unprotected land, he said, has little or no market value — any that it might have being entirely speculative on the chance of future services being extended to it. By this argument land owners, in their role of distributing the use of land by sale or lease, are actually serving as the merchandisers of public services. That is the functional role of land ownership. Rather than the politicians controlling access to land and resources, it is land owners who make sites and thereby the community services available on market terms.

Seen in this light, it would seem that land owners have sadly neglected their business. In fact, lacking all supervision, our elected political officials — our supposed "public servants," are running the business into the ground. It would behoove land owners, Heath said, to organize in order to take responsibility for their business and do two things: (1) Protect their tenants and their businesses from taxation and all other political depredations of every kind — since rents or proceeds of sale come out of production and only in a prosperous community can there be a high demand for land — and (2) Monitor the quality, honesty and efficacy of services provided by government. The cost of this last would be, for land

owners, in the nature of an ordinary business investment. Their business would be protecting and serving the public — the productive users of land — in ever new and better ways and thereby systematically building land values.

Adam Smith remarked in *The Wealth of Nations* on this unique relation of land owners to the general community (New York: Collier 1901, page 369):

"The interest of (land owners) is strictly and inseparably connected with the general interests of the society. Whatever either promotes or obstructs the one, necessarily promotes or obstructs the other. When the public deliberates concerning any regulation of commerce or police, the proprietors of land never can mislead it, with a view to promote the interest of their own particular order; at least, if they have any tolerable knowledge of that interest."

In a sense all of this stands Henry George's "single-tax" proposal on its head. But in reality, Heath saw this as the realistic completion of Henry George's *Philosophy of Freedom*. He credits George's insight regarding the relation of ground rent to public services for making this understanding possible and even cites evidence in George's last, uncompleted work that his thinking may have been moving in this direction. Next year will be the centennial of George's death, and I'm looking for a publisher to bring out a book from Heath's unpublished writings on this subject. The projected title: *RECONCILIATION OF PROPERTY IN LAND With the Philosophy of Freedom of Henry George*.

### The Basic Community Pattern

This much Spencer Heath saw and published in 1936 in a monograph entitled, *Politics versus Proprietorship* — a title I borrowed for these remarks today. Subsequently he found this basic social pattern — this functional relationship between land ownership and community services — in a primitive form had obtained in many parts of the world in the institutions of manorialism (sometimes called "free feudalism") wherever these had not become corrupted into serfdom and warring petty states. Lords of the manor provided protection, courts, upkeep of the commons and other public services which in turn were

financed out of customary rents. Heath also saw this pattern operating today in hotels, which are specialized communities entrepreneurially operated. After World War II, hotels were joined by a whole spate of new forms of "proprietary communities" ("multiple-tenant income properties," as they are called in the industry) — shopping centers, mobile-home parks, marinas, medical clinics, apartment complexes, research centers and combinations of all of these — each providing a high level of public services within their area of proprietary jurisdiction.

Finally, through my own studies in anthropology, it has become clear that virtually the whole of man's communal life at the tribal level before the formation of political states followed the proprietary-community pattern, although carried out within the forms and terms of kinship organization. The pattern was that of a clearly defined land-allocative function and other public services some of which were ceremonial in nature, reciprocated by customary gifts. These were covenantal communities, consistent throughout, no one exercising authority over the person or property of another. There might well be differences in amount of authority and prestige, but the authority exercised by one member did not differ in kind from that exercised by anyone else in the community. This contrasts with the situation in the United States, say, or any other political state, where the authority of official persons differs markedly in kind from that exercised by private persons.

Thus it begins to appear that the proprietary-community pattern might be considered the original, somehow authentic societal pattern which became derailed at some point in the past. How and why that derailing happened is an interesting study which I won't go into here, but a good deal is understood about it in principle. Once the first states — called in the literature "pristine states" — appeared, they rapidly escalated the process of destruction of tribal societies worldwide.

To summarize, the way this hypothesis concerning the evolution of human society is shaping up, is that the transitional period from the early stable level — evolutionary plateau, if you will — of kinship to the presumed next stable level of contract in the market was precipitated under stressful ecological conditions that led to the

breakdown of kinship as an effective means of organizing and sorting roles. The political state did not cause that breakdown but arose as a consequence of it. The state can best be understood as a social aberration, a cancerous pathology resulting from a deficiency disease — a deficiency of effective social organization. Once established, it metastasized, infecting communities globally that had not been subject to critical demographic pressures and might otherwise have continued indefinitely in the primordial proprietary pattern. This hypothesis is described in my little book, *The Art of Community*, published by the Institute for Humane Studies in 1970.

Where are we going from here? Or perhaps I should say, to keep to the metaphor, what is the prognosis? As my grandfather was fond of saying in a homely aphorism, "health is more catching than disease." If this were not indeed the case, none of us would be here today. So it may be that society is even now recovering from its illness of the last half-dozen millennia, reasserting its healthful pattern in ways appropriate not to a tribal village but to contemporary conditions.

### **Possible Objections to Entrepreneurial Communities**

Rich Hammer raised a point of concern in a letter to me a few weeks ago. What if the management of a proprietary community becomes lazy or corrupt and begins to prey upon the community members instead of serving them? The plain answer is that that might happen — occasionally. If we were to look through the records of the hundreds of thousands of proprietary communities extant today — there are more than 40,000 shopping centers in the United States alone — we could probably find some horror stories. I made a study years ago of dispute situations that arise in shopping centers and mobile-home parks and how they are handled, and collected some entertaining case histories (*Human Organization*, Vol. 30, No. 1, Spring 1971), but none that I found were of the sort that concerned Rich. The fact is that businessmen for the most part look out for their customers; that's why they're in business. If they get lax, there is always the possibility that someone else will buy the business and restore its profitability. By contrast, we don't have to wonder a great deal about political communities; we know all too well what to expect

there! So let's not look for perfection; we'll only be disappointed. What counts is the characteristic behavior we can expect to find in business enterprise, which is premised on service, as contrasted with piratical or other enterprises that are predatory in their essential nature.

A carefully drawn lease, of course, such as we are discussing today, is also relevant to Rich's concern. But perhaps much of this discussion is premature; generalized proprietary communities probably won't come overnight. As with shopping centers, there will be plenty of experimentation, plenty of backing and filling — plenty of opportunity to decide if this is the kind of critter we want to support with our consumer dollars.

Rich was not the first to be concerned about something so radically new. In the minds of some, the very notion of proprietary communities raises the spectre of feudalism. Although Rich didn't bring it up, the stereotype of feudalism is so deeply embedded in our culture that his question deserves some further consideration along those lines. It needs looking at from a historical perspective.

A teacher of mine at the University of Chicago, Sol Tax, did fieldwork in the highlands of Guatemala and later wrote a book called *Penny Capitalism* in which he described a system of Indian markets that appeared to be purely laissez-faire in the best tradition of Adam Smith — and to have been that way since before the Spanish conquest. The question he asked was: if they have such freedom, why isn't everybody rich? The answer he suggested was that significant wealth creation takes much more than just freedom from constraints. It requires the complex institutional development of a market society. The economic units in the society he studied was the family rather than the firm. Firms are impersonal, have narrow, well-defined goals and can recruit members on the basis of ability and experience. Families, on the other hand, have a complex agenda in which recreation, for example, may rank high. They can't hire and fire at will but must accommodate Aunt Susie and Cousin John. Now, manorial arrangements were of that kind. They were entirely family ventures and might look very unbusinesslike from today's perspective. Because the modern proprietary community operates in an al-

(continued on page 16)

## From the FNF Library

### **The Art of Community**

by Spencer H. MacCallum

Institute for Humane Studies, 1970  
105 pages

reviewed by Sean Haugh

*The Art of Community* is my favorite kind of non-fiction. Such a book takes some mundane thing or custom and examines its history and current place in our society. From this study, the author can take off in any number of directions to shed light on a broader aspect of our culture.

In this particular case, Spencer MacCallum begins with the evolution of the modern hotel, and leads us to a deeper understanding of the meaning and usefulness of private space. Quite simply, this is the original manifesto of proprietary community as the basis for a free nation.

Picking up where his grandfather, philosopher Spencer Heath, left off at the end of his 1957 work *Citadel, Market and Altar*, MacCallum uses practical examples such as hotels, restaurants, trailer parks, shopping centers and industrial parks to illustrate a variety of methods available to property owners for creating and managing larger communities. Beyond centralized single ownership, MacCallum shows how individual property owners can pool their resource to create similar effects of privately administered spaces. Condominiums and planned subdivisions are good examples of how the latter form of pooled ownership associations is beginning to materialize.

The interesting thing is that all the kinds of community in which MacCallum sees the seeds of contract-based politics have arisen only in the last century. (He might object to my use of the word "politics" here, as he sees the new community as being beyond politics.) As we develop the theory of private space, we are often only a step ahead of real life trends. He draws our attention to the solid experience that refines and furthers our ideas. While reading the book, it sometimes seems that market forces will do our job for us, with or without our help.

