I Must Speak Out

I Must Speak Out

The Best of *The Voluntaryist* 1982–1999

Selected and edited by
Carl Watner

Fox & Wilkes
San Francisco

Published in 1999 by Fox & Wilkes
938 Howard Street, Ste. 202
San Francisco, CA 94103

ISBN 0-930073-33-9 (pb)
ISBN 0-930073-34-7 (hc)

Printed in the U.S.A.

VERITAS NUMQUAM PERIT.
Truth never dies.

Dedicated to:

Julie
William
Tucker
Callia
Anya

Contents

(articles are by Carl Watner unless otherwise attributed)

Why I Write and Publish *The Voluntaryist*

by Carl Watner
(from No. 93, August 1998)

As I compose this article, I have only a few more issues of *The Voluntaryist* to write and publish before I reach No. 100. Once completed, that effort will have spanned nearly seventeen years of my life. During that time I have been imprisoned for forty days on a federal civil contempt charge (1982); married Julie (1986); witnessed the homebirths of our four children; operated two businesses here in South Carolina (one of them a feed mill I have been running since my marriage; the other, a retail tire store and service center I took over in early 1997); have been responsible for the building of our family's house; and participate in the homeschooling of all our children. Although *The Voluntaryist* has been an important and constant part of my life all this time, the first article that I wrote and published preceded *The Voluntaryist* by nearly a decade. It was "Lysander Spooner: Libertarian Pioneer" and appeared in *Reason* Magazine in March 1973.

As I reflect upon my writing career, I recall one of my very first self-published monographs—*Towards a Theory of Proprietary Justice*. In it there was a piece titled "Let It Not Be Said That I Did Not Speak Out!" There is obviously something in my mental-spiritual-physical constitution that needs a publishing outlet. It is important to me to set forth my ideas, especially when they are so very different from the vast majority of people that I associate with most of the time. If everyone seems to be heading toward a precipice, they need to be warned. If I am pushed and shoved along with them, even if I am powerless to stop the crowd, it is important to me and my integrity that some record be left of my resistance and of my recognition that we are headed toward danger. "Let It Not Be Said That I Did Not Speak Out!" was published in 1976, and appears now in the pages of *The Voluntaryist* for the first time:

> When the individuals living under the jurisdiction of the United States Government awake to political reality, they are going to find themselves living in government bondage. Every act of government brings us closer to this reality. The only logical future is to expect life in a socialized state. Henceforth, to be a citizen will mean to be a slave.
>
> To speak the truth without fear is the only resistance I am bound to display. To disseminate without reserve all the principles with which I am acquainted and to do so on every occasion with the most persevering constancy, so that my acquiescence to injustice will not be assumed, is my self-assumed obligation.
>
> The honest among us realize that the resort to coercion is a tacit confession of imbecility. If he who employs force against me could mold me to his purposes by argument, no doubt he would.
>
> The alternative is then simply living by the libertarian principle that no person or group of people is entitled to resort to violence or its

> threat in order to achieve their ends. This means that everyone, regardless of their position in the world, who is desirous of implementing their ideas, must rely solely on voluntary persuasion and not on force or its threat.
>
> Individuals make the world go round; individuals and only individuals exist. No man has any duty towards his fellow men except to refrain from the initiation of violence. Nothing is due a man in strict justice but what is his own. To live honestly is to hurt no one and to give to every one his due.
>
> … Justice will not come to reign unless those who care for its coming are prepared to insist upon its value and have the courage to speak out against what they know to be wrong.
>
> Let it not be said that I did not speak out against tyranny.

As much as any other piece I have ever written, it probably best explains why I have devoted so much time to *The Voluntaryist* over the years. There is an episode in Ayn Rand's *Anthem* in which the protagonist, Equality 7-2521, discovers a room full of books, someone's personal library, that had escaped the book burning that undoubtedly had accompanied the creation of the collectivist holocaust in which he lived. It was among those books that he rediscovered the word "I" which had disappeared from the current lexicon. My hope is that *The Voluntaryist* message—that a nonviolent and stateless society is both moral and practical—will survive, just like the books that Equality found. Hopefully, if someone in the future finds copies of *The Voluntaryist* newsletter or this anthology, they will help to rekindle, rediscover, or elaborate the ideal of a totally free-market society. One doesn't need to be a pessimist to see that those ideas might one day disappear. Even in our own time, only a small part of the population embraces libertarian ideas; and only a small number of libertarians would consider themselves voluntaryists—people who reject voting and the legitimacy of the State. Even the individualism of several centuries of American history is in danger of being obliterated by State propaganda. With luck, *The Voluntaryist* will play some small part in preserving a record of those times in history when men were free to act without State interference, and were self-confident enough to know that the State possesses no magical powers.

May knowledge and wisdom come to those who read *The Voluntaryist*. Long live voluntaryist ideas.

More information and a complete table of contents of *The Voluntaryist*, issues 1–100, are available from The Voluntaryist, P.O. Box 1275, Gramling, SC 29348. V

Part I
Statement of Purpose

The Voluntaryists are advocates of non-political strategies to achieve a free society. We reject electoral politics, in theory and in practice, as incompatible with libertarian principles. Governments must cloak their actions in an aura of moral legitimacy in order to sustain their power, and political methods invariably strengthen that legitimacy. Voluntaryists seek instead to delegitimize the State through education, and we advocate withdrawal of the cooperation and tacit consent on which State power ultimately depends.

"The only real revolution is in the enlightenment of the mind and the improvement of character, the only real emancipation is individual, and the only real revolutionists are philosophers and saints."

—Will and Ariel Durant,
The Lessons of History (1968), p. 72.

What We Are For? — What Do We Believe?

by Carl Watner
(from No. 29, December 1987)

PAST EDITORIALS and articles have made it clear that *The Voluntaryist* is unique in that it is the only regularly published libertarian publication to advocate non-State, pro-free market attitudes coupled with an anti-electoral stance and a predilection for non-violent means. In fact, we could probably argue that *The Voluntaryist* is the only journal in the world that consistently upholds individualist anarchism (by which we mean self-government), rejection of electoral politics, and the advocacy of non-violent means to achieve social change. This after all is what we signify when we use the term 'voluntaryist'.

The Voluntaryist is seldom, if ever, concerned with personalities, but we are concerned with ideas. Our interest is in the enduring aspects of libertarianism. Among these ideas we would include the concept that taxation is theft; that the State is an inherently invasive institution, a coercive monopoly; that war is the health of the State; that power corrupts (especially State power); that there is no service demanded on the free market that cannot be provided by market methods; and that the delineation and implementation of property rights are the solution to many of our social and economic ills. Not to be overlooked is our insistence on the congruence of means and ends; that it is means which determine ends, and not the end which justifies the means.

Voluntaryist thinking forms a link in the chain of ideas started many centuries ago. We have reviewed some of the significant sources of radical libertarian thought in Issue 25. Our roots are to be found in antiquity, when moral thinkers realized that character building, the building of morally strong individuals, was the essential basis of human happiness — as well as the prerequisite of a better society. Self-responsibility was inextricably linked to self-control. The ideas of personal integrity, honesty, productive work, fulfillment of one's promises and the practice of non-retaliation set the stage for social harmony and abundance, wherever and whenever these two attributes of social life were to surface in the world's civilizations.

These ideas helped set the stage for the voluntaryist outlook on means and ends. A person could never use evil means to attain good ends. For one thing, such an attempt would never work. It would be impractical and self-defeating. For another thing, it would be inconsistent with personal integrity. A person would not resort to lying and cheating, for example, even if he or she mistakenly thought such base means could result in good ends. Evil means, like these, would always be rejected by an honest person.

Impure means must lead to an impure end since means always come before ends. The means are at hand, closest to us. They dictate what road we shall set out on and thus eventually determine our destination. Different means must inevita-

bly lead to different destinations for the simple reason that they lead us down different paths. Thus it is that voluntaryists reject electoral politics as well as revolutionary violence. Neither of these methods could ever approximate voluntaryist goals—the ideal of a society of free individuals. Nor do either bring about a change or improvement in the moral tone of the people who comprise it.

Voluntaryists have a clear understanding of the nature of power—what we have labeled "the voluntaryist insight." We know that the State, like all human institutions, depends on the consent and cooperation of its participants. We also know that we are self-controlling individuals, with ultimate responsibility for what we do. We cannot be compelled to do anything against our will, though we may suffer the consequences for a refusal to obey the State or any other gangster who holds a gun at us. The State may do what it pleases with our bodies, but it cannot force us to change our ideas. We may lose our liberty behind jail bars (liberty being the absence of coercion or physical restraints), but we cannot lose our freedom (freedom being the inner spirit or conscience) unless we give it up ourselves.

Voluntaryism offers a moral and practical way for advancing the cause of freedom. It rests on a belief in the efficacy of the free market and on a historic and philosophic antagonism to the State. It rests on an understanding of the inter-relatedness of means and ends, and on a belief that "if one takes care of the means, the end will take care of itself." We are pro-free market, anti-State, non-violent, and anti-electoral. This, in a few short phrases, is what we are for; what we believe. V

What Is Our Plan?

by Carl Watner
(from No. 29, December 1987)

At a recent one day seminar at Freedom Country, the question was asked: "What can a person do to make this world a better place?" No single answer was articulated, but two different conceptual approaches were apparent. The responses of the participants could be categorized according to whether or not they believed

a. a better society depends on better individuals, or

b. better individuals cannot be raised until we have a better society (where, for example, educational services are improved, child abuse no longer exists, etc.).

In other words, which comes first—the chicken or the egg? Better individuals or the better society?

Nineteenth-century reformers, especially the non-resistants and abolitionists, grappled with this problem. How were they to advocate the abolition of slavery? Should they wait for Congress to abolish slavery or should they try to eliminate the vestiges of slavery from their daily lives? Should they be immediatists or gradual-

ists? Should they use legislative means or moral suasion? Should they vote or hold office or should they denounce the U.S. Constitution as a tool of the slaveholders?

Those nineteenth-century thinkers whom I would label voluntaryist (such as Henry David Thoreau, Charles Lane, William Lloyd Garrison, Henry Clarke Wright, and Edmund Quincy in pre-Civil War days, and Nathaniel Peabody Rogers) all believed that a better society only came about as the individuals within society improved themselves. They had no plan, other than a supreme faith that if one improved the components of society, societal improvement would come about automatically. As Charles Lane once put it, "Our reforms must begin within ourselves."Better men must be made to constitute society. For "society taken at large is never better or worse than the persons who compose it, for they in fact are it."

The Garrisonians, for example, were opposed to involvement in politics (whether it be office holding or participating in political parties) because they did not want to sanction a government which permitted slavery. Their opposition to participation in government also stemmed from their concern with how slavery was to be abolished. To Garrison's way of thinking it was as bad to work for the abolition of slavery in the wrong way as it was to work openly for an evil cause. The end could not justify the means. The anti-electoral abolitionists never voted, even if they could have freed all the slaves by the electoral process. Garrison's field of action was that of moral suasion and not political action. He thought that men must first be convinced of the moral righteousness of the anti-slavery cause. Otherwise it would be impossible to change their opinions, even by the use of political force.

Given this approach, it seemed that the anti-electoral abolitionists had no real strategy. In rebutting this criticism, Nathaniel Peabody Rogers, in a September 6, 1844, editorial in the *Herald of Freedom*, spelled out his answer to the question: "What is your Plan?"

> [T]o be without a plan is the true genius and glory of the anti-slavery enterprise. The mission of that movement is to preach eternal truths, and to bear an everlasting testimony against the giant falsehoods which bewitch and enslave the land. It is no part of its business to map out its minutest course in all time to come,—to furnish a model for all the machinery that will ever be set in motion by the principle it is involving. The plan and the machinery will be easily developed and provided, as soon as the principle is sufficiently aroused in men's hearts to demand the relief of action.
>
> What is the course of action these abolitionists have pursued? How have they addressed themselves to their mighty work? … They were not deterred by finding themselves alone facing a furious and innumerable host of enemies. They felt that the Right was on their side, and they went forward in the calm certainty of a final victory. They began, and as far as they have remained faithful, they continue to perform

> their mission by doing "the duty that lieth nearest to them." They soon discovered that Slavery is not a thing a thousand miles removed, but that it is intertwined with all the political, religious, social and commercial relations in the country. … In obedience to the highest philosophy, though perhaps not knowing it to be such, they proceeded to discharge their own personal duties in this regard—to bear an emphatic and uncompromising testimony against Slavery, and to free their own souls from all participation in its blood-guiltness. They laid no far-reaching plans … but obeyed that wisdom which told them that to do righteousness is the highest policy, and that to pursue such a straight-forward course would bring them soonest to the desired goal. Their question was not so much how shall we abolish Slavery? as, how shall we best discharge our duty?

Edmund Quincy in a February 24, 1841, editorial by the same title, in *The Non-Resistant*, pointed out that social institutions are but the projection or external manifestation of the ideas and attitudes existing in people's minds. "Change the ideas, and the institutions instantly undergo a corresponding change." In words reminiscent of Bob LeFevre's emphasis on self-control, Quincy went on to write that

> There is a sense in which the kingdoms of the world are within us. All power, authority, consent, come from the invisible world of the mind. … External revolutions, accomplished by fighting, have in general affected little but a change of masters. …
>
> We would try to bring about a mightier revolution by persuading men to be satisfied to govern themselves according to the divine laws of their natures, and to renounce the [attempt to govern others] by laws of their own devising. Whenever men shall have received these truths into sincere hearts, and set about the business of governing themselves, and cease to trouble themselves about governing others, then whatever is vicious and false in the existing institution will disappear, and its place be supplied by what is good and true.
>
> We do not hold ourselves obliged to abandon the promulgation of what we believe to be truths because we cannot exactly foretell how the revolution which they are to work, will go on, or what will be the precise form of the new state which they bring about. … A reformer can have no plan but faith in his principles. He cannot foresee whither they will lead him but he knows that they can never lead him astray. A plan implies limitations and confinement. Truth is illimitable and diffusive. We only know that Truth is a sure guide, and will take care of us and of herself, if we will but follow her.

The Voluntaryist essentially upholds the same ideas as these nineteenth-century thinkers. We advocate moral action, rather than politics and elections because moral suasion lays the axe at the root of the tree. We believe that moral action alone is sufficient to nullify State legislation. Legislation is not needed to abolish

other legislation. Harmful and unjust political laws should simply be ignored and disobeyed. We do not need to use the State to abolish the State, any more than we need to embrace war to fight for peace. Such methodology is self-contradictory, self-defeating, and inconsistent.

Difficult as it is to totally divorce ourselves from the State, each of us must draw the line for him- or herself as to how and to what extent we will deal with statism, whether it be driving on government roads, paying federal income taxes, using government "funny" money, or the post office. Several things are imperative, though. We must support ourselves on the free market, never taking up government employment. We must also remain uninvolved in politics, refusing to vote or run for public office. We must never accept a government handout or government funds (even when justified on the pretext that the money was stolen from you or that you were forced to contribute to a government program). No one is forcing you to accept money which the government has stolen.

In short, what we are advocating is that every one take care of him- or herself and care for the members of his or her family, when they need help. If this were done, there would be no justification for any statist legislation. Competent individuals and strong families, particularly the three-generation living unit, are some of the strongest bulwarks against the State. (And it should be remembered that families need not be limited by blood lines. Love, which brings outsiders into the family, is often more important than blood ties.)

If people would only realize that it is the individual and only the individual that directs the use and control of human energy, the world would change as individuals change themselves. Change starts with you and me! This means good family, friends, healthy living habits, lifelong learning, and rewarding and satisfying work; which in turn lead to good neighbors, a good community, a thriving economy, and a natural environment. That pretty much sums it up. What is our plan?—a better world begins with a better you!V

The Fundamentals of Voluntaryism

by Carl Watner
(from No. 40, October 1989)

The Voluntaryist is unique in uniting a non-State, non-violent, free-market stance with the rejection of electoral politics and revolutionary violence. The arguments that follow here are what I would call the pillars of voluntaryism. They are the bedrock, the solid foundation, of our philosophy. This presentation is intended as a condensation or summary of the logical bases for the voluntaryist position.

Introduction

Voluntaryism is the doctrine that all the affairs of people, both public and private, should be carried out by individuals or their voluntary associations. It represents a means, an end, and an insight. Voluntaryism does not argue for the specific form that voluntary arrangements will take; only that force be abandoned so that individuals in society may flourish. As it is the means which determine the end, the goal of an all voluntary society must be sought voluntarily. People cannot be coerced into freedom. Hence, the use of the free market, education, persuasion, and non-violent resistance as the primary ways to delegitimize the State. The voluntaryist insight, that all tyranny and government are grounded upon popular acceptance, explains why voluntary means are sufficient to attain that end.

1. The epistemological argument

Violence is never a means to knowledge. As Isabel Paterson explained in her book, *The God of the Machine*, "No edict or law can impart to an individual a faculty denied him by nature. A government order cannot mend a broken leg, but it can command the mutilation of a sound body. It cannot bestow intelligence, but it can forbid the use of intelligence." Or, as Baldy Harper used to put it, "You cannot shoot a truth!" The advocate of any form of invasive violence is in a logically precarious situation. Coercion does not convince, nor is it any kind of argument. William Godwin pointed out that force "is contrary to the nature of the intellect, which cannot but be improved by conviction and persuasion," and "if he who employs coercion against me could mold me to his purposes by argument, no doubt, he would. He pretends to punish me because his argument is strong; but he really punishes me because he is weak." Violence contains none of the energies that enhance a civilized human society. At best, it is only capable of expanding the material existence of a few individuals, while narrowing the opportunities of most others.

2. The economic argument

People engage in voluntary exchanges because they anticipate improving their lot; the only individuals capable of judging the merits of an exchange are the parties to it. Voluntaryism follows naturally if no one does anything to stop it. The interplay of natural property and exchanges results in a free-market price system, which conveys the necessary information needed to make intelligent economic decisions. Interventionism and collectivism make economic calculation impossible because they disrupt the free-market price system. Even the smallest government intervention leads to problems which justify the call for more and more intervention. Also, "controlled" economies leave no room for new inventions, new ways of doing things, or for the "unforeseeable and unpredictable." Free-market competition is a learning process which brings about results which

no one can know in advance. There is no way to tell how much harm has been done and will continue to be done by political restrictions.

3. The moral argument

The voluntary principle assures us that while we may have the possibility of choosing the worst, we also have the possibility of choosing the best. It provides us the opportunity to make things better, though it doesn't guarantee results. While it dictates that we do not force our idea of "better" on someone else, it protects us from having someone else's idea of "better" imposed on us by force. The use of coercion to compel virtue eliminates its possibility, for to be moral, an act must be uncoerced. If a person is compelled to act in a certain way (or threatened with government sanctions), there is nothing virtuous about his or her behavior. Freedom of choice is a necessary ingredient for the achievement of virtue. Wherever there is a chance for the good life, the risk of a bad one must also be accepted. As Bishop Magee explained to Parliament in 1872, "I would distinctly prefer freedom to sobriety, because with freedom we might in the end attain sobriety; but in the other alternative we should eventually lose both freedom and sobriety."

4. The natural law argument

Common sense and reason tell us that nothing can be right by legislative enactment if it is not already right by nature. Epictetus, the Stoic, urged men to defy tyrants in such a way as to cast doubt on the necessity of government itself. "If the government directed them to do something that their reason opposed, they were to defy the government. If it told them to do what their reason would have told them to do anyway, they did not need a government." As Lysander Spooner pointed out, "all legislation is an absurdity, a usurpation, and a crime." Just as we do not require a State to dictate what is right or wrong in growing food, manufacturing textiles, or in steel-making, we do not need a government to dictate standards and procedures in any field of endeavor. "In spite of the legislature, the snow will fall when the sun is in Capricorn, and the flowers will bloom when it is in Cancer."

5. The means-end argument

Although certain State services or goods are necessary to our survival, it is not essential that they be provided by the government. Voluntaryists oppose the State because it uses coercive means. The means are the seeds which bud into flower and come into fruition. It is impossible to plant the seed of coercion and then reap the flower of voluntaryism. The coercionist always proposes to compel people to do something; usually by passing laws or electing politicians to office. These laws and officials depend upon physical violence to enforce their wills. Voluntary means, such as non-violent resistance, for example, violate no one's rights. They only serve to nullify laws and politicians by ignoring them. Voluntaryism does not

require of people that they shall violently overthrow their government or use the electoral process to change it; merely that they shall cease to support their government, whereupon it will fall of its own dead weight. If one takes care of the means, the end will take care of itself.

6. The consistency argument

It is a commonplace observation that the means one uses must be consistent with the goal one seeks. It is impossible to "wage a war for peace" or "fight politics by becoming political." Freedom and private property are total, indivisible concepts that are compromised wherever and whenever the State exists. Since all things are related to one another in our complicated social world, if one man's freedom or private property may be violated (regardless of the justification), then every man's freedom and property are insecure. The superior man can only be sure of his freedom if the inferior man is secure in his rights. We often forget that we can secure our liberty only by preserving it for the most despicable and obnoxious among us, lest we set precedents that can reach us.

7. The integrity, self-control, and corruption argument

It is a fact of human nature that the only person who can think with your brain is you. Neither can a person be compelled to do anything against his or her will, for each person is ultimately responsible for his or her own actions. Governments try to terrorize individuals into submitting to tyranny by grabbing their bodies as hostages, trying to destroy their spirits. This strategy is not successful against the person who harbors the Stoic attitude toward life, and who refuses to allow pain to disturb the equanimity of his or her mind, and the exercise of reason. A government might destroy one's body or property, but it cannot injure one's philosophy of life. Voluntaryists share with the Stoics the belief that their ideas will not necessarily change the world. Nevertheless, some of them may be inclined—like the Stoics—to become martyrs, when necessary. They would rather suffer death or harm than lose their integrity because their integrity is worth more to them than their existence.

Furthermore, the voluntaryist rejects the use of political power because it can only be exercised by implicitly endorsing or using violence to accomplish one's ends. The power to do good to others is also the power to do them harm. Power to compel people, to control other people's lives, is what political power is all about. It violates all the basic principles of voluntaryism: might does not make right; the end never justifies the means; nor may one person coercively interfere in the life of another. Even the smallest amount of political power is dangerous. First, it reduces the capacity of at least some people to lead their own lives in their own way. Second, and more important from the voluntaryist point of view, is what it does to the person wielding the power: it corrupts that person's character. V

Cultivate Your Own Garden: No Truck with Politics

by Carl Watner
(from No. 40, October 1989)

LITTLE HAS appeared in these pages of late concerning the Libertarian Party because I believe it is more important to focus on the positive side of voluntaryism than to critique methodologies which differ from our own philosophy. I believe that we need to put our time, intelligence, and energy into that which we wish to nurture. Criticism directed toward an erroneous view not only sometimes helps entrench the opposition, but lessens the focus on the efforts to make voluntaryism grow. However, remarks by Karl Hess in the pages of *Libertarian Party News* (March/April 1989) deserve some comment. In an editorial titled "Our Goal Is Still Liberty," Hess writes:

> Ever since joining the Libertarian Party, years after declaring myself a small "l" libertarian, I have been concerned by the tendency of some in the party to insist that the party is, in fact, the movement. I have been equally concerned by the tendency of some outside of the party to insist that the party itself is a betrayal of the movement.
>
> My own conviction is that neither case is valid.
>
> The reasons for that have been stated many times in these editorial viewpoints. Rather than restate them, I want to move past them to what I hope is a practical suggestion to help us keep our eyes on the goal—liberty—rather than become fixated on one or another of the widely divergent ways of getting there.
>
> Might we not, as individuals, make some concession to at least the possibility of cooperating toward that main goal even through we may disagree about a number of things along the way [?]
>
> I offer a statement that would at least say we were friends: "Sharing a belief that free markets and voluntary social arrangements can be the basis of a peaceful and prosperous world, we members of various liberty-seeking organizations agree, as individuals, to cooperate, share information, and, as appropriate and practical, mutually support, or at least not impede, our varied and often sharply different efforts to increase individual freedom."
>
> Without for a moment suppressing our arguments, we might at least agree that we are headed in roughly the same direction and probably have less to fear from one another than from the great apparatus of state power that surrounds us.

The assumption that we might agree "that we are headed in roughly the same direction" is one with which I must take issue. This is an attitude that was shared by many debaters of limited-government and no-government during the early days of the L.P. According to this view, all libertarians are passengers on the same train. The only difference between the advocates of limited-government, no-government, and the voluntaryists is that some get off sooner than others; but all

are headed toward the same destination: liberty. However much this image might explain the difference between limited-government and no-government libertarians, it does not do justice to the voluntaryist view. At most, the image that I would suggest is that libertarians (of whatever stripe) and voluntaryists are at a common point of departure (we all face the present statist world). But the two groups board different trains, according to the methodology of social change that they choose to use. Since they are using the political means, the train of the political libertarians is traveling on the rails of statism, even if it seems to start off in the same direction as the other train. It will not long run parallel to the train boarded by the voluntaryists. The voluntaryists have no way of knowing where their journey will take them, and they are certain it has no end. The proper direction of their train can be only judged by the means used to propel it forward. There is no final "stop" or point of arrival since freedom and liberty are an on-going process. For the voluntaryists, the "final" form is in the means, not the ends.

While I do not wish to berate Hess's emphasis on toleration and cooperation among liberty-seeking individuals, one might also take issue with his reference to "liberty-seeking organizations" since most structures to achieve a public mission usually end up devoting more time to the structure than the mission. That theme was developed in the October 1988 *Voluntaryist* article, "Does Freedom Need to Be Organized?" so there is no reason to belabor it here.

In addition, it is not a certain fact that voluntaryists would have less to fear from the political libertarians than from the current statists, were the former to gain power. If the "law" is to be respected and enforced and not disobeyed (an attitude which political libertarians must necessarily cultivate), then it is quite likely libertarians will use that power not only to support themselves but to crack down on the opposition. George Smith argued this point persuasively in *The New Libertarian Weekly* (October 31, 1976) in his satirical essay, "Victory Speech of the Libertarian Party President-Elect, 1984." Also the entire history of the European anarchist movement (especially the brutal suppression of the Russian anarchist movement by the Bolsheviks, and the treatment of the anarchists during the Spanish Civil War) lends weight to this argument (see "Voluntaryism in the European Anarchist Tradition" in *Neither Bullets Nor Ballots*). As Errico Malatesta, the Italian anarchist, wrote in 1932:

> The primary concern of every government is to ensure its continuance in power, irrespective of the men who form it. If they are bad, they want to remain in power in order to enrich themselves and to satisfy their lust for authority; and if they are honest and sincere they believe it is their duty to remain in power for the people. … The anarchists … could never, even if they were strong enough, form a government without contradicting themselves and repudiating their entire doctrine; and, should they do so, it would be no different from any other government; perhaps it would even be worse.

Informed common sense says that "political gains without philosophical understanding are potentially short-lived." This may be better understood if we realize that we should focus on the question: "How do we prevent another State from taking the place of the one we already have?" rather than concentrating on the short-term problem (which most libertarians address) of "How do we get rid of the current State?" How can people be weaned from the State by the use of electoral politics? If the political method is proper to remove the State, as those active in the L.P. believe, then would it not be proper to re-introduce a new State, if the majority of voters were to desire it? The point is that there must be a sufficient respect and understanding for freedom and liberty in a given social community before those ideals can be realized, and if that respect and understanding already exist (or are brought into existence)—there is no reason to capture the seats of political power in order to disband the State. You attack evil at its roots by not supporting it. Just as voluntaryism occurs naturally if no one does anything to stop it, so will the State gradually disappear when those who oppose it stop supporting it. (This is not to overlook the fact that a certain "critical mass" of numbers must be reached before this can happen.)

The only thing that the individual can do "is to present society with 'one improved unit.' " As Albert Jay Nock put it, "[A]ges of experience testify that the only way society can be improved is by the individualist method …; that is, the method of each 'one' doing his very best to improve 'one.' " This is the "quiet" or "patient" way of changing society because it concentrates upon bettering the character of men and women as individuals. As the individual units change, the improvement of society will take care of itself. In other words, "if one takes care of the means, the end will take care of itself."

There is no question that this method is extremely difficult, since most of us realize what force of intellect and force of character are required just to improve ourselves. "It is easy to prescribe improvement of others; it is easy to organize something, to institutionalize this-or-that, to pass laws, multiply bureaucratic agencies, form pressure-groups, start revolutions, change forms of government, tinker at political theory. The fact that these expedients have been tried unsuccessfully in every conceivable combination for six thousand years has not noticeably impaired a credulous intelligent willingness to keep on trying them again and again." There is no guarantee that the voluntaryist method will be successful but because each individual concentrates on himself and not others, it is worthwhile, profitable, and self-satisfying even if it does not come to fruition in the short-run or during one's lifetime. The time spent on building a better, stronger you, on developing your vocational and avocational skills, your family, and your marriage makes you a better person regardless of outside circumstances. In short, time spent cultivating your own garden is always profitable and moral. Trying to cultivate another's garden is trespass (unless you are first invited to enter), and of necessity lessens the amount of time you can spend on your own self-improvement.

Libertarians engaged in electoral politics are saying (though they might not admit it) that the ends justifies the means. This has always been a common excuse for electoral activity and for supporting the existing political system. Emma Goldman laid this error to rest when she wrote:

> There is no greater fallacy than the belief that aims and purposes are one thing, while methods and tactics are another. This conception is a potent menace to social regeneration. All human experience teaches that means cannot be separated from the ultimate aims. The means employed become, through individual habit and social practice, part and parcel of the final purpose; they modify it, and presently the aims and means become identical. … The whole history of man is continuous proof of the maxim that to divest one's methods of ethical concepts is to sink into the depths of utter demoralization.

This is why I believe that political methods are inherently self-defeating and inconsistent with voluntaryism. Such methodologies carry the seeds of their own destruction. Though Karl Hess and other supporters of the Libertarian Party may claim to support liberty, I honestly believe they are mistaken. Their tickets may say "Destination—liberty," but I sincerely doubt that their train is headed in that direction. V

From the Editor: "Like a Voice Crying in the Wilderness" —A Restatement of Purpose

by Carl Watner
(from No. 50, June 1991)

Whole No. 50 marks our golden anniversary issue and nine years of publishing *The Voluntaryist*! Though this sum of years does not begin to match the length or the significance of Benjamin Tucker's *Liberty* (27 years), or Murray Rothbard's *Libertarian Forum* (15 years), there is a certain satisfaction in knowing that there has been this much staying power. So let's sit back and take stock of where we have been and where we are headed.

Publication of *The Voluntaryist* is a time-consuming task, both in terms of writing and production. As you may well imagine, I sometimes wonder "if the juice is worth the squeeze." Large amounts of my time are naturally devoted to my very loving and caring wife, Julie, and my two sons, William and Tucker, now ages four and two. Business commitments also absorb large chunks of my time and energies. I am grateful that *The Voluntaryist*, with a steady roster of slightly over two hundred subscribers (plus numerous exchanges), pays for its mailing and printing costs. Thanks should be extended to the "unsung volunteers" who have assisted throughout the years. This includes Julie for her editing and proofread-

ing, Paul Bilzi, who did this task several years ago, and Charles Curley, whose column "Voluntary Musings" has appeared in nearly twenty issues. Special mention should be made of George H. Smith and Wendy McElroy—for their partnership during the first three years, and Robert Kephart, whose funding allowed us to start *The Voluntaryist.*

The Voluntaryist is clearly a labor of love, and it would be wonderful to discover more people interested in "sharing the labor"—by locating new subscribers, writing articles and letters-to-the-editor, and being on the lookout for items worthy of reprinting. Though occasionally I feel like "a voice crying in the wilderness," surrounded by an onrushing sea of statism, *The Voluntaryist* has provided a "public" rostrum. It also has allowed me to publish my historical analyses from a voluntaryist perspective. In addition, it helped put me in touch with Robert LeFevre, and, after his death, assisted in making the contacts needed to fund and publish his biography, *Truth Is Not a Halfway Place.*

One important reason that I continue to publish *The Voluntaryist* is that there is a need to "let it not be said that I did not speak out." As I wrote in 1976, long before *The Voluntaryist* was ever thought of, "To speak the truth without fear, to disseminate without reserve all the principles with which I am acquainted, and to do so with the most persevering constancy—this is my self-assumed obligation." This in turn has made *The Voluntaryist* a most unique publication. As far as I know, there is no other literary forum that integrates a non-State, non-violent, free market outlook with the rejection of electoral politics. How did I arrive at that creed?

Like many other libertarians, I began my voyage under the tutelage of the writings of Ayn Rand, Ludwig von Mises, and Murray Rothbard. I still have the clipping from *The Wall Street Journal* (June 17, 1963) which mentioned Mises' receipt of a Doctorate of Law from New York University. It was that editorial which led me to the Foundation for Economic Education, which then opened up a pandora's box of new political and economic ideas. It was during that same summer, when I was fifteen, that I read *Atlas Shrugged*, a book given to me by my mother.

By 1969, I was corresponding with Morris Tannehill among others, whose book, *The Market for Liberty*, convinced me that people could function in a free society (without a State). My next major intellectual move was the purchase of a set of Lysander Spooner's *Collected Works.* In July 1976, I wrote and published my pamphlet, "Towards A Proprietary Theory of Justice," in which I embraced the Rothbardian framework of 1) the self-ownership and 2) the homesteading axioms; from which flowed the corollary doctrines of a) non-aggression, b) free exchange and freedom of contract, and c) anarchistic voluntaryism. I probably first read the term "voluntaryist" in Murray Rothbard's *Man, Economy, and State,* where reference is made to Auberon Herbert's "Voluntaryist formula."

During the late 1970s and very early 1980s, I published articles in *Reason* and the *Journal of Libertarian Studies.* I became friendly with Wendy and George, and was influenced by their rejection of electoral politics, a view towards which I

was naturally sympathetic. (At one time I had been president of our Student Council, and vowed after that experience never to hold "office" again.) I believe it was in the first half of 1982, that the three of us wrote and published the original pamphlets that were to comprise *Neither Bullets Nor Ballots*. In October 1982 we published the first issue of *The Voluntaryist*.

In "The Fundamentals of Voluntaryism," which appeared in Whole No. 40 (October 1989), I described voluntaryism as "the doctrine that relations among people should be by mutual consent, or not at all. It represents a means, an end, and an insight." Voluntaryism does not argue that social arrangements should take on any specific form; it simply advocates anything that's peaceful and reasonable. Voluntaryism occurs naturally if no one does anything to stop it. It rests on the premise that force should be abandoned, because the use of violence is never a remedy to social problems. The individuals in a society will flourish only if they are free, and only as men change can their society become better.

As I wrote in Whole No. 29, our interest is in the enduring aspects of libertarianism and individualism. Among these ideas we would include the concept that taxation is theft; that the State is invasive—hence, historically a criminal institution; that war is the health of the State; that coercive, State power corrupts those who try to use and/or master it; and that the delineation and implementation of property rights are the solution to many of our social and economic ills. Voluntaryist thinking finds its roots in antiquity, when the stoic thinkers realized that character-building—the development of self-controlling and self-responsible individuals—was the essential basis of human happiness, as well as the prerequisite of a better society.

Gandhi's pronouncement that "if one takes care of the means, the end will take care of itself" (*Harijan*, February 11, 1939), has, from the very beginning of *The Voluntaryist*, been a focal point of our thinking. We have always insisted on the congruence of means and ends; that it is the means which determine the ends; not the ends that justify the means. The means are at hand, closest to us. They dictate what road we shall set out on, and thus eventually determine our destination. Since the methods used to struggle towards one's goals are more important than the goal itself, *The Voluntaryist* rejects electoral politics and revolutionary violence. A voluntary society must be sought peacefully and must be based upon the improvement in the moral tone of the people who comprise it. All we can do as individuals is to "do our best:" to present the world with one improved unit—ourselves—"and then leave the rest" to take care of itself.

In a recent book about slavery in South Carolina (*Born a Child of Freedom, Yet a Slave*), Norrece T. Jones, Jr., indirectly reminds us of the similarities between slavery and our status as citizens. Jones points out how slavery is, in essence, a state of war between the slave and his master. "The assault on slaves was not only physical but mental. … [W]ithout capturing the minds as well as the bodies of

their workers, [the masters realized] that all effort at control would be futile." Jones quotes Thomas Higginson, an abolitionist, who stated,

> I have never heard one [referring to the slaves] speak of the masters except as natural enemies. Yet they were perfectly discriminating as to [good and bad owners]. … It was not the individuals, but the ownership, of which they complained. That [the ownership] they saw to be wrong which no special kindness could right.

If slavery had prevailed, without exception, throughout the world during the eighteenth and nineteenth centuries, Negroes born into that condition would have found it quite difficult to imagine that they might one day be at liberty. If freed slaves had not lived in the North, the slaves in the South would have had no practical example of freedom to which they might aspire. Nor would they have found their condition especially intolerable, since they could have comforted themselves with the thought that Negroes all over the world were in similar straits.

Our situation in the United States, today, is nearly analogous to that of the slaves. There is no bastion of pure voluntaryism anywhere in the world to which we can escape (though we can take solace from the fact that the freer nations are generally more peaceful and prosperous). What is citizenship and statism if not slavery? The American State (including all levels of government) robs us of nearly half the fruits of our labor. It rules us, it tries to count us and register our births and deaths, it inflates the currency, regulates and governs us in thousands of ways. The State attempts to maintain public opinion in its favor by controlling what is taught in the schools, manipulating the economy, involving the populace in the electoral process, and by "sharing the wealth" via progressive taxation. Slaves (citizens) who are contented with their lot are less likely to rebel than dissatisfied slaves. But to those who see through the smoke and mirrors is it not a war against the State to keep what we earn and to demand the right to do as we please, peacefully, without outside interference?

The American State is a slave-state, and like every other State in history it is at war against the people it governs. *It is still a criminal institution, regardless of how democratic or "kinder and gentler" it appears to be. Regardless of how much better living conditions may be in the U.S., we should never lose sight of the fact that the lesser of two evils is still evil.* The State may not have to use armed might and force to control us simply because it has been more successful (than many other governments) in capturing our minds, and, thus, enslaving us. As Ayn Rand once asked, "What is my life, if I am but to bow, agree, and to obey?" If we are enslaved, what difference in principle does it make who is our master? A State is a State is a State, regardless by whom, or where, or how its decisions are made and enforced.

Given the nature of the State and our opposition to *all* States, let me again restate our mission:

The Voluntaryist's **Statement of Purpose**
Voluntaryists are advocates of non-political strategies to achieve a free society. We reject electoral politics, in theory and in practice, as incompatible with libertarian principles. Governments must cloak their actions in an aura of moral legitimacy to sustain their power, and political methods invariably strengthen that legitimacy. Voluntaryists instead seek to delegitimize the State through education, and we advocate withdrawal of the cooperation and tacit consent on which State power ultimately depends. V

What We Believe and Why

by Carl Watner
(from No. 57, October 1992)

[Editor's Note: In the April issue of *The Voluntaryist* I asked for suggestions for the text of a brochure suitable as a general introduction to voluntaryist thinking. In the meantime, The Customer Company of Benicia, Calif., (who operate the Cheaper! Stores) asked me to assist in the preparation of an article (serving the same purpose) for their shopping bags. The following text was submitted to them.

Readers and subscribers are encouraged to prepare their own "What I Believe," which would entail a setting down of their own personal philosophy. It need not be entirely political at all; perhaps a summation of the wisdom and reflection distilled from their years of living and action. Please submit to *The Voluntaryist*. I would like to publish a series of these "What I Believe."]

For years we at Cheaper! have promoted our ideas about freedom and self-reliance. We want you to understand what we believe and why we believe as we do.

We believe that the following principles of ownership are self-evident:

1. Every person, by virtue of being human, owns (controls) his[1] own mind, body, and actions. No other person can think with your mind nor order you about unless you permit them to do so; and

2. Every person owns those material things which he has made, earned, or acquired peacefully and honestly from other people.

From these premises, it follows that

1. Please note that for purposes of simplicity, the generic words his/he are used to mean both male and female gender.

3. No person, or group of people, has the right to threaten or use physical force against the person or property of another because such coercive actions violate the rights of self-ownership (see #1 above) and property ownership (see #2 above).

4. Each person has the absolute right to do with his property what he pleases (this being what ownership means), as long as it does not physically invade another's personal property, without the other's consent. People can inter-relate in only two ways, peacefully or coercively, but only the former is compatible with the principles of ownership (see #1 and #2 above).

5. It is right to make a profit, and right to keep all you earn.

6. A pure free market is right because it is the only socioeconomic system in accord with the above precepts.

"Some Moral Implications"

7. We believe if an activity is wrong for an individual, then it is wrong for a group of individuals. For example, majority rule cannot legitimize taxation. If it is wrong for an individual to steal, then it cannot be right for 51% of the voters to sanction stealing from the 49% who oppose it.

8. We believe in the voluntary principle (that people should interact peacefully or not at all). Just as we must not force our ideas of 'better' on other people, so they may not impose their idea of 'better' on us.

9. We believe the superior man can only be sure of his liberty if the inferior man is secure in his rights. We can only secure our own liberty by preserving it for the most despicable and obnoxious among us, lest we set precedents that could reach us.

10. We believe that power of any sort corrupts, but political power is especially vicious. "A good politician is about as unthinkable as an honest burglar."

"Some Economic Implications"

11. We believe that actions have consequences; that there is no such thing as a free lunch. Somebody *always* pays.

12. We believe everything that comes into existence in this world is the product of human energy, plus natural resources multiplied by the use of tools. Invariably, men and women will produce more if each controls what they produce.

13. We believe the voluntary principle provides us with an opportunity to improve our standard of living through the benefits resulting from the division of labor. However, it does not guarantee results. Nature will always be stingy and perverse regardless of what kind of social structure we live under.

14. We believe taxation is theft. The State is the only social institution which extracts its income and wealth by force. No government possesses any magical power to create real wealth. Whatever it has obtained, it has "taken" (stolen) from us, our ancestors, and, unwittingly, from future generations.

15. We believe the only way to know what value people place on things is to watch them voluntarily trade and exchange in the unfettered marketplace.

16. We believe an individual's right to control his own life and property does not depend on how much he earns or owns.

17. We believe the economic marketplace is all about *self*-government. You govern your own life. You make choices about what to eat, what to wear, when to get up, what job to take, how to budget your money, where to live, and what to do in your free time. A majority of others doesn't do this for you. By not subjecting their personal lives to political decision-making, millions of Americans are able to live together in peace and prosperity.

18. We believe all the material wealth in the world is useless if its possessor has neither freedom of spirit nor liberty of body.

"Some Political Implications"

19. We believe that freedom and liberty are not bestowed upon us by government. Liberty is the absence of physical coercion among human beings and comes about naturally when no one does anything to forcefully interfere with another. Some people use violence toward others out of frustration because they cannot control them, but violence never really works in the long run.

20. We believe that "the man who truly understands freedom will always find a way to be free," because freedom is an attitude of mind. Although a prisoner loses his liberty, he may remain free so long as he realizes that no one can control his mind/spirit except himself.

21. We believe that each one of us is the key to a better world. The only person you can actually control is yourself. Light your *own* candle! Labor in your own "garden," doing your best to present society with one improved unit. Live responsibly and honestly, take care of yourself and your family. Don't waste your time waiting for the other guy. If you take care of the means, the end will take care of itself.

22. We believe common sense and reason tell us that nothing can be right by legislative enactment if it is not already right by nature. If the politicians direct us to do something that reason opposes, we should defy the government. And we certainly don't need politicians to order us to do something that our reason would have told us to do, anyhow. This being the case, who needs coercive government?

23. We believe that although certain goods and services are necessary for our survival, it is not essential that they be provided by coercive political governments. However, just because we do not advocate that governments provide these goods and services (for example, public education) it does not mean that we are against that activity (education) itself. Just because we recognize that people have a right to engage in certain activities (for example, drinking alcoholic beverages) it does not necessarily mean that we endorse or participate in such activities ourselves.

What we oppose is compulsion in support of any end; what we support is voluntaryism in all its many forms.

24. We believe the power to do good to other people contains the power to do them harm. A government strong enough to help you is also strong enough to harm you. What the legislature may grant it may also revoke.

25. When all is said and done, we agree with H. L. Mencken, who wrote: "I believe that all government is evil, in that all government must necessarily make war upon liberty; and that the democratic form is at least as bad as any of the other forms. …"

"But the whole thing, after all," as Mencken concluded,

"may be put very simply.

"I believe it is better to tell the truth than to lie.

"I believe it is better to be a free man than a slave.

"And I believe that it is better to know than to be ignorant."V

For more information, we suggest you choose among the following titles:

Henry Hazlitt, *Economics in One Lesson*

Rose Wilder Lane, *The Discovery of Freedom*

Ayn Rand, *Atlas Shrugged*

Robert Ringer, *Restoring the American Dream*

Or contact Laissez Faire Books, 1-800-326-0996, for a catalog.

If you have comments or questions, please write us at Cheaper!, Box 886, Benicia, CA 94510.

Part II
Voluntaryist Critiques of the State

"Every action and every agency of contemporary government must contribute to the fulfillment of its fundamental purpose, which is to maintain conquest. Conquest manifests itself in various forms of control, but in all those forms it is the common factor tying together into one system the behavior of courts and cops, sanitation workers and senators, bureaucrats and technocrats, generals and attorney generals, pressure groups and presidents."

—Theodore Lowi,
Incomplete Conquest (1981), p. 13.

The Ethics of Voting

by George H. Smith
(from No. 1, October 1982)

Part I

I. Introduction

A detailed libertarian critique of electoral voting is long overdue. Political libertarians (i.e., those who support the effort to elect libertarians to political office) are usually silent on the moral implications of electoral voting. When challenged, they typically dismiss moral objections out of hand, as if the voluntaryist (i.e., anti-voting) case deserved nothing more than a cursory reply.

This situation will probably change in the near future. The issues raised in voluntaryist arguments are far too important to be discarded without careful consideration, even if one ultimately rejects voluntaryist conclusions. This is especially true for those *political anarchists* (if I may use that curious phrase) who support the Libertarian Party. If it is at least comprehensible why minarchists (advocates of minimal government) support a political party, the spectacle of political anarchists is far more perplexing. Hence this essay (to be continued in subsequent issues of *The Voluntaryist*) is directed primarily at political anarchists, though some of the material is relevant to minarchists as well.

The purpose of this essay is to explore the moral implications of libertarians (especially anarchists) holding political office, running for political office, or assisting those who do—primarily through the vote. The ethics of voting cannot be divorced from the key question of what one is voting *for*. And this, as I shall argue, cannot be divorced from the institutional framework in which the voting occurs.

This essay is directed to fellow libertarians who are familiar with the standard debates in contemporary libertarianism, such as that between minarchism and anarchism. I must also assume that the reader is generally familiar with the basic approach of voluntaryism. (If not, my essay "Party Dialogue" should be consulted, along with the other essays in "The Voluntaryist Series.") Moreover, standard terms in the libertarian lexicon—e.g., "invasion" and "aggression" (which I use synonymously)—are not defined in this essay. Here again standard libertarian works should be consulted, such as various books and essays by Murray Rothbard. A term that may generate some confusion is "electoral voting." This means voting for the purpose of placing someone in a political office. It does not refer to other kinds of political voting, such as voting on particular issues in a referendum. (This requires a somewhat different analysis.) Hereafter, unless otherwise noted, the simple term "voting" shall be used to mean "electoral voting."

Since this essay is to appear in installments, I must beg the reader's pardon if some problems remain unsolved at the conclusion of each part. The theory of vot-

ing has been so neglected that it is difficult to explore its moral implications without first laying a good deal of preliminary groundwork. Some pro-voting arguments are based on different premises and actually clash with each other when employed by the same person. Other pro-voting arguments appear decisive, but they retain this appearance at the expense not only of voluntaryism, but of principles common to *all* libertarian theories (especially anarchism). These "kamikaze arguments" attack voluntaryism by undercutting the foundations of libertarian political analysis, thus exploding political arguments later. For one libertarian to use a kamikaze argument against another libertarian is somewhat indelicate, to say the least.

The theory of voting should be investigated within a broad framework of political and legal theory. This plunges us into complex and troublesome areas, like principal-agent relationships, accessories before the fact, aiders and abettors of crime, and so forth. I do not presume to have solved the problems these concepts create for libertarian theory, but libertarianism undeniably depends on *some* notion of accountability for persons other than those *directly* involved in criminal (i.e., aggressive) acts.

Libertarians generally agree that the driver of a getaway car is liable for a bank robbery, even if he did not personally wield a gun or threaten force. Similarly, we hold legislators accountable for their unjust laws, political executives accountable for their unjust directives, and judges accountable for their unjust decisions. We do not exonerate these individuals just because they legitimize their actions under the "mask of law." Yet political and bureaucratic personnel rarely participate in law enforcement; they do not strap on guns and apprehend violators. This is left to the police.

Clearly, therefore, the libertarian (anarchist) condemnation of the State as a criminal gang rests on the view that criminal liability can extend beyond the person who uses, or threatens to use, invasive force. Most of the individuals in government, though not directly involved in aggression, nevertheless "aid and abet" this process. Libertarian theory would be irreparably crippled without this presumption. If criminal accountability is restricted only to direct aggressors, then the vast majority of individuals in the State apparatus, including those at the highest levels of decision-making, must be considered nonaggressors by libertarian standards and hence totally innocent. We could not even regard Hitler or Stalin as aggressors, so long as they did not personally enforce their monstrous orders. The only condemnable persons would be in the police, military, and in other groups assigned to the enforcement of state decrees. All others would be *legally* innocent (though we might regard them as morally culpable).

Few libertarians are willing to accept this bizarre conclusion, but it automatically follows if we refuse to incorporate within libertarian theory some idea of "vicarious liability" defined by *Black's Law Dictionary* as "indirect legal

responsibility; for example, the liability of … a principal for torts and contracts of agents").

Libertarian theorists have virtually ignored vicarious liability in three respects: first, they have rarely acknowledged it as an implicit underpinning in the libertarian (especially anarchist) analysis of the State; second, they have neglected to provide a thorough study and justification of it; third (and most relevant to this discussion), they have not examined its implications for the theory of voting.

I shall not attempt to defend a theory of vicarious liability here, despite the crucial need for such a defense. Because I am addressing fellow libertarians—most of whom accept some version of this principle—I shall accept vicarious liability as a given within libertarian theory and proceed from this foundation. Libertarian theory in general, and anarchist theory in particular, would tread perilously close to incoherence without this presumption. Given this fact, it follows that voters, in some cases at least, are deemed accountable by libertarians for the results of their votes (e.g., legislators who vote for victimless crime laws). *And this liability attaches despite the fact that the voters do not directly engage in aggression or explicit threats of aggression.* It is incongruous, therefore, for a political libertarian to profess bewilderment that even a *prima facie* case against voting may exist, on the ground that voting is obviously a nonaggressive act. If voting *per se* is deemed nonaggressive, if the voter is *never* accountable for what occurs afterwards, then this attack on vicarious liability succeeds in smashing voluntaryism at the considerable expense of rendering incoherent the libertarian analysis of the State. Thus do kamikaze arguments "succeed."

The libertarian who seriously believes that voting is always nonaggressive—"How," he asks, "can pulling a lever in a voting booth constitute aggression?"—is led by his own logic to conclude that voting for *any* candidate is permissible by libertarian standards, regardless of what the aspiring politician promises to do while in office. A candidate might promise to imprison all redheads in slave labor camps, or to order the execution of all Catholics on sight. But on a strict nonaccountability theory of voting, the voters who placed these politicians in office are in no way liable for their criminal acts. And since—as political libertarians like to remind us—libertarian theory forbids *only* aggressive acts, there would be nothing inconsistent in a libertarian voting for these power-seekers, because all voting, by definition, is nonaggressive.

Moreover, the successful libertarian politician would find it *impossible*, qua office holder, to violate libertarian principles while in office. If voting is never aggressive, then the libertarian legislator can never be aggressive (and hence unlibertarian) regardless of *what* he votes for. Would a libertarian legislator who voted for a draft be regarded by members of the Libertarian Party as having acted contrary to libertarian principle? Most certainly. But if libertarianism forbids aggressive acts only, and if voting can never be an aggressive act, then in no sense can the pro-draft legislator be accused of behaving in an anti-libertarian fashion.

Political libertarians who endorse a nonaccountability theory of voting will have to grapple with its many paradoxes. After its implications are understood, it is unlikely to find many defenders. Some political libertarians already concede that a voter may be accountable. For example, Jeff Hummel, a prominent anarchist and supporter of the LP, maintains that "any legislator who votes for an unjust law is … in fact one of the actual aggressors!" (*Free Texas*, Fall, 1981). Does this argument extend a step further back? Do voters who place these politicians in power share liability for the resulting injustice? Unfortunately, this is one crucial question among many on which political libertarians remain silent.

I have argued briefly that the voluntaryist case against political voting cannot be dismissed as *prima facie* absurd by political libertarians. This is because political libertarians share with voluntaryists a theory of vicarious liability on which the case against voting is built. Deny vicarious liability … and political libertarians will be hard-pressed to retrieve their own theory from the wreckage strewn about by their kamikaze attack.

Of course, to establish the *prima facie* possibility of the voluntaryist case does not cinch the argument. Many more arguments and principles need to be considered. But we have at least cleared a path along which the rest of this article may travel.

II. The Burden of Proof

Before proceeding to an analysis of electoral voting and the arguments pro and con, it may prove helpful to establish some procedural guidelines. Foremost in any argument is the burden of proof. Who assumes the burden of proof in a given dispute? Which side must produce the preponderance of evidence and/or arguments in order to resolve the case? Most important, if the responsible party fails to meet the burden of proof, then what is the status of the dispute?

In the voting debate, it is usually assumed that the burden of proof rests with the voluntaryist, i.e., the opponent of voting. If the voluntaryist claims that voting is inconsistent with libertarianism or anarchism, then he must substantiate his claim. He must show that electoral voting actually falls within the category of actions known as "invasive" or "aggressive." Failure to accomplish this acquits the political libertarian, or the political anarchist, of all charges.

This procedure seems reasonable. To condemn voting as improper is a serious charge, after all, and it appears that the voluntaryist should assume the burden of proof if he expects to be taken seriously. We see a parallel in legal theory, where a man is *presumed* innocent until this presumption is "defeated," i.e., until the defendant is proven guilty beyond a reasonable doubt. The legal presumption of innocence determines where the burden of proof rests. Failure to provide sufficient proof means that the presumption remains where it began: the defendant is innocent.

The legal analogy is accurate in one respect. It points out that the burden of proof is fixed according to the basic *presumption* of an argument. If, as we have seen, an accused man is presumed innocent, then the onus falls upon his accuser to defeat this presumption. A presumption functions as the starting point in a dispute.

From the legal analogy, however, it does not follow automatically that the political libertarian is analogous to the defendant, and thus it does not follow that the burden of proof lies entirely upon the voluntaryist. Indeed, in dealing with *anarchism*—the principled rejection of the State—I maintain that there is a presumption *against* political office holding and therefore a presumption *against* voting for political office. Thus the political anarchist is the one who must defeat the basic presumption. When two anarchists debate the ethics of voting, it is the political anarchist who assumes the major burden of proof. It is the political anarchist who must demonstrate to the voluntaryist why voting—an overt participation in the political process—is not a violation of their common anarchist principles. Let us examine this claim in more detail.

Voluntaryists are more than libertarians; they are libertarian anarchists. They reject the institution of the state totally, and it is this element that is not contained (explicitly, at least) within libertarianism. Libertarian theory condemns invasive (rights-violating) acts and says that all human interaction should be voluntary. All libertarians, whether minarchists or anarchists, accept this. It is the defining characteristic of a libertarian

Libertarian anarchism professes not only the nonaggression principle, but the additional view that the State is *necessarily* invasive and should thus stand condemned. Libertarian anarchism combines the libertarian principle of nonaggression with a particular analysis of the State—an analysis not shared by libertarian minarchists. It is the premise of nonaggression, *coupled with an institutional analysis of the State*, that leads to the rejection of the State by the anarchist as inconsistent with libertarian principles.

The above reference to "institutional analysis" is critical. One cannot progress from libertarianism to anarchism without an intervening argument. A principled rejection of the State does not necessarily follow from the nonaggression principle, unless one can also show that the State is necessarily aggressive. This latter point—the anarchist insight into the nature of the State—is the minor premise required to justify anarchism:

> Major premise: Libertarian theory condemns all invasive acts.
> Minor premise: All States commit invasive acts.
> Conclusion: Libertarian theory condemns all States
> (or governments—I use the terms interchangeably).

This syllogism illustrates the difference between simple libertarianism (articulated in the major premise) and libertarian anarchism (articulated in the conclu-

sion). The transition to anarchism is realized through the anarchist insight (articulated in the minor premise). This insight is what all libertarian anarchists share with fellow anarchists. It is also what distinguishes libertarian anarchists from their minarchist cousins.

Minarchists qualify as authentic libertarians so long as they believe it possible for their minimal State to remain nonaggressive. The minarchist, like the anarchist, accepts the nonaggression principle; but the minarchist does not accept the anarchist view of the State. This controversy over the minor premise leads to different applications of the nonaggression principle to the State. (Whether this stems from a definitional dispute or from something more substantial need not concern us here.)

The minarchist issues a challenge to all libertarian anarchists, political and voluntaryist alike: "Prove that all governments are invasive. Demonstrate that the State, by its very nature, *must* violate individual rights." The anarchist responds, as indicated earlier, with an institutional analysis of the State. He avers that institutional features of the State, such as the claim of sovereign jurisdiction over a given geographical area, render the State invasive *per se*. This invasive trait persists regardless of *who* occupies positions of power in the State or *what* their *individual* purposes may be. The anarchist insight, in order words, is not arrived at inductively. The anarchist does not investigate *every* employee of every State, determine each individual to be an aggressor, and then generalize from the individual to the institution. On the contrary, the State is assessed first, qua institution, according to constant structural features inhering in all governments. This institutional analysis leads to the anarchist insight, after which particular individuals within the State are considered to be part of a "criminal gang" owing to their participation in the exercise of State power.

To put it another way: for anarchism, the individual does not taint the institution; rather, the institution taints the individuals who work within it. It is because the nature of the State as an institution renders it irredeemably invasive that we condemn particular offices within the State apparatus, and hence particular individuals who occupy those offices. Such individuals "aid and abet" State injustice, even though they may not *personally* commit aggressive acts.

It is necessary to understand that the institutional analysis sketched here is vital to all theories of anarchism, including political anarchism. This kind of institutional analysis must be valid if anarchism is to have a solid footing. It is simply impossible for anarchists to derive anarchism from the inductive method described above. It is patently impossible to examine the personal motives and goals of all individuals who comprise "the State" before we can pass judgment on the State itself. In addition, if this research were undertaken, we would find that the vast majority of State employees never *intend* to aggress against others, nor do they participate *directly* in aggressive acts. The inductive method never permits us to bridge the gap between individuals and institutions. Indeed, from a purely induc-

tive perspective, there is no "State." Only individuals exist and act, there are no institutions. The State, then, is a fiction, and it is nonsense to refer to the "State" as "invasive" or "aggressive." Only individuals can invade or aggress; and although some individuals within that organization we call the "State" may personally aggress, the vast majority do not. To condemn the State *per se*, therefore, as the anarchist wishes to do—and by implication to condemn all individuals within the State—is flagrantly unjust. It is to besmirch the good names of innumerable State employees who never personally engage in aggression.

This methodological objection to anarchism is important, and anarchists, as I have indicated, will be unable to respond adequately unless they defend the approach I have described as institutional analysis. The coherence of anarchism as a theory hangs on this kind of analysis.

Why is this relevant to the debate over voting? Because it illustrates that the presumption, and therefore the burden of proof, varies according to whether the voluntaryist addresses a minarchist or a political anarchist. Since the minarchist need not adopt an institutional analysis, he will not view the fact that an individual is an agent of the State as even *prima facie* evidence of improper conduct. There is, for the minarchist, no moral "curse" on the State as such, which then filters down to individuals within the State. Working for the State, in other words, does not constitute a presumption of guilt. The individual is presumed "innocent" until proven otherwise, despite his institutional affiliations.

This is why the minarchist is a difficult convert to voluntaryism. Usually the minarchist must be brought first to anarchism, which requires that he accept an institutional analysis of the State, and only then to voluntaryism. The procedural chasm dividing voluntaryists from minarchists is so wide that this intermediate step is ordinarily required. The burden of proof falls upon the anarchist to establish the soundness of this intermediate step.

But the situation changes when the voluntaryist addresses a political anarchist. Here the anarchist insight—the recognition of the State *per se* as an invasive institution—is agreed upon by all parties before the argument over voting even commences. Both disputants utilized institutional analysis in order to arrive at their current positions. It is plainly inconsistent, therefore, for the political anarchist to reject voluntaryism because it employs institutional analysis. It borders on hypocrisy for the political anarchist to fall back upon the *personal intentions* of his favorite politicians in order to save them from the anarchist curse, when he has traveled merrily down the anarchist road without ever having regarded personal intentions as significant before this point. If an institutional analysis of the State is good enough to get us to anarchism, then it is good enough to get us to voluntaryism. Institutional analysis is not a bridge that can be conveniently burned by the political anarchist after he has used it to cross over to anarchism.

It is because of their common acceptance of the anarchist insight that the initial presumption shifts in favor of the voluntaryist. The voluntaryist and the politi-

cal anarchist agree that the State is inherently aggressive. From this it follows that anyone who voluntarily joins the State—who campaigns for office, receives a salary, swears allegiance to the State, and so forth—is *at least* highly suspect from an anarchist point of view. There is a presumption, a *prima facie* case, against the political office-holder in anarchist theory (and thus against voting for a political office). The burden then falls not upon the voluntaryist to show how this office holder participates in aggression—for both disputants already agree that the State is inherently aggressive and both accept vicarious liability—but upon the political anarchist to show how his favorite office holder constitutes a *valid exception* to the general condemnation (the anarchist curse) of the State and its agents.

Anarchists agree that the State is necessarily aggressive, which is why they commonly use terms like "criminal gang" and "ruling class" to describe the State. But anarchists also realize that the State is not a disembodied entity. Institutions are not individuals; they cannot act in any fashion, much less act aggressively. Thus, if the anarchist analysis of the State is to have meaning, it must refer to individuals who work within the structure of the State apparatus. Individuals and their actions, considered within a broader institutional framework (prescribed goals, rules, and procedures), combine to form what anarchists mean by the State. Particular offices within the State, and the individuals who occupy those offices, are assessed according to their importance in directing, supporting, and furthering the institutionalized goals of State power.

It is because anarchists regard the State as inherently aggressive that there exists a presumption among anarchists that anyone who joins the State participates in this aggression. The anarchist curse—the presumption of evil—descends from the condemned institution to the individuals who are necessary to maintain the life of that institution. The institution is the skeleton, in effect, which requires the flesh and blood of real people to operate. These people are highly suspect in anarchist eyes, even if they do not personally aggress, because they are the components required to translate the institutional aggression of the State into concrete reality.

The anarchist presumption against agents of the State, like all presumptions, is defeasible. It may be that the political anarchist can argue for a valid exception to the general rule. He may be able to explain why we should regard all politicians as members of a criminal gang, except those politicians with "good" (i.e., libertarian) *intentions*. Personal intentions were not previously considered relevant to the anarchist analysis of the State, but the political anarchist may have uncovered new information that will convince his voluntaryist colleague. The political anarchist may thus be able to overcome the presumption, the anarchist curse, that makes his case seem initially implausible. (The idea of an "anarchist politician" does seem counter-intuitive at best.)

In our dispute between the voluntaryist and the political anarchist, therefore, the presumption is on the side of voluntaryism, and the political anarchist as-

sumes the burden of proof. Anarchists of all persuasions have traditionally rejected electoral politics, and with good reason. This seems, after all, to be an essential part of what anarchism *means*. This is why I wrote in "Party Dialogue" ("The Voluntaryist Series," no. 1) that "libertarianism must stand firm against *all* Senators, *all* Presidents, and so forth, because these offices and the legal power they embody are indispensable features of the State apparatus. After all, *what can it possibly mean to oppose the State unless one opposes particular offices and institutions in which State power manifests itself?*" V

"If This Be Treason, Make the Most of It!"

by Carl Watner
(from No. 30, February 1988)

WHY IS it that legislation defining the crimes of treason and sedition soon follows in the wake of the establishment of every nation-state? The answer is reasonably simple: At the heart of the question of these crimes lies the legitimacy of the State and the claims it can make upon the loyalty of its citizens. Treason has always been considered one of the most heinous crimes. Punishment has usually been capital and has at times been marked by quartering and burning at the stake.

The crime of treason is generally treated as a betrayal of allegiance—the duty and obligation of the citizen toward his State. In the laws of the Roman empire and in early British law, treason encompassed imagining or planning the death of the king, his family, or his officials; levying war against the sovereign; adhering to the king's enemies in the realm; or giving them aid and comfort in the realm or elsewhere. In the United States, which is one of the few countries to have defined treason in its Constitution, treason is confined to two specific types of action: challenging the power of the nation by armed insurrection and aiding its enemies during wartime.

Sedition is a loose concept that includes "everything whether by word, deed, or writing," which might disturb "the tranquility of the State," and lead to its subversion. In England and the United States, during the eighteenth century, sedition meant any hostile criticism of the government. which the authorities might choose to prosecute. If treason could not be alleged, then people might be imprisoned for sedition, i.e., "disloyal" speeches and writings. This occurred in the United States in 1798, at the time of the Civil War, and again during World War I.

Treason and sedition are twin-edged swords because they are found only in a statist context. Since every State arises out of conquest and domination, there inevitably arises a conflict between existing States and those striving to assert their independence. For example, all who advocated American independence from Great Britain in 1776, could have been prosecuted and convicted as traitors. Had

the revolution been a failure, undoubtedly they would have been tried for treason under British law. Since they were successful in establishing a new State, they went on to write laws against any actions they deemed hostile to *their* new State. At the Nuremberg trials after World War II, the Nazi leaders were tried and held personally responsible for the crime of war, for membership in certain criminal organizations, and for participation in the planning of aggression and domination. Yet had any of these Nazis refused to obey superior orders—on the basis that they owed a higher duty to humanity, which is what the prosecutors at Nuremberg claimed—they could have been tried for treasonous behavior in Germany during the war. As Thomas Jefferson put it, "The unsuccessful strugglers against tyranny have been the chief martyrs of treason laws in all countries."

All of this leads me to ask: Is voluntaryism treasonous? Are voluntaryists guilty of treason and/or sedition? Is *The Voluntaryist* a seditious publication?

Undoubtedly the answers to these questions are "Yes," particularly if treason and sedition are viewed in their broadest scope. Although treason in the United States requires overt action (levying war or in adhering to the enemy) against the State—actions which voluntaryists and *The Voluntaryist* are clearly not guilty of—we are definitely guilty of attempting (through education and other peaceful, non-violent means) to weaken the power of statism in this country and every other country in the world. It is in this sense that we are treasonous and seditious: we oppose not only specific states (such as the United States), but the very concept of the nation-state itself. Without the State there would be no compulsory institution to betray. One is not accused of treason when one quits the Ford Motor Company. and goes to work for General Motors. But it is generally considered treasonous to renounce one's citizenship (as when one attempts to become a naturalized citizen of a country that your country is at war with) because allegiance to the State was historically deemed perpetual and immutable.

Since voluntaryists look upon the State as a criminal institution, we believe that we owe it no allegiance. Since we view the U.S. Constitution as "a covenant with death, an agreement with hell," as William Lloyd Garrison put it, we accept no duty to uphold it or abide by it. Since the State is a thief we owe it no respect. The State is an invasive institution *per se*, which claims sovereign jurisdiction over a given geographical area and which derives its support from compulsory levies, known as taxation. The invasive trait of the State "persists regardless of *who* occupies positions of power in the State or *what* their individual purposes may be." This insight leads us to view the State and its minions as a criminal gang engaged in a common criminal enterprise—namely, the attempt to dominate, oppress, coercively monopolize, despoil, and rule over *all* the people and property in a given geographic area.

It is important to understand that although we owe the Constitution or the United States no duty, voluntaryists are not criminals, like those who hold State power. The touchstone for our own personal behavior is the Stoic conception of

freedom as self-control. We ask others to act by the rule of proprietary justice, i.e., the recognition of each person's self-ownership of his or her self and their legitimate property rights. We urge people to defy all forms of statism (what others would label "democratic" we would label tyranny, for all forms of statism are inherently tyrannical). However, urging them to defy tyranny does not imply that they necessarily break all laws. If the State directs us to do something opposed to our reason, then we defy the State. If the State tells us to do what our reason tells us to do anyhow, then there is clearly no need for the State. We respect reason and natural laws, not the Constitution and the political laws published by Congress.

The pages of *The Voluntaryist* have been filled with accusations of State criminality (and its historical proof) since our very first issue. This writer has suffered at the hands of State employees. and probably every reader has surrendered at least part of his or her earnings to these "authorities." We have posted an "International Crime Bulletin" (see Issue 22, November 1986) asserting that the State and statists have committed the most dastardly crimes in the history of mankind. In this century alone, various States worldwide have been responsible for murdering more than 155 million people. We have recognized that war and taxes are the health of the State; that both activities are functions of States—that without States no such activities on so wide a scale could ever occur. We accuse all States of these crimes and advocate withdrawal of the cooperation and tacit consent on which State power ultimately depends.

Let us therefore join in with Patrick Henry: "Caesar had his Brutus, Charles the First his Cromwell. … If *this* be treason, make the most of it."▽

The Myth of Political Freedom

by Carl Watner
(from No. 35, December 1988)

How is it that citizens of the Soviet Russia become imbued with the political ideas of the United States Constitution? Why are Americans knowledgeable about the political freedoms outlined in the Constitution of the U.S.S.R.? The answer to these two questions is relatively simple. In both countries, the concept of the State and the Constitution plays a similar role. The particular form they take on is of little or no consequence. The function of both constitutions is to legitimize State rule and to socialize the citizenry into their social and political roles. In the United States, the Constitution guarantees certain forms of political freedom—"particularly the idea that the ordinary people have the right to share in the formation and conduct of government, and to criticize and seek to change the policies of those in power." This encompasses the right to vote, to run for office, to petition elected officials, to assemble and protest, and to express opinions to those

holding political office. In the Soviet Union, the constitutional superstructure guarantees universal, equal, and direct vote by secret ballot; and broad civil and human rights of citizens, including the right to work, rest, education, and religious freedom.

From whence do these political rights originate—whether they be American or Soviet? In every case, they are derived from or found to be embraced in some governmental legislation or constitutional document. Political rights are not derived independently of the State; rather political freedom is something the government grants its citizens.

The great problem of obedience—why the many obey the few, when numerical strength is on the side of the many—has been the subject of endless study. Any accurate appraisal of the situation recognizes that such obedience depends upon 1) the formation of governmental decisions which willingly obtain the allegiance of the governed (i.e., policies which the majority of the governed would ordinarily follow even if there were no government [for example, the great majority of people would not murder or steal, even in the absence of the State]) and 2) the discovery of political mechanisms which make possible the widest participation in those decisions with the least possible impact.

The myth of political freedom is tied to the second of these points. If people think that their activities influence the outcome of elections, of policy-making, etc. they are complacent in accepting the outcome. Many commentators have noted that this is essentially a process of co-optation, in which the governed falsely imagine that their input is desired, valued, and necessary; when in fact the actors themselves are being deluded. The appearances do not match the reality. The appearance is that political freedom gives power to the people to direct their own political destiny, when in reality they are being manipulated by a system which has been designed to minimize the effects of their input, insulate the decision-making process from those on the street, etc. Elections are among the primary mechanisms by which governments regulate mass political control and maintain their own authority.

Voluntaryists realize that political freedom is no freedom at all. The term "political freedom" is actually self-contradictory. Politics and freedom do not mix. Political rights do not exist in the state of nature because—there—there is no politics. The only legitimate meaning of the terms freedom or liberty refer to spiritual freedom (the ability and power of each individual to exercise self-control over him- or her self) and physical liberty (the absence of coercive, physical molestation to one's carcass and one's physical property). Neither of these concepts allows for any intermingling of coercion (politics) and voluntaryism.

The only true freedom and liberty are the rights to own property and control it one self. One does not need a State in order to do this or to guarantee that property rights be protected. Such ownership rights are not created or granted by the State. They necessarily precede the State and are superior to it. In fact, every State by its

very existence negates the primacy of property rights because they gain their revenues by means of taxation rather than via voluntaryism on the free market. So the next time you hear the much touted expression, "political freedom," beware! Political freedom is hazardous to your health.V

The Case against Democracy: The More Things Change, the More They Remain the Same

by Carl Watner
(from No. 45, August 1990)

Democracy. For many, the word sums up what is desirable in human affairs. Democracy, and agitation for it, occurs all over the world: the Pro-Democracy movement in China during 1989; the democratic reform movements taking place in Eastern Europe and the U.S.S.R. resulting in the breakup of the Communist Party's monopoly over electoral activity; and the U.S. invasion of Panama to restore democratic government.

Future historians may label the twentieth century as the Age of Democracy. From Woodrow Wilson's salvo, "Make the world safe for democracy," and the ratification of the Nineteenth Amendment (1920) giving women the vote, to a 1989 observation of one Philippine writer—"In the euphoria of the [democratic Aquino] revolution, people expected that with the restoration of democracy all the problems of the country would be solved"—little has changed. Democracy has been hailed as the solution to many political problems. However much we would like to believe in democracy, we still need to recall that democracy is nothing more than a form of statist control. The purpose of this article is to briefly review the history and development of democratic political theory from a voluntaryist perspective, and to explain why the world-wide movements toward democracy (the more things change) do not alter the nature of the State (the more they remain the same).

Democracy. The word is ultimately traceable to two Greek roots, referring to "the rule of the common people or populace." As *The American College Dictionary* puts it, democracy is "government by the people; a form of government in which the supreme power is vested in the people and exercised by them or their elected representatives under a free electoral system." In the ancient democracies of Sparta and Athens, every free citizen was entitled to attend legislative assemblies and vote, but not every person was a freeman (slaves, women, and children were denied participation). The modern western democracies of the nineteenth and twentieth centuries have tended to be based on the assumption of equality of all human beings (though children, convicted felons, and the mentally incompe-

tent may not vote) and upon the idea of representation, where the people elect representatives to conduct the affairs of State.

It is no exaggeration to conclude that the modern concept of democracy has emerged as the result of the age-old search for "the best and most equitable form of government." Most commentators would agree that the essentials of modern democracy, as we know it today, include: 1) "holding elections at regular intervals, open to participation by all political parties, freely administered, where the voting franchise is universal"; and 2) "respect for fundamental human rights, including freedom of expression, freedom of conscience, and freedom of association," based upon the "fundamental assumption of the equality of all individuals and of their equal right to life, liberty, and their pursuit of happiness." It is important to note, at this point, that the advocate of democracy already presupposes that we need a State. By focusing on the less important question of "what kind of government is best," democracy and its spokesmen through the ages have ignored the more fundamental question of "why is any form of the State necessary?"

Why does democracy appear to be the "best form of government?" The answer to this question helps explain its persistence. Ever since political philosophers and politicians have tried to justify the State and the exercise of political power, they have been faced with solving the problem of political obligation. Why should some people obey rules and laws, so called, passed by other people? How do the actions of the legislators bind those who refuse to recognize their authority? By what right do the governors wield force to enforce their edicts? In short, what makes one form of government legitimate and another form not? Defenders of democracy answer these questions by pointing out that the history of democracy is largely the history of the inclusion of more and more people of a given country in the exercise of the ballot. It is through the idea of the right of the people to vote (to govern themselves) that the question of political obligation is answered. George Washington pointed out that, "The very idea of the right and power of the people to establish government presupposes the duty of every individual to obey the established government." By involving the whole community, or as many people as possible, democracy garners support for the "laws" passed in its name by the people's representatives. It does so by creating the theory that all the factions participating in an election agree to accept its outcome. In other words, the minority agree to abide by the decision of the majority in the electoral process. (For a discussion of the riddles of electoral representation see *The Voluntaryist*, No. 30, "Some Critical Considerations on the United States Constitution.")

Why should anyone agree to such an implicit contract? Why should one person, or some group of people, be bound by the outcome of an election—what *other* people think is advisable? The only possible answer is that it is a precondition to participation. But then, why should anyone participate? Democratic theory has never really answered this question because it already assumes that government is a social necessity. The importance of this point is found in the ob-

servation that "every ruling group must identify with a principle acceptable to the community as justification for the exercise of [its] power." In other words, if there is to be a ruling class in society, if political power is to be exercised, then the rulers must obtain some sort of sanction from the ruled. Democracy admirably serves this purpose because it focuses on the apparent right of the whole community to share in the direction of State.

As I observed in "The Myth of Political Freedom," the idea of political freedom is a charade. The appearance is that the populace has some say in the direction of its government, whereas the reality is that they are being manipulated by a system which has been designed to minimize the effects of their input. If people think that their activities influence the outcome of elections and policy-making, then they are likely to be complacent in abiding by the outcome. In short, this involves a process of co-optation, in which the participants are deluded into thinking that their involvement has a significant effect, whereas in reality it matters very little. The purpose of participation is to focus on "how shall we be ruled?" rather then "should we be ruled?" Democracy has survived and has been the most popular solution to the problem of justifying political authority because it has most successfully and most persuasively kept the political game within this framework.

Events in Eastern Europe and the U.S.S.R. serve to illustrate this thesis. When a ruling class loses or lacks a preponderance of force, or when force no longer serves as a threat to enslavement, the only alternative is to obtain the voluntary compliance of the people through the participatory and representative mechanisms of democracy. Thus a *Wall Street Journal* reporter was able to write on June 7, 1989 that, "Far from undermining the Communist leadership, the Soviet 'democracy' movement has actually strengthened Mr. Gorbachev's political legitimacy." Indeed, that is the whole purpose of democracy. As Benjamin Ginsberg in his book *The Consequences of Consent*, has noted:

> [Democratic] institutions are among the most important instruments of governance. Elections set the limit to mass political activity and transform the potentially disruptive energy of the masses into a principal source of national power and authority. Governments … rule through electoral institutions even when they are sometimes ruled by them. (244)

Thus it is plain to see why the communist systems are ready to accept some form of democracy or "democratic socialism." Democratic institutions are likely to emerge where the public "already possesses—or threatens to acquire—a modicum of freedom from governmental control." As Ginsberg explains, "democratic elections are typically introduced where governments are unable to compel popular acquiescence." (245) Ginsberg theorizes that "elections are inaugurated in order to persuade a resistant populace to surrender at least some of its freedom and allow itself to be governed."

Democratic participation in elections is offered as a substitute for the people's natural freedom. In the days prior to the Constitution, social power in the United States was stronger than or at least equal to political power. The populace could not have been compelled to accept a government it did not desire because there was no military force strong enough to overcome its resistance. Social power not only rested on the bearing of weapons, but on the strength of private associations, churches, and community groups which could be voluntarily organized if the need arose. Several framers of the Constitution urged the adoption of a democratic form of government on the grounds that the people would otherwise refuse to accept the new Constitution. Generally speaking, wherever and whenever rulers lack a clear preponderance of force, they tend to become much more concerned with the acquisition of voluntary compliance through democratic methods. As Ginsberg puts it:

> When sizable segments of the public possess financial, organizational, educational, and other resources that can be used to foment and support opposition, those in power are more likely to see the merits of seeking to persuade rather than attempting to force their subjects to accept governance. (247) … It is, in a sense, where the citizens have the means to maintain or acquire a measure of freedom from governmental authority that they must occasionally be governed through democratic formulas. And it is in this sense that freedom is an historical antecedent of democracy. (248)

The rulers in a democracy must obscure the inherent conflict between personal freedom and governmental authority. They do so by largely relying on the electoral mechanism and citizen involvement with government. How, the rulers ask, can a government controlled by its citizens represent a threat to the freedom of those who vote and participate? They do so by consistently ignoring the fact that all government, by its very nature, is arbitrary and coercive. As Sir Robert Filmer asked during the seventeenth century, if it be tyranny for one man to govern, why should it not be at least equal tyranny for a multitude of men to govern?

> We flatter ourselves if we hope ever to be governed without an arbitrary power. No: we mistake; the question is not whether there shall be an arbitrary power, whether one man or many? There never was, nor ever can be any people governed without a power of making laws, and every power of making laws must be arbitrary.

To the voluntaryist, a man is still a slave who is required to submit even to the best of laws or the mildest government. Coercion is still coercion regardless of how mildly it is administered. Most everyone (the author included) would prefer to live under a democratic form of government if the choice is between "forms of government," but that is not the point at issue. As Aristotle recognized in his *Politics* (though he was not opposed to it), "The most pure democracy is that which is so called principally from that equality which prevails in it: for this is what the law

in that state directs; *that the poor shall be in no greater subjection than the rich*" (emphasis added). From the voluntaryist point of view, neither the rich nor the poor should be under any "subjection" or coercion at all. The search for democracy is like the search for the "fair" tax or "good" government. Due to the nature of the "beast" there can be no such thing. Yet the clamor for democracy has persisted for at least 2500 years. The more things change, the more they remain the same!▽

Notes on War and Freedom

by Ramsey Clark
(from No. 57, August 1992)

War is more destructive of freedom than any other human activity. Any violation of civil liberties is easily justified in times of war and the threat of war, however unnecessary for security, harmful to its victims, irrational, unfair, or even detrimental to the war effort itself.

The unity of purpose war requires is intolerant of any dissent or failure to subordinate individual conscience and desire to military command. Absolute obedience to authority is the first rule of war.

Dehumanization and hatred of enemies are essential to create a human capacity for the horrors of war and the assault on liberty alike. A people willing to support killing will not hesitate to crush freedom.

Sometimes government will derive satisfaction from interfering with liberty as a way of showing its support for war. This may be understandable when the activity suppressed is directed against the conduct of the war. But government intervention also occurs when the hated activity is purely an affirmation of freedom, as when Upton Sinclair was arrested for reading the Bill of Rights. Freedom after all is an enemy of war. Sadly the American people more often than not have applauded the assault on liberty by the war lover.

There is little room for freedom when a people are under fire. Liberty will keep her head down when she is being shot at like everyone else. We can hear a lonely Eugene Debs observe on his way to prison for opposing U.S. involvement in World War I: "It is extremely dangerous to exercise the constitutional right of free speech in a country fighting to make the world safe for democracy."

The antagonism between war and freedom is inherent. War is rule by force. Freedom, as Robert Maynard Hutchins helpfully defined it, is the negation of force. A war-time government will act to crush freedom because a people who wants freedom will resist war.

It follows that in freedom is the preservation of peace. The very quest for freedom involves finding ways of preventing war.

It ought to be clear that the ultimate subversion of the Bill of Rights and the more comprehensive idea of freedom is the misbegotten belief that freedom can be either defended or obtained by force. In war all participants seek to have their way by violence. Whatever the intentions of the combatants or the policy of the prevailing party after war, freedom has been diminished.

Far from recoiling at war's inhumanity, the victor and the vanquished seek superior force as the only way to win. Each prepares for the next war while liberty is held in thrall to militarism. Jorge Luis Borges in his powerful story "Deutsches Requiem" depicts a captured Nazi concentration camp commander awaiting execution who declares ecstatically that although the Fatherland was destroyed, Nazism prevailed because its faith was in the sword and those who destroyed the fatherland adopted its faith.

Throughout history, nation-states have spoken of their commitment to freedom and desire for peace while planning war. In Plato's dialogue *The Laws*, the anonymous Athenian Stranger argues that the good legislator orders "war for the sake of peace." The more candid Cleinas of Crete observes of his own country, "I am greatly mistaken if war is not the entire aim and object of our institutions." The Athenian Stranger, thought by most scholars to represent Plato himself, by others Socrates, by all the wisdom of Attica, saw war as a means with peace as its end. Cleinas, with greater simplicity, saw a world in eternal struggle among nations for domination.

For both views the result has been the same. War has been the dominant experience of nearly every generation for virtually every nation, culture and civilization that history records. And the little bit of uneasy peace and partial freedom that has been known was found despite, and not because of, war.▽

Excerpts from the "Preface" in Michael Linfield, Freedom Under Fire, *Boston: South End Press, 1990.*

A Note to the Commissioner

by Anonymous
(from No. 63, August 1993)

In early 1993, more than a hundred million Americans received the following message ("A Note from the Commissioner") with their 1992 federal income tax filing package.

Dear Taxpayer:

As the Commissioner of the Internal Revenue, I want to thank you on behalf of the government of the United States and every American citizen. Without your

taxes, we could not provide essential services; we could not defend ourselves; we could not fund scientific and health care research. Thank you for paying your taxes.

You are among the millions of Americans who comply with the tax law voluntarily. As a taxpayer and as a customer of the Internal Revenue Service, you deserve excellence in the services we provide; you deserve to be treated fairly, courteously and with respect; and you deserve to know that the IRS will ensure that others pay their fair share.

To fulfill our responsibilities to you, we are making major changes in the way we conduct our business. Under our new philosophy of tax administration, known as Compliance 2000, we are reaching out to provide education and assistance to taxpayers who need our help. One program is dedicated to bringing non-filers back into the system. We will work with every American who wants to "get-right" with the government. At the same time we will direct our enforcement efforts toward those who willfully fail to report and pay the proper amount of tax. All must pay their fair share, just as you are doing.

We realize that the tax law is complex and sometimes frustrating. …

Our goal is to transform the tax system by the end of the decade. … As we improve our organizational structure, we also will do a better job of serving our customers, the taxpayers. We believe in accountability. Please let us know if you have any suggestions for ways to improve our service to you.

Thank you again for dedication to our country.
signed/Shirley D. Peterson

The following "Note to the Commissioner" was sent to us by a disgruntled subscriber.

Dear Ms. Peterson:

The past year, 1992, was a taxing year for every American. As you well know, the typical American family spent practically 40% of its income on federal, state, and local taxes. Everywhere you turn there is a government agent on hand to collect money, and a government official, like yourself, to try to doubletalk us into believing that you are actually performing a vital service.

You imply that we could not survive without your assistance. Yet, the fact is quite the reverse: you people in government could not survive without us, the workers and the producers in society. Where would your sustenance come from if we didn't provide it? American government monopolizes or interferes in essential services because the large majority of people use them. These areas of life—like money, banking, schooling, communication, and protection services—are the lifeblood of society. Government stranglehold on them yields control over every person in the country. Essential services, if not provided by government, would be

forthcoming. People do not walk barefoot because there are no government shoe factories.

You thank us for complying with the tax laws voluntarily, but in the next breath, write of directing your enforcement efforts against those who "fail to report and pay." Come on, Ms. Peterson! The only reason millions and millions of taxpayers send you their money 'voluntarily' is because you, Congress, and the Federal Marshal Service threaten them with imprisonment, penalties and fines, and confiscation of their property if they do not. You would surrender your wallet to a thief who brandished a gun, and threatened you for "your money or your life," but you wouldn't call it "voluntary."

If you truly believe in accountability, you ought to accept responsibility for the crimes of the organization you head. No Mafia syndicate, no pirate band, no gang of criminals has ever acted more brazenly, and more openly than the thieving Internal Revenue Service. The only thing that distinguishes your institution from its brothers-in-spirit-in-crime is its degree of legitimacy—the fact that most Americans have come to accept its existence, like death, as inevitable.

There is no way you could possibly improve your service. Evil actions should be abandoned, not made more efficient. If you are serious about your dedication to the welfare of American society, I urge you to submit your resignation. There is no way to make your job compatible with the norms of honesty, morality, and integrity. Please think about this before you work another day on the job.

Sincerely,
A Seriously Concerned Taxpayer

[Editor's Note: A *Wall Street Journal* report (Feb. 3, 1993, A16) indicates that Ms. Peterson has left her post, and that in a speech to the New York Bar Association she warned: "If we don't change our system of collecting taxes, it will break down. Our traditional approach cannot sustain an acceptable level of compliance."]

The Tragedy of Political Government

by Carl Watner
(from No. 79, April 1996)

Tragedy—"A lamentable, dreadful, or fatal event or affair; a disaster or calamity."

"WHAT IS tragic about political government?" you might ask. Let us return to that question once we have examined the nature of political government and the State.

In order to distinguish between government and other institutions in society we must look at the ways human behavior can be organized and human needs and desires satisfied. There are only two ways: peacefully or coercively. There are no other alternatives. If people rely on peaceful cooperation, they must necessarily offer products or services for which other people are willing to trade. If people use coercion or fraud, we call it obtaining goods or services under false pretenses, robbery, or larceny. However we label it, the basic contrast remains the same: one relies on voluntaryism or one relies on force.

A stranger knocks at your door and, upon opening it, he requests money. He represents the March of Dimes, and is asking for donations to support its activities. Unless you feel generous, you dismiss him. You have no particular obligation to support his cause, and the fact is you have already contributed to other charities, such as the United Way. Unless the stranger is a blatant thief, he leaves. He doesn't deal with you by using force, or its threat, to collect the money he is soliciting.

Compare this to what happens every April 15th in the United States. Granted, most "good citizens" send in their tax payments to the Internal Revenue Service. The IRS does not need to send out a representative to collect the tax; and if there is any need to do so, he generally needn't carry a gun or make any direct display of force.

Why don't people dismiss the IRS in the same manner as they would the solicitor who is collecting for a private cause? Many would, except they know that there is a big difference between the March of Dimes and the IRS. The March of Dimes organization is a group of private individuals assembled together for the common purpose of overcoming polio, muscular dystrophy, and birth defects. They do not use force, or the threat of force, to accomplish their goals. Should they, we would have no hesitation in calling the March of Dimes, and its solicitation agents, criminal.

The IRS, on the other hand, represents the government, which—when all else fails—uses force to accomplish its goals. If you do not voluntarily pay your taxes, your property is confiscated, or you are jailed. The amazing thing about our government in the United States is that it rarely has to resort to force. There are tax resisters, but they form a small percentage of the population. Except for these few people, no one calls IRS agents criminals even when they brandish guns, confiscate property, or put people in jail. Despite the fact that they engage in the same type of behavior as the private thief or kidnapper, it's seldom that their behavior is called criminal.

Why is this so?

Government is the only institution in our civilized society that is able to cover its coercion (and its use of threats) in a shroud of mystique and legitimacy. There are other individuals and groups in society that use force: individual criminals (the lone burglar, rapist, etc.), and groups of criminals (the Mafia or gangs of

thieves, etc.). But none of these claim their activities are proper and useful. Government is the only one of these coercive groups that claims its use of force is legitimate and necessary to everybody's well-being.

Government is the institutionalization of conquest over the people and property in a certain territory. The stated purpose of government is protection. In reality it is exploitation: to extract resources which otherwise would not be voluntarily handed over to the governors. Governments excel in the use of force and threat—the political means of survival—by combining military conquest and ideology. Though throughout history, governments have been of many different types, their reason for being and modus operandi have never changed. Governing requires that those who govern authorize or commit criminal acts—actions which, if used by any but the agents of the government, would be deemed criminal.

Governments seek the voluntary obedience of their populace. The continual use of physical force is not only expensive, but often of uncertain results. If the governors can get the governed to accept their conquest as being consistent with widely accepted norms and standards, there is little need to use raw force to continually compel submission. The primary tools which governments use to establish their legitimacy are: 1) the use of nationalism and patriotism to inculcate the belief that the entire nation is a single community with a manifest destiny; 2) the use of mass public "education" to socialize the younger generation and instill "acceptable" values in them; 3) the use of psychological warfare to "brainwash" the populace into supporting the government at all costs. The truth of the matter is that governments use every means at their command to ensure their control over society. Other methods include support of special interest groups with legislation and subsidies, celebration of national holidays, frequent elections, use of the secret ballot, sustaining foreign enemies to help maintain internal control, and the full panoply of patriotism.

The main tragedy of political government is that few people realize it is an immoral and impractical institution. Nor do they realize "that the power of any government is dependent on the cooperation of the people it governs, and that government power varies inversely with the noncooperation of the people." They have been conditioned to accept government as a natural part of their environment. After being raised in a culture in which "politics" is the norm, and after attending years of public school and being taught that political government is a necessary component of society, most people place government in the same category as the weather—something they complain about, but can't change. As people accept the structural trap called politics, they fail to realize that their actions support and undergird the State. Their demand for government services—from Social Security benefits to police protection—is what fuels the State.

Most people are capable of high values and responsible behavior, but once they enter the seductive garden of politics, they no longer notice that its wonders

cannot be reconciled with individual responsibility and their own personal moral values of honesty and hard work. It is not usually apparent that what they are doing or supporting is vicious and would not pass the test of ordinary decency. So long as the criminality is veiled by the political process, most people accept it because they do not see that it conflicts with their basic values. The main tragedy of political government is not only that the voters are the ones pointing the gun, but, most importantly, that the indecency of this act is concealed from them by the political process. It is the concealment that is the tragedy. The concealment is not the result of some conspiracy by some distant elite: it is inherent in the political process.

Perhaps the tragedy can be made more plain. Look at the daily news. At least half of every day's news consists of accounts of one pressure group or another noisily appealing to the government for greater support of its special agenda. The tragedy is that the people making the demands do not perceive that it's their own neighbors from whom they are stealing and sacrificing in order to support their special programs. The political process—purposefully—is an impersonal one. The secret ballot and the use of majority vote obscure the fact that it is the struggling family next door or the bachelor down the street who are being threatened at gunpoint if they do not fill the government's coffers or follow its mandates. The resources for every government program come from hundreds of millions of people across the United States—most of them personally unknown to those who campaign for these programs. Few people would directly confront their neighbors with such demands ("Your money or your life!"), but the structure of politics permits this to be done anonymously, and allows the supporters and perpetrators to conceal—even from themselves—the evil nature of what they are doing.

Such is the tragedy of political government.▽

[Author's Note: John Kreznar suggested and assisted in the preparation of this essay.]

"Will Rothbard's Free-Market Justice Suffice?"

by Murray Rothbard
(from No. 80, June 1996)

THE ANARCHISM/limited government controversy must be considered in two parts: the moral, and the practical or utilitarian. Morally, which for me is the prime consideration, it seems to me unquestionable that, given the libertarian premise of nonaggression, anarchism wins hands down. For if, as all libertarians believe, no one may morally initiate physical force against the person or property of another, then limited government has built within it two fatal principles of impermissible aggression. First, it presumes to establish a compulsory monopoly of

defense (police, courts, law) service over some given geographical area. So that individual property-owners who prefer to subscribe to another defense company within that area are not allowed to do so. Second, the limited government obtains its revenues by the aggression—the robbery—of taxation, a compulsory levy on the inhabitants of the geographical area. All governments, however limited they may be otherwise, commit at least these two fundamental crimes against liberty and private property. And even if one were to advocate the first feature without the second, so as to have only voluntary contributions to government, the first aggressive and therefore criminal feature of government would remain. Anarcho-capitalism advocates the abolition of these two features, and therefore the abolition of the State, and the supplying of defense service along with all other goods and services on the free market.

Dr. Hospers maintains that if one private agency should "predominate in a certain area, it would in effect be the government. ... there would be very little difference" between that and a single government agency of protection. ... It must be pointed out that even in these conditions, it makes a great deal of difference, because (a) individuals can always have the right to call in another, competing defense agency; and (b) the private agency would acquire its income from the voluntary purchases of satisfied customers, rather than from the robbery of taxation. In short, the difference would be between a free society and a society with built-in and legalized aggression. Between anarchism and archy.

To sum up, on moral grounds I don't think the limited archists have a leg to stand on: given the libertarian axiom, they must logically end up as dedicated anarchists. What then of the utilitarian arguments? First, I must state that for me the claims of morality and justice are so overwhelming that utilitarian questions are of relatively little moment. But even for those libertarians who would weigh the utilitarian more heavily, I would say this: that *usually* in human affairs, the moral and the practical go hand in hand; and, second, that at the very least, you should agree that the moral argument sets up, not indifference, but a heavy presumption on behalf of anarchism. ▽

Excerpts from Murray Rothbard's "Yes" answer. Reprinted with permission from the May 1973 issue of Reason Magazine. *Copyright 1973 by the Reason Foundation, 3415 S. Sepulveda Blvd., Suite 400, Los Angeles, CA 90034, pp. 19, 23–25.*

On Keeping Your Own: Taxation Is Theft!

by Carl Watner
(from No. 86, June 1997)

THERE ARE essentially two types of people that prey on other peoples' property. There are your everyday thieves or criminals who pick pockets, embezzle, or burglarize, and then there are your government bureaucrats (whether local, state, or federal) who are responsible for the collection of tax revenues and enforcement of political regulations. The bureaucrat may not carry a gun himself or enforce his threats against you, but he will get a judge to direct a policeman, state trooper, reservist, soldier, or federal marshal to seize your property in the event you choose to disobey his or the judge's directives. Both the highwayman and the government enforcers do the same thing: they take your property without your consent. The only difference is that the government agent acts under the guise of the law or the Constitution while the burglar does not. The difference, if there actually is any, brings to mind Lysander Spooner's passage from *No Treason:*

> The highwayman takes solely upon himself the responsibility, danger, and crime of his own act. He does not pretend that he has any rightful claim to your money, or that he intends to use it for your own benefit. He does not pretend to be anything but a robber. He has not acquired impudence enough to profess to be merely a "protector," and that he takes men's money against their will, merely to enable him to "protect" those infatuated travelers, who feel perfectly able to protect themselves, or do not appreciate his peculiar system of protection. ... Furthermore, having taken your money, he leaves you, as you wish him to do. He does not persist in following you on the road, against your will; assuming to be your rightful "sovereign," on account of the "protection" he affords you. He does not keep "protecting" you, by commanding you to bow down and serve him; ... by robbing you of more money ...; and by branding you as a rebel, a traitor, and an enemy to your country, ... if you dispute his authority, or resist his demands. He is too much of a gentleman to be guilty of such impostures, and insults, and villainies as these. In short, he does not, in addition to robbing you, attempt to make you either his dupe or his slave. [*No Treason* No. VI, (Section) III, 1870]

The highwayman claims no legitimacy in his assaults against you. The judge, the marshal, the gun-toting sheriff, and politician all claim that their depredations against you are legal, constitutional, and by due process of law.

Most advocates of taxation justify their view that "taxation is *not* theft" by referring to some form of "tacit" consent that each person incurs by the mere act of living in society. This amounts to the claim that if you live here, in the United States, your presence indicates that you have agreed to be taxed! Some people may agree with this line of thinking, but there are some who refuse to be brainwashed by

such State propaganda. The State has no right to determine the conditions under which we live. It is true that there are costs expended in protecting one's property, but taxation, as a means of financing "government protection," is self-contradictory. To resort to compulsion to protect us from the violence of others is self-defeating and illogical. Some people may not want the protection; others may be able to provide it more cheaply by doing it themselves; and others may choose to associate with non-governmental protection agencies to furnish the amount and kind of protection they desire. What justification is there for compelling a man to accept a product he doesn't want, or didn't order, or would prefer not to have? And then jailing him when he refuses to pay the bill?

The whole premise of government taxation is essentially the idea that you and your property belong to the State. You are a slave of the State. Whatever the government allows you to keep or accumulate is simply attributable to its generosity. It is not yours by right. The contrarian view, on the other hand, maintains that the State is a criminal institution; and that the State accumulates its resources and wealth only by stealing from each member of the community. Consequently, failing to file a tax return, or "cheating" on one's tax return is simply a case of outwitting the criminals and keeping your own property. How could anyone object to you hiding your jewels so that a common thief couldn't find them? How could anyone object to you holding on to your wealth so that the government couldn't seize it? The answer in both cases is the same. Neither the common thief nor the government have any right to your wealth, and therefore neither should object to your actions to prevent them from seizing all or part of it.

What the government calls tax evasion, either not paying your taxes or paying less than it claims, is simply a person's way of saying, "No!" or "Enough is enough!" Such actions are one way of protecting your property from government thieves and reducing the amounts the government steals from you. The tax evader is usually looked upon as a cheat, but is this really the case? No! The cheaters are those who deceive others into believing that they "owe" taxes to the government. These are the people who are trying to cheat the rest of us out of our rightfully earned property! The tax evader is simply trying to outwit a criminal government by keeping what belongs to him. It is his money. It was honestly earned. He is fully justified in keeping it out of the clutches of both the thief and the tax man!▽

Who Are the Realists?

by Roy Halliday
(from No. 88, October 1997)

When people first hear an anarchist calling for abolition of the State, they think of all the valuable services that the State provides, and they come to the State's de-

fense, because they want those services to be continued. They may readily agree with the anarchist when he says taxes are too high, wars are evil, there are too many restrictive laws, and the government has taken away too much of our freedom. But they assume that abolition would entail foregoing all the valuable government services, and that is too high a price to pay for the additional freedom. They do not ask, "Who will systematically steal our wages? Who will start wars and conscript our young men to fight in them? Who will deprive us of our freedom after the state is abolished?" because they would like to do without these government services as much as the anarchist would. Instead, they criticize the anarchist for overlooking the positive contributions of the State. They think that the anarchist has not thought through the consequences of his position.

After a moment's consideration, the average person believes he has discovered insurmountable objections that the anarchist has not thought of. The average person then tries to show the holes in the anarchist position by asking a series of questions about practical matters. The dialog goes like this:

"If we abolish the State, who would collect the garbage, deliver the mail, and educate our children?"

"Garbagemen, mailmen, and teachers of course."

"Yes, but who would pay for it?"

"People who want their garbage collected, mail delivered, or children educated."

"Yes, but who would pay for the people who want these services and don't have the money?"

"Friends, neighbors, relatives, charitable organizations, or nobody."

"Can't you see that the government has to provide these services?"

"No."

Sooner or later the average person comes to the conclusion that the anarchist is hopelessly blind to the obvious need for the State and goes away shaking his head. What the average person doesn't realize is that the services he is concerned about have been provided privately in the past and could be provided privately again if the State didn't prevent it.

The State jealously guards its coercive monopoly of the services it provides. Many attempts have been made to replace or circumvent the government by free-market alternatives only to be driven underground. In *Uncle Sam the Monopoly Man*, William Wooldridge provides historical examples of commercially successful private mail delivery companies in the 1840s that were put out of business only by special acts of Congress.

Wooldridge also provides examples of successful private businesses engaged in minting coins, building and owning roads, providing education to poor children in urban ghettos, and even arbitrating disputes and dispensing justice in private courts. All of these businesses were able to compete successfully with the

government despite the legislative roadblocks put in their way deliberately to discourage them.

We do not have to resort to theoretical arguments to prove that the state is unnecessary. There are historical examples of societies that functioned quite well without a state. The people of Ireland had a society for 1000 years without a State.

Two points that people often bring up are that man is not perfect, and there will always be crime. They assume that anarchists overlook these basic facts. This is particularly annoying to individual-rights-based anarchists, because our anarchism is fundamentally an anti-crime philosophy. The primary reason we oppose the State is that the State is a criminal organization. It is precisely because we are aware of man's moral weaknesses that we want to make the powerful machinery of the state unavailable to evil men.

Individual-rights-based anarchism, rather than being opposed to all law, maintains that there are objective, eternal, and universally valid principles of law. Anarchists use the natural law to judge the legitimacy of the various man-made laws. It is the statist, not the anarchist, who denies natural law and imposes an artificial, temporal, inconsistent, and often arbitrary set of "laws" on society. Any system of so-called "law" that opposes voluntary associations is opposed to the real laws of society.

Anarchism can be thought of as a philosophy of law and order. Like most other legal philosophies, anarchism is opposed to private crimes such as murder, kidnapping, rape, assault, and robbery. However, anarchists differ from other people by continuing to oppose these activities even when they are engaged in by authorized agents of the state. Anarchists judge all actions by the same principles, whether the perpetrator is acting on behalf of the state or as a private citizen. It doesn't matter whether he wears a badge, or dog tags, or lives in the White House: a criminal is a criminal.

The amount of money stolen by private individuals each year is tiny compared to the amount confiscated by the state. The number of private murders committed by civilians does not approach the number of innocent people murdered by agents of the state. According to R. J. Rummel's book *Death by Government*, in the twentieth century, states have murdered 169,198,000 of their subjects. If we add the military combatants who died in wars, the total is 203,000,000 people.

Anarchists are accused of being utopian or unrealistic because they do not believe in the theories, fictions, and myths used to justify the State, all of which are attempts to obscure or deny the historical evidence that the State has its origin in conquest and confiscation and that it maintains its existence by violence. The people who deny the facts, the statists, are the unrealistic ones.▽

This article originally appeared in Formulations, *Autumn 1996, a publication of the Free Nation Foundation, 111 West Corbin Street, Hillsborough, NC 27278. Reprinted, without footnotes, with permission of the author.*

Part III
Voluntaryist Strategies

"Participation is an instrument of conquest because it encourages people to give their consent to being governed. … Deeply embedded in people's sense of fair play is the principle that those who play the game must accept the outcome. Those who participate in politics are similarly committed, even if they are consistently on the losing side. Why do politicians plead with everyone to get out and vote? Because voting is the simplest and easiest form of participation by masses of people. Even though it is minimal participation, it is sufficient to commit all voters to being governed, regardless of who wins."

—Theodore Lowi,
Incomplete Conquest, (1981), pp. 25–26.

Neither Bullets Nor Ballots

by Wendy McElroy
(from No. 1, October 1982)

THE VOLUNTARYIST seeks to reclaim the anti-political heritage of libertarianism. It seeks to reestablish the clear, clean difference between the economic and the political means of changing society. This difference was well perceived by the forerunners of contemporary libertarianism who tore the veil of legitimacy away from government to reveal a criminal institution which claimed a monopoly of force in a given area. Accordingly, early libertarians such as Benjamin Tucker maintained that one could no more attack government by electing politicians than one could prevent crime by becoming a criminal. Although he did not question the sincerity of political anarchists, he described them as enemies of liberty: "those who distrust her as a means of progress, believing in her only as an end to be obtained by first trampling upon, violating, and outraging her." This rejection of the political process (by which I mean electoral politics) was a moral one based on the insight that no one has the right to a position of power over others and that any man who seeks such an office, however honorable his intentions, is seeking to join a criminal band.

Somewhere in the history of libertarianism, this rejection of the State has been eroded to the point that anarchists are now aspiring politicians and can hear the words "anarchist Senator" without flinching. No longer is libertarianism directed against the positions of power, against the offices through which the State is manifested; the modern message—complete with straw hats, campaign rhetoric and strategic evasion—is "elect *my* man to office" as if it were the man disgracing the office and not the other way around. Those who point out that no one has the right to such a position, that such power is anathema to the concept of rights itself, are dismissed as negative, reactionary or crackpot. They are subject to ad hominem attacks which divert attention from the substantive issues being raised, the issues which will be discussed in *The Voluntaryist*.

The Voluntaryist is unique in that it reflects both the several centuries of libertarian tradition and the current cutting edge of libertarian theory. The tradition of American libertarianism is so inextricably linked with anarchism that, during the nineteenth century, individualist-anarchism was a synonym for libertarianism. But anarchism is more than simply the non-initiation of force by which libertarianism is commonly defined. It is a view of the State as the major violator of rights, as the main enemy. Anarchism analyzes the State as an institution whose purpose is to violate rights in order to secure benefits to a privileged class. For those who believe in the propriety of a limited government it makes sense to pursue political office, but for an anarchist who views the State as a fundamentally evil institution such a pursuit flies in the face of the theory and the tradition which he claims to share. Thus, the political anarchist must explain why he aspires to an office he

proclaims inherently unjust. Perhaps one reason for the erosion of anarchism within the libertarian movement is that many of the questions necessary to a libertarian institutional analysis of the State have never been seriously addressed. A goal of *The Voluntaryist* is to construct a cohesive theory of anti-political libertarianism, of Voluntaryism, which will investigate such issues as whether moral or legal liabilities adhere to the act of voting someone into power over another's life. Perhaps by working out the basics of this theory the unhappy spectacle of "the anarchist as politician" can be avoided.

Another major goal is to examine non-political strategies. In constructing anti-political theory and strategy—which was assumed by early libertarians without being well defined—we will be labeled as merely counter Libertarian Party by those who innocently or with malice are unable to perceive the wider context which leads to a rejection of the political means itself. The myriad of non-political strategies available to libertarians will be dismissed or will be accepted only as useful adjuncts to electoral politics. It is ironic that a movement which uses the free market as a solution for everything from roads to national defense declares that political means, the antithesis of the free market, are necessary to achieve freedom.

As Voluntaryists we reject the Libertarian Party on the same level and for the same reason we reject any other political party. The rejection is not based on incidental evasions or corruption of principle which inevitably occur within politics. It is based on the conviction that to oppose the State one must oppose the specific instances of the State or else one's opposition is toward a vague, floating abstraction and never has practical application. Political offices *are* the State. By becoming politicians libertarians legitimize and perpetuate the office. They legitimize and perpetuate the State.

If libertarianism has a future, it is as the movement which takes a principled, resounding stance against the State. Those who embrace political office hinder the efforts of Voluntaryists who are attempting to throw off this institution of force. It is common for libertarians to view anarchism and minarchism as two trains going down the same track; minarchism simply stops a little before anarchism's destination. This is a mistaken notion. The destination of anarchism is different from and antagonistic to the destination of minarchism. The theory and the emotional commitment are different. Murray Rothbard captured the emotional difference by asking his famous question in *Libertarian Forum*, "Do you Hate the State?" Voluntaryists respond with an immediate, heartfelt "yes." Minarchists give reserved, qualified agreement all the while explaining the alleged distinction between a government and a state. Political anarchists are in the gray realm of agreeing heartily in words to principles which their actions contradict. It is time to have the differences between Voluntaryism and political libertarianism clearly expressed and for non-political alternatives to be pursued.

It is time for *The Voluntaryist*. V

Methods

by Francis Tandy
(from No. 9, September 1984)

[Editor's introduction: "The Voluntaryists seek to reclaim the anti-political heritage of libertarianism." As an example of that tradition I have selected a chapter on voluntaryist "methods" written by Francis Dashwood Tandy. Tandy (1867–?), a supporter of the individualist ideas of Benjamin Tucker, published the book *Voluntary Socialism* (from which this chapter is taken) in Denver during the spring of 1896. The book was described in advertisements in *Liberty* as "a complete and systematic outline of Anarchistic philosophy and economics, written in a clear, concise, and simple style."

Its purpose, in the words of the author's Preface, was to provide "a brief but lucid outline of … Voluntaryism." Its title, although somewhat of a puzzler, is easy enough to explain. Throughout much of the nineteenth century, "socialism" meant the abolition of every type of economic privilege. According to Tandy, there are two types of socialists: the State Socialist, who hoped to use the government to abolish the surplus value created by legislation (a method which he thought inherently contradictory) and the "voluntary Socialists or Anarchists," who maintained that the exercise of free competition, in such legally restricted areas as banking and tariffs (to name just two), was the only way to eradicate social evils.

Tandy has a clear grasp of the voluntaryist insight and the voluntary principle. He rejected revolutionary violence as impractical and unnecessary and saw electoral politics as just another form of institutionalized coercion. In reviewing his comments, I have changed his expression "passive" resistance to the more modern "non-violent resistance." I am proud to offer this condensed version of Chapter XIII (pp. 186–201), which I suspect represents the first and only time it has reappeared in nearly 100 years.—Carl Watner]

MANY AND various as are the different ideas in regard to what are the best social conditions, the opinions held concerning the best methods of attaining the desired end, are no less so. That different conditions may be brought about by different means is to be expected, but that so many entirely different methods are proposed as likely to produce the same results, is indicative of the loose thinking that is prevalent upon all subjects.

A correct idea of what we wish to attain is essential before we are capable of discussing how we can best attain it. Usually a thorough understanding of the first problem is a sure guide to the solution to the second. Having seen that the abolition of the State is necessary to progress, and that private enterprise is perfectly capable of performing the duties for which the State is said to be necessary, it is now in order to discuss how this end can be achieved. One thing should be borne in

mind from the start. It has been shown that the State is essentially an invasive institution. Since the person of the invader is not sacred, there is no ethical reason why we may not use any means in our power to achieve the results we desire. The State is founded in force. Therefore there is no good reason why it should not be abolished by force if necessary. The whole field is open to us. All we are bound to consider is, which method will be most likely to meet with success.

Where is the State? What is it? How are we to attack it? We see its agents around us every day. They are not the State and do not pretend to be. Where is the State from which these agents derive their authority? It only exists in men's minds. Karl Marx says: "One man is king only because other men stand in the relation of subjects to him. They, on the contrary, imagine that they are subjects because he is king." The officers of the State derive their authority simply and solely from the submission of its citizens. When it is said that the State is the main cause of our social evils, it must not be forgotten that the State is but a crude expression of the average intelligence of the community. Every law is practically inoperative that is very different from the general consensus of opinion in the community. The position of the State seldom exactly coincides with public opinion in regard to new measures, because it moves much slower than individuals. But it follows slowly in the wake of new ideas, and when it lags much behind its power is weakened. These facts are seen very plainly in prohibition States. They would be apparent to everyone, were it not for the superstition that we must obey the law because it is the law. It is said that our representatives are our servants. These servants make laws which we consider bad, yet because they are our servants, we must obey the laws they make! The State is king only because we are fools enough to stand in the relation of subjects to it. When we cease to stand in the relation of subjects to it, it will cease to be king. So that, in order to abolish the State, it is necessary to change people's ideas in regard to it. This means a long campaign of education.

These means are too slow to suit many who want to inaugurate a new social system at once. They cannot hasten matters a bit too much to suit me. The sooner the "new order" comes, the better I shall like it. But often "the shortest cut home is the longest way round." Ill-advised haste is disastrous. By all means let us hasten the progress of the race, but let us also use care lest our zeal upset our reason and cause us to hinder, instead of help, the re-adjustment of social forces.

A favorite method of reform, with those whose impatience with the present system is very great, is a violent revolution. If the State is purely an idea, how can we attack it with force? True, its agents use force to compel us to support it, and we might oppose them with force, but unfortunately we are not yet strong enough. As far as morality is concerned, it is, of course, justifiable to meet force by force. But, as an Egoist, the only morality I recognize is the highest expediency. So it would be highly immoral to attempt a revolution which would be foredoomed to failure. When a large minority have a clear idea of the nature of the State and an earnest desire to abolish it, such a revolution might be successful. But then it would be

unnecessary, for people having refused to stand in the relation of subjects to it, the State would be no longer king. Till then it must inevitably be a fearful failure, no matter which side was actually successful in the battles. …

Political methods must be condemned without even these qualifications. The ballot is only a bullet in another form. An appeal to the majority is an appeal to brute force. It is assumed that, since all men are on the average equally able to carry a musket, the side which has the largest number of adherents would probably conquer in case of war. So, instead of actually fighting over questions, it is more economical to count noses and see which side would probably win. The political method is a form of revolution, and most of the arguments directed against the latter are valid when applied to the former. The result shown at the polls indicates a certain stage of mental development in the community. As that mental development is changed, the political manifestations of it change also. So we are brought back to the original starting point. If we wish to effect the abolition of the State through politics, we must first teach people how we can get along without it. When that is done, no political action will be necessary. The people will have outgrown the State and will no longer submit to its tyranny. It may still exist and pass laws, but people will no longer obey them, for its power over them will be broken. Political action can never be successful until it is unnecessary. …

Any one who has had any experience in practical politics must know how hopeless it is to attempt to effect any reform—especially any reform in the direction of freedom—by that means. Platforms are adopted to get elected on, not to be carried out in legislation. The real position of a party depends, not upon the justness or unjustness of measures, but upon the probabilities of re-election. Scheming and "diplomacy" are the methods of the candidates for public office. Reasoning and honest conviction do not concern them in the least. …

These facts give us a glimpse of the intricacies of politics. How can the reformer or business man who has to earn his living hope to cope with the professional politician while this is the case? The politician is in possession of the field. He is able to devote his whole time to studying the situation and to heading off any move to oust him. What can you do about it? You can give the matter a little attention after business hours and think you grasp the situation. You can vote once a year or so for a different set of thieves. If you are very enterprising you can go to the primaries and think you are spoiling the politician's little game. What do you think the politician has been doing since last election? Instead of going to primaries you might as well go to—another place which politics more nearly resembles than anything on this earth. Perhaps better, for a spook devil would probably be an easier task-master than a politician in flesh and blood. You can do what you please, the politician is dealing from a stacked deck and has the best of the bunco game all the time.

