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## Conferees Discuss Business in a Free Nation

On Saturday, 19 October 1996, the Free Nation Foundation held a daylong Forum on the topic "Business in a Free Nation." Attended by eight, the Forum met at Oliver's Restaurant in Hillsborough, North Carolina.

Four papers were presented by their authors. Roderick Long presented "Beyond the Boss: Protection from Business in a Free Nation." Philip Jacobson and Richard Hammer presented papers each with the same title, "Business in a Free Nation." And Richard Hammer presented "Hit 'Em, But Not Too Hard: Institutions for Giving Negative Feedback in Small and Manage-

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(continued on page 5)

# formulations

Winter 1996-97 A Publication of the Free Nation Foundation Vol. IV, No. 2

## Next Forum: Family Structure

The next FNF Forum, on the topic "Family Structure," will meet on Saturday, 19 April 1997. We invite our readers to start thinking about this topic, and we solicit papers on the subject. The specific location of the Forum, which will be somewhere here in the Research Triangle area of North Carolina, will be announced in the Spring issue of *Formulations*.

About this topic, we assume that government in a free nation will impose no agenda upon family structure and family life. So we will explore questions such as:

- Will most people marry in churches and couple in traditional long-term monogamous relationships, or will there be Heinlein-style "linemarriages," or group marriages? What contracts and what enforcement mechanisms do we foresee?
- What supports, if any, will exist for abandoned partners, notably parents of young children, who find themselves

## FNF Posts Documents on the World Wide Web: **FREENATION.ORG**

Marc Joffe and Phil Jacobson have given FNF a presence on the World Wide Web. We have a page with general information and an archive. The archive, organized around a table of contents, now contains several of our early papers.

You can access the FNF pages from the New Country Foundation home page, with its easy-to-remember address, [HTTP://FREENATION.ORG](http://FREENATION.ORG) (also accessible as [HTTP://WWW.FREENATION.ORG](http://WWW.FREENATION.ORG)). Or you can go directly to FNF pages at [HTTP://FREENATION.ORG/AFNF.HTM](http://FREENATION.ORG/AFNF.HTM).

The table of contents of the archive now lists more than 100 papers, almost all of our previous publications. A reader of this

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# formulations

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

## Statement of Purpose

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

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

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

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

## Information for Authors

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

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

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

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

All submissions are subject to editing.

Submissions will be considered for publication if received by the first of the month preceding month of publication. Thus, the deadlines for writers are: February 1, May 1, August 1, and November 1.

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

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## **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>).

## **About the New Country Foundation**

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## Statement of Purpose

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

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

# Toward a New Country in East Africa

for the New Country Foundation

*Editor's Note: The author, who is presently working with New Country Foundation members to organize a libertarian new country project in Africa, asked that his name be withheld. If you would like further information about this project, please contact NCF at the address listed on the masthead.*

Somewhere in East Africa, there is a green valley that is often referred to as "no-man's-land." It received this name for two reasons. First, almost nobody was living there during the past two centuries. Second, for a long time the surrounding states, those of Ethiopia, British Somaliland and French Somaliland, showed little interest in this valley. It was only in 1954 that this no-man's-land, up till then a white spot on the political map of the United Nations, received its color. It was then that the UN divided this valley among two sovereigns, the larger part going to Ethiopia; the smaller part to British Somaliland.

When I visited this beautiful valley for the first time, in 1992, I instantly saw its potential as an independent country. Like Galt's Gulch, it is surrounded by mountains, which gives it a sort of privacy. Also, it has a pleasant, temperate climate due to its location at 1700 meters altitude. Its size, equal to that of Luxembourg, is three times larger than Hong Kong. With modern cultivating techniques it can easily feed a million people. My big question was, why there were no villages in this valley. The answer came soon. The British forbade settlement, fearing that its trees would be cut in order to permit agriculture. They reserved the valley for nomads.

The nomadic tribe which has been living in this valley for the past few centuries is called "Samaron," after its founder. Its nickname is Gadabursi, i.e. mountain people. When asked whether they were interested in turning their valley into an independent country, these tribesmen answered positively. They said that, traditionally, tribes are sovereign, refusing to take orders from each other, or from any Republic. They offered to discuss this matter with the Republic of Somaliland, independent since 1991, which professes

to welcome foreign investors.

This valley is part of the African continent, which has the reputation of being in a perpetual political and economic mess. But who created this image? Surely the proponents of the state order, which is precisely the order Africans don't want. The basic conflict in Africa is between the proponents of two different political systems: state government, which is authoritarian, and tribal government, which is libertarian.

Libertarian, in what sense? In a libertarian society every person is free to exercise the profession of his choice, including that of judge and policeman. This includes the right to establish and maintain a court of justice or a police force. In other words, in libertarian society no person has the right to monopolize the police services in any given area.

What is a state? It is best defined as a police force which doesn't tolerate any competitors; which monopolizes its particular trade. Therefore, states are unacceptable to libertarians. They prefer stateless societies, i.e. societies where the government consists of an aggregate of competing judiciaries and police forces.

Some people believe that, in politics, authoritarians and libertarians are equally honorable options. But they are wrong. The right to establish one's own judiciary or police force is grounded in natural law, which consists of the rights and obligations inherent in human nature. Therefore, all authoritarian political systems are of a criminal nature.

The scholars of tribal government in Africa agree that, at present, there are at least a dozen countries where part of the population is stateless. What do they mean by this? They mean that these Africans live under tribal governments which lack permanent offices, lack a bureaucracy, lack a hierarchy. But that is not how libertarians define statelessness.

Libertarians do not care whether the police force and the courts of justice are permanent or not, whether the jobs of judge and policemen are full-time or part-time occupations. What matters is, whether a police force does, or doesn't, maintain a coercive monopoly. And what do we see in Africa? Among the rural people almost nobody accepts such monopoly. They prefer tribal government, which is stateless. As there are some 400 million rural Africans who still live with tribal government, one

can say without exaggeration that there are 400 million stateless people in Africa, 400 million libertarians.

It has been said that living in a stateless society does not make one a libertarian; that the Africans would establish states if only they had the skills. Many observers have indeed volunteered this hypothesis, but it has never been substantiated. Professor George Ayittey from Ghana, as well as quite a few other eminent scholars, have shown, on the contrary, that statelessness in Africa is there by design, not by accident. They cite as evidence that there have been several African states, which — predictably — organized the lives of their subjects in frightening detail. Also, in almost all tribes, there are legends of dictators whose rule was so oppressive that the tribe forswore dictatorship forever. Third, almost all African tribes have organized their government in such a way that no politician can ever hope to accumulate any power over his fellow tribesmen. Let's analyze each of these three points in more detail.

Prior to the colonial period, there have been half a dozen African states, which is not much if you realize that there are approximately 2,000 tribes in Africa. Let's take Dahomey. Its state lasted for more than 200 years, until the end of the 19th century. It had a powerful army and an efficient bureaucracy.

Says one scholar (A.A. Boahen, *Topics in West African History*, New York, Longman 1986): "The farmers in each village were counted by officials of the ministry of agriculture and the tax paid in kind by each was fixed according to the assessment made of the villages' total production. Livestock was also counted and taxed. The kings of Dahomey regularly conducted a population census to get an accurate estimate of the number of people to be taxed ... or conscripted. Two other writers (G.T. Stride and C. Ifeka, *Peoples and Empires of West Africa*, Lagos, Thomas Nelson, 1971) have this to say about the State of Dahomey: "The entire administrative machine was ruthlessly efficient. Headed by rulers of rare political talent and backed by people of great military skill and courage, it was a dynamic political organism."

More typical is the case of the Habar Ghidir Sa'aad clan north of Mogadishu. Once they decided to have a ruler, a sultaan. As soon as he was appointed, he issued a

decree that he would eat, for breakfast, lunch and dinner, nothing but the marrow of goats, so as to secure him eternal youth. He specified that 25 goats had to be slaughtered in the morning, another 25 at mid-day and yet another 25 in the evening. After the first day of his reign, the elders of the clan came together. Not because they feared for the indigestion of their leader, but rather because they realized that, at this rate, their new ruler would soon devour all of the clan's wealth. So, collectively, they killed him, and decided never to have a dictator again.

African tribal government is organized as follows. In each village one finds a chief. Always, he is accompanied by three men who act simultaneously as his advisors and his guardians.

The role of the chief is to execute the decisions of the Council of Elders, who, in turn, must seek the consensus of the village assembly. In some tribes, a ruler, is appointed during times of war, but this ruler is stripped of his powers as soon as peace returns. During peace time, chiefs are carefully watched by the Council of Elders. Many an African chief lost his chieftaincy by stepping out of the lines drawn by his Council. A good example is the Samaron tribe, which owns the green valley which caught our attention. During the 1930s, this tribe deposed its king because he had signed a pact with Ethiopia's emperor Haileselassie without the prior consent of the tribe's Council of Elders.

Some observers of traditional African politics point to the fact that in many tribes one finds a king. His primary function, however, is a religious one. During political deliberations, a king keeps his mouth shut. There are tribes in which the king must pull a blanket over his head during political discussions. When the Council has taken a decision, the king is requested to speak up. Thereupon, he removes his blanket and says: "and so it has been decided." In politics, therefore, an African king is little more than a rubber stamp and an archive.

Another time-tested device to prevent politicians from becoming dictators is secession. Each African family is free to leave his community when he disagrees with the decisions of its leaders.

Given this almost obsessive fear, in Africa, that a state may emerge in their midst, one wonders why in Europe and North

America people are so much at ease with central government. The French historian Bertrand de Jouvenel, asking himself the same question, wrote a superb book about this, entitled *On Power: The Natural History of Its Growth*, published in 1993 by the Liberty Fund in Indianapolis. I quote:

"From the twelfth to the eighteenth century governmental authority [in Europe] grew continuously. The process was understood by all who saw it happening; it stirred them to incessant protest and to violent reaction. In later times its growth has continued at an accelerated pace .... And now we no longer understand the process, we no longer protest, we no longer react. This quiescence of ours is a new thing, for which the State has to thank the smoke-screen in which it has wrapped itself."

Bertrand de Jouvenel points to the cunning with which states hide their profoundly criminal character. One should keep this cunning in mind when establishing a new country, because all states will be tempted to foil any attempt to prove that statelessness is a viable option. Almost every state will want to send its secret agents to create havoc.

What sort of country would be a reliable host for an experiment with statelessness?

1. Its government must be quite libertarian itself.
2. It must have a large percentage of libertarians among its indigenous population, in order to keep it libertarian.
3. It must seek the short-term gains of the experiment rather than care for its long-term political consequences.

One can find such countries only on the African continent, especially below the Sahara, where almost all of the 45 states face hostile, libertarian populations. The power of these states sometimes doesn't reach further than their capital city, main airport and main seaport. The rural populations deny them the privilege of levying taxes. Some of these states have an annual budget of less than ten million US dollars. Such ramshackle states will do anything to live another year.

There is one African nation of particular

interest, the Somali nation. It is the only African nation thus far, which has abolished statehood after its decolonization. It's the first African nation that returned to its indigenous political tradition. There are, of course, many former politicians among the Somalis who try to revive the state. They are often plotting with foreign states, including the USA. When, in 1993, America tried to re-impose statehood on the Somali tribes, they successfully defended their newly won freedom with every tooth and nail. Thus, the Somalis bore out a pet libertarian theory that free nations need not fear foreign armies unless their soldiers are prepared to kill the entire population.

Tribal government is quite suitable for a rather static, pastoral way of life, but it does not serve the needs of those operating on world markets. The Somali leaders realize this, but what can they do? They lack the necessary political skills. This is where foreign libertarians can come in. The question is, how? Not by advising the Somalis how to reorganize their government, because there are almost no Somali politicians willing to listen to a foreigner. Those who will listen are rarely capable of acting upon such advice. Therefore, the only effective way in helping the Somalis is by establishing a small model country in their midst, with a sovereign government based on the same political principles as practiced by the tribes. This model government will then show the way to modernity, particularly to those Somali politicians who will be associated in its management.

The Somali tribes, because of their libertarian tradition, cannot be careful enough in choosing a partner for developing their politics and economics. The same goes for libertarian new country advocates. They should locate their free market experiments in a solid libertarian environment. Somaliland and the libertarians both have something to offer to each other. Somaliland has the land and the sovereignty that libertarians are seeking. The libertarians can bring about the political and economic development that Somaliland is seeking. Therefore, new country advocates and Somaliland can be — and will be — ideal partners. △

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# Airline Safety Can Be Assured by Insurance-Industry Incentives

by Robert W. Poole, Jr.

This column is excerpted from an article, "Safety on the Fly," which appeared in *Reason*, October 1996, and is reprinted here with permission. Copyright © 1996 by Reason Foundation.

Imagine for a moment that there were no Federal Aviation Administration. What would prevent some airlines from cutting corners and taking risks few of us would want to accept? To find an answer, consider who would have the most to lose in such a world. Clearly, it would be insurance companies, who would bear the brunt of the risk. Since no one would operate an airline without insurance, the insurance companies could face ruinous exposure for liability and replacement costs due to an increased number of crashes. Therefore, the insurance industry would have to engage in aggressive loss prevention activities, as insurers currently do in factory safety and fire protection. (There is no federal agency that regulates your local fire department; that is done by the non-profit Insurance Services Office.)

What would probably emerge is a non-profit entity, funded by and answerable to the insurance industry, that would set air safety standards. And that would dramatically change air safety incentives. Consider the apparent cause of the ValuJet crash. One of its maintenance contractors improperly labeled hazardous oxygen generators and illegally loaded them aboard the doomed DC-9. It turns out that the nine different FAA regions have nine different hazardous materials policies — and none has the authority to open or inspect packages to see if they contain hazardous materials. An FAA memo described this problem well before the ValuJet crash, but no action was taken because nobody's money or job was on the line.

If an insurance safety organization identified such a problem, it would have a strong financial incentive to solve it, in order to prevent future losses. And the airlines would have a financial incentive to comply with the insurance entity's safety standards because doing so would lower their premiums. (Today, airlines typically

fight proposed safety requirements because of their cost.) Some airlines might opt for a higher standard than others, seeking the best balance between insurance costs and safety expenditures. They might be rewarded with a published safety rating from the insurance entity, analogous to the Underwriters Laboratories symbol on electrical appliances.

On the other hand, it's unlikely that an insurance safety agency would push standards that imposed exorbitant costs on airlines for minuscule benefits; that would not serve the interests of the airlines, their passengers, or the insurers. But since it would not be in anyone's interest to have planes falling out of the sky, we could expect reasonable, science-based tradeoffs between safety improvements and cost.

An insurance-based system would depoliticize airline safety. This should be the goal. △

*Robert W. Poole, Jr., is Publisher of Reason magazine, and a former aerospace engineer.*

## Business Forum (from p. 1)

able Increments," which was a late addition to the agenda.

Attendees discussed two other papers whose authors could not travel the long distance to the Forum. These were "Optionality: Beyond Law and Order," by Ben Mettes, and "Everyone at Risk," by Dennis Riness. Discussion of Dennis Riness' paper was facilitated by the audio tape which he had sent, on which he spoke his presentation.

All of the papers presented at the Forum were printed in the preceding (Autumn) issue of *Formulations*, with the exception of "Hit 'Em, But Not Too Hard," by Richard Hammer, which is printed in this issue.

FNF holds forums twice each year, in October and April. This was FNF's seventh Forum, the first in its fourth year. The photographs in this issue were taken at that Forum, thanks to Bobby Emory. △

## Family Structure (from p. 1)

cutoff from their expected primary source of support?

- Will there be orphanages? Will children be sold? △

## FNF on the Web (from p. 1)

table of contents can see which papers are presently posted, as the titles of these papers are underlined.

We plan eventually to post all our previous papers to this archive (with the exception of any whose authors might choose to forgo this mode of publication). But it may take us a year or more to catch up with this largely-clerical work. By design we will always stay somewhat behind the paper production of *Formulations*, for which we receive revenue.

Phil Jacobson, having volunteered to take on the task of translating text files into the necessary "htm" language, has become FNF's editor of Web publications. Phil formats the papers, and modifies their headings as needed, to make them suit the new medium. Roderick Long, also involved in the work, reconstructs the papers from the fragments into which they were broken for page layout of *Formulations*. Earlier this year Marc Joffe established the NCF web location which hosts FNF's pages. Marc maintains that location. △

## Foundation News Notes

- We have at last published Roderick Long's draft of a Virtual Canton Constitution as a stand-alone document. This constitution had previously been presented in *Formulations*, in the four-part "Imagineering Freedom: A Constitution of Liberty" series, intermixed with Dr. Long's commentary upon the text of the constitution. Also, an earlier version appeared in the Proceedings of the first FNF Forum. Now we have published the text only of this most recent version (Version 5), as a 17-page FNF Working Paper. Copies of this document will be sent, without extra charge, to FNF Members and Friends. Others may order a copy, as shown on the enclosed order form.

- FNF's book-reading and discussion groups continue, with a dedicated little group picking title after title. In July we completed Isabel Paterson's *The God of The Machine*. Then Richard Hammer, although backing out of volunteering to lead the discussion, volunteered his liv-

(continued on page 15)

# Hit 'Em, But Not Too Hard

## Institutions for Giving Negative Feedback in Small and Manageable Increments

*Presented together with a comprehensive theory of property, society, and all things good and proper.*

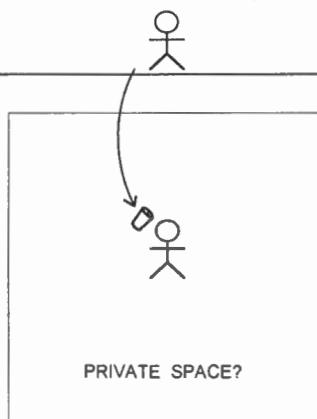
by Richard O. Hammer

I have been searching for ways that, in our envisioned free nation, people who feel themselves wronged can strike at the wrongdoers with appropriately-sized hits. In this talk I will begin and end with examples. In the middle I will present a theory of property which I have been formulating, and which I believe bears upon the problem illustrated by my examples.

### 1.0 First Example

Suppose someone keeps throwing empty soda cans on my front lawn. A couple of times a week, as this person passes my house after visiting the convenience store at the corner, he tosses his empty can on my lawn. What can I do about this?

GOVERNMENT "POLICED" STREET



One answer, which I expect to be offered by some libertarians, is that I can confront the litterer and threaten violence if he does not stop. After all, in the free nation I will be able to buy all the guns I want. But violence can bite back. I might get shot over a soda can.

Of course probably I would not take a gun with me for my first confrontation with the litterer. I may start by simply threaten-

ing to punch his nose. But I do not like this either. It might escalate and lead to costs far greater than the inconvenience of stooping to pick up the can.

If I have resources, I suppose I can hire a



Richard Hammer

private guard to do the threatening for me, and to absorb any shocks which may result. And others might suggest that I call the government police. But I would be surprised if this led to a satisfactory resolution.

None of these options is good. There needs to be some way I can hurt, not necessarily the litterer himself, but the interests of the litterer, so that he soon learns that his littering hurts his interests.

### 2.0 A Theory of Property Which Relates to Littering

To me this example raises issues of property rights. The problems can be explained in terms of ownership, if we examine what we mean by "ownership," and if we study the institutions in society which either support or undermine ownership. Some points which I make here may seem painfully obvious to already-libertarian readers. But I will appreciate your bearing with me, as it seems to me that I may be adding emphasis to points which have not yet received sufficient notice in our literature.

#### 2.1 Acts to Satisfy Needs

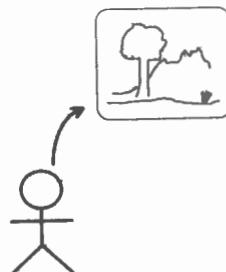
It all starts with human needs. By virtue of the fact that we live, we have needs.

And normally we act to try to satisfy our

needs. We act, that is, with one important limitation: normally we act only if we can imagine a cost-effective way to fill the need, a way which promises to give more in return than it costs.

Let us consider two ways that a person might act to try to satisfy a need, alone and through trade with another person.

#### 2.1.1 Alone



A person acts to shape something in the environment to his need

You might think I have the arrow pointing in the wrong way, in that the person probably takes something from the environment. But I think my model works better if the arrow represents a choice, with the arrow pointing from the person who makes a choice to the entity (either environment or person) affected by the choice.

Assuming that the person's choice to act in relation to the environment works for the person, then the person will reasonably want to believe that he can choose to repeat the act, for future satisfaction of the need. This, as I think of it, is our hunger for property.

Now, keep in mind this definition of ownership which I like:

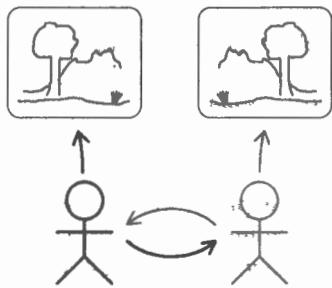
*Ownership is the power to decide how to use the thing owned.*

Notice that my definition differs in an important way from common usage. You do not own something just because someone might say that you own it. You own it only if you control the choices pertaining to it. For a big thing, such as a house, there are thousands of choices which pertain to that thing. But most "owners" of houses in fact control only a portion of the choices; control of many choices has been taken by government agencies.

Also notice that this definition looks

forward. The "power to decide" means in the present and future. Ownership then becomes the ability to predict future choices, the ability to plan.

