



– NEXT FORUM –

## How Do We Get There From Here?

### CALL FOR PAPERS

The topic of our next Forum will be: "Getting There: Preliminary Discussion about the Path to a Free Nation." The Forum will meet on Saturday, 16 October 1999, at a location which we will announce in the Autumn issue of *Formulations*.

We solicit papers on this topic. Papers received before the 1 August 1999 writers deadline for the Autumn issue of *Formulations* will be considered for publication in that issue. FNF will invite some of these writers to present their papers at the Forum. In some cases FNF can help writers with their travel expenses to reach the Forum.

Philip Jacobson, who suggested this topic, describes it as follows:

"At FNF forums and within the FNF journal *Formulations* we've done a lot to describe what a free nation ought to look like. But the path from here to there is far from clear. This forum will focus on developing key questions which must be answered in charting a path to a free nation, given today's world. Later forums will focus, more narrowly, on specific elements which might be required for a successful free nation project. The ideas explored in this forum might respond to (among others) the following questions:

(Concluded on page 7)

# formulations

Summer 1999

A Publication of the Free Nation Foundation

Vol. VI, No. 4

## FNF to Carry On New Volunteers Emerge

In a 17 March 1999 meeting of the Board of Directors, volunteers stepped forward to pick up the tasks which Richard Hammer has announced he plans to drop at the end of 1999. The Board passed this resolution:

"The Board recognizes and thanks Richard Hammer for all that he has done to establish and build the Free Nation Foundation. For the past six years Rich has been the driving force behind FNF, and he has done the lion's share of the work. The Board is grateful to him for his accomplishments and pleased that he will continue as President of FNF through 1999.

Since Rich has announced his intention to curtail his FNF activities at the end of 1999 so that he can attend to other matters, we resolve to continue the work that Rich has been doing in our behalf. It is the Board's intention to ensure that FNF continues to hold Forums and continues to publish *Formulations* as in the past. To accomplish these ends, the following individuals have volunteered to take over tasks that Rich has been handling:

- Candice I. Copas will organize FNF Forums, beginning with the Fall 1999 Forum.
- Wayne Dawson and Robert Mihaly will solicit articles for *Formulations*.
- Robert Mihaly will become the Publisher of *Formulations* in charge of layout, printing, and distribution.

- Christopher Spruyt will become Associate Editor of *Formulations* in charge of content.

During the remainder of 1999, Rich Hammer will train and assist these volunteers. Other FNF members who were already performing tasks for FNF will continue in their respective roles."

In a follow-up meeting on 1 May 1999, the Board continued developing the new working relationships.△

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– and more –

# *formulations*

a publication of the  
**Free Nation Foundation**  
[outdated street address]  
Hillsborough, N.C. 27278  
<http://www.freenation.org>

## **Statement of Purpose**

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

## **Board of Directors**

Richard O. Hammer, President  
Roderick T. Long, Founding Scholar  
Bobby Yates Emory, Secretary  
G. Wayne Dawson  
Candice I. Copas  
Roy G. Halliday  
Philip E. Jacobson  
Christopher H. Spruyt

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

Send correspondence to the postal address above. Or email to: [info@freenation.org](mailto:info@freenation.org).

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## **Subscription or Membership**

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*, invitation to attend regular meetings of the Board of Directors, copies of the Annual Report and Bylaws, more inclusion in the process.)

Send orders to the postal address above. We can accept checks, payable to the Free Nation Foundation, MasterCard and Visa.

## **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.

Submissions will be considered for publication if received by the first of the month preceding the month of publication. So our deadlines are: February 1, May 1, August 1, and November 1. All submissions are subject to editing.

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.

*Thanks to Robert Mihaly for the photographs in this issue. All of these were taken at our Forum on 10 April 1999.*

## Short Answers to the Tough Questions by Mary J. Ruwart

Reviewed by Roy Halliday

This little book is intended to help libertarians explain their ideal to non-libertarians by providing answers to questions that non-libertarians often ask. Dr. Ruwart's answers to questions about helping the poor, the war on drugs, discrimination, consumer protection, free trade, education, and even abortion and assisted suicide involve purely voluntary, free-market solutions that libertarians agree on. They are good answers for a general audience. Dr. Ruwart has a talent for presenting libertarian solutions as not only logical, clear, and principled, but also as practical and humane.

She begins by addressing questions about restitution, because the assumptions we make about how the courts will handle crimes and torts will affect the way we answer some of the other questions about how social problems will be dealt with in our ideal free nation. This shows up especially in her answers to questions about protecting the environment.

Dr. Ruwart accepts Randy Barnett's restitution paradigm. In this kind of libertarian legal system, private courts determine whether someone's property rights were violated and, if so, who is responsible. Then the courts decide what the responsible party owes in restitution to the aggrieved party (or the aggrieved party's heirs) and how much the respective parties owe in court costs. If the responsible party pays per the court-ordered judgment, his case is closed. If the responsible party cannot pay or refuses to pay, and if nobody volunteers to pay in his behalf, and if the debt is not forgiven by the party to whom it is owed, then the responsible party is forced to choose which private prison he would prefer to be incarcerated in until he pays his debts.

By giving short answers to a carefully selected series of questions, Dr. Ruwart is able in this little book to present a sketch of a libertarian country. This is a

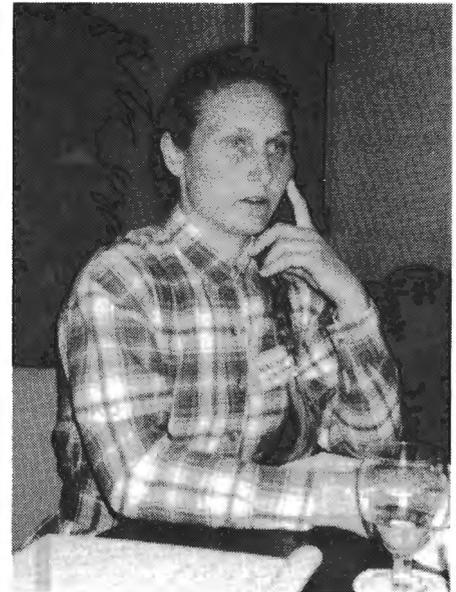
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## Two Members of Lapp Family Attend FNF Forum

FNF Member Jacob Lapp and his daughter Rachel Lapp drove overnight, from their farm in western New York, to attend FNF's Forum on 10 April 1999. After the Forum, at 5 PM, the Lapps told the assembly of their experiences in taking principled stands against the evil of the state.

They told bits of the story which Rachel and her sister Barbara Lyn Lapp have published in, *No Law Against Mercy: Jailed for Sheltering a Child From the State*, 1997. Four members of the Lapp family were jailed as a consequence of protecting a 15-year-old boy from Social Services "care." Refusing to lie in order to obtain release on a plea bargain, their incarceration extended to eight months, during 1993-94.

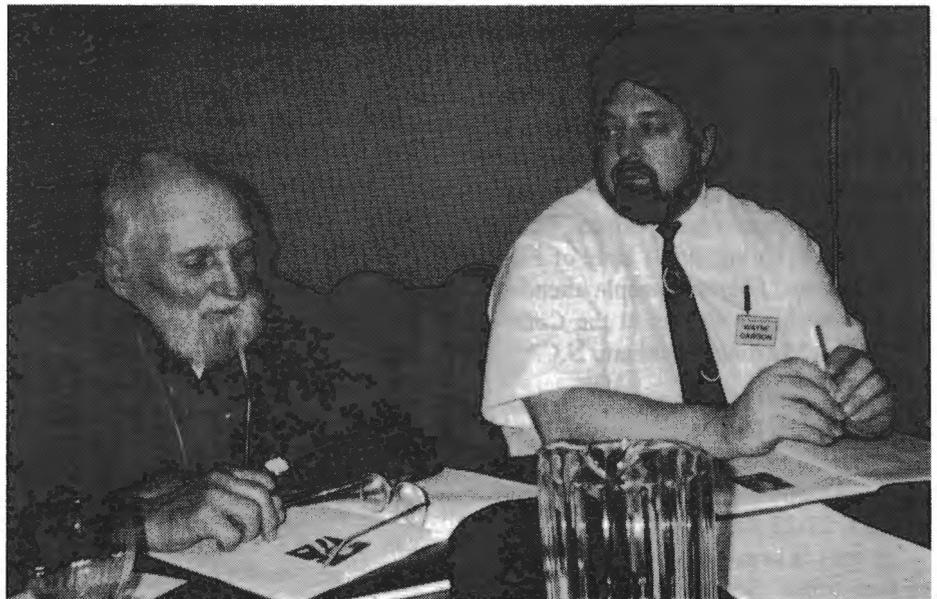
Presently the Lapps live in a standoff with the IRS. Until 1991 they had dutifully completed all IRS forms. But the IRS forms asked for the names and ages of all people paid on the farm. They did not want to report this because some of the people they pay for work are the children of their neighbors; they might incriminate their neighbors (as well as themselves) in the eyes of the state for violating child-labor statutes. Again refusing to lie, they came to feel that they could not sign IRS forms as "true and complete" when those forms did not detail all of their trades. They stopped filing the forms.



Rachel Lapp

In 1996 the Lapps ignored a summons to court, to answer IRS charges. In 1997 the IRS garnisheed \$50,000 of their wholesale milk payments, nearly forcing the family out of business, and stimulating a movement of support for the Lapp family in the local community.

Their book *No Law Against Mercy* and a video tape *We Hold These Truths* (which tells of their experience with the IRS) are available from: Hand of Hope Press, P.O. Box 101, Cassadaga, NY 14718.△



Jacob Lapp, left

## Purism vs. Practicality

by Richard O. Hammer

Many libertarians love to debate the principles of liberty. But do they love debate more than they love liberty itself?

For several years I attended Unitarian-Universalist fellowships. UUs tend to be intellectual, like libertarians. They love to discuss issues. They discuss and discuss. In fact they tell this joke about themselves.

*When UUs die their souls come to a fork in the road, where they see a sign.*



*UUs all go to the discussion group.*

Now, among libertarians, I often meet one who stubbornly debates some point of purity. It seems to me that these libertarians would want nothing to do with a new free nation unless their condition X were met. X might be:

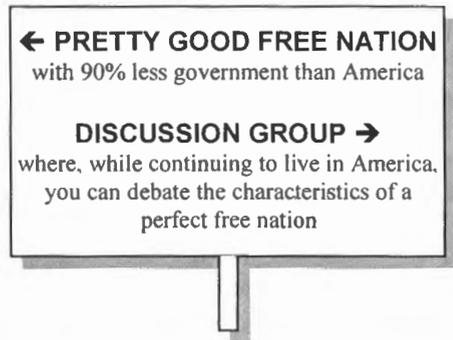
- absolutely no coercive government
- absolutely no taxes
- use of force to compensate victims but never to punish criminals
- every adult inhabitant signs a covenant of non-aggression.

These purists are eager to debate at length why I must settle for nothing less than perfect X. But I think liberty is a relative thing. Some countries are more free than others. More free countries are better places to live than the less free countries. A new country which had 90% less government than America would be a big improvement, in my view. And I would choose to go to that

country if it became an option while there appeared to be no immediate promise of getting an even greater reduction in government.

I think that we, who study the history of constitutions from a libertarian viewpoint, have learned enough that we can constitute a new nation with greater liberty, and with more protections for liberty, than ever before in history. But I do not expect that we are perfect, just yet.