At its very best, an election is merely an attempt to obtain the opinion of the majority upon a given subject, with the intention of making the minority submit

to that opinion. This is in itself a radical wrong. The majority has no more right, under Equal Freedom, to compel the majority. When a man votes he submits to the whole business. By the act of casting his ballot, he shows that he wishes to coerce the other side, if he is in the majority. He has, consequently, no cause for complaint if he is coerced himself. He has submitted in advance to the tribunal, he must not protest if the verdict is given against him. If every individual is a sovereign, when he votes he abdicates. Since I deny the right of the majority to interfere in my affairs, it would be absurd for me to vote and thereby submit myself to the will of the majority. …

Must we then sit still and let our enemies do as they please? By no means. Three alternatives offer themselves, active resistance, non-violent resistance and non-resistance. The folly of the first has already been demonstrated. Non-resistance is just as bad. Unless we resist tyranny, we encourage it and become tyrants by tacitly consenting to it. But non-violent resistance still remains. The most perfect non-violent resistance has often been practiced by the Quakers. During the Civil War the Quakers all absolutely refused to serve in the army. In European countries they have resisted conscription in the same manner. What could be done about it? A few were imprisoned, but they stood firm, and finally, by non-violent resistance, they have gained immunity from this particular form of tyranny. …

To gain anything by political methods, it is first necessary to gain a majority of the votes cast, and even then you have to trust to the integrity of the men elected to office. But with non-violent resistance this is unnecessary. A good strong minority is all that is needed. It has been shown that the attitude of the State is merely a crude expression of the general consensus of the opinion of its subjects. In determining this consensus, quality must be taken into consideration as well as quantity. The opinion of one determined and intelligent man may far outweigh that of twenty lukewarm followers of the opposition. "To apply this consideration to practical politics, it may be true that the majority in this country are favorable, say, to universal vaccination. It does not follow that a compulsory law embodies the will of the people; because the very man who is opposed to that law is at least ten times more anxious to gain his end than his adversaries are to gain theirs. He is ready to make far greater sacrifices to attain it. One man rather wishes for what he regards as a slight sanitary safeguard; the other is determined not to submit to a gross violation of his liberty. How differently the two are actuated! One man is willing to pay a farthing in the pound for a desirable object; the other is ready to risk property and perhaps life to defeat that object. In such cases as this it is sheer folly to pretend that counting heads is a fair indication of the forces behind." (Donisthorpe, *Law in a Free State*, pp. 123–124.) A strong, determined and intelligent minority, employing methods of non-violent resistance, would be able to carry all before it. For the same men, being in a numerical minority, would be powerless to elect a single man to office.

Another thing must be remembered. Nonviolent resistance can never pass a law. It can only nullify laws. Consequently, it can never be used as a means of coercion and is particularly adopted to the attainment of Anarchy. All other schools of reform propose to compel people to do something. For this they must resort to force, usually by passing laws. These laws depend upon political action for their inauguration and physical violence for their enforcement. Anarchists are the only reformers who do not advocate physical violence. Tyranny must ever depend upon the weapon of tyranny, but Freedom can be inaugurated only by means of Freedom.

The first thing that is necessary, to institute the changes outlined in this book, is to convince people of the benefit to be derived from them. This means simply a campaign of education. As converts are gradually gained, non-violent resistance will grow stronger. At first it must be very slight, but still has its effect. Even the refusal to vote does more than is often supposed. In some States the number of persons who, from lethargy or from principle, refuse to vote is large enough to alarm the politicians. They actually talk at times of compulsory voting. This shows how much even such a small amount of non-violent resistance is feared. As the cause gains converts and strength, this non-violent resistance can assume a wider field. The more it is practiced greater attention will be drawn to underlying principles. Thus education and non-violent resistance go hand in hand and help each other, step by step, towards the goal of human Freedom.

Living Slavery and All That

by Alan P. Koontz
(from No. 17, August 1985)

In various forums, at least since the birth of the LP, Murray Rothbard has invoked what he calls the "slavery analogy," to point up the morality of political voting. The question is: Does the slavery analogy really help in this way?

To begin with, Rothbard's slavery analogy illustrates the nature of the State. The condition of the slaves relative to their master is more or less the same as that of the subjects to the State. The master, by either directly or indirectly (through a foreman) exceeding his natural rights, denies his slaves' natural rights, just as the State denies the natural rights of its subjects by its very existence.

The condition of the slaves is thus a given before the question of "voting rights" arises. Their condition indicates that they have a ruler regardless of whether or not the slaves can vote. The same is true of the subjects of the State. Suppose, then, that the slaves are granted a choice of, say, two foremen by the master. The slaves may cast ballots to decide which foreman will execute rule over the slaves. The foreman who receives the most votes will be the choice of all the

slaves. Presumably, the slaves will each choose what he or she thinks is the lesser of the two evils. The situation of the slave thus becomes analogous to that of the subject who has been granted the "right to vote" for his ruler. In light of this slavery analogy, Rothbard asks: What is immoral about choosing the lesser of two evils, if that is the only choice one has under the circumstances?

To answer his question: First of all, the choice is one which affects the lives of others besides the chooser. Using the slave analogy, the vote of each slave isn't just a choice of which foreman will rule that slave, but is a choice of who will rule *all* of the slaves. Thus each slave that votes is acting in the capacity of the master respecting his slaves. To vote for a foreman is to take part in the process of other people's enslavement. It should be clear, at least to Rothbard, that by voting, the slave in respect to his peers is going as far beyond his or her natural rights as the master (or the foreman) does respecting his or her slaves.

Moreover, the possibility certainly exists in the slavery analogy that not all the slaves may be in agreement as to which of the two foremen is the lesser of the two evils. Most importantly, some or all of the slaves may decide that the lesser of the two evils is still evil and on this basis refuse to vote. In either case, the immorality of voting is quite obvious.

It is also obvious that assuming one only has the choice of the lesser or greater of the two evils in the slavery analogy is begging the question. As Frank Chodorov once asked, in this regard: "Under what compulsion are we to make such a choice? Why not pass up both of them?" Indeed there is nothing in the slavery analogy that says the slaves must choose one or the other of the two foremen. By making such a choice the slaves are merely doing yet another thing that the master wants them to do. Instead of choosing either foremen, one or more of the slaves may choose neither. This third choice, also open to the slaves, *is* a moral one for it doesn't affect coercion towards others unlike voting

Furthermore, the refusal to vote is a first step toward restoring individual sovereignty. If the slave does what the master wants him or her to do he or she will most assuredly remain a slave. (The master, for example, wouldn't give his or her slaves the "right to vote" if the slaves could thereby become free.) By refusing to vote the slave is not doing what the master wants him or her to do. If most of the slaves refused to vote the master would have to choose the foreman for them. However, the master (and foreman) would then be up against a group that has refused to barter his or her individual sovereignty for the lesser of the two evils the master had originally offered; let alone give it up for nothing. And so would it be for the State that failed to get barely any of its subjects to participate in the electoral process.

In short, the answer to the opening question is: No, on the contrary.

The Voluntaryist Insight: from "The Political Thought of Etienne de la Boetie"

by Murray N. Rothbard
(from No. 26, June 1987)

[Editor's Note: The following excerpts are taken from the Introduction to *The Politics of Obedience: The Discourse of Voluntary Servitude* (New York: Free Life Press, 1975). Etienne de la Boetie (1530–1563) anonymously authored *The Discourse* sometime during the late 1550s. It is one of the earliest formulations of the voluntaryist insight: that all coercive government depends on the consent and/or acquiescence of its subjects. *The Politics of Obedience* is a piece of literature that should interest all readers of this newsletter. It is available from *The Voluntaryist.*]

The Discourse *of Voluntary Servitude* is lucidly and coherently structured around a single axiom, a single percipient insight into the nature not only of tyranny, but implicitly of the State apparatus itself. Many medieval writers had attacked tyranny, but La Boetie delves especially deep into its nature, and into the nature of State rule itself. This fundamental insight was that every tyranny must necessarily be grounded upon general popular acceptance. In short, the bulk of the people themselves, for whatever reason, acquiesce in their own subjection. If this were not the case, no tyranny, indeed no governmental rule, could long endure. Hence, a government does not have to be popularly elected to enjoy general public support; for general public support is in the very nature of all governments that endure, including the most oppressive of tyrannies. The tyrant is but one person, and could scarcely command the obedience of another person, much less of an entire country, if most of the subjects did not grant their obedience by their own consent.

This, then, becomes for La Boetie the central problem of political theory: *why in the world do people consent to their own enslavement?* La Boetie cuts to the heart of what is, or rather should be, the central problem of political philosophy: the mystery of civil obedience. Why do people, in all times and places, obey the commands of the government, which always constitutes a small minority of the society? To La Boetie the spectacle of general consent to despotism is puzzling and appalling:

> I should like merely to understand how it happens that so many men, so many villages, so many cities, so many nations, sometimes suffer under a single tyrant who has no other power than the power they give him; who is able to harm them only to the extent to which they have the willingness to bear with him; who could do them absolutely no injury unless they preferred to put up with him rather than contradict him. Surely a striking situation! Yet it is so common that one must grieve the more and wonder the less at the spectacle of a million men

> serving in wretchedness, by their necks under the yoke, not constrained by a greater multitude than they. …

And this mass submission must be out of consent rather than simply out of fear:

> Shall we call subjection to such a leader cowardice? … If a hundred, if a thousand endure the caprice of a single man, should we not rather say that they lack not the courage but the desire to rise against him, and that such an attitude indicates indifference rather than cowardice? When not a hundred, not a thousand men, but a hundred provinces, a thousand cities, a million men, refuse to assail a single man from whom the kindest treatment received is the infliction of serfdom and slavery, what shall we call it? Is it cowardice? … When a thousand, a million men, a thousand cities, fail to protect themselves against the domination of one man, this cannot be called cowardly, for cowardice does not sink to such a depth. … What monstrous vice, then, is this which does not even deserve to be called cowardice, a vice for which no term can be found vile enough … ?

It is evident from the above passages that La Boetie is bitterly opposed to tyranny and to the public's consent to its own subjection. He makes clear also that this opposition is grounded on a theory of natural law and a natural right to liberty. La Boetie's celebrated and creatively original call for civil disobedience, for mass non-violent resistance as a method for the overthrow of tyranny, stems directly from the above two premises: the fact that all rule rests on the consent of the subject masses, and the great value of natural liberty. For if tyranny really rests on mass consent, then the obvious means for its overthrow is simply by mass *withdrawal* of that consent. The weight of tyranny would quickly and suddenly collapse under such a non-violent revolution. (The Tory David Hume did *not*, surprisingly, draw similar conclusions from his theory of mass consent as the basis of all governmental rule.)

Thus, after concluding that all tyranny rests on popular consent, La Boetie eloquently concludes that "obviously there is no need of fighting to overcome this single tyrant, for he is automatically defeated if the country refuses consent to its own enslavement." Tyrants need not be expropriated by force; they need only be deprived of the public's continuing supply of funds and resources. The more one yields to tyrants, La Boetie points out, the stronger and mightier they become. But if the tyrants "are simply not obeyed," they become "undone and as nothing." La Boetie then exhorts the "poor, wretched, and stupid peoples" to cast off their chains by refusing to supply the tyrant any further with the instruments of their own oppression. The tyrant, indeed, has

> nothing more than the power that you confer upon him to destroy you. Where has he acquired enough eyes to spy upon you, if you do not provide them yourselves? How can he have so many arms to beat you with,

> if he does not borrow them from you? The feet that trample down your cities, where does he get them if they are not your own? How does he have any power over you except through you? How would he dare assail you if he had not cooperation from you?

La Boetie concludes his exhortation by assuring the masses that to overthrow the tyrant they need not act, nor shed their blood. They can do so "merely by willing to be free." In short,

> Resolve to serve no more, and you are at once freed. I do not ask that you place hands upon the tyrant to topple him over, but simply that you support him no longer; then you will behold him, like a great Colossus whose pedestal has been pulled away, fall of his own weight and break in pieces.

It was a medieval tradition to justify tyrannicide of unjust rulers who break the divine law, but La Boetie's doctrine, though nonviolent, was in the deepest sense far more radical. For while the assassination of a tyrant is simply an isolated individual act *within* an existing political system, mass civil disobedience, being a direct act on the part of large masses of people, is far more revolutionary in launching a transformation of the system itself. It is also more elegant and profound in theoretical terms, flowing immediately as it does from La Boetie's insight about power necessarily resting on popular consent; for then the remedy to power is simply to withdraw that consent.

The call for mass civil disobedience was picked up by one of the more radical of the later Huguenot pamphlets, *La France Turquie* (1575), which advocated an association of towns and provinces for the purpose of refusing to pay all taxes to the State. But it is not surprising that among the most enthusiastic advocates of mass civil disobedience have been the anarchist thinkers, who simply extend both La Boetie's analysis and his conclusion from tyrannical rule to all governmental rule whatsoever. Prominent among the anarchist advocates of non-violent resistance have been Thoreau, Tolstoy, and Benjamin R. Tucker, all of the nineteenth century, and all, unsurprisingly, associated with the non-violent pacifist branch of anarchism. Tolstoy, indeed, in setting forth his doctrine of non-violent anarchism, used a lengthy passage from the *Discourse* as the focal point for the development of his argument. In addition, Gustav Landauer, the leading German anarchist of the early twentieth century, after becoming converted to a pacifist approach, made a rousing summary of La Boetie's *Discourse of Voluntary Servitude* the central core of his anarchist work, *Die Revolution* (1919). A leading Dutch pacifist-anarchist of the twentieth century, Barthelemy de Ligt, not only devoted several pages of his *Conquest of Violence* to discussion and praise of La Boetie's *Discourse*; he also translated it into Dutch in 1933. …

Why do people continue to give their consent to despotism? Why do they permit tyranny to continue? This is especially puzzling if tyranny (defined at least as

all personal power) must rest on mass consent, and if the way to overthrow tyranny is therefore for the people to withdraw that consent. The remainder of La Boetie's treatise is devoted to this crucial problem, and his discussion here is as seminal and profound as it is in the earlier part of the work. …

Here La Boetie proceeds to supplement this analysis of the purchase of consent by the public with another truly original contribution. … This is the establishment, as it were the permanent and continuing purchase, of a hierarchy of subordinate allies, a loyal band of retainers, praetorians, and bureaucrats. La Boetie himself considers this factor "the mainspring and the secret of domination, the support and foundation of tyranny." Here is a large sector of society which is not merely duped with occasional and negligible handouts from the State; here are individuals who make a handsome and permanent living out of the proceeds of despotism. Hence, *their* stake in despotism does not depend on illusion or habit or mystery; their stake is all too great and all too real. A hierarchy of patronage from the fruits of plunder is thus created and maintained: five or six individuals are the chief advisors and beneficiaries of the favors of the king. These half-dozen in a similar manner maintain six hundred "who profit under them," and the six hundred in their turn "maintain under them six thousand, whom they promote in rank, upon whom they confer the government of provinces or the direction of finances, in order that they may serve as instruments of avarice and cruelty, executing orders at the proper time and working such havoc all around that they could not last except under the shadow of the six hundred. …"

In this way does the fatal hierarchy pyramid and permeate down through the ranks of society, until "a hundred thousand, and even millions, cling to the tyrant by this cord to which they are tied." In short,

> when the point is reached, through big favors or little ones, that large profits or small are obtained under a tyrant, there are found almost as many people to whom tyranny seems advantageous as those to whom liberty would seem desirable. … Whenever a ruler makes himself a dictator, all the wicked dregs of the nation … all those who are corrupted by burning ambition or extraordinary avarice, these gather around him and support him in order to have a share in the booty and to constitute themselves petty chiefs under the large tyrant.

Thus, the hierarchy of privilege descends from the large gainers from despotism, to the middling and small gainers, and finally down to the mass of the people who falsely think they gain from the receipt of petty favors. In this way the subjects are divided, and a great portion of them induced to cleave to the ruler, "just as, in order to split wood, one has to use a wedge of the wood itself." Of course, the train of the tyrant's retinue and soldiers suffer at their leader's hands, but they "can be led to endure evil if permitted to commit it, not against him who exploits them, but against those who like themselves submit, but are helpless." In short, in return

for its own subjection, this order of subordinates is permitted to oppress the rest of the public.

How is tyranny concretely to be overthrown, if it is cemented upon society by habit, privilege and propaganda? How are the people to be brought to the point where they will decide to withdraw their consent? In the first place, affirms La Boetie, not *all* the people will be deluded or sunk into habitual submission. There is always a more percipient elite who will understand the reality of the situation; "there are always a few, better endowed than others, who feel the weight of the yoke and cannot restrain themselves from attempting to shake it off." These are the people who, in contrast to "the brutish mass," possess clear and far-sighted minds, and "have further trained them by study and learning." Such people never quite disappear from the world: "Even if liberty had entirely perished from the earth, such men would invent it. …"

La Boetie's *Discourse* has a vital importance for the modern reader—an importance that goes beyond the sheer pleasure of reading a great and seminal work on political philosophy, or, for the libertarian, of reading the first libertarian political philosopher in the Western world. For La Boetie speaks most sharply to the problem which all libertarians—indeed, all opponents of despotism—find particularly difficult: the problem of strategy. Facing the devastating and seemingly overwhelming power of the modern State, *how* can a free and very different world be brought about? How in the world can we get from here to there, from a world of tyranny to a world of freedom? Precisely because of his abstract and timeless methodology, La Boetie offers vital insights into this eternal problem. …

Since despotic rule is against the interests of the bulk of the population, how then does this consent come about? Again, La Boetie highlights the point that this consent is engineered, largely by propaganda beamed at the populace by the rulers and their intellectual apologists. The devices—of bread and circuses, of ideological mystification—that rulers today use to gull the masses and gain their consent, remain the same as in La Boetie's days. The only difference is the enormous increase in the use of specialized intellectuals in the service of the rulers. But in this case, the primary task of opponents of modern tyranny is an educational one: to awaken the public to this process, to demystify and desanctify the State apparatus. Furthermore, La Boetie's analysis both of the engineering of consent and of the role played by bureaucrats and other economic interests that benefit from the State, highlights another critical problem which many modern opponents of statism have failed to recognize: that the problem of strategy is not simply one of educating the public about the "errors" committed by the government. For much of what the State does is not an error at all from its own point of view, but a means of maximizing its power, influence, and income. We have to realize that we are facing a mighty engine of power and economic exploitation, and therefore that, at the very least, libertarian education of the public must *include* an exposé of this exploitation, and of the economic interests and intellectual apolo-

gists who benefit from State rule. By confining themselves to analysis of alleged intellectual "errors," opponents of government intervention have rendered themselves ineffective. For one thing, they have been beaming their counter-propaganda at a public which does not have the equipment or the interest to follow the complex analysis of errors, and which can therefore easily be rebamboozled by the experts in the employ of the State. Those experts, too, must be desanctified, and again La Boetie strengthens us in the necessity of such desanctification. …

La Boetie was also the first theorist to move from the emphasis on the importance of consent, to the strategic importance of toppling tyranny by leading the public to *withdraw* that consent. Hence, La Boetie was the first theorist of the strategy of mass, non-violent civil disobedience of State edicts and exactions. How practical such a tactic might be is difficult to say, especially since it has rarely been used. But the tactic of mass refusal to pay taxes, for example, is increasingly being employed in the United States today, albeit in a sporadic form. In December 1974 the residents of the city of Willimantic, Connecticut, assembled in a town meeting and rejected the entire city budget three times, finally forcing a tax cut of nine percent. This is but one example of growing public revulsion against crippling taxation throughout the country.

On a different theme, La Boetie provides us with a hopeful note for the future of a free society. He points out that once the public experiences tyranny for a long time, it becomes inured, and heedless of the possibility of an alternative society. But this means that should State despotism ever be removed, it would be extremely difficult to reimpose statism. The bulwark of habit would be gone, and statism would be seen by all for the tyranny that it is. If a free society were ever to be established, then, the chances for its maintaining itself would be excellent.

More and more, if inarticulately, the public is rebelling, not only against onerous taxation but—in the age of Watergate—against the whole, carefully nurtured *mystique* of government. Twenty years ago, the historian Cecilia Kenyon, writing of the Anti-Federalist opponents of the adoption of the U.S. Constitution chided them for being "men of little faith"—little faith, that is, in a strong central government. It is hard to think of anyone having such an unexamined faith in government today. In such an age as ours, thinkers like Etienne de La Boetie have become far more relevant, far more genuinely modern, than they have been for over a century. V

The Power of Non-Violent Resistance

by Jerry M. Tinker
(from No. 27, August 1987)

[Editor's Note: The following article was adapted from Volume 24 of *The Western Political Quarterly* (1971) (pp.775–788). Given the insights of La Boetie (discussed in our last issue), I thought this piece would be an especially good follow-up, explaining how non-violent resistance actually works, and showing how it is truly a radical alternative to electoral politics.]

As many writers have noted, the basic thesis, or strategy, upon which Gandhi's *satyagraha* and all non-violent resistance rests is that all structures of power—government and social organizations—always depend upon the voluntary cooperation of great numbers of people even when they seem to rely upon coercion. The chief wielders of power, in other words, must have the tacit assistance and cooperation of hundreds or even thousands of persons in order to exercise power. The strategy, then, of those who oppose or wish to change an established power structure, particularly one equipped with overwhelming physical force, is to persuade large numbers of persons to refuse to cooperate with it any longer. This is *not* the objective of non-violent resistance, but its strategy.

Altering the present power structure, or certain policies or aspects of that structure is the goal of non-violent resistance; its success or failure in attaining that objective rests squarely on the degree to which its strategy succeeds in inducing individuals to withdraw support from the structure. Once such cooperation is withdrawn, the power structure must at some point come to terms with the resisters; political change is brought about and conflict resolved. Two forces operate in this process: a form of *persuasion* and a degree of *coercion*.

Conflict is resolved in society and in government to the extent that a majority, or a substantial portion of individuals comprising it, are "persuaded"—either voluntarily or coercively—to adopt or follow a particular position. Persuasion by violence is part of the well-known story of mankind. *Satyagraha*, however, attempts to persuade without violence.

As noted previously, the strategy of non-violent resistance is to develop techniques of persuasion that will induce the hundreds of clerks, soldiers. police, heads of departments and thousands of other individuals upon which the opposing power rests, to abandon it—refusing tacitly, if not explicitly, to cooperate with it. The question is, of course, how does non-violent resistance induce such non-cooperation? In what manner does non-violent resistance persuade? Essentially, it persuades by manipulating techniques that play upon "suffering."

One of the persistent myths of non-violent resistance is that its persuasion is only accomplished through a particular kind of human reaction to suffering:

namely, the opponent supposedly has a guilty change of heart—a sense of remorse—upon seeing poor passive resisters suffering.

This conception of the role of suffering in non-violent resistance makes the fundamental error of presuming that only *two* persons are involved in the process—the suffering resister and the opponent. One suffers, and the other feels guilty and presumably makes amends. Actually, non-violent resistance operates within a framework involving *three* actors: the suffering passive resister, the opponent, and the larger, on-looking populace.

Because in every conflict situation the outcome is dramatically affected by the extent to which the on-looking audience becomes involved, this third actor is most important in politics. This concept was best enunciated by E. E. Schattschneider; he calls it "the contagiousness of conflict." Although intended to analyze the functioning of pressure groups in the United States, his concept clearly has relevance to the operation of non-violent resistance in the political process.

Schattschneider notes that a great change inevitably occurs in the nature of conflict as involvement inexorably expands to include the on-looking audience. Hence, a most important aspect of conflict in the public arena is how, and in what way, the scope of conflict expands. It is unlikely, says Schattschneider, that both sides will equally benefit by an expansion in the scope of conflict, for every change in the battle lines and its composition has a bias: it favors one side or the other. The moral of the phenomenon of the contagiousness of conflict is: If a fight starts, watch the crowd, because the crowd plays the decisive role. In every conflict one protagonist struggles to "privatize" it—to contain it and limit attempts to involve the larger public—while the other attempts to "socialize" it.

The tactics of non-violent resistance seek primarily to create situations that crystallize public opinion—that "involve" it—and which "direct" it against the government, while at the same time legitimatizing its own position. This legitimatization is accomplished when the resister willingly *suffers*; it demonstrates his integrity, courage, honesty, while showing the injustice, cruelty, or tyranny of the government. The essential function of suffering is comparable to the interaction that takes place between a martyr and a crowd. The resister's token of power in the face of the opponent's violence is his capacity to "suffer" in the eyes of the on-looking audience.

The non-violent resister employs techniques calculated to *provoke* a response from the opponent which can be made to seem unjust or unfair—thus confirming the resister's claims against the power structure. Yet, were the opponent or government to fail to act, it would abdicate its power, its control over the population, and over the enforcement of its laws. The classic non-violent resistance technique is to suddenly thrust the initiative to the opponent, and thus also the responsibility, for a conflict with unarmed citizens that it cannot avoid and which will have the inevitable consequence of alienating a portion of the on-looking audience. And because the resister is unarmed and "suffers" (going to jail, being

beaten, etc.), the onus of responsibility for all the suffering falls squarely on the opponent. Hence, the primary function of nonviolent resistance suffering is to re-draw the lines of battle in favor of the resister; it attempts to involve the audience and to coalesce public opinion in ways favorable to him.

How frequently does suffering in and by itself succeed in "persuading" an opponent? Does it really represent a powerful enough force to change an opponent's course of action—to cause him to abandon the opponent being resisted? Reviews of past cases of non-violent resistance show a mixed picture, and results seem to depend largely on certain significant variables.

First, is the attitude and orientation of the opponent; success seems somewhat dependent upon whether the opponent really cares how a population views him—whether he has any long-term interests in pacifying or winning support. Also, the effect varies upon whether the opponent is the resister's own countrymen; if foreigners are being resisted, non-violent resisters may more easily play upon common identity and nationalism. Finally, in some societies passive suffering may be viewed with contempt, and it can produce an opposite effect: instead of viewing suffering as noble, they perhaps see it as masochism or "an exploitation of the rulers' good natured reluctance to allow unnecessary suffering, denying thus any attributes of personal courage or virtue to the sufferer."

In summary, if non-violent resistance is stripped of its moral and philosophic trimmings, its role in conflict resolution may be simplified as follows:

a. The *strategy* of non-violent resistance is to rob an opponent of the public support and cooperation upon which his power ultimately rests. Even though it may seem to rest on violence, all power to be sustained long must at least have the acquiescence of the majority of individuals involved.

b. The *tactic* of non-violent resistance involves the use of various techniques—most of which demonstrate "suffering"—to manipulate the interaction of protagonist, antagonist and audience in ways that crystallize public opinion, alienating it from the opponent while legitimatizing the passive resister's position.

c. The *objective* of non-violent resistance is to resolve conflict by forcing, through non-violent coercion, the opponent to seek grounds for mutual agreement and to synthesize a satisfactory solution.

As qualified earlier, this is not to exclude entirely the objective of some non-violent resisters who seek a "change of heart" in the opponent. However, this is not the basis upon which the true efficacy or full political power of non-violent resistance rests.

The success of non-violent resistance rests, to a large extent, on whether it gains widespread compliance within a society. The strategy of robbing the opponent of popular support upon which his power depends cannot be made effective if only a few individuals respond. Most non-violent resistance techniques require *mass action* if they are to be anything more than just fleeting symbolic acts. A boycott, for instance, presumes participation by great numbers of people.

How does non-violent resistance secure such widespread compliance? What forces and factors induce people to participate or support the resister's cause? What are the prerequisites for non-violent resistance action?

One method is to clothe the movement and its techniques in the values and norms of society—in things people accept without questioning. Here lies one of Gandhi's greatest achievements in India; unlike previous nationalist leaders, Gandhi couched his movement in terms and symbols familiar to the mass of India's population. The result was that the Congress party and the Indian Independence movement became a mass rural movement for the first time. Gandhi had secured widespread compliance, and at that point one can rightly say the last days of the British *raj* began.

Communication and Propaganda

The first phase of a campaign is characterized by a period of intense propaganda activities: parades, demonstrations, posters, newspapers, and other forms of communication. Propaganda is directed to the opponent, but even more to the populace—to educate and inform both.

Once the resistance movement is launched, there must be continuing means of "spreading the word." No movement can operate without some form of communication between the leaders and the led. One of the principal organs used by Gandhi was his newspaper, *Young India*.

Publicity and propaganda are essential tools in securing widespread compliance. Even under circumstances when open publication is banned, a non-violent resistance movement must have some means of communication. There are numerous examples of underground newspapers operating effectively during World War II in Nazi-occupied Europe where non-violent resistance met with considerable success.

Population Pressure

In attempting to insure widespread compliance, non-violent resistance movements benefit from pressures, intentionally applied or not, that work against the public in the same coercive fashion as they operate against the opponent. For example, the technique of ostracism has frequently been used to apply pressure on sections of the public not participating in the resistance campaign.

Aside from any organized attempts at such coercion, there are powerful informal pressures for conformity that also help to secure compliance. The fact that resistance occurs mostly during times of crisis, of national ferment, or of popular unrest, means there is often a greater sense of nationalism of a particular "we" arrayed against "they." When issues are involved that society says the individual should be involved with (and when the organizers of non-violent resistance are able to cast their program in such terms), there are strong pressures demanding conformity—to do what everyone else is doing.

Consensual Validation

The technique of consensual validation—the phenomenon of simultaneous events creating a sense of validity in their own right—is often useful to coalesce public support. For example, the simultaneous occurrence of mass Congress demonstrations in widely diverse parts of India in 1930 gave a sense of validity to the complaints against the salt tax. It gave the apparent sanction of a widespread section of society and helped rally public opinion all the more. (A minority group can organize a multitude of "front" organizations, and the sense of seemingly widely separated organizations simultaneously advocating the same themes will give the impression that a large body of opinion is represented.)

These, then, are some of the factors that can be utilized in a non-violent resistance campaign to marshal widespread compliance, so essential for success. A second prerequisite for launching a non-violent resistance campaign is careful organization which will also insure training and the maintenance of discipline. In its need for discipline, some have likened Gandhi's *satyagraha* to the military. It calls upon the individual to display many of the same virtues associated with violent resistance: courage, strenuous action, enterprise, endurance; "a devotion and sense of unity with one's own kind; and order, and training." No one has ever argued that there are any fewer risks involved in non-violent action than in violent resistance—they both imply the possibility of suffering—the only distinction being that in non-violence the resister makes no attempt to physically harm the opponent although he may be faced with a violent response. Obviously, a discipline no less strenuous than that required to steel individuals to face the violence of military action is required to condition those who hope to resist non-violently the same kinds of physical threats.

The basic tactics of non-violent resistance are corollary to the efforts to secure widespread social compliance. In utilizing the various techniques of non-violent resistance, the underlying consideration must be whether they serve to legitimatize or alienate the position of the resister vis-a-vis the "audience." In order to obtain popular support and compliance, the resister's methods must seek to place the onus for what happens on the opponent.

Again, a key factor in launching non-violent resistance action is rearranging the conflict situation in such a way that the opponent is suddenly thrust the initiative, and thus also the responsibility for unfavorable developments he cannot really prevent. Thomas Schelling in *The Strategy of Conflict* has, in almost a devilish manner, developed a hypothetical illustration of this process: If a group of non-violent resisters were attempting to protest unfair railway labor practices, they might, he suggests, dramatically sit down on the tracks of the main railway station halting all trains and disrupting service. Such a move clearly would thrust the initiative to the railway management or government, as well as the responsibility for what happens. If the trains do not stop and run over helpless resisters, the onus is on the government; if the trains do stop, then the government has abandoned its

power and weakened its authority. If the resisters are arrested and taken to jail, the responsibility for this suffering is also on the hands of the government which, under certain circumstances, might prove a stimulus for the crystallization of public opinion against the government.

Attention-Getting Devices

Non-violent resistance in the earliest stages usually takes the form of actions calculated to gain attention, or to provide propaganda for the cause, or to be a nuisance to the government and police forces. In 1930 Gandhi used this technique with magical skill: he launched the *satyagraha* campaign by walking to the sea with 78 disciples to break the salt tax laws. "Day by day the tension mounted," reports one writer, "as all India followed the elderly Mahatma plodding through the countryside on his crusade." Then the dramatic moment came; as hundreds of congressmen and government officials watched, Gandhi made salt from the sea, breaking the law and setting the rest of India into a "semi-comic frenzy of producing uneatable salt." It was a supremely successful "attention-getting device." Immediately Congress organizations set about to utilize the other attention-getting devices, such as demonstrations, mass meetings and picketing.

The creation of symbols is a universal non-violent resistance device. Even prior to the 1930 campaign, Gandhi had developed a host of symbols—from *khadi* cloth (particularly the "Gandhi cap") to the spinning wheel.

Ostracization campaigns—the refusal to speak or be friendly—were also effectively used in the Salt Satyagraha. This was documented in several British reports. In typical bureaucratic British understatement, one form of such ostracization was mentioned in an official report: during an attempt by *chaukidars* (local guards) to assist officials in making tax collections during a "no-tax" campaign, they were, said the report, "forcibly deprived of their uniforms and subjected to social boycott."

Non-Cooperation

Techniques of non-cooperation call for a passive resister to behave normally in a slightly contrived way, but not in a way that permits police or government to accuse him of breaking normal laws. Such activities as "slow-downs," "boycotts," and forms of disassociation from government, are all examples of non-cooperation.

Nearly all Gandhi campaigns emphasized these various forms of non-cooperation; there were boycotts of British manufactured goods (viz., cloth and liquor) as well as British culture. There were innumerable *hartals*, or the voluntary closing of business activity for a day.

As a tool of non-violent resistance, non-cooperation has been widely demonstrated to be effective in disrupting the processes of society—of severely hampering and challenging the writ of a government—all in a fashion that is most

difficult for the government and its police to question. For non-cooperation is only an individual altering his normal behavior in a slightly contrived way. However, when large numbers of individuals do the same, it adds up to a society behaving in a most abnormal manner.

Civil Disobedience

Perhaps the most powerful weapon of non-violent resistance—certainly the most threatening to any government—is civil disobedience. This technique involves deliberate unlawful acts, mostly misdemeanor crimes, done in mass action. Anything beyond misdemeanors crosses the boundary of non-violent resistance. Forms of civil disobedience in the 1930 *satyagraha* included breaking the salt tax law, general tax laws (non-payment of taxes), no-rent campaigns, laws prohibiting mass meetings, and so forth.

Civil disobedience is a powerful weapon, but to be effective it must be exercised by a large number of individuals. There is a calculated risk involved: the breach of law, whether in a totalitarian state or not, automatically justifies and involves punishment by the government—jail, fines, even death. But if civil disobedience can be organized on a mass scale, it progressively becomes less profitable for the government to carry out its sanctions. The official British reports on the 1930 campaign testify to a government's dilemma in this regard: "arrests were rendered impracticable owing to the size of the crowds which had committed breaches of some particular law."

The threatening nature of civil disobedience to a government was most cogently summarized by Lord Irwin, the Viceroy, in a speech to the legislative council in 1930:

> In my judgment and in that of my Government the [non-violent resistance] campaign is a deliberate attempt to coerce established authority by mass action. ... Mass action, even if it is intended by its promoters to be non-violent, is nothing but the application of force under another form, and, when it has as its avowed object the making of Government impossible, *Government is bound either to resist or abdicate.*

To "resist or abdicate" is indeed the dilemma civil disobedience presents a government. The tactics of non-violent resistance are to make counter steps by the government not only difficult (through mass action, so that the arrest of hundreds of individuals is unprofitable) but, as noted above, to also make government accept the onus of responsibility for "repressive" acts.

Again, official British reports provide eloquent evidence of a government's dilemma in trying to stop passive defiance, yet avoid the onus attached to counter actions. The strategic success of Gandhi in 1930 is seen in the following official refrain:

> In the initial stages Government endeavored to avoid making arrests on a large scale; but as the tide of … disorder extended over the country this policy had to be abandoned. On the other hand, the clashes which have occurred between the forces of law and the populace have inevitably created a good deal of bitterness. … And Congress organizers took every opportunity of exploiting for their own purposes the emotions which these incidents aroused. *By the simple expedient of staging a procession or demonstration on a scale large enough to force the authorities to take action against it, they could now count in many places upon being able to bring about an automatic revival in popular sympathy for their cause.* …

To make the official position all the more difficult, and to further complicate enforcement, Congress strategically employed women (some emerging from *purdah* for the occasion.) This truly amazed the British, and, as the official reports remark, it "made the work of the police particularly unpleasant."

Severe repressive measures which a government may wish to use, and may be organized to use, require some justification. The violence of resisters themselves is, of course, the best justification for violent counteraction; but if resisters are non-violent, the government is faced with the dilemma of how to explain their violence or coercion. This explains the tendency of all governments when faced with non-violent resistance to emphasize any violent fringes that may emerge. This was certainly the tactic of the British in India. Time and again official British reports and statements on Gandhi's *satyagraha* movement stressed mainly the accounts of terrorist and violent acts (which largely occurred in Bengal). The British regularly repeated the theme that "despite the sincere endeavors of many of the Congress leaders to keep the Movement 'nonviolent', experience again proved that it is inevitable… that an organized and strenuously conducted campaign of defiance of Government and of the law should result in serious and widespread disturbances." In the face of non-violent resistance an opponent can be expected to justify his counteraction, which is normally coercive physical force, by seeking examples of breaches in the resister's non-violence. Gandhi once temporarily suspended non-violent resistance precisely because violent reactions by some Indians threatened to undermine the basic strategy of *satyagraha*.

Another important stratagem of civil disobedience is to be selective in the laws to be breached. To be most effective, the laws should be related in some manner with the issues being protested or the demands being made. The Salt Satyagraha is again, a perfect example. The salt tax laws were indiscriminate in that they taxed both the rich and poor, being specially hard on the poor. Gandhi thus selected them for contravention "because they not only appeared to be basically unjust in themselves, but also because they symbolized an unpopular, unrepresentative, and alien government." Their contravention was, in other words, related to the long-range objectives of independence.

Conceived as a political instrument, it can be seen that nonviolent resistance does not set out to, nor does it significantly accomplish individual persuasion or change of heart. This is not to say that in politics only coercion is possible, as though politics were wholly rational and that therefore persuasion on a moral basis is irrelevant or impossible. Rather, it is simply to say that the importance and effectiveness of non-violent resistance rests in the political arena.

It is no exaggeration to say that its ability to manipulate the political dynamics of society is comparable to the effectiveness of coercive techniques of threats and terror in an insurgency. Indeed, it is instructive to note that the strategy of non-violent resistance largely parallels the approach of revolutionary insurgents. The terrorist's aim is to separate the existing government from its base of power by capturing the institutional supports upon which it rests—either at the top or, in the Mao Tse-tung tradition, at the rural base of the masses. It has been observed that revolutionaries in modern society do not so much "seize" power as destroy and recreate it. The simple creation of disorder will not automatically bring a subversive group to power. It can, however, create a vacuum into which new organizational instruments of power can move.

By all these yardsticks, the Gandhian technique is subversive, especially in the context of India in 1930. However, Gandhi found that he could accomplish the goals of the coercive subversive without terror and violence. He fashioned *satyagraha* into techniques that attained and shaped the same political ends.

Reflecting on the use and effectiveness of non-violent resistance in other parts of the world—in Europe during World War II, in the Soviet Union, with the Buddhists in South Vietnam in 1963, and certainly with the Negro in the southern part of the United States—it seems clear that non-violent resistance does not depend upon any particular attitude of the opponent or upon the nature of the political system (i.e., democratic vs. totalitarian) to be effective. The strategy and tactics of Gandhian non-violent resistance are relevant in any social conflict situation and in any society because they have achieved a fundamental insight into the dynamics of political and social change. The only aid a democratic framework provides, vs. a totalitarian, is to make the process easier, or at least safer, for the resister—although individual willingness to "suffer" and to sacrifice is as basic to non-violent struggle as it is implicit in violent resistance.

It should be stressed that we have reviewed here the potentiality of non-violent resistance when used *within* a political system. Its effectiveness against a foreign invasion or as a tool in international relations, naturally involves a number of other, perhaps more complex, variables. However, within the terms of internal societal conflict, or when used against an outside occupier or colonial power, it is clear that *satyagraha* has continuing relevance. Contrary to many who argue that Gandhi was only successful because he was confronted by a democratic government observing the rule of law, the analysis here shows that his success was due solely to his insights into some fundamental principles of political change opera-

tive in any political system. What Gandhi did was to develop a tool—a highly sophisticated tool at that—by which he very successfully manipulated those principles. Gandhi did not so much render his British "opponents impotent through their own virtues," as some have argued, as he successfully prostrated them on their own terms. He robbed them of their political and social base of support by undermining the cooperation of millions of Indians upon which their rule ultimately rested. The lessons flowing from this are still relevant for our time—in Vietnam, Angola, Alabama, or Quebec, to mention a few.

"Is Gandhi relevant?" ask those celebrating his centenary. The answer is that he is so long as there are those willing to understand and manipulate his tools of non-violent political change. He will be so long as he is simply not dismissed as a "saint," but seen as the political revolutionary he was. As India's Prime Minister Indira Gandhi has written, "The ultimate justification of Gandhi is that he showed how armed strength could be matched without arms. If this could happen once, can it not happen again?" V

How Can We Do It?

by Robert LeFevre
(from No. 34, October 1988)

SINCE I have repeatedly opposed the belief that one can advance the cause of liberty by political action, I have been asked on several occasions for an outline of the practical steps to be taken outside the political arena. How do we move from where we are to where we would like to be if we don't rely on politics?

My recommendation is based on my analysis of the nature of man. If man is a living being endowed with the ability to make decisions and to act on them, then the method employed to improve the human situation must take that fact into account. My analysis says that man is a self-controlling being.

How are people controlled? Each person controls himself. Each controls his own mind and his own body. Liberty is the natural ability of each individual to act on his own volition.

Can a person be controlled by some other method? Actually, no. All men are subject to persuasion, argument, pleading, influence, and so on. But no one *must* accede to the wishes of another. Even if a person is told to do a certain thing or die, reality teaches us that the person can still refuse. Under certain conditions, an individual may prefer to die rather than obey. Indeed, the primary cause of the violence that men exhibit toward each other is the direct result of their lack of ability

to control each other. If one person could control the other, there would be little reason to interfere by physical violence.

If we seek a free society, or freedom, we must seek to establish a human situation in which the natural power of the individual to control himself will not be interfered with by physical violence. In short, we seek a condition in which all men will experience liberty.

The reason that people resort to force, or the threat of force, in dealing with each other is that the other party does not do what the first party wishes him to do. Force is threatened or used as a *motivational*, not a control factor.

When I have tried to persuade another, by all reasonable avenues open to me, and I am still met with refusal, I have only two possible avenues open. I can cease my efforts. Or I can become unreasonable. I can put reason aside and resort to force or the threat of force.

Reduced to simplicity, there are two motivational factors and only two. Remember, you control yourself. But to get you to control yourself in a way that pleases me, requires that I (1) offer you a gain if you comply—the carrot, or (2) offer to injure you if you don't comply—the stick.

All political systems rely on the stick. Do as you're told, or suffer. Only the market place offers gain (the carrot) as the motivational factor. A society in which each member experiences liberty will require the abandonment of the stick method and total reliance upon the carrot method.

Why is this necessarily true? Because the victim who experiences the stick wielded by another loses some of his freedom. Additionally, the party wielding the stick has been diverted from his principal objectives and is wasting time and energy on punitive matters. Thus, although he is still acting volitionally, the stick wielder has injured himself by choosing a secondary rather than a primary course of action.

What if the carrot method doesn't work? The *only* alternative within the context of freedom is to leave the individual alone to his own pursuits.

With this in mind, how do we move toward greater freedom in our society? Only by influence and persuasion, entailing the use of reason. The moment we become frustrated and begin to rely on force or the threat to use force (implicit in political processes), we have abandoned our objective and to some degree are reducing the amount of freedom.

The very first requirement, then, if we sincerely wish to achieve a greater measure of freedom, is intellectual. We must not only establish the goal but we must understand the nature of the goal. And we must be correct, in the sense that our definitions correspond to reality; either a reality that exists or a reality that can be brought into existence.

So far as I can determine, many libertarians have not as yet taken this first step. While it is true that most of those who speak up for liberty are intellectually in-

volved, many of them are cringing before the onslaught of the anti-intellectuals who carp at virtually all intellectual activities.

The anti-intellectuals criticize the libertarian as a person who spends a great deal of time discussing ideas, in debating and probing the subject. Those who are uncomfortable in this area constantly tell me, "You've got to come up with a program of action or we won't have any libertarians left." "We want to *do* something." "Don't give us all these theories, tell us what to do."

Another complaint is that "libertarians are completely impractical. They accept a principle or two and lose touch with the real world. They've got to get out of their ivory towers and come to grips with reality." "We need action!"

So libertarians are prone to get involved in politics, or they shoot off on scores of tangents of greater or lesser merit, with few holding the main thrust of freedom in the center of their objectives. Or as another alternative, they isolate themselves in disgust.

Thus, I find many fine people whose major concern is opposing the I.R.S. Or I find those whose principal concern is obtaining the legalization of drugs; or special laws respecting the status of women; or justice for the American Indian. Some become primarily concerned with repeal of income tax. Some seek to champion the concept of atheism. Some wish to promote certain psychological theories. The bulk of those calling themselves libertarian are pursuing their own individual ends, each more or less worthy in itself. But who speaks up for liberty as a primary goal? Who puts liberty at the top of his scale of values?

To move from a controlled society, taxed, regimented and stultifying, into a great new world of human liberty requires a revolution. But the revolution is one of thought, not of guns and bombs. What is required is for people to think differently than they presently do in respect to human relationships.

John Adams, after a lifetime of service first to the Colonial and then to the early Constitutional cause, had what to me is a remarkable insight that might apply today. In a letter to Hezekiah Miles dated February 13, 1818, and commenting on the American rebellion against Britain, Adams wrote: "The [American] Revolution was effected before the war commenced. The Revolution was in the hearts and minds of the people. … This radical change in the principles, opinions, sentiments, and affection of the people was the real revolution. …"

It took Adams a lifetime to realize that the importance of the decades through which he had lived was not the number of battles, the casualties, the war itself, but rather the change that had come in the way people thought; in their affections, opinions, and sentiments.

They had moved from believing in the divine right of kings to a position in which they believed in the equal rights of man. Unfortunately, this great intellectual attainment was quickly lost in a new wave of dependence upon a centralized state—not a king, but an all-powerful state, nonetheless.

The libertarian revolution, as I see it, must achieve that same objective. We must have a change in the sentiments, opinions, and affections of the people themselves. How is that brought about? Clearly, the task is one that involves education.

Once a significant number of persons become convinced that we are dealing with an intellectual revolution rather than a political or military one, the practical steps to be taken reveal themselves.

When the individual sees through this problem clearly, he himself takes action. He does so by hitching his activities to that blazing comet of freedom speeding across our skies. How does he do this? He studies, learns, and communicates. And if his studies and his learning are incomplete (as must be for all of us), he begins the process of communicating what he does know.

The more you try to explain ideas to others, the more the others will challenge and correct you. A teacher is no more than an active student.

To whom does he communicate? It really doesn't matter. The whole world is his artichoke. Logical starting places are with his own children, spouse, and friends who evince an interest. The job is not to persuade others to his opinion. The job is to encourage the others to formulate their own opinions in harmony with the reality of human liberty. The person who convinces himself remains convinced. The person who is persuaded by another can be re-persuaded later on. It is better to work a year or two with a single person until that person convinces himself than to labor in an effort to sway thousands.

What are the tools that will be most useful? They are the tools of education: the books, the films, the blackboards and chalk, the classroom—the log shared between someone eager to learn and someone eager to let him learn.

The school and the church can provide the proper climate and tools. To be effective, however, both school and church ought to be outside the conventional groves of academy or ordination. There is such a vested interest in most established institutions of learning and communication that the most skilled communicators will be more concerned with defending and enhancing their credentials or personal reputations than blazing a revolutionary trail.

Years ago, I accepted as a personal motto: "The man who knows what freedom means will find a way to be free." In short, I cannot "organize" a free society. Freedom emerges as the natural result of men working together in liberty when we stop "organizing" a free society.

Within the existing society, what we organize are specific units of production and distribution. We learn to support ourselves, pay our own bills, and champion the cause of liberty by consistent advocacy. As others glimpse the merit, they, one by one, join the effort. They do not have to join each other. They enlist in the *concept*.

From this procedure there can be no backlash. More and more persons, self-motivated and self-controlled, simply stop engaging in the existing social de-

vices which impose on others. They break their ties with the existing political structures; not by violence, not by trying to obtain majorities or by using force, but by understanding and then thinking differently about the whole area of human relationship.

I know of no other practical method for moving from where we are to where at least some of us can see new hope and light. ▽

[This article first appeared in LeFevre's *Journal*, vol. 4, spring 1977, pp. 8–9.]

A Way Out — Victory without Violence

by Carl Watner
(from No. 38, June 1989)

Marshall Fritz of the Advocates for Self-Government recently loaned me a copy of John Yoder's book, titled *What Would You Do (If a Violent Person Threatened to Harm a Loved One)?* (Scottsdale, Penn.: Herald Press, 1983.) At dinner one evening, we were discussing the question of what I would do if an armed maniac came barging in and threatened to kill my son or wife. How consistently would I practice my philosophy of nonviolence? Would I view it as a departure from my principles to use violence in self-defense?

To answer the latter question first: Yes, I do believe violent self-defense is a departure from the principle of nonviolence, but I also view self-defense as a natural right. While I view self-protection as being within the moral jurisdiction of each and every person, I believe we would have a less violent and more peaceful, harmonious, and abundant world if people refrained from using violence, or its threat regardless of the situation. I would not criticize others who use violence, in self-defense, but I would not choose this method to defend my loved ones. The inter-connection of means and ends makes me desirous of avoiding violence in either a personal confrontation, or in supporting it in the broader social context of the State.

Now to answer the first question. My choice is not simply between acting cowardly or acting violently. I would make every attempt to react nonviolently to an attack against a loved one. Whether I could maintain the strength of will and presence of mind to do this will only be determined in an actual situation, but I would strive to achieve this. The type of nonviolence I am talking about is the nonviolence of the brave. It requires consistency and adherence in the most dangerous situations. It requires resourcefulness, the use of intellect, and creativity. This type of nonviolence comes from strength not weakness, and depends on the inner spirit and will. As Gandhi put it, nonviolence does not mean meek submission to the will or intention of the evildoer.

Just because I say, beforehand, that I would not use violence to defend my family from an attacker does not mean or imply that I would not actively and nonviolently protect them. As the LeFevre adage puts it, an ounce of protection is worth a pound of defense in an actual encounter. If my protection (security alarms, adequate lighting, dead bolts, and secure doors) fails, the very last thing I would do is offer myself as a shield between the invader and the invaded. Under no circumstances could I envisage myself calling the police.

One of the main themes of the Yoder book is that there are numerous nonviolent ways of disarming the assailant: seeming to go berserk (as LeFevre once did), trying to distract the attacker with talk, offering the attacker money or sanctuary, making the attacker feel at home, disarming the attacker emotionally, etc. The violent person expects to be violently resisted, and is usually scared himself. When he does not encounter this reaction in his victims, or their defenders, his equilibrium is thrown off balance, and the initiative is placed in the hands of the nonviolent person. *What Would You Do?* includes several true-to-life stories of missionaries and pacifists, who behaved nonviolently and successfully warded off personal danger, when faced with violent situations.

However, even if my nonviolent resistance to violence failed, it would not be a defeat for nonviolence. For there is no guarantee that violence would be successful in preserving the lives of my family. A person of integrity is more concerned with the means than the ends. Such a person would rather give up his own life, than take the life of another. As the ancient Stoics put it, we must all die some time. It is more important how we live and deport ourselves, than whether we preserve our existence temporarily. The Biblical commandment did *not* say, "Thou shall not kill, except in self-defense of the family or for the common good." A person simply has to have faith that "if one takes care of the means, the end will take care of itself," and then let the chips fall where they may.V

Freedom Works Both Ways

by Dean Russell
(from No. 38, June 1989)

Everybody says he's in favor of freedom. Even the Soviet leaders claim to be fighting for freedom. So did Hitler. Our own leaders are also for freedom. So was my slave-owning grandfather.

But my grandfather failed to understand the fact that freedom is a *mutual* relationship; that it works both ways. He thought that he himself remained completely free even though he restricted the freedom of others. He never grasped the obvious fact that his participation in slavery controlled him and his actions just as it controlled his slaves and their actions. Both my grandfather and his slaves would

have been richer—materially as well as spiritually—if he had freed his slaves, offered them the competitive market wage for their services, and left them totally responsible for their own actions and welfare. But like most of us today, he continued to believe that some persons—without injury to themselves—can legally force other persons to conform to their wishes and plans. He learned the hard way.

Hitler and Stalin were also victims of the systems they created and enforced. Their "food tasters," bullet-proof cars, personal bodyguards and constant fears of assassination were the visible evidence of a part of the freedom they lost when they decided to force peaceful persons to conform to their wills and viewpoints. Knowingly or unknowingly, they lost a great deal of their own freedom when they deprived others of their freedom. That's the way it always works.

Apparently, our own political leaders, regardless of party are also unaware that freedom is a mutual relationship among persons; that it works both ways. Like my grandfather, they are under the delusion that freedom is something which one person can take from another with no effect on the freedom of the person doing the taking—especially if it's legal. If they thought otherwise, they would stop most of the things they are now doing. In the good name of freedom, our leaders now force others to conform to their viewpoints and prejudices on housing, savings and retirement, military service, electricity production, hours of work, wages, education and a host of other items which form the major part of every person's daily life. All of these are restrictions against freedom because they are enforced against *peaceful* persons who would not participate voluntarily. The freedom of the American people—like the freedom of legal slaves—is lost to whatever extent they are forced to conform to the ideas, whims and viewpoints of others. That is all that slavery is. And the fact that the current restrictions and compulsions are legal doesn't deny that they are acts against freedom; the slavery of 1860 was also legal!

As long as our officials continue to deprive peaceful persons of their right to use their time and earnings as they please, the officials will continue to lose a part of their own freedom along with the rest of us. As long as they continue to believe that freedom permits or obligates them to force their ideas upon peaceful persons who do not wish to participate, the system they have created enslaves them also. They obviously don't understand it, but they are somewhat like the man sitting on the chest of a person he has pinioned to the ground; as long as he sits there, he restricts his own freedom about as much as he restricts the freedom of his victim.

The officials who endorse and defend this system of legalized compulsions and prohibitions against peaceful persons are compelled to spend most of their time discussing ways and means—such as propaganda, secrecy, guile, deceit, laws, policemen, courts, jails, fines and so on—to force the rest of us to conform to their ideas and plans which we would reject if we were permitted a real choice in the matter. As long as they continue to enforce this mutually degrading process, they restrict and destroy the potentialities they have within themselves for ad-

vancement toward human understanding and some worthwhile ideal or goal. Sooner or later, the restrictions and compulsions they enforce against others will culminate in some type of an upheaval by an aroused and angry society which the officials can no longer control. Acts against human freedom—legal or illegal—have *always* worked that way. The fact that the intentions of most of our officials are so good only makes it sadder.

Some day we may realize that freedom is a relationship of *mutual* nonmolestation among persons wherein no person uses violence or the threat of violence to impose his will or viewpoint upon any other person. When enough of us understand this idea, we will begin to enjoy as much peace and prosperity as it is possible for us to have on earth.V

[This article first appeared as an editorial in *The Freeman*, February 1955, pp. 291–292. It is reprinted here with some modification to its last paragraph.]

Persuasion versus Force

by Mark Skousen
(from No. 54, February 1992)

SOMETIMES A single book or even a short cogent essay changes an individual's entire outlook on life. For Christians, it is the *New Testament*. For radical socialists, it may be Karl Marx and Friedreich Engels' *The Communist Manifesto*. For libertarians, it may be Ayn Rand's *Atlas Shrugged*. For Austrian economists, it may be Ludwig von Mises' *Human Action*.

Recently I came across a little essay in a book by Alfred North Whitehead, the British philosopher and Harvard professor, that captured my interest. The book is *Adventures of Ideas* and the essay is "From Force to Persuasion." Actually, what caught my attention was a passage on page 83, only one page in the entire 300-page book:

> The creation of the world—said Plato—is the victory of persuasion over force. Civilization is the maintenance of social order, by its own inherent persuasiveness as embodying the nobler alternative. The recourse to force, however unavoidable, is a disclosure of the failure of civilization, either in general society or in a remnant of individuals. ...
>
> Now the intercourse between individuals and between social groups takes one of these two forms: force or persuasion. Commerce is the great example of intercourse by way of persuasion. War, slavery, and governmental compulsion exemplify the reign of force.

Professor Whitehead's vision of civilized society as the triumph of persuasion over force should always be paramount in the mind of all politically active citizens and government leaders. It should serve as the guideline for the libertarian ideal.

Let me suggest, therefore, a new libertarian creed:

"The triumph of persuasion over force is the sign of a civilized society."

Surely this is a libertarian creed that most citizens, no matter where they fit on the political spectrum, can agree on.

Too Many Laws

Too often lawmakers resort to the force of law rather than the power of persuasion to solve a problem in society. They are too quick to pass another law in an effort to suppress the effects of a deep-rooted problem in American society rather than seeking to recognize and deal with the real cause of the problem, which may require parents, teachers, pastors, and community leaders to persuade people to change their ways.

Too often politicians think that new programs and new taxes are the only way to pay for citizens' retirement, health care, education or other social needs. "People just aren't willing to pay for these services themselves," they say.

Oliver Wendell Holmes once said, "Taxation is the price we pay for civilization." But isn't the opposite really the case? Taxation is the price we pay for failing to build a civilized society. The higher the tax level, the greater the failure. A centrally planned and totalitarian state represents a complete defeat for the civilized world, while a totally voluntary society represents its ultimate success.

Thus, legislators—ostensibly concerned about poverty and low wages—pass a minimum wage law and establish a welfare state as their way to abolish poverty. Yet poverty persists, not for want of money, but for want of skills, capital, education, and the desire to succeed.

The community demands a complete education for all children, so local leaders mandate that all children attend school for at least ten years. Winter Park High School, which two of my children attend, is completely fenced in. Students need a written excuse to leave school grounds and a written excuse for absences. All the gates except one are closed during school hours, and there is a guard at the only open gate at all times to monitor students coming and going. Florida just passed a law that takes away the driver's license of any student who drops out of high school. Surely that will solve the problem!

Now students who don't want to be in school are disrupting the students who want to learn. The lawmakers forget one thing—schooling is not the same thing as education.

Many high-minded citizens don't like to see racial, religious or sexual discrimination in employment, housing, department stores and restaurants. Instead of persuading people in the schools, the churches and the media that discrimination

is unchristian and morally repugnant, lawmakers simply pass civil rights legislation outlawing discrimination.

Well, so much for that problem! Does anybody wonder why discrimination is still a serious social disease in our society?

Is competition from the Japanese, the Germans, and the Brazilians too stiff for American industry? We can solve that right away, says Congress. No use trying to convince industry to invest in more productive technology, or trying to reduce the tax burden on business. No, we'll just impose import quotas or heavy duties on foreign products. Surely that will make us competitive.

Drugs and Abortion

Is drug abuse a problem in America? Then pass legislation prohibiting the use of certain high-powered drugs. Surely that will solve the drug-abuse problem. Yet it never addresses the real problem, which is why people misuse drugs in the first place, and how can these needs be satisfied in nondestructive ways? By outlawing drugs, we fail to consider the beneficial uses of these drugs in medicine and we fail to consider the underlying cause of increased drug or alcohol misuse among teenagers and adults.

Abortion is a troublesome issue, we all agree on that. Whose rights take precedence, the baby's or the mother's? Apparently millions of pregnant women prefer abortion because it's a quick little clean operation that can eliminate in a day all the outward signs of sexual irresponsibility. Did you let your sexual desires get carried away? Forget to use a birth control device? No problem—you can get a abortion down at the local clinic. You know, right next to the drugstore, where you forgot to buy the condoms.

Political conservatives are shocked and embarrassed by millions of legal fetal killings that take place every year in America and around the world. How can we sing "God Bless America" with this eyesore plaguing our nation? So, for many conservatives the answer is simple: Ban abortion! That will solve the problem. This quick fix will undoubtedly give the appearance that we have instantly solved our national penchant for genocide.

Yet wouldn't it be better if we tried to answer the all-important question, "Why is abortion so prevalent today, and what can we do to prevent the need for abortions? How can we persuade teenagers, for example, that sexual irresponsibility only creates more problems than the temporary pleasure it gives?"

There are those in society who want to ban handguns, rifles and other firearms, or at least have them tightly controlled and registered. Is there a crime problem? Don't worry. We can solve the murder and crime problem in this country, simply by passing a law taking away the weapons of murder. No guns, no killings. Simple. Thus, they look to change outward appearances, but they show little interest in finding ways to discourage a person becoming criminal or violent in the first place.

I am convinced that the libertarian movement will remain a fringe movement so long as libertarians think only in terms of freedom and not in terms of responsibility for their free actions. Too many libertarians equate liberty with libertine behavior. That the freedom to have an abortion means that they should have an abortion. That the freedom to take drugs means that they should take drugs. That the freedom to use handguns means they can use them irresponsibly.

More Than Just Freedom

It is significant that Professor Whitehead chose the word "persuasion," not simply "freedom," as the ideal characteristic of the civilized world. The word "persuasion" embodies both freedom of choice and responsibility for choice. In order to persuade, you must have a moral philosophy, a system of right and wrong that governs you. You want to persuade people to do the right thing, not because they have to, but because they want to.

In this context, let us answer the all-important question, "Liberty and Morality: Can We Have Both?" The answer is, absolutely, we must have both—or eventually we will have neither. As Sir James Russell Lowell said, "The ultimate result of protecting fools from their folly is to fill the planet full of fools."

Our motto should be, "We teach them correct principles, and they govern themselves."

Freedom without responsibility only leads to the destruction of civilization, as evidenced by Rome and other great civilizations of the past. As Alexis de Tocqueville said, "Despotism may govern without faith, but liberty cannot." In a similar vein, Henry Ward Beecher added, "There is no liberty to men who know not how to govern themselves." And Edmund Burke wrote, "What is liberty without wisdom and without virtue?"

My challenge to all libertarians today is to take the moral high ground. Neither the Republicans nor the Democrats think any more in terms of persuading people; they feel the need to force their nostrums down our throats at the point of a bayonet and the barrel of a gun, in the name of the IRS, the SEC, the FDA, the DEA, or a multitude of other ABCs of government authority.

Our case is much more compelling when we can say that we support drug legalization, but do not use drugs. That we tolerate legal abortions, but choose not to abort our own future generations. That we support the right to bear arms, but do not misuse handguns. That we favor the right of individuals to meet privately as they please, but do not ourselves discriminate.

In the true spirit of libertarianism, Voltaire once said, "I disapprove of what you say, but I will defend to the death your right to say it!" If we are to be effective in convincing others of a libertarian world, we must take the moral high ground by saying, "We may disapprove of what you do, but we will defend to the death your right to do it."

In short, my vision of a libertarian society is one in which we discourage evil, but do not prohibit it. We teach our children and our students not to abuse drugs, but after all our persuading, if they still want to use harmful drugs, that is their right—so long as they do not infringe on the rights of others. We may discourage prostitution and pornography by insisting that it be restricted to certain areas and to certain ages, but if people really want it, no one is going to be jailed or fined. If an adult bookstore opens in your neighborhood, we don't run to the law and pass an ordinance, we picket the store and discourage customers. If we don't like violence and sex on TV, we don't write the Federal Communications Commission, we join boycotts of the advertiser's products. Several years ago the owners of 7-Eleven stores removed *Playboy* and *Penthouse* from their stores, not because the law required it, but because a group of concerned citizens persuaded them. Truly, these actions reflect the spirit of libertarianism.

It is the duty of every advocate of human liberty to convince the world that we must solve our problems through persuasion and not force. Whether the issue is domestic policy or foreign policy, we must recognize that passing another law or going to war is not necessarily the answer to our problems. Simply to pass laws prohibiting the outward appearance of problems is to sweep them under the rug. It may hide the dirt, but it doesn't dispose of the dirt properly or permanently.

Convincing the public of our message, "that persuasion instead of force is the sign of a civilized nation," will be a lot of hard work, but it can be rewarding. The key is to make a convincing case for freedom, to present the facts to the public so that they can see the logic of our arguments, and to develop a dialogue with those who may be opposed to our position. Our emphasis must be on educating the public. For we shall never change our political leaders until we change the people who elect them.

A Vision of a Libertarian Society

Martin Luther King, Jr., gave a famous sermon at the Lincoln Memorial in the mid 1960s. He said he had a dream about the promised land. Well, I too have a vision of an ideal society.

I have a vision of world peace, not because the military or the police have been called in to maintain order, but because we have peace from within and friendship with every nation.

I have a vision of universal prosperity and an end to poverty, not because of foreign aid or government-subsidized welfare, but because each of us has productive, useful employment where every trade is honest and beneficial to both buyer and seller, and where we eagerly help the less fortunate of our own free will.

I have a vision of an inflation-free society, not because of wage and price controls, but because our nation has an honest money system.

I have a vision of a drug-free America, not because drugs are illegal, but because we desire to live long, healthy, self-sustaining lives.

I have a vision of an abortion-free society, not because abortion is illegal, but because we firmly believe in the sanctity of life, sexual responsibility, and family values.

I have a vision of a free society, not because a benevolent dictator commands it, but because we love freedom and the responsibility that goes with it.

I end my remarks with these words taken from a Protestant hymn. The author is anonymous, which I think is appropriate, for it expresses the aspiration of every man and every woman in free society.

> Know this, that every soul is free
> To choose his life and what he'll be;
> For this eternal truth is given
> That God will force no man to heaven.
> He'll call, persuade, direct alright,
> And bless with wisdom, love and light
> In nameless ways be good and kind,
> But never force the human mind.V

[Editor's Note: This article was reprinted from the September 1991 *Liberty* (Box 1167, Pt. Townsend, WA 98368, 6 issues—$19.50, single issue—$4.00). Generally, it advocates the same kind of fundamental change that *The Voluntaryist* seeks. Even though Dr. Skousen's emphasis is on "educating the public," I suspect that he still supports electoral politics. Otherwise, there would be no reason for him to write (immediately after the words just quoted): "For we shall never change [the attitudes and goals of] our political leaders until we change [the attitudes and desires of the] people who elect them." My immediate response is that we don't want "political" leaders. The point of the "one man at a time revolution" is to make each person a self-governor so that political leaders are not only not necessary, but viewed as the criminal usurpers they really are.

As I wrote in my article, "Cultivate Your Own Garden," in Whole No. 40:

> Informed common sense says that "political gains without philosophical understanding are potentially short-lived." … [T]here is no reason to capture the seats of political power in order to disband the State. … Just as voluntaryism occurs naturally if no one does anything to stop it, so will the State gradually disappear when those who oppose it stop supporting it. …
>
> The only thing that the individual can do "is to present society with 'one improved unit.' " As Albert Jay Nock put it, "[A]ges of experience testify that the only way society can be improved is by the individualist method … ; that is, the method of each 'one' doing his very best to im-

> prove 'one'." This is the "quiet" or "patient" way of changing society because it concentrates upon bettering the character of men and women as individuals. As the individual units change, the improvement of society will take care of itself. In other words, "if one takes care of the means, the end will take care of itself."

In concluding, I would like to commend Dr. Skousen for taking "the high moral ground," as he puts it. He understands, as so few of our critics do, that just because we advocate allowing an activity (e.g., unrestricted drug usage), it does not necessarily mean that we personally advocate participation in it. Of course, the other side of the coin, which our critics often miss, too, is that "just because we don't support State-involvement in an activity (public schooling, for example), it doesn't mean that we don't necessarily support that activity itself."]

The Illegality, Immorality, and Violence of All Political Action

by Robert LeFevre
(from No. 60, February 1993)

THERE ARE only three arguments possible by which to try to justify the concept that some men may rightfully rule over other men and other men's property. Probably the earliest, and the most frequently employed, relates to force.

If I am big and strong enough, I may be able to rule you. Whether the force is obtained by superior military might, or by the presumed might of the most numerous group of voters expressed at the polls, the argument is the same. I'm big enough to have my will over you in any case; hence, my rule of you is just and proper.

The second to emerge is the appeal to a theological justification. God wills it; therefore, I have divine rights and may rightfully rule over you. I am special, set apart by the Almighty. Hence, I may rightfully seek to control you and your property, even if I should happen to lack the military force to do so.

The only other argument possible is the contractual one. You have voluntarily, as your own free act and deed, entered into an understanding with me in which you grant me certain decision-making functions over you and your property.

However, if we wish to be precise at this point, a contractual rule is not rule in any logical or legal sense. The separate contracting parties are always in a position to abrogate the contract and to renegotiate, whereas this is never true with government as we presently know it. The contractual argument is the gist of the Declaration of Independence.

The plight of the people of the United States is best summed up by recognizing that it is popularly believed that all three arguments are quite properly employed in our case.

It is presumed that (1) our government is strong enough to rule, therefore it may properly do so. (2) The Constitution is a divine instrument, the explicit result of heavenly supervision over the revolutionary leadership which brought about our separation from England, and thus, as a curious extension of that argument, while God has dethroned the king, God supervises elections and the voice of the people is the voice of God. (Vox populi, vox dei.) Further, (3) the creation of the governmental structure was contractual in nature, hence everything the government does is the result of a social contract to which we have all implicitly or explicitly agreed.

There is only one of these arguments that has any substance. The government is very strong and thus, because of its power, it may very well manage to rule. However, any pretense that the government has been divinely ordained or that some kind of social contract, explicit or implicit, exists between the government and those governed is pure nonsense.

Let me deal with the theological implications first. The very core of the resistance which led to the formation of this country as a separate nation, inspired by such men as Sam and John Adams, Jefferson, Hancock, Henry, Franklin and a hundred others, rested its case on a denial of divine rights reposing in any man or body of men. It was the argument of those who signed the Declaration of Independence, or the Virginia Bill of Rights, and of Tom Paine in *Common Sense*, that divine rights which raised some above others didn't and couldn't exist.

On the contrary, the position was taken that all men had precisely the same rights, no one having, or being able to obtain, any moral ascendancy over any other.

It is important to note that the documents referred to, which represented the axiomatic base to be established, clearly showed that all men's rights are *inalienable*. That can only mean that rights cannot be alienated. What these men were seeking to establish was the validity of a contractual government and the invalidity of any other kind of government. By no possible process whatever could any man obtain a right to rule any other—either by force of arms, by the voting process, or by other practices.

The denial of divine rights reposing in anyone, or obtainable by anyone, became the most dominant characteristic making up the belief of an American. Any pretense to divine rights was, hence, un-American, archaic, and relegated to the ash heap. It is on this point alone that we fought and obtained our independence.

Unfortunately, thirteen years after the signing of the Declaration, the entire concept of a contractual government was put aside. Instead, a single political party put together a governmental structure embodied in the Constitution which

was not and never has been a social contract, and which has never been a statement coming from "we, the people of the United States."

Beginning approximately in 1785, a couple of years after the signing of the Treaty of Paris which brought about our legal severance from England, a political party calling itself the "Federalists" was organized. This small but determined group put together the so-called Constitutional Convention of 1787 and managed to obtain a majority approval of the instrument they had designed as a new form of government. The delegates were bound to return their findings to the state legislatures which had authorized their sojourn in Philadelphia for the convention. But this was never done. The Federalists well knew that the instrument they had framed would be disapproved by every state legislature then in existence. Hence they wrote into the Constitution, Article VII, the process of ratification, specifying that the Constitution would obtain ratification from the conventions of nine states. This made it possible for the Federalists to avoid virtually certain rejection by the state legislatures and also placed control of the conventions in their hands. As the only organized political party, they carefully packed the separate conventions, making certain not to convene any of them until they were reasonably certain of a successful vote. This procedure, by itself, wipes out any possible assumption of legality or moral obligation.

The Constitution was drawn up by a single political faction, was subsequently read by fewer than 10,000 (that is a generous estimate—it probably fell far short of that number), and was approved by simple majorities with a total of fewer than 6,000 delegates participating in scattered conventions. Opposition was strong and the Constitution barely squeaked by in some states Thus, the instrument was drafted and approved, in the main, only by a few people within a single political party. Yet the instrument purports to come from "we, the people of the United States."

In view of the undeveloped communications system, the absence of roads, and the huge size of the rural populations, it is probable that a vast majority of Americans of European, Asian, or African origins didn't even know that conventions had been held or that an instrument had emerged claiming to be a contract with them.

At the time this was occurring, the total imported population was approximately three million people. By no stretch of the imagination can the deliberations of some six or seven thousand of that number be presumed to bind the total number within a contractual agreement.

In further support of this argument, the evidence shows that popular voting for presidents, beginning with George Washington, was so meager that no effort was made to preserve the figures. Thus, for the first ten presidential elections the only figures available are those showing electoral votes. However, in 1824, when no candidate obtained a majority of electoral votes and the election was decided in the House of Representatives, for the first time the popular totals were retained.

The four candidates running that year polled an aggregate of 352,062, while the population of the United States according to the census of 1820 had reached a total of 9,638,453. Only slightly more than three percent of the total population was voting even at this late date. The winning candidate in 1824, John Quincy Adams, received 105,321 votes, slightly more than one percent of the population of 1820. It is reasonable to assume that popular voting prior to 1824 was considerably less. There is no way these facts can be construed as evidence of a contract with the people of the United States.

As a result of the constant barrage of propaganda to which we are subjected both directly from government and through the governmentally dominated and supported public school system, we have been led to believe that the American government has some kind of divine right to impose its will on us and to take our money and property and lives if it chooses. And if the divinity of the election process is denied, then it is argued that the Constitution came into existence as a result of a contractual understanding in which well-meaning persons entered into a voluntary association for mutual benefit. The facts are to the contrary.

Therefore, there is only one argument that can be validly applied to the American government. It rules because it has the power to rule. This is the justification of brute force. Every law, ukase, rule, or bit of legislation enacted at federal, state, or local level is backed up by the ultimate threat of death. That may sound like an extreme statement, yet it is true, and applies even to traffic citations.

Let us suppose that a person has received a summons because he has allegedly violated some statute, law or ruling. He decides that the summons is unjust and that he will not obey. The men in government decide that they will compel him to obey.

Clearly, it is always possible for men in or out of government to change their minds. The government can fail to prosecute, and a man who decides he will not submit to prosecution may ultimately decide to do so. But let us assume that both sides remain adamant.

What ensues? Legal formalities will be followed, of course. The unwilling target of the prosecution will receive a series of warnings, each more harsh than the last. Finally, since he will not obey, he will be physically arrested. But if he submits to arrest, he is in fact obeying. Therefore, he must resist arrest or confinement. Ultimately, he will be shot for resisting arrest or for trying to escape. The shot may not be fatal. But unless the man submits, he must keep trying to escape. In the end, death will be inflicted.

The ultimate truth is that even a traffic citation is backed up by an appeal to ultimate force to the point where death makes obedience impossible.

To assume that the people of the United States entered voluntarily into a contractual relationship of such unbalanced character that specific performance on the part of one of the contracting parties is enforced under the threat of death while specific performance on the part of the other contracting party is totally un-

enforceable, is a patent absurdity. No sane or reasonable human being would voluntarily bind himself by any such contract.

There is no way in which a remedy can be found for government that exists only by force, until the people at large understand that that is the only kind of government they have. However, this most assuredly does not imply, nor should it be inferred, that a government of force should be overturned by force. In my judgment, such should never be attempted. A forceful government forcefully eliminated, leaves forceful persons in control. The result is not a cure, but a further extension of the disease. There are available far more efficacious methods than an appeal to arms. The first and most important of these is an appeal to reason and to peace.

We have long been aware that slaves can be the product of monarchs and dictators. It is time we realized that slaves can also be produced by legislatures, and by executive decrees. V

[This article originally appeared in *Lefevre's Journal*, Summer 1974.]

Thoughts on Nonviolence

by Karl Meyer
(from No. 64, October 1993)

What is nonviolence? It is a way of life based on these human beliefs: Human conflicts can be resolved without violence or force; organized social aggression can be faced and turned back effectively without war and without killing anybody; most crime problems can be addressed more effectively without the use of violent methods or punishment or restraint; people well-educated in the use of nonviolent methods will almost always be more effective in human relations than those who use physical threats and weapons.

Commitment to nonviolence requires us to find solutions that address the needs and feelings of all parties. Resorting to violence means that one party will lose and be forced to give up when the other party wins. Nonviolence begins with respect for the needs and feelings of others, and a serious attempt to appreciate their point of view. The methods of nonviolence are communication, negotiation, mediation, arbitration and nonviolent forms of protest and resistance, when other forms of communication fail to resolve a conflict. When these methods are used with skill and persistence, most conflicts can be resolved without any party's feeling the need to resort to violence. Organized, persistent nonviolent action can overcome oppression and resist aggression more effectively than violent means.

The fact is that all of us use nonviolent methods in most of our human relationships, most of the time. It would be a sorry world if we didn't. What would it be

like if we used violence instead of negotiation every time that someone else had something that we wanted? What would it be like if we used violent retaliation every time that someone else did something that obstructed us or angered us? We use nonviolent methods in most of our family disputes. We use it in our schools, our work relationships and our commercial trading transactions. We use it in almost all relationships between communities within the established borders of nations and in most relations between nations.

Many of us never resort to the explicit use of violence at all. Most others resort to it only in occasional situations.

We carry on most of our activities within a structure of law and customary principles of nonviolent relationship. It may seem that this structure is only held together by the ultimate threat of police force; but, in fact, the fabric of social relationships in families, in groups and in larger communities has always been held together primarily by voluntary assent to common principles of social organization.

Throughout history it has been common to resolve conflicts between nations by warfare and the use of force. Yet even here the majority of relationships have been governed by negotiated agreements, treaties, laws and customs.

Mahatma Gandhi and Martin Luther King, Jr., did not invent nonviolence. Their instinctive contribution was to show how organized nonviolent action could solve intractable situations of longstanding oppression and conflict. Before them, others believed that these problems could not be solved, or could be solved only by violent revolt.

Mahatma Gandhi and Dr. King showed how we can take the nonviolent methods that we use most of the time in everyday relationships, and develop them as powerful tools to solve the most difficult problems of entrenched oppression and institutional violence.

We are all believers and practitioners of nonviolence in human relationships. The challenge is to extend our belief and our practical skills to more difficult and remote situations of human conflict. Those who really commit themselves to these principles find that they work. Many lives are saved. Destruction is avoided and everyone benefits as the process develops.

Our politicians often tell us that it is impossible to resolve conflicts without war. The fact is that they don't try hard enough, because it is our lives and our well-being that they put on the line when they decide that violence is necessary. V

[Reprinted from *The Catholic Worker*, Oct.-Nov., 1992.]

A Visit to Rhinegold

by Harry Browne
(from No. 70, October 1994)

Once, in a fantasy, I had the opportunity to visit the mythical nation of Rhinegold. I was doing research for this book, and I'd heard there was a strange money system in Rhinegold—so I thought I should investigate.

Rhinegold is a very small country (about the size of Luxembourg—around 1,000 square miles) situated on the river Rhine in a little nook at the corner where France, Germany, and Switzerland would otherwise meet. There are about 160,000 inhabitants, all of whom speak the ancient tongue of Cash (at least that's the only language they understand).

When I went there, I figured the best way to learn about the monetary system was to head for the capital city and speak to someone at the central bank. But no one I asked had ever heard of a central bank. In fact, no one even knew what the capital city was—an ignorance I was to come to understand only later.

So instead, I went to the city of Glitter, where I was able to make friends with a businessman named Brian Sell. Seeing my interest in finances, he arranged a luncheon meeting comprised of a leading banker (I. M. Solvent), a renowned economist (G. N. Product), Mr. Sell, and myself.

After the amenities had been completed, we began discussing the economy of Rhinegold.

It seems that the monetary unit there is the gram. Having written in the past about francs, Swiss francs, Belgian francs, Japanese yen, and even Qatar/Dubai riyals, I saw nothing strange about a government naming its currency the gram.

So I asked my first question: "What is the gram backed by?"

"Backed by?" replied Mr. Sell, rather quizzically. "What do you mean 'backed by'?"

"I mean what is your monetary reserve—silver, U.S. dollars, SDRs, what?"

"But, Mr. Browne, the gram is not backed by anything."

"Not backed by anything? Well, it must be a very inflationary currency then. Many currencies are backed by gold, for instance."

"No, Mr. Browne, you do not understand. The gram is not backed by gold. It is gold. What do you think a gram is? The gram is a weight of gold—equal to .03215 ounces, consisting of one hundred centigrams or one thousand milligrams. Have you never heard of a gram?"

"Yes," I said. "But gold isn't money; it's only a backing for money."

"Maybe where you live, but not here. We would not dream of considering anything but gold as money."

"But you don't actually exchange gold in daily trade, do you?"

"Of course we do. I cannot imagine anyone accepting anything else in payment."

"But isn't that rather cumbersome?" I asked.

"Not at all," Mr. Sell replied. He reached into his pocket and extracted an assortment of things. "Here is a 100-gram bar of gold, for example. I would not ordinarily have this size bar with me; in fact, I was going to take it over to the warehouse of Mr. Solvent after lunch."

I turned to Mr. Solvent and said: "But I thought you were a banker."

"You may call me anything you choose," he said, shrugging. "A bank is merely a warehouse for gold."

Mr. Sell handed the gold bar to me, and I must admit I was impressed—holding gold in my hand for the first time in my life. It was a wafer-thin little bar, about two inches long and an inch wide. I looked at the inscription on it. It said, "Alberich's Mint. 100 grams, .9999 fine. Assayed by I. M. Solvent." It turned out that Mr. Solvent's warehouse included an assay office. He was highly respected in the country, as were his father and grandfather before him.

"How much is the gold bar worth?" I asked.

"It is worth what 100 grams will buy in the marketplace," said Mr. Sell. "For example, I could buy a nice color television set, a bedroom suite, many things."

"But what is the price of a nice color television set?" I asked.

And with a straight face he replied, "The price is 100 grams."

"But how much is 100 grams?"

He became a little annoyed and said: "My dear sir, 100 grams is 100 grams. Are you trying to make fun of me?"

At that, Mr. Product, the economist, intervened. "I think what Mr. Browne wants to know is what 100 grams are worth in American paper currency. With U.S. dollars selling for about 1/5 of a gram or 1/150 of an ounce each, you could buy about 500 U.S. dollars with that gold bar—if you *wanted* to."

"Don't you mean that gold is selling for about $150 an ounce?"

"My friend, you do not buy gold, you spend it. Gold is money. You might buy dollars (they are not money) if you had some reason for wanting them; but, off hand, I cannot think of any reason. You Americans have everything upside down."

Satisfied that my questions were prompted by ignorance, not malevolence, Mr. Sell continued showing me his money.

He displayed various coins—several more from Alberich's Mint and a few from Miser's Mint. They were denominated in 30 grams, 20 grams, 10 grams, 5 grams, and 1 gram.

I quickly tried to compute the value of each in the only terms I knew—U.S. dollars. It appeared that the 1-gram coin was worth about $5.00. It was a tiny thing, about half the size of an American dime.

He noticed my consternation at the small size of the 1 gram coin, and said, "Yes, it is a rather inconvenient coin—too easily lost. So we also have a 1-gram token; here is one of them."

I looked at the "token." It was a typical copper-nickel coin (as I had always thought of the word "coin"), about the size of an American silver dollar. I noticed that the inscription on it said, "Good for one gold gram at Rhinemaiden Safekeeping Company, 'Guardians of the Rhinegold.' "

"That is my warehouse," said Mr. Solvent. "Anyone can redeem that token for a gram of gold at any time."

Mr. Sell showed me some other tokens. They bore labels of 50 centigrams, 25 centigrams, 10 centigrams, 5 centigrams, 2 ½ centigrams, 1 centigram, and ½ centigram. The first four had the same look of nickel about them that the 1-gram token had, decreasing in size along with the value. But the 2 ½, 1, and ½ centigram tokens were plain copper, brown like American pennies; and so were a little larger since they were easily distinguishable from the more valuable tokens.

Coins and Tokens

Thinking I was one up on them, I said, "I'm surprised at you folks. With your apparent fetish for intrinsic value, why don't you have silver coins?"

They each looked surprised, but then Mr. Solvent came to the rescue. "I think I understand your question. But I do not think you understand that tokens are not money. They should not have intrinsic value as gold coins do. A token is a money substitute, something you exchange for gold when you want to—just as your paper currency was once redeemable in gold.

"You would not think of printing money receipts on some special paper that was worth more than the money it represents. That would be a waste. The same thing is true for tokens. A one-gram token contains about one centigram's worth of copper in it. It is merely a substitute. If we put silver in the token, the value of the silver might be greater than the amount of gold it is meant to represent."

"But *we* once had silver in our coins in America."

"Ah yes," Mr. Product broke in. "I have read about that. And that is precisely why you continually had so-called 'coinage problems.' The silver in the 'coin,' as you call it, was often worth more than the so-called 'money' it was supposed to represent. And when it was, people would not use them; they would hoard them. As more were minted, they would disappear from circulation immediately."

"But the coins had intrinsic value."

"Yes, that was their problem. You cannot have two kinds of money circulating, gold and silver; one will always be worth more proportionately than the other and so will not circulate. Your government would try to force people to accept them at the same value; how silly."

"What is a 'government'?" Mr. Sell asked, but Mr. Product went on with what he was saying.

"If you offered me some silver, I would accept it—because silver is very valuable. But I would be calculating in my mind how much the silver is worth in terms of gold."

Seeing his question wasn't going to be answered, Mr. Sell shrugged and brought the rest of his money out of his pocket. In his hand was a wad of currency.

"And here we have money receipts. They are like tokens, exchangeable for gold but more convenient to handle in larger amounts."

He showed me the receipts. Many of them were from Mr. Solvent's warehouse. They were somewhat similar to U.S. bills—finely engraved (probably to discourage counterfeiting), had denominations on them from 100 grams to 1 gram, and also had pictures of men and women.

I leafed through them, looking at the unfamiliar faces—probably the former presidents of Rhinegold, I thought—until I came across the face of *John D. Rockefeller*! And there was one of Andrew Carnegie.

"Yes, Mr. Browne," said Mr. Solvent. "I grace my money receipts with honored men to lend a sense of prestige to my warehouse. People in Rhinegold are very grateful to John D. Rockefeller for what he did to make gasoline inexpensive for our motor cars."

At my request, he explained the warehouse business. He stored gold, gold coins, and money receipts for people. He offered demand deposits—a pure storage function—for which customers paid a small fee. And he also borrowed gold from people by setting up time deposits—whereby customers left gold with him for specific lengths of time, for which he paid *them* a fee. He, in turn, lent the gold to others for larger fees. As he put it, he *was* a loan broker.

Foreign Exchange

He also offered a foreign trade department—which I later realized was similar to a foreign exchange business. Mr. Sell imported products to be sold in his stores and he handled the transactions through Mr. Solvent.

If Mr. Sell wanted to buy products from Germany, for example, he would get a price in German marks. But he kept no supply of German marks, so Mr. Solvent would check their value by determining the exchange rate between Swiss francs and German marks, and by getting a commitment from someone in Zurich to buy gold from Solvent's warehouse. That way, he could tell Mr. Sell exactly how much gold was required to buy the products. He would then handle the exchange transactions for Mr. Sell.

"As an exchange broker, I guess you stock various currencies, too."

"Very little," replied Mr. Solvent. "We have some business selling currencies to Rhinegolders who intend to travel to other countries, but I just keep a small inventory. I would never want to have a large supply of this strange paper that fluctuates in value."

Then I remembered that gold had gone up in value recently—rising from $35 per ounce to $150 per ounce in just the past four years. When I mentioned this, Mr. Product replied, "Yes, you people have had some strange ideas about gold.

Your authorities kept dumping it on the market for years—trying to make your paper currencies more valuable. How ridiculous.

"But we knew you couldn't do it indefinitely. And so most Rhinegolders restricted their purchases over the past few years, knowing things would change, holding on to as much gold as possible.

"We buy many things from other countries. You see, we do not produce many things here—some dairy products, a few cereals, potash, some agricultural products, a rather inferior quality of wine, and, of course, we have the power plant. So as long as you people had such contempt for gold, we would not buy very much from other countries. But now, *now* every gram of gold will buy about four times as much in foreign products. We are all far wealthier than we were four years ago; we are importing luxury cars, excellent French wines, and all sorts of other things we have always wanted."

"But if you're importing so much, business must be terrible here."

"Oh no. I suppose most people are taking it a little easy for a while. And why not? They are enjoying the fruits of past labor. But no one expects to live the rest of his life off your follies. Meanwhile, we are buying many things we have always wanted."

"But what about your balance of payments?" I asked. "It must be in terrible shape."

"What is balance of payments?" Mr. Sell and Mr. Solvent asked in unison.

"You don't know what balance of payments is? That's the comparison between your imports and exports. Right now, you're running at a deficit; it could ruin your money system."

"I do not understand," said Mr. Sell. "How could we run at a deficit? Our imports and exports are always equal; how can they be otherwise? No one is willing to give us anything without getting something in return. I do not understand what you mean by a deficit."

"I would look at it another way," said Mr. Solvent. "You could say that we always import more than we export. After all, an individual only exchanges when he gets back something of greater value than he gives up; otherwise he would not bother making the exchange. So, taking all our people as an aggregate, we always import things of greater value to us than we export. But then so do people of every other country. Is that what you mean?"

"No, that is not what he means," interrupted Mr. Product, the economist. "I've read about this balance of payments matter. It is really very simple. What they do in the United States is to buy on credit, in effect. They import products but do not pay for them with gold. Instead they give IOUs that are supposedly payable in gold—something like our money substitutes. But they issue far more IOUs than they actually have gold for.

"And so they are constantly besieged by creditors demanding payment in gold for the IOUs. As a result, they always hope they will export more food and cars and

other things in exchange for other people's IOUs (or to get their own IOUs back), thus keeping foreigners from asking for the gold that is not there.

"We do not have that problem here, because we do not deal in that kind of credit. Everything we buy is paid for with something immediately—potash, cheese, any of our other products, or gold. So every import is simultaneously an export, too.

"Occasionally, someone pays for an import with one of Mr. Solvent's warehouse receipts—sort of the way you pay with 'dollars' (a strange term that denotes nothing specific). But any foreigner can exchange the receipts for gold in storage at the warehouse anytime he wants. And there is always gold there for every receipt; Mr. Solvent can prove it.

"So if everyone holding a receipt wanted to exchange it for gold at the same time, all the receipts would be redeemed. No one would be left out. The only problem might be that Mr. Solvent would have to hire a couple of extra clerks to handle the increased business that day."

"Ah, that would be no problem," said Mr. Solvent. "And if everyone took the gold they have stored with me, I would be able to take that vacation I have been putting off."

"But that's not true," I said. "You couldn't satisfy all the demands for gold. You've already told me that you've lent out some of the gold."

"Not *that* gold," he said. "I cannot lend gold that is covered by a receipt; that is dishonest. Two different people would be trying to spend the same money at the same time. The gold I lend is gold that is *lent* to me, not stored with me. No one who has lent gold to me has a claim upon it until the due date of the note I gave him. And before then, I will be paid back the gold by the person I lent it to. I could not possibly lend gold unless I have the exclusive right to it for a given period of time."

"That sounds like a very restrictive credit system to me. How can you stimulate business that way?"

"I do not understand. How would we have any more resources or workers by doubling the money substitutes? That is what would happen if I lent gold that someone else was spending with his receipts.

"All that is rather academic right now, anyway," he added. "No one has borrowed much gold the past few years. Everyone in Rhinegold knew the world's respect for gold would be increasing. As long as gold was being dumped on the market by your authorities, gold was buying artificially small amounts of things temporarily. So our friends have been waiting, saving as much gold as they could, waiting until it would buy much more. No one wanted to borrow money and spend it at relatively high prices and then pay it back when prices would be much lower. In fact, the price for borrowing money has been around one percent a year for several years now."

"You mean prices are dropping?"

"Of course, *you* price U.S. goods in dollars. Well, until recently an ounce of gold would buy only about 35 'dollars' worth' of U.S. products. Now an ounce of gold will buy 150 'dollars' worth' of U.S. goods. Four years ago, it would have cost Mr. Sell 400 grams to buy that American color TV set; now it costs only 100 grams. And that, of course, has also forced local prices to go down, too, because foreign products can be bought so cheaply now.

"In fact, to facilitate the lower prices, I have recently started issuing a 2 ½-milligram token. There are now some things that cost less than ½ centigram."

That sounded ominous to me. "Then you must be suffering a depression—if prices have dropped to one-fourth of what they were."

Depressions?

"What is a depression?" asked Mr. Sell.

Calling upon my vast knowledge of economics, I said, "A depression is when you have to reduce your standard of living because of bad times."

"Oh yes, we had one of those," replied Mr. Sell. "During that ridiculous war you people had back in the 1940s. Most of the borders to other countries were closed and it seemed like nobody in any other country was producing anything of value. We could not buy automobiles from any other countries, for example; and we had to go without a lot of other things for several years. So we ate a lot of cheese and waited it out. Is that what you mean by a depression?"

"Well, sort of, I guess. I'm not really sure. Wars are supposed to be good for business. At least that's what my economics textbook said. But I mean a real depression—like we had in the 1930s."

"I know what you mean," said Mr. Product. "We had something like that just after the war. When the war ended, Rhinegold was overrun with tourists from the United States. They wanted to buy all sorts of things—potash, cheese, sightseeing, even our cheap wine since the French had been producing very little for several years.

"You see, we were so glad to see people from the outside world again, we did not ask many questions. And they had stacks of money substitutes—your 'dollars'—which they said were 'good as gold.' So we took their word for it and accepted the dollars.

"When people took the money receipts to Mr. Solvent, he checked them out and found out that they were not as good as gold—not hardly. The people who had printed the receipts would not give you any gold for them; you had to get in a waiting line.

"So there we had given up a great deal of our production for something of much less value. We all suffered a bit from that—our standards of living went down for a while. It was like having worked for four years for nothing. That was our real depression."

"But wait a minute," interrupted Mr. Solvent. "We had another depression right after that, remember? When the people in Glitter City realized that the money substitutes were not exchangeable for real money, they had a big bonfire in the city square and burned all these phony receipts. The fire spread and a third of Glitter was destroyed by fire. It took some time to get back to normal living standards after that. So we have had two depressions—thanks to this funny money of yours."

Wars

Anxious to change the subject, I turned the conversation back to the war. "How in heaven's name did you manage to stay out of World War Two? Here you are right between Germany and France. Didn't the Nazis occupy Rhinegold while they were overrunning France?"

"They tried to." said Mr. Product. "A large band of soldiers in tanks moved in and said that Glitter City was now under Nazi occupation. That is, they tried to say it, but they could not find anyone to listen to them. They posted signs on the buildings and went looking for something called the 'City Hall' to take over the government."

"Then what happened?"

"You see, we do not *have* a government. No one here respects *any* authority except his own self-interest and the self-interest of any person with whom he might have some intercourse."

"By the way, what is a government?" asked Mr. Sell.

Ignoring him, Mr. Product went on with his story. "So that meant *they* would have to set up a government. They sent home for more troops; but since no one here had any concept of what a 'government' is, it meant they could control us only if they had one policeman for every Rhinegolder. At first, they tried stationing a soldier on every corner with a tommy gun—but people just went on about their own business.

"Finally, they realized they would have to have 160,000 soldiers here to guard 160,000 Rhinegolders. And for what? Just to say they had conquered a little country of 1,000 square miles. That did not make sense—even to them. So they stole some cheese and went on to France."

"That's very inter—"

"Wait, that's not all. In 1945, it happened again—sort of. Then the American soldiers came. They had even *more* tanks and soldiers than the Germans had. They rode into town and a man in uniform with some artificial silver stars on his shoulder stopped me on the street and said, 'Take me to your leader.' So I took him home and introduced him to my wife.

"Well, either I had misunderstood or *he* misunderstood, because he threatened to shave my head and denounce me as a collaborator. Fortunately, he

changed his mind—but I do not think he ever really comprehended our way of life here, and I certainly do not understand his.

"So after a couple of days, they stole some cheese and headed into Germany."

Democracy

This was all a little too much for me to grasp. "But you *must* have a government. Who decides when prices get too high or how much is a fair profit?"

"What is a government?" insisted Mr. Sell.

"We all decide such things," said Mr. Product.

"Oh," I said. "You mean you vote on such questions."

"I guess you could say that. I vote when I buy something. I am telling the seller that his price and profit are not prohibitive. If enough other people also vote for the product in that way, the seller keeps offering it. If not, he is voted into changing his prices or doing something else for a living. Is that what you mean?"

"No, but we'll set that aside. Even if you don't want a government to control your economy, you *have* to have one for national defense. If nothing else, that's a necessity."

"I disagree with you. In fact, I see it to be exactly the reverse. If we had a government running our economy, we would survive. We would have to put up with the recurring price distortions of inflation and the inevitable depressions that you people take for granted. Our standard of living would go down considerably with such a government running our lives, but—as I said—we would still survive somehow.

"But the one thing we could not tolerate would be a government responsible for our defense. Depressions are bad enough—but *wars!* Wars that send our people off to fight the personal battles of some stupid politician; large shares of our production taken away from us to buy guns and fortifications; bombs raining on our cities. I am surprised that you imagine that we would want that."

"But how do you defend yourselves?"

"By minding our own business. Oh, we have had other people wanting to conquer us a few times. But a nation is conquered only when the government surrenders; then the people surrender. A people who do not respect any authority but themselves have no one to surrender for them. That means they would each individually have to surrender. No conqueror has the resources to waste trying to conquer 160,000 different and individual enemies.

Each time the foreigners have come to make war, they have left soon enough. And yes it is true that they killed a dozen people or so before they left. And we *all* mourned—because I doubt that there is a single person in Rhinegold who does not consider such deaths to be senseless.

But fortunately we did not have a government. If we had, the 'great' ruler would have called for blood and vengeance 'on behalf of an injured nation.' He would have drafted half the population and sent *thousands* off to die. If a dozen

people killed is such a tragedy, then why bring on the even greater tragedy of thousands killed?

"No thank you, Mr. Browne, no national defense for us. It is too dangerous."

Property

I could see it was time to change the subject again.

"Tell me about your industry. I notice you have a pretty impressive power plant on the river. If you have no government, how was it built?"

Mr. Sell handled that one. "By production, of course. Some people worked, saved their money, and invested it in the building of the power plant—hoping enough people would want the electricity to make the investment pay off."

"But such things as power plants are too expensive to be built with private money. That's why governments always have to put up the money."

"I do not know what is this thing you keep calling a 'government,' but I know one thing: If the people of Rhinegold are not rich enough to have the money, starting a government is not going to make them any richer."

"Well then, let's talk about your other industry. I've seen some large farms. Who owns them?"

"Some of them are owned by local residents. And a few of them are owned by Germans. They do very well with them, too. I understand Herr Dorado made quite a profit last year."

"Doesn't that bother you—Germans coming in here, buying up valuable property, making money on it, and taking the profits out of the country?"

"I do not understand; why *should* it? Evidently, the local people do not consider the property as valuable as the Germans do or they would offer prices that would buy them out. As for 'taking profits out of the country,' how can that hurt us? They only make their profits by offering something in return. They get the gold; we get the food we want. And when we sell something we produce, we get gold in return—or we don't do business. What is the problem?"

"No problems, I guess. Well, I see the time is getting late. So we'd better break up this very informative meeting so you can get back to your businesses. I appreciate your taking the time to tell me about your rather strange money system. It's really quite quaint, though a bit primitive."

"What is primitive about it?" asked Mr. Product. "We have no shooting wars, no trade wars, no balance of payments problem, no inflation, no depressions of the kind you take for granted, no borders really (just the borders of other countries), no one to prevent us from buying what we want from whomever we want at whatever price we can agree upon, no one to tell us what we can produce, what we can own, whom we can deal with. If that is primitive, I would rather be primitive than have to face the problems inherent in your contrived, 'sophisticated,' controlled economy."

Money

I had been clearly outflanked and out-argued. They'd pushed me into an intellectual and ideological corner. It meant that I had to bring up the one thing that, out of courtesy, I'd wanted to avoid. l didn't want to bring it up, but they'd forced the issue. I *had* to raise the ultimate argument—my *coup de grace*.

"All right, you've just made the most telling point about your system. Everything you think is so good about your system has to do with money. *Money*! That seems to be all you ever think about, all you can talk about. You're so preoccupied with money, where's the aesthetic interest, the spiritual concerns, the higher order of things that you have no time for because of your preoccupation with money? This is the most materialistic society I've ever seen."

They all looked surprised; clearly I'd gotten to them. Then Mr. Product spoke.

"Money? You think we are preoccupied with money. You invite us to lunch and ask one question after another about money—and then think that we are preoccupied with money. How very funny.

"We talk about money because you insist upon it. You have taken us away from our pleasures, our aesthetic enjoyments, and—yes—our businesses, because you, my friend, are the one who is totally absorbed in the subject.

"Why are you writing a book about money? Only because your own money system is in such terrible straits. If it worked right, you would be writing about something else. Our money system works precisely because no one ever sat down and invented it. It simply evolved over hundreds of years as thousands of individuals just did what was in the self-interest of each.

"We never became so preoccupied with money that we tried to invent it out of paper in a vain attempt to have more than we have earned.

"As a result, we *understand* money. We know what it is and we know what it is not. It is simply some commodity of such accepted value in the community that an individual is willing to hold it while he waits to purchase something else with it.

"And because we understand money and earn a lot of it, we are rich. And do you know what that means? It means we do not have to be preoccupied with it. We are free to enjoy many things in life that you cannot enjoy because you are too absorbed trying to figure your way out of the dilemmas *your* primitive money system has caused.

"We live fruitful lives here because we are not so pompous as to believe we know what is best for other people. So we do not take the earnings of one person to give to another we 'judge' to be more deserving.

"Mr. Solvent here gave up the matinee at the opera this afternoon to indulge your preoccupation with money. And Mr. Solvent regrets that—not because opera is culture but because opera is enjoyment.

"You talk of materialism as 'opposed' to spiritual and aesthetic values. But there is no opposition between them. What I have just said about money and the

lack of the need to be preoccupied with it was not meant to disparage money. Quite the contrary.

"There are people here who go to church quite often. But I doubt that anyone of them thinks that Bibles are printed on paper by prayer. Nor do men like Mr. Solvent believe that operas are reproduced on gramophone records by aesthetic meditation. Those things are accomplished by effort, by productivity, by a sound understanding of what money is—so that one's limited resources are not used up chasing after pieces of paper that have no durable value.

"When your country learns what money is, your people will be able to produce so well that the aesthetic and spiritual endeavors of your country will no longer be so expensive that you cannot afford them.

"I advise you to become so preoccupied with money that you learn to understand it, and to earn it, so that you can finally become preoccupied with something else."

When he finished, I said, "Well, I respect your position. Of course, I don't have to accept it. Especially since my president said last week that everything will be much better next year—after the new controls have had a chance to work.

"And gentlemen, I appreciate your taking this time to talk with me." As I shook hands with each of them, I said, "Thank you, Mr. Brian Sell; thank you, Mr. I. M. Solvent; thank you Mr. G. N. Product. Oh, one other thing, Mr. Product; do you mind my asking what the initials G. N. stand for?"

He looked at me a bit surprised and said, "Why no; they stand for Gerald Nathan. Why do you ask?"

"Oh, no special reason. Thank you very much."

And so I left Rhinegold and headed back to the warm, reassuring, comforting homeland where I could deal with things I understood—strikes, food shortages, exchange controls, etc.

When I arrived, the customs official asked me, "Do you have anything to declare? Any money over $5,000? Any gold? Anything else?"

I thought of the 10-gram gold coin I'd bought on my way out of Rhinegold, which was now hidden in my shoe; I cleared my throat and said, "Er, no, not a thing. Uh, that is, except for some cheese."

Reprinted with permission from How You Can Profit from a Monetary Crisis, *Chapter 13, New York: Bantam Books, 1975.*

An Open Letter to Harry Browne from John Pugsley

Harry, Please, Don't Run for President
An Argument in Defense of the Invisible Hand
(from No. 74, June 1995)

Dear Harry:

Your decision to seek the Libertarian Party's nomination for president in the next election has electrified libertarians. It is, without doubt, the most exciting news that has hit the Party since its formation in 1971.

Many of us were stunned. Your writings over 30 years have consistently argued the futility of political action and maintained that people waste their freedom working to affect the government. However, on reviewing your writings along with your explanation for the change, I'm satisfied that you haven't reversed course. You just believe that the public's perception of government has changed. Today, tens of millions of Americans—perhaps the majority—can see for themselves that government doesn't work. Where in the past you felt political action was futile, you now are convinced that the time is here to wage the battle for individual liberty through the ballot box. With heightened public recognition that government is the problem, you sense that the right candidate could be a lightning rod, collecting the disparate energies of a disenchanted populace and focusing them on disbanding the state.

As a long-time friend who has been one of your greatest admirers, I can testify that your considerable skills as a speaker, coupled with your brilliant mind and rapier wit, make you the most powerful candidate the Libertarian Party has ever put forward. The emotional appeal of a person of your intelligence, wisdom and knowledge in the position of president makes the thought of joining your crusade compelling. Win or lose, such a campaign would bring the free-market argument to hundreds of thousands of disenchanted individuals, spreading the truth that big government is their enemy and the sole source of America's social decay. And yes, it would be an extreme long shot, but with luck, the Libertarians might actually win. If you became president, it would appear that you'd be positioned to strike a potentially mortal blow to the state. And even if you didn't win, reaching voters with the truth might exert tremendous pressure on politicians in the other parties, leading them to change the direction of government.

I hear that support is pouring in from libertarians who have never before deigned to touch a ballot. Many of my close friends and colleagues, including such independent thinkers as Doug Casey, Mark Skousen, Bill Bradford, Rick Rule and Bob Prechter, have told me that they are joining your campaign. The calls are coming in thick and fast entreating me to join the new libertarian army at the political barricades.

As I said, this is emotionally compelling. However, I ask you and all of our libertarian friends to re-examine the premises on which political action is founded

before succumbing to its visceral appeal. Your charisma and persuasive power will attract the best and brightest minds of the libertarian world onto the political battlefield. If you are wrong, the potential injury to the cause of freedom could take a century to heal.

The goal of all individuals of good will today and for most of history is and has been *freedom*. The brightest minds of every generation in recorded history have searched for the path to that goal. The discovery of how to achieve freedom has been and is mankind's most important quest. You and I are painfully aware of how completely mankind has failed. Nowhere on earth does man live in freedom.

Why has our species failed to achieve this, its most important goal?

I think you would probably agree that it has failed because those searching for freedom have incorrectly assumed that freedom could only exist if we first designed the *perfect form of government*. Even those enlightened men whom we call our "founding fathers" started from the premise that a society can only function if individuals subordinate at least some of their personal freedom to *a political authority*. Outside of you, me and a relative handful of libertarians around the world, this false belief that men cannot live in harmony without government is nearly universal.

Libertarians and anarchists have long recognized the wolf in grandmother's nightgown, and now conservatives and even many who consider themselves liberals at last are becoming aware that each time grandmother kisses them, they wind up with a nasty bite. As the victims of government multiply, the search intensifies for a way to contain it. The central issue facing all freedom-seeking individuals, conservatives, libertarians and anarchists alike, is, how can the cancerous growth of the state be stopped? What can individuals do to effectively reverse the trend toward omnipotent government and ultimately achieve either a stateless society, or at least the maximum degree of individual freedom?

There are two fundamentally different strategies from which to choose. The most popular strategy is to use the political process to take control of the state apparatus. Those who choose this strategy believe that through education, political campaigning and the voting booth, political power can be wrested from special interests, spendthrift politicians can be excised from government, and the state can be subdued. The Libertarian Party was founded to pursue such an agenda. The other strategy, that of using individual action, is far less popular. Those who seek freedom through a strategy of individual action refuse to condone political action even as a means to an end. They reject all political action. They do not register. They do not vote. They do not campaign for or against candidates. They do not contribute to political parties or political action committees. They do not write letters to congressmen or presidents. This nonpolitical road is one some libertarians and all pure anarchists have followed.

In the past you have rigorously argued that individual action was the only rational strategy primarily because voting is futile—one vote doesn't matter. How-

ever, you now feel that masses of voters will choose a candidate who promises to bring down government, so that individual votes will matter. I'm not clear why if one vote doesn't matter in one election, it does in another. If it's because now there is a chance of winning when before their wasn't, then that would presume that votes only matter if there's a chance of winning

But you also argue that even if you don't win, a large voter turnout for a Libertarian candidate will send a message to the Democrat or Republican who does win in 1996. But again, I'm not clear as to why this wasn't true in past elections. If influence on the winner is a reason to participate in politics, this should have been just as legitimate a reason for voting in the past, too.

You've talked with people all over the country and they universally distrust government. The polls themselves continually signal the public's disenchantment with the state. If asked, even many liberal Democrats will say that government is doing a bad job. But, have the majority of people become anti-government? There is some evidence to support the idea that a great number have become fed up with big government. Perot's appeal in the last election stemmed partly from his government-bashing. But part of it also came from his Japan-bashing, and courting workers and business owners with protectionist arguments. We shouldn't forget that in spite of all, the election was won by the "Big Government" party.

It would be dangerous to assume that just because someone says he thinks government is too big, that he is ready to eliminate those areas of government in which he is a beneficiary. If history is any guide, the next election will be won by the candidate who promises to bring big government under control, *without cutting off the flow of government benefits*. Assuming there is a majority of voters who could be won over to a candidate that promises to bring down big government and repeal the income tax, what will happen to the attitude of these voters when the consequences of repealing the income tax and downsizing government become obvious? How many senior citizens will vote for repealing the income tax if they believe that the effect will be to curtail Social Security or Medicare? How many corporate executives will back away when they realize that their regulatory shield will be removed and they'll face open competition? How many managers of subsidized export industries will defect when they realize the foreign loans that pay for their products will be axed? How many public school employees will vote Libertarian when they learn that education will be privatized? How many union members will vote Libertarian when they learn that minimum wages and other pro-labor laws they have worked years to get passed will all be trashed?

Yes, 7 out of 10 people will say they want less government—but I fear their desire will last only as long as it doesn't interrupt their own turn at the trough. The point is that the number of people who want smaller government is no indicator of how many will be willing to sacrifice immediate gratification to secure their longer-term well being. …

Your arguments for political action basically revolve around a belief that political action really can ultimately result in freedom. But I ask you to reconsider each of the arguments against political action, one by one. Some, I grant you, are weak, as I will point out. But others require your response.

1. *One vote doesn't matter.* The front-line argument against voting, and the reason that most people don't vote, is simply the belief that one vote doesn't matter.

This is one of the weaker arguments against voting, since we all know that this is not quite true. It's more correct to say that one vote probably won't matter. But it could. Elections have been won or lost on small margins. Since voting could swing an election, the low probability of casting a useful vote should not be considered a valid reason for abstaining from political action … providing that political victory could eventually lead to a free society. I think you properly qualified this argument when you said in *How I Found Freedom in an Unfree World*, "…the individual's efforts become almost irrelevant to the outcome." The operative word was "almost."

2. *Libertarians can't hope to win.* The futility-of-one-vote argument above is harmonic with the argument that the Libertarians can't hope to win. Because of the power of the two major parties, the great sums of campaign money they command and the bias of the media, the odds against free-market advocates are overwhelming. Furthermore, even if free-market advocates gain media coverage, the majority of individual voters will probably prefer to vote themselves benefits in the short-term because they fool themselves into believing that somehow they will personally be able to avoid paying the price in the long-term. Again, I think this is one of the weaker arguments against political action. There is no law of nature that says a Libertarian candidate couldn't win. Victory is not impossible, just unlikely. The low probability of winning an election is not an insurmountable reason for abstaining from political action … providing, that is, that political victory could eventually lead to a free society.

3. *Natural rights.* The central anarchist argument against political action, and the first one, it seems to me, that is impossible to refute, is that of "natural rights." As stated in the Declaration of Independence all men are created equal and are *endowed by their creator with certain unalienable rights, including life, liberty and the pursuit of happiness.* If each person has a natural right to his body and property, then another individual cannot have a right to aggress against him. In a political democracy or republic, voters appoint a candidate to be their agent and implicitly sanction him to aggress against others in the community. It is equivalent to saying that you have the right to give A permission to aggress against B. The anarchist argues that no individual, including you, has the right to give anyone else permission to aggress. According to the natural rights hypothesis, voting is an immoral act. …

The would-be-voter, in a fall-back defense of voting, argues that he is not voting for just anyone, he is voting for Harry Browne. You're ready to swear that you'll

never, never use the gun of political power against anyone, but are seeking that gun only in an attempt to destroy it once you hold it in your hands. If the other candidate wins, he may aggress, but you will not.

You and your voters know the office carries with it, by law, by Constitution and by tradition, the power to aggress. Each voter admits he knows the authority exists and delegates it to the individual for whom he votes. The voter implicitly agrees that whoever wins the election is entitled to those powers—the power to regulate, power to tax, the power to imprison and the power to kill. If you are elected, you'll be required to swear an oath to carry out the duties of the presidency and uphold the laws, *as specified in the Constitution*. You and the voter don't set the contract, but your participation is your agreement to abide by its rules. You condone the existence and authority of the office by the very act of entering the race and entering the voting booth so you must therefore be responsible for acts of aggression performed by whoever wins the election. Where on the ballot is there a box that you can check saying you do not agree that the person elected should be given the powers of the office? Where on the ballot can you withhold the authorization for some or all of the powers that are attached to the office? Where on the ballot is there a box to check denying personal responsibility for the acts of any of the candidates once they are in office? *If an appointed agent acts within the boundaries of the office to which he is appointed every individual participating in appointing an agent to that office is responsible for the acts of any agent appointed to that office.* The voter is not absolved of his responsibility simply because his candidate didn't win. In truth, what is missing from any ballot, and which should be printed on it, is the entire Constitution and body of laws setting down in detail the duty and powers of the office being voted on, as well as the place to check the person you want to fill the office. It would then become crystal clear that every voter endorses *the office* and is thereby responsible for all acts carried out in its name.

In response to the moral argument, your campaign manager, Michael Cloud, asked me: "If Libertarian politics were an act of self-defense, would you consider it morally acceptable?"

In order to understand the implications of this position, burrow down to the basic principle on which the question rests. Political action, as explained above, is a synonym for aggression, and the term "Libertarian politics," becomes, by definition, an oxymoron. Substitute "aggression" for "politics" and he's really asking, "If *aggression* were an act of self-defense, would it be *moral*?" Well, something can't simultaneously be moral and not moral. The proper question is, "am I justified in aggressing against B in order to defend myself from aggression by A?" While aggression in the name of self-defense is widely accepted, I'm not certain Michael or you would be comfortable absolving yourself of guilt in this way. If you are threatened by a lion, are you justified in throwing me to the lion in order to save yourself? What if the lion is about to attack our group? Can individuals in the group *vote* to throw me to the lion and claim that it's an act of self-defense? If the mugger

tells you he's stealing your money to defend himself against his neighbor, or hunger, or illness, does that make his aggression morally acceptable? …

By definition, any attack on the life, property or freedom of an innocent third party is aggression. It does not become right or moral simply because it is carried out while acting in self-defense. Voting does not become moral simply because the voter declares that he is acting in self-defense.

In summary, according to my reading of morality, the voter can't deny responsibility for the acts of elected officials, nor can he deny being an aggressor because he appointed them in self-defense. Just as much as those who voted for Hitler share in the guilt of his atrocities, voters in the Allied nations share the responsibility for the deaths of the innocent civilians who died in the bombing of Dresden. Those who voted in the Clinton/Bush election have permanently stained their hands with the blood of the families who died in Waco. Those who vote in the next presidential election will share responsibility for the theft, coercion and destruction the next administration will wreak on all Americans as well as on innocent people around the world who fall victim to American intervention. … Since a voter appoints an agent and empowers that agent to aggress against others, the act of voting is immoral. It is wrong.

Unfortunately, for the majority, including the majority of libertarians, the moral argument is often brushed aside. Just as the preacher's sermon fails to make all in his congregation honest, moral suasion consistently fails to deter some libertarians from endorsing coercion as a defense against coercion. It's far too easy to believe that the end justifies the means—in just this one case, of course. Political action to end political action is like drinking for temperance, gluttons against obesity, stealing to end theft, waging war to end wars.

4. *It doesn't work.* In spite of the moral arguments, your supporters may still argue that although it may be immoral to vote, if a minor violation of principle might result in a free world, it would be rational to vote. If it was possible to elect you to the presidency you would dramatically reduce the power of the state and the ends achieved would justify the means. Even though it violates morality, even though political action may be wrong on some erudite, ideological, hoity toity level, why don't we just give it a try? What do we have to lose? Maybe this time the country is ready to abandon government and all it needs is the right voice to lead it. Let's give it one more try.

The cry to give politics one more try reminds me of P. J. O'Rourke's book, *Give War a Chance*! Those who are swayed toward political action have forgotten that we have given it a try. It has been tried for thousands of years in thousands of nations, in tens of thousands of elections and through hundreds of thousands of political parties and candidates. Even if political action only had one chance in 100,000 of resulting in a free nation, statistical probability alone would suggest that there would be at least one free nation today. Mankind has reached the brink of self-extinction giving politics a try.