#### 2.1.2 Through Trade With Another Person



*A person acts in relation to another person to satisfy his need.*

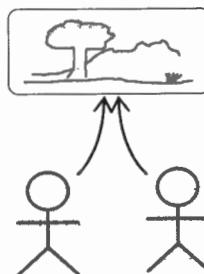
Again it is natural for a person who succeeds in a choice, in this case to trade with another, to want to be able to repeat that choice in the future. It is natural for one partner to want to own (to have power to decide) the future choice of the other. This begins a contest of rights, about which I will say no more now.

In this drawing I included the environments with which the partners interact to make it easier to show that both parties in the trade are winning. Since each partner has a choice to interact with the environment, each partner would choose to trade with the other only when that choice was better than interacting with the environment.

Also, a drawing which omits the environments and shows only two trading partners without their environments, fosters the incorrect notion that trade is a zero-sum process, that what one person gains another must lose. But, since both interact also with the environment, both can specialize, and extract values from the environment which can be traded. Normally both partners can and do accumulate wealth.

And finally notice the possibility of ostracism. Given that trade helps each partner, each partner is given some power to hurt the other, by withdrawing from future trade. Since each partner finds himself motivated to treat the other with respect, littering rarely becomes a problem.

## 2.2 The Hunger to Define Property Rights



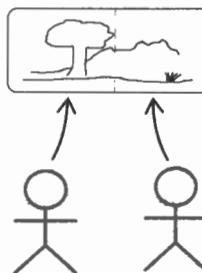
*Typical initial conditions*

Here, with two persons each able to make choices relating to the environment, we have potential conflict.

Now if one person hunts fowl and the other gathers nuts then the two do not necessarily conflict. I reiterate this point: First and foremost, property rights concern choices; secondarily, in those instances when bundles of choices get tied to plots of land, property rights also concern real estate.

But, for the typical case which concerns us, we assume that people acting in the same environment will naturally conflict regarding certain choices. Especially when new environments are opened, or when new people enter an unfamiliar environment, it will be unclear who will make which choices.

But typically, I believe, property rights quickly come to be understood. A tense state is unstable. In most cases a working division of property rights soon evolves.



*Choices tend to come to be owned*

If it is not clear who has power to make some choice, there is a natural tendency for someone to take charge of making that choice. And if no one challenges that person's making that choice, then it becomes accepted within that society: that individual owns that choice.

The soda can tossed regularly on my yard

illustrates this. While I might like to believe that my property-tax "ownership" of the lawn gives all choices pertaining to me, the litterer possesses power to choose to toss cans there. Since ownership (using my definition) grows from power to make choices, it seems the litterer owns a choice which I would like to own. Unless somehow his choice is successfully challenged, it remains his property.

Before we depart this subject, notice that every choice worth owning will tend, in the settled state, to be owned by someone. Valuable powers to choose will not remain unclaimed for long.

## 2.3 Public Space

In my writing during the past few years I have blamed many problems on what I call "public space." But I am still trying to figure out what I mean by this fuzzy concept. Perhaps in calling it "public space" I have not named it well. Here I will try again to explain what I think I see. Perhaps your feedback will help clarify this concept.

To show what I mean by public space, I might point first to a street which is owned and policed (if at all) by government, such as the street in front of my house. By way of contrast, to show what public space is not, I point to a private space, a private restaurant, and invite you to compare the feeling of a rule-full and ordered environment in a private restaurant, in which the owner can and will kick you out if you transgress too much, with the feeling of dubious lawfulness which exists on the government-policed street outside the restaurant.

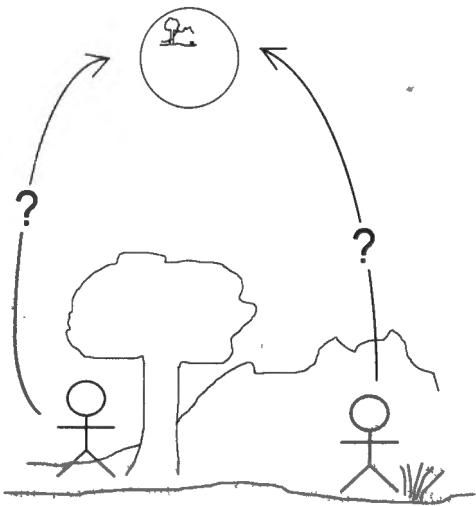
When you step out of a private restaurant and onto a government-policed street, you step from a space in which responsibility for policing is predominately private to a space in which that responsibility is predominately public. Do you notice, as I think I do, a difference in the feeling of the lawfulness of those spaces? This exemplifies the difference between private space and public space.

As I grope to explain this difference, I might say public space is a place in which the institution of private property is not working, in which choices, if any are being made, are not being made in response to the private interests of private persons. Public space consists of a set of choices which are not owned privately.

It gets more complicated. Early in my

thinking about public space, I saw that it was not all the same. There are differences. I now distinguish two categories of public space, which are: frontiers not yet occupied, and public space created by acts of state.

### 2.3.1 Frontiers Not Yet Occupied



In frontiers not yet occupied there is nothing worth fighting over; there is no power to make a choice which will return to the person who holds that power a value greater than the cost of defining and policing that power. One example concerns ownership of an acre on Neptune. Nobody to my knowledge cares enough to make issue of it.

Another example concerns standards. For example, do we write the day of the month first, as "19 October 1996", or second, as "October 19, 1996"? I think there is an economics of this; we could list and compare costs and benefits. But evidently there is not sufficient value at stake here to induce formation of a definite standard.

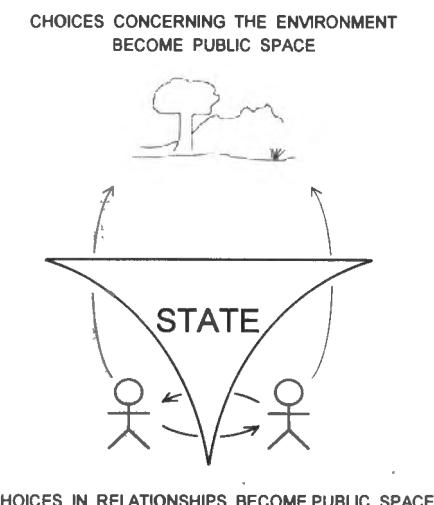
The nature of human progress, I think, entails pushing outward into this type of public space. Pioneers who push into new frontiers, previously unsettled or un-imagined, find some choices which can be made in that new terrain which promise to return to those pioneers more than the cost of defining and policing. The pioneers stake claims to these choices, attempting to become proprieties in this new space.

While, as I have said, property relates primarily to choices and only secondarily to three-dimensional objects, I think it is natural for people to have fallen into the habit of thinking that property relates pri-

marily to three dimensional objects. Because we find it relatively inexpensive to define property in terms of three dimensions, this is one of the first and commonest ways to stake claims.

### 2.3.2 Public Space Created by Acts of State

In areas controlled by acts of state private ownership of choices is not allowed. Virtually every act of state, so long as it expands the range of choices subordinated to agents of the state and thereby diminishes the choices left to private parties, expands this type of public space.



One example, in three-dimensional space, is the street in front of my house. A second example, which falls somehow between three-dimensional space and choice space, concerns policing or remedial actions that might be undertaken to deter littering onto my front yard. A third example, clearly in choice space, concerns the choice, by plumbing code officials, of the size of water-supply piping in private residences.

It is my opinion that most problems which beset human society breed in this second category of public space. Most of the worst pollution and littering can be seen as occurring in this type of public space, as a consequence of the state taking over some range of choices and then failing to exercise those choices as responsibly as would a private party. Complaints about this type of public space fill, it seems to me, the bulk of libertarian literature. I want to add just a few points:

Most of the choices taken over by state would be made better, in terms of the economic success of persons affected, by private parties, because of the way that in-

centives drive private parties to care about individual people. As we all know, agents of the state respond to the wrong incentives.

Most of the choices taken over by the state are choices that would have been claimed by some private party if that private claim had been legal. These choices have value to someone and, as such, would not fall into the category above, of frontiers not yet occupied.

In this type of public space, a private party who attempts to claim a choice, which that party would find it worthwhile to homestead, is probably breaking the law. For a first example, a private party may not "take the law into his own hands": most ways that I might attempt to punish the litterer are probably illegal. For another example, I probably break the law if I attempt to patch a pothole, which the government has been neglecting, in the government street in front of my house.

### 2.3.3 Externalities and Public Space

Advocates of acts of state have gotten plenty of mileage out of a concept called "externalities." Externalities are negative side effects of a free market process. Pollution, for instance. But free market environmentalists have a different view: externalities show a failure all right, but not of too much market action; externalities show a failure of too little market action.

If a government-owned river stinks with pollution dumped there by private parties, it is because that river is public space: the river is policed, if at all, by government. If, on the other hand, the river were owned privately, then that private owner would confront the polluters with fierce battle, and probably even government courts would enforce the claims of the private owner against the polluters.

Notice that externalities can be classed in two sets which correlate with my two categories of public space.

First, some externalities concern trifling issues, which would fall into my category of frontiers not yet occupied. Some may object to the litter which the U.S. leaves on the moon but, until someone derives enough value from the cleanliness of the moon to police a claim to that cleanliness, anyone who attempted to police such a claim would squander scarce resources.

Second, all other externalities concern valuable choices which would fall, as I see it, into my category of public space created by acts of state. If the irritation which someone feels, as a consequence of some form of pollution, drives that person to choose to act in some way to stop the pollution, this shows, I believe, an attempt to stake a private claim. If, as I understand markets, that claim has sufficient motive, it will succeed. And markets will deliver a better service than government.

We should see that the way to rid ourselves of externalities is not to expand the public space, as statist will argue, but to shrink it.

### 3.0 Concluding Example: The Possibility of a Trade in Hurts

Free trade brings benefits to all trading partners, and this gives to each trader some power to hurt another, by withdrawing from trade with that other. But the hurt delivered in this way will often be too small to induce the change we desire.

Suppose I am willing, able, and eager, to do more than simply withdraw. I am ready to pay, to act. What, within the limits of libertarian propriety, can I do?

I raised this question with Bobby Emory, one day while we were talking on the phone, and out of that conversation came this idea. Suppose there is an oil company that you do not like, because of the way that it treats the environment. You would like a way to send a strong message to that company, and you are willing to dedicate resources (time or money) to take a hit at that company.

Here is a mechanism: Find customers of that oil company's gas stations, and give them coupons for, say, \$1 off on a tank of gas at any other gas station. So you have to pay the dollar, but in so doing you can deprive the oil company of the revenue it would have received for that tank of gas. This is all voluntary. You are not coercing anybody.

This kind of boycott could be organized. It could be run by a nonprofit organization. Or it could be a business which, motivated by your payments, translates your animus toward a polluter into effective strikes at the viability of that polluter's business.

Of course mechanisms such as this trade

in hurts hardly exist in America, because anyone who undertook such trade would soon find themselves attacked by government police and courts. Government has taken the function of regulation unto itself; regulation of negligence is public space. But in a free nation mechanisms such as this could abound, and could satisfy the needs which numerous government regulatory agencies were intended to satisfy. I wish I could imagine more of them. Can you?

### 4.0 Afterword

This paper created controversy when I presented it in the Forum, and I was left doubting that I had made my points clear. Therefore I add this section in which I try to summarize key concepts.

### 4.1 Concerning "Ownership"

Some controversy grew from my use of the word "ownership." In our language this word has several meanings. I intentionally highlight one of those meanings, that of power to decide how to use the thing owned, at the expense of another of those meanings, that of a claim to a right to decide how to use the thing apart from any real power.

For example: Do I own a car which was stolen, and never recovered, twenty years ago? The meaning which I highlight in this paper would say "no." The other meaning would say "yes."

The objection to my usage grew, I believe, from a desire to defend the legitimacy of claims. Since I never intended to attack the legitimacy of claims, please bear with me as I try again to crystallize a point which I sense is important.

Power to control our own lives leaks away to government as government takes powers to decide. But sloppy thinking about the concept of "ownership" hides this leak, even from most libertarians. Ownership leaks away from us, not only all at once as in the theft of a car, but also choice-by-choice as government adds regulations.

Government bureaucrats, the mainstream media, and even most libertarians, continue to describe as "owners" persons who can no longer exercise many choices concerning the thing they supposedly "own." Since I cherish the legitimacy of claims, I ask that we face the fact that "ownership" in West-

ern democracies does not mean "power to decide," as I would prefer.

## 4.2 Concerning Public Space and the Need for a Trade in Hurts

I think that little frustrations can add up, accumulate, and finally cause an explosion of violence. So what is needed is a way to process little frustrations as they arise, one at a time, before they accumulate.

Statists will agree with this, but will say: "We want your frustrations to receive consideration. But postpone acting yourself, as you may not act appropriately. Bring your frustrations before a commission."

And therein lies the problem. The commission, being an act of state, inevitably creates public space of the sort I describe in section 2.3.2.

The commission will be a blunt instrument. Because communication requires effort, the commission can never notice the details in your frustrations as much as you do. What you need is a way to deal with your frustration yourself, without having to work through the high-transaction-cost effort of convincing someone else of the legitimacy of your need. You need an efficient little tool, a low-transaction-cost way to communicate a little bit of frustration.

Every act of state builds a dam across some flowing river of human ambition, creates a blockage behind which frustrations can accumulate. And typically when ambitions finally break out from behind the dam, no already-established channels exist which can order the flow.

Most libertarians have been trained to recognize some of the social problems created by government dams on rivers of human ambition. For instance most libertarians can explain why prohibition of drugs causes more death and destruction than it avoids.

However, few libertarians, I am struck, recognize the social problems caused by government's takeover of law, by the dam it has built between us and the predictable and orderly environment in which we would like to live. Generally, I believe, any assumption that wrongdoers can get away with crimes must be traceable, in all but trifling cases, to the dam of government law which blocks the natural ways which we would find to vent our frustrations. Our

(continued on page 37)

# An Open Letter to Harry Browne and His Supporters

by Marc D. Joffe

for the New Country Foundation

*Editor's Note: As an educational foundation, FNF neither supports nor opposes any candidate for political office. At Press Time, the Microsoft/NBC web site was reporting that Libertarian Party President Candidate Harry Browne had received 471,000 votes. The author assumed that the official tally — which is usually reported in December — would be close to 500,000 votes.*

Before I get started, I wish to congratulate you on making such a concerted effort to spread libertarian ideas during the Presidential campaign. I also wish to compliment you on the honesty of your post-election press release, which said, among other things:

"[Browne's] effort [was] the second most successful presidential campaign in Libertarian Party history. . . . But the numbers disappointed Browne's campaign staff, who had hoped that Browne's unprecedented onslaught of talk radio appearances and TV, radio, and newspaper ads — as well as his popular book, *Why Government Doesn't Work*—would push the vote totals higher.

"I think we ran the best \$3 million presidential campaign you can run, with the best presidential candidate," said Sharon Ayres, Browne's campaign manager."

Given a campaign budget of \$3 million and a vote total of 500,000, LP contributors paid \$6 for each vote. Unfortunately, Ms. Ayres then goes on to draw the wrong lesson from these results:

"But we've run up against the limits of what's possible with a \$3 million campaign. If we're going to compete more successfully in the year 2000, we're going to need a lot more members, more resources, and more money.'

Browne agreed that a lack of money — compared to Clinton, Dole, and Perot — had restricted his ability to reach enough voters enough times to persuade them to vote for him:

'You are only going to get the really hardcore [supporters] unless you get an enormous amount of media coverage — so people can hear our message several times,' he said. '[Most] people had no way of knowing about our message. We had tremendous exposure through talk radio, but that's just a fraction of the voting public.'"

While this all sounds reasonable, there is considerable evidence to the contrary. First of all, Andre Marrou got roughly 60% of your campaign's vote total, but his campaign budget was less than half as large. Thus it would appear that you have already reached the point of diminishing returns.

Other candidates have spent enormous amounts of money in local races, only to obtain disappointing results. For example, in the 1989 New York City Mayoral Primary, perfume heir Ronald Lauder ran a very well-financed campaign against Rudolph Giuliani and bombarded viewers with advertisements, but still obtained only a small number of votes.

So spending more money and putting on a lot more ads next time is simply not the solution. And, if we agree you had a solid candidate, an effective strategy, and a united party — as I'm sure you would — it is really hard to see how you could do much better the next time around. The question you really need to be asking now is not how can you get more resources for the next election, but rather, is electoral politics the way to achieve your ideological goals?

Let's begin by asking what was the ideological goal of your campaign. I believe you would say something like this: "to free ourselves and other Americans from coercive government." You want to convince your fellow Americans that they can live better without government taking 40% of their income, churning it around and then misallocating it. You want to convince them that they could live better without authorities telling them what they may say, what they may eat and what they may inhale. But you have a problem.

If someone asks you for an example of a society that works the way you envision, you're stuck. You might point to America 100 years ago — but your questioner will undoubtedly say something like: "Things are more complicated now; we can't go back to the way things were then." You could point to Switzerland (as Harry did in his investment book days), but, of course, Swiss taxes are almost as high as ours and

Swiss regulations are probably worse. Hong Kong? The majority of the housing stock is state-owned, and, after July 1997, it will become part of China, and thus unlikely to remain much of an inspiration to any of us. The Cayman Islands or other tax havens? Well, that's more like it. But, such territories are not perfect examples because they're very small, they usually have some form of intervention (like immigration restrictions, consumption taxes, etc.), and they're usually under the protection of a larger state (like the United Kingdom or Holland).

With no good example of a large country functioning successfully with only a "night watchman state" — let alone without coercive government at all — why should the average American voter take the chance? His life isn't that bad right now. He has plenty of food to eat, a comfortable home, one or two cars in the garage and plenty of sports to watch on TV. Why risk all that on some radical social theory?

He needs to see a concrete example that libertarian ideas not only work, but that they can provide a substantially better quality of life. That's why communism was overthrown. Lots of people figured out that things were better in the West, and they decided that their governments should start acting more like those in the West.

While lots of people are a little uneasy with the Western mixed economic system, they simply don't see any practical alternative. Thus all we can expect in the near future is what we have been getting in the recent past — fine tuning, but no radical change.

So I hope you will consider expending your energies in a different direction. Let's work together to formulate a plan for creating a libertarian country outside America. We can start small at first, but we should create something that has the potential to grow so that one day our fellow Americans will see a viable alternative to the welfare state demonstrated on a significant scale.

Of course, new country activities have thus far been unsuccessful. This I would attribute primarily to a lack of resources. Not financial resources so much as mental resources — creativity, initiative and persistence. These are the sort of things I think you could contribute to our movement.

I hope you will join us.

Yours in Liberty,

Marc

# Christian Libertarians

by Roy Halliday

The libertarian philosophy, which is the basis of the Free Nation Foundation, is compatible with Christianity. Not only that, libertarianism is the only political philosophy compatible with the ethics of Jesus. Furthermore, although most Christians and most libertarians are not aware of it, Christians are logically aligned with the most radical wing of the libertarian movement — the anarchists. I intend to support these claims here in order to encourage more Christians to participate in the Free Nation Foundation.

Libertarianism as a moral philosophy is based on the principles that it is wrong to initiate violence and it is wrong to steal. Most people agree with these principles, but they do not apply them to the government. Libertarianism is unique in that it does not exempt the actions of governments from these requirements of basic justice. Consequently, libertarians condemn such state activities as war and taxation, and libertarians want to reduce government power to the minimum in order to reduce government crime. This means that libertarians are either minimal statists or anarchists, depending on how much government they believe it is possible to abolish. Reducing government power as much as possible is the same thing as maximizing liberty, so we are called libertarians.

The libertarian philosophy is not a complete world view. It says nothing about metaphysics, epistemology, esthetics, or theology. It doesn't even have much to say about morality, except that theft and the initiation of violence are wrong, even when done by the government. Most of the libertarians that I know are as skeptical about supernatural power as they are about government power. But it is not necessary to be skeptical about religion in order to be skeptical about government. It all depends on whether your religion condones theft and the initiation of violence by the state.

The things that Jesus taught about the end of the world, the Kingdom of God, redemption, salvation, grace, and life everlasting are essential to Christianity as a religion. And Jesus' strong convictions concerning charity, marriage, envy, honesty, faithfulness, piety, material wealth, and service to God are essential in defining

a perfect Christian life. But it is what Jesus taught about theft and violence that defines Christian political philosophy, because political philosophy consists of the prin-



Roy Halliday

ciples for using political power, which is financed by theft and based on violence.

## Jesus' Political Philosophy

Jesus was totally opposed to theft and violence. He subscribed to the Ten Commandments, including number eight: "Thou shalt not steal." (Exodus 20:15). And he was a pacifist. He taught that we should not use violence to resist evil or to punish evildoers. Instead, we should respond to evildoers with love. We should love our neighbors and should show good will to our enemies.

Any open-minded reader of the New Testament will conclude that Jesus advocated nonresistance and nonviolence, despite a few passages that tend to point in the opposite direction. That Jesus was opposed to war and violence is even admitted by Reinhold Niebuhr, the leading theologian in defense of the allies in World War II. Niebuhr wrote:

"It is very foolish to deny that the ethic of Jesus is an absolute and uncompromising ethic.... The injunctions 'resist not evil,' 'love your enemies,' ... 'be not anxious for your life,' 'be ye therefore perfect even as your Father in heaven is perfect,' are all of one piece, and they are all uncompromising and absolute."<sup>1</sup>

Even though Jesus regarded himself as the Messiah the Jewish people were waiting for, he refused to lead the Zealots in violent revolution against the evil Roman conquerors and oppressors of his people. When they came to arrest him, one of his followers drew his sword and sliced off the ear of a servant to the high priest. Jesus said:

"Put up thy sword into his place: for all they that take the sword shall perish with the sword. Thinkest thou that I cannot now pray to my Father, and he shall presently give me more than twelve legions of angels? But how then shall the scriptures be fulfilled, that thus it must be?"