So, fellow traveler, which direction will you turn, if you find yourself facing this sign?△



## Foundation News Notes

- On Saturday, 10 April 1999, FNF held its twelfth semiannual Forum. The topic was "Mythology In a Free Nation." Seven papers were presented by six speakers. These were: "A Free Society Requires the Myth of a Higher Law" by Roy Halliday, "Libertarian Mythology" by Steven LeBoeuf, "Myths for a Free Nation" by Roderick Long, "Myths of the Nation-State" by Gordon Diem, "Sacred Choice: Myths for a Free Nation" by Phil Jacobson, "The State Is a Form of Life" and "Mythology of a Free Nation" by Richard Hammer. All these papers were printed in the previous (Spring 1999) issue of *Formulations*. Fourteen people attended the Forum, which met at the Courtyard by Marriott in Durham, N.C.
- Three of FNF's Directors, Rich Hammer, Bobby Emory, and Wayne Dawson, plan to attend the World Libertarian Conference in San José, Costa Rica, 22-27 August 1999. This conference is organized by ISIL, the International Society for Individual Liberty, <www.highlink.net/isil.org>.
- FNF President Rich Hammer will speak in San José on 21 August 1999, the day before the opening of the ISIL Conference. FNF Member John Ewbank has arranged for Rich to speak at the Global Assembly of Decentralist-Federalists, on constitutional ways to limit state power. This will take place in the same hotel as the ISIL conference.
- FNF Founding Scholar Roderick Long was named Outstanding Professor for the Winter Quarter by the Panhellenic Council at Auburn University, where Roderick teaches philosophy. This Council, he informs us, consists of sorority babes!
- *Healing Our World*, a book by FNF Member Mary Ruwart, ranks in the 100 best nonfiction books written in English and published in the twentieth century, according to a poll being run by Random House. Its rank was 74 at the time of this writing. You can see the list, and place your own votes, at: <www.randomhouse.com/modernlibrary/100best>.
- FNF has joined Free-Market.Net as a partner organization. This will give us a range of networking and marketing services. It is run by the Henry Hazlitt Foundation in Chicago. See <www.free-market.net>.
- The number of visitors to FNF's web site increases rapidly. Here is the number of user sessions on our site for each of the first four months of 1999:

January	691
February	1013
March	1402
April	1951
- FNF Director Roy Halliday has started an on-line discussion group. Anyone can read prior messages, by going to <www.eGroups.com> and searching on "free-nation-foundation." But postings can be made only by FNF Members who have arranged with Roy <royhalliday@mindspring.com> to join the group.△

# A Senate for the Free Nation Foundation, and for a Free Nation As Well

By Phil Jacobson

## Introduction

The Roman Senate, a body of senior political leaders, was a key institution in the Roman Republic, with some politically innovative characteristics. That institution, or one like it, might be useful for libertarian organizations today and free nations in the future. The Board of Directors of the Free Nation Foundation has recently created its own Senate. More on this later. First, let's explore how the Roman Senate fit into Roman politics.

## The Roman Model

Republican Rome is famous for its Senate. Roman armies marched under the initials SPQR (in the name of the Senate and People of Rome), an indication of the Senate's high status in Rome's political system. When the framers of the U.S. Constitution adopted the term "Senate" for the upper house of the Federal legislature, they sought to place U.S. Senators in a similar position of prestige. Despite this, the American model of a Senate has, in reality, little in common with the Roman model, aside from the prestige accorded its members. Yet the key to the success of the Roman Senate was prestige—for it had no formal powers over Roman affairs. The Roman Senate was a debating society, populated exclusively by those Romans who had already served in the highest positions of leadership. It was a well-organized reservoir of experienced politicians, ever ready to critique or praise the formal Roman government. As such, it had great influence despite its lack of control over Roman affairs.

The government of Republican Rome was composed primarily of a military command structure and a court system. (Libertarians may recognize this as the essentials of a classically libertarian limited government.) In Rome, the rank of Senator was normally given to any politician who had successfully completed a

term as an elected officer in the Roman army, which was a militia composed of all citizens who were able to serve. The elected officers served as the high command of the Roman army. They would appoint and/or confirm other officers un-

command for the duration of the emergency. However, this was an uncommon decision even during war. Consuls would also appoint judges to hear court cases within Roman law, a primary function during peace.



*Phil Jacobson (right)*

der them as necessary. A new set of high officers was elected each year. All Roman militiamen were given votes in this yearly election. The Romans used a system of strict term limits. Roman officers could not be re-elected to the same post, though they could serve at each of the three separate named ranks, via separate elections. Thus a given Roman citizen could at most serve three years as part of the high military command—typically with several years between being elected to each office.

Of the three types of elected-officers, the highest rank was that of "consul." For a given year, two individuals would be elected as consuls, with equal authority. They would share supreme command of the armed forces. In war one consul would typically command a home-guard garrison in Rome itself, allowing the other to take an expeditionary force against the enemy. But the consuls had equal authority and had to agree to any military decision when they were together. In rare, emergency situations, the consuls could jointly appoint a third soldier (someone with an especially good military reputation) to serve as Dictator, in order to achieve absolute unity of

Becoming a consul was the peak of a man's political career outside the Senate. Normally, a consul would have served several years before his consular election, in the 2nd highest rank of "praetor." The title of praetor was initially created for a military governor of a non-Latin province. Later, as Rome's military power grew, praetors were given other semi-autonomous military missions, always under the general authority of the consuls. A praetor, typically, would have been elected earlier to the lowest elected rank of "quaestor." Quaestors (originally there were two of these) were in charge of making arrests and of the state's treasury.

The Republican Roman senators met as a body in Rome to discuss policy. While the official statements made by the Roman Republican Senate were not binding lawfully, they carried great political influence. This was to a large extent because of the career pattern for Roman politicians. A successful Roman politician would spend most of his career as a Senator, not as an elected official. In the Senate, a Senator's status was primarily based on the highest elected rank held. But his status in the Senate was also

affected by the way his elected term of office had been appraised by the other Senators. So even though elected officials, especially the consuls, held immense power, they understood themselves to be primarily of the Senate, not of the administrative bureaucracy. The Senate's influence on the administration of the Roman government rested on this fact. A consul or praetor would want to return to the Senate with more respect, more status than when he had entered elective office.

The career of a Roman politician did not cultivate the art of wielding raw power so much as the skill of being an influential speaker, one who could sway the opinions and behavior of others. Once in the Senate, this skill could be used to influence public policy. First a Roman politician would typically have received a Classical education, which would include Rhetoric. Next the would-be politician would make a name for himself as an advocate in the courts. The judge for a court would be responsible for recognizing agents to argue the respective sides of a case. There was no permanent judiciary nor a separate profession of "lawyer," so men who felt skilled in Rhetoric, with or without formal training, would argue the sides. Men with good reputations as advocates would be chosen as judges, one case at a time. Typically a judge, who had been given his commission by one of the elected military officers, would appoint an advocate for the state, and the defendant would try to find a talented volunteer to be the counsel for the defense.

Roman "political parties" were built from these traditions, as talented speakers surrounded themselves with supporters who could count on the leader's persuasive talents in a dispute with those in other parties. The "parties" should be seen as long-term versions of the alliances which gather during American political elections to promote single candidates, rather than the ideological groupings modern nations call "political parties." The only "political party" of this latter sort was the Roman State itself. Other organizations, like men's clubs or professional societies—even religious organizations—were broken up and suppressed by the Romans if they appeared to be developing political influence. By

the charismatic associations based on personal patronage, these "parties" provided the blocs of votes needed for getting someone elected to high office.

A young man who had won a name for himself in the Roman court system might, on this basis, win an election to the office of quaestor. A good military record could also help his bid for elective office. Being sponsored by an influential Senator would also help. A year later, if all went well, he would be a Senator. He could continue to seek further fame in the courts and on the battlefield. Demonstrated skill would tend to lead to important appointments as a prosecutor or judge. He would likely serve in the military as an appointed officer, under the elected officers—acquiring and demonstrating further skill in military command. Years later, he might be elected a praetor, thereby gaining additional rank in the Senate. This additional rank would be a matter of prestige rather than formal power. But a former praetor would also tend to get a more prominent appointment in a field army than would a former quaestor.

If and when a politician became a consul, one of the joint supreme commanders, he would have built most of his public prestige as a Senator or appointor of judges—not as a military man. When he returned to the Senate, after one year as a supreme commander, the former consul would be a higher ranking Senator than he had been before, but would forever be outranked himself in the arena of formal power by each year's newly elected consuls. So consuls listened to the Senate far beyond what the law required. Thus many decrees of the Senate were confirmed by the consuls as public policy—simply because of the Senate's moral authority over Roman politicians.

But not always. Consuls had the duty to use their own judgment, and the two consuls would often take action against the wishes of the majority of the Senate. However, in most cases at least a strong minority of Senators would probably need to stand with the consuls before the consuls felt completely comfortable. After all, any field army a consul commanded would likely contain many Senators within its officer ranks. And the consul would need the support of such officers to be successful.

## By Contrast, Modern Political Systems

When the American Founding Fathers designed their new system, they were influenced by an admiration of the Roman Republic. While some of the features of the Roman system were borrowed, including the name "Senator," the U.S. system was largely a modification of the British one. Since then most other modern constitutions have also been close to the British model, often even closer than the U.S. system. Political organizations in modern times have tended to adopt a British model as well. The true nature of the Roman Senate has thus been forgotten by non-historians, despite many references to it in popular literature. There is no equivalent institution to the Roman Senate in the world today.

In various ways, modern organized communities give rank to specific members for specific terms, as well as giving honorific rank for indefinite terms. As these individuals leave their offices, however, they often lose contact and influence with the active organization. In political organizations this can be especially dysfunctional. Active officers are often glad to get those who came before them out of the way, fearing that the advice of a previous administration would be inherently disruptive. This can generate an unnecessary atmosphere of competition, where consensus could serve the organization better. Potential leaders anticipate a need to seize the organizational agenda and hold it as long as possible, until they too will be expected to retire to the sidelines. No vehicle will typically exist for a review of a current administration in terms of the general philosophy of the organization, save overly formal judicial procedures. All internal discussion is expected to be supportive of the administration's immediate tactical decisions. Calls for "organizational unity" are made to minimize internal dissent—but these calls also minimize internal diversity and lead to a high drop-out rate. As such, even though it doesn't always happen this way, political organizations in the modern world often take a winner-take-all-for-as-long-as-possible, zero-sum approach to internal leadership.

## Modern Opportunities

In the Republican Period, the politics of the Roman Senate allowed for a "loyal" opposition based on previous service to the Roman government. The socio-political concept of a Senate, in the Roman Republican sense, could be applied to formally organized communities today. Former officers of organizations could be automatically granted a title like "Senator." That title could reflect the organization's desire that they continue to share the wisdom of their experience.

The title should be more than just a recognition of and a reward for prior service. Pursuant to this end, the title itself could simply reflect a formal request from the organization that the Senators keep contact, being available to share their opinions. But it could also become the tradition that Senators might initiate these communications. A petition signed by one or more Senators could start debate on a key policy. Such petitions need not be divisive, however. A petition could also provide a foundation for a specific project by the current administration. Senatorial support could also be solicited for other activities, such as efforts to regain the support of regular members who had not been active for a considerable time. The habit of saying things like, "Senator Smith will be chairing the committee on new funding," could be cultivated. By acknowledging Senators by title when they serve on any project within the current administration, that administration's efforts can be shown to be part of a continuity with the organization's past.

Perhaps, as in the Roman Republic, the Senators could even meet regularly to review organizational policy. Perhaps an organized Senate would come to be viewed as a major part of political life. That might be a bit extreme for a small organization. But for a free nation, should the free nation have an administration per se, or for any major political organizations within a free nation, all the benefits of balance of power through continuity enjoyed by the Roman Republic might accrue.

## FNF's Senate

Recently, the Free Nation Foundation has created the title of FNF Senator. According to the minutes of the FNF

Board of Directors meeting from March 17, 1999, the Board passed a motion calling for:

"...the creation of a Senate composed of people who have made a contribution to FNF and of those who were officers or board members but who no longer are."