Drawing on his background as an anthropologist, MacCallum devises an interesting theory of the state. Primitive

tribes began as a form of proprietary community, with the tribal chief acting in the capacity of what we would now call the owner. As tribes grew, settling down and beginning trade with other tribes, conflict arose between them. The state, and along



Sean Haugh

with it the principle of sovereignty, originated for purposes of warfare and protection.

While most anthropologists would see the state as an evolution of human society, MacCallum instead views it as an aberration. "Force is not an organizing principle in its own right, but a natural and primitive expedient in crisis." (p.85) With the emergence of modern forms of proprietary community, MacCallum sees human society resolving this digression of the state, returning to our natural path of political and economic evolution.

Why has this colossal error, this wrong turn in human evolution, taken hold and triumphed to this day? MacCallum would say it is because we lacked the tools to maintain a properly functioning community. We needed to develop high tech social skills. In the beginning, community was based solely on kinship. Even with adoption and intermarriage, as societies became more mobile over wider areas, kinship alone could not assure stability of land-use management, nor of economic productivity. The manorial system that became feudalism was also an expression of these principles, except that the people lacked the freedom necessary to voluntarily make contracts,

which is essential to a properly functioning proprietary community.

But today, we see all manner of proprietary communities springing up like mushrooms. The refinement and advanced flexibility of free contract has certainly been the major contributor. We also see new forms of community arising, corporations predominant among them. On many levels in our culture, people are redefining and realigning themselves. Community can now be based on anything and can have a broad range of functions. And given the advantages of coordinated land-use planning, these new communities can be highly profitable.

MacCallum never departs from his focus on the value of land. Our political history is seen in terms of trends in real estate. According to this thesis, the naturally concerned stewardship by a property owner (or owners) in the context of a totally free market will result in the most appropriate use of the land. From proper land-use planning flows community organization, harmony with the environment, economic prosperity, and most importantly, a clear path to our best possible human destiny.

*The Art of Community* is essential reading for those of us in the Free Nation Foundation. As we continue to refine our concepts of private and public space, this book is a basic source of ideas that we will turn to again and again. I thank Spencer MacCallum for giving us this excellent book, and also for continuing to develop his ideas within FNF. ▲

Sean Haugh 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.

**Libertarians:**

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START  
BUILDING**

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# Security of Information in a Free Nation

by Richard O. Hammer

Thanks to a tip from one of our readers, I read a thriller, *Dark Rivers of the Heart*, by Dean Koontz.<sup>1</sup> It has libertarian themes, casting big government in the role of villain. So I considered writing a review of it for *Formulations*. But the book does not help us with the FNF work plan, to build a beacon to noncoercive society.

I noticed that Koontz's plot relied upon the ability of the main characters, hackers par excellence, to sneak into supposedly-secure computer databanks and find what they wanted to know about their adversaries. While such theft of data may happen routinely in a government-diseased society such as America, I believe that in a free nation personal data would be more secure.

So in this column I will mix purposes. First I will tell you a little more about the book. Then I will tell why I think invasions of privacy, such as occurred in this book, will not happen in a free nation.

## *Dark Rivers of the Heart*

From start to finish the two protagonists run for their lives. In moments of calm they: 1) dare to show each other their scars from a past in which their mothers, among others, were murdered; 2) fall in love. A dog, also with a scarred past, tags along the whole way, and warms otherwise-too-chilling passages.

Among the evil forces in the book, we have: 1) a secret agency in the U.S. government which covers its murders with lies; 2) secretive serial killers who yearn most to share, with someone who will understand, the rewards they get from killing.

Both sides in this plot connect their portable computers, through phone lines or satellites, to mainframe computers. From that platform they connect through networks to: 1) government databases including those of police, DMV (Department of Motor Vehicles), military, and registrars of deeds; 2) "private"<sup>2</sup> databases including those of banks, utilities (telephone, electric), credit card companies, and catalog-sales companies.

I enjoyed the book. But Koontz was too kind to big government. We can blame

government not only for murders in the plot, but also for lack of privacy in cyberspace, as Koontz portrayed it.

## Private Policing of Data Works Better

Join me in noticing something crucial about the databases, both government and "private", which the characters in Koontz's plot regularly violated. Notice that government has seized, for the most part, the power and the will to punish invasion of these databases. Suppose an administrator of one of these databases notices an intrusion, and knows that a theft is taking place. What can that administrator do? Dial 911?

The administrator of a database receives, I assume, almost no support from government in fighting intrusions. If an administrator reports an intrusion to a government prosecutor, the prosecutor will probably ignore the report, because the prosecutor has other priorities. Alternatively, the administrator could try to get justice through civil law. But that is expensive and promises little chance of achieving restitution.

So, it seems that hackers can try, almost with impunity, to invade computer databases. In America, as portrayed by Koontz, they need not fear that some force will punish their theft. Law in America has been stolen by government, and we have no reason to expect that government will run law any better than it runs anything else.<sup>3</sup>

An administrator of a given database can, of course, invest in improving security with better systems of password protection and identification of users. But locks can be expensive, can fail, and motivation to use locks properly can be lacking. The task of protecting databases from invasion would be easier if locks were supplemented with an environment of law which promised to punish invaders.

In other ways government aggravates the problem of insufficient privacy in computer databases.

- 1) If a person in America wants some service, such as driver's license, telephone, or electricity, usually there is no choice: you must buy that service from a government-run or government-regulated monopoly. Having no competition, these monopolies have no incentive to offer improvements in service. One improvement which they might offer to attract new customers would be greater privacy.

- 2) In many cases government in America dictates what information must be collected regarding certain individuals. This applies for instance to DMV records.

- 3) In other cases involving "fair credit" laws, I expect government tells companies what data they may — and may not — request from applicants.

Thus government creates an environment in which we can predict certain behavior on the part of administrators of databases. After government has issued all these commands about the content of databases, and has taken control of the only real means to punish thieves of data, what can we expect these administrators to do? I would say that we can expect these people to make a show of caring about security, but we cannot expect them to protect the data with any vigor.

And the problem feeds upon itself. Some data in America is so insecure that it could be obtained from many sources. This frees particular sources from responsibility, as each source can claim that the data might have been stolen elsewhere.

For a contrast to the poorly-policed databases in Koontz's novel, let us look at some other examples. These are under private control, and are better policed.

- 1) In my office I have a drawer of files with information about all the jobs I did for customers while I ran a residential remodeling and building business. While there seems to be nothing crucial about this data, still I feel some responsibility: I should not allow unpoliced access to data such as the paint color of people's bedrooms, or the bids submitted by subcontractors. To my knowledge there has never been an unwarranted intrusion into these files. And if I did suspect such an intrusion, I would be troubled, and would increase my effort at policing till I felt confident that the leak had been stopped.
- 2) Consider your own personal business. Do you have files, perhaps in a computer, which you would rather keep private? If so, do you have reason to believe that someone snoops around in your files and steals your secrets? I

am betting that you guard your secrets, with about as much energy as you feel necessary to keep them secure.

These examples, of private protection of private data, illustrate the norm that I believe would emerge regarding protection of data in a free nation.

### Information Flow in a Free Nation

Information in a free nation will be exchanged when both parties win. Thus exchange follows the same rule as other voluntary exchange: no party may be compelled. Parties, of course, may be enticed to give information in exchange for some benefits of trade.

People who want privacy will find, I expect, vendors who advertise privacy as one attribute of their product offering. I expect an array of privacy products.

One of these products, I expect, will be something like bonding. Let me point out that vendors who collect personal data about their customers do this, not so much because they are naturally snoopy, but because they want to be sure they are not going to be cheated in this business deal; personal data offers them some security. So we can see the business opportunities. On the one hand we see the needs of vendors: to be sure that they will be paid; and to be sure that customers will not violate other trust (such as to return a rented car). On the other hand we see the needs of customers: for privacy and anonymity. In the middle we see opportunities for entrepreneurs: create bonding or contractual arrangements which satisfy the needs at both hands.

Let us end with a brief, and encouraging, look at history. The total wealth possessed by humans has increased dramatically. In the continual struggle between property owners and would-be thieves, property owners seem to be holding their own and winning. People who want wealth for themselves discover, for the most part, that their best chance to attain wealth lies — not in trying to break through someone else's lock — but in working through accepted channels which create new wealth.

In a free nation I expect possessions will abound. Among these will be privacy, with, as always, the caveat that trading partners may not be cheated or injured. Δ

### Notes

<sup>1</sup> Published in 1994 by Alfred A. Knopf.

<sup>2</sup> I put quotation marks around some uses of "private" because, in these cases, the privacy (as I use the term) is more nominal than real. I contend that a person owns something only if that person has power to choose how to use that thing. To the extent that government has taken power to make choices, then those choices, and the things controlled by those choices, are no longer private but become what I call *public space*.

<sup>3</sup> See *The Enterprise of Law: Justice Without the State*, by Bruce Benson, 1990.

