



formulations

Spring 1998

A Publication of the Free Nation Foundation

Vol. V, No. 3

A Plea for Public Property

by Roderick T. Long

Public or Private?

Libertarians often assume that a free society will be one in which all (or nearly all) property is private. I have previously expressed my dissent from this consensus, arguing that libertarian principles instead support a substantial role for public property. ("In Defense of Public Space," *Formulations*, Vol. III, No. 3 (Spring 1996).) In this article I develop this heretical position further.

Let me specify once again what sort of public property I am defending. To most people, "public property" means "government property," on the (dubious) theory that governments hold their property in trust for the public, and administer such property with an eye to the public interest. As an anarchist, I do not regard government as a legitimate institution, and so do not advocate government property of any sort. But this is not the only kind of public property. As I wrote in my earlier article:

"Throughout history, legal doctrine has recognized, alongside property owned by the *organized* public (that is, the public as organized into a state and represented by government officials), an additional category of property owned by the *unorganized* public. This was property that the public at large was deemed to have a right of access to, but without any presumption that *government* would be involved in the matter at all."

It is public property in this sense that I am defending.

(Continued on page 5)

"Law" to Be Topic of October Forum

For our Forum in October of this year we will take up, once again, the topic of law in a free nation. We invite our readers to start thinking about this. And we seek papers upon the topic, particularly for the Autumn issue of *Formulations* (which has a writers' deadline of 1 August).

We need to understand law from its foundations to its practice, because we seek to see a good system of law established (or grow spontaneously) in a free nation. We first considered this topic in FNF's second Forum, in April 1994. But many questions remain.

The exact date of the Forum has not been set. But it will probably take place, as before, on a Saturday. Δ

Forum Announcement Property Rights

11 April 1998

Come to the next Forum of the Free Nation Foundation. This will meet on Saturday, 11 April 1998, from 10 AM till 5 PM, at Oliver's Restaurant in Hillsborough, North Carolina. The topic will be property rights in a free nation. Four speakers will present papers.

Three of the four papers to be presented at the Forum appear in this issue of *Formulations*. These are: "A Plea for Public Property," by Roderick Long; "The Definition of 'Property' and 'Property Rights' in a Free Nation," by Gordon Diem; and "Nineteen Propositions About Property," by Richard Hammer. The fourth paper, "A Theory of Property Rights for a Free Nation," by Roy Halliday, appeared in the last (Winter) issue of *Formulations*.

You may pay (\$15 general admission or \$12 for FNF Members) at the door. But if you plan to attend you might let Rich Hammer know ahead of time, and he will reward you with a computer-printed nametag. You could let him know by: sending a check to preregister; calling 919-732-8366; or emailing roh@visionet.org.

During the day we will break for lunch. Note that the Forum admission fee does not include lunch, but you may of course buy lunch at Oliver's.

Oliver's Restaurant is on South Churton St., about 0.5 mile north from Interstate 85, exit 164. Δ

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formulations

a publication of the
Free Nation Foundation
[outdated street address]
Hillsborough NC 27278
<http://www.freenation.org/fnf>

Statement of Purpose

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

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

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. Checks should be made payable to the Free Nation Foundation. Additional contributions are welcome.

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.

JOINT PUBLICATION ARRANGEMENT

Formulations sometimes carries articles obtained through Marc Joffe of the New Country Foundation. These articles are distinguished by the line "for the New Country Foundation" under the author's name. Marc Joffe may be contacted at: joffe@aptech.net, or c/o The New Country Foundation, P.O. Box 7603, FDR Station, New York, NY 10150.

The web site <http://freenation.org> maintained by Marc Joffe carries Free Nation Foundation documents, along with numerous other new country documents and pointers.

report Freedom Ship Project

by Wayne Dawson

Norman L. Nixon of Engineering Solutions (a company based in Sarasota, Florida) proposes to build the largest ship in the world. The project's web site entices the reader to "Envision a moving city where you can live and run a business. Imagine this community levies no taxes and no import duties." Mr. Nixon sees a need and a market in the world for what he calls "a modern Hong Kong." He expects the floating city, to be called *Freedom*, to set sail two years after the start of construction and circle the globe every two years. Mr. Nixon is currently evaluating bids from shipyards around the world in preparation for beginning construction this year.

As I prepared to report my impressions of this project, which we at FNF might consider a "new country project" (I use the term loosely), I decided to take another gander at the project's web site. After entering cyberspace and traveling over to <<http://freedomshipcity.com>>, I noticed a request that I "Please Read About The Freedom Ship In The February '98 Issue of *Popular Mechanics*."

Being the type to always obey the dictates of such urgent sounding requests, I immediately went out and purchased the magazine. This turned out to be a good move, since the article proved to give additional insights into the project—that is, beyond the many pages of promotional material which the project's manager had supplied to FNF founder Rich Hammer.

There are three questions that I, being a libertarian, am most interested in.

1. How *libertarian* is it?

They claim to have no taxes, although monthly condo fees ranging from \$427 to \$9,866 (this after having purchased the condo at a price somewhere between \$93,113 and \$6,104,600) may seem just as onerous a burden to some as many nations' tax burdens.

The promotional material mentions a "rigorous customs inspection" and "strict security procedures," including confiscation of "weapons, drugs, [and] other contraband."

"No illicit businesses will be permitted." The project manager appears to believe these measures will guarantee "unexcelled" security. I cannot detect that there has been any thought to dispute resolution or a court system—and I somehow doubt that this is because the project is so libertarian as to expect private enterprise to supply these necessary services.

Also, "scrupulous and stringent quality controls will ensure the wholesomeness of onboard food."

Perhaps such controls in the hands of an ostensibly private organization will be more successful than similar state schemes.

But then again, it doesn't have to be *very* libertarian in order to be vastly more libertarian than most of today's highly statist nations.

2. How *technologically viable* is it?

To say the least it is an incredibly ambitious project. The ship *Freedom* (assuming project completion) will displace 2.7 million tons of water, as compared to the largest vessel currently afloat which displaces 546,739 tons (the supertanker *Jahre Viking*).

Mr. Nixon has licenses to practice structural, electrical, sanitary and civil engineering, which—despite my libertarian objections to state licensing—indicates he has unique qualifications to manage a project of this type, especially considering his 7 years' engineering experience and apparently 27 years' project management experience.

What is more important to me than sheer number of years experience, is his being "part of a team of engineers who built a \$1 billion modular ethylene plant in Japan and then towed it as more than 100 modules to Saudi Arabia, where it was reassembled" (according to the *Popular Mechanics* article)—that, and his "team of 24 engineers and consultants" working on the Freedom Ship project (again, according to *Popular Mechanics*).

This does not appear to be a wild-eyed, pie-in-the-sky scheme.

3. How *economically viable* is it?

The promotional material claims, "Because the demand for these units will substantially exceed the number available, a priority list of prospective buyers has been established." This appears to be marketing hype because according to *Popular Mechanics*, out of the 4000 units planned for sale as of Jan 1, 1998, only 600 buyers "have signed on."

Still, at the required \$10,000 deposit per buyer, this gives a \$6,000,000 deposit account (just for starters), representing what appears to me a considerable market demand at this stage of the project.

I am certainly not ready to drop everything and run off to join the Freedom Ship project, but I will be keeping my eye on this one. Δ

Wayne Dawson has made it his lifetime goal to "make the world free." He lives in Virginia Beach, Virginia, and teaches classes in computer programming and other computer subjects.

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Dialog on libertarian activism: To whom do we reach? and why?

Susan Callaway:

Mr. Hammer's comments (on page 5 in the Winter issue of *Formulations*) about most libertarians having "formed a habit—of trying to sell liberty to statist" was very provocative because I have never been accused of such a thing and I've been a libertarian/Randian for a long time. I believe he may have libertarians a bit confused with Libertarians, as in the Libertarian Party.

It has taken me most of my adult life to learn that little or no education of statist occurs in any setting and that they will not understand Rand at any decibel level. You can't teach dogs to purr and that's that. Mostly I just ignore them as much as possible and talk to those who seem to be leaning in the direction of freedom.

I despise the nonsense of politics in America. As far as I'm concerned, politics are the most immoral activity ever devised and I'll have no part of it. Oh, I did, for a while, and learned that it is as bad for libertarians as it is for Republicans or anyone else. The original intentions may be, I say may be, all good and noble, but the end result is a sell-out, increasing love of the power over the lives and property of others when they manage to get elected and a colossal waste of time and money in either case.

The useful part of the Libertarian movement mostly bled off into the Advocates for Self-government and The Alliance for the Separation of School and State, both of which I support with little reservation, along with all of the other publications, think tanks and such. As far as I can see, aside from the Party itself, few of these spend much time trying to convert actual statist, but reach out to those who want and believe in freedom but don't know where to start finding it.

I believe that libertarians simply must start by actually doing active, daily self-government and educating their own children in spite of and without the permission or tolerance of the statist, up to and including going to jail or whatever. I'm convinced that a lot of the nonsense

we seem forced to endure stems from a lack of effort on the part of most people to maintain full charge/responsibility for their own lives. For instance, most people tend to cry for government regulation of safety and health issues, rather than to take responsibility to educate themselves as consumers. When enough people take this responsibility first and stop looking to government for solutions, when they begin to resist statist' agendas for their lives and resist giving them their money in any form, then they can begin to hope for freedom. It won't happen magically through "education," but only by the gut effort of everyone who wants to be free.... and when there are enough of us....

The fly in the ointment, beyond the obvious, are the millions of people who honestly believe that they want and love "freedom," but who also honestly believe that other people need to be controlled (for their own good, of course) such as those who choose to take drugs or view photos of naked whatever....

To this end your vision of a free country is an intriguing possibility. However I must say that, all in all, I would rather be free and remain in my own home on my own land right here. As wonderful as a new and free country might be, I would not want to be separated from my family and many friends who would not wish or be able to move. Most people are a long way from being able to accept full responsibility for their own lives and property and, unfortunately, many of those family members and friends are among them.

So I read your publication with interest and appreciation, but with many reservations. I don't know how to make America truly free, but I don't want to go anywhere else just yet.

Susan Callaway writes from Lucerne Valley, California

Richard Hammer:

I appreciate being checked occasionally. Probably, if you do not keep your eyes on me, I can go too far out on a limb.

Perhaps I went too far when I implied that every other libertarian organization (other than FNF) works primarily to convince statist within the paradigm of majority-rule democracy.

But, to continue the discussion, consider the work done by the two organizations which Susan Callaway mentions: the Advocates for Self-government and the Alliance for the Separation of School and State. It is true that these two organizations, in seeking supporters and participants, reach out primarily to people who are already libertarian. But still, I believe, the work that these organizations do shows that they assume that the best way to get liberty is to work through the paradigm of majority-rule democracy.

Both organizations assume that statist must be convinced. The Advocates for Self Government specializes in helping libertarians learn how to communicate with statist. And concerning the Alliance for the Separation of School and State we can see, in the name of that organization, that they start with the assumption that school and state need to be separated. Certainly that is true in statist America. But it is no issue among people who are already libertarian; we would never put the two together in the first place.

I try through FNF to get libertarians to realize our own strength. If we will redirect a modest amount of energy, perhaps only one tenth of the amount which we now pour into the effort to convert statist, that will be sufficient to found a new Hong Kong, with more liberties than the last.△

Plea for Public Property

(Continued from page 1)

I want to stress, however, that in defending public property I do not mean to be criticizing private property. I am a strong proponent of private property. But what I am maintaining is that the very features that make private property valuable are also possessed, in certain contexts, by public property, and so public property can be valuable for the same reasons.

First I shall consider three common libertarian arguments for private property, and I shall try to show that each of these arguments also supports a role for public property. Second, I shall consider several objections I have encountered to my position, and I shall attempt to meet them.