Thus, the most obvious, and therefore most overlooked reason to eschew political action is that it simply doesn't work. All of political history can be summed up as a struggle to throw the bad guys out and put the good guys in. Just as Sisyphus was condemned to spend eternity in Hades rolling a rock up a hill, only to have it roll down again, so the human race seems to be sentenced to spend forever trying to put the good guys in office *only to find out they turn bad once there.* I'm sorry to say, but when it comes to placing power in the hands of humans, there are no good guys. Which brings us to the next argument against political action.

5. *Human Nature.* It hasn't yet occurred to most freedom-seekers that the reason political action hasn't succeeded is not a matter of bad luck, bad timing or inarticulate candidates. The reason is that it can't work. How about just one more roll of the dice? No matter how many times you roll the dice, they will never come up thirteen. Let me explain exactly why political action must fail no matter how many times it is tried.

A principle is a fundamental truth derived from a natural law. As A. J. Galambos so clearly pointed out in his courses on volitional science, the proper means to reach any objective is to establish a set of first principles. Thus, scientists establish a set of principles that describe the basic mechanisms of physics and from this they design the devices to reach their objective. If an engineer wants to design an airplane, he first tries to understand the principles governing the nature of the materials involved. He then tries to design the plane according to those principles. If he violates one principle of physics, the plane will not fly.

Just as the principles of physics are determined by the nature of physical objects, the principles of human action are determined by the nature of man, a nature that has been created through thousands of generations by natural selection. As sociobiologist Edward O. Wilson argues [in his book, *On Human Nature* (1978, pp. 50, 159)], "[M]ankind viewed over many generations shares a single human nature. ... Individual behavior, including seemingly altruistic acts bestowed on tribe and nation, are directed, sometimes very circuitously, toward the Darwinian advantage of the solitary human being and his closest relatives. The most elaborate forms of social organization, despite their outward appearance, serve ultimately as the vehicles of individual welfare." We are programmed to be selfish, although we may not always be conscious of the fact.

The species exists because genes that impelled the individual toward personal survival were replicated more frequently, surviving more often than genes that impelled the individual toward unsuccessful behavior. Man's genetic programming requires that his actions be self-centered. Those species whose individual members cared more about others than about themselves are extinct. Man isn't bad or good because of his individual selfishness; he exists because of it. And this leads to a curious mistake made by most people.

When you talk to the average person about the advantages of a stateless society, the quick retort is that such an idea is utopian; it would never work. Government

is required to control man's selfish nature. But clearly, the truth is *precisely* the opposite.

Because of the selfish nature of man, it is utopian to give a human being authority over the lives and property of strangers and expect that person not to consider his or her own well-being first. Because he is genetically programmed to be self-interested, man cannot be given authority over another without taking advantage. The idea is utopian that a government composed of human beings would consider the well-being of the population before those in power considered their own. Historians have completely rewritten history, making it appear that political leaders have acted in the interests of nations, rather than in their own, but you and I know that behind every law some politician or political supporter benefitted. For individuals elected to positions of authority, acts of altruism are almost nonexistent. Lord Acton's famous maxim, "Power tends to corrupt and absolute power corrupts absolutely," is merely an astute observation about the nature of man. We find the statement compelling because it so perfectly describes the history of state power. …

Political activists of all persuasions are uncomfortable when confronted with the corruptibility of anyone given political power. All candidates assure voters that they will never be corrupted by power. A few, such as yourself, Harry, have a reputation for adhering to principle. And perhaps, in this one case, you may be that exception among humans who will not be corrupted in the slightest, no matter how many temptations are paraded before you, no matter how many "means-to-an-end" choices you are faced with. Even if you are not corrupted once in office, can you find hundreds more incorruptibles to populate the legislative and judicial branches? Can you find thousands of incorruptible appointees to staff the executive agencies? Even assuming you are incorruptible, and I believe you probably are, you must see that your candidacy will lend respectability and attract resources to the Libertarian Party, making it a more potent tool for your successors, who may not be so pure. Hasn't history proven that once a political mechanism is given life, it becomes a magnet for the corruptible?

6. *All political action ultimately enhances state power.* I have described the pragmatic arguments against political action. I have described the moral arguments against condoning the political process. I have touched on the scientific evidence that indicates political action must fail because of the nature of man. Yet if you reject all of these arguments, there is still a compelling and overriding reason to abandon political action.

On a practical and immediate level, political action is not only futile, it is not only immoral, it is not only bound to fail scientifically, *it is always destructive.* I once published "Pugsley's First Law of Government." It was: "All government programs accomplish the opposite of what they are designed to achieve." In fact, the same is true of political action. The libertarian's involvement in politics always will achieve the opposite of the result intended. No matter who the candi-

date is, or what issues motivate him, political action will not reduce state power, it will enhance state power.

Consistently down through history, all efforts to put the "good guy" in power have resulted in more government not less—even when the person elected was overwhelmingly elected to reduce the size of government. Let us not forget the mood in the United States when Ronald Reagan first ran for president. Here was a popular hero, a man of the people, who rode into Washington on a white horse. His campaign was simple and directly to the point: government was too big, it was taxing too much, it was spending too much, it was strangling the economy with regulations, and it was no longer a servant of the people. His mandate from the American people was clear: balance the federal budget and reduce the size of the federal government.

Yet what was the result? In 1980 federal spending totaled $613 billion. In 1988, at the end of his tenure, it totaled $1,109 billion. In 1980 federal tax revenue was $553 billion. In 1988 it was $972 billion. Total government debt went from $877 billion to $2,661 billion. Then, to prove the ultimate futility of electing a white knight, the electorate decided that the government wasn't doing enough, so it put a liberal Democrat back in office. All of the rhetoric of the Reagan campaign is forgotten. All of the public anger over the bureaucracy is forgotten. Government is bigger than ever.

Political action will solve the problem? In some other universe, perhaps.

Harry, when you, who have earned respect and admiration in your own field, announce that you will seize the standard of liberty and lead us to freedom through the ballot box, you convince thousands of honest, desperate individuals that politics is respectable, that voting is the answer to change, and that political action can be a mechanism to dismantle the state. Your brand name, earned through providing positive products to the free market, gives a patina of respect to the very system of coercion and force that has enslaved the people. Your participation in the political process does not convince people that the process is wrong; it makes people believe that the right leader could be the answer to a perfect society.

Meanwhile, I fear that your support of political action plays right into the hands of the constituencies that nurture and feed on state power. Businesses that gain market share through regulations, laws and subsidies; trade unions that depend for survival on coercive labor laws; entitlement recipients who demand their subsidies; welfare recipients; government employees—all are absolutely dependent on the survival of the myth that "you must get out and vote." In the end there will always be more votes for subsidy than voters who will vote to avoid taxes. There will always be more people struggling to get up to the feeding trough than there will be people determined to keep them away. That is simply human nature. Encouraging individuals to vote strengthens the institution of voting. It violates the principle of human nature. It violates the principle of morality. It violates the principle of justice. Encouraging people to vote encourages them to abandon, to

moderate their principles. And as Thomas Paine said in *The Rights of Man*: "Moderation in principle is always a vice."

Nor does history support your hypothesis that electoral politics might lead to a freer society. There is no case on record that I am aware of where electoral politics has reduced the size and scope of government in a fundamental or lasting sense. However, fundamental shifts have come on the heels of trauma. Wars, depressions or the outright failure of the state have, on occasion, led to fundamental changes. The destruction caused by governments through economic policies has caused their collapse and a necessary turn toward freer markets, as has been the case with the communist nations in recent years. But none of these changes can be traced to electoral politics. The best that can be claimed for political action are small retracements of government intrusion, such as happened under Margaret Thatcher in England or in recent years in New Zealand. But inevitably, the relief is brief and has never resulted in a continuing erosion of state power. Electoral politics has never succeeded in achieving a free society. So, to all of the other arguments against political action, you can add the evidence of history.

In the end, no matter how forceful, how principled or how scientific the arguments presented, you and many of your followers may say, "Principle and reason be hanged, we have to do something!" You can argue that we can't just stand helplessly by and let the politicians have their way with us. Even if it is immoral, even if it is contrary to man's nature, even if in the long run it is counter-productive, and even if there is no evidence that political action has ever been productive, *we have to do something*. After all, "The only thing necessary for the triumph of evil is for good men to do nothing."

This idea, that something must be done, is a disaster. History is replete with instances in which well-meaning people who didn't understand the nature of the thing that was hurting them, but intent on doing something, turned their discomfort into catastrophe. In past centuries, doctors, ignorant of causes of many ailments, but wanting to do something for their patients, commonly bled them, making a sick patient even sicker. Obstetricians in the mid-nineteenth century, not understanding the cause of "puerperal fever," but eager to do something to stop the fatal disease, gave unsanitary pelvic examinations that spread death from patient to patient. In order to avoid doing nothing they were doing something: they were bringing death. When the Black Plague swept Europe in the fourteenth century, people didn't understand the cause, but they wanted to do something. They killed the cats. They burned the witches. The flagellants beat themselves and each other with sticks and chains to atone for their sins. Was "doing something" to fight the plague better than nothing?

The first rule of medicine, as Hippocrates said, is "at least do no harm." Unless you know that the action you are undertaking is *right* you're much better off doing absolutely nothing.

Fortunately, doing nothing is far from the only alternative to political action. What positive steps can we take? The energy that is now expended by well-intentioned, freedom-seeking individuals on the destructive course of politics can be turned into powerful steps that will have a positive effect on the future. All are moral, right and just. None require aggressing against your neighbor. None require you to abandon principle. Consider the following.

1. *Improve yourself.* Perhaps the single most important thing a person can do (before he sets out to improve others) is to improve himself. Become a model citizen. Don't use government to attack your neighbor, even if you don't like his dog or the color of his house or the color of his skin. If you want to stop others from aggressing through the political process, start by excising from your own life all vestiges of comfort and support for political aggression.

2. *Stop subsidizing your enemy.* Stop loaning the government money. Stop thinking you're profiting by getting a safer return. You wouldn't loan money to your local car thief to see him through a dry spell. Why would you loan it to the thugs in Washington or Sacramento? Moreover, point out to others that buying T-bills is supporting the muggers and mass murderers in Washington. Pull the drapes back and expose these criminals to the light of day.

3. *Stop doing business with your enemy.* Don't provide products to the government. Don't accept government contracts. Don't do business with government employees. Don't cash government checks—with the possible exception of tax refunds. If you're in business, don't cash them for your customers. Don't take government money. Don't take government subsidies. Don't be a willing, eager beneficiary of political theft.

4. *Stop doing business with people who support your enemy.* Boycott businesses that live on government contracts. Boycott those who lobby for protective legislation. Tell them you don't approve of them stealing from you through the state.

5. *Support private alternatives to government services.* Wherever you can use a private service instead of a government service, use it. Use faxes instead of the Post Office. Use private libraries instead of public ones. Use private schools instead of public schools.

6. *Create parallel mechanisms to replace government functions.* A positive step for society is to show that private enterprise is the correct alternative to government monopolies. By creating Federal Express, Fred Smith did more to reveal the insanity of a government mail monopoly than all of the free-market politicians who have ever argued for private mail service on the floors of Congress. Most individuals will never understand that all services are best provided by the free market. They do not need to understand the philosophical or intellectual basis for this truth. All they need to do is be given the opportunity to use one or the other. Most of the people who use Federal Express don't understand that it is superior to the government service because it is operated for a profit and not by coercion. They just know it works. Spend your creative energies developing products that com-

pete with government. Put it out of business by offering consumers a better product. Think of all of the things we are told government must do. Develop better home, neighborhood and personal defense services, better consumer protection ideas, safer money, more secure retirement plans, better educational opportunities. With the government absorbing more and more of the private sector, the opportunities for successful private competition are exploding.

7. *Expose the enemy among us.* Instead of talking your neighbors into voting, spend your energy explaining why the political process is their enemy. Talk to centers of influence. Identify the real culprit as the individual who promotes bigger government by secretly lobbying for subsidy or privilege. Expose the businessman who is lobbying for a protective tariff, the defense contractor lobbying for tax dollars, the individual seeking government handouts. Call them what they are, mooches and thieves. Embarrass them. Shame them.

8. *Master the issues.* Libertarians should master the issues and learn to communicate so they can explain and persuade others. You, Harry, are the acknowledged master. You have developed simplicity of example and persuasion to an art form. Teach others how to confront the irrational arguments of government advocates.

9. *Have the moral courage to confront others.* When somebody makes a statement like, "I'm not in favor of government medicine, but we do have to do something to help the poor," or "even if there are abuses, legalizing drugs is not a serious alternative—we have to enforce the drug laws," libertarians should never sanction such statist propaganda by silence.

10. *Get involved in campaigns designed to enlighten and enrage the public.* Speak out against victimless crimes. Support organizations such as the National Taxpayers' Union, Amnesty International, the Fully Informed Jury Association (FIJA) and Families Against Mandatory Minimums (FAMM). Work with groups that are working against regulations. Put pressure on those who are supporting government intrusion. But don't get involved in electoral politics. Don't fight crime by becoming a criminal.

11. *Engage in civil disobedience if you are prepared for the consequences.* Henry David Thoreau went to jail for refusing to pay a small poll tax. He believed that civil disobedience was a moral obligation. His view of political action as a means of changing government was succinctly stated in his tract, *On the Duty of Civil Disobedience*. "How does it become a man to behave toward this American government today? I answer that he cannot without disgrace be associated with it."

12. *Find ways to avoid taxes.* Cut every corner. Make life miserable for a tax collector. Consider using trusts, foundations, tax deferred investments and offshore charities. Your success will be emulated by others, and every dollar denied a thief makes him that much more likely to find another line of work.

13. *Pamphleteer.* Follow the noble lead of Thomas Paine and Lysander Spooner. Tell it like it is. Inundate the talk shows, newspapers and magazines with

rational arguments against government. Let other people who are fed up with Big Brother know they are not alone. But show them there is another way than voting.

14. *Write free-market novels and produce free-market movies.* Support companies and individuals that bring a positive message to the audience. *Atlas Shrugged* may have had more influence on the direction of freedom today than all the libertarian political activity since it was written.

15. *Consider becoming an expatriate.* Stop falling for the ridiculous cultural blather that says, "my country, right or wrong." Just because you're born at a place controlled by a particular group of politicians doesn't mean they are right. There may be places in the world where you can live in greater freedom than in the U.S. Find them. Vote with your feet.

Basically, look for solutions that don't violate your principles. Design the system to be fully compatible with the laws of human nature. Don't think you can work around them.

Finally, Harry, I would hope that you, Doug Casey, Mark Skousen, Bill Bradford, Bob Prechter and all the other writers of our group return to the principles of free-market economics as outlined in the works of such giants as Adam Smith and Ludwig von Mises. The central theme of our economic philosophy is that the "invisible hand" of the marketplace—the individual efforts of independently acting people—creates progress and plenty; and that any attempt to "organize" and "centrally plan" economic activity subverts progress and eventually leads to tyranny.

Political action is built on exactly the same false premise as that of a centrally planned economy: i.e., that an organized group of political activists engaged in a planned group effort can build freedom more rapidly or better than the individual efforts of independently acting people. The positive actions listed above are merely top of mind suggestions of a few thinkers. They are only the obvious steps. But if all of the energies now being expended on political action by libertarians around the world were focused instead on finding individual solutions, we would marvel at the ideas and mechanisms that would be bound to evolve.

Harry, I am acutely aware that you understood all of the arguments against government that I have brought up in this letter long before I had heard of them. It was your teaching that helped lead me to many of these conclusions. I laud you, our mutual friends, and all of those libertarians who are willing to go to the political barricades in defense of freedom. I understand your motive, recognize your sincerity and respect your integrity. However, I implore you all to reconsider. Let us all gather around the single, unifying principle set down so clearly by the founding fathers of Austrian economics. Let us have the courage to leave the design and construction of freedom to the invisible hand.

Sincerely and in friendship,
John V

Election Day: A Means of State Control

by Robert Weissberg
(from No. 89, December 1997)

INTERPRETING ELECTIONS is a national spectator sport, offering as many "meanings" as there are board-certified spin doctors. Nevertheless, all of these disparate revelations, insights, and brilliant interpretations share a common, unthinking vision: elections, despite their divisive, contentious character, exist to facilitate citizen power over government. Whether ineptly or adeptly, honestly or dishonestly, government is supposed to be subjugated via mass electoral participation. This is, it might be said, The Great Democratic Belief of Popular Sovereignty.

Less understood, though hardly less significant, is that control flows the opposite way: elections permit government's effective management of its own citizens. The modern state's authority, its vast extractive capacity, its ability to wage war, its ever-growing power to regulate our lives, requires constant reinvigoration via the ballot box. Moreover, and even less obvious, properly administered elections promote cohesiveness, not acrimonious division. Indeed, this periodic reaffirmation of the political covenant may be elections' paramount purpose, relegating the actual choice among Tweedledee, Tweedledum candidates to mere historical details. Like the atmosphere, this phenomenon appears nearly invisible, escaping both popular attention and scrutiny from talking-head television pundits. Even scholars, those investigating civic matters of profound obscurity, with few exceptions (particularly my former colleague, Ben Ginsberg) are neglectful. Put succinctly, marching citizens off to vote—independent of their choice—is a form of conscription to the political status quo. Election day, like Christmas or Yom Kippur, is the high holiday, a day of homage and reaffirmation, in the creed of the modern state.

Those at the Constitutional Convention well understood this conscriptive function. Though the Founders are now fashionably branded as unrepresentative elitists who distrusted the downtrodden masses and oppressed women and toilers of color, what they never doubted was the political usefulness of elections. James Wilson and Elbridge Gerry openly acknowledged that a vigorous federal government required extensive popular consent, freely given by the ballot. Voters could not, and should not, guide policy, but without periodic popular authorization, how could the national government efficiently collect taxes, compel obedience to its laws, solicit military recruits or gain loyalty? This is what "no taxation without representation" is all about: the ritual of consent. Elections, however tumultuous or corrupt, bestowed legitimacy far better and more cheaply than brute force, bribery, appeals to divine right, or any alternative. Opposition to the direct elections of senators, predictably, arose from state sovereignty advocates—allowing citizens to vote for such a prominent national office could only enhance centralism.

Elections as a means of state aggrandizement, not popular control of government, was clearly grasped during the nineteenth century's march toward universal suffrage. Today's liberal vision of common folk clamoring for "empowerment" via the vote is much overdrawn; extension of the suffrage was often "topdown." The modern, centralized bureaucratic state and plebiscitary elections are, by necessity, intimately connected. To Napoleon III and Bismark the freshly enfranchised voter was the compliant participant in their push toward unified state authority. Casting the national ballot liberated ordinary citizens from the influences of competitors—the church, provincial notables, kinfolk, and champions of localism. Elections soon became essential ceremonies of national civic induction, a process ever-further extended as wars evolved into expensive million-man national crusades.

Modern dictatorships are especially taken with elections, typically combined with some form of compulsory voting, as a means of state domination. The Soviet Union's notorious single-party elections with 99+ percent turnout are the paradigmatic but hardly unique example. Many African nations boast of near unanimous turnout to endorse their beloved kleptocratic leader. The Pinochet government of Chile even went so far as to make nonvoting punishable by three months in prison and a $150 fine. While it is tempting to dismiss such choice-less, forced-march elections as shams, the investment of precious state funds and bureaucratic effort confirms that elections are far more than mechanisms of citizen control of government.

In general, the electoral process, whether in a democracy or a dictatorship, performs this citizen domestication function in various ways, but let us examine here only three mechanisms. To be sure, the connection between state aggrandizement and elections is not guaranteed, and much can go astray. Nevertheless, over time the two go together. The first mechanism might be called psychological co-optation via participation: I take part, cast my vote, therefore I am implicated. All of us have been "victims" of this technique beginning, no doubt, as children. Recall, for example, when mom wished your acquiescence to visit hated Aunt Nelly. Despotically demanding compliance, though possible in principle, was too costly. Instead, mom "democratically" discussed alternatives with you, including cleaning house or going to the ballet. Given such choices, you "freely" opted for visiting Nelly, and your subsequent complaints were easily met with "you freely decided."

Such co-optive manipulation extends beyond devious parenting; it is the essence of modern management psychology. Beginning in the 1920s, industrial psychologists realized that "worker involvement" [usually] gained cooperation, especially when confronting unpleasant choices. Let workers conspicuously offer their "input" and they will be far more malleable. Internal "selling" to oneself flows from public choice. Personal participation need not even occur—it is the formal opportunity to add one's two cents, or the involvement of others, that is im-

portant. Provided executives define the range of options and control decision-making rules, this "worker empowerment" benefits, not subverts, management. That manipulative inclusion can be labeled "democratic" and "enlightened" and flatters "worker insight" is wonderful public-relations icing on the cake.

This process applies equally to elections. Recall the 1968 presidential contest—a highly divisive three-way race of Hubert Humphrey, Richard Nixon, and George Wallace in which the winner failed to gain a popular majority. Nevertheless, despite all the divisiveness, Ben Ginsberg and I discovered that views of national government, its responsiveness and concern for citizens, became more favorable following the election among voters than among nonvoters. This was also true among those choosing losing candidates. Involvement transcended and overpowered the disappointment of losing. Even a nasty, somewhat inconclusive campaign "juiced" citizen support for government. The pattern is not unique—the election ceremony improves the popularity of leaders and institutions regardless of voting choice.

Elections are also exercises in "Little Leagueism" to help prop up the political status quo. That is, potentially dangerous malcontents are involved in safe, organized activity under responsible adult supervision rather than off secretly playing by themselves. All things considered, better to have Lenin get out the vote, solicit funds, ponder polls, circulate petitions, or serve in Congress. This is equally true in democracies or dictatorships—regular electoral activity facilitates "conventionality" (regardless of ideology) among those who might otherwise drift to the dangerous, revolutionary edge. This is especially true where bizarre groups overall constitute a relatively small minority. At a minimum, humdrum details and ceaseless busy work hardly leaves any time for sitting around a café plotting revolution.

Even if all potential revolutionaries are not "domesticated" via the election process, the easy availability of elections helps keep the peace. Why risk mayhem when public employment by stuffing ballot boxes is so simple? The 1960s Black Power movement is the perfect poster child. The urban guerrilla movement back then seemed imminent—the infatuation with Franz Fanon's celebration of violence and similar mumbo-jumbo rhetoric, the macho allure of automatic weapons, and the gleeful "in-your-face" public paramilitarism demeanor. Urban riots were everywhere; Newark and Detroit had become virtual garrison states. Comparisons with Northern Ireland or Lebanon were not absurd.

Nevertheless, the pedestrian seduction of public office easily overcame this intoxication with violence. The Malcolm X Democratic Club and similar entities suddenly materialized while numerous cleaned-up revolutionary agitators entered "the system" as "progressive Democrats," often occupying positions set aside for minorities. The "Black Mayor" became institutionalized. The passage of the 1965 Voting Rights Act, its extensions, and generous subsequent interpretations made black electoral mobilization a national government priority. The federal

registrar served as the neighborhood convenience store for "selling out." Within a decade, the once-familiar "revolutionary" agitator spewing forth cliches about insurrection was a political antique. By the 1980s, it was impossible for a "take-to-the-hills" Black Power revolutionary even to think about competing with elections.

The transformation of revolutionary "Black Power" into humdrum conventionality highlights the third way elections domesticate potential disruption: tangible inducement (or bribery, in plain English) to malcontents. The "cooling out" via granting a piece of the action is a time-honored American tradition, from nineteenth-century populists and socialists to the 1960s antiwar movement. Entering "the system," at least in highly permeable American politics, wonderfully corrupts revolutionary ardor. At a minimum, rabble-rousers in remission must come out of hiding to collect their salary, sit in their offices, boss around subordinates, issue press releases, accept financial contributions, and, if necessary, bounce a check. If Maxine Waters (D-CA) seems like an out-of-control ballistic missile, imagine her unchecked by the obligations of high public office. As a comfortable congresswoman, she is far more constrained than if preaching the street-corner revolutionary gospel or a tenured professor with an endowed chair. Ditto for the thousands of others contemplating revolutionary violence but who now owe their prestige and income to elective office. Let the most ambitious attend endless dull committee meetings. The very existence of this electoral opportunity, apart from bodies enrolled, is critical—the prospect of a few well-paid prestigious sinecures, like playing for the NBA, can work wonders on millions.

This relationship between rising electoral involvement and the demise of 1960s-style revolutionary radicalism helps to explain our collective blind eye toward the extensive corruption in "minority politics." Why do the Protectors of Democracy, from the ACLU to Common Cause, seem so unconcerned with racial gerrymandering, districts comprised largely of illegal aliens, abuses of absentee ballots, outright selling of votes and other nefarious customs when such practices bring blacks and Hispanics to office? More must be involved than just having Third World standards. The answer is simple, though seldom articulated: rotten boroughs, our versions of autonomous homelands, are part of the bargain to guarantee domestic peace. The actual outcome is irrelevant; what is important is that up-and-comers, would-be "community leaders," are brought into "the system." Fundamentally, shipping a few dozen would-be agitators off to legislatures or city councils, even felons and dope addicts, hardly puts the national enterprise at serious risk; consider it midnight basketball for the civic-minded. If Washington, D.C., can "survive" Marion Barry, the entire nation is bulletproof.

Elections are but one of many tools of social control and, as with all tools, mere use does not guarantee success. Critical details of administration and organization must be attended to—matters of timing, suffrage, modest enforcement of anti-corruption laws, countervailing power within government, and so on. Nor do

elections come with an unlimited lifetime warranty to remedy deep political problems. It is doubtful whether elections would solve much in Bosnia or Rwanda, while the jury is still out for Russia and South Africa. Elections are wondrous, circuitous devices, but not all-powerful magic.

Having described this little understood but critical purpose, what lessons can be learned? Two in particular stand out. Most evidently, if one wishes to maintain one's ideological purity, remain uncontaminated in the quest for a higher truth, avoid elections. Those seeking to transform society via "playing the game" will inevitably be metamorphosed by the game itself. This lesson should be heeded by everyone from fundamentalist religious groups to those promoting the redistribution of political power in the United States. Purity and empowerment via elections do not mix. The loss of revolutionary zeal among the formerly faithful, an inclination toward "wheeling and dealing," and being comfortable with petty enticements need not result from flawed character; pedestrian opportunism comes with the territory. If this seems farfetched, one only has to review our history: virtually every splinter group, no matter how ideologically noble or distinct, that ventured into the electoral arena, has been mainstreamed and today exists only as a domesticated, digested fragment within the Democratic or Republican parties.

The surrender of purity via electoral absorption need not, despite advice to the contrary, be a particularly good deal. There are costs, and no guarantee of gain, for getting into bed with the state. You might even get a serious rash. Groups that have devoted themselves extensively to electoral achievement, especially for economic advancement, have seldom, if ever, accomplished much beyond politics itself. This has surely been the case with black infatuation with electoral success since the mid 1960s. Despite all the voting rights laws, federal court interventions, registration drives, and elected black officials, blacks as a group continue to lag behind whites on most indicators of accomplishment. In some ways, conditions have deteriorated. By contrast, Asians and Indians have made remarkable strides without any electoral empowerment. Like polo, electoral politics may be a worthwhile sport only after first becoming economically successful. How this plunge into electoral politics will play out for today's moral issues—abortion, pornography, religion, sexuality—remains to be seen.

The second lesson is the converse: if domestication is the objective, get the would-be revolutionaries, extremists, grumblers, and malcontents enrolled. Are anti-government militias posing a problem? Take a clue from the Motor Voter bill and allow voter registration at all firearms and survival equipment stores. Voting, even corrupt voting, should be as convenient as possible. Rig the district boundaries so that leaders must serve their time in state capitals and Washington, D.C., consorting with generous lobbyists. Make those with talent precinct captains, election judges, convention delegates, county commissioners, and paid advisors to established political parties. Within the decade the militiamen will be as threatening as an agitated American Legion post forced to give up its bingo.

In sum, as we observe the 1996 campaign, we should not be distracted by the details. Far more goes on than selecting candidates. Despite the acrimony and divisiveness, all the talk of a people freely exercising sovereignty, we are witnessing a ceremony for reinvigorating the covenant between citizen and state. All sorts of would-be troublemakers are being domesticated and brought into "the system." Those who attempt to escape will be brought to the attention of the Department of Justice. V

The author is a professor of political science at the University of Illinois at Urbana-Champaign. This article first appeared in Chronicles *(934 N. Main St., Rockford, IL 61103), November 1996. It is reprinted with permission.*

Consent, Obligation, and Anarchy

by A. John Simmons
(from No. 100, October 1999)

Consent and Voting

What is to be made of the claims that voting or continued residence in a democratic state constitute ways of giving consent? Let me consider these suggestions in turn, beginning with the view that having or exercising the right to vote establishes that the governed have consented in an appropriate fashion to legitimate governmental control. This claim is a familiar feature of liberal democratic rhetoric; and it may be … an issue more directly relevant to Locke's thought than is commonly supposed. First, of course, it makes a difference whether it is claimed that consent is given by the mere possession of a right to vote, or only by actually *exercising* that right (i.e., voting). The first, stronger version of the claim (that mere possession of a right to vote is sufficient) would justify asserting that *all* citizens in typical democracies are consenters. It is hard to see, though, how consent could be given simply by having a right; this appears to conflate with actually consenting. The weaker version of the claim (that actually voting is what gives consent) initially seems more reasonable. It, however, faces difficulties of a different sort. In the first place, many citizens in existing democracies fail to vote in particular elections, many vote in none at all, and very few citizens vote in *all* democratic elections. Presumably, then, some citizens' consent is much more extensive than others', while nonvoters cannot be understood to have consented at all. And one would have to assume that since what is typically voted *for* is a candidate for a political of office of limited term, consent is given only to the authority of that candidate for that term. This seems far short of the overarching consent to the authority of government that was supposed to be given in the act of voting

Perhaps this conclusion will incline us away from the weaker claim about voting back toward the stronger. Perhaps the stronger claim is really this: in possessing the right to vote in a democratic society, we possess the power to change laws, alter the constitution, remove public officials, and so on. Insofar as we do *not* do these things, we can be understood to consent to the authority of the law, constitutional provisions, and political officeholders. Again, this is all familiar enough from the rhetoric of democratic life, but it involves so many confusions that I despair of mentioning them all. It once again involves confusing "going along with" something, or acquiescing in it, with consenting to it. It involves supposing that consent can be given to arrangements (laws, officeholders) of which one may have no knowledge and without intending to consent to anything. *Failing* to do something can only be a way of consenting when that inactivity is in response to a clear choice situation, only when inactivity is significant as indicating that a choice has been made (and, as we will see, not always even then). Inactivity that results from ignorance, habit, inability, or fear will not be a way of consenting to anything. Citizens of modern democracies are not continuously, or even occasionally, presented with situations where their inactivity would represent a clear choice of the status quo.

But I have not yet mentioned the most obvious, and most damaging, shortcomings of the strong claim about voting. Individuals in democratic societies do not possess the right to change laws, constitutional provisions, or public officials. Only majorities possess this right. There is, then, no sense at all in which *my* failure to exercise *my* right to do these things constitutes my consent to the status quo. I have no such right. Nor is there any obvious sense in which I have granted the majority the right to act for me in these matters. For that one would need, in any event, a unanimous *prior* consent to majority rule that could not have been given by voting (as in Locke's account of the origin of a legitimate polity …). Majority rule in actual practice, however, is a product not of individual consent but of political convention. There is, of course, a clear sense in which "the people" as a whole or "the body politic" possess a right to alter their political institutions (and the like) in a democratic society. Is the failure of "the people" to accomplish such alterations a sign of the consent of the governed? Claiming that would involve the same confusions that I noted in the individual case. The maxim that "silence (or inactivity generally) gives consent" is a very misleading one. Silence virtually *never* gives consent. It does so only where that silence is a freely chosen response to a clear choice situation. And even if the silence of "the people" did give a kind of consent to democratic institutions, this "consent" in no way translates into the individual consent of particular citizens living in the state.

One final but extremely important point: we would do well to remember that voting is often a way not of consenting to something, but only of *expressing a preference*. If the state gives a group of condemned prisoners the choice of being executed by firing squad or by lethal injection, and all of them vote for the firing

squad, we cannot conclude from this that the prisoners thereby consent to being executed by firing squad. They do, of course, choose this option; they approve of it, but only in the sense that they prefer it to their other option. They consent to neither option, despising both. Voting for a candidate in a democratic election sometimes has a depressingly similar structure. The state offers you a choice among candidates (or perhaps it is "the people" who make the offer), and you choose one, hoping to make the best of a bad situation. You thereby express a preference, approve of that candidate (over the others), but consent to the authority of no one.

Those who wish to defend the weaker version of the voting-consent thesis in the face of such objections, insist that voting in a democratic election is necessarily a way of consenting because there are clear conventions governing such elections. It is made clear to voters that in casting their ballots they are participating in a political process designed to produce a result that all are morally obligated to accept. You cannot perform the acts that are clearly indications of consent (to the authority of the elected candidate) and then happily argue that you were only expressing a preference, not consenting, any more than a person can say (with a full knowledge of the implications), "I consent to X" and then claim not to have consented to X after all. Certain acts, when performed knowingly, intentionally, and voluntarily, just *are* acts of consent, like it or not.

Is voting in a democratic election such an act? It seems obvious to me that it is not. In the first place, the conventions governing such elections are hardly crystal-clear; one could be forgiven for not understanding the (alleged) moral significance of casting one's ballot. I would guess that average voters have very little sense of what they have committed themselves to by voting. This conjecture, if true, is especially damaging to the argument under consideration; for the more centrally our important interests are involved (as they are in political cases), the clearer our signs of consent must be for them to bind us. But even if I am wrong in my guess, the government *itself* in effect routinely declares in modern democracies that voting is *not* a way of morally binding oneself to the state. For voting is typically portrayed not only as a right, but as a *duty* of citizens, suggesting that the status and duties of citizenship have some entirely different basis than the "consent" given in voting. Nor is it ever suggested that by *not* voting one would be freed of obligations that voters voluntarily assume. In short, the government makes it clear that we should go to the polls and express our preference, but that our political obligations (and its rights over us) in no way depend on this and will be in no way altered by failing to do it. Our conclusion must be that the conventions governing democratic elections, and the rhetoric surrounding them, do *not* establish that voting is a way of undertaking obligations and granting authority (i.e., a way of *consenting* in the sense that interests us here). And, of course, if the conventions in this area are not clear on that point, voting simply is not a way of giving consent, unless it is accompanied by some (nonmechanical) further act of consent.

Consent and Residence

Let us turn, then, to the second (Locke's) proposal concerning the consensual basis of a free society: that by continuing to reside in a state that we are free to leave (whether by taking possession of land or not), we give our consent to the authority of its government, at least during our residence. Some nondemocratic (and even quite oppressive) governments, of course, also give their citizens the right to free emigration. So if the consent theorist can defend this thesis, he will either have shown that government by consent is a reality (and hence that government is morally legitimate) in more states than we might initially have expected, or else he will be obliged to defend severe limits on what our consent can bind us to (as in Locke). But it is surely a standard feature (if not a defining characteristic) of democratic societies that they allow such free emigration. So in examining this line of argument we will also be saying something special about the respects in which democratic governments enjoy the consent of the governed.

The view that residence (at least in certain kinds of states) constitutes consent has enjoyed a long history. It was first suggested by Plato in the *Crito*, of course, long before Locke's *Treatises*. Others among the classical contract theorists (such as Hobbes and Rousseau) and many philosophers in this century have agreed with Locke. In *Moral Principles and Political Obligations*, I argued against the view that continued residence, even in democratic states, could properly be taken as an act of consent to the authority of government. While my views on the proper conclusion of the argument have not changed significantly, I do believe that the case I presented there was too weak to establish that conclusion. I will try to remedy that defect here.

We must begin with the most general conditions for an act to be an act of binding consent (i.e., for consent to be a clear ground of obligation and rights-transfer). Consent must, first, be given knowingly and intentionally. Second, binding consent must be given voluntarily. Consent can ground obligations only when it is freely given and adequately informed. These requirements apply, I will suggest, even where the alleged consent is (as in the case of continued residence) tacit only. Let me take these requirements separately, beginning with the requirement that binding consent be given knowingly and intentionally.

Where an apparent consenter has tried to do something other than consent (or tried to do nothing at all), or where, as a result of incapacity, ignorance, confusion, or fraud, he does not fully comprehend what he is taken to have consented to, there is no (or only appropriately circumscribed) binding consent. When the (very) confused foreigner, speaking (very) little English, tries to order a pound of bologna with the words "I consent to your authority over me," he has consented to nothing. Only when the appropriate words, actions, or inaction are intentionally utilized with awareness of their significance can binding consent be given.

This seems to be taken for granted in the following passage from Hume's essay: "It is strange that an act of the mind, which every individual is supposed to

have formed, and after he came to the use of reason, too, otherwise it could have no authority; that this act, I say, should be so much unknown to all of them, that over the face of the whole earth, there scarcely remain any traces or memory of it."

Here Hume insists that consent is "an act of the mind," by which we may (charitably) understand him to mean that consent must be an intentional act, undertaken with reasonably full awareness of its significance and consequences. Where there is no awareness of having consented, no consent has been given. If Hume is right in this claim, then he is also right that the honest testimony of each of us will ultimately determine whether we have consented to our governments' authority (assuming only that our memories are accurate). And if we further accept, as I believe we should, that very few ordinary citizens are aware of ever having given consent to their governments' actions, this will count heavily against the "generality" of consent theory's account of political obligation and authority. Hume applies the point thus, in his challenge to the view that residence gives consent:

> Should it be said, that, by living under the dominion of a prince which one might leave, every individual has given a tacit consent to his authority, and promised his obedience; it may be answered, that such an implied consent can only have place where a man imagines that the matter depends on his choice. But where he thinks (as all mankind do who are born under established governments) that by his birth, he owes allegiance to a certain prince or a certain form of government; it would be absurd to infer a consent or choice, which he expressly, in this case, renounces and disclaims.

Continued residence cannot be taken to ground political obligation unless residence is understood to be one possible choice in a mandatory decision process. Residence must be seen as the result of a morally significant choice. It is not enough that the choice is available; it must be understood by each person to be a required choice, with mere residence not constituting, for instance, a way of declining to choose. And in Hume's view, of course, these conditions are not satisfied in our actual political lives. Residence requires no "act of the mind" as consent does.

To the consent theorist inclined to try to avoid this conclusion by *denying* that binding consent must be knowingly and intentionally given, it seems sufficient to point out that consent theory is in fact committed to *accepting* this requirement. As we have already seen in the case of Locke, the consent of which the consent theorist speaks must be consent knowingly and intentionally given, for several reasons. First, the consent theorist is attempting to utilize in his work a plausible theory of obligation; the consent with which he concerns himself must be a clear ground of obligation. But surely it is only consent that is intentionally given that satisfies this condition. Consent in any looser, wider sense would be a considerably less convincing example of an obligation-generating act; where the "consent"

is given unknowingly, its moral significance becomes extremely doubtful. Second, the most basic point of consent theory, we should remember, has historically been to advance an account of political obligation that is consistent with our intuitive conviction that political bonds cannot be forced on any individual, or fall upon him against his will. Political allegiance is to be a matter for each person's decision, for each is naturally free, with strong rights of self-government (the central thesis of any political voluntarism, like Locke's). Authority exercised over subjects without their permission is illegitimate. But if this ideal of a "free choice" is to be given more than mere lip service, the consent that legitimates political authority must be knowingly and intentionally given. Only the satisfaction of this condition will guarantee that a genuine decision has been made, and a consent theory that recognizes other sorts of consent as binding will undermine its own intuitive support.

We can understand Hume's argument, then, to have two points. It can be seen first as an attack specifically aimed at Locke. For when Locke claims that mere residence in a state constitutes consent to its authority, he seems to allow the possibility that we can give binding consent unknowingly, by merely going about our business. And Hume surely saw this as a case of Locke's sacrificing at once the plausibility and the integrity of his consent theory (and not, as I have urged, as a case of Locke's illegitimately extending the term "consent" to cover the grounds of nonconsensual special obligations). But the broader point of Hume's argument challenges any consent theory, not only Locke's. For if the consent theorist must insist on the intentionality of binding consent, as we have argued, then the consent of ordinary citizens cannot be a subtle process of which "people take no notice … thinking it not done at all" (II, 117). The act that binds us to our political community cannot be one whose true significance is unknown to the actor. Even the person of less than average intelligence must know that he consents when he does so. Hume's simple point, then, seems to strike home. If there is no widespread awareness of the process of political consent, consent theory's account of political obligation cannot have the wide application its proponents have supposed.

The argument cannot, however, be won so easily. Hume's attack on consent theory might be challenged at two points. First, it might be suggested that there are some cases in which unintentionally given consent can be taken to ground political obligations, without this suggestion conflicting either with good sense or with the spirit of consent theory. Second, one might claim that Hume is mistaken in his observation that most persons are unaware of ever having given their consent. Harry Beran, for instance, seems to argue in both of these ways in the course of defending the view that political consent is given by continuing to reside within the boundaries of the state after reaching the "age of consent."

It is hard to deny that there might be some cases where it seems possible to give binding consent without intending to do so or being aware of the consequences of

our act. We have already mentioned such cases—those where people perform an act that is clearly established by convention as an act of consent, but claim not to have intended to consent to anything in their performance. Where this claim is a result of understandable ignorance or confusion, we will not regard the performance as consensual (as in the case of the foreigner who uses words in ignorance of their meaning). But what about cases where the ignorance claimed is harder to understand? For instance, consider the case of a man who enters a restaurant, examines the menu, and asks for the filet mignon (clearly priced on the menu he has examined). After eating and being presented with the check, he claims not to have been aware that he would have to pay for the food. He takes himself to have consented to nothing. Now assuming that the man in question is a normal, healthy, literate person, reared in a normal way, we can react to him in one of two ways. Most likely, we will take him to be a troublemaker who knew full well that his order amounted to an agreement to pay for the food. If he seems sincere and genuinely puzzled, however, we might check him out with our local polygraph examiner. When we find, to our surprise, that he has been speaking the truth, what should we conclude about his startling ignorance? Has he made a binding agreement (given binding consent) to pay for the meal, or not? One plausible answer is this: insofar as he has not been deprived in any way of the opportunity to learn about the conventions governing ordering in restaurants, and insofar as it would have seemed appropriate for him at least to have asked about the rules before eating, his ignorance is neither understandable nor excusable. It is genuine, but *negligent*, ignorance. And we will take him to have made a binding agreement to pay for his food, despite the absence of any intention on his part to do so. Ordinary, excusable ignorance defeats the claim that consent was given. Negligent ignorance may not.

I emphasize this point only because it seems to be a key to Beran's response to the Humean argument we have been considering. Beran, in fact, admits that the Humean argument constitutes "a very persuasive objection," and he seems willing to grant as well its key premise: that "ordinary people are not aware that their remaining within a state when they cease to be political minors counts as their implicit agreement to obey." How, then, can he avoid the conclusion that very few ordinary people have political obligations grounded in "consent through residence"? Beran's answer is that while people do not commonly see that continued residence counts as an agreement to obey, they do understand that by remaining in the state they "accept full membership" in it. And because the state is a rule-governed association like others with which they are familiar, they should be able to see that such "acceptance of membership" entails an obligation to follow the rules. If they do see this, then they properly understand the significance of continued residence, and can be taken to agree to obey. But if they do not make the necessary inference, their residence can *still* be taken as an agreement to obey. "For ignorance that doing W counts as agreeing to do X is only a conclusive de-

fense against the claim that one has agreed to do X if such ignorance is not negligent." And this failure to see that one's acceptance of membership involves obligations "may well be negligent, since people should consider what moral significance there is in their new status and their new rights." So, Beran can conclude, in spite of the objection we have raised, that those who continue to reside in a state can be understood to have agreed to obey (at least, we might add, if they do not publicly reject the state's authority).

Beran's defense, in order to be convincing, must persuade us on two main points. First, we must be persuaded that ordinary people do in fact regard continued residence after their political minority as a way of "accepting full membership" in the state. And second, we must be convinced that they regard the "association" in which they "accept membership" as very much like other rule-governed associations with which they are familiar. For only if they "accept membership" with such an understanding could they possibly be considered *negligent* in failing to see that they have undertaken political obligations; it is only by virtue of their familiarity with ordinary, everyday rule-governed associations that they could be presumed to know that becoming a member necessarily involves assuming obligations (they are not, after all, moral philosophers).

Now both of these questions look like they would be best decided by a public opinion poll. Beran merely asserts that ordinary persons understand these matters, that clear conventions make continued residence a way of consenting. Hume (and I) would claim that they do not. Certainly there are many countries where the average citizen is not much better educated to political matters than he was in Hume's day; the claim that the ignorance of such persons is "negligent" seems ridiculous. And whatever accomplishments modern educational systems can claim, I doubt that a universally increased insight into problems of moral obligation is among them. But in order to try to add argument to opinion, let me suggest some reasons why it would seem peculiar (or even unreasonable) for ordinary persons to hold the views ascribed to them by Beran. First, if the transition to political majority is commonly regarded as involving a choice of no small significance, it should be viewed as a moment for careful thought and planning. One might also expect the transition to be accompanied by significant changes in behavior patterns, as is often the case when one becomes a new member of some association. None of this is in evidence in most political communities. Why is not this very important event in our lives the subject of elaborate rituals or formal pledges, as when other associations are joined? The most plausible answer is Hume's: residents of most countries believe themselves born to citizenship. The transition to majority is no celebrated event for the simple reason that it is not regarded as a sharp break in one's political life. Rather it is regarded as a point at which certain important rights and duties are added to the list of those already possessed. Political minors are no strangers to the burdens of citizenship; they can have legal obligations, be tried and punished, be required to pay taxes on income. They are

taught to think of themselves as citizens long before they cease to be minors. American children pledge their allegiance from their earliest school years and sit through units on "citizenship" regularly. At the "age of consent" they gain a legal freedom from the control of their parents, but this is by no means the time at which all their rights and duties begin. The rights to vote, to purchase alcoholic beverages, to hold political of office, and to receive old-age benefits are among those that are not (or have not always been) received on reaching majority. Eligibility for military service may or may not begin at this time. The important point is that the course of one's political life does not appear as two distinct stages, with a moment of decision dividing them. Rather it appears as a smooth course involving the periodic gain or loss of rights and duties, and it would be extremely odd, given the state of political conventions, if ordinary persons regarded their political lives in any other way. It would be, then, more than surprising if they viewed continued residence at some point as a sign that one is accepting membership in the state, an agreement that would ground all future rights and duties. Beran's chief assumption, then, seems mistaken.

It follows from this, of course, that his second assumption is mistaken as well. For the points made above suggest that it would be equally surprising if persons regarded their "political associations" in the same light as the ordinary rule-governed associations with which they are familiar. Ordinary associations are joined in a way that political communities do not seem to be. Homes, families, and friends are established in the state long before the age of consent; only the rare person thinks that there is anything to join at majority. Given these facts, the widespread "ignorance" of the moral consequences of continued residence can hardly be regarded as negligent. Indeed, it cannot even be regarded as "ignorance," for if residence is not understood to be a sign of consent, it cannot be one.

Part IV
Voluntaryism as a Matter of Integrity and Conscience

"The most interesting thing about responsibility is that we carry it with us everywhere."

—Attributed to Jan Patocka by Vaclav Havel in "The Power of the Powerless," from Jan Vladislav (ed.), *Vaclav Havel: Living in Truth* (1986), p. 104.

The Decision Is Always Yours — Freedom as Self-Control

by Carl Watner
(from No. 17, August 1985)

THE PURPOSE of this paper is to explore the many-faceted implications of the statement, "Freedom is self-control, no more, no less." Although this definition has been credited to Rose Wilder Lane, no one has yet been able to locate where or when she wrote or spoke it. In 1971, in his Foreword to the 1972 Arno reprint of her *Discovery of Freedom*, Bob LeFevre summarized Rose's thinking on this topic by offering this statement and calling it her definition. "Freedom is self-control" was a popular phrase used by the editorial writers of the Colorado Springs *Gazette Telegraph* during the mid-to-late 1950s. Rose Wilder Lane was often referred to as its author.

One clue to the actual source of the statement is to be found in an editorial appearing in the *Gazette Telegraph* on April 14, 1958. This editorial is titled "Amish Problem Remains" and deals with the jailing and release of two Amish couples in Ohio who had refused to send their young children to elementary school. In the course of advocating the separation of education and the State, the editorial writer calls for a government limited to the protection of the rights of the individual. It is only under "such an atmosphere that men can be free to do and achieve for themselves." It also means "that each man is his own master and must accept the responsibility for himself." The editorial goes on:

> Freedom is neither license nor anarchy: it does not mean chaos or the use of tooth and nail. Freedom does not give any man or group the right to steal, to use fraud or aggressive force or threats of same to get what one wants.
>
> Freedom is the right of a man to choose how he controls himself, so long as he respects the equal rights of every other individual to control and plan his own life. In short, it means self-control, and self-government, no more, no less.

These could be Rose Wilder Lane's words within the editorial's quotation marks. There are sections in her *Give Me Liberty* and *Discovery of Freedom* that certainly are very similar sounding, but none that produce the original. One of Rose's main themes in *Discovery* was that the key to human energy was its self-controlling nature. "Consider the nature of human energy," she wrote:

> Each living person is a source of this energy. There is no other source. … All energy operates under control. … Everyone knows what controls human energy. Your desire to turn a page generates the energy that turns the page; you control that energy. No one else, and nothing else, can control it.
>
> Many forces can kill you. Many, perhaps, can frighten you. But no force outside yourself can "compel" you to turn that page. Nothing but

> your desire, your will, can generate and control your energy. You alone are responsible for your every act: no one else can be.
>
> This is the nature of human energy: individuals generate it, and control it. Each person is self-controlling, and therefore responsible for his acts. Every human being, "by his nature," is free.

This was her description of "The Situation." The control of human energy was always an individual thing. Every person controls his or her energy in accordance with his or her personal view of the desirable or the good. Thus every person acts on the basis of his or her belief in the nature of the universe and the nature of human beings. In discussing the fact that for thousands of years human energies have not "worked efficiently enough to get from this earth a reliable supply of food," Rose pointed out that the inhibiting factor was mankind's belief that "some Authority controlled them," rather than each person understanding that he or she actually was a self-directed individual. When men and women did not feel free to act, either because they faced threats of violence or because they misunderstood the nature of their own human energy, they were not efficient producers.

Bob LeFevre approached this aspect of "freedom is self-control" in a like manner. He noted that when a person is faced with a compulsive choice, that person will inevitably act in a way that will seem good at the time. "This may result in … either losing or saving your life. But the decision is always yours. There is no other way that the fact that you own your own energy can ever be understood."

Another important discussion of "freedom as self-control" appears in a book titled *Faith and Fact*, which was written by Alfred Haake and published in 1953. In his section on "The Law of Freedom Is the Law of Self-Control," Haake noted that the important question for man "is whether the control over the energies of the individual shall be from within the man or from the outside." He then went on to say:

> If the control of the individual is from within himself he is free. He may discipline himself severely and even remorselessly, deny his body gratifications of its yearnings, and force himself to work until he drops from sheer exhaustion. But, so long as it is *his* will that gives commands to himself, voluntarily, he is free. On the other hand, if the control or direction of the individual is from outside himself, he is not free. He may suffer little restraint, he may gratify his yearnings and work not at all, and yet be a slave, if the control comes from outside himself. … Freedom lies in self-mastery, in triumph of the spiritual man over the material creature out of which he evolved. "He that ruleth his own spirit is greater than he that taketh a city."

Although Haake embraces the idea that "freedom is self-control," he implies that control or direction of the individual may come from an outside source. This is in complete contradiction to Rose Wilder Lane's thesis that all control comes from within. In fact, in some very important statements, she noted:

> Submission to Authority is always and everywhere voluntary, because individuals control what they do. … You alone are responsible for your every act; … Each person is self-controlling.

In the very nature of things as we know them in the universe, Rose could not imagine that one man could control another, without the latter's willingness. In fact, her position, that submission to authority is voluntary, is the flip-side of the voluntaryist insight that all human organizations and institutions require the consent and cooperation of their participants to function. Whether it be a voluntary business association or a coercive institution like the State, each of these organizations must have the cooperation of those it deals with. No business or State could long exist without customers or citizens who willingly do what is desired of them.

Even though we perceive that the State rests on violence and threats of coercion, the fact remains that each individual still remains self-controlling. So when a person complies with the demands of a person or group of people exerting aggressive force, one of two things may have happened: 1) The person complying to violence or its threat understands that he or she is a self-controlling individual and makes a conscious choice based on this realization and his or her evaluation of the situation, or 2) The person does not consciously realize that there is a choice involved and therefore acts on the mistaken assumption that the person exercising force is actually controlling his or her energies. Of course, in this second case, it is still the threatened person who is, in Rose's words, "submitting to Authority," under the mistaken notion that Authority directs the individual rather than the individual directing him or her self.

It is interesting to observe, in this context, what violence or its threat can actually achieve. Though we have seen that human beings, by their very nature, rule themselves and control their own energy, it is possible that they can be arrested, tortured, and even killed. But no aggressor or group of individuals claiming to be a State can get around the fact that individuals cannot be controlled except by their own consent. "One man cannot control another man. It simply isn't possible, any more than it is possible for someone other than yourself to do your breathing for you, to feel the pain of your own bruise, to direct your vocal chords." (Bob LeFevre, *Gazette Telegraph*, January 15, 1959.)

All that violence can do is to inhibit the free flow of human energy. As Rose Wilder Lane wrote in *Give Me Liberty*, "No jailer can compel any prisoner to speak or act against that prisoner's will, but chains can prevent his acting, and a gag can prevent his speaking." Violence cannot create and direct positive human energies, ever, without the cooperation of the human actors involved. Force always inhibits creative energy. (This insight is what I have labeled the epistemological bias against violence. In short, violence can never produce anything creative.) "Violence may punch to the floor and silence a person, for instance, who is trying to solve a problem in mathematics, but no one will claim that

the silence thus brutally obtained will provide the solution for the mathematical problem. All we shall have will be a man on the floor and a problem still pending—it will pend till some mathematician is allowed to speak and solve it." (Bendetto Croce, "The Roots of Liberty.")

Bob LeFevre put it this way:

> The fact is that each human being controls his own energies and that no government can control his energy. A government may inhibit, harass or otherwise controvert the usages of your energy. But it cannot control it. A government might be able to kill you. But it cannot control you without your consent.
>
> And as you must consent before the government controls you, it follows that it is your consent that does the controlling. You are not a zombie. You respond to your own motor nerves, your own muscles, your own brain.
>
> The government may pretend to control you but you should not be fooled by its pretense. In short, tho [sic] the government may have the force behind it to put you into jail or to shoot you, the government cannot possibly find the force wherein it will actually supplant your own control over your own energies. Stopping the flow of energy in a human being is not the same thing as controlling it.

This insight into the nature of human action has many implications. For one thing, it leads directly to the voluntaryist insight, that all States rest on the consent and cooperation of their victims. For another thing, it illustrates the dual nature of human freedom and liberty. Perhaps this is best exemplified by a story related by William Grampp. He tells the story of a Stoic who was captured and told to renounce his beliefs. He refused and was tortured and eventually threatened with death. His response was that his captors could do whatever they wanted with his body, but that they could not injure his philosophy. "That was in his mind and their authority, in its physical … aspect did not extend to that."

This little story not only demonstrates the futility and impotence of human violence but shows that conceptually it is possible to distinguish between physical liberty of the body and the spiritual freedom of the Self. Self includes one's mind, soul, and spirit which is endowed with time, intelligence, and energy. The point is to understand that the absence of coercive molestation is only one criterion by which to judge the true nature of human freedom and liberty. As Haake and Lane, and others have pointed out, one can be at liberty physically, but if mentally one has submitted to some Authority then one is still a slave. Although one is at liberty (physically), one does not have freedom of the Self. This is what La Boetie, the author of *The Discourse of Voluntary Servitude*, meant. A State need not exercise violence if it has already convinced its citizens that they should voluntarily obey its dictates. The State either succeeds in convincing people that they have no choice but to obey or convinces them that out of self-interest they stand to gain more than they would lose financially by resisting the State. Thus it induces vol-

untary servitude. (An interesting aside on this general point is the distinction between a prisoner and a slave. A prisoner requires placement behind bars because his or her spirit has not been broken. An obedient slave, on the other hand, does not need to be caged because his or her spirit is in illusory chains of his or her own making.)

Thus "freedom is self-control" leads to the conclusion that as acting individuals, we must respect the rights and boundaries of others. In other words, every individual should control his or her actions such that they do not aggress or invade against other individuals or their rightfully owned properties. "Freedom" as "self-control" points up the dual nature of human existence: of the Self (mind, soul, and spirit) housed in a physical body. Human beings require both spiritual freedom and physical liberty (the absence of coercive molestation). Though these may be separated conceptually, and existentially, the human being searching for fulfillment in life requires both. Only in this manner is it possible for the moral and the practical consequences of freedom and liberty to exist side by side.

In this context, the moral implications of "freedom is self-control" refer to the unblemished integrity of each individual human actor, who allows no one else to direct his or her energies. The practical implications refer to the material benefits which accrue to individuals when they are able to direct their own energies. The marvelous productions of the free market and the high standard of living which results are only two of the practical consequences of "freedom is self-control."

So, "freedom is self-control" on the spiritual level has no reference to man-made, coercive restraints imposed upon us by the State or private criminals. It refers to our attitude about who controls our minds, souls, and spirits. It is the realization that ultimately each one of us is responsible for what we choose to do and believe as individuals; that ultimately each one of us is a self-responsible human being—whether we want to be or not. All individuals have their own choice to make in this respect. They may try to evade self-responsibility, but the fact remains they cannot. They must take the consequences of their decision, whether they choose to recognize it or not. Human nature makes us self-controlling and responsible. This is a physiological fact. "The consequence is that every human being *is* responsible by the nature of his own life. … He is responsible because only he can control his own energy."

Bob LeFevre answered the question, "For what are people responsible?" in the *Gazette Telegraph* of June 10, 1960:

> A person is responsible for every action he takes and for every action he refuses to take. Thus, he is responsible for commissions and omissions, and whether these are good or bad. The individual is the responsible unit. Responsibility cannot be collectively delegated. Each person is responsible in exactly the same way and to the same degree that every other person is.

People are self-responsible, whether they want to be or not; whether they know it or not. They cannot escape this fact. Even if a person acts under the false belief that someone else is directing his or her human energies, the fact remains that the first person is still directing his or her own energy. As Rose Wilder Lane concluded, "self-control, which is freedom, can be taken away" from a person only by killing that person. It is impossible for one person to transfer his or her responsibility to another.

Even though "freedom is self-control" expresses the idea not to aggress against others or violate their boundaries, it also offers us a second level on which to model our behavior. The expression "self-control" is one of the most important elements of the Stoic philosophy, which was developed by Zeno several centuries before the Christian era. The Stoic was a person who was in control of him- or her self and who was intent on character building at all times. The Stoic readily accepted the main condition of a virtuous life: self-responsibility. He or she realized that no one else could be made responsible for another and behaved accordingly. No true Stoic would place man-made coercive restraints upon another person or try to impinge upon another's spiritual freedom.

The Stoic also realized that governance of the self required self-discipline; a discipline which could only be self-invoked. If another imposed that discipline on the Stoic, of what value would it be? No moral choice was to be had if violence or its threat demanded that one follow a certain mode of behavior. The Stoic always believed in accord with the basic moral rules of mankind. As Bob LeFevre put it, the "self-governed person" (the Stoic in the context of this discussion) "is one who controls himself and consequently is not in need of any controls administered by another."

Thus the Stoic and the advocate of freedom philosophy look askance at any attempt to legislate personal standards of behavior. Moral actions cannot exist where free choice is absent. People who are threatened with violence in order to make them behave in certain ways are not necessarily good or moral men. They are merely being constrained by outside forces. It is imperative that people be allowed to make the wrong choices because this is the only way they can develop their characters.

Take laws against drunkenness, for instance. Granted that drunkenness is a vice, the way to eliminate it is not through statist legislation. Witness the failure of Prohibition, for example. "The way to prevent these evils is obviously to build up within the individuals themselves a strong desire not to drink habitually or to excess. … In the end, one could never hire enough policemen to prevent people from doing something they want to do." (Bob LeFevre, November 24, 1961.) This same argument applies equally to criminal law. The prerequisites of law and order among any group of people are self-control and self-responsibility. "Lacking these things, no amount of government or police power will bring law and order.

But with these things, law and order will come whether or not there is a government or policemen in evidence."

In a society without a State, the question is really not "control or no control" as statists would have us believe. Much as they would claim that the absence of State planning implies there is no planning at all. The fundamental question for any society or group of people is: Should the individual be able to remain physically unmolested so that he or she can develop character and exercise self-governance or is the State to impose its regimentation upon the people? Self-control in this context is just another way of saying self-government or that each person should exercise governance over him or her self.

This outlook produces an important insight for understanding how the law enforcement process and respect for life and property is produced among a group of people where no State exists. As Rose Wilder Lane explained it in *Discovery*, "The only safeguards … are individual honesty and public opinion. … The real protection of life and property, always and everywhere, is the general recognition of the brotherhood of man. … Our lives and property are protected by the way nearly everyone feels about another person's life and property."

Thus we can see that the most fundamental and truly effective way to deal with crimes and criminals is to work to eradicate them through education "and the awakening of desires within individuals to practice self-control." (Bob LeFevre, *Gazette Telegraph*, April 13, 1960.) This certainly is the message of the Stoic because this process calls upon each individual to discipline himself. Equally stoic in outlook is the insistence that each person refrain from imposing his or her own moral outlook on others by means of force.

In fact, this is largely the basis for the voluntaryist rejection of electoral action and involvement in the political process. Moral and self-responsible people cannot be developed by imposing government-made rules of action upon them. Not only do they resent it, but when some of them are forced, "they rebel, many times in the precise direction they should avoid." (Bob LeFevre, *Gazette Telegraph*, March 30, 1961.) It is immoral in itself for the moral person to impose morality upon others. The moral person does not resort to force, does not compel others to accept his or her morality. The means would be inconsistent with the ends of morality. If the moral person gives due consideration to the means (the inculcation of character and self-control), the end (a group of people who are moral and respect property rights) will take care of itself. Thus another proof of "freedom is self-control." "One does not have to labor to compel others to accept freedom. One has, rather, to control himself, so that he does not interfere with the freedom of others. Freedom for all is the product of self-control. This means that we will be free when we stop preventing the freedom of others." (Bob LeFevre, *Gazette Telegraph*, September 13, 1959.)

> This is one of the great truths human beings do not yet seem to know, that human beings are self-controlling and self-responsible entities who can achieve their own freedom by tending to their own characters and not inhibiting the character development of others. If they once understand it, they will recognize that they are *free*. They will see that their freedom is not dependent upon government but upon themselves as individuals. Government can inhibit the flow of … creative energies but it cannot control those energies. (Bob LeFevre, *Gazette Telegraph*, July 2, 1959.) ▽

A Further Note on 'Freedom as Self-Control'

by Carl Watner
(from No. 18, May 1986)

In my article in Issue No. 17, the point was made that there is a direct relationship between the fact that each individual is a self-controlling entity and the voluntaryist insight that all human organizations and institutions require the consent and cooperation of their participants to function. The purpose of this short note is to elaborate on this idea.

In examining Rose Wilder Lane's *The Discovery of Freedom*, her statement—that some people could be physically coerced into giving their consent did not alter the fact that submission to authority is always voluntary—was highlighted. At first glance this seems contradictory because if coercion has been used or threatened, how could the subsequent behavior be termed voluntary? This is what I wish to explain.

Ms. Lane reasoned that submission to authority is voluntary because individuals control what they do (even when they are coerced). I accept her use of the word "voluntary" but it leads to the tautology that all human action is, by its very nature, voluntary. To distinguish between what a person does willingly (without the threat or use of violence) and what that same person does when confronted by the use or threat of violence, I think it is important to introduce the qualifiers "coerced" and "uncoerced" to differentiate between human action which is freely taken and human action which is only undertaken as a result of duress. When a kidnapper threatens to kill your wife, unless you ransom her for $10,000, you voluntarily turn over the money; but your consent has been coerced because of the kidnapper's threat to kill her. When you purchase a car for $10,000, the car dealer has obtained your uncoerced consent because there has been no use of, or threat of, violence. In both cases your tender of the $10,000 was a voluntary act, but in the first instance your consent has been coerced, while in the second instance your consent has been uncoerced.

The parallel between these examples and our acceptance of the State should be obvious. Although our consent may have been coerced by State threats, ultimately our submission to the State is voluntary because we are self-directed and self-controlled individuals.

I would like to extend my thanks to Pat and Kevin Cullinane for helping me clarify these ideas. ▽

To Thine Own Self Be True: The Story of Raymond Cyrus Hoiles and His Freedom Newspapers

by Carl Watner
(from No. 18, May 1986)

In 1964, an article appearing in *The New York Times* newspaper described Raymond Cyrus (R. C.) Hoiles as "slight of build, hawk-nosed, toothy, bespectacled, with a fringe of still dark hair around his otherwise bald head." It also publicly identified Hoiles as a voluntaryist. With regards to the upcoming national elections (Goldwater was running for President), the same article reported that Hoiles was not inclined to look towards the ballot box for the quick adoption of his libertarian ideas. In fact, it quoted R. C. as stating, "It doesn't make much difference who is president. What is important is the attitude of the American people."

Another contemporary sketch of R. C. by Robert LeFevre painted him as "a rare old bird, a combination of crusty, two-fisted, hardheaded egoist, and a gentle, optimistic, hard-working idealist. The man is a true genius in my view. His writings are about the most cumbersome, unwieldy, and unreadable in print. In fact, I once stated that it was a good thing that R. C. owned some newspapers because no independent publisher would ever accept anything he wrote. Nor, so far as I know, has anyone ever done so. Yet, what R. C. thinks and writes, if you can interpret it, is magnificent. I love the old man." (Letter from Robert LeFevre to Howard Kessler, April 16, 1964.)

Raymond Cyrus Hoiles (born November 24, 1878; died October 30, 1970) was the founder of the Freedom Newspaper chain, a group of daily newspapers that grew out of his employment as a printer's devil in the early 1900s. His newspaper organization still exists today. It could probably be described as the greatest money-making device ever put together in support of human liberty and human dignity. Its editorial pages were (and still are) dedicated "to furnishing information to [its] readers so that they can better promote and preserve their own freedom and encourage others to see its blessings." (From the masthead of the Colorado Springs *Gazette Telegraph*, November 24, 1984.) The Hoiles papers distinguished themselves from all other newspapers by the contents of their editorial

pages. Their news sections were the models of industry standards in factual reporting, but they were without doubt the only papers in the United States that came out against such things as tax-supported compulsory education, labor unions, and the United Nations.

In short, Hoiles "carried freedom's flame," as an editorial in one of the Freedom Newspapers announced on the anniversary of what would have been his 106th birthday. He gave encouragement to such people as Frank Chodorov, Rose Wilder Lane, Robert LeFevre, Ludwig von Mises, and Leonard Read, people who were largely responsible for the creation of the libertarian movement in the last quarter of the twentieth century. For more than thirty-five years, through conversation and the written word, R. C. "contended that human beings can enjoy happier, more prosperous lives in a voluntary society where force or threats of force are absent from human relationships." He believed that a single standard governed all human relationships: that neither the lone individual nor any group of people (even if it were the majority and called itself the State) had any right to initiate force.

"Hoiles displayed that rare mixture of principle and worldly practicality" which was necessary to transmit his ideas to literally millions of newspaper readers over the course of several decades. The purpose of this essay is to show how R. C. was a unique blending of both philosopher and businessman, who created an empire dedicated to selling both newspaper and ideas.

R. C. was born in the Mt. Union section of Alliance, Ohio. His dad was considered a successful farmer in the area and had a keen business sense. By the time R. C. graduated from public high school, one of the most important lessons he had learned from his father was never to ask anybody to do something for him that he was not prepared to do himself. This lesson served him well in the business world as well as in the realm of moral ideas. During his college days at a Methodist school (Mt. Union College), R. C. spent his weekends working as a subscription solicitor for the Alliance *Review*. This was his first real introduction to newspapering. After teaching school and an assortment of odd jobs, R. C. eventually went to work for his older brother, Frank, who had purchased the *Review*. He started as a printer's devil at $2 per week.

In 1905, R. C. married Mable Myrtle Crumb and over the course of the next few years was to father four children: Clarence (November 1905–December 31, 1981), Raymond (died 1920) Harry (born January 27, 1916) and Mary Jane (born April 1922). When the *Review*'s bookkeeper died, R. C. took over that job and eventually became Frank's business manager. By 1919, R. C. had managed to accumulate enough money to buy into two newspapers with his brother. At that time, R. C. owned a one-third interest in the *Review* and a two-thirds interest in the Lorain, Ohio, *Times Herald*. Several years later, he bought a third interest in another newspaper, the *News* of Mansfield, Ohio.

By swapping part of his holdings for those of his brother, R. C. managed to take full control of two newspapers by the mid 1920s. He and his brother Frank could no longer operate in tandem, since Frank insisted that their newspapers say nothing against labor unions, while R. C. persisted in speaking his mind. So in 1927 when he purchased the Bucyrus, Ohio, *Telegraph-Forum*, R. C. already fully owned the Mansfield *News* and the Lorain *Times Herald*. His son Clarence was sent to manage the Bucyrus newspaper, while R. C. lived in Mansfield and served as publisher there.

Shortly thereafter, Hoiles "entered into one of the bitterest newspaper fights in the history of the publishing business in Ohio." The Hoiles paper in Lorain had exposed the corruption prevalent in the awarding of paving contracts to the Highway Contracting Company of Cleveland. Horowitz, the owner of this company, was eventually shown to be the owner of the newspapers in Lorain and Mansfield, both of which strove to "get even"—with Hoiles for his part in exposing the fraudulent practices. The rivalry between Horowitz and Hoiles prevailed till 1931, but in the meantime the front porch of the Hoiles home was destroyed by an explosion in November 1928, Hoiles' car was wired with dynamite (which fortunately failed to detonate), and a dud bomb was discovered in the office of the Mansfield *News*. None of this gangsterism was ever explained, but it did motivate R. C. into selling the papers in Mansfield and Lorain.

During the New Deal days, R. C. became a victim of New Deal legislation. He had effected the sale of his two papers in Ohio in 1931, but according to the terms of settlement he was not to receive all of the proceeds until 1935. By that time FDR had devalued the dollar and nullified the gold clause in all private contracts. As R. C. expressed himself in a private letter to Robert LeFevre, written on February 4, 1964, he "had a little experience" with the government abrogation of contracts whereby "I lost $240,000." It was for this reason, if no other, that he concluded government should have nothing to do with money or credit.

The proceeds from this sale were used to purchase daily papers in other parts of the country. The Santa Ana, California *Register* and the Clovis, New Mexico, *News Journal* were acquired in 1935. A year later, the Pampa, Texas, *Daily News* became a Hoiles property. These along with the *Telegraph-Forum* of Ohio days, formed the nucleus of the Freedom Newspapers. No new papers were acquired during World War II, but R. C. did achieve a degree of notoriety during that time. At one time during the war, he was fined $1000 by the Federal Government for raising wages in violation of government statutes. His editorial stance against the forcible relocation and internment of Japanese Americans was noted all across the country. He vigorously opposed their evacuation and fought for lifting the bans placed on them.

As the Japanese American Citizens League once put it, Hoiles "was the only one with the courage of his convictions." (*Gazette Telegraph*, January 23, 1966, p. 8-E.) One other example will illustrate R. C.'s sublime indifference to compro-

mise, even though his adherence to principle might be costly. Once in Santa Ana, a cub reporter was writing news stories about a group of local businessmen who had contrived an anti–chain store organization. When the managers of the chain stores, who represented over half of the advertising revenue of the *Register*, walked into his office and demanded that the stories about their opposition cease, Hoiles responded in the following manner. "You can take your advertising out of my paper. That's your business. But I'm running this paper and I'll say what is to be printed in it as long as I'm running it, and if the stories are true, and we think that they are news, they're going to run whether you like it or not." (*Raymond Cyrus Hoiles*, p.8.)

After World War II, Hoiles purchased two more papers. His son Harry became the publisher of the Colorado Springs *Gazette Telegraph*, and his daughter, Mary Jane Hardie, became associated with the Marysville, California, *Appeal Democrat* in 1946. A year after the purchase of the *Gazette Telegraph*, that paper encountered a strike of its employees, who were members of the International Typograpical Union (ITU). The strike action began in January 1947 and R. C. refused to make a satisfactory contract agreement with the local involved. Picketing ceased in July, but the ITU did not give up its efforts. It funded a competition paper, known as the *Free Press*, which existed for at least two decades. A similar occurrence took place in Lima, Ohio, when Hoiles purchased the *News* there in 1956. In the interval the Freedom Newspapers had expanded to include the Odessa, Texas, *American* (1948) and three other Texas papers (1951), the Brownsville *Herald*, the McAllen *Valley Evening Monitor*, and the Harlingen *Valley Morning Star*. The Anaheim, California, *Bulletin* was acquired in 1962.

It was not until after these purchases in the early '50s that the designation "Freedom Newspapers" was applied to the Hoiles' acquisitions. Although R. C. first suggested that they collectively be designated "Our watchful newspapers," the "freedom" label was ultimately selected as being far more descriptive of their overall editorial policy and outlook. When the *New York Times* wrote about Hoiles in 1964, the combined circulation of these dailies exceeded 300,000. By the time of Hoiles' death, the Freedom chain also included the LaHabra, California, *Daily Star-Progress* (1963); the Turlock, California, *Turlock Daily Journal* (1965); the Gastonia, North Carolina, *Gastonia Gazette* (1969); three dailies in Florida, the Panama City *News-Herald* (1969), the Fort Pierce *News Tribune* (1969), and the Fort Walton Beach *Playground Daily News* (1969); and the Columbus, Nebraska *Telegram* (1970). In 1985, the chain comprised nearly thirty papers with a combined daily circulation of almost 1,000,000 readers.

Though the bare bones of R. C.'s life do not indicate the evolution of his thinking, he did leave at least one record of his intellectual development and mentors. For many years, R. C. wrote a daily column that appeared on the editorial pages of all his newspapers. This column was originally titled "Common Ground," but then changed to "Better Jobs," because R. C. believed that was a

commonly shared interest of most people. In a three-part series in his "Better Jobs" column of late 1955, R. C. discussed "My Handicap":

> I want to explain how my attending government schools and getting a high school diploma and then graduating from a Methodist college handicapped me in developing my moral and mental faculties. How, in short, it retarded my education.

R. C. explained that he lived in the country across from a "little red school house" and how both his parents had attended government schools themselves. It was natural for them to want to send him to government schools, too. His father, as a prominent local citizen, was usually a member of the local school board. But R. C. recalls that even as a board member, his dad had some reservations about the efficiency of governmental education. Once he remembers his dad referring to government schools as "socialistic."

The handicap that R. C. got from the public schools was the belief that the State or the majority of citizens had the right to use taxation to support the public school system.

> I never once read in any book or heard any professor in the high school explain the basic principle that governments derive their just powers from the consent of the individual; that the government had no right to do anything that each and every individual did not have a right to do. Instead, they had to teach that the government or the local school district, if the majority so willed, had a right to force a Catholic parent or a childless person or an old maid or an old bachelor to help pay for government schools. …
>
> The textbooks did explain the error in the belief in the divine right of kings. But they never explained the error in the belief in the divine right of the majority. It simply substituted the divine right of the majority for the divine right of the kings.
>
> Of course, I never found any textbook or any teacher that believed taxation was a violation of justice and of moral law, as set forth in the Commandments "Thou shalt not steal" and "Thou shalt not covet." In other words, the government schools I attended made no attempt to be consistent and teach me to recognize contradictions.

R. C.'s experiences in high school were duplicated during the four years he went to a Methodist college. Never once was he exposed to or did he come into contact with a real libertarian. It was probably not until he was out of college that he came across the ideas of Ralph Waldo Emerson, which aroused his interest in liberty and limited government. The essays on "Compensation," "Politics," and "The Uses of Great Men" stimulated Hoiles' desire for better understanding. After Emerson, some of the works of Herbert Spencer whetted his curiosity, particularly the ones that questioned "the morality of government schools and the myths that existed in most of the organized religions."

> Then a Socialist told me that Frederic Bastiat made the best explanation of the disadvantages that come from the protective tariff. That interested me. I got his "Sophisms" and was so fascinated that I bought his "Harmonies of Political Economy" and even had some of his essays translated that had not been translated into English.
>
> He was the first man who awakened me to the errors, taught in government schools and most Protestant colleges, that the state doing things that were immoral if done by an individual made these acts become moral. In other words, he was the first man that pointed out that there was only one standard of right and wrong—the same standard for the state that governed the standard for the individual....
>
> Bastiat so impressed me that I republished his "Social Fallacies (Economic Sophisms)" and his "Harmonies of Political Economy" in two volumes, and his essay on "The Law." [The first of these books was published by R. C. in 1944.]

R. C. realized that he had never come across Bastiat in college for the same reasons that he had never found Bastiat in his high school library. Bastiat represented a clear cut threat to "the establishment" by demanding that one standard of morality apply to the individual and the State. After discovering Bastiat, R. C. ran across Henry Link's *Return to Religion* (1936), *Rediscovery of Man* (1940), *Rediscovery of Morals* (1947), and his essay on "The Way to Security" (1951), which "clearly pointed out the immorality and injustice of government schools." Another author that influenced R. C. was John Rustgard, who in his books *The Problem of Poverty (1935), Sharing the Wealth* (1937), and *The Bankruptcy of Liberalism* (1942), explained that it was impossible for the State to educate the youth of the land in liberty and justice. Rose Wilder Lane's *Give Me Liberty* (1936), fascinated R. C. because it explained that government schools were the "primary tyranny." It was Rose Wilder Lane who suggested that he read Isabel Paterson's *The God of the Machine* (1943). That book so intrigued him that he purchased 100 copies for distribution to his friends and associates.

Rose Wilder Lane and R. C. had a special sort of relationship. They carried on an extensive correspondence, extending from at least the early 1940s till the early 1960s. One of R. C.'s favorite aphorisms was attributed to Rose Lane. He was fond of quoting her statement that "freedom is self-control, no more, no less." After R. C. read her book, *Discovery of Freedom*, which was published in 1943, he wrote her a devastating critique. He claimed that he could not recommend *Discovery* because she had made one egregious blunder in presenting her ideas. Rose had assumed by implication that it was government protection of private property which made private property possible. When R. C. pointed this out to her, and explained that the State was the major violator of property rights, she was so chagrined that she bad-mouthed her own book the rest of her life.

R. C.'s view that he was "handicapped" by his government education was reinforced by his contact with Lane and Paterson. He realized that neither one of

them had been contaminated to any great extent by the public schools. Rose Wilder Lane went to school for only six months, and Isabel Paterson for less than two years when she was a small girl. It was the absence of this governmental indoctrination and propaganda which made it possible for them to do their thinking. R. C. was so impressed with the view that government-controlled schooling was one of the major causes of statism that he had an outstanding offer of $500 to any school superintendent or official who was willing to stand up (as in a court of law) and defend the public school system as being consistent with the Golden Rule. He never had any serious takers.

Although R. C. related that Isabel Paterson personally confided to him "that she did not write a chapter on taxation because she had not thought it through," R. C. was eventually able to arrive at some very definite conclusions on this subject. But it was not until he was corrected by Frank Chodorov on the question of "voluntary taxation" that R. C. reached his mature view of the matter.

> I, of course, believed in taxes, having gone to a state school. I used to contend that I believed in voluntary taxes. I was straightened out on this error by Frank Chodorov, who pointed out that there was no such thing as voluntary taxation—to use that term was a contradiction of words. That caused me to overcome the handicap that I learned from the state schools and Methodist college of believing in taxation. …
>
> But it took me 40 or 50 years to partially throw off and outgrow and discard the handicap I received in government schools and a Methodist college. And I have not yet, by any means, completely discarded all the collectivist authoritarian ideas that handicapped me.

It was probably in the late 1940s or early 1950s when Chodorov pointed out to him that the difference between voluntary contributions and taxation was that taxation rested on an element of force. R. C. was proud that he was man enough to admit his mistake. "You're right," he told Chodorov, "I'm against all taxes." (Ashby, p. 483.) R. C. thought that the terms government and "State" caused all sorts of semantic confusions. What he favored was a free-enterprise association or a defensive voluntary association that would sell protection of life and property, much like an insurance company.

> I must have the right to discontinue buying from one agency and buy from one I think will give me the most for my money. In other words there must be competition or the threat of competition in order to have a true value of the worth of the service. When there is no competition there is no true value, as in the case when the government has the right to arbitrarily confiscate a man's property and call it a tax. …
>
> Competition would be the protection as to the agency overcharging me. I hear the objection that the protective agencies would come in conflict. I do not believe there would be nearly as much conflict when the insured had the right to dismiss an agency and the agency

> had the right to refuse the individual who was too great a risk as there is now.

R. C. expounded on these ideas at length in his column "Better Jobs," which appeared in the *Gazette Telegraph* on October 30, 1956 (p. 21; this particular column was captioned "A Good Question"). He was certainly one of the earliest twentieth century libertarians to espouse the idea of replacing limited governments with competing defense agencies. He was absolutely fearless as to how and to whom he presented his ideas. Once he challenged Ludwig von Mises on his "contention that we have to have monopolistic local, state, and federal governments to protect our lives and property." The two were personally acquainted as R. C. had at one time in the mid 1950s invited von Mises to lecture in Santa Ana, at R. C.'s expense. Some years later, in 1962, R. C. directed a letter to von Mises in New York, asking him to reconsider his rejection of voluntary defense agencies. R. C. said that he saw von Mises doing so much good on behalf of free enterprise and free market economics, that he hated to see von Mises "continue to advocate any form of socialism, or any form of tyranny. And when you are advocating that the free market is not the better way of protecting men's lives and property, I think you are serious in error. …" There is no record of von Mises' response.

R. C. was also familiar with the individualist-anarchist ideas of the nineteenth-century libertarians, for he referred to having read Benjamin Tucker's *Instead of a Book* in a column which appeared in the *Gazette Telegraph* on May 8, 1955. In discussing "Anarchy—Good or Bad" R. C. was trying to get at the point that sometimes anarchy meant "self-rule" and other times meant "no rules" at all. He was in favor of everyone controlling him- or herself and not being subjected to coercive forces outside the self. He was opposed to the absence of self-rule, because he believed that its absence would lead to chaos.

Where or how R. C. came upon the term "voluntaryist" remains a mystery. He may have come across it in his religious studies, since the term was originally applied to the manner in which churches were voluntarily supported in this country and England, as opposed to the establishment and funding of a State church. R. C. was not totally anti-electoral, for he did support Goldwater in his bid for the presidency. He was, however, clearly an advocate of an all-voluntary society, one in which the person who did not wish to pay for government protection should not receive such protection nor be forced to pay for a service he did not receive. In the latter part of 1958 and the early part of 1959, he gave several public talks to such groups as the Unitarian Fellowship of Orange County and the Exchange Club of Santa Ana. The subject of these presentations was "voluntaryism." He chose this theme because he sincerely thought that to the degree that more and more people believed in and practiced voluntaryism "the more they will increase their happiness, their physical and spiritual health, their peace of mind and their prosperity." The message of Jesus Christ, and as R. C. was to fondly add, the Ten Command-

ments, The Golden Rule, and the Declaration of Independence, was clearly voluntaryist at heart. "If it is harmful for one to get things on an involuntary basis, or two people, it is harmful for any number of people or for a government to get things by using involuntary means." He was optimistic that voluntaryism would triumph, just as chattel slavery had been abolished in this country. In his 1956 column, quoted above, he wrote that

> For thousands and thousands of years people have believed in the divine right of government to plunder and rob individuals. … For thousands of years people believed in slavery. We abandoned it about 90 years ago in the United States. Maybe in another 90 years people will adopt the ideologies set forth in the Declaration of Independence that governments derive their just powers from the consent of the governed. That means the government would have to render service efficiently enough that people would voluntarily pay for protection.

As a man of good will, R. C. felt that he had a personal obligation to speak out and the editorial pages of his newspaper were his mouthpieces. He believed that all progress came from some individual who was willing to state the truth and stand alone against the crowd. He was fond of quoting one aphorism that he thought was a masterpiece. "There is nothing noble in being superior to some other man. True nobility consists in being superior to your previous self." He called this "The Key to Continuous Happiness" because he believed that the man who is constantly trying to improve himself is the happiest person and his happiness grows with age. Though he suffered from diabetes and two heart attacks, R. C. certainly tried to practice this during his own long life. (R. C. to Bob LeFevre on January 17, 1962.) He also once quoted Robert Ingersoll's observation that if you seek happiness directly it will flee from you. Rather, "Happiness is not a reward, it is a consequence" of continued self-improvement. (*Gazette Telegraph* column of January 26,1959.)

R. C. served as the editorial watchdog for his paper. He perused all the editorials and was in constant contact with his writers. If an editorial did not suit, or if it violated his conception of freedom philosophy, he was sure to let them know. A particularly outstanding editorial was likely to be sent to all the papers. Editors were to make minor changes in the editorials to suit local circumstances and then publish the revision. And since the freedom philosophy was a constantly evolving group of ideas, there was constant correspondence and discussion among all the editors as to what should be the Freedom Newspaper position.

The Freedom School which LeFevre and others started in the summer of 1957 taught the same basic philosophy that the Hoileses presented on their editorial pages. Harry was largely responsible (in several indirect sorts of ways) for helping get the school started. He allowed LeFevre to take time off from his job at the newspaper (with the proviso that the school did not interfere with his writing productivity) and he lent the school $7000, which it needed during its very early days.

Once the school was going both R. C. and Harry made substantial financial contributions to it. They also sent a number of their editors and family members to the school. During the summer of 1963, R. C. attended. That same summer a number of his children, grandchildren, in-laws, and editors also were students at the Freedom School.

Freedom School, to the same extent, served as a philosophical training ground for the Freedom Newspaper editorial staff, allowing the staff writers to better understand freedom philosophy. They were all working for the same goals: increasing their circulation and an expansion of freedom thinking. There were occasional departures, editorially speaking, from the freedom philosophy. During the early 1960s, McDowell, the publisher of the Lima *News*, and some of the Freedom Newspapers in Texas were the worst offenders. Often the opposition papers were helpful in pointing out their inconsistencies (and of course they delighted in doing so). For example, in 1960 in Lima, the *News* was planning a special supplement in honor of the opening of a new school and National School Week. In view of Hoiles' bitter opposition to "gun run" schools, as he often termed the public schools, the opposition paper said it looked ludicrous for a Freedom paper to be issuing such a supplement and the publisher had to cancel his plans.

The whole purpose of the editorial page of a newspaper, in R. C.'s view, was to get people to think. Just as R. C.'s contact with the ideas of Emerson and Spencer had helped him overcome his own "handicap," so the exposure of readers to libertarian ideas in the editorial page was designed to awaken in them the concept of self-rule and self-control. In fact, R. C. saw "the editorial page of a newspaper, which is kept open for contrary points of view, and which is well prepared and thoughtfully assembled, as a daily school room made available to its subscribers," whether "rich or poor, young or old, and without the duress of taxes nor the compulsion of forced attendance."

Soon after LeFevre joined the Hoileses, the Freedom Newspaper formulated a long editorial statement entitled "Here Is Our Policy." It was published as a single page handout, as well as appearing in the editorial columns of the papers and then being blown up so as to take up a full newspaper page. In the mid 1950s, R. C. was still largely wedded to a conception of a strictly "minimal" government. The most important passages from "Here Is Our Policy" are reprinted below.

> The 11 daily newspapers published by Freedom Newspapers, Inc., and Freedom Newspaper, a co-partnership, believe in a system of natural law. …
>
> We consider three concepts to govern human behavior. They are:
>
> 1. The Decalogue.
>
> 2. The Sermon on the Mount, which is an exposition of the Decalogue.
>
> 3. And the Declaration of Independence which is a political expression of the Commandments. …

> The Yardsticks of Morality we have mentioned indicate several facts, uncontested by any Christian or Jew, of our acquaintance. They include:
>
> 1. That every man is born with certain inalienable rights.
>
> 2. That these rights are equally the birthright of all men, that they are the endowment of the Creator and not of any government.
>
> Since we believe these facts are expressed in the Commandments, we do not believe any man has the moral right to curtail the rights of his brother. That is, no man has the right to initiate force against his brother. …
>
> Our belief in a single standard of conduct, and in the existence of individual rights, and in the fact of Natural law, brings us to oppose all things in which an individual or group seeks to initiate force—that is, curtail the rights of any other individual or group.
>
> We must oppose all brands of socialism, whether it is called Communism, fascism, Fabian socialism, New Dealism or New Frontierism.
>
> We oppose socialism in factories, schools, churches and in the market place. …
>
> We believe, therefore, in a minimal government. The state, at best, exercises those powers which the individuals in that state voluntarily have turned over to the state for administration. …

A great deal of thoughtful consideration went into the preparation of "Here Is Our Policy" and it was subjected to ongoing revision as the years passed. As LeFevre became more involved in the writing of editorials for the *Gazette Telegraph*, he saw his role in the Freedom Newspapers as pivotal in keeping the paper in Colorado Springs in the forefront of libertarian thinking. The masthead of LeFevre's paper read "Colorado's Most Consistent Newspaper" and it was Harry Hoiles' desire that LeFevre write consistently on the themes of human liberty and human freedom. The masthead went on to conclude:

> We believe that one truth is always consistent with another truth. We endeavor to be consistent with the truths expressed in such great moral guides as The Golden Rule, The Ten Commandments, and the Declaration of Independence. Should we at any time be inconsistent with these truths we would appreciate anyone pointing out such inconsistency.

In a June 7, 1955, editorial explaining "Why We Picked Our Slogan," Harry Hoiles wrote that he had never found another newspaper in the United States, with the exception of a Freedom Newspaper, "that can truthfully say that their policies are consistent and say what they are consistent with." It was clearly more important to R. C. and Harry Hoiles and Bob LeFevre to stand by a consistent position than "to take in a few more dollars by trying to be popular." During the course of the following decade, LeFevre and Harry Hoiles both worked together

on establishing a consistent libertarian position on virtually every editorial topic under the sun.

They also managed to work R. C. away from his reliance on the basic precepts of organized Christianity, as well as moving him a little further in the direction of pure freedom. By 1969, when "Here Is Our Policy" was transformed into "Here Are the Convictions That Led to Our Belief in a Universal Single Standard of Conduct," the three basic guides to morality (formerly the Decalogue, the Sermon on the Mount, and the Declaration of Independence) had been reduced to the following "Guide To Morality." The belief in a minimal government had been converted into a belief for a voluntarily supported one.

> [I]t is incumbent upon us to state a single universal law or fact as we believe it:
>
> Persons, groups and governments ought not threaten to initiate force or use it to attain their ends. This would certainly mean, Thou shalt not steal individually or collectively. If no person or group stole, there would be no murder, no false witness, no adultery.
>
> To express the belief positively, all individuals or groups should get what they get in a manner that would be profitable to all. Then all would respect the private property of others 100%. That would be true liberty and voluntaryism. …
>
> We do not believe in initiating force for any reason, even though the cause is a "good" one. …
>
> We believe, therefore, in a voluntarily supported government. …
>
> If some do not want to support a police force, they should not be forced to do so. Nor should they receive its services.

Although there was a tendency on reaching an editorial consensus among the Freedom Newspaper editors and editorial writers, there was one area of major disagreement. The issue involved the question of capital punishment. It is probably safe to say that R. C. was tolerant of any opinion so long as it was solidly reasoned and cogently presented—even if it were an opinion with which he disagreed. Bob LeFevre, writing in 1956, said that "Despite the fact the Mr. [R. C.] Hoiles is the head of a corporation which pays me a salary, I do not always agree with him. And to his credit, may I add that Mr. Hoiles doesn't expect me to do so. He only demands that my conclusions be honest and backed by logic." (Robert LeFevre to Albert Penn, May 21, 1956.)

R. C. was to live until 1970, but even his contribution to the Freedom Newspapers' philosophy is evident today, sixteen years after his death. For example, as late as 1984, the masthead of the *Gazette Telegraph* continued to dedicate itself to the promotion and preservation of individual freedom. "We believe that freedom is a gift from God and not a political grant from government. Freedom is neither license nor anarchy. It is self-control. No more. No less. It must be consistent with the truths expressed in such great moral guides as the Coveting Commandment, the Golden Rule, and Declaration of Independence." R. C. would have certainly

agreed with every statement in that masthead. It sounds as though he could have written it himself.

One of his contributors to a commemorative book published on R. C.'s 75th birthday wrote that if there was such a thing as a typical individualist, then R. C. would certainly serve as his standard. R. C. was a talented businessman and a versatile thinker. He once quoted Zoroaster, taking the citation from a book on the world's religions:

> Salvation cannot be brought to any man by priest or teacher. It can only come from within each human being, and for himself. Salvation can be achieved by good thoughts, good words, and good deeds. All the rest is commentary and elaboration.

By remaining true to himself and building the Freedom Newspaper chain from a single newspaper, R. C. undoubtedly achieved whatever salvation is possible in this world. He certainly had good thoughts, good words, and a strong sense of right and wrong. As one of the unsung heroes of the twentieth-century libertarian movement, his life, his efforts, and ideas deserve our undivided attention.

The Case against T-Bills: And Other Thoughts on Theft

by John A. Pugsley
(from No. 28, October 1987)

Underlying all economic systems, and permeating all economic questions, whether they are about the value of assets, or political programs to foster economic change, is the fundamental question of the nature of exchange of transactions—to wit: is any particular exchange of property voluntary or involuntary? The importance of this question to the individual should not be underestimated. The solution to virtually all social problems can be derived from this starting point. The entire "science" of economics is built around it. And the monetary problems of this country, which lead to the investment problems you have as an individual, all originate because individuals fail to ask this question.

Let us begin by establishing a definition of theft. I define theft as any involuntary transfer of property from its owner to someone else. While this definition is quite clear, understanding its implications requires some examples. Consider the following situations.

When Is Theft Not Theft?

Responding to a knock at your front door, you open it to find a stranger standing there pointing a pistol at you. He demands money. Being of sound mind, you give him what you have.

Your property has been taken from you without your voluntary consent, and therefore this would be an act of theft by our definition.

Suppose that you later find out that the individual who demanded your money used it to satisfy an essential need—let's say he was hungry and he used the money to buy food. Does the fact that he needed the food mean that the act of taking money from you was not an act of theft? In other words, is there any need he might have for the money that would convert his act from theft to something else? No, by definition, it was still stealing.

Suppose that you find out that the culprit used the money to satisfy an essential need of someone else—let's say his daughter was ill and needed the money for medicine. Does this change the nature of the act from theft to not theft? In other words, is there any need someone else might have that would change your opinion of the act and make it not an act of theft?

Suppose that you find that the man with the gun was not acting by himself, but instead had been hired by a group of people to take your money. Would the fact that they had hired him transform his act from theft into something else? Is it possible that the number of people who were involved in hiring him has a significance? If ten people met and decided to hire him to take your money, would that change what we called his act? How about 10,000?

What if 10,000 people met and hired the gunman, and they used the money to buy medicine for someone's ailing child? Would the fact that so many people were involved, coupled with the fact that the money was used for a "good" cause make a difference in how the act was defined? What if the people who took your money without your consent decided to buy something with the money that they could all enjoy (perhaps a nice color TV set), and they allowed you to occasionally come and watch it. Would the fact that you could participate in the use of the goods for which your money was taken make the act not an act of theft?

The conclusion that most people would come to in considering these questions is that no matter what the money is used for, and no matter how many people consent to taking it from you by force, and no matter who else needs the money, it is an act of theft if the owner of the property—you—do not voluntarily (and that means without any kind of threat) consent to part with it.

By Definition, Taxation Is Theft

How does the IRS agent who collects our taxes differ from the gunman? He does not. You are forced to pay under threat of imprisonment (the gun). Your money is taken without your voluntary consent. It is used by other people who claim that their need is a just demand on your property. The process is justified because a group of people (voters) decide as a group that you should be robbed and that the money should be used for whatever purposes they deem proper.

The next objection that is normally raised is that even though we might define taxation as theft, it is still necessary and proper in order to ensure that the

"needs"of society for government services are fulfilled. I have answered this a number of times before, so I won't attempt to refute this premise in any great detail at this point. Let me just throw out a couple of thoughts for your contemplation.

First, I reject the idea there is some real, definable entity out there called "society." There are only individuals. Only individuals live, think, and act. Groups do not think or act. So if property is being transferred, it is always being transferred from one individual to another individual. Consequently, we are back to the key question, does one individual's need constitute a just and rational claim on the property of another?

Will the Means Fit the Ends?

There is no moral question involved here. It is a matter of ends. If the end objective of a social system is to provide the safest environment for the individual members, and is to result in the highest average standard of living for those individuals, then I can easily prove that any form of theft would be wrong. Every successful act of theft, no matter how large or small, diminishes the total production of the members of society in that it reduces the incentive of the recipient of the plunder to be productive. It also results in the diversion of labor away from consumable goods to the production of defensive goods, such as locks, fences, alarm systems, police forces, etc.

A social system based on theft, whether it's called taxation or anything else, cannot promote the highest standard of living for the individuals in that society. In fact, the higher the degree of theft, the lower the standard of living. The reason that Russians suffer a lower standard of living than Frenchmen is that the Russian social system confiscates more property from individuals than does the French system. The reason the average Swiss has a higher standard of living than the average Frenchman is because the Swiss system is less confiscatory than the French. Taxation—whether in the form of direct taxes, regulation, or inflation—varies in intensity from nation to nation. The result, however, is identical—the greater the involuntary transfer of property, the lower the standard of living.

Voluntary Citizenship?

I recently received the following letter from a reader who feels that perhaps taxation is not theft The reasoning is based on another factor: citizenship.

> Since I began reading your thoughts in 1975 I have believed that taxation is theft—"removal of one's wealth with a threat of force." Recently I confronted a line of logic which makes me question that basic premise.
>
> Each of us who is born in this country is offered citizenship. We may either accept it or we may reject it. If we accept it we do so with conditions attached, namely that we agree to abide by the laws of the

> land. One of those laws states that citizenry shall pay taxes to the state. In accepting citizenship—a voluntary act—are we not also volunteering to pay taxes? If we are volunteering then there is no force involved when the government extracts our wealth in the form of a tax. He who evades payment of taxes owed is actually failing to trade value for value, i.e., tax for citizenship. Having first accepted and taken citizenship, is not the tax evader the thief?

The critical premise in this logic is that citizenship is voluntary. Is it?

There is no doubt that one can relinquish his or her U.S. citizenship, but where could one go, or how could one function without citizenship in some country? The world is such today that there are no geographical areas (with the possible exceptions the polar regions) that are not claimed by one country or another. Inasmuch as all countries exact taxes from their citizens, as well as from their non-citizen residents, one cannot simply move out of his current political jurisdiction and thereby avoid being taxed, since he would find himself in another jurisdiction.

Further, citizenship in any particular country may or may not be voluntary, but citizenship in some country is a practical necessity. Once someone becomes a "person without a country," he is effectively prevented from legally traveling within any country, from crossing borders, and from functioning in normal trade with others.

Finally, the act of relinquishing U.S. citizenship does not exempt one from U.S. income taxes, at least in the eyes of the U.S. government. According to U.S. tax laws, an individual who relinquishes his citizenship must still pay U.S. income taxes for ten years after his citizenship is terminated.

It might be more useful to look at the citizenship question from another viewpoint—namely, that governments consider all people born within their jurisdictions to be the property of the state. Citizenship thus becomes little more than a brand placed on the person to evince ownership by the government.

The Implications

If one takes the position that the taking of property by force or threat of force is always theft, then certainly almost all government actions can be equated to the actions of any armed gang, such as the Mafia. In the same way the Mafia sells "protection," so does the government. Just as the Mafia uses force to control its "territory," extort money, and drive people out of business who are competing with its interests, so does the government.

If you accept the idea that the government is analogous to the Mafia, then your relationship with the government must be examined. Can you deal on a purely voluntary exchange basis with a known thief without yourself becoming an accomplice to the other, coercive activities of that thief? In other words, should

you accept government grants, subsidies and other benefits, knowing they have been taken at gunpoint from someone else?

Many people instantly see the ethical problems in being a direct beneficiary of legal plunder, but many areas in which individuals participate in the process go unnoticed. Along this line, one reader sent the following letter:

> If a person buys some kind of government debt security, wouldn't he be guilty of theft, since he is giving the government a given number of dollars and getting back at a later time more than he put in, the excess of which must be taken away from somebody else by force through taxes?
>
> The company I represent sells term insurance and annuities, which means the money I obtain from them through the sale of annuities will be invested in government securities of some sort. Does this make the company I represent a thief? Does it make the holders of these annuities thieves? Does this make me an accomplice to the crime?

Here is one of the stickiest of all ethical questions related to individual investing, and one that almost all free-market advocates either have not considered, or prefer to politely ignore.

If you lend a thief $100, knowing that he will repay you $150,and that the entire $150 will be stolen from your neighbor, are you guilty of aiding and abetting in the plunder of your neighbor? The question of ethics is not limited to the interest earned on the loan. Lending money to the thief in the first place is aiding that thief in the pursuit of his activities.

Would you lend money to your local safecracker when his business was bad and he was temporarily short of funds? Would you agree to lend money to the government of Russia; or would you have lent it to Idi Amin in Uganda; or to the German government when Adolf Hitler was in power? Would you be implicated in the crimes performed by those governments if you helped finance them with your loans?

I have pondered this question for years, and I have been unable to avoid this conclusion: the purchaser of government securities is just as guilty of participating in the activities of government, and benefitting from government plunder as is the person who accepts government benefits of any kind. If you consider theft immoral, irrational, or just antiethical to the well-being of your society, and you consider government to be a thief, then buying government securities is a wrong action.

I don't believe that this position is likely to be accepted by many people. Few would forego the benefits of Treasury securities (e.g., safety and return) in order to uphold a principle. Even if a person recognizes that buying the government's IOUs aids and abets the government's crime, the act could be rationalized on the basis that the person's contribution to the problem is so small that it doesn't matter. Or, a person could take the position that if he didn't lend the government the

money, someone else would. Or, that government securities are the only absolutely safe investment on the market, and so he has no alternative.

These three arguments, however, are based on three false premises: (1) that stealing is all right if you don't steal very much; (2) that stealing is all right because someone else will steal the goods if you don't; and (3) that stealing is all right if it's the best way to get what you want. If you accept any one of these, then you can certainly justify stealing anything you want at any time.

Assuming you buy this logic, then buying government securities or participating in the marketing of government securities is a tacit acceptance of the methods of government, and the acts of theft for which government is used.

Conclusion

The moral case against taxation is strong, even though most people may prefer not to think about it. The moral case against dealing on any level with thieves is strong, as well.

If you decide that taxation is wrong, or that engaging economic transactions with the government is wrong, don't expect much support from friends, family, or business acquaintances. You'll probably be considered a bit eccentric, stupid, and in some cases un-American if you advocate this position. In the end however, it's your own opinion of your actions that counts.

The alternatives to dealing with and through government are obviously less rewarding in the short term than is the use of the mechanisms of government. Not all things sponsored by government can be avoided. You are not forced to accept government subsidies. You can sell your product to the free market. You are not forced to allow government to protect you from your competition. You can beat them fair and square by building a better product for less. You are not forced to invest in government securities. The are plenty of private individuals and companies who will be willing to borrow money from you at attractive rates. And although these securities may carry more risk, remember that the risk-free nature of government securities is based on governments' ability to tax (steal). □

This may not be what you would like to hear. But if you're interested in your long-term well-being, rather than your short-term gain, you should consider it. v

[Editor's Note: The preceding article first appeared in *Common Sense Viewpoint*, October 1983. It has been reprinted here since it generally sets out the case for viewing "taxation" as "theft" and because it raises the thorny question of "how and how far do we distance ourselves from the State?"]

"I Don't Want *Nothing* from *Him*!"

by Carl Watner
(from No. 31, April 1988)

C. V. Myers, the investment analyst, related this story about his principled mother. "She was the most uncompromising immigrant to ever hit the Atlantic shores. She loved to personify the government. She called it '*He*.' She could work up a much better mad about '*Him*' than she could about an 'It.' She said, 'Let *Him* leave me alone, I'll leave *Him* alone. I don't want nothing from *Him*, and let *Him* not ask anything from me.' "

When it came time for her to apply for her Canadian old-age pension, she balked. After long arguments, she was finally cajoled into applying. Myers said, "We told her everyone else got it. She had earned it. Why shouldn't she have it?" After her death, in her bookcase, we found a neat stack of old-age pension cheques—from first to last—none had been cashed! She had stuck by her uncompromising guns. 'I don't want nothing from *Him*, and let *Him* ask nothing from me.' "

How do voluntaryists relate to this story? Why do we have the same attitude as Myers' mother? In short, why is it wrong for us to use State services and/or take anything from the State?

We take it as a given that any action which is wrong or immoral for one person is just as wrong for a few or many. As explained in John Pugsley's article in Whole No. 28 of *The Voluntaryist* ("The Case Against T-bills: And Other Thoughts on Theft"), the State is a criminal institution and the people who comprise it are either criminals or are acting as accessories. The use of the criminal metaphor to describe the State is at least as old as St. Augustine (354–439 A.D.), who pointed out that were it not for the State's claim to administer justice, States would be nothing but big thieves. ("*Remota justitia, quid sunt regna nisi magna latrocinia?*").

Those who accept this starting point, and agree that theft is a coercive and thus an immoral act, would naturally have second thoughts about dealing with a thief. How far do they have to distance themselves from him in order to claim that they do not sanction his act of theft? Do they become an accessory to his crimes by trading with him? Even if a thief "gives" away some of his loot, how can a person acquire valid title to property which the thief has stolen? The thief, possessing no title, can pass none. Doing business with a thief should be avoided for this reason.

How does the State differ from a thief? It doesn't! The State has never had an honestly earned dollar in its treasury! It does however, from time to time, offer each of us the chance to recover some of the money it has stolen from us. Take Social Security as an example. One of the conditions of "above ground" employment is contributing to FICA. If we have been forced to contribute, why shouldn't we claim our share of the benefits when the time comes to retire?

The crux of the problem lies in the fact that there is no way of getting one's own money back. Any money taken from you has been spent long ago. As a consequence, any money you receive from the State would be money that has been stolen from someone else. Patricia Cullinane relates that the following story helped her to get this idea across to her students.

> A band of light-fingered gypsies had set up camp on the outskirts of town. One evening they confronted you with a demand for your silverware. You resist, but they threaten to slit your throat, so you tell them where your silver is hidden. They take it and return to their camp.
>
> Later the next day, after having regained your composure, you enter their campground and demand that your silver be returned. The gypsy leader looks astounded. "But, my dear sir, you seemed perfectly willing to give it up when our agents called on you. We have spent it on a good and worthy cause—we've fed our hungry band and given it to our elderly. At any rate, you can readily see that we no longer have your silver."
>
> With that he tips a melting pot so that you could see the remnants of someone's silver—no one could tell whose. This explanation doesn't satisfy you. So he sends his henchmen out to steal another set of silverware, which he then offers to you.

Should you accept it? Although the gypsies technically owe you silverware, they have no right to steal a second set with which to repay you, nor do you have a right to accept it. The title to that silverware resides with the person from whom it was stolen. If you accept it, you become party to the crime. Your action. while ostensibly an effort to recover your property, has resulted in a second crime.

As this example illustrates, the State has no way of paying back your money except to give you money which has been stolen from someone else. This is the primary reason that it is wrong to accept money or other benefits from the State. Two additional reasons for refusing State handouts are "There is no such thing as a free lunch," and "He who pays the piper inevitably calls the tune." While acceptance of State funds or services can appear to offer relief in the short term, the inevitable long-term cost to you is that you become more and more of a vassal of the State. In addition to the further loss of your freedoms, you pay in the "golden coin" of your self-respect and independence. These hidden costs are destructive of your character and allow the State to set the conditions for the use of that which it grants. In any proposed dealings with the State we should consider that great pair of maxims: '*Finem respice*' and '*Principiis obsta*'—which teach us to 'Consider the end' and thus 'Resist the beginnings.'

We can easily see that the claim, "I'm only getting back part of what I put in"—doesn't hold up. Other common justifications for accepting State funds or services are that "everyone else is doing it," and "if I don't, someone else will." These assertions hardly need answering. Suffice it to say, that the numbers involved don't change the principles. Hitler's henchmen used as their excuse that if

they didn't murder, Hitler would get others to take their places. That may have been true, but the man who pulls the trigger is responsible for his act, regardless of how many replacements there might be for his position.

One other argument comes up fairly frequently. When we refuse to take State benefits, do we not strengthen the State by allowing funds to remain in its hands? In one sense, we do—because the State does maintain control over more resources than if we had taken money or services from it. However, there is another, and much more important, question to be considered, and that is *What happens to my personal integrity* when I receive stolen goods? You have no control over the State, those people who work for it, or those who milk it for all it is worth. However, you do have control over your own actions, and thus you alone are responsible for what *you* do. This is what is meant by the maxim: "Freedom is self-control." Each one of us decides what we do: whether we vote or not; whether we steal; whether we tell the truth or deal in lies; whether we retaliate or seek forceful restitution; whether we deal violently with our fellow man or live in harmony. Your integrity, or lack thereof, is up to you.

Though your refusal to accept State funds may seem at times to strengthen the State, your refusal to accept anything from the State makes *you* a stronger person. It should be clear that acceptance of State money is not a step in the direction of either a better you or a free society. No matter how good your intentions or how 'badly' you might *need* the money, there can never be any justification or profit in departing from principle. And while we cannot control others, the person who acts on this truth sets a powerful moral example for his fellow humans. Though it sometimes appears that all we can do is preserve our own integrity through our refusal to accept State benefits, the impact this might have on others may be greater than we think. We must stand by our principles and let the chips fall where they may, being assured that "if one takes care of the means, the end will take care of itself." V

The Day the World Was Lost

by Milton Mayer
(from No. 31, April 1988)

[Editor's Note: The following excerpt is taken from Mayer's book, *They Thought They Were Free, The Germans 1933–45*, Copyright 1955 by the University of Chicago Press, pp. 176–181. Reprinted by permission. The volume concerns itself with the rise of the National Socialism in Germany prior to World War II.

This passage is of interest for several reasons. First, in the early days of *The Voluntaryist*, we were concerned about the propriety of Libertarian Party officeholders taking an oath of allegiance to the U.S. Constitution when they did not believe

in its legitimacy. Some libertarians claimed that such an action had no significance, and that it constituted no more than a 'white lie' on their personal escutcheon. They felt that they would recite the oath of office in order to gain what they conceived to be a greater good—holding office, which would allow them to implement a libertarian program. As this recitation points out, mental reservations in taking an oath mean nothing. An honorable person should refuse to swear such an oath, if for no other reason than retaining his or her personal integrity.

The second point of interest involves the discussion justifying "the lesser of two evils." Whether the argument be applied to accepting government funds or electing the least harmful candidate, this story demonstrates the falsity of committing a positive evil in the hopes of achieving a greater future good. The lesser of two evils is still always evil.

Thirdly, the chemical engineer had no guarantee that his refusal to take the oath would impede Hitler's activities, but neither did he have any assurances that taking the oath would achieve a positive good. Had he refused the oath, we would simply have an example of "what one man can do." It may not have been much, but it would have served as an example to others and perhaps sparked their resistance. No one ever knows exactly what influence his choices will have on others. That is why it is so important to choose the proper means. The faith that could "move mountains" is simply the recognition that "if one takes care of the means, the end will take care of itself."]

ANOTHER COLLEAGUE of mine brought me even closer to the heart of the matter—and closer to home. A chemical engineer by profession, he was a man of whom, before I knew him, I had been told, "He is one of those rare birds among Germans—a European." One day, when we had become very friendly, I said to him, "Tell me now—how was the world lost?"

"That," he said, "is easy to tell, much easier than you may suppose. The world was lost one day in 1935, here in Germany. It was I who lost it, and I will tell you how.

"I was employed in a defense plant (a war plant, of course, but they were always called defense plants). That was the year of the National Defense Law, the law of 'total conscription.' Under the law I was required to take the oath of fidelity. I said I would not, I opposed it in conscience. I was given twenty-four hours to 'think it over.' In those twenty-four hours I lost the world."

"Yes?" I said.

"You see, refusal would have meant the loss of my job, of course, not prison or anything like that. (Later on, the penalty was worse, but this was only 1935.) But losing my job would have meant that I could not get another. Wherever I went I should be asked why I left the job I had, and, when I said why I should certainly have been refused employment. Nobody would hire a 'Bolshevik.' Of course I was not a Bolshevik, but you understand what I mean."

"Yes," I said.

"I tried not to think of myself or my family. We might have got out of the country, in any case, and I could have got a job in industry or education somewhere else.

"What I tried to think of was the people to whom I might be of some help later on, if things got worse (as I believed they would). I had a wide friendship in scientific and academic circles, including many Jews, and 'Aryans,' too, who might be in trouble. If I took the oath and held my job, I might be of help, somehow, as things went on. If I refused to take the oath, I would certainly be useless to my friends, even if I remained in the country. I myself would be in their situation.

"The next day, after 'thinking it over,' I said I would take the oath with the mental reservation that, by the words with which the oath began, '*Ich schwore bei Gott*,' 'I swear by God,' I understood that no human being and no government had the right to override my conscience. My mental reservations did not interest the official who administered the oath. He said, 'Do you take the oath?' and I took it. That day the world was lost, and it was I who lost it."

"Do I understand," I said, "that you think that you should not have taken the oath?"

"Yes."

"But," I said, "you did save many lives later on. You were of greater use to your friends than you ever dreamed you might be." (My friend's apartment was, until his arrest and imprisonment in 1945, a hideout for fugitives.)

"For the sake of argument," he said, "I will agree that I saved many lives later on. Yes."

"Which you could not have done if you had refused to take the oath in 1935."

"Yes."

"And you still think that you should not have taken the oath."

"Yes."

"I don't understand," I said.

"Perhaps not," he said, "but you must not forget that you are an American. I mean that, really. Americans have never known anything like this experience—in its entirety, all the way to the end. That is the point."

"You must explain," I said.

"Of course I must explain. First of all, there is the problem of the lesser evil. Taking the oath was not so evil as being unable to help my friends would have been. But the evil of the oath was certain and immediate, and the helping of my friends was in the future and therefore uncertain. I had to commit a positive evil, there and then, in the hope of a possible good later on. The good outweighed the evil; but the good was only a hope, the evil a fact."

"But," I said, "the hope was realized. You were able to help your friends."

"Yes," he said, "but you must concede that the hope might not have been realized—either for reasons beyond my control or because I became afraid later on or

even because I was afraid all the time and was simply fooling myself when I took the oath in the first place.

"But that is not the important point. The problem of the lesser evil we all know about; in Germany we took Hindenburg as less evil than Hitler, and in the end we got them both. No, the important point is—how many innocent people were killed by the Nazis, would you say?"

"Six million Jews alone, we are told."

"Well, that may be an exaggeration. And it does not include non-Jews, of whom there must have been many hundreds of thousands, or even millions. Shall we say, just to be safe, that three million innocent people were killed all together?"

I nodded.

"And how many innocent lives would you like to say I saved?"

"You would know better than I," I said.

"Well," said he, "perhaps five, or ten, one doesn't know. But shall we say a hundred, or a thousand, just to be safe?"

I nodded.

"And it would be better to have saved all three million instead of only a hundred, or a thousand?"

"Of course."

"There, then, is my point. If I had refused to take the oath of fidelity, I would have saved all three million."

"You are joking," I said.

"No."

"You don't mean to tell me that your refusal would have overthrown the regime in 1935?"

"No."

"Or that others would have followed your example?"

"No."

"I don't understand."

"You are an American," he said again, smiling. "I will explain. There I was, in 1935, a perfect example of the kind of person who, with all his advantages in birth, in education and in position, rules (or might easily rule) in any country. If I had refused to take the oath in 1935, it would have meant that thousands and thousands like me, all over Germany, were refusing to take it. Their refusal would have heartened millions. Thus the regime would have been overthrown, or, indeed, would never have come to power in the first place. The fact that I was not prepared to resist, in 1935, meant that all the thousands, hundreds of thousands, like me in Germany were also unprepared, and each one of these hundreds of thousands was, like me, a man of great influence or of great potential influence. Thus the world was lost."

"You are serious?" I said.

"Completely," he said. "These hundred lives I saved—or a thousand or ten as you will—what do they represent: A little something out of the whole terrible evil, when, if my faith had been strong enough in 1935, I could have prevented the whole evil."

"Your faith?"

"My faith. I did not believe that I could 'remove mountains.' The day I said 'No,' I had faith. In the process of 'thinking it over,' in the next twenty-four hours, my faith failed me. So, in the next ten years, I was able to remove only anthills, not mountains."

"How might your faith of that first day have been sustained?"

"I don't know, I don't know," he said. "Do you?"

"I am an American," I said.