### Business Forum (from p. 1)

2) If the state does not give special legal status to corporations, what sorts of business organizations will form? With no



legislated boundary between insiders and outsiders, what relationships will evolve between insiders and outsiders?

3) If the state does not intervene (through legislation) to protect stockholders from liability for failings of corporations, will it be possible to assemble the capital necessary for large business ventures? How will investors satisfy their need for protection from liability?

4) With no state meddling in decisions to extend credit, what institutions will emerge to satisfy customers' need for financial privacy, while at the same time satisfying vendors' need to collect debts?

5) With the insurance industry deregulated,

and with the state no longer setting itself up as everybody's protector of last resort, what new offerings can we expect from the insurance industry? What needs will we satisfy through voluntary institutions for sharing risk? Δ

### FNF News Notes (from p. 1)

ment speakers, and gave membership and subscription information in addition to data about the Forum. If you missed the ad look on page 63 of the May '96 issue. Subscribers in this area received that issue of *Reason* during the first few days of April.

• On the Friday evening before our recent Forum, a small group met and so

cialized at the home of Richard Hammer (which also happens to be the World Headquarters for FNF). Our out-of-town speakers, Mary Ruwart and Spencer MacCallum, attended, along with about eight others. Invited were: Directors, Members, and Friends of FNF, along with significant others.

• On 13 March 1996 the Board of Directors held a regular meeting (to which Members were invited) at Oliver's Restaurant. The Annual Report for 1995, which had been previously mailed to Members, was reviewed by Richard Hammer, who doubles as FNF treasurer and president. Among other things this

(continued on page 22)

# Constitutions Are A Beginning

by Jim Davidson

for the New Country Foundation

In "Constitutions: When They Protect and When They Do Not" (*Formulations*, Vol. III, No. 2 (Winter 1995-96)), Randy Dumse argues against the protections offered by constitutions. Unfortunately, he leaves it to others to offer something to go beyond them to better protect liberty.

As the principal author of *The Atlantis Papers*, I object to his characterization of my work as self-contradictory. Of course my book points out that the United States Constitution is not the law of the land, and that the Bill of Rights is daily violated. That does not mean that the United States Constitution is useless, only that its enforcement is vital. When those who take the oath to uphold and defend the Constitution do not carry out that oath, indeed when many who take that oath have never even read the document, then it ceases to have effect.

## Time and Tide

Henry David Thoreau noted in *Civil Disobedience* (1848) that the United States government was excellent, but daily losing some of its integrity. It was reputed to be powerful, but so weak that one man could bend it to his will. Over the last 150 years, many men have bent the United States to their will many times. Names of some of the most egregious violators of the Constitution include Lincoln, Roosevelt, Wilson, Hoover, Roosevelt, Johnson, Nixon, Ford, Carter, Reagan, Bush, Clinton....

Today, the United States Constitution is not the Supreme Law of the Land. Instead, we live in a nation of men, not of laws. We live in fear of the man with the badge and gun who may at a whim, for cause or by chance, kick in the door and gun down the occupants. We live in fear of the traffic stop which can lead to endless searches, identity checks, even beating or murder. We live in fear of the tax investigator who can empty our bank accounts, seize our papers, close our business, foreclose our property, and imprison even those who can afford lengthy court battles. We live in fear of the man who would accuse our property in civil court of being used in a drug-

related crime.

## A Different Past

Randy quotes the *Declaration of Independence of These United States* in pointing out that to defend rights governments are instituted among men, deriving their just powers from the consent of the governed. A rather significant work of liberty-oriented fiction, *The Probability Broach* by L. Neil Smith considers what might have resulted had there been just one word added to that famous clause. Had Jefferson written, "...deriving their just powers from the unanimous consent of the governed," we might now live in a very different world, one in which far fewer laws would have been created or tolerated.

Today, a nearly universal response to every situation is "there ought to be a law." The enthusiasm for this approach can be illustrated by the recent case of a family dispute which has caused a teenager who prefers to live with her mother to emigrate to New Zealand to avoid complying with a court ordered custody decision. The sympathy for her situation, which has been portrayed in the media as one individual's fight to avoid living with an abusive parent, has led one Congressman to propose a bill of attainder. This bill would make it a law of the United States to specify the custody of this child by her mother, a law which would, incidentally, violate the Constitutional provision against bills of attainder, laws that single out individuals for special legal action.

Noting that power corrupts, history scholar David N. Mayer (author of *The Constitutional Thought of Thomas Jefferson*) points out that vesting power in the hands of the majority does not protect against violations of individual liberties. Just because access to power in the hands of the people is harder does not mean that it is any less corrupting.

## Natural Rights versus Property

Randy (and I avoid the journalistic approach of using his last name because Randy is a valued friend and has been an excellent customer) also reiterates arguments against natural rights. Certainly there are many fallacies in the natural rights arguments that held sway in the time of Jefferson and Madison. Equally, however, there are principles which are derived from the theory of natural rights which are greatly valued by

the friends of liberty.

If natural rights theory lacks robust character, is there a philosophy which might underpin a better approach to government? For many years now, I have been enthusiastic about what I term the "propertarian" approach.

Begin at the beginning. You are born. What do you have? You have a body. Is it yours? What else could it mean to have a body? Who else has control of its nerves, its muscles, its bladder? Okay, for a while no one controls the bladder, but that comes with time.

Do you own your body? My response is, of course. If you don't own your body, then someone else owns your body, in which case you are a slave. There are innumerable economic and philosophical arguments against slavery. As a practical matter, all slavery requires the cooperation of the slave. An uncooperative slave may quickly become a dead person, but then the issue of ownership is determined. The slave that won't cooperate is demonstrating that the ownership of his body is his own.

If you grant the ownership of the body to the self, if you agree that you own your own body, then much can be agreed. If you own your body, you have the capacity to own things. Your body is a thing, indeed it is many things. If you are able to own one thing, you are able to own other things. You have the capacity to acquire property, having been born with that capability. Is it "a natural right"? Dunno. I would prefer the term "an inherent capacity."

Just as your ownership of your body conveys complete freedom in choosing how to clothe it, dress its hair, pierce its ears, move its parts, use its voice, end its life, or do none of these things to it, your ownership of other property has similar implications. To own property, you must be in control of it, to the same extent that you control your body. You must be able to move it, shape it, change it, destroy it, or do none of these things as you choose. If your property is not yours to do with as you please, it is not exclusively your property.

If you do not convey part ownership of your property to another person or group, but they exert control through force, extortion, or fraud, they are stealing your property, just as they would be enslaving you if they exerted control over your body. Therefore, no government on Earth has a legitimate right to tax property or income.

But what if you yielded some control of your property? Why might you do that? Jefferson said that to secure liberties, governments are instituted among men. Traditionally, the associated philosophy suggested that a Social Contract yielded certain rights of the individual to the group. In return, the balance of the rights of the individual were protected. Among the rights traditionally yielded was the right to do violence or exact retribution.

### **The Visual Basic Approach to Individualism**

From a proprietarian perspective, there are no rights. There is only ownership of property such as your self, your land, your car, your guns, your computer, your books. Either you own these in whole or in part. You might, for instance, have agreed with a bank to share ownership of your car. You provide payments to the bank and the bank conveys ownership after a fixed term.

If you own a gun and bullets to match, you have the capacity to fire those bullets at any target. You may forebear your use of your gun against certain targets, or you may contractually obligate yourself to such forbearance, but you always have the capacity. Do you have the right to use the gun? If you own that right, where do you keep it at night? How do you safeguard your rights while you are asleep? They don't store well in your absence. So rather than owning the right to use the gun, you simply own the gun and the bullets and the body which combine into deadly force when you choose.

The capacities you have might be likened to the properties of objects in Visual Basic or other object oriented programming languages. These capacities or characteristics are identifiable, measurable, real in every sense. Rights, in contrast, are a philosophical construct, as ephemeral in practice as they are in attempts to measure them.

### **Contracts**

I don't wish to defend the flimsy concept of the Social Contract, especially as I seem to be expected to live by the terms of one without ever having been dignified with the opportunity to sign it. However, there is a great deal of value in the concept of a contract. Rather than yielding certain rights by convention, perhaps you should consider yielding certain aspects of your property by contract.

Rather than agreeing with the conventional approach that you should give up the right to kill your neighbor in the interests of not being killed, perhaps you should seek a specific contractual obligation on the part of your neighbor and yourself. Look at your property and decide what parts of it or which uses of it you could live without. Would you be willing to commit yourself to not using your guns except in self-defense or in defense of your property? Would you be willing to exchange that aspect of your ownership for the agreement of your neighbors to avoid the same?

In other words, would you agree to a contract in writing that set forth the extent of your property ownership, the limitations and restrictions thereon, and the specific terms and conditions which might be exceptions or otherwise justify a contract dispute? Notice that contracts have a great history. It is quite likely that they pre-date history, as there are numerous artifacts of accounting which are 25,000 years old and more. Some archaeologists contend that the exchange of items bearing marks counting the number of a herd or other set of items was a means of symbolizing the exchange of the items themselves. In other words, the exchange of accounting artifacts was an early form of contract.