The Natural-Rights Argument for Private Property

The standard libertarian natural-rights argument for private property goes back to John Locke's *Second Treatise of Government*, and rests on two basic claims: a *normative* claim about how we should treat other people, and a *descriptive* claim about the boundaries of the person.

The normative claim we may call the Respect Principle. This principle says that it is morally wrong to subject other people to one's own ends without their consent, except as a response to aggression by those others. (There is disagreement as to what deeper moral truths, if any, provide the grounding for this principle, but that question lies beyond my present topic.)

The descriptive claim we may call the Incorporation Principle. This principle says that once I "mix my labor" with an external object—i.e., alter it so as to make it an instrument of my ongoing projects—that object becomes part of me. The case for this principle is that it explains why the matter I'm made of is part of me. After all, I wasn't born with it; living organisms survive through constant replacement of material. The difference between an apple I eat (whose matter becomes part of my cellular composition) and a wooden branch that I carve into a spear (a detachable extension of my hand) is only one of degree.¹

When we put the Respect Principle and the Incorporation Principle together, the result is that it is wrong to appropriate the products of other people's labor; for if your spear is a part of you, then I cannot subject your spear to my ends without thereby subjecting *you* to my ends. In the words of the 19th-century French libertarians Leon Wolowski and Émile Levasseur:



Roderick Long

"The producer has left a fragment of his own person in the thing which has thus become valuable, and may hence be regarded as a prolongation of the faculties of man acting upon external nature. As a free being he belongs to himself; now the cause, that is to say, the productive force, is himself; the effect, that is to say, the wealth produced, is still himself. ... Property, made manifest by labor, participates in the rights of the person whose emanation it is; like him, it is inviolable so long as it does not extend so far as to come into collision with another right...."²

The Incorporation Principle transforms the Respect Principle from a simple right to personal security into a general right to private property.

How Natural Rights Support Public Property Too

But this Lockean argument for private property rights can be adapted to support public property rights as well. Lockeans hold that individuals have a property right to the products of their labor (so long as they trespass on no one else's rights in producing them); they also typically hold that individuals have a property right to any goods that they receive by voluntary transfer from their legitimate owners (since to deny such a right would be to interfere with the right of the *givers* to dispose of their property as they choose). But the public at large can acquire property rights in both these ways. To quote once more from "In Defense of Public Space":

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

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

Public property can also be the product of gift. In 19th-century England, it was common for roads to be built privately and then donated to the public for free use. This was done not out of altruism but because the road-

¹For a fuller defense of this claim, see Samuel C. Wheeler III, "Natural Property Rights as Body Rights," in Tibor R. Machan, ed., *The Main Debate: Communism versus Capitalism* (New York: Random House, 1987), pp. 272–289.

²Cited in Murray N. Rothbard, *For A New Liberty: The Libertarian Manifesto*, Revised Edition (San Francisco: Fox & Wilkes, 1994), pp. 36–37.

builders owned land and businesses alongside the site of the new road, and they knew that having a road there would increase the value of their land and attract more customers to their businesses."

Since collectives, like individuals, can mix their labor with unowned resources to make those resources more useful to their purposes, collectives, too can claim property rights by homestead. And since collectives, like individuals, can be the beneficiaries of free voluntary transfer, collectives too can claim property rights by bequest.

I should note one important difference between the homesteading case and the bequest case. In the homesteading case, it is presumably not the human race at large, but only the inhabitants of the village, that acquire a collective property right in the cleared path; since it would be difficult for humankind as a whole, or even a substantial portion thereof, to mix its labor with a single resource, and so the homesteading argument places an upper limit on the size of property-owning collectives. But there seems to be no analogous limit to the size of the collective to which one can freely give one's property, so here the recipient might well be the human race as a whole.

I have argued that the Lockean argument does not specify private property as the only justifiable option, but makes a place for public property as well. It should also be noted that in at least one case, the Lockean argument positively forbids private property: namely, the case of intellectual property.

This fact is not always recognized by Lockean. But consider: suppose Proprius, a defender of protectionist legislation, were to invoke Lockean principles, saying, "Well, surely private property is a good thing, right? So the market for widgets should be my private property; no one else should be allowed to enter that market without my permission. I demand a government-granted monopoly in widget production." No Lockean would take this argument seriously, for a market consists in the freely chosen interactions of individuals—so Proprius cannot own a market without owning people, and ownership of other people is forbidden by the Respect Principle.

Suppose, however, that Proprius, our would-be monopolist, is also the *inventor* of the widget. Is his plea for exclusive control of the widget market now justified? Many Lockean would think so, because we have a right to control the products of our labor, and if the product of Proprius' labor is the *idea* of the widget, then no one should be able to use or implement that idea without Proprius' permission.

But the Lockean view is not that we come to own whatever we mix our labor with; rather, we come to own whatever *previously unowned* item we mix our labor with. My plowing a field does not make it mine, if the field was yours to begin with. Likewise, the fact that my labor is the causal origin of the widget-idea in your mind may mean that in *some* sense I have mixed my labor with your mind; but it was your mind to begin with, so you, not I, am the legitimate owner of any improvements I make in it. (For a fuller discussion, see my "The Libertarian Case Against Intellectual Property Rights," *Formulations*, Vol. III, No. 1 (Autumn 1995).)

The Autonomy Argument for Private Property

A somewhat different libertarian argument for private property focuses on the human need for autonomy: the ability to control one's own life without interference from others. Without private property, I have no place to stand that I can call my own; I have no protected sphere within which I can make decisions unhampered by the will of others. If autonomy (in this sense) is valuable, then we need private property for its realization and protection.

How Autonomy Supports Public Property Too

It is true that private property provides a protected sphere of free decision-making—for *the property's owners*. But what is the position of those who are not property owners (specifically, those who do not own *land*)? A system of exclusively private property certainly does not guarantee *them* a "place to stand." If I am evicted from private plot A, where can I go, except adjoining private plot B, if there is no public highway or parkland connecting the various private spaces? If everywhere I can stand is a place where I

have no right to stand without permission, then, it seems, I exist only by the sufferance of the "Lords of the Earth" (in Herbert Spencer's memorable phrase).

Far from providing a sphere of independence, a society in which all property is private thus renders the propertyless completely dependent on those who own property. This strikes me as a dangerous situation, given the human propensity to abuse power when power is available.³

It may be argued in response that a libertarian society will be so economically prosperous that those who own no land will easily acquire sufficient resources either to purchase land or to guarantee favorable treatment from existing land owners. This is true enough in the long run, if the society remains a genuinely libertarian one. But in the short run, while the landless are struggling to better their condition, the land owners might be able to exploit them in such a way as to turn the society into something other than a free nation.

The Rivalry Argument for Private Property

For many libertarians, the most important argument for private property is what Garret Hardin has labeled "the tragedy of the commons" (though the basic idea goes back to Aristotle). Most resources are *rivalrous*—that is to say, the use of the resource by one person diminishes the amount, or the value, of that resource for others. If a rivalrous resource is also public property, meaning that no member of the public may be excluded from its use, there will be no incentive to conserve or improve the resource (why bother to sow what others may freely reap?); on the contrary, the resource will be overused and swiftly exhausted, since the inability to exclude other users makes it risky to defer consumption (why bother to save what others may freely spend?). Hence private property is needed in order to prevent depletion of resources.

How Rivalry Supports Public Property Too

The rivalry argument is quite correct as far as it goes. But how far is that?

First, let's notice that the argument only applies to goods that are in fact rivalrous. So once again it doesn't apply to intellectual property; my use of the idea of the widget doesn't make less available for others. Nor does it make others' widgets less valuable; on the contrary, the more widgets there are, the more uses for widgets are likely to be discovered or developed, and so the value of each widget increases. Ideas are public property, in that no one may be legitimately excluded from their use.

Another example of a largely nonrivalrous good is the Internet. I say *largely* nonrivalrous, because the Internet does have a physical basis, which, though constantly expanding, is finite at any given time, and an increase in users can cause delays for everyone. But this rivalrous aspect is offset by the reverse effect: the value of the Internet to any one user increases as the volume of available information, potential correspondents, etc., increases; so additional users on balance *increase* the value of the good as a whole.

It might be argued that this the-more-the-merrier effect occurs only with goods that are wholly or largely nonphysical, but could never apply to more concrete resources like land. As Carol Rose and David Schmitz have shown,⁴ however, although any physical resource is finite and so inevitably has *some* tragedy-of-the-commons aspects, many resources have "comedy-of-the-commons" aspects as well, and in some cases the latter may outweigh the former, thus making public property more efficient than private property.

For instance (to adapt one of Carol Rose's examples), suppose that a public fair is a comedy-of-the-commons good; the more people who participate, the better (within certain limits, at any rate). Imagine two such fairs, one held on private property and the other on public. The private owner has an incentive to exclude all participants who do not pay him a certain fee; thus the fair is deprived of all the participants who cannot afford the fee. (I am assuming that the purpose of the fair is primarily social rather than commercial, so that impecunious partici-

pants would bring as much value to the fair as wealthy ones.) The fair held on public property will thus be more successful than the one held on private property.

Yet, it may be objected, so long as a comedy-of-the-commons good still has *some* rivalrous, tragedy-of-the-commons aspects, it will be depleted, and thus the comedy-of-the-commons benefits will be lost anyway. But this assumes that privatization is the only way to prevent overuse. In fact, however, most societies throughout history have had common areas whose users were successfully restrained by social mores, peer pressure, and the like.

Objection One: The Coherence of Public Property

One common libertarian objection to public property—and particularly, public ownership of land—is that the whole idea makes no sense: a resource cannot be collectively owned unless every part of the resource admits of simultaneous use by all members of the collective. This objection has been forcefully stated by Isabel Paterson:

"Two bodies cannot occupy the same place at the same time. ... Ten men may be legally equal owners of one field, but none of them can get any good of it unless its occupancy and use is allotted among them by measures of time and space. ... If all ten wished to do exactly the same thing at the same time in the same spot, it would be physically impossible [G]roup ownership necessarily resolves into management by one person"⁵

Paterson does, however, offer the following qualification to her claim that public property is inherently impossible:

"[I]t is practicable—whether or not it is necessary or advisable—to make roads public property, because the use of a road is to traverse it. Though the user does in fact occupy a given space at a given moment, the duration is negligible, so that there is no need to take time and space into account except by negation, a prohibition: the passenger is not allowed to remain as of right indefinitely on any one spot in

the road. The same rule applies to parks and public buildings. The arrangement is sufficiently practicable in those conditions to admit the fiction of 'public ownership.' To be sure, even in the use of a road, if too many members of the public try to move along it at once, the rule reverts to first come, first served (allotment in time and space), or the authorities may close the road. The public has not the essential property right of continuous and final occupancy. ... Public property then admits of *use by the public* only in transit, not for production, exchange, consumption, or for security as standing ground."⁶

Note that here Paterson actually points out three ways in which public property can be feasible. First, it may be the case that not enough people are competing for use of the same portion of the property to cause a conflict. Paterson assumes this will only happen in cases where any one user's occupancy of a given area is of minimal duration; but clearly the same result could be achieved when the total volume of users is low enough, and the resource itself is homogeneous enough, that a lengthier occupancy of any particular portion of the resource is no inconvenience to anyone else.

Second and third, in cases where use is becoming rivalrous, Paterson offers two different possible solutions. One solution is to require frequent turnover, so that no one member of the public is

³This is a reason for my reservations about the proprietary-community model for a free nation, in which all land in the nation is held by a central agency and leased to its inhabitants. See my "The Return of Leviathan: Can We Prevent It?," *Formulations*, Vol. III, No. 3 (Spring 1996).

⁴Carol Rose, "The Comedy of the Commons: Custom, Commerce, and Inherently Public Property," *University of Chicago Law Review*, Vol. 53, No. 3 (Summer 1986), pp. 711–781; David Schmitz, "The Institution of Property," *Social Philosophy & Policy*, Vol. 11 (1994), pp. 42–62.