At its next meeting, May 1, 1999, the Board appointed FNF's first Senator, Robert Mihaly. Robert has been helping the Board in its efforts to take on much of the work previously done exclusively by FNF President Richard Hammer. In coming months, Robert will assume responsibility for desktop publishing and production of this publication, *Formulations*.

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## Review of Short Answers

*(Continued from page 3)*

significant contribution. It is one of the goals of the Free Nation Foundation.

One difference between Dr. Ruwart's achievement with this book and FNF's similar goal is that this book, as indicated by its title, gives short answers, whereas FNF wants to develop answers that are more complete.

The intended audience for the answers given in this book is also different from FNF's audience. Dr. Ruwart's answers are intended for people who are just learning about libertarianism. FNF addresses its work to libertarians who are interested in a blueprint for a libertarian country.

So the bad news is that Dr. Ruwart has not done all of our work for us. But the good news is that in attempting to explain to an unsophisticated audience how a free country could work, she has provided an outline that we could follow in developing more detailed answers to the same questions.

*Short Answers to the Tough Questions* and *Healing Our World* by Dr. Mary Ruwart plus *The Structure of Liberty* by Randy Barnett and articles by Roderick Long such as "Punishment vs. Restitution: A Formulation" (*Formulations* Vol. I, No. 2) have given a big boost to the restitution paradigm.△

So the FNF Senate has begun, an emerging real-life model for a future free nation. How far it will develop is uncertain. But I hope this essay has helped to show some of the possibilities.△

*Phil Jacobson graduated from the University of Alaska at Fairbanks, where he majored in sociology. Phil completed his active duty in the Army at Fort Bragg in Fayetteville, North Carolina. Then, in that city, in 1974, he opened his first used-book store. Now living in Raleigh, he has a son and a daughter, both of college age, and two more bookstores, in Greensboro and Raleigh. He can be reached at <philj@freenation.org>.*

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## Forum Topic for October

*(Continued from page 1)*

- How much planning is needed? How much organization is needed?
- Which activities should be done before a site is occupied? Which activities after a site is picked and occupation begins?
- Must there be one path? Is there even a "best path"?
- Could several free nations emerge simultaneously? Is this a wasteful diversion of resources?
- Are there key resources which will be required for a free nation project? If so, what are the best sources for these? Should any of these be lined up before a specific free nation project begins?
- Is it better to seek a site for a free nation in an economically "underdeveloped" part of the world or a "developed" territory?
- Is it better to seek a site for a free nation in an uninhabited space?"△

# Why Not a New Hong Kong?

by Richard O. Hammer

*[Editor's note: This article was written for submission to another libertarian publication. It was intended to introduce those readers, libertarians not familiar with our work in FNF, to some of Richard Hammer's assumptions about how a free nation could be founded. It uses a question-and-answer format, with answers kept brief to keep the article short. As such, it fails to elaborate as much as readers of Formulations may desire. But it provides an overview.]*

The suggestion that private citizens might combine their forces to create a new free nation generally produces more disbelief than concurrence. So, devout believer that I am, lately I have taken to pushing this line of proselytism:

*What if, before Hong Kong reverted to communist rule two years ago (in 1997), a handful of that city's wealthiest industrialists had decided they would pool their billions in an effort to launch a new Hong Kong, a city on a new site leased from some poor, third-world country. Do you think they might have succeeded?*

This question, I hope, brings the possibility to life.

**Why would any government give land to these wealthy businessmen?**

The land would not be given to the consortium. It would be leased. Surely there are regimes in the third world which hunger for money. I believe one could be found whose dominion included an underpopulated area that had never generated significant income for that government. A deal might be negotiated, in which the host signed away sovereignty to a tad of land, for 99 years, in exchange for a substantial boost in its spending budget.

**Why wouldn't the host government invade as soon as the new city got established?**

First, in a win-win landlord-tenant relationship the landlord wants the rent payments. Invading would be like killing a goose that lays golden eggs.

Second, the consortium could meet force with force. The lease agreement must, in my opinion, allow the consortium to arm in order to defend itself. And the consortium should arm itself enough to render unprofitable any attempts to invade.

Third, because such an attack could conceivably be a threat, the consortium surely would have considered this while shopping for real estate. In many third-world countries, of the sort which I think would be ideal, the regimes teeter in power. These regimes are not sure they can control the guards in their own capital cities, let alone mount an attack on a modern security force some distance from the capital. So the host selected by the consortium might be too feeble to mount a serious threat.

And last but not least, the new nation would be a good neighbor. Assuming it would adhere to libertarian principles—it would honor its commitments. It would not be offensive in ways that might provoke attack. Indeed, I believe it would have more friends than enemies, because all its trading partners would benefit from the ongoing relationship.

**How would the rent be paid?**

At its heart this venture would be a real-estate deal. It must have some core businesses, from the planning stage onward, which could set up profitable operations. In the Hong Kong example with which I started, I assume that industrialist billionaires would establish factories or other businesses that could pay their share of the rent. Ideally of course the lease would have room for expansion, for new businesses and settlers, beyond the initial core.

**What business owners would be interested in such an unproven venture?**

As a minimum I believe business owners must perceive that their gain, upon escaping regulation and taxation, would exceed their cost, of participating in the venture.

**Wouldn't some major power such as the U.S. promptly invade and crush the new nation?**

This does require attention because a major power might intervene if the consortium botched its diplomacy. But once again consider the Hong Kong scenario, in which respected citizens, whose lives and property were about to be annexed into a communist regime, were seeking only to relocate to some underpopulated land, to pay fair rent, to live in peace, to start a new Hong Kong. Would Bill Clinton have stood against that?

I feel more confident on this point when I observe examples of other tiny nations, now existing on Earth, which have more freedoms than their big neighbors. Singapore has more economic freedoms than its neighbors. Andorra has relatively few taxes. And Amsterdam (the city) allows unusual freedom to consume recreational drugs. Is Bill Clinton talking about invading these places? In general I think big nations do not invade little nations just because those little nations have more freedoms.

We libertarians can justifiably doubt our ability to play the game of international diplomacy, because so many of us botch diplomacy on the smaller scale close to home. But let's give ourselves some credit. Any large organization of libertarian interests would surely select diplomatically competent leadership. Imagine someone like Ron Paul or Harry Browne in the leading role.

**What form of government would it have?**

Some sort of minarchy would probably be necessary. To be left alone the new Hong Kong would need some minimal appearance of statehood. It would "...need to be able to turn a governmental face toward other countries" (Roderick T. Long, "Options for the Body Politic, Laissez Faire City"). But of course this decision, of how the new Hong Kong would be constituted, would be made by the major investors.

**How would law be enforced?**

For starters I imagine a kind of "company town" law, in which all businesses and settlers would contract to accept the rulings of a court appointed by the consortium. And during startup I expect the consortium would have a security agency on its payroll that would supply any enforcement needed.

While this might sound threatening, it is not necessarily any more frightening than taking a cruise on the ocean, with the understanding that law for the duration will be decided by the ship's captain. Once a passenger has decided to entrust her life to the ship (and to the business that owns the ship) the decision to trust the ship's law usually follows without qualm.

After startup I would prefer to see the consortium's monopoly in law phased out. A government-run set of courts and enforcement agencies might be instituted, pursuant to a written constitution. Competing courts and enforcement agencies might be allowed to operate.

**Wouldn't the government of this new nation grow and become corrupt, just the way all governments do?**

Perhaps. But notice that governments grow gradually, not all at once. The U.S.A. kept many of its original freedoms for a century or more. The checks and balances in the U.S. Constitution still work sometimes.

With this experience it should be possible to write a new constitution—with a few additional checks on power—that could preserve liberties at least as long as the U.S. Constitution did. For instance,

a new constitution might incorporate Robert Heinlein's idea of a legislative house whose single duty is to repeal laws, which it can do with one third vote (*The Moon is a Harsh Mistress*, Berkley Books, 1968, p. 242).

Rather than seek perfection in planning the constitution of a new nation, I argue we should be realistic. We should seek to learn from experience and to improve.

**What would happen to the people who were living on the land at the time when it was rented to the consortium?**

Hopefully they would be few in number. But they would be dealt with in some way that was both practical and conscionable. It would be best to consider their interests separately, and not to assume that the host state represented their interests in its negotiation for the lease. So, after signing the lease, the consortium would negotiate with these people. It might buy their land for handsome prices, or give them new villas somewhere else. Finally, if some refused to accept even outrageous prices for their land, I would have a clear conscience about simply declaring them to be citizens of the new nation—and subject to the new law.

**Where would settlers come from?**

In the new Hong Kong scenario, which I used as an introduction, at least a few of the prominent business owners would have come from Hong Kong. Additionally some owners and top-level managers may come from America. But most early settlers would be low-level employees of the core businesses. These would probably come from poor countries. For manufacturing plants I suppose countries like the Philippines, Vietnam, and Mexico would disgorge a supply of eager workers.

Notice that I do not show, in this sketch, the tropical vacation paradise and tax haven that some American libertarians seek. I show a working town, teeming with industry and poor immigrants on the rise. But of course luxury lifestyles could be one of the core industries, if the climate happened to be right.

**Why not look for land in the western U.S., or in another first-world nation?**

I cannot imagine the government of the U.S., or of another first-world democracy, surrendering sovereignty to some real estate for a reasonable price. Most Americans still believe in their form of government. And most American officeholders believe they are doing the right thing in preserving America as it exists. To obtain sovereignty within the U.S.A. it might be necessary first to convince 51% of the voters. And that would be no easier than electing a Libertarian President.

But in the third world many officeholders have a more realistic view of government. They do not pretend that their rule is ideal. I believe that a new Hong Kong consortium could find among these officeholders some who—for the right price—would ease the transition.

**Would statist in the UN try to foil this plan?**

Probably. But if the deal were struck with a government that was a member of the UN in good standing, then that government (eager to start receiving rent payments) would probably become an advocate for the deal in the UN. Furthermore, if the consortium sweetened the appearance of the deal by taking in some boat people as employees/settlers, or by offering college scholarships to the children of the indigenous population, then I believe the statist in the UN would fragment into ineffectual resistance.

**How would infrastructure, such as streets and airports, be provided?**

Since the core businesses would require a certain minimal infrastructure, I assume that the consortium would assure this base at startup. Beyond that I trust markets.△

# The Structure of Liberty by Randy Barnett

Reviewed by Roy Halliday

This is a scholarly, often difficult, yet bold and often brilliant, treatise on law that will repay the efforts of a patient reader. It gets better as it goes along. If you stick with it, you will learn the rationale for a new libertarian legal paradigm based on restitution.

In this ambitious essay Randy Barnett presents rights and the rule of law as hypothetical (as opposed to categorical) imperatives. The hypothesis is that a society that is peaceful, cooperative, and prosperous is desirable. His argument is couched in terms of solving the problems of knowledge, interest, and power. The reason for stressing these problems is that:

"Addressing these problems is a pre-requisite to any hope we have of effectively handling the other problems of social life. A society that failed to deal effectively with the problems of knowledge, interest, and power would be in chaos. And a society in chaos cannot deal effectively with any social problem, however serious it may be." (326)

He systematically builds the case for a particular set of rights, adding to and modifying the list of rights as he goes along. Considerately, he repeats the list and highlights the changes in bold letters each time his analysis requires him to alter the previous version of the list. He also includes summaries of the main points at the end of each chapter.

**Unfortunately, we will still need lawyers.**

Since Barnett is a law professor, it is not surprising that many of the sources cited in his footnotes are legal scholars rather than philosophers and that he uses terms found in legal journals in place of more common words. Sometimes this adds precision. Sometimes it doesn't.