Contract law has a certain elegance which it derives from the process by which it came into existence. Contract law is largely common law with only a few exceptional legislative standards imposed upon it. Thus, it is a body of law that has evolved through use rather than being brought about by design.

Suppose then, that the basis of your government was a contract which stated in explicit terms what aspects of your property you would yield in order to gain protection from the contractual obligation of your associates. That would seem preferable in many ways to the current formless government we have.

### **Contracts versus Constitutions**

Lysander Spooner argued eloquently that the U.S. Constitution is not a contract. Indeed, no government on Earth is contractual in nature. Those born under the flag of a certain government abide by its rules largely out of fear of reprisal. In the case of the United States, only those who choose to be naturalized agree to the terms of the Constitution. Curiously, those who lead as

President may not be naturalized. Although the members of government are sworn to uphold the Constitution, the individual members of the body politic are not.

By requiring each member of our society to agree to contractual obligations for mutual defense, we may be able to provide for the common defense in a better way. By requiring an agreement in writing that certain forms of mediation and jury trial will govern disputes arising from the contract, we may be able to better provide for justice for ourselves and our posterity. By requiring a contract for self-sufficiency, we may at last be able to provide for the general welfare.

### **Contract versus Convention**

A government which rules by convention, by having predated the population, by existing before the current voters were of majority, is a government which may be converted to the rule of men. The U.S. Constitution established adequate guidelines based on sufficient principles as to slow this conversion process to a matter of generations, but the conversion still took place.

Indeed, Jefferson argued that every nineteen years government should be revised in accord with the living generation's views. His attitude was that the Earth belongs to the living, not the dead. If the living generation does not find the current form of government, they should be free to amend it.

A government which exists not by convention but by contract, which is not empowered to do anything but that which is contractually agreed, and which is limited not by the tension among its powerful agencies or some alleged checks and balances, but which is limited by the individual concerns of every signatory, is a government which must remain one of law, in this case of contract law. The kind of sovereign individuals who would sign such a contract are the kind of people with whom I wish to live.

Contracts have another advantage. They can provide for individual amendment. If a contract change requires the approval of other contract holders, that is now possible with modern communications technology. However, provision for a variety of standard exceptions and corresponding fees can be established, making individual ac-

ceptance of the conditions of government more likely.

### Devil in the Details

However, Randy's ultimate point is well taken. The paperwork which precedes the practice of living together may be significant, it may be essential, and it may be written well or poorly. Ultimately, however, the paperwork is only as meaningful as the intentions of those who live by its



words. The strength of a new nation lies as much in who lives there as in how they live.

You live among looters. If you doubt it, look about you. Circumspice. What you see is theft in one form or another everywhere. Property is taken for common use. Property is seized under civil forfeiture laws. Property is condemned for public utilities or infrastructure. Defending ones property is not widely accepted as proper conduct. In a recent case, a man was charged with second degree murder because in defending his home against a thief, he fired twice into the man's chest and seven times into the man's back. By this reasoning, it is okay to shoot a robber, as long as you stop when he runs away. Ridding society of such individuals is not considered a reasonable and proper behavior, but is apparently reserved to the state.

Would you consent to be governed by a contract knowing that many of those signing have the moral character of a jackal? I would not. However, the contract, by itself is a form of filter. Given the choice between living among lions who are governed by convention and lions who are

governed by contract, the average jackal chooses the conventional lions.

The contract can be enhanced as a filtration mechanism with a property requirement. Payment of a contract signing fee of \$10,000 to the governing corporation might enhance the character of the average signatory.

As well, the choice of territory can act to filter for those who are truly dedicated to living in liberty. If a new nation is needed,

However, we are not now in a position to set up a filter to select liberty lovers. We have some candidate territories to evaluate, but none to which to move immediately. Thus, we are not able to live together as befits the sons of liberty.

We are, however, able to consider what the terms might be under which we would consent, in writing, to be governed, and by what manner of entity we would yield our consent. As shareholders in a corporation, as partners in a general partnership, as members of a club, or in some other way, we might find ourselves one day bound by a contract that establishes the terms and conditions of our lifestyle.

Might we not then want to begin by examining the specifics of that contract? As Thoreau said, "Let every man make known what kind of government would command his respect, and that will be one step toward obtaining it."  $\Delta$

### Proprietorship (from p. 10)

together different environment made up of impersonal firms and interlocking, supportive financial and marketing institutions, it would be sad indeed if we attempted to understand it only in terms of the medieval manor or the tribal village.

In closing, it might be relevant to recall what Spencer Heath judged the most significant happening in modern history. He observed that widely throughout the world until the 18th century, as they are in many places today, land ownership and politics were interlocked and inseparable. In England and Europe, however, the revolutions of that century were peculiar in this, that they stripped all political power from the landed nobility without stripping them of their land. This separation of land ownership from politics allowed land to become a market commodity. Divorced from the state, released from entail and other burdensome feudal restrictions, land could be freely bought and sold for the first time.

Private property in land, Heath liked to point out, became a bulwark against the tyranny of the state. For the function of all ownership is that it affords a voluntary, rational, market means of allocating land and its resources. Land is perhaps fundamental to life and livelihood — if only for

*(continued on page 18)*

# Locks in Layers: Security Through Win-Win Connections

by Richard O. Hammer

Locks say loads about the environment in which owners attempt to secure property rights. In this article I observe the size and location of some locks as they occur in America, and speculate on the nature of locks which would come to be used in a free nation.

One time my television was showing a sitcom which was set in an apartment in New York City. I noticed something behind the action — the locks on the door into the apartment. Those were serious locks. Not just your usual doorknob with a key slot, and not supplemented with just one deadbolt. The door had perhaps two deadbolts, and also one of those big side-to-side deals, which spanned the inside of the door with a steel bar anchored at each side.

Fortunately I have never lived anywhere where locks like that seemed necessary, but I believe such locks are common in some city neighborhoods. So what can we learn, if we think about the size and location of locks?

Well, in a sense it is obvious. The resident in the apartment is trying to establish a space within which the resident will have control of what happens. The resident recognizes that in other spaces, such as just beyond that door, the resident has almost no control over what happens. So, striving to maintain a perimeter, the resident installs whatever defenses seem necessary to fend off assaults which may come from the outer zone.

## The Powerlessness Felt in Public Space

The resident of that apartment in New York City probably has many neighbors in the building who have similarly invested in locks. It seems likely that they would all be better off if some institution empowered them to satisfy their need for security by policing the exterior entrances to the building, with locks or with other means. If the hallways in the building were more secure, residents of apartments would not need such an impressive panoply of locks on their individual doors. But probably the typical resident in such a building feels

powerless to influence the policing of the entrances to the building.

This feeling of powerlessness, to achieve a change which seems as though it should be easy, raises a flag in my mind which I call "public space." Even though the hallways in the apartment building may be listed as "private" in the tax assessor's rolls, I expect that government has taken away so many of the landlord's choices that security in the hallways falls almost to the same low level as security on the government-policed street outside the building.

Let me explain why I call the interior hallways of the subject apartment building "public space." Recall this definition of ownership, *ownership is the power to decide how to use the thing owned*, and join me in examining who has power to decide important issues regarding management of the apartment building.

- Who has power to choose the mix of product features (including security measures and rental price) which the landlord offers for sale in the form of a lease? This choice — this aspect of ownership — is regulated. Thus it belongs not to the landlord but to the public.
- Who has power to choose to evict troublesome tenants? Again the landlord has limited power. Power to make this choice has been taken by government.

Government has set itself up as advocate for tenants. It has inserted itself between the tenants and landlord, in what would otherwise be a set of private, win-win, relationships. Typically a tenant or a landlord, who has a problem with the other, cannot resolve the problem by dealing just with the other, but must work through some government bureaucracy. A tenant who hopes to get better policing of the entryways to the building has to get this by influencing government.

Now, in America, government schools have taught us what we should do to try to get what we want from government. We should write letters to elected representatives, write letters to the editor, start a grassroots campaign to influence legislation, or even run for office. But, in America, real life has taught us the smartest way to improve security — get bigger locks. In fact, most of us are powerless to influence the public space.

## A Series of Perimeters

The residents of an apartment building could more efficiently achieve the security they desire if they were protected by two perimeters, and not just one. Effective policing of the exterior entrances would create an interior zone of intermediate security. In this intermediate zone I expect that a spirit of community policing would grow.

In ongoing win-win relationships (in the ideal as I am trying to build the picture) every person has reason to listen to every attempt, from other persons, to communicate, because to shun an attempt to communicate alters the win-win balance in the relationship. A landlord who ignores a call from a tenant about a suspicious-looking stranger ignores this call at a price, because the tenant might balk in some future cooperation sought by the landlord. The landlord, being in business by virtue of serving tenants, will generally welcome, and act upon, calls from tenants. Thus empowered, tenants will, in their own interest, become eyes of an unofficial police force.