⁵Isabel Paterson, *The God of the Machine* (New Brunswick: Transaction Publishers, 1993), pp. 180–181.

⁶Paterson, pp. 181–182.

allowed to monopolize any portion of the resource for longer than a certain time period; the other solution is to adopt "first come, first served," meaning that those who currently occupy portions of the property may stay there and exclude newcomers. Paterson thinks that both of these options take away from the genuinely "public" nature of the property. But do they?

According to Paterson, the turnover requirement takes away from the publicness of the property because the public then lacks "the essential property right of continuous and final occupancy." But is this true? If no individual *member* of the public has "the essential property right of continuous and final occupancy," it hardly follows that the public as such lacks this right; in fact, the turnover requirement is precisely a means of implementing that right.

What about the first-come-first-served rule? Paterson may think that this ends the publicness of the property because it gives individuals the right to exclude others from the particular portions they have claimed. But this falls short of a full private property right. If I have private ownership of a portion of land, then that land remains mine, off limits to others, even when I am away from the land. But if I leave the particular area of a public park that I've been squatting in, I lose all rights to it; in that respect, what I have a "right" to is more like a place in line than it is like freehold property.

Which is preferable, the turnover rule or the first-come-first-served rule? Presumably it depends on the function of the resource in question. In the case of a road, it is in the interest of the owners—the public—that the turnover rule be applied, because a road loses its usefulness if it cannot be traversed. However, the autonomy argument suggests that not all public property should be subject to the turnover rule, so in some cases the first-come-first-served rule is appropriate.

Suppose a conflict arises between two users of the property, one who thinks it should be governed by the turnover rule, and another who thinks it should be governed by the first-come-first-served rule. What happens?

Well, ideally the decision should be made by the owner: the public. But only a unanimous decision could count as the will of the public, and unanimous decisions are hard to come by. (Putting the matter to a vote would reveal only the will of a majority faction of the public.) In that case, the public is in the same situation as an infant, a lunatic, a missing person, or a person in a coma: the public has the right to decide the matter, but is currently incapable of making a coherent decision, and so the decision must be made for them by a court which attempts (presumably in response to a class-action suit) to determine what is in the best interest of the rights-holder.

Objection Two: Policing Public Property

As Rich Hammer is fond of pointing out, shopping malls are generally safer than city streets. As Rich notes, this is so for two reasons. First, the owners of the malls have a financial incentive to police their premises so as to avoid losing customers, while government police face much weaker incentives. Second, mall owners can set higher standards for what is permissible behavior on their premises, and can exclude undesirable persons more or less at will, while the police have less power to kick people off the city streets. Does this mean that public property in a libertarian society will be under-policed?

Not necessarily. Consider the incentive issue first. Since the property is public, everyone has an equal right to police it. But some will have stronger motives for policing than others. Consider the case mentioned earlier, of the road built for and donated to the public by those who owned property alongside the road and hoped the road's proximity would raise their property values and bring increased traffic to their businesses. The same incentives that led the owners to build this road would also lead them to police it, since property values will be higher and customers will be more plentiful if the road is safe.

Moreover, the unsafeness of city streets results not only from the fact that they are public but from the fact that the police enjoy a monopoly on protection services. A competitive market in security would probably find some way to offer its customers protection while on

public property. For example, public parks might be patrolled by a consortium of insurance companies, if a substantial number of their customers enjoy visiting public parks.

As for the higher-standards issue, it is true that users of public property face a somewhat greater risk from their fellow users than users of private property do. A private mall (particularly in a libertarian society where the right to control access to one's private property is legally protected) can exclude users who simply *appear* to pose a threat to other users, even if they have committed no overt act (or can admit them only if they post a bond, disarm themselves, show proof of insurance or a letter from their pastor, etc.). Public property, by contrast, must be open to anyone whose conduct *so far* is peaceful. By the same token, however, public property allows more freedom. That is why the best option is a society that makes room for both public and private property. Those who place a high value on security, and are willing to put up with some burdensome restrictions in order to get it (call them the Little Old Ladies), will be free to patronize private property, while those who seek self-expression, are averse to restrictions, and are willing to put up with more risk from others (call them the Gun-Toting Pot-Smoking Nudist Bikers), will likewise be free to patronize public property.

Objection Three: Liability and Public Property

In a free society, people are liable for harm that they cause. Now suppose I own the road that runs past your house, and I decide to donate that road to the general public. Now it is no longer possible to exclude undesirables from the road. There used to be guards at the toll gate who checked drivers' IDs, but now they are gone, and one day some loony who in the old days would have been excluded takes the public road to your house and massacres your family. Since the loss to your security was caused by my decision, it has been suggested to me (by Rich Hammer) that I should be legally liable for the result. And if this is so, then public property would not be tolerated in a free nation, because the liability costs would simply be too high.

But surely a libertarian legal system will not hold people liable for every harm to which they merely made a causal contribution. The current statist trend of holding gun manufacturers liable for the use of guns by criminals, and so forth, flies in the face of the libertarian principle of personal responsibility. An owner is not obligated to check out the background of everyone he gives or sells property to.

Objection Four: Reversion of Public Property

Once property becomes public, how can it ever become private again? In a free-market economy, property tends to be assigned to its highest-valued use, because those who value the property more will purchase it from those who value it less. But if I value Central Park more than the public at large does, how do I go about purchasing it from the public? The dispersed, disorganized, and divided public lacks the ability to consent to the sale.

This is a difficult problem, to which I do not have a full solution. But let me try out a few possibilities.

There are two ways I can lose my claim to property. I can give or sell it, or I can abandon it. The public is not in a position to give or sell its property,⁷ but perhaps it is capable of abandoning it.

What counts as the public's having abandoned a piece of property? Well, the easiest case would be if no one has used it for a very long time. (How long? Well, the length of time should presumably be the same as whatever is accepted in the case of abandoning private property.) But what if only a few people have used it? Does that count as the public's using it (given that the property has *never* been used by the *entire* public)?

Or suppose I privatize some portion of the property, claiming it for my own use, fencing it in and so forth. Perhaps it then counts as mine so long as no one protests. (How widely do I have to advertise the fact that I've done this?) But again, what if just a few people protest—does that count?

Ultimately these problems will have to be resolved by a libertarian legal system, through evolving common-law precedents. That's fine with me. What I would want to insist on, though, is that *some* role for public property is important for a libertarian society. An all-private system can be oppressive, just as an all-public one can be; but a system that allows networks of private spaces and public spaces to compete against each other offers the greatest scope for individual freedom.△

⁷At least I don't think so. Someone could argue that the court could act on behalf of the people's interests, authorizing the transfer of ownership from the collective to me, in exchange for the "price" of my doing something judged to be of general benefit to the public. But I am wary of heading too far down that path. For one thing, if the court acquires too much power to administer the property of the "disorganized public," we start to move back toward the "organized public" model of government property, and the whole idea of free access is replaced by access-in-the-interests-of-the-public-as-determined-by-some-official. For another, the value of public property is severely undermined if it can be unpredictably privatized on some judge's say-so.

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Foundation News Notes

- On 29 December 1997 FNF President Rich Hammer received email from Marc Fisher—a reporter for *The Washington Post*. Fisher said, "I am ... researching an article on the new nations movement. I've read your fascinating website and wonder if you might be available to discuss the Free Nation Foundation by phone sometime in the next couple of weeks."

Being suspicious of that newspaper, but having time before the interview to find prior writing by the individual reporter, Rich discovered that Mr. Fisher seems to understand that socialism is bad. Fisher has written one article telling how East Germans, who have never during their lives been expected to take initiative, were having trouble melding with West Germans, who expect personal responsibility. He has also written a book titled *After the Wall: Germany, the Germans and the Burdens of History*.

With this, Rich decided that he could be candid with this reporter. The telephone interview on 5 January lasted 30 minutes or more, and seemed to go well. Evidently, however, no story has yet appeared.

- FNF will once again be placing an ad in *Liberty* magazine. Look for it in the May issue.
- FNF Directors Bobby Emory and Richard Hammer were reelected, to three-year terms running through 1 December 2000, at a Board meeting on 23 November 1997. The meeting took place over a homemade supper at Candi Copas's new residence, a neat little house in West Hillsborough.
- FNF will soon be able to accept Visa and Master Card. Actually, FNF could accept these credit card payments now, since the account has been approved and set up with Central Carolina Bank. But FNF has not yet installed the software to process the payments with the bank.

(Concluded on page 17)

Nineteen Propositions About Property

by Richard O. Hammer

For my contribution to our discussion on property rights in a free nation, I will present a series of propositions. Many of these I have argued before. But regular readers of *Formulations* will find a few new ideas.

I do not establish proof here, in any rigorous sense, for any of these propositions. In most cases I could develop longer arguments. But typically I offer only scanty logic, and then move on. As such, I expect that many readers will be unconvinced. And some readers, whose philosophical structure I suppose rests upon different premises, may even be disturbed.

But I hope there is some value in pressing all these propositions together, as I do here. I believe we are never absolutely sure of each step we take. But most people seem to find the supports that they need to take the steps which they want to take. For those who want, enough, to reach that shore which I call a free nation, I believe the stepping stones can be found in the power of free markets. Here I show how I cross.

Proposition 1: Property is choice, not things.

I think that we can discuss what we mean by "property" more usefully if we think of owning choices, rather than of owning things.

Suppose I pick up a rock from my driveway. Assuming no one makes a contrary claim, I may be said to own the thing. Ownership in this case tends to imply—though this is rarely spelled out—that I own all the choices which might be made pertaining to that rock. I may paint it, sell it, or grind it into power. I may throw it, this way or that. And social networks, in the society in which I live, will support my right to make these choices, and will presumably come to my aid should someone interfere with my attempts to make these choices.

But should I choose to throw that rock in a direction that would take it through my neighbor's window then presumably the social networks will adopt a

different tone. This will say that I had no right to throw the rock in a particular direction. In other words, even though I "owned" the rock, and thereby presumably owned the whole bundle of choices pertaining to the rock, in fact, as experience uncovers law, it turns out that I never owned that one choice pertaining to the rock.



Richard Hammer

It is not wrong to speak of owning a thing. This is efficient. Historically, for the sake of not having to think about it too much, all the choices which may be made pertaining to a given thing have been presumed to be bundled together, in possession of the one owner.

But I advocate that we libertarians focus upon choice as the basic unit of ownership. I think that this will clarify our thinking and our arguments, whether we are formulating the institutions of a free nation or fighting the spread of socialism in existing nations.

Proposition 2: The contest over choices, over property, originates spontaneously in nature.

This contest cannot be separated from the origin of life, and of living organizations.

As I have described, I believe that living things, whether small or large, can survive only if they detect patterns in their environments, and act in ways to exploit those patterns.¹ As such living things, whether organisms or organiza-

tions, must possess both the means to detect patterns and the means to act. But for obvious reasons the two processes of detecting and acting will almost always be separated: detecting will be achieved by some means suited to detection (which I will sometimes call a "detector"); acting will be achieved by some means suited to action (an "actor").

This separation introduces the need for communication. Within any living thing, the detectors must communicate with the actors.

Furthermore the separation introduces the possibility of competition. A given actor may receive signals from more than one detector. Here I believe is where we start to see the struggle for property rights. Detectors will compete for the services of actors. For example, more than one nerve may signal a particular muscle to contract, as is shown when skeletal muscles twitch or act without conscious direction.

Also notice that a detector may be separated by a considerable distance from an actor. Nothing requires that these two processes be confined within the bounds of one biologically-defined organism. For example, I contend that I own my car as well as my fingers, and find social support in this contention.