One would hope that, in a libertarian legal system, the laws would be simple and we wouldn't need no-stinking-lawyers. But Barnett defends them. He says lawyers play a crucial role in reduc-

ing partiality in the courts because they are repeat players in the legal system.

**Rights are part of a planned architecture for society.**

Barnett's objective in this book is to devise meta-rules for handling the problems of knowledge, interest, and power in such a way as to produce a society from scratch that will be as peaceful, cooperative, and prosperous as possible. The background rights that he comes up with are part of this plan. He finds the appeal that these rights have lies in our interest in solving these problems rather than in our conscience or personal integrity. He aims his argument at social architects rather than individual moral agents. Consequently, he imagines that the basis for our objection to theft is that we appreciate the first-order problem of knowledge:

"Permitting forcible transfers disrupts the complex, but vital, mechanism of information dispersal that only consensual transfers make possible. In this regard, the prohibition on the use of force reflects an effort to handle the first-order problem of knowledge, which consists of permitting persons and associations to act on the basis of their diverse local and personal knowledge while taking into account the knowledge of others about which they are pervasively ignorant." (103)

Normal human beings would regard this as a far-fetched explanation. People have been outraged by theft much longer than they have known about the first-order problem of knowledge. In fact, few people have ever heard of this problem or have an appreciation of its significance. This is not what they have in mind when they yell "Stop thief!"

Barnett's arguments in support of the meta-rules for a free society leave a lot to be desired with regard to human moral psychology, but they constitute a fine piece of work in social architecture.

## Background Rights

I like the fact that Barnett clearly distinguishes between three uses of force (1) to defend rights, (2) to rectify rights violations, and (3) to punish rights violators. He explains that force used in defense generally occurs *ex ante* (before) or *during* a rights violation and that force

used to obtain compensation or to punish rights violators generally occurs *ex post* (after) the crime.

The right to use force to defend rights may be derived immediately and trivially from the very idea of enforceable rights. If we have any enforceable rights at all, we have the right to use force or threats of force to defend them. That is what *enforceable* means. If we don't have any enforceable rights, then the whole idea of justice is empty. But the right to use force to rectify rights violations and the right to use force to punish rights violators are not so easy to establish.

Here is Barnett's final formulation of justice and rights:

"Formulation 6. *Justice is respect for the rights of individuals and associations.*

- (1) The *right of several property* specifies the right to acquire, possess, use, and dispose of scarce physical resources—including their own bodies. Resources may be used in any way that does not physically interfere with other persons' use and enjoyment of their resources. While most property rights are freely alienable, the right to one's person is inalienable.
- (2) The *right of first possession* specifies that property rights to un-owned resources are acquired by being the first to establish control over them and to stake their claim.
- (3) The *right of freedom of contract* specifies that a rightholder's consent is both necessary (freedom *from* contract) and sufficient (freedom *to* contract) to transfer alienable property rights—both during one's life and, by using a 'will,' upon one's death. A manifestation of assent is ordinarily necessary unless one party somehow has access to the other's subjective intent.
- (4) Violating these rights by *force or fraud* is unjust.
- (5) The *right of restitution* requires that one who violates the rights that define justice must compensate the victim of the rights viola-

tion for the harm caused by the injustice, and such compensation may be collected by force, if necessary.

- (6) The *right of self-defense* permits the use of force against those who communicate a credible threat to violate the rights of another." (190)

The only change I would make would be to delete number 5. Most other libertarians would keep number 5 and add a similar one describing the right to punish criminals.

### Extended Defense

Barnett advocates a broadened definition of defense that allows us to use force, if necessary, when someone has communicated to us their intention to violate our rights. I agree with this and go a bit further. Communication of an intention to violate a right is not always required, in my opinion, in order to justify the use of defensive force. If you see that someone is about to violate your rights, whether this is their intention or accidental, you have the right to use force to prevent them from violating your rights, if there is no other way to stop them. One difference between unintentional imminent threats and intentional imminent threats is that non-violent means have a better chance of working against unintentional threats. Sometimes it is only necessary to toot your horn or shout "Watch where you're going!" or "Keep your eyes on the road!"

What matters the most is what someone is threatening to do, not why he is doing it. He may be so crazy or absent minded that he doesn't realize that he is threatening others. It is still OK to use force, if necessary, to stop him. Barnett supports this view with regard to defense against mentally incompetent people:

"Indeed, if a person is so incompetent as to be unable to control his conduct, he becomes a greater threat, not a lesser threat..." (189)

Barnett says, "The principle of extended self-defense might well be used to justify life imprisonment for some violent offenders who have communicated by their past actions the intent to commit violence again." (191) But he would

limit incarceration for defense to those who have been convicted of crime by a heightened standard of proof such as proof beyond a reasonable doubt, perhaps more than once. (213-214)

### The Case Against Punishment

Barnett argues against punishment. This will be hard for many readers to accept. The desire to punish offenders seems to have deep roots in human nature. It is counterintuitive to say that the guilty should not be punished, especially when they are guilty of heinous crimes. However, I agree with Barnett on this subject, and I go even further in this counterintuitive direction than he does. I notice that many of his arguments against punishment can be turned against his own system of compulsory compensation.

Barnett asks a series of questions of those who advocate punishment. When we substitute *compensation* for *punishment* in some of these questions they become difficult for those who advocate compensation to answer:

Is the amount of compensation whatever it would take to subjectively satisfy the victim, or is it limited somehow?

What is the appropriate compensation?

What form should the compensation take: monetary fines, services, payment in kind?

Suppose you murder your own child, who should receive compensation?

Here is another objection to punishment that applies equally to compulsory compensation:

"Once legitimized by retributivists, the power to punish can be abused when it is knowingly applied to the innocent, to disfavored groups, and to those whose actions do not merit punishment." (320)

Barnett argues against the possibility of discovering the optimal schedule of punishments. Unlike some theorists who think all we have to do is try different schedules of punishment and thereby determine empirically which one deters the most crime at the lowest cost, Barnett is aware that punishment harms those who

receive it, and we have no way to measure this harm to include it in our utilitarian calculations. Even if we disregard the costs of punishment to the guilty recipients, we still have to deal with the fact that some innocent people will be punished. How do we fit their suffering into the equation?

We run into the same difficulty when we try to calculate the correct compensation. Furthermore, if we look at this from the point of view of a person with a conscience instead of an economist or social architect, it can seem not only inefficient, but immoral to enslave someone or to otherwise force him to pay compensation for a crime he might not have committed or to risk forcing him to pay too much compensation for a crime that he did commit.

Barnett admits that restitution involves calculating the subjective value that the victim of crime places on compensation for his loss, but he says this is not so bad because it only introduces one unknown variable into the calculation. (232)

### Slavery

Barnett advocates *pure restitution* limited to fully compensating the victims of rights violations (based on the principle of strict proportionality between the rights violation and the compensation), as opposed to *punitive restitution*, which requires the offender to overcompensate the victim, and *pure punishment*, which imposes harm on the rights violator without a requirement that he compensate the victim. (204) These are useful distinctions.

In Barnett's system of law, slavery would be legitimate:

"Because victims would have an *enforceable* right to restitution, unlike today, agencies acting on the victim's behalf would be justified in using force to incarcerate criminals who could not be entrusted to make restitution on their own. ... Their wages would be used to pay for their living costs and to make reparations to their victims. And they would be released only when full restitution had been made or when it was adjudged that reparations could more quickly be made by unconfined employment." (177)

This led me to think that prostitution might be the most expeditious method for some criminals to earn the money to make restitution. And that some criminals might "volunteer" to be guinea pigs in medical experiments to earn the money to pay restitution. Some could get released faster by "donating" organs for transplanting. I believe these options would be available in Barnett's system, although he doesn't mention them.

Barnett thinks that the threat of being confined and enslaved until you pay restitution would be normal rather than unusual:

"... were we to fully implement a right of restitution, a majority of offenders would face ... confinement in an employment project" (221)

It seems odd to me that a legal system designed by a libertarian would end up including involuntary slavery as a means to collect debts, especially since Barnett makes strong arguments against voluntary slavery earlier in the book (78-82). If a person cannot voluntarily make a binding contract to be a slave, how can he involuntarily become obligated to perform services for another person? Unless the parties entered into a prior contract, insurance policy, or wager that covers the situation, it seems to me that no property titles are transferred by an accident or a crime.

### Does compensation have to be compulsory?

Barnett's main argument for restitution assumes a false dichotomy:

"Surely a rule—'no restitution for injustice'—resulting in the *certainty* of injustice to every innocent victim is inferior to a rule creating only a *chance* of an injustice [to] an innocent accused." (203)

"... the only alternative to imposing this risk [of extracting compensation from innocent people because of error], is to guarantee that *every* innocent victim of crime will suffer an injustice." (228)

This overlooks voluntary compensation and self-defense. If the perpetrator admits his responsibility and voluntarily makes compensation, the victim gets

compensated without risking the violation of anyone's rights. Or if the victim exercises his right to self-defense by taking back what is his, a stolen car for example, there is no error and there is restitution in the form of repossession. Also, in some cases the victim will have an insurance policy that will require his insurance company to compensate him for his loss. So it is not true that nobody will receive restitution unless we make restitution an enforceable right.

### Can we fight crime without resorting to punishment or compulsory compensation?

Barnett gives three good reasons why private law enforcement would be better. None of these reasons rely on punishment—and none of them rely on restitution. They all rely on defense. He strengthens my case against compulsory compensation while making his own case against punishment:

"First, in contrast to the public response, which must await the commission of a crime before taking action, private owners who will directly suffer from a crime can directly benefit from truly *preventative* measures." (223)

"Second,...ownership rights and free contracts both enable and compel private law enforcement agencies to allocate their resources more efficiently than public police departments do." (224)

"Third,...Suspicious persons can be excluded from some 'public' places and not others, resulting in a far more graduated response to the threat of crime than imprisonment." (224)

Here is another advantage that self-defense has over punishment: "... unlike a punishment that is postponed into the distant future, because normal self-defense is immediate, it is more likely to be taken into account by an offender with a high time preference." (233) This statement continues to be true when you substitute the word *compensation* for the word *punishment*.

Barnett practically admits that self-defense is a better deterrent to crime than punishment and restitution when he says:

"Because of the variables of certainty and proximity as well as the high time preference of most criminals, the most powerful disincentives to rights violations are those that are brought to bear before the offense (*ex ante*) or during the offense." (234)

### A Taste of Barnett at His Best

Despite my criticisms, I think this book offers the best proposal for a libertarian legal system that I have seen, and it contains many valuable insights. Here's a good engineering analogy:

"Altering the precepts of justice to pursue other social ends—even very important ends—is like taking from the foundation of a building to add more floors to the top." (326)

Libertarians and classical liberals will like this one:

"Given the risks that, in a conflict among competing moralities, we will be subjected to someone else's morality, *the liberal conception of justice becomes nearly everyone's second-best outcome.*" (308)

Here's another good one:

"... particular allegations of market failures often reflect 'imagination failures' on the part of analysts rather than a genuine incentive problem." (163)

To read more gems like these, plus a fascinating chapter on how a private legal system could work, you will have to buy the book.△

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# How to Handle the Press

by Richard O. Hammer

Imagine that you are approached by a reporter from the mainstream media. The reporter wants to get the scoop on this “free nation” business. What do you say?

I have had one such experience. Late in December 1997 a reporter for *The Washington Post* sent email saying he was “researching an article on the new nations movement,” and asking for an interview. I considered carefully.

For most libertarians such an invitation would be a dream come true. It offers free publicity. And most libertarians need all the publicity they can get—because they are working in the majority-rule, popular-persuasion paradigm. But since I am working in the free-nation paradigm, I see such a situation as more dangerous than promising.