Thus the interior, intermediate zone of a truly private building should be policed much more effectively than the interior of a "private" building in which government has, by taking command of many important choices, inserted itself between tenants and landlord. In a truly private building I believe the locks which guard individual apartments would not grow so massive.

If not only the apartment building were private, but also the street on which the building is situated, then I think market forces might induce the owner of the street to erect a gate at the entry point to the street. And this third perimeter, if erected, will relieve some of the pressure on the second and first perimeters. The locks at those interior perimeters can diminish in size.

We see, in this developing picture of layers of locks, that the amount of locking required at any given perimeter increases with the deficiency of the policing in the outer layer. No locks are required at a perimeter where the outer layer seems sufficiently policed. Huge locks are required at a perimeter which stands alone, the only barrier between private space and totally unpoliced public space.

## Public Space Destroys the Fragile Network of Ties in Voluntary, Win-Win Society

Detractors may object that my image of a free nation begins to sound like a totally

locked-up land, with keys, or formal permissions, being required to move anywhere. True, in one sense I believe this could happen, since government would not intervene to stop it from happening. But I do not think so.

This objection reminds me of other objections made about free markets, for instance the objection that greedy employers would, if not restrained by minimum-wage law, lower wages to near zero. But we, who understand how markets work, do not have this worry. We do not advocate low wages, but we understand that it is essential that employers be free to offer lower wages. Similarly, in the picture I am trying to build of security in a free nation, I do not advocate gates at the entrance to every thoroughfare, but I believe it is essential that each property owner, including the owners of thoroughfares, be free to choose to erect gates.

In the free nation I envision, once institutional evolution has settled down a bit, I expect locksmiths will find less work than in America. Since locks get smaller as the outer environment becomes more secure, I think many locks in the free nation will be nominal.

Notice that in America the biggest locks seem to protect private space from public space — but not from other private space. Most owners of private property fear what might come from public space more than they fear what might come from adjoining private properties. With all property private, in the free nation as I envision it, I expect everything to be more secure. I expect fewer locks, not more.

Indeed, a lock, a piece of steel used in attempt to control the behavior of other humans, shows a failure of other means to control the behavior of those people.

As I see the theory of voluntary society, every relationship which lasts rewards both parties to that relationship; these relationships are win-win. Since life itself is, overall, a winning enterprise,<sup>1</sup> and since free individuals will constantly adjust their relationships to maximize their wins and minimize their losses, in voluntary society a network of win-win relationships will surround most people most of the time. By and large, most people will have reason to look out for their neighbors, and their neighbors will have reason to look out for them.

But bring state into this network, and notice what happens. Most acts of government, by their very nature, rely upon coercion (otherwise these acts could, and would, be achieved by voluntary associations).

Thus acts of state override, and cut, the win-

win ties that would otherwise form between individuals. Before each act of state, private individuals with particular needs will find that the best way for them to satisfy their needs will be to approach some other private individual, to seek win-win exchange with that individual.

After each act of state, the individuals with the needs find that private relationships no longer have such meaning. The individuals with needs must seek satisfaction through the state. Or, once again, they can do the smart thing, and buy bigger locks.

### Two Final Illustrations

To illustrate the power of free markets, you may have heard some speakers describe the production of a pencil. The pencil seems simple but its production is complex. Let me build upon that example, and relate the production of a pencil with the production of security.

You do not need to know the cashier in the store where you buy the pencil. You only need to know the appropriate behavior in that relationship: that the cashier and you each enter a voluntary exchange with certain expectations, cash for goods in this case. The cashier does not need to know the sales representative from the pencil factory, who does not need to know the driver of the truck carrying the logs to the mill which cuts the wood of the pencil. Thousands of people who do not know each other, each pursuing their own self interest, work together somehow to provide the pencil which you need.

Regarding security, you may not know your neighbor, or you may not know the owner of the building from whom you rent an apartment. You only need to know the appropriate behavior which sustains your relationship with those parties. Often that behavior includes participation in an informal community watch, warning neighbors of hazards.

If I live in a community, city, and nation, built of such relationships, my security derives only partially from my relations with my immediate trading partners and neighbors. My neighbors have neighbors, in similar relationships. My security derives from thousands of people in an interconnected network. And my security, while affected by my immediate trading partners and neighbors, does not rely solely upon these few immediate connections, any more than my pencil, while sold to me by the cashier, was manufactured solely by the cashier. A vast network of win-win relationships provides the pencil — and the security.

For a final example, comparing voluntary

relations with state-sullied relations, notice a current issue in the management of government schools in America. In a school board race here where I live, someone recently advocated the presence of a police officer in each school, during all operating hours.

Of course no one needs to advocate police presence in private schools. In private schools the relationships (between teacher and student, between parents and administration) continue only so long as they are win-win. Tensions which arise find resolution at a low level, between the parties concerned.

I think I see a similarity between the origin of the need for policemen in government schools and the origin of the need for big locks on apartment doors. In each case there is what I call "public space," a set of choices which cannot be made privately in win-win interactions, but which have been stolen by state. This public space gives undesirable interests space in which to organize and gather strength. As a result, the eventual assault, from the undesirable interests upon the desired order, comes with more force, and requires larger defenses. Δ

### Notes

<sup>1</sup> I say more about this in the appendix in FNF Working Paper, "Win-Win Society is Possible."

### Proprietorship (from p. 16)

a place to stand. But for its private ownership, it could be distributed and held only by political preference or privilege — precariously for most and hence unproductively, if at all.

Besides the merely distributive function of buying and selling or leasing land, land owners have vastly greater opportunities which they have been slow to visualize (largely because of legislation and tax policy discriminating against leasing) of systematically building land values by creating environments, both physical and social, favoring the productive use of land. But for the unique character of the revolutions of 18th-century Europe, this might not have been an option today. The resurgence of proprietary administration that made possible the industrial "revolution" might not have happened or might have been far more limited in its scope. Δ

*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.*

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# The State as the Only Defense Against Nuclear War

by Roy Halliday

The invention of nuclear weapons has given rise to a new and powerful argument for the state. The argument is as follows:

1. We do not want to be destroyed.
2. Nuclear weapons can destroy us.
3. Some states have nuclear weapons and would be willing to use them to destroy us if they could get away with it.
4. Our only defense against these states is the threat of retaliation with nuclear weapons.
5. Private industry cannot threaten such retaliation.
6. Therefore, we need a state that will threaten to destroy any country whose government uses nuclear weapons against us.

What can we say about this argument? Is it sound? Yes. Is it moral? No.

Let's check the soundness of this argument, premise by premise.

1. We can agree that we do not want to be destroyed.
2. Based on what scientists have told us, it is true that nuclear weapons can destroy us.
3. We have to face the terrible fact that several states now have nuclear weapons, and some of them are hostile toward each other. They have these weapons primarily for two reasons: (A) For offense; to help them win a war against another state as the U.S.A. did to Japan in the second world war. (B) For defense; to threaten to destroy any country whose state would be so foolish as to launch a nuclear attack.

I have no difficulty imagining that the leaders of these states are criminals who would have no moral inhibitions that would deter them from murdering the hostage population in a rival's country. So the nuclear war argument for the state applies

to anyone living within the borders of any of the hostile states that have nuclear weapons, and it applies to those who live in nearby countries, because they too would probably be destroyed in a nuclear war. Some scientists believe that a nuclear war



Roy Halliday

would destroy all life on earth. If so, we are all hostages to the nuclear-armed states, and this argument applies to everyone on earth.

4. The military experts are probably correct when they say that the threat of nuclear retaliation is the main reason why the nuclear powers haven't attacked each other. There is currently no other defense against nuclear weapons.

5. Nuclear weapons are clearly too dangerous to be allowed to be privately owned or traded in the free market. Would you trust someone who wanted to buy nuclear weapons? Why would anyone go to the expense of buying nuclear weapons unless they intended to use them? What would a private individual or corporation want to use nuclear weapons for except to terrorize whole populations into meeting their demands? Almost everyone would agree that nuclear weapons should not be privately owned. Anyone who has one is a threat, and we would be within our rights to use force against him to disarm him.

So, private industry cannot provide the nuclear deterrent needed to prevent our destruction by nuclear weapons owned by existing states.

6. All of the premises seem sound, so we must accept the conclusion that we need a state to provide a nuclear deterrent so that other states will be afraid to destroy us.

Now that we have accepted the argument, let's see what it really proves and what it does not prove. It proves that a state is needed because of certain conditions that exist now. These conditions have not always existed, and they may not exist in the future.

The argument is not relevant to conditions prior to the nuclear age. So it cannot justify any states prior to the nuclear age.

The argument would not be sound if all governments destroyed their nuclear weapons, because that would negate premise 3.

The argument would not be sound if we could destroy nuclear weapons with laser guns or by some other, as yet unknown, technology, because that would negate premise 4. If weapons could be manufactured that could destroy incoming nuclear-armed missiles and those antimissile weapons could be used without killing innocent people, then private individuals or groups would have the right to own and use them, and this argument for the state would not be sound.