My friend smiled. "Therefore you believe in education."

"Yes," I said.

"My education did not help me," he said. "and I had a broader and better education than most men have had or ever will have. All it did, in the end, was to enable me to rationalize my failure of faith more easily than I might have done if I had been ignorant. And so it was, I think, among educated men generally, in that time in Germany. Their resistance was no greater than other men's." V

"Voluntary" Contributions to the National Treasury: Where Does One Draw the Line?

by Carl Watner
(from No. 46, October 1990)

ALTHOUGH PEOPLE were arrested or imprisoned for non-payment of taxes prior to 1913, such episodes were relatively few and far between because there were no significant governmental levies against property or income. However, as a result of the passage of the income tax amendment, anyone working for his living, today, is supposed to "contribute" 20 to 25% or more of his income to pay federal, state, and local taxes. If one does not "voluntarily" pay his income taxes, he could be criminally indicted for willful failure to file and pay; his person and property could be subject to seizure and confiscation. Such actions can only be predicated on the premise that both one's body and income belong to the State. If convicted, one could face a lengthy jail term, as well as a hefty monetary fine.

Is the person who does not or will not file or pay his income taxes really a criminal? Probably not. Generally, his income has been honestly earned by providing a product or service for those who choose to trade with him. Only a federal or state prosecutor would dare to come forward with a criminal indictment (the State hav-

ing been deprived of much-needed obeisance and funds). In short, he must accuse the would-be criminal of committing a victimless crime, because there is no individual whom he has physically harmed, or whose property he has trespassed against.

We have grown up in an atmosphere of State control over our lives, and to knowingly refuse to file and pay taxes is to court great danger. The psychological aspect of tax refusal is to wonder when the long arm of the law will descend upon the "refuser." Intimate business associates become shy in dealing with such person because they perceive his actions may snare them in vicious net, even if their activities are legitimate from the point of view of the law, so-called. The objector's family becomes wary of strangers, who might be nosy I.R.S. agents, and his wife wonders what might become of her children, herself, and her home in the event her husband is prosecuted. The State, through its direction of schooling, its use of media propaganda, and its impact on the culture around us, wages psychological warfare against those who refuse to kowtow to its image of control and authority.

Despite the relentless campaign to obtain voluntary compliance with the tax laws of the State, some people have chosen to become conscientious objectors against taxation, and in particular, against income taxation. This latter is where some "draw the line." It appears to them to be totally contrary to an ethic of life-survival to support one's enemy voluntarily. By conscientious objection, such people refer to the awareness that taxation is theft, and therefore a wrong committed against them. Like one who, when called upon in time of war to fight for his country, refuses to do so because of conscientious moral or religious scruples, these people are the ones who, when called upon to contribute their "fair" share of income taxes, refuse to do so out of knowledge of the evil of the State and the wrongness of taxation.

The conscientious objector rejects the State and the income tax for two reasons. First, he objects to their compulsory nature, and secondly, to the odious uses to which the State employs the money so collected. Government employees are the only group of people in society that regularly and "legally" use physical force, or its threat, to collect funds to sustain themselves. Whether the money is spent on ends of which the conscientious objector approves or whether the money is spent on ends of which he disapproves, the main point is that the money has been stolen, and therefore becomes tainted. It should be returned to its owners. Much as many people would like to think otherwise, the ends (whatever Congress decides to spend it on) do not justify the means (the coercive collection of funds).

Here are three ready measures of oppression in human societies. First, to what extent do government employees confiscate or collect property from individuals? This question has already been answered, by pointing out that most people "contribute" 20%, or often significantly more, of their income to various levels of government. Second, to what extent does one become a criminal by minding one's own business? In a society where the State has first claim to one's income, one be-

comes a criminal by refusing to contribute to the State's upkeep, and by refusing to supply the State with the information which it requires in order to calculate the share which you allegedly owe it. Those who in times past have refused to bear witness against themselves, and supply personal financial data, have been found in contempt of court and imprisoned for their obstinance. The measure of social injustice now existing in our society is reflected in the fact that the criminal penalties for income tax refusal are as great, if not greater, than the penalties for assault, rape, or murder. The third measure of oppression: to what extent does one have to ask permission to do as one pleases with one's own person and property? Witness the fact that, in the most "free" country in the world, one must have a government license or permit to engage in many occupations and professions, build a house with one's own money on one's own property, drive a vehicle on a road, travel abroad, or to operate almost any kind of business. These are all signs that we live under a domineering State that is intent on controlling and regimenting us in every conceivable way.

The "burden of proof" argument demonstrates how the government oppresses "its" citizenry. It wants you to prove that you don't owe any taxes, rather then having to positively prove that you do. It is their position that the burden is on you to either file and pay, or to prove why that is unnecessary. In either case, all the collection agents have to do is sit back and wait for their obedient slaves to fill their coffers. If this doesn't happen, then the State which fails to inculcate such obedience is faced with a fundamental challenge to its existence. Its agents must either initiate coercion to collect revenue, or the State must begin the process of 'withering away', which would ultimately bankrupt a private group of people. When faced with this threat of shriveling up from loss of revenue or using coercion and its threat to sustain their income, the State has always historically flexed its muscles and jailed resisters—to demonstrate, first, that it means business, and second, to bully the majority into subservience by demonstrating what happens to those who chose to resist.

The State is a criminal and anti-social institution because its agents must initiate violence against peaceful people, and confiscate their property, and/or place them in jail for refusal to acknowledge its jurisdiction. The difference between private groups of people and the State is that no matter how influential or wealthy the former become, they never have the legal right to require you to deal with them. Those who see no gain from dealing in the market place, refrain from doing so, and are left alone. It is no crime to be a hermit. State power, however, is of different character. As "citizens" we find ourselves living in geographic area where defense services (police, army, and courts), and some social services (for example, first-class mail delivery, monetary legal tender laws) are coercively monopolized by the government. Whether or not we wish to be bound by its laws or patronize its monopoly services, we are forced to do so. There is no "right to ignore the State," as Herbert Spencer so eloquently argued.

The case for conscientious objection to the State rests on the basic moral premise that it is wrong for anyone to engage in aggression against non-aggressors. People, so long as they harm no one else, should be left alone. The State, and its agents, must always violate this precept, or else cease being a State. Since there are only two ways of inter-relating with other people in society—either voluntarily or coercively—State agents and people who support the State are faced with a dilemma. Do they act as accessories to the crimes of coercion, extortion, and theft, or do they distance themselves from the State; the former—by resigning their official positions, and the latter by refusing to pay taxes? Conscientious objectors to taxation, like Henry David Thoreau, have already answered this question. They will not be compelled, even under the direct threat or use of force, to bear witness against themselves, or to acquiesce in payment of their taxes, so-called. They do not wish to be accused of complicity in government crimes, whether against themselves or others.

The first three centuries of the Christian church's existence, when Christians were opposed to war and other forms of violence, illustrate the origins of conscientious objection to State power. The Christian opposition to war expanded into denial of the rightness of all coercive action on the part of the civil power, and thus arose that form of conscientious objection which is being discussed here. It may be identified as voluntaryist in nature, characterized by political non-participation, objection to the State, and taxation. Its manifestations are the refusal to serve or deal with the government in any way: the refusal to vote, to hold political office, volunteer information, pay taxes, etc.

Another historical form of conscientious objection was exhibited during the era of State-imposed religions. Those whose beliefs differed from the State's orthodoxy had to go underground, flee the country, or convert (at least cosmetically) in order to survive. The history of the Society of Friends (the Quakers) from its origins in seventeenth century England is an example of a people persecuted for conscience's sake, yet who ultimately prevailed. From 1647, when George Fox began his public ministry, until the passage of the Toleration Act of 1689, the Quakers were subject to almost continuous persecution. It was not until the early 1800s, that they were no longer imprisoned for nonpayment of taxes to the Anglican church and that their complete religious freedom was recognized.

The spirit of truth which inspires the conscientious objector demands a unity of means and ends. Conscientious objection to taxation is derived from voluntaryism, which itself is means oriented because of its concern for non-coercion. What the voluntaryist objects to about the State is the means it uses (its ultimate resort to violence and coercion). Although certain government goods and services may be essential, it is by no means necessary that they be provided by the State. The objection is against the means, against the methods of State power, regardless of what ends State power is used for.

Like the abolitionists of Thoreau's time, the conscientious objector realizes that even the most arduous journey begins with a single step. In their struggle to help the slave (often a violation of the federal Fugitive Slave Laws), statist laws and constitutions were nothing to the abolitionists. The old Puritan idea of duty was their ideal: quick in thought, prompt in action, stern love for the right, and the most unflinching advocacy of what one believes to be so, even though the whole world shall oppose. As Wendell Phillips once said, there is nothing higher than the individual's conscience. "We must each learn to feel, in determining a moral question, as if there was no one else in the Universe but God and ourselves."

Once satisfied that both taxation and support of the State are moral wrongs, the conscientious objector can only appeal to the consciences of other members of society—for it is their opinion which ultimately supports government and enforces all law. Unless the laws accord with the moral feelings and usages of the people at large, they will be inoperative and powerless. Freedom grows out of custom and tradition—not out of legislation or State edicts.

The conscientious objector sees a personal duty not to cooperate with evil. This entails performing one's duty regardless of the consequences; otherwise one becomes party to what one realizes is wrong. This means, that like the Russian dissidents of the 1970s and 1980s, conscientious objectors must act whether or not they think their actions will be practical and influential in molding public opinion. Certainly, Vladimir Bukovsky, one of those Russian dissidents, had no way of realizing the cumulative impact of the dissident movement, but he must have implicitly realized that if one takes care of the means, the end will take care of itself—for he wrote in *To Build a Castle* (1977) that, we must grasp the great truth

> that it was not rifles, not tanks, not atom bombs, that created power, nor upon them that power rested. Power depended upon public obedience, upon a willingness to submit. Therefore each individual who refused to submit to force reduced that force by one 250 millionth of its sum.

And, as he added,

> We weren't playing politics, we didn't compose programs for the liberation of the people, we didn't found unions. … Our sole weapon was publicity, …so that no one could say afterward, "I didn't know." The rest depended on each individual's conscience. Neither did we expect victory—there wasn't the slightest hope of achieving it. But each of us craved the right to say to our descendants: "I did all that I could. … I never went against my conscience."[V]

[Editor's Note: Reader's might consult two earlier articles in *The Voluntaryist*, for variations on the same theme: "The Case Against T-Bills: And Other Thoughts on Theft," (No. 28, October 1987) and "I Don't Want *Nothing* from *Him*!" (No. 31, April 1988). Also *A Voluntary Political Government*, edited by Carl Watner,

and available from The Voluntaryists, deals with Charles Lane's and Henry David Thoreau's early tax resistance in the 1840s.]

"Drawing the Line"

by Blair Adams, in *Who Owns the Children?* (1991), p. 292.
(from No. 59, December 1992)

IT CERTAINLY appears, on the surface and in the short run, easier to come to some sort of compromise with the State and allow it to have some say in the education of our children. Yet such a compromise can only feebly palliate our position for that day when the State comes and insists that we must teach what we conscientiously oppose. Minimum Requirements do indeed *appear* reasonable. And probably few Christian parents or schools fail to teach their children the basic subjects that the proponents of this view include in their list of prescribed courses. … This is quite different. however, from acknowledging that the State has the right to *compel* us to teach our children these things, particularly when the State has so miserably failed in teaching "its" own children these very requirements.

Moreover, once we grant this principle, where can we possibly draw the line? If we agree that the State has the legitimate authority to mandate the teaching of that which society generally agrees as essential to social communication and good citizenship because we may agree with those basic requirements today, what if tomorrow the consensus of an increasingly corrupt society (as in Nazi Germany) goes beyond our prior agreement? If tomorrow we say that we cannot agree to the State's requirements, then we can only in good conscience refuse to submit to those requirements if we deny that the State *ever* had that rightful authority in the first place. If the State has *legitimate* power to control education, then obviously that control cannot be defined by those over whom it is to be exercised. Either the State has the legitimate power or it does not. If we accept any governmental authority in this area today, we greatly weaken and compromise our position for the battles that will inevitably come tomorrow. Unless we confess now that absolute, given limits prevent us from submitting in good conscience to any governmental control of education, we shall have compromised our position for the future.

Why Homeschool?

Excerpts from Correspondence between Helen Hegener and Carl Watner
(from No. 65, December 1993)

Mark and Helen Hegener are the homeschooling parents of five children and owners of Home Education Press, which publishes *Home Education Magazine*, a bimonthly homeschooling magazine, and several books on homeschooling and alternative education. Their newest book is *Alternatives in Education*. They have been active in the homeschool movement since 1983, and have been featured speakers at homeschooling conferences across the nation. Their magazine is available from Box 1083, Tonasket, WA. 98855 (6 issues—$24, current issue $4.50).

After the publication of my article, "Who Controls the Children?" in the December 1992 issue of *The Voluntaryist* (Whole No. 59), I wrote the Heelers to see if they would be interested in publishing the story of John and Vickie Singer's struggle to assert their parental rights to homeschool. They were, and it appeared as "John Singer: Martyr or Fool?" in the July-August 1993 issue of *Home Education Magazine*. In that same letter of December 19th, I also mentioned that

> Another short article I have in mind is one dealing with "Why Homeschool." Even if the State did a perfectly wonderful job of educating children in their schools, I would object on conscientious grounds. I object to the compulsory aspects of state schooling: attendance laws, taxation, and penalties for failure to comply with their statutes. I believe this is a completely different perspective—one probably never presented in your magazine.

Helen responded that this was her "personal reason for homeschooling our five kids," and that she and her husband were "more convinced now than we were then [back in the mid-1980s] that the state has absolutely no business telling parents how to raise their children. We haven't been writing as much about these issues lately as we probably should, but they're still there, simmering on the back burner."

On February 13, 1993, I wrote Helen that

> While we both oppose *all* state interference in the realm of the family and schooling, I believe my position goes much further, and hence, implies much more than you see.
>
> For example, take state-mandated birth certificates. In most states, the statues regarding the reporting of births fall under the Dept. of Health and Vital Statistics. Compulsory birth registration would not be justified by statist supporters as an intervention in the realm of schooling, but rather as a requirement to help "promote the general welfare" by enabling the state to identify, process immunization records, and count its population. Compulsory registration does constitute an

invasion of the family, but how many people—including homeschoolers—perceive it that way? Very few, I suspect.

Take another example: taxation by county, state, or federal governments. Isn't taxation an invasion of the family? Money spent on taxes is that much less money the family has to spend on education, health, food, recreation, etc. Of course, I also believe taxation is theft because it is collected under the threat of personal imprisonment or property confiscation if not paid.

The point I am trying to make is two-fold.

First, no matter how small and limited a government starts out (like the American republic in 1789) it inevitably seeks more and more power and control over its people. Taxes grow and grow, and interventions in all areas of life take place. Witness our situation today. We are living in a dictatorship "in all but name." (See my article by this title in the June 1993 *Voluntaryist.*)

My second point is that the existence of any coercive government (no matter how small or limited) means that such a coercive institution must of necessity have an impact on the people it governs. Even if there were a constitutional amendment separating education from the state, I do not believe it is possible to separate the State from the family or schooling. If you have a state, it must have an effect on people and their affairs. If there is a State, it is impossible to separate it from anything.

You may not agree with my conclusion that we do not need a coercive state to oversee our affairs, but I do hope you follow the logic of my argument, and understand the consistency that holds it together. While I agree with your position that the state should not intervene in schooling or family affairs, doesn't this imply that the state may coercively interfere in other areas, such as providing national defense, or providing roads (just to take two examples)? My argument starts out the other way. I am opposed to the use of all coercion, both by the state or private parties—whether it be providing national defense, building roads, providing a common money, educating its citizens, etc., etc. Most people have their favorite areas, in which they support government intervention. I have none.

If we don't take a direct, frontal approach to opposing the state, it seems to me that we are forever fighting brush fires, and thus only opposing specific areas of intervention, such as in homeschooling.

Helen answered on March 29, 1993:

Regarding your point of opposition to all intervention by the state, I can agree on some levels, but I would ask how you define "the state." What comprises a "government, no matter how small or limited." Let's say that two people agree to a plan whereby one of them grows a nice garden and in the fall trades half his crop to the other for plowing his road all winter. Next year a third person joins, offering to supply firewood from his property to both for a share of the garden and getting his road

> plowed. And so on, until a dozen or more families are involved. At what particular point do these agreeably sharing neighbors become a "state" or a "government"? What determines whether these mutually beneficial arrangements are "good" or "bad": their size? Their usefulness to all those concerned? I see some perhaps overly simplified, but still valid parallels, and I would suggest that it's not the system that is necessarily at fault, but the potential for misuse by certain greedy individuals, which, of course, is magnified by the size of the "state" or "government." Unfortunately, their kind will always be with us, leading to the types of misuse that make us all willing to condemn bureaucracies, states, governments, or whatever.
>
> We have no quarrel with schools, per se. Our argument is with the fact that they've been made compulsory, that for the vast majority kids there is no escaping the ineptitude that passes for "schooling" these days. If they were run more like libraries—use what you want when you want to and leave the rest—we think they might actually be nice to have around. It's the way they've been twisted and reshaped into this monolithic bureaucracy that serves no one well that we're against.

I answered her question about how you define 'government' in my letter of April 3rd.

> The 'classic' definition of a government is an institution which claims exclusive jurisdiction over a given piece of territory, exercises the power to tax, and monopolizes certain public services such as police, courts, and external defense. Your neighborhood group is not a government by this definition.
>
> You write: "We have no quarrel with schools, per se. Our argument is the fact they've been made compulsory." I infer that you object to compulsory attendance laws.
>
> You continue: "If they [schools] were run more like libraries—use what you want when you want to and leave the rest—we think they might actually be nice to have around."
>
> The point I was trying to make in my earlier letter is that the compulsion in the State school system involves far more than just compulsory attendance laws. State schools are tax-supported and taxation is compulsory. I oppose compulsory attendance laws, but I also object to compulsory taxation to support the public schools. Even if attendance were not made compulsory, I would still oppose State schools—just as I oppose public libraries—because they are supported by force. Why shouldn't public schools and public libraries receive their funding voluntarily, as do all other businesses and organizations in the free market?
>
> The principle I am trying to demonstrate is that if it is wrong to use coercion to enforce attendance, it is just as wrong to use coercion to collect taxes. As a matter of consistency, if I can compel you to contribute to a school system that you would not voluntarily support, or to which you would not voluntarily send your children, then why should-

n't I be able to compel you to school them in a manner that I prescribe. Or, if I can compel you to send your children to school, why shouldn't I also be able to compel you to send them to the library for a fixed amount of time? And, as a practical matter, I believe that if we do not object to the tax-support that public schools receive, we (as a society) will never reduce or abandon the statist schools.

If I am not mistaken, no one in the home school movement has opposed State schools because they are tax-supported. If I am wrong, please tell me. This is an important issue to me, and I seem to be alone in pointing it out.

I know you are busy, but I hope you might briefly explain your position on the issue of schools, taxation, and compulsion. Or please tell me if you consider it a non-issue.

Helen replied on May 11th:

I've tried to figure out how to reply to your concerns, but the best I can come up with is that it doesn't seem as though the issues of taxation and schooling can be mixed in any reasonable way and made sense of. While you do make a valid point in your letter, they still seem to me to be separate issues. You're right, I can't think of anyone in the homeschooling movement who has objected to state schools on the basis of their being tax-supported. The best reason for this is a fairly simple one: traditional public schooling is so obviously bad for kids, and homeschooling is so obviously good for them, that most of the other concerns such as taxation and compulsion seem to be moot points. Valid, maybe, but moot to most of us in the homeschooling movement. We just go on about our lives and don't worry about the rest of it.

I know this is a non-answer, but maybe it will give you an idea of my standing on the whole question.

My letter of May 15th concluded our correspondence.

Homeschooling is an example of how the moral and the practical coincide. As you point out, there are plenty of practical reasons for homeschooling. In my opinion, there are plenty of moral reasons, too. (And in fact, I would argue that the practicality of homeschooling stems from its moral roots.) First of all, I believe each of us as parents should take a hands-on responsibility for the education of our children; not just a turning over of that responsibility to outside bureaucrats and teachers. The incentive is for 'us', as parents to do a better job. Second, I believe it is wrong to use compulsion and the coercive apparatus of the State to provide or supervise education in any manner whatsoever. The State strives to monopolize whatever it does, tends to destroy all competition, and has no healthy incentive to act efficiently or morally.

Really, the main point I am trying to make is this: Is it ever proper for some people to steal from others—which is what happens when the State taxes its citizens for educational pursuits? I object to having my

property taken from me by the State for educational and/or other purposes. Stealing is wrong, and we should object to it in principle.

If you don't object to this happening now to all of us, how could you expect others to support you when you object to having your 'privilege' to homeschool taxed? It may sound like a ludicrous prediction, but I bet that homeschoolers will someday be socked with a special tax—just to discourage the practice.

Homeschooling gives us the opportunity to avoid having our children indoctrinated with State ideologies. But if we don't oppose statist dogma by pointing out that taxation is theft, that compulsion against peaceful people is wrong,—then we are merely helping to make our children more efficient slaves, not the aspiring free people they have a right and responsibility to become. V

This Far: No More!

by Anonymous
(from No. 68, June 1994)

1994. The numeralization of American society is marching onward. The U.S. federal government is poised for "The Great Leap Forward," into universal health care for the nation. Everyone, it appears, will be issued a health-care smart card, undoubtedly tied to their Social Security number, and having the ability to be encoded with all sorts of personal, financial and medical information.

Everyone but me. That is where I draw the line. I will not use a Social Security number.

What has my refusal to use a Social Security number cost me to date? I am unable to open a personal checking account. I am unable to have a driver's license in nearly every state. I cannot apply for a passport without being reported to the I.R.S. I do not file federal or state income tax forms. In short, I am a non-person as far as the state and federal governments are concerned. I am also a target of the war on cash, a motor-vehicle regulation scofflaw, a tax-evader, and a land-locked domestic resident. Perhaps, too, my refusal will cost me access to professional health care.

Is it necessary to be the object of such sufferings—to take such chances of being prosecuted and thrown in jail? Is it necessary to draw a line in the sand and say, "This far, no more"?

I answer proudly, "Yes."

Why is it necessary to draw the line, and say when you will or won't obey the State? Because there is a point of no return. Eventually you will reach the stage at which the State commands and you obey. That is, unless you say, "No," and choose to resist.

Some of our dealings with the State are unavoidable, such as becoming an American citizen if we are born on American soil. Some are merely matters of convenience, such as using a public library or public school instead of private institutions. (Indeed, it is becoming increasingly difficult to avoid contact with State institutions as the government monopolizes more and more goods and services.)

There is, however, a point at which you must say, "No," if only to retain your own integrity as a human being. Would you kill, pillage and steal for the State simply because you are ordered to do so? Whether you draw the line because the "laws" are too foolish, too expensive to comply with, or are morally wrong, there is a point at which you must take a stand. You must say with your actions, "I will not be a slave." You must end your obedience by refusing to follow coercive political orders regardless of the consequences.

This line of reasoning leads to a second question.

Do I have any responsibility for the actions of the State? Am I responsible for the actions of someone who acts in my name without my permission? I do not, unless by my actions I lend credence to such unauthorized behavior. Perhaps someone could argue that I have some minimum degree of responsibility for what is done in the name of the American government, if for no other reason than I live here in America and my earnings, via the payment of state and federal excise taxes, support the state. But my efforts not to use a Social Security number, not pay federal or state income taxes, not vote, and not receive any government monies, for me at least, are very important steps in saying that I am not responsible for the crimes and actions of these coercive institutions.

I am first and foremost accountable to myself. While it is impossible for me to entirely avoid or evade the State because the world has become a vast prison in which coercive governments are found everywhere, this is no excuse for not drawing a line. I can only do what I can do, and, having done that, I must be satisfied. I have withdrawn my sanction and avoided complicity with the State insofar as is possible.

Everyone is responsible for their own behavior. Each person must decide whether to draw a line, and if so, where it is to be drawn. One thing is certain. If you refuse to face the issue and never draw a boundary, then the State will gain total mastery over you.

All I ask is that you consider the issue. Harry Browne once pointed out that, "The sooner you pay a price, the less the cost." Resolve to draw your line, if you have not done so. The sooner you do, the sooner you will weaken and undermine the power, authority and legitimacy of the governments which attempt to assert authority over you and every other American citizen. As Vladimir Bukovsky, the well-known Russian dissident, explained:

> Power rests on nothing other than each person's consent to submit, and each person who refuses to submit to tyranny reduces it by one

two-hundred-and-fifty-millionth, whereas each person who compromises only strengthens it.

… [P]ower is not created from the barrel of a gun; it is created by the people who are ready to comply with the demand[s of the State]. And if the people withdraw their compliance, the authorities suddenly have no power. …

No matter what happens, I would like to be able to say to my children that I personally did whatever I could. … It is not my fault that I could not change the whole system, but at least I have done as much as I could, personally. V

This article was submitted by an anonymous reader of The Anumeralist. *Reprinted with permission from* The Anumeralist, *Box 2084, Morristown, PA 19404, Nov. 1993.*

A Definition of Freedom

by Julie Watner
(from No. 70, October 1994)

Freedom is a mental condition—a condition of the spirit. All of us are free, if we but choose to acknowledge it. To borrow from Rose Wilder Lane, freedom is control of self. The essence of your "self" is your mind, soul, and spirit. We all are always free to change our thoughts, improve our knowledge and understanding, change our attitudes and beliefs—the inner part of each of us. We do need more folks to recognize that they already are *free*!

Liberty is a condition of the physical body: the absence of physical restraints. We seek liberty to use our resources, time, intelligence, and energy in the most beneficial (to us) way.

A productive, healthy society of freedom- and liberty-minded individuals is not to be confused with a libertine one. The conditions of liberty and freedom, above all, require individual responsibility in every phase of life. Each of us must take the consequences of our actions, good and bad. This is not easy, especially with our Big Brother the State standing by to present at least the illusion of "help" with every aspect of our lives.

Because the root of the problem (irresponsibility) is so ingrained, trying to convince others to live the freedom ideas through slogans, speeches, and hype is usually short on results. At best they provide the spark which causes an individual to seek out new information.

The "library of freedom"—books, pamphlets, newspapers, and magazines—not only documents man's quest from ancient times forward, but also is an

important, longer lasting way to spread the word and fan the spark of interest into a flame.

But "plain-Jane" and unexciting as it sounds, I believe the most effective way to spread the freedom idea is to educate ourselves and raise our children to be honest, knowledgeable, confident, responsible lovers of freedom—to light a single candle. If each one of us lights another candle, and each of those follows suit, the freedom ideas will grow from a quiet bonfire to a *wildfire* engulfing everything in its path.

Living in an environment of liberty and freedom is akin to being a parent—it is the best of times; it is the worst of times. With neither can you ever relax your vigilance, there is always work to be done, you are always being called upon to exercise new skills, and improve upon old ones. There is a tremendous amount of worry involved, also discouragement and uncertainty. On the other hand, it is hard to convey to a non-parent, just as to a statist, the joys, rewards, exhilaration, and satisfactions that make the responsibilities worthwhile. You just have to have faith, jump in, and *do it!* ▽

[Editor's Note: This essay was the winner in a contest sponsored by The Customer Company. The stated object of a one-page essay was to define freedom and suggest the best way to implement it.]

"Vices Are Not Crimes": Defending *Defending the Undefendable*

by Carl Watner
(from No. 77, December 1995)

When I first read Walter Block's "Libertarianism and Libertinism," reprinted in this issue of *The Voluntaryist*, I was inclined to agree with his "Mea Culpa," in which he expressed second thoughts about having published certain sections of *Defending the Undefendable* (1976). Walter expressed regret for being "too enthusiastic" and "wax[ing] eloquent" about the virtues of various deviant, non-violent, but politically-outlawed activities. Although he didn't explicitly identify them, presumably he was referring to his chapters on prostitution and drugs. His "present view with regard to social and sexual perversions is that while none should be prohibited by law, [he] counsel[s] strongly against engaging in any of them."

Never in the twenty-plus years that I have read Walter's writings, have I ever known him to advocate personal participation in these "social and sexual perversions." In fact he specifically states that his defense of

> the prostitute, pornographer, etc. is … a very limited one. It consists solely in the claim that they do not initiate physical violence against non-aggressors. Hence, according to libertarian principles, none

> should be visited upon them. This means only that these activities should not be punished by jail sentences or other forms of violence. It decidedly does not mean that these activities are moral, proper, or good.

This being the case, why should Walter be ashamed about having written in defense of the non-aggressive pervert?

This reminds me of a similar situation regarding H. L. Mencken, which is described in a "Personal Note" by Hamilton Owens in *Letters of H. L. Mencken*, selected by Guy J. Forgue (New York, 1961). Not believing that the German people would embrace Hitler, during the mid-1930s, Mencken refrained from criticizing the Nazis. Consequently, Mencken was often called a Nazi supporter. One day he asked if Owens thought he (Mencken) was an anti-Semite. Owens replied in the negative. Reassured, Mencken offered the following, which Owens called "one of the frankest confessions of faith I ever heard from" Mencken:

> "I believe," [said Mencken] "in only one thing and that thing is human liberty. If ever a man is to achieve anything like dignity, it can happen only if superior men are given absolute freedom to think what they want to think and say what they want to say. I am against any man and any organization which seeks to deny or limit that freedom."
>
> I made the obvious comment that he seemed to limit freedom to superior men. His reply was simple, to the effect that the superior man can be sure of freedom only if it is given to all men. So far as my observation goes, that little exchange gets close to the core of the Mencken philosophy.

Extending Mencken's comments to include non-aggressive actions, liberty simply means that perverts have just as much right to their peaceful, corrupt activities as do the rest of us to our own moral, non-aggressive pursuits. As Benjamin Constant wrote in "On Conquest and Usurpation": "Freedom cannot be denied to some men and granted to others." No man is safe when another man's liberty may be politically violated. If one man's rights may be restricted, none are safe. In fact, the efforts to forcibly insure man's morality by passing laws to inhibit his choice of activities is one of mankind's oldest political myths. The attempt to compel virtue by outlawing certain activities is not only doomed to fail, but is self-contradictory. Virtue rests on choice, and if choice is denied what is left of virtue? "If there is to be a chance for the good life, the risk of a bad one must also be accepted. There is no escape from that."

As responsible and self-disciplined adults, what lessons are there for us in *Defending the Undefendable*? First, as Ayn Rand pointed out, we have to be prepared to accept the least attractive instance of a principle. In other words, if we are to stand by the statement "no aggression against non-aggressors" we have to defend the right of the immoral to be immoral and the virtuous to be virtuous. There is no middle ground. As Walter and others have repeatedly said, this does not mean that

we endorse, sanction, or personally participate in these perversions, but only that we consistently demand that every *peaceful* person be left alone. Secondly, it is necessary to formulate and elaborate a personal code of ethics to explain why these perverted activities are vicious and morally wrong. We need to be able to explain to our children why they should refrain from these pernicious activities, yet at the same time we defend the right of these people to be "the scum of the earth." Everyone needs to understand why these perverts have rights, and why they are not admirable or to be emulated.

Walter has made a good beginning in this direction. Any successful ethical code has to be life-oriented, and focused upon personal and family survival. None of these perverted activities build strong character, independence, self-control, or teach moderation. Intemperance, promiscuous sex and taking drugs lead to self-destruction of both the mind and body, and hence are to be avoided and shunned. These vices will undoubtedly exist in a stateless world, as they do in a statist environment. Thus we must teach our children that it takes morally strong individuals to resist both the lure of the State and the seemingly attractive snares of libertinism. They must learn that if they cannot govern themselves, then someone else will try to rule them. Only self-controlled individuals can earn freedom and liberty. People must be good and virtuous to be free in mind, body, and spirit.

Proper discipline of our children teaches them how to be self-governors. This in turn leads to success in the disciplines of life. Self-discipline is critical to success in every realm of life. If you can teach them correct principles, ultimately you'll be teaching them to govern themselves. This in turn leads to a freer society. This recalls the words of Albert Jay Nock, who wrote that the only thing that the individual can do "is to present society with 'one improved unit.' " A person who practices all sorts of vices is not an "improved" or improving person. "It is easy to prescribe improvement of others, … to pass laws." But the voluntaryist method is "the method of each 'one' doing his best to improve" himself. This is the "quiet" or "patient" way of changing society because it concentrates upon bettering the character of men and women as individuals. As the individual units change, the improvement of society will take care of itself. In other words, "If one takes care of the means, the end will take care of itself."▽

Libertarianism and Libertinism

by Walter Block
(from No. 77, December 1995)

THERE IS perhaps no greater confusion in all of political economy than that between libertarianism and libertinism. That they are commonly taken for one another is an understatement of the highest order. For several reasons, it is difficult

to compare and contrast libertarianism and libertinism. First and most important, on some issues the two views do closely resemble one another, at least superficially. Second—perhaps purely by accident, perhaps due to etymological considerations—the two words not only sound alike, but are spelled almost identically. It is all the more important, then, to distinguish between the very different concepts these words represent.

I. Libertarianism

Libertarianism is a political philosophy. It is concerned solely with the proper use of force. Its core premise is that it should be illegal to threaten or initiate violence against a person or his property without his permission; force is justified only in defense or retaliation. That is it, in a nutshell. The rest is mere explanation, elaboration, and qualification—and answering misconceived objections.[1]

Libertarianism is a theory about what should be illegal, not what is currently proscribed by law. In some jurisdictions, for example, charging in excess of stipulated rent levels is prohibited. These enactments do not refute the libertarian code since they are concerned with what the law is, not with what it should be. Nor does this freedom philosophy technically forbid anything; even, strictly speaking, aggression against person or property. It merely states that it is just to use force to punish those who have transgressed its strictures by engaging in such acts. Suppose that all-powerful but evil Martians threatened to pulverize the entire earth and kill everyone on it unless someone murdered the innocent Joe Bloggs. The person who did this might be considered to have acted properly, in that he saved the whole world from perishing. But according to the doctrine of libertarianism he should still be guilty of a crime, and thus justly punishable for it. Look at it from the point of view of the bodyguard hired by Bloggs. Surely, he would have been justified in stopping the murder of his client.[2]

Note that the libertarian legal code speaks in terms of the initiation of violence. It does not mention hurting or injuring or damaging. This is because there are so many ways of harming others that should be legal. For example, opening up a tailor shop across the street from one already in business, and competing away its customers, surely offends the latter firm; but this does not violate its rights. Similarly, if John wanted to marry Jane, but she agreed instead to marry George, then once again a person, John, is harmed; but he should have no remedy at law against the perpetrator, George. Another way to put this is that only rights violations should be illegal. Since in this view people only have a right to be free of inva-

1. For further explication, see Rothbard, 1970, 1973, and 1982; Hoppe, 1989, 1990, and 1992; and Nozick, 1974.
2. For this example, as for so much else, I am indebted to Murray N. Rothbard.

sions, or interferences with their persons or property, the law should do no more than enforce contracts, and safeguard personal and private property rights.

Then there is the phrase "against a person or his property." This, too, must be explicated, for if libertarianism is predicated on punishing uninvited border crossings or invasions, then it is crucial to know where your fist ends and where my chin begins. Suppose we see A reach his hand into B's pocket, pull a wallet out of it, and run off. Is the pickpocket guilty of a crime? Only if the previous possessor of the wallet were the legitimate owner. If not, if A were the rightful owner merely repossessing his own property, then a crime has not been committed. Rather, it occurred yesterday, when B grabbed A's wallet, which he is now repossessing.

In the case of the human body, the analysis is usually straightforward. It is the enslaver, the kidnapper, the rapist, the assaulter, or the murderer who is guilty of criminal behavior, because the victim is the rightful owner of the body being brutalized or confined.[1] Physical objects, of course, present more of a problem; things don't come in nature labeled "mine" and "thine." Here the advocate of laissez-faire capitalism relies on Lockean homesteading theory to determine border lines. He who "mixes his labor" with previously unowned parts of nature becomes their legitimate owner. Justice in property is traced back to such claims, plus all other non-invasive methods of title transfer (trade, gifts, and so on).

"Uninvited," and "without permission" are also important phrases in this philosophy. To the outside observer, aided voluntary euthanasia may be indistinguishable from murder; voluntary sexual intercourse may physically resemble rape; a boxing match may be kinesiologically identical to a street mugging. Nevertheless there are crucial differences between each of these acts: The first in each pair is, or at least can be, mutually consensual and therefore legitimate; the latter cannot.

Having laid the groundwork, let us now relate libertarianism to the issues of prostitution, pimping, and drugging. As a political philosophy, libertarianism says nothing about culture, mores, morality, or ethics. To repeat: It asks only one question, and gives only one answer. It asks, "Does the act necessarily involve initiatory invasive violence?" If so, it is justified to use (legal) force to stop it or punish the act; if not, this is improper. Since none of the aforementioned activities involves "border crossings," they may not be legally proscribed. And, as a practical matter, as I maintain in *Defending the Undefendable*, these prohibitions have all sorts of deleterious effects.

---

1. In the religious perspective, none of us "owns" his own body. Rather, we are the stewards of them, and God is the ultimate "owner" of each of us. But this concerns only the relation between man and Deity. As far as the relationship between man and man, however, the secular statement that we own our own bodies has an entirely different meaning. It refers to the claim that we each have free will; that no one person may take it upon himself to enslave another, even for the latter's "own good."

What is the view of libertarianism toward these activities, which I shall label "perverse"? Apart from advocating their legalization, the libertarian, qua libertarian, has absolutely no view of them at all. To the extent that he takes a position on them, he does so as a non-libertarian.

In order to make this point perfectly clear, let us consider an analogy. The germ theory of disease maintains that it is not "demons," or "spirits," or the disfavor of the gods that causes sickness, but rather germs. What then, is the view of this theory of disease on the propriety of quarantining an infected individual? On the electron theory of chemistry, of astronomy? How does it weigh in on the abortion issue? What position do germ theoreticians take on the Balkan War? On deviant sexual practices? None whatsoever, of course. It is not that those who believe germs cause disease are inclined, however slightly, toward one side or the other in these disputes. Nor is the germ theorist necessarily indifferent to these disputes. On the contrary, the germ-ists, *qua* germ-ists, take no position at all on these important issues of the day. The point is, the germ theory is completely and totally *irrelevant* to these other issues no matter how important they may be.

In like manner, the libertarian view takes absolutely no moral or valuative position on the perverse actions under discussion. The only concern is whether the actions constitute uninvited initiatory aggression. If they do, the libertarian position advocates the use of force to stop them not because of their depravity, but because they have violated the one and only libertarian axiom: non-aggression against non-aggressors. If they do not involve coercive force, the libertarian philosophy denies the claim that violence may properly be used to oppose them, no matter how weird, exotic, or despicable they may be.

II. Cultural Conservatism

So much for the libertarian analysis of perversity. Let us now look at these acts from a completely different point of view: the moral, cultural, aesthetic, ethical, or pragmatic. Here, there is of course no question of legally prohibiting these actions, as we are evaluating them according to a very different standard.

But still, it is of great interest how we view them. Just because a libertarian may refuse to incarcerate perverts, it does not mean he must remain morally neutral about such behavior. So, do we favor or oppose? Support or resist? Root for or against? In this dimension, I am a cultural conservative. This means that I abhor homosexuality, bestiality, and sado-masochism, as well as pimping, prostituting, drugging, and other such degenerate behavior. As I stated in Part I of my three-part interview in *Laissez Faire Books* (November 1991):

> The basic theme … of libertarianism [is that] all nonaggressive behavior should be legal; people and their legitimately held private property should be sacrosanct. This does not mean that nonaggressive acts such as drug selling, prostitution, etc., are good, nice or moral activities. In

> my view, they are not. It means only that the forces of law and order should not incarcerate people for indulging in them.

And again, as I stated in Part III of the same interview (February 1992):

> I don't see libertarianism as an attack on custom and morality. I think the paleolibertarians have made an important point: just because we don't want to put the pornographer in jail doesn't mean that we have to like what he does. On the contrary, it is perfectly coherent to defend his right to engage in that profession and still detest him and his actions.

In order to better pinpoint this concept, let us inquire as to the relationship between a libertarian and a libertine. We have already defined the former term. For our purposes here, the latter may be defined as a person who loves, exults in, participates in, and/or advocates the morality of all sorts of perverse acts, but who at the same time eschews all acts of invasive violence. The libertine, then, will champion prostitution, drug addiction, sado-masochism, and the like, and maybe even indulge in these practices, but will not force anyone else to participate.

Are libertarians libertines? Some clearly are. If a libertarian were a member of the North American Man-Boy Love Association, he would qualify.[1] Are all libertarians libertines? Certainly not. Most libertarians recoil in horror from such goings-on. What then is the precise relationship between the libertarian, *qua* libertarian, and the libertine? It is simply this. The libertarian is someone who thinks that the libertine should not be incarcerated. He may bitterly oppose libertinism, he can speak out against it, he can organize boycotts to reduce the incidence of such acts. There is only one thing he cannot do, and still remain a libertarian: He cannot advocate, or participate in, the use of force against these people. Why? Because whatever one thinks of their actions, they do not initiate physical force. Since none of these actions necessarily does so,[2] the libertarian must, in some

---

1. The issue of children is a daunting and perplexing one for all political philosophies, not just libertarianism. But this particular case is rather straightforward. Any adult homosexual caught in bed with an underage male (who by definition cannot give consent) should be guilty of statutory rape; any parent who permits such a "relationship" should be deemed guilty of child abuse. This applies not only to homosexual congress with children, but also in the case of heterosexuals. There may be an issue with regard to whether the best way to demarcate children from adults is with an arbitrary age cutoff point, but given such a law, statutory rape should certainly be illegal. And this goes, as well, for child abuse, even though there are continuum problems here as well.

2. Of course, as a matter of fact, many if not all pimps, for example, do initiate unjustified violence. But they need not do so, and therefore pimping *per se* is not a violation of rights.

cases reluctantly, refrain from demanding the use of physical force against those who engage in perversions among consenting adults.[1]

The libertarian may hate and despise the libertine, or he may not. He is not committed one way or the other by his libertarianism, any more than is the holder of the germ theory of disease required to hold any view on libertinism. As a libertarian, he is only obligated not to demand a jail sentence for the libertine. That is, he must not demand incarceration for the non-aggressing, non-child molesting libertine, the one who limits himself to consensual adult behavior. But the libertarian is totally free as a person, as a citizen, as a moralist, as a commentator on current events, as a cultural conservative, to think of libertinism as perverted, and to do what he can to stop it—short of using force. It is into this latter category that I place myself.

Why, then, as a cultural conservative, do I oppose libertinism? First and foremost, because it is immoral: Nothing could be more clear than that these perversions are inimicable to the interest and betterment of mankind. Since that is my criterion for morality, it follows that I would find these activities immoral. Furthermore, however, libertines flaunt the "virtue" of their practices and are self-congratulatory about them. If a "low rung in hell" is reserved for those who are too weak to resist engaging in immoral activities, a lower one still must be held for those who not only practice them but brag about them, and actively encourage others to follow suit.

Other reasons could be given as well. Consider tradition. At one time I would have scoffed at the idea of doing something merely because it was traditional, and refraining because it was not. My every instinct would have been to do precisely the opposite of the dictates of tradition.

But that was before I fully appreciated the thought of F. A. Hayek. From reading his many works (for example, Hayek, 1973), I came to realize that traditions which are disruptive and harmful tend to disappear, whether through voluntary change, or more tragically, by the disappearance of societies that act in accordance with them. Presumably, then, if a tradition has survived, it has some positive value, even if we cannot see it. It is a "fatal conceit" (Hayek, 1989) to call into question everything for which good and sufficient reason cannot be immediately given. How else can we justify the "blindly obedient" practice of wearing ties and collars, for example?

Tradition, however, is just a presumption, not a god to be worshipped. It is still reasonable to alter and abolish those traditions which do not work. But this is best done with an attitude of respect, not hostility, for that which has worked for many years.

Religious belief furnishes another reason to oppose libertinism: Few sectors of society have been as strong in their condemnation of perversity. For me in the early 1970s, however, religion was the embodiment of war, killing, and injustice. It was an "unholy alliance" of the Crusades, the Inquisition, religious wars, virgin

sacrifice, and the burning at the stake of "witches," astronomers, non-believers, free thinkers, and other inconvenient people. At present, I view this matter very differently. Yes, these things occurred, and self-styled religious people were indeed responsible. But surely there is some sort of historical statute of limitations, at least given that present religious practitioners can in no way properly be held responsible for the acts of their forebears. Religion now seems to me one of the last best hopes for society, as it is one of the main institutions still competing valiantly with an excessive and overblown government.[1]

To analyze in brief our present plight: We suffer from far too much state interference. One remedy is to apply moral measurement to government. Another is to place greater reliance on "mediating" institutions, such as the firm, the market, the family, and the social club, particularly organized religion. These organizations—predicated upon a moral vision and spiritual values—can far better provide for mankind's needs than political regimes.

Another reason why I oppose libertinism is more personal. I have come to believe that each of us has a soul, or inner nature, or animating spirit, or personhood, or purity, or self respect, or decency, call it what you will. It is my opinion that some acts—the very ones under discussion, as it happens—deprecate this inner entity. They are a way of committing mental and spiritual destruction. And the practical result of these acts, for those able to feel such things, is emptiness and anomie. They may ultimately lead to physical suicide. And this destruction of individual character has grave repercussions for all of society.

III. Examples: Prostitution and Drugs

As an example of this destruction of the individual, consider prostitution. The sinfulness of this act—for both buyer and seller—is that it is an attack upon the soul. In this it resembles certain other forms of conduct: engaging in sex without love or even respect, fornication, adultery, and promiscuity. Prostitution is singled out not because it is unique in this regard, but because it is the most extreme behavior of this type. True, prohibition drives this "profession" underground, with even more deleterious results. True, if the prostitute is a self-owner (that is, she is

1. It cannot be denied that the economic statements representing many religions are hardly ringing endorsements of economic freedom and free enterprise (see Block, 1986 and 1988). This would include pastoral letters from the U.S. Catholic Bishops, the Canadian Conference of Catholic Bishops, the Papal Encyclicals and the numerous statements on such matters from the Reformed Jewish and many Protestant denominations. Nonetheless religious organizations, along with the institution of the family, are still the main bulwark against ever-encroaching state power. They play this role, in some cases, if only by constituting a social arrangement alternative to that provided by government.

not enslaved), she has a right to use her body in any non-invasive manner she sees fit.[1] These may be good and sufficient reasons for legalization. However, just because I oppose prohibition does not mean I must value the thing itself. It would be a far, far better world if no one engaged in prostitution, not because there were legal sanctions imposed against it, but because people did not wish to so debase themselves.

At the opposite end of the scale, in a moral sense, is marriage, certainly an institution under siege. The traditional nuclear family is now seen by the liberal cultural elite as a patriarchal, exploitative evil. Yet it is no accident that the children raised on this model don't go out on murderous rages. Of course, I am not saying that sex outside of the bounds of matrimony should be outlawed. As a libertarian, I cannot, since this is a victimless "crime." As a cultural conservative, however, I most certainly can note that the institution of marriage is under attack as never before, and that its resulting weakness has boded ill for society. I can vociferously maintain that imperfect as real-world marriages are, they are usually vastly superior to the other possible alternatives for taking care of children: the tender mercies of the state, single parents, orphanages, and so on.[2]

For another example, consider drug taking. In my view, addictive drugs are no less a moral abomination than prostitution. They are soul destroyers. They are a slow, and sometimes a not so slow, form of suicide. Even while alive, the addict is not really living; he has traded in a moment's "ecstacy" for focused awareness and competence. These drugs are an attack on the body, mind, and spirit. The user becomes enslaved to the drug, and is no longer master of his own life. In some regards, this is actually worse than outright slavery. At least during the heyday of this "curious institution" during the nineteenth century and before, its victims could still plan for escape. They could certainly imagine themselves free. When enslaved by addictive drugs, though, all too often the very intention of freedom becomes atrophied.

I am not discussing the plight of the addict under the present prohibition. His situation now is indeed pitiful, but this is in large part because of drug criminalization. The user cannot avail himself of medical advice; the drug itself is often impure, and very expensive, which encourages crime, which completes the vicious cycle, and so on. I am addressing instead the circumstances of the user under ideal (legalized) conditions, where the substance is cheap, pure, and readily available, where there is no need of shared needles, and medical advice on "proper" usage and "safe" dosage is readily forthcoming.

---

1. A *legal* right, but not a *moral* right.

2. For an analysis of the government's attack on marriage and the family, see Carlson, 1988, and Murray, 1984.

There are certain exceptions, of course, to this rather harsh characterization. Marijuana may have some ameliorative effects for glaucoma sufferers. Morphine is medically indicated as a pain reliever in operations. Psychiatric drugs may properly be used to combat depression. But apart from such cases, the moral, mental, and physical harm of heroin, cocaine, LSD, and their ilk are overwhelming and disastrous.

Why is it moral treason to engage in such activities, or, for that matter, to pollute one's brain with overindulgence in alcohol? It is because this is a subtle form of suicide, and life is so immeasurably valuable that any retreat from it is an ethical and moral crime. Life, to be precious, must be experienced. Drugs, alcoholism, and the like are ways to drop out of life. What if using these controlled substances is seen as a way of getting "high," a state of being that is exhilarating? My response is that life itself should be a high, at least ideally, and the only way to make it so is to at least try. But it is the rare person who can do anything virtuous at all, while "under the influence."

Once again I reiterate that I am not calling for the legal abolition of drugs. Prohibition is not only a practical nightmare (it increases crime, it breeds disrespect for legitimate law, and so on) but is also ethically impermissible. Adults should have a legal (not a moral) right to pollute their bodies as they wish (Block, 1993; Thornton, 1991). To the objection that this is only a slow form of suicide, I reply that suicide itself should be legal. (However, having said this as a libertarian, I now state as a cultural conservative that suicide is a deplorable act, one not worthy of moral human beings.[1])

We are thus left with the somewhat surprising conclusion that even though addictive drugs are morally problematic, they should not be banned. Similarly with immoral sexual practices. Although upon first reading this may be rather unexpected, it should occasion no great surprise. After all, there are numerous types of behavior which are legal and yet immoral or improper. Apart from the ones we have been discussing, we could include gossip, teasing the mentally handicapped to their faces and making great sport of their responses, not giving up one's seat to a pregnant woman, cheating at games which are "for fun" only, lack of etiquette, and gratuitous viciousness. These acts range widely in the seriousness with which they offend, but they are all quite despicable, each in its own way. And yet it is im-

1. That is, apart from extenuating circumstances such as continuous excruciating pain, intractable psychological problems, and the like. We have said that the essence of morality is the promotion of the welfare of mankind. In instances such as these, it is conceivable that suicide may be the best way to accomplish this. In any case, the response to these unfortunate people should be to support them, not to punish them. Certainly, the imposition of the death penalty for attempted (failed) suicides—practiced in a bygone era—would be the very opposite of what is required.

proper to legally proscribe them. Why not? The explanation that makes the most sense in this quarter is the libertarian one: None of them amounts to invasive violence.

IV. Mea Culpa

Previously, when I argued for the legalization of avant-garde sexual and drug practices (in the [1976] edition of *Defending the Undefendable*), I wrote about them far more positively than I now do. In my own defense, I did conclude the introduction to the [1991 Fox and Wilkes] edition with these words:

> The defense of such as the prostitute, pornographer, etc., is thus a very limited one. It consists solely of the claim that they do not initiate physical violence against non-aggressors. Hence, according to libertarian principles, none should be visited upon them. This means only that these activities should not be punished by jail sentences or other forms of violence. It decidedly does *not* mean that these activities are moral, proper or good.

However, when it came to the actual chapters, I was altogether too enthusiastic about the virtues of these callings. I waxed eloquent about the "value of the services" performed. I totally dismissed the moral concerns of third parties. I showed no appreciation of the cultural conservative philosophy. Nowadays, when I reread these passages, I regret them. It seems to me that the only fitting punishment is not to delete these chapters, but to leave them in, for all the world to see.

Marriage, children, the passage of two decades, and not a little reflection have dramatically changed my views on some of the troublesome issues addressed in this book. My present view with regard to "social and sexual perversions" is that while none should be prohibited by law, I counsel strongly against engaging in any of them.

One reason I defended several of them some twenty years ago is that I was so concerned with the evils of initiatory violence that I failed to fully realize the implications of defending these other activities. I was fooled by the fact that while many of these depraved acts are indeed associated with violence, none of them are intrinsically so, in the sense that it is possible to imagine them limited to consenting adults. Attempting in the strongest possible way to make the point that initiatory violence was an evil—and indeed it is—I unfortunately lost sight of the fact that it is not the only evil. Even though I of course knew the distinction between the legal and the moral, I believed that the only immoralities were acts of aggression. For years, now, however, I have been finally convinced that there are other immoralities in addition to this one.

The mistake I made in my earlier writing, it is now apparent to me, is that I am not only a libertarian but also a cultural conservative. Not only am I concerned with what the law should be, I also live in the moral, cultural, and ethical realm. I was then so astounded by the brilliance of the libertarian vision (I still am) that I

overlooked the fact that I am more than only a libertarian. As both a libertarian and a cultural conservative, I see no incompatibility between beliefs which are part of these two very different universes of discourse. v

References

Block, Walter E. 1986. *The U.S. Bishops and Their Critics: An Economic and Ethical Perspective*. Vancouver: Fraser Institute. □

—1988. "Economics of the Canadian Bishops." *Contemporary Policy Issues* 6, No. 1 (January): 56–68.

—1993. "Drug Prohibition: A Legal and Economic Analysis." *Journal of Business Ethics* 12: 107–18.

Carlson, Allan C. 1988. *Family Questions*. New Brunswick, N.J.: Transaction.

Hayek, F. A. 1973. *Law, Legislation and Liberty*. Chicago: University of Chicago Press.

—1989. *The Fatal Conceit: The Errors of Socialism*. Chicago: University of Chicago Press.

Hoppe, Hans-Hermann. 1989. *A Theory of Socialism and Capitalism*. Boston: Kluwer.

—1990. "The Justice of Economic Efficiency." In Steven Littlechild, ed., *The Austrian School of Economics*. London: Edward Elgar.

—1992. *The Economics and Ethics of Private Property: Studies in Political Economy and Philosophy*. Boston: Kluwer.

Murray, Charles. 1984. *Losing Ground: American Social Policy From 1950 to 1980*. New York: Basic Books.

Nozick, Robert. 1974. *Anarchy, State, and Utopia*. New York: Basic Books.

Rothbard, Murray N. 1970. *Power and Market: Government and the Economy*. Kansas City: Sheed Andrews and McNeel.

—1973. *For a New Liberty*. New York: Macmillan.

—1982. *Ethics of Liberty*. Atlantic Highlands, N.J.: Humanities Press.

Thornton, Mark. 1991. *The Economics of Prohibition*. Salt Lake City: University of Utah Press.

Walter Block is professor of economics at the College of the Holy Cross in Worcester, Massachusetts. *This was written as an introduction to the Portuguese translation of* Defending the Undefendable *(Porto Alegre, Brazil: Instituto de Estudos Empresariais, 1993). The author thanks Lois Allen, Michael Edelstein, Terry O'Neil, Peg Richner, Jeff Riggenbach, Murray Rothbard, and Menlo Smith for helpful criticisms of an earlier draft. The author alone, of course, bears responsibility for all remaining errors and infelicities. Reprinted with permission from* Journal of Libertarian Studies*, 11:1 (Fall 1994): 117–28.*

The Cunning of Governments and the Contributions of Citizens

by Fred E. Katz
(from No. 91, April 1998)

I was born into a Jewish family in a small village in the north Bavarian part of Germany. When the Nazi regime began its harassment of Jews in the 1930s our non-Jewish neighbors said, after each incident: "There is nothing we could do about it. We are just little people. It's the government."

I visited the village thirty years after most members of my family and of the other Jewish families from the village were murdered in death camps. The villagers again said, "There is nothing we could do about it. We are just little people. It's the government." I am not paraphrasing. These were the exact words (in German) announced once again. The villagers' view of themselves and their world was remarkably stable.

Yet some little people, in some little villages, did do something about it. They hid some of these hounded people. They fed some of these hounded people. They helped some of these hounded people escape.

During the visit to my village I found out that there had been one exception to the pattern of passively leaving Jews to the evil deeds of the Nazi government: A lone woman stood by Jews. She brought them food. She talked with them. She did not join in the distancing by the rest of the villagers. But she was not able to save anyone or offer much protection. She said to me, concerning the Nazis, "what they did was not right." And she wept.

Despite such exceptional human beings, the Nazi-German government achieved its objectives of carrying out massive evil because it had the help of a multitude of "the little people," who paid their taxes, sent their sons to the front, and closed their eyes to the savaging of innocent people in their midst.

Are people merely the victims of their government? During the Nuremberg trials of Nazi war criminals it was customary for the accused to say that he was merely following orders established by the government. The accused claimed they were loyal, law-abiding citizens. When faced with an order by one's government one had to obey. Army officers, in particular, invoked the idea of duty. It was one's duty, sometimes they used the term sacred duty, to obey one's government.

Even my fellow villagers in Bavaria believed that it was their duty to obey the government. The government was not merely infinitely bigger and stronger than "the little people" of the village, the villagers also owed a duty to the government. On the basis of this duty they did not question the government's policy of uprooting and murdering Jews who had lived in their midst for centuries. They also did not question the government's right to conscript the young men, their sons, for military service in the war.

When fully one-half of the village's young men did not return from the war—attesting to the fact that uneducated, backwoods people make excellent

cannon fodder—they still did not question their duty to the government. Instead, they erected a plaque in the village square. It was dedicated to the memory of the dutiful obedience of those who did not return. On the plaque is listed the name of each of the village sons who perished in the Second World War. The village thereby remembers, in love and respect, how these sons gave the final measure of devotion to duty.

To me, the sons of the village who perished were my classmates and their older brothers. They had tormented me because I was Jewish. They had broken our dog's leg because he was a Jewish dog. They had made going to school a daily nightmare for me. Then they went off to war, in which they would inflict more torment. In turn, they, their families and their village reaped the harvest of the ultimate torment: death in their own midst.

Were the village sons innately evil? Or were they fairly ordinary sorts of people, who were awash in evil, tormenting Jews when it was a sporting thing to do, going off to war to kill when it was one's duty to do so?

I think they were not innately evil. In many ways they were ordinary people, but their actions were mightily evil. They contributed to their government's pursuit of extraordinary evil, and they did so eagerly. They were not reluctantly evil. They needed little coercing by their government. The remaining villagers, the parents and the sisters of the soldiers, also contributed to evil. They did so by their silence and by their active support of the government and its policies.

How cunning are governments? How do governments obtain the support of their citizens? The Nazi-German government had power over its citizens. With that power at its disposal it could brutally enforce virtually every one of its demands upon the villagers. But usually it did not need to use brute force. In the name of duty the government could, and did, demand sacrifices from its citizens. The citizens responded, including donation of the ultimate sacrifice, the lives of their sons. When this ultimate sacrifice was accepted by the government, when the sons died, the citizens did not question the need for such a sacrifice. They did not turn against their government, in consternation and fury—instead, they sanctified the sacrifice. They erected a plaque.

To be regarded as legitimate, governments need the help of their citizens. It is the citizens who erect the plaques. It is the citizens who do the sanctifying. They bring the fresh flowers to the plaque. They stop by the plaque, on their way to and from work, to look at the names of their sons. First, they do so in a spirit of stricken grief and sorrow. Then, over time, their sentiment turns to pride and a measure of satisfaction in the sons who did their duty for a great cause. They thereby sanctify their sons and the policies of the government.

Without such sanctifications by the citizens, without citizens donating their support for policies, governments are hollow shells. The cunning of governments consists of getting their citizens to attribute sanctity to government policies, no matter how evil they may be. Coercion alone will not accomplish this, not even in

totalitarian countries like Russia before Gorbachev. Government propaganda alone will not accomplish this (although some governments have developed brainwashing to a fine art). Nor is it a matter of leadership alone: Leaders need followers. Followers donate legitimacy to leaders. They do so by using their own autonomy to give or to deny support to the leader. "Leaders" without followers end up in mental hospitals.

When the villagers said they were powerless, "little people" they did not give an accurate description of the support they contributed to the Nazi movement. Throughout Germany the "little people," by the millions, gave both passive and active support to Nazism. Passively, they failed to interfere with the Nazi storm troopers and hooligans who ransacked Jewish homes in the early years of Nazism; and they failed to try to subvert the highly organized extermination campaign when it hit their own neighborhood in the latter years of Nazism. Actively, they collaborated in the Nazi cause by freely joining the Nazi party, by helping to enact its package of programs, by sanctifying its actions, and by donating the lives of their own sons.

The cunning of governments operates by harvesting the contributions of their citizens. The citizens, for their part, have much autonomy to decide what sort of contributions they will make.

A crucial point is how one uses one's autonomy: how one uses the choices one has available. Often we believe we have no autonomy, no freedom to choose, when in fact we have a great amount of autonomy. Even when one lives under an authoritarian government, as in Nazi Germany, or when one finds oneself in a military situation, as American soldiers did in Vietnam, the issue is not whether one has choices, but how one uses the choices one has available.v

□

Participation and the Lie

by Alexander Solzhenitsyn
(from No. 95, December 1998)

OUR PRESENT system is unique in world history, because over and above its physical and economic constraints, it demands of us total surrender of our souls, continuous and active participation in the general, conscious *lie*. To this putrefaction of the soul, this spiritual enslavement, human beings who wish to be human cannot consent. When Caesar, having exacted what is Caesar's, demands still more

insistently that we render unto him what is God's—that is a sacrifice we dare not make!

The most important part of our freedom, inner freedom, is always subject to our will. If we surrender it to corruption, we do not deserve to be called human.

But let us note that if the absolutely essential task is not political liberation, but the liberation of our souls from participation in the lie forced upon us, then it requires no physical, revolutionary, social, organizational measures, no meetings, strikes, trade unions—things fearful for us even to contemplate and from which we quite naturally allow circumstances to dissuade us. No! It requires from each individual a moral step within his power—*no more than that*. And no one who voluntarily runs with the hounds of falsehood or props it up, will ever be able to justify himself to the living, or to posterity, or to his friends, or to his children.

We have no one to blame but ourselves, and therefore all our anonymous philippics and programs and explanations are not worth a farthing. If mud and dung cling to any of us it is of his own free will, and no man's mud is made any the less black by the mud of his neighbors. …

Do not lie! Do not take part in the lie! Do not support the lie! …

In our country the lie has been incorporated into the state system as the vital link holding everything together, with billions of tiny fasteners, several dozen to each man.

This is precisely why we find life so oppressive. But it is also precisely why we should find it natural to straighten up. When oppression is not accompanied by the lie, liberation demands political measures. But when the lie has fastened its claws in us, it is no longer a matter of politics! It is an invasion of man's moral world, and our straightening up and *refusing to lie* is also not political, but simply the retrieval of our human dignity.

Which is the *sacrifice*? To go for years without truly breathing, gulping down stench? Or to begin to breathe, as is the prerogative of every man on this earth? What cynic would venture to object aloud to such a policy as *nonparticipation in the lie*?

Oh, people will object at once and with ingenuity: what is a lie? Who can determine precisely where the lie ends and truth begins? In every historically concrete dialectical situation, and so on—all the evasions that liars have been using for the past half century.

But the answer could not be simpler: decide *yourself*, as *your* conscience dictates. And for a long time this will suffice. Depending upon his horizons, his life experience and his education, each person will have his own perception of the line where the public and state lie begins: one will see it as being altogether remote from him, while another will experience it as a rope already cutting into his neck. And *there*, at the point where *you yourself* in all honesty see the borderline of the lie, is where you must refuse to submit to that lie. You must shun *that part* of

the lie that is clear and obvious to you. And if you sincerely cannot see the lie anywhere at all, then go on quietly living as you did before.

What does it mean, *not to lie*? It doesn't mean going around preaching the truth at the top of your voice (perish the thought!). It doesn't even mean muttering what you think in an undertone. It simply means: *not saying what you don't think*, and that includes not whispering, not opening your mouth, not raising your hand, not casting your vote, not feigning a smile, not lending your presence, not standing up, and not cheering.

We all work in different fields and move in different walks of life. Those who work in the humanities and all who are studying find themselves much more profoundly and inextricably involved in lying and participating in the lie—they are fenced about by layer after layer of lies. In the technical sciences it can be more ingeniously avoided, but even so one cannot escape daily entering some door, attending some meeting, putting one's signature to something or undertaking some obligation which is a cowardly submission to the lie. The lie surrounds us at work, on our way to work, in our leisure pursuits—in everything we see, hear and read.

And just as varied as the forms of the lie are the forms of rejecting it. Whoever steels his heart and opens his eyes to the tentacles of the lie will in each situation, every day and every hour, realize what he must do.

Jan Palach burned himself to death. That was an extreme sacrifice. Had it not been an isolated case it would have roused Czechoslovakia to action. As an isolated case it will simply go down in history. But not so much is demanded of everyone—of you and me. Nor do we have to go out and face the flamethrowers breaking up demonstrations. All we have to do is *breathe*. All we have to do is not lie.

And nobody need be "first," because there are already many hundreds of "firsts," it is only because of their quietness that we do not notice them (especially those suffering for their religion, and it is fitting that they work as cleaners and caretakers). I can point to several dozen people from the very nucleus of the intelligentsia who have been living this way for a long time, *for years*! And they are still alive. And their families haven't died out. And they still have a roof over their heads. And food on the table.

Yes, it is a terrible thought! In the beginning the holes in the filter are so narrow, so very narrow: can a person with so many needs really squeeze through such a narrow opening? Let me reassure him: it is only that way at the entrance, at the very beginning. Very soon, not far along, the holes slacken and relax their grip, and eventually cease to grip you altogether. Yes, of course! It will cost you canceled dissertations, annulled degrees, demotions, dismissals, expulsions, sometimes even deportations. But you will not be cast into flames. Or crushed by a tank. And you will still have food and shelter.

This path is the safest and most accessible of all the paths open to us for the average man in the street. But it is also the most effective! Only we, knowing our sys-

tem, can imagine what will happen when thousands and tens of thousands of people take this path—how our country will be purified and transformed without shots or bloodshed.

But this path is also the most moral: we shall be commencing this liberation and purification *with our own souls*. Before we purify the country we shall have purified ourselves. And this is the only correct historical order: for what is the good of purifying our country's air if we ourselves remain dirty?

People will say: how unfair on the young! After all, if you don't utter the obligatory lie at your social science exam, you'll be failed and expelled from your institute, and your education and life will be disrupted. …

Educational damage is not the greatest damage one can suffer in life. Damage to the soul and corruption of the soul, to which we carelessly assent from our earliest years, are far more irreparable.

Unfair on the young? But whose is the future if not theirs? Who do we expect to form the sacrificial elite? For whose sake do we agonize over the future? We are already old. If they themselves do not build an honest society, they will never see it at all. v

Why I Refuse to Register (to Vote or Pay Taxes)

by Anonymous
(from No. 100, October 1999)

To the Editor of *The Voluntaryist*,

I am anonymously sending this letter to you after looking at *The Voluntaryist* website while surfing the internet (http://members.aol.com/vlntryst). It appears that my ideas might fit somehow with what you call voluntaryism.

I am one of the tens of millions of Americans who don't file tax returns or voluntarily pay taxes. I'm writing this letter to explain something that you and your readers may not be aware of. The reasons for not filing tax returns or voluntarily paying taxes, and not voting, are similar.

They are similar in that both taxes and voting are activities that demand involvement with that coercive institution known as government. Government exercises a monopoly of legal control over a certain geographic area. This encompasses coercive monopolization of the major services that it provides us. To fund these services, the government unilaterally imposes a compulsory levy upon us. These "taxes" are not based on the amount of service the government provides

us, nor upon our request for them. (The government does not offer us the opportunity to do without a particular service, or shop elsewhere for it, or to negotiate the price.) It doesn't care if we didn't want the service, didn't use all that was offered, or simply refused it altogether. The government declares it a crime if we refuse to pay all or part of "our share." It attempts to punish this refusal by making us serve time in jail or confiscating some of our property, or both.

The main reason, however, why I refuse to pay taxes is that I don't want to give my sanction to the government. I, for one, do not consent to our particular government, nor do I want to support any coercive institution. I object, on principle, to the forced collection of taxes because *taxes* are a euphemism for *stealing*. (By stealing, I mean taking another person's property without his voluntary consent.) Stealing is not an activity that leads to social harmony or prosperity. Stealing is anti-life. It is not an activity that can be universalized. If it were, it would result in death and destruction for all. Furthermore, "stealing" or "taxation" is wasteful. Everyone agrees that government money is spent unwisely, wastefully, and on at least some project(s) which would not be voluntarily supported by some taxpayers. But, even if the spending were not wasteful or for some improper purpose, I would still object strenuously because taxes are theft. In other words, I object to the means (the compulsion used by the government)—regardless of how efficiently the money is spent or what it is spent on. I do not want it said about me that I cooperated with the government.

Similarly, I refuse to participate in the electoral process (I simply refuse to register to vote) because I do not want it ever said that I supported the state. When you play a game, you agree to abide by the rules and accept the outcome. Well, I simply refuse to play, and in clear conscience can say that I am not bound by the outcome. Furthermore, there many reprehensible activities taken by the government (you choose your own example) which I do not wish to support. Governments need legitimacy, and one of the major means of establishing legitimacy is to claim that the voters support the government. Just imagine if everyone refused to vote and pay taxes. Government would shrivel up. But, before that happened legislators at every level would probably pass laws that would make voting compulsory. This has already happened in some countries.

I recently read an article by Charles Reich (from his column, "Reflections") on "The Limits of Duty," that appeared in the June 19, 1971 issue of *The New Yorker*. It was written during the Vietnam era, when many draft-age college students were resisting conscription into the United States military forces. Reich wrote:

> Perhaps the best way to understand those who have resisted the draft—by seeking conscientious-objector status, by going to jail, by fleeing to Canada—is to acknowledge that they are demanding to live and to be judged by the old standards as fully responsible moral beings. *They are seeking law, not evading it.* Finding no acceptable standard of

> conduct available in today's organizational society, they have gone to standards that are not their own personal fiat but the old, traditional standards of religion, ethics, and common law. They are saying that they refuse to act in a way that common experience tells them will produce evil—evil that we know about or should know about. (emphasis added, p. 55)

In other words, in refusing to register to vote and in refusing to "register" to pay taxes, I am going back to "the old, traditional standards of religion, ethics, common law," and common sense. I am refusing to act in a way that produces or contributes to evil. I rest my case. v

□

Part V
Voluntaryism vs. the American Government

"With all respect to differences among types of government, there is not, in strict theory, any difference between the powers available to the democratic and to the totalitarian state."

—Robert Nisbet, "The State,"
in D.J. Enright (ed.), *Fair of Speech* (1985),
p. 186.

A Plague on Both Your Houses

by Carl Watner

(from No. 21, September 1986)

SUPPOSE YOU were an advocate of a consistent philosophy of freedom and self-government living in British North America in the early 1770s. What position would you have taken with regards to the on-going resistance to British rule and the establishment of new governments free from Parliamentary control? How would you have analyzed the rhetoric and the actions of the revolutionists? Would you have considered the Declaration of Independence a truly liberating document? Did it emanate from a governmental body that could rightfully be described as a State or was the Second Continental Congress a voluntary body of people that made no claims to national sovereignty? In short, as the revolution unfolded before your eyes, what did you learn about the nature of the State? Did the State ever die in North America or was the Constitution of 1789 merely a continuation of the activities of the pre-revolutionary era?

The classical definition of the State is that it is an institution which possesses one or both (and almost always both) of the following characteristics: (1) it acquires its income by physical coercion, known as taxation; and (2) it asserts and maintains a coerced monopoly of the provision of defense services (police, army and courts) over a given territorial area. As *The Encyclopedia of the Social Sciences* puts it, "The State is a community in which membership is not voluntary but imposed upon all individuals within a given territory." (vol. 7, p. 9) Few would disagree that the State is a complex institution, but all States seem to share certain characteristics: the acquiescence of a majority which allows them to control sufficient physical force to tax, police and defend the population of a specified area; a legislature exists to pass laws to define crimes (against the State); it issues money and maintains a post office. Every State is of necessity a police State because its actions are invasive. By its very nature, the State must violate individual rights, but some States may be more totalitarian than others.

Did a State actually exist in North America during the early days of the revolution? If it did, then how totalitarian was it? Two ready measures of State oppression will be used to answer these questions. The oppressiveness of a State can be determined by (1) judging how much a criminal people become when they simply attend to their own business; and (2) to what extent do government employees confiscate property? If no one became a criminal for minding his own business and no property is "taxed" then it is reasonably safe to say that no State existed. Where do the revolutionary governments of 1776 stand in these respects? To what extent did the revolutionists actually oppose the State? Just because the Americans were opposed to the British State, is it safe to conclude that they were opposed to all States in general, and an indigenous State in particular? How

"stateless" was the ideology of the American revolution? How libertarian was the revolution itself?

The Quakers are a particularly apt group of people to look at in times of revolutionary upheavals because their pronounced pacifism makes them an unlikely threat to either side of the conflict. Most members of the Society of Friends refused to support either the British or the Americans. Their goal was to maintain a passive neutrality, without actively aiding either side. For this they were condemned by both sides. The Quakers were one group of people that offered no threat to the American cause, yet the history of their treatment during the American revolution demonstrates how coercive the American State had become, even before the issuance of the Declaration of Independence. As early as 1775, many Friends refused to sign the articles of Association, the American declaration of October 1774, to abide by the non-intercourse agreements against Britain. Neither the Americans nor the British seemed to understand that the Quaker policy embraced a traditional loyalty to the old order, as well as a passive, if unenthusiastic, obedience to the new. As we shall see, the Quaker attempt to mind their own business made each and every Quaker a criminal from the point of view of American law.

The Quakers were particularly hard hit by the laws compelling military service and the swearing of test oaths. Both sets of laws were passed by many state assemblies. In Massachusetts and Rhode Island, where heavy concentrations of Quakers lived, selective service laws were imposed shortly after the outbreak of the revolution. In Massachusetts, by a law of September 1776, persons refusing the draft or the hiring of a substitute were to be fined 10 English pounds or imprisoned up to two months. (Three young Quakers from Worcester were actually imprisoned soon after the passage of the laws.) In Rhode Island, at first, Quakers were subject merely to the requirement included in pre-war legislation of performing in an emergency certain auxiliary non-combatant but paramilitary duties, such as acting as scouts or messengers. Later in April 1777, the Rhode Island assembly imposed a draft upon all citizens, including Quakers. There was no exemption for conscientious objectors and those who would not find substitutes were to have a distress levied upon their property. (Brock, 200) When a British attack on Philadelphia was expected, the Continental authorities were desperate for men to stem the enemy advance. Two men from a Philadelphia meeting were jailed "for refusing to bear arms or work at the entrenchments near the city." They were released after Friends had intervened with General Israel Putnam.

Due to their rejection of bellicose means, Quakers often refused to handle the paper currency issued by the Second Continental Congress and state assemblies. In their eyes the usage of such money was not financially honest (they preferred using gold or silver coins), since transactions carried on with it, whether by the authorities or by private individuals, did not approximate the true values involved. Furthermore, continental paper money was considered to be a covert means of

taxation to finance the prosecution of the war. "In February 1776, as a result of their outspoken stand against the money, the two Fisher brothers (Samuel Rowland Fisher and his brother of Philadelphia) were advertised as enemies of the American cause, and their stores were temporarily closed down by the authorities." (Brock, 208)

During the period of serious military crisis, when Philadelphia was threatened by British troops, seventeen leading Philadelphia Quakers and three well-known Anglicans were accused of "treasonable relations with the enemy." Their arrests took place between September 2nd and 5th, 1777 and on September 9th the men were removed to Winchester, Virginia, for safekeeping. They were held in custody until April 1778. Two members of the group died during their detention. "The charge of Quaker complicity with the British was undoubtedly false; it was based in part on hearsay, in part on forged documents, and in part on the known neutralist and quasi-loyalist sentiments of these leading members of the Pennsylvania Society." The arrests were precipitated by a resolution of the Continental Congress, issued in late August 1777. The exiles were never tried and branded their imprisonment illegal and arbitrary. (Brock, 251–252, 258)

J. P. Brissot de Warville, who traveled widely throughout the United States, half a decade after the end of the American Revolution, had this to say about the Quakers and the war:

> I believe it was wrong to persecute them so ruthlessly for their pacifist neutrality. Had this been the first time they had refused to fight, had this refusal been dictated by devotion to the British cause, and had it been only cloak to cover their true feelings, then they would have certainly been guilty and the persecution would have been perhaps justified. But their neutrality was dictated by religious beliefs which they had always professed and have continuously practiced. Whatever prejudiced or misinformed writers may say, the truth … is that the majority of Quakers did not favor more one side than the other, and that they helped anyone who needed help, no matter who he was. If a few Quakers did serve in the English army, a few … also served in the American army, and the Society expelled indiscriminately all who bore arms. (Brock, 258)

The experience of the Quakers proves, despite their pacific nature, the belligerents did not leave them alone (the British, in some instances being no less coercive than the Americans). The fight for exclusive jurisdiction between the British and the new "United States" meant there was no place for neutrality. From the very beginning, one either supported the revolutionists or became subject to fines, penalties, imprisonment or distraint of property. The history of the Quakers also demonstrates that the American authorities were exacting taxes from the people under their control even during the first two years of the Second Continental Congress.

In his book, *The Financier and the Finances of the American Revolution*, William Graham Sumner points out that the newly independent colonies "were not able to go on without some taxes." (15) Taxes were not laid in Massachusetts until after the state government was organized in March 1775. In Rhode Island, where the government of the colony went over directly to the revolutionary forces, "taxation was carried on just as before." In Connecticut, "all male persons from sixteen to seventy, except those exempted by law, were liable to taxation." A sinking fund tax was imposed to redeem bills of credit issued by the state of Connecticut in April 1775.

Although taxation did exist on the state level, Sumner points out that it was not until after the Federal Constitution was adopted that the people of the United States paid a tax for federal purposes equal to the import duties which they had paid under British rule. Despite the fact that the revolutionaries would not pay taxes which were levied upon them by a Parliament in which they were not represented, it does not appear that the revolutionary ideology rejected taxation on principle or viewed "taxation as theft." In fact, one of the early rallying calls of the revolution, "no taxation without representation," is worded in such a manner as to imply that "taxation with representation" is perfectly legitimate and acceptable. "In England the only meaning attached to the phrase 'no taxation without representation' was that neither the King nor his Ministers could lay a tax without getting the consent of Parliament." The American theory was that none had the power to tax except an assembly containing representatives of those taxed, men who were actually elected by the persons who were to pay the tax. (Van Tyne, *Causes of the War of Independence*, 217) (But even this theory leaves open the door to taxation without consent, for many people who paid taxes would not be "represented" in such an assembly; or would they willingly consent to the payment of the taxes which a majority of someone else's representatives approved? The whole attempt to connect 'taxation' and 'representation' falls flat because there is no rational way to determine how small or large an area the representatives are to be selected from.)

To get around the need to raise revenue through taxation, most of the state legislatures and the Second Continental Congress resorted to the expedient of issuing paper currency. "The plan of the continental paper was to put it in the power of the Continental Congress to make such expenditures as they saw fit for the common cause, without asking the previous consent of the States, and to bind the States to meet those expenditures by taxation, which would retire and destroy the notes." (Sumner, 41) These issues of paper currency were more in the nature of "anticipations"; they anticipated taxes yet to be raised and were receivable for the payment of future taxes.

The first move towards the issuance of paper currency took place in Massachusetts on May 20, 1775. A month later, the bills were made legal tender and anyone not accepting them was declared an enemy of the country. Many of the other

colonies followed suit. By July 1776, the Rhode Island assembly made its own paper notes, as well as the notes of the Continental Congress, legal tender. Anyone refusing to accept the paper notes as equivalent to real specie dollars was to be denounced as an enemy who "should be barred from all communications with good citizens." (Rothbard, IV: 55)

The idea of issuing "continentals" was first presented to the Second Continental Congress on June 15, 1775, a month after it was convened. It proved an enticing way to finance the war without making the populace pay for it cash on the barrel head. A week later the Congress resolved: "that a sum not exceeding two million of the Spanish milled dollars be emitted by the Congress in bills of credit, for the defense of America." The confederated colonies pledged their credit to redeem the bills. On July 21, 1775, the new paper money finally came from the printers and it was immediately seen that it would be exhausted by the time the notes were numbered and signed. "Straightway (July 25) Congress authorized the issue of another million." Before the end of the year 1775, six millions had been emitted or authorized, and even that was but a small beginning for what was finally issued. (Burnett, 82) By July 22, 1776, the Second Continental Congress had issued over $20,000,000 of notes. (Rothbard, III: 383) At the beginning of 1777, Congress was forced to make an enactment to try to give forced circulation to the continental paper. It was resolved that the paper bills ought to be equal to Spanish dollars, and whoever shall ask, offer, or receive more in said bills for gold or silver than of any other kind of money or shall refuse to receive such bills for goods, "ought to be deemed an enemy and forfeit the value of the money, or goods, …; and the States are recommended to enact laws to this effect." (Sumner, 61)

Sumner notes that depreciation of the continental paper must have begun almost immediately. "It was regarded as the highest crime against patriotism to depreciate it, or to recognize and admit that it was depreciated." (Sumner, 48) Although the Continental Congress did not have the power to make its own notes legal tender, the Congress did support price tariffs and price conventions. These tariffs and devices were "devices for giving a forced circulation to the continental paper, against fact and truth and right. On account of the legal, financial and political vices of the continental currency, in the shape which it had taken by the end of 1776, it failed of its purpose because it encountered the resistance of persons whose interests were imperiled by it. The price Conventions were intended to bear down this resistance in the hopes of still attaining the purpose, in spite of it." (Sumner, 53)

The Second Continental Congress was the governing body of the "united colonies" at the outbreak of hostilities against England. It was the successor to the First Continental Congress, which was the result of an invitation issued by the Virginia House of Burgesses on May 28, 1774. The 12 committees of correspondence were to send delegates to Philadelphia in September, and consult together as to what measures should be taken to procure a repeal of the "Coercive Acts"

passed earlier that year by Parliament. The group was an entirely "extra-legal consultative body" (Morison, xxxiv) that had no legal authority, unless it was able to assume sufficient authority to enforce its recommendations. (Becker 143–144)

Delegates to the First Congress were selected in a variety of ways. Some were appointed by colonial assemblies and others by the committees of correspondence in their respective regions. The strangest election process took place in Kings County, New York. There, two persons assembled; one was made chairman, the other clerk; and the latter certified to the Congress that the former, Mr. Simon Boerum, was unanimously chosen for the County of Kings. (Becker, 139–140) Samuel Seabury, one of the leading Tories in the colonies, criticized it for its presumptuousness. Seabury maintained "that Congress could bind its constituents was nonsense. 'Not one person in 100, in the province at least (New York), gave his vote for their election.' " (Becker, 160). Although the First Continental Congress was supposedly a representative body, it is questionable just whom it represented. In New York, particularly, where there was a great deal of local dissent, the question inevitably arose as to "who were the people and how were their wishes to be known?"

In perfecting the organization of the Congress, which met at Carpenter's Hall in Philadelphia, on September 5, 1774, it was essential at the outset to determine the method of voting. It was agreed that each colony should have one vote. (Burnett, 36, 38) On October 20, 1774, the Congress adopted the plan of Association: "a solemn agreement on the part of the several colonies to pursue a rigid policy of non-intercourse with Great Britain until the grievances complained of should be resolved." (Burnett, 55) The Association primarily relied upon social boycott and ostracism to bring round those who refused to honor the non-importation agreement. The problem was that while individuals could certainly control what they did with their property and control whom they had dealings with, no individual or group of individuals had the right to force merchants or traders who wanted to trade with Britain to cease doing so.

The Second Continental Congress met in Philadelphia on May 10, 1775, pursuant to a resolution of the first Congress that a second congress be held if the King had not redressed their grievances by the following spring. Meanwhile, the Battle of Concord and Lexington had taken place (April 19, 1775) and an informal army of revolutionists had gathered outside of Boston. Fort Ticonderoga was captured the same day that the Congress convened, but the news did not reach them until a week later. The primary business before the Second Congress presented itself in early June. The Provincial Congress of Massachusetts requested advice on two points: First, should the colony of Massachusetts take up and exercise the powers of civil government? And second, would the Continental Congress take command of the army then forming around Boston?

The delegates to the Continental Congress pondered these questions deeply. To take command of an army and call for the establishment of a new civil govern-

ment in the Massachusetts colony would be a definite move towards independence. It would also be a definite move towards statism.

On June 7th, Congress decided to temporarily sanction the creation of a new government in Massachusetts, at least until such time as a "Governor of his Majesty's appointment, will consent to govern the colony according to its charter." (Burnett, 74) A week later, the Continental Congress took measures to raise an army of 15,000 to 20,000 men and on June 15th, Washington was chosen as commander-in-chief of the forces assembled about Boston.

It was shortly thereafter that the Battle of Bunker Hill was fought. Several days before the news of the fighting reached Philadelphia, the Continental Congress had laid out the groundwork for the prosecution of those who "illegally obstructed the American cause." On June 24, 1775, the Continental Congress defined "treason" as the levying of war against the "united colonies," being an "adherent to the King of Great Britain" or "giving him aid and comfort." The resolution authorized the revolutionary legislatures to "pass laws for punishing such persons." (Calhoon, 306) The Second Continental Congress remained in session until August 2, 1775, but before adjourning it set up the continental postal system (July 26, 1775) and appointed two treasurers (July 29, 1775) to keep track of the first emission of paper money which it had authorized (June 22, 1775).

When the Second Congress reconvened on September 5, 1775, its immediate concern was with the status of the revolutionary army and combating the disaffection and disloyalty of the Tories residing in America. Although the Congress refused to do anything about hunting down Tories, it did urge the various local committees to crack down on everyone that might endanger the safety and liberties of America. (Rothbard, IV: 67) In early November, Congress empowered courts martial to impose the death penalty on soldiers convicted of aiding the enemy. (Kettner, 177) By the end of 1775, Connecticut became the "first colony to enact a systematic body of law against Tories, including such severe punishment as forfeiture of all property and three years imprisonment." (Rothbard, IV: 72)

The Continental Congress had reason to be concerned about the Tories, particularly in the areas around New York. In November 1775, the freeholders of Queens County declared their neutrality in the war and armed in their own defense. The Continental Congress resolved to smash this resistance and in January 1776, sent 1,200 soldiers to Queens County. The continental troops declared the entire county in a virtual state of outlawry and announced that no inhabitant was to leave the county without a passport issued by the New York Committee of Safety. (Rothbard, IV: 75)

During the year 1776, the radical revolutionaries in the colonies and the Continental Congress found themselves in a quandary. How could they assert the sovereignty of the soon-to-be independent "United States" without violating the rights of those who remained neutral and those who took the King's side? Was there any way to assert exclusive jurisdiction without injuring the Loyalists and

neutrals? Congress was faced with a dilemma, for boycott and ostracism did not seem adequate. Therefore on January 11, 1776, Congress resolved "that whosoever should refuse to receive in payment Continental bills, etc. should be deemed and treated as an enemy of his country, and be precluded from all trade and intercourse with the inhabitants." (Being declared an "enemy of his country" implied other forceful penalties.)

During the next few months, the movement for independence forged ahead. Tom Paine's *Common Sense* was published in early January 1776, and word of Parliament's law of confiscation reached the Continental Congress at the end of February. By early May 1776, Congress advised the colonies to suppress all crown authority and to assume the reins of government. On June 7, 1776, Richard Henry Lee introduced a three-part resolution before the Continental Congress.

> That these United Colonies are, and of right ought to be free and independent states, that they are absolved from all allegiance to the British Crown and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved.
>
> That it is expedient forthwith to take the most effectual measures for forming foreign alliances.
>
> That a plan of confederation be prepared and transmitted to the respective colonies for their consideration and approbation.

Before the Continental Congress took up debate on the Lee resolutions, it had to deal with the pressing problem of defining the legal status of dissent in the soon-to-be independent colonies. Congress recommended to the New York Provincial Congress that it "make effectual provision for detecting, restraining, and punishing disaffected and dangerous persons in that colony and to prevent all persons from having any intercourse or correspondence with the enemy." (Nettels, 43) On June 18th, Congress confirmed that suppression of the disaffected Tories was to be carried out by public authorities and not by private action: "No man in these colonies, charged with being a Tory or unfriendly to the cause of American Liberty, be injured in his person or property, or in any manner whatsoever disturbed, unless the proceedings were sanctified by the Continental Congress or the local authorities." (Kettner, 178)

On June 24, Congress moved to clarify the legal situation and took steps that turned disaffection into treason. Recognizing the need to provide a clear legal basis for the suppression of the internal threat, the delegates passed three resolutions:

> That all persons residing within any of the United Colonies, and deriving protection from the laws of the same, owe allegiance to said laws, and are members of such colony; and that all persons passing through, visiting, or make [sic] a temporary stay in any of the said colonies, being entitled to the protection of the laws during the time of such passage,

> visitation, or temporary stay, owe during the same time allegiance thereto.
>
> That all persons, members of, or owing allegiance to any of the United Colonies, as before described, who shall levy war against any of the said colonies with the same, or be adherents to the king of Great Britain, or other enemies of said colonies, or any of them, within the same, giving to him or them aid and comfort, are guilty of treason against such colony. (Kettner, 179) [The resolve then urged the 'legislatures of the several united colonies' to enact 'laws for punishing, in such manner as to them shall seem fit, such persons … as shall be provably attainted of open deed … of any of the treasons before described.' (Nettels, 39)]

"The third resolve of June 24 urged 'the several legislatures of the United Colonies' to enact laws for the punishment 'in such manner as they shall think fit,' of persons who were guilty of counterfeiting the continental currency or of passing counterfeit bills." (Nettels, 42)

These resolutions defining allegiance and treason provided the individual states with authority to crush internal dissent. As we have already seen, every state established oaths and declarations to test the loyalty of its inhabitants. Non-jurors were subjected to penalties ranging from imposition of punitive fines, disenfranchisement and deprivation of legal rights to confiscation of their property and banishment. In effect, what the Congress and states were saying was: "Love this country or else leave it. If you remain within the protection of our laws by residing here, then your loyalty is assumed. Any acts of disaffection will be construed as treason and disloyalty."

Finally on July 1, 1776, Continental Congress as a whole considered Lee's June 12th resolutions: "Both Pennsylvania and South Carolina cast their votes in the negative, while Delaware, having but two members present, was divided." (Burnett, 182) The following day, twelve of the voting colonies unanimously approved the Lee resolutions. Since the New York delegation had not been instructed to vote on a resolution of independence, they abstained. "Thus at last did Congress, on the 2nd of July, 1776, after long hesitation and not a little squirming, resolve the henceforth the United Colonies should be free and independent states." (Burnett, 182–184) On July 4th (two days after the vote on the resolution) a revised version of the Declaration of Independence was adopted.

New York's abstention was not cleared away until July 15th, when the Continental Congress received notice that a new convention in New York had approved the vote for independence. On July 19, 1776, Congress resolved that the Declaration should be engrossed on parchment and should then be signed by every member of Congress. It was not until August 2, 1776, that the engrossed parchment was laid before Congress to sign. "A good many of the signers were not actually in Congress on July 4; some of them, in fact, were not even members of Congress at the time; and some of the actual signers had actually given their indi-

vidual votes in opposition to the Declaration. (Burnett, 192) Due to the treasonous nature of signing the Declaration, their signatures were not made public until January 1777.

During the last part of June, even before the formulation of the Declaration of Independence, the Virginia Bill of Rights was adopted. Virginia and New Jersey had approved new state constitutions on June 29th and July 2nd, 1776, respectively. (Kettner, 175) "None of the (state) constitutions had to stand the test of a public vote. All the revolutionary conventions that drafted them … were chosen without foreknowledge by the voters that the elected body would draft a constitution. Every one of these first constitutions" fell short of what strict consent theory would require (Tate, 379) The colonial separation from Great Britain did not create a state of nature in which individuals could decide where to place their allegiance. The State never totally disappeared. "*In the colonies royal authorities were gradually replaced by ad hoc provisional governments that were in turn legitimized or superseded as new state constitutions were drafted and ratified. But there was no general perceptible break in the actual continuity of the government. The Continental Congress defined (and thereby imposed) membership in the new states even before formalizing independence. And state governments easily and automatically claimed jurisdiction over the same inhabitants and territories that had constituted the colonial dependencies.*" (emphasis added, Kettner, 190) The revolutionary bodies simply assumed that the will of "their" majority was authorization enough "to extend jurisdiction over those who renounced independence and professed their continuing loyalty to the King." (Kettner, 187)

Although an oft-quoted part of the Declaration of Independence is that governments derive "their just powers from the consent of the governed," it should be rather obvious the framers of the Declaration did not mean it in the sense outlined by Lysander Spooner: "the separate, individual consent of every man who is required to contribute, either by taxation or personal service, to the support of the government." In fact, the Virginia Declaration of Rights asserted the right of "*a majority*" (emphasis added) to "reform, alter, or abolish" government "in such manner as shall be judged most conducive to the public weal." (Section 3) The implication of the Virginia Bill of Rights was that a majority could set themselves up as a State and "compel" the minority to accept its rule. In fact, majority rule itself is never a guarantee of respect for individual rights. Thus when "consent of the governed" masquerades under the guise of majority rule it can become dangerously tyrannical.

No members of the First or the Second Continental Congress could pass the "principal-agency" test applied by Lysander Spooner to political officials elected under the Constitution (nor could the Declaration of Independence any more pass muster as a contract than could the Constitution). The historical context of the Declaration and the struggle of the Continental Congress to survive demonstrate it took on the essential elements of the State. The principles of representa-

tive government and majority rule were never called into question, nor was it reflected on how these concepts might conflict with the idea of "consent of the governed."

The fact that the opening paragraphs of the Declaration of Independence are full of natural rights doctrine represents a step towards enunciating a philosophy of individual rights. However, the Declaration is a statist document, issued by politicians that were struggling for their lives. How much the Declaration was a propaganda device, used to help them establish the legitimacy they were looking for may never be known. But in contrast to the opening passages, the closing paragraph of the Declaration reveals just how much its authors were still embedded in statism:

> We, therefore, the Representatives of the United States of America, in General Congress, Assembled … do in the Name, and by the Authority of the good People of these colonies, solemnly publish and declare, That these United Colonies are, and of Right, ought to be Free and Independent States; … and that as Free and Independent States, they have full Power to levy War; conclude Peace, contract Alliances, establish Commerce and to do all other Acts and Things which independent States may of right do.

Albert Jay Nock in his *Our Enemy, the State* makes an interesting observation about the Declaration. He writes that there was a great dissension about the form of the political institution which the Declaration was forging, "but none about its nature. … Dissatisfaction was directed against administrators, not against the institution itself." (Chap. 4, Section II, 131–132 of the 1950 edition) Walter Lippmann in *Essays in Public Philosophy* (1955) puts it this way:

> Jefferson and his colleagues … were in rebellion because they were being denied the rights of representation, and of participation which they, like other subjects of the same King, would have enjoyed had they lived in England. The Americans were in rebellion against the "usurpations" of George III, not against authority as such but against the abuse of authority. The American revolutionists had in fact participated in the colonial governments. They intended to play leading parts, as indeed they did, in the new government. Far from wishing to overthrow the authority of government, … they went into rebellion first in order to gain admittance into, and then take possession of the organs of government.
>
> When they declared that "a prince [George III] whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people," they were not saying that there was *no one* who was fit to be a ruler of a free people. They were imbued with the English idea that the governing class must learn to share its special prerogatives by admitting new members who had been unjustly, in fact illegally, excluded from the government of the colonies. They, them-

> selves, meant to govern the colonies after they had overthrown the government of the King. (emphasis in original, 67–68)

Looking at the Declaration 'in toto' as well as considering the historical situation and the actions of the states and the Continental Congress reinforces the point made by Nock and Lippmann. The Declaration played a conspicuous part in helping to establish a new State. (Isn't a political document declaring the independence of one nation from another already statist?) The history surveyed here only deals with the earliest part of the revolution, until 1777. The fact of the matter is the Continental Congress which had started out as an extra-legal consultative body grew more and more statist as the years progressed. One bright side to its existence, however, is that it was the Alexandria Convention and not the Continental Congress that gave rise to the Constitutional Convention. The early State in the United States was relatively weak because its constantly moving westward boundary made it possible for people to escape its jurisdiction by moving to the frontier. America became the land of opportunity during the nineteenth century largely because the State here was weaker than States in other countries of the world.

Nevertheless, it should be clear now that what happened during the American revolution was the swapping of one State for another. Whenever two States or two State factions have pitted themselves against each another (usually in times of war or revolution), freedom lovers have been confronted with a difficult strategic choice. They could either choose the "lesser of two evils" or "reject any and all evils." In the course of American history, this happened at the time of the Civil War, and again during World War I and World War II. Patriotism and State propaganda normally sway one in favor of the nation State where one was born. But is this right? All States are criminal; only some more so than others. By engaging in violence, even if it is to fight a more totalitarian State, a methodology is being used that can never lead to liberty. So, what position would a consistent advocate of freedom philosophy and self-government take towards the British and American struggle? One would be inclined to maintain a strict neutrality and a refusal to obey edicts of either side. One would have to say, "A plague on both your houses." ▽

References:

Carl L. Becker. 1909. *The History of Political Parties in the Province of New York 1760–1776*. Madison: University of Wisconsin Press, 1960.

Peter Brock. *Pacifism in the United States from the Colonial Era to the First World War*. Princeton: Princeton University Press, 1968.

Edmund Cody Burnett. 1941. *The Continental Congress*. New York: W. W. Norton, 1964.

Robert Calhoon. *The Loyalists in Revolutionary America 1760–1781*. New York: Harcourt Brace Jovanovich, 1973.

Encyclopedia of the Social Sciences, vol. 7. Entry: "Government," New York: The Macmillan Company, 1959.

James E. Kettner. *The Development of American Citizenship, 1608–1870*. Chapel Hill: University of North Carolina Press, 1978. Especially see Chapter 7, "The Idea of Volitional Allegiance."

S. E. Morsion. *Sources and Documents Illustrating the American Revolution 1764–1788*. Oxford: at the Clarendon Press, 1923 and 1948. This volume contains the articles of the Association, the Virginia Bill of Rights, etc.

Curtis Nettels. "A Link in the Chain of Events Leading to American Independence." 3 *William and Mary Quarterly* (1946), pp. 36–47.

Murray Rothbard. *Conceived in Liberty*. New Rochelle: Arlington House, 1979.

William Graham Sumner. *The Financier and the Finances of the American Revolution*. New York: Dodd, Mead and Company, 1892. Several chapters of vol. I deal in detail with taxation, paper money, price controls and impressment.

Thad W. Tate. "The Social Contract in America 1774–1787, Revolutionary Theory as a Conservative Instrument." 22 *William and Mary Quarterly* (1965), pp. 365–391.

Claude H. Van Tyne. *The Causes of the War of Independence*. Boston: Houghton Mifflin, 1922.

Claude H. Van Tyne. 1902. *The Loyalists in the American Revolution*. Gloucester: Peter Smith, 1959. A complete list of the "Test Laws Passed by the Legislatures of the Thirteen Colonies During the Revolutionary War," is found in Appendix B.

To All Patriots and Constitutionalists: Some Critical Considerations on the United States Constitution

by Carl Watner
(from No. 30, February 1988)

THE CONSTITUTION is one of the most revered symbols of the United States. Over the years, it has taken on all the trappings of sovereignty, commanding the loyalty of almost every American. The Constitution is "America's uncrowned king," because "[i]t is above party, a common object of veneration, a living symbol of national unity."

We should examine the Constitution closely, since it has such a pervasive influence over our lives. Does it meet the requirements of commonly accepted legal principles and reason, or do we judge it by a double standard? Did the Constitu-

tion have a legal birth, or did it unlawfully encroach on the Articles of Confederation? In other words, is the Constitution constitutional, and does it have any inherent authority?

Did the Constitution Originate in a Constitutional Manner?

Constitutional conventions are characteristically an American institution and had their origins during the American Revolution, when individual state conventions were convened. In 1787, the Congress of the Articles of Confederation called for a new convention in Philadelphia for the "sole and express purpose of *revising* the Articles." (emphasis added) The forty-two delegates, who gathered there, ignored their instructions, instead creating an entirely new framework of government—the Constitution. Regardless of their justification, the members of the convention had no authority to do anything but revise the Articles of Confederation. In violating their "commission," they committed a serious breach of trust.

In setting out the instructions for ratification of the new constitution, the convention also exceeded the power it had been delegated. It sanctioned a ratification process which looked to specially elected conventions, rather than being dependent upon Congress and the existing state legislatures. The new constitution was to supersede the Articles of Confederation, after it had been approved by conventions of nine out of the thirteen states. The procedure for amending the Articles of Confederation provided that amendments be originated in Congress and approved by all thirteen state legislatures. The fact that the Articles were still the fundamental law was simply ignored by the members of the Constitutional Convention. There is no question that they resorted to an illegal process to create a new government.

Many questionable legal maneuvers were employed during the struggle for ratification of the Constitution. In Pennsylvania, the call for a convention was adopted without a quorum. In South Carolina, the anti-federalists tried to block the call for a convention, on the grounds that the Philadelphia convention had exceeded its lawful authority. Patrick Henry, in Virginia, launched a critical attack on the Constitution and alleged that the delegates in Philadelphia were engaged in a criminal conspiracy.

In many states, ratification was achieved by narrow margins, but nowhere was the new constitution put to a popular vote. Women, Negroes and Indians did not vote for convention delegates in any of the states. White male suffrage was generally restricted to those who held land, or property of a certain value. The question of ratification was greeted with apathy and indifference by many. It is quite likely that the Constitution would have been rejected if it had been submitted to a referendum vote of the people. Its adoption was clearly pushed by the politically powerful and men of wealth. "Probably not more than three percent of the male population actually balloted upon the choice of delegates to the various state con-

ventions." Clearly the new constitution was adopted by an unrepresentative process.

On General Principles of Law and Reason, Is the Constitution Constitutional?

Even before the passage of the English Statute of Frauds in 1677, it was a generally accepted legal principle that a contract could not be enforced unless it was put in writing and signed and delivered by the parties. Who signed the U.S. Constitution and to whom was it delivered? Thirty-nine (out of several million Americans) men signed the document, but not in a manner that made them personally responsible. Today's judges, who profess to derive their authority from the Constitution, would spurn any other written document which did not contain all the signatures of the parties bound to the agreement. On what grounds can it be asserted that the people of the thirteen North American states ever obliged themselves to obey the Constitution?

Did those who voted for the convention delegates bind themselves to accept the Constitution? The anti-federalists opposed the Constitution and could not be said to be honor bound to accept it, even though they voted for delegates to the ratifying conventions. Their opposition was widely known. No delegate held a power of attorney from anyone who voted for him. By what authority could a delegate legally speak for anyone but himself?

Furthermore, to whom does the Constitution legally apply today? Few people consented to the Constitution in any meaningful way. Those persons, even if they gave their formal consent, are dead. If the Constitution was *their* contract, it died with them. "They had no natural power or right to make it obligatory upon their children" or posterity.

Is the Constitution Constitutional?

History and logic provide evidence for the conclusion that the Constitution is unconstitutional. It did not legally supersede the Articles of Confederation. How can a document the adoption of which violated the laws of due process purport to be the foundation of our government? Time does not heal violations of "due process." Furthermore, the Constitution was neither signed nor delivered, and its obligation, if it ever had any, attaches to no one now. The Constitution was an illegal usurper at the time of its inception. The government which it spawned has been an ongoing criminal conspiracy that has used the document to legitimize its activities.

Since the Constitution is Unconstitutional, What Do We Do?

There are two essential things each one of us can do. One is positive, the other, negative. First, we must assume self-government and take on the responsibility of caring for ourselves, and our own. If each of us can fill the prescription for the

good life, we probably don't need a constitution anyhow. And if we can't, a constitution won't do us much good. A society is only as healthy as the individuals who compose it. Our emphasis must be on creating strong-willed, self-governing, principled individuals.

Second, we must not sanction the Constitution in any way. Voting, holding political office, a government job, or pledging allegiance to the Constitution, all sanction the system. We should avoid using tax-supported services to the greatest extent possible. If circumstances make it difficult not to use such services (roads, post office, government money), we should speak out and make it plain that we call for an end to such services.

In a sense, our first mission—of providing for ourselves—encompasses the second directive of not sanctioning the government. If we concentrate on becoming better people and building stronger families, we will, of necessity, avoid relying on government. Depending on the government diminishes our self-respect and self-responsibility.

Constitutions are signs of mental laziness. The surest sanctuary of freedom for a people is not in constitutions or bills of rights, but rather in the minds of the people and in their attitudes towards those who encroach on their rights. Many nations have been tyrannized by governments that ruled according to constitutions (Nazi Germany and Soviet Russia). If people reject the legitimacy of those who would trample on their rights, they are on the road to being safe and free. If they do not reject such attempts, no constitution in the world will save them from tyranny.

It is clear that Americans should stop supporting the Constitution. Today's controversies surrounding the Constitution are directly traceable to the fact that it is a cover for an illegitimate government. Isn't it time to reject the Constitution and all forms of political government? Isn't it time each one of us assumed self-government over the only person we can rightly govern—our own selves? V

References:

Warren E. Burger. "Birth of a True Nation." *Reader's Digest*, September 1987, pp. 33–35.

Marc Eric Ely-Chaitlin. "Constitution Paper #2." Privately circulated, 1986.

Alfred H. Kelly and Winfred A. Harbison. *The American Constitution: Its Origins and Development*. New York: W. W. Norton and Company, 1948. See pp. 146, 158, 161, 163, and 166.

Lysander Spooner. 1870. *No Treason, No. VI. The Constitution of No Authority.* In *The Lysander Spooner Reader*, San Francisco: Fox & Wilkes, 1992.

Propaganda, American-Style

by Noam Chomsky
(from No. 37, April 1989)

POINTING TO the massive amounts of propaganda spewed by governments and institutions around the world, observers have called our era the age of Orwell. But the fact is that Orwell was a latecomer on the scene. As early as World War I, American historians offered themselves to President Woodrow Wilson to carry out a task they called "historical engineering," by which they meant designing the facts of history so that they would serve state policy. In this instance, the U.S. government wanted to silence opposition to the war. This represents a version of Orwell's *1984*, even before Orwell was writing.

In 1921 the famous American journalist Walter Lippmann said that the art of democracy requires what he called the "manufacture of consent." This phrase is an Orwellian euphemism for thought control. The idea is that in a state such as the U.S. where the government can't control the people by force, it had better control what they think. The Soviet Union is at the opposite end of the spectrum from us in its domestic freedoms. It's essentially a country run by the bludgeon. It's very easy to determine what propaganda is in the USSR: what the state produces is propaganda.

In totalitarian societies where there's a Ministry of Truth, propaganda doesn't really try to control your thoughts. It just gives you the party line. It says, "Here's the official doctrine; don't disobey and you won't get in trouble. What you think is not of great importance to anyone. If you get out of line we'll do something to you because we have force."

Democratic societies can't work like that, because the state is much more limited in its capacity to control behavior by force. Since the voice of the people is allowed to speak out, those in power better control what that voice says—in other words, control what people think.

One of the ways to do this is to create political debate that appears to embrace many opinions, but actually stays within very narrow margins. You have to make sure that both sides in the debate accept certain assumptions—and that those assumptions are the basis of the propaganda system. As long as everyone accepts the propaganda system, then debate is permissible.

If you pick up a book on American history and look at the Vietnam War, there is no such event as the American attack on South Vietnam. For the past 22 years, I have searched in vain for even a single reference in mainstream journalism or scholarship to an "American invasion of South Vietnam" or American "aggression" in South Vietnam. In the American doctrinal system, there is no such event. It's out of history, down Orwell's memory hole.

If the U.S. were a totalitarian state, the Ministry of Truth would simply have said, "It's right for us to go into Vietnam. Don't argue with it." People would have

recognized that as the propaganda system, and they would have gone on thinking whatever they wanted. They could have plainly seen that we were attacking Vietnam, just as we can see that the Soviets are attacking Afghanistan.

People are much freer in the U.S., they are allowed to express themselves. That's why it's necessary for those in power to control everyone's thought, to try to make it appear as if the only issues in matters such as U.S. intervention in Vietnam are tactical: Can we get away with it? There is no discussion of right or wrong.

During the Vietnam War, the U.S. propaganda system did its job partially but not entirely. Among educated people it worked very well. Studies show that among the more educated parts of the population, the government's propaganda about the war is now accepted unquestioningly.

One reason that propaganda often works better on the educated than on the uneducated is that educated people read more, so they receive more propaganda. Another is that they have jobs in management, media, and academia and therefore work in some capacity as agents of the propaganda system—and they believe what the system expects them to believe. By and large, they're part of the privileged elite, and share the interests and perceptions of those in power.

On the other hand, the government had problems in controlling the opinions of the general population. According to some of the latest polls, over 70 percent of Americans still thought the war was, to quote the Gallup Poll, "fundamentally wrong and immoral, not a mistake."

Due to the widespread opposition to the Vietnam War, the propaganda system lost its grip on the beliefs of many Americans. They grew skeptical about what they were told. In this case there's even a name for the erosion of belief. It's called the "Vietnam Syndrome," a grave disease in the eyes of America's elites because people understand too much.

All of this falls under Walter Lippmann's notion of "the manufacture of consent." Democracy permits the voice of the people to be heard, and it is the task of the intellectual to ensure that this voice endorses what leaders perceive to be the right course. Propaganda is to democracy what violence is to totalitarianism. The techniques have been honed to a high art in the U.S. and elsewhere, far beyond anything that Orwell dreamed of. The device of feigned dissent (as practiced by the Vietnam era "doves," who criticized the war on the grounds of effectiveness and not principle) is one of the more subtle means, though simple lying and suppressing fact and other crude techniques are also highly effective.

For those who stubbornly seek freedom around the world, there can be no more urgent task than to come to understand the mechanisms and practices of indoctrination. These are easy to perceive in the totalitarian societies, much less so in the propaganda system to which we are subjected and in which all too often we serve as willing or unwitting instruments.

Noam Chomsky is a linguistics professor at MIT. Reprinted with permission from Utne Reader, *Sept./Oct. 1988 (1624 Harmon Place, Minneapolis, Minn. 55403, $24 yearly).*

An Octopus Would Sooner Release Its Prey: Voluntaryism vs. Educational Statism

by Carl Watner
(from No. 48, February 1991)

Introduction

This article was sparked by the fact I am a parent, responsible for the education of my children, and my perception that in the days before public (state) schools, a large percentage of this country's children were educated at home, or in private or religiously-affiliated schools. A large majority of private school and homeschool parents today are motivated by their concern for religious instruction and their concern over the academic and moral decline in the public schools.

While these are certainly valid reasons for not sending one's children to a public school, my main opposition to the public schools rests on other grounds. First of all, I object to their foundation in compulsion: both in the sense that they are tax-supported, and in the coercive aspect of attendance laws. Our tax-supported, compulsory public schools are the epitome of the totalitarian State. Second, it follows that public schools will necessarily inculcate statism in their students, if for no other reason than "he who pays the piper, will call the tune." The primary job of the public school has never been to educate good people, but rather good citizens that are loyal to the State. Thirdly, to be consistent, the arguments that have been historically used to urge separation of church and State, or to argue against State involvement in education could (and should) have been directed against the very existence of the State itself. For voluntaryists, the question of whether or not the State should involve itself in education resolves itself into the question: should there be a State at all involving itself in education, religion, business, and all the other myriad affairs of humankind? In the educational field, the choice has never been between State education and no education at all. Rather, the choice has been, and will continue to be, between either a compulsory or a voluntary system of education for all people.

Homeschooling and Voluntaryism

The right to homeschool a child, to engage a private instructor, or to send him to a private school, all derive from the parents' right to care for and teach their child. Homeschooling offers the opportunity of individualized instruction, and

allows those who know and love the child the most to provide the finest instruction they can offer. For those parents who choose not to homeschool, for whatever reason, the free market in education would supply private schools specializing in providing each kind of parent-child demand.

From the time this continent was colonized by Europeans until the early part of the twentieth century, homeschooling had been the major form of education. The colonists and pioneers conceived schooling as an extension of the family, the church, and the apprentice system, rather than as a function of the State. Families were not required to obtain permission from the government to educate their children at home. (Most parents would have been incensed at the idea!) Until the late 1800s, homeschooling was simply the exercise of a common law right. Many great people in America have been homeschooled, including Patrick Henry, Thomas Edison, Mark Twain, Andrew Carnegie, the Wright brothers, and a host of well-known political figures, including nine presidents. (That doesn't bode well for any claim that homeschooling produces voluntaryists!) Literacy rates during the era of homeschooling were at least equal to those achieved through mass public schooling (some claim higher). Even as late as 1900, only 10% of American children attended public schools.

Today, the outlook on schooling and the state has changed drastically. Since the U.S. Constitution is silent on the topic of education, most contemporary homeschoolers have claimed the Free Exercise clause of the First Amendment as a religious basis for homeschooling. None (to my knowledge) have asserted their right to homeschool on the basis of the 9th and 10th Amendment claims that the powers and rights not enumerated or delegated to the government are retained and reserved by the people. Contemporary homeschoolers, by focusing on the religious exemption, have ignored the crucial issue of whether or not the State has the broader right to interfere in educational activities. Although English and American jurisprudence have historically respected the traditional family unit, with parental authority over minor children, the right to homeschool (and even use private schools) has now been eroded, and tightly regulated by every one of the fifty states. The reason for this shall become apparent as the history of compulsory schooling is described, but suffice it to say that the state has always recognized the importance of controlling the minds of "its" children.

Voluntaryism and Compulsion in Rhode Island

This brief overview of the contemporary scene allows us to better appreciate the history and development of compulsory education laws as they first developed in the New England states. The state of Rhode Island is of particular interest since it was one of the last of the original thirteen colonies to impose educational statism on its citizens. Historians of education have tended to look upon Rhode Island unfavorably because they have measured educational progress exclusively in terms of legislation. While there were school laws in Massachusetts and Connect-

icut as early as the middle of the seventeenth century, Rhode Island had none until nearly two hundred years later. As a result, many have concluded that Rhode Islanders were backward in educating their children, even though there were 193 schoolhouses in the state in 1828, when the legislature passed the basis of what is now the modern compulsory education laws. This view has been challenged by a state school commissioner (no less!), who wrote in 1918, in a book published by the Commission on Education, "it is, and has been, characteristic of Rhode Island school history that progress and improvement precede legislation."

Charles Carroll, author of *Public Education in Rhode Island*, from which the foregoing quote is taken, in describing the condition of pre-nineteenth century schooling in Rhode Island, referred to it as being "alive with educational activity," however lacking in "central direction and control." He explained the state of affairs in the following manner:

> Regarding the education of the child … as primarily a responsibility resting upon the individual, parent, or family, there were, until education became socialized and the state provided free public schools, several ways in which this obligation might be fulfilled:
>
> First, the parent, himself or herself, might become the family teacher. …
>
> Second, the teacher might be a professional instructor exercising his calling as an individual entrepreneur, or perhaps combining a vocation and avocation, as did William Turpin, the innkeeper-schoolmaster of Providence. …
>
> Thirdly, cooperation is one of the most economical solutions of the problem of supplying a common need, and this rule applied to education as well as to other necessities. In some instances in Rhode Island cooperation functioned as a broadening of family responsibility to embrace several families. In other instances, cooperation developed in neighborhood groups, … The Society of Friends was the first religious organization to provide a school for its children.
>
> Fourthly, out of the co-operative school organization developed the incorporated school society, which was still a form of voluntary organization.

What made Rhode Islanders unique was their particular view of religion and schooling. Like the people of neighboring colonies, they held that religion was the end of human existence and human institutions. They did not believe, however, that this end could be promoted by the aid or interference of the state. "They contended that the state would do the highest service to religion by letting it alone." In the eyes of the early Rhode Islanders, schooling was a religious function, not a civil one. Thus, they rejected the idea that education was a responsibility of the state. They adhered to this belief from the mid 1600s until the late 1700s, when the agitation for state aid to education began. According to the author of an 1848 article on "Common Schools in Rhode Island," early residents of the state

believed that, "To compel a citizen to support a school would have been to violate the rights of conscience. To compel him to educate his children (against his will) would have been an invasion of his rights."

"The History of Compulsory Education in New England"

In a book by this title, John Ferrin, in 1896, traced the roots of compulsory education back to the Protestant Reformation. "The great movement, which began with Luther's breaking the ecclesiastical shackles which Rome had placed on the Christian world, had transferred from the church to the state all matters pertaining to the instruction of youth." Tax support of education and compulsory attendance laws have their origin in the desire that everyone be educated, which accompanied the Reformation. "The principle that the safety and the strength of a city lie in an educated and a moral citizenship, and that other principle, which is its sequence, that the state has not only the right to establish schools, but that it is its duty to do so, and, if need be, to compel the attendance of its youth upon them, are both Lutheran in their origin."