(Matthew 26:52-54).

Instead of violence, he practiced forgiveness, and he offered no resistance, even when they crucified him.

Jesus did not believe in resisting evil with violence, but he believed in speaking out against it in strong terms. He was not a collaborator or a man who would negotiate with the devil. He was a radical champion of the Kingdom of God. And he taught his disciples to be just as fanatic and radical as he was. He taught them to obey God rather than government.

The Pharisees knew Jesus' attitude about serving anyone but God, so they "took counsel how they might entangle him in his talk" (Matthew 22:15) and get him in trouble with the law. They tried to get him to publicly condemn the payment of taxes. But Jesus was not ready to die yet, and they weren't clever enough to trap him. They said to him:

"Master, we know that thou art true, and teachest the way of God in truth, neither carest thou for any man: for thou regardest not the person of men. Tell us therefore, What thinkest thou? Is it lawful to give tribute unto Caesar, or not?"

But Jesus perceived their wickedness, and said, 'Why tempt me ye hypocrites? Show me the tribute money.' And they brought unto him a penny. And he saith unto them, 'Whose is this image and superscription?' They say unto him, 'Caesar's.' Then saith he unto them 'Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's.'"

(Matthew 22:16-21)

When he was ready to die and was on trial for his life before the governor, Jesus wouldn't lie, but again he refused to say any words that would give the governor an excuse to crucify him.

"And Jesus stood before the governor: and the governor asked him, saying, 'Art thou the King of the Jews?' And Jesus said unto him, 'Thou sayest.' And when he was accused of the chief priests and elders, he answered nothing. Then said Pilate unto him, 'Hearest thou not how many things they witness against thee?' And he answered to him never a word; insomuch that the governor marvelled greatly."

(Matthew 27:11-14)

Jesus encouraged his followers to keep the faith despite what those in power might do to them:

"Blessed are they which are persecuted for righteousness' sake: for theirs is the kingdom of heaven. Blessed are ye, when men shall revile you, and persecute you, and shall say all manner of evil against you falsely, for my sake. Rejoice, and be exceeding glad: for great is your reward in heaven: for so persecuted they the prophets which were before you."

(Matthew 5:10-12)

He warned them about the evil councils, and governors, and kings:

"Behold, I send you forth as sheep in the midst of wolves: be ye therefore wise as serpents, and harmless as doves. But beware of men: for they will deliver you up to the councils, and they will scourge you in their synagogues; And ye shall be brought before governors and kings for my sake, for a testimony against them and the Gentiles."

(Matthew 10:16-18)

"But when they persecute you in this city, flee ye into another."

(Matthew 10:23)

Although Jesus was nonviolent, he was not meek and mild. He demanded full-time, life-long service and devotion to himself above all others. His political philosophy included the libertarian moral

principles: uncompromising opposition to theft and to the initiation of violence. But Jesus was more opposed to violence than many libertarians are. He was a pacifist anarchist. He was an extremist who was willing to die for his beliefs rather than compromise. He was an outlaw who founded an illegal religious sect, and because of this he was executed by the state.

#### The Political Words and Deeds of Paul

The strongest defense of government in the New Testament is in Paul's letter to the Romans in which he says we should pay our taxes and honor and obey our rulers, because they are ministers of God, and if you resist them, you are resisting God, and you will be damned (Romans 13). Paul's statement is quite clear and unequivocal, but there are reasons why Christians should disregard it: (1) It comes from Paul rather than Jesus, so it is not from the most authoritative source and (2) Paul ignored it himself.

For example, when Paul was in Damascus (Acts 9:23), the Jewish leaders plotted to kill him, and the governor under King Aretas had the walls of the city guarded in order to seize him (2 Corinthians 11:32-33), but Paul defied the law, and his Christian friends let him down in a basket at night through a window in the wall, and he escaped the authorities. Paul also fled from the authorities in Iconium (Acts 14:5-7), and he hid from angry Jews and government authorities in Thessalonica (Acts 16:4-7). He was not so fortunate at Caesarea, where he was imprisoned for 2 years for spreading illegal ideas. Finally, this outlaw's luck ran out completely when he lost his appeal to Rome and was executed by the "duly established" government.

#### The Political Words and Deeds of Peter

The apostle Peter also taught respect for the emperor and his governors (1Peter 2:13-17), but, like Paul, he did not always heed his own advice. Peter and other apostles who were with him were arrested and put in prison for preaching and healing without a license (Acts 5:17-21). What did God do? Did God condemn Peter for breaking the law? Did God forgive Peter and say you violated the law for a good reason, but you must pay the price like a conscientious objector? No! God sent an angel to open the prison doors, which had been closed and sealed by the government authorities. God took the side of the criminal apostles and

broke them out of jail! Not only did God aid and abet these criminals, he had the angel tell them to go to the temple and preach the gospel and break the law again! The apostles did as they were told and were arrested again. When the council asked Peter why he deliberately broke the law by teaching in Jesus' name, Peter replied, "We must obey God rather than men." (Acts 5:29). The authorities were persuaded by Gamaliel not to kill the apostles. Instead, the council had the apostles beaten and released under orders not to speak in the name of Jesus.

"Then they left the presence of the council, rejoicing that they were counted worthy to suffer dishonor for the name. And every day in the temple and at home they did not cease teaching and preaching Jesus as the Christ."

(Acts 5:41-42)

Peter, like Paul, was eventually executed by the Roman government for the crime of putting God above the state. These convicted felons were the two great New Testament apologists for the state. Their actions more than atone for the few aberrant words they offered in behalf of the ruling powers.

#### The Outlaw Church

Jesus' original disciples and followers up to the fourth century continued to practice his philosophy of nonresistance, love, and forgiveness. In those days, Christianity was an outlaw religion. Those caught practicing it were persecuted. It was by going into hiding and doing things that were illegal as far as the government was concerned that Christians succeeded in spreading the gospel into Europe.<sup>2</sup> Trying to follow in Jesus' footsteps, no Christian would become a soldier after baptism at least up to the time of Marcus Aurelius (about A.D.170).<sup>3</sup> Aristeides, Justin Martyr, and Tatian in the second century, Tertullian, Origen, Cyprian, and Hippolytus in the third century, and Lactantius in the fourth century all made statements that show they regarded war as organized sin and a denial of the way of Jesus.<sup>4</sup>

#### The Established Church

The Church was Christian<sup>5</sup> until Emperor Constantine declared himself to be a "Christian" in 312. After that the Church

became the state religion and it opposed Christianity. The Church even went so far as to pronounce the primitive Christian attitude liable to punishment, and as early as 314 the Council of Arles decreed that "they who threw away their weapons in time of peace shall be excommunicated."<sup>6</sup> Leo Tolstoy said the alliance between the Roman Church and the Roman Empire was "the moment when a majority of Christians abandoned their religion."<sup>7</sup> He sarcastically described the arrangement between the Church and the emperor as follows:

...they sanctify his robber-chieftainship, and say that it proceeds from God, and they anoint him with holy oil. And he, on his side, arranges for them the congress of priests that they wish for, and orders them to say what each man's relation to God should be, and orders every one to repeat what they say.

And they all started repeating it, and were contented, and now this same religion has existed for fifteen hundred years, and other robber-chiefs have adopted it, and they have all been lubricated with holy oil, and they were all ordained by God...

And as soon as one of the anointed robber-chiefs wishes his own and another folk to begin slaying each other, the priests immediately prepare some holy water, sprinkle a cross (which Christ bore and on which he died because he repudiated such robbers), take the cross and bless the robber-chief in his work of slaughtering, hanging, and destroying.<sup>8</sup>

The Roman Church has adopted the concept of a "just war," and increasingly has tended to place the crusade of the day in this category.<sup>9</sup> In the meantime other branches of "Christianity" also entered the heathen path as when Vladimir adopted Christianity in A.D. 988 and had the people of Kiev driven into the Dniepr river to be baptized against their will.<sup>10</sup>

### Keepers of the Faith

Since the Churches were co-opted by the various emperors, the majority of "Christians" have been opposed to Jesus' philosophy of nonresistance to evil. However, over the centuries some nonconformists have dared to support Jesus' moral philosophy at the risk of becoming martyrs to the

vengeance of the orthodox Church. The German Baptists and Mennonites, the Friends or Quakers, and the Shakers are examples. Even the Roman Church tolerated nonviolence within some of its monastic orders. Francesco d'Assisi practiced nonviolence as part of his attempt to lead a perfect life in the manner of Jesus.

In 1846, Adin Ballou published *Christian Non-Resistance*, which is a lengthy defense of Jesus's moral philosophy that draws out its libertarian implications.<sup>11</sup> Leo Tolstoy, who was influenced by Adin Ballou's book, became a famous advocate of Christian nonviolence and anarchism. He used his influence to raise money from English and American Quakers to charter ships in 1899 to bring approximately 12,000 Dukhobors (Russian Christians who refused to bear arms and were consequently persecuted and exiled by the Tsar's "Christian" government) to a large tract of land in Canada where they were allowed to practice nonviolence.<sup>12</sup>

Albert Schweitzer was inspired by the nonviolent philosophy of Jesus. He expanded it into the philosophy of reverence for life. After earning doctorate degrees in philosophy and theology and becoming the premier pipe organist in Europe and an authority on Bach and a Christian pastor and an author, Schweitzer decided he wasn't doing enough for Christ. So he went back to school, became a doctor of medicine, and then moved to equatorial Africa to minister to the medical and spiritual needs of the benighted Africans. During World War I, the French government arrested him, brought him back from Africa, and put him into a prisoner of war camp in the Pyrenees, because he was technically a German subject. After the war he continued to split his time between doctoring in Africa and lecturing and giving organ recitals in Europe. He was awarded the Nobel Peace Prize in 1952.

Brother Andrew, a Calvinist Christian from Denmark, exemplified another aspect of Christianity that leads to radical actions in violation of government laws. Like the early Christians, Brother Andrew took to heart Jesus' command to spread the gospel throughout the world and to reclaim it for God (Matthew 28:19-20). He explained his smuggler's attitude toward political borders this way:

"You see, I don't believe that our Lord is willing for his Word and witness to be kept out of any country by guarded

boundaries or government decrees. That would be contrary to both the spirit and the letter of his commission to us to make disciples of all nations. In fact, doesn't it make better sense to concentrate efforts on those very spots that are most resistant to the gospel, most dominated by the devil's power?"<sup>13</sup>

So, during the Cold War, Brother Andrew smuggled Bibles behind the iron curtain in violation of the laws of the communist governments, and he became the organizer of dozens of teams of international smugglers who illegally brought thousands of Bibles and Christian documents to victims of communism. He offered a Christian defense of these criminal activities in *The Ethics of Smuggling* in which he expressed views that are in line with the most radical libertarians. He believed that to succeed against the devil you have to be as dedicated and fanatical for Jesus as the communists are against him. He also believed that to follow God's law it is sometimes necessary to break the laws of governments.

"I want to be very plain here: if we are consistent in keeping the law of God, of necessity we will have to break the law of many governments. At this moment, in all the godless, atheistic governments where they tell us not to teach, not to take Bibles, we've got to break that law or break God's law."<sup>14</sup>

"What so many regard as an ethical issue, saying, 'Oh, you shouldn't smuggle; you should keep the law,' is nothing but an agreement with the devil. In debating the morality of smuggling, we deny God the right to rule the world. And that is exactly why the devil rules it."<sup>15</sup>

### Christian Libertarianism

The link between Christianity and libertarianism is very simple. The Christian moral philosophy includes the libertarian principles that it is wrong to initiate violence and it is wrong to steal. Christianity is, therefore, a libertarian religion. As a religion, Christianity goes beyond libertarianism to include beliefs about many subjects in addition to justice and politics. Nonetheless, since Christians accept the premises of libertarianism, they should, logically, reach the same conclusions about the morality of government taxation, leg-

isolation, and war. If it is morally wrong for a Christian to steal or to initiate violence, it should also be morally wrong for a Christian to advocate, condone, recommend, approve, or authorize someone else committing these crimes in his name. As Tolstoy said:

"Laws are rules made by people who govern by means of organized violence, for non-compliance with which the non-complier is subjected to blows, to loss of liberty, or even to being murdered."<sup>16</sup>

Hence it is morally wrong for a Christian to advocate, condone, recommend, approve, or authorize government taxation, punishment, legislation, war, or violence of any kind.

The perfectionist ethics of Jesus goes beyond the minimum entrance requirements of libertarianism. All that libertarianism requires is that you not condone theft or the initiation of violence by anybody. Libertarianism does not require you to not resist when someone attacks you. Libertarianism allows, but does not require, the use of violence in self-defense against aggressors. Furthermore, libertarianism allows you to delegate your right to self-defense to others. This is the source of the disagreement between the limited-government libertarians and the anarchist libertarians. The limited-government libertarians believe that governments have somehow gotten the authority to protect our rights and to punish criminals. The anarchists deny this. The Christians, who do not even believe in using violence for self-defence or punishment, must logically be aligned with the anarchists.

Christians cannot condone the violent overthrow of government, but Christianity would destroy government by withdrawing support.

"A man who refuses to kill and imprison his brother man does not purpose to destroy government: he merely wishes not to do that which is contrary to the will of God; he is merely avoiding that which not only he, but every one who is above a brute, undoubtedly considers evil. If through this, government be destroyed, it only shows that the demands of government are contrary to God's will —

(continued on page 38)

— SO —



How do you feel  
about the  
elections?

## TRAVEL WITH US.

We seek thoughtful libertarians to join in building a free nation — by first building vision of the critical institutions in that nation.

Assume we can succeed in strictly limiting the role of government. How then will we assure safety standards? raise families? corral dangerous criminals? defend borders?

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This sales pitch for FNF was printed, by our new laser printer, onto the backs of the 1143 6"x9" envelopes which were mailed to prospects following the elections in November.

## Update

### Bruce Benson Keeps Busy

by Richard O. Hammer

Several of our readers admire Bruce Benson and his work. As such, recently I asked him if he could tell us what he is up to these days. He reports the following.

- A number of recent and forthcoming publications, including:

"Restitution in Theory and in Practice," *Journal of Libertarian Studies* Vol. 12, Spring 1996, pp. 75-89.

"Are There Tradeoffs Between Costs and Quality in the Privatization of Criminal Justice," *Journal of Security Administration* Vol. 19, December 1996, forthcoming.

"Predatory Public Finance and the Origins of the War on Drugs: 1984-89" (written with David W. Rasmussen), *The Independent Review: A Journal of Political Economy* Vol. 1, Fall 1996, pp. 163-189.

- Being invited to contribute three separate articles to *The New Palgrave Dictionary of Economics and the Law* (London: Macmillan Press, forthcoming, 1998). Two of these are completed and accepted ("Law Merchant" and "Evolution of Commercial Law"), while one is in progress ("Arbitration in the Shadow of the Law").
- Being invited to contribute a review article on "Arbitration" to *The Encyclopedia of Law and Economics* (London: Edward Elgar, forthcoming, 1997). A draft of this paper is now being reviewed.
- Being scheduled to appear on a Televised Debate on "Stopping Violent Crime: New Directions for Reduction and Prevention," sponsored by The Independent Institute, the Koch Crime Commission, and Washburn University. The debate will take place on 3 December at Washburn University in Topeka, Kansas, and will be broadcast at some

date. Other participants include: William Webster, Former FBI Director; Richard Thornburgh, former U.S. Attorney General; Erika Holzer, author of *Eye for*



Bruce L. Benson

*This photograph taken at the April 1995 conference on "Secession," organized by the Ludwig von Mises Institute.*

*an Eye*; David Sentelle, U.S. Court of Appeals Judge in the D.C. Circuit; and several prominent criminologists and criminal law professors.

• Being offered an endowed chair in economic policy at Oklahoma State University, but deciding to remain at Florida State University.

Bruce Benson, who now works as Distinguished Research Professor in the Economics Department at Florida State, has been a member of the Free Nation Foundation since April 1994. He contributed an article to *Formulations*, "Can a Stateless Society Survive?," which appeared in the Spring 1996 issue. His 1990 book, *The Enterprise of Law: Justice Without the State*, left many readers wanting to find more of his work. △

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### FNF News Notes (from p. 5)

ing room as a place to continue meeting — if another would volunteer to lead the discussion. First Phil Jacobson volunteered. We spent three evenings discussing *Origins of the Common Law*, by Arthur Hogue, and another three discussing *Freedom and the Law*, by Bruno Leoni. Now Jim Jeck has volunteered, and we plan two meetings to discuss part one of *The Enterprise of Law: Justice Without The State*, by Bruce Benson. The meetings, free and open to all, are announced in mailings. These mailings go to all names on the list which are within driving range, as well as to all FNF Members and Friends.

- As you may have noticed on the back cover of this issue, FNF now has its own non-profit bulk mail permit. We put this permit to its first use in a few days after the November elections, sending a 1143-piece outreach mailing to a list which combined new names in North and South Carolina, obtained from Laissez Faire Books, with old or inactive names from earlier FNF lists.
- In October FNF purchased a laser printer, a Hewlett Packard LaserJet 5L, to replace an inkjet printer which never really produced good quality print. This will not improve print quality in *Formulations*, as we have long used a laser printer at Kinko's for this, but you can expect other FNF publications and mailings to have a crisper and more professional look.
- The number of people who pay to receive FNF publications continues to grow gradually. As of early November we have 85 currently-paid subscribers and 65 Members. We enjoy a gratifyingly high rate of renewals.
- All contributors of writing should notice that we are changing our writers' deadlines for future issues. The deadlines, which used to be the 15th, or roughly two weeks before the date of publication, have been moved earlier, to the first. This will give us two more weeks in which to produce *Formulations*, and should help our effort to bring our actual date of publication into conformity with our announced date of publication. △

# The Nature of Law, Part IV: The Basis of Natural Law

by Roderick T. Long

## Is There Room for Natural Law?

In previous installments of this series (Vol. I, No. 3; Vol. I, No. 4; Vol. II, No. 1), I have referred to *Natural Law* as the transcendent standard to which manmade laws must correspond in order to be legitimate. But is there such a thing as Natural Law? Are we justified in appealing to such a concept? Or is it hopelessly outdated, an unscientific remnant of a mediæval way of thinking?

Traditionally, Natural Law is called "natural" for two reasons. First, Natural Law is distinguished from *conventional* law; in other words, Natural Law does not depend on or derive from manmade institutions and customs. (If it did, it would not be able to serve as a standard by which to judge manmade law.) Second, Natural Law is distinguished from *supernatural* law; in other words, Natural Law is accessible to human reason rather than requiring divine revelation. (Historically, Natural Law theorists have disagreed with one another about whether Natural Law derives its authority from God's commands; but even those who have held — wrongly, in my view — that Natural Law does indeed depend on divine commands have nevertheless insisted that Natural Law represents that portion of God's commands that we could figure out for ourselves as being rational and reasonable, through our own unaided intellect, without appeal to scripture or other forms of revelation.)<sup>1</sup>

But the very features of Natural Law that make it attractive — its independence of human customs and its accessibility to reason — are also the features that make it controversial.

How can there be a law that doesn't rest on any legal institutions or practices? What is it grounded on instead? In other words, what is the *metaphysical* basis of Natural Law?

Likewise, how can a moral standard be ascertained by human reasoning? How could we ever acquire objective knowledge of what is right and what is wrong? In other words, what is the *epistemological* basis of Natural Law?

Without some answers to these questions

— or at least, without some hope that they *can* in principle be answered — any political theory that appeals to Natural Law is going to be on shaky ground.

At the end of Part III, in Autumn 1994, I promised that the next installment would

we don't ordinarily take ourselves to be expressing a purely personal, subjective preference, like the preference for chocolate over vanilla; rather, our ordinary practices of praising and condemning seem to implicitly assume that there are objective



Roderick Long

consider "The Basis of Natural Law." Well, it's been over two years, but now I return at last to the promised topic. A full-scale defense of Natural Law theory, however, is a task beyond the scope of this article; so I will confine myself to responding to some of the most common objections I've encountered within the libertarian community to the notion of Natural Law (and the associated concept of natural rights).

## Who Has the Burden of Proof?

But first let me make a point about the burden of proof. Most critics of Natural Law assume that the burden of proof lies with the proponent of Natural Law — presumably because they see Natural Law as something bizarre and implausible, something one couldn't sensibly believe unless there were a knock-down argument for it. But in fact, to believe in Natural Law is simply to believe that there are moral standards that transcend the practices and customs of any given community — that there are rational grounds for condemning the Nazi regime as immoral, that it is possible to be justified in so condemning it, even if we assume that what the Nazis did was perfectly in accordance with the values of Nazi culture. When we condemn Nazism,

moral standards, i.e., that there is a Natural Law to which manmade laws are answerable.

Now of course the fact that ordinary practices implicitly assume something is no guarantee that what they assume is true. But such a fact does seem to shift the burden of proof.

Consider: the fact that it *seems* to me that I am sitting in front of my computer typing these words doesn't *guarantee* that I really am doing so; I might be dreaming, or hallucinating, or I might be trapped in an incredibly realistic virtual-reality program. Now a philosopher like Descartes would say that I have the burden of proving that I'm *not* dreaming, hallucinating, etc. — that I have to be able to rule those alternatives out before I can be justified in thinking I really am here, awake and typing.