One of the special conditions that this argument assumes is that states with nuclear weapons already exist (premise 3). So the argument cannot be used to justify the establishment of the first state. Nor can this argument be used to justify the existence of any particular state. It only proves that one state is needed to provide a threat of retaliation so that another state with nuclear weapons will be afraid to use them. The argument cannot be used to justify any state that does not have nuclear weapons. Nor can it be used to justify any particular state that does have nuclear weapons, because any particular state could be overthrown safely, as long as there is another one that has enough nuclear weapons to deter nuclear war.

Another point to remember about this argument is that it doesn't prove that a state can guarantee our survival. It only proves that, under the existing conditions, a state that can make other states afraid to use nuclear weapons is our only defense. We have been fortunate, so far, that the leaders of the states with nuclear weapons have not been insane enough to start a nuclear war.

However, if these weapons continue to exist, it is very likely that somebody will eventually be mad enough to use them and that their rival will be criminal enough to retaliate. All of our lives are threatened by the people who control these weapons. We are all hostages.

Finally, remember that this is a utilitarian argument for the state rather than a moral argument. In so far as it justifies the existence of a state under particular circumstances, the justification is a practical one rather than a moral one. There is no moral justification for the use of nuclear weapons. The argument amounts to a defence of the state on the grounds that the state can threaten mass murder. Δ

*Roy Halliday is a longtime libertarian who works as a technical editor for a major software development company in Research Triangle Park, NC.*

## FNF News Notes (from p. 13)

report shows sources and uses of funds. In 1995, \$5,862 were raised and used. The Annual Report also proposes a budget for 1996, with an increase to \$7,700 raised and used. All five directors attended the meeting, as well as two members and two significant others.

- The FNF library has grown considerably, to about 100 books. Philip Jacobson has transferred to the library, on indefinite loan, about 70 books from his comprehensive collection. These new additions, all germane to the FNF work plan, include several classics and cover sociology, anthropology, history, political science. The FNF library resides on a bookshelf in the home of Richard Hammer. Directors and Members may borrow from the library. Members distant from here may arrange to borrow books through the mail. Δ

## New Country Briefs

for the New Country Foundation

### Laissez Faire City Establishes Web Site, Interim Community

Laissez Faire City is continuing to recruit founders, and continues to seek a host country. The organization, whose goal is to obtain a 50-year lease for an extensive territory in a developing country, has also set up a web site at <http://www.lfcity.com>. The site contains a description of Laissez

Faire City's interim community in San Jose, Costa Rica. According to this description, the community is occupied by 34 LFC Founders and contains a consulate, a hotel and a restaurant. The Costa Rican government provides "special temporary residency and tax-free living environment programs for LFC Founders who qualify."

### First Millennial Foundation Plans Conference, Prototype Project

The First Millennial Foundation will join with United Societies in Space to hold a joint conclave in Colorado Springs, Colorado from August 2nd through 4th. A major topic of the conclave will be Aquarius Rising, the Foundation's first major project planned for completion in 2004 on the island of St. Croix. Aquarius Rising is intended to be both a land-based prototype for a self-sufficient, floating city, as well as a revenue generating enterprise for the Foundation. In addition to a prototype colony, the development will contain a 450-room beach front hotel, a duty free shopping mall, a casino, a golf course, a time-share real estate development, a theme park showcasing space colonization, and a sub-sea habitat dedicated to underwater research and closed-loop ecological systems. Electricity for the development will be produced by an Ocean Thermal Energy Conversion (OTEC) plant. An OTEC plant produces energy by transferring heat from warm surface waters to cold deep waters. Additional information about the Foundation can be obtained from its recently upgraded web site at <http://www.millennial.org>. Δ

## Reading Group Forms on Isabel Paterson's *The God of the Machine*

This summer, starting on 24 June 1996, a group led by Roderick Long and Richard Hammer is meeting on three Monday evenings to study and discuss *The God of the Machine*, the 1943 classic in libertarian theory by Isabel Paterson. You are invited.

The meetings, free and open to all, meet at the home of Richard Hammer, 111 West Corbin Street, Hillsborough, N.C.

### Meeting and Reading Schedule

Each meeting starts at 7:30 PM.

- 24 June: Chapters I through X
- 8 July: Chapters XI through XVII
- 22 July: Chapters XVIII to the end

This schedule means that the group covers about 100 pages per meeting. The first purpose in each meeting is to discover and restate Paterson's most important points. After perhaps an hour of this study the group relaxes its focus, socializes, or discusses current events.

### Endorsements of *The God of the Machine*

Ayn Rand said this about Paterson's work in her 1964 introduction to *The God of the Machine*:

"[*The God of the Machine*] is brilliant in the perceptiveness, the incisiveness, the power, the scope of its analysis that presents — in carefully chosen, dramatically illuminating essentials — the history of man's long quest for freedom, from ancient Greece to World War II. It offers an unforgettable experience: a panorama of the centuries, as seen from the elevation of a truly grand intellectual scale."

A note from Roderick Long:

"Isabel Paterson's *The God of the Machine* is an intellectual tour de force, combining history, economics, philosophy, and political theory into an engaging, challenging, often provocative account of the role of political structure in the preservation of freedom. I can't think of any libertarian book from which I have learned more, even in areas where Paterson's conclusions and mine have come to diverge. I enthusiastically recommend *The God of the Machine* as essential reading for anyone interested in libertarian theory in general or constitutional design in particular."

A note from Rich Hammer:

"Following Roderick's lead I read this book once a few years ago. Paterson gives an important, and as far as I know new, interpretation of political history. Unfortunately I found some of her points difficult to discern. Thus I want to read it again."

The book may be purchased from Laissez Faire Books in San Francisco, phone 800-326-0996, for \$20 plus shipping, and probably from other places as well.

For more information call Richard Hammer at 919-732-8366. Δ

## **Book Note**

### **The Mechanism of Mind**

by Edward de Bono

Simon and Schuster, 1969

reviewed by Richard Hammer

Edward de Bono has written a shelf of books about thinking. They contain fascinating stuff, and cast new light on the FNF



effort to build new vision.

First, following a lead from subscriber Maribel Montgomery, I read *Serious Creativity: Using the Power of Lateral Thinking to Create New Ideas*. This 1992 book gives techniques for generating new ideas. It also introduces de Bono's theories of the way our brains work. Next I followed de Bono's reference to his *The Mechanism of Mind*, which he suggests for readers who want to know his theories.

De Bono uses physical models of surfaces to portray the mechanism of mind. Here is one: Take a flat surface of ordinary table jelly (say it has been jelled in a flat cake pan) and drizzle water onto it (perhaps in a pattern, perhaps randomly). Some drops will stay where they land. Others will flow together, into some pattern. Now let it all evaporate, come back tomorrow. There will be patterns on the surface of the jelly, low spots where the drops settled. This, according to de Bono, is memory, something that has happened and not completely unappened.

Today, when you drizzle water onto the

surface, the flow of water will be affected by what happened yesterday. If you drip water in a new pattern near enough to one of yesterday's patterns, then today's drops will flow into yesterday's depressions, and will simply reinforce (or deepen) the first day's pattern. Little trace of the second day's pattern (somewhat different) will remain. So the order in which patterns are presented determines which grooves get established.

The book is filled with such writing about happenings on surfaces, happenings which

harken of mental experience. Thoughts flow in learned patterns. And the more those patterns are etched, the more difficult it becomes for later thoughts to find new patterns. Events which differ from existing patterns nonetheless tend to flow into the established grooves.

This model of mental mechanics suggests techniques for getting unstuck, and de Bono, in most of his work, explains these techniques again and again. He suggests ways to jump out of the groove, to enhance the possibility of finding a whole new avenue.

One of these techniques, for instance, is the random word technique: Selecting a word randomly, say by poking your finger onto a printed page, force your thoughts to find connections between that word and the problem you face. Probably at first there will seem to be no connection, it will seem silly. But finding some connection, even a ridiculous connection, might cause your thoughts to jump to some useful new idea or insight.

De Bono teaches things that seem perti-

nent to FNF. He gives a model of what we are up against, ingrained patterns of thought, and suggests ways of overcoming adversely ingrained patterns. Δ

### **Texans Seek Separation from U.S.**

by Richard O. Hammer

In May we received the first issue of *The Republic of Texas Magazine*. The publishers of this magazine, along with the movement which they hope to serve, claim that Texas was never legally incorporated into the United States: that acts in the mid 1800s which brought about de facto union were not authorized by the constitution of either the U.S. or the Republic of Texas.

One story "Provisional Government serves notice to IRS: vacate Texas soil!" tells of events at the Federal Building in Austin on 18 March 1996. Other articles, "Federal courts lack jurisdiction in the Republic," and "Citizens have option to send sales tax to Republic," show actions of this movement in Texas, to establish itself as the legitimate government of Texas.