These ideas summarize the basic doctrine of Martin Luther's sermon, "On the Duty of Sending Children to School," which was delivered in 1524. He maintained that it is both the right and duty of the state to compel parents to educate their children by sending them to state schools.

> If the government can compel such citizens as are fit for military service to bear spear and rifle, to mount ramparts, and perform other martial duties in time of war; how much more it has a right to compel the people to send their children to school, because in this case we are warring with the devil, whose object it is secretly to exhaust our cities and principalities of their strong men.

There was little practical difference between the implementation of Luther's doctrine in the German states and the New England colonies of Massachusetts and Connecticut. The Puritan laws of 1642 and 1647 in Massachusetts, and the school law of 1650 in Connecticut, all embraced the principle of compulsory, tax-supported schooling. Samuel Blumenfeld in *Is Public Education Necessary?* opines that it was these laws that helped make the "transition from Bible commonwealth to republicanism." Advocates of State-controlled education have always used it as a means of inculcating the entire population with their views. In this respect, there was no difference between the Lutheran reformists and the New England Puritans. Murray Rothbard sums it up by saying, "From the beginning of American history, the desire to mold, instruct, and render obedient the mass of the population was the major impetus behind the drive for public schooling. In colonial days, public schooling was used as a device to suppress religious dissent, as well as to imbue unruly servants with the virtues of obedience to the State."

By 1817, there was a movement afoot in Boston to expand the tax-supported school system. In a study authorized by the Boston School Committee and released that year, Charles Bulfinch claimed that public elementary schools were unnecessary because 96% of the town's children already attended some sort of school. Blumenfeld, citing Bulfinch, goes on to say that "most parents who sent their children to private-tuition schools did not look upon the expense as a burden: they paid the cost willingly out of love and a sense of duty. This, in turn, made them better parents. They were more likely to devote their attention to the business of education, 'where a small weekly stipend is paid by them for this object, than where the whole expense is defrayed by the public treasury.' Bulfinch further implied that moral degeneration would result if public taxes usurped the province of private responsibilities. Family solidarity might break down if government assumed the cost of what rightfully belonged to the private sphere. 'It ought never to be forgotten,' he argued, 'that the office of instruction belongs to the parents, and that to the schoolmaster is delegated a portion only of the parental character and rights.' "

A full-fledged, city-wide school system in Boston was not the result of the failure of the free market. Rather, it was the result of a unique combination of seemingly-opposed interest groups, all attempting to use public education as a means of political influence and of strengthening the hand of the government, which they hoped to control. The religious conservatives, the Unitarians, and the socialists all saw public education as the perfect vehicle to capture. Each of these groups was more interested in "modifying the sentiments and opinions of the rising generations," according to government standards (which they would determine), than in diffusing elementary knowledge. "The socialists saw public education as the necessary instrument for the reformation of human character before a socialist society could be brought about. The Unitarians saw public education as the means of perfecting man and eradicating evil … [and] as the means of exerting social and cultural control over a changing society. … As for the religious conservatives, they were persuaded to see public education as the means of preserving the American system of government and maintaining the predominantly Anglo-Saxon culture against the rising tide of Catholic immigration." With all three of these powerful groups agitating for public education, it was no wonder that the public education movement triumphed.

The English Voluntaryists Oppose State Education

With respect to the history of State education, English and American history have tended to run parallel. In England, limited state aid to education was introduced in 1833; full tax support of schools came in 1881. The opposition to state aid was led by a group of people known collectively as voluntaryists, because they supported the voluntary principle in education. Voluntaryism—"consistent opposition to all state aid and interference"—arose out of the Non-conformist and

Dissenting tradition in England, which itself derived from the attempt of the Anglican church to monopolize its position in English society. The Dissenters, for religious reasons, preferred establishing their own schools, and during the eighteenth century their academies were some of the greatest English schools of their day. People such as Herbert Spencer, Edward Baines, and Edward Miall were the most well-known voluntaryists. (Miall and Baines ultimately abandoned their defense of private education for political reasons later in their careers.)

The principal arguments put forth by the voluntaryists were both practical and theoretical. "On the empirical side, the English voluntaryists argued at length that the progress of voluntary education had been satisfactory, and that there was no need for state interference. On the theoretical side, voluntaryists used their moral, social, and economic principles to build a formidable case against state education." Herbert Spencer's major objections to national education, published in the early 1840s in his letters on the "Proper Sphere of Government," neatly summarize the voluntaryist position:

> 1. (National education) necessarily involves a uniform system of moral and intellectual training, and that the destruction of that variety of character, so essential to a national activity of mind, must naturally result.
>
> 2. That it must take away that grand stimulus to exertion and improvement on the part of the teacher, arising from honourable competition that must ever exist under the natural arrangement.
>
> 3. That, considering the improbability of any alterations in future ages, it practically assumes that we are capable of pointing out to our descendants, what kinds of knowledge are the most valuable, and what are the best modes of acquiring them — an assumption very far from the truth.
>
> 4. That it would be liable to the same perversions as a national religion, and would, in all probability, become ultimately as corrupt.
>
> 5. That, if it is intended to be an equitable institution, it must be necessarily presumed that all men will agree to adopt it — a presumption which can never be borne out.
>
> 6. That it would be used by government as a means of blinding the people — of repressing all aspirations after better things — and of keeping them in a state of subserviency.
>
> From abstract reasoning, and from the evident analogy with existing institutions, it is, therefore, concluded, that national education would, in the end, be a curse, rather than a blessing.

Many of the predictions of the nineteenth century voluntaryist opponents of State education have come to pass. A study of the historical record, by Jack High and Jerome Ellig in *The Theory of Market Failure*, supports the arguments of the voluntaryists. In both the United States and Britain, education was "widely demanded and supplied" privately. At least until the mid-nineteenth century, attendance was not compulsory in either country, and yet most children did receive

some education during their childhood years. History shows that even working class parents in both countries patronized private schools, and often paid school fees that fully covered the costs of educating their children. When the government intervened in the educational marketplace, it usually displaced private education, because private schools could not compete economically with state-supported schools. Private education, which was definitely more diverse and more consumer oriented, was stifled by public education. In short, State aid to education came "at the expense of, rather than in addition to, private efforts."

E.G. West, author of *Education and the State*, reinforces these conclusions with his own observations:

> [T]he majority of [the English] people in the first half of the 19th century did become literate [in the technical sense] largely by their own efforts. Moreover, if the government played any role at all in this sphere it was one of saboteur! As long ago as the first few years of the 19th century it was a subject for government *complaint* that the ordinary people *had become literate*. For the government feared that too many people were developing the 'wrong' uses of literacy by belonging to secret 'corresponding societies' and by reading seditious pamphlets. ... Far from subsidizing literacy, the early 19th century English governments placed severe taxes on paper in order to discourage the exercise of the public's reading and writing abilities. Yet, despite this obstacle, by the time the government came round to subsidizing on a tiny scale in the 1830s, between 2/3 and 3/4 of the people ... were already literate. ... The notion held by many people that had it not been for the [S]tate they or at least most of their neighbors would never have become educated, is a striking monument to the belief of the Victorian lawyer, Dicey, that people's opinions and convictions eventually become conditioned by the legislated institutions they make themselves.

Why Is Education So Important to the State?

Education is of the utmost importance to the state, because "where the government can't control the people by force, it had better control what they think." To determine what they think, it must dominate and control the institutions in society which disseminate information and educational services. To rule by controlling what people think is far less expensive than to rule with guns. This "manufacture of consent" is largely achieved by State control of schooling. The State seizes children from their parents for at least 1/3 of the day, 75% of the year, teaches them what the authorities say they shall be taught, and expropriates from the parents and others the funds necessary for this to occur. The nature of what is happening is so little understood that the result is called "free public education."As Isabel Paterson noted, this is one of the most absolute contradiction of facts by terminology of which our language is capable. As she adds:

> Every politically controlled educational system will inculcate the doctrine of state supremacy, … Once that doctrine has been accepted, it becomes an almost superhuman task to break the stranglehold of the political power over the life of the citizen. It has had his body, his property, and mind in its clutches from infancy. An octopus would sooner release its prey. A tax-supported compulsory educational system is the complete model of the totalitarian state.

We, both as parents and children, are so conditioned by the State around us that few of us see through the "divine right of the State." This successful indoctrination via public education can only be described as one of the propaganda miracles of the world. It is easy to agree with Samuel Blumenfeld's assessment that "experience has taught us that the most potent and significant expression of statism is a State educational system. Without it, statism is (nearly) impossible. With it, the State can, and has, become everything." This helps explain why education is one of the most important of political questions. Statist schooling everywhere promotes nationalism through the teaching of history, civics, and social studies. This point also helps explain why soon after establishing compulsory attendance laws and public schools, the state establishes "teachers' colleges." Control the teachers and it becomes easier to control what their students are taught.

The State makes a feeble attempt to justify its role by arguing that it must provide children with the necessary reading and writing skills to enable them to participate in its democratic system of government. It also argues that it must supply schooling so that children will be able to eventually provide for themselves and not become a burden on the welfare system. These alleged "civic" and "economic" reasons really mask the state's true purpose in socializing and politicizing children. State education is a form of social control which enables the State to cast children into a behavioral mold acceptable to the politicians, and which practically assures the continued existence of the State.

This is not to say that values and ideologies would be absent from the free market schooling. The difference would be that no single institution, like the state, would be able to dominate the educational scene. For education, etymologically, (from *educare*) means "to lead out," and someone must decide where the child is to be "led." At times in the past, it was the parents, the family unit, or the religious body with which they associated, that directed education, but these social forces have been greatly weakened by the State.

Conclusion: Freedom in Education Is Not a Special Case

The arguments for educational freedom and freedom from State interference have usually suffered from a lack of consistency. Few people are prepared to argue that since the State sets educational standards and provides education, it therefore should set minimum parental standards in areas such as the feeding and clothing of children. Yet, the same reasons used to defend educational statism could be

used to defend state involvement in these other areas. Few people have understood that freedom in education is not a special case, but rather embraces the general argument against the State. Instead, most people lose sight of the forest for the trees, by arguing about the State's role in many areas undreamt of by earlier advocates of "limited" government, such as whether sex education and Biblical creationism should be taught in public school, health inoculations, teacher certification, building code requirements for schools, lunch programs, busing and transportation programs, non-discrimination policies, taxation programs to support this interference, etc. The simplest argument is that if there were no State, these issues would resolve themselves in a free market for schools. Furthermore, a sort of Gresham's law would operate in a free market school environment: in the absence of state-subsidized schools, those schools best serving the consumer would achieve success, and those not pleasing enough customers would soon fail.

To advocate liberty is not to advocate untaught children or bad schools, but rather excellence in education. The voluntary principle does not guarantee results, but only that we have the possibility of choosing the best available. "Liberty is the chief cause of excellence; … it would cease to be Liberty if you proscribed everything inferior. Cultivate giants if you please, but do not stifle dwarfs."

Isabel Paterson once asked, "Who taught Americans to drive?" "It was not done in school and could not have been." The answer to her question is that Henry Ford and his co-workers in the automobile industry showed Americans how to drive by making the automobile widely available to the common man. Such teaching was done by the free enterprise system on a voluntary basis: a willing customer buying a wanted product from a willing seller, and then learning to use it. There was no element of compulsion about 'teaching' people to drive. Those who wanted to and could afford the 'lessons' learned; those who wanted to and could not afford the lessons, waited till they had the opportunity; those who didn't want to learn, were not forced to.

This example conveys the voluntaryist message quite clearly and concisely. There is no more reason for State involvement in education than there is for the State in any other area of life. The advocates of public education should rely on persuasion, not coercion, to bring about their desired goals. Instead, we have a system of education which has become the most despicable and insidious system of teaching propaganda and indoctrinating the future generation that has ever existed in this country. It rests on compulsion, destroys parental responsibility for the education of one's young, and is generally ineffective in creating thinking youngsters. But then, that is its unstated purpose and agenda. Thinking slaves are dangerous because they eventually begin to question, and then disobey, authority. Ⓥ

Short Bibliography

Samuel Blumenfeld. *Is Public Education Necessary?* Old Greenwich: Devin-Adair Co., 1981. See p. 44.

Charles Carroll. *Public Education in Rhode Island.* Providence: Commission of Education, 1918. See pp. 35–38.

Jack High and Jerome Ellig. "The Private Supply of Education: Some Historical Evidence." *The Theory of Market Failure.* Fairfax: George Mason University Press, 1988.

Isabel Paterson. *The God of the Machine.* Caldwell, Idaho: Caxton Printers, 1964. See pp. 271–272.

John Perrin. *The History of Compulsory Education in New England.* Meadville, Pa., 1896. See pp. 7–8, 16, 30.

Murray Rothbard. *For a New Liberty.* New York: The Macmillan Co., 1973. See Chapter 7, "Education."

E. G. West. *Education and the State.* London: Institute for Economic Affairs, 1965. See p. 42.

Who Controls the Children?

by Carl Watner
(from No. 59, December 1992)

In his book, *The Survival Home Manual*, Joel M. Skousen notes that "the bureaucrat never does any of the dirty work for the prosecution of his rulings." In other words, a judge or administrative officer who cites a citizen for the conduct of illegal activities never directly enforces his own edicts. If the activity in question—such as building a house without a permit—continues after it has been administratively determined such activity should stop, then the bureaucrat in charge of regulating such affairs usually initiates a case before the judicial branch of government. If the defendant refuses to "cease and desist" then the judge has the power to hold the offender in contempt. Instead of arresting a person for "building a house without a permit," the judge authorizes a policeman or sheriff to arrest the offender for "contempt of court." The crime then shifts into a different playing field. The issue then becomes one of "control," and the offense becomes one of questioning and denying the power and authority of the State and its judicial system. As Skousen puts it, "Notice, that if you ever resist bureaucratic 'law', you are not prosecuted for resisting an inane and unconstitutional law, but for 'defying the court' or 'resisting arrest.' Separating the act of resistance from the

initial law which motivated the act is one of the slickest ways to bring a populace into line with bureaucratic law."

A compliant citizenry makes it easy for the State to mask its ultimate sanction. Usually the threat of arrest and imprisonment is enough to make most people docile and obedient. However, if a person wishes to resist, and refuses to submit to "court orders," he will usually find himself overwhelmed by State force, usually in the form of drawn guns ready to shoot. All State law, no matter how petty, has as its final punishment your death—should you decide to resist to the bitter end. In this enlightened age, there are few holdouts who would dare the State to go this far, but in the late 1970s John Singer, a fundamentalist Mormon living in Utah, defied court orders that he cease teaching his children at home. Ultimately, he would not peacefully submit to an arrest, and after holing himself and his family up in their mountain hideaway, he was eventually shot and killed by law enforcement officers on January 18, 1979.

The saga of John Singer should be of interest to voluntaryists for a number of reasons. First, it is concrete proof that State sovereignty rests on force and its threat. Second, it presents the dilemma of conscientious homeschool parents: Who has the final say how children should be raised and educated? Who has the right to say what they are taught, and how they are taught? Should homeschool parents acknowledge State supremacy in matters of schooling and submit to the State by complying with its regulations, or should they go their own way, as John and Vickie Singer did? In short, the case of John Singer epitomizes the question: Who ultimately controls the children in our society—their parents or the State? The purpose of this article is to look at some of the important evidence necessary to answer these questions.

Although John Singer was born in Brooklyn, New York in 1931, his parents, both originally German citizens, took him back to their native country shortly after his birth. There he experienced the horrors of Nazi regimentation and the chaos of World War II and its aftermath. Since he was a U.S. citizen he was allowed to emigrate back to the United States in 1946. There he lived with his mother's sister, learned English, studied TV repair, and became a carpenter under his uncle's tutelage. Within a year after his mother, brother, and two sisters joined him in New York, they had saved enough money to drive to Utah, "the promised land of their faith," the Church of Jesus Christ of Latter-day Saints, the Mormons.

By the time Singer married Vickie Lemon in September 1963, he had built himself a log home in the Kamas Valley, where he farmed and plied his TV repair trade. He was described by David Fleisher and David Freedman, authors of his biography (*Death of an American*. New York: Continuum, 1983) as "a strong, independent, industrious man with an unwavering faith in his God." Seven years after their marriage John and Vickie were excommunicated from the Mormon Church for their continued insistence on believing in the literal interpretation of

the Mormon scriptures (including its original doctrine of plural marriage) and for taking the side of the fundamentalists rather than the modern church. Two years later, in March 1973, they withdrew their three school-age children from South Summit Elementary School, a public school in Kamas, Utah. The Singers objected to the "immoral secular influences" found in the Utah state-run schools, including "the school's 'permissive altitude' toward such immoral behavior as sexual promiscuity, drugs, crude language and gestures, rock music, and lack of respect for adults." They believed the State had no constitutional right to interfere with their religious beliefs by requiring them to send their children to public school.

This marked the beginning of the first phase of Singer's resistance to public schooling. After an initial meeting in April 1973, to explain their views to the Superintendent of the school district and the members of the Board of Education, the Singers received a letter informing them that they were in violation of the state's compulsory attendance law, which required attendance at a public or "regularly established" private school, or homeschooling subject to the approval of their local school district's Board of Education. On December 6, 1973 the School Board filed a complaint against John Singer in juvenile court for "the crime of contributing to the delinquency and neglect of" his three oldest children, ages six, seven and eight. When Singer failed to appear in court to defend himself against the charges, the judge issued a bench warrant for his arrest. It took the sheriff and his deputies about a month to apprehend Singer, since he refused to surrender voluntarily. They surprised him while he was on a TV repair call. Singer spent the night in jail, and the following day agreed to accept a court-appointed attorney and work with the school board on an approved homeschooling program. On March 8, 1974, the school board issued a certificate of exemption to the Singers, with the stipulation that the school board administer a Basic Skills Achievement Test to the four oldest Singer children twice a year, starting in the fall. The school psychologist, Tony Powell, was appointed to administer the tests and monitor the children's home education progress. Three months later, in June 1974, the criminal complaint against Singer was dismissed based on the evidence of his compliance.

John and Vickie Singer did not take lightly to regimentation. Although they allowed their children to be tested in October 1974, and April 1975, by April 1976 they concluded that "they must get out from under the thumb of the local school district" because they resented bureaucratic intrusions into their home and family life. Consequently, they informed the district they would permit no further testing. They decided that they would educate their children according to their own religious beliefs without interference from the government. As they explained, "We are responsible for our children, not the school board. They don't support or raise them, we do. We are true Americans, and the Lord has let us know that He will protect our constitutional freedoms. It is a corrupt government that passes a

law that takes children away from their parents, and those people who try to enforce that law are tyrants." (pp. 61–61)

Thus began the second stage of their resistance. The local school board withdrew their exemption certificate, and initiated a new criminal complaint against them. After having attended several school board meetings and court hearings, on August 23, 1977, the Singers were present in the juvenile court of Judge Kent Bachman. The charge against them was again criminal neglect of their children. Representing himself, John refused to plead guilty. All his children were well cared for, none were "neglected," and he readily admitted that they did not attend public school. Singer's position was "that the only thing I have to prove to this court is that my children are not being trained for any delinquency actions or any criminal actions, and this is the only thing I have to prove and nothing else." (p. 76) Judge Bachman insisted that the only issue was whether the Singers "complied with the policies or standards set out for the education of your children" by the school board. (p. 81) Singer responded, "But it seems like the standards which have been set out here are not the same standards I believe in. … Have you got even the right to force my children under any form of education?"

The judge concluded that the Singers were guilty of a misdemeanor and found them in violation of the compulsory attendance law. Both parents and children were to be evaluated by a court designated psychologist, Dr. Victor Cline. John and Vickie were each fined $290, and sentenced to 60 days in the county jail unless they met with the evaluating psychologist. Due to the publicity that their case was generating, the Singers were approached by supporters of private and home schooling, and urged to incorporate their own private school. Since Utah law was very vague on the requirements for a private school, it was thought they might use this loophole to escape the jurisdiction of Judge Bachman's juvenile court. Thus by the time they were summoned on November 1, to explain why they had failed to comply with the judge's order (four children had been tested and evaluated by Dr. Cline, but they themselves refused to submit) the Singers had formally incorporated their own private school, High Untas Academy, Inc. Judge Bachman granted a stay, and held that if after one month the Singers did not comply with the order of August 23rd, "there will be incarceration for both of you."

On November 3, 1977 John and Vickie were interviewed and tested by Dr. Cline. He found the children to be on an average of 34 points lower IQ than their parents because the children were not having "adequate educational experiences." In the meantime, Judge Bachman had set a trial date for December 16th, and decided to hold a pre-trial conference on November 5. In an effort to work out a peaceful compromise, the judge agreed to vacate his order that they be jailed and pay a fine, if the Singers would submit an acceptable plan for the education of their children. This the Singers refused to do, because they believed the judge had improperly disregarded their efforts to form a private school. They also decided not to attend their December 16th trial for fear that their children would be

physically taken from them. On December 16th, Judge Bachman issued bench warrants for their arrest, and set bail at $300 each. Their trial was continued to January 31, 1978.

For the next year, John Singer was literally at war with the authorities, and did not set foot outside his farm. When contacted by the sheriff on the telephone, John informed him that he "intended to resist arrest." At the January 3rd trial, Judge Bachman found John and Vickie Singer guilty of child neglect. By now, they had five school-age children who were ordered to submit to daily tutoring provided by the South Summit School District. If the Singers failed to comply with the tutoring program designed by the school district, they would be held in contempt of court. The Singer children were to remain in the custody of the Utah Division of Family Services (Judge Bachman had first issued the custody ruling on August 23, 1977), but allowed the children to remain at home with John and Vickie. After the trial, John Singer told the press that he and Vickie would not allow a tutor in their home. "We're not trying to tell other people what to believe or how to live, we just want to be left alone and mind our own business."

As a result of case reassignments, a new judge entered the picture. Since the Singers would not comply with the school district's daily tutoring plan, on February 6, 1978, the new juvenile court judge, Farr Larson, issued an order for the Singers and their children to appear in court March 14, 1978 to show cause as to why the parents should not be held in contempt, and why the children should not be taken from their home and placed in custody of the State. The Singers did not attend their show cause hearing on March 14, 1978. Judge Larson found them in contempt and issued bench warrants for their arrest. His order was stayed for seven days, so as to allow the Singers time to file an appeal. On March 21st, the sheriff was ordered to commit both parents to jail for 30 days, and each of them were ordered to pay a fine of $200.

The Singers refused to appeal their convictions (primarily on the basis that such actions were inconsistent with their religious beliefs). John had also previously told friends that "I'd rather die than go against my religious beliefs." (p. 111) When Judge Larson finally dissolved his stay of execution, he was quoted in the newspapers as saying:

> By law, children in this state have a right to an education, and a duty to attend school. Children are no longer regarded as chattels of their parents. They are persons with legal rights and obligations. The rights of the parents do not transcend the right of a child to an education nor the child's duty to attend school. Parents who fear the negative influence of public education should also examine the damaging effects of teaching a child disobedience to law and defiance to authority. (p. 114)

The judge also directed the sheriff to arrest John Singer, but "to employ such means and take such time as are reasonably calculated to avoid the infliction of bodily harm on any person." (p. 144) After nearly six months of inaction, in Octo-

ber 1978, Judge Larson removed the restriction about the use of violence from his arrest order, but he set no time limit for Singer's apprehension. After consultation with State law enforcement officials, it was decided that they would try to arrest Singer during a media interview, at which three law officers would pose as newsmen. This caper was foiled by Singer's strength, his family's immediate reaction (they jumped all over his would-be captors), and the pistol in Singer's waist band. On October 20, 1978, the Summit County attorney filed a new criminal complaint, charging John with 3 counts of aggravated assault for resisting arrest with a gun. A felony warrant (which automatically permits the use of deadly force to effect an arrest) was issued so he could be taken into custody. Judge Larson was also reaching the end of his patience. Near the end of October 1978, he threatened the county sheriff with a contempt of court citation if he—the sheriff—did not carry out the order to arrest Singer.

By early November 1978, John Singer had been at a standoff with the authorities for the better part of a year. He was still in contact with the media via the telephone and friends. His predicament, he believed, was caused as much by the Mormon Church as it was by the State of Utah. "Speaking of his right to educate his children as he saw fit, John had said: 'According to the state's system, my home is just a feeding place. All they want me to do is feed my children and they want to take them from me and brainwash them to put them into a Sodom and Gomorrah society.' " (p. 158) The local and State government and its enforcement machinery found themselves in an increasingly embarrassing situation. One lone man was holding them at bay.

Something had to be done. The leadership of the Utah Department of Public Safety, the Division of Narcotics and Liquor Law Enforcement, and Highway Patrol all became involved in a surveillance and apprehension plan. The key was to "surprise Singer with such a show of force that he would realize the futility of resisting arrest and would submit peacefully." (p. 170) Ten men, in five groups of two, were to watch Singer, learn his daily routines, and eventually confront him in such a fashion that he would have no choice but to submit. On January 18, 1979, their plan was put into effect while John was clearing snow off his driveway with a gas-powered snowblower. Although he had put down his rifle, Singer still had a thirty-eight Colt automatic tucked in his trousers. When approached by four of the lawmen, he turned, started running, and drew the pistol from its resting place. Feeling threatened for his personal safety, one of the officers fired his shotgun at Singer, and killed him with a single blast of buckshot. Shortly thereafter, social workers took the children into protective custody for nine days. In order to get them back, Vickie agreed to a court-approved plan whereby she could teach the children at home under the supervision of a private school acceptable to the juvenile court.

Thus ended the life and saga of John Singer, killed while resisting arrest on charges of contempt of court and feloniously assaulting law officers attempting to

arrest him. Was he right? Does statist law assign the control of children to their parents, or does the State reserve to itself the right to control their upbringing? In other words, who controls the children in our society?

One of the books that prompted the writing of this article was Blair Adams' volume: *Who Owns the Children?* (subtitled "Public Compulsion, Private Responsibility, and the Dilemma of Ultimate Authority," Waco, Texas: Truth Forum, 1991, Fifth edition). Penning a very broad-ranging fundamentalist Christian attack on State compulsion, the author examines some of the court cases and legal precedents that shed light on this important question. In his "Preface" he writes:

> [A]ccording to the courts of this land, … "A child is primarily" not his parents' offspring but "a ward of the [S]tate"; … parents hold relationship to the child only at the State's "sufferance", … "the moment a child is born he owes allegiance to the government"; … parents serve as a mere "guardianship" which "the government places [the child] under"; … parental authority must be "at all times exercised in subordination to the paramount and overruling direction of the [S]tate"; … "the natural rights of a parent to the custody and control of … his child are subordinate to the power of the [S]tate"; … in deciding whether parent or State will control a child's education, the child's academic progress under the parents—even as measured by State-approved tests—has been termed by State prosecutors as "irrelevant and immaterial"; and finally … such legal principles and policies form the basis of all this nation's compulsory education laws. (pp. xix–xx)

Now let us examine the actual court cases and contexts in which these judicial statements were made.

Mercein v. People Ex Rel Barry, 25 Wendell 64, December 1840

This case involved a custody dispute in New York state. Lawyers for Mr. Barry, the father, argued that the father's right to the custody of his minor child was paramount to that of Mercein (his father-in-law) or even Mercein's daughter (the child's mother). The court stressed that, "The interest of the infant is deemed paramount to the claim of both parents," and that the welfare of the infant must be recognized ahead of the rights of the parents. The chancellor then went on to explain how parental authority is dependent on the State:

> By the law of nature, the father has no paramount right to the custody of his child. By that law the wife and child are equal to the husband and father; but inferior and subject to their sovereign. The head of a family, in his character as husband and father, has no authority over his wife and children; but in his character of sovereign he has. On the establishment of civil societies, the power of the chief of a family as sovereign, passes to the chief or government of the nation. And the chief or magistrate of the nation not possessing the requisite knowledge necessary to a judicious discharge of the duties of guardianship and educa-

> tion of children, such portion of the sovereign power as he relates to the discharge of these duties, is transferred to the parents, subject to such restrictions and limitations as the sovereign power of the nation think proper to prescribe. *There is no parental authority independent of the supreme power of the state.* But the former is derived altogether from the latter. ... [Emphasis added.]
>
> It seems then, that by the law of nature, the father has no paramount inalienable right to the custody of his child. ... *The moment the child is born, it owes allegiance to the government of the country of its birth*, and is entitled to the protection of that government. [Emphasis added.]

State v. Bailley, 157 Ind. 324, October 29, 1901

Sheridan Bailey had been convicted for violating the compulsory education law of Indiana which went into effect March 8, 1897. One of the grounds upon which Bailey challenged the state was that "it invaded the natural right of a man to govern and control his own children." The court responded with the following words:

> *The natural rights of a parent to the custody and control of his infant child are subordinate to the power of the state, and may be restricted and regulated by municipal laws.* [Emphasis added.] One of the most important natural duties of the parent is his obligation to educate his child, and this duty he owes not to the child only, but to the commonwealth. If he neglects to perform it or willfully refuses to do so, he may be coerced by law to execute such civil obligation.

Viemeister v. White, President of Board of Education, 179 N.Y. 235, October 18, 1904

This case involved a compulsory immunization regulation of the Queens County Board of Education mandating that all pupils and teachers be vaccinated, or otherwise be denied admittance to school. The parents sued the Board of Education, demanding that their son be re-admitted to public school, even though he had not received the required shots. The parents believed that smallpox vaccinations "did not tend to prevent smallpox," "tends to bring about other diseases, and that it does much harm with good." The court observed: "When the sole object and general tendency of legislation is to promote the public health, there is no invasion of the Constitution, even if the enforcement of the law interferes to some extent with liberty or property." The court also noted that belief in the efficacy of vaccination programs was widespread both in the United States and other countries.

> The possibility that the belief may be wrong, and that science may yet show it to be wrong, is not conclusive; for the legislature has the right to pass laws which, according to the common belief of the people, are adapted to prevent the spread of contagious diseases. In a free country, where the government is by the people through their chosen represen-

> tatives, practical legislation admits of no other standard of action: *for what the people believe is for the common welfare must be accepted as tending to promote the common welfare, whether it does in fact or not.* [Emphasis added.]

In effect, the court said that if it is a common belief that killing red headed people is an effective way to ward off economic depressions, and the legislature passes a law authorizing the killing of all red heads for this purpose, then killing of red headed people is no longer murder but a legislatively sanctioned activity for the general welfare of the society. Such reasoning is the result of belief in majority rule, and the negation of individual rights.

State v. Shorey, 48 Or. 396, September 11, 1906

John Shorey was convicted of violating Oregon's child labor law which prohibited "the employment of a child under 16 years of age for a longer period than 10 hours in any one day." On appeal the Oregon Supreme Court explained that laws regulating the employment of adults had a different constitutional basis than the child labor law. Since the 14th Amendment to the federal constitution protected "life or liberty," adult employment laws were only valid if they were reasonably necessary to "protect the public health, safety, morals or general welfare."

> But laws regulating the right of minors to contract do not come within this principle. … *They [minors] are wards of the state and subject to its control. As to them the state stands in the position of* parens patriae *and may exercise unlimited supervision and control over their contracts, occupation, and conduct and the liberty and right of those who assume to deal with them. This is a power which inheres in the government for its own preservation and for the protection of life, person, health, and moral of its future citizens.* [Emphasis added.] … [The court then goes on to cite the author of a legal textbook] 'Minors are wards of the nation, and even the control of them by parents is subject to the unlimited supervisory control of the state.'

Consequently, the court affirmed that Oregon's child labor law was "a valid exercise of legislative power."

Allison et al. v. Bryan, 21 Oklahoma 557, June 25, 1908.

This case adjudicated a custody dispute over Kenner Allison, Jr., the illegitimate child of Anna Bryan and Kenner Allison, Sr. By the early common law, fathers usually asserted their control over any and all of their children. This right was gradually eroded by statutory law and court decisions during the nineteenth century. Thus, by 1908, the Oklahoma Supreme Court declared that fathers were not entitled to the services of their children.

> *A child is primarily a ward of the state.* The sovereign has the inherent power to legislate for its welfare, and to place it with either parent at

> will, or take it from both parents and to place it elsewhere. This is true not only of illegitimate children, but is also true of legitimate children. *The rights of the parent in his child are just such rights as the law gives him; no more, no less.* His duties toward his child are just such as the law places upon him. … [The Court then cites the case of *Mercein v. People* (see above) and concludes its general discussion of children, parents, and the state by referring to Lewis Hochheimer's book, *A Treatise on the Law Relating to the Custody of Infants* (1887).] "It may be considered as the settled doctrine in American courts that all power and authority over infants are a mere delegated function, entrusted by the sovereign state to the individual parent or guardian, revocable by the state through its tribunals, and to be at all times exercised in subordination to the paramount and overruling direction of the state." [Emphasis added.]

Ex Parte Powell, 6 Oklahoma Criminal Court of Appeals 495, January 11, 1912.

Upon being convicted of burglary, John Powell, aged fourteen and without parents or relatives, received a sentence of two years in the State Training School for Boys. This case was instituted by the State Commissioner of Charities and Corrections, who applied for a writ of habeas corpus, seeking to remove Powell from the school. It became necessary for the Court to review the statutory provisions relating to juvenile delinquents in Oklahoma. It observed that in the United States "the fundamental doctrine upon which governmental intervention in all such [juvenile] cases is based is that the moment a child is born he owes allegiance to the government of the country of his birth, and is entitled to the protection of the government for his person, as well as his property. … The authority of all guardians is derived from the state; …"

Prince v. Commonwealth of Massachusetts, 321 US 158, January 31, 1944

This case originated in a clash between the Jehovah's Witnesses and the State of Massachusetts. The legislature had passed a law which prohibited children from selling magazines. It was designed to prevent Jehovah's Witnesses from having their children distribute the "Watchtower" publication. Sarah Prince had been convicted of violating Massachusetts' child labor laws, and she appealed to the Supreme Court of the United States on the basis that her religious freedoms, under the First Amendment, had been violated by the State. The Supreme Court upholding her conviction, set forth part of its reasoning in the following comments:

> Previously in *Pierce v. Society of Sisters*, 268 US 510, 45 S. Ct.571, … [see reference to this case in my article "Bad or Worse!" *The Voluntaryist*, October 1992] this Court had sustained the parent's authority to provide religious with secular schooling, and the child's right to receive it, as against the state's requirement of attendance at public schools. … It is cardinal with us that the custody, care and nurture of

> the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. *Pierce v. Society of Sisters*, supra. And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.
>
> *But the family itself is not beyond regulation in the public interest, as against a claim of religious liberty. And neither rights guard the general interest in youth's well being, the state as* parens patriae *may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor, and in many other ways. ... [T]he state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare, and this includes, to some extent, matters of conscience and religious conviction.* [Emphasis added.]...
>
> The state's authority over children's activities is broader than over like actions of adults. This is peculiarly true of public activities and in matters of employment. A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies. [What should they be—obedient, tax-paying slaves and conscripts?] It [the state] may secure this against impending restraints and dangers, within a broad range of selection.

Ex parte Walters, 221 P.2d 659, Criminal Court of Appeals of Oklahoma, June 28, 1950.

This case extensively quotes *Ex parte Powell*, one of the earlier Oklahoma citations found above. It prefaces these quotes by remarking that, "Thus it will be found that this court has for some forty years been committed to the thesis that the state has a paramount interest in the child. And why should this not be? Is it not for the common good? Aristotle, the Greek Philosopher, hundreds of years prior to the modern dictators who for selfish, sinister ends, though proclaimed for the common good, have made such effective use of the idea, said, 'All who have meditated on the act of governing mankind have been convinced that the fate of empires depends on the education of youth.' "

Without a doubt statist case law demonstrates that the State claims that it owns the children. Although there may be cases to the contrary (we'd like to see them if there are any), John Singer was certainly right when he asserted that the state wants the parents to bear the cost of raising the children, so that the state can then take the children, brainwash them, and have them as loyal supporters.

The implications arising from the principle that the State owns the children are astounding. Note, that if the state owns the children, then it must own the adults into which the children mature. Although there may be no court rhetoric to this effect, all the actions of the State, from taxation to military conscription of adults reinforces this conclusion. Second, if the State owns the children, then adults should be required to have not only marriage licenses, but permission from

the State before they bear children. Why should unapproved couples be allowed to procreate? Soon, the State will not only grant permission to have children, but will tell couples how many children to have. Bearing children and having a family become privileges granted only at the sufferance of the State. Third, comes licensure of all birth attendants and the places where births may take place. If your home is not approved by the State, you may not have a home birth, any more than you may home school your children if the State does not approve. If the state owns the children, it must be able to keep track of when, where, and how they are born. (Current birth registration laws are but a partial attempt to do this.) As Blair Adams puts it,

> This desire for control over childbirth has *nothing* to do with considerations for the health and safety of the mother or child. As always it has everything to do with the power of the State and its desire to establish total control over, its ownership of, the lives of our children and of everyone else as well. … The day rapidly approaches that will designate as a crime the birth of children anywhere outside State-controlled and State-sanctioned institutions, Just as today many states have designated as criminal the education of children outside of such institutions.

It has been repeatedly shown, although State rhetoric denies it, that State solicitude for children originates not from any genuine concern for the children, but rather from the State's desire to achieve "order, stability and control." The State's primary concern is always not the condition of children's lives, but in expanding State control. "Control, not quality, has become the essential rationale behind" all sorts of State compulsion. In the case of education, the State maintains a double standard. Its own efforts to educate via the public schools is an admitted failure. Parents of homeschoolers have excelled at training their children. Rather than trying to curtail homeschooling, one would think that the State would logically try to encourage it. More students at home would take some of the burden off the State system, and would result in an improvement for those taken out of public schools. So why does the State want to regulate and curb homeschooling? Obviously there are vested economic interests which oppose homeschooling (teachers, unions, etc.). But state opposition to unfettered homeschooling is more than a question of economics. It is a question of control and legitimacy. As Blair Adams explains,

> [T]o proclaim a people free to choose their own government but then to insist that the government determine, through a government-controlled compulsory educational system, the very attitudes and values by which the people will choose becomes the most insidious and pernicious form of tyranny: it gives the people the *illusion* of freedom while all along controlling them through a form of governmental programming.

There is little doubt that the State will do everything in its power to maintain its supremacy. We have seen how State personnel murdered John Singer for no other reason than he would not "bow down to Caesar." A year and a half after his death, the judge who issued the contempt citation against Singer, finally terminated his jurisdiction over the Singer family. "The freedom that we've been fighting for has finally come through," declared Vickie Singer. "But it's very ironic, to say the least, because now I'm teaching my kids the same way that John and I did before he died, and I think the State knows it. But all they wanted to do was show us, and show the people, that if anybody tried to come against the system, watch out because this is what can happen to you. And I think they tried to use John and me as an example." (p. 216)

So there you have it. As long as the omnipotent cult of the State exists the State will attempt to control the children. Homeschooling, as the State has already recognized, contains an explosive and potential force for change, possibly away from statism in the direction of voluntaryism. If there is to be a change, it must originate within the individual, and must proceed from individual to individual. Homeschooling certainly follows this method. There can be no mass conversions. Only as the philosophy of voluntaryism is passed down from father to son, from mother to daughter, will the situation change. "If one takes care of the means, the end will take care of itself." V

A Declaration of Personal Independence

by a Friend of Paine
(from No. 62, June 1993)

When in the course of human events it becomes necessary for a person to advance from that subordination to which he or she has been subjected and to assume the equal and independent station to which the laws of nature entitle that person, a decent respect to the opinions of mankind requires that he or she should declare the causes which impel that person to the change.

I hold these truths to be self-evident: that all people are created with equal, independent and unalienable rights; among which are the preservation of their own life, liberty, and the pursuit of happiness; that to secure these ends, associations are formed among humans, deriving their just powers from the consent of their members; that whenever any association becomes destructive of these ends, it is the right of each member to secede from it, to withdraw financial and other support, and to create or join different associations which lay their foundation on such principles, and organize their powers in such form, as to their members shall seem most likely to effect their safety, enterprise and happiness.

Prudence indeed will dictate that government and other associations long established should not be changed for light and transient causes; and people may be more disposed to suffer, while evils are sufferable, than to right themselves by abolishing or abandoning the forms to which they are accustomed. But when a long train of abuses and usurpations reveals a design to subject people to the absolute power of a tyrant, it is their right to throw off such government or other associations, and to provide new guards for their future security. Such has been the patient suffering of the undersigned; and such is now the necessity which constrains me to reject the current form of government to which I am subjected. The history of this government is a history of unremitting injuries and usurpations, among which no one fact stands single or solitary to contradict the uniform tenor of the rest; all of which have in direct purpose, the establishment of an absolute tyranny over me and my fellow citizens. To prove this, let facts be submitted to a candid world, for the truth of which I pledge a faith, as yet unsullied by falsehood:

1. The government of the United States of America and its State subsidiaries rely upon the legalized theft called taxation to coerce citizens into contributing to activities they do not support. This has led to a lack of market discipline and the largest public debt in the history of mankind, because those who pay for this government cannot legally say, "*No!*" While this coercion has allowed short-term benefits to be created for some, this has come only at the most severe and tragic cost. This government cannot continue to expand public debt and increase taxes without widespread, catastrophic consequences. I object to the fact that my personal welfare and assumed consent are excuses this government relies upon to continue this irresponsible and destructive behavior.

2. I am forced, by this government's political laws and the police and courts that do its bidding, to contribute to a bankrupt Social Security system that is a tragic fraud. Unlike the savings and investment account that I have been told it represents, it more accurately resembles a checking account, from which people older than a certain age may be given benefits at my expense. None of the current extortion I am forced to pay for this system is being saved, invested, or otherwise allocated to my retirement. Instead, this government uses my involuntary contributions to pay others currently drawing benefits, while promising to continue this theft on the children and grandchildren of this generation to pay for the empty promises made for my retirement. I can no longer tolerate this injustice.

3. The collapse of organized communism in eastern Europe and the Soviet Union has failed to significantly reduce the size and influence of the military-industrial-political complex. The so-called Department of "Defense" currently spends almost $300 billion per year to protect its bureaucracy, some U.S. companies and the corrupt governments of foreign nations. The annihilation of 100,000 Iraqis, popularized by a propaganda campaign and level of censorship unparalleled in this country, has elevated mass murder to a new level of social acceptability. I refuse to accept the fact that my involuntary contributions to this

government are used to perpetuate such an instrument of terror in the false name of "national defense."

4. The creation and expansion of a welfare state in the U.S. has brought about precisely the opposite result from that intended. Rather than help people out of poverty, it has encouraged them to remain. Rather than provide emergency funds for low-income people, most government spending in this area is received by those well above the official poverty level. Rather than job skills and opportunities, it has produced dependency and helplessness. Rather than pride of accomplishment, it has spawned civil unrest and despair. The continuation of this corrupt and fraudulent system is an affront to human dignity and a complete denial of human compassion.

5. This government has created political laws which prevent honest people from solving their problems in non-violent, voluntary ways. Examples include the establishment of government-protected monopolies for public services and oppressive restrictions on private enterprise and non-violent personal behavior. Occupational licensing and minimum wage laws, contrary to their stated purposes, protect established industries and unions from market competition rather than consumers and most workers. No such government regulation can produce a more beneficial or fair result than the free, unregulated marketplace of human ideas and uncoerced activities.

6. The police of this government protect neither people nor their property. Instead, the primary mission of this government's police is to enforce coercive political laws which have been created at the request of powerful special interest groups. In so doing, this government's police inadvertently protect criminals, while punishing non-violent people. State and federal crime statistics reveal that violent and property criminals in the U.S. have less than a one-in-twenty chance of being successfully and fully prosecuted. Despite this, the United States has a larger percentage of its population in prison than China, the former Soviet Union, or South Africa. These two facts suggest that this government's police, courts and prisons exist primarily to punish those who disagree with this government; not to protect people or their property from violence or other aggression. Indeed, the most dangerous and destructive influence in the life of most U.S. citizens is the violence and aggression of this government.

7. The so-called "war on drugs" is a cure that is worse than the disease. It has changed a serious health problem into a popular means for suspending the Bill of Rights (the only part of the U.S. Constitution based on individual rights); and has created violent crime where there was none before. This disastrous government activity has resulted in the expansion of the American police state and the reduction of personal freedom, responsibility and legal rights of all people who reside in the United States.

8. Despite spending more money per student than either private schools or most other countries, the U.S. system of public schools is an unmitigated disaster.

As taxes and debt are increased for this coercive government "education," expectations are lowered and the current educational establishment becomes more entrenched. There cannot be quality education until teachers are required to achieve results, rather than tenure; and when teachers, students and parents play an active role in education without interference or "help" from politicians. The purpose of education is not to provide jobs for teachers and administrators, but to teach. No one should be forced to support this primitive, counterproductive system of mass obedience and indoctrination.

9. The U.S. Constitution, as the basis for statutory law in the United States, was never, and can never be, a document by which a free and independent people govern themselves. There are three reasons for this:

This document is fundamentally a statement of government—not people—sovereignty.

This document was never executed as a proper contract between any humans, living or dead.

This document has been repeatedly modified to expand government power and to reduce the legal rights of individuals without their consent.

10. The U.S. Government has repeatedly created the conditions for economic, social and military crises, while using each such crisis as an excuse to expand its own power. Specific examples of this include the administration of president Abraham Lincoln during the Civil War, the creation of the Federal Reserve and the income tax in 1913; and the policies of president Franklin Roosevelt in the 1930s. It was the artificial expansion of the money supply by the Federal Reserve in the "roaring" 1920s that led directly to the stock market collapse in 1929. President Roosevelt's socialist agenda (the "New Deal") in the 1930s caused the Great Depression to last ten years instead of one. More recent wars, recessions, social unrest and "emergency" presidential power legislation are an extension of this consistent downward spiral, caused by continuing and expanding government intervention in the markets that non-coercive humans choose to satisfy their legitimate desires.

11. The U.S. Congress has consistently subsidized special interest groups at taxpayers' expense, while restricting the personal freedom of all Americans. This coercive, unrepresentative body of men and women holds the sole responsibility for suffocating public debt, oppressive taxation and ongoing budget deficits. The fact that a small percentage of the U.S. population voted for the current members of Congress cannot begin to justify the irresponsible actions of this untrustworthy band of plunderers. I hereby declare that no congressman, senator, governor or president represents my interest in any conceivable way.

12. This government has promoted itself as a true, legitimate and representative agent of all Americans, which is an inherent contradiction and unattainable goal. Special interest politics and the fraudulent charades called elections have completely destroyed any remaining legitimacy or representative quality that this

government might have once had. Reform of this coercive system of government is hopeless, as naive voters continue to be misled by promises of more benefits without apparent cost.

I therefore reject and renounce all allegiance and subjection to any person, association, majority, or government that I have not voluntarily and explicitly chosen as my personal representative. I assert and declare myself to be a free, sovereign and independent person, and as such I have the right to regulate my own affairs, decide which products, services, charities and causes to support; and to do all other things which independent persons may of right do. And for the support of this Declaration, I pledge my life, my property, and my sacred honor.

A Friend of Thomas Paine

[Editor's note: *The Voluntaryist* will act as a repository for those who wish to sign this Declaration. If this document does not satisfy you, you are invited to prepare your own and submit it for publication. In his "Letter to the Editor," the author refers to a small book which he has written. It is titled *A Personal Declaration of Independence*. In conjunction with the author, I am undertaking its publication. If you are interested in more information on how to order the book, please send your name and address to *The Voluntaryist*.]

Major Crimes of the United States Government: 1776–1993

by Carl Watner
(from No. 64, October 1993)

Because of its very high legitimacy rating, the government of the United States does not generally use "direct" violence to enforce its edicts. Since it has trained so many of its citizens so well, they are inclined to obey "voluntarily." Hence, most people tend to think of "their" government as some sort of heaven-sent institution designed to dispense benevolence and goodness. The purpose of this article is to debunk that view of the State by briefly reviewing the major crimes (crimes being defined as an invasion of person or rightfully owned property) committed in the name of, or by agents of, the government of the United States of America.

As the following narrative demonstrates, the American State, like all other States in history, is a coercive and exploitative institution. It is still a criminal institution, regardless of how "democratic" it appears to be. Even though we have one of the highest standards of living in the world in the U.S., we should never lose

sight of the fact that the lesser of two evils is still evil. The primary difference between States is simply the amount of violence they are required to exert in order to maintain power. The more successful and long-lived States usually exercise less physical force because they are more adept at waging psychological warfare, and thus capturing the minds and spirits of their citizens. As the recent elections show us, the emphasis on electoral "participation" is to focus on "Who should rule us," not to raise the question: "Should we be ruled at all?" It is practically a foregone conclusion that we need leaders to direct a government that robs us of nearly half the fruits of our labor, registers our births and deaths, destroys our money, and regulates and governs us in thousands of ways.

It would take a series of books to enumerate and discuss all the crimes of the United States government. What this brief review attempts to do is put the major crimes of the United States government in perspective. *The Voluntaryist* is far more interested in promoting positive alternatives than in decrying the evils of statism, but it is necessary to "know the enemy." We can do so only by examining its dark, dark history.

American Revolutionary War Era, 1776–1798

Expropriation of Property

Both our federal government and the state governments of the thirteen colonies were born amidst violence and an orgy of expropriation. During the Revolution most states passed laws voiding all debts owed by Americans to loyalists, and confiscating the holdings of those people who remained loyal to the Crown. Such confiscations were used as a tool of the national and state governments in an effort to build loyalty. Confiscated land and property were used to reward and enrich Revolutionary War leaders and their friends. Some was parceled out among small farmers and soldiers who fought for the cause, in order to create a mass base of support for the new government. "Indeed, this became a characteristic of the new nation: finding itself possessed of enormous wealth, it could create the richest ruling class in history, and still have enough for the middle classes to act as a buffer between the rich and the dispossessed."

People's Tribunals, Loyalty Oaths, and Censorship of the Press

In nearly every community, Committees of Safety were formed by supporters of the Revolution. The function of these groups was to identify potential Loyalist sentiment, write and administer loyalty oaths, conduct 'ad hoc' people's trials to punish those suspected of committing disloyal acts, and to pass bills of attainder, by which loyalists were deprived of their life or property. In New York state over 1000 people were convicted of treason. In 1778, 400 people were attainted and banished from the state of Pennsylvania.

"All of the colonies passed wartime laws prohibiting the publishing of materials supporting the King's authority over the emerging states." Laws were also passed which made it a crime to decry the Continental currency, which became nearly worthless as the Revolution progressed.

Incongruities of the American Revolution

The Founding Fathers were in rebellion because *they* were denied the rights of representation which, like other subjects of the King, they would have enjoyed had they lived in England. Their acts of disobedience and tax refusal were not an attempt to overthrow the authority of government. "They went into rebellion first in order to gain admittance into, and then take possession of, the organs of government." They had no intention of extending the recognition of individual rights to native American Indians, whose lands had been mostly stolen, to Negroes, who themselves, or whose ancestors had been kidnapped and were held in slavery. Nor did they intend to extend suffrage to indentured servants, women, and poor white working people. The Revolutionary slogan—"No taxation without representation"—was obviously not a plea for no taxes, but rather a demonstration that the American revolutionists believed that robbery (taxation) of themselves and their neighbors would be politically proper so long as they had a say in the process.

From the Articles of Confederation to the U.S. Constitution—A Coup d'etat, 1786–1791

The U.S. Constitution was clearly a work of genius because it "created the most effective system of national control devised in modern times, and showed future generations of leaders how to keep control with a minimum of coercion, maximum of law—all made palatable by the fanfare of patriotism" and national unity. The Constitutional Convention was engineered mostly by wealthy men and politicians who realized that under the Articles of Confederation the federal government lacked the power to become a strong, centralized force in the new nation. The Constitutional Convention was supposed to amend the Articles of Confederation, not replace it with a new form of government. Any proposed changes were supposed to have been ratified by *all* the states before they were adopted. "But the Framers defied these legal stipulations, abandoned their authorization to amend the Articles only, designed an entirely new centralized national government, and inserted in the Constitution that it should go into effect when ratified by *only nine states*." What the Framers "actually did, stripped of all fiction and verbiage, was to assume constituent powers, ordain a constitution of government and liberty and demand a *plebiscite* thereon over the heads of all existing legally organized powers." Had Julius Caesar or Napoleon committed these acts, their actions would have been pronounced a *coup d'etat*.

The passage of the first ten amendments to the Constitution (the Bill of Rights) was designed to bolster the weak popular support for the new Constitu-

tion. These amendments appeared to make the new central government the guardian of the people's liberty—to speak, to publish, to worship, to petition, to assemble, to be tried by a jury of their peers, and to have their homes secured against official intruders. But using the Constitution to protect the people from its own government was like having the proverbial fox guard the hen house. Within less than ten years the government was breaking out of its own constitutional limitations. According to the First Amendment passed in 1791, Congress was to "make no law … abridging the freedom of speech, or of the press." Yet as early as 1798, Congress passed a series of laws plainly violating this amendment.

Alien and Sedition Acts, 1798

Three alien laws and a sedition act were passed by the Federalist majorities in both houses of Congress in an effort to curb their political opposition. In particular, the Sedition Law made it a crime to speak or write any scandalous, false, or malicious words against the government of the United States, or to stir up sedition or opposition to any lawful act of the President or Congress. All the leading anti-federalist newspapers in the country were attacked. Some were put out of business, others suspended publication. Ten Americans (including some newspaper editors) were jailed for speaking out against the national government, and their imprisonment was held to be constitutional. Members of the Supreme Court, sitting as appellate judges in 1798–1800, held that the common law concept of seditious libel still ruled in America. This meant that although Congress could not exercise prior restraint, it could punish treasonous speech or writing after their utterance. Although Jefferson, an anti-federalist, had opposed the passage of these laws when he was Vice President under John Adams, he used these same laws to silence his critics after he was elected President in 1800.

The First Half of the Nineteenth Century

Andrew Jackson and the Indians

The military exploits of Andrew Jackson (seventh President of the United States, 1828–1836) during the War of 1812, demonstrate that this war was not just a war of survival against Britain, but "a war for expansion of the new nation into Florida, Canada and into Indian territory." After the Battle of Horseshoe Bend in 1814, and after his victory over the British in New Orleans in 1815, Jackson got himself appointed treaty commissioner and dictated a treaty which took away half the land of the Creek nation. One historian called this land grab "the largest single Indian cession of southern American land." Jackson was also instrumental in beginning the Seminole War of 1818, which led to the American acquisition of Florida in 1819.

After Jackson was elected President in 1828, stealing land from the Indians became the order of the day. Wherever Indians lived in the states of Georgia, Ala-

bama and Mississippi, they were subjected to pressures from white settlers, farmers, trappers and hunters to move westward. The eastern Cherokees had begun modeling themselves after the white man, becoming farmers, blacksmiths, craftsmen, and owners of property. However, none of their attempts to assimilate themselves made their land any less desirable to the whites. "Jackson's 1829 message to Congress made his position clear: 'I informed the Indians inhabiting parts of Georgia and Alabama that their attempt to establish an independent government would not be countenanced by the Executive of the United States, and advised them to emigrate beyond the Mississippi or submit to the laws of those states.' "

After his re-election in 1832, Jackson moved to speed up the removal of the Creek, Cherokee, and Seminole Indians from Alabama, Georgia, and Florida. Immediately after Creek delegates signed the Treaty of Washington in 1832 (under which they gave up 5 million acres of land, and agreed to removal beyond the Mississippi), a white invasion of Creek lands began. As one historian put it, "no agreement between white men and Indians had ever been so soon abrogated as the 1832 Treaty of Washington. Within days the promises made in it on behalf of the United States had been broken." New treaties were made and broken, and finally in 1836, the Cherokees were summoned to New Echota, Georgia to sign a new treaty of removal. Only five hundred of the 17,000 Cherokees in Georgia appeared, but the treaty was signed despite the fact that most of the tribe was not represented. After the treaty had been ratified in the Senate of the United States, President Van Buren (succeeding Jackson) ordered the army to use whatever force was necessary to move the Cherokees westward. Nearly all of the 17,000 Cherokees were rounded up and confined in stockades. Their emigration, known as the Trail of Tears, began on October 1, 1838. "As they moved westward, they began to die—of sickness, of drought, of the heat, of exposure." It has been estimated that four thousand died, either during confinement or while on the march.

During the 1960s when Lyndon Johnson spoke about American "commitments" and when President Nixon talked about Russia's failure to respect international treaties, the Indians of the United States had every right to laugh in their faces. "The United States government had signed more than four hundred treaties with Indians and violated every single one" of them. As one Indian put it, "They [the white man] made us many promises, more than I can remember, but they never kept but one: they promised to take our land and they took it." During the course of American history, no group of people—except the Negro slave—were more criminally mistreated or persecuted by the white man's law than the American Indian.

The Civil War Era

Negro Slavery

The essence of chattel slavery is the ownership and control of one person by another. Slavery violates not only the ethical precepts of the greater part of mankind, but blatantly negates the very concept of individual rights. Although neither the words 'slave' or 'slavery' were used in the Constitution of the United States, the federal government and numerous individual state governments upheld the legality of slavery in their own judicial systems. (For example, the U.S. Supreme Court held that the slave, Dred Scott, could not sue for his freedom. In the eyes of the law, he had no standing in court since he was property, not a person.) Several northern states either abolished slavery or refused to uphold the claims of southern owners in their state courts.

Under the Fugitive Slave Act of 1850 owners of southern slaves were enabled to recapture runaway slaves without observing due process of law. Alleged runaways were denied trial by jury, and instead were brought before federal commissioners who were empowered to return them to slavery. Commissioners were paid $10 for each person returned to slavery and $5 for each person set free. Federal marshals, whose job it was to capture fugitives, were empowered to summon citizens to their aid.

The Civil War

Although it is often thought that the Civil War was fought to abolish slavery, in President Lincoln's first inaugural address he affirmed his intention not to interfere with slavery in the South. When Union General Fremont declared martial law in Missouri, and stated that slaves whose owners were resisting the United States were to be freed, his orders were countermanded by Lincoln. Even under the terms of the Emancipation Proclamation of January 1, 1863, slaves behind Union lines were not set free. Rather than the abolition of slavery, the war was fought to preserve the Union by preventing secession, and to ensure the continued domination and control by the ruling classes of the West and North. The Civil War was one of the most traumatic periods in U.S. history. During five years of terrible conflict, it pitted state against state and family against family. Some 600,000 died out of a population of 31,443,000.

During the Civil War:

- "Complete censorship was imposed on all telegraphic communications." Lincoln seized the telegraph lines and established censorship over all transmissions; wartime reporters were required to get clearance for their writings.
- "Anti-administration newspapers were closed, their editors jailed or banished."

- "Tens of thousands of civilians were arrested for secessionist tendencies or for refusal to take an oath of allegiance to the Union. Many were tried and punished by military tribunals."
- "Confederate leaders were jailed after the war without ever being brought to trial." At the conclusion of the War, Jefferson Davis was held for two years at Fort Monroe before formal charges were pressed.
- "Property was confiscated from pro-slavery whites; slaves, rather than being freed, originally became the property of the U.S. government." The First Confiscation Act of August 6, 1861 "declared that all property used by the Confederates in their insurrection was forfeited and became the property of the government." Besides the telegraph, Lincoln seized control of the railroads.
- "Habeas corpus was illegally and unconstitutionally suspended." Lincoln not only used military tribunals to try Confederate soldiers, he resorted to military (rather than civilian) arrests and trials in Union controlled areas.
- Federal troops were used to break up industrial strikes during the war. "Soldiers were sent to Cold Springs, New York to end a strike at a gun works where workers wanted a wage increase. Striking machinists and tailors in St. Louis were forced back to work by the army. In Tennessee, a Union general arrested and removed from the state 200 striking mechanics. When engineers on the Reading Railroad struck, troops broke the strike, as they did with miners in Tioga County, Pa."
- The North resorted to a coercive draft of military solders under the Conscription Act of 1863. Violent draft riots broke out in the North to protest the fact that members of the wealthier class could buy a substitute or pay $300 to avoid military service.
- The first income taxes in U.S. history were imposed both in the North and the Confederacy.
- On December 21, 1861, the Northern government reneged on its contractual promise to redeem its money in gold by suspending specie payments. Government issue of legal tender notes ("greenbacks") began the following year.

Military Intervention and Empire, 1846–1900

The United States government has been concerned with expanding its geographical hegemony ever since its inception in 1776. The Northwest Ordinance of 1787, the Louisiana Purchase of 1803, the War of 1812, and the Indian Wars of the 1820s and 1830s are all evidence of the dreams of manifest destiny held by public office holders and private land speculators. The Mexican-American War of 1848 was instigated by the killing of an American colonel near the Rio Grande River in 1846. President Polk began hostilities by sending American troops "into what was disputed territory, historically controlled and inhabited by Mexicans." The indiscriminate bombardment (by American warships) of the Mexican port

city of Vera Cruz resulted in the killing of civilians, the destruction of the post office, and a surgical hospital. The war ended with the cession of large amount of Mexican territory to the U.S. government.

American armed forces have repeatedly been used to protect American interests in foreign nations. A State Department publication, "Armed Actions Taken by the United States Without a Declaration of War, 1789–1967," catalogs more than 125 incidents of intervention in the affairs of other countries during the 178 years in question. This study did not include the more encompassing engagements involving the five declarations of "solemn war" made during the course of U.S. history (the War of 1812, the Mexican-American War of 1848, the Spanish-American War of 1898, World War I, and World War II). (Korea, Vietnam, Grenada, the 1989 invasion of Panama, and Operation Desert Storm did not involve formal declarations of war.) Highly representative of the incidents involving U.S. military was the landing of troops in Hawaii in 1893, ostensibly to protect American lives and property. In reality, the show of force was to promote the formation of a provisional government under Sanford B. Dole. Although this action was later disavowed by the United States, it set the stage for the annexation of the Hawaiian Islands in 1898.

The Spanish-American War led to the annexation of Puerto Rico, Cuba, Wake Island, Guam and the Philippines. In the Philippines, 70,000 American troops were required to squash a fierce guerilla war led by Emilio Aguinaldo. Many brutalities were committed against the native forces, and, as a result, more than 4300 Americans were killed, more deaths than were sustained in the entire war against Spain. Typical of the U.S. attitude toward the Filipinos was the message sent by President Theodore Roosevelt to General Leonard Wood in 1906. Wood's soldiers had successfully surrounded a Moro stronghold (the Moros were native tribesmen of the Philippines) and killed 600 men, women and children. Roosevelt congratulated Wood and his men "upon the brilliant feat of arms wherein you and they so well upheld the honor of the American flag."

The Crusade Against Mormon Polygamy, 1862–1890

The first federal legislation directed against the Mormon practice of plural marriage was the Anti-Bigamy Act of 1862. It largely remained a dead-letter law because the Mormons saw it as an unconstitutional attack on their religion. They controlled the territorial courts and juries in the Utah territory, and it was impossible to get indictments or convictions for what they viewed as a non-crime. Under the Edmunds Bill of March 22, 1882, over 12,000 Mormon men and women were disenfranchised and prevented from serving on juries because of their beliefs, and over 1,000 were convicted of unlawful cohabitation. Refusal to deny the existence of a plural marriage was sufficient evidence to convict, which meant six month's imprisonment, and a $300 fine. Congress also appropriated a "spotter's fund,"

which paid out $20 to every informer whose information led to the arrest of a polygamist.

The Edmunds-Tucker Act was adopted on February 19, 1887. The purpose of this federal statute was to destroy the temporal power of the Church of Latter-Day Saints. It did this by 1) dissolving the Church as a legal entity; 2) allowing the Attorney General to commence forfeiture and escheat proceedings to confiscate all Church property in excess of $50,000 (the Government eventually took possession of over $1 million of Church property); 3) disenfranchised all women voters in Utah; 4) disinherited the children of plural marriages; and 5) prescribed a test oath to prevent polygamists from voting, holding office, or serving on juries. Many leading Mormons went underground in an effort to evade arrest; others were imprisoned. But in September 1890, the Church capitulated and Wilford Woodruff, President of the Church, issued an Official Declaration under which he authorized the removal of religious sanction from plural marriages. Government receivership of Church property was finally terminated in 1896, when statehood was granted.

Historians have calculated that only 2% of the Church's membership practiced polygamy during the 1880s. Based on their pronouncements, authorities in the federal government made it plain that they were not so much opposed to plural marriage as they were to the power of the Mormon Church. The Mormons had to be taught to place State before Church. Utah could not become a state until its people were cowed into submission. The "Crusade Against Mormon Polygamy" accomplished this objective.

Labor Unrest and the Use of Government Force, 1870–1915

If the purpose of government is to protect the property of the wealthy, insulate them from competition, provide businessmen with a captive market, an inexpensive source of labor, and inexhaustible pool of natural resources, then it is understandable why local police, state militia men, and federal troops and marshals have been used to break labor strikes. President Hayes sent federal troops to Maryland, West Virginia, Pennsylvania, Illinois and Missouri to break the railroad strike of 1877. President Cleveland used troops to crush the Pullman strike of 1895 in Illinois, even though there was no prior violence, and Governor Altgeld protested their deployment.

The Ludlow Massacre of April 1914 demonstrates how deadly governmental force can be. Miners began striking against the Rockefeller coal interests in Colorado in September 1913. After the governor of the state called out the state's National Guard, there was a machine gun attack on the tents housing strikers and their families in Ludlow, Colorado. At least 26 people were killed, including eleven women and two children. In reaction, armed strikers and their supporters began massing in the Colorado mountains. "The governor of Colorado asked for federal troops to restore order, and Woodrow Wilson complied."

War is the Health of the State: A Century of War

World War I

War was declared by the United States against Austria-Hungry on April 6, 1917, in spite of growing American anti-war sentiment and labor unrest. As a result, before, during and after the war a wide array of civil and economic liberties of the American people and resident aliens were trampled upon by government officials.

- "Citizens committees and people's tribunals were established to try individuals suspected of disloyalty." In August 1916, Congress created the Council of National Defense to coordinate the activities of local and state committees. "Religious people opposed to the war were thrown in jail, kept in chains and given a diet of bread and water until they renounced their religious convictions." Some 450 conscientious objectors were court-martialed, convicted and jailed. Seventeen were sentenced to death (though these sentences were eventually commuted). Numerous others were imprisoned under the most barbaric conditions.
- "Vigilante organizations with the support and approval of the Department of Justice and local police, kidnapped, 'arrested,' and incarcerated thousands without trial." The American Protective League, a private organization had 250,000 members in 600 cities by the end of the war. The APL's purpose was to combat draft evasion and combat foreign subversion, and harass foreign radicals and labor unions.
- During the winter and spring of 1919–1920, one of the most massive campaigns of civil liberties violations ever, occurred in the U.S. On Jan. 2, 1920, alone, 2700 people in 33 cities were seized. As a result of the raids, 4000 were arrested, and some 1000 were deported. These raids were organized by President Wilson's Attorney General, A. Mitchell Falmer, with the help of assistant, J. Edgar Hoover. People of Russian birth, like Emma Goldman and Alexander Berkman, were forced on transport ships and deported to the USSR—all without due process of law or any sort of trial. … "The first official federal censorship board was established and given complete control over all printed material." The War Department established a censorship office, known as the Bureau of Information, headed by Major Douglas MacArthur. The Post Office and Postmaster General received power under the Espionage Act to bar subversive materials from the mails. "Over one hundred publications were suspended and prevented from being printed."
- The Espionage Act of 1917 and the Sedition Act of 1918 made any criticism of the government a crime. Both were designed to prevent insubordination, mutiny, disloyalty, and refusal to serve in the armed forces. There were over 2,000 prosecutions under the Espionage and Sedition Acts, and nearly 900 convictions.

- "The government directed 75,000 people around the country to deliver official propaganda speeches written in Washington." On April 14, 1917, President Wilson created the Committee on Public Information. It propagandized the war from the administration's point of view and helped convince the general populace that war-time restrictions on their civil liberties were justified and acceptable.
- "President Wilson seized all wireless establishments and instituted censorship of cable communication on April 6, 1917."
- "The Trading with the Enemy Act not only allowed the U.S. to confiscate property owned by enemies, but also property of allies of enemies. Under the Act the government confiscated property of citizens of Turkey and Bulgaria, both allies of Germany, but against whom the U.S. was not officially at war." Property of loyal citizens was also confiscated to assist the war effort. President Wilson seized eleven industrial plants during World War I.

World War II

Repression during World War I was only a dress rehearsal for what was to occur during World War II. "For every person falling afoul of official or spontaneous persecution in the First World War, there were more than ten times as many victims in the Second." The ratio of repression to dissent during this war was probably higher than at any other time in U.S. history. The interned Japanese and Nisei alone numbered one hundred twenty thousand in 1942. One well-respected legal scholar has labeled the treatment of the Japanese as "the most drastic invasion of rights of citizens of the United States by their own government that has thus far occurred in the history of our nation."

During the years of World War II the United States government:

- Maneuvered the Japanese government into attacking Pearl Harbor, and then engineered a coverup to hide its knowledge of the attack.
- Besides interning nearly 120,000 Japanese-Americans, 70,000 of whom were U.S. citizens, in domestic concentration camps, the U.S. military also ordered some 900 Aleuts to leave their birthplace after the Japanese invasion of the Western Aleutian Islands. The U.S. military destroyed their homes and village church.
- "Established strict censorship over all media, extending not only to war-related news, but to any reports that might lower homefront morale." Immediately after Pearl Harbor, FDR gave FBI Director Hoover emergency authority to censor and control all communications going in or out of the country. The Office of Censorship was established in early 1942 to exercise the authority granted Hoover. The U.S. Steel Shareholders' Report of 1941 was censored to show production figures as "00,000 thousand tons" of steel.
- "Closed down the pro-Nazi press." During 1942, seventy papers were banned from the mail and/or censored.

- "Enacted a peace-time sedition act, making criticism of the government a crime." The Smith Act of June 28, 1940 prohibited the advocacy of insubordination, disloyalty, mutiny or refusal to serve in the military and violent or forceful overthrow of any government in the U.S.
- Prevented foreign writers and artists who held opinions disliked by our government from entering the country, and/or imprisoned some whose political opinions it disliked. The Voorhis Act of 1940 gave the President power to exclude anyone "whose ideas were found dangerous." Ezra Pound, the well-known poet, was confined to a mental hospital, after the war, even though the government could not convict him of treason.
- "Expropriated private factories due to 'inefficient management'." During the war at least 47 industrial facilities (coal mines, railroads, textile plants, among others) were seized by presidential decree to prevent labor disputes from affecting the war effort. The government also closed down all gold mines during the war, in an effort to free up workers for the war effort.
- Initiated the federal "pay as you go" tax withholding plan whereby taxpayers had funds deducted from their wages before any tax payments were actually due. The result was a huge interest-free loan by millions of taxpayers to the federal government. Taxpayers became less concerned with the actual amount of their taxes, and more concerned with how much of a refund they would receive at year's end.
- Dropped the first atomic bombs on populated areas at Hiroshima and Nagasaki, Japan, destroying large portions of both cities, killing thousands, and inducing radiation sickness in countless more.

The Post–World War II and Korean War Era

- The McCarran Act of September 23, 1950 authorized the creation of twelve detention camps for the purpose of holding innocent citizens detained under presidentially declared emergency decrees. It also created restrictive immigration requirements, basing exclusion or deportation of aliens on their political ideology. It created a Subversive Activities Control Board, which could declare any organization 'communist,' thus requiring it to register with the Attorney General.
- The Department of State denied passports to hundreds of progressives, including one member of Congress and a U.S. Supreme Court Justice.
- In 1947, President Truman created the Federal Employees Loyalty Program. It screened over 20,000,000 citizens for 'subversion.'
- During this time the FBI expanded into a full-scale nationwide secret police agency. Beginning in 1936, Franklin Roosevelt gave the FBI authority to spy on subversive organizations. Its authority was expanded during World War II. In 1948, the FBI had a list of 26,000 people to arrest in the event of a national emergency; in 1972 its Administrative Index still had over 15,000 names listed.

In 1987, in the FBI building in Washington, there were over 35,000 linear feet of domestic intelligence files. The rest of the FBI's work only required 23,000 linear feet of file space. The most important function of the FBI was clearly not crime fighting, but rather political repression and surveillance.

- During the post-World War II period, the federal government conducted secret nuclear bomb testing in the Western states, and refused to acknowledge the potential danger of atomic radiation exposure to residents of those areas.

The Last Three Decades: 1960–1990

Governments never cease being coercive and exploitative, protective of their own institutional interests, and the interests of those who control and manipulate them behind the scenes. The last thirty-plus years of American history only reinforces the observation that some sort of national "enemy" or national "crisis" is always needed as an excuse to justify the government's behavior. During the 1960s,

- "the U.S. government launched a comprehensive program to silence underground newspapers; anti-war editors were jailed, presses were bombed, reporters were harassed, news vendors were arrested for distributing newspapers, newsrooms were infiltrated by government spies, and businessmen were intimidated"—to prevent them from advertising in opposition newspapers.
- "Police illegally broke into the headquarters of the Socialist Workers Party on the average of once every three weeks during the early 1960s."
- "National Guard and local police shot and killed unarmed, innocent and non-violent protestors," such as those at Kent State.
- "Conspiracy trials—often no more than kangaroo courts—were organized to remove the leaders of anti-war and minority people's movements."
- Undercover police, acting as agent provocateurs, "infiltrated peaceful organizations and then encouraged and led anti-war and civil rights protestors in bombings and other violent activities."
- "The FBI engaged in a concerted program to destroy the New Left and the black movement." The FBI's Counter Intelligence Program (COINTELPRO) was begun in 1956, and expanded until during the early 1970s it included: illegal eavesdropping and telephone bugs; spread of disinformation, harassment arrests, fabrication of evidence, and complicity in assassinations.
- "Local police spied on churches, unions, and organizations engaged in peaceful protest activity."
- During the early 1980s, the Federal Emergency Management Agency (FEMA) developed a secret "Martial Law Plan" containing details for suspension of the Constitution, roundup and detention of dissent citizens, censorship of all telecommunications, and the seizure of private property.

- "Every federal intelligence agency—the FBI, CIA, NSA and military intelligence units—spied on U.S. citizens."
- In 1976, Congress observed that "our Constitutional government has been weakened by 41 consecutive years of emergency rule." In this century, at least four Presidentially declared emergencies have never been terminated. These states of national emergency were declared by:
  - "President Roosevelt in 1933 to fight the Great Depression" under which 1) the U.S. Treasury reneged on its obligation to redeem its paper currency in gold, and 2) U.S. citizens were required to surrender their gold to the national government;
  - "President Truman in 1950 during the Korean War";
  - "President Nixon in 1970 to handle the Post Office strike"; and
  - "President Nixon in 1971 to meet balance of payment problems" during which the U.S. "refused to honor its gold obligations to foreign countries."
- The IRS has persecuted dissident writers and tax protesters. Some have been convicted and jailed; others have fled underground; while still others have been murdered by government agents while resisting arrest. Examples include Gordon Kahl (murdered), Tupper Saussy (underground) and ex-Congressman George Hansen (imprisoned).
- State and local governments have prosecuted homeschoolers for failure to follow government law. In Louisville, Nebraska, Pastor Everett Sileven was jailed for two months when he failed to close his Christian School at Faith Baptist Church. A Mormon homeschooler, John Singer of Utah, was murdered by state agents for resisting arrest arising out of his refusal to send his children to school.
- State and local laws restrict the use of private property via zoning ordinances and eminent domain confiscations. In the early 1980s residents of Poletown, a neighborhood in Detroit, Michigan, had their land seized and eventually turned over to General Motors Corp., which was going to use the land for a new Cadillac plant. In December 1991 in Skaneateles, New York a private home was razed by the city government, and its owners jailed for contempt of court, because they would not bring their $370,000, 11,000 square foot "dream house" into compliance with zoning requirements.
- The War on Drugs came into full bloom during the late 1980s and early 1990s. Many people were jailed not only for possession, but for "intent" and "conspiracy" to distribute drugs. Seizure and forfeiture laws were passed to allow both local, state, and federal law enforcement authorities to confiscate property belonging to those accused of using or distributing drugs, or accused of violating money laundering statues. Federal forfeitures have taken over $24 billion from tens of thousands of people since 1985. The police may seize anything that they believe was bought from the profits of criminal activity, or any-

thing that was used to facilitate the commission of a crime. Usual due process procedures (like trail by jury) do not apply because it is property—not people—which is being accused of crime. Police have every incentive to exercise these powers because they either keep the property for their own use, or, if it is sold, receive the proceeds.

The list of crimes grows longer and longer as the United States government remains in power. There are undoubtedly numbers of continuing crimes not even mentioned here, including the ongoing collection of a wide array of taxes, many of which appear almost invisible (the federal gas tax we pay on every gallon of gas we purchase, being just one). There can be little doubt that the history of our federal government confirms the inherent criminality of the State. In a voluntaryist world, a world without States, crime would still exist. But it is hard to imagine that crime could be institutionalized, legitimized, and accepted like it is today. As a libertarian pundit once put it, we have little to risk by embracing liberty. We might break the chains of bondage, only to be re-enslaved, but the level of crime in a State-free world could hardly exceed that which has been endured throughout the three centuries of American history.▽

Short Bibliography

Michael Linfield. *Freedom Under Fire: U.S. Civil Liberties in Times of War.* Boston: South End Press, 1990. The large majority of quotes appearing in this article are taken from this book.

Howard Zinn. *A People's History of the United States.* New York: HarperCollins Publishers, 1980.

"By Their Fruits Ye Shall Know Them": Voluntaryism and the Old Order Amish

by Carl Watner
(from No. 67, April 1994)

Introduction

In 1984, I published an article entitled: "The Noiseless Revolution," (*The Voluntaryist*, Whole No. 10) about voluntaryism and the railroad industry's development of standard time zones. At that time I had not been aware that there were any modern-day Americans who refused to use government-mandated daylight savings time. In 1989, I came across Donald Kraybill's book, *The Riddle of Amish Culture*, and realized that during the Great Depression, those same "refuseniks" would not accept government money due them under the crop reduction provisions of the Agricultural Adjustment Administration. During World War I, out of

religious conviction they refused to buy government bonds and fight in the armed forces. During World War II, they refused to use government-issued ration stamps for the purchase of food and other necessities. They resisted participation in Social Security by not paying their taxes, and were finally exempted by Congressional action. They refuse to use televisions or install telephones in their homes, to own or drive automobiles or farm tractors with pneumatic tires, nor will they bring electricity generated by "public utilities" into their homes. They won a Supreme Court decision which protected their parental rights (based upon the tenets of their religion) to terminate their children's formal education at the eighth grade. They believe in complete nonviolence, preferring to "turn the other cheek," rather than harm another human being. Who are these people, and why do they behave like a cross between the ancient Stoics and a modern-day Gandhi?

During the summer of 1993, my interest in the Amish was rekindled by an article by Gene Logdson on "Amish Economics: A Lesson for the Modern World," parts of which I reprinted in Whole No. 65 of *The Voluntaryist*. What was the reason for their "separate and peculiar" way of life? How principled was their rejection of government programs? To what extent did they really distance themselves from the government? Could they be considered voluntaryists? What was the basis of their religion and lifestyle?

Never having met an Amishman, how could I hope to answer these questions? In the course of writing this article, I contacted several Amish people, who for the most part were quite reserved and unhelpful. However, I did find a number of books and authors, who seemingly understood the Amish and presented their case to the modern-day world. Along with these academic sources, I also discovered a world of lay literature—*The Budget*, a weekly Ohio newspaper devoted to "The Amish-Mennonite Communities Throughout the Americas", *The Diary*, a Pennsylvania monthly magazine "Serving the Old Order", a yearly Amish publication, *The New American Almanac*, and the many books of Pathway Publishers (Aylmer, Ontario) and Good Books Publishers (Intercourse, Pennsylvania). While the study of these materials has not made me an authority on the Old Order Amish, they have provided me with some insight into their culture and way of life. Any errors of interpretation, naturally, remain my responsibility.

The following analysis of Amish life and history is obviously written from a voluntaryist point of view. If we define voluntaryism as the philosophy of life that all the affairs of people should remain private and voluntary—that relations among people should be by mutual consent or not at all—then clearly we can characterize members of the Old Order Amish as falling within the voluntaryist fold. Perhaps they might not agree with this assessment. Nevertheless they meet the criteria. They both preach and practice nonviolence, they generally reject electoral politics, and are antagonistic to the modern state. They also use and respect private property, although they do not believe in unbridled individualism or in accumulating wealth for wealth's sake. One would be hard pressed to find any other

large and cohesive group of people in the modern world that not only practice what they preach, but live out their lives in peace and simplicity. Who are the Old Order Amish and where did they come from?

The Amish Background and History

The Old Order Amish are the descendants of the Anabaptists, who originated in Europe when youthful reformers in Zurich, Switzerland outraged the city elders by rebaptizing one another in early 1525. Throughout Europe at the time, church and state were linked by infant baptism, which insured that all members of the body politic were also members of the church. "The rebaptism of adults was punishable by death" because this impinged on the sovereignty of both institutions. If adults could chose to be baptized outside the state religion, then there would be no reason why they could not withdraw their support from the state. The more radical of these religious reformers were soon under attack for rejecting the state's authority in matters of religion. They were called "religious anarchists" because they believed in an incipient form of voluntaryism. Much to the consternation of people like Martin Luther and Ulrich Zwingli, they "sought a return to the simplicity of faith and practice as seen in the early Christian Church in the Bible." The Anabaptists were known as "rebaptizers" (or second baptizers) because they believed "that the church should be a group of voluntary adults, baptized upon confession of faith, and, like the early Christian Church, separated from the world and the State." The practice of adult baptism embraced by the Anabaptists emphasized the fact that "children cannot be born into a church." They believed that the nature of the church was such that it should be "voluntary, adult, holy, full-time, caring and disciplined." Some of their other distinctive beliefs included 1) a strong Bible-centeredness, which they believed should pervade one's entire life and faith, 2) "a forgiving love in all of life" resulting in their refusal to participate in war, and 3) a "belief in separation from the world by means of nonconformity in dress and lifestyle."

Separation of church and state has always been a cornerstone of Anabaptist belief. Rulers of sixteenth century Europe had a "deep fear that Anabaptists were destroying God's good society by disobeying their orders, not bringing their infants to be baptized, rejecting military service, refusing to swear the civic oath, and worshipping" apart. Anabaptists soon had a price put on their heads, and were being hunted down, tortured, and often killed for refusal to recant or give the names and locations of fellow believers. "The first martyr was drowned in 1527. Over the next few decades, thousands of Anabaptists were burned at the stake, drowned in rivers, starved in prisons, or lost their heads to the executioner's sword." The coercive kingdom of this world starkly contrasted itself with the peaceable kingdom of God, which the Anabaptists embraced. As followers of Christ they believed they "must not take the life of another human being even if it meant losing one's own

life." It was more important for them to bear witness to the reality of God's love than it was to preserve their own lives, which they believed were in God's keeping.

Menno Simons (1492–1559), a Catholic priest from Holland, joined the nonviolent Anabaptists in 1536. He rejected a group of violence-prone Anabaptists who had captured the city of Munster in 1534, and began punishing those who would not be baptized as adults. His moderate leadership and prolific writings did much to unify the outlook of his Swiss brethren. "So important was his influence that within a few decades many of the northern Anabaptists were called 'Mennonites'." The Mennonite congregations throughout Europe maintained a basic identity in belief and action until the early 1690s, when Jacob Ammann (1656?–1730?), a Swiss Mennonite bishop, felt that the mainstream Anabaptists were losing their purity. The new Christian-fellowship which he began in 1693, became known as the Amish. Ammann and his supporters believed that a member who broke with the fellowship should be severely censured and eventually completely excommunicated. This was in line with the New Testament teaching that "taught the church to discipline its members. If after long loving counsel a member in sin refused to repent, that person should be excommunicated from the fellowship until he did repent. Otherwise the fellowship would eventually have no standards." From the Amish point of view, the purpose of excommunication was to bring a sinful member back into the fellowship, not an attempt to harm or ruin the individual.

Today, the many subgroups of Mennonites and Amish fall into two broad categories. Merle and Phyllis Good in their book, *20 Most Asked Questions about the Amish and Mennonites* (1979), explain that there are both Old Order and New Order among the Amish and Mennonites. "Those who take their cue for decision-making primarily from their faith fellowship" are labeled Old Order, while "those who are more influenced in their primary decision-making by what the larger society thinks than by what their faith fellowship believes" are modern or New Order. Although this article specifically addresses the Old Order Amish (Amish in the context of this article means Old Order Amish), there are Old Order Mennonites and Hutterites that may share more in common with the Old Order Amish than they do with their own modern religious groups. Even the division New Order and Old Order does not divulge the extent of differences between many of the Amish sects, which range from the most conservative Old Order Swartzentrubers, to the more liberal Beachy Amish and Amish Mennonites. The Old Order Amish emerged as representatives of the traditionalist Amish in 1865, when they rejected "worldly carnivals," fancy clothing, "pompous carriages," gaudy household furnishings, commercial insurance, the operation of large scale businesses and warned against lax church discipline. The change-minded Amish of the post-Civil War era became known as the Amish Mennonites.

In 1992, there were about 63,000 Old Order Amish adults and maybe 70,000 Amish children to be found in twenty-two of the United States and Ontario. This Amish population comprised itself into about 900 church districts. The largest concentrations were located in Ohio, Pennsylvania, and Indiana. When you find an Old Order Amishman you will be able to see and hear him! His distinct badges of identity are: his horse and buggy transportation, his use of horses and mules for field work, his "plain dress" (no buttons or pockets), his beard and shaven upper lip, his Pennsylvania German dialect, his selective use of modern technology, and his eighth grade education. The Old Order Amish are sometimes referred to as the "House Amish," because they have no church buildings, but rather hold their biweekly church services in their own homes. An Amishman's intention is not "to get ahead," but rather to get to heaven. The Amish believe "that how one lives reflects one's Christian faith." The Amishman's objective in life is to remain faithful to the teachings of the New Testament. His lifestyle is based upon his religion. His goal is to "live daily a frugal, simple life of work and worship" and, by doing this, his vocation, recreation, and home life are blended into "a harmonious social pattern." This integration weaves itself all the way throughout Amish life.

The Amish and Mutual Aid

"An important theme in Amish history is the presence of community and the practice of mutual aid." Shunning plays a pivotal part by defining what is acceptable and what is not. The Amish have two German words, which more than anything else, characterize their outlook on shunning: *Gelassenheit*, which means "submission" to the local congregation's will, and *Ordnung*, which stands for their code of "expected behavior." Shunning is an effective form of social control, which in the words of one ex-Amishman "works like an electric fence around a pasture with a pretty good fence charger on it." As Donald Kraybill has put it, "The Amish embody the virtues of a small, highly-disciplined community where social controls rest on informal sanctions meted out in a dense network of kinship ties." The traditional Amish values—"obedience, hard work, responsibility, and integrity"—are all reinforced by the yielding of the individual to the consensus of the community. If the individual refuses to compromise, he is ostracized socially and boycotted economically.

Yet for those who stay, there is the deep-seated assurance that they will be taken care of for life, providing they make every effort to take care of themselves. The Amish believe that, if the church is faithful to its calling, commercial insurance and government welfare programs are unnecessary. Their ethic of mutual assistance flows from the Biblical emphasis on charity, taking care of one's own, and from the spirit of *Gelassenheit*, "with its doctrine of humility, self-sacrifice, self-denial, and service to others." By not having to rely on outsiders or the state for help, the mutual aid system of the Amish permits them to remain aloof and separate from the outside world. Mutual aid far exceeds the romanticized barn raisings

we have read about or seen in the movies. "Harvesting, quilting, births, weddings, and funerals require the help of many hands. The habits of care encompass responses to all sorts of disasters—drought, disease, death, injury, bankruptcy, and medical emergency. The community springs into action in these moments of despair—articulating the deepest sentiments of Amish life. Shunning governmental assistance and commercial insurance, the Amish system of mutual aid marks their independence as well as their profound commitment to a humane system of social security at every turn."

Since each Old Order Amish congregation sets its own rules, it is difficult to generalize on the specific activities of each group's mutual aid system. However, it is safe to say that the Amish aid system eliminates their need for commercial insurance. For example, "between 1885 and 1887, the Amish of Lancaster County (Penn.) formed the Amish Aid Fire and Storm Insurance Company" which is still in existence and collects "from church members according to their ability to pay." Many congregations maintain similar cooperative systems known as Amish Aid, which cover other types of losses. Amish Liability Aid is an assessment system which collects premiums from members "to pay for tort liability awards against Amish farmers and businessmen. Amish Church Aid is yet another cooperative plan," which covers hospitalization and medical costs. Those who suffer misfortune and are not enrolled in these cooperatives "receive assistance from church funds for the poor." Every congregation has a deacon who is responsible for helping those in need, including those who have suffered losses resulting from their nonresistance or refusal to sue or defend themselves in court. An Amishman once summed up his outlook on life and mutual aid by writing: "[I]n our way of living, none of us is fully independent. We all need each other and try to help each other get through this life."

The Amish View of the State

"Centuries of persecution have resulted in an almost instinctive distrust of government. The Amish realize that the hand that feeds you also controls you." The Amish see the state as the embodiment of force, since the army and police are the most essential parts of government. Nevertheless, the Amish are law-abiding, tax-paying citizens until the laws of man conflict with the laws of God. Then they can be stubborn as a mule, refusing to compromise deeply-held beliefs, and will respectfully take a stand opposing government, even if it means prosecution, fines, imprisonment, or death. The Amish maintain a very apolitical or "courteous disregard for the affairs of state." They apply this strategy of non-involvement to such questions as whether a Christian should vote, serve on a jury, or hold public office. Most Amishmen believe that if they do not help elect or vote for government officials, the latter are not their representatives, and therefore they are not responsible for what these office-holding wielders of the sword do.

The Biblical admonitions to live a nonresistant life largely shape the Amish view toward lawyers and lawsuits. They studiously avoid using the courts to protect their rights or to force other people to comply with their agreed-upon promises. They will not use the law to collect unpaid debts, although the Amish have been known to stand in court in their own defense or to be represented by attorneys in such a situation. This allows them to avoid "the public role of plaintiffs seeking to vindicate their rights." They will also use lawyers to draw up farm deeds, wills, articles of incorporation and to transfer real estate, but they will not generally initiate a lawsuit since this is grounds for excommunication from the congregation. "In the spirit of nonresistance, modeled on the suffering of Christ, the Amish traditionally have suffered injustice and financial loss rather than resort to legal force." Not only is going to law contrary to the spirit of God, but the Amish also have their practical reasons for rejecting lawsuits. They believe they are unnecessary, always cause bitter feelings, and that as a rule both sides are losers.

The Amish do believe in paying their taxes, and they have never opposed the payment of real estate, property, school, sales, county, or federal and state income taxes. However, most Amishmen would agree that after they pay their taxes, the tax is no longer their money. Hence they have no responsibility for how the government spends the money, nor do they consider it their responsibility to tell the government how it should be used. If the Amish hold these attitudes, then why did they oppose payment of taxes to the Old Age, Survivors and Disability Insurance (Social Security) program? Why didn't they pay their taxes and refuse the benefits offered by the government?

The Amish vs. Social Security Taxes

The answer to this question is two-fold. First, as already mentioned, the Amish are adamantly opposed to participation in all commercial and governmental insurance schemes, and are just as adamant against receiving public welfare assistance. Since the very beginning of its propaganda on behalf of Social Security, the federal government has described it as an insurance program. However mistaken this nomenclature might be, the Amish accepted it at face value, and consequently viewed Social Security as the government portrayed it. Thus to the Amish, they were not refusing to pay a tax, but rather opposed to participating in an insurance program. The second reason the Amish opposed Social Security was that Amish leaders "feared that if their members paid Social Security, future generations would be unable to resist receiving the benefits for which they had already paid. Payment of taxes would be seen as participation in the system, and if paying was allowed, then how could receiving benefits be prohibited?"

The Amish first encountered the Social Security question in 1955, when it was extended to cover self-employed farmers. The Amish used many dodges to avoid complicity with the program. Some simply did not pay; others allowed the IRS to seize money from their bank accounts. Valentine Y. Byler, an Amish farmer from

New Wilmington, Penn., was one of the hardliners, who closed his bank account in order to forestall IRS collection. In June 1959, the IRS filed a lien against Byler's horses for nonpayment of his Social Security taxes. In July 1960, the IRS served him with a summons to appear in court to defend his actions. When he failed to honor the summons, he was seized by government agents in August 1960, and taken to the US District Court in Pittsburgh to answer charges of contempt. The charges were lifted when the judge realized that Byler was refusing to pay his Social Security taxes because of a firmly-held religious conviction. Finally, on April 18, 1961 Byler received national attention when IRS agents came onto his farm and seized three of his work horses for nonpayment of his taxes.

The resulting furor led to a temporary moratorium on the collection of Social Security taxes from the Amish. In September 1961, Mortimer Caplan, Commissioner of the IRS, met with a group of Amish bishops in hopes of resolving the stalemate. The Amish refused to contribute to Social Security in any way, but finally agreed to initiate a lawsuit that would determine whether or not their sect was entitled to an exemption based upon the fact that forced participation in Social Security was a violation of their religious freedom. In April 1962, Byler filed the promised suit, but soon he and the Amish bishops had second thoughts, realizing that "going to court violated their religious beliefs." The suit was withdrawn in January 1963. Meanwhile the Amish bishops collected signatures and petitioned their representatives in Congress, pressing their case for a legislative exemption, which finally passed in 1965.

The exemption applied to self-employed workers who were members of a religious sect continually in existence since 1950, and "with established tenets opposed to accepting the benefits of any private or public retirement plan or life, disability, or health insurance." Each person must certify on IRS exemption form No. 4029 that he or she is conscientiously opposed to receiving government benefits such as Social Security and Medicare, "and must do so before becoming entitled to receive" those benefits. Furthermore, the worker must waive "all rights to future benefits for self and dependents under those programs." This government-granted exemption did not cover Amish employees working for Amish or non-Amish employers, so that at least some Amishmen were still liable for the tax. In addition, since the Social Security tax was both paid by employees and employers, some Amish employers, although not responsible for Social Security tax on their own earnings from self-employment, were still liable for their employer's share of the Social Security tax on the earnings of their employees (whether Amish or not). This oversight led to the next stage in the struggle involving the Amish and Social Security.

In the case of *United States v. Lee* (455 US 252) the Supreme Court decided, in 1982, that the burden on an Amish employer, Edwin Lee, was not unconstitutional "since the state's overriding interest in maintaining the nationwide Social Security system justified the limitation on religious liberty." Between 1970 and

1977, Edwin Lee employed Amish workers in his carpentry shop and on his farm. He objected to being forced to contribute the employer's share of the Social Security tax on these employees because of the sect's religious scruples about participation in the Social Security program. In 1978, Lee sued for an injunction blocking IRS collection efforts and asked for a refund of the amount of Social Security tax he had actually paid on these workers. The federal district court granted the injunction and refund on the basis that "requiring Lee to participate in Social Security and pay the employer tax for his workers" would be a violation of his rights to the free exercise of his religion guaranteed in the First Amendment to the U.S. Constitution.

On appeal by the government, the Supreme Court overruled the lower court's decision, and while granting Lee's religious freedom was violated, it held that there were more important interests at stake. The majority opinion of the Court demonstrated concern with a number of issues. First, the Court noted that the 1965 Congressional exemption applied only to self-employed individuals, not to employees or employers. Second, the Court agreed that the forced payment of taxes to or receipt of benefits from the Social Security program did violate the Amish religious beliefs and did, in fact, interfere with their freedom of religion. But the Court noted, that "Not all burdens on religion are unconstitutional. … [T]he State may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest."

The court's main concern was the smooth functioning of the tax system. This became apparent in its discussion of taxation and religious freedom. The Court observed that there was no fundamental difference between paying federal income taxes and paying the Social Security tax. Both were forced contributions to the government's treasury. As the Court said, "There is no principled way, however, for purposes of this case, to distinguish between general taxes and those imposed under the Social Security Act. If, for example, a religious adherent believes war is a sin, and if a certain percentage of the federal budget can be identified as devoted to war-related activities, such individuals would have a similarly valid claim to be exempt from paying that percentage of the income tax. The tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief. … Because the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax."

Having lost the case, the Amish probably concluded that it was a lawsuit "that should never have been brought." For one thing it violated the Amish injunction against initiating court cases. For another, it left the Amish no constitutional route to make any further challenges. Their only option was to lobby and petition for an amendment to the original Congressional exemption. In 1988, they succeeded in expanding the 1965 exemption to "include Amish employees working for Amish

employers exempting both from the tax." Consequently the only Amish who are currently liable for any Social Security tax payments are those working for non-Amish employers. "Although relatively small in number, these persons pay into the system but generally do not accept its benefits."

Today, the National Amish Steering Committee acts as a liaison between the Old Order Amish congregations and their church districts and the Internal Revenue Service. The Committee was begun in October 1966, in response to the Amish predicament over the military draft and the Vietnam War. The Old Order Amish tolerate little church bureaucracy, and since each congregation sets its own rules, Amish-governmental relations are complicated because "the Amish have no national headquarters, national policy or national office to represent them." Consequently, the Old Order Amish Steering Committee "represents a delicate balance between the autonomy of the church districts and the practical need of the Amish to represent themselves in a single voice to government officials." Even some of the more conservative Amish "continue to distance themselves from the activities of the National Amish Steering Committee. As one Swartzentruber bishop stated unequivocally, 'We don't join groups.' "

The IRS has taken the position that the religious exemptions to payment of Social Security taxes granted in 1965 and 1988 are not individual exemptions but rather an exemption to recognized religious groups. The law has never been tested to see what would happen to a bona fide member of such a group who refused, not only to pay the Social Security tax, but also to apply for an individual exemption. Presumably he would be considered exempt if he were a member in good standing of his congregation. Conversely, any member of the Amish who is excommunicated from or leaves the faith, automatically loses his exemption. "Entitlement to exemptions granted the Amish is determined by church membership rather than personal conviction. This was made clear in *Borntrager v. Commissioner* [1990] when an excommunicated Amishman who claimed a religious objection to Social Security was required to pay the tax." The National Amish Steering Committee "has asked that all [excommunicated] individuals be reported to it," presumably so they can answer IRS inquiries.

The federal government's approach to dealing with the Amish has been to treat the Amish as a religious group, rather than to deal one on one with the individual Amishman. In the most well-known Supreme Court case (*Wisconsin v. Yoder*, 406 US 205) involving the Amish, Chief Justice Warren Burger in his majority opinion emphasized that, "The record of this case abundantly supports the claim that the traditional way of life of the Amish is not merely a matter of personal conviction but an organized group and intimately related to daily living." Citing Henry David Thoreau as an example of an individual exercising his philosophical and personal choice, rather than a religious rationale, the Court concluded that despite the unity of Thoreau's lifestyle and philosophy, the state had the right to force him to conform and pay his taxes. The Amish, while taking a po-

sition similar to that of Thoreau (that they would not pay a tax contrary to their convictions), were protected because their rationale was religious, and thus they were extended protection under the First Amendment.

The Amish vs. State Education

In order to better understand the Yoder case, which involved the religious rights of Amish parents to terminate their children's education, it is necessary to comprehend the Amish outlook on education, children, and the family. Since very few "outsiders" convert to the Amish faith, the main conduit for the preservation and extension of the religion is the children of the Amish themselves. The number of Amish would diminish rapidly if their children could not be raised to embrace the faith of their parents. The Amish believe that their children are not born into the church. "Therefore, the parents, not the church, are responsible for the children's souls." Child-rearing becomes the task of the parents who are responsible for the physical and spiritual condition of their children.

The ranking of duties within Amish culture is generally: first, church, second, family, and third, state. Sometime, usually between the ages of 15 and 20, before marriage, the young Amish adult chooses whether or not to join the church. "One's first commitment is to God as manifest in the believing community, and the second is to spouse and family." If there is a conflict of obligations, "the rules of church take precedence over family relationships. The laws of the state are obeyed insofar as they do not conflict with the laws of the church or one's duty to family." Consequently, the Amish would argue that their children do not belong to the state. "They belong first to God, and then to their parents, and then to the church through their parents." The Amish take the position that "they and their children should obey the laws of the state, because government is ordained by God, but they would also contend that the Christian does not belong to the state. Therefore, if a conflict arises between the laws of the church and the laws of the state, the church's authority take precedence."

The main goals of Amish parents are: to raise their children to become farmers or to take up farm-related occupations; "to learn to serve God according to Amish belief; and to marry and rear their own families in the traditional Amish way of life." The Old Order Amish are not against education as such. They do think, however, that schooling up to and including the eighth grade is sufficient to prepare their children for their tasks in life. The Amish question whether high school and college "lead to greater wisdom and Christian obedience." What is more important they ask: wisdom and understanding or knowledge and facts? To the Amish, learning is a way of life, not time spent in the classroom. As one Amish bishop put it, "Our children work; we feel work is the best education they can get." He also added that he knew of no Amish youngster who had completed high school and had stayed with the Amish religion.

The Amish place great importance upon the education of their children. They want them to be as well-taught as possible. They want their elementary education second to none. Generally they prefer their children be instructed by members of their own faith, since such teachers both understand and practice the Amish way of life. "Schools play a central role in the preservation of Amish culture. They not only reinforce Amish values but also shield youth from contaminating ideas." When Pennsylvania took the Amish to court in 1951, in the case of *Commonwealth v. Beiler*, Amish church officials issued the following statement:

> We believe that our children should be properly trained and educated for manhood and womanhood. We believe that they need to be trained in the elements of learning which are now given in the elementary schools. Specifically, we believe that our children should be trained to read, to write, and to cipher. We believe our children have attained sufficient schooling when they have passed the eighth grade. We believe that when our children have passed the eighth grade that in our circumstances, way of life and religious belief, we are safeguarding their home and church training in secular and religious beliefs and faith by keeping them home under the influence of their parents. (Fisher, 16)

The early Amish settlers in eighteenth century Pennsylvania generally established private subscription schools in their communities. When state-run school systems became popular in this country during the nineteenth century, the Amish usually accepted and used the public schools. This was especially true in the mid-west and central states, where Amish farmers were glad to have their children in one-room school houses during some of the idle winter months. Schooling and the state were not really an issue for the Amish until the passage of compulsory attendance laws, which required that children stay in school after the age of fourteen. Compulsory attendance laws "at the outset may have appeared harmless enough" (because the Amish never believed they would be forced to keep their fifteen and sixteen year olds in school), but by the end of the 1800s some Amish realized that they had been duped. "Free" public education not only cost them in school taxes, but with the passage of attendance laws, more and more of their children were required to attend longer and longer terms at school. "The churches began to realize what they had lost when they turned education over to the state." Amishman Samuel D. Guengerich of Johnson County, Iowa noted in 1896 that, "The righteousness which counts before God is neither sought nor found in the public schools or free schools; they are intended to impart only worldly knowledge, to ensure earthly success, and to make good citizens for the state."

During the twentieth century, as the state has tried to make "good citizens," the Amish and the state have increasingly come into conflict. The first struggle in this century broke out after World War I in Ohio, when the Bing Act required children to attend school until age 18. In January 1922, five Amish fathers were arrested for "neglecting their children's welfare," their school age children were

made wards of the court and kept in custody for two weeks at an orphanage. The distraught parents finally gave in, realizing that the most important thing was to keep their families together. The next clash occurred during the mid-1930s, when the federal government, trying to encourage public construction, authorized the federal Public Works Administration to grant money to the states for the building of consolidated elementary and high schools. In many areas this meant the demise of the one-room school house. Many, not only the Amish, resisted the closing of these schools because it meant that outside professional educators, rather than local citizenry, would control the schools. In 1937, these issues came to a head in East Lampeter Township, Pennsylvania. Not only had the Pennsylvania legislature raised the compulsory attendance age to fifteen, but a new consolidated school was being built. At least one Pennsylvania Dutch Amishman spent a night in jail for refusing to send his daughter to school. The Lancaster County Amish began to open their own private schools, and successfully lobbied the state legislature for a reduction of the compulsory attendance age to fourteen.

It was not until the mid-1950s, that the Amish encountered more school difficulties. In the meantime, they often sent their children to their own private schools, or reached agreements with local school officials to use the rural public schools, until their children completed the eighth grade. In 1955, when Pennsylvania again raised its compulsory attendance age, a compromise was worked out whereby Amish children older than fourteen were able to work at home, but reported to a special vocational school one morning per week until they reached fifteen. In other places the Amish simply refused to allow their children to attend public schools. In the fall of 1962, officials in Buchanan County, Iowa determined that Amish schools no longer met state standards since, among other things, they employed uncertified teachers. Matters came to a head in November 1965, when school officials used a bus to collect and transport the children of recalcitrant Amish parents to public schools. Most of the children fled into surrounding corn fields or refused to accompany the officials. Iowa's governor finally declared a moratorium on local school board interference, and national sympathy began to coalesce behind the Amish position. In 1967, the Iowa General Assembly granted state officials the power to exempt the Amish from compliance with Iowa public education standards.

One of the results of the Iowa controversy was increased national interest in the problems of religious freedom. Lutheran pastor Reverend William C. Lindholm became responsible for the formation of The National Committee for Amish Religious Freedom in March 1967. Meanwhile, in Kansas, Amishman LeRoy Garber was convicted under the state's compulsory attendance laws for refusing to send his daughter to public high school. The Kansas Supreme Court agreed with an earlier Pennsylvania decision of 1951, that stated, "Religious liberty includes the absolute right to believe, but only a limited right to act. … The parent's right to believe as he chooses remains absolute. But compulsory school at-

tendance is not a religious issue." Thus, the Kansas Court concluded that requiring high school attendance did not infringe on the right of the parents to worship or believe as they saw fit. It further stated that regardless of how sincere a religious belief might be, "an individual cannot be permitted upon religious grounds to be the judge of his duty to obey laws enacted in the public interest." The National Committee for Amish Religious Freedom tried to appeal the Kansas decision to the U.S. Supreme Court. When their petition was denied there was nothing the Committee could do. It had to wait for another test case.

The Supreme Court Decision

Litigation originating in Green County, Wisconsin in 1968 soon provided the opportunity. Many Amish parents living near New Glarus, refused to send their children to high school. One of the fathers charged with this crime was Adin Yutzy, who had moved from Iowa to escape from school officials there. The two other defendants in the case were Jonas Yoder, another Old Order Amishman, and Wallace Miller, a member of the Conservative Amish Mennonite Church. Reverend Lindholm contacted these men and urged them to allow the National Committee for Amish Religious Freedom to represent them. On January 6, 1969 "the Amish agreed to sign a power of attorney called 'Understanding and Agreement' which declared that they were 'not concerned so much about themselves as they were in allowing the committee to defend the principle of religious freedom for others.' " The agreement stated that the Amish would permit their case "to be pursued to its fullest conclusion."

The men were convicted in the Green County Court in the Spring of 1969. Wisconsin's compulsory attendance law required that they send their children to public or private school until reaching age sixteen. Yoder (for whom the case became known) and the other men refused to send their children, ages fourteen and fifteen, to public school after the eighth grade. The local court held that although the tenets of their religion were violated, there was a "compelling state interest" in an educated citizenry that overruled the violation of their rights. The Wisconsin Circuit Court affirmed the conviction. The National Committee appealed and the Wisconsin Supreme Court issued a reversal, deciding in favor of the parents. The state's Supreme Court concluded that since Amish and Mennonite schools had been so successful in preparing their students for productive lives there was no threat "to society" by limiting their education to the eighth grade. Therefore the state had no "compelling interest" in requiring attendance until age sixteen. The State of Wisconsin was not satisfied with this ruling and appealed the case to the U.S. Supreme Court, which held final jurisdiction since the issue being litigated was a First Amendment question.

The U.S. Supreme Court in affirming the decision of the Wisconsin Supreme Court reasoned as follows. First, it appeared to the Court that the Amish practice of working and teaching their children after the age of fourteen actually consti-

tuted a highly-successful form of "vocational" education. Second. this case involved "the fundamental interest of the parents, as contrasted with that of the State, to guide the religious future and education of their children." Third, in analyzing the Amish religion, the Court agreed that the Wisconsin compulsory law coerced them "under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their religious beliefs." Finally, the Court adduced that the State of Wisconsin made no showing that two years of additional schooling would either make Amish children more fit to live within their own culture or better American citizens. Consequently, the failure of Amish parents to send their children to school after the eighth grade was not a crime, nor a threat to the physical or mental health of the children or to "the public safety, peace, order, or welfare" of the State of Wisconsin.

Thus, the Supreme Court of the United States confirmed that "the Amish educational process is one of the most effective yet devised. Amish schools have been remarkably successful in preparing youth for productive lives within Amish society." Not only do Amish students usually outperform their public school counterparts when they are tested in basic reading, writing, and arithmetic skills, but they are also prepared for life in other less tangible ways. The Amish place far more emphasis on character education than they do on technical education. The kind of educational wisdom the Amish seek to impart to their children is to build "character, honesty, humility, and long-suffering" patience. The Amish "have no interest in landing men on the moon," instead "they seek only to produce good men."

Amish Farming and Modern Technology

In the course of several centuries, the Amish have proven that their method of producing Godly men and women works. It could easily be said of the Amish that they are proof that "if one takes care of the means, the end will take care of itself." First, and foremost to them, they are Biblical people rooted in the soil. The family farm is the focus of their daily life, where the Amish raise their families and eke their living out of the soil. The Amish have always been noted as being some of the world's best farmers. They make the land bloom, wherever they go, thus providing the truth of the observation that "the condition of the land, reflects the character of" the people who live upon it. Whenever they uproot and leave a place, it is usually because of political conditions imposed upon them by the authorities from the outside world, rather than because they cannot make a living from the soil.

The Amish do not engage in farming because of its economic rewards, but rather because they are guided by the Biblical injunction that men and women should earn their bread by the sweat of their brow. Farming and farming-related occupations are not only religiously motivated, but personally satisfying, and represent the best opportunities for them to raise their children in the ways of the Lord. Farming, as the Amish practice it, promotes a prudent "ecology, a modera-

tion in financial and material ambition, frugality, attention to detail, good work habits, interdependence, neighborliness, and good common sense." Their traditional farming background teaches them ingenuity and self-confidence. With this experience they have no need to seek their fortune in the city or to obtain a college degree to ensure success.

Even though they do not use large motorized combines and rubber-tired tractors, studies have shown that the Amish are able to harvest more per acre "with less energy consumption than" their more mechanized neighbors. The Amish farmer concentrates on doing a better job with what he already has rather than on getting more land to farm, as his modern counterpart does. The Amish have no particular desire to "get rich," though there may be a few wealthy Amishmen. They are satisfied if they can make their living from the land, and set their own children up as farmers. They try to live so that when they retire they will be able to take care of themselves. They also expect their children to help them in their retirement, just as they have helped their children in their formative years.

Since the Amish way of life has proven itself to the Amish, they have little desire to change. Hence, they are very suspicious of and hesitant to accept the "modern" way of doing things. Nowhere is this approach more important to them than in dealing with modern technology. "Unlike modern folk who are eager to save labor at every turn, the Amish welcome [farm] work as a wholesome way of keeping families together." Although they still farm with horses, they have adopted and integrated beneficial technology—so long as it does not "disrupt the community or give in to human frailty." Their use of electricity illustrates how they have accomplished this. Most Amishmen do not reject electricity anymore, but only electricity brought directly from the outer world into the home, where it may become "an umbilical cord to worldly distractions and unnecessary gadgets." Home-generated electricity, from wind, sun or diesel motor, is generally accepted for use in the barn or workshop, where its use is not likely to lead to abuse. Thus at one stroke the Amish have eliminated television and radio from their lives, not only because they are electrical appliances, but even more importantly because they represent the modern world's influence and intrusion into the family home.

In the case of cars, which the Amish will use but not own, they have reached "an astute cultural compromise. It protects the traditional identity and equality of the community while allowing it to flourish financially and socially." The Amish will ride in cars, buses and transport vans in emergencies and in special circumstances. But they will not own them for fear of allowing them to "get out of hand." The Amish not only distinguish between use and ownership, but they emphasize the importance of the dividing line between use and abuse. From the Amish perspective the refusal to permit car ownership controls the negative side effects on the community (especially disruption of the family based upon the car making it so easy for family members to travel). Their limited use of the car enhances, rather than destroys, community solidarity. There is no hypocrisy from their viewpoint

in using cars, but not owning them. The community and congregation are kept together by the fact that their normal day-to-day travel is limited by the distance that a horse and buggy can drive. The Amish are free of yoking themselves to the state via driver's license and insurance, although state requirements that they use slow-moving vehicle emblems has sometimes resulted in controversy. The Swartzentrubers, for example, reject the red triangular safety symbol as being too worldly, too loud and bright in color, and their use as showing a distrust in the protection offered by God. Whatever compromises the Amish have made with the modern world, their accommodations seem to be a reflection of their ability to make carefully-selected lifestyle changes, yet not be swept away by modern influence.

Conclusion

As the twentieth century has progressed, there have been more and more instances of interaction with the State, both on local and federal levels—not because the Amish have tried to force their way of life on others, but because government has insisted on intruding into every aspect of their lives. Some of the conflicts between the Amish and the State not discussed in this article involve land use regulations, building permits, vaccinations, stabling of horses within town limits, sanitation facilities. and manure pollution. Although the Amish have sometimes been successful in obtaining legislative exemptions or judicial decisions which favor their way of life, they should certainly be aware that such privileges granted them are just that. Constitutional mandates and man-made-law are all the same. The Constitution may be amended and laws may be easily changed. How the Amish will fare under the new universal health care plan remains to be seen.

Although the Amish have been characterized as largely voluntaryist, their history offers a few aberrations. They have never objected to the applications of compulsory education laws to the first eight grades, nor do they view taxation as theft. They accept the Biblical admonition to render unto Caesar. Although they are ready, willing and able to stand up to the State when it conflicts with God s law, they believe the State is God-ordained and to be resisted only when it violates Scripture. While the Amish and voluntaryist both oppose the State, it is not always for the same reasons. Some voluntaryists might find the Amish lifestyle strange and backward, but it is necessary to remember that it is their basic stance on non-violence and mutualism that unites them.

The Amish exude a basic common sense about life in the real world that is refreshing to us moderns. They know which values are important, and they pursue those values in their own lives. Amish society emphasizes "informal learning through doing, a life of goodness rather than a life of intellect, wisdom rather than technical knowledge, community welfare rather than competition, and separation rather than integration with a contemporary worldly society." Yet for all the

praise due the Amish, they are not a perfect people. "Marriages sour, and greed and pride lift their heads, just as in any other community. It is easy to romanticize Amish life as an idyllic alternative to modern ways," forgetting that they are facing the same oppressive state and human problems as everyone else. Nevertheless, the words written by John Hostetler in 1952, still ring true:

> Their mission to America as apostles of peace is to bring healing to human society and to witness to a higher way of life. They do not entertain any utopian ideas about possessing the whole world or converting it. … [They believe that] [t]he foundations of any civilization depend on the moral quality of the people living in it. Where better can such virtues as neighborliness, self-control, good will, and cooperation be found than in small communities? A civilization will thrive wherever these qualities are found, and it will break down wherever they cease to exist. Perhaps the modern hurried, worried and fearful world could learn something from the Amish.V

Short Bibliography

John A Hostetler. *Amish Life.* Scottsdale: Herald Press, 1952.

Albert N. Keim (ed.). *Compulsory Education and the Amish: The Right Not to Be Modern.* Boston: Beacon Press, 1975.

Donald Kraybill (ed.). *The Amish and the State.* Baltimore: The Johns Hopkins University Press, 1993.

Lucian Niemeyer and Donald Kraybill. *Old Order Amish: Their Enduring Way of Life.* Baltimore: The Johns Hopkins University Press, 1993.

Steven M. Nolt. *A History of the Amish.* Intercourse, Penn.: Good Books. 1992.

"Sweat Them at Law with Their Own Money": Forfeitures and Taxes in American History

by Carl Watner
(from No. 72, February 1995)

NOT ONLY voluntaryists, but people from across the political spectrum are objecting to the current wave of seizures, forfeitures, and attacks on private property. Stemming from the passage of the RICO legislation of the early 1970s and the inception of "America's longest war"—the war on drugs—these confiscations are only the latest manifestation of a power the government has had since the adoption of the federal Constitution. There is absolutely no difference in principle between passing a law that authorizes the forfeiture of a prohibited drug, a law that authorizes forfeiture of merchandise on which the excise duty has not been paid,

or a law which empowers the Internal Revenue Service to seize one's property and auction it off to satisfy unpaid back taxes. All such laws are based on the premise that the government may take property without the owner's consent.