In this article I will tell my theory about the mainstream media—they are naturally statist. I will advise that we free-nation libertarians should probably avoid publicity in these media. And I will propose that we can do this by responding to questions with long, dry, and truthful answers—designed to give a reporter little material with which to write an attention-grabbing article.

I agreed to talk with the reporter at *The Washington Post*, whose name incidentally was Marc Fisher. We conversed on the phone for half an hour or more, about a week after I received his introductory email. But no story has come out of that interview in the sixteen months since. I count that as a success.

To save verbiage in what follows I will drop the word “mainstream” from “mainstream media.” Now of course we libertarians have our own specialized media, our own magazines and mailing lists, in which we can expect sympathetic editing and friendly readers. But that is not what I write about here when I say “media.” Keep “mainstream media” in mind because I am writing about non-libertarian reporters, editors, and readers.

## The Media Are Inherently Statist

We libertarians commonly observe that workers in the media seem to love the state. In most cases they give more favorable coverage to proposals which would expand state power than they give to proposals which would diminish state power. But I have not read a good theory to explain this phenomenon.

So naturally I had to cook up my own theory. It is that the media are part of the democratic state. Now apologists for the state will say that the media are separate and unregulated. And I grant that argument seems valid—from the viewpoint taught in government schools.

But we can adopt a broader viewpoint, in which organizations include all components with which a regular and mutually beneficial trade occurs. We see that the democratic state and media use each other. A regular and mutually beneficial trade occurs between them.

In order for a democratic state to work, as its adherents believe it could possibly work, information must be gathered and presented to both voters and politicians, so they can formulate their opinions regarding how other people should be forced. A democratic state requires that large amounts of information be processed.

And the constitution of a democratic state, by specifying the process of representation, lays out the channels through which this information will flow. Since

the constitution focuses power in capitals, passion about issues under consideration will drive information through the media to and from capitals. And elections provide the media with strong trade, just as the Christmas season provides retailers with strong trade. As such, a large portion of the media in America work hand-in-hand with the state, as a necessary partner in the process of majority rule.

It is easy for us to understand why a government worker might oppose a libertarian proposal to shrink the state; it is her job we are talking about, after all. I think it takes just one more step to see why a media worker would also feel threatened by a proposal to shrink the state. If government shrivels away, then all the flows of information to and from the capitals will dry up as well; there will be no more work for the media in the old, dominant channels. Media workers, as well as government workers, might have to learn new job skills.

Just as we can expect media workers to resist libertarian proposals to shrink the state, we can expect that media workers will favor statist proposals to expand the state. Because, as the democratic state takes over regulation of more aspects of life, the role of the media becomes more important. As the state grows, more people need to be informed on more issues which are being decided in the capitals. Jobs in the media will be



Richard Hammer (left)

more secure, and there will be more opportunities for advancement in the growing media industry.

Now the workers in the media may present themselves as neutral. And certainly this is true sometimes. When the issue concerns *which way* the government will regulate some activity, then I will grant that the media are probably neutral, on average. But when the issue concerns *whether* government will regulate an activity, then I believe the media turn out to be biased on average, to favor regulation.

Thus I hope you see that the media and the democratic state are partners. They sustain each other. We should not expect the truth, as we libertarians see it, to transmit well through the media.

### Other Attributes of the Media

Generally, the reporters in the media have good intentions, on the conscious level. I used to be a leftist, so I think I know how these people think. They think that:

- They are good people.
- They are open minded.
- They serve the public good, by gathering and reporting information, so that their democracy can work.

As such, we can generally expect reporters from the media to respond favorably to people who treat them with civility. They will try to give anyone, no matter how alien or hostile their position might seem, a chance to tell their story.

Apart from the attitudes of reporters, the industry in which they work demands colorful stories which grab the attention of readers. Because there is vigorous competition, many stories never get published. In this environment, one thing that reporters look for is sound bites, which are short and provocative quotes. If you give a reporter good sound bites she will have a better chance of getting her story published.

### Remember Your Goal: A New Free Nation

I am writing as a libertarian whose primary aim is creation of a new free nation. In this scenario, libertarians with enough financial strength will organize

and acquire land for a new Hong Kong, probably through purchase or lease of underpopulated terrain in a poor third-world country.

I need to point this out because almost all libertarians with whom I come into contact have deeply ingrained habits regarding how they should present themselves to the media: They seek publicity among statist. These habits are appropriate for electioneering in a majority-rule democracy. But, from the viewpoint of the free-nation movement, these habits are probably wasteful and possibly dangerous.

Assuming you join me in thinking as a free-nation libertarian, you will see that what we need to do is to build a new network of trust among wealthy and influential libertarians, where no network now exists. We need to reach these particular libertarians with high quality and focused messages. So exposure in the media can help us if, and to the extent that, it helps us reach these libertarians. Apart from that we have no need for the publicity which majority-rule libertarians habitually seek.

### Possible Outcomes of a Meeting with the Press

Let us look at possible outcomes that might follow from a meeting with the press. For starters we should consider that you might simply refuse to be interviewed. Of course, assuming you do not want the tone of your refusal to become a story in itself, you must be polite when you refuse. Then the reporter will be left to speculate on why you refused, and there is danger that your refusal might stir up wild and damaging speculation about our movement. As such, while I think it might sometimes be wise to refuse, we will assume now that you do consent to be interviewed.

Consider the following four outcomes.

1. The reporter might deliver a front-page shocker of a story in which he portrays the free-nation movement as a large and evil threat to the civilized world, a threat that requires immediate attention of the world's leading governments. Although this would be inaccurate, I think it could happen. From the viewpoint of the reporter

this outcome would probably be the best, in that it would win him the most points. So I think you have to expect that the reporter will be looking for anything that might make the free-nation movement look ridiculous, corrupt, or threatening.

2. The reporter might deliver a negative story of smaller impact. This might show the free-nation movement to be a disturbing development which leading governments should monitor. Although this too would be inaccurate from our viewpoint as libertarians, I think it is a fairly likely outcome. This would be a decent outcome for the reporter, and it would be a bad outcome for you.
3. Considering favorable outcomes now, the reporter might write a glowing account of the free-nation movement and its promise to bring dignity and prosperity to millions who are downtrodden. But even if you could charm the reporter into believing this, I think it is unlikely that such an account would be published, because it threatens the myth that the American way is best. Statist readers might cancel their subscriptions to the publication. I believe the publishers and editors would not let such a story go to print. So this outcome, which would be the best for you, is not in the cards, I believe.
4. The reporter might write a favorable story of modest impact. It might portray the free-nation movement as an interesting oddity, possibly good for a few eccentric people, and not threatening to American interests. But, here again, I think such a report might be subtly disturbing to some readers, because it raises questions which no statist wants to face. I doubt that the publishers and editors would approve it for publication. Assuming the story were not published, then the reporter would be disappointed, but you could be satisfied. If on the other hand the story were published, then I believe it would be given minimal exposure. For the reporter this outcome would be better than nothing. For you it would be the best for which you can hope.

## Do's and Don'ts in Meeting the Press

I advise then that you aim for the fourth outcome (above). In this outcome, whether the story is published or not, you have passed through a minefield without injury. You can return your attention to where it can do us some good—to productive undertakings within the free-nation movement.

As such, your first priority in an interview with the media should be to mollify any suspicions that the reporter might have that the free-nation movement is dangerous. Be cordial. And certainly you can emphasize how the free nation will be absolutely non-aggressive as a neighbor.

Another way to appear non-threatening is to make it clear that we in the free-nation movement are not trying to impose our libertarian beliefs upon anyone else. We are not even trying to make converts. We are merely trying to make a private trade. Indeed, it is our desire to leave others alone in their own systems of belief which draws us to seek a place apart, where we can live peaceably in our unusual way. Notice that this live-and-let-live attitude, which is inherent to free-nation libertarians, is alien to majority-rule libertarians who, in order to get what they want, must rip the state away from terrified statisticians who know no other comfort.

Also it cannot hurt if you appear idealistic—even to the extent of being kooky. Just take one of the subjects which libertarians always try to explain to statisticians anyhow, such as the way free markets help the poorest people in society, or the way free markets can assure quality in medical care, or the way free markets can protect the environment, and explain this patiently and at length, as if you were talking to a friend who you knew to be interested and willing to listen all day.

Of course the reporter will not listen all day. But I believe you will always stay on safe terrain if you always head down such a path: Patiently explain the benefits of liberty until the reporter tires of you, and dismisses you.

Now, there are some things you should avoid. I hope you understand that you should not say:

- Some of us libertarians consider statisticians to be our enemies.
- Many of us believe that states, which provide comfort for most Americans, are doomed to collapse.
- Many of us free-nation libertarians will find it satisfying to see existing states crumble in corruption and poverty—just as soon as we get away and can observe it from a safe distance.

Also, I believe you should avoid using sound bites. Now when I had a habit of running for office within the American political system, I sought publicity so I developed a sense for sound bites. I inserted striking phrases into my media interviews with some confidence that my words would be picked up and echoed. I was feeding the press the material that they needed to make colorful and tightly edited reports. And I think many other libertarian activists, using the popular-persuasion paradigm that we were all taught growing up in America, have developed a habit of giving sound bites to the media.

But I believe sound bites are counter-productive for a representative of the free-nation movement. Remember that we have more to lose than to gain from this exposure. You might give them a sound bite which is appropriate for the context—but their editors might use it in a different context, which they have created to smear the free-nation movement. So you should avoid being colorful.

Do not try to hide from the media. If a reporter calls and leaves a message asking you to call back, I think you should return the call and try to convey the image of a non-threatening idealist. This would be safer than neglecting to return the call, as this might arouse either the suspicion or the ire of the reporter.

And finally, do not try to deceive a reporter. If a deception were called for, and I cannot think of why it would be in our movement, it could succeed only if others in our movement acted the parts necessary to maintain the deception. But we do not have anything like a tight organization in which everyone plays from the same score. And the best reason for not attempting to deceive the media is that the truth is so much easier.

As a libertarian you tell the simple truth when you portray yourself as a non-threatening idealist.

## Answers to Objections which Will Be Raised by Other Libertarians

This advice which I give will seem strange to many libertarians. Let me answer two objections.

First objection: *But you never know, you might connect through the media to someone who might become the biggest supporter of the free-nation movement.*

I think this objection is valid. But I think that perhaps the person who makes this objection has not understood the FNF work plan. Within the FNF work plan we need to reach only libertarians. Indeed, we need to reach only a small minority of libertarians. Remember that we can promote ourselves in specialized libertarian media and other publications (such as those for offshore investors). I believe that outreach in these special media will bring much better returns for our effort than outreach in the mainstream media. So, given that we have not begun to devote enough attention to gaining coverage in these special media, I believe that you waste your time if you spend it on publicity in the mainstream media.

Second objection: *But if you get exposure in the media you might get some dribble of sense into the heads of some statisticians. You might lead them one step closer.*

Again, it seems to me that a person who says this probably does not understand how FNF's work, as I have attempted to establish it, differs from the work of other libertarian organizations. Almost every libertarian organization—except FNF—exists to serve the purpose of pumping sense into the heads of statisticians. Many of these are fine organizations. I support many of them. But FNF has a different purpose. If this objection seems cogent to you, perhaps you have found your way into the wrong organization.

The free-nation movement desperately needs workers. I beg you to forget the publicity-seeking habits which you learned as a popular-persuasion libertarian, and to focus instead on what needs to be done in this free-nation movement.

## The FNF Challenge: Can Libertarians Learn Faster than Statists?

In 1993 when I founded FNF I believed two things:

1. Some libertarians could establish a new free nation on real estate rented or purchased from a third-world regime—if those libertarians were organized in a way not yet achieved.
2. Settlers could leave first-world nations, with most of their wealth, to live in that new free nation.