Proposition 3: Natural ambition drives processes which detect to extend their ownership over as wide a scope of actions as possible.

Within limits, I suppose that those processes of detection which survive best are those that extend their control as far as possible.²

Isabel Paterson gives an example of the natural limit upon this ambition. Assuming I understood her in *The God of the Machine* (1943), she shows that the amount of control that a dictatorial state can exert over a distant colony is limited by the length and capacity of the communication channel to the colony. Distant colonies reached only infrequently by couriers retain more local control.

Proposition 4: The struggle for property rights, among living organizations in a given ecology, may result in formation of a new and larger organization.

Many organizations form spontaneously, without ever being planned, from the actions of self-interested individuals.³ As we humans struggle for, and succeed in defining, property rights, we organize ourselves into patterns which may be perceived by none of us. But nonetheless these patterns are organizations. Families, clans, and firms organize themselves. As do, I fear, states.⁴

Thus we see that the struggle for property may occur in layers; is a test to discover which style of larger organization will succeed.

For example, something like the struggle which we humans experience, amongst ourselves for property rights, may have occurred among early bacteria as they negotiated formation of the first Eukaryotic cells (which make up modern plants and animals). For another example, a struggle now seems to occur among European states as they test formation of a European union.

Proposition 5: The real distribution of choices (RDC) in any given society is shaped ultimately by an optimum distribution of choices (ODC), because trade, limited by transactions costs, constantly moves the RDC toward the ODC.

If we make certain assumptions, common in economic thought, that markets work perfectly and frictionlessly, and if we assume that we can describe the value (perhaps using some unit of currency) which any person might give to obtain any choice, then for every choice we can find the person who values it most. If that person does not already own the choice then that person will buy that choice immediately, given our assumptions. With each trade, the choices, or bundles of choices assigned to given things, move from people who value them less to people who value them more.

Of course the RDC never reaches the ODC because markets are not perfect and because the ODC is always moving.

But, here is my point which seems to stir controversy: I suggest that we libertarians should recognize that physical

forces, which translate through human society into market forces, shape the RDC, more so than do proclamations, of morals or rights, concocted by human minds.

Proposition 6: If perfect free markets (with zero transactions costs) could be established in a geographic region, then market forces would carry the RDC in that region to the libertarian ideal.

Said another way: The ODC is what libertarians ultimately seek. In the ODC each intelligence will be given maximal possession of itself and whatever material goods it can purchase through free exchange.

I still feel unsure of this proposition, because I feel unsure of how and why organizations obtain identity. Nonetheless, in case our discussion gets too boring, I will proceed to argue for it.

Concerning equal opportunity, some people, who are sensitive to issues of fairness, may be willing to agree with this proposition if wealth is distributed equally at the outset, if initial conditions do not favor some individuals over others.

I agree that initial conditions can skew outcomes, but I think that worrying too much about rectifying initial conditions may do more harm than good. Given free markets, the work that we do during our lives affects our individual wealth so much that any bias traceable to initial conditions diminishes rapidly in importance, or so it seems to me. If a debate, seeking to rectify initial conditions, delayed liberalization of trade policies, the injustice caused by prolongation during the debate of the initially-biased conditions may exceed the injustice which would linger for long after prompt liberalization of trade policies.

The ODC is the condition in which all the information dispersed throughout nature (and society) finds maximal employment in productive undertakings.⁵ In the ODC each detector finds itself owning those choices which it can employ better, to the greater utility of itself and others through trade, than any other detector.

Here is an example, using slavery. We libertarians would not say that slavery is optimal. But suppose it exists. I will use three characters: Slave, Slaveowner, and Entrepreneur.

Slave, in the initial condition, is controlled by Slaveowner who, with constant surveillance and constant application of force, is able to extract work from Slave which has a value of \$10 per day.

Now Slave has a mind, hopes, and ambitions. Given liberty, Slave would work hard and intelligently. Given liberty, Slave could produce value worth \$20 per day.

So, assuming a regime in which contracts are sustainable, the opportunity for Entrepreneur is clear: offer Slaveowner \$12 per day for the services of Slave; offer Slave liberty for \$15 per day. All three characters gain.

At the conclusion of this example, the ODC has not been reached. Slave still has an onerous contract, a diminished legacy of the unfair initial conditions. But the ODC has been approached. And I believe that most libertarians, seeing that Slave has gained some liberty, would say that the libertarian ideal has also been approached. I offer this logic: if an approach toward the ODC always produces an approach toward the libertarian ideal, then probably the ODC and the libertarian ideal are the same thing.

¹Richard Hammer, "An Engineer's View of Morality Set in a Model of Life," in *Formulations* Vol. V, No. 2 (Winter 1997-98).

²The reader should be warned that, for this central concept "detector," I use several terms to mean roughly the same thing. I intend analogy in using: "detector"; "process which detects"; "intelligence"; "human."

³A few examples are offered in Hammer, *op. cit.*

⁴Franz Oppenheimer, *The State: Its History and Development Viewed Sociologically*, 1909.

⁵Surely Friedrich Hayek, in Volume I of *Law, Legislation and Liberty*, 1973, influenced this idea.

We will never reach the ODC, because of market imperfections. But entrepreneurial action brings us closer. And through FNF I suggest that entrepreneurial action can be turned more effectively against the worst of market imperfections, the state.

Proposition 7: Relatively poor or powerless individuals generally can purchase defense for their claims through networks of trade, assuming markets are free.

An example is provided by the purchase in the preceding example, in which Slave purchased his freedom. Another example is provided by the institution of insurance. A third example is found in medieval Iceland:

“Judicial systems relying on user fees, as a libertarian system presumably would, have been criticized for giving no protection to the poor. ... One solution would be to make a victim's claim to restitution a marketable claim, which may be acquired through gift or sale. The marketing of claims to restitution worked fairly well in medieval Iceland, where a person too weak to enforce his claim could sell it to a powerful chieftain; this made it more costly for the rich to prey on the poor.”⁶

Proposition 8: Property rights exist because of transactions costs.

While I feel unsure of all the implications of this proposition, I offer it for debate, and take the side of the proposition.

Let me start with an observation which I believe supports this proposition: people tend to avoid violent confrontations because violence is costly. We can view violence as one—expensive—means of negotiation. Wherever participants avoid this cost the negotiations which remain are civil, by definition.

In general, all negotiations have some transactions costs. And the tendency to avoid these costs both enables us to hold claims of our own and encourages us to respect the claims of others.⁷

For instance, I might work out some scheme to share a lawn mower with three of my neighbors. Even though this scheme may appear efficient to a socialist planner, the transaction cost of negoti-

ating the deal appears likely to exceed any savings which I might gain. Consequently I claim my own lawn mower (which I purchased at Wal-Mart). Likewise, my neighbors each claim their own lawn mowers. And none of us has ever challenged another's claim to his or her lawn mower. Mutually we respect these claims. We each have a property right in a lawn mower because we need to avoid the cost of negotiating a scheme of sharing.

Proposition 9: Tenets are constructed by human minds to cover usual experience.

Here, by a “tenet” I mean a property right, or a norm.

On the way to arguing for this proposition, I need to take a slight detour, to tell a theory about how our minds work. While I was in college, taking calculus, I remember that one theorem jumped out at me. It seemed profound. It says: *through a finite number of points pass an infinite number of functions*

Within math, this means simply that if you have some dots on a piece of graph paper and if you try to guess a pattern which explains those dots, you can never be absolutely sure. An infinite number of patterns may explain any given set of dots.

Suppose, for instance, that dots are being placed one by one upon a page, and that after a thousand dots have been placed they all lie on a perfect circle. If, perceiving this, you guess that the next dot will likewise fall somewhere on that circle, you might be wrong. The function of a circle is only one of an infinite number of functions for the locations of those first thousand dots. The circle, after all, is not on the page. The circle only exists in your perception, in your mind's attempt to make some useful sense of what is happening.

Carried beyond math, into life, I think this theorem says something important about how our minds must work. As I have argued, in order to live we must detect patterns in our environment. But since our senses, and our experiences, are finite, we have only a finite number of data points to suggest any pattern which we might perceive.

In order to live we also have to act in ways that exploit patterns in our environment. So, for each situation in which we act, we have to guess a pattern to explain what is happening and then use that pattern to guess what our act should be. This, I contend, is what we do. And our guesses succeed often enough to support our continued life.

This has philosophical implications. We are never absolutely sure. We are always proceeding upon our best guesses. This applies to our reflexes, hunches, norms, laws, rights, and religions. Any finite set of experiences, which I may feel sure proves one tenet, may, upon further presentation of evidence, also support a different tenet.

This ends the detour which sets the stage. Now I will argue for the proposition.

Our minds must construct tenets, from that data that we gather in life, to enable us to live through each day. And most of us have quite a lot of data, not all of which we can succeed in explaining. In these cases our minds need to ignore some data, and construct a tenet (an explanation, a function) from some subset of the data. And which subset should our minds select? The answer seems obvious to me: our minds should select the subset that promises to explain what is most important. It is more important, for instance, to have a plan to survive during the next week than it is to have a plan for vacation next year.

Many people have observed that most major religions overlap in their basic laws for day-to-day life. Some people take this as evidence that the same force created all these religions. I concur, and I formulate that force is the process which I have sketched here. All human minds construct tenets by which to live successfully. And most human lives face similar physical constraints. Some practices plainly help almost all people in almost all circumstances; these become norms, dogma, and law.⁸ An example would be: if you enter an exchange with someone with whom you hope to exchange again, keep your end of the bargain.

Proposition 10: Most debate about tenets occurs when attempts to extend the tenets, so that they can explain new and farfetched realms, produce suggestions that the tenets might need to change close to home, where the tenets guide immediate choices.

In circumstances where our minds have succeeded in explaining and guiding immediate, day-to-day experience, it becomes advantageous, at the margin, to seek explanations for more remote or infrequent experience.

This intellectual exploration consists, I believe, of trying to produce new functions, or to modify existing functions, so that they explain marginal data which previously had been anomalous, while continuing to explain important data of the sort that allows day-to-day survival.

Will this debate feel threatening to the people who participate in it? Generally not, because the participants, as I have assumed, already have their most important issues covered by their existing tenets. But there are times when debate about issues at the margin becomes heated. This occurs when the debate at the margins has implications not only at the margins—but also close to home.

The most important tenets, by which people live day to day, are not entirely supported by immediately obvious data. As such, some theories which are posited to explain marginal data will suggest that important day-to-day tenets need to be tweaked. And even though the modifications suggested for important tenets may be minor, I think it is natural to encounter heated debate in such cases.

For an example, consider the debate within the U.S. about assisted suicide. Even though the particular question which motivates the debate is about whether some terminally ill person, probably a stranger to almost all of us, may choose how to die, the emotion which comes into the debate derives from fear, I believe, that new forms of murder will become acceptable, and that this may apply to us or to someone we know.

Proposition 11: Property rights are working hypotheses, nothing to get self-righteous about.

As I argue here, the way we think and believe can be explained by physical necessity: to survive as organisms we must construct explanations for our experiences. Sometimes we find ourselves feeling threatened by proposals advanced by others. This is natural, because indeed those proposals may threaten our interests. But if we also see the larger context, I believe we can be more objective, and more kind, during the process of debate.

Proposition 12: Property rights originate in physical reality, not in philosophical speculation.

All the human debate about property rights started in regimes which already had property rights. We humans, as we started observing and communicating about our behavior, observed that we treat each other with certain respects, which we then named "property rights." Our debate about property rights, like our debate about any natural phenomenon, is our attempt to understand the phenomenon. Given better understanding we may invent some useful tools. But, I contend, it is a mistake to think that conscious thought among humans created property rights.

Proposition 13: The anger and alienation which people feel in state-regulated regimes may grow from their firsthand perception of wasted opportunity.