One of the first acts of Congress in 1789 was to enact revenue laws for the collection of customs and excise duties. Modeled after the Navigation Laws of England, these new American laws contained the same types of enforcement features that were found in the century-old acts of Parliament, against which the American revolutionists rebelled. As J. B. Thayer put it, "The Revolution came, and then what happened? Simply this, we cut the cord that tied us to Great Britain, and there was no longer an external sovereign. Our conception was that 'the people' took his place. [S]o far as existing institutions were left untouched, they were construed by translating the name and style of the English sovereign into that of our new rulers—ourselves, the People." Although the King's armies were defeated in 1781, the essence of government in America remained the same. For example, the Virginia Constitution of 1776 contained a provision that "All escheats, penalties, and forfeitures, heretofore going to the King, shall go to the Commonwealth, save only such as the legislature may abolish or otherwise provide for."

Changing the locus of sovereignty from the English monarch to the people of each American state in no way altered the exploitative nature of the institution that had been ruling them. The English Crown, both in Great Britain and its colonies, had a long history of turning every contingency into a source of revenue. "Forfeitures appealed to the English Crown because forfeited estates of attainted traitors and felons added substantially to the Crown domain and because statutory forfeitures were the principal means of tax enforcement." Seizures provided a steady source of income, and were never questioned as being a violation of constitutional rights. By the time of the American Revolution, forfeiture, seizure, and condemnation procedures were enshrined by ancient custom and statute in England and its North American colonies.

English legislation regulating both coastal and foreign trade, as well as the establishment of a government board to collect customs duties, can be found as far back as 1381, when the first Navigation Act was passed during the reign of Richard II. A trade act enacted in the early 1540s, under the reign of Henry VIII, provided for the forfeiture of goods carried in English owned vessels that carried foreign shipmasters. Under an act of Parliament passed in 1564, the activities of informers were encouraged by allowing them a share of penalties. During the Commonwealth period in 1649 and 1651, a new series of Navigation Acts was approved by Parliament. The Act of 1651 "proclaimed the doctrine that merchandise should be brought directly from the country of production or from the port where usually first shipped, and announced that goods must be carried either in ships of the country of origin or of usual first shipment or in English ships." Other than empowering the Admiralty to seize violators, the Act relied upon informers, who were promised one-third of the value of the offending ship and cargo. At least forty

or more vessels were seized and forfeited under the terms of this Act. Subsequent legislation in 1660, provided that "the carrying of trade between ports in the British Empire" be limited to "English ships." All merchants and factors doing business in the British colonies were required to be bona-fide British subjects. "The penalty was forfeiture of all their goods." This act further provided that no sugar, tobacco, cottonwood, indigo, or ginger be carried from the colonies to England other than under pain of forfeiture. An office of "Survey, Collector and Receiver of the Moneys and Forfeitures Payable by the Act" was also created at the same time. If the master of the ship failed to make a complete and accurate accounting of his cargo, both the ship and its lading were subject to seizure. The English courts construed these statutes so that the act of an individual seaman, undertaken without the knowledge of the master or owner, could cause the forfeiture of an entire ship. The Acts were written so that the burden of proof was upon the owner or claimant to show that the seizure was illegal, rather than requiring the Admiralty or Collector of Customs to defend their actions.

"Stealing the King's customs," otherwise known as smuggling, soon became common. Evasion often took place by entering port secretly at night or falsifying information relative to ownership of the cargo, "so that when His Majesty's officers came to collect the duty," there would be no valuables on which to levy it. Even churches were used upon occasion to conceal smuggled goods, and the clergy did not seem to have been unduly concerned about such crimes. "Proceedings for the violation of the Navigation Acts or customs laws could be brought either against the smuggler or against the offending ship and its illegal cargo," by actions "in personam" against the person involved or "in rem" against the thing concerned. Since ancient times, the court of the Exchequer had used the "in rem" action to give the King title to treasure-trove and wrecks, since many times there was no obvious owner against whom suit could be brought. "The same technique proved valuable in seizures because the authorities could more often lay their hands upon smuggled merchandise than upon the smugglers themselves." Once the smuggled goods were seized, they were then appraised as to value, and two proclamations issued. The first "called upon those interested in the goods to show cause why they should not remain forfeit, and the other invited bidders to make an offer of more than the appraised value." One half of the successful bid was to be paid to the Exchequer, while the other half went to the officer making the seizure.

Similar procedures were used to regulate prices, manufacturing, trade, shipping, and real estate in colonial America. The very first set of price control measures issued in any English-speaking colony (Virginia in 1623) included a forfeiture and confiscation feature: "Upon paine of forfeiture and confiscation of all such money and Tobacco received or due for commodities so sold (contrary to the aforesaid orders) the one half to the informer, the other half to the State." The buyer of price-controlled goods was required to report his purchases to the Gover-

nor or Counsel of State within ten days. For failure to do so "the said buyer shall forfeit the value of said goods, the one half to the informer, and the other half to the State." When a public market was established in Boston in 1696 (requiring that certain goods be traded only in the City's market area), the lawmakers provided that those violating the laws of public market be subject to forfeiture of their goods, and that informers be paid rewards. A typical law provided that any "fish, beef, or pork packed and sold without a Gager's [official inspector] mark shall be forfeited by the seller, the one half to the informer and the other half to the country." J. R. T. Hughes in his analysis of *Social Control in the Colonial Economy* pointed out that ever since the beginning of British colonization of North America, real estate—whether feudal holdings under British rule, or absolute fee simple title under state governments—has always been subject to "the authority of our various political units to seize it and sell it for taxes."

Beginning in the year 1764, the English government decided that the century-old navigation system should be used for the sake of revenue and political exploitation. During the French and Indian Wars (1755–1763), Parliament had enacted a number of "trading with the enemy" acts, which were enforced by the British Navy. As Oliver Dickerson noted in *The Navigation Acts and the American Revolution*, with the coming of peace, the British navy became more of a menace than any foreign enemy, such as France or Spain. It "continued in its wartime job of policing British commerce. As the crews received one half the net proceeds of all seizures, it was profitable for them to seize colonial ships on purely technical grounds. Trials were in admiralty courts, the burden of proof of innocence was upon the owner of the seized vessel. Costs were assessed against the owner even in cases of acquittal; the owner had to give a heavy bond before he could file a claim to his own vessel; and there was no practical way a naval officer in the colonies could be sued for wrongful seizures. … Legislation after 1763 increased the technical grounds for seizure and opened up new opportunities for naval action against colonial shipping. Thus the warfare that was begun against France in 1756 was continued with varying degrees of vigor against British colonial commerce until the outbreaks of open hostilities" against the British in 1775.

The Sugar Act of 1764 and the Stamp Act of 1765 marked the end of the period of salutary neglect in British North America. Although the Stamp Act was only in operation a little more than 4 months, and ultimately repealed in March 1766, its enforcement provisions duplicated those in the Sugar Act. Under the former, penalties for failure to purchase and display government tax stamps on legal and commercial documents, pamphlets, newspapers, almanacs, and playing cards, were to be assigned equally, in three parts, to the colonial governor, the informer, and to the Crown. Under the Sugar Act, if a seizure was made at sea, one-half the value went to the crew of the vessel making the seizure. Offenses under both acts were triable in newly established courts of admiralty. These and similar other provisions found in the Sugar Act and the Revenue Act of 1767 formed the basis for

"the legal plundering of American commerce." These laws generally recited that a customs bond must be issued before any goods were loaded on board either a coastal or ocean-going vessel, that the penalty for failure to have such bonds and clearance papers was "confiscation of ship, tackle, stores, and cargo." Additionally there was a requirement that "all vessels had to carry cockets [manifests] listing in detail every cargo item on board. Penalty was forfeiture of the goods not included on the cockets." If a shipmaster entered port and broke bulk before receiving a permit to unload, then his ship was laid open to seizure. Any customs officer who reported the breach of these conditions was entitled to one third the value of all confiscations. "In the admiralty courts, goods or ships once seized were the property of the crown unless legally claimed by the owner. To maintain a claim the owner had to prove the innocence of goods or ship." Even if the admiralty court restored the cargo or ship to its original owner, generally the judges certified that custom officials had "probable cause" in making the seizure. This meant that the original owner had to pay all court costs, including the fee of the judges, and was barred from bringing any future damage suit against the custom officials in the civil courts.

Two examples will serve to demonstrate the odious nature of these British practices. In Massachusetts in late 1767, the customs commissioners were "denounced [by the merchants] as robbers, miscreants, and 'bloodsuckers upon our trade.' " John Hancock, future signer of the Declaration, and one of the leading businessmen in the colony, announced that "he would not let any custom officials board any of his ships." He followed through on his threat when, in April 1768, he refused to allow the commissioners to board his ship *Lydia*. On June 10th, his sloop *Liberty* was seized and confiscated in Boston harbor after loading 20 barrels of tar and 200 barrels of oil without a license. In late October 1768, Hancock and his five partners were sued by the Attorney General of the colony for £9,000 each for allegedly aiding in the unloading of 100 pipes of wine on the night of May 9th, 1768, when the *Liberty* first entered Boston. The suit was brought under a provision of the Sugar Act that "any person in any way connected with or abetting the unloading, transporting, receiving, storing, or concealing uncustomed goods could be sued for triple the value of the goods allegedly landed." Finally in late March 1769, the suit was withdrawn for lack of evidence and political support in London. After the condemnation decree, the *Liberty* had been converted to a naval sloop, and was commanded by a zealous British navy captain, William Reid, who sailed the ship into the harbor at Newport, Rhode Island and began seizing merchant ships there. In mid-1769, members of the local populace "grounded, scuttled, and then burned the *Liberty* [now a customs sloop], to the ground."

Similar events took place in the Southern colonies. In March 1767, Daniel Moore was appointed Collector of Customs in Charleston, South Carolina. After seizing three inner-coastal ships belonging to Henry Laurens, one of the richest

men in the southern colonies, Moore quickly acquired a reputation for rapaciousness, and promised the southern merchants that he would "sweat them at law with their own money." On May 24, 1768, Lauren's ship *Ann* arrived from Bristol, was properly entered at the customhouse, and began loading for the return journey. Moore claimed that Captain Fortner, Laurens' master of the ship, had failed to give bond prior to loading certain non-enumerated goods in violation of clause twenty-three of the Sugar Act. The *Ann* was seized by George Roupell, Moore's deputy. With her tackle, furnishings, and cargo, the *Ann* was probably worth in excess of £1,000 sterling. Laurens challenged the seizure, and the admiralty court judge decided that the *Ann* should be released back to her owners, but even then, Laurens was assessed two-thirds of court costs, as well as payment of the judge's fee. The seizure of the *Ann* received wide-spread notice in all the colonies. A writer in the *Pennsylvania Journal* summarized the American outlook. "Our property is not only taken from us without our consent, but when thus taken, is applied still further to oppress and ruin us. The swarms of watchers, tide waiters, spies, and other underlings [are] now known in every port in America, [and] infamous informers, like dogs of prey thirsting after the fortunes of worthy and wealthy men, are let loose and encouraged to seize" the property of these unlucky merchants.

Despite these pre-Revolutionary experiences with forfeitures and seizures, no objection to these procedures was registered in the Declaration of Independence. The closest remonstrance was against the King's imposition "of Taxes on us without our Consent." The rebellious colonists did not oppose the use of seizures and forfeitures, they only objected to their use against themselves. In fact, "three weeks after the Declaration of Independence, the Continental Congress proposed a law making all property of those siding with the King subject to seizure. During the early years of the Revolutionary War, virtually every state enacted laws confiscating the holdings of people loyal to the Crown." Traitors, enemy aliens, and other people guilty of the offense of "adhering to the enemy" were banished "and all their real and personal property confiscated." "Debts owed to British merchants were another target of the state legislatures." In Virginia, Maryland, and North Carolina money owed to enemy aliens or British merchants was sequestered and paid into the state treasuries. British creditors were not allowed to sue their American debtors in the local American courts. So far as is known, no American patriot took exception to these forfeitures, seizures, and sequestration schemes. Some 40 years after the Revolution, Chancellor James Kent noted that these procedures "had been the constant theme of complaints and obloquy in our political discussions for the fifteen years preceding the war," yet were unhesitatingly embraced by the legislative and judicial branches of the new country.

From a strictly constitutional point of view, what was the legal basis for forfeitures and seizures? Probably it was considered an inherent right of sovereignty, falling within the power of Congress to "lay and collect Taxes, Duties, Imposts and Excises." Whatever its source, it was not long before the first Congress of the

United States relied upon their use. The first meeting of Congress took place on March 4, 1789. On July 31, 1789, Congress passed legislation to "regulate the Collection of the Duties imposed by law on the tonnage of ship or vessels, and on goods, wares and merchandises imported into the United States" (Section 1, Chapter 5). Many portions of the law dealt with forfeitures and seizures. Section 12 provided that goods were to be forfeited if landed in the United States without a customs permit; Section 22 provided that goods entered, but not truly invoiced, should be forfeited; Section 24 empowered the Customs agents to search for and seize concealed goods; Section 25 authorized the conviction of any person concealing goods, who upon conviction shall forfeit such goods and pay a sum double the value of the goods so concealed; Section 37 provided that vessels and goods condemned by this act should be sold to the highest bidder at public auction; Section 38 determined that all forfeiture proceedings should be split between the United States Treasury, the informer(s), and customs collectors; and finally, Section 40 provided that all goods brought into the United States by land, contrary to this act, should be forfeited together with the carriages, horses, and oxen that shall be employed in conveying the same. This legislation formed the basis for subsequent laws, such as that of First Congress, Session III, Chapter 15, March 3, 1791 which sparked the Whiskey Rebellion (see *The Voluntaryist*, No. 68, June 1994, p. 6).

It is not known when the first official seizures and forfeiture of smuggled goods into the United States took place, but in the early 1800s court cases record legal challenges to government expropriation. However, since the money generated by customs revenues was probably the primary source of income to the federal government, it is not surprising that the federal courts upheld these laws under the justification of "guarding the revenue laws from abuse." One of the earliest court cases contesting a forfeiture proceeding was registered as "The United States v 1960 Bags of Coffee" (12 US 398). Agents of the Federal government had seized a large quantity of coffee imported in violation of the Non-intercourse Act of March 1, 1809. Justice Johnson of the Supreme Court noted that "the question rests on the wording of the act of Congress, by which it is expressly declared that the forfeiture shall take place upon the commission of the offense." Therefore, the government was entitled to the forfeited goods even though the importer had sold them to an innocent purchaser for valuable consideration.

Another early landmark case, involving the power of the government to seize a ship under the piracy acts of March 3, 1819, was heard before the Supreme Court in January 1827. In the case of "The Palmyra" (25 US 1) the use of the "in rem" action to impose a forfeiture was challenged. The owner of the ship contended that a forfeiture could not be imposed "in rem" until he had first been convicted in a criminal prosecution. The court held that no criminal conviction was necessary to sustain an "in rem" forfeiture. The proceeding against the thing forfeited stands wholly unaffected by any criminal proceeding "in personam" against its owner,

and "no personal conviction of the offender [or owner] is necessary to enforce a forfeiture 'in rem' in cases of this nature." In upholding the difference between a civil forfeiture and a criminal one, the court laid out the ground work for all future civil or "in rem" government attacks on private property. All civil forfeitures begin with the arrest or seizure of the offending property. On the other hand, a criminal forfeiture cannot commence until the defendant has been convicted in a criminal proceeding.

During the first half of the nineteenth century there was little departure from the government's standard practice of enforcing the customs laws via "in rem" proceedings. However with the outbreak of the Civil War, Congress found a new way to apply forfeiture and seizure laws. The first Union confiscation law was passed on July 15, 1861 (Statutes at Large, XII, 319) and provided for the confiscation of property, including slaves actually employed in the aid of the insurrection. The second confiscation law, passed in mid-1862, was titled "An Act to Suppress Insurrection, to punish Treason and Rebellion, to seize and confiscate the Property of Rebels, and for other Purposes" (Statutes at Large, XII, 589). It provided for seizure and forfeiture of two different categories of property. First, property belonging to "officers, whether civil, military, or naval of the Confederate government or any of the rebel states, and of citizens of loyal states giving aid or comfort to the rebellion" was declared seizable at once without qualification. Second, other people in any part of the United States who aided the rebellion were to be warned by public proclamation, and given sixty days in which to return their allegiance to the federal government. If they failed to do so, their property was to be confiscated.

Something like this happened in the case of the Robert E. Lee estate, known as "Arlington," in northern Virginia. Soon after the first confiscation act in August 1861, Congress levied a direct tax upon real estate in the South. The tax was upheld by the Supreme Court as constitutional, even though no similar levy was made against property in the loyal states. The tax was only assessed and collected in those areas of the South controlled by the northern armies. Owners were only given one chance to pay the tax; should payment be missed, there was no grace period during which the property might be redeemed and saved from seizure and auction. Tax commissioners often required payment of the tax in person by the owner, an onerous burden for those owners behind the southern lines. Additionally, if valuable land was sold, any proceeds in excess of the tax due were forwarded to the U.S. Treasury, rather than being returned to the original owner. Many opponents of the direct tax described it simply as another form of forfeiture and confiscation.

In the case of the Lee property, a tax amounting to $92.07 was levied, and in September 1865, the whole estate was sold for its non-payment. The tax commissioners bid $26,800 on part of the estate for the federal government. (This parcel is now known as Arlington National Cemetery.) After the death of Mrs. Robert E.

Lee, her son, G. W. P. C. Lee petitioned Congress, claiming he possessed valid title to the estate. He contested the validity of the tax sale which amounted to confiscation in his view. His mother had attempted to tender the tax through an agent, but the commissioners had refused to accept it. The Lee petition was buried in Congressional committee, and not heard of further. Mr. Lee then brought suit in federal court in Alexandria, Virginia, where his title was upheld. On appeal, the Supreme Court sustained the lower court decision, but not on the basis that such war-time tax sales were unconstitutional. Rather, the Court denounced the conduct of these particular tax commissioners, who had refused payment from Mrs. Lee's agent and required that the owner pay the tax in person. "In view of the decision, an appropriation became necessary to establish the title of the United States to Arlington Cemetery. The matter was finally settled by the payment of $150,000 as compensation to the Lee heirs, in return for which a release of all claims against the property was secured."

The Civil War is notable for greatly expanding taxation and the related enforcement powers of the federal government. "The first income tax measure ever put into operation by the federal government" was signed by President Lincoln on July 1, 1862. The tax was a lien upon any property owned by the taxpayer, "and, if not paid, the property could be taken and sold by the United States" (12 U S Statutes at Large, 474–75). George S. Boutwell, first commissioner of Internal Revenue, not only employed detectives to search out those wealthy individuals who refused to file or attempted to defraud the government, but also established the rule that informers might be rewarded. The first federal legislation authorizing the compulsory production of personal papers and records for tax enforcement purposes was passed on March 3, 1863 ("An Act to prevent and punish Frauds upon the Revenue," 12 Stat. 737), soon after the first federal income tax law. The law "authorized the search and seizure of a man's private papers, or the compulsory production of them, for the purpose of using them in evidence against him in a criminal case, or in a proceeding to enforce the forfeiture of his property." In other words, if the government alleged that an excise, duty, or income tax was due, or that property be forfeit, then the government's claim was to be upheld unless the defendant produced his books and records to prove otherwise.

The case of *Boyd v. United States* (116 US 616, 1886) is particularly interesting, not because it found such legislation unconstitutional, but because it shows that the original Constitution and Bill of Rights sanctioned the violation of private property and personal privacy. In the Boyd case, Justice Bradley pointed out that the 4th Amendment did not prohibit all searches and seizures, but only outlawed "unreasonable searches and seizures." In deciding the case against the government, Bradley noted that "the search for and seizure of stolen or forfeited goods, or goods liable to duties and concealed to avoid the payment thereof, was a totally different thing than a search for and seizure of a man's private books and papers for the purpose of obtaining information therein contained, or of using them as

evidence against him." What Bradley didn't say, was that it was the government itself, which was the judge of what was reasonable and unreasonable. Furthermore, as constitutional history has shown, his distinction is a distinction without a difference, because courts today generally hold defendants in contempt if they do not produce their books and records for the Internal Revenue Service.

In making these admissions, Bradley demonstrated that the government has always had the power to seize goods forfeited for breach of the revenue laws. "[S]eizures have been authorized by our own revenue acts from the commencement of government. The first statute passed by Congress to regulate the collection of duties, the act of July 31, 1789, 1 Stat. 29, 43 contains provisions to this effect. As this act was passed by the same Congress which proposed for adoption the original amendments to the Constitution, it is clear that the members of that body did not regard searches and seizures of this kind as 'unreasonable,' and they are not embraced within the prohibition of the amendment." Bradley noted other exceptions to the 4th Amendment prohibition against "unreasonable search and seizures:"

> So, also the supervision authorized to be exercised by officers of the revenue over the manufacture or custody of excisable articles, and the entries thereof in books required by law to be kept for their inspection, are necessarily excepted out of the category of unreasonable searches and seizures. So, also, the laws which provide for the search and seizure of articles and things which it is unlawful for a person to have in his possession for the purpose of issue or disposition, such as counterfeit coins, lottery tickets, implements of gambling, etc., are not within this category. Many other things of this character might be enumerated.

In closing his opinion, Bradley also objected to the government's attempt to make "in rem" forfeitures civil, rather than criminal. In his view this was reprehensible and impermissible because the claimants were deprived of their legal immunities and protections under the criminal laws of due process.

It is clear that, today, we are living with the legacy of not only the English Navigation Acts, but the Civil War Confiscation Acts, and the income tax law of 1862. Nearly every court case since the founding of the United States has upheld the right of the political sovereign to exercise its power—via forfeitures and seizures—over the lives and property of its citizens. The foundational precedents were set in the common law, and confirmed in the early federal courts. Cases from the last half of the nineteenth century and early twentieth century merely set the tone for today's drug prohibition laws, and their accompanying forfeiture provisions. Cases such as the *United States v. Two Horses* (1878), the *United States v. Two Bay Mules, Etc.* (1888), or the *United States v. One Black Horse, et. al.* (1904), all reflect the federal government's power to seize animals and conveyances that were used to transport liquor on which no federal excise had been paid. Once this

power was established, there was no difficulty in using it to confiscate motor cars, trucks, boats and airplanes used in the illegal transportation of untaxed or prohibited liquor or drugs.

It is hard to see any end in sight as the government attempts to expand the use of its forfeiture laws. "Once a property qualifies for forfeiture, almost any other property owned or possessed by the same person can fall into the forfeiture pot." As the government succeeds in casting its forfeiture nets, it would not be too implausible to imagine that all of Harvard University might be seized because some drug sale or drug manufacturing took place on campus. As Steven Duke and Albert Gross, authors of *America's Longest War*, have written:

> Where will it end? Why not extend it [forfeitures] to income tax evasion and take the homes of the millions—some say as many as 30 million—who cheat on their taxes? The statutory basis for forfeiting homes and businesses of tax evaders is already in place. The Internal Revenue Code reads, "It shall be unlawful to have or possess any property intended for use in violating the provisions of the Internal Revenue Service Laws or which has been so used, and no property rights shall exist in any such property."[26 USC 7302] The provisions of this law could even be extended to the accountants and lawyers of income tax cheats.

If ever proof was needed of the voluntaryist assertion that governments don't create, protect, or enforce property rights, here it is. Coercive governments destroy and negate property rights. Or as Daniel Moore, the eighteenth century customs man put it, "We'll sweat them at law with their own money!" V

Short Bibliography

Lawrence A. Harper. 1939. *The English Navigation Laws*. New York: Octagon Books, 1964.

James Garfield Randall. *The Confiscation of Property During the Civil War*. Indianapolis: Mutual Printing and Lithographing Co., 1913.

Terrance G. Reed. "American Forfeiture Law: Property Owners Meet the Prosecutor." *Policy Analysis*, No. 179, September 29, 1992. Washington, D.C.: The Cato Institute.

Whose Property Is It Anyway?

by Carl Watner
(from No. 73, April 1995)

In my article, "Sweat Them at Law" (Whole No. 72), I contended "that governments don't create, protect, or enforce property rights." Below is further evidence

to support my conclusion. Although I knew that inheritance and estate taxation is a potent means by which the State undercuts and destroys the principle of private property, I had no idea how blatantly the American judiciary acknowledged this fact.

Inheritance refers to the manner in which property, upon the death of its owner, is conveyed into new hands. Since the beginning of human history, people have been acquiring real and personal property, and leaving it for the benefit of their heirs. The right of children to inherit the property of their parents has existed in one form or another long before Esau sold his birthright to the wily Jacob. However, both in ancient societies and in modern times, their inheritance has been taxed and the right to bequeath property has been minutely regulated by those possessing political power. For example, "seven centuries before the Christian era, property transfers were taxed in Egypt at a 10 per cent rate; [and] the transfer of property by inheritance was included in this tax." References to estate taxes are found in a papyrus dating from 117 B. C. The Romans instituted a 5% tax on bequests in 6 A.D.

The Egyptian and Roman taxes, like their modern counterparts, rested on the feudal doctrine of property—that full title to all property in the domain of the sovereign rested with its political ruler or the State. The Egyptian inheritance tax was viewed as a "redemption fee," meaning that the heirs had to ransom the property of their deceased parent from the pharaoh. Likewise, thousands of years later, "the United States Supreme Court and the vast majority of state tribunals, on numerous occasions, have enunciated the doctrine that Succession is a privilege conferred by the State and that the power of the State with respect to it is unlimited." In American, as in ancient, jurisprudence, "it is only by virtue of the State that the heir is entitled to receive any of his ancestor's estate."

When a person dies, what might happen to the property that person has owned? Several scenarios are possible. First of all, the person or people designated by the deceased might take possession and title to the property, according to instructions left by the deceased. Historically, in some societies the deceased has been required to leave the bulk of his or her estate to spouse and children. In at least one place—communist Russia—all inheritance was prohibited for a time (under the decree of April 27, 1918, which lasted for five years). "The reason for the restoration of Succession was the discovery that the people were circumventing the law so flagrantly that it was considered more expedient to allow Succession and impose a tax on it than to attempt [outright] confiscation." Finally, if neither the State nor the family succeeds to the property, it might simply be left up for grabs and taken by the first person to appear and claim it.

Societies organized around the tribe or clan did not have to deal with the question of succession because the concept of inheritance presupposes that of private ownership. But even in those times and places where some forms of private property have existed, there have always been political restrictions on how and to

whom the deceased could leave property. If property, whether real or personal, is truly private, then logical consistency demands that the owner be able to leave instructions regarding the disposition of his or her assets. As Murray Rothbard in his essay, "Justice and Property Rights," has put it

> … if Smith and Jones and Clemente have the right to their labor and their property and to exchange the titles to this property for the similarly obtained property of others, then they also have the right to give their property to whomever they wish. The point is not the right of 'inheritance' but the right of bequest, a right which derives from the title to property itself. If Roberto Clemente owns his labor and the money he earns from it, then he has the right to give that money to the baby Clemente [or whomever he chooses].

Contrast this reasoning to the theory that the right to own property is created by the State. As one expositor wrote, "Inheritance is a creature of domestic law. The State gives and the State may take away." This has been, and is, the situation in America today. When it comes to inheritance, there is no judicial pretense that the disposition of property is a natural right. In other words, there is nothing in the federal or any of the state constitutions that restrains politicians from abolishing inheritance or the will-making power altogether. Inheritance and estate taxation rest on three intertwined theories: (a) the feudal power of the state over the property of the dead; (b) the power of the state to control and regulate succession within its boundaries; and (c) the power of the state to raise revenue via various forms of taxation. The federal and state judiciaries have asserted these theories time and time again, as a review of the most important inheritance cases reveals:

Mager v. Grima (United States Supreme Court, 49 US 1168, 1850)

> Now, the law in question is nothing more than an exercise of the power, which every state and sovereignty possesses, of regulating the manner and terms upon which property, real or personal, within its dominion, may be transmitted by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it. Every State or nation may unquestionably refuse to allow an alien to take either real or personal property situated within its limits, either as heir or legatee, and may, it if thinks proper, direct that property so descending or bequeathed shall belong to the State. In many of the States of this Union, at this day, real property devised to an alien is liable to escheat [to the State].

Eyre v. Jacob (14 Gratt 422, 73 Am Dec 367, Virginia, 1858)

> The right to take property by devise or descent is the creature of the law and secured and protected by its authority. The legislature might, if it saw proper, restrict the succession or it may tomorrow, if it pleases, absolutely repeal the statute of wills and that of descents and distributions and declare that upon the death of a party his property shall be applied to the payment of his debts and the residue appropriated to public uses.

Pullen v. Commissioners (66 NC 361, North Carolina, 1872)

> Property itself, as well as the succession to it, is the creature of positive law. The legislative power declares what objects in nature may be held as property; it provides by what forms and on what conditions it may be transmitted from one person to another, it confines the right of inheriting to certain persons whom it defines as heirs; and on the failure of such it takes the property to the State as an escheat.
>
> The right to give or take property is not one of those natural rights and inalienable rights which are supposed to precede all government, and which no government can rightfully impair. There was a time, at least as to gift by will, [when] it did not exist; and there may be a time again when it will seem wise and expedient to deny it. These are the uncontested powers of the Legislature upon which no article of the Constitution has laid its hands to impair them. If the Legislature may destroy this right, may it not regulate it? May it not impose conditions upon its exercise? And the condition it has imposed in this case is a tax.

United States v. Perkins (United States Supreme Court, 163 US 625, 1896)

> While the laws of all civilized States recognize in every citizen the absolute right to his own earnings, and to the enjoyment of his own property, and the increase thereof, during his life, except so far as the State may require him to contribute his share for public expenses, the right to dispose of his property by will has always been considered purely a creature of statute and within legislative control. [W]e know of no legal principle to prevent the legislature from taking away or limiting the right of testamentary disposition or imposing such conditions upon its exercise as it may deem conducive to the public good.

Magoun v. Illinois Trust & Savings Bank (United States Supreme Court, 170 US 283, 1898)

> Legacy and inheritance taxes are not new in our laws. The constitutionality of the[se] taxes has been declared. They are based on two principles (1) An inheritance tax is not one on property, but one on the succession; (2) the right to take property by devise or descent is the creature of the law, and not a natural right,—a privilege,—and therefore the authority which confers it may impose conditions upon it.

Irving Trust Co. v. Day (United States Supreme Court, 314 US 556, 1942)

> Nothing in the Federal Constitution forbids the legislature of a state to limit, condition, or even abolish the power of testamentary disposition over property within its jurisdiction.

After reading these statist comments, several remarks are in order. First of all, it is important to remember that the family, and succession of property within the family, existed long before the State came into existence. "A practice so universally accepted and so universally acquiesced in at all times, …, is something more substantial than a privilege conferred by the State." Secondly, what would people

do regarding succession if there were no State, or if the State made no laws for testamentary disposition or descent? What would happen is what occurs whenever voluntaryism flourishes. People would arrange their own affairs to suit themselves. Yes, there might be chaos and confusion until things were sorted out, but eventually customs and practices would evolve under which property was transmitted from one generation to another in accordance with the desires and instructions of the deceased. The last thing in the world we need, both figuratively and literally, is for the State to tell us what we may do and may not do with our property when we die. V

Is "Taxation Is Theft" A Seditious Statement?: A Short History of Governmental Criticism in the Early United States

by Carl Watner
(from No. 86, June 1997)

Introduction

In August 1996, I received a press release regarding the imprisonment and legal appeal of the organizers of the Hickory (North Carolina) Patriots, a private organization which opposes the federal income tax. The defendants, Robert Clarkson, Vernon Rubel, and Dr. Herbert Fleshner, were convicted (Federal Case No. 94-5933, originating in the United States District Court for the Western District of North Carolina, Statesville Division) on October 5, 1994 of violating the provisions of Section 371 of Title 18 of the United States Code of laws. According to the Bill of Indictment the three defendants "did knowingly, willfully and unlawfully conspire, … to defraud the United States by impeding, impairing, obstructing and defeating the lawful government functions of the Internal Revenue Service of the Treasury Department." The indictment stated that these activities primarily consisted of public meetings where 1) the constitutionality of the Sixteenth Amendment was called into question, 2) instructions were given to individuals how to file W-4 forms with increased exemptions, and 3) conclusions were reached that the income tax laws do not pertain to wages and salaries (and that, therefore, working people are not required to file income tax returns). The meetings were attended by undercover IRS agents, who later replayed tapes of the meetings to the jury.

In October 1995, Clarkson appealed his conviction to the United States Court of Appeals for the Fourth Circuit in Richmond, Virginia. At the original trial, the IRS labeled Clarkson as a leader in the tax protest movement. Clarkson freely admitted that he and his co-defendants had organized public meetings where he had openly challenged the constitutionality of the income tax. However, he

claimed that his rights to do so were protected under the First Amendment to the Constitution ("Congress shall make no law … abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances"). The trial court judge would not allow any First Amendment issues to be raised and sentenced Clarkson to 57 months of imprisonment.

As the editor, publisher, and chief contributor to *The Voluntaryist*, the Clarkson case hit me squarely between the eyes. Could I be charged with a similar crime? Unlike Clarkson, I am not concerned with the constitutionality of the income tax laws. I oppose taxation and all political statutes on moral grounds. Stealing is wrong; taxation is a form of stealing; therefore taxes are wrong regardless of what the government says or does. (See the accompanying article, "On Keeping Your Own: Taxation Is Theft!") It is not so far fetched to imagine that someday, on the basis of my published writings, I might be charged with impeding the collection of government revenues.

Furthermore, much of what I have written and published during the last decade and a half of *The Voluntaryist* has been highly critical of the government of the United States. In "If This Be Treason, Make the Most of It!" (Whole No. 30, February 1988), I addressed the treasonous and seditious nature of my writings. If sedition be defined as anything that tends to disturb the tranquility of the State and which might lead to its subversion, then clearly the educational and instructional efforts of *The Voluntaryist*, even though they be nonviolent, are seditious because their intent is to weaken the grasp of statism over the minds of individuals in this country and every other country in the world.

My outlook since that time has not changed, and what I wrote bears repeating:

> We oppose not only specific states (such as the United States), but the very concept of the nation-state itself. Without the State there would be no compulsory institution to betray. One is not accused of treason when one quits Ford Motor Co. and goes to work for General Motors. But it is generally considered treasonous to renounce one's citizenship (as when one attempts to become a naturalized citizen of a country that your country is at war with) because allegiance to the State was historically deemed perpetual and immutable.
>
> Since voluntaryists look upon the State as a criminal institution, we believe that we owe it no allegiance. Since we view the U.S. Constitution as "a covenant with death, an agreement with hell," as William Lloyd Garrison put it, we accept no duty to uphold it or abide by it. Since the State is a thief we owe it no respect. The State is an invasive institution per se, that claims sovereign jurisdiction over a given geographical area and which derives its support from compulsory levies, known as taxation. The invasive trait of the State "persists regardless of who occupies [the] positions of power in the State or what their individual purposes may be." This insight leads us to view the State and its

> minions as a criminal gang engaged in a common criminal enterprise—namely, the attempt to dominate, oppress, coercively monopolize, despoil, and rule over all the people and property in a given geographic area.

In short, the fundamental purpose of every State is conquest, and the United States government, even in its earliest days, has never departed from this norm. As I have pointed out in many historical articles in *The Voluntaryist*, the American Revolution, and the State apparatus that took control over the American colonies after independence was declared from Great Britain were not libertarian enterprises. The American revolutionaries and the Founding Fathers violated the rights of peaceful civilians during the war against British rule. They continued to levy compulsory taxes during the revolution and under the rule of the U.S. Constitution. They suppressed rebellion and secession. Their stand on slavery was unlibertarian. Hardly any time passed at all after the adoption of the Constitution before governmental policies were adopted which violated both the spirit and the actual wording of the document. So while the Americans might have rebelled against (what they considered) the abuses of George III, they did not reject his right or the right of some other government to rule and maintain its conquest over a subject population. "Far from wishing to overthrow the authority of government," their intent was to establish a new government which they could control. Instead of disbanding political government for the American people, the American Revolution only resulted in the swapping of one State for another.

The Alien and Sedition Laws

The likelihood that I might be charged with impeding government operations or sedition is even greater when one views the history of sedition laws in the United States. At least twice in American history (the late 1790s, and World War I) these laws have been responsible for the suppression of criticism of the government and the imprisonment or deportation of those antagonistic to the government and its policies. What is even more noteworthy is that the first occurrence happened less than ten years after the adoption of the Constitution. In an effort to support these charges and flesh out the history of sedition in the early days of the United States, the remainder of this article will be devoted to a review of the Alien and Sedition laws of 1798.

In order to comprehend the reasons for this legislation, it is necessary to understand the geo-political situation in America and Europe at the time. George Washington, President, and John Adams, Vice-President, began their second term of office in 1793; with Adams succeeding to the Presidency in March 1797. The commercial treaty concluded with England in November 1794, by John Jay, had disrupted Franco-American relations since France regarded it as evidence of a pro-British policy. Members of Adams' Federalist party feared a French invasion. French privateers in the Caribbean preyed on American commerce. The

French Directory attempted to extort money from three American commissioners when they were sent to Paris to negotiate a peaceful settlement of differences between the two countries. The "X Y Z despatches" created a storm of criticism in the United States, which led President Adams to adopt a policy of armed neutrality toward France, even though it was expected that France would declare war against the United States.

All these events conspired to serve as "a starting point for spirited measures that would strengthen the federal government." A navy department was created, separate from the army; the Marine Corps was revived, and naval frigates and warships were outfitted and purchased. Congress authorized the enlistment of 10,000 men in the army; Washington and Hamilton were appointed as generals to command the new army; and a gunners' school was begun at West Point, which was to become home of the United States Military Academy. Adams hoped to protect American commerce, but hoped to avoid war and did so by sending a new minister to France who concluded a commercial convention between the two countries in September 1800. Meanwhile, in the congressional elections of 1798–1799, the Federalists obtained a majority of the seats in the House and Senate. The Republicans, led by vice-president Thomas Jefferson, were tagged as Jacobins and discredited because of their support of France. Numerous European radicals who had fled from England, France, and Ireland were already in the United States. "By French consular estimates, there were 25,000 French refugees in the United States in 1798." The Federalist fear of a French invasion and the possibility of these foreigners engaging in treasonous activities against the United States resulted in the passage of legislation against these aliens and other critics of the government.

Commonly referred to as the Alien and Sedition Laws, there were actually four statutes passed during the summer of 1798. The Naturalization Act (Statutes at Large, I, 566–569; signed into law on June 18, 1798) was the earliest piece of Federalist legislation and was designed to deprive foreign-born citizens of the privilege of becoming officeholders and engaging in political activity. Under this law, a foreign-born resident of the United States had to prove that he had lived in the United States fourteen years before he could become a naturalized citizen. Five of those years must have been spent in the state or territory where he was being naturalized and at least five years before his citizenship could be granted, he must have declared his intentions of becoming a citizen. The Naturalization Act extended by nine years (as compared to the previous law) the time that foreigners had to wait before they could become citizens. The intent of the law was to reduce the foreign influence in American politics and resulted in questioning the bona fides of the Republican leader in the House of Representatives, foreign-born Albert Gallatin.

The second law known as the Alien Friends Act was actually titled "An Act concerning Aliens," (Statutes at Large, I, 570–572) and was signed by President

John Adams on June 25,1798. This was a temporary peacetime measure, which expired at the end of Adams' second term of office. It delegated to the president extraordinary powers over aliens: "[I]t shall be lawful for the President of the United States at any time during the continuance of this act, to order all such aliens as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable ground to suspect are concerned in any treasonable or secret machinations against the government thereof, to depart out of the territory of the United States, within such time as shall be expressed in such order." Aliens ordered to depart could protest their expulsion and if a Presidentially-appointed commissioner found they held no threat to the interests of the United States, they could be granted a license to remain within the United States. Penalties for failure to depart the country when ordered and not having obtained a license consisted of a maximum of three years imprisonment and denial of United States citizenship in the future. Many Southerners opposed this legislation because they believed that the President could use his authority to deport their slaves by labeling them undesirable aliens. Adams never did this and only grudgingly exercised his powers under the law: the only warrants of expulsion signed were in the case of two Irish journalists. However, the law's intention was fulfilled because "over a dozen shiploads of Frenchmen left the country in anticipation of trouble."

The third law passed by the Federalist Congress and approved by President Adams on July 6, 1798, was titled "An Act Respecting Alien Enemies" (Statutes at Large, I, 577–578). It had no expiration date, was only applicable during hostilities, and could have served as the model for the interment legislation affecting some Japanese-Americans during World War II. This statute authorized the apprehension, restraint, and or removal of all non-naturalized residents whose country of allegiance had declared war or committed predatory incursions against the United States. Both the President and federal and state courts of criminal jurisdiction were empowered to regulate and oversee the behavior of enemy aliens allowed to remain in the United States during a military crisis. The President was empowered to declare that a state of emergency existed, under which these powers might be exercised.

The Sedition Act was the real crown jewel of Federalist policy. Formally titled, "An act in addition to the act, entitled 'An Act for the punishment of certain crimes against the United States'," it was approved July 14, 1798 (Statutes at Large, I, 596–597). Its primary purpose was to make seditious libel a federal crime, which could then be used to stifle Republican criticism of the Adams administration. The Federalists justified this legislation on the grounds of self-preservation. Under the Constitution, the federal courts lacked jurisdiction to try conspiracies against the government or seditious libel without specific statutory authority. Therefore, these activities needed to be made federal crimes, even though they could already be prosecuted at the state level under the common law. The pertinent portions of the law bear repeating:

> Sec. 1. That if any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States, …, or to impede the operation of any law of the United States, …, he or they shall be deemed guilty of a high misdemeanor, and on conviction before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term not less than six months nor exceeding five years. …
>
> Sec. 2. That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either House of the said Congress, or the said President, or to bring them, or either or any of them, into contempt or disrepute, or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, …, or to resist, oppose, or defeat any such law or act, …, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.
>
> Sec. 3. That if any person shall be prosecuted under this act, for the writing or publishing of any libel aforesaid, it shall be lawful for the defendant, …, to give [in] evidence in his defence, the truth of the matter contained in the publication charged as a libel. And the jury who shall try the cause, shall have the right to determine the law and the fact, under the direction of the court, as in other cases.
>
> Sec. 4. That this act shall continue and be in force until the third day of March, one thousand eight hundred and one, and no longer.

In examining the Sedition Law, it should be observed that it did not outlaw the advocacy of the violent or forceful overthrow of the federal government. This had been provided for in the Treason Law of 1790. Under the common law of England, which had been adopted by the thirteen American states, there was a distinction between treason (acting against the government) and sedition (writing or speaking out against the government). During the 1700s, sedition had come to mean stirring up disaffection against the king, his ministers, or the established institutions of government, even though such words or deeds were not accompanied by or conducive to open violence. The Federalists were trying to get around the very exacting requirements of treason set forth in the Constitution "by creating crimes similar to treason and then imprisoning men for speeches and writing deemed disloyal." (Weyl, 8) The test of the criminality of such utterances was

whether or not they tended to blame or castigate the government and its officials for their policies. It was a presumption of the common law that whosoever engaged in sedition intended to bring the government into disrepute and intended to overthrow the State. Under the common law, the truth of the libel or the criticism of the government was no defense. It was the provocation and intention, not the truth or falsity of what was said or written, which was being punished.

The states were not bound by the constraints of the First Amendment. In fact, the Federalists argued that the Sedition Law only allowed the federal government to do what the states could already do. The Sedition Law "spelled out the common law meaning of the First Amendment. Rather than abridging freedom of speech and of the press, the law would merely stifle its licentiousness." (Smith, 139) Nor did the law alter the time-honored common law definition of sedition. Jefferson and his Republican supporters viewed the issue as one of states' rights versus federal authority, rather than questioning the propriety of defining sedition as a crime. They believed that restraints upon the press should be imposed by the states, rather than the federal government. Even though the Kentucky and Virginia Resolutions of 1798 and 1799, authored by Jefferson and Madison, declared these federal laws "null and void," their reasoning was never intended to be applied to seditious libel at the state level.

The "Sedition Mongers"

The Federalists were so anxious to bring their critics to the bar of law, that they did not even wait for the passage of the federal Sedition Law to begin the prosecution of their opponents. Two weeks before the Alien Friends law was signed, Benjamin Franklin Bache of the Philadelphia newspaper, the *Aurora*, was indicted and charged with "having libelled the President and the government in a manner tending to excite sedition and opposition to the laws." Once the Sedition Law was passed, the Federalist enforcement machinery was responsible for at least fourteen indictments under the new law. Most of the prosecutions involved political opponents or editors of anti-Federalist newspapers. Congressman Matthew Lyon of Vermont was the first victim of the statute. He was sentenced to four months in jail and fined $1000 for, among other things, referring to President Adams' "continual grasp for power." During his imprisonment, he became the first candidate for Congress in American history to conduct his campaign from a federal prison, and he was eventually re-elected in a runoff vote. Jedidiah Peck, a member of the New York State Legislature, whose indictment was eventually dropped, was charged with circulating a petition asking Congress to repeal the Alien and Sedition Laws. The attempt to suppress seditious criticism actually ran counter to the intentions of the Federalists, because the more they persecuted their opponents, the more they publicized the opposition's opinions in public.

David Brown, known as "that wandering apostle of sedition," received the stiffest sentence of anyone prosecuted under the Sedition law. Convicted of "sowing

sedition in the interior of the country" by helping to erect a liberty pole with the inscription: "No Stamp Act, no Sedition, no Alien Bills, no Land Tax: downfall to the tyrants in America, peace and retirement to the President," in Dedham, Massachusetts, he was sentenced to eighteen months in federal prison and a fine of $480. Brown, a Connecticut Yankee, had traveled all over New England preaching his subversive ideas. His sentiments were recorded in the *Massachusetts Mercury* and *Porcupine's Gazette* of June 21, 1799: "all government was a conspiracy of the few against the many, a device to squeeze wealth out of farmers and artisans for the benefit of the rich and powerful. 'The occupation of government is to plunder and steal,' he declared; and the Federal government of the United States seemed to him to be doing a superlative job. It imposed taxes in order to enrich speculators; the majority of Congress had been corrupted, …; it was, in short, 'a tyrannic association of about five hundred out of five millions' to engross 'all the benefits of public property and live upon the ruins of the rest of the community.' "

Another vocal critic of the Administration was Thomas Callender, a journalist and author, who had fled from Scotland when he was charged with sedition there. In the United States, both in Philadelphia, Pennsylvania and Petersburg, Virginia, his pamphleteering and writings marked him as a target of the Adams administration. Supreme Court Justice Samuel Chase, who presided at his trial, was quoted in a Richmond newspaper as saying that besides silencing Callender, the primary purpose of prosecuting him "was to demonstrate that the laws of the United States could be enforced in the Old Dominion." In *The Prospect before Us*, a political pamphlet published in January 1800, and which served as the impetus for his indictment, Callender described government as an evil "contrivance of human villainy. Every government, he maintained, was corrupt; office holders were thieves and villains and 'the object of every government always had been, and always will be, to squeeze from the bulk of the people as much money as they can get.' " The *Richmond Examiner* described Callender's view of the government of the United States as a "conspiracy against the welfare of the people." (Miller, 212) Callender was ultimately found guilty of sedition, and sentenced "to nine months in jail, assessed a $200 fine, and bound … over on a $1,200 bond to good behavior for two years." He was to remain in jail until his fine was paid and his security posted. (Smith, 356)

Supreme Court Justice Samuel Chase also presided at the April 1800 trial of Thomas Cooper, who the Federalists listed as one of the top three Republican "scribblers." During this trial, Cooper had the audacity to attempt to subpoena President Adams, but Chase prohibited the clerk of the court from issuing the order. Cooper argued that "the Constitution contained no statement which exempts the president from court process." Chase believed that Adams could not be compelled to appear, nor placed on the stand and asked if he were guilty of maladministration. Chase ruled that Cooper's request was not only improper, but "very indecent." Cooper was convicted, sentenced to six months in federal prison,

assessed a $400 fine, and ordered to post a $2,000 surety bond for his good behavior upon the expiration of his imprisonment. The most interesting thing about the Cooper trial was Justice Chase's charge to the jury because it helps explain why the Federalists believed they needed a sedition law:

> Since ours is a government founded on the opinions and confidence of the people, … if a man attempts to destroy the confidence of the people in their officers, their supreme magistrate, and their legislature, he effectually saps the foundation of the government. A republican government can only be destroyed in two ways; the introduction of luxury, or the licentiousness of the press. (Smith, 324–325)

Poisoning the Minds of the People

During the Congressional arguments over the Sedition Law, its Federalist defenders stated that governments that depend upon public support "must take measure to ensure that [they] enjoyed a favorable press." They also pointed out that no government could be secure in power unless criticism of the government could be punished. To the Federalists, curbing licentiousness of the press under the Sedition Law was not an abridgement of the First Amendment because no prior restraints on speech or writing were being imposed. Those who chose to criticize the administration had the right to do so, but had to suffer the consequences if they libeled elected officials or engaged in sedition. To those in power, the First Amendment meant that Congress should make no law abridging freedom of speech and the press unless Congress became the recipient of undue or harsh criticisms. (As one twentieth century commentator put it, "The First Amendment … means just about this: Congress shall make no law abridging freedom of speech and the press, unless Congress does make a law abridging freedom of speech and the press.") (Chafee, 65) Samuel Dana, one of the Federalist House of Congress members from Connecticut, argued as much during the debates over the Alien and Sedition Laws: "There is one power inherent and common in every form of Government. … The power of preserving itself … implies the necessary power of making all laws which are proper for this purpose." (Smith, 71) Harrison Gray Otis, a Massachusetts Federalist stated on the floor of the House of Representatives, that "Every independent Government has a right to preserve and defend itself against injuries and outrages which endanger its existence. … The government could not function 'if sedition for opposing its laws, and libels against its officers, itself, and its proceedings, [we]re to pass unpunished.' " (Smith, 132)

After the expiration of the Sedition Law in 1801, there was no more federal legislation criminalizing seditious practices until World War I. During the Civil War, President Lincoln simply violated the Constitution with "emergency measures." Despite the censorship of all telegraphic communications, and the closing of anti-administration newspapers, and the jailing of their editors, the only pertinent federal legislation passed during the Civil War was a statute of 1861, which

punished conspiracy "to overthrow, put down, or to destroy by force the Government of the United States" or to forcibly hinder the execution of any federal law. Another statute of 1867 punished conspiracy to commit an offense against the government with any overt act. Such overt acts might consist of force, or actions which might otherwise be innocent, such as speech or writing. These statutes were eventually codified as Sections 371 and 2384 of Title 18 of the United States Code. (Clarkson was convicted of violating Section 371 in 1994. Certainly the Civil War authors of this legislation never dreamed it would be used to jail twentieth century tax protesters.)

Another example of how old laws can be applied to new circumstances can be found in the case of a Georgia statute. Although many states enacted sedition laws during World War I, Georgia did not need to because it already had one on the books, dating back before the Civil War. According to Sec. 4214 of the Georgia Code of laws of 1861, "anybody who attempted by speech or writing, to excite an insurrection of slaves," was to be punished by death. After Georgia's defeat in the Civil War, the legislature left the law on the books, but deleted the reference to slaves (Ga. Code Ann., 1933, Section 26-902: "Any attempt, by persuasion or otherwise, to induce others to join in any combined resistance to the lawful authority of the State shall constitute an attempt to incite insurrection.") No one was ever prosecuted under the law, until the 1930s, when Angelo Herndon, a Communist, was charged with stirring up sedition among his black brethren in Atlanta.

In order to counter the threat of anarchism, communism, and the Industrial Workers of the World after World War I, more than ten states passed their own sedition laws. Most of these laws applied, not to criminal acts, but to speech, assembly, and association that appeared dangerous to the authorities. As one historian described them: "They had three characteristics in common: severe penalties, broad and loose definitions of the crime, and a return to the eighteenth century English conception of sedition as language which threatened the power or prestige of the government." (Biddle, 19) A Montana statute applied to any language "calculated to incite or inflame resistance to any duly constituted federal or state authority." The Nebraska law of 1918 even punished concealment of knowledge that sedition had been committed! The New Jersey law of 1918, "later amended after a portion had been declared unconstitutional, defined as criminal any attempt to incite hostility or opposition to government; membership in a society formed to advocate this hostility or opposition; and letting or hiring a building or room to a society or meeting advocating this hostility or opposition."

During the World War I era, both the states and federal government were active in countering sedition. Under the terms of the federal Sedition Act of May 16, 1918 (40 Stat. 555) it became a crime to utter, print, write, or publish "any disloyal, profane, scurrilous, or abusive language or language intended to cause contempt, scorn, contumely, or disrepute as regards the form of government of the United States or the Constitution of the United States; or the flag; or the armed forces of

the United States." It was also made unlawful to engage in "any language intended to incite resistance to the United States. ..." Another new offense included in the act was "saying or doing anything with intent to obstruct the sales of United States bonds." Violations of the laws made the perpetrator subject to twenty years imprisonment, or ten thousand dollars fine, or both. Although not enacted, Senator McKellar in 1920, offered an amendment to the law to make it "a felony to entertain the belief in no government or to hold membership in an organization disbelieving in all forms of government." As one historian concluded, "No legislation remotely approaching this in its infringements of the rights of freedom of speech and press had existed in this country since the famous Alien and Sedition Acts of 1798." (Summers, 80)

Sapping the Foundations of Government

In observing the long sweep of history, it becomes readily apparent that political governments have always suppressed criticism of those in power. Irving Brant calls this "a grim tradition," because "for hundreds of years" men and women have been killed, or "fined, whipped, pilloried, imprisoned, and had their ears cut off for speech and writings offensive to government or society." Why is this so? Why has every political government that has ever existed found itself at odds with the freedom of individuals to speak their minds openly and without fear of the consequences? As I noted in my article, "Beyond The First Amendment," (Whole No. 25) the answer is bound up in the basic issue of how States govern. Nikolai Lenin hinted at the answer to this question, in a speech he delivered in Moscow in 1920:

> Why should freedom of speech and freedom of the press be allowed? Why should a government which is doing what it believes to be right allow itself to be criticized? It would not allow opposition by lethal weapons. Ideas are much more fatal things than guns. Why should a man be allowed to buy a printing press and disseminate pernicious opinions calculated to embarrass the government?

Lenin's point that ideas are more lethal than weapons is the insight upon which all political control is based. State hegemony and the ability to command obedience actually grow out of ideas. It is ideology, not force or its threat, which causes most people to obey. That is why governments are so concerned about the unrestricted exposure of their people to a wide variety of ideas, particularly to those ideas which question its legitimacy. It would be suicide for a State to stand idle while it was being criticized and its power base was being undercut. If the State is to remain in control, it can never reconcile itself to unrestrained freedom of the press. Whether the State is trying to retain its legitimacy or fight for its life, as in time of war, it must generally control what the people think. Public schooling is one of the major means the State uses to accomplish this. Another is by legislating the criminal boundaries of what is and what is not acceptable criticism.

The loss to individuals resulting from these infringements on their speech and writing can only be measured in years imprisoned, fines paid, and punishments suffered. But the real loss to society can never be ascertained because there is no way to calculate the value of ideas stifled, never uttered, or lost. The State's forceful suppression of some ideas clearly inhibits the voicing of others. How many people have refrained from calling taxation "theft" because of the threat of government prosecution? The number will never be known. However, one thing is for sure: early American history clearly demonstrates that the statement "taxation is theft" is a very seditious one.▽

Short Bibliography

Francis Biddle. 1951. *The Fear of Freedom*. New York: Da Capo Press, 1971.

Zechariah Chafee, Jr. *The Blessings of Liberty*. Philadelphia: J. B. Lippincott Company, 1954.

John C. Miller. *Crisis in Freedom: The Alien and Sedition Acts*. Boston: Little, Brown and Company, 1951.

James Morton Smith. *Freedom's Fetters: The Alien and Sedition Laws and American Civil Liberties*. Ithaca: Cornell University Press, 1956.

Robert E. Summers (compiler). *Wartime Censorship of Press and Radio*. New York: H. W. Wilson Co., 1942.

Nathaniel Weyl. *Treason: The Story of Disloyalty and Betrayal in American History*. Washington DC: Public Affairs Press, 1950.

"The Illusion Is Liberty — the Reality Is Leviathan": A Voluntaryist Perspective on the Bill of Rights

by Carl Watner
(from No. 101, December 1999)

Delegates to the Constitutional Convention in Philadelphia began their deliberations on May 25, 1787. During the hot summer months when their arguments seemed to extend interminably, Benjamin Franklin observed that life went on around them despite their debates. At one point, he "is said to have warned the delegates: 'Gentlemen, you see that in the anarchy in which we live society manages much as before. Take care, if our disputes last too long, that the people do not come to think they can very easily do without us.' "[1] While this story may be apocryphal, James Iredell, another delegate, noted that if the confederation continued

1. Leonard Krimmerman and Lewis Perry (eds.), *Patterns of Anarchy* (Garden City: Anchor Books, 1966), p. xv.

as it was, it might as well "resolve into total anarchy at once, of which indeed our present condition falls very little short."[1] These introductory remarks demonstrate that the Federalist supporters of the Constitution were highly perceptive politicians and strategists. They realized that if they fumbled too long, their efforts at structuring a new government would fail and they would not attain the legitimacy which their new political enterprise required.

This article was sparked by an essay written by Forrest McDonald entitled "The Bill of Rights: Unnecessary and Pernicious," in which he presents the thesis (which he shares with some other historians) that the first ten amendments to the federal Constitution were essentially a legitimizing device used by those favoring a strong central government. In other words, many Americans who otherwise might not have supported the new central government were won over to it by the adoption of the Bill of Rights. Reading McDonald's article led me to review some of the history of the adoption of the Bill of Rights, of the conflict between the Federalists and their opponents, the Anti-Federalists, of the strategy adopted by the Federalists in urging the ratification of the Constitution, and to consider the ultimate significance of the Bill of Rights. Would we, as late twentieth century Americans, have been better or worse off had the Bill of Rights never been adopted? What would American constitutional history look like if here had been no Bill of Rights? The purpose of this article is to examine these topics from a voluntaryist perspective, and to decide what position the committed voluntaryist would have taken during the struggle for the ratification of the Constitution and the adoption of the first ten amendments.

In order to understand the place of these amendments in American history, it is first necessary to comprehend the voluntaryist view of the Declaration of Independence and Revolutionary War.[2] Despite the seemingly libertarian nature of the revolution, even the Declaration of Independence was a statist document. For example, it concluded with the statement that the representatives of the United States of America do declare "That these United Colonies are, and of Right, ought to be Free and Independent States; … and that as Free and Independent States, they have full power to levy War; conclude Peace, contract Alliances, establish commerce and to do all the other acts and Things which independent States may of right do." In other words, the signers of the Declaration intended to create a new State to replace the one they were "throwing off." As Albert Jay Nock ob-

1. Herbert Storing (ed.), Volume II, *The Complete Anti-Federalist* (Chicago: The University of Chicago Press) 1981, p. 14 (footnote 7).

2. Readers who are interested should consult my earlier discussions in *The Voluntaryist*. On the Revolutionary War see Issue 21, "A Plague on Both Your Houses," and on the Declaration see Issue 60, "Would You Have Signed the Declaration of Independence?"

served, there was great dissension about the form of the political institutions which came after the Americans won the war, "but [there] was none about its nature. … Dissatisfaction was directed against administrators, not against the institution itself." Those who fought and led the rebellion against Great Britain meant to have a State of their own to control, not one under the control of a far away British Parliament and monarch. The bottom line, after all is said and done, is that colonial-era Americans, after having won the battle against Britain, simply swapped one State for another.

Nonetheless, the first American central government, The Articles of Confederation and Perpetual Union, was relatively weak because "most men of the Revolutionary period took it for granted that it was the nature of all governments to seek to acquire more power. … [Their attitude was that] all power corrupts and all power tends to become absolute." [1] Hence, they were jealous of political power. Many on the frontier were independent and self-reliant to the point of being nearly ungovernable. They "were improvident and anti-social; they did not take kindly to any form of authority which inevitably to them meant order, limitations on freedom of action, mutual obligations, and, worst of all taxes. … Generally speaking and aside from statesmen, merchants, and the veterans of the Revolution, the idea of a National Government had not [yet] penetrated the minds of the people. They managed to tolerate State Governments, because they had always lived under some such thing; but a National Government was too far away and fearsome, too alien and forbidding for them to view it with friendliness or understanding" [2]

The Confederation, agreed upon by the Second Continental Congress on November 15, 1777 became effective in 1781. It was based upon an alliance of the thirteen newly independent states. The central government they created had no power to tax, field soldiers, regulate commerce, or even enforce its own laws. Whatever revenue it raised was done by assessing the legislatures of the individual states, who then, in whatever form they wished, levied upon their citizenry. It was an intolerable situation for any government, much less a national one. Consequently, American political leaders realized that they must assume control over the financial and military aspects of the country in order to truly govern. They required sufficient money and soldiers to protect the new nation from foreign aggressors, criminals, and recalcitrant states or taxpayers. In order to accomplish

---

1. Hillman Metcalf Bishop, *Why Rhode Island Opposed the Federal Constitution* (Providence: The Roger Williams Press, 1950), p. 38. (Reprinted from *Rhode Island History*, 1949).
2. William E. Nelson and Robert C. Palmer, *Liberty and Community: Constitution and Rights in the Early American Republic* (New York: Oceana Publications, Inc., 1987) pp.42–43.

these goals, they crafted a new document, known as the Constitution of the United States, which was distributed to the various state governments for their approval in September 1787.

The Constitutional Convention was originally called to amend the Articles, not supersede or annul them. Under the Articles of Confederation, the states were pledged to a perpetual union, and no provision had been made for dissolving their association—except that any changes in the Confederation had to be done by the unanimous agreement of all the States. Thus, there are only two ways to view the Constitutional Convention. Either the individual States had the right to secede (without the agreement of the other States) or else the Founding Fathers instigated a revolution to change the governing institutions of the country. In the latter case, they "assumed constituent powers, ordained a new constitution, and demanded a plebiscite thereon over the head of all existing legally organized powers. Had Julius [Caesar] or Napoleon committed these acts, they would have been pronounced a *coup d'etat*." [1] The fact that the Articles of Confederation were still the fundamental law of the thirteen states was simply ignored by the members of the Constitutional Convention.

Although the States never seem to have formally withdrawn their consent to the Articles, in each State a special ratifying convention was held to approve or reject the Constitution. In Rhode Island, the first ratifying convention rejected the Constitution. It was during the struggle for the ratification (September 1787 to June 1788, when the new constitution actually went into effect in the first nine ratifying states) that the first political parties in America took shape. Despite the chasm between Federalists and Anti-Federalists, one very important point is usually overlooked. Both were supportive and approved of some sort of central statist authority over the thirteen states. All assumed that some sort of government was necessary to protect man's rights. As Herbert Storing in *The Complete Anti-Federalist* put it, "If the Federalists and Anti-Federalists were divided among themselves, they were, at a deeper level, united with one another." They all "agreed that the purpose of government is the regulation and thereby the protection of individual rights and that the best instrument for this purpose is some form of limited republican government." [2] The Federalists and Anti-Federalists were not arguing about whether there should be a government to rule men–but rather what form that government should take.

Many historians have often seen the Anti-Federalists as libertarian opponents of the newly proposed federal Constitution. This, however, is a mistake. Alexander Hamilton pointed out that the Anti-Federalists were really trying hard to rec-

1. Jerry Fresia, *Toward an American Revolution* (Boston: South End Press, 1988), p. 50.
2. Storing, op. cit., Volume I, p. 5.

oncile the contradiction of "limited government." [1] How could a coercive organization that retained a monopoly on the use of violence be kept in check? The Anti-Federalists recognized that such a monopoly carried with it the potential for unbounded tyranny. Many features of the new Constitution frightened them: A lifetime judiciary "removed from the people might 'enforce harsh and arbitrary laws.' " In the combined role of the President as commander-in-chief and chief executive officer of the government they saw the powers of a military dictator. They were also skeptical about how a government might be kept limited if Congress could pass any laws "necessary and proper" to carry out its enumerated powers.

One commentator has claimed that the Anti-Federalists

> thought the goal of the American Revolution was to end the ancient equation of power where arrogant, oppressive, and depraved rulers on one side produced subservience and a gradual erosion of self-respect, capacities, and virtue of the people on the other side. The result was an increasing corruption and degeneracy in both rulers and ruled. Unless this cycle could be broken, [the Anti-Federalists thought] independence would mean little more than the exchange of one tyranny for another. The intense Anti-Federalist suspicion of corruption, greed, and "lust for power" was not without merit, but not one of them recognized the error of the Federalist claim that "the true principle of the American Revolution was not hostility to government, but hostility to tyrannical government."

In fact, that was their error: they objected to tyrannical government, believing that some form of government might not be tyrannical. In this they were wrong. History has not only sustained the Anti-Federalists in their claims that "corruption and tyranny would be rampant … when those who exercised power felt little connection with the people," but has also shown that all government, by its very nature, is tyrannical.[2]

The inconsistent and unprincipled attitude of most Anti-Federalists shows how they were manipulated into supporting the Constitution. At first, they argued that the Articles of Confederation were preferable to the newly proposed Constitution, but as more and more state ratifying conventions approved the Constitution, they began to realize that they had better cut their losses. They began calling for amendments in order to safeguard and protect the rights of individual citizens, as well as to reserve the unenumerated powers of governing to the individual State governments. Furthermore, if the Anti-Federalists had a strategy for opposing the Constitution it was flawed from the beginning. Instead of objecting to the legal ir-

1. Storing, op. cit., Volume I, p. 6.

2. Ralph Ketcham, *The Anti-Federalist Papers* (New York: New American Library, 1986), pp. 19–20; and Storing, op. cit.,Volume I, p. 71.

regularities of the Philadelphia convention and boycotting the proceedings, some of the Anti-Federalists participated in the convention and had a direct role in creating the compromises incorporated into the new Constitution. By arguing against specific details of the Constitution, they gave it a legitimacy which it otherwise could not have obtained. If they were opposed on principle to the new Constitution, they should have stated their opposition to it and refused to debate the details. By participating in the debates over ratification in the States, the Anti-Federalists implied that they were willing to accept the decision of the special conventions called together in each State to decide whether or not that State would accept the Constitution. How could the Anti-Federalists reject the vote of the majority of delegates to special ratification conventions if they participated in the political campaigns that led to the selection of those delegates?

Initially, the Federalists had a clear-cut goal. Their objective was to get the new Constitution ratified by the conventions in nine States as quickly as possible. Otherwise, they would be in danger of losing their new Constitution altogether. "The Federalists were determined that Americans not be diverted … from the main task of providing themselves with effective government. … The main political business of the American people … was … not to protect themselves against political power, but to accept the responsibility of governing themselves. The Federalists did not deny that government, once established, may need protecting against, but they tried to make" that a secondary consideration.[1] Thus in June 1788, when New Hampshire became the ninth state to ratify the Constitution, both the Federalists and Anti-Federalists underwent a sudden change of strategies. The Anti-Federalists began campaigning for a new constitutional convention, which was permissible under Article V of the newly adopted Constitution. They hoped that they would have the required political clout to change some of the objectionable features of the new Constitution. On the other hand, many of the Federalists who had hitherto resisted supporting a call for any constitutional amendments, changed their tune. James Madison became the leader of those advocating the incorporation of a bill of rights into the new Constitution. In June 1789, he proposed twelve amendments to the Constitution, ten of which were adopted in 1791 and which later became known as the Bill of Rights.

Originally, most of the Federalists had been opposed to any bill of rights. Alexander Hamilton, for example, pointed out that there was no reason to limit the powers of the federal government in areas where it was not constitutionally granted any powers. Nevertheless, Madison believed, and rightfully so, that his

1. Herbert Storing, "The Constitution and the Bill of Rights," in Robert A. Goldwin and William A. Schambra (eds.), *How Does the Constitution Secure Rights* (Washington: American Enterprise Institute for Public Policy Research, 1985), p. 28.

suggested amendments would help keep the Constitution intact and protect it from destruction by the Anti-Federalists. His objective, as he said in his speech of June 8, 1789, was "to give satisfaction to the doubting part of our fellow-citizens." [1] His proposal for a bill of rights was designed to forestall a call for a new constitutional convention and to counter the efforts of the Anti-Federalists to revise the powers and basic structure of the new government. His hope was to save the constitution "by pushing forward a set of amendments that almost everyone could accept and that excluded all the Anti-Federalists' [radical and] fundamental proposals." [2] The most significant of these had been the suggestion from several of the States that direct taxes and excises not be collected in any State raising its own quota of money for the federal government.

Madison purposefully crafted his proposals to quickly help legitimize the new government. He avoided statements detailing perpetual standards or maxims "to which a people might rally" because he realized "that they tended to undermine stable and effective government." Since the new federal government needed (and in his opinion deserved) a presumption of legitimacy and permanency, it would have been foolish of him to include any reference to first principles that would have undermined that presumption. For this reason, Madison limited his proposals to "specific protections of traditional civil rights" rather than embrace a statement of first principles like those found in the Declaration of Independence or the Virginia Bill of Rights. Congress showed that it understood this need for legitimacy when on September 25, 1789 it submitted the completed constitutional amendments to the States and noted that "their acceptance would extend 'the ground of public confidence in the government.' " [3]

Madison's amendments were simply window dressing for public consumption. First of all, they did not curtail any of the substantive powers of the central or state governments. Secondly, they had little legal or constitutional significance because many of the critical rights of Americans were already respected without a bill of rights.[4] A few like the prohibition on "ex post facto" laws had originally been included in the Constitution. (Indeed, some had questioned the propriety of the prohibition's inclusion there arguing that "there was no lawyer, no civilian who would not say that 'ex post facto' laws were void in [and of] themselves. It can-

1. Ibid., p. 20.
2. Ibid., p. 22.
3. George Anastalpo, *The Amendments to the Constitution* (Baltimore: The Johns Hopkins University Press, 1995), p. 326.
4. Ibid. p. 45 and Bennett B. Patterson, *The Forgotten Ninth Amendment* (Indianapolis: The Bobbs-Merrill Company, Inc., 1955), p. 7.

not be necessary to prohibit them." [1] Others, like the presumption of innocence, were considered so basic and self-evident that they never required constitutional recognition. Under the English common law "basic, natural, and fundamental individual rights were protected whether enumerated specifically in the Constitution or not." [2] Consequently, the personal security of those living under the common law at that time did not "really depend upon or originate in any general proposition contained in any written document." The enactment of constitutions or bills of rights or parliamentary statutes were "records of the existence of a right" rather "than statutes which conferred it." Freedom for Americans at the time of the adoption of the Bill of Rights grew out of custom and tradition, not written law.[3]

As several observers have pointed out, it would be interesting to speculate how our constitutional liberties would have evolved without a Bill of Rights or what would have occurred had the amendments not been set off by themselves at the end of the Constitution. (Madison originally opted for their insertion at various places within the document.) Hadley Arkes, in his essay "On The Danger of a Bill Of Rights" comments that justification for interference with personal liberties would still have to be made whether or not a particular liberty was embraced in the Bill Of Rights.[4] Herbert Storing wrote that "without a Bill Of Rights our courts would probably have developed a kind of common law of individual rights to help test and limit governmental power." [5] What we do know, for sure, is that several violations of individual rights were and still are found right in the Bill of Rights. For example, according to the Third Amendment, soldiers may be quartered in private homes during war time without the homeowners consent. (As one commentator noted, the government has bypassed even this requirement "by simply removing the citizens from their houses and conscripting them into the army, navy, and air force.")[6] By the Fourth Amendment, the government may conduct

---

1. Hadley Arkes, *Beyond the Constitution* (Princeton: Princeton University Press, 1990), pp. 61 and 70. Chapter 4 of this book, from which these quotations are taken, is titled "On The Dangers of a Bill of Rights: Restating the Federalist Argument."
2. Patterson, op. cit., p. 7.
3. See the discussion in Carl Watner, *Your Document for the Use of Silence* (Boulder City: Neo Tech Research, 1984), p. 21 citing Bernard Schwartz, *The Great Rrights of Mankind* (New York: Oxford University Press, 1977), p. 24.
4. Arkes, op. cit., pp. 69–70.
5. Storing, "The Constitution and the Bill of Rights," p. 26.
6. Forrest McDonald, "The Bill of Rights: Unnecessary and Pernicious" in Ronald Hoffman and Peter Albert (eds.), *The Bill of Rights: Government Proscribed* (Charlottesville: The University Press of Virginia, 1997), p. 401.

searches and seizures so long as they are of a reasonable nature. The wording of the Fifth Amendment implies that people may be deprived of their property so long as such confiscation is countenanced by due process of law. Private property may be taken for public purposes so long as just compensation is paid by the government. The Seventh Amendment, which provides for jury trials in civil suits, also provides that "no fact tried by a jury, shall be otherwise reexamined by any Court of the United States, than according to the rules of the common law." "By implication, limiting the exemption to a reexamination of facts effectively confirmed the power of appellate courts to overturn jury findings in matters of law." [1] Thus it was that juries lost the final say in matters of law.

Forrest McDonald in his essay mentioned at the beginning of this article labeled the Bill of Rights as "Unnecessary and Pernicious." They were unnecessary because most of them were already embraced by the common law. They were pernicious because they helped legitimize the Constitution in the minds of the American people. Furthermore, McDonald points out that "The Bill of Rights has never been an especially effective guarantor of rights." [2] "One by one, the provisions … [of the Constitution] have been eaten away, and nobody seems to have noticed or cared. The illusion is liberty. The reality is Leviathan." [3] Whenever the government's revenues have been threatened, whenever the nation has been gripped by some sort of national emergency, or by a major war, the Bill of Rights and other provisions of the Constitution have usually been laid aside. One need only mention Lincoln's violation of civil liberties during the Civil War, the Legal Tender and Gold Cases, the Red Scare during world War I, the internment of Japanese-Americans during World-War II, and the imprisonment of tax resisters during this century to see how little protection the Bill of Rights has offered Americans.

Many nations have been brutally tyrannized by governments that ruled according to constitutions, but the question about government is not really whether it is tyrannical. The question is: Should there be a state, however weak or strong it might be? A man who is a slave asks: by what right is he enslaved, not whether he has a good or kind master. All governments and all slavemasters are unjust. The weakest or strongest of governments must necessarily make the same claims and both attempt to exercise a monopoly of power within their borders. They must both have exclusive possession of and control over the military and the police. They must both demand the right to declare war and peace, conscript life, and expropriate income and property, levy taxes, and regulate daily life. The main point is, as Robert Nisbet has so ably put it in his essay, "The State": "With all respect to

1. Ibid., p. 400.
2. Ibid., p. 417.
3. Ibid., p. 420.

differences among types of government, there is not, in strict theory, any difference between the powers available to the democratic and the totalitarian State. We may pride ourselves in the democracies on Bills or other expressions of individual rights against the State, but in fact they are rights against a given government and can be obliterated or sharply diminished when it is deemed necessary."[1] Constitutions and bills of rights are legitimizing tools of the ruling elite. Both are badges of slavery not liberty, and should be rejected. It is only when people awaken to these facts that they will become free.V

1. Robert Nisbet, "The State," in D. J. Enright (ed.), *Fair of Speech* (Oxford: Oxford University Press, 1985), p. 186.

Part VI
Voluntaryism in History

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

—Thomas Paine,
Rights of Man (1792), Ch. 1, Bk. 2

The Noiseless Revolution

by Carl Watner

(from No. 10, October 1994)

NOVEMBER 18, 1883, is a day that should go down in voluntaryist history. It marks what is possible for people to achieve when they are left to themselves to solve their own problems. It shows what is possible when social change depends only on proprietary justice and respect for individual rights. It was on that day that the standard time zone plan was put into effect over nearly all of North America. What is so voluntaryist about this achievement is that the whole program was accomplished without the benefit of legislation, no compulsion was threatened or used. Some individuals and communities, as well as the federal government and a small number of local railroads refused to use the new time, but no one was threatened with jail or penalty. The idea of reducing the multiplicity of local times in use throughout the continent was largely generated out of the railroads' desire to simplify their operating schedules. The standard time plan was a voluntary arrangement implemented by their General Time Convention. Adoption of standard time was unique in that it was carried out by private initiative and it surely demonstrates the relationship of the general habits and usages of the population, public opinion and the real world. The purpose of this article is to describe the history and background of this event, because it proves that free, unmolested individuals are quite capable of both recognizing social problems and implementing creative solutions, without the need for any government whatsoever. A number of other related issues will be examined, such as the acceptance of Greenwich Mean Time in England (there also a railroad motivated usage), and the use of the Greenwich meridian as an international geographical reference point. Even these subsidiary points reinforce the voluntaryist contention that the existence of government is not necessary to the smooth functioning of a voluntary society.

Prior to the early 1880s, mean sun time, or what was referred to as local time, was commonly used by most people throughout North America. Before the coming of the railroads, the distances traveled were not usually large enough or traversed fast enough to make any significant difference with respect to time between different parts of the continent. Due to the earth's shape and rotation and its place in the solar system, when the sun is directly overhead in one place (thus being noon according to a local sun dial), it is not noon in places some distance to the east or west. The time varies approximately one minute for every thirteen miles, or one second for every 1,140 feet of longitude. So for example, in a city of the size of New York, noon time based on the sun might vary several minutes from the easternmost part to the westernmost part of the city. What this geographical fact presents is the question of how to determine noon, or any exact time over a significant portion of the earth's surface.

The use of a multiplicity of local times presented no real problems until the growth of the railroad industry during the middle of the nineteenth century. Smaller communities had traditionally used the time of their larger neighboring cities and in the large cities, local time was usually designated by sun time at city hall or some other designated point. The larger railroads used the time standard of their home terminals. For instance, the Pennsylvania Railroad in the East used Philadelphia, which was five minutes slower than New York time and five minutes faster than Baltimore time. The Baltimore and Ohio Railroad used Baltimore time for trains out of Baltimore, Columbus time for trains in Ohio and Vincennes time for trains running west of Cincinnati. Most of the railroads running west and south of Chicago, used Chicago time and those running west from St. Louis used St. Louis time. In short, the railroads had a problem coordinating their schedules and travelers had a problem in knowing the actual arrival or departure time of trains, since there were literally hundreds of communities using different local times. Railroad industry records indicate that there were probably at least 100 different local times in use by the railroads prior to the adoption of standard time.

In larger cities, it was not uncommon to see three or four clocks in the railroad station, all reading different times. For example, at Buffalo, New York, there were clocks set to New York City time (for the New York Central Railroad), Columbus time (for the Lake Shore and Michigan Southern Railroads), and to local Buffalo time. In Pittsburgh six clocks were seen in the terminal building. Since accurate time was a commodity that people willingly paid for, in the larger cities, like New York, the Western Union Telegraph Company provided a subscription service to commercial customers; sending them a time signal every day at noon. Time balls were not an uncommon sight. These were large balls (sometimes three or four feet in diameter) mounted on spires at the top of prominent buildings in the larger cities. At noon every day, the time ball would fall, signaling to the populace the exact arrival of noontime. Competition between time standards and in the provision of time was left to the free market, as can be seen in the case of Kansas City. There, the leading jewelers (who sold timepieces) all had their own standards of time, and no two standards agreed. Sometimes the variation in jewelers time was as much as twenty minutes. Every jeweler took his own reading, thereby hoping to prove the accuracy of his own merchandise. Each jeweler had his own customers who set their watches according to their jeweler's time and swore by it. According to one account, "the people of Kansas City never did have accurate information on the arrival and departure of trains, except such as was gained by going to the edge of the hill and looking down at the railway station." The babel of clocks in Kansas City was eventually solved by the adoption of the time ball system.

The railroads were cognizant of these problems. As one newspaper of the era put it, "The confusion of time standards was the source of unceasing annoyance and trouble." Not only did various time standards pose a problem for travelers, who often might miss trains because of using a standard differing from the railroad

standard, but the multiplicity also presented a safety problem because of the risk of crews misinterpreting which time standard was to be used and of dispatchers ordering trains out on the same track at the wrong time. In May 1872, an association of railroad superintendents met in St. Louis to discuss summer train schedules. This meeting led to the formation of a permanent organization successively known as the Timetable Convention, the General Time Convention, the American Railway Association, and finally the Association of American Railroads. However, the Time Convention had been preceded by a convention of railroad personnel in New York in October 1869. There they had listened to the presentation of Charles Ferdinand Dowd of Saratoga Springs, New York, who proposed a plan of standard time zones based on a meridian passing through Washington, D.C.

Dowd, who was principal of a girl's seminary in upstate New York, had himself experienced and perceived the problem faced by the railroads of the country. In an effort to come up with a solution to the problem of so many confusing time standards, he proposed four hourly time zones for the continent (Washington time for the Atlantic states, one hour slower for the Mississippi Valley states, two hours slower for the Rocky Mountain states, and three hours slower for the Pacific states). Sparked by the appointment of a committee of railway superintendents who were to review his plan, Dowd authored two studies in 1870, published under the titles of "System of National Time for Railroads" and "National Railroad Time." Although his plans were treated favorably, the railroads were slow to act. The first formal meeting of the Timetable Convention took place on October 1, 1872, in Louisville, Kentucky. The following year, Dowd embarked on a program of obtaining written promises from railroad executives, which provided for the introduction of his standard time plan as soon as a majority of the executives of the country had agreed. The financial panic of 1873 disrupted interest in his plan, so that it was not until the early 1880s that the railroads were in a position to renew their efforts on behalf of time standardization. However, through the remainder of the 1870s, the issue did not entirely drop out of sight. Sanford Fleming, a Canadian railroad engineer, became interested in time reform and published several international articles on "uniform or terrestrial time," as he called it. In 1878, he presented his plan for a twenety-four hour terrestrial day to the Canadian Institute. Fleming's plan was based on a meridian 180 degrees from Greenwich. Various papers advocating such ideas as decimalization of daily time and the dual use of standard and local times were delivered before various cultural and scientific groups. Such groups as the American Metrological Society, the American Association for the Advancement of Science and the American Society of Civil Engineers all supported the call for a new timekeeping system.

In 1881, the General Time Convention met again and appointed William Frederick Allen as a committee of one to investigate Dowd's and Fleming's suggested time zone plans. Allen came from a prominent railroad family and had

been for many years the secretary of the General Time Convention and also managing editor of the *Official Guide of the Railways*. Allen's favorable report was finally presented on April 18, 1883, to the meeting of the Southern Railway Time Convention meeting in New York City. Allen's plan differed from Dowd's in that instead of basing the time zones on the meridian passing through Washington, Allen chose to base his zones on the 75th and 90th meridians. By spacing the zones 15 degrees of longitude apart, he provided even hour differences between them. As Allen realized, it was an added advantage to his plan to use zones based on a reference point to the Greenwich meridian, because similar plans had already been proposed by scientists and scientific societies for time systems which were designed to include the whole world. He referred be this as "a gratifying but not a convincing argument in its favor from a railway stand point." Nevertheless Allen was not intimidated by scientific authority or the existence of government boundaries, for he wrote that:

> From a railway standpoint we have nothing to do with State lines or national boundaries, but must confine ourselves purely to the needs and be governed by the limitations of railway operations. We are not scientists dealing with abstractions, but practical businessmen seeking to achieve a practical result.

In formulating his plan, Allen used certain guidelines: first, "That nothing should be proposed for which there was not at least a closely approximate present example"; second, "that, as far as possible, all changes from one standard to another should be made at points where the changes were then (being) made"; and third that "the difference being the substitution of a variation of an even hour for one of odd minutes."

Allen's plan differed from previous plans in that they had assumed adoption of meridians an even hour apart, whereas Allen was able to apply his knowledge of railroad operations, geography, economics, large cities and the general habits of the people to the idea of simplifying time zones. Although Dowd might rightfully have been referred to as the father of our current time zone plan, Allen was the man responsible for coming up with a practical, rather than a theoretical plan, and then implementing it. As an interesting aside, neither man received any government pay for his work. Dowd was unsuccessful in obtaining compensation from the railroads for first having suggested the idea of standard time zones. Eventually his only recognition was to receive free annual passes over the great railways. Ironically, he died in 1904, after being run over by a train. Allen received no special compensation from the railroads for his services (other than in his role as secretary to the time convention meetings). A six piece sterling tea service was presented to him in 1886 by the Southern Railway Time Convention, in recognition of his services. In addition, the old Union Station in Washington displayed a bronze tablet honoring his role in the adoption of standard time.

Although the tradition or recollection of unsuccessful efforts to standardize time plagued the railroad industry during the 1870s, Allen, within the space of six months, managed to convince all the leading roads of the country of the merits of his plan. After making his presentation in April 1883, he sent circulars to every railroad in the country. These included an explanation of his plan, maps showing the geographical area encompassed by each time zone, and a proxy to be signed and returned to him signifying the railroad's acceptance or rejection of the plan. The sensible practicality of his plan so convinced the railroads running from Boston to Montreal (except the Boston and Lowell Railroad) that they inaugurated the use of Eastern standard time on October 7, 1883. By early October, Allen had proxies from many railroads accepting his proposal. All that was left was to determine when the plan would be inaugurated.

This was done at a meeting of the General Time Convention which took place on October 11, 1883, in Chicago. Allen presented a report in favor of the adoption of standard time, backed by affirmative votes representing 78,000 miles of road. The best available figures indicate that railroads representing fewer than 7,000 miles of track objected. Objections of railroads in several major metropolises had to be overcome. For example, in Boston, a promise had to be obtained from the Cambridge Observatory to observe the proposed standard time, before the railroads of that city would consent to it. In New York, similarly, it was the unanimous wish of the railway lines that the time ball on the Western Union building should be dropped on the time of the new standard on the day when it went into effect upon their roads. Allen had to solicit the cooperation of the superintendent of the Western Union office, as well as the cooperation of the city authorities. On October 19th, he interviewed Mayor Edson of New York, who promised to influence the Board of Aldermen. At least one pubic lecture was delivered at Columbia University and the city authorities agreed to support the proposed changeover to standard time. Other cities, such as Baltimore and Philadelphia, followed suit. In Washington, it was decided by Attorney-General Brewster that the change would require Congress, not then in session, to pass an act. Brewster ordered no government department to adopt railroad time when it became effective on November 18, 1883. In fact, Congress did not legalize the use of standard time in Washington, D.C. until March 13, 1884, and for the entire nation until World War I. According to what is perhaps an apocryphal story, Brewster went to the Washington train depot late on the afternoon that standard time began in order to take a train to Philadelphia. He was greatly surprised to find that the train had left some eight minutes before he arrived, due to the difference between local Washington time and the new Eastern standard time.

The railroads encountered other opposition during their campaign to win public acceptance of the change. Some conspiracy theorists saw it as the machinations of the pocket watch and clock manufacturers to ensure steady sales. In Bangor, Maine, the mayor vetoed a city ordinance that provided for the use of

Eastern standard time. He declared it unconstitutional, "being an attempt to change the immutable laws of God Almighty." In Columbus, Ohio, and Fort Wayne, Indiana, there was delay in accepting the new standard because of their supposed deleterious effect on the working population. The general criticism was that "the Railroad Convention has taken charge of the time business and the people may as well set about adjusting their affairs in accordance with its decree." People "must eat, sleep, and work as well as travel by railroad time. … People will have to marry by railroad time, and die by railroad time." In Detroit, the people refused to accept either Central or Eastern standard time, since they were on the borderline of a zone. (They kept local time in effect until 1900, when the City Council decreed that Central time should be used; and even then there was considerable agitation against the change.) "The civilian population nevertheless adopted 'Railroad Time' almost spontaneously, as had happened in Britain thirty years before: 85 per cent of U.S. towns over ten thousand inhabitants had done so by October, 1884."

As a result of this public campaigning and the prior approval of over 90% of the railroads, the General Time Convention voted to adopt Allen's plan, at their meeting of October 11, 1883, and directed a notice that all railway clocks governing train operation be set to the new standard at exactly 12 o'clock noon, Sunday, November 18, 1883. The was "the day of two noons," since in the eastern part of each time zone there was a noon based upon sun time. Then all timekeeping instruments were set back from one to thirty minutes to the new standard time, so that there was another noon when standard time in the community reached 12 o'clock again. This was the noiseless revolution that took place; namely, that millions of people, from the Atlantic to the Pacific, from the Arctic to the Gulf of Mexico, were voluntarily moving the hands of their clocks and watches to railroad standard time. Near unanimity existed because the utility of the new time plan appealed directly to the good sense of all. Therefore, it met with general public approval.

However, there is no real unanimity of legal opinion to be found among the court cases dealing with questions of legal time. The two earliest of them, a Georgia case from 1889, and a Nebraska case from 1890, both favored the use of local mean or solar time as opposed to the presumption in favor of using railroad standard time. Interestingly enough, most the early time cases dealt with local or state governmental affairs and not contractual matters between private parties. In the Georgia case it was decided that a jury verdict given in the court of a local judge who ran his court by railroad time could not be sustained because it was actually given on a Sunday (rather than late Saturday before midnight, according to railroad time).

Partly to alleviate the possibility of confusing railroad and local time, and as part of the war effort to conserve energy, fuel, electricity, and to allow working people to take advantage of the evening sun (to work in their war-gardens), an act

of Congress legalizing railroad standard time was signed by President Wilson on March 19, 1918. This bill also enacted daylight saving time, which was to go in effect on March 31, 1918. The daylight saving time movement had originated in England, where William Willett first campaigned for it as early as 1907. Germany and Austria were the first to adopt it as a wartime measure (April 30, 1916) and England soon followed with its Summer Time Act of May 17, 1916. As Willett expressed himself, "for nearly half the year the sun shines upon the land for several hours each day while we are asleep." His original plan was to advance the clocks twenty minutes on each of the four Sundays of April, and then to retard them the same amount on the four Sundays in September, every year.

In England, legal time had not been defined until well after most of the population had accepted Greenwich mean time. If anything, the experience both in the United States and Great Britain proves that the voluntary efforts of the people and commercial enterprises were far in the vanguard of establishing social customs and that their respective governments were laggards when it came to even formalizing those usages. The Definition of Time Bill was not passed by Parliament until August 2, 1880. It establishes a presumption in favor of Greenwich mean time, unless another local time standard was specifically mentioned.

As early as 1840, London time had been suggested as the standard of time for all of England. During that decade the great English railways, such as the Great Western, ordered that London time be kept at all their stations. Many other railroads followed suit during the next few years. On September 22, 1847, the Railway Clearing House, which was an organization of railroads begun in 1842 with the aim of coordinating various aspects of railroad operation, recommended that each of its member adopt Greenwich time. By 1855, 98% of all the public clocks in Great Britain were set to Greenwich mean time, but there was still nothing in the statute book to define what was the time for legal purposes. In fact, it was the railways, and not the government or the Post Office in England, which eventually brought about uniform time. In 1858, in the Court of the Exchequer Division, it was held that the opening of court was to be governed by local mean time and not Greenwich time.

The Greenwich meridian and Greenwich time play a prominent part in English metrological and geographical history. The royal observatory at Greenwich park was established in the late 1670s, and for several centuries navigators and explorers of all nations depended on the meridian and Greenwich mean time for geographical purposes. The important point to understand is that the location of Greenwich is not significant geographically; but only that some point had to be established as a base line reference for world cartography and navigational purposes. Greenwich was one of the earliest observatories in existence and had established its premier position through its pioneering work. There were other competitors for the prominent position occupied by the Greenwich meridian. The French government was most reluctant to accept it unless the British adopted

the metric system. However, given the existence of the British Nautical Almanac (with all its calculations based on Greenwich) and the widespread usage of Greenwich, most geographers and seamen had a vested interest in retaining Greenwich as their standard. This viewpoint was expressed at several international conferences during the 1880s, especially those held in Rome in 1883 and that at Washington, D.C., in 1884. Its acceptance as a world wide reference involved the least amount of work and change to nautical charts, books, and records.

So closes our examination of the noiseless revolution. In one sense, the change from local mean time to standard time, both in Britain and on the North American continent, involved no revolutionary change. It was simply part of the spontaneous order; a voluntary affair of a great many people who had a vested interest in doing away with the confusion inherent in keeping local time. Any old curmudgeon who wanted to continue operating on his old time had the right to do so. He might miss his train or be late for the movies, but no one would throw him in jail for refusing to live by standard railroad time. The fact that the large number of people living around him operated on standard time would be the strongest inducement possible for him to change his habits. Public opinion has the power to change behavior and influence our activities in ways that legislation and government cannot touch. Peaceful, evolutionary change based on the voluntary principle is the voluntaryist way; not the resort to either bullets or ballots. Thus, this history of standard time proves that voluntary social movements can achieve important and long lasting improvements without resorting to governments or coercion. V

"Health" Freedoms in the Libertarian Tradition

by Carl Watner
(from No. 16, June 1985)

"Health" freedom, by which I mean the freedom to take our health into our own hands in any way we choose, depends on our right to own and control our own bodies. This principle of self-ownership represents the single most important element of the libertarian tradition. Since the seventeenth century it has been the underlying basis of the struggle for individual rights. In the context of this article, it has manifested itself in the pursuit of various hygienic and dietetic reforms during the nineteenth century. These include the advocacy of temperance, vegetarianism, water cures, Grahamism, and sexual hygiene, as well as agitation against medical licensing laws, and compulsory vaccination. The purpose of this article is to broadly describe the history of the self-ownership principle with respect to "health" freedoms during the nineteenth century and to portray a few of the personalities intimately connected with it.

Historians of the nineteenth century have noted that Henry David Thoreau was a vegetarian for at least several years. Although he is well-known as the author of the famous essay on "Civil Disobedience," it is not widely realized that Thoreau was involved in the radical abolitionist movement. Since slavery reflected the theft of a person's self-ownership, it was just as wrong as the denial of a person's right to doctor himself or herself. Two of Thoreau's closest friends were Amos Bronson Alcott and Charles Lane, who started a utopian farm community near Concord, Massachusetts in the summer of 1843. The farm, which was called Fruitlands, was intended to be a self-sufficient homestead, where the principal staple of daily food was to be fruit. The main belief of both Alcott and Lane was the sacredness of all sentient life—"'that beast, bird, fish, and insect had a right to control their individual lives."

The close relationship of Lane, Alcott, and Thoreau illustrates the integral relationship between radical ideas in health and politics throughout much of the nineteenth century. Lane, an Englishman, had helped publish *The Healthian*, before he came to this country in 1842. In 1843, he wrote a series of letters for William Lloyd Garrison's *The Liberator*, in which he advocated "a voluntary political government." He was opposed to compelling people to live their lives in any particular way, so long as they remained at peace with one another. This included their dietary and health practices, as well as their political relationships. Lane saw taxation as theft and coercion: taxes were not voluntary, for he was arrested and Thoreau was jailed for non-payment of their poll tax. It was Lane's series of letters on voluntaryism which largely influenced Thoreau's own resistance to the government. After Lane returned to England in 1846, he wrote *A Brief Practical Essay on Vegetarian Diet* (1847) and *Dietetics: An Endeavour to Ascertain the Law of Human Nutrition* (1849).

The radical abolitionists were not only involved in the agitation against slavery. Health reforms were in the air during the first three or four decades of the nineteenth century. Perhaps the most popular health reformer of the era was Sylvester Graham, who began his career as a temperance lecturer in Pennsylvania in 1830. While others spoke for women's rights and the peace movement, Graham concluded that the way to individual salvation was through the stomach. In his hands. the temperance ideal developed into something far more comprehensive than moderation in drink. It evolved into the ideal of sensible living and good health in all its phases: of a sound mind and a sound body. Graham's concern with personal hygiene and diet brought his ideas to a wide audience, both in the lecture hall and in the home. He published his *Science of Human Health* in 1839, which emphasized the relation of physiology to hygiene. "Graham boarding houses" were established, where the devotees of both sexes could partake of the eating of "Graham bread" and the taking of a bath "in very warm water at least three times a week." In Boston a special bookstore was established to supply them

with food for thought and such periodicals as the *Graham Journal* and *Health Journal* and *Advocate* were published.

Graham's influence spread through a wide network of converts. Among them were many influential abolitionists such as Gerrit Smith, Edmund Quincy, and William Lloyd Garrison. Others, like Amos Bronson Alcott's cousin, Dr. William Alcott, and Mrs. Asenath Nicholson were enthusiastic about "Mr. Graham's rules." Mrs. Nicholson wrote *Nature's Own Book* in which she advocated vegetarianism (even though Graham's diet allowed some fish and meat). Some like Mary Gove ran a school in Lynn, Massachusetts where she introduced bloomers, the brown bread supper and free love under the guise of "individual sovereignty." Such people were "not only reformers in Diet, but radicalists in Politics," as one contemporary noted.

While lecturing on hygiene, Graham capitalized on the antimedical philosophy which was characteristic of his day. If right living was a more certain means to health than were drugs and the doctor, then it was a natural conclusion that if people would but live hygienically there would be little need for physicians. Although Graham never went so far as to oppose the medical fraternity, his doctrines began to be viewed as a popular substitute for regular medicine.

The call for each person to be his or her own physician had been put forward by Samuel Thomson as early as 1806. Thomson was a New Hampshire farmer who learned much of his medicine at the side of a local herbalist. In 1813, he obtained a patent on his "Family Rights" and began selling his botanical recipes for healing purposes. During the 1820s and 1830s he commissioned agents throughout New England and the southern and western states to spread his home remedies, which eliminated the need for doctors. His *New Guide to Health* encouraged people to take care of themselves and his ideas were patronized by a widespread clientele. It was estimated that he had some three to four million adherents out of a total population of seventeen million people at that time. His philosophy had a Jacksonian flavor reflecting the widespread distrust of elites and the conviction that Americans "should in medicine, as in religion and politics, think and act" for themselves. "It was high time," declared Thomson, "for the common man to throw off the oppressive yoke of priests, lawyers, and physicians." The Thomsonians believed that self-medication was safer than being doctored to death. "Being your own physician would not only save your life … but save you money as well."

Historians refer to Thomsonianism and the Grahamite movement as the "popular health movement" because Thomson, Graham, and other health reformers appealed to the working class and feminist movements of their era. Although Graham rejected the botanical remedies of the Thomsonians, both equated natural living habits with liberty and classlessness. They realized that any medical system which creates a privileged class which uses law to support itself "destroys true freedom and personal autonomy." Both Thomson and Graham

were appalled by the regular medical profession's attempt to gain a monopoly. "Monopoly in medicine, like monopoly in any area of endeavor, was undemocratic and oppressive to the common people." With this attitude, members of the popular health movement started to agitate for the repeal of all medical licencing laws.

Although under the common law, the practice of medicine was open to all comers (subject only to liability for malpractice damages), statutory medical licencing had existed for many centuries in England. Licensure was placed under the control of the College of Physicians which was established in 1518. This group had the right to punish irregular medical practice with both fines and imprisonment. Medical licencing was brought to this country with the English colonists. However, the widely scattered population and the small number of physicians made licencing impractical up until the late eighteenth century. Colonial and then later state assemblies assumed licencing prerogatives. Between 1760 and 1830 laws against irregular practice became more severe, but with the development of both rival medical systems and the popular health movement and with the accompanying doctrine of educational standards in regular medicine, the scene began to shift.

State after state began repealing their restrictions against irregular practice. Nearly every state which had restrictive licensing laws softened or repealed them. Alabama and Delaware exempted Thomsonians and other types of irregular healers from persecution. Connecticut withdrew exclusive control of the medical profession from the State Medical Society and Louisiana gave up all attempts to enforce its medical legislation. Finally in 1844, after ten years of pressure, New York State abandoned its licencing law. The popular health movement coincided with a laissez faire attitude on the part of the populace. The American people were impatient with all restrictions and "were doubtless anxious to maintain their 'liberty' in medical as well as in other matters." They wanted no protection but freedom of inquiry and freedom of action. It was certainly the spirit of the times to open up all fields of endeavor, business as well as professional, to unrestricted competition. "Medicine, with all other human activities, must take its chances in the grand competitive scramble characteristic of the age."

Despite the success of the popular health movement, both in terms of adherents and the removal of monopolistic protection for the regular medical profession, it soon waned for a variety of reasons. Large numbers of Thomsonians began hankering after professional status. Where once they had denounced the transformation of medicine into a commodity, now they sought to commercialize their own remedies. Where once they had protested the elite status of the regulars, they now aimed for such a status themselves. The underlying current of social unrest which had carried the popular health movement along with it was moving in other directions, such as the support of woman suffrage. Furthermore, regular medicine began to adopt enough of the hygiene promoted by Graham and

Thomson to save itself. One historian of the Hygiene movement has credited it with these accomplishments:

> People learned to bathe, to eat more fruits and vegetables, to ventilate their homes, to get daily exercise, to avail themselves of the benefits of sunshine, to cast off their fears of night air, damp air, cold air and draughts, to eat less flesh and to adopt better modes of food preparation.

It is now forgotten how far the regular medical profession protested these reforms, which were largely brought about by people like Thomson and Graham.

While this discussion has concentrated on America, it is worth examining another medical controversy which originated in England and eventually spread to the United States. The protests against compulsory vaccination and inoculation originated in England because it was there that Edward Jenner originated the method of cowpox vaccination in 1796. Although Jenner was rewarded by Parliament in 1803 and 1806, it was not until 1853 that vaccination became compulsory in England. This law, however, met with widespread opposition and local vaccination registrars referred to the measure as a "nullity" owing to the resistance of the people.

Finally, in 1871, due to the large numbers of infants which remained unvaccinated, a new statute provided for the appointment of non-medical men to police and enforce the compulsory vaccination law. They were empowered to fine parents of unvaccinated children twenty-five shillings, or upon their refusal to pay the fine, to imprison them. Passage of the law renewed interest in the Anti-compulsory Vaccination League which had been founded in London in 1853. At the same time, the leading opponents of vaccination in America were active. Among the leaders of the American movement were Dr. Joel Shew, a leading advocate of the water cure system, and Dr. Russel Trall, a prominent hygienist. In 1879 the leader of the English anti-vaccinationists, William Tebbs, founded the Anti-vaccination Society of America, assisted by what one medical historian refers to as the "medical faddists" of the day. During the 1880s and 1890s, vaccination was opposed by American health magazines, such as *Health Culture*, *The Chicago Vegetarian*, *The Naturopath* and *Medical Freedom*.

The arguments surrounding compulsory vaccination, both in England and the United States, present a very interesting analysis of the nature of "health" freedom. The arguments in both countries roughly break themselves down into two types: the practical or scientific argument over the effectiveness of vaccination and the moral or ethical argument over the use of State coercion to enforce vaccination. Many opponents of vaccination attacked it on medical grounds that statistically it had not been proven as effective as claimed; that it sometimes caused death; that the decrease of smallpox, for example, was not caused by vaccination but rather by improvements in sanitation and health practices. Others argued that

even if there were unanimity among the medical profession on the merits of vaccination, that such unanimity would prove nothing. "It would not be the first time that the no less unanimous profession had been as unanimously wrong." One of the more astute anti-vaccinationists urged that

> Unanimity does not exist, and if it did it could not justify compulsion against our plea that the medical profession does not come to us with a record sufficiently reassuring to tempt us to lay at its feet our right of private judgement and our own sacred responsibilities.

The practical danger that the unvaccinated are a public danger was met by claiming that "vaccination is either good or bad. And its goodness removes the need, as its badness destroys the right, of enforcement on the unwilling." If vaccination was effective, those who were vaccinated would suffer no harm from the unvaccinated. If vaccination was harmful to the body, as some anti-vaccinationists claimed, then to coercively impose it under the threat of going to jail was criminal.

Those who argued on practical grounds also claimed a right to be heard on the moral side of the question. Even if the anti-vaccinationists were wrong with regard to their assertion that vaccination was not medically effective, they desired to be heard out on their argument that "compulsion is a wrong." The burden of proof, in their opinion, was on those who wished to resort to coercion. For example, John Morley in 1888 maintained that "liberty or the absence of coercion, or the leaving people to think, speak, and act as they please, is in itself a good thing. It is the object of a favorable presumption. The burden of proving it inexpedient always lies and wholly lies on those who wish to abridge it by coercion, whether direct or indirect." John Bright, writing in 1876, disapproved of compulsory vaccination. "To me it is doubtful if persuasion and example would not have been more effective than compulsion: … to inflict incessant penalties upon parents and to imprison them for refusing to subject their children to an operation which is not infrequently injurious and sometimes fatal, seems to be a needless and monstrous violation of the freedom of our homes and of the right of parents."

Bright's reference to the possibility of accomplishing the same end (the eradication of smallpox) by voluntary persuasion and example illustrates the underlying voluntaryist theme in this historical overview of the "health" freedoms. One need not have been opposed to vaccination at all to have been an opponent of compulsory vaccination. One could have been opposed to the compulsion without being opposed to the practice of vaccination. Similarly, some of the opponents of compulsory vaccination were also opponents of compulsory school attendance laws for the very same reasons. They were not opposed to educating their children (or perhaps even contributing to the financial costs of educating other parents' children) but they were opposed to the use of compulsion in education as well as in medicine. To force some parents to have their children vacci-

nated was just as wrong as to force other parents to send their children to government schools. It made no difference whether those who opposed compulsory vaccination supported school attendance laws or whether those who supported compulsory attendance disapproved of involuntary vaccination. The only principled stand was to oppose *all* compulsion as a means, regardless what position one took with respect to the underlying end.

In fact it was radicals like Thoreau and Charles Lane who understood that involving the government in such matters as education and medicine only made "public" issues of such private matters. They wondered why if religious or personal conscientious objections could be raised against vaccination, why not against compulsory schooling too? In fact to be a consistent defender of "health" freedom, they realized it would be necessary to argue for the principle of self-ownership in all areas of human activity. To allow the State to oppress even one person would be to threaten all people's freedoms. Indeed, this is one reason why they opposed chattel slavery and were so opposed to government in general. Thoreau and Lane and their disciples argued that no person or group, including the government, had the right to initiate coercion or its threat against other peaceful individuals. These early apostles of voluntaryism advocated an all voluntary society where no one's "health" freedoms were impinged on and where no one had the right to violate someone else's right of self ownership even under the guise of the "public good." They realized that 'health' freedoms were really just one aspect of their larger right of self-ownership and that all freedoms were integrally related to one another. They knew that all human freedoms—whether they relate to our health or our labor or our property—depend on the inviolability of our self-ownership rights to our own bodies. This is their libertarian message across the time span of more than a century.V

"Hard Money" in the Voluntaryist Tradition

by Carl Watner

(from No. 23, January 1987)

At least twice in his career, Lysander Spooner (1801–1887) commented on the existence and circulation of privately made gold coins in the United States. In 1844, when rebutting the Postmaster General's claim that the constitutional right of Congress to establish post office post roads was an exclusive one, like that of coining money, Spooner noted that

> Provided individuals do not 'counterfeit' or 'imitate' 'the securities or current coin of the United States,' they have a perfect right, and Congress have no power to prohibit them, to weigh and assay pieces of gold and silver, mark upon them their weight and fineness, and sell them for

> whatever they will bring in competition with the coin of the United States. It was stated in Congress a few years ago, …, that in some parts of the gold region of [North Carolina], a considerable portion of their local currency consisted of pieces of gold, weighed, assayed, and marked by an individual, in whom the public had confidence. And this practice was as unquestionably legal, as the sale of gold in any other way.

In 1886, in *A Letter to Grover Cleveland*, Spooner observed that the power of Congress to coin money was simply a power to weigh and assay metals and that there was no necessity that such a service be provided by or be limited to the federal government. Spooner claimed it would have been best if all coins made by the authority of Congress or private individuals "had all been made into pieces bearing simply the names of pounds, ounces, pennyweights, etc., and containing just the amounts of pure metal described by those weights. The coins would then have been regarded as only so much metal; . … And all the jugglery, cheating, and robbery that governments have practiced, and licensed individuals to practice—by coining pieces bearing the same names, but having different amounts of metal—would have been avoided." Spooner also mentioned that for many years after the discovery of gold in California, "a large part of the gold that was taken out of the earth, was coined by private persons and companies, and this coinage was perfectly legal. And I do not remember to have ever heard any complaint or accusation, that it was not honest and reliable."

Spooner's references to private gold coinage reflect the pioneers' search for a way to satisfy their monetary needs. Where there were no government mints and when State coinage was scarce, but where gold was plentiful, it was only natural that the demand for gold coinage would be satisfied by market means. This aspect of numismatic history of the United States demonstrates how "natural society" operates in the absence of the State. If there is a market demand for a good or service, then some entrepreneur(s) will satisfy it. The people of the frontier were more concerned with the intrinsic worth and quality of their media of exchange than with who issued it. There was nothing special about coinage. In the Southeast during the Civil War it became customary to specify the settlement of monetary obligations in "Bechtler gold" rather than Union coin or Confederate or state currencies. A similar preference manifested itself in Colorado, where Clark, Gruber & Co. coins were the preferred media of exchange during the same era.

The production and circulation of these coins was absolutely legal, though never sanctioned by any positive law. "By the time of the Colorado gold rush, [the] private coiners' common law right to issue gold coins of intrinsic value comparable to the Federal products was undisputed." A "common law right" simply means the right to engage in any form of peaceful, honest market activities. No activity, commercial or otherwise, is outlawed, unless it is inherently invasive of another person and/or his or her property.

The "hard money" movement today has little if no understanding of the significance of the voluntary principle and the voluntaryist approach to social change. First, few "hard money" advocates believe in a monetary system totally free of State interference. Secondly, only a few seem prepared to abandon legal tender laws and adopt the principle of the specific performance doctrine (that monetary debts can be settled only in accord with the specifications of the contract of debt). Thirdly, many seem enamored of lobbying for legislative changes rather than ignoring unjust laws and seeking to make those laws unenforceable through mass noncompliance. Even the legalization of gold ownership and the legalization of gold clauses in private contracts is clouded because of the past confiscatory history of the United States government during the New Deal and the continued existence of legal tender laws today. It should be fairly obvious that a State strong enough to legislate and enforce legal tender laws is certainly strong enough to abrogate such laws when it so chooses. The voluntaryist attitude that positive legislation and court decisions can never overrule the natural rights of individuals to deal in gold or silver is negated by most hard money advocates when they use the legislative process to obtain permission to own gold and use the gold clause in contracts.

Just over a 100 years ago, private issues of gold coins and ingots were the dominant media of exchange in the western areas of this country. Gold issues today, such as the Engelhard gold "Prospector," and the output of Gold Standard Corp. in Kansas City, are reminiscent of this earlier frontier era. Even the United States government is trying to take advantage of investor interest in gold coins, by issuing the new gold "Eagle," a one ounce coin with a legal tender value of $50. Before 1933, when FDR's administration confiscated all privately held gold (with the exception of numismatic coins), an ounce of gold was worth $20 on the market. Since that time no political administration has ever returned the confiscated gold to its rightful owners. Meanwhile the one ounce gold coin which was then referred to as a "double eagle" has become dubbed the "Eagle" (which formerly was only one-half ounce of gold) and the new coin's legal tender value bears no relation to the free market price of gold (which at the time of this writing is about $400 per ounce). Unlike today, the almost complete absence of paper currency, coupled with the traditional use of gold coins, led to the rejection of federal greenbacks in California during the time of the Civil War.

Private gold coinage had its origins during the gold rush that occurred in Georgia and North Carolina in 1828. Prior to the discovery of gold in California in 1848, these southeastern states produced more gold than any other region in the country. In 1840, the Director of the Mint, in his report to Congress, referred to Christopher Bechtler who operated a private mint in Rutherfordton, North Carolina, in competition with the U.S. mint at Charlotte. The Mint Director could take no legal action against Bechtler, for he observed: "It seems strange that the privilege of coinage should be carefully confined by law to the General Gov-

ernment, while that of coining gold and silver, though withheld from the States, is freely permitted to individuals, with the single restrictions that they must not imitate the coinage established by law."

By the time of the California Gold Rush, Bechtler and his family had minted well in excess of 100,000 coins. Though the mint in Charlotte had been established in 1838, the Bechtlers continued to issue gold coins until the late 1840s. Their mint successfully competed with the mint at Charlotte because the Bechtlers were much closer to the gold mining areas and had an established reputation.

In California, many of the conditions which had originally sparked the Bechtler mint into life were to be found. American settlement began in California as early as 1841, and by 1846 there was extreme agitation for making California an American territory. U.S. forces occupied California during the Mexican War, and in 1848 Mexico ceded all of its claims to California to the United States. Gold was discovered in January 1848 and the Gold Rush, as we know it, began in the fall of that year. Military government lasted until October 1849, at which time a state convention created a constitution and made a formal request for admission to the Union. Meanwhile government on all levels barely existed: There was no formal law, there were no jails, immigration to the gold fields progressed unimpeded, and the military strength of the Federal government was relatively weak. Finally, in September 1850, California was accepted as a state and the struggle began to establish formal government. Communication with the East was difficult until the telegraph reached the state in 1861, and transportation remained a problem even after direct rail connection was made with the East in 1869.

The requirements of the early mercantile community in California, especially of San Francisco businesses, led directly to many of the events in which we are interested. According to Federal law in effect in 1849, all custom duties due the United States were payable in lawful United States coin. Accordingly, every piece of coined money which existed in California was hoarded to pay import duties and the normal channels of trade suffered from a shortage of coined money. At first gold dust was used as a substitute for coined money, but the military governor discovered that the law regarding duties could only be satisfied by a tender of coins, whether gold or silver. Thus gold coins eventually came to command a premium over gold dust since they were desperately needed at the Custom House. Since the supply of coins was so limited, it was suggested by members of the mercantile community that private assayers issue gold pieces to fill the need. The first suggestion to this effect appeared in July 1848, and by early 1849 private issues were struck. The private issues enabled the miners to get more coined money for their gold dust and allowed a greater number of coins to circulate in general trade.

The first private gold coin was probably issued by the firm of Norris, Gregg & Norris and was followed, during the summer of 1849, by strikes from the assay and gold brokerage business of Moffat & Co. At first gold dust was assayed and formed

into rectangular ingots with the firm's name, the fineness (in carats) and the dollar value appearing on the bar. Shortly thereafter a $10 gold piece, struck as a circular coin, was issued by Moffat & Co. By the end of 1849, a virtual avalanche of private issues had found circulation in California, including minting work done by the Mormons in Salt Lake City, by J. S. Ormsby & Co., and the Miners' Bank.

The coins with which the early Californians had to do business soon fell into disrepute, as it was discovered that their intrinsic value did not always match their stamped value. The Mormon coins, which only contained $17 worth of gold in a $20 piece, soon ceased to circulate, as did many of the other private coins. The holders of such pieces had to sell their coins at bullion value and pocket the loss. Moffat & Co., whose pieces were always worth at least 98 percent of their stamped value, continued to issue coins in 1850, at which time there also appeared new issues by Baldwin & Co., Dubosqu & Co., and by Frederick Kohler, the newly appointed state assayer.

By April 1850 the coin situation had come to the attention of the state legislature and during the same month laws were passed which prohibited private mints. Simultaneously, to fill the demand for coined money, the California legislature created the State Assay Office, which was responsible for assaying gold dust, forming it into bars, and stamping its value and fineness thereon. The State Assay Office is unique because it was the only establishment of its kind ever operated in the United States under the authority of a state government, and because its issues were so closely allied to that of gold coinage it is questionable that it did not violate the constitutional clause against state coinage. The State Assay Office was soon superseded by the U.S. Assay Office. which was established by Federal statute on September 30, 1850. Moffat & Co. became the contractor for the U.S. Assay Office and began operations in this capacity in February 1851. A month later the state prohibition on private coinage was repealed, since well over a million dollars' worth of gold had been privately coined in the first quarter of 1851 alone, so great was the demand for bars and coins.

Although Moffat & Co. became associated with the U.S. government as its assay contractor, they always recognized the right of private persons or firms to issue their own gold coins. In responding to criticisms leveled directly at them during the passage of the state prohibition on private issues they stated: "We aver that we have violated no law of the United States in regard to coining (our own) money; that we have defrauded no man of one cent by issuing our coin; that we have in no instance refused or failed to redeem in current money of the United States all such issues without detention or delay, and we hold ourselves ready now and at all times hereafter to do so. ... We hold ourselves responsible for the accuracy of our stamp, whether it be upon bullion or in the forms of ingots or coin. If there be error then the party aggrieved has his remedy at common law."

Moffat & Co. was apparently the most responsible of the private concerns minting money, for in April 1851, the businesses of San Francisco placed an em-

bargo on all private gold coinage except issues by Moffat. The remainder of the private issues were soon sent to the U.S. Assay Office to be melted down or else were passed only for their bullion content in trade. Under the directive establishing the U.S. Assay Office, slugs of not less than $50 were to be issued. Such ingots were too large for normal trade and soon a demand grew for coins of smaller denominations. Moffat & Co., as contractor for the U.S. Assay Office, requested authority to issue such coins. Since this authority was not forthcoming, in the end Moffat & Co. bowed to the demands of the merchants and minted such coins under their own authority and mark.