In 1993 it seemed to me that there were probably few barriers to the plan—except for the lack of organization among libertarians. It seemed to me that the feat could be accomplished if libertarians organized within a few years, before existing governments had time to grow paranoid responses. And now, in 1999, it still seems possible to me.

But as time passes I worry. Existing governments are erecting barriers to the formation of a new free nation. Examples of these barriers are:

- “environmental” treaties passed in the UN which impose restrictions unacceptable to libertarians and which bind all member nations—including those which may become our landlord
- new restrictions in countries such as the US that limit the ability of residents to leave with their possessions.

We know that statists of an earlier generation erected the Berlin Wall when it became clear to them that their best subjects tended to leak away toward freedom. This has not yet happened to such an extent in Western democracies because, I have the impression, voters and politicians in these democracies have not understood that democratic socialism must evolve toward totalitarian socialism.

While they remain ignorant of this we have the opportunity to leave with relatively little resistance. But I fear that nothing will prevent the authorities in Western democracies from erecting new

Berlin Walls to prevent our exit. As they become more cynical and ruthless they will do what “needs to be done for the good” of their countries. I fear that the time may pass when the free-nation paradigm, as I have described it, may be fulfilled.

So I see a race between two processes of education. These are:

1. Libertarians learn they can win liberty for themselves by creating a new free nation.
2. Statists in Western democracies learn why the Soviets erected the Berlin Wall.

In order for the FNF work plan to succeed, I believe the first process must run faster than the second; libertarians must learn faster than statists. When I founded FNF, I bet that libertarians would win this race.

But now, after six years of repeating myself, I think I must have been wrong about something, because I see only miniscule evidence of libertarians applying themselves to the FNF work plan. I fear that barriers to our exit will be erected more rapidly than we organize to make good our escape.

## Publicity Hounds Could Endanger Our Movement

The race described above tells, in part, why I think that we should not seek publicity in the media. We need to educate libertarians—but not statists—about our new free nation.

And in this vein I worry that some majority-rule libertarians might hurt the free-nation movement. Since these libertarians naturally try to get all the publicity they can, they might flash the free-nation movement in the faces of statists, using our movement as evidence to try to convince statists that there is something wrong with the state. I fear that statists will react by erecting more barriers to the exit of free-nation libertarians. But majority-rule libertarians may not notice or care if they injure the free-nation movement, just so long as they generate press coverage.

## Conclusion

The mainstream media in Western democracies are inherently statist, because they are an essential part of that super-organization which grows around the state, and which includes the state as its backbone. These media have grown in a niche created by the state, in which majority-rule democracy creates opportunities to profit by carrying information through particular channels. As such, we should not be surprised to find workers in these media reluctant to transmit libertarian ideas, because our ideas would restructure society along new lines in which most media jobs would disappear, as they now exist. Rather, we should expect that the self-interest of workers in these media would cause them to view libertarian ideas with caution, suspicion, or outright hostility.

As such, I advise that free-nation libertarians treat a reporter from the media the way we would treat a dangerous beast in the wild. Give it respect. Try to keep a safe distance. But if you find yourself face-to-face with it, try to convince it that you are neither afraid of it nor dangerous to it. It may help if you present yourself as an oddity which is just passing through.△

*Richard O. Hammer moved to North Carolina in 1982, when he started a graduate program in computer science at UNC-Chapel Hill. His favorite subject in high school was physics. He hopes one day to return to the study of that subject.*

## New Utopia

By Paul A. Rosenberg

*[Editor's note: In early April email from Paul Rosenberg brought the following description of the New Utopia project. We print it because we believe some of our readers may find it of interest.*

*Rosenberg titled this piece "A New PT Haven—If You Want It." When asked what "PT" stands for, he wrote:*

*"The term PT stands for Perpetual Traveler, and was originated by Harry Schulz, International Financial Consultant. These people (and I am not one of them) scatter their citizenship, residence, bank accounts, and income sources among several nations, with neither their persons or assets never able to be seized as the property by any government."*

*Two years ago FNF published a report on the New Utopia project, written by Marc Joffe for the New Country Foundation. See Formulations Vol. IV, No. 4 (Summer 1997), <[www.freenation.org/fnf/a/f44j1.html](http://www.freenation.org/fnf/a/f44j1.html)>.*

*FNF has no affiliation with either Mr. Rosenberg or the New Utopia project.]*

Right now, the greatest PT development of our time is underway in the Caribbean. A new, PT-friendly city/state is being built. The name of the city is New Utopia, and it is being built on platforms in very shallow water (4–20 meters) on the Grand Cayman Ridge.

If you've read Ayn Rand or Robert Heinlein (as almost all of us have), you know the philosophy that is driving this project, and you will also understand

why this city will be a more hospitable location for PTs than any other place on the planet. We are under no illusions that this city will be heaven on earth, but we are relatively certain that it will be the best place for productive people that has existed in a long time.

We already have hundreds of citizens, several developers, a group of doctors that want to run the greatest and freest medical facility on earth, a communications company ready to install an all-fiber network and turn the city into a cyber-haven, plus continual information requests from productive people worldwide. We've had literally millions of visits to our web site. We've been featured in newspapers worldwide, and on dozens of television and radio programs. The people who are involved with this project are among the most respected and capable in their fields. This is not a pie-in-the-sky effort; these are serious, competent people who are seriously interested in living without restraint.

The type of wide-open opportunity that exists in New Utopia is something that has not existed in a long time. Unlike our great-great-grandparents, none of us have been around as a new city or state was founded, being built where nothing previously existed. Think about it—opportunities abound for anyone with initiative enough to build something themselves. And just as importantly, freedom exists there. No oppressive regulations or taxes. So long as you keep your agreements and don't hurt anyone, there is no one that will be telling you what you may or may not do. You will be free in New Utopia.

The big question is whether or not we will be able to pull this off. Everything we are doing is within the bounds of international law, and only one real need faces us: numbers. We need people and we need money. Do you want to have a place where you can be free? Where you can come and go without being treated like a fugitive slave? Would you like to live in a place where all of your neighbors are honest, competent, productive people, and where there is no government constantly scheming new ways to get into your bank accounts?

If so, we need you to get involved. Do whatever you can. Tell your friends, become a citizen, contribute something, buy a condo, invest in one of the companies that is building the city. Do whatever you want to—but do something! An opportunity for freedom is being laid before you, and your choice is either to play dumb or to act like someone who values their life. If you want to live without chains, here's your chance!

Go to the New Utopia web site <[www.new-utopia.com](http://www.new-utopia.com)> and get the details, then get in gear. This may be the only serious opportunity of this kind that you will ever see; and the only thing that threatens to kill it is a lack of action.

*Paul Rosenberg may be contacted at <[PROSENBERG1@prodigy.net](mailto:PROSENBERG1@prodigy.net)>.*

# Removing the Market for Coercion

by Jack W. Coxe

In a free market, exchanges are made voluntarily, which means that all people concerned consider the exchanges to be profitable. But if coercion is in any way involved, then someone profits at the expense of whoever gets coerced. And so, the designers of a free nation need to find some way to free the market by removing the option to use coercion to gain profits.

It might be tempting to assume that the free market would supply the demand for defense against aggressive acts of coercion, and to leave it at that. But what about the market for aggressive coercion?

For example, suppose an ambitious businessman with a sizable amount of money hired the most powerful guards he could find, to defend himself against aggressive acts of coercion. Wouldn't he be tempted to use the coercive abilities of the guards to aggressively increase his wealth?

He might be stopped by a call for arbitration, but if there is a way for him to pressure the arbiters he might hire an army able to ignore arbitration and assert his organization as a coercive government. And since coercion would be their business, wouldn't the guards be tempted to use their abilities this way? Couldn't such an organization gain huge profits for all of its members?

Even if most people retained their ethics and morals, it would only take one such renegade to motivate many or most people to compound the problem by demanding some kind of elective government, hoping to overpower the use of coercion for personal profit. The distinction between aggression and self-defense can become very debatable. It is my opinion that the governments that we have now are basically highly evolved markets for coercion in many disguises. "Justice" is for sale to the highest bidder or to the most influential political organization.

I need to qualify this by acknowledging that this motive to manipulate coercion for profit is to some degree held in

check by the natural motive for people to try to do what is right. And I predict that our natural motive to do what is right will eventually find a way to remove coercion from the market.

In this article I will suggest an arbitration procedure which I believe would free the market by removing coercion from the market and replacing it with a common ingredient in the personal profit motive of every person. The common ingredient would be the motive to estimate as accurately as possible an impersonal but universally agreeable standard of fairness and reason, and to act accordingly.

This standard of fairness which everyone would be estimating would literally be agreeable to everyone—accommodating any way of life that did not infringe on the freedom of another way of life. Even if this perfectly agreeable standard didn't exist, the motive resulting from this procedure would be for everyone to estimate or approximate it as closely as possible.

I will describe the procedure and then show how it would affect the personal profit motive of every person. Then I will summarize the basic principle of the procedure and ask for comments on the principle and on the possibilities of organizing the establishment of the procedure.

## The Procedure

As I describe the procedure, please bear in mind that the obvious questions, which you will have while you read the description, do have answers which will be explained or implied by what follows.

1. Anyone could call for arbitration to settle any dispute with anyone else. No money would be needed—just a simple call to the police.
2. For each call for arbitration, a panel of 7 arbiters would be chosen completely at random—no screening.
3. The arbiters would have the recognized authority to settle the case at their own discretion, coercively binding on a maximum of 50 people of their choosing, for a period of 6 months. This authority would include the authority to coercively penalize any attempt to pressure the arbiters, to penalize any abuse of po-

lice force, and to penalize unreasonable calls for arbitration—all according to the discretion of the arbiters.

4. Anyone could observe and subsequently call for a new random arbitration to settle any allegation that the former arbiters were abusive or deficient in exercise of their temporary authority. This would not be an appeal—the decision of the former arbiters would stand—but the former arbiters would become subject to the new panel of arbiters.
5. A panel of arbiters would have 7 days to make their decision. Otherwise, a new panel of arbiters would be randomly chosen.
6. All details about the system would be decided by voluntary agreement with random arbitration as a last resort.
7. The purpose of the system would be to motivate people NOT to use it, but to seek voluntary agreement instead. This seeking would be the source of justice and fairness.

## How the Procedure Would Affect the Personal Profit Motive of Every Person

If you were a randomly chosen arbiter, how could you avoid being subsequently called to a new arbitration for alleged abuse of your temporary authority? Interested people would have reason to inform you that anyone on any side of the issue could accuse you, and that many would have good reason to scrutinize your conduct as an arbiter.

Would you as an arbiter allow yourself to be bribed or threatened? To do so would just about guarantee that someone would call you to a new arbitration for abuse of your authority. Would you imagine yourself to be qualified? Wouldn't you be realistic enough to know that you need expert advice on how to use your recognized authority to coercively penalize anyone who tried to pressure you, and on how to settle your case fairly? Knowing that you would be watched from all sides, you would need to walk the straight and narrow—using all necessary coercive authority but not an ounce more.

*(Continued on page 19)*

— Humor —

## Will Bill Gates Start a New Country?

*[Introductory note from Richard Hamner: The following article appears in The Web Lampon. Although this is humor, I think it shows that we in the free-nation movement have made progress. Humor of this sort works only if the idea seems plausible. A few years ago, if I am not mistaken, the idea that a billionaire could start a new nation did not have enough plausibility to rise even to this level of humor. But now the idea has risen to this level, if you care to join me in self congratulation. We thank Web Lampon Publisher Stephen Uber for permission to reprint. You may find this piece at <www.weblampon.com/archive/August/Newcountry.htm>.]*

### Gates to create new country, plans relocation of Microsoft

copyright *The Web Lampon*

REDMOND, WA—Microsoft chairman and CEO Bill Gates has put a plan in motion to establish a new country outside of the United States, and to relocate the software giant there, out of the reach of the Department of Justice.