In any distribution of choices which has been imposed by a government there will be some people who could make better use of information available to them. Right under their noses, these people will see something that they could do which would make someone (probably themselves) better off without making anyone worse off—but the government prohibits them from doing it. Anger and indignation are likely to result.

Proposition 14: Judgments concerning property rights in a free nation will probably work best if they acknowledge the subordination of property rights to bottom-up economic forces.

I contend that property rights are mental constructs which grow naturally in human society, because transactions costs always keep the RDC apart from the ODC. This has important implications for the system of law in a free nation. Every judgment should defer either to superior economic might (the release through markets of the greater value of the ODC) or to efficiency (where litigants seek only to avoid transactions costs).

Proposition 15: In a free nation, anything worth owning will tend to become privately owned.

If there is any choice that might be made by any person, to the benefit of that person, then, unless there are other claims to that choice which induce the person to leave it alone, I expect that person will take that choice. The only choices which will remain unclaimed in a free nation will be those that have trifling value, those which reap benefits less than the costs of the claim.

Proposition 16: Public space will tend to shrink; spaces will be kept public only through some special effort.

By "public space" I mean the set of choices not privately claimed.

⁶Roderick T. Long, "Options for the Body Politic of Laissez Faire City," <<http://www.lfcity.com/bodypolitic.htm>>.

⁷This reasoning may parallel, and owe credit to, the observations of Ronald Coase, as expressed in *The Firm, the Market, and the Law*, 1990.

⁸I find support for this idea in Bruno Leoni, *The Law and Politics*, which is published in the volume titled *Freedom and the Law*, Liberty Fund, 1991.

Proposition 17: Within existing nations, statists feel threatened by libertarian proposals for political action because these proposals would take property from the statists.

Keep in mind that by "property" I mean real power to make choices, and not claims or wishes for a different set of affairs.

Here is an example. I live in a government-declared Historic District, in Hillsborough, N.C. Anyone here who wants to make any visible change on the exterior of their house must apply to the Historic District Commission for a "certificate of appropriateness." When I ran for Town Board—and made abolition of the Historic District a central plank in my platform—a lot of people who feel pride in the District were upset. Some people's decision to move to Hillsborough had actually been favorably influenced by existence of the District.

Well, in light of the propositions in this paper, I was proposing to take away from them some of their power to make choices. In the existing regime, for instance, any resident in the district who chooses to become an activist can stall any other resident's application to make changes. I was proposing to take that away, and not offering anything in trade which would cause them to voluntarily accept my proposal.

Now I would not say that they gained their property (their power to participate in the choice of what color I paint "my" front door) through legitimate process. As with Slaveowner's property, something rotten has gone on here. But they do own those choices. I think this offers a new explanation for why the process of winning through majority rule seems so difficult for libertarians.

Proposition 18: There is no necessity to educate the people who would populate a free nation in libertarian theory of property rights.

I often hear sympathizers assert that a free nation could work—but only if all the inhabitants were confirmed libertarians. I do not agree. Only the founding must be libertarian.

People protect what they perceive to be their own. Each of us understands instinctively what a frown, an angry shout, or a shot fired over our head, means. Property rights grow perfectly well—except where government has done something to stop or distort the growth. And this natural growth of law predates the growth of the state.⁹

In human history many free societies (with little or no state) have existed. And typically these societies enjoy a perfectly adequate system of property rights. An example is provided by the U.S.A. during its early years. But the absence of a state does not mean the presence of libertarian beliefs. It only means that the concentrations of wealth, upon which a parasitic state can grow, have not yet been present long enough in this environment.

The story "A Nation' Is Born" gives an example of how a free nation might be created.¹⁰ And in this example most of the initial inhabitants were oriental boat people. These people were not libertarians, in any conscious way. They were just people eager to work, and willing to do whatever it would take to settle peaceably in a new homeland.

I assume that most people, being naturally self interested, do whatever they can—within whatever rules restrain behavior in the society in which they live—to advance their own interest. For most people, if they live in a society where levers of state power are within their reach, then they will use those levers of state power in any way they can to help themselves. Such a society will become a socialist cesspool. If however these same people find themselves living in a free nation, where no levers of state power are within reach, then they will seek their own self interest through voluntary means.

Proposition 19: To attain a free nation, we do not need better attitudes, or to educate the masses. All we need is mechanisms.

My belief in this proposition motivates my work in FNF. As I described in "A 'Nation' Is Born," all that is needed is a small group of libertarians with sufficient resources. I hope to advance the day when that group forms, by bringing credibility to the idea. Neither the inhabitants of a free nation, nor the government of the host nation which rents the real estate, needs to be converted to libertarian beliefs. Those parties only need to be offered a win-win exchange.△

⁹Bruce Benson, *The Enterprise of Law: Justice Without the State*, 1990.

¹⁰Richard Hammer, *Formulations*, Vol. 5, No. 1 (Autumn 1997).

Richard O. Hammer, who holds the FNF offices of President and Treasurer, has just survived his 50th birthday.

Locke, Hobbes and the Free Nation

by Gordon Neal Diem

Can mankind live in harmony in a free society? Both John Locke and Thomas Hobbes address this in ways shedding light on the quest to establish a free nation.

Enlightenment British philosopher John Locke presents a vision of mankind in a state of nature as free, equal, and unwilling to harm another through force, fraud or other means. When I recall meeting with other libertarian academics and arm-chair intellectuals in the 1960s to speculate on the "nature of man," most envision man in terms of John Locke, and envision the free society in terms of Locke's state of nature. Rarely does anyone mention philosopher Thomas Hobbes, and his vision of man as selfish, predatory, and exploitive. Such men are assumed suited only for authoritarian society capable of restraining men's appetite, ambition, and quest for power over one another. Most 1960s libertarians—from economic entrepreneurs to "flower children"—see a Hobbesian view of man and a libertarian free society as incompatible. John Locke, on the other hand, presents a view of man entirely compatible with libertarian free society.

John Locke's State of Nature

"[A]ll men are naturally in... a state of perfect freedom to order their actions and dispose of their possessions and persons as they think fit, within the bounds of the law of nature, without asking leave or depending upon the will of any other man..... [H]e has not liberty to destroy himself, or so much as any creature in his possession.... [T]hat being all equal and independent, no one ought to harm another in his life, health, liberty or possessions" (Locke, *Second Treatise of Government*).

This "state of nature" is an achievable utopia for me and other members of the 1960s libertarian generation. Many libertarians believe if individuals sharing this utopian dream isolate themselves in a

libertarian free society, they can live in this free "state of nature" forever. John Locke, himself, undermines this utopian dream.

Locke contends this state of nature requires constant vigilance against those who would violate this perfect freedom, and requires each man restrain the inappropriate actions of every other man.

"[A]ll men may be restrained from invading another's rights and from doing harm to one another, and [this] law of nature... which wills the peace and preservation of all mankind... is... put into every man's hands, whereby everyone has a right to punish the transgressors of that law to such a degree as may hinder its violation" (Locke, *Second Treatise of Government*).

Men Sacrifice Natural Freedom for Civil Security

Locke believes it is impossible for men to remain in a free state of nature. This natural utopia is shattered by the realization that each person cannot secure his liberty for himself and cannot punish transgressors on his own. Frightened by this realization, men enter into a binding commitment to civil society, where each submits to the will of the state and loses control over his life and his property to the needs and demands of the common good. Mankind sacrifices its freedom for the less-free majority-rule society advocated by modern political conservatives and liberals.

Most 1960s libertarians argue either one of two points. Either men remain in a state of nature free of transgressions against one another, or, in the face of transgressions, opt for a civil society with government limited to the most minimal powers necessary to prevent transgressions. These two points of view evolve into the anarchist and limited-government libertarian alternatives popular in the late 1960s.

The Emerging Hobbesian Vision of Man

In the 1990s, Locke's vision of the nature of man and the utopian state of nature, and the limited government civil society all enjoy support among libertarians, but increasing numbers of libertarians see man as more aggressive and less good natured toward his fellow man than

Locke believes. Many 1990s libertarians view man more in terms of Hobbes than Locke.

This more Hobbesian view of man surfaces in a recent FNF Forum discussion. The discussion concerns the need to regulate the activities of Free Nation-supported non-governmental charitable organizations in international affairs, to prevent those organizations from doing harm or engaging in force or fraud to further their own self-interests. As a 1960s libertarian, I see no need to regulate a Free Nation-sponsored organiza-



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tion since the organization is staffed, funded and supported by individuals who, individually, will not harm another person through force, fraud or any other means, and who, collectively, will not use their energies to engage in force or fraud. Hobbesian individuals, on the other hand, may be willing to use force or fraud to achieve personal satisfactions, and may be willing to use a charitable organization to engage in that force or fraud.

The FNF Forum participants also discuss ways to limit ownership of personal nuclear weapons within the territory of the Free Nation. Again, I see no need for such a discussion. Locke's individuals do not seek to harm others and have no need for such weapons, so the discussion is moot if Locke's view of mankind is accepted. Hobbesian individuals, on the other hand, may seek ownership of such weapons to increase their personal power

relative to other individuals, so the discussion is suddenly meaningful, assuming a Hobbesian nature of man.

By the close of the FNF Forum, I begin to question how people can both assume a Hobbesian view of man and believe in the possibility of a libertarian free society.

If 1990s libertarians take a Hobbesian view of man as selfish, self-seeking, power-seeking and willing to exploit others for his own self-interest, can this view of man be extended into either a state of nature or civil society compatible with a free society? Is it possible this more Hobbesian man can live in a free society? Locke's state of nature clearly supports the free society (while his civil society may not). Can either Hobbes' state of nature or Hobbes' civil society also support the free society?

Thomas Hobbes and the State of Nature

Thomas Hobbes, in *Leviathan*, sees man as a machine operating on the basis of cause-and-effect or stimulus-response. Man seeks to achieve a single goal—the satisfaction of human appetite. Appetite arises out of sensation as the external world presses upon human sense organs. The sights, smells, touches, and sounds of pleasurable things gives rise to appetite. Appetite gives rise to will; will precedes action.

Man acts to create and possess those things the human machine "feels" are good. Something is "good" if it satisfies appetite. Appetite is defined by each individual for himself, and the satisfaction of appetite is a personal, individual passion. Appetite is selfish, and man, striving to satisfy appetite, is also selfish. Each individual selfishly strives to satisfy his own appetite, even to the point of depriving another individual of his satisfactions. The "Right of Nature" says each man is at liberty to use his own power, as his will commands, to preserve his own life and exercise his "right to everything, even to another's body."

Each individual strives to accumulate the means to obtain satisfying, pleasurable things. These means are summarized in the term "power." Hobbes sees "a general inclination of all mankind, a perpetual and restless desire of Power after Power, that ceaseth only in Death." The quest for power is not for power for

its own sake, but for power to obtain satisfying, pleasurable things. Power is a means to obtain satisfaction.

In this selfish quest for power and quest for the creation and possession of satisfying, pleasurable things, all men are basically equal—equal in their possession of at least some power to attain success, and equal in their possession of sufficient power to deny success to others. Even those who accumulate masses of power (including those who own a personal nuclear arsenal) must compete with those who have little power and, more importantly, those with masses of power are vulnerable to those who have little power. "(T)he weakest has strength enough to kill the strongest, either through secret machinations or by the confederacy with others." Thus, the "Right of Nature" leads to a state of war in which men, equal in their ability to attain their own success and ability to deny others their success, destroy one another in their quest to attain satisfying pleasurable things for themselves.

The "State of Nature" is, therefore, a state in which all "men live without other security, than what their own strength, and their own invention shall furnish them... In such condition there is no place for Industry; because the fruit there of is uncertain... and (men live in) continual fear, and danger of violent death; and the life of man (is) solitary, poor, nasty, brutish and short."