The two publishers, Wesley W. Burnett and Charles W. Duncan, operate from Post (28 miles southeast of Lubbock, according to my map) where Burnett is publisher of a weekly newspaper *The Post Dispatch*. These two echo libertarian themes in their articles, which taken together constitute



# How Healing Our World Went Global

By Mary J. Ruwart

Reprinted from *Freedom Network News* (October 1995), a publication of the International Society for Individual Liberty (1800 Market St., San Francisco, CA, 415-864-0952).

Many people have asked me, "How did you get the idea for writing *Healing Our World*?" I didn't get the idea at all — instead the idea got me!

In the summer of 1986, I was reading diligently about the foreign policy of the United States in an attempt to understand it better. As a libertarian, I believed that taxation was wrong. Nevertheless, I thought that taxes could do some good if they were used well, especially to help the poor at home or abroad.

As I read more about the interferences of the United States in the affairs of other countries, I could see that our tax-based foreign aid did much more harm than good. Even food sent overseas to feed the starving rarely made it to those in need. Instead, those in power in the impoverished nations managed to keep most of the aid for themselves. Indeed, nations getting the most from the U.S. were the most likely to practice human rights violations, such as torturing, and killing those who didn't want to give up their freedom.

The poor of these nations would have been better off if we had done nothing at all. By giving their governments our tax dollars these governments were empowered to deal harshly with their "subjects" and continue wars with neighboring nations. Since war and fighting destroy wealth and prevent its creation, we simply made the poor poorer. Our help was actually a hindrance.

Suddenly, a great understanding swept over me. Tax-supported relief would always be destructive, because it started out as destructive. Taxes are levied and extracted by those who are willing to forcibly take what belongs to another. Even if the ends tax-takers sought were constructive, the means they were using were destructive. The means would ultimately pollute the ends.

For example, taxes are distributed by the same people who think it's right to take them. Of course they give these taxes to other governments and dictators of like

mind! The foreign aid would almost invariably be used to subjugate the citizens of the receiving country. The mindset of those using force as a means would be reflected in the ends.

If ends and means are related, then



Mary Ruwart

unprovoked acts of violence against others could only beget violence. We reap as we sow. If we harm others, it will be reflected back to us. Those who are willing to use force to bend others to their will, will find themselves enslaved in turn. Aggression becomes a lose-lose game, while respecting the rights of others makes everyone a winner.

The laws of a democratic country reflect the summation of each person's desire to control. If I want to control in one area, I will most likely grant you the right of control in another to gain your acceptance of my dominance. Thus, if I vote for a tax to help the poor, I have no moral or legal basis for preventing you from voting for a tax to bail out businesses. If I don't fight against you trying to spend my money, I lose. If I fight you, it consumes my resources and I lose. The same goes for you. It's a lose-lose situation.

From these insights, came a marvelous and uplifting discovery — world peace and prosperity is not only possible, it's inevitable.

People support aggression-through-government only because they think they win that way. Once they learn that they really lose, they will automatically stop aggressive

behavior. Peace and prosperity will ensue. If people could really win with aggression, peace would be impossible, for it would be in everyone's best interest to disregard the rights of others.

These ideas were imbedded in many of the world's philosophies, including Christianity, the New Age movement, rationalists, etc. The reflection of these truths had been glimpsed by many others, but no one had tied them all together.

The next several days after the understanding, I was in a state of bliss. World-wide peace and plenty became a realistic possibility instead of an impossible dream. How wonderful!

I wanted to share the good news with the entire world, but wasn't quite sure how to do it. I called my sister Martie and tried to explain it to her. Because we were so close, she knew exactly what I was trying to say. However, my understanding wasn't in English. It was difficult to put into words the ideas that pulled so much together.

Over the next five years, I sent Martie drafts of *Healing*. She would send them back marked up with ideas and corrections. She told me when the tone was wrong or the logic flow confusing. Her computer programming background helped to create a systematic presentation.

Every spare moment was spent on creating *Healing*. As my understanding grew, so did the scope of the project. The ideas I wrote about had been glimpsed by sages throughout the ages — rather than cite them, I used their quotes as sidebars. Examples of how liberty works to create a win-win world resulted in over five hundred references. Working full-time at the demanding job of research scientist meant that I needed every evening and weekend moment over the five years of writing to complete *Healing*. I cloistered myself from the rest of the world. I had thought I could finish *Healing* in a single year, but Martie's encouragement kept me going when it seemed impossible to push myself so hard.

"You were born to write this book," she would often remind me. "When I look back on our childhood, I can see how your life has lead you to this marvelous vision and the ability to share it."

Finally, when we were together at Christmas in 1991, Martie handed me back the final draft. "It's finished, Mary," she told me. "I can't find anything more to fix or change." We celebrated as best we could — Martie

was having trouble eating our favorite spicy foods. We thought perhaps she had the stomach flu.

I decided to self-publish *Healing* in order to have it ready for the 1992 elections. I picked up the first copies and brought them to the Michigan Libertarian Party convention in the spring of 1992. While there, I got word that Martie had checked into the hospital. Her persistent "stomach flu" had been diagnosed as an ulcer. When she began vomiting up all she could eat, she had more tests run. Martie had a growth in her upper intestine, right below her stomach. Surgery was indicated.

I left the convention and flew to Martie's bedside with copies of *Healing*. Over the next few days, I was glad I had brought a whole carton with me — Martie kept selling them to the patients and staff faster than I could bring them to her. During the surgery, the doctors removed the tumor from her intestine, thinking that they had gotten it all. Martie went to our brother's house in Dallas for a prolonged recovery. Her operation had been extensive and she had a difficult time regaining her weight and strength.

Meanwhile, *Healing* got rave reviews. Endorsements came from Andre Marrou, Dr. Ron Paul, Dr. Wayne Dyer, Durk Pearson and Sandy Shaw, Frances Kendall and Leon Louw. *Visions Magazine* claimed that *Healing* might be "the most important book of the decade." The first printing was rapidly sold out and so I prepared for the second one.

Martie was thrilled to hear the wonderful news about *Healing*. Unfortunately, her health problems had become serious. She had developed large tumors on both ovaries by November of 1992. Knowing that the cancer had spread aggressively, I asked her to leave San Diego and join me in Kalamazoo, Michigan when I could care for her.

During her next surgery, the doctors found that the cancer had spread throughout her abdomen. Martie tried many alternative therapies, but decided against aggressive chemotherapy which would have been painful and did not have a good record against her type of cancer. Soon she began vomiting up her meals as the cancer blocked her bowels. When she became unable to keep down even liquids, she asked me to take her to Dr. Kevorkian.

Dr. Kevorkian, a Michigan physician, had been helping people with debilitating

illnesses by providing them with the means to end their lives. The Michigan legislature had been attempting to try him as a murderer and imprison him without success. With some difficulty, we arranged for his help.

Martie asked me to use her savings to promote *Healing*. Several Eastern Europeans had approached me about translating and publishing *Healing* in their nations — but seed capital was necessary. I asked



Martie if she would like to fund these endeavors as her legacy to the world.

Martie's face lit up and a gigantic smile glowed from her starvation-thinned face. "Yes, Mary, yes!" she exclaimed, "I would like that very much!" Because of Martie, *Healing Our World* has been translated, published and distributed in Russian, Lithuanian, and Romanian through the same ISIL contacts that Ken Schoolland used for the *Adventures of Jonathan Gullible* (see the June/July 1995 issue of *Freedom Network News*). The Serbian translation is underway as well.

Martie went to Dr. Kevorkian and became his fourteenth patient on February 18, 1993. She was two weeks away from her forty-first birthday. My sisters, myself, and two friends held her hands as she breathed the carbon monoxide that gave her a peaceful end.

I often wonder if Martie was right when she said that I was born to write *Healing*. If so, perhaps she was born to help me. Without her support and guidance, *Healing Our World* might never have been. Δ

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*.

***Healing Our World:  
The Other Piece of the Puzzle***

by Mary Ruwart

SunStar Press  
P. O. Box 50342  
Kalamazoo MI 49005

\$14.95 plus \$2.00 S&H

**Texas (from p. 23)**

most of the magazine, though they do not use the word "libertarian."

Other articles in the 40-page magazine discuss the question of what should be in a constitution, and what functions should be served by a cabinet.

Notices in the magazine state that: copies of this "Premier Issue" (May 1996) may be purchased for \$5; subscriptions rates are \$24 per year (12 issues) in the Republic of Texas, \$48 outside the Republic. The mailing address is: 118 S. Avenue N, Post, Texas 79356. Phone 806-495-4135. Δ

# The State As Penalizer

by Roy Halliday

Perhaps the strongest reason for advocating the establishment of a state or for defending the existence of a state is that only a state can administer punishment fairly.

Most people believe that criminals deserve to be punished. Most people also believe that criminals who commit equal crimes should receive equal punishments. However, people do not all agree on what the fair punishment should be for any particular crime, and nobody can prove that one particular punishment is more fair than another punishment for the same crime.