But if Descartes were right — if we couldn't be justified in believing anything unless we first ruled out all possibility of error — then we would never be justified in believing *anything*, since whatever evidence we pointed to in order to prove our starting beliefs reliable would in turn have to be justified by appeal to further evidence and so on *ad infinitum*. And if that were so, then we couldn't be justified in holding the

belief that started us down this infinite regress in the first place — namely, the belief that in order to be justified in believing anything we must first rule out all possibility of error. So Cartesian skepticism ultimately undermines itself: if everything should be doubted, then the claim that everything should be doubted is itself one of the things that should be doubted — and once we go doubting *that*, we lose our original reason for doubting everything else.<sup>2</sup>

What that means is that we are, after all, justified in accepting the way things initially seem to us as a true picture of the world, *despite* the possibility that those beliefs are mistaken. Now that doesn't mean we're justified in clinging to our beliefs with blind faith, defying all evidence to the contrary. But it does mean that those who oppose these ordinary beliefs are the ones who have the burden of proof; we're justified in accepting our initial beliefs as true *until* we find convincing evidence that they're false. This must be so, because the contrary position, as we've seen, is rationally incoherent. So if our ordinary practice of moral judgment commits us to believing in Natural Law, then Natural Law is part of our picture of the world, and we're justified in accepting it until someone gives us good reason to reject it. The burden of proof thus rests with the opponents of Natural Law.

That is not to say that I think there is no positive case to be made for Natural Law. On the contrary, much of my own philosophical research is devoted to making such a case, relying on the insights of the Aristotelean tradition combined with the philosophical discoveries of the last thirty years. My point is simply that the justifiability of accepting Natural Law as part of one's picture of the universe does not require that the positive case for Natural Law be established first.

Now let's turn to some of those common objections to Natural Law theory.

### Objection One: Natural Law Serves No Useful Purpose

#### Natural Law: ineffective protection?

One objection one sometimes comes across in libertarian circles is that Natural Law, and in particular natural rights (the rights we have under Natural Law), are *useless*. A Natural Law against murder or

theft will not protect us from murderers and thieves; a natural right to life will not turn a mugger's knifeblade or repel an assassin's bullet; a natural right to property is not as useful as high walls and sturdy locks.

One version of this criticism is put forward by L. A. Rollins in his pamphlet *The Myth of Natural Rights* (Port Townsend: Loompanics, 1983). Rollins asks:

"How many Jewish lives [under the Nazis] were saved by their natural right to life? The answer, of course, is: Zero. ... If all Jews of Nazi-occupied Europe had a natural right to life and, yet, the Nazi regime was able to kill six million of them, then clearly natural rights are of no value whatever as protective devices. A bullet-proof vest may protect a person against being shot, but a natural right has never stopped a single slug." (Rollins, pp. 40-41.)

"Another natural rights mythologizer is Eric Mack who says, 'Lockean rights alone provide the moral philosophical barrier against the State's encroachment upon Society.' But a 'moral philosophical barrier' is merely a metaphorical barrier, and it will no more prevent the State's encroachment upon 'Society' than a moral philosophical shield will stop a physical arrow from piercing your body.

But if natural rights are merely fake or metaphorical rights, what then are real rights? Real rights are those rights actually conferred and enforced by the laws of a State or the customs of a social group." (Rollins, p. 2.)

What are we to make of this criticism? Well, let's draw some distinctions.

#### Natural Law's function: guidance, not protection

In ordinary speech we often switch without noticing it between different senses of "rights." For example, we might say in one breath that citizens in China have no right to free speech — and then say in another breath that Chinese citizens' right to free speech is being violated. Logically, this seems to make no sense; you can't violate a right your victims don't even have. (No one would say, for example, that my right to rule North America is being violated, because nobody thinks I have such a right in the first place.) But our ordinary speech

makes more sense once we realize that the term "rights" is being used in more than one sense, so that the kind of right that's being violated in China is a different sort from the kind of right the Chinese don't have.

First, we can distinguish between "rights" in the *normative* sense and "rights" in the *descriptive* sense. Normative facts are facts about what people *ought* to do; descriptive facts are facts about what people *actually* do.

In turn, we can distinguish two subvarieties of descriptive rights: *legal* rights and *de facto* rights.

This gives us a three-way distinction:

- **Normative rights:** the claims that ought to be respected and protected.
- **Legal rights:** the claims that a given legal institution officially announces it will respect and protect.
- **De facto rights:** the claims that actually receive respect and protection in a given society.

Going back to my China example, when someone switches between saying that the Chinese have no right to free speech and saying that their right to free speech is being violated, he probably means one of the following things:

- a) The Chinese have a normative right to free speech, but no legal right.
- b) The Chinese have a legal right to free speech, but no de facto right.
- c) The Chinese have a normative right to free speech, but no de facto right.

(I don't know enough about Chinese law to know whether (a) or (b) is closer to the truth, though (c) would be true in either case.)

Now we can see where Rollins' critique has gone wrong. Rollins is thinking of natural rights as if they were a special kind of legal right — a right legislated by God or Nature rather than by the state. Given that assumption, what he says makes sense: legal rights are of little value unless they are also de facto rights. (When Rollins refers to "real rights" as "those rights actually conferred and enforced by the laws of a State or the customs of a social group," he clearly has in mind de facto rights.) Just as it does me no good to have a legal right

on paper that the state pays lip service to in theory but systematically ignores in practice, so it does me no good to have a natural right inscribed in the Law of Nature if no one is willing or able to enforce that right.

But this is the wrong way to think about natural rights. A natural right isn't a legal right, it's a normative right. To claim that natural rights don't protect anything is to miss the point; natural rights are supposed to receive protection, not to provide it. Likewise, the function of Natural Law is not to protect any claims, but rather to tell us which claims deserve protection. As normative concepts, natural rights provide guidance for people's conduct. Blaming natural rights for not protecting us is like blaming a cookbook for not making dinner. Cookbooks don't make dinner for us; their purpose is to teach us how to make dinner for ourselves. Likewise, Natural Law doesn't lead our lives for us; its purpose is to guide us in the living of our own lives.<sup>3</sup>

#### Natural Law can sometimes protect

So if natural rights don't protect us, that's no indictment of Natural Law theory. In fact, however — even though this is not their essential function — natural rights can and do sometimes provide people with de facto protection. In discussing the Holocaust, Rollins takes it as obvious that the Jews' natural rights didn't save any of them. But is this true? All over Nazi-occupied Europe, thousands of Jewish lives were saved by brave and committed people who were motivated by their recognition of the Jews' rights to life and liberty — rights whose authority transcended the dictates of the Nazi state. In fulfilling their primary normative function of guiding the choices of the rescuers, the Jews' natural rights thereby indirectly did what Rollins says natural rights cannot do — they saved the Jews' lives.

Now Rollins would no doubt respond that these Jews were saved not by natural rights but by their rescuers' belief in natural rights. Well, suppose I'm walking along absent-mindedly and I'm about to step inadvertently into a pit of deadly scorpions, when Rollins suddenly shouts "watch out!" I hear his warning shout, and stop just in time. Now if I said that his warning shout had saved my life, would Rollins object that this is wrong, that it's only my perception of a warning shout that saved my life? In such a case this would be an idle

quibble, because although my salvation was caused by my perception of the warning shout, that perception of the warning shout was in turn caused by the warning shout itself; so either one can be credited as causally responsible for my escaping the scorpions.

But Rollins would presumably insist that the Holocaust rescuer case is different, because although the Jews' salvation was caused by the rescuers' belief in natural rights, the rescuers' belief in natural rights was not caused by natural rights themselves. Here I must disagree, though; I don't see why the rescuers' belief in natural rights couldn't be the result of their having correctly recognized and identified the fact of the Jews' natural rights, just as my avoiding the scorpion pit was the result of my having correctly recognized and identified the fact of Rollins' warning shout.

The only answer Rollins can give is that the rescuers can't have recognized and identified the fact of natural rights because there is no such fact; but in that case Rollins' argument for the uselessness of natural rights begs the question against his opponents by presupposing that natural rights don't exist. (After all, it's easy enough to prove something useless if you first presuppose that it doesn't exist!)

#### Which are the rights that might makes?

A recent variation on the natural-rights-don't-protect argument is Rich Hammer's article "Might Makes Right: An Observation and a Tool," (*Formulations*, Vol. III, No. 1 (Autumn 1995)). Rich argues that the rights we have are the ones we are able to secure by force:

"As we humans live, we constantly propose new rights and test old rights. What determines which rights survive this continual struggle? Force. Those rights that survive are those backed up by the greatest force — by which I mean both ability and willingness to police. ... In the long run, the amount of force which people can bring to bear to defend any right depends upon how much that right helps those people survive in their environment. This limits the extent to which humans can invent rights to serve their whims."

("Might Makes Right," p. 14.)

When I read a passage like this, my first question is whether the rights being talked

about are normative rights, legal rights, or de facto rights. If Rich is talking about de facto rights only, then I don't think I have any disagreement with what Rich says, at least if "force" is defined broadly enough (e.g., does the ability to motivate people through persuasive argument to respect certain rights count as effective policing of those rights?).

Most of the arguments Rich goes on to give do seem to be intended to apply specifically to de facto rights (and also, to some extent, to legal rights). For example, Rich offers the following challenge to his readers:

"Here I ask you to refute the thesis with a counterexample. If the thesis is wrong, then you can show me an example of a right which has survived even though a contrary claim was supported by greater willingness and ability to use force."

("Might Makes Right," p. 15.)

This request for a counterexample seems to presuppose that it is descriptive rights that are in question. For of course no natural-rights libertarian will have any trouble coming up with examples of *normative* rights that we still retain despite the ability to back them up by force — because normative rights are rights that we retain even when we're deprived of whatever it is the rights are rights to. Indeed, that's the crucial difference between normative rights and de facto rights. If you steal my jacket, I lose my de facto right to my jacket, because my claim to that jacket has not been respected; but I retain my normative right to the jacket, so long as it remains true that my claim to the jacket ought to be respected. So when Rich assumes it will be tough to come up with examples of rights we retain despite a contrary claim's being supported by greater force, it seems he must be thinking about de facto rights, not normative rights.

But this can't be the whole story. For Rich thinks his position is going to be a controversial and unwelcome one:

"I fear that the thesis, which can be paraphrased 'might makes right,' will upset some fellow libertarians who believe that rights come from other sources.

Let me make it clear that I am not saying that I want might to make right. In many instances this thesis runs contrary

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to the values by which I live. But I observe that the thesis makes sense, like it or not."

("Might Makes Right," p. 14.)

Who are these libertarians who are going to be upset by Rich's thesis? Libertarians who believe that *de facto* rights come from sources other than superior might? I'm not sure there are any such libertarians. And I strongly suspect that Rich instead has in mind libertarians who believe in *normative* rights that they regard as deriving from sources other than superior might—sources like Natural Law, for example. But why would such libertarians be upset by Rich's thesis, if it is only a thesis about the source of *de facto* rights? Clearly, Rich thinks his thesis has implications — unfavorable implications — for the theories of natural-rights libertarians. And that means that Rich's thesis is more than just a thesis about *de facto* rights; it has something to say about normative rights as well.

But what? There seem to be two salient possibilities. Either a) Rich is saying that superior might is the source not only of *de facto* rights but also of normative rights; or else b) Rich is saying that there are no normative rights, that *de facto* rights are the only rights there are.

I'm inclined to doubt that (a) is what Rich means. If (a) were Rich's thesis, then he would be committed to endorsing and approving of whatever *de facto* rights actually end up getting favored by superior might. Now, to be sure, Rich does argue that the results of superior might will generally tend to be beneficent, at least in the long run; but he also says that there are cases in which the might-makes-right thesis "runs counter to the values by which I live"; by saying this, Rich seems to be denying that in every case he will automatically regard as valuable whatever set of arrangements wins out.<sup>4</sup>

Thus I think the most likely interpretation is (b): Rich believes that there simply are no rights over and above *de facto* rights — that his occasional aversion to the results of force is simply a matter of personal preference.

This interpretation is reinforced by the following passage:

"... be on the lookout for the distinction between rights which are merely claimed and rights which are backed by force.

Through tricks of language, wishes often advance in status to rights. But one point of my writing this paper is to help us see the difference between wishes and rights.

... In the country in which I live, most members of the population seem to believe that they have a right to share in the fruits of other people's labor, just so long as that sharing is passed by the legislature. And ... they do in fact have that right, since it is backed with willingness and ability to prevail in use of force. Of course I favor the alternate claim, to keep all the fruits of my own labor, but this claim diminishes to the status of a wish; it lacks force."

("Might Makes Right," p. 14.)

If I understand him properly, Rich seems to be saying that any claim that is not backed up by sufficient force — that is, any claim that fails to be a *de facto* right — is nothing more than a wish, a subjective preference. And that in turn would seem to mean that there are no *objective* grounds for preferring one claim over another, no such things as claims that *ought* to be respected and claims that *ought* to be denied. In other words, there are no normative rights, and there is no Natural Law.

Now of course this sort of moral skepticism *might* be true. But I can't see that Rich's article gives us reason to think it *is* true. I find quite convincing Rich's arguments for the claim that *de facto* rights are made by might; but those arguments do not seem to rule out the possibility of normative rights that do not depend on might for their validity.

### **Objection Two: There Couldn't Be Such a Thing as Natural Law**

#### Natural Law: a tool of manipulation?

Another objection that's a bit harder to get a handle on is the complaint that there's something spooky and mysterious about Natural Law and natural rights. In his pamphlet *Natural Law: or Don't Put a Rubber on Your Willy* (Port Townsend: Loompanics, 1987), libertarian science-fiction writer Robert Anton Wilson characterizes natural rights theory as the view that "some sort of metaphysical entity called a 'right' resides in a human being like a 'ghost' residing in a haunted house." (p. 4.) The implication is that natural rights are too weird to be believable.

Like Rollins, Wilson seems to want to

treat natural rights as if they are supposed to be descriptive facts. But natural rights are normative facts. To say that Wilson has a natural right to be treated in manner X is not to say that there's some kind of invisible sprite lurking somewhere inside Wilson's body. Rather, what it means is this:

- a) It is morally *obligatory* for other people treat Wilson in manner X.
- b) It is morally *permissible* for Wilson or his agent to force other people to treat Wilson in manner X.

In other words, natural rights *consist* in facts about what people ought to do, how people ought to treat each other. Now people do sometimes talk as though (a) and (b) are true *because* Wilson has a right to be treated in manner X, as though the right were something separate, over and above facts (a) and (b). But this strikes me as no more than a figure of speech. Strictly speaking, there is nothing more to Wilson's having a right to be treated in manner X than the existence of the moral obligations and moral permissions listed in (a) and (b). So natural rights can be dismissed as objectionably spooky and mysterious only if the entire notion of an objective morality — of there being facts about what people ought and ought not to do — is also dismissed as objectionably spooky and mysterious.

This is indeed the position Rollins takes:

"If you want someone to do something which he has no personal reason for doing, but you are unable or unwilling (perhaps afraid) to use real coercion to get him to do it, then you can try to get him to do it by means of metaphorical or fake coercion. You can tell him it's his duty to do it. You can tell him he 'must' do it. Why? Simply because he must. And if he is gullible enough to believe that he must do as you tell him, simply because he must, then you control that two-legged sheep by means of the metaphorical or fake coercion of duty. ... Morality ... is a myth invented to promote the interests / desires / purposes of the inventors. Morality is a device for controlling the gullible with words. 'You "must not" commit murder!' Why not? 'Because murder is "wrong!"' Murder is "immoral!"' Bunk! Murder may be impractical or excessively risky or just not worth the trouble. There are all sorts

of reasons why I might refrain from committing murder even when I would like to do it. But murder is not 'wrong.' Murder is not 'immoral.' And the same goes for rape, robbery, assault, battery, burglary, buggery, bestiality, incest, treason, torturing children, suicide, cannibalism, cannabisism, etc. ... Nothing is sacred. Nothing is 'entitled to reverence.' Nothing is 'inviolable.'" (Rollins, p. 8-9, 19.)

Rollins is more willing than most critics of Natural Law to face the logical consequences of his position. But if morality is merely a tool for manipulating other people into doing what one wants, one wonders why people ever wrestle privately with moral dilemmas, why they ever find themselves compelled by conscience to do something that is unwelcome not only to themselves but to those around them.

More importantly, though, the question is *why* we should accept Rollins' claim that nothing is right or wrong and nothing is entitled to reverence. These are extraordinary claims, claims that run contrary to our ordinary beliefs and practices, and so *the burden of proof rests with the person making such claims.*

#### The metaphysical basis of Natural Law

Natural Law theorists may not have the burden of proof; but it's still a fair question to ask what kind of facts normative facts could be, what basis in reality they could have. This is a question to which different Natural Law theorists provide different answers. In my philosophical work I'm attempting to develop an answer of my own; my position is not fully worked out yet, but what follows is a thumbnail sketch of the kind of approach I find most plausible:

1. Skeptics about the possibility of objective morality often say that we call things good or valuable simply because we desire them. But this treats desires as if they were simply blind impulses without any cognitive content. It seems more psychologically realistic to say that desiring something involves regarding that thing as good, valuable, choiceworthy. In other words, desire is a *response* to apparent value; the activity of desiring implicitly commits us to accepting the existence of objective values, i.e., values independent of our desires.

2. "Good" and "value" are inherently relational concepts; to be good or valuable is to be good *for* or valuable *to* someone. After all, normative concepts are action-guiding concepts, and thus are meaningless except in the context of an agent whose actions are to be guided.

3. Thus, each of us implicitly seeks goods that are both objective (i.e., not simply a function of one's subjective preferences) and agent-relative (i.e., not intrinsic impersonal goods, but ones that are goods *for* oneself).

4. A living organism — be it an azalea or an accountant — cannot be fully explained without appeal to that organism's "natural ends" or goals. As Darwin himself realized, this teleological approach is only buttressed, not discredited, by the theory of evolution through natural selection. Such natural ends provide the content to the objective, agent-relative goods our desires commit us to seeking.

5. Natural ends can be rank-ordered according to centrality and importance, which in turn are functions of teleological explanatory power. If A and B are both natural ends of mine, but A explains more about me than B does, or if the facts A explains about me are more central and essential to me than the facts B explains, then A is *more* my end than B is. Thus, for example, the capacity for reasoning explains a greater number of a human being's characteristics than the capacity for tuning pianos.

6. Just as the end for which a thing is *used* may not be its most explanatory end (e.g., if I use a pinecone as a paperweight, its goal of growing into a pinetree is still more explanatory, since it explains more about the internal causal structure that makes the pinecone the kind of thing it most fundamentally is, whereas the goal of holding papers down only explains the accidental and peripheral fact of the pinecone's being where it is, when it is), so likewise even the end for which a thing is *created* may not be its most explanatory end.

For example, a knife is designed to cut things. But suppose I make a knife in order to scare away potential aggressors. I have no intention of cutting anybody or anything with it; if my plan works, I'll never have to use it. Still the goal of cutting is more explanatory than the goal of scaring aggres-

sors away; as in the pinecone case, the goal of cutting explains more about the internal causal structure that makes the knife the kind of thing it most fundamentally is, whereas the goal of scaring aggressors away only explains the accidental and peripheral fact of the knife's having come into existence where it did, when it did. Likewise, if a couple procreates in order to have a convenient slave, the fact that the child was created in order to be its parents' slave doesn't mean that that external end overrides the child's own internal ends.

This point also applies to teleological explanations in terms of "selfish genes." Suppose the drive for self-preservation was implanted in us because beings that seek to preserve themselves are more likely to reproduce their genes (as opposed to dying off before they reach mating age). In other words, our genes "chose" the drive for self-preservation as a *means* to the goal of reproduction. This may make reproduction our *genes'* primary goal, but it doesn't necessarily make it *our* primary goal; given that our genes, in order to achieve their goals, hit upon the strategy of giving us a drive toward a somewhat different goal, then if we end up choosing our goal over theirs in cases where the two goals conflict, that's our genes' problem, not ours.<sup>5</sup> We are not mere puppets of our genes; we have the capacity (our genes gave it to us!) to reject our genes' goals in favor of higher ones (or, in some cases, lower ones).

7. The primary natural end of a human being is not to reproduce more human beings, but to live one's life as a human being. But some lives — namely, the lives that more fully express the characteristics most fundamental and essential to being human — are more human than others.<sup>6</sup> Since reason is a human being's most explanatory feature, a life is more human (and thus, more one's end) to the extent that it expresses reason, and so the life of reason is a human being's overriding natural end. (In particular, the *rationality* of a life is more important than the *length* of that life; longevity is only one value among others, and can be overridden.) Natural Law thus represents the rules for ascertaining what our proper goals are, and acting accordingly; and the binding force of Natural Law comes from the fact that we already implicitly desire the ends to which it gives content.

8. A life that exemplifies reason only in the means one chooses to achieve one's ends is not as human as one that exemplifies reason not only in the means to one's ends but in those ends themselves. Thus, whenever we choose to let our personal lives be guided by blind emotion rather than by thoughtful reflection, we are choosing a less human life over a more human one. And likewise, whenever we choose to deal with other people through violence or intimidation rather than by reason and persuasion, we are once again choosing a less human life over a more human one. In either case, we are defeating our own desire for our objective good. Hence our natural end commits us to preferring the life of reason and cooperation.