But, Thomas Hobbes, himself, envisions man avoiding this state of natural chaos and, instead, attaining a condition of civil society. It is possible this civil society can closely resemble a libertarian free society.

Hobbes' Civil Society Resembles Locke's State of Nature

The strongest of all men's appetites is the desire for life and safety; the strongest of all men's passions is the fear of death and injury. It is this appetite, or passion, that makes man give up his power—his personal means to achieve satisfying, pleasurable things—and live peacefully with his fellow man.

"Natural Law," or "the rule of reason," arises out of the hardships man finds in the state of nature. Man sees that "power after power" threatens his own life, and sees that personal security is the prerequisite for any creation or posses-

sion of satisfying, pleasurable things. The first "Fundamental Law of Nature" is to seek peace and live in peace, but to also be prepared to defend oneself from anyone who aggresses against the peace and against those who seek peace. For Hobbes, peace and self-defense go hand-in-hand. Hobbes sees peace as the highest form of self-defense or self-preservation; defending the peace is merely defense of this highest form of self-preservation.

The second "Fundamental Law of Nature" is that every man should be willing to give as much liberty to others in their quest for satisfying, pleasurable things as he is willing to claim for himself in his own search for satisfying, pleasurable things. Man should only seek to limit the freedom of others to the extent he wants others to limit his own freedom. In no case, however, should a level of liberty be allowed that threatens the peace.

Hobbes progresses through several steps to arrive at his second law of nature. Is it possible to interpret this second law of nature to allow for the creation of a libertarian free society?

The state of nature is a contest between individuals each seeking personal satisfactions; this contest leads to a state of war. The rule of reason leads man to see this contest (and eventual war) as a threat to each individual's survival. The first law of nature is to seek peace and to live in peace. The second law of nature implies that the contest for personal satisfactions and peace are not incompatible. To continue the contest and maintain peace, all that is necessary is for each individual to give to every other individual as much freedom to wage the contest as each individual wants for himself. This also means individuals are willing to restrict the freedom of others only to the extent each individual is willing to have his own freedom restricted.

Hobbes also contends that civil society created through these two laws must have the mutual consent and the willingness of all the people included in the civil society. Mutual consent and the participation of all people is obtained by allowing as much freedom as is desired by the most freedom-loving individual, and by restricting freedom only to the extent desired by the least restricting individual. Anything other than this will fail to

achieve mutual consent and full participation of all the people included in the civil society. This agreement, or social contract, is a democratic agreement. In this agreement, individuals also establish a sovereign power to insure each individual lives up to his "covenant" to his fellow men. Assuming the individuals making the agreement are sincere, and the agreement is acceptable to all and democratically contracted, it is likely the agreement will not be violated and it is also likely there will be little need for the sovereign to legitimately exercise power over men.

It appears, therefore, the extent of freedom in any civil society is determined by the desire of the most freedom-loving person for his own freedom, and the extent of control in society is determined by the willingness of this most freedom-loving individual to submit himself to the control of others. Thus, the civil society is as libertarian and as free as the most freedom-loving of the citizens who join in the social contract to establish the civil society.

Implications for a Free Nation

Hobbesian assumptions—assumptions concerning the nature of man, the state of nature and civil society—support free society. Even if man is selfish, pleasure-seeking and willing to war with others to achieve selfish ends, a civil society composed of freedom-loving Hobbesians will be as free as the most freedom-loving among them permits, and as free as the need to preserve the peace among freedom-loving Hobbesians requires. Mankind in Hobbes' civil society may be as free as mankind in Locke's state of nature.

Based on Locke, free society is natural to man's nature; free society is lost when man deviates from his nature and transgresses upon his neighbor. Transgressions from man's free state of nature require the establishment of a less-free civil society.

Based on Hobbes, free society is a choice made by selfish people seeking to escape the war of each against all others. Once chosen, free society is lost only when the most freedom-loving person in the society chooses to relinquish freedom, or when individuals pursuing satisfying, pleasurable things threaten the peace of society. Free society is main-

tained, and an authoritarian alternative avoided, when man chooses freedom as one of his satisfying, pleasurable goals, or when man is willing to temper appetite with self control.

It is possible, therefore, to accept either Locke's or Hobbes' view of the nature of man, and use either view to claim a free society can exist within a Free Nation. This has important implications for broadening the appeal of the Free Nation concept, to include those who accept either Locke's or Hobbes' view of the nature of man.△

Gordon Neal Diem recalls more than 30 years of philosophical debates beginning when he first became active in the libertarian movement in 1965. He also believes writing in the present tense adds impact and immediacy.

Foundation News Notes

(Continued from page 9)

- FNF Director Roderick Long spent 16-19 January in Palo Alto, California, at a conference hosted by the Institute for Civil Society, an organization recently started by Walter Grinder to complement the work of the Institute for Humane Studies. The interdisciplinary conference brought in libertarian academics from around the world to offer advice and criticism on papers presented by libertarian graduate students. In addition to Dr. Long, the roster of libertarian faculty included Daniel Klein, Chandran Kukathas, and Jeremy Shearmur.
- FNF President Richard Hammer will attend the Austrian Scholars Conference, 3-4 April 1998, at Auburn University, sponsored by the Ludwig von Mises Institute.
- The FNF office now has a scale for weighing postage. The rebuilt digital, electronic scale was donated by FNF Member Ted Elkins, of Decatur, Georgia. Ted and Rich Hammer both grew up near Canandaigua, New York. Both played euchre and hunted woodchucks with high powered rifles in their spare time. They met by chance in 1967—in ChaRang Valley, Vietnam—and have been friends since. For more than twenty years Ted has worked as a technician for Fairbanks Scales Co.△

A Note to Readers about Renewal Notices

Please do not wait to receive more than one renewal notice, at the end of your subscription or Membership in FNF.

Given the small scale of our operation, Rich Hammer still produces renewal notices by hand—one at a time. He tries to make sure that at least one notice is sent, but does not always pursue renewals beyond one notice.△

Reply to Phil Jacobson on the Inevitability of the State

by Roderick T. Long

In his "Reply to Roderick Long's 'Was the State Inevitable?',"¹ Phil Jacobson corrects my interpretation of his position on the origin of the state. I had interpreted Phil to mean that food shortages in preindustrial society made it impossible for everyone to survive even if they cooperated peacefully, thus making the economy a zero-sum game and so explaining why our ancestors adopted the predatory practices that led to the formation of the state. Phil says in response that he does not regard the primitive economy as having been zero-sum across the board; it was only food shortages, not shortages of resources in general, that were the problem. I'm not sure that contradicts anything I said, however. If a resource crucial to one's survival is in short supply, then one faces a shortage of resources, regardless of how plentiful other resources may be.

I had said that, as I interpreted Phil, the shortage of resources caused "exploitation [to] be seen as a more attractive mode of interaction than cooperation." Phil replies:

"This is not about exploitation, which is a by-product of the real problem. It is about surviving. As several generations of individuals grew up believing that famine could strike with little warning, they learned that survival required military institutions which would be ready to protect or steal food."

In other words, because there would often not be enough food for everybody, reliance on voluntary trade would be insufficient to meet their needs (no amount of gold will buy a sane person's only food supply), and so they would be motivated to resort to theft (exploitation) instead. Again, isn't that what I had said?

In response to my summarizing Phil's view as "the absence of industrialization is what maintained the power of the state," Phil responds:

"It was not the absence of industrialization—but the citizens' fear of death."

This response puzzles me, since my understanding of Phil's position is that it is the Industrial Revolution which has ended the problem of famine and finally ensured that there is enough for everyone. So if food shortages are what created and maintained the state, and food shortages depend on the absence of industrialization, how is it a mischaracterization of Phil's view to say that the state owed its existence to the absence of industrialization?

Or perhaps by "fear of death" Phil means, not fear of death by starvation because of food shortages, but fear of death by violence because of the state authorities. This does seem to be what he means a little later on, when he says:

"Only ... the fear of death motivates the bulk of a statist society's citizens (and serfs, and slaves) to cooperate with the exploitive institution known as the state."

So perhaps Phil is saying that although food shortages are what create the state, once the state exists it maintains itself through sheer force, regardless of whether the food shortages continue or not. But can a state really maintain itself by force alone? As Étienne de la Boétie points out in his *Discourse on Voluntary Servitude*, those in political power rarely wield sufficient might to compel obedience without significant *voluntary* support for the regime on the part of the ruled.

But Phil may disagree. In response to my remark that "our ancestors certainly had the conceptual resources to realize that their experiment with statism was not going to benefit them," Phil replies:

"The state was not an experiment. (It is interesting that this is as close as Roderick gets to offering an alternative explanation of the origin of the state.) I see no evidence suggesting that an ancient constitutional convention established the first state as a contract between free individuals. The state was formed when bands of conquering warriors found it more expedient to treat the conquered as cattle than to

simply kill them and/or steal from them. This was a major conceptual breakthrough for these warriors. The conceptual resources of the conquered were limited to accepting this situation as preferable to death."

I certainly was not suggesting that ancient states originated in social contracts. As theories of state origins go, Phil's conquest theory seems as plausible as any. (Though I should add that I doubt that there is any *one* way that *all* states originated. In particular, I suspect that many communities that were *not* conquered by external forces became states because the *internal* warrior groups on which they relied for protection were able to translate their crucial status into political power.² This seems to be how King Aelfred of England came to power, for example.)

But as I have written elsewhere:

"Statist régimes exist because people want them. This is not to say that such régimes arise, and maintain themselves in existence, solely through the deliberate choices of individuals. On the contrary, the growth of government is often a spontaneous and quite unintended side effect of human actions pursuing quite different goals. Nevertheless, if the result were entirely unwelcome I do not think it would long survive."³

Perhaps in the cases Phil is describing, the invading raiders are powerful enough to subdue the population by sheer force. In most states, however, the rulers are a small minority compared to the ruled, and so the rulers are maintained in power not by force but by the belief on the part of the populace that the rulers' position is justified or necessary or useful. So even if force creates states, it is not force that maintains them, but, as La Boétie observed, a combination of ideology and self-interested rent-seeking on the part of the ruled. And so my point remains the same: the state survived because the ruled accepted ideologies that were false and self-interested strategies that were mistaken (since, as in any pyramid scheme, the gains from rent-seeking greatly diminish as one heads down the ladder of status; the poor who received bread and circuses under the

Roman regime were not better off economically than they would have been in the absence of that regime). And if, as I argued, it was not inevitable that they should make these intellectual mistakes (despite being all too likely, given the frailties of human nature), then the state was not inevitable either.

I had argued that our ancestors had the conceptual resources to prefer cooperation to exploitation even in the face of food shortages, and had cited various anti-exploitation religions such as Buddhism, Christianity, Taoism, and Stoicism. Phil responds:

"It is useful for most states that a part (often the majority) of the subject population be non-military producers, who pay their taxes but who never participate in or train for violent activity. Many ancient (and modern) philosophies provided handy belief systems for such people and were (and are) quite useful to the state."

I am not sure exactly what Phil is claiming here. Is he saying that these religions were actually invented as propaganda by the state, or only that, once they emerged, the state co-opted them because of their usefulness in keeping the population docile?

If Phil is making the first claim, that these religions were founded with deliberate propagandistic intent, I must say I find that claim fantastically implausible, and wonder what evidence Phil is relying on. And I think that, absent specific evidence to the contrary, there is a general presumption in favor of taking seriously, as sincerely intended, the posi-

tions and arguments defended by ancient thinkers, simply because there is a kind of pragmatic incoherence in taking a different interpretive attitude toward the texts one is analyzing than the attitude one expects one's colleagues to take toward one's own work.