The situation worsened in 1852, when the U.S. Customs House refused to accept the $50 ingots issued by the U.S. Assay Office. Although these slugs were issued under the direct authority of the Federal government, their fineness was only that of average California gold, perhaps 884/ to 887/1000 fine. A new federal law required that all custom duties be paid in gold coinage of the fineness of standard U.S. coins, which was 900/1000 fine. Therefore the Treasury Department instructed its agents not to accept the issues of its own Assay Office, until these issues met the required fineness. The Washington authorities did not seem to recognize the ridiculousness of their decision, which not only disparaged their own issues, but practically denied the merchants any circulating medium at all. Eventually the controversy was settled by having the Assay Office conform to the higher fineness.

The Federal mint, which had long been agitated for in California, went into partial operation in April 1854. Within a few years it satisfied all the demand for coins. Until it went into full-scale operation, however, the demand for circulating coins was met by the issues of such private concerns as Kellogg & Richter, Kellogg & Humbert, and Wass, Molitor & Co. At the end of 1855 it was estimated that there was still some five to eight million dollars' worth of private coin in circulation. In the summer of 1856 coin was needed in San Francisco for export purposes, and both the issues of the U.S. mint and private coins were used to meet this need. By October 1856 the Federal mint was apparently able to meet all demands for coins in domestic circulation and for export, so that private issues of gold coin quietly passed out of existence. There is no record of any further private minting in California after this time.

Although paper money found circulation in the East, at no time before the Civil War did banknotes play a substantial part in the circulating media of California. Between the cessation of private issues and the outbreak of the Civil War, the Federal mint in San Francisco continued to satisfy all demands for coins. This tradition of handling gold and silver coinage in California was buttressed by the provision of the state constitution which expressly prohibited the creation of any (paper) credit instruments designed to circulate as money.

The metallic coinage of the Californians had provided them with a remarkable prosperity and stable purchasing power. Therefore, when as a result of the

Civil War the Federal government issued legal tender notes in 1862, Californians were faced with the prospect of handling paper money for the first time. Acceptance and use of these new "greenbacks" (which had no gold backing, only the general credit of the government behind them) became a subject of public debate in California. Objections to the new currency concerned its constitutionality and the likelihood of its depreciation in terms of purchasing power.

Creditors were particularly fearful that their interests would be hurt as it would be possible for debtors to repay their loans in depreciated currency. At first this is exactly what happened, as can be seen from the grievance of a Sacramento financier:

> About four years ago [1859] I loaned $10,000 in gold coin of the United States to John Smith of Sacramento City, for which said Smith executed me a note, in the usual form, bearing interest at the rate of one and one-half per cent per month. This note I placed in the hands of my bankers, D. O. Mills & Co., Sacramento, with instructions to receive and receipt for the interest as it accrued thereon, and also to collect the principal at maturity. In January last (1865), Mr. Smith called at the banking house ... and tendered $10,000 in greenbacks in payment in full of the note executed to me, knowing that the said notes were not at that time worth more than 68¢ on the dollar. ... [My bankers] refused to received the tendered greenbacks without consultation with me, and, moreover denounced the conduct of Mr. Smith as unfair in the extreme, at the same time reminding him of the fact that he had received the whole amount in gold coin. After a conference more protracted than pleasant, Mr. Smith offered to pay $10,000 in greenbacks and $1,000 in gold, which proposition, rather than be a party to a tedious and expensive lawsuit, I assented to. ... As it is, I am loser to the amount of $2,200, allowing 68¢ on the dollar for greenbacks; and at the rate they are now selling—and I still have them on hand—my loss is about $3,500.

However, there were those who favored introduction of the legal tender notes in California. Loyalty and patriotism to the Union were advanced as the chief reasons. Some thought that a refusal by the people of California to use the currency of the Federal government would be tantamount to secession. Others felt that the greenbacks would act as a stimulus to business, and hoped to profit from the speculation inherent in their use.

Since the Federal notes continued to lose purchasing power, the commercial elements in San Francisco realized that a definite stand had to be taken on the use and acceptance of the greenbacks in local transactions. Business that had contracts with the Federal government were hard hit by the inflation, as they had expected to receive gold coin for their work and instead were paid in paper of a lesser value. Federal employees also found themselves at a serious disadvantage in receiving their wages and salaries in depreciated money, while their expenses were

counted in gold. In November 1862 the merchants of San Francisco attempted to counter the use of greenbacks by effecting an agreement among themselves

> not to receive or pay out legal tender at any but market value, gold being adhered to as the standard. The plan was to have this agreement signed by all the leading firms of the city; then to have it signed also by all other firms, both those in the city, and those in the country who had dealings with the city. If any one refused to enter the association, or having agreed to pay for goods in gold, paid for them in greenbacks at par instead, then his name should be entered in a black book, and the firms all over the State should be notified so that in all his subsequent dealings he would be obliged to pay for his goods in gold at the time of purchase.

As early as July 1862 questions raised by the circulation of the greenbacks had received attention in the courts. A case was brought before the Supreme Court of California during this month which sought "To compel the defendant, as tax collector of the city and county of San Francisco, to accept from the relator $270.45 in United States notes, tendered in payment for the present year." The tax collector had refused to accept the tender of paper money, claiming that his duty was to accept only "legal coin of the United States, or foreign coin at the value fixed for such coin by the laws of the United States." The court judged in favor of the tax collector and thus prohibited the payment of taxes in greenbacks.

At the same time the State Treasurer pulled off an ingenious financial coup by taking advantage of depreciation of the paper currency. The plan was to collect the Federal direct tax in coin and pay it into the U.S. Treasury in legal tender notes, saving the difference for the state. This "earned" the state the sum of $24,620, but the action was almost universally condemned. The moral attitude of the San Franciscans on paying their debts in depreciated money is well illustrated by the fact that the interest on the City's municipal bonds were paid in gold at New York, rather than in legal tender notes. To pay in depreciated notes was considered beneath the dignity of the city and a real violation of the faith pledged with the holders of the bonds abroad.

Although Californians could continue to own gold the very existence of the legal tender law created a general feeling of insecurity. The merchants of San Francisco were determined to remain on the gold standard and they were encouraged by the decision of the court in favor of the tax collector. In order to keep the business of the state on a gold basis, however, it became clear to the merchants that legislation must be had to enable the parties to a contract to enforce the collection of the kind of money which had been specified in the contract. They had at first attempted to agitate for exemption of California from the Federal legal tender law, but their resolution to this effect in the state legislature was postponed indefinitely. Later, resolutions were introduced in the legislature to obtain relief for those working for the Federal government by having them paid in gold coin.

Nothing was gained by the discussion of these resolutions except to arouse the ire of advocates of the greenbacks.

These legislative maneuvers, even if they had been successful, would not have accomplished what was needed to keep the state on a specie basis. Slowly people realized that, where there were two different types of money in circulation, legislation was needed to make it possible to enforce contracts in either paper currency or metallic coinage, as provided for in the contract. Advocates of such legislation held that "contracts fairly made in view of all the circumstances ought to be enforced. If, then, contracts are made specifically to be performed by the payment of gold, it seems to us to be a duty on the part of the legislature to provide the remedy for their enforcement. Common honesty cannot refuse this."

The legislation which accomplished this objective was approved on April 27, 1863. By amending the procedures in civil cases, writs of execution or judgment on a contract or obligation for the direct payment of money in a specified kind of money or currency had to be fulfilled by the same kind of money or currency that was specified in the original contract or obligation. This came to be known as the Specific Performance Act or Specific Contract Law, since it voided the requirement of the Federal legal tender act and substituted the provisions of each contract for purposes of determining what kind of money was to satisfy a debt. In the discussion that led to the passage of this bill in the state legislature it was pointed out that there was no mention of gold or silver in the law itself. The law simply let freely contracting parties choose the means of payment between themselves. Formerly there had been no legal means to enforce payment of gold coin on a contract or debt, even though it had been specified as the means of payment. A man owing $100 in gold could pay it with $100 of legal tender notes, even if $100 in notes would only buy $50 in gold coin. Now a creditor could seek justice. Supporters of this legislation were not entirely antagonistic to the use of legal tender notes, but they saw no reason to compel acceptance of paper money at an artificially enforced value. The law did not discriminate between the two types of money, but it enabled the parties to make contracts understandingly and upon equal terms, regardless of whether they chose gold or paper as the means of payment.

Any opposition to the Specific Contract Law which may have existed was disarmed by a State Court decision of July 1864, which upheld the act as constitutional. It was ruled that the specific contract to pay in gold was more than a contract merely for the payment of money, but went to the extent of defining by what specific act the contract should be performed. The court noted that,

> A contract payable in money generally is undoubtedly, payable in any kind of money made by law legal tender at the option of the debtor at time of payment. He contracts simply to pay so much money, and creates a debt pure and simple; and by paying what the law says is money his contract is performed. But, if he agrees to pay in gold coin, it is not

> an agreement to pay money simply, but to pay or deliver a specific kind of money, and nothing else; and the payment in any other is not a fulfillment of the contract according to its terms or the intentions of the parties (25 Cal. 564)

The Specific Performance Act was also held to apply to contracts made before its passage. In an action brought before the court to enforce gold payment of a note which had been executed before the passage of this legislation, it was held that "where laws confessedly retrospective have been declared void, it has been upon the ground that such laws were in conflict with some vested right, secured either by some constitutional guarantee or protected by the principles of universal justice." But this act "takes a contract as it finds it, and simply enforces a performance of it according to it terms," and is not changing the relations of the parties to the contract. The Specific Contract Law was also used to enforce payment under agreements "to pay a specific sum in gold coin or upon failure thereof, to pay such further sum as might be equal to the difference in value between gold coin and legal tender notes." As the San Francisco Chamber of Commerce noted in 1864, the Specific Contract Act "simply enforces the faithful performance of contracts. It enjoins good faith, a principle which lies at the very foundation of public prosperity, and without which there can be no mutual confidence, no progress, no credit and no trade."

Apparently the Federal government took little or no notice of the actions of the Californians during the Civil War. In fact the Specific Contract Law remains on the California statute books (as Section 667 of the California Code of Civil Procedures) and has never been changed by California legislation. And it was not until 1935 that the Federal government took any action to abrogate this state legislation (by outlawing gold clause contracts). However, as early as 1861 the Secretary of the Treasury realized that private coinage was a danger to the government's own prerogatives. Between 1860 and 1862 the firm of Clark, Gruber & Co. was engaged in the manufacture of their own coins from their mint in the city of Denver. Here again, the demand for a circulating medium was satisfied by private means before the government was able to act. The Clark, Gruber coins were of high quality and always either met or exceeded the gold bullion value of similar United States coins. In a period of less than two years this firm minted approximately three million dollars' worth of coin. Their mint promised to outdo the government's own production, and to get rid of them, the government bought them out in 1865 for $25,000.

Such private competition with the Federal mints led to an amendment of the coinage laws of the United States which prohibited private coinage. By an Act of Congress, on June 8, 1864, it was ruled:

> That if any person or persons, except now authorized by law, shall hereafter make, or cause to be made, or shall utter or pass, or attempt to utter or pass, any coins of gold or silver, or other metals or alloys of met-

> als, intended for the use and purpose of current money, whether in the resemblance of the coin of the United States or foreign countries, or of original design, every person so offending shall, on conviction thereof, be punished by fine not exceeding three thousand dollars, or by imprisonment for a term not exceeding five years, or both, at the discretion of the court, according to the aggravation of the offence.

It was not until after 1870, when Federal bank charters were granted to banks in California, that banknote circulation gained any real foothold in California. The entire history of California money up until that time supports the observation that "the more efficient money will drive from circulation the less efficient if the individuals who handle money are left free to act in their own interest." Thus in the early period the Moffat coinage, because it was consistently of higher quality, won out in the struggle among private issues. Since there was no legal tender law compelling people to use the coins of a particular company or mint, that money which best satisfied the people was most often used. Issues of questionable fineness were either rejected, or valued at bullion value and returned to the melting pot. Wherever the government failed to provide sufficient coined money private firms and private individuals soon filled the void, so long as they were not prevented from doing so by law.

The latter period under discussion, dated from the beginning of the Civil War, more closely resembles our own monetary situation today. The period was one of government inflation, caused generally by the budgetary strains of war. Issues of legal tender notes cause prices to rise, and between 1860 and 1864 prices doubled in the northern states. The rate of interest was appreciably affected in California due to the uncertainty of having debts paid off in greenbacks. Nevertheless, Californians avoided much of the government inflation by adhering to the gold standard and enacting the Specific Performance Act. Their main objection to the legal tender notes was to using them at an artificial value enforced by law. This realization defeated the purpose of the Federal government (or debtors who chose to cancel their debts with such notes) since their object was to obtain goods and services on a compulsory basis at an undervalued price. Since the power of the Federal government did not reach as strongly into California as into the North, people there were able to avoid the compulsory aspects of the tender law and value the government notes as they saw fit. (It is interesting to note that in San Francisco both paper and gold continued in use until 1914. With the outbreak of World War I the Federal Reserve Bank was desperate to put a stop to the handling of gold. By allowing the banks to pay only in $20 gold pieces when payment was demanded in gold, $5 and $10 pieces were gradually removed from circulation, and thus the effective base of gold handling was undercut.)

Given the demise of both private and government gold coinage, it is difficult to imagine how commodity money will once again assert its dominance in market exchanges. Yet there is a natural law at work which assures us that paper is not

gold, despite all the statist protestations to the contrary. Both voluntaryists and "hard money" advocates need to be aware of the monetary history related in this article. Not only is the moral case for private coinage laid out, but its very existence just over a century ago proves that such a system was functional and practical. ▽

Short Bibliography

Edgar Adams. *Private Gold Coinage of California, 1849–55.* Brooklyn: by the author, 1915 (see pages xi–xii).

Donald Kagin. *Private Gold Coins and Patterns of the United States.* New York: Arco Publishing, 1981 (see page 9).

Bernard Moses. "Legal Tender Notes in California." *The Quarterly Journal of Economics*, October 1892.

Lysander Spooner. *A Letter to Grover Cleveland on His False Inaugural Address, The Usurpations and Crimes of Lawmakers and Judges, and the Consequent Poverty, Ignorance, and Servitude of The People*, 1886 (see Section XXII).

Lysander Spooner. *The Unconstitutionality of the Laws of Congress Prohibiting Private Mails*, 1844 (see p. 18).

Carl Watner. "California Gold, 1849–65," *Reason* Magazine. January 1976, pp. 22–28. Much of the present article has been excerpted from this source.

William C. Woolridge. *Uncle Sam, the Monopoly Man.* New Rochelle: Arlington House, 1970. See esp. Ch. 3, "Every Man His Own Mintmaster."

Thinkers and Groups of Individuals Who Have Contributed Significant Ideas or Major Written Materials to the Radical Libertarian Tradition

by Carl Watner
(from No. 25, April 1987)

Pre–Seventeenth Century

First Samuel of the Old Testament and the Pre-Monarchic Era of the Hebrews (circa 1300 B. C.–1000 B. C.):

The Old Testament provides the accumulated wisdom of the ancient Hebrews and lays forth the foundations for social harmony and abundance based on personal integrity and honesty in the marketplace. Judaic monotheism emphasized self-control as the responsibility of each individual and the basic guidelines

for social life were set forth in the Ten Commandments and precepts of the Noahide Law. The Twelve Tribes had no centralized State or kingship for over 200 years until they clamored for the selection of a King. Samuel, their seer, warned (see I Samuel 8) against the State, predicting that the kingship would bring conscription, taxation, eminent domain, and war.

Zeno (342–270 B. C.) and The Stoics:

Zeno brought the Hebraic attitudes to the Greeks: that man should strive to cultivate the moral life and that, relatively speaking, worldly success was far less important than personal integrity and truth-seeking. When Zeno died it was noted that "He made his life a pattern to all, for he followed his own teaching." The Stoics emphasize the supreme goal of character building as the essential step for human happiness and as the prerequisite of a progressing civilization. Cicero (106–143 B.C.) in his *De Republica* (III, 22) set forth the idea of a higher law of eternal justice which is superior to the statutes and decrees of the State. The law is not made by man but is a product of the natural order of things and discoverable by reason. "To invalidate this law by human legislation is never morally right, nor is it permissible to restrict its operation, and to annul it wholly is impossible. Neither the senate nor the people can absolve us from our obligation to obey this law, … It will not lay down one rule at Rome and another at Athens, … But there will be one law, eternal and unchangeable, binding at all times upon all peoples."

Saracenic Civilization (circa 600–1400):

During the European Middle and Dark Ages, the flame of freedom was kept alive in the Middle East and Iberian peninsula by the Mohammedans. See the comments of Rose Wilder Lane in *The Discovery Of Freedom.*

Francisco De Vitoria (1483?–1546). Bartolome De Las Casas (1474–1566):

These Spanish theological jurists elucidated a proprietary theory of justice by which they denounced the violent invasion and conquest of the New World and supported the rights of the native inhabitants. Without exception they defended the doctrine that "all mankind is one" and that all men are equally free on the basis of natural law.

Etienne De La Boetie (1530–1563):

La Boetie was a Frenchman who wrote *The Discourse on Voluntary Servitude* (written circa 1550). He was one of the first to elaborate the voluntaryist insight—that the State depends on the sanction of its victims, that the State depends on the tacit consent and cooperation of its citizens. He called for non-violent resistance, not political or military action, to topple the regime in power.

The Separatists (circa 1608–1623):

The Separatists believed that the lesser of two evils was still evil and risked not only their lives, but those of their wives and children in migrating to new lands in search of liberty. They also proved to themselves that communism was an unworkable "vain conceit" of Plato by offering one of the only comparative and historical examples of where communism and then private ownership were practiced by the same people in the same place with the same resources. Only a system of private ownership allowed them to survive.

John Lilburne (1614–1657) and Richard Overton (circa 1620–1663):

These were the best known of the English Levellers during the English Civil War, circa 1640–1650. They based their initial support of Cromwell and the regicide of Charles I on English common law and the natural rights of the individual, but later opposed Cromwellian rule because they recognized that nothing had changed. Lilburne was known as "Freeborn John" and was more responsible than any other person in English history for establishing the right to remain silent before one's accusers.

John Locke (1632–1704), Algernon Sidney (1622–1683), and William Molyneux (1656–1698):

Locke and Sidney epitomize the emergence of the radical Whigs in England. Authors of *Two Treatises on Government* (1685) and *Discourses Concerning Government* (1682), respectively, they began to elaborate proprietary theories of justice based on the self-ownership and homesteading axioms. Sidney lost his life under a charge of treason wherein he was accused of supporting the lawfulness of resistance to oppression. Locke's theories argued strongly for government resting on "consent of the governed." Molyneux, an Irishman and a friend of Locke, insisted on a literal interpretation of Locke's ideas on consent of the governed and proprietary justice. "To tax me without consent, is little better, if at all, than downright robbing me." (*The Case of Ireland's Being Bound by Acts of Parliament in England*, 1698.)

1700s

Adam Smith (1723–1790):

Smith was a leading representative of the Scottish enlightenment thinkers and author of *Inquiry Into The Nature and Causes of the Wealth of Nations* (1776), which worked out some of the earliest theories of the free market and the natural system of liberty.

Thomas Jefferson (1743–1826) and Thomas Paine (1737–1809):

These men represent the Freedom Philosophy of 1776, marked by the opening statement of The Declaration of Independence: all men are endowed with "certain unalienable rights" and that governments derive their just powers from the consent of the governed. Paine, particularly, represents the view that the State is an enemy of freedom and an instrument of tyranny and oppression, as opposed to those who consider the State as indispensable to individual liberty because of its capacity to establish "law and order."

Granville Sharp (1735–1815):

Sharp's life was inextricably bound up with seeking freedom for slaves in England. He was the primary mover behind establishing the doctrine that the common law writ of habeas corpus applied to slaves (thus preventing their masters from kidnaping and enslaving them). At the outbreak of the American Revolution, he gave up his job in the Government Ordnance Department in England because he sided with the rebels. He represents an important link in the historical chain of English liberty based on the common law.

1800s

Charles Lane (1800–1870):

Lane represents one of the few pre-Civil War abolitionists who eschewed electoral politics, as well as violence, in bringing about an end to slavery. His letters, *A Voluntary Political Government* (1845), influenced Henry David Thoreau (1817–1862) who believed that "that government is best which governs not at all." Thoreau, author of *On the Duty of Civil Disobedience* (1848) recounts the night he spent in jail for failure to pay his taxes. His imprisonment and Lane's earlier arrest for failure to pay his taxes were probably the earliest examples of conscientious objection to taxation. Neither objected to how his taxes were being spent, but rather opposed the use of force and threat to enforce taxation, which they viewed as theft.

Thomas Hodgskin (1787–1869) and Herbert Spencer (1820–1903):

Hodgskin's *The Natural and Artificial Right of Property Contrasted* (1832) presents some of the earliest nineteenth century thinking to demonstrate that the State is not needed to define or protect property and property titles. He was an early opponent of State education and began writing for the laissez-faire newspaper, *The Economist* in 1844, where he undoubtedly influenced Herbert Spencer, who was an assistant editor from 1846 to 1853. As a young man, Spencer had published *On the Proper Sphere of Government* (1842–1843) and *Social Statics* (1851). In the former he argued that if churches could exist by voluntary support, he saw

no reason why the state could not; in the latter he advocated "the right to ignore the state."

Frederic Bastiat (1801–1850) and Gustave De Molinari (1819–1912) :

De Molinari and Bastiat exemplify the early to mid-nineteenth century French free market economists. Bastiat was author of the famous *The Law* (1850) in which he defines legal plunder by showing that "the law takes from some persons what belongs to them and gives it to other persons to whom it does not belong." Molinari was the first economist (1849) to suggest that all the legitimate services provided by the monopolistic State could be performed by competitive protection agencies on the free market.

Lysander Spooner (1808–1887):

Spooner was probably the only constitutional lawyer in history who evolved into a non-State individualist. He authored *No Treason: The Constitution of No Authority*, in which he points out that no office holder has ever had a power of attorney from those he claims to represent (hence he does not legally represent them) and that according to contract law and common sense the United States Constitution does not bind anyone.

Benjamin Tucker (1854–1939):

Tucker was publisher of the first avowedly individualist-anarchist newspaper, *Liberty*, published in the English language from 1881 to 1908. His paper provided a forum for many of the chief individualist spokesmen of the late nineteenth century. Tucker was a publisher of libertarian tracts, but did write *Instead of a Book* in 1893.

Auberon Herbert (1838–1906):

Herbert was at one time a member of Parliament. His experiences there demonstrated the futility of electoral politics. Herbert adopted the label 'voluntaryism' to identify his philosophy and he was also one of the leading proponents of "voluntary taxation." Many of his writings have been collected in *The Right and Wrong of Compulsion by the State and Other Essays* (Eric Mack, editor, Indianapolis: Liberty Classics, 1978).

1900s

Ludwig Von Mises (1881–1973) and Murray Rothbard (1926–1995):

Mises, author of *Human Action* (1949), was referred to as the dean of the free market, "Austrian" economists during most of the twentieth century. Rothbard studied under Mises, and has been a prolific writer on free market and libertarian

themes. His introductory text to libertarianism, *For a New Liberty* (1973), and *What Has Government Done to Our Money?* (1964) are two of his notable works.

Ayn Rand (1905–1982):

Rand was novelist-philosopher who created the philosophy of Objectivism. Her two most successful novels capturing her ideas were *The Fountainhead* (1943) and *Atlas Shrugged* (1957). Although she never advocated replacing the State with voluntary organizations, all her ideas lead to that conclusion.

Robert Lefevre (1911–1986) and Andrew Galambos (born circa 1910):

LeFevre was founder of Freedom School (1957); author of *The Nature of Man and His Government* (1959), *This Bread Is Mine* (1960) and numerous other books and pamphlets. Andrew Galambos taught numerous free market classes in his Free Enterprise Institute in California and, along with LeFevre, was one of the most articulate twentieth century proponents of a non-State society.

Leonard Read (1898–1983):

Read was founder of The Foundation for Economic Education (1946) which is dedicated to explaining the benefits and operation of the free market. He consistently defended a "limited" State as the ideal form of government, but his strong emphasis on the free market and personal integrity merit his inclusion in this list. FEE can be contacted at Irvington-on-Hudson, New York 10533.

Kevin And Patricia Cullinane and Freedom School (1986):

In Freedom School, the Cullinanes trace back the non-State aspects of the Judeo-Christian tradition and show how that fundamental philosophy has been the cornerstone of all progressing civilizations. They were (to the best of my knowledge) the first to point out Samuel's prophecy about the dangers of the State and to discuss the non-State history of the Jews during their pre-monarchic era. They also show that English and American history—the migrations of the Separatists, the Declaration of Independence, and life on the frontier—depended on Judeo-Christian ideals to create actual examples of functioning voluntaryist societies. Picking up on Rose Wilder's dictum that "freedom is self-control, no more, no less," (originally emphasized at LeFevre's Freedom School) the Cullinanes have distinguished freedom (inner, spiritual self-control by which one refrains from trespass) from liberty (the absence of coercion). Thus, one's body may be violated (loss of liberty) without entailing a loss of freedom (because one's self is inviolate). Freedom School can be contacted in care of Freedom Country Executive Conference Center, Campobello, South Carolina 29322.

Other twentieth century thinkers and writers include: H. L. Mencken, Albert Jay Nock, Rose Wilder Lane, R. C. Hoiles, Frank Chodorov, Isabel Paterson, Robert Ringer, and Friedrich A. Hayek. V

"And Every Man Did What Was Right in His Own Eyes": Voluntaryism in the Old Testament

by Carl Watner
(from No. 28, October 1987)

The early Celts and their Brehon laws (which were committed to writing in the late Seventh and early Eighth Centuries A.D.), and the experiences of medieval Iceland (from the Tenth to the Thirteenth Centuries A.D.) are commonly referred to as the earliest examples of the libertarian oriented societies. In my own writings, I have traced the radical libertarian tradition as far back as the English Levellers (mid-seventeenth century) and have illustrated how their concern with self-proprietorship led them to formulate and advocate a proprietary theory of justice. Now, my exposure to Freedom School and the ideas of Kevin and Patricia Cullinane has uncovered an episode in social history which pre-dates these early non-State societies. Some ten or more centuries before Christ, the Twelve Tribes of Israel, in the Sinai Desert, were practicing societal-wide voluntaryism. In fact, the "judge" Samuel predicted their fall from grace should they substitute the State for the rules set out by Moses. Thus it is important to consider some of the early history of the Hebrews. How did they live for two centuries without a State and what happened when they finally accepted a king? How consistent were the rules they lived by (the Ten Commandments) with libertarian ideas?

In this paper, we will be concerned with the social and political history of the early Jewish tribes, rather than with their religious beliefs and rituals. However, in many cases it will be found that their religion, their cosmology, their views on natural law, set the stage for the rules by which they lived; but our purpose here is to look at what their rules for social living were and to determine if they led towards a proprietary theory of justice. Why the Hebrews accepted these rules will be beyond the scope of this discussion. The main focus will be to identify what was probably the earliest example of a functional voluntaryist society.

According to their own scriptural history, the Jewish people, or the Children of Israel, began with the migration of their patriarch, Abraham, to Palestine sometime around 2000 B.C., Abraham and his son, Isaac, and grandson, Jacob, tended flocks and worshiped a god they called Yahweh. They grew prosperous and powerful through their alliances with the local Canaanites. One of Jacob's sons, Joseph, was "sold into Egypt," where he eventually became the vizier of the Pharaoh. This took place sometime around 1700 B.C. When prolonged drought followed by famine struck the land of Canaan, Joseph was able to take advantage of his political position in Egypt and befriended his brothers and father when they emigrated to Egypt. Several generations of the descendants of Jacob in Egypt were enslaved by a subsequent Pharaoh, "who knew not Joseph." The Jews were forced to toil on "public works," until led out of bondage by Moses around 1300 to 1280 B.C. Moses

taught them to obey and worship Yahweh, and was one of the best insurgent leaders the world has ever seen. It was during the forty years in the wilderness of the Sinai desert that the Ten Commandments were formulated, giving the Jews the guidelines they needed to live successfully as free men.

According to Hebrew tradition, the Ten Commandments were delivered by God to Moses on Mt. Sinai and came into being sometime around 1300 B.C. They are probably Judaism's greatest contribution to human civilization, since history has repeatedly shown that their violation brings disaster not only to the individual, but to societies as a whole which ignore them. Though there may be no single answer to the question "Why have the Jews survived for thousands of years?," their faithful adherence to the Ten Commandments may certainly be one reason for their continuous existence as a people.

In their original form, the Ten Commandments probably consisted of very short sentences preceded by the negative command, and even the two exceptions (the Sabbath command and the command to honor parents) were most likely originally stated in the negative. The Ten Commandments are found at two places in the Old Testament (Exodus 20:2 and Deuteronomy 5:6) but a short, primitive form of the Ten Commandments (circa 100 A.D.) will serve to illustrate its basic message:

I am the Lord thy God:

1. Thou shalt have no other gods.
2. Thou shalt not make thee idols.
3. Thou shalt not take the Lord's name in vain.
4. Remember the Sabbath, to keep it holy.
5. Thou shalt honor thy father and mother.
6. Thou shalt not kill.
7. Thou shalt not commit adultery.
8. Thou shalt not steal.
9. Thou shalt not bear false witness.
10. Thou shalt not covet thy neighbor's house.

Although several of the commandments may be regarded as religiously oriented and were addressed to individuals as part of a religious group to promote community solidarity and preservation, the main message of the Ten Commandments is moral. They impose five negative duties on every individual. The Ten Commandments convey a strong sense of individual liberty based on "the right to be let alone." They also impose on each person the responsibility of self-control for one's actions and forbid all coercive interference with one's neighbor or another's property. The three essentials of community living are singled out for protection: life, marriage, and property. They are safeguarded by the Commandments condemning homicide, adultery, and theft. Although the Ten Commandments were formulated for a society in which human slavery was accepted, early Hebrew law emphasized respect for both property rights and a re-

spect for fellow humans as persons. This was why Jewish slavery was comparable to indentured servitude. The Jews never forgot that they were at one time slaves in Egypt and hence treated their own slaves more humanely than many other slave-owning peoples.

At Freedom School, Kevin Cullinane explains that the Ten Commandments are guidelines that "allow us to live without the sheriff or the State. It was pure, simple pragmatism," which led him to develop this " 'revisionist interpretation' of the Decalogue." Cullinane extrapolates from the Commandments the following ten rules of harmonious living:

1. "Thou shall not play God with another person's life, nor let anyone play God with yours."

2. "Thou shall not establish label-substitutes for your principles and then worship the label, thus losing sight of the true inner reality."

3. "My word is my bond, I speak it carefully."

4. "Maintain your faith in your principles during the dark hours and realize that one must use right means."

5. "Honor the concept of motherhood and fatherhood in whomever it is found (the Jews were the first people to honor the mother)."

6. "Thou shalt not kill. Period! No Exceptions!"

7. "Thou shalt not adulterate your product, your principles, or your character."

8. "Thou shalt not steal. Period!"

9. "Thou shalt not identify fellow humans with labels of nation, race, religion, philosophy, etc."

10. 'Thou shalt not envy thy neighbor's good fortune. Rather imitate it."

After their forty year sojourn in the desert, the Israelites were led by tribal or clan patriarchs. The Twelve Tribes consisted of about 15,000 people altogether and each isolated group carried on its own affairs, uniting only when some great peril threatened one or more of them. Though there were religious leaders, there was no centralized State and they "recognized no authoritarian government." A loose confederation existed among the tribes (the technical term describing this relationship is "amphictyony") but there was no provision "for a national leader who was to be the center of political and religious authority for his whole life," nor was such power hereditary. Occasionally when there was need for united military action among the tribes, a charismatic leader, such as Joshua or Gideon, would be voluntarily chosen to bring about deliverance from their enemies.

"Prior to the time of Saul (referred to as 'pre-monarchic Israel') there was no political, administrative, or military organization which would have embraced the whole people of Israel. The only tie effectively joining the people was their faith." In the Semitic world people were grouped around their gods rather than on the basis of physical origin, blood, or geography. Identification as a Hebrew was a spiritual matter rather than a case of where one lived. Thus the early Hebrews had

no such thing as a nation in the modern sense of the word. In fact, they long endured as a people (not a nation) because they had no formal State. It was Gideon (who had led them safely out of military disaster and who refused to be crowned king) who effectively expressed the Hebrew attitude: "I will not rule over you, and my son will not rule over you. Yahweh will rule over you." (Judges 8:23) Gideon recognized that spiritual bonds were mightier than political regimentation and refused to interfere in the governance of their society.

So for nearly 200 years, from Moses to the time of the monarchy of Saul (from about 1240 B.C. to 1020 B.C.) Israeli life went on without the State. There was no taxation, no bureaucracy, no public works, not even any official courts. According to the author of Judges 17:6 and 21:25, "In those days, there was no king in Israel, but every man did what was right in his own eyes." This has seemed like "moral anarchy" (the absence of any social rules) to nearly all Biblical commentators, because there was no "external authority to impose the right controls." However, the Hebrews, who practiced the voluntaryist life realized that they were living in a moral universe, one of cause and effect. The absence of human authority and external control over their lives did not mean they lived in a world without natural moral guidelines. The natural laws of harmonious living outlined in the Ten Commandments served as their standards. Differences of opinion were most likely settled by clan leaders acting as arbitrators or "judges" in cases of dispute.

According to the writers of the Bible, the institution of the kingship in Israel was brought about as a reaction to the invasion of the Philistines during the end of the 11th century B.C. The kingship was justified by the need to stave off "tyranny and invasion." "The so-called antimonarchic source of the books of Samuel, disclaimed the historical necessity of the institution of kingship and stamped the people's wishes to have a king as an apostasy and rejection of the lord's kingship." Samuel, one of their "judges" warned the people that a king would control not only the warriors but everyone and everything. "Vehemently he promise[d] them that they [would] rue the day when they first made it possible for the [S]tate, with a centralized government, to assume the right to use everyone and everything for its own ends;"

> So Samuel told all the words of the Lord to the people who were asking for a king from him. He said, "These will be the ways of the king who will reign over you: He will take your sons and make them serve in his chariots ["tank corps"] and with his cavalry ["helicopter airborne"], and will make them run before his chariots ["infantry"]. Some he will appoint officers over units of a thousand ["battalions"] and units of fifty ["platoons"]. Others will plow his fields ["Department of Agriculture"] and reap his harvest, others again will make weapons of war ["General Dynamics"] and equipment for his mounted troops ["Chrysler"]. He will take your daughters for perfumers, cooks, and confectioners ["mothers out of the house and back to the factories, children to day care centers"], and will seize the best of your cornfields, vineyards, and

> olive yards and turn them over to his lackeys ["income tax"]. He will take a tenth ["would that it was only 10%!"] of your grain and your vintage to give to his eunuchs and his lackeys ["World Bank, United Nations, etc."]. Your slaves, both men and women, and the best of your cattle and asses he will seize and put to his own use. He will take the tenth of your flocks, and you will be his slaves. When that day comes you will cry out against the king. ..."[I Samuel 10-18] (bracketed quotes provided by Kevin Cullinane)

Thus it was that Samuel predicted the basic elements of the State: conscription, eminent domain, and taxation. Although Saul, who was appointed king by Samuel, did not exert a harsh rule over the Hebrews (even at the height of his kingdom he had no military conscription, no taxes), his successor to the kingship, David, laid the foundation for a lasting State. He conducted a census of property and military men, taxed the people, and kept a large standing army. The institution of the monarchy clearly marked the beginning of the separation of the civil from the religious leadership in Israel. This meant that Israel was now to have a political history independent of her religious history.

Both the Ten Commandments and Samuel's prophecy regarding the destructive nature of the State, remind us of the radical libertarian tradition's opposition to any and all forms of invasion against property and bodily rights. Certainly if the proprietary concerns of the Decalogue were honored, the world would be much closer to (if not arriving at) a libertarian condition. The respect for proprietary justice found in the Ten Commandments is a universal guideline for all peoples at all times. Although its concern is not unique, it is one of the earliest and most consistent applications of proprietary justice to be found in world history.

This article has had a rather limited scope: to establish and identify the basic tenets of the Old Testament heritage as it relates to the libertarian tradition. While this heritage has played a very significant part in the development of Western civilization, the anti-State attitude of Samuel and the Jews of the Exodus is practically non-existent today. Nor have the proprietary concerns of the Ten Commandments been able to overcome the statist bias of other influences on Western civilization (such as the Platonic, Greek emphasis on the State). Nonetheless, we should not lose sight of the fact that a voluntaryist society existed for two centuries, some 1000 years before Christ and that probably the earliest known opposition to the idea of the State is found in Jewish literature.

P.S. This article was researched and written between October 1986 and February 1987. After seeing the references to 1st Samuel in Whole Number 25 of *The Voluntaryist*, in February 1987, Charles Curley was kind enough to point out to me that Thomas Paine dealt extensively with this Biblical passage in the second chapter of *Common Sense*, which is entitled "Of Monarchy and Hereditary Succession." The following excerpts are typical of Paine's outlook:

> Government by kings was first introduced into the world by Heathens, from whom the children of Israel copied the custom. ...
>
> As the exalting of one man so greatly above the rest, cannot be justified on the equal rights of nature, so neither can it be defended on the authority of scripture, for the will of the Almighty, as declared by Gideon and the prophet Samuel, expressly disapproves of the government by kings. All anti-monarchial parts of scripture have been very smoothly glossed over in monarchial governments.
>
> [Paine then goes on to cite the words of Gideon and Samuel, concluding that] These portions of the scripture are direct and positive. They admit of no equivocal construction. That the Almighty hath entered his protest against monarchical government is true, or the scripture is false.

It must be noted, however, that Paine was limiting the application of the 1st Samuel passage to monarchies. He did not apply it to other forms of the State. The thrust of *Common Sense* was that the colonists must declare their independence from George III and found a new nation without a king.▽

Short Bibliography

George A. Buttrick, Editor. *The Interpreter's Bible.* Nashville: Abingdon Press, 1953 (12 volumes) (See commentary for the 1st Samuel biblical passage.)

George A. Buttrick, ed. "Kingship." *The Interpreter's Dictionary of the Bible,* vol. 3. Nashville: Abingdon Press, 1962 (in 4 volumes). (Deals with the nature of Israeli voluntaryism and rejection of the monarchy.)

Harry Carroll Jr., ed. *The Development of Civilization,*vol. 1. Glenview, Ill.: Scott. Foresman and Co., 1969, p. 35. (Deals with the Hebrew manner of interpreting history.)

Kevin Cullinane. Various Freedom School presentations during 1986.

Jack Finnegan. *Let My People Go.* New York: Harper and Row, 1963. See Chapter 7, especially pp. 90–93. (Deals with the population of the Israeli tribes.)

Jacob Golub. *Israel in Canaan.* Cincinnati: Union of American Hebrew Congregations, 1930. See especially p. 233. (Deals with the statist framework created by the Jewish monarchs.)

William A. Irwin. "The Hebrews." In A. and H. A. Frankfort,*Intellectual Adventure of Ancient Man.* Chicago: University of Chicago Press, 1946. See pages 303–359, especially pp. 323 and 359. (Deals with Hebrew interpretation of history and the contributions of Israeli culture to world civilizations.)

Murray Lee Newman, Jr. *The People of the Covenant: A Study of Israel from Moses to the Monarchy.* Nashville: Abingdon Press, 1962. See especially p. 120. (Deals generally with the stateless structure of the Hebrew tribes.)

Libraries in the Voluntaryist Tradition

by Carl Watner
(from No. 31, April 1988)

AMERICA'S PAST is full of examples of private, voluntary cooperation which served to fill a host of needs, now unquestioningly made the responsibility of the State. For all practical purposes, from the time of the first English settlement until the early decades of the nineteenth century, there was no such thing as a tax supported public library in North America. Yet, the reading needs of the public were satisfied. This article will briefly relate the developmental stages and history of the voluntary efforts to provide library services in the United States, show how voluntaryism worked in this particular realm, and demonstrate that the movement for "free" public schooling prepared the scene for the tax supported library.

The first private library in America probably belonged to Elder William Brewster of Plymouth Colony, who owned about 400 books in all. John Winthrop, Jr., the first governor of Connecticut, brought his collection of over 1000 books to Boston in 1631. Originally the term "public library" was applied to any collection of books not belonging exclusively to a private individual (it did not necessarily imply tax support). The first attempt to create a public library, as we now understand the term, came about in 1656 when Captain Robert Keayne, a merchant of Boston, willed his book collection to the town of Boston, stipulating that the city provide a building to house it. The City built a Town House with a room for the books, but the collection was destroyed by fire in 1747.

One of the earliest examples of private support for libraries came during the late 1690s, when an Anglican clergyman, who sponsored parish libraries in England, became interested in establishing religious libraries throughout the British colonies. Between 1695 and 1704, the Rev. Thomas Bray was responsible for funding and starting over seventy libraries in America. He and his Society for Promoting Christian Knowledge were responsible for sending 34,000 books to the new world.

It was not until the 1720s, that the next major development in colonial library history occurred. The first social library came into existence when Benjamin Franklin inaugurated the "Junto" library in Philadelphia in 1727. The "Junto" consisted of young men, like Franklin, who found enjoyment in debating literary and scientific subjects. Their activities prompted the formation of a library, in which they jointly pooled their privately owned books. This arrangement came to

an end in 1730. A year later, Franklin proposed what was to become the Library Company of Philadelphia. Formally chartered in 1742, the Library Company of Philadelphia was a subscription library, where the participants paid an annual fee, in return for the privilege of using the library's books.

The type of library founded by Franklin was nothing more than a voluntary association of individuals who contributed money toward a common fund to be used for the purchase of books. Every member had the right to use the books of the organization, but every library had its own by-laws indicating who owned the books and the terms on which they might be used. The subscription library was a specialized form of the social library, and between 1731 and 1759 fourteen more social libraries were organized throughout the colonies. Philadelphia had three major subscription libraries before 1770, when mergers left the city with only Franklin's Library Company.

The social library took another form near the end of the eighteenth century. Mechanics' and apprentices' libraries in America were the outgrowth of the workers' institutes founded in England at the close of the 1700s. These types of libraries were often set up by tradesmen and workers who included vocational and inspirational reading materials in their collections. Other types of nineteenth century libraries included the Sunday School libraries which were probably the most numerous, and the private academy or private school library. Both of these types of libraries were created in conjunction with the many religious and non-secular schools that existed in America throughout the nineteenth century. This is not to overlook the many other specialized types of libraries that were started, such as university, college, hospital and Americana collections. Some of these, such as the American Antiquarian Society begun in 1812, are still in existence today.

The most popular form of nineteenth century American library, however, was an old familiar institution to readers in England and the Continent, dating back to the 14th century. Circulating, or rental, libraries were started in the colonies several decades after the social library, but did not actually become widespread until well after the American revolution. One of the best known examples was the collection owned by James Hammond of Newport, Rhode Island, which contained some 4200 volumes in 1848. The circulating library often met with criticism because it catered to the prurient tastes of the reading public. Such libraries were one of the most sensitive barometers of popular taste because they were for-profit enterprises and the only way they could stay in business was to furnish what patrons wanted to read.

Library historians have generally identified the "fatal flaw" in the social library system by referring to its dependence on the principle of voluntary support. According to these historians, "the shifting sands" of voluntaryism seemed to be "inadequate to the task of supporting the widespread and efficient library services so desired by library advocates throughout the nation." One problem was that social libraries tended to fail during financial hard times. The depressions of 1819, 1837

and 1857 interfered with their support and patronage. "Such instability was simply unacceptable to those who believed that libraries were essential, for whatever reason, to the success of the Republic. Their efforts to discover a form of support which would be capable of bringing stability and energy to library service led them eventually to the idea of supporting libraries with tax funds." (Johnson and Harris, 203)

Despite these criticisms, both the historians and contemporary observers of nineteenth century libraries admit that the fees of the circulating and social libraries were generally low. In the case of Massachusetts, where a survey of library resources in the State was made in 1840, and from whence much of the agitation for tax supported schooling and libraries originated, it was noted that "it is doubtful whether any serious reader was denied access to the books because of poverty. The network of social libraries across the state was more than a forerunner of the public library pattern—it was a public library system based on the ability of the patron to pay for the service he received." (Shera, 74)

People in Massachusetts, and particularly the city of Boston, were in the vanguard of the movement calling for state and municipal support of libraries. The movement in Boston for a tax supported public library was spurred on by two major considerations. First of all, the $400,000 gift of John Jacob Astor to the city of New York in 1848 for the establishment and maintenance of a public library had hurt the civic pride of many politically prominent Bostonians. Secondly, by the middle of the nineteenth century the centralization of the municipal administration of the city of Boston had been completed. "Boston citizens had seen their local government freely exercise authority over many functions related to community welfare. A long succession of official acts had encouraged and improved municipal services promoting public health, fire protection, education, care of the poor, water supply, and many other similar activities. The promotion of a public library for the common use was accepted without question as a proper function of the city government." (Shera, 171)

In 1848, the Massachusetts State Legislature authorized the city of Boston to establish a public library. However, it was not until May 1852, that a board of trustees was appointed to office. The Trustees issued a report in July 1852, which showed how the existence of the city run schools in Boston set a precedent in arguing for a Boston Public Library.

> Although the school and even the college and the university are, as all thoughtful persons are well aware, but the first stages in education, the public makes no provision for carrying on the great work. It imparts with a notable equality of privilege, a knowledge of the elements of learning to all its children, but it affords them no aid in going beyond the elements. It awakens a taste for reading, but it furnishes to the public nothing to read. …The trustees submit, that all the reasons which exist for furnishing the means of elementary education, at the public

> expense, apply in an equal degree to the reasonable provision to aid and encourage the acquisition of the knowledge required to complete a preparation for active life. … In this point of view we consider that a large public library is of the utmost importance as the means of completing our system of public education.

The free public library, in the words of one Bostonian, was "the crowning glory of the public schools." The Boston Public Library, which went into operation in the spring of 1854, was not the first tax supported library in this country. Nevertheless, it was the first unendowed municipal library in any major city, and Boston, because of her importance in American municipal life (Boston was the fourth largest city in the United States at the time), accomplished much by the power of example. Legislation authorizing tax support of libraries in other New England states soon followed.

The establishment of the American Library Association in 1876, and the generous philanthropy of Andrew Carnegie (during the late nineteenth and early twentieth century) furnished additional impetus for the socialization of what had hitherto been primarily a voluntaryist affair. Carnegie financed the construction of library buildings in cities that would guarantee to maintain a public library (by 1920 he had provided $50 million for the erection of 2500 buildings). Also the American Library Association gave a definitive authoritarian and missionary flavor to the tax supported public library. The first president of the Association (1876–1886), Justin Winsor, noted

> that the public library could be wielded as a 'great engine' for 'good or evil' among the 'masses of people.' Using a similar analogy in one of his presidential addresses to his colleagues, he said that he thought of the public library as 'a derrick, lifting the inert masses and swinging them round to the surer foundations upon which the national character shall rise.' Following Winsor's lead, librarians were soon touting the public library as a panacea for most of the country's ills: crime, disease, illiteracy, prostitution, intemperance and the reckless and unAmerican ways of the waves of the new immigrants sweeping into the country. (Johnson and Harris, 272)

Despite the fact that the first major city to have a tax supported library was Boston, it is interesting to observe that one of her sages as early as 1840, noted that libraries, as well as a host of other municipal services, should actually be provided by voluntary support. In his essay "Politics," Ralph Waldo Emerson wrote that when men "are pure enough to abjure the code of force they will [then] be wise enough to see how these public ends of the post office, of the highway, of commerce and the exchange of property, of museums *and libraries*, of institutions of art and science can be answered." (Emphasis added.)

Up until Emerson's time, private library services were available. It is time we recaptured Emerson's voluntaryist vison.V

Short Bibliography

Elmer D. Johnson and Michael H. Harris. *History of Libraries in the Western World*. Metuchen: The Scarecrow Press, 1976.

J. Brian Phillips. "Alternatives to Public Libraries." *The Freeman*. April 1987, pp. 147–150.

Jesse H. Shera. *Foundations of the Public Library*. North Haven, Conn.: Shoe String Press, 1965.

Voluntaryism on the Western Frontier

by Carl Watner
(from No. 41, December 1989)

AMERICAN POLITICIANS experienced the same problems in governing their western frontier during the late eighteenth and early nineteenth centuries, as did the English in governing their distant North American colonies during the sixteenth and seventeenth centuries. In both cases, it was difficult to exercise coercive political control because the great distances made troop movement and communications slow and difficult. The people on the American frontier usually lived in a 'de facto' state of voluntaryism, even though the government in Washington, D.C. claimed a 'de jure' political jurisdiction over the land on which they lived. One of the last areas to be 'conquered' by the United States was its far western frontier in California. Until this conquest was completely effected, most people there lived beyond the bounds of political laws, restrictions, and statutes. This article briefly describes how they behaved and what institutions they developed in the absence of coercive political ones.

In an article in *The Journal of Libertarian Studies*, subtitled, "The *Not* So Wild West," authors Terry Anderson and P. J. Hill note that "government as a legitimate agency of coercion was absent for a long enough period to provide insights into the operation and viability of property rights in the absence of a formal state." [1] Their research indicates that during the period 1830 to 1900, property rights were protected and civil order generally prevailed on the Western frontier of America. "Private agencies provided the necessary basis for an orderly society in which property was protected and conflicts were resolved. These agencies often

1. T. Anderson and P. J. Hill, "An American Experiment in Anarcho-Capitalism," vol. III *The Journal of Libertarian Studies* (1979), pp. 9–29, at p. 9. Mention should also be made of the private production of gold coins on the western frontier. See " 'Hard Money' in the Voluntaryist Tradition," *The Voluntaryist*, No. 23, January 1987.

did not qualify as government because they did not have a legal monopoly on 'keeping order.' They soon discovered that 'warfare' was a costly way of resolving disputes and lower cost methods of settlement (arbitration, courts, etc.) resulted." [1]

Although the wild West has been characterized by the absence of formal government and the presence of gunfights, horse-thievery, and a general disrespect for property, scholars have questioned the accuracy of these perceptions. Violence was not rampant on the frontier. W. Eugene Hollon in his book, *Frontier Violence: Another Look*, concludes "that the Western frontier was a far more civilized, more peaceful, and safer place than American society is today." Frank Prassel, in his book subtitled "A Legacy of Law and Order," states that crime statistics do not indicate that the West was any more violent than parts of the country where political government exercised the full majesty of the law. Watson Parker in a chapter entitled, "Armed and Ready: Guns on the Western Frontier," concludes that the ordinary frontiersman did not hanker after violence; "the frontier American was the mildest of men, to be so well armed and to shoot so few people." [2]

The Gold Rush and Property Rights in the West

Until 1866, seventeen years after the beginning of the California gold rush, there were no federal laws to govern the active mining frontier in the Far West. If ever there were a clearcut, real-life example of voluntaryism at work, it is this. The federal government took no initiative in the matter of mining law, and, regardless, was too weak to exert effective control. The miners worked at their own risk, for their own profit. The territory of California, which did not become a state until September 9, 1850, was held under the military authority of the United States. Technically, all gold and silver mined in the area ceded by Mexico was legally owned by the U.S. federal government, and in the absence of any federal legislation, the mining industry remained for a time subject to the pre-existing Mexican law. Soon, however, the U.S. military governor abolished the Mexican laws and customs relating to mining. But as he did not have sufficient military force to prevent work at the diggings, he thought it best to leave mining open to all who tried.

---

1. Ibid., p. 10.

2. W. Eugene Hollon, *Frontier Violence*, New York: Oxford University Press, 1974, p. x. Frank Prassel, *The Western Peace Officer*, Norman: University of Oklahoma Press, 1953, pp. 16–17. Watson Parker, "Armed and Ready: Guns on the Western Frontier," in Ronald Lora, ed., *The American West*, Toledo: The University of Toledo, 1980, p. 167. For a review of the literature extolling both the frontier as violent and not especially violent see the "Appendix" in Roger McGrath, *Gunfighters, Highwaymen, and Vigilantes* (Berkeley: University of California Press, 1984).

No attempt was made to tax or control the miners or their output, even though they were trespassing and robbing the federal treasury of its mineral wealth. Even if Congress had been strong enough to regulate and enforce mining regulations, it lacked the knowledge as to what laws to pass. When legislation was finally enacted, the customs, usages, and rules evolved by the miners themselves were adapted as the basis for federal mining law.

The discovery of gold at Sutter's mill near Sacramento, California nearly coincided with the end of the Mexican War in January, 1848. Although California became an American territory, there was little evidence of American statist control except for the presence of about 1000 American soldiers. When the discovery of gold was announced in San Francisco in mid-May 1848, the Sacramento region was invaded by nearly 10,000 people within the space of seven months. These people rushed to mine gold on property to which no one had exclusive rights. Although nearly every miner carried a gun, little violence was reported. In July, 1848, when the military governor, Colonel Mason, visited the mines, he reported that "crime of any kind was very infrequent, and that no thefts or robberies had been committed in the gold district … and it was a matter of surprise, that so peaceful and quiet a state of affairs should continue to exist."[1]

The real gold rush commenced in 1849. More than 20,000 people departed from the east coast in ships bound for California. By the end of the year, the population in California had reached about 107,000, mostly miners. As land became relatively scarce with this influx of emigrants, there was an incentive to assign exclusive rights to mine a given piece of land. This gave birth to the miner's meeting and the development of miner's law which was based on generally accepted mining customs and practices. When a meeting of miners was called in a specific area, one of the first articles of business was to specify the geographic limits over which their decisions would govern. In some cases, the mining district would be as large as three miles long and two miles wide. If a large group of miners were dissatisfied with the proposals regarding claim size, or jurisdiction, they would call for a separate meeting of those wishing a division of the territory. "The work of mining, and its environment and condition were so different in different places, that the laws and customs of the miners had to vary even in adjoining districts." This necessitated the right to secede and form districts as circumstances dictated.

By the end of 1849, some miners committed their agreements on property rights to writing. Typical agreements had a definite structure, which included 1) Definition of the geographic boundaries over which the agreement would be binding on all individuals. 2) Assignment to each miner of an exclusive claim.

---

1. For this and subsequent quotes see, John Umbeck. "The California Gold Rush: A Study of Emerging Property Rights," Vol. XIV *Explorations in Economic History* (1977), pp. 197–226, at p. 214.

3) Stipulations regarding the maximum size of each claim. 4) Enumeration of the conditions which must be met if exclusive rights to the claim boundaries were to be maintained. These might include staking the claim boundaries with wooden stakes, recording the claim at the miner's meeting, and working the claim a certain amount of time. 5) An indication of the maximum number of claims which any individual could hold, either by preemption or purchase, and what evidence was needed to substantiate a claim purchase. 6) Provision for some means of enforcement, such as calling upon a jury of five persons to settle disputes.

The purpose of the miner's meeting was to recognize and sanctify the right of the miner to locate a mining claim and to hold it against all comers. This was the traditional and customary right of the miner the world over to homestead the mining claim that he worked, provided it had not been claimed or worked by anyone else. Contemporary observers were startled that the miners could maintain the peace and avoid violent property disputes among such a large population. If ever there were an opportunity for "anarchy to run wild" it was in California at this time, but such was not the case. One contemporary observer noted, after visiting the camps:

> The first consequence of the unprecedented rush of emigration from all parts of the world into the country almost unknown, and but half reclaimed from its original barbarism, was to render all law virtually null, and bring the established authorities to depend entirely on the humor of the population for the observance of their orders. … From the beginning, a state of things little short of anarchy might have been reasonably awaited.
>
> Instead of this, a disposition to maintain order and secure the rights of all, was shown throughout the mining districts. In the absence of all law or available protection, the people met and adopted rules for their mutual security—rules adapted to their situation, where they neither had guards nor prisons, and where the slightest license given to crime or trespass of any kind must inevitably have led to terrible disorders. Small thefts were punished by banishment from the placers, while for those of large amount or for more serious crimes, there was the single alternative of hanging. These regulations, with slight change, had been continued up to the time of my visit to the country. In proportion as the emigration from our own States increased, and the digging community assumed a more orderly and intelligent aspect, their severity had been relaxed, though punishment was still strictly administered for all offenses. …
>
> In all the large diggings, which had been worked for some time, there were established regulations, which were faithfully observed. …When a new placer or gulch was discovered, the first thing done was to elect officers and extend the area of order. *The result was that in a district five hundred miles long, and inhabited by 100,000 people, who had neither government, regular laws, rules, military protection, nor even locks or bolts, and a great part of whom possessed wealth enough to tempt the vicious and depraved, there was as much security to life and*

> *property as in any part of the Union, and as small a proportion of crime. The capacity of a people for self-government was never so triumphantly illustrated. Never, perhaps, was there a community formed of more unpropitious elements; yet from all this seeming chaos grew a harmony beyond what the most sanguine apostle of Progress could have expected. (emphasis added).*[1]

Western Water Rights

Obviously, water was a necessity to the western settler. Miners often required water to work their claims. Western farmers needed large amounts for irrigation purposes. These demands led to the development of "Western water rights." Such rights were based on the homesteading principle: that the first user of a given flow of water became the owner of "right." Western water rights differed from "riparian" rights, which were recognized in the eastern United States. Under riparian law, the rights to flowing water belonged to those whose property bounded the running water. The use of riparian ownership rights in the West meant that water could not be diverted for mining or irrigation and created insuperable problems in a region where commerce depended on the availability of water.

The conflict between riparian doctrine and the needs of the Westerners gave way to the development of an "arid region" or appropriation doctrine. The underlying principle that evolved in Western water rights was that the first appropriator received an exclusive right to the water, and latter appropriators had their rights conditioned on the prior rights of those who had gone before. Thus, "first in time" gave "first in right." The law that evolved in the West reflected the greater scarcity of water. The appropriation or homesteading doctrine slowly evolved to permit the diversion of water from water-beds so that it could be used on non-riparian lands, forced the appropriator of water to forfeit his right if the water was not used, and allowed for the transfer, sale, and exchange of rights in water between individuals (something that was unheard of under the riparian system).

The appropriation doctrine, though novel in frontier America, was based on much of the world's traditional system of allocating property rights in water. These, in turn, were based on the protection of the eldest rights, which rested on the homesteading principle. In some places, the idea of appropriating water by the first user could be traced back to antiquity. Blackstone, at the time of the American revolution, claimed that "whoever possessed or made use of water first had a right to it." One of the most frequently cited authorities on water law, Samuel Wiel, contended that riparian doctrine was an innovation on the common law, introduced into England by way of the Code Napoleon of 1804. Riparian doctrine was not embraced in English judicial decisions until 1833, and it was not un-

---

1. Bayard Taylor, *Eldorado or, Adventures in the Path of Empire Comprising a Voyage to California…*, New York: George Putnam, 1850, pp. 100–101.

til 1849, that the term 'riparian' was used by the English courts. Wiel also claimed that the idea of a common right to water flow (such as held by riparian owners) was simply socialism. "To carry out the idea of common right consistently, newcomers would have to be admitted to the use of the common supply, even though the supply is already in full use by others. The others would have to give up *pro rata*, and apportion some to the newcomers. … It would be bare socialism if it were extensively done." [1]

The ownership of water in the West permitted the development of ditch, canal, and irrigation companies which charged for the delivery of water to specific points. This was impossible in other parts of the country, where only riparian rights were recognized. The existence of water rights aided the agricultural development of the dry regions from 1850 to 1900. By the turn of the century, however, statist regulations and court decisions disrupted the free market in water rights.

On the Overland Trail

Perhaps the best example of the ability of private property and ownership rights to sustain law and order is found in the experience of travelers on the Overland Trail westward beginning in the late 1840s. There was no political law west of Leavenworth, Kansas, but this does not imply that there was social disorder or disorganization. "Realizing that they were passing beyond the pale of law, and aware that the tedious journey and constant tensions of the trail brought out the worst in human character, the pioneers … created their own law-making and law-enforcing machinery before they started." [2] Large numbers of people traveling together formed voluntary contracts with one another in an effort to establish wholesome rules and regulations. This included organization of jury trials, regulation of gambling and intoxication, and penalties for failing to perform camp chores and guard duty.

The emigrants were property-minded, and respect for property rights was paramount. The pioneers seldom resorted to violence, even when food became so scarce that starvation was a distinct possibility. "It is no exaggeration to say that the emigrants who traveled America's overland trail gave little thought to solving their problems by violence or theft." [3] Violence and helping themselves to the property of others were not the norm of behavior. Instead, self-control and respect for property rights, even in strained circumstances, was the rule. There was little need for

---

1. Samuel Wiel, "Theories of Water Law," vol. 27 *Harvard Law Review* (1913–1914), pp. 530–544, at p. 540.
2. Anderson and Hill, op. cit., p. 21.
3. See John Phillip Reid, *Law for the Elephant: Property and Social Behavior on the Overland Trail*. San Marino: The Huntington Library, 1980. This quote is cited by Anderson and Hill, op. cit., p. 23.

police on the frontier because respect for property was the taught, learned, and accepted custom of the people on the trail.

Indeed, the conception of ownership on the trail was so strong that a finder could lose title to things he had taken up and which were then found by the original owner. Furthermore, a good-faith purchaser for value, from a person in possession, could lose the property if it were claimed by a prior owner who had lost it, or from whom it had been stolen. No "finder-keepers" rule existed on the Overland Trail. People who lost property expected it to be returned. People who took up strays and lost property routinely announced their finds to strangers, in hopes that they might find the true owner. John Reid, a historian of the Overland Trail, states that "two facts stand out in all extant accounts of retrieving lost or stolen property on the Overland Trail. First, possession was not the test of title. When emigrants decided if an individual had a right to property they based their judgment on a legal abstraction they called 'ownership,' not the physical reality of possession. Second, when stolen goods were taken up, the person taking them acted as trustee for the 'owner.' The rule was universal. Emigrants suspecting that something offered for sale had been stolen would not buy it."[1]

Conclusion

As this review has shown, although the Western frontier was nearly stateless, it was not lawless nor without the benefits of civilization. When the federal government could not adequately provide coined money for the inhabitants of the Western frontier, businessmen in several Western territories began their own minting services. Private coinage, which has been frequently discussed in *The Voluntaryist*, has a long and rich history and effectively competed with the federal mints. When the State is unable to provide a service that is demanded by consumers, market-place entrepreneurs will fill the breach (unless forcibly prevented from doing so by political restrictions).

Another service often poorly supplied by local governments on the Western frontier was adequate law enforcement. There are several hundred documented instances of vigilante movements in the United States during the eighteenth and nineteenth centuries. Generally, these involved the leading citizens of the community, and other law-abiding, property-respecting individuals who were concerned with enforcing and reestablishing "law and order," which local and corrupt governments failed to provide. In most cases, this "taking of the law into their own hands" was supported by a great majority of the inhabitants. The best-known instances of vigilantism occurred in San Francisco in 1851 and 1856. As Roger McGrath has put it, the vigilante movements were usually well-regulated, "dealt quickly and effectively with criminal problems, they left the

1. Reid, op. cit., p. 274.

town[s] with more stable and orderly conditions; and when opposition developed they disbanded." [1]

The history of the American West shows that it is possible for people to live together in peace and harmony, even where a formal political state is not present. Under such circumstances, property rights evolve independently of state institutions, based on the principle of homesteading, or "first user, first owner." People did respect property even in the absence of government courts, legislatures, and police. As this short overview demonstrates, voluntaryism was successfully practiced on the Western frontier! V

Voluntaryism and the English Language

by Carl Watner
(from No. 45, August 1990)

English is a Crazy Language

Language is not only one of mankind's oldest social and cultural phenomena, but, as George Orwell and others have pointed out, it is also one of the most subtle and powerful means of social control. The development of language, its evolution, and its transmission by conquest, assimilation, migration, and other ethnic movement, is a complex and enigmatic process. Viewed historically, the evolution of the English language is one of the best examples of voluntaryism. English is clearly a "crazy" language just because no one person or group of people ever sat down and decided to invent it. It is one of those institutions which, as Friedrich Hayek has described, is "the result of human action but not human design." Language, like money, falls in the realm of "the spontaneous order" because by its very nature it is a growing, evolving thing. It may be studied and cultivated, but it may not be fixed without stifling and killing it. The balance of this article will present an overview of the history of the English language (and some of its related areas, such as English dictionaries and grammatical rules) in an effort to demonstrate how one of the world's longest uninterrupted experiments in voluntaryism has proceeded.

The tone for this stage of our inquiry is taken from Richard Lederer's new book, *Crazy English* (1989). Well into the book (but after many, many examples of crazy English), he asks us to consider the foreign couple who decided to name

---

1. McGrath, supra note 3, pp. 255–256. Also see Alan Valentine, *Vigilante Justice*, New York: Reynal and Company, 1956, and Mary Floyd Williams, *History of the San Francisco Committee of Vigilance of 1851*. 1921. New York: Da Capo Press, 1969.

their firstborn daughter the most beautiful English word they had ever heard. They named the child Diarrhea. Despite this *faux pas*, the fact is that English is probably the most widely spoken language in the history of our planet. That, however, does not keep it from being full of paradoxes and vagaries. How can a darkroom be lit, silverware be plastic, or tablecloths be made of paper? Why do we drive on the parkway but park in the driveway? Why does your nose run, but your feet smell? Why do we fill out a form by filling it in, or chop a tree down and then chop it up? Why do alarm clocks go off by going on?

The English language is a crazy "quilt" because it was created by great numbers of people over the course of nearly two thousand years. No one sat down with the purpose of inventing it. Consequently, our language reflects the creativity and asymmetry of the large part of the human race that uses it. One out of seven people in the world speaks, writes, or reads it: half the world's books, and the majority of international telephone calls are made in English. Eighty percent of computer text is stored in English, sixty percent of the world's radio programs are in English, and seventy percent of all international mail is written in English. Perhaps one cause for this widespread usage of English is that it has the largest vocabulary of any tongue on earth. *The Oxford English Dictionary* documents over 500,000 words, of which nearly one-half are still in use. By contrast, French speakers have access to less than a third of that number, while Russians make do with only a quarter. Primitive peoples, in comparison, make do with vocabularies of about 20,000 words.

The Origins and Roots of English

From where do our words come? They come from almost everywhere. Robert Claiborne, in his handbook of word origins (*The Roots Of English*, [1989]), cites the following examples:

> "Alcohol" and "alkali" come from Arabic; "amok" from Malay; "bizarre" from the mysterious Basque tongue of northern Spain. "Coach" comes from a Hungarian town; "parka" from the Samoyedes of the northern Urals; "skunk" and "Chile" from the Native Americans; and "taboo" from Tahitian. "Okay" was brought into English by slaves from West Africa; "corral" by Mexican cattlemen—who learned it from Portuguese sailors, who learned it from the Hottentot herders of southern Africa.
>
> But though English has plundered the whole earth for words, such exotic birds of passage account for only a small fraction of its oversized lexicon.

The large majority of English words have come from three root sources. These are: Primitive Germanic; Latin and its descendants, the Romance languages; and Greek. The first of these, Primitive Germanic, is the ancestor of English, as well as modern German, Dutch, Yiddish, and the Scandinavian tongues. It is responsible

for giving us words for body parts (arm, head, eye, brain), family terms (brother, sister, etc.), many of our everyday verbs (have, be, come, go, etc.), and every one of our English pronouns (I, you, she, he, etc.). Latin, the language of the Roman empire, has given us French, Spanish, and Italian, and through these sister languages, has contributed more than half of the words in the English language. The third root of English is the Greek language, which was spoken in the eastern Mediterranean during the Roman era. Greek indirectly influenced English by way of Latin, but also had a direct effect by being the source of most of our medical and scientific vocabularies.

The interesting feature of these three roots is that they, themselves, can be traced back to a common origin. At least half of the languages spoken today (mostly those in the western world, including the Indian sub-continent) can be traced back to a remote ancestor language. This common taproot has contributed at least 80% of the words in English. Since this parent language was never written down, for ages it was lost to scholars. Its modern rebirth began with Sir William Jones, a man of letters and an English Judge in India during the late eighteenth century. Jones was interested in Sanskrit, and also knew Latin and Greek. As his linguistic studies progressed, he could not help but notice many similarities among the three. The Sanskrit *trayas* (three), the Latin *tres*, and the Greek *trias* all resembled one another, as did the Sanskrit *sarpa* (snake), and the Latin *serpens*. The Sanskrit word for god, *devas*, was close to the Latin *divus* (divine). Sir William found hundreds of other parallels, which led him to conclude that there had been some "universal" language, which later philologists termed Indo-European. Since then, scholars have identified some of its oldest components: Sanskrit, Hittite, Old Latin, Gothic, and Old English.

The ancient Indo-Europeans probably lived in the area of the valley of the middle Danube and flourished in the centuries after 6000 B.C. They were farmers, raising grain crops, vegetables, and domesticated animals. Archeological evidence indicates that they were among the first people to use animal power to till their fields. By 3500 B.C., groups of Indo-European migrants had spread all over northwestern Europe, and by 2000 B.C. they had conquered what we now refer to as Greece, Italy, and the rest of the Mediterranean basin. As they fanned out toward Asia Minor and India, they took their native language with them, but their tongue split into dialects, which eventually evolved into the distinct languages, some of which were the direct precursors of our modern day English.

The History of English

The English language of today has been in the development stages for over a score of centuries. The political and social events that have affected the English peoples in their natural life have also affected their language. Celtic (a kin of modern Welsh and Breton) was probably the first Indo-European language spoken in England, around 2000 B.C. Several centuries later, the Norseman conquered a

large part of northern and central Britain. Being outnumbered by the natives, they learned their language, though there existed a considerable infusion of Norwegian words. Similarly, Latin was introduced when Britain became a province of the Roman empire during the first century A.D. Many new words, particularly in the fields of warfare, trade, cookery, and building were contributed by the new invaders.

With the decline of the Roman empire, groups of Germanic tribes living along the North Sea were able to migrate into the island of Britain. They brought their own Germanic speech ashore during the invasions of the 5th and 6th Centuries, A.D. The migrants were drawn from three main tribes—the Angles, the Saxons, and the Jutes—and the language they spoke was called Old English. The Christianization of England at the end of the 6th century A.D. and the settlement of most of England and Scotland by the Anglo-Saxons resulted in further changes to the language of the native inhabitants. The island's isolation allowed Old English to evolve away from its West Germanic sister languages of the continent. Old English, which lasted from about 450 A.D. until about 1150 A.D., began to develop regional dialects of its own. They were West Saxon, Kentish, Mercian, and Northumbrian, and differed from each other mostly in pronunciation.

The end of the Old English period was marked by the Norman Conquest of 1066. This invasion of Frenchmen had a substantial effect on the English language, more than any other event in its history. Since the new governing class in both church and state were made up of the new conquerors, their effect on the native language was far out of proportion to their numbers. By the time their assimilation was complete, some two centuries later, English was greatly changed in both its form and vocabulary.

By the end of the Middle English period (1150–1500), the influence of French was on the wane. One of the effects of the 100 Years War (1337–1453) was to bring about the decline of French, which, after all, was still the language of an enemy people. At the same time, the appearance of the Black Death ensured the economic importance of the native laboring class (workers were in great demand due to the shortage of hands caused by the plague), and with it the importance of the English language which they still spoke. Nevertheless, there were many important changes in the grammatical structure of English as well as a considerable transference of words from French to Middle English.

The Modern English of today, which we recognize as Standard English, dates from about the beginning of the 1500s. The dialects which had developed at the end of the Old English period and which continued to evolve during the following centuries became dominated by the language spoken in the East Midland district, in which London, the political capital and commercial center of the country, was located. The district itself was centrally located between northern and southern England and was the most populous and most agriculturally important region of England. Furthermore, the presence of the new universities of Ox-

ford and Cambridge contributed to the rise of Standard English. This became known as the London standard. The press became another powerful force in promoting a standard, uniform language throughout the land. By 1640 (the printing press had been introduced in England by William Caxton in 1476), over 20,000 books and pamphlets written in English had been printed. Other factors contributing to the diminution of regional dialects were the spread of popular education, the rising literacy of the population, and the development of rapid means of communication and transportation.

Language Standards and the Academics

Although all of these elements have contributed to modern English, there are still three broad types of English. They are the *spoken standard*, which is the language heard in the conversation of educated people; the *written standard*, the language of prose and poetry found in books; and the *vulgar* or *illiterate* slang of those who are ignorant or indifferent to the ideals of correctness by which the educated are governed. The interesting thing about these types of English is that none of them is wrong. The spread of English to North America and Australia has affected standard English. Even the spoken standard, or as it is sometimes called, the *received standard* is something that varies in different parts of the English-speaking world.

Unlike French or Italian, the English language is anarchic in the sense that there has never existed one central authority to determine the standard language. In France in 1647, the grammarian, Vaugelas, had defined good usage as the speech habits of the sounder members of the King's court, as well as conformity to the practice in writing of the sounder contemporary authors. In 1635, Cardinal Richelieu had authorized the formation of the Academie Francaise, composed of writers, bookish nobles, magistrates, and amateur men of letters. Its principal function was to give exact rules to the language. The Academie became the Supreme Court of the French language, and set itself the task of preparing a dictionary. Work began on the dictionary in 1639, but it was not published until 1694. In Italy, the Academy della Crusca was founded even earlier, in 1582. Its purpose, too, was to purify the Italian language. In 1612, it published a dictionary, *Vocabolarior Degli Academici Della Crusca*, which became the standard of the Italian language.

The earliest calls for a language academy in England were voiced during the last half of the sixteenth century. A proposal was made in 1660, for an academy "to purifie our Native Language from Barbarism," and in 1664, the Royal Society voted that there should be a committee for improving the English language. John Dryden, the famous English poet, was a member. Though nothing came of the committee meetings, by the end of the century another notable writer, Daniel Defoe, was agitating for an academy for England. In his 1697 *Essay upon Projects*, he concluded that it should be "as criminal to coin words as money." A decade

later, Jonathan Swift published A *Proposal for Correcting, Improving, and Ascertaining the English Tongue*, because he saw "no absolute necessity why any language should be perpetually changing." Though not proposing a formal academy, Swift suggested that his Majesty appoint a society to govern the language, but no such institution was established.

By the mid-1700s, various writers in England such as Alexander Pope, William Washburton, and Samuel Johnson were thinking about the compilation of a new English dictionary based upon the usage of recognized authorities. Pope drew up a list of writers whose works he thought should be examined, and somehow this list fell into the hands of Samuel Johnson. This was the impetus for Johnson's famous dictionary which was published in 1755. In the preface to his *Dictionary*, Johnson noted his objections to Dryden's and Swift's idea for an English academy to "fix" the language:

> [foreign] academies have been instituted, to guard the avenues of their languages, to restrain fugitives, and repulse intruders; but their vigilance and activity have hitherto been vain; sounds are too volatile and subtle for legal restraints; to enchain syllables, and to lash the wind, are equally the undertakings of pride, unwilling to measure its desires by strength. … If an academy should be established … which I, who can never wish to see dependence multiplied, hope the spirit of English liberty will hinder or destroy [it].

English Can Take Care of Itself

In 1761, Joseph Priestley echoed Johnson's negative view by inserting the following passage in his *Grammar*:

> As to a public Academy, invested with authority to ascertain the use of words, which is a project that some persons are very sanguine in their expectations from, I think it is not only unsuitable to the genius of a free nation, but in itself ill calculated to reform and fix a language. We need make no doubt but that the best forms of speech will, in time, establish themselves by their own superior excellence: and, in all controversies, it is better to wait the decisions of time, which are slow and sure, than to take those of synods, which are often hasty and injudicious.

In effect, Priestley and others were recognizing that good usage does not depend on the force of law and language academies, but rather must be based on rational principles and rules, which are generally known and accepted. The so-called laws of language are simply brief, summary statements of accepted usage. Since no one has been appointed to be the supreme arbiter of the English language, standard English must rest upon the sanction of custom and good sense. As the English language has evolved, there is no absolute standard of rightness. Each speaker or writer recognizes that usage is his or her own affair, with due regard to the usage of other good writers and speakers. The duty of determination

falls upon each of us, just as it does in every other affair of life. As Ayn Rand once said: "Who is the final authority in ethics? … Who 'decided' what is the right way to make an automobile …? Any man who cares to acquire the appropriate knowledge and to judge, at and for his own risk and sake."

As Bloomfield and Newmark, in their book, *A Linguistic Introduction to the History of English* (1967), have put it, the linguistic authoritarian laments the corruption of English and tends to disapprove of any changes except perhaps for words labeling new inventions. On the opposing hand, the linguistic libertarian "feels that English can take care of itself, as it did for hundreds of years before people in the seventeenth century began to worry about the state of English." English-speaking people have always struggled with spelling and grammatical rules, but it was not until the 1600s that anyone recognized the importance of setting down "rules" for good usage. Rules for the use of shall/will, should/would were said to have been laid out by the seventeenth century grammarian, John Wallis; that about the meaning of a double negative by John Lowth in 1762. In 1765, William Ward, in his *Grammar of the English Language*, drew up the forerunners of the rules which are found in modern grammar books.

A major force behind a standardized grammar and spelling in England were the commercial printers and publishers. It was they who led the way to orthographic regularity in the seventeenth and eighteenth centuries. Formal spelling "reform," however, did not really get underway until the nineteenth century. The development of several forms of shorthand, the interest of both English and American Philological Societies in the 1880s, and the formation of the American Spelling Reform Association in 1876, all contributed to a concern for a more consistent and simplified spelling. In 1906, Andrew Carnegie funded a quarter of a million dollars to the Simplified Spelling Board. The main purpose of most of these movements was to eliminate some of the most obvious anomalies in the traditional system. Generally speaking, though, they all relied on voluntary means, and neither the English nor the American public was ever persuaded of the value of their suggestions.

The Dictionary

One consequence of the absence of any central authority to set up and enforce spelling or grammatical standards in the language, is that English writers and speakers give their dictionaries and grammar books an aura of authority and a degree of respect unknown or rare among people using other languages. The dictionary and the traditional prescriptive grammar have been made the final arbiter of correctness in English, and although they have represented quite a unifying force, there are often numerous differences between authoritative and reputable dictionaries. The controversy surrounding the appearance of *Webster's Third New International Dictionary, Unabridged*, in the early 1960s, is some indication that not all dictionaries are considered equal. Many commentators thought that the compil-

ers' permissive attitude represented an abdication of their responsibility to judge good English usage.

English lexicographers, until the mid-nineteenth century, considered it to be their role to register words only deemed "good" for literary usage. The first effective protest in England against the supremacy of this literary view of dictionary-making was made in 1857 by Dean Trench, in a paper he read before the English Philological Society. His point was that the dictionary maker should be a historian and not a critic of good language usage. The philologist's view is that the dictionary should be a record of all the words—current and obsolete—of that language, with all their meanings and uses. This view emphasizes the fact that languages continually grow and progress.

The first work to carry the title of *The English Dictionary* was produced in 1623 by Henry Cockeram. Up until then the chief motive behind dictionary-making in England was to assist the students of foreign languages. For the next century, English lexicography concentrated on dictionaries of hard or difficult words. The first attempt to list all the words in the language was made by Nathaniel Bailey, when he published his *Universal Etymological Dictionary* in 1721. This was followed by Samuel Johnson's dictionary in 1755. Although marred by errors, Johnson cataloged the English vocabulary much more fully than had ever been done before, and supplied thousands of quotations illustrating the use of words.

The *Oxford English Dictionary*

The next major advance in dictionary-making did not come about until the late nineteenth century. In 1888, the first volume of the monumental Oxford *New English Dictionary, on Historical Principles* appeared, under the editorship of James Murray. Murray himself was an extraordinary dictionary-maker, and his compilation (not to be completed until after he died, and made with the help of other editors and hundreds of other helpers) has yet to be outdone. Murray's task was to trace the life history of every English word in use or known to have been used since 1150 A.D. By the time the project was completed in 1928, the dictionary contained 15,488 pages covering more than 400,000 words and phrases (by comparison, the recently published second edition contains 21,728 pages and defines more than half a million words).

One of the main differences between Murray's dictionary (referred to hereafter as the O.E.D.) and others is that in all modern dictionaries, except the O.E.D., the quotations are used to help make the definitions clearer or to provide information about the entry under which it appears. In the O.E.D., quotations are used to show the historical development of the different significations of the word under which they are given. Other special features of the O.E.D. are the completeness with which variations in orthography are given, the full and scientific etymologies, the phonetic precision with which British pronunciation is given, and the elaborate subdivisions of meaning.

The original idea for the O.E.D. came from the English Philological Society, which was founded in 1842. The object of this organization was to investigate the structure, affinities, and history of language. In 1857, the Society began collecting words which had not been included in Johnson's work of 1755, or a more recent work by Dr. Charles Richardson, whose *New Dictionary of the English Language* appeared in 1837. The Society invited the public to help in assembling these new words, and the project was so successful that some members thought it would be wise to compile a new dictionary altogether. In early 1858, the Society adopted this idea, and for the next twenty years, volunteer editors and researchers worked on the project. Although headway was made in collecting materials, it was not until the University of Oxford's Clarendon Press agreed to pay an editor, James Murray, who began working full-time on the dictionary in 1879, that real progress began.

From a voluntaryist viewpoint, the most interesting aspect of the work on the O.E.D. was that although the work was of national, and even international importance, it was basically a private undertaking, spurred by the hope of commercial profit. James Murray had no formal university training or degree, but did have a formidable knowledge of world-wide languages. One of his biographers referred to him as the "most learned bank clerk in England." Brought up on the English-Scottish border, Murray was struck from childhood with the failure of political boundaries to coincide with the natural frontiers or boundaries between languages (what linguists refer to as an "isogloss"). By the time he took over the reins of the dictionary project, he had worked in the international department of a British bank, and then taught in a private school for a number of years. He had also been an active participant, writer, and researcher for the Philological Society.

Rather then dissipate his energies on a number of smaller projects, he decided to devote all of his time to the dictionary, in an effort to do one big thing well. The dictionary became his life's work, and was not only a labor of love, but one of near martyrdom, due to the strenuous efforts he put forth on its behalf. Murray's only involvement with the English government was his being awarded a Civil List Pension of £250 a year, beginning in 1884. Although Murray had help from nearly 1000 voluntary helpers, and eventually from a number of assistant editors, nearly half of the work on the O.E.D. was done by him before his death in 1915. It was his obstinate resistance to all the pressures upon him to stop short of excellence which insured the lasting quality of the O.E.D. His efforts surely proved that what is worth doing, is worth doing well, and that good work, once in print, becomes an eternal inheritance which remains of value for generations to come.

Language and Political Control

It is fortunate for English-speaking peoples the world over that Murray and others devoted their lives to the publication of the O.E.D. No matter what changes the English language undergoes in the future, the O.E.D. will remain a

monument to its inherently voluntaryist history. One of the most likely shifts is an increasing tendency away from unrestricted evolution toward increasing political control over it wherever it is spoken. Indeed, both linguists and political thinkers have recognized the important relationship between language and political control. Noam Chomsky has noted that, "in a State such as the United States, where the government can't control the people by force, it had better control what they think." Indeed, one of the ways to control what people think is to control the language and concepts they use to express political ideas. The purpose of Newspeak in George Orwell's novel, *1984*, was to not only set up a means of communication, but to act as a subtle, yet effective, means of oppression. Newspeak eliminated "undesirable" words, and by diminishing the breadth of the vocabulary, diminished the range of thought. All this was done to make "all heretical, unorthodox thinking literally unthinkable, at least so far as thought is dependent on words." Orwell realized that "freedom cannot endure without a highly developed language" to express a broad range of ideas.

Language is one of the most important and the most powerful weapons in the hands of a State that is dedicated to controlling and transforming human beings into slavery. As Orwell put it, the purpose of language and thought control is as "an instrument with which to express the philosophies and thoughts that are permitted," and to make "all other sorts of thinking impossible." In a recent book, *Cogs in the Wheel* (1988), about "The Formation of Soviet Man," Mikhail Heller has observed that Soviet language is being "used to destroy the capacity for logical thought and to shut people's eyes to the true nature of things." As Orwell predicted, (the Soviet) language is one of the most important means of preventing people from acquiring more knowledge than the State wishes. The Soviet State does this by deciding what a word means and the circumstances in which it can be used. This is accomplished by possessing absolute power over the word and the means of transmitting it. This is why censorship was introduced in the Soviet Union ten days after the beginning of the October Revolution in 1917. Within the space of a year, all non-Communist periodicals and newspapers were shut down, and total control over the printing press was established. As Lenin asked in 1920, since "ideas are much more fatal things than guns, why should a man be allowed to buy a printing press and disseminate pernicious opinions calculated to embarrass the government?"

Soviet censors regard the world as a semantic system in which the information that is let through is the only reality. Instead of expanding vocabulary and accuracy of thought, emphasis is put on reducing independent thinking. In terms of truth or falsehood, the objective sense of the world no longer exists. Instead of dealing with real things, the censor hopes that his world view will be accepted. Only what the censor approves is said to exist; what he disapproves has no independent existence. To illustrate the effects of language control in the Soviet Union, Heller relates a story by a Soviet author who writes about a leader who

possesses magical powers. The politician declares a river's water to be vodka. "But the people who drink the water complain that though it tastes like vodka, it doesn't make them drunk." Language control in the Soviet Union is designed to make people accept anything the authorities want them to believe.

Liberty, the Mother, Not the Daughter, of Order

Fortunately for the human race, there always seem to remain some hard-headed realists that insist on maintaining contact with reality and thinking for themselves. At least these people, however few they might be, realize that appearances are not always what they seem to be. It is these people who appreciate the fact that though diversity appears to spawn chaos, it is usually out of the voluntaryist vortex of great diversity that true order springs.

The absence of compulsory standards has not hindered the development of English. As this overview of its history demonstrates, this is why English is such a rich, vibrant, "crazy" language. Just as "Liberty is the mother of order, not the daughter of order," so voluntaryism has been the mother of our English tongue. Lacking any official or centralized standards, English has evolved to become one of the world's most widely used languages. A clear parallel exists between English and other categories of the spontaneous order. The lack of a centralized, monopolistic justice system (police, courts, and law) would not impede the development of "common law" and "order" in a voluntaryist society. Just as dictionary-makers compete in the free market today, justice agencies would compete to provide their customers with the best possible rules and service at the lowest possible price.

Among many of the important institutions comprising the spontaneous order, one of them has remained largely unsullied by statist intervention. Voluntaryism has dominated the English language for most of its history (fortunately the teaching of language by the public schools only began two or three centuries ago). Money, another major institution of the spontaneous order, has been under the thumb of statist control almost since its very inception. If the history and present status of these two institutions is compared, is there any doubt about which institution works more smoothly, and whether voluntaryism or statism is a better method on which to base our social life? V

Additional Sources

Albert C. Baugh and Thomas Bable. *A History of the English Language.* Englewood Cliffs: Prentice-Hall, 1978.

M. M. Mathews. *A Survey of English Dictionaries.* Oxford: Oxford University Press, 1933.

William Morris, ed. *The American Heritage Dictionary of the English Language.* Boston: Houghton Mifflin, 1969. See Prefaces on "A Brief History

of the English Language," "The Indo-European Origin of English," and "Good Usage, Bad Usage, and Usage."

K. M. Elizabeth Murray. *Caught in the Web of Words: James A. H. Murray and the Oxford English Dictionary*. New Haven: Yale University Press, 1979.

D. G. Scraggs. A *History of English Spelling*. New York: Barnes & Noble, 1974.

Weights and Measures: State or Market?

by Carl Watner
(from No. 47, December 1990)

Introduction

Historically, the State has been largely responsible for coinage and the systems of weights and measures by which the metallic content of coins has been determined, but there is no reason why these operations should not be in the hands of private enterprise. The purpose of this article is to call attention to the parallel between the advocacy of private money and the free market provision of weights and measures.

A Brief History of Weights and Measures

Before there was a State, primitive man perceived a need for measurements of length and weight. For objects which he could lift and handle, nature suggested the arm, the hand's breadth, and the finger as units of measure, while the pace and the foot provided a ready means to measure distance. For small and delicate items, the earliest and most commonly available unit of weight was found in the form of the seeds of plants. The carat weight, used by jewelers and goldsmiths, was originally based on the weight of the carob seed of the Near East, or the locust tree seed. In Central Europe, the dry grain of wheat was another natural weight, which gave its name to the standard unit of one 'grain.' Although seed grains are all not equal, there is a reasonably constant uniformity among samples from the same locality and from the same harvest, which was sufficient to make the early 'grain' standard widespread from Europe to China.

Apart from the metric system, nearly all of the customary standards of weights and measures used in the western world have evolved from the systems used by the empires of the Middle East. The Beqa Standard, usually associated with the weighing of gold and silver, has by far the longest history of any of the ancient standards. It was used in Egypt throughout 3000 years of dynastic rule, and was then adopted by the Greeks as their standard about 700 B.C. The Romans derived their weights for the silver denarius and the gold aureus from the Beqa Standard. The Arabic empire of the 7th century A.D. used the Beqa Standard to weigh bulk gold,

and ultimately it became the basis for the English troy weight system (which was transmitted to medieval Europe by way of the ancient Greek city of Troy, hence the name).

Since the mining and use of gold and silver were a jealously guarded prerogative of royalty in the ancient world, the provision of coins became a government monopoly. The coining monopoly necessitated government intervention in the definition and promulgation of weights and measures because of the integral connection between measuring gold and silver, and determining the standards by which they were to be measured. To enforce its monopoly in these areas, governments had to erect safeguards for the proper manufacture and use of weights and measures, and simultaneously provide for the prohibition of new standards, which might compete with its existing standards. The involvement of early governments in these areas is well exemplified by the ordinances found in medieval Germany. The accuracy of early German coinage left much to be desired: many were underweight, others overweight. In an effort to prevent people from discovering and melting down the overweight coins, the government outlawed the private ownership of scales.

There were numerous other ways in which governments tampered with weights and measures. In the history of nearly every national unit of account, there can be found the story of chronic debasement, either in the form of reducing the weight or the purity of the metal in a given coin, without reducing its legal value. In other times and places, the State has redefined the content or standard of value of the monetary unit. The story of modern State control over currency and coinage may be summed up in the numerous hyperinflations of the twentieth century, in which the monetary systems of various countries have been totally destroyed. To say the least, the constitutional mandate of these sovereign nations—generally described as "to coin money, regulate the value thereof, … and fix the standard of weights and measures"—has demonstrated the total inability of coercive political power to ever accomplish these goals. While there is no guarantee that private enterprise would perform better over the long run, there is at least the assurance that if a private organization fraudulently altered its money or weight standards, other alternatives would be quickly offered by its competitors. The voluntary aspect of market competition in both weights and measures and monies most likely would insure us against the failure of a single coercive monopoly to honor its own laws and standards. In any case, it is hard to imagine private enterprise leaving a more sordid record than the State has left.

The Common Law of Weights and Measures

In any country, there must always be some commonly accepted standard(s) of weights and measures. The use of certain weights and measures, like the use of various kinds of money, originates with the people, in their economic transactions in the marketplace. There is no inherent reason why these common law standards

must be legalized or sanctioned by the State; adoption by the government adds nothing to their efficacy. Unless the new system demonstrates an overriding superiority to the one in use, there seems little reason for people to give up the old standard. Indeed, if a new system of weights and measure requires legislation to bring it into use, it must be lacking the advantages which the users consider necessary to cause them to adopt it voluntarily.

The one system developed and promoted by governments, the metric system, has still not been commonly accepted in the United States. Instituted by the revolutionary government of France in 1791, the metric system was supported by compulsory legislation wherever its use became widespread. In the United States, the Metric System Act of 1866, "officially recognized the use of metric weights and measures in commercial transactions," meaning that no contract or pleading in a government court was to be held invalid because the weights or measures expressed or referred to were metric. The Act also provided an official table of equivalents between metric and the customary units of measure. Despite the fact that there was never a similar Act of Congress authorizing the use of our customary systems of English weights and measures, those systems have always been recognized in government courts.

The duty of Congress or some private registry agency with respect to weights and measures is to define and preserve the standard, so that if some dispute arises, there is an independent, third-party verification of the weight or measure used. Lysander Spooner, a nineteenth century constitutional lawyer, explained this purpose thusly,

> Congress fixes the length of the yard-stick, in order that there may be some standard, known in law, with reference to which contracts may conveniently be made (if the parties *choose* to refer to them), and accurately enforced by course of justice when made. But there is no compulsion upon the people to use this standard in their ordinary dealings. If, for instance, two parties are dealing in cloth, they may, *if they both assent to it*, measure it by a cane or broom-handle, and the admeasurement is as legal as if made with a yard-stick. Or parties might measure grain in a basket, or wine in a bucket, or weigh sugar with a stone. Or they may buy and sell all these articles in bulk, without any admeasurement at all. All that is necessary to make such bargains legal, is that *both* parties should understandingly and voluntarily assent to them—and that there should be no fraud on the part of either party.

Spooner's analysis also sheds light on the evolution of new units of measurement, and their legal and commercial use. For example, prior to the development of oil pipelines, oil was commonly moved in barrels, and transported by horse and wagon, or boat. The term 'barrel' as we know it today, and as used by the OPEC countries, is a measure of 42 gallons of petroleum, that came into use only during the last 125 years. In the early 1860s, a barrel of oil usually meant a cask of oil, re-

gardless of its size, for there were no standard-size casks in use. Variations in the oilman's barrel persisted until at least 1872, when a producer's agreement resulted in a fixed price for a 42 gallon barrel of oil. Today, it doesn't matter if oil was ever shipped in 42 gallon barrels or not, since it is now moved by pipeline, oil tankers, and tank trucks. What is important to us, is that the custom still persists of buying and selling oil by the barrel. The oil pioneers did not (indeed they could not) wait for the government to proclaim a unit by which they should measure and sell the oil they discovered. Rather they adopted measurements from other liquids (the whiskey barrel of western Pennsylvania, where oil was first commercially exploited, was a 42 gallon container). Eventually there arose from the competition of various interests (the producers, transporters, and consumers of oil), the industry standard of a 42 gallon barrel. It did not originate in the halls of any legislature and needed no governmental sanction.

The history of the oilmen's barrel is just one incident in the standardization of weights and measures in modern industrial America (there are many others). For example, the development of the electrical industry explains why product integration and standardization were needed. It also exemplifies the manner in which the free market operates. Light bulbs must screw into household sockets; electrical appliances must be supplied with the proper voltage. The United States electrical industry agreed on standards because it made economic sense, not because they were imposed by Congress.

Producers who do not wish to abide by the standards, or who wish to introduce new standards, are not prohibited from doing so; but neither is there any guarantee that their efforts will find consumer acceptance, which is the ultimate test of the market. Another example, much closer to home to the readers of this newsletter, involves the decimalization of the troy ounce, which was pioneered by Conrad Braun and Gold Standard Corporation. The troy ounce, by which gold has historically been traded in the modern world, is based upon twelve ounces, each of twenty pennyweight. Nevertheless, economists and gold advocates believed that gold gram coinage (rather than pennyweight coins) would be the most appropriate way of introducing gold coins to the public. After gold ownership became legal, several mints, including the South African government, tried to market gold coins of 5, 10, and 20 grams. These coins were not widely accepted by the public since it was difficult to readily calculate their worth. Gold Standard solved this problem by decimalizing the troy ounce, producing coins of 1/10, 1/5, 1/4, and ½ of an ounce, whose value could easily be determined in relation to the spot price of gold.

Conclusion: Compulsion or Voluntaryism?

Justice in weights and measures systems means the dominance of those systems which best fulfill the needs and desires of the consumers and users on the market. In the absence of coercion, fraud, and government intervention, those

weights and measures systems which prevail are necessarily the most satisfactory (taking into account the past state of affairs). The advantage of market-oriented weights and measures is that they are responsive to changes in consumer needs and demands, as well as new technological developments. Compulsory government standards can only be changed by fiat and must often be imposed by force.

Like the rest of human knowledge, the science of weights and measures is ever-evolving. It has roots in the past, and there exists a capital investment in any given weights and measures system. Not only human inertia, but the financial stake in existing standards impedes the acceptance of new weight and measurement systems. Just as Gresham's Law of Money points out that in the absence of government interference, the more efficient money will drive from circulation the less efficient money (if the individuals who handle money are left free to act in their own interest), so in the absence of government-mandated standards, the most naturally-suited systems of weights and measures will eventually drive the less naturally-suited out of use.

The National Bureau of Standards, the federal agency most responsible for weights and measures, is subject to the same criticisms that can be directed against all governmental operations. It is funded by taxation, so that people who do not desire its services are forced to pay for them anyway. The services it provides are not subject to the test of the market, therefore either their quality and/or price are not as good as those that could be provided by private enterprise. There are no services performed by the Bureau that could not be accomplished by private individuals operating in a free-market framework. The continuing research carried out by scientists at the Bureau may be necessary to the improvement of weights and measures systems and the mastery of metrology (the science of weights and measures). However, there is no reason why, if there is a market demand for such services, they would not be forthcoming from private research labs, each competing with the other to provide the best possible service at the lowest price. If the free market can provide better quality, price, and service in the area of money and banking, there is no reason why it cannot succeed in the realm of weight and measures. V

Voluntaryism and the Evolution of Industrial Standards

by Carl Watner

(from No. 52, October 1991)

The State is involved in just about everything we do. The alarm clock that wakes us up in the morning is set according to government-mandated time. The radio or TV station that we turn on must have a government license. Nearly all the other appliances we use are subject to regulations regarding their manufacture and sale.

If you live in an area where there is city water, you cook and shower with water you purchased from the government. Your toothpaste has been approved by some branch of the government; so has the towel you dry yourself with, as well as your clothes. The food you eat must pass certain governmental standards and labeling requirements. You drive to work in a government-approved and licensed vehicle, whose gas mileage has been certified by yet another government agency. You drive on a government-owned road, and get paid by check or cash in government-denominated units.

How has the State created all the technical standards by which it regulates and governs our lives? For the most part, the various branches of government in the United States rely upon parameters that originally evolved on the free market. Only after these standards have proven themselves workable and acceptable does the State expropriate them, and attempt to make their use compulsory. The history of the standard time zones used in the United States are a perfect example of this. First developed by the railroad industry for a safe, yet practical way of overcoming the use of local mean time across the country, the time zone plan was adopted by an early predecessor of the Association of American Railroads on November 18, 1883. The whole program was accomplished prior to the onset of the Interstate Commerce Commission, without the use of government legislation or compulsion. In fact, Congress did not make the railroad's time zone plan legally binding on the country until the passage of the daylight savings law during World War I.

In its broadest sense, standardization applies not only to weights and measures and material objects, but permeates nearly all fields of human activity. The process of establishing, by custom or general consent, a rule or model to be followed is this article's working definition of standardization. "Folkways, taboos, moral codes, ceremonies, religious rituals, educational procedures, social and business customs, industrial practices, and law itself, are all forms of standardization" described in the *Encyclopedia Britannica*. "Language standards enable us to articulate our thoughts; legal standards enable us to live together—all social organization would be impossible without social standards." Language, which has been discussed from a voluntaryist perspective in Whole No. 45 of *The Voluntaryist*, is probably man's most important example of voluntary standardization. Without agreeing on the meaning of words and sounds, there would be no way of communicating with other individuals. In so far as the English language is concerned, this has been accomplished over the centuries without government involvement.

Part of what I am trying to document in this paper are some of the ways in which industrial standards have evolved and affected our lives. The voluntary development of industrial guidelines, particularly in the United States, is an integral part of the system of private ownership and private production—which has made this country the most productive on earth. The importance of this fact, from our

perspective, is that the successful formulation, implementation, and functioning of such standards is entirely dependent on voluntaryism from start to finish. The use, value, and efficiency of industrial standards clearly does not need or require compulsion of the State.

The Consensus Principle

The more important industrial customs and trade practices are, in a very real sense, industrial law, no less than statute or common law. "Often more potent than much of the legislation on the statute books, they constitute a powerful system of controls, which become generalized 'law'." Most standards have come about, like our language standards, through a more or less unconscious evolutionary process. Even the development of the common law is a remarkable example of the standardization process at work. "The common law is the result of gradual growth of a consensus of opinion as to what conduct on the whole will produce the best possible society. It is a slowly acquired body of standardized conduct," which does not depend on the legislature, but rather on the actions and acceptance of the people involved. It differs from legislation, which usually involves a majority mandate.

Howard Coonley and Paul Agnew, writers on the subject of "The Role of Standards in the System of Free Enterprise," have explicitly described the standardization process as resting on the principle of consensus. "Standards must represent an agreement among those concerned with its subject matter," whether the subject be industrial or social. Industrial standards, in particular, are "issued only when supported by a majority so substantial as to approach unanimity—almost never on a mere majority vote as so frequently happens in legislatures." They approvingly quote Sir John Salmon, author of *Jurisprudence* (1924, p. 364) who succinctly stated the consensus principle in the following manner: "There is in general no better evidence of the justice of an arrangement than the fact that all persons whose interests are affected by it have freely and with full knowledge consented to it." If this isn't what voluntaryism is all about, what is?

One of the main purposes of standards is to remove conditions that lead to potential danger or controversy. Rules of the road like driving on the right-hand side of the road, help prevent vehicle collisions. Social standards, such as manners, are devices for reducing friction and conflict. Many industrial standards serve the same function, but are usually definitional in nature since "all buying and selling in which goods do not come under the actual eye of the buyer must necessarily be based upon some sort of standard." Other industrial standards help identify parts that do not fit, that are not suitable for their intended purpose, and that do not live up to their sales representations. Since the beginning of the twentieth century, such standards have often been brought into existence by a deliberately planned, cooperative effort, often spearheaded by groups known as standardizing bodies. One specific example will suffice at this point. The Chicago Board of Trade was

making use of specialists to inspect and certify the quality of grain as early as 1856. Other examples include the numerous codes of ethics adopted by commercial, industrial, and professional associations; much of the work of trade associations; rules and machinery for the arbitration of commercial disputes; and the rules laid down by the governing bodies of organized sports such as baseball, football, and basketball.

History of Standards Institutions

Sometimes standardization has been brought about by the threat of State intervention in industrial affairs, and at other times it has been brought about by the requirements of government in wartime. The American National Standards Institute's (ANSI) predecessor was founded in 1918, and was given a great boost by the standardization demands of the War Board Industries during World War I. Like its international counterpart, the International Organization for Standardization (ISO), and British sister, the British Standards Institutions (founded 1901), the ANSI considers itself part of "the world's largest non-governmental systems for voluntary industrial and technical collaboration." The tremendous amount of government involvement in such standardization bodies makes their assertion questionable (how purely voluntary are they?), but it remains true that the primary motivation for their work has usually been found in the marketplace.

The "economics of standardization" helps build healthy profits among all participants. For example, insurance companies that insure against property damage have the largest vested interest in promoting fire safety. Consequently, water hoses and fitting have always been of primary interest to them. Property damage would be likely to increase if firefighters could not connect their hoses to hydrants or their hoses to one another. This is exactly what happened during the Chicago fire of 1871, when fire engines from many other cities were sent there to augment the local equipment, and none of them could be connected to the Chicago hydrants because of the differences in the screw threads. After this experience the American Water Works Association developed a standard fire hose coupling to meet such situations in the future. Practically nothing was done about adopting the standard by local municipalities because of the cost and human inertia. The same conditions as those at the Chicago fire existed at the Boston Fire of 1872, the Baltimore fire of 1904, and the San Francisco fire of 1906. Finally, the National Board of Fire Underwriters took a hand in the matter. In the early 1920s, an American Standard for Fire Hose Couplings was published in conjunction with the American Standards Association and the American Water Works Association. Any community which adhered to the new standard obtained a lower fire insurance rate, and in a short time the standard became widely used.

One of the world's largest standardizing institutions, United Laboratories, was created because of the Chicago Board of (fire) Underwriters, needed an electrical expert to investigate the safety of the Palace of Electricity at the Great Columbian

Exposition, which they were insuring in 1893. William Merrill, their safety investigator, founded the Underwriter's Electrical Bureau, the following year. Its primary purpose was to furnish fire risk data on a growing array of electrical goods. As soon as Merrill's new firm established its expertise in the fire prevention area, it was recognized by the National Board of Fire Underwriters, which began its long-time patronage of the firm. By 1901, Merrill had moved his company several times, each time to larger facilities, and changed its name to Underwriters Laboratories, Inc.

By the time William C. Robinson became the Chief Engineer in the early 1900s, the company was in a position to expand outside the fire prevention and electrical areas. Robinson's initial thrust was to establish safety standards for fire hoses, gasoline and kerosene engines, alcohol heaters, fire extinguishers, automobile headlights, bumpers, and safety glass. UL also expanded by fire-testing building materials for the National Board of Fire Underwriters and by inspecting electrical wire for the Wire Inspection Bureau, an industry association devoted to maintaining quality in the production of electric wire.

In 1915, UL's Label Service had issued 50 million labels attesting to the quality of the merchandise for which it had set production and safety standards. By 1922, the Label Service was issuing over 50 million labels per month. During this era, Underwriters Labs was employed by the National Aircraft Underwriters to certify the safety of all the aircraft they insured, and to test the proficiency of the pilots that flew these planes, whether commercial or private. "When the government ultimately took over this field, it could use UL standards as a ready point of departure. They may be considered the forerunners of today's federal flying regulations."

Underwriters Labs has always worked on the cutting edge of the new technology by meeting the need for safety certification of products and materials. Although totally independent of the insurance industry, it helps set the standards which insurance companies require. Its headquarters are in Northbrook, Illinois with three other laboratory facilities throughout the country. It is clearly international in scope, as it operates programs in about 75% of the world's political jurisdictions. That makes it the largest independent, not-for-profit safety testing organization in the world, employing more than 3800 people on its staff (nearly 1000 are graduate engineers). It publishes safety standards, product directories, and other safety-related information. It employs a network of inspectors who visit manufacturing facilities worldwide to insure compliance with UL production standards. "A product that does not comply cannot bear the UL Mark. The UL Mark is recognized by those who seek and rely on third-party certification of products." Its growth over the years is largely related to the dedication and expertise of personnel, who are devoted to UL's motto, "testing for public safety." Today, UL Marks are applied to over 13,000 different types of products. In 1989, the UL Mark appeared on more than 6 billion new products entering the marketplace. During

its lifetime, UL has published more than 500 "Standards for Safety." It is an organization that, in the words of its President, has "touched the lives of almost every person living in America."

Mass Production and Standardization

Standardization in the United States was not strictly a late nineteenth and early twentieth century phenomenon. As early as 1801, Eli Whitney demonstrated the interchangeability of parts in rifles to government officials in Washington. "The keynote of American development was mass production of standardized articles." Standard-sized parts could be assembled quickly, were replaced easily and cheaply, and eliminated the need for hand-fitting. "From the making of muskets and revolvers this method of production spread to that of clocks, woodwork, sewing machines, harvesters, locks, and the like."

One of the most significant events in the history of mass production took part during the early part of 1908. Henry Leland of the Cadillac Motor Car Company took three newly-produced Cadillacs to London to demonstrate the interchangeability of their parts. The test took place under the supervision of a control-committee of the Royal Automobile Club of England. The cars were dismantled, and the control-committee scrambled the parts into three piles of 724 parts each, replacing 89 of the parts with new parts from stock. The reassembly was done without hand fitting—much to the astonishment of British engineers. The cars were driven 500 miles over the Brooklands track, with only one minor adjustment. This test was given world-wide publicity and exerted an important influence in the extension of mass production methods, not only in England, but in the United States and other countries.

Automobile manufacturers were some of the chief "movers and shakers" in the standardization field in the early twentieth century. The Association of Licensed Automobile Manufacturers formed a technical committee soon after its founding in 1903. Following its abandonment in 1911, members of the National Automobile Chamber of Commerce and the Automobile Board of Trade were responsible for instituting automotive cross-licensing agreements which went into effect during 1914 and 1915. The pooling effect of automobile patents was a remarkable extension of the principle of standardization through intercorporate cooperation. It reduced litigation and promoted parts compatibility throughout the industry. In some respects, it served as the forerunner of the Society of Automotive Engineers which was formed in 1917. The SAE's great work began with the standardization of spark plugs, carburetor flanges, and continued with screw threads, and bolts and nuts. Its early standards for lubricants, led to the practice of marking oil with viscosity number, a practice which it initiated in 1926. Today nearly every motorist that purchases motor oil knows that SAE 10 means a light oil, and that 50 weight oil is a heavy one.

Railroad Standardization and Other Industrial Standards

Although the automobile played a great role in standardizing parts and mass production, it was really the railroad, with its far-ranging impact on daily life, that was responsible for the origin of many industrial standards. "Before the great railway boom of the middle 1800s, markets were local and what was required could be supplied from local resources." Widespread rail transport, as well as the increasing ability to sail, and ultimately, fly across the seas, soon gave rise to the need for greater standardization whether in the realm of time-keeping, or simply in the interchange of rail cars from one railroad to another.

As mentioned earlier in this article, the railroad industry was responsible for standardizing local mean times and for implementing the system of four times zones which currently governs the keeping of standard time in the continental United States today. The idea of reducing the multiplicity of local times in use throughout the continent was largely generated out of the railroads' desire to simplify their operating schedules, improve their efficiency, and increase operating safety. The standard time plan was a voluntary arrangement implemented by an association of railroads, known as the General Time Convention.

As early as 1872, the railroads directed their attention to the problem of the proliferation of local times, and their effect on operating schedules. A meeting in St. Louis that year led to the formation of a permanent organization, ultimately known as the Association of American Railroads. The plan for four time zones, each one hour apart, was first promoted by Charles Dowd during the 1870s. The practical implementation of Dowd's idea was left to William Frederick Allen, the secretary of the General Time Convention, and editor of the *Official Guide of the Railways*.

Allen worked out the details of four standardized time zones by relying on certain guidelines: first, "that nothing should be proposed for which there was not at least a closely approximate present example"; second, "that, as far as possible, all changes from one standard to another should be at points where changes were then [being] made"; and third that all differences in time should result in "the substitution of a variation of an even hour for one of odd minutes." His plan was first proposed in April 1883, adopted at a meeting of the General Time Convention on October 11, 1883, and set for implementation on Sunday, November 18th. This was referred to in railroad history, as the day of "two noons," since the western part of each time zone experienced a noon, according to local mean sun time, and then a second noon, according to the new standardized time.

This "noiseless revolution" involved millions of people, from the Atlantic to the Pacific, who peacefully set the hands of their watches and clocks to railroad standard time. Near unanimity existed because the utility of the new time plan appealed directly to the good common sense of all. However, there were a few individuals and local communities (including the federal government's jurisdiction of Washington, D.C.), and a small number of localized railroads, that initially re-

fused to use the "new" time. Like the old Amish today (who set their clocks an hour ahead of standard time), no one forced them to use the new time. It was up to them to determine its usefulness.

The railroads were also responsible for standardizing many other features of their operations. During the Civil War, the lack of a uniform track gauge was seen as a major barrier to efficient transportation. During the 1870s, the owners of broad gauge track found themselves handicapped by their inability to interchange traffic with the majority of lines which operated on a narrower gauge of 4 feet 8½ inches. Most of the South's track was standardized to this size during the three weeks between May 12, and June 2, 1886. "Twelve thousand miles of 5-foot track in the South was standardized with no traffic disruption longer than 24 hours." By 1890, the American railroad system of tracks was substantially standardized. "This was achieved not as the result of legislation, but of business adjustment, compromise and cooperation among the many hundreds of private companies which built and operated the American network of rails."

"As interchange of cars among railroads became standard procedure, it was found to be desirable to adopt uniform standards in other matters, too." Coupling devices, standard sizes for cars, and uniformity for brakes and axles, were some of the earliest concerns. Two of the earliest railroad groups were the Master Car-Builders Association, founded in 1867, and the General Time Convention founded in 1872, which became the American Railway Association in 1891. Some of the latter's early contributions included standard interlocking and block signal systems (1897), standard cipher code (1906), and standard code of air brake and train air signal rules (1908). A Bureau for the Safe Transportation of Explosives was established in 1905. Its rules became the basis for the ICC regulations passed in 1908.

There are literally thousands of standards, some of which have been developed by technical societies and trade associations. Groups like the American Banker's Association have established check specifications and clearing procedures; the Gemological institute of America has standardized diamond grading; the American Society of Mechanical Engineers appointed a Standardization Committee on Pipe and Pipe Treads, which began work in 1892. The American Gas Association established a testing lab in Cleveland in 1925, and the standardization work of the American Petroleum Institute started in 1923. Pioneer work in lumber standardization was done by the various hardwood lumber associations, which for many years have maintained an elaborate inspection and grading service. The Southern Pine Association was one of the earliest to promote the use of stamps and grademarks. The National Lumber Manufacturers' Association was involved in the project of establishing national lumber grades as American standards, under the auspices of the American National Institute or its predecessors.

One of the most interesting standardization "stories," if for no other reason than it seems so pedestrian, is the history of screw thread standardization in the

United States and Britain. It is one of the great ironies of industrial history that in 1864, twenty-five years after Sir Joseph Whitworth had standardized screw threads in Britain, that William Sellers, president of the Franklin Institute of Philadelphia developed his own system of screw threads for the United States. The system proposed by Sellers differed from Whitworth's in several respects—the sizes and pitches represented the "fair average" of American practice and were more comprehensive than Whitworth's. The system was studied by a special committee of the Franklin Institute and adopted on December 15, 1864. The committee took steps to make the standard widely known. Within a decade it was accepted by government engineers in the Army and Navy, by the Master Mechanics Association and the Master Car-Builders Association. The railroads were the strongest supporters of the standards because, among other things, the practice of exchanging cars from one road to another was growing, and interchangeability of nuts and bolts of other companies' cars was becoming increasingly important. The incompatibility of the Whitworth and Sellers systems created difficulty during World War I and II when British and American forces had many occasions to need interchangeable parts. Beginning in 1918, and continuing sporadically until 1948, groups in both countries tried to reconcile the two systems. At a conference in Washington in 1948, the U.S., Canada, and the U.K. adopted a Unified Thread System that incorporated features of both the Sellers and Whitworth system.

Justice in Standards of Weights and Measures

It is plainly obvious that governments can only have a limited impact in the area of standards. Much as the State would like to claim responsibility for it, many economists have pointed out that the origin of monetary standards is entirely natural. Money "is not the invention of the State or the product of a legislative act. Even the sanction of political authority is unnecessary for its existence." As with money and other standards, people cannot and will not be forced to use standards which do not adequately serve their needs. History offers repeated examples where State-imposed standards (especially monetary standards) have been cast aside because they lost their utility.

Just as Gresham's Law of Money points out that in the absence of government interference, the more efficient money will drive from circulation the less efficient money (if the individuals who handle money are left free to act in their own best interests), so in the absence of government-mandated standards, the most naturally-suited systems will drive the less satisfactory systems out of use. The advantage of market-oriented standards is that they are responsive to changes in consumer demand. If people are to be left free to determine the prices at which they buy and sell goods, why should they not be left free to define the standards of the goods which they intend to trade? Compulsory, government standards can only be changed by fiat and must be imposed by force. One of the dominant arguments against the metric system was precisely this: since compulsory laws are re-

quired to bring it about, it must not have a sufficient number of advantages and benefits which would lead people to adopt it voluntarily.

The numismatic industry, today, offers us an insight into how market-oriented standards evolve. For years, coin collectors have been faced with the problem of how to grade the rare coins which they collect. In 1949, Dr. William H. Sheldon devised a grading scheme based on a numerical rating of 1 to 70, which related to the customarily-used descriptions of large cents ("fair, good, very good, fine, very fine, extremely fine, uncirculated, and proof"). The Sheldon numerical standard was slowly adopted by hobbyists, and by the early 1970s was being applied to nearly all coins. In 1977, the American Numismatic Association endorsed the Sheldon scale.

Although there may be differences of opinion about the grade of a coin, the Sheldon system is now used by nearly everyone—from hobbyist to expert—to assign coin grades. No collector or dealer is forced to accept these grading standards when he trades coins, but they are accepted in the numismatic industry because they serve the purpose of communicating a commonly understood description of coins. *Coin World*, one of the industry's largest papers, requires that advertisers use at least one of four authoritative grading books as the basis for describing coins listed in their ads.

The demand for more objective grading standards led to many evolutionary changes in the coin industry during the decade of the 1980s. When sellers and purchasers both had to assign and then agree on the grade of a coin they were trading, the seller naturally tended to overgrade, and the buyer to undergrade. In 1979, the American Numismatic Association Certification Service conceived of the idea of independent third-party grading. Buyers or sellers could submit their coins to an independent organization, which then assigned the coin a grade. Although there was initial reluctance to accept third-party grading, by 1987, several other companies were competing with ANACS. The most significant development involved the creation of the Professional Coin Grading Service (PCGS) which offered guaranteed third-party grading. "Never before had a grading service guaranteed that it would pay to the owner of a coin the difference in the event that standards changed, or that the coin was incorrectly graded." Guaranteed grading was soon embraced by PCGS's major competitor, Numismatic Guaranty Corporation of America (NGC), and both were instrumental in simplifying grading by encapsulating coins in holders (to prevent wear and tampering), by assessing one overall grade to the coin (rather than an obverse and reverse grade), and by expanding the Sheldon scale for mint state coins from five points (Mint State 60, 63, 64, 65, and 67) to eleven points (60 thru 70).