9. If we subordinate other people to our own purposes, treating them as prey or objects of manipulation rather than as equal partners to be dealt with through persuasion, we are choosing a life that is inferior by our own standards. Thus we are obligated to choose peaceful relations whenever peaceful relations are available; we are obligated not to impose our will on other people.

On the other hand, if we insist on renouncing violence even when peaceful relations are not an option — that is, if we refuse to defend ourselves from aggression — then we are declining to extend our lives even when we could do so without decreasing the humanity of our lives. Thus, while human beings are under an obligation to respect one another's autonomy, they are not under any obligation to refrain from forcibly defending their own autonomy.<sup>7</sup> (Indeed, they may even be obligated to defend themselves, since we have other ends (such as self-preservation) which become imperative for us when they do not conflict with higher goals.) But this means that every human has an obligation to refrain from invading the freedom of every other human, and that it is permissible for the latter to defend this freedom by force against incursions from the former. In other words, every human being has a right to freedom — a natural right, one that derives from the Natural Law specifying our natural ends.

I do not expect the nine steps I've just set down to persuade anyone; what I've just offered is not an argument but an outline

for an argument, and each step would have to be filled in with a lot more detail and backed up by further arguments in order to be convincing. Indeed, this project is one I'm pursuing in my own philosophical research. The point of setting down these nine steps here is simply to show what *kind* of metaphysical basis I think can be given for Natural Law (and in particular to show that no supernatural basis is required).

In addition, I should stress that it is not primarily on the basis of the nine steps I've just outlined that I believe in libertarian natural rights. I feel a good deal more certain of the existence of libertarian natural rights than I do of my ability to ground this nine-step argument. The purpose of such an argument, if it can be made to work, is to *explain* why we have the rights we do, not to justify our belief in them (though on the other hand, the process of working through and developing such an argument naturally induces modifications in the details of the natural-rights claims that I think are justified).

In earlier centuries, Natural Law theorists drew a useful distinction between Natural Law's *principium essendi* and its *principium cognoscendi*. The *principium essendi* of X is the basis for X's *being* so; the *principium cognoscendi* of X is the basis for *knowing* that X is so.

For example, sandalwood has a distinctive smell by which it can be identified; so that smell is a *principium cognoscendi* of sandalwood. But that smell is not what makes sandalwood what it is; it is not sandalwood's *principium essendi*. The *principium essendi* of sandalwood is presumably its biochemical microstructure; but the presence of the distinctive sandalwood smell is a reliable indicator of the presence of that biochemical microstructure. A *principium essendi* can also serve as a *principium cognoscendi*; that is, we can identify sandalwood by its biochemical microstructure as well as by its smell. But not every *principium cognoscendi* is also a *principium essendi*.

The purpose of the research program described in my nine-step outline is to discover the *principium essendi* of Natural Law and natural rights. But I do not think the success of such a program is required in order for us to be able to say what natural rights we have or what Natural Law requires of us. As we shall shortly see, there are many epistemic avenues to moral truth; the

*principium essendi* of Natural Law, whatever it turns out to be, is only one of many *principia cognoscendi*.

### **Objection Three: Even If There Were a Natural Law, It Would Be Unknowable**

#### The epistemological basis of Natural Law

One of the most common objections to Natural Law is that it is not open to scientific test. Wilson, for example, insists that he is open-minded and willing to accept Natural Law if only it can be provided with a scientific basis:

"... all I am asking is that somebody should [produce] a shred or a hint of an adumbration of a shadow of a ghost of something like scientific or experimental evidence in place of the metaphysical, and meaningless, verbalisms Natural Law cultists habitually use. Until they produce some such sensory-sensual space-time evidence, I still say: *not proven.*"

(Wilson, p. 37.)

But Wilson is not terribly optimistic about the prospects for finding such a scientific basis; by its very nature as a moral code, Natural Law "is not subject to experiment; experiment, and refutation by experiment, are simply not relevant to it." (p. 14.) Noting that the Ayatollah Khomeini thinks Natural Law authorizes divorce in some cases while the Pope does not, Wilson remarks:

"I still don't have a clue as to a scientific test to determine which of these vehement and dogmatic old men might actually know what Natural Law is, or how to be sure they aren't just calling their own prejudices Natural Law. ... there is no experiential-experimental way to judge among any of them ...."

(pp. 35-37.)

In other words, Wilson's objection is that normative statements are not testable, and so there are no rational grounds for deciding whether they are true or false.

But this is a mistake. Normative statements — moral judgments — are as open to being tested as any other kind of judgment. For normative statements entail empirical statements, and if the empirical statements in question are falsified by

sensory observation, then the normative statements that entail them are likewise falsified.<sup>8</sup>

Consider the following two normative statements: "Adolf Eichmann is a virtuous person" and "A virtuous person would never participate in genocide." These two normative statements, taken together, entail an empirical statement, namely, "Adolf Eichmann did not participate in genocide." This is a statement that is open to empirical test; the clearest falsification would be one's own eyewitness observation of Eichmann participating in genocide, but barring that, we can still have convincing evidence that Eichmann did indeed participate in genocide. And once the empirical conclusion has been falsified in this way, we can infer that at least one of our normative premises must be wrong. (From "If P & Q, then R" and "Not R," the inference "Not both P & Q" logically follows.) So the results of empirical investigation can indeed require us to revise our moral beliefs; in short, normative statements are indeed testable.

Now it might be objected that all this test shows is that at least *one* of our normative premises must be wrong, but it doesn't tell us which normative premises to reject.

This is true. But the same criticism applies equally well to any application of the scientific method. Suppose I want to test the proposition that water boils at 100° C. So I heat some water, and when it starts to boil I stick in a sturdy thermometer and see what reading I get. Now suppose the thermometer reads 96° C. What should I conclude? Well, I could regard the assumption that water boils at 100° C as having been disproven. But this is not my only option. It is also open to me to hold on to that assumption and instead reject some auxiliary assumption — e.g., my assumption that this stuff is really water, or my assumption that the thermometer has been labeled correctly, or even my assumption that I am awake rather than dreaming.

One can never test any belief in isolation; one can only test groups of beliefs. In natural science as in ethics, empirical tests can expose an inconsistency in one's total belief-set, but they cannot tell one which belief(s) to reject. How we resolve the inconsistency will depend on which beliefs we find most plausible, how committed we are to them, how many of our other beliefs

depend on them, and so forth. In this regard, ethics is no worse off than natural science.

The implication I would want to draw from this is "so much the better for ethics!" But some will instead want to conclude: "so much the worse for natural science!" If no belief can ever be tested in isolation — if all our conclusions, in science as well as in ethics, depend on personal and inevitably impressionistic judgments of relative plausibility — then isn't it impossible for *any* belief to be justified? Instead of upgrading our assessment of moral reasoning to place it on a par with the objectivity of scientific reasoning, why shouldn't we downgrade our assessment of scientific reasoning to place it on a par with the subjectivity of moral reasoning?

Well, one reason not to do so is that this would amount to the kind of global skepticism that we've already seen to be self-defeating. If the skeptic wants to claim that the standard scientific method does not yield justified beliefs, then the skeptic has set the standards of justification so high that it is very hard to see how the skeptical thesis itself could meet those standards. And if it cannot, then the skeptic has given us no reason to accept his claim that the standards should be set so high. We do not have to build our system of beliefs on a bedrock foundation of self-evident truth before we are justified in accepting those beliefs as provisional starting-points. Our current beliefs deserve the benefit of the doubt until we find some positive reason to suspect them; we have to start where we are, not somewhere else. The structure of a belief-set is not hierarchical, like a skyscraper with each floor resting on the floor below it, all the way down to the ground; it's more like a spiderweb, a network of interrelated, mutually supporting judgments varying in strength and centrality. In epistemology (the theory of knowledge), this spiderweb model of justification is known as *coherentism*, while its skyscraper rival is called *foundationalism*.

Thus far I've been talking about testing normative beliefs by seeing whether they conflict with empirical observations. But if coherentism is correct, we can also test normative beliefs by seeing whether they conflict with each other. And we can even test descriptive beliefs by seeing whether they conflict with normative beliefs. On the skyscraper model, higher-level beliefs can be revised in the light of changes in lower-

level beliefs, but never vice versa; the arrow of justification points in one direction only. But according to coherentism, any belief is in principle open to revision if it clashes with a sufficient number of other beliefs, of whatever kind. Which beliefs we should keep and which ones we should toss out will depend on how central the beliefs in question are to our overall picture of the world.

Most people, for example, have a lot more invested in the judgment that genocide is immoral than they do in any particular view about the status of normative judgments; so if someone like Rollins comes up with a theory about the status of normative judgments that implies that genocide is not immoral after all, the rational response is to hold on to one's condemnation of genocide and reject Rollins' theory — unless Rollins can show that his theory rests on judgments that are more central to our belief structure than our belief that genocide is immoral. There is no fundamental difference between moral reasoning and the experimental method of natural science; both involve what Plato and Aristotle call *dialectic*, or what John Rawls calls the method of reflective equilibrium: tracing the implications of our beliefs and attempting to eliminate inconsistencies among them. (And performing experiments is simply a way of adding new beliefs to our total belief-set — and using those new beliefs to test the old ones.)

At this point the following objection might be raised: In the case of a disagreement between two different *descriptive* theories, there is a possibility of resolving the dispute by performing experiments. Perhaps, as the coherentist claims, experiments are just a way of acquiring new beliefs, but at least they cause the disputants to acquire the *same* new beliefs, thus bringing the two belief-sets into greater alignment. But there seems to be no analogous way to resolve disputes over different interpretations of Natural Law. For example, Stephen O'Keefe writes in his preface to Rollins' book:

"Any superficial political conversation with libertarians will sooner or later touch on the subject of rights. ... If the discussion gets serious, though, libertarians find their solid ground of rights quickly disintegrating into quicksand. One deadly question usually puts an end to the rights nonsense: why is the communist claim

that people have a right to live off the labor of others less valid than libertarian rights? The libertarian must then find an authority behind his or her authority, and there is no rational place to turn. They can appeal to God, or nature, or human nature as ordaining their brand of rights, but the communists can do the same."

But I think this difference between scientific method and moral reasoning is overstated. Even people who differ violently on various moral issues generally have many more beliefs (both descriptive and normative) in common, and it is often possible to mine the vast area of common agreement for premises with which to resolve the disputes. Thought-experiments play a role in moral reasoning similar to the role that actual experiments (and thought-experiments too, for that matter) play in natural science.

For example, someone who believes that we should always do whatever maximizes social utility may have second thoughts when asked to imagine a case in which a doctor secretly kills a healthy patient in order to redistribute the patient's organs to five sick patients who will die unless they receive organ transplants as soon as possible. If we agree that the doctor's action maximizes social utility, but we nevertheless find ourselves inclined to evaluate the doctor's action as wrong, then the thought-experiment has resulted in new beliefs that conflict with our older belief that whatever maximizes social utility is okay. Thus moral thought-experiments can also serve the function of bringing divergent belief-systems into alignment.

An important function of new data — whether acquired through sensory experience or through philosophical reflection — is to introduce inconsistency into a previously consistent belief-set, thus prompting a revision in belief.

Of course, someone might choose to reject the new data rather than revise old beliefs; and sometimes (e.g., in the case of hallucinations and the like) this can even be the rational option. Once again, what we accept and what we reject will depend on the number of beliefs at issue and the weight or plausibility we assign to those beliefs. So the attempt to resolve inconsistencies among one's beliefs may not necessarily bring one's belief-set into greater consilience with those of others.

In the moral case, for example, Rollins, a self-proclaimed "amoralist," chooses to hold on to what most would view as a highly implausible belief — the belief that there is nothing wrong with "murder, rape, robbery, or torturing children" — and to reject more plausible beliefs whenever they come into conflict with that one. But this is no proof that moral reasoning is useless in reaching agreement, because the same phenomenon can show up in natural science — as in the case of creationists who cling so stubbornly to the belief that the universe is only a few thousand years old that they reject countervailing evidence (whether astronomical, geological, or paleontological) as fake clues planted by God to test our faith.

In ethics as in natural science, dialectic is a powerful tool for reaching agreement, but in neither case does it offer any guarantee of convincing people like amoralists and creationists, who, when confronted with inconsistencies in their belief-set, insist on resolving these by keeping the less plausible beliefs and rejecting the more plausible ones. (Of course both the amoralist and the creationist will protest that the characterization I've just given of their positions depends on *my* personal perspective as to what is or is not plausible. Well, sure. My personal perspective is the only place I have to stand.)

Wilson (in *Natural Law*) is skeptical about the degree of similarity between ethical disagreement and scientific disagreement:

"The suspicion that what is called 'Natural Law' may consist of personal prejudice with an inflated metaphysical label pinned on it grows more insidious as one contemplates the fantastic amount of disagreement about virtually everything among the various advocates of 'Natural Law.'

Prof. Rothbard tells us that this means nothing, because there are disagreements among physicists, too: but I find this analogy totally unconvincing. ... In the area of Natural Law and metaphysical 'morality' in general, there is no shred of ... agreement about how to ask meaningful questions (questions that can be experimentally or experientially answered)<sup>9</sup> or even about what form a meaningful (answerable) question would have to take. There is no pragmatic agreement about how to get the results you want. There is

no agreement about what models contain information and what models contain only empty verbalism. There is, above all, no agreement about what can be known specifically and what can only be guessed at or left unanswered. ...

Some states and nations believe in capital punishment; others do not. Pacifists are against killing anybody, but not all pacifists are vegetarians. Some quasi-vegetarians will not eat the higher mammals but will eat fish. Pure vegetarians kill vegetables to eat. And so on. ...

To compare this ontological spaghetti with the highly technical disagreements in physics seems to me like comparing ten drunks smashing each other in a saloon with the difference in tempo and mood between ten conductors of a Beethoven symphony."

(Wilson, pp. 33-36.)

It is probably true that there is more disagreement in the natural sciences than there is in ethics.<sup>10</sup> But are the natural sciences the best comparison class? Ethics surely has more in common with the social sciences than with the natural sciences; and in the social sciences — e.g., economics, sociology, psychology — the extent of disagreement is notorious. Consider the differences between, say, the Keynesian, monetarist, econometric, public-choice, Marxist, Georgist, Austrian, and mainstream-neoclassical approaches to economic theory. Here we find not only a torrent of disagreements about specific policy issues such as whether or not a given policy will or will not increase inflation, unemployment, economic growth, etc., but also precious little agreement about "how to ask meaningful questions," or "what form a meaningful (answerable) question would have to take," or "what models contain information and what models contain only empty verbalism," or "what can be known specifically and what can only be guessed at or left unanswered."

Should economic method be inductive or *a priori*? Should it aim at prediction or at explanation? Should it employ a subjective or an objective conception of economic value? How useful are mathematical models when applied to human behavior? How many simplifying assumptions can we make about the motivations of economic agents before our models cease to be useful in elucidating social reality?

These are questions on which the economic field is not even close to reaching a consensus. Yet, as a libertarian, Wilson would probably be unwilling to conclude that all economic theories are equally valid and that none is better grounded than any of its rivals, or that there is no fact of the matter as to whether a given policy would cause a rise or a drop in unemployment. I would bet that despite the lack of consensus among economists, Wilson probably believes in some kind of economic truth.<sup>11</sup> So why should an equivalent level of disagreement in ethics make us skeptical about the possibility of ethical truth?

There's no great mystery about why agreement is harder to reach in ethics and the social sciences than it is in the natural sciences. For one thing, the subject matter (human activity) is both more complex and less susceptible to mathematical analysis, thus making theoretical modeling and controlled experimentation inherently more difficult. For another, researchers are likely to bring more prejudice, self-interest, and ideological baggage with them to issues in ethics and social science than to issues in natural science, thus making the problem of bias more pervasive. It is complexity and bias, not inherent subjectivity, that make moral disagreement so intractable.

#### Knowledge vs. mere justification

I've been arguing that normative beliefs can be *justified*. Now someone might grant this, but still deny that our moral beliefs can count as *knowledge*. At one time it was fashionable in philosophical circles to define knowledge as justified true belief, but nowadays philosophers recognize that a belief can be both true and justified, and yet be such that few would be willing to call it knowledge.

The paradigm case is when a justified true belief is based on a justified false belief. Suppose I believe that alligators are mammals. Suppose further that I have good reasons for my mistaken belief; the encyclopedia I looked in contained a misprint, the biologist I consulted lied to me, and so on. So I'm justified in believing, falsely, that alligators are mammals. Since I know that all mammals are vertebrates, I'm justified in concluding, on the basis of my false belief that alligators are mammals, that alligators are also vertebrates. Now it just so happens that alligators actually are vertebrates, although my reasons for believing this truth

are mistaken. So I have a justified true belief that alligators are vertebrates, but most people would be reluctant to say that I *know* that alligators are vertebrates, and the source of their reluctance is the fact that the connection between the belief's being true and my being justified in believing it seems so chancy and accidental. Hence most philosophers conclude that some sort of reliability condition, showing how our beliefs track truth, must be added in order for justified true belief to count as knowledge.

It seems to follow that even if a) I believe that people have a right to freedom, and b) my belief is true, and c) I am justified in holding it, I don't count as *knowing* that people have a right to freedom unless I believe this *because* it is true. But, the objection runs, we can causally interact only with descriptive facts, not with normative facts; therefore, normative beliefs can never satisfy the reliability condition, and so can never count as knowledge.

Briefly, my response to this objection is threefold:

a) if something like my nine-step sketch of the *principium essendi* of Natural Law is correct, then normative facts are actually a subset of descriptive facts (e.g., facts about our natural ends) and so we can after all interact with them;

b) we cannot causally interact with mathematical facts, but we can nevertheless have mathematical knowledge, so causal interaction must not be the only possible way to satisfy the reliability condition;<sup>12</sup> and

c) in any case, just as we do not need to be able to explain how our eyes work before we're justified in taking ourselves to have sensory knowledge, so likewise we do not need to be able to explain how it is that our beliefs track moral truth before we're justified in taking ourselves to have moral knowledge.

#### Consequentialist vs. deontological approaches

While I'm on the subject, I think the coherentist approach to moral argument that I've been defending can shed some light on a topic of common discussion among libertarians — namely, whether libertarianism should be based a) on the consequentialist

argument that we should allow people to be free because doing so will have beneficial social consequences, or instead b) on the deontological argument that we should allow people to be free because doing so is mandated by our moral obligation to respect other people as ends in themselves.<sup>13</sup> (Generally it is only the deontological libertarians who employ the language of Natural Law, but historically there have been both consequentialist and deontological versions of Natural Law theory; if you believe in a higher moral standard, independent of convention but accessible to reason, to which manmade laws are properly answerable, then you are a believer in Natural Law, even if your higher moral standard is simply social welfare.)

Sometimes all the dispute between consequentialist and deontological libertarians amounts to is simply a debate over the best way to present libertarianism when trying to convince non-libertarians. In that case I think the debate is a somewhat silly one; for reasons I'll soon get into, most



*from our recent Forum*

people will be unwilling to accept as socially beneficial a system they think is unjust, and vice versa, so neither the consequentialist nor the deontological argument can stand very well alone. And in any case, since there are plenty of good consequentialist arguments for libertarianism and plenty of good deontological ones, why not use all the ammunition in our arsenal?

But more often the disagreement is not about how to package libertarianism when selling it to the infidels, but rather about which set of reasons — the consequentialist or the deontological ones — constitutes the deepest truth about *why* libertarianism is the right system. For example, deontological libertarians often say that although it's a lucky break for us that libertarianism is socially beneficial, we would still be obligated to respect libertarian rights even if it turned out that doing so would lead to social chaos and misery; and consequentialist libertarians make similar remarks on the other side. In other words, each side of this debate is officially committed to the view that the other side's reasons are *irrelevant* to the justification of libertarianism.

Yet, interestingly enough, although deontological libertarians don't think it *matters* that libertarianism is socially beneficial, they all seem to think that in fact it *is* beneficial. And likewise, although consequentialist libertarians don't think it *matters* that libertarianism expresses respect for persons, they all seem to think that in fact it *does* express respect for persons.

If deontological libertarians were to become convinced that libertarian policies would actually cause social chaos and misery, I suspect that most of them would find their faith in libertarianism shaken. Consequentialist libertarians, recognizing this, often accuse the deontologists of hypocrisy, claiming that under their deontological veneer they are crypto-consequentialists. (I recall reading a lengthy debate on this topic in *Liberty* magazine during its first few issues.) But this accusation is a two-edged sword, since if consequentialist libertarians were to become convinced that libertarian policies in fact express contempt for persons, I imagine their faith would be shaken too.

So what's going on here? Well, suppose I believe that water is H<sub>2</sub>O. Then that belief commits me to thinking that if there were no such thing as H<sub>2</sub>O, there would also be no such thing as water (since they're the same thing). However, if I were to become convinced that the atomic theory of matter is wrong — if I were to come to believe that there are no hydrogen and oxygen atoms, and thus no H<sub>2</sub>O — I would not conclude that there is no water. Instead, I would revise my belief that water is H<sub>2</sub>O.

I have a particular theory about what the *principium essendi* of water is; I think it's H<sub>2</sub>O. And that commits me to the belief "If there were no H<sub>2</sub>O, there would be no water." But that statement does *not* commit me to the belief "If I didn't believe in H<sub>2</sub>O, I wouldn't believe in water." H<sub>2</sub>O is not my primary *principium cognoscendi* of water; I ordinarily identify water by its appearance, potability, boiling and freezing points, etc., not by its molecular composition. So if I were to learn that H<sub>2</sub>O is nonexistent, but my ordinary *principia cognoscendi* still indicated the presence of water, the most plausible way of resolving the inconsistency would be to reject my theory about what water's *principium essendi* is, rather than giving up my belief in the existence of water.