In a conference call with surprised reporters from his headquarters in Redmond, Washington, Gates insisted he is serious about carrying out the move, although some are speculating the proposal is more of a shot across the bow of Janet Reno and the Justice Department prosecutors working on the government's case against Microsoft.

The prosecutors have been pursuing Microsoft on a restraint of trade charge, related to the inclusion of the company's own internet browser as an integral part of the Windows 98 operating system, effectively shutting out competitors in the browser market.

"An unholy alliance has been formed between our competitors in this business, and the government itself, to create an advantage they have been unable to win in the marketplace," said the 42 year old Gates. "This whole case is nothing but a high-tech lynching of an uppity software company," the chairman continued.

Gates would not comment on specifics of where the new country would be located, but reports are that he has been negotiating with several Latin American countries, and may indeed have reached terms with one of them, on acquiring enough territory to establish a sovereign state.

"We initially were going to call the new country 'Micronesia,' but apparently that one's already trademarked," Gates explained, "so we're going to go with 'Windonesia.'

"I want to make it clear," said Gates, "that no shareholders' or customers' money will be used to implement this strategic move. It will be financed out of my own personal fortune."

The Microsoft chairman, because of his holdings in Microsoft stock, is estimated to be worth upwards of \$60 billion, a tidy sum to hold out in front of relatively poor Latin American countries.

"Windonesia will be more than a corporate headquarters for Microsoft," the chairman said. "It will be a haven for entrepreneurs of all kinds, and other ordinary people who want to escape the

shackles of oppression; a new country devoted to liberty, equal rights before the law, very limited government, and lots of cool technology."

As to whether Gates himself would take an active role in the government of the proposed country, he declined to say, but seemed to feel there could be administrative roles for others in the company. "Once we've migrated to a single desktop interface in Windows NT, we might be able to reassign the Windows 98 teams to do some of that government stuff," he speculated.

Some were unconvinced that Gates would actually take the step of creating a new country. "I don't think he would dare try it—he's bluffing," said James Barksdale, president of rival Netscape. "If he does try it, we will... that is, I'm sure the government will hang him by his thumb-nails."

The Justice Department, caught flat-footed by the announcement, was unable to give a clear indication of how it plans to counter the gambit by the Microsoft chairman, or whether indeed it can do anything to prevent the company from leaving.

But Attorney General Janet Reno, who met hastily with reporters after Gates' announcement, spoke harshly. "The Microsoft chairman seems to feel that he and his company are at liberty to come and go as they please, and that he has the right to conduct his business strategy as he sees fit," she said. "Well, I have news for Mr. Gates—this is America."△

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### Removing the Market for Coercion

*(Continued from page 18)*

Your basic need would be to try to conduct your case in such a way that any subsequent random selection of arbiters could find no fault with your conduct. If called, the subsequent panel of arbiters would have the same motive, since they too could subsequently be called to another arbitration by random arbiters who would in turn have the same motive—and so on, having the effect that all panels of arbiters would ultimately need to estimate what an impersonal but univer-

sally agreeable standard of reason and fairness would say about their case.

If you were an expert who was asked for advice by a panel of arbiters, how would you yourself avoid being called to a new random arbitration for offering corrupt advice? Isn't it likely that other experts would be watching you? Wouldn't you bend over backwards to give the most honest and fair advice you could? Again, you would need to estimate what any random selection of people (who themselves would be looking out for their own best interests) would think of your advice. And again you

would end up estimating the impersonal but mutually agreeable standard of fairness and reason.

Would you as an expert dare to offer advice that would rob anyone of any part of his natural wage? Would you dare to offer advice that would be detrimental to a minority or to a disabled person, or to a victim of unfortunate circumstances, or to the environment? To offer such advice would nearly guarantee that someone would call you to a new random arbitration. You would then have to try to convince that random selection of arbiters that you did nothing wrong. And

those arbiters would be on the same spot. If they dared to approve of your corrupt advice, they in turn would have to try to convince another random selection of arbiters that they did not abuse their temporary authority. And so on.

If you were just going about whatever your business is, and you were offended by someone, how would you decide whether it would be worth it for you to call for random arbitration? Again, wouldn't you need to estimate the best you could what any random selection would think of your complaint? Knowing that the arbiters would most likely seek expert advice, wouldn't it make more sense for you to skip the arbiters and seek advice yourself? And knowing that the experts, for their own sakes, will try their best to estimate the mutually agreeable standard of reason and fairness, wouldn't it make more sense for you to skip the experts and estimate the standard yourself?

If someone else was offended by something you did and threatened to call you to a random arbitration, what would be in your best interest? Again, wouldn't you need to estimate what any random selection of people would think of the problem? Wouldn't you and your adversary be better off if you try to reason with each other and reach agreement on the basis of the agreeable standard of reason and fairness that everyone would be trying to estimate? If you couldn't reach agreement, wouldn't your next choice be to seek expert advice? A call for random arbitration would be your last choice, and experience and education would teach you how to avoid it.

And finally, as you contemplate your routines of life, how would you go about dealing with other people in such a way that you know and can demonstrate that you are doing what any random selection would expect you to do according to the standard of reason and fairness? Wouldn't you seek expert guidelines—proven effective at harmonizing the routines of the lives of people? Wouldn't you be willing to pay for the guidelines?

Wouldn't there most likely be a demand for "proposal planning systems", enabling people with ideas to make their proposals, and for everyone else to pledge their support for the plans of their choice? All the details of mutual cooperation, that are now monopolized by

power-struggling government officials, could be handled voluntarily by this provision for inviting proposals and for counting pledges of support for them. In the context of our monopolistic governmental system, there might not be much of a motive to participate in such proposal planning systems. But in a random arbiter system, they would be the logical means for organization. And if you think about it, how could anyone really know how to avoid random arbitrations without the guidance of organizations? The real motives would be there.

We have seen the economic effect of the personal profit motive. If a profit can be made by building houses, cars, computers, or whatever, people are likely to organize to get the job done. Likewise, as long as a profit can be made by manipulating our agreed-on procedure to coerce, then there will always be those who will try—struggling with each other at the expense of all who would rather just live and let live. But if the common motive is to estimate the perfectly agreeable standard of fairness, imagine what could be accomplished with all motives in harmony with each other!

Any selection that is not random is a selection that could be manipulated. And whatever can be manipulated, could be used for personal profit.

### The Basic Principle

What I propose is a principle, which I will call "the principle of natural government". I ask for comments on the principle and suggestions on how to organize the practical application of it.

This is the principle:

Coercion could be removed from the market by building a prevailing consensus that no act of coercion would be legal except as directed by randomly chosen arbiters, who would be limited only by the possibility of being subsequently called for arbitration by another random selection of arbiters, who in turn would be limited only by the possibility of being subsequently called for arbitration by another random selection of arbiters, and so on—effectively motivating everyone to estimate as accurately as possible the universally agreeable standard of fairness, and to act accordingly.

### Establishing the System

Once established, the system would be self-organizing—that is, the motives would be there for people with ideas for organization to make their proposals, and the motives would be there for everyone else to respond with pledges of support for the plans of their choice. Agreeable plans for organization would be a high priority for everyone, as they seek to avoid random arbitration. Random arbitration as the last resort, final authority for all unresolved disputes, would provide the motive for everyone to do whatever is necessary to learn how to cooperate with each other.

But until the system is initiated, action is needed from self-motivated people who understand the principle and are willing and able to spread the understanding, and to formulate plans for establishing the procedure.

The first step would be to find out how agreeable this basic principle is. I would appreciate comments on this.

If the principle is agreeable, then we might request proposals on how to organize the establishment of the procedure.

This idea is explained more completely at <[www.hm-ng.com](http://www.hm-ng.com)>, which welcomes comments, and includes the option for people to send a notice of agreement that the procedure should be investigated, tried, and tested.△

*Jack Coxe studied government and economics at Sacramento State College. He was drafted into the Army in 1969, and while in Vietnam the idea of random selection of arbiters came to him as the only way to motivate the effort to agree with adversaries instead of trying to overpower them. The idea wouldn't let go of him, and he has been working on it since that time. He can be reached at: <[coxe@hm-ng.com](mailto:coxe@hm-ng.com)>*

– Dialog –

## Basic Questions About a Free Nation

by Roy Halliday,  
Spencer MacCallum,  
and Philip Jacobson

*[Editor's note: This interview was synthesized from several messages posted in FNF's new eGroup (see the News Note about this group on page 4). The exchange started when Roy Halliday sent a list of nine questions to participants. He began by saying "The purpose of this e-mail group is to air ideas about a free nation—a nation in which the opportunities for voluntary actions are maximized and the use of physical coercion and threats of violence are minimized."]*

**RH: How can a free nation defend itself from foreign military attack?**

**SM:** By keeping a low political profile, observing strict neutrality, and perhaps contracting with General Electric or a related firm for some technological deterrence. As the world becomes more entrepreneurial and less political, there will be less occasion for violence of any kind. I don't think defense will be a very important issue in the future.

**PJ:** One theory which I've heard and respect is that the free nation should develop trade with potential enemies. The more the potential aggressor values the trade, the less attractive an attack would be.

**RH: How much government, if any, is necessary for a viable free nation?**

**SM:** If by "government" we mean public administration financed by taxes, none. Otherwise, "government" means all the coordinating and feedback mechanisms of the marketplace, among which competition is foremost. In this sense, the more government the better.

**PJ:** I'm not sure I agree that "the more government the better", even with this definition. In some arenas a market may not evolve, competition may not be deemed desirable.

**RH: How can services that are currently provided by nation-states be provided voluntarily?**

**SM:** We may give nation-states more credit than they are due for providing any services at all to their populations. Certainly on net, taking into account democide, their services must be negative. If we read economists such as Fred Foldvary *Public Goods And Private Communities: The Market Provision Of Social Services* or Bruce Benson *The Enterprise Of Law: Justice Without The State*, it would appear that there are no services that cannot be provided competitively through the free market. My own little book, *The Art Of Community*, explores the same theme from an anthropological perspective.

**RH: What laws would have to be enforced to provide the most overall freedom?**

**SM:** If by "laws" we mean statutes, none. It seems unlikely that any statutory enactment can ever contribute, on net, to freedom of action in the world. Customary law, on the other hand, such as common law, the Law Merchant, the Halacha, and so forth contribute in a major way to the freedom of choice people enjoy.

**RH: Who should make the laws and how?**

**SM:** Property owners in the course of administering that which they own, whatever it may be. This includes private courts and those who administer them. Rules evolve through a discovery process of what works to the satisfaction of all parties.

**PJ:** When social institutions are formed, the customs associated with these should prevail instead of law to the maximum extent possible. Anything more formal should be established only on the basis of the consent of the governed. As long as no one is conscripted into a legal system (given the primacy of the libertarian mandate against initiated force), market forces can determine who makes the law — to the extent that there is any law.

**RH: Who should enforce the laws and how?**

**SM:** The same as [the previous question]. I suspect that those who use no violence or who use the least possible violence in enforcement will find them-

selves at a competitive advantage over others.

**RH: Would a free nation have prisons? If so, who would run them and who would pay for them?**

**SM:** There is no reason why there should not be prisons, if they represent a market opportunity. Like anything else, prisons would be run and paid for by their owners. Residents would be "outlaws"—people who had put themselves outside of the law and had repudiated its protection by refusing to appear at hearings or acknowledge judgments against them. Prisons would be community-like facilities operated competitively in the market, providing rehabilitation and opportunities for earning under conditions of safety in order to build up personal resources, pay restitution owed, and so forth.