If Phil is making only the second claim, that these anti-exploitation religions, however sincere the intentions of their founders, became useful for governments to co-opt, I remain skeptical. It is certainly true that when one of these religions emerges, the state rushes to co-opt it. But is that because the anti-exploitation aspect of the religion is so *useful* to the state that the state is eager to propagate it? Or is it instead because the anti-exploitation aspect is so *dangerous* to the state that the state is desperate to tame and defang it? The latter seems much more likely. For one thing, once the state succeeds in co-opting one of these religions, the religion always ends up toning down and diluting the pacifistic implications of its doctrines, rather than strengthening and emphasizing them.

In closing, I want to make sure to avoid leaving the impression that my carping and kvetching in response to Phil represents an unfavorable assessment of his work. Let me emphasize that I think Phil Jacobson's series of articles on the nature and formation of power elites represents some of the most important work being done in libertarian social theory today, and has profoundly shaped my thinking about these matters. In some sense I could even call myself a Jacobsonian ... just a heretical one!△

¹*Formulations*, Vol. V, No. 1 (Autumn 1997). My original article appeared in *Formulations*, Vol. IV, No. 4 (Summer 1997).

²Franz Oppenheimer, the most prominent defender of the conquest theory, writes:

"The State ... is a social institution, forced by a victorious group of men on a defeated group, with the sole purpose of regulating the dominion of the victorious group over the vanquished, and securing itself against revolt from within and attacks from abroad. Teleologically, this dominion had no other purpose than the economic exploitation of the vanquished by the victors. No primitive State known to history originated in any other manner." (Franz Oppenheimer, *The State*, trans. John Gitterman (San Francisco: Fox & Wilkes, 1997), p. 9.)

But having said this, Oppenheimer immediately goes on to qualify it:

"[Sometimes] a reliable tradition reports otherwise, [but in such cases] it is an adaptation to men of the fable of the sheep which made a bear their king in order to be protected against the wolf. But even in this latter case, the form and content of the State became precisely the same as in those States where nothing intervened, and which became immediately 'wolf states.'"

In other words, Oppenheimer is granting an exception to the conquest theory of the state: Sometimes, rather than being conquered from without, a community will voluntarily accept an authority who promises to be a kinder master than those outsiders and to protect the community from them. (Oppenheimer suggests this isn't a real exception to his theory, because the *result* is the same; but that is surely a non sequitur.)

³"The Return of Leviathan: Can We Prevent It?," *Formulations*, Vol. III, No. 3 (Spring 1996).

The Definition of "Property" and "Property Rights" in a Free Nation

by Gordon Neal Diem, D.A.

What is "property" and how does property come into existence? One of the few political philosophers to describe the origin of "property" and "property rights" is Ludwig von Mises. In *Omnipotent Government*, von Mises says:

"(P)roperty...can be traced back to a point where somebody either appropriated ownerless goods or land or violently expropriated a predecessor whose title had been based on appropriation. To law and legality no other origin can be ascribed. It would be contradictory or nonsensical to assume a 'legitimate' beginning. The factual state of affairs became a legitimate one by its acknowledgment by other people. Lawfulness consists in the general acceptance of the rule that no further arbitrary appropriations or violent expropriations shall be tolerated. For the sake of peace, security, and progress, it is agreed that in the future every change of property shall be the outcome of voluntary exchange by the parties directly concerned.

This, of course, involves the recognition of the appropriations and expropriations effected in the past. It means a declaration that the present state of distribution, although arbitrarily established, must be respected as a legal one. There is no alternative. To attempt to establish a fair order through the expropriation of all owners and an entirely new distribution would have resulted in endless wars.

Within the framework of a market society the fact that legal formalism can trace back every title either to arbitrary appropriation or to violent expropriation has lost its significance. Ownership in the market society is no longer linked up with the remote origin of private property. Those events in a far-distant past, hidden in the darkness of primitive mankind's history, are no longer of any concern for present life."

Von Mises is writing in the absence of any knowledge that future generations

may attempt to establish a new nation from a state of nature—or from a state of relative nothingness in the middle of the ocean—and may, in fact, need to originate a definition of property and a definition of property rights for this new nation. But, his brief discussion of the origins of property does suggest a course of action to be taken by a new nation.

Von Mises implies that land and raw materials exist in nature, pre-date claims of individual ownership and are originally "free goods." Natural, social, and physical laws also exist in a state of nature and are "free goods" which pre-date human discovery and claims to individual ownership. It is the claim of individual ownership that appropriates these free goods from nature and transforms these free goods into "private property." The "right to private property," or "ownership," is a claim by a person or persons to exclusive utilization, consumption, or transfer of some category of goods. "Utilization" is the use of a good without erosion in the quantity or quality of the good. "Consumption" is the use of a good with a subsequent erosion in the quantity or quality of the good. "Transfer" is simply the reassignment of ownership from one individual to another.

Proposal to Establish Two Categories of Property: "Social Property" and "Private Property"

In the new Free Nation, pre-existing free goods should remain free goods, free of appropriation by individuals as private property, and should become "social property." Social property is owned collectively, not individually. As social property, these free goods remain available for all citizens of the free nation to utilize, but not necessarily consume. Utilization rights should be unencumbered, but consumption should be regulated by some group consensus concerning equitable and fair use.

Maintaining free goods as social property provides two benefits. First, free societies rapidly become unfree as power politics and the use of force are initiated to insure the "fair and equitable" distribution of land, raw materials, and intellectual goods. The question of fair and equitable distribution becomes moot when all pre-existing free goods are owned in common by all citizens and are

available for utilization (although not consumption) by all citizens. Individuals consuming free goods (reducing the quality or quantity of the goods) should compensate all other citizens, both living and yet unborn, for that consumption. Thus consumption by one becomes consumption by all, and fairness and equity is maintained.

Consumption of all social property is held to the standard of "usufruct," the legal right to use another's property and enjoy the advantages of it without injuring or destroying it. In their use of social property, Free Nation citizens should constantly remind themselves of the words of Nineteenth Century conservationist George Perkins Marsh.

"Man has too long forgotten the earth was given to him for usufruct alone, not for consumption, still less for profligate waste."²

The second benefit of social property is increased production. Society's efforts to create personal property, constructions upon the land, and mixed goods (see definitions below) are often stymied by private property claims to the pre-existing free goods necessary in the production efforts. Of special concern are private "deeds" to land and "copyrights" on pre-existing social and physical natural laws. The production of private property is maximized in the free nation by insuring all free goods are available to all potential producers. (There is a question of rival claims to the free goods which is beyond the scope of this paper, although standards such as "first in use" are available to resolve claims issues.)

In addition to free goods, which remain social property, there are abundant other categories of goods which are available to become private property. "Goods" fall into four general categories.

Four Categories of Goods

The first category of goods is real estate, including land, raw materials in the land, and human constructions on the land. Land and raw materials are finite, are the creation of God, pre-date human claims to ownership, have a past history as free goods, and are the possession of all mankind. These goods are both utilized and consumed. Once consumed, they are gone forever and are lost to future generations who have a legitimate

claim to the goods by virtue of their humanity. Individual claims to ownership of land and raw materials are not appropriate and should be preempted by social claims to ownership. Human constructions on the land are clearly the creation of man and have no history as free goods, therefore, individual claims to ownership of human constructions—homes, factories, highways—are appropriate. Human constructions are private property, but land and raw materials are social property.

The second category of goods is personal property, including tangible goods utilized or consumed to fulfill human needs and wants. These goods do not exist in nature, do not pre-date human claims to ownership, have no past history as free goods, and are the creation of man, not of God. This category of goods is both utilized and consumed, but, unlike land and raw materials, personal property can be replaced. Personal property is private property.

The third category of goods are intellectual goods, including non-tangible goods and ideas utilized to fulfill human needs and wants. Intellectual goods include talents, skills, inventions, discoveries, ideas, art, literature, and knowledge. Intellectual goods are utilized, but never consumed. To the extent intellectual goods are claimed from nature (e.g. discovery of a natural law), intellectual goods should be social property. To the extent intellectual goods are a unique attribute of an individual (e.g. musical talent), intellectual property should be private property.

The fourth and final category of goods is capital goods, including tangible goods utilized or consumed to produce personal property or place human constructions on the land. Capital goods do not exist in nature, do not pre-date human claims to ownership, have no past history as free goods, and are the creation of man, not of God. These goods are utilized, consumed, and replaced. These goods are, therefore, private property.

Property Claims Are Based on the Nature of the Goods

Within these four general categories of goods, goods are sub-divided into "man-created goods," "pre-existing goods," and "mixed goods." Man-created

goods are molded by the hand or mind of man. Pre-existing goods exist in nature, pre-date human claims, and have a past history as free goods. Man-created goods are appropriately private property. Pre-existing goods are appropriately social property.

Mixed goods are the result of the combination of pre-existing free goods with the exertion of the human hand and mind. Mixed goods pose the greatest challenge to claims of ownership. Mixed goods are social property in proportion to the amount of free goods used in creating the mixed goods; conversely, they are private property in proportion to the amount of human exertion and creativity involved in the creation of the goods. The human exertion and creativity is the basis for the private property claim. Disagreements concerning the proportion of goods in the mix is resolved by popular consensus, reinforced by a civil court jury system. Disagreements concerning the proportion of free goods in the mix are potentially very important because the proportion of free goods determines the extent to which the mixed goods are available for free utilization by all citizens, and, conversely, the extent to which individuals can claim private property rights, thus limiting the utilization to only those citizens who, for example, pay a fee or offer goods in barter

Mixed goods include "discoveries" and "inventions." Discoveries are the human recognition of the value and usefulness of land, raw materials and intellectual goods that exist as free goods. Individual ownership claims to these goods are minimal. Most discoveries should be considered social property and should be available to all individuals to use. Inventions are largely human creations in which considerable human exertion and creativity is applied to some small amount of pre-existing goods (e.g. raw materials). Most inventions should be considered private property and individual claims to exclusive utilization, consumption, and transfer of the property should be enforced.

The Unique Problem of Extraction Industries

Critics of the above proposal may question how extraction industries can exist in a system in which raw materials

are recognized as social goods. First, potential producers of personal goods, capital goods or constructions on the land engage in extraction activities to support their production activities. Extraction activities do not exist independent of goods-production activities. Second, extractors pay the citizenry for the right to extract (the payment mechanism to be worked out later), so all citizens benefit from extraction activities and encourage those activities deemed beneficial. Third, the extractor owns that portion of the raw materials to which he continues to exert his labor, but abandoned or unharvested materials remain social property available for claim or gleaning by other producers. Thus there is no waste of natural resources in the system. Fourth, knowledge of mining and other extraction methods is derived from natural laws, thus this knowledge cannot be denied to any potential extractor by copyright, although capital tools used in the extraction process can be patented.

Property in a Free Nation

Many of the social, political, and economic problems facing contemporary nations are resolved in the Free Nation by disallowing any appropriation of pre-existing free goods from the state of nature; these goods remain the social property of all citizens. Private property rights emerge as individuals exert themselves to create constructions on the land, personal property, capital goods and mixed goods. Private property is property created by man, not God or nature. Conflict concerning the proportion of free goods in any mixed goods are resolved by consensus or by the civil court.

The above arrangement should maximize the availability of free goods in production, should secure the rights of private property to those who produce such property, should insure the full and equitable distribution of access to goods and the opportunity to produce to all citizens, and should insure prosperity for the Free Nation.△

¹Ludwig von Mises, Ludwig. *Omnipotent Government: The rise of the total state and total war*. Arlington House, 1969. pp. 136-137.

²George Perkins Marsh. *Man and Nature*. Charles Scribners Sons, 1864, p. 138 quoted in Jeffrey Brown, ed. *Sustaining the Future*. Global Learning, 1995.

Theory for Libertarianism

(Continued from page 24)

Example

Recall the reply which we libertarians often give to anyone who, hoping to rectify discrimination in employment, argues for state-forced affirmative action. We say that if discrimination exists then that discrimination creates an opportunity for an entrepreneur. If some employers are prejudiced, and if thereby some adequately-qualified minority workers are denied employment at wages which are enjoyed by majority workers, then this describes a business opportunity.