The same point applies to the dispute over the basis of libertarianism. The disagreement is about the *principium essendi* of libertarianism's validity; consequentialist libertarians think the *principium essendi* is social welfare, while the deontological libertarians think it's respect for persons. However, libertarians, like most people (myself included), tend to think that social welfare and respect for persons go together, at least roughly; that is, they think that a system that respects persons is likely to be socially beneficial, and vice versa, so that each trait can serve as a reliable (though not exceptionless) indicator of the other's presence. Given that belief, those who regard social welfare as the *principium essendi* of rightness will tend to treat respect for persons as at least a *principium cognoscendi* of rightness, just as those who regard respect for persons as the *principium essendi* of rightness will tend to treat social welfare as a *principium cognoscendi*.

The debate about whether social welfare or respect for persons is the *principium essendi* of libertarianism's validity is an important one (and it's no secret that I'm in the respect camp); but I think its participants have sometimes misconstrued what their positions commit them to. Recall the H<sub>2</sub>O case. Those who believe that respect for persons is libertarianism's *principium essendi* are indeed committed to the belief "If libertarianism were not socially beneficial, it would still be morally obligatory." But many of them have made the mistake, as I see it, of thinking that this belief commits them to the further belief "If we ceased to believe that libertarianism is socially

beneficial, we would still regard it as morally obligatory." (And likewise, *mutatis mutandis*, for the consequentialists.) This further belief is rarely true, nor should it be; both consequentialist and deontological considerations are crucial for the *justification* of libertarianism, even if one is more fundamental than the other when it comes to *explaining why* libertarianism is the correct position.

#### Objection Four: Evolutionary Explanations Make Natural Law Obsolete

##### Natural Law: the product of biological evolution?

A final objection I want to consider is that Natural Law is an unnecessary hypothesis, because moral evaluations can be explained as a product of evolution, rather than as a response to objective moral truth.<sup>14</sup> In a recent article, Rich Hammer writes:

"If beauty is beauty, you might think that [a cockroach] and I would fight over the same lady. ... [But we] are each programmed to seek females with whom our genes might, well, carry on. ... [Because we recognize this] we do not fall into bitter dispute because we disagree about which lady is more beautiful. ... But we do get into a tiff sometimes when our other senses, especially our senses of right, recommend different rules of conduct. ... Maybe this sense of right, which causes me to form opinions about how I should regulate my actions in order to consider the needs of others, has been programmed into me, just like my sense of beauty. Maybe my genes have figured out that they have a better chance of surviving if human individuals are programmed to hunger for rules of behavior which favor cooperation over conflict." ("The Sense of Right and a Man-to-Man Talk With Archy About Women," *Formulations*, Vol. IV, No. 1 (Autumn 1996), p. 37.)

But I have some questions about this analogy. In Rich's story, it's no surprise that human and cockroaches disagree in their judgments of beauty, because biological needs have programmed them to have different responses — and so we should take a similar attitude toward moral

disagreements. This last inference, about morality, is what puzzles me.<sup>15</sup> Moral disagreements don't occur between humans and cockroaches; they occur among humans — members of the same species, products of the same evolutionary process. So an explanation of our moral judgments that appeals only to evolutionary considerations is necessarily going to be incomplete.

So evolutionary explanations of moral *disagreement* seem unpromising. Evolutionary explanations of moral *agreement* are on firmer ground. But even here there is room for skepticism. It's often thought that if the Darwinian theory of evolution through natural selection is correct, then any central or important feature of human beings must have an evolutionary function. But this isn't true. Consider the ability to solve mathematical equations. This is an important and valuable skill, and arguably has survival value; but was it selected for *because* of its survival value? I doubt it. Evolutionary pressure did select for something, but what it selected for was *reason* — i.e., a generic capacity for figuring things out — and our more specialized capacity to solve mathematical equations is a *byproduct* of that more generic capacity, rather than something that was selected for directly.

So if human beings generally have a tendency to assent, upon reflection, to the proposition that 374 times 98 equals 36652, that's not because the belief that 374 times 98 equals 36652 has any particular survival value; rather, it's because we have a generic capacity to figure things out (a capacity that does have survival value), and when we apply that capacity to the problem of what 374 times 98 equals, we come up with 36652 because we are able to figure out that 36652 is the actual right answer.

Likewise, then, it is possible that our capacity for moral reasoning, like our capacity for mathematical reasoning, is the byproduct of our general ability to reason, rather than something for which natural selection is *directly* responsible. In other words, if people have a tendency to hold certain normative beliefs, it might be because they have used their rational capacities to figure out that certain things are right and others wrong.

Now I certainly don't mean to deny that evolutionary considerations of the sort Robert Axelrod appeals to in his book *The Evolution of Cooperation* play an impor-

tant role in explaining why we tend to favor "rules of behavior which favor cooperation over conflict." I wholeheartedly endorse this basic point. But these basic cooperative impulses are not specific enough, by themselves, to ground the full spectrum of our normative attitudes.

Consider the following pattern of moral reasoning:

1. It is wrong to kill humans except in self-defense.
2. Animals are relevantly like humans, in that they have capacities for desire and fear, joy and pain.
3. Therefore, it is also wrong to kill animals except in self-defense.

My present concern is not with whether this is a good or bad argument. The point is that it is a typical, and easily understandable, mode of reasoning. Even those who disagree with the argument can easily see the point of it.

Now suppose that we have a natural tendency to believe (1), and that this tendency was selected for by evolution, because creatures who kill their own kind have a harder time building cooperative networks and so are disadvantaged in the struggle for survival.

Suppose also, on the other hand, that we have no particular tendency to believe (2), and that the absence of such a tendency is also the product of evolution, because before the development of agriculture, people who were squeamish about eating animals tended to die out before they had a chance to reproduce and pass on their genes.<sup>16</sup>

We can assume, then, that our early ancestors had no qualms about eating animals, and did not feel any tension between their acceptance of (1) and their rejection of (2). But the exercise of reason can prompt people to notice the tension, and to resolve it by embracing (2). (I am not saying that this is the only way to resolve the tension, only that it is *one* salient and intelligible way.) This is one of the modes through which people come by their moral beliefs, and it is a mode to which evolutionary considerations are only peripherally relevant.

We may think of our evolutionarily-implemented normative impulses as playing a role in moral reasoning analogous to the role that sensory experience plays in scientific reasoning. The data of the senses are

one of the most important sources of our beliefs about how the universe works. But we are not confined to the sensory level. Our capacity for reason drives us to try to build up a conceptual picture of the universe that makes sense; and although we rely heavily on sensory data in building that picture, if we have to sacrifice some sensory data in order to achieve a scientific picture that makes a little more sense — if we have to decide that, despite initial appearances, the earth isn't flat, the sun doesn't circle it, and tables aren't continuously solid all the way down — then some of what the senses tell us may have to be scrapped for the sake of a more intellectually satisfying theory.

Likewise, our evolutionarily-implemented moral impulses are one of the most important sources of our beliefs about how we ought to live. But we are not confined to the instinctual level. Our capacity for reason drives us to try to build up a conceptual picture of right and wrong that makes sense; and although we rely heavily on innate impulses in building that picture, if we have to disregard some of our innate impulses in order to achieve a moral picture that makes a little more sense — if we have to decide that, despite our initial impulses, we shouldn't kill animals for food — then some of what our moral instincts tell us may have to be scrapped for the sake of a more intellectually satisfying ethic. Once again, a purely evolutionary account of our sense of morality, however illuminating, will be importantly incomplete.

#### Natural Law: the product of cultural evolution?

In any case, the ratio of learned behavior to instinctual behavior is higher in humans than in any other known organism.<sup>17</sup> So it's not surprising that many defenders of the evolutionary objection to Natural Law have chosen to focus on cultural evolution rather than natural evolution. As this version of the objection has it, our moral attitudes are by and large the result not of natural selection acting on *species*, but of natural selection acting on *ways of doing things*. Cultural practices that promote their society's survival tend to survive themselves, both because the society where they originated survives and keeps those practices, and because other societies notice their success and start imitating them. Harmful social practices, by contrast, tend

## John Locke on Natural Law

The first argument can be taken from the evidence of Aristotle at *Nicomachean Ethics*, Book I, chapter 7, where he says that "the proper function of man is the activity of the soul according to reason"; for once he had proved by various examples that there is a proper function for each thing, he inquired what this proper function is in the case of man; this he sought through an account of all the operations of the faculties both vegetative and sentient, which are common to men along with animals and plants. He arrives finally at the proper conclusion that the function of man is activity according to reason; consequently man must perform those actions which are dictated by reason. Likewise in Book V, chapter 7, in his division of law into civil and natural, he says that "this natural law is that law which has everywhere the same force" ....

At this point, some object to the law of nature, claiming that no such law exists at all, since it is discovered nowhere; for the greatest part of mankind lives as if there were no guiding principle to life at all .... if there were, in fact, a law of nature, knowable by the light of reason, how does it happen that all men who are endowed with reason know it not?

We reply: ... because a blind man cannot read a notice displayed publicly, it does not follow that a law does not exist or is not promulgated, nor because it is difficult for someone who has poor sight to read it; nor because someone who is occupied with other matters does not have the time, nor because it is not to the liking of the idle or vicious to lift his eyes to the public notice and learn from it the statement of his duty. I allow that reason is granted to all by nature, and I affirm that there exists a law of nature, knowable by reason. But it does not follow necessarily from this that it is known to each and all, for some make no use of this light, but love the darkness .... But the sun itself reveals the way to none but to him who opens his eyes .... Some men who are nurtured in vices scarcely distinguish between good and evil, since evil occupations, growing strong with the passage of time, have led them into strange dispositions, and bad habits have corrupted their principles as well. Still others, because of a defect of nature, have a keenness of mind too weak to allow them to unearth these hidden secrets of nature. Indeed, how rare is the man who yields himself to the authority of reason in matters of daily life, or in things easily known, or follows reason's guidance? For men are often driven off their proper course by the onrush of their feelings or by their indifference and lack of concern or as they are corrupted by their habitual occupations, and follow passively not what reason dictates but what their low passions urge upon them. ....

What it is we must do we can infer... from the constitution of man himself and the equipment of the human faculties, since man is not made by accident, nor has he been given these faculties, which both can and ought to be exercised, to do nothing. It seems that the function of man is what he is naturally equipped to do; that is, since he discovers in himself sense and reason, and perceives himself inclined and ready to perform the works of God, as he ought, and to contemplate his power and wisdom in these works .... Then, he perceives that he is impelled to form and preserve a union of his life with other men, not only by the needs and necessities of life, but he perceives also that he is driven by a certain natural propensity to enter society and is fitted to preserve it by the gift of speech and the commerce of language. And, indeed, there is no need for me to stress here to what degree he is obliged to preserve himself, since he is impelled to this part of his duty ... by an inner instinct ....

### *— Questions on the Law of Nature*

... we must consider what state all men are naturally in, and that is a state of perfect freedom to order their actions and dispose of their possessions and persons as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man.

A state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another: there being nothing more evident than that creatures of the same species and rank, promiscuously born to the same advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination or subjection ....

The state of nature has a law of nature to govern it, which obliges everyone. And reason, which is that law, teaches all mankind who will but consult it that, being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions. ... being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such subordination among us that may authorize us to destroy one another, as if we were made for one another's uses ....

For in the state of nature ... a man [may] do whatever he thinks fit for the preservation of himself and others within the permission of the law of nature; by which law, common to them all, he and all the rest of mankind are one community, make up one society distinct from all other creatures. And were it not for the corruption and viciousness of degenerate men, there would be no need of any other; no necessity that men should separate from this great and natural community, and by positive agreements combine into smaller and divided associations.

### *— Two Treatises of Government*

to undermine a society's chances of survival; the society is more likely to perish, and other societies are more likely to avoid the practice because failed societies have less prestige and so attract fewer imitators. Thus the harmful practice dies out.

I think there is a core of profound truth to this argument. It exemplifies the classical liberal insight — developed in different ways by writers like John Stuart Mill, Michael Polanyi, Friedrich Hayek, and Bruno Leoni — that competition is above all a discovery process. Still, the argument has its limits. To borrow a comparison from David Ramsay Steele:<sup>18</sup> it is true that organisms with beneficial parasites are more likely to survive than organisms with harmful parasites, but it would be rash to conclude from this that existing parasites are likely to be beneficial. The fact that a given society has survived is no proof that any *particular* practice of that society is beneficial.

This caveat applies to any evolutionary approach, whether biological or cultural; but cultural evolution in particular faces special problems as an explanatory factor. In biological evolution, mutations arise slowly and incrementally; no species sprouts wings or antlers overnight. Thus, when we see organisms with wings or antlers we can be sure that these features have developed over many thousands of generations, and so the hypothesis that these features are beneficial, or at least not inimical, is a salient one. But in cultural evolution, mutations — i.e., new ideas and practices, or what Richard Dawkins calls *memes* — are often the product of human thought and can emerge fully developed in a single generation (examples: Islam, the U. S. Constitution, the paper clip), and so the presence of a meme is very weak evidence that it's been reliably selected for by evolutionary pressures.

Worse yet, because memes, unlike genes, can reproduce via imitation, a particular meme can spread and survive even if it kills off its host group. The fact that a meme is good at ensuring its *own* survival is no guarantee that it will be equally effective at ensuring the survival of groups who adopt it.

For example, as the Roman Empire grew more centralized and authoritarian, it so weakened its economic and cultural base that it essentially self-destructed, unable to fend off marauding tribes that in earlier

years it could have crushed without blinking. Yet the fall of stagnant, ossified, hierarchical Rome did not put an end to the Roman centralist meme, which continued to attract admirers and imitators over the centuries. Having destroyed its original host, the imperial virus propagated, infecting countless societies from the Byzantine Empire to the Thousand-Year Reich, killing them off in turn.

When we read the 14th-century Italian poet Dante singing the praises of world government in his treatise *De Monarchia*, looking specifically to Rome as his model, or treating the assassination of Caesar, in his famous *Inferno*, as a crime comparable in seriousness to the betrayal and crucifixion of Christ,<sup>19</sup> we recognize that the staying power of a meme may have little to do with its success in promoting the survival of societies that adopt it. And a glance at our own sprawling reproduction — both architectural<sup>20</sup> and political — of ancient Rome in full imperial splendour on the banks of the Potomac bodes ill for the future of the United States.

#### The hazards of victory: lessons from history

This distinction between the success of memes and the success of societies that adopt those memes provides one possible response to a worry posed by Rich Hammer that if we make anything other than evolutionary success our normative standard, we run the risk of endangering our own welfare:

"Rights can be viewed as ways to economize, ways to save the cost of battle. ... Rights guide behavior within a dominant community. Among a group of people who have won, and who are in process of harvesting (or looting), rights limit counterproductive struggle within the group. Rights guide each individual member of the group to seek to satisfy his wants by harvesting from outside the group rather than from another member within the group. ... If you believe the evolutionary account of formation of life, then you may observe that we, presently surviving humans, find ourselves here as the present culmination of a long history of evolutionary struggle. And if you believe my thesis, that there is a competitive survival-of-the-fittest among systems of rights, then you may observe that we, in Western Civilization, find ourselves

here, in a position which seems to dominate other cultures, because we are the beneficiaries of evolutionary struggle and selection of rights. ... As I am presenting it, rights minimize violence and bloodshed among us humans who dominate the ecosystem in which we live. To argue that rights have a different basis argues, I believe, either against our dominance or for more violence and bloodshed."

("Might Makes Right," pp. 15-16.)

But of course rules that encourage "harvesting from outside the group," thus enabling a society to "dominate other cultures," will successfully "minimize violence and bloodshed" only *within* the group. Successful societies have a long history of exploiting and even exterminating those who are outside the group; witness the treatment that Africans, Asians, and Native Americans have received at the hands of Western colonialist powers. Rich notes (p. 16) that powerful cultures can afford to be more generous in granting rights to their weaker neighbors. True enough, and sometimes they do. But powerful cultures can also afford to enslave or murder their weaker neighbors without fear of reprisal, and sometimes they do that instead. Civilization is largely a process of increasing people's options (advances in technology and advances in political freedom can both be seen in this light); but unfortunately, one of the things one is better able to do once one's options have increased, is to decrease one's neighbors' options.

But, leaving aside the issue of violence toward outsiders, is it at least true that dominant societies manage to minimize violence and coercion *within* the group? Not necessarily. Once a given society achieves a position of dominance over other cultures, it tends to squelch the competitive process that brought it to power (by conquering the competitors); and once competitive pressure is diminished, the presumption that the dominant society's practices enjoy the continued blessing of evolutionary selection must inevitably be weakened.

Such a society's status is rather like that of a business enterprise whose efficiency and innovation earns it success on the free market — but which then uses its newfound resources, the fruits of its competitive success, to lobby government for laws insulating it from competition. Once such laws

are passed, the company's incentives change, and it grows inefficient and lazy because it can now afford to. It would then be a mistake to assume that the company's continued dominance makes its top-down management structure, unimaginative product design, and lack of responsiveness to customers a useful model for would-be entrepreneurs to imitate.

In short, a society's dominance does not guarantee, and may even undercut, its efficiency in any particular area, including the minimization of violence and bloodshed. Indeed, the following pattern is a common one throughout history:

1. An advance in civilization enables members of Group A to expand their options.
2. Members of Group A choose to use their expanded options to decrease the options of group B.
3. Group A's need to maintain its control over Group B results in a decrease in the options of Group A's members as well; they lose their freedom, and their culture stagnates.

Holding Group B in subjection is an expensive proposition; it requires conscription, tax hikes, and perhaps a military-industrial complex, all burdens that will end up being shouldered by the population of Group A. Keeping an eye on potential troublemakers from Group B requires a system of surveillance and documentation that the rulers of Group A can later use against their own citizens. Those within Group A who criticize the treatment of Group B threaten A's dominance over B and may find themselves subject to censorship. Free economic transactions between members of A and members of B may result in improvements of B's economic status that empower it to start resisting A's authority, so the freedom of A's members to deal with B's members will also need to be curtailed. And so on.

In the ancient world, Sparta and Rome provide paradigmatic examples of this dynamic at work. Both began as vigorous, progressive centers of trade and culture, but the need to maintain control over subject populations (the Helots, in the case of Sparta; the Empire, in the case of Rome) turned Sparta into a grim military collective and Rome into a bureaucratic, dictatorial police state.

But there are examples closer to home as well. Consider the case of the American Civil War. For centuries, white settlers had been using the expanded options bequeathed to them by the progress of Western civilization to hold blacks in servitude. Then the American Revolution brought a dramatic increase of freedom to whites throughout the colonies. Northern whites, still riding the wave of revolutionary libertarian fervor, actually used their newly expanded options to *increase* the options of blacks, by enacting a series of laws leading ultimately to the abolition of slavery in the North. But in the more agrarian South, where slavery was more deeply entrenched, whites were less attracted to the cause of the emancipation (though they often paid it lip service).

Later economic and political developments cemented Southern whites' attachment to slavery still more firmly. Specifically, Eli Whitney and Katharine Greene's invention of the cotton gin made plantation farming more profitable, while the Constitution's three-fifths compromise (treating each slave as three-fifths of a person for purposes of representation) gave slave states a disproportionate voting bloc in Congress, and thus an added incentive to continue slavery. In order to take advantage of the expanded economic options offered by the cotton gin and the expanded political options offered by the three-fifths compromise, whites in the slave states needed to make sure that blacks' options remained severely limited.

But to maintain the slave system, the South had to retreat from the libertarian principles of Jefferson and the revolution. Southern governments found it necessary to impose greater and greater restrictions on the civil and economic liberties of *whites* in order to keep blacks in subjection. Many states made it illegal for slaveowners to free their slaves; and there was soon no freedom of speech or press for whites who advocated abolition. In some cases, speaking against slavery was punishable by death.

Once secession finally came and the Confederacy was established, suppression of white freedoms grew even greater, as the central government, in the name of military necessity, extended its controls over every aspect of life. Internal passports were required for travel, traditional civil rights like habeas corpus were suspended, currency was devalued, and most sectors of the

economy were nationalized. In their desperate quest to maintain their control over blacks, Southern whites found themselves compelled to establish an authoritarian political order that ended up claiming their own freedom as well.

This retreat from the principles of the American Revolution in political *practice* was accompanied by a parallel deterioration in political *theory* as well. During the 1810s and 1820s, the great intellectual spokesman for the South—the defender of agrarian interests against Federalist neomercantilist regulation — was John Taylor of Caroline (author of *Arator, Tyranny Unmasked*, and *An Inquiry into the Principles of Government*), whose political outlook was deeply Jeffersonian and libertarian — with the predictable exception of a massive blind spot about slavery. Taylor refused to face the tension between the principles of the Declaration of Independence and the institution of slavery; but later Southern intellectuals would face that tension — and resolve it in the wrong direction.

In the 1830s and 1840s, the ideological champion of Southern interests was not John Taylor but John C. Calhoun (author of *A Disquisition on Government* and *A Disquisition on the Constitution*). To his credit, Calhoun was a fierce opponent of centralized power, and came up with some rather ingenious ideas for curbing its growth (e.g., veto rights for minority factions); to this extent, Calhoun stood squarely in the Jeffersonian tradition. But the need to avoid that tradition's radical implications for the legitimacy of slavery drove Calhoun to repudiate the principles of '76. Human rights, Calhoun maintained, rest on legal custom, not on the Laws of Nature — and the exercise of political authority does not depend for its legitimacy on the consent of the governed, but is a natural and inevitable feature of the human condition. By tossing the Declaration of Independence out the window, Calhoun was able to develop a Southern political ideology that could accommodate the institution of slavery. (Blacks were *not* one of the minority factions to whom Calhoun contemplated offering veto rights!)