If individuals were allowed to punish criminals as they see fit, the punishments received by criminals who commit similar crimes would vary, depending on the emotional state, physical capacity, economic resources, and theory of punishment of the individual who administers the punishment. Each individual punisher might believe that the punishments he administers are fair, yet each should, logically, regard all the other punishers who administer different punishments as unfair. Consequently, the overall system of punishments administered privately should be regarded by everybody as unfair.

Because it is unfair for criminals to go unpunished, and it is unfair to allow individuals to punish criminals as they see fit, the only solution is to have the state administer all punishments according to a uniform penal code.

I see nothing wrong with this line of reasoning, and I accept the conclusion that the only way that punishment can be administered fairly is for a single organization to monopolize the punishment business and to enforce a uniform penal code. The organization would have to be a state, or an arm of the state, because it would have to use the political means to maintain its monopoly. People do not agree on theories of punishment, so they would not all voluntarily accept the penal code of any single organization. One penal code would have to be imposed by force to the exclusion of all other penal codes in order for punishment to be uniform and fair. Only a state can do this.

This line of reasoning needs to be carried further. In a world divided up among many

independent states, if we allow each state to administer its own penal code, then criminals who commit the same crime will receive different punishments depending on which state has jurisdiction over them. When we look at this system from a global point of view, we can see that it isn't fair. Fairness requires a superstate that monopolizes the punishment business throughout the world, in fact, throughout the universe. Nothing less than this will do.

The strongest argument for the state turns out to be an argument against all actually existing states, whose penal codes are unequal, and a justification for the establishment of one superstate that would rule the universe.

Before we run off to establish such a superstate, we should remind ourselves what this argument proves and then ask ourselves:

- a) Is the creation of a superstate that imposes a universal penal code possible?
- b) Is the creation of such a superstate worth the trouble?
- c) Is it just?

The argument is:

- 1) It is unfair for criminals to go unpunished.
- 2) It is unfair for criminals who commit the same crime to receive different punishments.
- 3) Allowing individual people or individual states to administer punishments as they see fit would result in criminals receiving different punishments for the same crime, depending on the individual or state that administers the punishment.
- 4) Therefore, individuals and individual states should not be allowed to administer punishments as they see fit.
- 5) Therefore, a superstate that administers a universal code of punishments is necessary.

I agree with the premises and the conclusions of this argument. It proves that, from a global or universal point of view, punishment cannot be administered fairly by men without a superstate. However, strong ob-

jections to the establishment of a superstate can still be raised even if we agree with this argument.

The argument does not prove that a superstate, if established, would or could actually administer punishment fairly. The argument proves that no man-made system of administering punishment, short of a superstate, can satisfy the requirement that criminals who commit the same crime be punished equally. Equality of treatment, however, is not the only criterion of fairness. If it were, then it would be fair to execute all criminals, because executing all criminals would guarantee that all criminals who commit the same crime would receive the same punishment. It would also be fair to lobotomize all criminals, or to brand them on the forehead. However, most people would agree that such widely different solutions cannot all be equally fair. The margin of error for fairness is not broad enough to encompass all of these solutions. Consequently, if a superstate adopted and enforced any one of these solutions, many people would regard the superstate's punishment system as unfair, even if the superstate administered it universally and impartially, without corruption or favoritism.

Many of the people who believe that equal crimes deserve equal punishments also believe that unequal crimes deserve unequal punishments. This compounds the problem of determining the appropriate punishment. If fairness requires that some criminals such as murderers be punished more severely than other criminals such as pick-pockets, then the expedient solutions, such as executing or lobotomizing all criminals, are unfair, and it is necessary for the superstate to devise a more elaborate penal code. The number of possible penal codes is infinite. This makes it very unlikely that the superstate will be able to determine which of the possible penal codes is the objectively fair one. The odds are that the superstate would impose one of the unfair codes.

The uniform imposition of an unfair penal code by the superstate might be more unfair than allowing individuals to punish criminals as they see fit, even though private punishment would not be consistent. So, even if the superstate impartially imposed a uniform penal code, it probably would not be fair, and it could not be proven to be more fair than allowing the

chaos of private punishment.

The fundamental problem with administering punishment is that men don't have any way to determine the correct punishment. This problem cannot be solved by delegating it to a state or to a superstate composed of men. Only a superhuman being who is omniscient with respect to crime and punishment can determine the correct punishment. If we met such a being, we would have no way to know whether he was a fraud.

Given the history of all known states in the past and the present, there is little reason to believe that any state or superstate will ever administer any penal code objectively and uniformly, without corruption, without prejudice, and without favoritism.

Because nobody knows what the objectively fair system of punishment is, and because it is unjust to impose a subjective opinion about fairness on others against their will, it would be unjust for the superstate to impose a system of punishment throughout the universe.

It is highly unlikely that we could create a superstate that enforces a universal penal code consistently, without bias or favoritism. If we could create such a superstate, it would probably enforce an unfair penal code, so it would hardly be worth the trouble. Consequently, the punishment problem does not provide a sound justification of the state. ▲

## Heritage

### Government versus Society

by Thomas Paine

#### From *Common Sense* (1776)

Some writers have so confounded society with government, as to leave little or no distinction between them; whereas they are not only different, but have different origins. Society is produced by our wants and government by our wickedness; the former promotes our happiness *positively* by uniting our affections, the latter *negatively* by restraining our vices. The one encourages intercourse, the other creates distinctions. The first is a patron, the last a punisher.

Society in every state is a blessing, but government, even in its best state, is but a necessary evil; in its worst state, an intolerable one: for when we suffer, or are exposed

to the same miseries *by a government*, which we might expect in a country *without government*, our calamity is heightened by reflecting that we furnish the means by which we suffer.

#### From *The Rights of Man* (1792)

Could we suppose a spectator who knew nothing of the world, and who was put into it merely to make his observations, he would take a great part of the old world to be new, just struggling with the difficulties and hardships of an infant settlement. He could not suppose that the hordes of miserable poor, with which old countries abound, could be any other than those who had not yet had time to provide for themselves. Little would he think they were the consequences of what in such countries is called government.

If, from the more wretched parts of the old world, we look at those which are in an advanced stage of improvement, we still find the greedy hand of government thrusting itself into every corner and crevice of industry, and grasping the spoil of the multitude. ...

Almost everything appertaining to the circumstances of a nation, has been absorbed and confounded under the general and mysterious word *government*. Though it avoids taking to its account the errors it commits, and the mischiefs it occasions, it fails not to arrogate to itself whatever has the appearance of prosperity. It robs industry of its honors, by pedantically making itself the cause of its effects; and purloins from the general character of man, the merits that appertain to him as a social being. ...

Great part of that order which reigns among mankind is not the effect of government. It had its origin in the principles of society and the natural constitution of man. It existed prior to government, and would exist if the formality of government were abolished. The mutual dependence and reciprocal interest which man has upon man, and all parts of a civilized community upon each other, create that great chain of connection which holds it together. The landholder, the farmer, the manufacturer, the merchant, the tradesman, and every occupation, prospers by the aid which each receives from the other, and from the whole. Common interest regulates their concerns, and forms their laws; and the laws which common usage ordains, have a greater influence than the laws of government. In fine, society performs for itself

almost every thing which is ascribed to government.

To understand the nature and quantity of government proper for man, it is necessary to attend to his character. As Nature created him for social life, she fitted him for the station she intended. ... She has not only forced man into society, by a diversity of wants, which the reciprocal aid of each other can supply, but she has implanted in him a system of social affections, which, though not necessary to his existence, are essential to his happiness. ...

For upward of two years from the commencement of the American War, and to a longer period in several of the American states, there were no established forms of government. The old governments had been abolished, and the country was too much occupied in defense, to employ its attention in establishing new governments; yet during this interval, order and harmony were preserved ....

There is a natural aptness in man, and more so in society, because it embraces a greater variety of abilities and resources, to accommodate itself to whatever situation it is in. The instant formal government is abolished, society begins to act. ... In short, man is so naturally a creature of society, that it is almost impossible to put him out of it.

Formal government makes but a small part of civilized life .... It is to the great and fundamental principles of society and civilization ... infinitely more than to any thing which even the best instituted government can perform, that the safety and prosperity of the individual and of the whole depends.

The more perfect civilization is, the less occasion it has for government, because the more does it regulate its own affairs, and govern itself .... It is but few general laws that civilized life requires, and those of such common usefulness, that whether they are enforced by the forms of government or not, the effect will be nearly the same. ...

All the great laws of society are laws of nature. Those of trade and commerce, whether with respect to the intercourse of individuals, or of nations, are laws of mutual and reciprocal interest. They are followed and obeyed because it is the interest of the parties to do so, and not on account of any formal laws their governments may impose or interpose.

But how often is the natural propensity to society disturbed or destroyed by the operations of government. ▲

*What Archimedes said of the mechanical powers, may be applied to reason and liberty: "Had we," he said, "a place to stand upon, we might raise the world."*

*— Thomas Paine*

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