**PJ:** I don't like the concept of a prison. If, by some means, an individual is determined to be at odds with a libertarian community, that community should use ostracism as its primary deterrent — the individual should lose interactive privileges. This can be done in stages. Perhaps the individual is not allowed in certain places at first. Perhaps the individual is refused credit at some point. Various other courtesies and privileges can be removed in order to make the punishment harsher. As a last resort the individual is declared an "outlaw" — their conflict is so severe that the community totally refuses interaction. For stricter communities, a final step might be to assume that some types of violence directed against the outlaw would always constitute retaliatory force (as authorized by a certified victim), thus granting forgiveness to anyone who might assault the outlaw with intent to kill.

**RH: What is the most practical way to establish a free nation?**

**SM:** As an entrepreneurial venture offering safe environment and services competitively in the market for a profit. Not as an ideological venture.

**PJ:** [This is] too big and wide a question for me to give a short answer, even in summary. FNF needs to devote several Forums to this one!

*(Continued on page 22)*

# Defense Through Free-Market Sport

By Douglas Nusbaum

[Editor's note: This letter was stimulated by "Defending a Free Nation: The Status Economy," by Gary F. York, Formulations Vol. VI, No. 2 (Winter 1998-99).]

I have given some thought to how a free country may fund defense using the free market. I found [Gary York's] idea of awarding titles to those who pay for such a defense interesting, but the plan lacks the discipline one sees in a free market. It talks about raising money, but not how it is spent.

I think there is a way, but I have not given it a great deal of thought, and I am sure this is one area where a lot of minds could be very helpful. As you all know, the amount of money spent on sports is probably comparable with, if not greater than, the amount we spend on defense. And many of these sports are just a glorified, sublimated form of war. So let's abandon the pretense. Make war a sport. Instead of having teams from various regions, states, etc., we would have armies who would continually take part

in war games. Those supplying the materials would get advertising rights. You could have college competition, and minor leagues.

A few times a year we could have elimination rounds. Hopefully non-lethal. Or at least no more lethal than current sports.

War has everything that all the other sports have: individual activities, crashes, explosions, team efforts, management skills, planning, tactics, strategy. It should have. Almost all sports are a derivative of war.

Since there is a corporate (insurance) interest in cleaning up after natural disasters and preventing looting, members of the "minor leagues" could pick up extra money acting as the National Guard acts today. We assume that private companies would like protection against pirates. This would provide another source of income to the "sport navy."

No longer would we have politics determining who got the military contracts. Or where women or "minorities" got to serve. The discipline of the market place would be the non-biased objective arbiter.

New tactics would come into play faster, as would optimum use of re-

sources. There would be no fat, useless officer class.

We could even be the world's policemen. Mercenaries. And if some groups wanted to volunteer to go into such political cesspools as Indonesia, or the former Yugoslavia, or even Iraq, they would be free to do so. They could even keep a part of the loot they recovered from the current despots. The only losers would be the despots.

Note that there would be a great drive to optimize size and skill levels with available resources. And every so often there might have to be a random reshuffling of the yearly "best armies" to keep it interesting.

While I am sure there are problems with a system as described above, I think it would probably provide more cost-effective and secure defense than what we have now, and better serve the rest of the world. Since we are not the only gorilla on the block, this would be a good time to experiment.△

*Douglas Nusbaum became acquainted with FNF in 1995, when he worked in North Carolina as a computer programmer on contract. Now he lives in Las Vegas.*

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## Dialog, Basic Questions

*(Continued from page 21)*

**RH: What beliefs must the citizens of a free nation share?**

**SM:** That life can be wonderfully good, being the open door to infinite opportunities for creative endeavor, and that freedom is of immediate personal value in the pursuit of happiness. (For this purpose, it makes little difference how one defines "freedom," whether more broadly as one's range of available options—having to do with such things as personal competence, the advance of scientific knowledge and the specializations of the market—or more narrowly as absence of restraint imposed by others.)

**PJ:** That citizens of the free nation should renounce initiated force.

**RH:** Spencer, I liked your answers to the nine questions. The answer that I have the most trouble agreeing with is the one about prisons. So that is the issue I want to discuss.

The idea of free-market prisons strikes me as an oxymoron. I suppose there could be a market in prisons in that they could be owned by various private groups, they could compete with each other, entry into the industry could be open rather than monopolized, they could charge prices and gain the benefits of efficient allocation of resources that go along with markets, and so on. But couldn't we say the same things about a slave market? Or a market for stolen goods? If murderers compete with each other for contracts, would we call that a free market?

I think we need to make a distinction between markets in which all the property rights exchanged are legitimately owned by the parties to the exchange and markets in which some of the property being exchanged does not legitimately belong to the person who exchanges it. The former are legitimate markets and the latter are fraudulent markets.

Can prisons fit into a legitimate market, or do they only fit into a fraudulent market?

**SM:** This is entirely speculative on my part about prisons! I seem to remember someone having given thought to it quite a number of years ago and working out an interesting picture. Perhaps someone will recall who that was.

As I understand the logic of the common or customary law, a person who refuses to participate in the justice system by answering summons or heeding judgments puts herself outside the law, which is the meaning of "outlaw"—hence depriving herself of its protection. Anyone encountering such a person is free to treat her with impunity as a wild animal. This is a dangerous situation to be in, and usually it meant self-exile. This is drastic "punishment," and might in some cases seem disproportionate to the crime the "outlaw" was charged with. The "outlaw" status, however, is not for that original misbehavior, which may never even have been adjudicated, but for having repudiated the customary law process which is a cornerstone of social life.

*(Concluded on page 23)*

– an appeal –  
**Let's Discuss the  
Amount of Coercion  
Needed in a Free Nation**

by Roy Halliday

In her books (*Healing Our World* and *Short Answers to the Tough Questions*) Dr. Ruwart is able to make progress in describing an ideal libertarian country because she boldly assumes that libertarians have already reached consensus on some fundamental issues. Specifically, she takes for granted that courts should be private and they should enforce the restitution paradigm rather than any of the other libertarian legal paradigms.

We in FNF have not been able to present a complete picture of the ideal free nation because, as a group, we have not reached a consensus on some fundamental issues such as whether to have a tiny government that monopolizes law or a system of competing private courts, and whether the legal system should enforce the restitution paradigm, the punishment paradigm, or the self-defense paradigm. Until we in FNF reach a consensus on these basic issues, we will not be able to give a unified answer to some of the other questions about how a free nation will operate.

The founders of FNF assumed that we could make progress in developing a plausible description of a free nation if we aim our arguments at fellow libertarians who already understand that freedom creates a spontaneous order. The assumption that we are addressing a select

audience permits us to take for granted that we share a positive disposition toward liberty, free markets, private property, voluntary cooperation, and so on. But the FNF experience so far has demonstrated that we cannot take for granted that we share the same opinions about minarchism, anarchism, restitution, punishment, natural rights, and some other important issues.

It turns out that within the libertarian movement there are several different and mutually exclusive legal paradigms. I tried to define and categorize them in my article "Law and Violence" (*Formulations*, Vol. VI, No. 1).

As an example of the lack of agreement on fundamental legal paradigms within FNF, consider the FNF Board of Directors:

- Two directors advocate limited government (but I suspect that they have different limits).
- Two or three advocate the restitution paradigm.
- One advocates the self-defense paradigm.
- Two or three don't fit into my scheme because they don't believe in any natural rights.

So on our eight-person board, the no-natural-rights paradigm and three of the six natural-rights paradigms are represented. We all agree that most things should be privatized, so there is a lot of common ground. But I don't think that more than two or three of us agree completely on how to decide what should be legal.

Libertarians who believe in different legal paradigms can hardly be expected to reach agreement on the constitution of a free nation.

The problem is further complicated by competing structural proposals within each paradigm. For example, *Formulations* has published proposals for a limited-government monarchy, a limited government designed to shrink, virtual cantons, a proprietary community, a doughnut-shaped nation with a hole of anarchy surrounded by a limited government, a paper-tiger pseudo-government with no special powers, and an electric democracy in cyberspace.

In order to stop spinning our wheels, maybe FNF should encourage its members to develop full and separate descriptions of each of the competing libertarian legal paradigms. This is an extension of Bobby Yates Emory's idea described in "A Time for Prototypes" (*Formulations* Vol. VI, No. 1).

Except when writing about a solution that is compatible with all the paradigms, I suggest that those who write articles for *Formulations* would be more effective in making progress toward a clear description of a free nation if they identify which libertarian legal paradigm they are advocating.

By following this course, the pages of *Formulations* will eventually contain full descriptions of a free nation as defined by each paradigm. Perhaps we could track, collect, edit, and publish anthologies of articles for each paradigm. Then, in traditional libertarian fashion, these fully developed products can compete for customers.△

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## Dialog, Basic Questions

(Continued from page 22)

Under customary law, enforcement of a judgment normally is the responsibility not of the court but of the plaintiff or her kin, who can use force to the extent necessary (not "excessive") under the sanction of the court. A prison/refuge enterprise might include among the services it offered the public, therefore, the capturing and holding of "outlaws" for plaintiffs under such conditions that they could earn and thus pay off outstanding judgments against them. Other "outlaws" might voluntarily seek refuge, contract

appropriately and then be free on their own recognizance—no longer being "outlaw." The refuges would carry insurance, naturally, and would have to be careful and conservative in their actions lest their premiums soar out of sight. Thus, theoretically, the use of force by prison enterprises could not be ruled out, but would be under scrutiny of both the court and the plaintiffs, their clients—who would not want to incur liabilities of their own.

The large picture might be one of prisons evolving into largely voluntary, rehabilitative "refuges" where their clients could gain protection and regain a

lawful status in society through contracting as dependents of those operating the refuges. The refuges then would assume liability for their clients' conduct while they were dependents, and in some cases that might require agreed-upon restraint of the client as part of her contract. [There are some] interesting possibilities here. The client would work in the safe environment of the refuge for her keep and to accumulate resources to pay restitution owed, and so forth. The refuge would have incentive to provide education and training that would make the client more productive—etc.△

## Two New Directors Join FNF Board

Wayne Dawson and Roy Halliday have joined the FNF Board of Directors. This action, taken at the meeting of the Board held on 17 March 1999, increased the size of the Board from six to eight.

Wayne was elected to a term which runs until 1 December 2000; Roy to a term which runs until 1 December 2001. Why the difference in terms?

Directors are normally elected to three-year terms (and the terms begin and end on the first of December in the pertinent years). As nearly as possible, the terms are created so that one-third of the seats are filled each year. As such the Board added one term which runs roughly two years, and one which runs roughly three years. Directors may be reelected any number of times.△

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### New Director

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Roy G. Halliday has been a regular contributor to *Formulations* and a participant in FNF Forums since 1996. In 1997 he retired from IBM after a 30-year career as a technical writer and editor. Since 1997 he has been the copy editor for *Formulations*. In 1998 Roy devised and implemented the links to online articles about free-market alternatives to the state, which can be accessed from the FNF home page. Currently it contains links to more than 300 articles organized under 29 different topics. In 1999 Roy created the FNF e-mail group to facilitate discussion among FNF members.



Roy Halliday (center)

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### New Director

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G. Wayne Dawson was born a libertarian, although he never identified himself this way until he discovered the libertarian movement's existence in 1987. He has attended many conferences and conventions since then, although his participation in the Libertarian Party has dropped to nil in the last few years, as he has decided that electoral politics is not the best way to promote freedom. He currently works as a computer programmer and teacher, and aspires to become "a full-time libertarian". He feels the best way for him to achieve this is to become an independent computer/internet consultant to the libertarian community.



Wayne Dawson (center)