The process of decay did not stop there. In the 1850s, the new ideological spokesman for the South was the arch-communitarian George Fitzhugh (author of *Cannibals All! or Slaves Without Mas-*

ters and *Sociology for the South, or the Failure of Free Society*). In Fitzhugh's system, the need to justify slavery resulted in a full-scale assault on the Jeffersonian tradition in all its aspects; every vestige of libertarianism was methodically uprooted. Combining the right-wing nostalgia for an idyllic traditionalist feudal past and the left-wing hunger for a scientifically organized socialist future, Fitzhugh championed the Society of Status — an organic, hierarchical view of society in which every person has an assigned social role that carries with it both compulsory duties of obedience to one's superiors and a guarantee of support, security, and paternalistic oversight from those same superiors. Black slavery, in Fitzhugh's vision, was just a special case of the general principle that no person, black or white, is entitled to be the master of his or her own destiny.

Not all defenders of slavery accepted Fitzhugh's philosophy, of course; but the general way of thinking which his works represented was becoming pervasive in Southern society. By 1862, the Confederate journal *De Bow's Review* was trumpeting the slogan "The State is everything, the individual nothing." (Some of the people who wear the Confederate flag on their jackets might want to think that one over.) The need of the Southern white culture to maintain dominance over its black population had led it to adopt principles which ended up threatening the freedom of its own white members.

It was not inevitable that Southern whites would choose to close their eyes to the injustice of slavery. That was their choice to make, and they made it. What was inevitable, or close to inevitable, was that this choice, once made, would have costly consequences — that it would have a corrupting influence on both their institutions and their ideals. When we find ourselves in a position of dominance over others, we cannot afford to excuse our authority on the grounds that the struggle for survival has favored us. We cannot afford to follow Calhoun and Fitzhugh in rejecting the Natural Law that all human beings are entitled to equal respect, regardless of who has been dealt the winning hand. For if we do, we run the risk of destroying not only their freedom but, in the long run, our own.

I don't mean to be giving the Union a free ride here. In the Civil War, *both* the North and the South decisively turned their backs

on the ideals for which the American Revolution had been fought.<sup>21</sup> The North's drive to subjugate the South had an effect on the North analogous to the effect the South's drive to preserve slavery had on the South. More authority was centralized in Washington; civil liberties were routinely violated; income taxation and Federally administered conscription were introduced; and an ominous cult of national unity spread through the American consciousness. The result was a Federal government with vast new powers — a fledgling Leviathan that quickly proved too tasty a treat not to be captured by the corporate élite. And so we are left, at the end of the twentieth century, with a burgeoning American police state whose primary victims, ironically, are the very blacks whose liberation was supposed to be the moral justification of Union victory.

The moral of this long historical digression is that when a society acquires a dominant position, the prospects for freedom can sometimes become not less but more precarious, first for the society's neighbors and second (as a result of the need to keep those neighbors in subjection) for the society's own members. Hence we are trusting in a weak reed if we rely on the process of cultural evolution to secure freedom for ourselves or our neighbors. If we want the meme of liberty to prevail, we must take the initiative and work to promulgate it, taking as our guide the polestar of Natural Law. △

#### Notes

<sup>1</sup> It's worth noting that there is another common sense of "natural law," according to which the basic causal laws that govern the universe are called natural laws. These two concepts are distinct. In the causal conception, natural law is *descriptive*; it tells what actually happens. But Natural Law in the sense I'm concerned with here is *normative*; it tells what *ought* to happen.

But the two senses are sometimes linked. For example, it is a natural law, in the descriptive sense, that if you stick your hand in the fire you'll get a sensation you won't like; and insofar as this is taken as a reason for not sticking your hand in the fire, the causal connection might also be counted as a Natural Law in the normative sense.

The term "natural law" has gotten an unusual amount of press lately because of the increasing prominence of the Natural Law Party, and some may wonder what the relation is, if any, between the sort of Natural Law I'm defending and the sort that the Natural Law Party is talking about. In the recent U.S. campaign, representatives of the Natural Law Party remarked that they agreed with America's founders that public policy should be based on Natural Law. Now America's founders were heavily influenced by Natural

Law theorists like Cicero and John Locke, and when they talked about Natural Law they usually (though not always — they were fans of Newtonian physics too) meant it in the normative sense, as when the Declaration of Independence states in its preamble that the "Laws of Nature and of Nature's God" entitle the American colonists to secede from the British empire. I don't know much about the Natural Law Party's beliefs, but given their emphasis on "scientifically proven solutions," and their repeated statement that "government should be based on what works," my impression is that they are instead talking primarily about natural law in the descriptive sense, and that what they mean is that public policy should be framed in the light of accurate information about how the world works. So to that extent I don't think the Natural Law Party is talking about Natural Law in the same sense I mean here.

On the other hand, there does appear to be a religious — specifically, a Hindu-influenced — dimension to the Natural Law Party's perspective (its founder and recurring Presidential candidate John Hagelin teaches at the Maharishi University in Fairfield, Iowa, and such spiritual practices as transcendental meditation and yogic flying are central to the party's policy proposals), so it's possible that some of the Natural Law candidates' remarks about the need to bring our political system into accordance with Natural Law should be interpreted as a call to reform our system in the light of a *moral* order inherent in the universe (the existence of such an order, Dharma, is a central tenet of Hinduism), in which case the Natural Law Party's perspective would count as a version of normative Natural Law theory after all. But once again, my information about the Natural Law Party is too sketchy for me to offer any interpretation with confidence.

<sup>2</sup> Descartes thinks he has a way out of this, that he can stop the regress with some beliefs (e.g., my belief that I exist) that are self-evident and not subject to doubt. But the principle that starts off the regress — the Cartesian principle that belief is justified only when we can rule out all possibility of error — does not seem to be one of the beliefs that are self-evident and not subject to doubt, so it's still not clear why we should believe it.

<sup>3</sup> It's worth noting, however, that there are some versions of Natural Law theory that see Natural Law as a self-enforcing set of rules, and thus see natural rights as de facto rights of an odd sort, with the universe rather than society doing the enforcing. According to these views, violations of Natural Law will be punished — perhaps by God (you'll be sent to Hell for having sex with the wrong person), perhaps by nature (if you break the Natural Law against walking off a cliff, you'll be punished with death or injury), perhaps by the Law of Karma (if you sin in this life you'll be punished by being reincarnated as something icky in your next life), perhaps by the very fact of being a worse person (if you act wickedly, your punishment is your wicked condition itself, which is far less desirable than the condition of being virtuous; as Socrates puts it, the worst possible punishment is to have a corrupted soul). And if violations of natural rights are reliably punished, then those natural rights do start to look rather like de facto rights, at least to the extent (often minimal, alas) that the prospect of such punishment actually

deters rights-violations.

This notion of Natural Law as self-enforcing does still add a normative element on top of the de facto element, though. It's one thing to say that if you do X, you will receive punishment Y. It's another thing to say that punishment Y is so bad that it's not worth it to do X. This last is a *normative judgment*; it says that the badness of Y outweighs the goodness of X. That's something that no merely de facto theory is qualified to pass judgment on. So even if all normative rights turned out to be de facto rights of a sort, their status as normative rights would not be *reducible* to their status as de facto rights.

4 On the other hand, there is one more piece of evidence for (a). Noting that our ancestors and our civilization survived because of their success in the competitive struggle for existence, Rich says: "If you argue for a different mode of selection, you argue against the process which brought you and me here. We enjoy life, health, and leisure to discuss this subject because of the process which has brought us here." (p. 16.) Rich might be interpreted as saying that the value we place on our own lives and welfare *commits* us to valuing the triumph of superior might, because it is only through the latter's having prevailed that we are able to enjoy the former — and that accordingly we should always cheer for the stronger power, even when that power opposes us. But I doubt that this passage will bear the weight of so strong an interpretation.

5 Incidentally, this is what is wrong with the argument (parodied in the subtitle of Wilson's book) put forward by some Natural Law theorists that condemn contraception on the grounds that reproduction is the natural end of sexual intercourse. Our genes gave us a sex drive on the strategic grounds that beings with a sex drive are more likely to reproduce. So reproduction was our *genes'* goal in giving us a capacity for sexual desire, but the natural end of sexual intercourse considered in itself is intercourse, not reproduction.

6 Isn't being human an all-or-nothing condition, rather than a matter of degree? Well, I would reply that humanness is like size. In one sense, size is an all-or-nothing condition; either something has size or it doesn't. Still, among things that do have size, some have greater size than others. By the same token, in one sense being human is an all-or-nothing condition; either a life is human (i.e., if it is the life of a human being) or it isn't — but among human lives, some lives exemplify that humanness to a greater extent than others.

7 For more discussion of this point, see my "Punishment vs. Restitution" (*Formulations*, Vol. I, No. 2 (Winter 1993-94)) and "Slavery Contracts and Inalienable Rights" (*Formulations*, Vol. II, No. 2 (Winter 1994-95)).

8 I am indebted to Nicholas Sturgeon, Richard Boyd, and Robert Adams for many of the ideas that follow.

9 Wilson's phraseology here suggests he is an adherent of the old positivist notion of *verificationism*, which held that a statement is meaningful only if it can be tested empirically. Wilson doesn't say how he would reply to the standard objection to verificationism, namely

that by this criterion the verificationist doctrine itself is meaningless. (Another cure for verificationism is to consider how you would react if you were listening in on creatures from another dimension who were incapable of detecting you, and hearing them conclude that the hypothesis of your existence was not only implausible (which would be fair enough) but meaningless.)

10 I say "probably" because the extent of dissent within the natural sciences is difficult to assess, given that such dissent is made invisible by our social customs in a way that dissent within the field of ethics is not. For example, if a self-proclaimed scientist argues that the earth is flat or that the Rocky Mountains are an avant-garde sculpture carved by visitors from Venus, we decline to continue calling him a scientist, or to grant that what he is doing is science; but if a self-proclaimed ethicist argues that the human race is a cancer on the earth and should be annihilated, then even if we disagree with his position, we still grant him the title of ethicist and say he is doing ethics. As a result, disagreement over scientific matters is rendered less visible than disagreement over ethical matters. (The real test of "genuine science" in our culture, I suspect, is whether it can produce military technology for the government.)

11 I say this with caution, as some of Wilson's other writings suggest a skepticism about the concept of objective reality as such. Still, he does often write as though he thinks statements about causal interactions in space and time have a kind of objectivity to them that normative statements do not.

12 In particular, the following provision seems to do everything we need the reliability condition to do, without excluding moral knowledge: "The belief must not depend for its justification on the presence of beliefs that are false or the absence of beliefs that are true."

13 Strictly speaking, my own position is neither consequentialist nor deontological but virtue-ethical; but on most issues, and certainly on the present issue, it comes closer to the deontological side, and so I will ignore the differences here (especially since Immanuel Kant, usually regarded as the paradigmatic deontological theorist, counts as a virtue-ethicist by my lights, since he justifies moral rules in terms of the virtuous attitude they express, rather than justifying the virtuous attitude in terms of its being a disposition to obey the right rules). For more about these distinctions, see my "Slavery Contracts and Inalienable Rights" (*Formulations*, Vol. II, No. 2 (Winter 1994-95)) and "Inalienable Rights and Moral Foundations" (*Formulations*, Vol. II, No. 4 (Summer 1995)).

14 Another way of putting the objection is that if our moral attitudes are the result of evolution, then we would have the moral attitudes we have whether or not they accurately reflected a transcendent moral truth, in which case moral beliefs fail to meet the reliability criterion for knowledge, i.e., the connection between our believing something to be wrong and its actually being wrong is purely accidental.

15 Actually, I'm puzzled by the beauty example too. It seems to work only if we limit beauty to the narrow case of sexual attractiveness. An

evolutionary explanation is pretty plausible when it comes to Rich's preference for human females over cockroach females. But if someone finds Mozart's music more beautiful than Haydn's, it's less obvious that an evolutionary explanation must be in the offing. What would such an explanation look like?

16 Please note that these are only examples; I am not making any claims about how human evolution actually occurred. In fact, many of our most basic tendencies may have evolved when our ancestors were still herbivorous. And in particular, I doubt that our earliest ancestors were inclined to believe anything so highminded as (1); indeed, they may well have held to an ethic of cooperation within the group and indifference or hostility to those outside the group. If so, then the widespread modern attitude that cooperation should be extended (at least to some degree) to all fellow humans may be in part the result of moral insight, the recognition that the differences between insiders and outsiders are not significant enough to warrant such a disparity in treatment.

17 For discussion, see "The Return of Leviathan" (*Formulations*, Vol. III, No. 3 (Spring 1996)).

18 Let me take this opportunity to recommend, to anyone interested in the subject, David Ramsay Steele's illuminating article "Hayek's Theory of Cultural Group Selection" (*Journal of Libertarian Studies*, Vol. VIII, No. 2 (Summer 1987), pp. 171-195), one of the best discussions I've seen of the uses and abuses of cultural evolution arguments.

19 At the lowest circle of Hell (*Inferno*, Canto XXXIV), the three jaws of Satan are forever gnawing on the three greatest traitors of all time: Judas (the betrayer of Christ) — and Brutus and Cassius (the betrayers of Cæsar). This from a supposedly Christian author, in adulation of the Roman imperial system under whose laws Christ was executed and thousands of early Christians martyred! The only indication that Judas' crime might be a notch more serious than that of the two tyrannicides is that Judas has his head inside Satan's mouth and his legs out, while Brutus and Cassius are in the presumably comfier head-out legs-in position. (Ironically, the European cultural flowering that produced artists like Dante — and laid the groundwork for the Renaissance and the Scientific Revolution — seems to have been largely a result of the West's political decentralization and fragmentation, reflecting precisely the extent to which Dante's society had (thankfully) failed to assimilate the Roman centralist meme.)

20 Most of the classical marble government edifices that seem so definitive of Washington, D.C., date not from the time of the Founding but rather from the Progressive Era (roughly, the late 19th and early 20th centuries), when America's romance with fascism and imperialism was just getting into full swing.

21 Apologists for the North like to think that the Civil War was primarily about slavery, because this puts the Union cause in the most attractive light. Apologists for the South like to think that

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# Men and Women Differ in Political Values: Theory and Implications

by Richard O. Hammer

In the libertarian movement men outnumber women. I wish it were otherwise. But experience shows, again and again, men choosing to participate in libertarian events and women choosing to do something else.

Observing this, many of us react that we should try harder to attract women. I have tried this again and again. But I have had almost no success that resulted from my effort; the few women who participate probably would have participated anyhow.

We in the movement talk frequently about the disproportion between men and women, but write about it rarely if ever. For the past eight years, during which I have become increasingly involved, I do not remember reading a frank attempt to describe what is going on here. It is touchy territory. But I feel a need. We need to talk — to write — about this.

In this article I lay out some theories. Then, concluding, I draw from the theories to suggest how we might perceive ourselves and manage our movement.

## Observable Differences

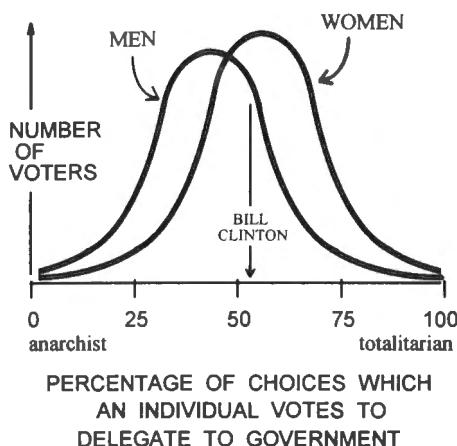
Men and women want different things. For good reason, biology. Men and women play different roles in reproduction. As such men and women need to behave in different ways, in order to increase the likelihood of survival of their own individual offspring. Our genes, having figured this out long ago, drive us to behave in these different ways.

Before proceeding I had better repeat what anyone who ventures onto this turf needs to repeat: I do not imply that any individual man or woman must fit a stereotype, but only that on average men and women differ. As with tallness, on average men are taller than women, but many women are taller than many men.

Scientists who study such matters feel no doubt that men and women differ, in mind as well as in body.<sup>1,2,3</sup> But popular opinion during all my formative years has tended to deny any innate difference, and has tended instead to blame differences upon training, upon the idea that children

are coached from birth onward to become stereotypical boys or girls.

Pervading opinion in the U.S. does seem ready to accept some differences between the sexes. If I say that men naturally outperform women in basketball, then probably I will not get into too much trouble. But if I mention the possibility of other differences, such as a difference in drive to notice the problems of a young child, or a difference in drive to create a predictable environment of rules, then I may find myself in a minefield of denial.



This graph shows my theory about the distribution of political values of men and women. This is not based upon a scientific survey. It shows only my guess. I invite you to consider whether it could explain observations such as these:

- Men and women, while differing significantly on average, nonetheless overlap a great deal. Many men trust government more than many women, and conversely many women distrust government more than many men.
- Many more men than women participate in libertarian events. Down in the minimal-government range, in the tails below 25%, men far outnumber women.
- During my years of active involvement in politics in Orange County, N.C., I had numerous occasions to examine lists of registered voters, as issued by the Board of Elections. I noted with interest that most married couples, perhaps three-fourths of them, were both registered in the same political party: either both were Democratic or both were Republican. However, for those couples which split

between the two parties, the split was almost always (nine-tenths of the time or more) in one direction: the wife was a Democrat and the husband a Republican. The split went the other way in only a handful of cases.

- Exit polls reported on 6 November 1996 by the *Raleigh News and Observer* showed this pattern of votes.

	Clinton	Dole
Male	42	49
Female	53	42

- Some men, such as Bill Clinton, represent women as a whole better than men as a whole. And, there being more women, women often cast the votes which elect these men. Indeed, women could elect a complete legislature full of men who represent women more closely than men. The mere fact that men hold office does not mean that the government serves the interests of men better than the interests of women.
- More men than women seem to be angry about the political situation in the United States.

Finally, as you must have been thinking, my graph fails to show many important things. It may be more wrong than right. But, till that happy day when I read of respectable research which shines more light on the political difference between men and women, I will maintain that there is something right about it.

## More Males Than Mating Territories: A Natural Plan

In nature I think I see parallels. Humans, animals, and even libertarians, when challenged with certain environmental limits, behave in ways for which we can concoct explanations. Here I will develop a hypothesis to explain why men and women differ in political values.

A healthy population can, and should, continuously produce a surplus of competitors for existing mating territories

As a first step along the way, I present a rationale for why a population may contain many healthy, but less-than-fully-mated adult members. But before jumping into this, let me say that when I use the term,

"mating territory," I intend a broad meaning. I include the usual meaning, of a three-dimensional space in a physical environment which offers sufficient food and range, but I also include, for subtle animals such as humans, any set of circumstances in which a person finds it possible to procreate successfully. For humans these circumstances can include: establishing a prosperous career, winning a lottery, or renting a nice apartment in a skyscraper.

Now, seeking to explain the large number of unmarried libertarians, it seems to me that evolutionary pressure would favor a strategy, within a population enjoying stable circumstances, of producing a surplus of offspring in each generation, more than can hope to mate successfully within the given environmental constraints. The extra offspring are not doomed, necessarily, to starvation, but probably must live without reproducing, unless they can establish a new mating territory outside the existing range. Let me give two illustrations.

First, Richard Dawkins wrote this in *The Selfish Gene*:

"If the population gets too big, some individuals will not get territories, and therefore will not breed. Winning a territory is therefore, to Wynne-Edwards, like winning a ticket or license to breed. Since there is a finite number of territories available, it is as if a finite number of breeding licenses is issued. Individuals may fight over who gets these licenses, but the total number of babies that the population can have as a whole is limited by the number of territories available."<sup>4</sup>

Second, join me in recalling the institution of primogeniture. Surely this has been practiced in several societies, but let me tell what I recall from reading *Trinity*, a historical novel by Leon Uris. In Ireland a few centuries ago a typical farm family might have six children, but only one, the eldest son, would inherit the farm. Among the daughters we might expect that one would be lucky enough to marry the eldest son inheriting a farm in some other family. But what happens to the other four? Well, they can go to the brothel, become a priest or a nun, get on a boat and go to America, hope for a job in commerce in one of the newly-forming cities, or maybe hire on as a helper on the elder brother's farm.

I used to think, as evidently did Hobbes and Malthus, that most creatures in nature live on the edge of starvation, because they reproduce to the limit of their food supply. But now I see evidence which suggests that nature is smarter than that. I think many species limit their numbers by limiting their mating practices. If a population can limit its numbers to a level safely below the brink of starvation then it can avoid the weakness and disease which may accompany living at that brink. Such a population may spread more successfully when chance opens new terrains, as it will contain adults which are not only unmated, and therefore malcontent, but also fit to move with full vigor of health, where there is hope to establish a mating territory.

#### Men, more than women, need mating territories

As I understand the theory of the selfish gene, genes infuse us with motivations which maximize chances of survival of copies of those genes. And, consciously or not, we are selfish about it. It is not just anybody's genes, but our individual genes, that we arrange our lives to spread. Thus, humans of both sexes find themselves eager to invest their energies to help rear children that they know to be their own.