An entrepreneur could take customers away from the prejudiced employers by hiring minority workers, at the lower rates for which they can be hired, and offering, to those customers of the prejudiced employers, the same service for a lower price. If free markets are allowed thus to work, the prejudiced employers will soon lose customers; the majority workers who enjoyed high wages will soon be out of work; and the now-in-demand minority workers will soon be able to bargain for higher wages.

And, as we libertarians must sometimes point out to statisticians, wherever unfair discrimination in employment has existed for any length of time, almost certainly this has been caused by something which the state has done in the past; wherever unfair discrimination persists the majority, having the power of the state in their hands, have almost certainly done something with that power to give themselves an advantage.

The solution, which we libertarians advocate to this sort of state-powered discrimination, is not to create a new abuse-inviting apparatus of state power, in affirmative action, but to find and repeal the prior acts of state which sustained the discrimination in the first place. Arguing thus, we libertarians demonstrate that we believe that the need for fair compensation in employment can be fulfilled by free markets (by voluntary means).

Extension and Limitation

Assuming that you accept this line of reasoning, I hope that you will join me in seeing that it can be generalized: a parallel line of reasoning can be applied to every other human need, including for instance the needs for food, safety, law, and tooth brushes. For every human need, which will cause statisticians to call for an act of state, we libertarians can know that the very existence of the need describes an opportunity for an entrepreneur.

But notice that this reasoning does not apply to two classes of needs, which we generally do not expect to be fulfilled anyhow. First, it does not apply to trifling needs. Sometimes, for instance, my nose itches. But if even I am too lazy to lift my hand to scratch it, probably I cannot expect the free market to help me either. And second, it does not apply to those needs, such as a cure for cancer, for which no practical means to fulfill the need exist at present.

Furthermore, notice that we would not claim that every need is fulfilled perfectly, by voluntary means, but only that it can be fulfilled satisfactorily. Indeed it is the small and continuously appearing imperfections which drive entrepreneurs to provide the solution in which we trust.

Here I need to add just a few points. Notice that impetus to act, to fulfill any need, falls to the individual who feels that need. This follows from the definitions. Recall that this does not mean "rugged individualism," but includes all cases of compassion, charity, obligation, and contract, in which individuals can be expected to feel that they need to do things for the good of others.

This is the engine that we can trust to drive the sort of society in which I would like to live. People experience their own needs, and act to satisfy their own needs, either directly or cooperatively, through any channels of trade which might exist. Every human need will find satisfactory fulfillment through voluntary means. We do not need to turn to collective coercion, for anything.

Agendas Are Packed Into Definitions *a reflection upon the use of words*

If I have a new thought, I should not expect to find terms in the existing language ready tailored to convey my thought.

You may notice that the definitions which I provide in this paper seem stilted. Yes. I take words which have many possible meanings in common usage, and restrict those words, for my purpose here, to a tight and unusual meaning. I believe my usage is correct, insofar as the meanings which I intend can be found among the many possible meanings of these terms in common usage. But my usage is also controversial, in that I ask the reader to ignore, to reject for this purpose, all the other possible meanings in common usage.

I suspect that such twisting and strain upon the meanings of words is inevitable. I believe that words in natural language work because they are fuzzy, because they remain ambiguous even while they suggest a concept. Often our attempts to persuade involve attempts such as mine: to advance a particular meaning, from a realm in which it had been marginally permissible, into central focus.

I doubt however that libertarians will be troubled by any controversy caused by my definitions. I expect that libertarians will agree with my objective, with the end toward which I push. So libertarians will humor me and adopt, for this purpose, the definitions which I give.

But disagreement will spring forth immediately, I suspect, for any statisticians who might read my definitions. This would occur because my agenda shows itself in my definitions. The only reason why a person would suggest such stilted definitions is because that person must be trying to get to a conclusion, such as my primary statement, which statisticians, from their vantage, must reject as soon as possible—even while terms are being defined.

You might also agree with me that my three statements (primary, converse, and derivative) seem to fall into place once the definitions are accepted. Someone who accepts my definitions will probably readily accept the statements. The definitions seem to contain the meat.

CONVERSE STATEMENT

*Every regular evil is caused
by the state.*

This, if you can accept one more of my definitions, you will see follows directly from the primary statement.

Definition

regular evil: a human need which is not satisfactorily fulfilled through voluntary means. An evil, to be included in my meaning here of "regular evil" must be eradicable by practical methods. This means that the evil must be persistent or predictable (so that entrepreneurs could plan to profit by fulfilling the need implied by the evil). It also means the evil must be non-trivial (big enough to induce someone to act).

As such, regular evils include the obvious: war, genocide, unfair discrimination, urban blight, gang warfare. But regular evils also include some not-so-obvious: slavery (held in place by the police power of the state, which has fallen into the service of slave-owning businesses), famine (of the only sort that exists now on Earth, where some government has blocked the flow of food from those billions of Earth's citizens who hunger to feed the hungry), pollution (wherever it is truly noxious), persistent poverty.³

I regularly refer to the principles expressed by these statements, especially when I find myself challenged with a new demand that government must do this or that. If a statist asserts that a need is going unmet, first I examine the need. Does it satisfy my definition of need? Or is it really a deception, an agenda which person A has for person B? If it does pass my test, as a real need, then I ask why entrepreneurs are not moving to fill this need.

In some cases I find it helpful to imagine myself to be that entrepreneur. I ask, if I attempted to start that business, what would I encounter? Regularly, in every case, I can find something government has done to block or impede the formation of this business.

DERIVATIVE STATEMENT

*Every call for an act of state
—assuming it responds to a human
need not satisfactorily fulfilled by
voluntary means—
stands upon a prior act of state.*

Of the many conclusions which can follow from the above, here is a statement that, although outside FNF's usual scope, may be useful to readers who participate in public-policy debate within their majority-rule democracy:

This follows from the primary statement, in that only an act of state could prevent voluntary means from satisfactorily fulfilling a human need.

With this understanding I would suggest the following way to respond to any call for an act of state:

first, acknowledge the human need not satisfactorily fulfilled which has led to the call;

second, find the most obvious act of state which blocks fulfillment of this need by voluntary means;

third, call for repeal of that act.

You probably will not get far, not in the process of public policy within a majority-rule democracy.⁴ But, after you test the hardness of this brick wall with your head, I hope you will feel better about renewing your support for FNF.

We Can Use This

This theory, I contend, gives us libertarians a tool. Let me give an analogy:

Consider the condition of human tribes before they discovered how to use fire. While they no doubt feared fire, they may also have appreciated it. At least they may have enjoyed the barbecued flavor given to game caught in a fire. So sometimes these early humans may have said, "Gee. Wouldn't it be nice if another fire comes this way."

But if I were there I would have been saying, "Look, we do not need to wait for fire. We can make it."

I have the impression that many people who want more liberty talk about liberty as something that happens to them. Like the weather, they just hope it will be good, and wring their hands in despair when it is bad. While I think this attitude is perfectly reasonable, given history to date, I think we stand now at a threshold.

It is possible, I contend, for us who want liberty to create a new nation, with substantially more freedoms than now exist in any present nation. If we believe that liberty works, we do not need to wait till we have convinced 50% of our neighbors to believe it too. We can leave our neighbors, along with their beliefs, in peace, and proceed directly to our goal.

Lastly, note that the primary statement, given here, is positive. Most descriptions of libertarian philosophy are negative, in that they tell what we insist other people must not do. Most descriptions of libertarian philosophy describe a pestilence which we wish would go away. But, I believe, the primary statement describes a tool, capable of fighting pestilence, which lies in our hands.△

³These examples, of evils which can be blamed upon the state, I draw from a longer list, of about 130 evils, which I have compiled in the draft of a book tentatively titled *Gifts From Government*.

⁴I believe this follows from Public Choice economics. See, for instance: James M. Buchanan and Gordon Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* 1965.

Note: I owe thanks to Roy Halliday and Gordon Diem who, by commenting upon drafts, have improved this paper.

A Theory for Libertarianism

by Richard O. Hammer

Introduction

We libertarians find ourselves in agreement on many issues in public policy. We share an attitude. In almost every case we would shrink the state rather than expand it. But we divide when we are asked to explain why we would do this. We do not share a theory which explains our positions.¹

During the past few years I have been piecing together a theory which seems, to me, to explain libertarian positions. I have sketched this several times in my FNF writings.² But recently, prompted by Bobby Emory who has said we need a "unified field theory" of libertarianism, I have worked more on it, and packed it into one simple "primary statement" which you will see below.

After telling the primary statement, I give extended definitions of the terms used—since the statement must be understood as limited by those definitions. In the remaining discussion I give two additional statements, which follow from the primary statement. I hope readers will find these either entertaining or useful.

In this article I will tell the theory as I now see it. But I am not satisfied that I have completed this. So I will welcome receiving comments from any readers who have criticism or help.

Assuming my readers to be well-read libertarians, you might see nothing new here, in either my statements or elaborations. You may see that I do little more than say, in a different way perhaps, what we libertarians typically believe: that free markets work. Yet I continue thinking that I have failed as yet to communicate something important; I believe that we libertarians have a power which most of us have not yet perceived. I hope that the theory, as I argue it here, will help illuminate that power. In the concluding section "We Can Use This" I develop this point further.

PRIMARY STATEMENT

Every human need can find satisfactory fulfillment through voluntary means.

We often find that statements such as this, when boiled down to just a few words, cannot be understood until they have been explained. So I will elaborate upon the narrower-than-usual meanings which I intend for the terms "need" and "satisfactory fulfillment." My usage here differs somewhat from common usage, and differs significantly from what will be assumed by non-libertarians. But since I assume my readers to be favorably predisposed, I expect you will see that the primary statement follows from the definitions, and demands hardly any additional reasoning for its proof.

Definition

human need: anything needed or desired by an individual human. It would be impossible to give a complete list of needs; there are too many. But, for starters, needs include such things as: safety, food, clothing, shelter, love, education.

Notice that I include protection, from aggression or fraud, among needs. As such these needs include negative rights.

But, for this theory, I must exclude two meanings of the word "need" which are in common usage. First, I exclude any notion of a collective need. If, for example, most people in a city need food, then I would not say "the city needs food."

Second, I exclude projection, in which one person purports to speak for another. For instance, George might say to Sally, "You need to lose weight." Or he might say of the people in Calcutta, "They need to learn hygiene." But if Sally, as evidenced by the choices which she

makes, shows no evidence that she feels the "need" mentioned by George, then I would exclude George's usage. Likewise with the people in Calcutta.

Now in my theory there is a way for George to express his feelings, but he must own his feelings and not project them onto others. He might say, "Sally, I need you to lose weight." Or he might say, "I need to feel good about myself, and I would feel good about myself if I could somehow participate in encouraging the people of Calcutta to practice more hygiene, and thereby live longer and healthier lives."

Definition

satisfactory fulfillment: the best result that can be expected, given current constraints.

Definition

voluntary means: any act which does not, or set of acts which do not, initiate use of coercion. We libertarians seem to have an instinctive grasp of this meaning, so there is no need to belabor it.

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¹John Gray corroborates this view that we lack a theory. In the preface to his *Liberalisms: Essays in Political Philosophy* (Routledge, 1989), he says, "The upshot of the arguments developed in these essays is that the political morality that is constitutive of liberalism cannot be given any statement that is determinate or coherent and it has no claim on reason."

²For instance, see: FNF Working Paper "Win-Win Society Is Possible," 1994 (this paper can be found online at the FNF web site); "Might Makes Right: An Observation and a Tool," *Formulations*, Vol. III, No. 1 (Autumn 1995); and "Nineteen Propositions About Property," in this issue.