But, while women know without doubt who their children are, men cannot be so sure. Men can only improve the chances that they know by working to establish an environment in which they can increase confidence in the monogamy of their mates. Men need mating territories, in which they can father and then raise children.

Women, should this line of reasoning hold, do not need anything like mating territories. Instead women need secure environments with supports. What an individual woman decides to do, to get the security she needs, will depend upon the options which she sees in the society in which she lives. If a man promises security, if only she will cleave to him, then she may do that. But if a government also promises security, if only she will vote for Democrats, then she will probably choose this in preference to the man, as it gives her more flexibility.

To the extent that a woman feels threatened by infidelity on the part of her husband, this may follow chiefly from her lack of trust in marriage law: she may feel doubt about her future support from that husband.

But surely she feels no threat to her confidence that she is the mother of her children.

Further speculation suggests an explanation for why men, more than women, have interest in politics, in debating the rules in society, and in developing a predictable environment of contract law. The explanation grows from men's need for mating territories. If men in a given ecology can cooperate, then many of them can establish individual mating territories for themselves. If they cannot cooperate, then no one of them can be sure that he has a secure mating territory. So the process among men of discussing rules for ordering society is a positive-sum game. Overwhelmingly, men feel that they gain by securing a set of rules which grant them certain scope, as individuals, and keep others from encroaching upon that scope.

Women however may have nothing to gain from the discourse over rules which so fascinates men. Several times, in social gatherings, I have had an experience like this: I meet a couple, a man and a woman, and after introductions reply to one of their questions about what I am reading or writing. To my reply the man responds with interest, carrying the question further. I respond. The man responds. We are interested. The woman's eyes glaze over. Women may gain from a discussion about rules only to the extent that it helps them know that their stream of support is secure.

#### Men, more than women, take chances

In order to reproduce, women have less time than men. Women have a shorter span of years during which they can successfully parent a child. This fact surely influences our conscious choices, along with our unconscious attitudes. Women, properly, have less patience with grand ideas that may pay off in twenty years. But a man, finding no satisfactory prospects in the present regime, may willingly take a gamble that promises a mating territory twenty years hence. So women naturally focus on today, tomorrow, and next year. Whereas men commonly find their thoughts drifting decades ahead.

Further speculation might suggest this: among the spare men and women in an established regime (those who do not succeed in mating in one of the established territories), men might feel more alienated

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## Dialogue

### The Market for Punishment

by Richard O. Hammer  
and Roy Halliday

**Rich Hammer:** Roy Halliday, in his article "The Anticrime Industry in a Free Nation" (*Formulations*, Vol. IV, No.1, Autumn 1996), sometimes reasons in ways that I cannot follow. Here I will describe a few of these issues and invite Roy to respond.

Roy develops an argument (in section 1.a.) that "it would never be proper for a third party to come to the aid of someone who is being attacked, because it would be impossible to know whether the attack was a crime or a punishment."

This argument, as I understand it, stands upon the possibility that someone carrying out punishment might be acting upon the eye-for-eye principle, such as giving a mugging to punish for a mugging. But this argument seems farfetched. Any sensible third party administering a punishment would foresee this possible confusion, and would take steps to avoid it.

In contrast (in section 2) Roy says that the state, unlike private agencies, could administer punishment without fear of confusing any third parties who might come to the aid of the party being punished. This, he says, is because the state would administer punishment "with a lot of pomp and ceremony." But I believe private punishment agencies would also employ pomp and ceremony, as much as they deemed necessary to protect themselves from this hazard Roy has described.

In making this argument Roy overlooks another reality, I think. Usually we can recognize aggression, by noticing the nature of the act and the status of the two parties involved. This recognition is not perfect, but most of us who have compunctions judge with care. The judgements which result can, and commonly do, support order in a community.

So the possibility that a protection agency might confuse aggressor and victim does not support, in my mind, Roy's argument that private punishment could not work — any more than the possibility of having an accident stops most of us from driving in

our automobiles.

Now I go on to another point. In section 1.b., Roy describes the possible development of a "punishment-entertainment" industry, which would profit by selling admission to watch punishments. He speculates that punishment of pretty girls, in particular, could pay so well that profiteers would spy on pretty girls, looking for any cause to bring them to judgement.

This strikes me as wrong, in a moral sense, and therefore I doubt that voluntary society would sustain such behavior. When such behavior becomes regular in a society I believe that usually we can trace incentives and show it to be the effect of something done by government.

In this case it seems Roy imagines that a business hired to punish a person in one way could, with impunity, hurt that person, or that person's pride or reputation, in other ways. It may be reasonable for Roy to imagine this, because he lives in a country in which the government system of punishment submits inmates to extra indignities.

But many people care about inmates. And these people would, if they could, protect inmates from extra indignities. But government, having given itself a monopoly in law, cripples these people.

In a free nation, I believe market forces would protect the one being punished. Punishment agencies which overstepped their duties could, in turn, be charged with crime.

Finally, please do not assume, because I question Roy's method in a few places, that I take the opposite view: that I favor punishment, either private or public. I have described, but not clearly enough, some of my own formulations about the nature of voluntary law enforcement, in articles here in *Formulations*.

**Roy Halliday:** Rich Hammer makes a good point when he says that any sensible third party administering a punishment would take steps to avoid the possibility that the punishment could be mistaken for an ordinary crime. I would expect professional punishers to be dispassionate and deliberate and cautious. Anyone who witnesses an apparent mugging could safely assume that it is not a punishment being administered by a professional punisher, because professionals would not administer punishment that way. But what about victims of crime and their families who are

seeking vengeance? What is to stop them from taking direct action, without hiring professionals and without waiting for a trial? How would a third party know that an apparent mugger is not, for example, a former victim of the person being attacked or the big brother of the former victim? It may seem farfetched, but that is because what I am trying to imagine is a farfetched society in which each individual has the right to administer punishment as he sees fit.

Rich makes another good point when he says that "usually we can recognize aggression, by noticing the nature of the act and the status of the two parties involved." An aggressor, let's call him A, is someone who uses force against the person or property of another person, call him B, without B's consent for reasons other than to defend against B's own use of force. We can often recognize when this sort of thing is happening. The problem is that punishment fits this definition. The kind of punishment that I am referring to is when a private individual or the government uses force against a criminal without his consent after the crime is over. So our ability to distinguish aggression from nonaggression does not help us to distinguish punishment from crime, because punishment and crime are both forms of aggression. In fact, under the eye-for-an-eye principle, there is no visible difference between a crime and its punishment.

The scenario that I described, in which pretty girls are punished as a form of entertainment, does not presuppose that "a business hired to punish a person in one way could, with impunity, hurt that person, or that person's pride or reputation, in other ways." In my scenario, the victim of the crime gets exactly the form of justice that he pays for. What I suggest would happen is that punishment businesses would encourage victims to select forms of justice that make the most profit. Punishment businesses might be able to persuade their clients to select entertaining forms of justice by offering them discounts or even by offering to let them share in the profits. If the victim of a pretty criminal was not sadistic, he could forgive her, and that would be the end of it. But if he wanted to hurt and humiliate her, there would be money to be made by doing so and selling

(continued on page 38)

## Our Readers Write

To the Editor:

The introduction to "A Model Lease for Orbis" [Formulations, Vol. III, No. 3 (Spring 1996)] is incorrect in part when it reports that "nothing remains of Atlantis."

In the early '70s, the vision of Atlantis coalesced into two separate but complementary views of what needed to be done in order to accomplish the whole project. The "high road" involved a focus on dramatic, large-scale, island-based enterprises such as off-shore banking and strategic issues, while the "low road" worked to establish an autonomous, self-supporting community that put into practice the details of the vision. If Atlantis was going to become a living, sustainable entity, both paths had to come together.

While the "high road" was indeed blocked by Haitian gunboats in the Windward Isles in the mid-'70s, the "low road" relocated to the Pacific Northwest and is alive and well. Located on 106 acres near the Columbia River in south-central Washington state, Windward has achieved a high proportion of its organizational goals while creating a good life for its people.

The dramatic vision of creating a new land from scratch will always be exciting and passionate, while dealing with the practical details is hard work and time consuming. Still, much has been learned and solid progress has been achieved. Looking back, I have become convinced that "the tragic side of something beautiful never ends in vain."

With best wishes from Windward,

Walt Patrick  
Executive Director  
The Windward Foundation  
windward@hevanet.com

### **Hit 'Em (from p. 9)**

natural human desire for a lawful environment is bottled up behind a government dam. △

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Spencer MacCallum, "The Social Nature of Ownership," in *Modern Age*, Winter 1964-65, pages 49-61.

*Richard O. Hammer, founder of the Free Nation Foundation, was one of the first in his class in U.S. Army radar repair school to receive promotion to Private First Class. During his subsequent year in Vietnam, he was sometimes called from more boring duties to drive a jeep or type a memo for the platoon sergeant.*

### **Natural Law (from p. 33)**

the Civil War had almost nothing to do with slavery, because this puts the Confederate cause in the most attractive light. The actual truth casts the least flattering light possible on each side: the preservation of slavery was central to the South's motives for seceding, but the elimination of slavery was only peripheral to the North's motives for invading. For a penetrating libertarian analysis that focuses on the political, economic, and cultural rather than the military aspects of the conflict, and avoids the temptation to glamorize either the North or the South, see Jeffrey Rogers Hummel's *Emancipating Slaves, Enslaving Free Men: A History of the American Civil War* (Chicago: Open Court, 1996). (The bibliographical essays alone are worth the price of the book.)

*Roderick T. Long's mother made the mistake of teaching him at an early age Descartes' proof of his own existence. Roderick never recovered from this early infection, and still displays troubling symptoms of the philosophical meme today. Tragically, he now seeks to infect others, through his teaching post at the University of North Carolina.*

### **Men and Women (from p. 35)**

than women. In this situation, as I have guessed the theory, the spare men have almost no chance of fathering in a way that seems natural to them, whereas the spare women can, and commonly do, rear their own children without marrying.

This leads to an explanation of why it seems that men, more than women, venture first into new and possibly dangerous frontiers. Men who do not possess a mating territory in an established regime have less to lose by gambling, even their lives, in an attempt to secure a mating territory beyond some new frontier. These men will sometimes do things that will be called crazy, by

people who are comfortably established in the existing regime.

It seems natural then that women will follow men into new frontiers as those frontiers develop and promise supports better than those which the women could have expected in the already-established regime.

I suggest that the genes which drive us might have hit upon this strategy which I have sketched here, for sprinkling motivations into the members of a population. The strategy seems a plausible way to maximize survival, as it fills without overtaxing existing environmental niches, while continuously producing a force (spare men) which seeks new niches for possible expansion of the species.

### **What These Theories Suggest for the Libertarian and Free Nation Movements**

For decades now I have believed, or wanted to believe, a sweet lie, that men and women are equal. If this lie is true, it means I can just be myself and meet a mate who is my equal in interests and drives. It means I do not have to submit to any discipline, struggling to understand an alien operating system. But the lie has borne no fruit, and the prospects do not look good.

I think I am ready to give up the lie. But I do not know what to replace it with. I sympathize with the women's liberation of the 60s and 70s to the extent that it grew in response to repression by government. Before that time there were plenty of practices by governments which wrongly restricted and stereotyped women. So I do not believe that, if I could remember the

### **Libertarians:**

**STOP  
COMPLAINING**

**START  
BUILDING**

**Join the  
Free Nation  
Foundation**

roles assumed by adults during my boyhood, the 50s provide a useful model of sex roles which might exist in a free nation. I feel almost clueless for where to start thinking. This awareness led, in part, to my suggesting the topic "Family Structure" for our Forum in April.

But, that aside, the observations and theories which I have described above draw me most of the way toward making an unpleasant conclusion: The libertarian movement consists of mostly men for reasons which we cannot change, and which will not change. This is a man thing, for the most part. I suggest, if you agree with that conclusion, that you join me in trying to accept it without guilt or embarrassment.

For those of us who might see ourselves as surplus men, unable or unwilling to do the dance which fetches mates in the established regime, I suggest that we take heart and proceed with our task. We are pushing into a new, as yet unproved, frontier. We should not be surprised that women stay back, waiting before they follow to see evidence that we can provide supports. For them provision, not politics, is what matters. △

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1 Frances Kendall, *The SeXY Factor: Gender Differences at Home and at Work*, 1993, Amagi Books.

2 Anne Moir and David Jessel, *Brain Sex: The Real Difference Between Men and Women*, 1989, Carol Publishing Group.

3 Warren Farrell, *Why Men Are The Way They Are: The Male-Female Dynamic*, 1986, McGraw-Hill.

4 Richard Dawkins, *The Selfish Gene*, 1976, Oxford University Press, p 122. In this quotation Dawkins refers to V.C. Wynne-Edwards, *Animal dispersion in relation to social behaviour*, 1962.

#### Punishment (from p. 36)

tickets to witness justice in action.

Rich says it strikes him as morally wrong to punish pretty girls as a form of entertainment, and that, therefore, he doubts that a voluntary society would sustain such behavior. Here again, Rich makes my point. In my article, I predicted that many people would be morally repelled by the consequences of free-market punishment and they would clamor for a change to eliminate its most obvious inequities. △

#### Christianity (from p. 14)

that is, they are evil; and thus government, being in itself an evil, comes to be destroyed."<sup>17</sup>

We encourage Christians to join the Free Nation Foundation. We need more radical libertarians to balance the wishy-washy minimal statists. Let us work together to create a sanctuary for human beings, a refuge from organized violence, a land of peace and freedom. △

#### Notes

1 Reinhold Niebuhr, *Why the Christian Church is Not Pacifist*, p. 15.

2 Brother Andrew, *The Ethics of Smuggling* (Tyndale House Publishers, Inc., Wheaton, Illinois, 1st ed. 1974), p. 44.

3 Harnack, *Militia Christi*, p. 47.

4 G.H.C. Macgregor, *The New Testament Basis of Pacifism* (Fellowship Publications, Nyack, New York, 1960), p. 88.

5 By "Christian" I mean following the teachings of Jesus.

6 Macgregor, p. 90.

7 "Church and State," p. 149 in Tolstoi's *Essays on Life* (Carlton House, New York, 1928).

8 "Church and State," pp. 151-152.

9 In Italy, "Christian" approval of World War II was so strong that the Italian bishops were said to have petitioned Mussolini to extend the "crusade" to the Holy Land. (Macgregor, p. 149.)

10 Translator's footnote to "Church and State," p. 150 in Tolstoi's *Essays on Life*.

11 Adin Ballou, *Christian Non-Resistance* (Universal Peace Union, Philadelphia, Pa., 2nd ed. 1910; reprinted in 1970 by Da Capo Press, New York).

12 Translator's footnote to "The Emigration of the Dukhobors," p. 316 in Tolstoi's *Essays on Life*.

13 Brother Andrew, p. 29.

14 Ibid., p. 48.

15 Ibid., p. 51.

16 "The Slavery of Our Times," p. 359 in Tolstoi's *Essays on Life*.

17 "Persecution of Christians in Russia," p. 302 in Tolstoi's *Essays on Life*.

Roy Halliday recently retired as a technical editor for a major software development company, and is working on a book-length essay on justice.

#### The purpose of the

## Free Nation Foundation

is to advance the day when coercive institutions of government can be replaced by voluntary institutions of civil mutual consent,

by developing clear and believable descriptions of those voluntary institutions,

and by building a community of people who share confidence in these descriptions.

#### Join Our Effort

## BECOME A MEMBER

# Miscellaneous Reflections

by Roderick T. Long

## 1. Dangerous Rights

As readers of this publication know, I am opposed both to intellectual property rights ("The Libertarian Case Against Intellectual Property Rights," *Formulations*, Vol. III, No. 1 (Autumn 1995)) and restrictions on admissible evidence in courtroom trials ("The Athenian Constitution: Government by Jury and Referendum," *Formulations*, Vol. IV, No. 1 (Autumn 1996)). These are views I came to gradually, with some trepidation, but two recent news items have reinforced my stand.

Former Panamanian leader Manuel Noriega is apparently in court once again, being tried on charges of drug trafficking. The story has it that Noriega attempted to introduce evidence to prove that he had been working for the CIA during the period in question; the point of the evidence was to show that the source of his revenue at the time was the American taxpayer, not the drug trade. (Not that the two have ever been mutually exclusive!) But the court ruled inadmissible all evidence of Noriega's former association with the CIA.

This only serves to confirm my suspicion that the rules on admissibility of evidence, while perhaps well-intentioned, are too dangerous to merit libertarian support. When the government can choose to exclude evidence embarrassing to itself, the defendant is left without recourse, and the right to a trial means nothing.

The other incident that caught my eye is that AT&T is apparently suing competitors who use the word "true" in their advertisements, on the grounds that the effort invested by AT&T in its "True Voice" advertising campaign has supposedly earned it an exclusive right to the use of the word "true" in such contexts.

While this is an extreme example, and perhaps a laughable one (I'm waiting to see how the case comes out before I start laughing), it illustrates the danger that intellectual property rights can pose to freedom of speech and press. Ownership of ideas must lead, in the end, to thought control.

## 2. The Bureau of Sabotage

Back in grade school I remember reading a series of tales about the "Bureau of

Sabotage," written by science-fiction author Frank Herbert (author of the much more famous *Dune* series). To the best of my recollection, the premise of the "Bureau of Sabotage" series (which included both novels and short stories) was that well-meaning reformers had succeeded in eliminating all the red tape and bureaucratic rigmarole that make government so inefficient. The result was a government so streamlined, so effective, that it posed a far greater threat to liberty than ever before. Laws were passed at a much higher rate, and enforced vigilantly. Delays and oversights due to incompetence or graft were a thing of the past; now there was no escape from the everpresent eye of the state.

To solve this problem, the Bureau of Sabotage was created. An official governmental body, its sole function was to interfere with the functioning of other branches and agencies of the state — to slow them down, to frustrate their plans, to block them at every turn. (As I recall, some institutions, like government hospitals, were exempt.) The Bureau's motto was: "In Lieu of Red Tape."

What set me thinking once again about the Bureau of Sabotage was Rich Hammer's article "A State Can Be Designed to Shrink" (*Formulations*, Vol. III, No. 3 (Spring 1996)). A number of libertarians have suggested designing the legislature's power in such a way as to make it easier to repeal laws than to pass them (for some examples see *Forum Proceedings: Constitutions* (Autumn 1993)); Rich took this a step further, suggesting that we put our minds to work thinking up additional ways of building law-repealing mechanisms into a political system's constitutional structure. And then I was reminded of the Bureau of Sabotage.

What's distinctive about the Bureau of Sabotage, though, is that, if I recall correctly, its impact occurred not so much at the level of *legislation* as at the level of *enforcement*. In other words, what the Bureau primarily did was not to repeal laws or prevent laws from being passed, but to interfere with the government's ability to carry out its statutes. Could there be room for something like the Bureau of Sabotage in the constitution of a free nation?

Now that I think about it, the founders of the American Republic did think they had given us the equivalent of a Bureau of Sabotage. John Adams praised the right of the jury to nullify unjust laws; Thomas

Jefferson went further, arguing that any part of government should be able to nullify the enactments of any other part of government (though he didn't like it when the Supreme Court did it to him); and James Madison and Alexander Hamilton pointed to the armed citizenry as the ultimate check on the abuse of government power. But there must be other ways as well.

My memory of Herbert's series is fairly dim, but I don't think it offered any particularly constructive suggestions beyond the basic concept of a Bureau of Sabotage. The actual methods depicted were fairly crude and haphazard, and as I recall, a bit too close to terrorism for libertarian tastes; the author's approach was tongue-in-cheek, not concerned with practical implementation.

I invite readers to join me in trying to imagine safe, workable ways for government agencies to interfere with one another's activities.

## 3. Theocracy No Improvement

On television the other night, U. S. Representative Dick Armey quoted George Washington as saying, in 1796, that it's impossible to govern the world without God. Armey then went on to say that the last 200 years have shown us the result of trying to govern the world without God.

The implication of Armey's remarks was that we should try to govern the world *with* God instead. But that's been tried too. The millennium and a half before George Washington have shown us the result of trying to govern the world with God, and it's not a pretty picture either.

So if mankind first tried to govern the world with God, and made a mess of that, and then tried to govern the world without God, and made a mess of that as well, maybe it's not the God-or-no-God part but the governing-the-world part that's responsible for the mess. Maybe the correct moral to draw from history is that the attempt to govern the world — to impose one's will by force on other human beings — can only lead to disaster, be one's motives religious or secular.

As long as our rulers (and those whose support or acquiescence keeps them in power) continue to believe that the ills of contemporary society result merely from their having chosen the wrong *flavor* of government control, no relief from oppression will be in sight — and those who value freedom will continue to search for a homeland free of rulers. △

*May the news of your happiness bring to your homes all the unfortunate people of the earth.*

*May all tyrants and oppressors, either political or religious, know that a place exists in the world where people can cast off their chains; where persecuted humanity has raised up its head again ....*

*May the idea of such a sanctuary frighten the despots and restrain them ....*

*We ourselves ... shall profit from your example.*

*If our constitution is changed;*

*if public wealth corrupts the court, and the court corrupts the nation;*

*if our kings, to whom we have given so many terrible examples, finally forget them ....*

*if slavery ... becomes established one day in the same country which has been bathed in blood for the sake of freedom ...*

*then we shall collectively abandon this ungrateful land given over to despotism and leave the monster to reign over a desert.*

*You will then receive us as friends and brothers.*

— Denis Diderot (1713-1784), on the American Revolution

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