The coin industry has done a great deal to standardize grading and police itself during the last ten years. The growth of services like PCGS and NGC, and of dealer associations like the Professional Numismatic Guild, have brought self-respect and legitimacy to the rare coin business. "Without government inter-

vention, the coin market has done a remarkable job of cleaning itself up. The ambiguity and biases inherent in coin grading, intentional overgrading, lack of uniform grading standards and terminology, inefficient trading methods, and poor liquidity," have been overcome by allowing free market forces to operate. All of this has come about without involving the government (except the Federal Trade Commission's Investigation of PCGS, which culminated in 1990) because in the absence of government intervention the most user-oriented and consumer-oriented standards and systems will survive.

The Problem of Objectivity in Standards

While the reliability, honesty, and objectivity of free market institutions are generally rated quite high by many in the numismatic industry, it must never by forgotten that coin certification companies are simply providing a service to their customers. "They render their professional opinion concerning the grade of a coin according to the standards in effect at the time they perform their service." No third party is obligated to accept their opinion concerning the grade of a coin, and there is no guarantee that any one else will grade the coin in the same fashion. Nor is there a guarantee that commonly accepted, industry-wide grading standards will not change in the future. While these third-party grading services have upgraded the professionalization of coin grading by using experts, and have helped eliminate the inherent conflict between buyer and seller as to the determination of the grade of the coins they are trading, there is no guarantee—other than widespread market acceptance—that their standards are any better than anyone else's. "Buyers must still examine each piece to decide for themselves if the price being paid is worth the value being received in comparison to other pieces available."

The important point here is to understand that people in government employment, like Federal Trade Commission employees, for example, have no more special knowledge or interest in the area they regulate than do those in the free market. The only true test of the market is to rely on an outcome based on the absence of force or fraud. FTC hearing judges—even if they were coin collectors or investors themselves—are hardly any more expert than the coin graders at PCGS or NGC. Nor do they have a vested interest in establishing and maintaining the integrity and reputation required by firms like PCGS, who only obtain customers voluntarily. If people are not pleased with a grading service, they will go elsewhere, or simply grade their own coins as best they can. PCGS and the like can only succeed if they please their customers and serve the market.

This leads to the question of what is reasonable, and who decides what is reasonable when it comes to the determination of standards in general. First and foremost, any solution to this question must be based on the satisfaction of the buyer and seller in any transaction—since neither one of them is forced to enter into any exchange in which they are not satisfied with the objectivity or reason-

ableness of the standards by which they trade. If there is a dispute about the grade of a coin, there is the option of resolving the differences to the satisfaction of both parties, or of not completing the contemplated exchange. If a person is consistently unreasonable in his claims, he will eventually find himself without trading partners in the market, a situation which he may or may not desire. Other market participants do not coerce him into accepting their standards. He will either persist in his own ways, or the economic pressures resulting from his lack of exchanges with others will convince him to change his ways. That is the voluntaryist way.

As Ayn Rand once wrote, "Who is the final authority in ethics? … Who 'decided' what is the right way to make an automobile … ? Any man who cares to acquire the appropriate knowledge and to judge, at and for his own risk and sake." Her answer is quite applicable to the use and determination of standards. Standards are based upon the laws of nature, our understanding of them, and the knowability of objective truth. When two or more persons are in disagreement about standards, whether it be the grade of a coin or the quality of steel, the voluntary way of settling their differences is by reliance on the objective evidence. The answer to the question as to who shall make the choice is: "whoever undertakes to evaluate the objective evidence." Since the human mind is finite and human problems are enormously complex, we must always remember that when two men of equal sincerity disagree, it is quite possible they may both be wrong. "But the significant thing is that their very differing is predicated upon the assumption that there is some objective truth to differ about, and that the pursuit of objective truth is worthwhile. Error is simply unintelligible without the existence of objective truth attainable by human reason."

Conclusion

Viewed historically, the evolution of the English language is a perfect example of how the market place arrives at solutions to human problems. Since there is no single group of people or institution in our society that is charged with the responsibility of promulgating rules or determining what is "proper" English, who decides? An eighteenth century proponent of voluntaryism in language, argued that "the best forms of speech will, in time, establish themselves by their own superior excellence." Good usage does not depend upon the force of law, but simply rests upon the sanction of custom and good sense.

As the English language has evolved there is no absolute standard of rightness. Each speaker or writer recognizes that "good" usage is his or her own affair, with due regard to the usage of other good writers and speakers. The duty of determining what is "good" or "bad" English falls upon each of us, just as it does in every other affair of life.

This is exactly how the principle of voluntaryism operates and pervades every field of endeavor, if not trampled upon by the State. This voluntary system in-

cludes all that is not governmental or not compulsory, all that people do for themselves, their neighbors, and their posterity, of their own free will. It comprehends the efforts of parents on behalf of their children, of religious bodies, of charitable societies, of wealthy benefactors, of cooperative groups, of private associations, of industrialists and inventors trying to make a profit by offering their wares to the world. Voluntaryism is based on individual initiative and the liberty to act in a world where prior permission from anyone is not required but those with whom you interact. The voluntary principle offends no person's conscience, exacts from no person's purse an unwilling contribution, favors no sect, rejects all political parties, and neither enforces nor forbids religion. It gives no one the slightest ground for complaint because it recognizes each individual as the sole arbiter within his or her own domain.

In a very real sense all the conservational forces of civilization are within the realm of standardization. This includes our social institutions, our customs and common laws, literature and art, science and commerce. "They all involve the fixation of advances which have been made into a better understanding of the world, and such advances are in turn points from which to make fresh advances" in the future. As this article has hopefully demonstrated, voluntaryism and the voluntary principle are the underlying framework and basis for standardization and the advances which standardization makes possible.V

Short Bibliography

Howard Coonley and P.G. Agnew. "The Role of Standards in the System of Free Enterprise." In Paul Agnew, ed., *Policy and Historical Papers*. New York: American Standards Association, April 1941.

John Perry. *The Story of Standards*. New York: Funk and Wagnalls Company, 1953.

"Standardization." *Encyclopedia Britannica*, Chicago: 1947, vol. 21, pp. 305–308.

Carl Watner. "The Noiseless Revolution." *The Voluntaryist*, No. 10, October 1984.

Carl Watner. "Voluntaryism and the English Language." *The Voluntaryist*, No. 45, August 1990.

Carl Watner. "Weights and Measures: State or Market?" *The Voluntaryist*, No. 47, December 1990.

Albert W. Whitney. *The Place of Standardization in Modern Life*. Washington: Government Printing Office, 1924.

C. Douglas Woodward. *BSI: The Story of Standards*. London: British Standards Institution, 1972.

Yesterday, Today, Tomorrow. Underwriters Laboratories Inc. Northbrook: circa 1985.

"One of Our Most Human Experiences": Voluntaryism, Marriage, and the Family

by Carl Watner
(from No. 53, December 1991)

Introduction

As with my article on education a few issues ago, this essay is sparked by the fact that I am a husband and parent. References have been made in earlier issues of *The Voluntaryist* about my marriage (Whole No. 20) and family (Whole Nos. 26 and 40). In the latter, I referred to my second son, Tucker, whose namesake, Benjamin Tucker (publisher and editor of *Liberty*, 1881–1908), was never legally married in the eyes of the State. Nevertheless, he and his wife, Pearl, were considered by their daughter to be "the most monogamous couple," she had ever seen, "absolutely devoted to each other to the end."

As these and other freedom-seekers have shown, marriage and the family can be respected institutions without involving either Church or State. Indeed, it is possible that a man and woman may fall in love with one another, marry, remain monogamous, raise a family, and lead honest, productive lives without seeking the permission or sanction of any civil or ecclesiastical authority. I believe that marriage and the family, if they are not coercively interfered with, are voluntary in nature. Just as the individual is the fundamental unit of society, so the family is the chief structural unit of society. The State only serves to disorganize and disrupt the family and kinship systems, which are the fundamental infrastructure of voluntaryist communities. Consequently, this article will review the origins, evolution, and history of our familial and marital institutions from a voluntaryist point of view.

Voluntaryism and Marriage

Anthropologists and social commentators have observed that, practically all—including even the simplest—human societies exhibit a complex system of "universal and primeval institutions." These include the incest taboo—the prohibition of marriage and/or sexual relations within the immediate family; exogamy—rules ensuring marriage outside a certain group, usually larger than the primary group; kinship—the recognition of various categories of kin who behave toward one another in prescribed ways; marriage—which universally legitimizes offspring and creates in-law relations; the family—the basic economic unit of so-

ciety; a division of labor based on age and sex; and the notion of territory (which includes the concept of property). Although our discussion will primarily focus on marriage and the family, the point is that for untold centuries these patterns of group behavior have performed a wide range of valuable societal functions regardless of how the State or Church has interfered with them or regulated them.

Marriage, in all its various forms, has probably existed almost as long as men and women. For thousand of years, it has been recognized that "a permanent relationship between a man and a woman for the purpose of nurturing children, offers the best chance of human happiness and fulfilment." This union is necessitated by certain biological facts. Not only does it take both a man and a woman to have children, but the presence of a father is of considerable benefit, given the great length of infancy, and the hardships encountered by a mother raising young children by herself. The essence of marriage seems to be found in the living together (cohabitation) of a man and a woman, with some sort of solemn public acknowledgment of the two persons as husband and wife. Thus, it becomes a socially and culturally approved relationship between the two, which includes the endorsement of sexual intercourse between them with the expectation that children will be born of the union. The ultimate societal purpose, of course, is to make provision for the replacement of its members.

George Elliott Howard in his three volume work, *A History of Matrimonial Institutions*, noted that the primitive and medieval marriage was strictly a lay institution. "There was no trace of any such thing as a public license or registration; no authoritative intervention of priest or other public functionary. It [was] purely a private business transaction. Either the guardian gives away the bride and conducts the ceremony; or else the solemn sentences of the ritual are recited independently by the betrothed couple themselves. These formalities and the presence of the friends and relatives are only means of publicity. … Rights and obligations growing out of the marriage contract are enforced … just as other civil rights and obligations are enforced." It was only gradually beginning around the 13th century, that this ancient usage was superceded by the Church's claim to jurisdiction.

Due to its strictly personal nature, marriage has nearly always had to include the consent of the parties. In fact, in the theory of American law, no religious or civil ceremony is essential to create the marriage relationship. A common-law marriage may be defined as a contract which is created by the consent of the parties, just as they would create any other contract between themselves. A common-law marriage need not be solemnized in any particular way; rather it is based on mutual agreement between persons legally capable of making a marriage contract in order to become man and wife. It is an unlicenced and unrecorded affair from the State's point of view. Common-law marriages are based on the recognition of the fact that marriages took place prior to the existence of either Church or State. As an early advocate of free love put it, "a man and a woman who … love

one another can live together in purity without any mummery at all—their marriage is sanctified by their love, not by the blessings of any third party, and especially not the blessing of any church or state."

Martyred for Marriage

The first couple in America to be "martyrized" by state marriage laws was Edwin C. Walker and Lillian Harman, of Valley Falls, Kansas. They attempted to assert their right to live as husband and wife without the benefit of the State's sanction. Instead of leaving them alone, the State of Kansas prosecuted them, and imprisoned them in the late 1800s. Both Walker and Harman were part of the radical tradition of free love and "free marriage," a term that epitomized for them "the freedom of the individual within an enlightened partnership in which neither partner would rule or be ruled." Edwin Cox Walker was born in New York in 1849. He had farmed, been a school teacher, and by the early 1880s became a noted speaker and writer on the topics of free-thought and free-love. It was during this time that he made the acquaintance of Moses Harman, editor and publisher of the *Kansas Liberal*, which later became *Lucifer, The Light Bearer*. *Lucifer* took up the cudgel for anarchism and free love, but its "specialty [was advocating] freedom of women from sex slavery."

Moses' sixteen year-old daughter, Lillian, wed Walker, thirty-seven, on September 19, 1886, in what they both described as an "autonomistic marriage" ceremony. "The ceremony began with the reading of a 'Statement of Principles in Regard to Marriage' by the father of the bride," in which Moses Harman explained his opposition to male dominance in marriage. Conventional wedlock placed the man in power, even to the extent of merging the "woman's individuality as a legal person into that of her husband" by requiring her to surrender "her name, just as chattel slaves were required to take the name of their master. … Marriage being a strictly personal matter," Harman denied "the right of society, in the form of church or state, to regulate it or interfere." To acknowledge the right of outside "authorities" to dictate in these matters would be to "acknowledge ourselves the children or minor wards of the state, not capable of transacting our own business." He compared his stand on marriage to his position on temperance: "he practiced abstention from liquor and he practiced monogamy in marriage, but he opposed state enforcement of his beliefs on anyone else; true morality, he believed, demanded liberty of choice in such matters." He rejected all laws which limited the solemnization of marriage to the civil or religious authorities. External regulation by the State or Church was "not only wrong in principle, but disastrous to the last degree in practice." Harman regarded "intelligent choice,—untrammeled voluntaryism,—coupled with responsibility to natural law for our act(ion)s, as the true and only basis of morality."

Walker made his pronouncement to the assembled family and friends, after Harman had finished reading his statement. He repudiated "all powers legally

conferred upon husband and wives," by acknowledging "Lillian's right to the control of her own person, name, and property; he also specifically recognized her equality in the partnership, while recognizing his own 'responsibility to her as regards to care of offspring, if any, and her paramount right to the custody thereof should any unfortunate fate dissolve this union.' " Then he explained that "the wholly private compact is here announced not because I recognize that you or society at large, or the State have any right to enquire into or determine our relationship to each other, but simply as a guarantee to Lillian of my good faith toward her, and to this I pledge my honor." Lillian then acknowledged her agreement with the views of her father and husband-to-be, after which Moses Harman refused to "give away the bride," because he wished "her to be always the owner of her person, and to be free always to act according to her truest and purest impulse, and as her highest judgment may dictate."

The following day, the constable presented the couple a warrant charging them with flouting the peace and dignity of Kansas, by "unlawfully and feloniously living together as man and wife without being married according to statute." They were taken into custody, and spent their second night together under armed guard in Valley Falls. On September 21, 1886, they were jailed in the county jail at Oskaloosa, Kansas, but Lillian was permitted to return home pending the outcome of the trial. At the preliminary hearing, a week later, their attorneys argued that the observance of the statutory requirements (obtaining a license) violated their liberty of conscience, and therefore was unconstitutional. The county attorneys countered "that society had rights in the matter of marriage, that these rights had been ignored, and that the authority of the state had been defied." The presiding judge held the couple over for a trial "on charges of violating Section 12 of the Marriage Act, which deemed 'any persons, living together as man and wife, within this state, without being married [as required by law],' guilty of a misdemeanor and subject to a fine of from $500 to $1000 and a jail sentence of from thirty days to three months."

Lillian was returned to custody on October 6, when both she and Walker were taken to the Shawnee County jail in Topeka to await their trial, which commenced on October 14. The trial ended when "the jury found the couple guilty of living together as man and wife without first having obtained a license and (without) being married by a legally prescribed officer." At their sentencing on the 19th, Walker was given 75 days in the Jefferson County jail, and Lillian 45. "In addition, both were to remain in jail until court costs were paid." Incarcerated pending appeal, their case reached the Kansas Supreme Court In January of 1887.

In a decision reached on March 4, the court refused to overturn their conviction. Although the court upheld the legal validity of their common-law marriage in the state of Kansas, it punished the defendants for not complying with the state's marriage statute which required a license. The Chief Justice noted that "the question … for consideration is, not whether Edwin Walker and Lillian Har-

man are married, but whether, in marrying, or rather in living together as man and wife, they have observed the statutory requirements." In other words, the court decided that "punishment may be inflicted upon those who enter the marriage relation in disregard of the prescribed statutory requirements, without rendering the marriage itself void." The Kansas Marriage Act of 1867, like marriage legislation in other states, provided punishment for ministers or magistrates who might marry a couple before they obtained a marriage license. Likewise it punished the couple themselves for failing to be married as prescribed by the law. Although they had already served their jail time, the couple refused to pay court costs until April 1887, when they were released (the impetus for their payment was the fact that the authorities had tried to close *Lucifer* down by arresting Lillian's father and brother in February 1887, on charges of publishing obscenities).

The legal questions of the Walker-Harman union demonstrate the confusing and technical nature of nineteenth century American law with regard to marriage. (Every state had its own marriage law, and these often differed from those of neighboring states.) The term "marriage license" found its origin in early English ecclesiastical practice, "in accordance with which a bishop's license or archbishop's license released candidates for marriage from the obligation of publishing banns in church." The banns were simply notice of the intent of marry, usually given three times in the parish church of each espoused. Maine became the first state in the union, in 1858, to invalidate a marriage contract unless the couple had been granted a state license. Adoption of the marriage licensing system came slowly in the United States; in 1887, there were still eleven states that had no laws requiring the issuance of a marriage license. Some states, like Kansas, prohibited unlicenced marriages, but then retreated from this position in finding that if such marriages occurred, they were not to be held invalid. Nevertheless, the marriage statutes sometimes penalized the couple (like Harman and Walker) or the officiant who married the couple without a license. Today, common-law marriages are recognized in fourteen states. In the other states, there are statutes that explicitly nullify such non-state marriages.

Common-law Marriage

Judicial recognition and legitimation of common-law marriage in the United States found its legal roots in England. There, like many other places around the world, marriage customs were shaped by the development of cultural traditions, and ecclesiastical and civil law. Until 1753, when Parliament passed the Hardwicke Act, marriage in England had been governed by medieval customs and the Anglican Church. English canon law had always recognized the validity of a marriage without the benefit of clergy. The statute of 1753 required that marriage be solemnized by the publication of banns and take place before an Anglican clergymen. Although such marriages were recorded in the Church parish records, no civil registration of marriage was required in England until 1836. Such

laws worked great hardship against the dissenters and non-conformists. For example, the Quakers, who rejected the traditional ring ceremony and the Anglican Church observances, believed that marriage was a divine institution—"a matter between man and his own conscience and one in which the priest shall have nothing to do." It was probably out of respect for the sincerity of beliefs such as these that common-law marriages were held valid in England.

Since marriage by consent alone was legal in England while its settlers colonized much of North America, American courts generally held that common-law marriages were valid here, too. Such was the case in 1809, when Chief Justice James Kent of the New York State Supreme Court decided that no special form of marriage solemnization was required, since there had been no marriage statute in the New York colony or state since 1691. The existence of a marriage contract, the Chief Justice declared, may be proved "from cohabitation, reputation, acknowledgment of the parties, acceptance in the family, and other circumstances from which a marriage may be inferred." The strength of public sentiment in New York against any marriage licensing system can be gauged by the fact that a marriage statute of 1827 was repealed shortly after it went into effect in 1830. The repealed law had sought to place the responsibility for policing and recording all marriages upon the clergy and civil magistrates. Writing in 1832, Kent noted in his *Commentaries* (vol. 2, p. 88) that "these regulations were found to be inconvenient," and "they had scarcely gone into operation when the legal efficacy of them was destroyed and the loose doctrine of the common law was restored by the statute of 20th April 1830, declaring the solemnization of marriage need not be in the manner prescribed, and that all lawful marriages contracted in the manner in use before the Revised Statute could be as valid as if the articles containing those regulations had not been passed." The earlier decision of 1809 (*Fenton v. Reed*, 4 Johns., 52) continued to govern the policy of New York until common-law marriage was superceded by a statute of 1901.

Unlike the situation in New York, the courts in Massachusetts never recognized common-law marriage. Although early Separatists and Puritans regarded marriage as "purely a civil contractual relation," and therefore concluded that "the parties may marry themselves as they may make other contracts," they also held that marriage, like all other civil institutions must be regulated by municipal law. Marriage must be sanctioned by the civil authority, "and for that reason persons may be fined for marrying without observing the forms prescribed by statute." In actual practice, even though the Massachusetts settlers considered marriage to be a contract, they looked upon it differently than all other forms of contract, such as tenant-landlord or servant-master. "In these the parties may in general make their rights and duties what they please, the law only intervening when they are silent" upon some point. In marriage, however, every right and duty was fixed by law. Nevertheless, this point of view was not universally accepted by all the colonists and "seems to have been resented by the more radical as an interference with

individual liberty." Edward Perry, a resident of Cape Cod in 1654, was twice fined for self-marriage, and placed on "notice that his fine would be repeated every three months till he complied."

The position of the early Christian Church was not so far removed from this radical attitude. Marriage was already a well-established social institution when Christianity was founded. In the early Christian communities, marriage of the faithful was governed by local customs so long as they did not conflict with the tenets of the Church. Although the early Church "admonished its members to contract their marriages publicly under its officials in order to insure and preserve the integrity and dignity" of the marriage contract, "broadly stated, the canon law maintained the validity of all proper marriages solemnized without the priestly benediction, though spiritual punishment might be imposed for the neglect of religious duty." During the Thirteenth century, the clergy began expanding its role in the marriage ceremony by "appropriating the right of the father or the guardian of the bride to officiate at wedding ceremonies." Its motives were to impart a more religious form to the nuptials, and to avoid the evils resulting from clandestine or secret unions. However, it was not until the Council of Trent in 1563, that there was an official church requirement that marriages be contracted in the presence of a bishop or parish priest, and two other witnesses. "The main object of the provision of the Council of Trent was to give publicity to marriage, and to bring the fact of marriage to the notice of the Church."

Church and State vs. Voluntaryism and the Family

Like the institution of marriage, the family is clearly one of the most ancient forms of social bonding. For thousands of years, the family has been the center of all social structure. Apart from the individual, it is the lowest common denominator, and the very heart of all group organization and interaction. As Peden and Glahe have written, "the family, in its minimal nexus of parent and child, must be co-temporal with the origin of the human race and natural in its grounding in the biological relationship of a parent and child arising from procreation and nurturing." The "essence of the familial entity," as they see it, centers "on the responsibility for nurturing children until they reach self-sustaining autonomy," since it is biologically necessary that some adult care for the infant until "it can fend for itself." Thus, the family had its roots deep in the physiological conditions of human mating, reproduction, and education. The State, on the contrary, they point out, "is not a biological necessity. Men and women have survived and even flourished outside its purview and power."

Like marriage customs, the structure and characteristics of the family vary from culture to culture, and from era to era: most monogamous, some polygamous; most are patriarchical, others matriarchical. Methods of child-rearing may vary widely, but the point is that this great diversity represents the enduring strength and voluntaryist nature of the family. "This very diversity points to [its ori-

gin in the] spontaneous order!" Whatever or wherever the culture, the family is always voluntary. It begins in the mutual attraction of one sex for the other, expands to include some type of formal or informal contract, and always remains beneficial to the participants.

The State is always hostile to the family because it cannot tolerate rival loyalties. It must inevitably attempt to make itself more important than the family or kinship system, which it seeks to supersede. It establishes a coercive orthodoxy from which there is no escape except by emigration, death, or treason. Under all authoritarian governments, children are separated from their parents (at least part of the time, the most prominent example being schooling) because the State needs to weaken the child-parent relationship. In the more totalitarian societies, children often live apart from their parents, but if not, they are encouraged to report any signs of parental disloyalty or treason to the authorities. This pits the loyalty of the children to the State against the love of their parents. This conflict even exists in America today. Is a spouse or child to denounce one's partner or parent for violation of a political crime, like violating the income tax or drug laws? To whom is one loyal?

That voluntaryism is at the heart of the family can be seen by observing what happens when the State enters the picture. "Many of the adverse consequences of social policy today can be described as the result of attempting to have the State function as father in the family." Family relations are invariably upset, controlled, perverted, distorted, or weakened by political interference. By claiming that nearly all forms of social activity have some sort of compelling state interest—an interest in the fate of children and civil society, the State attempts to involve itself in every marriage and every family. The State intervenes for the purpose of educating the young—more often by removing them from their parents for one-third of their waking hours and using state schools to indoctrinate them with statist attitudes; less often by placing them in fostercare homes. The obligation of caring for elderly parents is undermined with the introduction of welfare-state provisions like Social Security and Medicare. Rather than resorting to family first, people begin to focus on the State as their main source of "problem-solving and mutual aid."

Although State power rests on conquest, coercion, and ideological persuasion, in an effort to legitimize themselves, political leaders describe the State in family-like terms ("Big Brother," "Fuhrer," and even "Uncle Sam"). As Robert Nisbet has noted, the State invariably takes on the "trappings and nomenclature of the family and of religion." In fact he notes that the Church and State seem to have more in common with each other than with the economic realm—the market place. Although State and church have been arch-enemies over long periods of time, "it is a fact that in the succession of power that forms the greatest single pageant in Western history, the state has succeeded the church in the detailed and minute custodianship of the individual. [S]ince the eighteenth century , the state

has … taken over once-ecclesiastical functions." The Middle Ages represented the height of Church governance—"birth, marriage, death were all given legitimacy by the church, not the state. … Much of modern … history is the story of the gradual transfer … of ecclesiastical absolutism" to the modem State. Nationalism and statism have replaced religion as the new State church.

Both the Church and the State attempt to exert their control over our "most human experience" in order that people might become accustomed to accepting the legitimacy of outside authorities intervening in their personal affairs. Although the institution of marriage obviously existed before "there were any legislatures to enact marriage laws, or any churches to ordain priests," for all practical matters both organizations work together to enforce the statist marriage licensing system. For example, the Catholic Church does not recognize common-law marriages (the couple are considered to be living in sin, even in those political jurisdictions where common-law marriages are legal), and will not bless a marriage unless the couple can provide a copy of their state marriage license.

Marriage Licenses

The offense of marrying without a license is just like the crime of practicing medicine without a license. The crime is created by fiat, not by the natural act of marrying or healing. Black's *Law Dictionary* states that: "a license is the permission by a competent authority to do any act which, without such permission would be illegal." A license is something needed to keep the act in question from being illegal from the point of view of the State. For example, hunting and fishing are not wrong in and of themselves, but the State makes these activities illegal without a license. As John Kelso (a nineteenth century advocate of "autonomistic marriages," like that of Walker and Harman) pointed out, the marriage licensing system creates a victimless crime because the act of marrying injures no third party.

State licensing systems (whether it be of marriage, fishing, hunting, etc.) serve many purposes. First, they instill and legitimize the idea of State control over the activities of the individual. Second, they raise revenue for the State and provide jobs for state employees. Third, in commercial enterprises they tend to protect the "ins" from competition by restricting entry. In short, they deny the natural right of the individual to act without first obtaining permission from some authority. Licensing laws inculcate the idea that anything not authorized by law is illegal and may not be undertaken without permission.

Just as voluntaryists oppose compulsory licensing laws in medicine, or barbering, or any other profession, they oppose coercive laws in the realm of marriage. There is no more reason to require or regulate the registration of real estate conveyances or mortgages than there is to require licensing of marriages. If there is a market demand for services to record or register such transactions (whether in real estate or family affairs), then private, voluntary registration bureaus will be forth-

coming on the market. The marriage licensing system has been so long in existence, that the free and voluntary market has never been given an opportunity to show how it might operate in this area of our lives.

"Would society degenerate into promiscuous and homosexual debauchery in the absence of marriage laws?" Were we accustomed to government or church regulation of our eating habits, is it likely that we would stop eating if all outside interventions were removed? Hardly—eating is as natural to us as marrying or raising a family. In fact, our marriage and family institutions would be stronger if third-party intervention ceased. A state marriage certificate, like a bank charter or some other official certification, provides a false sense of security. Possession of a marriage license certainly doesn't solve any of its possessor's marital problems, and probably helps induce a false sense of confidence in those who marry. In other words, dispensing with the legal licensing of marriage would strengthen respect for marriage; its absence would make people not less cautious, but more cautious concerning their marital affairs. For after all, how do marriage laws contribute toward making the parties true to each other? The large majority of those who are true to their partners base their fidelity upon love and honor, "not upon terrors of the law."

Prescription for Sound Living

Many of the social institutions of Western civilization are based on the Old Testament moral code, especially those rules found in the Ten Commandments. Theft, murder, adultery, covetousness, bearing false witness, and sexual promiscuity were all placed in the same prohibited category. The purpose of such a moral code was to help protect private property, the family, the integrity of marriage, and promote peaceful, harmonious social relationships in the community. Although often times the reasons for these rules are lost sight of, when one examines them "one finds in [them] the most reasonable and logical guide to a healthy, happy life." They present "a moral code based on a profound understanding of human nature and human experience," and contain a prescription for sound living, regardless of where or how they originated. If one studies them and understands the operation of the free market, one perceives the connections between war, sexual decadence, inflation, and political corruption, which all collapsing civilizations (including ours) experience.

As James J. Martin once observed, "the family is the wellspring" of all social tendencies. The family is the place where we all ordinarily start, "where the fundamental ideas relating to self and mutual aid are first engendered, the incubation place where dedication to one's welfare and to that of one's closest associates is emphasized, and where respect or disrespect to the State is first seen, felt, and emulated." The family as an institution is one of the strongest bulwarks against the encroaching State and the disrespect for private property which statism engenders. A strong family is most likely to produce principled individuals who are spiri-

tually and mentally prepared to withstand statist propaganda. And the State understands this as it consciously or unconsciously implements political policies which undermine and destroy the family. Many of the major changes which have taken place in the family during this century are not the result of unfettered individual or family decision-making. Rather they have been shaped by major statist wars, governmental legislation, and the often disastrous results of centralized economic planning.

Marriage and the creation of a family are one of the most important and most basic elements in the spontaneous order. As Wilhelm von Humboldt once wrote, such a relation cannot mold itself according to external, third-party arrangements, but depends wholly upon inclination and mutual satisfaction of all the immediately concerned parties. The introduction of coercion into such relationships can only divert them from the proper path. State intervention is as counter-productive in the family-marital realm as it is in the economic realm; and for all the same reasons. That is not to say that people will not make mistakes when they are left to their own devices, but it is surely better to suffer the "ills of freedom" than to attempt to cure them at the expense of restricting individual liberty. "To curtail that freedom is to cut away part of the foundation of further progress."

Or paraphrasing Albert Jay Nock, as he once so eloquently put it: Freedom is the only condition under which any kind of substantial moral fiber can be developed. Freedom means the freedom to marry as many partners as one wishes or the freedom to drink one's self to death, but it also means the freedom to be self-disciplined and be a life-long monogamist, or to never get married, or to never drink, or to drink in moderation. The voluntaryist is not engaged by the spectacle of sots or polygamists or pornographers, but rather points to those who are responsible, responsible by a self-imposed standard of conduct. He asserts that the future belongs to them, not to those who engage in vicious conduct. He believes in absolute freedom in sexual relations, yet when the emancipated man or woman goes on the loose, to wallow along at the mercy of raw sensation, he is not interested in their panegyrics upon freedom. He turns to contemplate those men and women who are responsibly decent, decent by a strong, fine, self-sprung conscious of the Right Thing, and he declares his conviction that the future lies with them. The desire for freedom has but one practical object, i.e., that men and women may become as good and as decent, as elevated and as noble, as they might be and really wish to be. Under freedom they can, and rather promptly will, educate themselves to this desirable end; and so long as they are in the least dominated by statism, they never can. V

Short Bibliography

George Elliott Howard. A *History of Matrimonial Institutions*. 3 vols. Chicago; University of Chicago Press, 1904.

Otto Koegel. *Common Law Marriage.* Washington, D.C.: John Byrne & Company, 1922.

Joseph Peden and Fred Glahe, eds. *The American Family and the State.* San Francisco: Pacific Research Institute for Public Policy, 1986.

Hal Sears. *The Sex Radicals.* Lawrence: The Regents Press of Kansas, 1977.

"For Conscience's Sake": Voluntaryism and Religious Freedom

by Carl Watner
(from No. 55, April 1992)

Introduction

George Smith, in his essay "Philosophies of Toleration," reviews the history of freedom of religion and identifies the moral axiom of "righteous persecution," which has been part of most religions throughout the ages. The principle underlying this "persecution complex" was that recalcitrant people should be coerced "for their own good." It made no difference whether people were being compelled to change their earthly behavior or their spiritual beliefs. The justification for persecution was the same in either case: the end—the public welfare in the here-and-now or the salvation of the persecuted in the hereafter—warranted the use of violence. The opposite proposition, based on the principle of persuasion, embraced the voluntaryist prescription for reasonable argument and non-violent behavior. Many defenders of religious freedom understood that force could only make hypocrites of men, or as William Penn put it, "tis only persuasion that makes [true] converts."

An interesting twist on Smith's comments about persecution is to apply them to the ancient practice of State taxation. Since taxation is the taking of another's property by the public authorities without his voluntary consent, clearly taxation may be viewed as a form of persecution by those who would not willingly pay. Indeed, William McLoughlin described "the principal aspect of the struggle against the Puritan establishment" in America as "the effort to abolish compulsory tax support for any and all denominations." If it is correct to characterize religious taxes as coercive and as a form of persecution, then it should certainly be proper to categorize other forms of taxation similarly. The principle at work is the same regardless of the purpose behind the tax. Property must be forcibly taken from some people and applied in ways which they (the owners) would not ordinarily direct it.

Seventeenth and eighteenth century advocates of toleration, like Henry Robinson, William Penn, John Locke, and James Madison, all viewed "freedom of conscience" as a form of property. Robinson claimed that "those who are forced to

pay a [religious] fine are subject to a forcing of their conscience." Penn often argued that to punish religious dissent by fines and imprisonment was as much an invasion of conscience as it was of property rights. Locke in *A Letter Concerning Toleration* called "liberty of conscience … every man's natural right." Madison, in his essay on "Property," wrote that "Conscience is the most sacred of all property." So it was clearly recognized that religious persecution took on many forms—from being compelled to pay taxes to support a minister one did not patronize, to the confiscation of property for the non-payment of such taxes, to the actual imprisonment of the persecuted minorities who insisted on practicing their religion publicly or refusing to falsely swear their allegiance to a king or god of whom their conscience would not approve.

The entire basis on which religious taxes were laid was the idea that "the authority of the church [wa]s as essential to the continued existence of civil society as that of the [S]tate." It was assumed that religion would not be able to sustain itself without some financial assistance from the State. "Thus," as McLoughlin writes,

> [T]he controversy over the establishment of religion in America in 1780 was not over the establishment of any one sect, denomination or creed, but over the establishment of religion in general (meaning, the Protestant religion). The question of support for religion was often compared to the responsibility of the state toward all institutions concerning the general welfare—the courts, the roads, the schools, the armed forces. If justice, commerce, education, religion, peace were essential to the general welfare, then ought these not to be supported out of general taxation? It was no more inconsistent in the minds of most New Englanders to require a general tax for the support of religion than to require, as Jefferson advocated, a general tax for the creation and maintenance of a public school system. (p. 610)

The purpose of this paper is to demonstrate the uniqueness of the voluntaryist argument for religious freedom. The voluntaryist does not advocate separation of Church and State because the issue is a red herring. To argue for separation of Church and State does nothing more than to legitimize the State since it does not question or challenge the State's existence. The issue, by the nature of the way it is framed, assumes that the State must and should exist. The fact of the matter is that Church and State will never truly be separated until either one or the other disappears. Tax exemption of church property or taxation of church property? So long as a State engages in compulsory taxation to raise its revenue, it must inevitably impact on the religious sphere. Has the religionist, who must support the police with his taxes, had his rights violated when the police come to the aid of the atheist? If the State pays a policeman to direct traffic and protect children going to church schools, might not the atheist object to having his tax money spent in such a fashion? Only a voluntaryist would recognize the injustice inherent in these sit-

uations. So long as the State violates property rights by its existence—which it must necessarily do—religious freedom or any other form of freedom will never be secure. In principle and in practice, all freedoms are inter-related to one other. If a property right may be violated in one sphere, by the same principle it may be violated in another.

The balance of this paper will discuss the issues of toleration, religious freedom, separation of Church and State, and freedom of conscience from the voluntaryist point of view.

Liberty not Toleration

Religious liberty or freedom of conscience, as the early dissenters called it, means thinking as one pleases, and then using one's body and rightfully owned property to express those thoughts without being coercively molested. For example, religious freedom manifests itself in the right to build places of worship, to print religious literature, to speak of one's ideas without the possibility of physical retaliation, and the right not to have one's property taken or used in ways that the rightful owner deems inappropriate. Yet, no historical religious thinker ever thoroughly understood the principle behind religious liberty. A religious radical, like Roger Williams, saw that it was wrong to "steal" a person's property to support a religion he did not practice. Yet no supporter of religious liberty ever questioned the propriety of compulsory taxation as it applied to the secular realm.

The English dissenters of the late eighteenth century, however, did go so far as to support the individual against the collective, no matter what form the issue took. For them, freedom of conscience was "a principle implicit in human nature, a right innate in the heart of every man, constituting the essence of personality." Writing about the dissenters view of freedom of conscience, Anthony Lincoln says:

> It implied that there were certain issues so fundamental that no municipal laws or conventions, no social or conventional machinery, could compass or even approach them, but could be resolved only in the reason and conscience of the individual: an inner sanctuary into which all commands of priest and magistrates penetrated only as idle, meaningless echoes. (p. 11)

In his 1837 sermon on "Intellectual Liberty," Reverend Horatio Potter described the principle which lies at the foundation of the right to freedom of conscience as one which is at the very basis of all intellectual and religious liberty. It is an epistemological bias against violence which, he said, is predicated on the premise that "error is to be refuted, that truth is to be made manifest and its influence extended not by external force, but by reasoning. … Produce your strong reasons—employ your intellect to shew wherein my intellect has erred or led others into error, but abstain from violence, which can prove only that you are powerful and vindictive, without proving that you have truth and justice on your side." The

resort to violence is a confession of weakness because he who would employ force would not do so unless his arguments and reasoning were weak and unconvincing. Truth or the effort to obtain the truth does not need to rely on force. "If a man believes he possesses the truth, then let him convince others by argument, not compel them by threats."

Henry Robinson (1605–1664), along with other Englishmen of his age such as John Milton, John Lilburne, and Richard Overton, were among the first of the moderns to see that the idea that violence was not a convincing argument (and hence compulsion should not be threatened or used in order to bring about a change of opinion) applied just as much to the economic and political realm as it did to the religious sphere. In his book, *Liberty of Conscience*, published in 1643, Robinson brought forth just about every "argument that the modern world has been able to advance in defense of religious liberty." The right of private judgment or freedom of conscience, as Robinson identified it, was as much an individual right as the right to life, liberty, or property. None of these rights were secure so long as people could be imprisoned, fined, and coerced for their religious or political beliefs. In fact, Robinson compared the freedom to choose one's religion to the freedom to engage in free enterprise activities. As William Haller explained, Robinson argued that since "no man has a monopoly on truth" in any sphere of life,

> 'the more freely each man exercises his own gifts in its pursuit, the more of truth will be discovered and possessed.' As 'in civil affairs …, every man most commonly understands his own business,' as 'every man is desirous to do with his own as he thinks good himself,' and as it would be absurd for the State to make laws requiring men to manage their worldly affairs after one 'general prescript forme and manner,' so in religion every man should be permitted to go his own way. Compulsion compels men only to hypocrisy or rebellion. (Vol I, p. 69)

Although the distinction was not articulated until the following century. Robinson and others of his era could see that there was a difference between religious toleration and religious liberty. The voluntaryist argues for the latter, while the statist implicitly endorses the former. The difference is that what the State at one time tolerates, it may, at another time, condemn and prohibit. Hence, whatever freedom of activity is granted by toleration is subject to restriction and/or revocation. "Toleration is not the *opposite* of intolerance, but is the *counterfeit* of it," wrote Thomas Paine in 1791 in *The Rights of Man*. Religious liberty, no more than the liberty to own property, is not granted by any one or any institution. It precedes the organization of the State and arises from the nature of man and the manner in which he best lives. Freedom of religion was "a right so sacred" that Mirabeau once explained to the French Constituent Assembly that the word "toleration" seems to "convey a suggestion of tyranny." He pointed out that "the existence of any authority which has the power to tolerate is an encroachment upon the liberty

of thought, precisely because it tolerates and therefore has the power not to tolerate."

J. B. Bury in his *A History of Freedom of Thought* (1913) surveyed the many different approaches to intellectual liberty throughout the ages, but they all ultimately reduce themselves to the fact that the coercion of opinion is never successful, and that "reasons' only weapon" has been logical "argument." Since the beginning of written history, one can probably find people who "refused to be coerced by any human authority or tribunal into a course which his own mind condemned as wrong." The conflict between the individual and the collective (whatever form the latter took) is simply a replay of the eternal struggle for the supremacy of individual conscience over man-made statutes.

Religion and Citizenship

Two historical observations become apparent as one reviews the history of arguments and the actual struggle for religious liberty. First of all, those who were in fact persecuted, such as the early Christians or the latter-day Puritans, often resorted to persecution themselves, once they attained political power. "Courageous dissenters often became intolerant conformists." The advocates of religious liberty sometimes themselves "practiced religious discrimination." The corruptive influence of political power often manifested itself in such contradictory ways. The other historical observation is that those who supported a tolerant or *laissez faire* attitude toward religious beliefs always thought that man's religious beliefs were of no harm or consequence to anyone else. The Roman emperor Tiberius (43 B.C.–37 A.D.) said that, "If the Gods are insulted, let them see to it [the punishment of the blasphemers] themselves." Tertullian (145–225), an early Christian, took the position that one man's religion can neither hurt nor help another. More modern thinkers embraced the same idea. Martin Luther (1483–1546)—before changing his opinion—defended freedom of religion by declaring that "everyone [should] believe what he likes." Montaigne, Luther's contemporary, once remarked that, "it is setting a high value on one's opinions to roast men on account of them." A century latter, John Locke as much said that, "If false beliefs are an offense to God, it is really his affair." And Frederick the Great, writing in 1740, a few months after his accession to the throne, noted "that everyone should be allowed to go to heaven in his own way."

What all these thinkers, and a great number of others not mentioned, shared was the belief that "the right of private judgment must be given free scope and every man, being completely responsible for his own soul, must seek and find the truth in his own way." For them, "the right to seek the truth in one's own way" comprises one of the most important and necessary responsibilities of life. Under normal circumstances, whatever faith a person might profess is irrelevant to his status as a good citizen. The problem is that often times the demands of good citizenship can conflict with the demands of one's religion. Thus Marcus Aurelius,

one of the most enlightened and stoical of the Roman emperors, persecuted Christians "because they refused to recognize the sacred character of" his position, "a refusal which threatened to undermine the foundations of the state." Centuries later, the Anabaptists were persecuted because they denied the Magistrate's right to use force, and hence called into question their "right to exist at all." John W. Allen in his *A History of Political Thought in the Sixteenth Century* (1928) pointed out:

> It was mainly on the ground of their denial of rightful jurisdiction in the magistrate that they were everywhere persecuted. … They were persecuted as anarchists rather than as heretics. But theirs was a religious anarchism: and it was just this fact that made the problem of dealing with them a difficult one for Protestant governments inclined to toleration. To say that they were condemned as anarchists was, really, simply to suppress part of the truth; since it could be shown that their anarchism was one with their religious opinions. We prate religious toleration as though it rested on some principle of universal validity. But religious toleration may be inconsistent with the maintenance of government. (pp. 40–42)
>
> In the Netherlands, … Menno Simons (1492–1559) taught … [the Anabaptists that] "[t]he faithful must refuse any military service. If they really held that the use of force was in all cases unlawful … they were logically bound not to accept it (military service and the coercive government which it supported). They were bound, indeed, to refuse to pay taxes at all to support the evil thing." (p. 46)

Consequently, what was a State to do if it was faced with a large portion of its populace, who refused to serve in the military or pay taxes to support its activities (military or otherwise)? Historically and theoretically, if the State was to continue its State-like functions, it must not and could not tolerate such behavior. Few would serve or pay if conscientious objection to military service and taxation were an integral part of its legal structure.

The British colonies and early American states were faced with this dilemma. For example, the New England Baptists claimed for themselves the same principle which the American revolutionists used to justify their separation from the mother country. Isaac Backus, leader of the New England Baptists, repeatedly used the argument that "the Baptist grievances … were much more serious than the threepenny tax on tea, which anyone could avoid by abstaining from drinking tea." The Baptists thought that they had as much right to seek liberty of conscience (and freedom from religious taxes which they vigorously opposed) in Massachusetts as Americans did to seek civil liberty from Parliament in England. Baptists were repeatedly jailed and had their goods auctioned off for non-payment of religious taxes.

The basic premise behind the imprisonment of Baptists and other dissenters was that civil cohesion could not exist without religious unity. Many Americans reject this premise today, because we have 200 years of "cohesive" nationalism behind us, but the situation in the early 1790s was not so clear. Although the drafters of the federal Constitution confirmed the lack of federal jurisdiction over religion, the fact is that in 1789, when James Madison proposed an amendment to the federal Constitution "prohibiting the states from violating certain rights, including freedom of religion, the House of Representatives approved of Madison's proposal but the Senate voted it down." The "representatives" of the people were not so sure that individuals, rather than the states, could be trusted with responsibility for their own religious freedom.

The Massachusetts Constitution of 1780

The contradictory and inconsistent reception of Church and State "separation" in the early American states is well documented in the case of Massachusetts. Under Article II of its Constitution of 1780, Massachusetts recognized:

> It is the right as well as the duty of all men in society, publicly, and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.

But Article III of the same document practically denied religious freedom to non-believers and believers in non-protestant faiths in the state:

> As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion, and morality; and as these cannot be generally diffused through a community but by the institution of the public worship of GOD, and of public instruction in piety, religion, and morality: Therefore, to promote their happiness, and to secure the good order and preservation of their government, the people of this commonwealth have a right to invest their legislature with the power to authorize and require, and the legislature shall, …, authorize and require, the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision, at their own expense, for the institution of public worship of GOD, and for the support and maintenance of public Protestant teachers of piety, religion, and morality, … [The article then continues, giving the legislature power to compel attendance for the purpose of religious instruction, and the power to coercively assess all citizens of the state for the support of public teachers of religion.]

The controversy over the passage and ratification of the Massachusetts Constitution of 1780 has been documented by modern-day historians, such as Oscar and Mary Handlin and William McLoughlin. The latter found that Article III "was the only one in the entire constitution which did not receive the necessary two-thirds vote for approval." Those who tabulated the votes "were able by careful juggling of the statistics, to make it appear as though it had." The returns from towns which actually opposed Article III, but offered an amendment to it, were counted in favor of the existing article, rather than opposed to it.

Middleborough, one of the towns that opposed Article III, protested that it "might compel individuals under some circumstances to pay money contrary to the dictates of their consciences." The citizens of West Springfield, Mass. explained that if the legislature had the power to compel citizens to attend public worship "at stated times and seasons," then it could "prohibit the worship of God at any other time … and also define what worship shall be and so the right of private Judgement will be at an end." One letter writer during the campaign summed up the opposition in the following manner. A person signing himself "Philanthropos," wrote that "The third article is repugnant to and destructive of the second. … The second says the people shall be free, and the third says they shall not be free. … To use an old saying (Articles II and III are) like a cow that gives a full pail of milk and then kicks it over."

The supporters of Article III believed that if the restraints on religion were broken down by not compelling religious attendance or support, then it would be hopeless to "preserve the order and government of the state." The "trouble with allowing anyone to exempt himself from religious taxes on grounds of liberty of conscience" was that "the most abandoned wretch who has no conscience at all and is too avaricious to do anything … has only to say that he is conscientiously against" public worship and religious taxation. "The pretended proposal grants full liberty to every man to have no conscience at all, and to be as deceitful and hypocritical as he pleases." The most daring argument for Article III went so far as to claim that its opponents wanted "to deprive a respectable part of the community of what they esteemed a right of conscience, viz., the right of supporting public worship and the teachers of religion by law." In a stunning reversal of natural rights thinking, the supporters of Article III believed that the community at large had the right to tax and control everyone under their jurisdiction. Hence, the loss of this power would be a violation of the consciences of those who advocated religious taxes.

The Baptists, Universalists, Quakers, Shakers, Episcopalians, and Methodists were all sects that opposed Article III, and suffered by its enforcement. Despite the provisions of Article II, the seizure and confiscation of private property of religious believers took place. Some constitutional test cases were taken to court, but none were successful in overturning Article III. Theophilius Parsons, a member of the committee that drew up Article III, wrote a judicial opinion when he was Chief Justice of the Supreme Judicial Court of Massachusetts in 1810, that explained its

rationale. He wrote that since "every citizen derives the security of his property and the fruits of his industry, from the power of the state, so as the price of this protection he is bound to contribute in common with his fellow-citizens for the public use, so much of his property and for such public uses as the state shall direct. … The distinction between *liberty of conscience and worship, and the right of appropriating money*, is material; the former is unalienable, the latter is surrendered as the price of protection. Religious teaching is to enforce the moral duties and thereby protection of persons and property."

> To the objection that it is "intolerant to compel a man to pay for religious instruction from which as he does not hear it, he can derive no benefit," Parsons answered that, "The like objection may be made by any man to the support of public schools, if he has no family who attends; and any man who has no lawsuit may object to the support of judges and jurors on the same ground." Religious instruction supports "correct morals among the people" and cultivates "just habits and manners, by which every man's person and property are protected from outrage and his personal and social enjoyments promoted."

Almost two hundred years after Parsons wrote these words, we find that his arguments are still used to justify statism. The safety of the State and the preservation of the general welfare both require public taxation. Without money to fund itself, the State could not provide for the security of private property (as though private property is ever secure when subject to the depredations of the State). In a sort of perverse way, those who supported religious taxation in America during the late eighteenth and early nineteenth centuries were at least consistent in their reasoning. They realized the "virus" of voluntaryism (whether religious or secular) could undermine the foundation of the State. If the general welfare could be best served by permitting each individual to follow his own self-interest, then this argument should apply as much to the religious sphere as to the economic realm. Just as religious liberty is more than a fight for religion, so economic liberty is more than a fight for free economic transactions. Both are part of the struggle for liberty in all spheres of life. Just as religion flourishes best when left to private voluntary support, so do economic transactions, protection of property, and the settlement of disputes. The "virus" of voluntaryism is contagious and consistent. It leaves no stone unturned; it applies to all the affairs of people, whether public or private. It leaves no room for the State or coercion.V

Short Bibliography

William Haller. *Tracts on Liberty in the Puritan Revolution*. New York: Columbia University Press, 1933.

Oscar and Mary Handlin. *The Popular Sources of Political Authority: Documents on the Massachusetts Constitution of 1780*. Cambridge: The Belknap Press of Harvard University Press, 1966.

W. K. Jordan. *The Development of Religious Toleration in England.* Gloucester: Peter Smith, 1965 (1932).

Leonard Levy. *The Establishment Clause: Religion and the First Amendment.* New York: Macmillan Publishing, 1986.

Anthony Lincoln. *Some Political and Some Social Ideas of English Dissent 1763–1800.* Cambridge: University Press, 1938.

William McLoughlin. *New England Dissent 1630–1833.* Cambridge: Harvard University Press, 1971.

George Smith. *Atheism, Ayn Rand, and Other Heresies.* Buffalo: Prometheus Books, 1991.

George Smith. "Property Rights and Free Trade in Ideas." *The Voluntaryist*, Whole No. 15, April 1985.

Carl Watner. "The Struggle for Religious Freedom and the Voluntaryist Tradition." *The Voluntaryist*, Whole No. 34, October 1988.

The Most Generous Nation on Earth: Voluntaryism and American Philanthropy

by Carl Watner
(from No. 61, April 1993)

"THERE HAS always been an extraordinary impulse of Americans to form voluntary groups and devise nongovernmental institutions to serve community purposes." For nearly four centuries Americans have initiated countless spontaneous undertakings to fulfill their longing for individual and social improvement—from helping the poor and the sick to expanding the cultural and educational horizons of people from all walks of life. The scope of this article and the boundaries of these efforts are mapped out by the following definitions:

"Philanthropy: love of mankind, especially as manifested in deeds of practical beneficence."

"Charity: benevolent feelings and actions, especially toward those in need."

"Voluntaryism: the doctrine that all the affairs of mankind should be by mutual consent, or not at all."

The principles of voluntary association and voluntary support have always been at the heart of charitable and philanthropic efforts in America. Our American society is so rich, so resourceful, so complicated that it could never have been planned by any central authority. "What political power," De Toqueville asked, could carry on the "vast multitude of … undertakings which the American citizen" participated in every day? These voluntary endeavors have always gone far

beyond the commands of political law because true charity, true philanthropy cannot be coerced. The record of these thousands of charitable and philanthropic enterprises "is the story of America at its best," for history shows that since the European colonization of North America, Americans have generally been the most generous people on earth.

The chronicle of American charity and philanthropy begins in the early 1600s, with the story of the settlers in the New England settlement of Plymouth, and in Jamestown, Virginia. Although the English colonists encountered forceful resistance from some Indians, they also received assistance in learning how to plant, fertilize, hunt and fish from such well-known Native Americans as Pocahontas and Squanto. (In many instances, the Indians acted in a more Christian-like manner than the actual Christian settlers.) In most of the colonies, settlements outpaced the organization of formal government. In the absence of statutory law, caring for the ill, the destitute, and the disabled naturally became the responsibility of family, friends, neighbors and the churches. "Voluntary mutual assistance was a natural response to the hardships of the New World."

In the early days, churches and religious groups were the primary vehicles providing assistance to those in need (this is still largely the case today), but there were "numerous other private organizations—nationality groups, fraternal societies, social organizations, and the like" that "aided the unfortunate. Appealing to common sense and self-interest as well as compassion, these bodies gave their members a sense of economic security through mutual aid while performing charitable services for others as well." The traditional role of the friendly societies, as many of these groups were known, "was the elimination of want without the creation of dependence" upon "the largess of the wealthy or of governments."

Mutual Aid and the Friendly Societies

The earliest of these friendly societies was the Scots Charitable Society. It was begun by twenty-seven Scotsmen living in Boston in 1657. According to its charter, the group was founded in order to provide for the "relief of ourselves and any other for which [sic] we may see cause." It spread beyond Boston, and by 1690 had over 180 members, including several well-to-do merchants. "Largely based on ties of common nationality in a strange land, the Society aided its poor, provided for its sick, and buried" its own dead. The Society became the model for countless other groups that began during the eighteenth and nineteenth centuries. "In 1754, for example, fifty-four Boston Anglicans founded the Episcopal Charitable Society of Boston, distributing charity to needy members of the Church of England in that city. Thirteen years later, the Charitable Irish Society of Boston was born. Soon the German Society, and so on." Later groups, like the Providence Association of Ukrainian Catholics in America, or the Locomotive Engineers Mutual Life and Accident Insurance Association, or the Fraternal Society of the Deaf, united people sharing other common interests.

Friendly societies, or fraternal organizations for mutual assistance, are not unique to America, but they do offer a picture of how Americans cared for themselves before the advent of the welfare state. Most important of all, Americans had to rely on the principle of voluntaryism because there was no coercive mechanism to force every man to be his brother's keeper. Friendly societies were strictly voluntary associations. No one was compelled to join, nor, having joined, prevented from leaving. Membership, however, did impose its own obligations, and those composing the society were expected to observe its rules and satisfy their financial and social obligations to it.

The range of responsibilities of the typical fraternal association were probably best represented by the Constitution of the National Fraternal Congress of America, which was founded in 1913. It was formed largely as a result of the consolidation of the National Fraternal Congress and the Associated Fraternities of America. Among its By-laws was found the following definition:

> Resolved, That a Fraternal Society is an organization working under ritual, holding regular lodge or similar meetings, where the underlying principles are visitation of the sick, relief of distress, burial of the dead, protection of widows and orphans, education of the orphan, payment of the benefit for temporary or permanent physical disability or death, and where these principles are an obligated duty of all members to be discharged without compensation or pecuniary reward, where the general membership attends to the general business of the order, where a fraternal interest in the welfare of each other is a duty taught, recognized, and practiced as the motive and bond of the organization.

By 1920, about 18 million Americans belonged to some type of mutual aid society, and at least half this number were specifically associated with fraternal insurance societies.

There were two or three basic types of fraternal organizations. First there were secret societies, like the Masons, the Elks, and Odd Fellows, which specialized in the social and informal components of mutual aid. They would help out with unexpected sickness, pay funeral bills, build orphanages and old-age homes for their members. The second type was the fraternal insurance society. As their name suggests, these institutions were devoted to providing death and disability benefits, and health insurance to their members. But insurance was not the only service they offered. For example, members of the Woodsmen of America during the 1930s would help one another harvest and gather crops, cut a winter's supply of firewood or help replace a home destroyed by fire. A third type of society was recognized by its ethnic component. Nearly every major city saw the formation of immigrant fraternal societies. Boston, as we have already seen, had its Scottish and Irish elements represented. Greek and Italian societies were found wherever immigrants from these countries congregated. Afro-Americans often joined the Prince Hall Masonic Order, which had signed up over 30% of adult male Afri-

can-Americans in "small towns throughout the South" during the 1930s. Local and state lodges of this order "provided a wide range of mutual aid services, including medical insurance, orphanages, employment bureaus and homes for the aged."

Social Insurance and the Church

The fraternal insurance movement in America began in 1868, when John Jordan Upchurch, a master mechanic in the railroad shops at Meadville, Pennsylvania, conceived the idea of organizing his fellow workmen into the first lodge of the Ancient Order of the Workmen. Under its constitution, the heirs of members were entitled to death benefits. The idea of mutual insurance spread, particularly among working men. By the 1920s there were over 120,000 different fraternal lodges. At that time local insurance lodges were providing their 9 million members with more than $1½ billion of life insurance coverage. Protection, however, was not limited to life insurance. "Many provided protection against loss of income through sickness or accident. Some even provided medical care through 'society doctors' on a fixed fee basis, much like today's HMOs."

In 1917, Samuel Gompers, the well-known labor leader, observed that "compulsory benevolence" would never benefit the majority of American workers. In the same article, he also wrote that, "There is in our country more voluntary social insurance than in any other country in the world." Gompers was referring to the fraternal societies which "dominated the health insurance market for working class people" before the Great Depression. Although the friendly societies and fraternal orders left plenty of room for improvement "in the context of the time, [they] did a credible job of fulfilling the needs of members and their families."

The mutual aid system of the fraternal orders has now been replaced largely by commercial insurance, government Social Security, or Medicare and Medicaid, but the churches still retain their role as charitable and philanthropic sponsors. Wherever and whenever men and women have been able to embrace the precept "Love thy neighbor as thyself" they have created—"without any suggestion from rulers, lords, governors or selectmen—voluntary agencies to serve their communities." Nowhere has this been more true than in the case of the Christian churches in America.

American Quakers led the way in contributing enormous amounts of time, effort and money in helping the needy and the enslaved. Each Quaker congregation in the New World "had a permanent poor fund for the use of its members, but in time of general calamity or widespread suffering they were among the first to raise additional funds for the unfortunate, whoever or wherever they happened to be." At the time of the American Revolutionary War, the Quakers organized "The Meeting of Sufferings," composed of Quaker delegates from all the colonies. Its special purpose was to deal with hardships resulting from the conflict. Their most notable relief effort was undertaken during the British siege of Boston

in 1775, during which they distributed money and supplies to those in need, "without respect to religious or political belief."

The Hospital

For most of American history the churches have probably been the largest single enterprise in America supported by voluntary gifts. Consequently, their roles in assisting the needy, feeding the hungry, sheltering the homeless and healing the sick have been prominent ones. Two of our most noble American institutions, the hospital and the university, have slowly evolved out of Christian charity and concern.

Hospitals and colleges have always received broad-based support from the American public and pulpit, but in spite of this, many of the earliest were partially supported by the public funding via taxation. The first hospitals in this country probably received more tax money than their educational counterparts because the municipal "sick ward, almshouse and prison," were often combined together in one institution. Neither of the two original American municipal hospitals, Old Blockley (1731) (the predecessor of the Philadelphia City Hospital) and Bellevue (1736) in New York City were open to the public, and both functioned as "houses of correction and public workhouses," caring only for incarcerated wards of their respective cities.

The first two private hospitals in the United States to accept patients from among the general public were founded in New Orleans and Philadelphia. Charity Hospital of New Orleans was begun in 1737, and was originally called St. John Hospital. Jean Louis, a sailor and later an officer in the East India Company, gave $2,500 to establish it. The efforts to found the Pennsylvania Hospital in Philadelphia were begun by Thomas Bond and Benjamin Franklin in 1751. A subscription list was begun in 1750, but the amount of voluntary pledges was insufficient to start the hospital. Franklin petitioned the Provincial Assembly for a charter and "pecuniary aid." Rural members of the assembly saw little benefit in a city hospital. Believing that the merchants of the city would be unwilling to fund such an institution, they finally agreed to make a grant of 2000 English pounds if the citizens of Philadelphia would contribute a like sum. Using this as leverage, Franklin was able to complete his subscription campaign. The hospital finally opened its doors in 1755.

Private initiative was responsible for the beginnings of other hospitals: New York Hospital (1770), the Boston Dispensary (1801), and Massachusetts General Hospital (Boston, 1818). All these early institutions relied upon voluntary subscription lists and bequests, but also received some assistance from their local governments. During the latter half of the nineteenth century, church and civic groups built many hospitals. For example, the Catholic Church established well over 800 hospitals in the United States. As one historian of philanthropy has put it, the resources required to establish American hospitals during the nineteenth century

were "raised by an evocation of community good will surpassing any united effort that our people had ever made in behalf of a voluntary enterprise."

Universities and Colleges

Similar hard work went into the founding of American colleges and universities, some of which were established nearly concurrently with the settlement of this country. The ten earliest institutions of higher learning in America were all the result of private philanthropy and religious zeal, though some received financial support from the political authorities. Harvard (1636) was partly supported by taxes paid by the colonists of both Massachusetts and Connecticut, until Yale was founded in 1701. The College of William and Mary (1693) was begun by the Church of England as an Episcopal outpost in Virginia. Columbia University in New York was begun in 1754 by the Episcopalians. Princeton was founded in 1746 by the Presbyterians. "Before the Civil War religious denominations had established 150 of the 180 permanent colleges and universities in existence in 1860." The Congregationalists, the Presbyterians, the Baptists, Methodists and Catholics were also responsible for education "which planted colleges on the frontier as it rolled forward across the continent." The list of religiously affiliated institutions comprises many of the oldest, most respected and well-known institutions of higher learning in this country: New York University (Presbyterian); Brown, Wake Forest and Hillsdale (Baptist); Emory and Northwestern (Methodist); Fordham, Georgetown, and Notre Dame (Catholic); and Swarthmore and Haverford (Quaker).

Although many American colleges were "founded by personal efforts and private gifts, often in tiny amounts scraped together, with great sacrifice, from the most varied sources," others—especially during the last quarter of the nineteenth century—resulted from the beneficence of wealthy businessmen. During the late 1860s, Cornell University was started with a gift of $500,000 from Ezra Cornell. Johns Hopkins, a Baltimore merchant, bequeathed $700,000 in 1876, for the establishment of a hospital and university. Today, the Johns Hopkins University and Johns Hopkins Hospital are world-renowned institutions. Stanford University was begun by Leland Stanford Jr. with a bequest of 90,000 acres of land in California. Between 1889 and 1910, the University of Chicago received nearly $35 million from John D. Rockefeller. Trinity College was renamed Duke University and received millions of dollars from the Duke family of North Carolina.

The history of these private institutions of higher learning demonstrates their vitality, strength and closeness to the communities in which they exist. For whatever reasons, the voluntary colleges and universities of America have created a deep-seated loyalty, a spirit of sacrifice and unselfish devotion among their alumni and supporters. Even during the Great Depression of the 1930s when hundreds of banks, thousands of businesses, and many municipalities defaulted on their obligations, very few American colleges closed their doors. The liberal arts

college, "founded and sustained by private philanthropy," represents the spirit of free Americans, who willingly demonstrate their support of higher learning.

The Christian Missions

Many of the missions and homes founded in the late nineteenth century took their impetus from religious convictions. For example, the purpose of the Florence Crittenton homes and the Doors of Hope Union was to spread their Christian message to "fallen women"—prostitutes and those who were pregnant but unmarried. Charles Crittenton, a New York businessman and millionaire, started this first home in 1883 in honor of his four-year-old daughter who died in 1882. "By 1930 there were forty-five Crittenton homes that afforded both spiritual challenge and the training of character necessary to instill habits that would lead to employment." The Doors of Hope was started by Emma Whittemore in 1890, to help needy women. When she died in 1931, there were almost 100 mission houses providing "housing, food, clothing, medical care, spiritual challenge and training in skills such as sewing, dressmaking and cooking."

Probably the most famous of the late nineteenth century missions was founded in New York City in 1872. Jerry McAuley's Water Street Mission was located just below the Bowery, near the Water Street area which was one of the worst in the City, full of saloons, slums, prostitutes, and disease. It was there that McAuley, a notorious drunkard, bandit and river thief began his work. Before he was 30, McAuley had served time in Sing Sing penitentiary, where he read the Bible and attended gospel meetings. After being released, he "fought himself" for four years. Part of that time he reverted back to his old ways, but he eventually resolved to "work for the Lord," by establishing a mission, and helping others who "were as he had been and still, to some extent, was."

McAuley's mission grew from humble beginnings, though from the start he was assisted by friends and ministers. "He invited in tough guys and stumblers-by for cheap, hot food and lots of hot stories. Tales of destitution and depravity were on the menu every night, but so was dessert—stories by McAuley and others of how God's grace had changed their own lives." Individual confessions and testimonies were at the heart of McAuley's method. His purpose was to let those who attended the mission meals and services to "see that dramatic change in their lives was possible, and to challenge them to speak up." He placed emphasis on individual responsibility and the ability to change, always challenging his listeners to "crawl up out of the gutter, stop sinning, and live a new life," with Christs help.

Jerry McAuley met with great success. By 1882, he was able to found the Cremorne mission, further uptown, and many of his converts went on to found their own halfway houses. One, Michael Dunn, a fifty-two-year-old ex-convict, began the House of Industry and Home for Discharged Convicts in 1881, "with room to feed and lodge twenty-seven ex-convicts. The men made brooms or worked at other tasks in return for their room and board, and spent evenings in the reading

room or at religious meetings held three nights a week." In New York City the mission list became long: Christ's Rescue Mission, the Gospel Temperance Union, the Jewish Mission, the Galilee Coffee House, etc.

Ministers in other parts of the country were interested in duplicating McAuley's work. Three of the best inner-city efforts were found in Chicago (Pacific Garden Mission, 1877), Boston (North End Mission), and Washington, D.C. (Central Union Mission). In Boston, there were many spin-offs, such as the Elliot Christian Mission, Women's Mission, Portland Street Mission and the Kneeling Street Mission. In New York, some missions catered solely to certain ethnic groups, like John Jaegar's Mission of the Living Waters on the lower East Side which was a haven for German-speaking immigrants. Staffed with volunteers and funded by voluntary contributions, many of these halfway houses and missions "built model tenements and lodging houses, equipped libraries and reading rooms, and provided job training." Those in the mission movement all based their evangelical efforts on the teaching of Jerry McAuley, who "believed in hand-picked souls" because as McAuley realized "the best fruit is not shaken from the tree, but picked by hand, one by one."

Taking Care of Their Own

Another religious group that has embraced philanthropic endeavors is the Mormons, members of the Church of Jesus Christ of Latter Day Saints. Since their beginnings in the 1830s, the Mormons were enjoined to demonstrate their love of mankind by attempting to convert everyone to the gospel. In the 1840s, Joseph Smith, the Mormon patriarch, began the practice of designating one day a month as a "fast day," during which the Saints would refrain from eating. The food that was not consumed was contributed to poor relief. At nearly the same time, the Mormon Women's Relief Society was founded. Its purpose was to "provoke the brethren to good works" in looking to the wants of the poor, searching after objects of charity, and administering to their wants. The organization put down new roots in Utah during the 1860s and 70s, and was the forerunner of the Mormon church welfare program. "The Church also participated in humanitarian efforts to help the victims of disasters and war," especially after the San Francisco earthquake of 1906.

During the early years of the Great Depression, Church leaders began considering their role in alleviating suffering and hardship among their own. The 1931 Annual Conference "offered much practical and familiar advice: keep out of debt, patronize home industry and pay tithes and offerings." Recognizing the past success of economic cooperation, they urged that each religious ward appoint an employment committee to help find jobs for those Mormons out of work. Church leaders looked unfavorably upon direct government handouts, either in the form of cash or commodities, believing that putting a person to work (so he could earn the money to buy food, shelter and clothing) would do the most to maintain his

self-respect and rehabilitate him and his family. In 1933, Saint President J. Reuben Clark, Jr. declared that the idea that the Mormons should get as much as they could from the government because everyone else was, was "unworthy" and "will debauch us."

Some, however, did sign up for federal and state welfare. To keep them off the dole, during the mid-1930s Mormon religious leaders began developing community enterprises in which able-bodied members could find employment. The Saints were reminded that the faithful were to be "independent, self-respecting, and self-reliant." Each bishop was to provide the less fortunate, the worthy sick, infirm and disabled with food supplies and other materials. In April 1936, the General Church Authorities formulated the Security Plan, now known as the Church Welfare Program. Its guiding principle was to help people help themselves, and do away with the curse of idleness and the evil of the dole.

The program began making great strides, even during its first year of operation. Immediate steps were taken to lay in stores of blankets, fuel and clothing for the coming winter. "Nearly fifteen thousand needy Saints were transferred from government to church relief, and more than one thousand were placed in jobs." The most important part of the welfare plan was to find employment for the unemployed. Church employment committees, apprentice programs, make-work projects (constructing schools, homes and church buildings), and farming enterprises constituted the mainstays of the Saints' welfare plan. Later, large regional warehouses were built to receive bumper harvests of agricultural produce which the Church's farms produced. The goal of the Church's program was, and still is, "that no Mormon need ever apply to the State or Federal Government for assistance because of old age, sickness or unemployment. The Church tries to take care of its own," and while it may not have succeeded one hundred percent, the Church offers a picture of how a truly voluntary welfare program would work.

"Tough Love for the Needy"

Habitat for Humanity of Americus, Georgia is another Christian group that shares an outlook similar to that of the Mormons. Established in 1976, the group promotes simple and decent housing for the poor through a unique "partnership" program to restore and/or build new housing. The occupants of each house built must contribute not only 500 hours of "sweat equity" to the project, thus helping to build their own home, but also must agree to make payments on a no-interest loan for the cash cost of their house (the average cost being around $30,000, much less if a house is only rehabilitated). To date, there are more than 700 chapters world-wide, in more than 25 countries. The organization was responsible for the construction of 4,300 homes in 1991, and about 6,000 in 1992. In April 1993, during its "20/ 20,000" week in Americus, Habitat volunteers plan to build 20 houses in one week, and the twentieth house completed will be the 20,000th house built by Habitat since its founding in 1976.

Habitat is voluntarily supported and accepts no government funds. Fearing that acceptance of government funds would compromise its operation, Millard Fuller, founder, says that he wants to keep the ecumenical Christian housing organization strong "by scrambling for our money." In 1988, international headquarters received contributions and income of $10 million, and its local affiliates raised over $17.6 million. However, Habitat has accepted land donated to it by local governments, and has argued for (and received) special exemptions from onerous zoning laws and building codes (which ultimately raise the cost of construction). The heart of its success in building homes stems from the volunteer construction labor donated by its members. Another part of its success rests upon the fact that the recipients of its largess must eventually repay Habitat for its beneficence. Millard Fuller recognizes that Habitat must sometimes exercise what he calls "tough love," and foreclose on a mortgage. This occurs infrequently, when a family demonstrates by its actions and behavior that they no longer want to be "partners in this ministry" to house the homeless.

The Independent Sector and "Give Five"

Some commentators have categorized the charitable and philanthropic activities described in this article as part of the "third" sector (the first two being, business and government). The essence of this third or independent sector of society is "a belief in being of service to one's community and to other people, without relying on government and without any expectation of (monetary) profit. At the heart of the third sector is individual initiative and a sense of caring." In 1980 a coalition was organized to represent these interests. This group was called Independent Sector, and now numbers of 850 corporate, foundation and voluntary organization members. Its mission "is to create a national forum capable of encouraging the giving, volunteering and not-for-profit initiative that help all of us better serve people, communities and causes." The supporters of the independent sector number in the millions, from those who give a few dollars to their favorite charity, to those who give a few hours of volunteer labor to their favorite cause. Taken all together, the sum of these activities constitutes a vitally important, and distinctive part of American life, which is hardly duplicated elsewhere in the world.

Independent Sector has originated and sponsored the national campaign of "Give Five." Since 1986 it has been asking Americans to become Fivers—"to give five percent of income and five hours a week for causes of their choice." The campaign aims to give Americans "a clearer idea of what all of us should do in the fulfillment of our community service and what the composite of all this caring means to our communities and to the nation." The "high five" symbol used by the campaign is designed to celebrate those who are presently tithing 5% of their income and volunteering five hours a week to the causes they care about.

Although there are many different statistics regarding the level of giving and caring in the United States, all of them tend to demonstrate that people in the

United States are the most generous on earth. In a recent *Wall Street Journal* article (August 14, 1992), Peter Drucker estimated that one out of every two adult Americans, or 90 million people, work for a charitable cause or volunteer for an average of three hours a week. In his article, "Was It a Decade of Greed?," in the Winter 1992 issue of *The Public Interest*, Richard McKenzie summarized figures for giving during the 1980s. Individual giving by Americans reached $102 billion in 1989, and this category represents over 80% of all giving in the country. Measuring in constant dollars, McKenzie notes that "total private charitable contributions by living individuals, bequests, corporations and foundations, reached record high levels in the 1980s. Between 1980 and 1989, total giving in constant dollars expanded by 56 percent to $121 billion." According to McKenzie, Independent Sector's 'Give Five' Campaign has a way to go. National averages show that Americans with incomes less than $10,000 and over $75,000 gave between 2.4 and 2.9 percent of their incomes to charity in 1989. The vast numbers of people with incomes between $10,000 and $75,000 usually devoted less than 2 percent of their incomes to philanthropic purposes.

The range of cultural/charitable/philanthropic services found in the independent sector is incredible. It includes the education provided to many millions of students in private and parochial schools, as well as in institutions of higher learning. It includes numerous centers of private research, many of them connected with universities. Private cultural institutions, such as libraries, ballet companies, choral societies, art museums, theatrical groups, and symphonies are all part of the third sector. Much of the health care system of the United States falls in this category: private voluntary hospitals, facilities for the handicapped, and old-age homes. In the field of welfare services, the independent sector helps alleviate human distress. According to the 1990 edition of *The Giver's Guide*, the three largest charities in the country, the Young Men's Christian Association, the Lutheran Social Ministry Organization, and the American Red Cross, rely on private support and receive no government funding. Each group reported 1988 income of $1 billion, astronomical amounts for voluntary organizations. Religious organizations make up another large part of the independent sector. There are probably more than 500,000 churches and synagogues in America, ranging from the garage or storefront meeting places to the great cathedrals of New York and Los Angeles. More than 15,000,000 Americans belong to one or more of the 500,000 self-help groups across the country. Open to the public, these groups charge only voluntary membership fees, and are often oriented toward helping people to cope with medical problems by holding regular meetings to share information and experiences. "The groups cater to almost every need and creed, from Agent Orange to Zellweger syndrome (a brain affliction); from helping disabled musicians to messy homemakers."

The independent sector is not limited to "organized" activities, but also includes individuals who are trying to bring their own "message to the world."

Where else but in America, could one find the Tattoo Removal Project, the brainchild of Karl and Sandy Stein, and sponsored by the Los Angeles County Medical Association? Dr. Stein, a plastic surgeon, donates his time and skills in removing unsightly tattoos from the hands or arms of young teens, who cannot afford to have their tattoos removed surgically. Where else but in America would one find a couple like Hurt and Carol Porter, founders of Kid-Care in Houston, Texas? Their mission? To help feed and clothe some of Houston's most indigent youngsters. They have been doing this for seven years—"using at first their own money, transforming their home into a food pantry and kitchen, and racking up miles on their wheezing old automobile to deliver the food." Their example prompted dozens of volunteers to organize Kid-Care, which now delivers more than 200 meals twice a day. Why have they done this? "It's just something we love to do," says Hurt Porter. He and his wife wish that all the people in this country would just do one thing:

> I wish they would call up a church, or someone they respect—someone involved in civic activities—and say, "Help me find a family that needs help."
>
> It wouldn't take much, just a big bag of groceries a month and getting involved. ...
>
> One family reaching out to help another family. No government funding, no bureaucracy—and, in one home, no more hunger. (*Parade Magazine*, July 5, 1992, p. 9)

The Voluntary Sector vs. the Criminal Sector

The three part division of American society into business, government, and the voluntary sector is actually incorrect. In reality what separates government from both business and the private, non-profit sector of society is its coercive nature; and what unites business and the charitable/philanthropic sector is their reliance on voluntaryism. Coercive governments, whether local, state, or federal, forcefully impose their demands (sovereign jurisdiction and taxes or else imprisonment and/or death). Though we might not like the choices offered to us by businessmen or charitable philanthropists, we have the options of dealing with them, doing without their services, providing for ourselves without them, or looking elsewhere for someone else to deal with. The point is that those in the voluntary sector do not resort to force and violence if we choose not to deal with them, while those in government may do so if they cannot cajole us into following their dictates. Like criminals everywhere, government employees ultimately say: "Your money or your life."

Voluntaryism and voluntary associations provide an alternative to politics and government action. All kinds of groups and individuals are able to exert their influence and seek their goals without recourse to coercion. Voluntary associations have traditionally been one of the largest and most powerful forces in the United

States. Even before the 1830s, when Alexis DeTocqueville made his noteworthy comments, voluntaryism in the realm of private associations had established itself as an enduring feature of our American way of life.

> Americans of all ages, all conditions, and all dispositions constantly form associations. They not only have commercial and manufacturing companies, in which all take part, but associations of a thousand other kinds, religious, moral, serious, futile, general or restricted, enormous or diminutive. The Americans make associations to give entertainments, to found seminaries, to build inns, to construct churches, to diffuse books, to send missionaries to the antipodes; in this manner they found hospitals, prisons, and schools. If it is proposed to inculcate some truth or to foster some feeling by encouragement of a great example, they form a society. Wherever at the head of some new undertaking you see the government in France, or a man of rank in England, in the United States you will be sure to find an association. (*Democracy in America*, Vol 2, Second Book, Chapter 5, "Of the Use Which the Americans Make of Public Associations in Civil Life")

Without doubt, DeTocqueville pointed his finger at one of the most important aspects of American life. As Daniel Boorstin has put it, in America "*communities* existed before governments were here to care for public needs. There were many groups of people with a common sense of purpose and a feeling of duty to one another before there were political institutions forcing them to perform their duties." If a public activity was required and not yet performed by a government, then individuals joined together to do the job. "If they wanted a church or a school or a college they had to build it" themselves.

It is safe to say that the vitality and success of community life in America has rested on its voluntary nature. There are two senses in which this is true. First, both history and economic theory demonstrate that people in the free market produce many more goods and services than their counterparts in a centrally organized economy. Thus, there is more to go around in a free society, and the poor there generally have a higher standard of living than the poor in a collectivist society. This economic largess is largely a result of the investment in tools and individual saving which is promoted by the free market economy. Secondly, as Charles Murray noted in his book, *In Pursuit of Happiness and Good Government*, "People tend not to do a chore when someone else will do it for them." If people know that governments will provide a safety-net for the poor, there is little reason for them to exert themselves. When governments reach deep into the local community, the private citizen comes to feel little responsibility for what happens in his own neighborhood. Government efforts not only tend to crowd out private efforts, but also make it more difficult to raise funding for private charitable efforts unless it gives special tax-breaks for charitable contributions.

Government policies are rapidly bringing about the time when the voluntary tradition in America will be greatly diminished. Voluntary associations weaken, as their functions are taken over by the State, and little will remain to hold people together except the coercive power of the State. As Plutarch noted during the First century, A.D., "The real destroyer of the Liberties of any people is he who spreads among them bounties, donations, and largess." "Bread and circuses" make the poor dependent on the State, and give those who care much less incentive to become charitable and philanthropic.

Like competition in the free market, decentralized, voluntary, private charity brings about the best of all possible worlds (however, it does not guarantee a perfect world). One of the great benefits of private charity is that it permits the best projects to succeed on their own merits. It also fosters experimentation and allows controversial endeavors a chance to succeed. By standing outside the public sector, private philanthropy is free to back new ideas from small beginnings. Like their private enterprise counterparts, those that garner voluntary support begin to succeed and grow; and those that do not gather sufficient funding downsize their operations or cease their efforts.

The private sector in America has not only proved itself capable of producing and creating large amounts of wealth, but it has also demonstrated its willingness to contribute to community causes and to helping the poor. The record of American philanthropy, which "is so impressive that it would require several lengthy volumes to list its achievements," has been created in an environment largely free of government coercion and threat. So, when one asks, "what would happen to the poor in a free society?" one only has to look at American history for an answer. As James Bryce, writing in 1888, observed: "In works of active beneficence, no country has surpassed, perhaps none has equaled, the United States." This tradition has largely continued unabated throughout the twentieth century. Even in an era highlighted by progressive income taxes and coercive social security contributions, Americans have continued to be generous—not because of their government, but in spite of it.▽

Short Bibliography

James B. Allen and Glenn Leonard. *The Story of the Latter-Day Saints.* Salt Lake City: Deseret Book Co., 1976.

David Beito. "Mutual Aid for Social Welfare: The Case of American Fraternal Societies." *Critical Review* (Fall 1990), pp. 709–736.

Independent Sector Annual Report 1991. (1828 L Street NW, Washington DC 20036).

Arnaud C. Marts. *Philanthropy's Role in Civilization: Its Contribution to Human Freedom.* New York: Harper and Brothers, 1953.

Marvin Olasky. *The Tragedy of American Compassion.* Washington, D.C.: Regnery Gateway, 1992.

Walter I. Trattner. *From Poor Law to Welfare State: A History of Social Welfare in America.* New York: The Free Press, 1974.

"Plunderers of the Public Revenue": Voluntaryism and the Mails

by Carl Watner
(from No. 76, October 1995)

Introduction

In my article "The Fundamentals of Voluntaryism" I argued that although certain services and goods are essential to human survival, it is not necessary that they be provided by coercive government. An example of this is the history of private postal communications. From time immemorial men and women have had the need and desire to correspond with one another. At first, travelers going to distant places would be enlisted to carry written messages. Ship captains, transport drivers, merchants, even itinerant preachers and peddlers were employed to perform similar functions. If no travelers were available and the message was important enough, a private messenger would be hired. From such services evolved more routine delivery systems involving regular couriers, established routes, and scheduled deliveries.

Good communications were also an essential part of maintaining rule over political territories. The far flung Persian, Roman, and Islamic empires, the monarchies of western Europe, and the republics of North and South America all created postal organizations to deliver government-generated mail within their geographic confines. In some instances government systems existed before private ones; in other cases governments usurped the private prerogative of mail delivery. The catalyst for blackmarket mail services existed wherever and whenever abnormally high government postal rates were demanded or delivery performance was unsatisfactory. From before medieval times to today's Federal Express and United Parcel Service, philatelic history attests to the existence of thriving private mail services.

Despite their often bungling attempts, practically every country in the world has claimed the postal power as a prerogative of its political sovereignty. "The principal purpose of the postal monopoly has been to compel writers to use the government post so that government officials, by reading letters, could discover and suppress communications of treason and sedition." This was true in the ancient dynasties of Persia and Rome, no less than in Stuart and Elizabethan Eng-

land, and modern America. King Charles I of England, fearing for his life in 1637, practically "outlawed [all] private correspondence." An Act of 1657, passed during the Cromwellian protectorate declared that "the possibility of espionage upon private communications" was "to be one of the great benefits of the post to the state." The Postal Act of Queen Anne in 1711, still in force at the outbreak of the American Revolution, permitted "postmasters to open any letters at the order of the Secretary of State or of the Secretary of the Province." In 1777, the Continental Congress appointed a special postal inspector to "communicate to Congress any letters which might come into his possession containing schemes inimical to the United States." Since then, the American government has censored the mail of armed forces personnel during times of war, enforced foreign exchange controls, placed mail covers on suspected tax evaders, censored the postal distribution of pornographic materials, and enforced laws against "mail fraud." Most modern governments, like the United States, use the post office to spy on and control their citizens.

Post Office History: Worldwide

Evidence of organized postal systems, both private and government, is found as far back as the twelfth Pharaonic Dynasty (circa 2000 B.C.). In the late thirteenth century, Marco Polo encountered the vestiges of the ancient Chinese postal system dating from the Chou Dynasty (1122 to 255 B.C.). The Persian postal system of Cyrus the Great (553 to 528 B.C.) was honored by Herodotus, a Greek of the 5th century B.C., whose tribute to the ancient postal messenger is inscribed on the pediment of the New York Post Office: "Neither snow nor rain nor heat nor gloom of night stays these couriers from the swift completion of their appointed rounds." When the Islamic empire assumed control of large areas of the Roman Empire, including its postal system, one calif is reported to have said that "his throne rested on four pillars and his power on four men: a blameless judge, an energetic chief of police, an honest minister of finance, and a faithful postmaster, 'who gives me reliable information on everything.' "

Like countries in the western world, China and Japan eventually witnessed the rise of private postal systems. In China "during the middle years of the Ch'ing dynasty (1644–1912) there were several thousand of these private post offices," although the last of them did not close its doors until 1935. The Min-Chu, or private letter companies, called hongs, evolved like the private mail expresses in the United States. They had their origin "in the needs of bankers and merchants for some means of transporting correspondence, documents, and money." During the 15th century "there were scores of letter hongs in operation, some of them covering a thousand miles or more of routes." In Japan, during the Ming Dynasty (1368–1644 A.D.) private agencies began to carry both private and business correspondence. They were "extremely reliable and reimbursed the sender if valuable contents were lost in the mails. These companies were originally connected with

banks or merchant's establishments but gradually made their services available to anyone willing to pay the low letter rates of 2¢ to 20¢." They continued to operate until 1873, when the postal service was monopolized by the Japanese government.

While the postal arrangements of antiquity were created by absolute governments for their official business and were imposed upon the people, the postal services in the Middle Ages grew with the needs of the various classes of society. Thus, instead of a centralized and uniform state post, there arose exceedingly diverse postal services made up of many hundreds of independent institutions. Princes, religious orders, and universities all created private messenger facilities. With the increase of trade and industry, independent cities and commercial enterprises, also found a need for the exchange of messages. Many of these services were placed at the disposal of the public, a development which was almost unheard of in earlier times. Examples range from the postal service of the Hanseatic League, which tied together a great part of northern Europe, to the international service provided by the House of Taxis (originally for the members of the Habsburg Dynasty, but later open to the public) from the early 1500s to the mid 1800s, to the Butcher Post in Germany (where butchers, who traveled widely on cattle buying trips, were entrusted with private letters to carry), to the Stranger's Post in London (where, from the 15th century on, foreign businessmen organized their own system for sending letters and packets abroad).

The emergence of powerful nation-states, as well as the incipient industrial revolution, profoundly affected postal service all over Europe. As soon as feudal politicians consolidated their control, the official demand for rapid and reliable communications grew. "In answer to this need, ruling monarchies in Western Europe began to create royal posts, similar in many respects to those which had existed in ancient times, for the transportation of official messages. The first nation on record to make this step was France," in 1477, where Louis XI established a Royal Postal Service. Similarly, the discovery of the printing press, the slow but steady extension of education, and spread of commerce contributed to an increasing public demand for postal service. Where few facilities for deliveries existed, such as in France after the Royal Post was started, private citizens regularly bribed the royal couriers to carry their mail. Eventually, "authorization was given to the official postal service to accept private letters." This, in turn, usually led the political sovereign to declare the monopolization of all letter carrying. "There were two major reasons for these actions. The first was revenue. The charges levied on private use of the royal mails proved an excellent means of subsidizing the official service. The second was security," to assure the king that his enemies could not secretly communicate without his knowledge.

The British Post Office

The interaction of public and private forces can be seen in the operation of the Dockwra's Penny Post established in London in 1680. Although the Crown (and

later Parliament) had asserted its monopoly power over mail delivery in England as early as 1609, seventy years later there was still no regular delivery service in London. William Dockwra remedied this situation by organizing a company which collected intra-city mail, sorted it, and delivered it from four to eight times daily. The charge was one penny for every letter or packet. Other features of his system "were that letters were prepaid and stamped to indicate place of posting and the time they had been sent out for delivery." By November 1682, his service began generating a profit, at which time the Duke of York, to whom the Post Office profits had been assigned, used his political clout to confiscate Dockwra's business and continue the service. Some years later in 1709, Charles Povey, another enterprising businessman, set up a half-penny post in London, restricting his deliveries to the more populous areas of the city. The government instituted a law suit against him, and his post was closed within seven months of its beginning.

The English had a long tradition of bypassing the government post office because of poor government service and high rates. "Under Charles II and James II there were searchers lurking here and there who stopped suspected persons and vehicles and searched for letters just as customs officers do now for dutiable goods." When the searches stopped during the reign of William III, the 'bootlegging' of letters increased. The public was so ill-disposed to cooperate that the "postal authorities were almost in despair." The tradition of evading the government post in England continued well into the nineteenth century. When Rowland Hill, the reformer of the British postal service, began his inquiries in the 1830s, he discovered that evasion of postage and the bootlegging of letters extended through all strata of society. The major ways of circumventing the government post included use of private expresses, placement of letters in bookseller's parcels, in warehousemen's bales, in stagecoach parcels, delivery of personal letters in weaver's bags, and in private packages, "such as those containing food and dainties sent by country folks to their sons in the universities," and by unauthorized use of the Parliamentary seal and franking privilege.

The British postal system's inadequacies were the primary causes behind the widespread bootlegging. However, instead of urging postal "freedom" and abandonment of the postal monopoly, Rowland Hill suggested that two major reforms be made in the operation of the government system. His "solution was a uniform rate of postage, regardless of distance, and prepayment of postage [by the sender] by means of adhesive stamps sold by the post office." Both steps were designed to improve the efficiency and service of the government post office. At that time, the least expensive rate of service within the country was fourpence. Hill proposed that a letter mailed and delivered in England be charged at the basic rate of one penny for each half ounce, regardless of how far it traveled. To make prepayment workable, Hill developed the world's first adhesive postage stamps, which were placed on sale on May 1, 1840 by the British Post Office. "The significance of his reforms lies not only in the fact that they brought the [official] post within the

means of the mass of the people, but also in the less obvious way in which they gave the postal system the technical capacity to deal with the vastly increased demand for postal service that ensued. The radical simplification of postal organization and methods" resulted in such improved government service that private sector delivery alternatives were no longer demanded by the British public.

The Early American Posts

A similar wave of postal reform swept the United States during the following decade. Despite their ultimate defeat, the forces of voluntaryism were much stronger in this country, than they had been in Britain. At one time in the early 1840s Henry Wells (later of Wells Fargo and Company fame), urged that the government's Post Office Department be eliminated, and asserted that his company, as well as a myriad of others, was more than capable of satisfying the public demand at rates which would drastically undercut the existing government postage rates. In order to understand how such a situation came about, and how the government extricated itself from such a threatening possibility, it is best to examine the origins and history of the early postal service in the United States.

After the founding of the British colonies in North America, most official correspondence traveled by government warship between Europe and the colonies. Private correspondence had to find its own way since the English Postmaster Generals refused to offer service to and from the American colonies because such mail could not be handled profitably. Consequently, an informal system evolved to accommodate overseas correspondence. It incorporated coffee houses or taverns on both sides of the Atlantic (where mail was deposited and received) and masters of merchant ships and sea captains, who carried the ocean mail on board their ships. "Those wishing to send letters placed them in bags located at these establishments or handed letters directly to the captain. On the sailing date the bag was closed and taken aboard. The captain of the vessel received a penny for each letter, collected from either the sender or the addressee."

Prior to the late seventeenth century, mail originating in and destined within the colonies relied upon "a rude, slow, unsafe, but neighborly system of letter delivery." As in England, travelers, merchants, and others were enlisted to deliver the mail for private correspondents. In 1691, the British government granted a twenty-one year domestic postal monopoly to Thomas Neale, covering the colonies from Virginia to Canada. Failing to profit from his enterprise, Neale sold the monopoly back to the British government in 1707. Despite the government's attempt to reinvigorate the postal system, "the public's business invariably gravitated toward private carriers because their service was cheaper and more dependable." This was true throughout most of the eighteenth century, even though improvements made by Benjamin Franklin, deputy postmaster general for the colonies (1753–1774), bettered the service and increased postal revenues. Franklin understood that the colonial post office would never be successful

through legal enforcement of its monopoly powers, but rather only through superior performance against its private competitors. Hugh Finlay, a British postal inspector in 1773, found complete disregard for the monopoly laws everywhere he traveled. At Newport, Rhode Island he reported that " 'there are two post offices, the king's and Peter Mumford's—Mumford being the post-rider to Boston—and that Mumford's had the greater revenue, about one hundred pounds a year."

One month after the Battle of Bunker Hill, in July 1775, the Continental Congress established its own postal system to help it communicate with the army and the state assemblies. A statute creating a monopoly was drafted as early as 1776, although it was not until the Articles of Confederation that the first law prohibiting the private carriage of letters for profit was passed. Under Article IX, paragraph 4 of the Articles of Confederation, "The United States in Congress assembled shall have the sole and exclusive right of … establishing and regulating post offices from one State to another, throughout all the United States, and exacting such postage on such papers passing through same as may be requisite to defray the expenses of said office." The first American law to deal with postal matters was passed on October 18, 1782 by the Confederation Congress, and followed British precedent in several respects. "To ensure a monopoly it was provided that no persons other than specially engaged messengers, on public or private business, might carry letters or packets for hire outside of the post office." Additionally, "except in time of war, no letters might be opened or destroyed save at the express order of the President of Congress."

The authors of the federal Constitution, proposed in September 1787, gave little attention to the postal powers of the new government. In Article I, Section 8, Clause 7, Congress was given the power "To establish Post Offices and post Roads." There is no existing evidence as to why the authors of the new document deleted the reference to "sole" and "exclusive" powers. Since Congress' power to establish Post Offices is independent of any private efforts to deliver the mail, was Congress empowered to prohibit competition? There is no direct historical answer to this question, but it appears that the authors of the Constitution did intend for Congress to be able to outlaw private competition since "the first representatives to the new Congress endorsed government management and monopoly [over the post office] without debate by reenacting the 1782 postal ordinance."

The politicians of the time understood the unifying importance of a national postal system and the political clout it carried. Washington, himself, alluded to its potential for political propaganda, while some anti-federalists complained that deliberate slowness in the mails had hampered their fight against ratification of the Constitution. In the final decade of the eighteenth century, Washington, "eagerly followed by members of Congress, manipulated postal operations with an undisguised intent to accumulate political power." Obtaining a new postal route for one's Congressional district, and appointing a new post master were new forms of political spoils. Samuel Osgood, the first Postmaster General (1789–1791) in his

report of 1790, affirmed his belief that "new post offices and new post roads" would not only assist in the transmission of intelligence, but "were needed to facilitate the work of revenue officers."

The rates of postage charged by the new post office remained practically unchanged from 1792 until the early 1840s. Until 1838, the Post Office Department was nearly self-supporting, but at the danger of alienating the public with its high rates. A single page letter going as far as 30 miles in the early 1790s cost 6¢, while one going as far as 450 miles cost 25¢. In 1843, it cost 18½¢ to send a letter from New York City to Troy, New York, and only 12¢ to send a barrel of flour the same distance. The Post Office had simply become out of touch with reality when it cost as much to send a letter (10¢) as to ship a barrel of flour by steamboat from Detroit to Buffalo. The Post Office's policy of high rates was an open invitation to Americans to avoid using the government mails. Not only did "the subterfuges practiced in all parts of the literate world to avoid paying postage" become common here, but the high rates of postage "were regarded by the majority of Americans as undesirable taxes," and a needless burden, especially when it was not at all necessary to patronize the government's service. People who had been accustomed to using private posts during the Revolutionary War continued to do so in the opening decades of the nineteenth century. By the 1840s, the violation of the postal laws which had once been performed surreptitiously, was being "done openly and with gusto."

The Private Expresses

During the 1840s the private posts flourished in New England and the mid-Atlantic states for the simple reason that they were able to overtake the government post by offering better service at a much lower price. In his chapter on "The Post Office," William Wooldridge wrote that "it was estimated that private companies carried 15,500,000 of the 42,500,000 letters transported in 1845." William Harnden, often referred to as the "founder of the express business in America," was one of the earliest mail entrepreneurs. On February 23, 1839, he advertised in the Boston newspapers that he was inaugurating a mail service between Boston and New York. In his report for 1841, the Postmaster General listed eighteen private mail expresses operating out of Boston ("to every town in the vicinity"); by 1844, there were at least forty such companies. Hale & Company was among the largest, providing service from various cities in New England to Washington, D.C. Another was Lysander Spooner's American Letter Mail Company which began on January 23, 1844, with service between New York, Philadelphia, Baltimore, and Boston. Free market postage on single page letters between any of these cities was usually between 5¢ and 6¼¢. By contrast, the cost of government postage for similar distances was 18¾¢. The Philadelphia Postmaster noted in the early 1840s that he was firmly convinced that if Harnden and Adams, another well-known express company, were not stopped by legislative fiat, "they will ere

long put down the Post Office Department." The New York Postmaster believed that the government had lost at least one-third of its letter business to the private expresses.

There were numerous well-known concerns that pioneered in private mail delivery for intra-city delivery. "In 1842, Alexander M. Greig and Henry T. Thomas had established the City Despatch Post in New York to carry letters within the city." The first adhesive postage stamps issued in the United States were sold and used by this firm on February 1, 1842. (The government did not officially issue stamps until July 1, 1847.) Greig and Thomas placed boxes for the deposit of letters in public places and also provided a registry service. Their stamps were sold at the rate of 3¢ each or $2.50 per hundred, at a time when government postage for delivering a letter originating and destined within New York City was 6¢. It was no wonder that their business prospered. By July 1842, the City Dispatch Post was handling about 450 letters per day, while the government carriers at the New York Post Office were only handling about 250 per day. In 1844, John T. Boyd opened a rival local system in New York with improved delivery schedules. A third New York competitor was Swarts City Dispatch Post, which by 1858 was referred to approvingly by the New York Postmaster as the Chatham Square Branch of the New York Post Office, even though it was not bonded to the Government. Swarts had its own stamps and several hundred mail boxes scattered through the city. Intra-city delivery firms like these were found not only in other large cities all over the country, such as Baltimore, Washington, Philadelphia, New Orleans, Cleveland, San Francisco, and Chicago, but also existed in smaller cities like Bayonne, N.J., Easton, Pa., and Chester, N.Y. They thrived until the beginning of the Civil War, when the streets in all the larger cities were made official "post roads" by the Postmaster General.

In 1849, an anonymous author in the *Monthly Law Reporter* wrote that "While the rates of postage are high, private mails will be supported, and any attempt by the government to interfere in such cases would create a revolution in public opinion which would prostrate the post-office system in three months." Nevertheless, the government post office was able to survive by reducing its rates and tightening its monopoly restrictions. Before the 1840s, the government's monopoly on the postal system was based on various Congressional statutes. They were:

September 22, 1789—Congress re-enacted the original postal act of 1782, which outlawed private letter carriage on established government mail routes.

May 8, 1794—Congress revised the monopoly provisions to deter the carriage of letters by employees of transportation companies.

March 3, 1823—Congress made the navigable waters of the United States post routes.

March 3, 1825—Congress clarified and tightened the monopoly provisions of earlier laws by stating that no stage or packet boat shall convey letters over a government post route.

March 2, 1827—Congress prohibited the establishment of a private foot or horse post over government mail routes.

July 7, 1838—Congress subjected all mail transported on railroads to the federal postal monopoly.

By 1845, Congress concluded it must increase its share of the market by tightening the monopoly restrictions and lowering the rates it charged. "On March 3, 1845, Congress passed a broad statute which set the parameters on the postal monopoly for years to come. The statute prohibited establishing a private express for the carriage of letters; prohibited sending a letter, carrying a letter and transporting a letter by private post, and penalized the sender, as well as the person who transported the letter." The general prohibition against private expresses (including foot posts) only applied to conveyances of letters between cities. (This loophole, which lasted until 1861, led to the establishment of private foot posts for mail delivery within city limits.)

The Act of March 3, 1845 also made a drastic reduction in postal rates. Rates which had previously ranged from 6¢ for letters under 30 miles, to 18¾¢ on letters over 150 miles but less than 400 miles, were changed to 5¢ under 300 miles, and 10¢ over 300 miles. But even this reduction in rates was not enough to stifle the competition from the private sector. As the Report of the Postmaster General for 1845 stated, in spite of the passage of the new act "plunderers of the public revenue" continued to carry letters outside the mail. Continuing agitation by the advocates of cheap postage prompted Congress to pass another law on March 3, 1851, which further reduced postal rates. Until this time, "the same amount of postage was charged whether letters were sent prepaid or collect. This act provided a lower rate of postage on prepaid letters," and extended the area in which the least expensive rates applied. The new prepaid rates were 3¢ per half ounce under 3000 miles and 6¢ per half ounce over 3000 miles, while rates on letters where the postage was paid by the recipient were 5¢ and 10¢ respectively. A year later the Post Office Department introduced prestamped envelopes and supported a Congressional act which provided an exception to the monopoly provisions of the Act of 1845. The Act of August 31, 1852 permitted private companies to deliver mail outside the government system so long as it was mailed in official prestamped envelopes. This allowed the federal post to receive compensation for a service which it did not provide, and caused the patrons of the private expresses to pay twice—once for the government's postage and a second time for the cost of private delivery. As the Post Office improved its service and lowered its rates, it, at first encouraged and then finally, mandated that its customers prepay postage. As one commentator noted, "Prepayment of postage had to be dealt with gingerly because skeptical Americans, having observed their Post Office over the years, hesitated to pay for postal service before it was rendered." Nevertheless, the Act of March 3, 1855 made prepayment of postage on all domestic letters compulsory.

By the end of the nineteenth century, the federal government had eventually quashed most of the private express business. When Congress first reduced the rates of postage in 1845, it was pursuing a course of competing more cheaply and effectively with the private companies. This also provided Congress with an opportunity to avoid testing the constitutionality of the prohibition of private mails. "In the early 1840s the Post Office brought suit against several of the private expresses under the monopoly provisions of the Acts of 1825 and 1827. The results were disastrous." In Massachusetts and New York, the Post Office failed to gain convictions, although it did win cases in Maryland and Pennsylvania. None of these cases were ever appealed to the Supreme Court.

When Lysander Spooner established the American Letter Mail Company in early 1844, he referred to the "unconstitutionality of the laws of Congress prohibiting private mails" and wanted to "prove by argument that Congress had no Constitutional power to forbid the establishment of mails, by the States or private individuals." Spooner admitted that the Constitution says Congress shall provide for the carrying of the mails, but pointed out that the Constitution does not empower Congress to prohibit private citizens from delivering their own mail or that of others in competition with the postal system set up by Congress. Spooner also pointed to the existence of private gold coins minted by the Bechtlers, which circulated throughout much of the South. The same section of the Constitution which empowers Congress "To coin money, [and] regulate the Value thereof," authorizes Congress "To establish Post Offices and post Roads." Since no one questioned the constitutionality of the Bechtler coins (whose circulation obviously competed with that of government coins), why should it be unconstitutional for the private expresses to compete against the Post Office Department? Unfortunately for Spooner, within six or seven months, he ran out of money, both to support his mail operations and to defend his carriers in court. "The government wore him down," rather than meeting his constitutional arguments. Neither he nor any other American since then has had the interest or wherewithal to carry a test case to the Supreme Court. The government certainly learned its lesson. Rather than take a chance on adjudicating constitutional doctrine, it found that the more effective way to maintain the postal monopoly was to attempt to provide reasonable service at a competitive price.

The U.S. Post Office in the West

However, there was one section of the country where the Post Office was unable to establish a satisfactory delivery service. Ernest Wiltsee, author of *The Pioneer Miner and the Pack Mule Express*, pointed out that the impetus for private deliveries in California and other areas of the western United States was "the profound failure of the United States Post Office Department to provide, in any competent way, a mail service" in those areas. For example, during the time of the California Gold Rush, over 90% of the mail for the miners was delivered by pri-

vate express companies. The roots of the problem were probably two-fold. First, Congress and the Post Office were totally unprepared to authorize substantial expenditures in new territories where there appeared to be little chance of initially generating sufficient postal revenues to justify the investment in postal facilities and personnel. Second, due to the gold fever it was actually very difficult to hire postal employees at the rates the Post Office was prepared to pay. Post Office service was so lax that during the first two years of the American occupation of California, beginning in 1847, the only mail that came from the East was privately handled by sea captains or by overland pioneers. It took over nine months after the discovery of gold (January 24, 1848) at Coloma before the first government Post Office was opened in California (at San Francisco on November 9, 1848).

Evidence of the extreme dissatisfaction with the government Post Office can be found in numerous newspaper articles of the time. "*The Placer Times* of August 18, 1849, wrote 'The regular mail is a regular humbug. It's stuck in the mud half the time, and might as well be the other half.' " Alvin Harlow in his book, *Old Waybills*, quotes from an 1853 issue of the *Alta California*: "It [the Post Office] has been so useless that business men place no reliance on it, but confide their business entirely to the expresses. In certain interior towns, where the stages arrive and depart daily, an express is as punctual as the sun; the [Post Office's] mail bag is not relied upon at all." The expresses won the hearts of the western pioneers by practically rescuing "the mining public from the loss of communication with the outer world. They made it possible for the business man to transact business, which the utter failure of the postal service had made little short of an impossibility. The post office was either a nonentity, or it was miserably inadequate." By contrast, "the express service was secure and swift and beyond reproach."

Probably the first express to be started in California was begun by Charles Cady in 1847, when he began delivering letters weekly between San Francisco and Sutter's fort, charging 25¢ per letter and making local stops on the way. Of the early expressmen, one of the most notable is Alexander Todd, who reached San Francisco in June 1849. Todd found himself unable to perform the backbreaking work of the miners in the goldfields, so he organized an express line in July 1849. He went around the diggings soliciting patrons at a $1 each, who could sign up on his list to receive mail. He then returned to San Francisco, and was sworn in as an official U.S. postal clerk, in charge of all the letters addressed to his clients, which ultimately numbered nearly 2000. For delivering each letter, he charged an ounce of gold dust, worth $16 at the time. Besides actual transportation expenses he had to pay the San Francisco postmaster 25¢ per letter as a rakeoff to take the letters out of the post office, and 40¢ per letter in government postage. Todd's Express also delivered and sold newspapers at one-half ounce of gold per copy, mailed outbound letters for the miners, and transported their gold dust back to San Francisco for a 5% fee. When other Californians saw how profitable the express business could be, they soon joined ranks with Todd, confirming Harlow's

statement that after 1850, "express companies sprang up like mushrooms after a rain." New settlements appeared so fast that the Post Office Department could not establish post offices quickly enough. A special agent sent out to investigate reported that he found "several postmasters doing a thriving business, though they had never been appointed by the Government, nor were their post offices recognized officially!"

In the larger cities, especially San Francisco, two types of private mail service were demanded. What were known as "locals" provided mail delivery for letters originating and destined within San Francisco. Additionally, the local expresses would deliver locally written letters and packages with destinations beyond San Francisco to the Post Office, and would twice daily distribute inbound mail from the San Francisco Post Office to those on its subscription lists. Since the Post Office performed no local delivery service (all mail had to be picked up or delivered to it), the locals were much in demand. The largest of them was known as the Penny Post, and was started in June 1855 by H. L. Goodwin of San Francisco. He opened branch offices in Benicia, Coloma, Nevada City, Grass Valley, and Mokelumne Hill. Another type of local service was provided by the "letter bag operators," which were common only in San Francisco because of its position as the primary ocean port. These operators were individuals, who for a small fee, would deliver a citizen's mail to any steamer on its sailing date. The motivation was to get the mail sent off to the East as rapidly as possible. The most notable letter bag operator was Charles P. Kimball, who just before ship sailing time would walk the streets "announcing his mission in a powerful baritone voice—and collecting the letters." This presently earned him the nickname of the Noisy Carrier, which he adopted for use as a postmark during his years of business.

Wells Fargo Company

There were probably close to one thousand different companies and individuals that expressed mail in the western half of the United States during the nineteenth century, but Wells Fargo Company is in a class by itself. One of the most important services rendered by Wells Fargo was the carrying of the mail.

> Its record demands the use of superlatives. Its success was legendary, its honesty and reliability were proverbial. The miners and merchants swore by it. Entering the California scene in 1852, by the mid-1860s it was the most important express agency in the West, the richest bank, the farthest-ranging stage line, and one of the largest freighting agencies. Almost every town in California had a Wells Fargo building, a combination bank and stage agency. Its green mail boxes stood alongside the red U.S. postal boxes, and became the largest depositories of mail because of an awareness that Wells Fargo could and would provide better mail service than the United States postal system. It had agents in Mexico, Panama, Hawaii, and other foreign nations. Within

> 15 years of its founding in San Francisco, it had absorbed every one of its major rivals, and was the most powerful institution in the West.

Its over one hundred offices throughout California and the other western territories served as gateways to the outside world for news, mail, and banking transactions. One traveler observed that the Company was the "omnipresent, universal business agent" of the West. In his book, *Beyond the Mississippi*, published in 1869, Albert D. Richardson wrote that Wells Fargo

> illustrates the superiority of private enterprise. When its messengers run on the very steamer, or the same railway carriage, with those of the United States mail, three-fourths of the businessmen intrust it with their letters, which are invariably delivered in advance of the Government consignments. … To found and systematize a great enterprise like this, extending over half a continent, new, thinly-settled, with poor means of communication, along routes infested by robbers and Indians, requires more capacity than to 'run' the Government of the United States in ordinary times. The uniform charge for delivering letters is 12½¢. The company carries them only in stamped envelopes, thus paying a Government tax of 3¢ on every half-ounce. Yet the post office department constantly endeavors to suppress it. When the operations of the Wells-Fargo company were confined to the Pacific coast and the steamers between San Francisco and New York, it transported 2,300,000 letters annually. [Nearly] two and a-quarter million writers paid 9½¢ *not* to have their letters pass through the Circumlocution Office!

As it had done in the East, the Post Office Department did everything in its power to curb the competition. Although the Congressional Act of August 31, 1852 had legitimized the use of private expresses, it required the patrons of private posts to use prepaid government envelopes, thus making them pay twice for the same service. The law of March 3, 1855 expressly outlawed unstamped or collect letters as of January 1, 1856. An editorial in the San Francisco *Daily Alta California* newspaper of July 18, 1855, summed up the outlook of many Californians:

> [T]he present Post Office system is the most outrageous tyranny ever imposed upon a free people. It forbids us from sending letters by such conveyances as we may prefer, without paying an odious and onerous tax to the government. A private individual cannot carry letters because it would interfere with the government monopoly, and so the Post Office charge must be paid, whether the service is rendered or not.
>
> [T]he Post Office system, so far as California is concerned, is a humbug and a nuisance. It does not facilitate intercourse between different parts of the State but impedes it. It subjects correspondents to an onerous tax, if they select a more speedy and sure conveyance for their letters than the mail, and it benefits no one save office holders and contractors.

In order to more easily comply with the Post Office demands, and to reduce its losses on letters that were sent collect, in the autumn of 1856, Wells Fargo initiated a policy of carrying letters only when enclosed in its own prepaid envelopes, provided that the envelopes also had the correct amount of government postage affixed. Louis McLane, the general agent for Wells Fargo in California, is generally credited with the idea of having his company purchase government-stamped envelopes in large quantities, and having them imprinted on one end: "Paid, Wells Fargo & Co., over our California and Coast Routes." The success of the Wells Fargo franked envelopes was spectacular. By 1863, the company was buying well over 2,000,000 government envelopes and 100,000 extra stamps every year.

The Wells Fargo mail service persisted for nearly 50 years, during which it operated the famed Pony Express in 1861. By the 1890s, the officials of Wells Fargo & Co realized that its mail service was no longer profitable. The Post Office had become efficient enough that Wells Fargo was losing business. On October 1, 1893, the company stopped selling franked envelopes east of the Missouri River. Customers in the west were no longer willing to pay Wells Fargo 5¢ for what the Post Office would actually deliver for 2¢. "Accordingly, on May 24, 1895, the bright-green Wells Fargo mailboxes in the streets of San Francisco, Sacramento, and Portland [Oregon] were taken down and the privately run service was terminated."

Conclusion

In discussing the activities of Wells Fargo, Edward Hungerford noted that war between the express companies and the Post Office lasted throughout most of the nineteenth century. The express companies won most of the battles, but the Post Office finally won the war of attrition when it was able to drive its major competitors out of business. The Post Office has always had the full "faith and credit" of the United States government on its side. Not only has the Post Office always been assured support via government taxation, it has also been successful in avoiding any frontal attacks on its constitutional powers.

The government might not ever go so far as to say that a man could not write letters, or that once written he could not carry and deliver them himself, but it has certainly acted as if it owned or rightfully controlled private correspondence. An example of such effrontery is the recent Congressional efforts for the "Interception of Digital and Other Communications" (H.R. 4922 of 1994) that requires every public and private communication carrier to maintain equipment and facilities that enable the government "to intercept … all wire and electronic communications … concurrently with their transmission …; delivering intercepted communications and call-identifying information to the government." Although seemingly right out of *1984* such a demand stems directly from the roots of the postal monopoly and the reasons why governments find such a monopoly attractive.

The American government's motivation in these matters is the same as every other government's. Protecting itself by conducting espionage and spying on private communications has always been the first and foremost reason for bringing the mails under State control. Practically none of today's postal customers understand the reasons behind government control of the post office. Nevertheless, we can bet that many of them are voluntaryists at heart. As postal history demonstrates, it's natural for customers to patronize private alternatives when government service gets too slow or too expensive. V

Short Bibliography

R. H. Coase. "The Postal Monopoly in Great Britain." *Economic Essays in Commemoration of the Dundee School of Economics, 1931–1955*. J. K. Eastham, ed. Dundee School of Economics, 1955.

Jesse L. Coburn. *Letters of Gold: California Postal History Through 1869*. Canton: U.S. Philatelic Classics Society, 1984.

Wayne E. Fuller. *The American Mail*. Chicago: University of Chicago Press, 1972.

Alvin F. Harlow. *Old Post Bags*. New York: D. Appleton and Company, 1928.

Edward Hungerford. *Wells Fargo*. New York: Random House, 1949.

George L. Priest. "The History of the Postal Monopoly in the United States." *18 Journal of Law and Economics* (1975).

Carl H. Scheele. *A Short History of the Mail Service*. Washington: Smithsonian Institution Press, 1970.

William Wooldridge. *Uncle Sam, the Monopoly Man*. New Rochelle: Arlington House, 1970.

"Beyond the Wit of Man to Foresee": Voluntaryism and Land Use Controls

by Carl Watner
(from No. 80, June 1996)

Introduction

The impetus for the research behind this article was a Spartanburg, S.C. *Herald-Journal* editorial of June 25, 1995 (p. A15) headlined "Zoning isn't a loss of rights: zoning is a protection rather than an elimination of property rights." In "double-think" language right out of *1984*, the writer justified zoning controls because "zoning prevents surprises." According to the editorial, without zoning there is nothing to prevent the value of one's property from being diminished when a neighboring property is suddenly developed as a junkyard or landfill. The

author of this piece hadn't realized that there are ways of avoiding land use surprises on the free market, such as deed restrictions, privately planned developments, and purchase of buffers and development rights. Furthermore, the writer didn't understand that in a free market, it is not monetary values that are guaranteed, but rather the right to use one's property peacefully. The value of your property is a function of what other's will pay for it. No political statute can change the law of supply and demand.

As I began reading about the history of land use controls in the United States, I discovered that one of the justifications behind early twentieth century zoning laws was that "zoning protected property rights." New York City's Fifth Avenue merchants wanted to be protected from the invasion of the garment industry, and San Francisco businessmen wanted to be insulated from the spread of Chinese laundries throughout their city. Probably few, if any, of the early supporters of zoning understood that zoning was actually a violation of property rights: that political controls over private land use constituted a gross violation of the free market concept. Researching the topic further, the same conclusion was constantly buttressed: total private property rights have never existed in this country. There have always been political controls on the use of one's land and property. These laws have always gone beyond the common law rule which recognized that one should not use one's own property in a manner to physically invade another's property. These political controls have included nuisance and public health laws, taxes on the value of real property, and the legitimization of property confiscation for "public use" via the Fifth Amendment. In short, government "protection" of property rights is one of those political myths which the government uses quite effectively to legitimize its conquest over us. Governments and property rights are like oil and water; they don't mix. Despite all the propaganda and rhetoric to the contrary, governments can only negate property rights, not protect them.

Up to this point, my research had been primarily negative, focusing on the statist aspects of zoning. Voluntaryism, however, is a philosophy of living peacefully with others; the advocacy that all human affairs should be by mutual consent. In the absence of a coercive government, how would the problems addressed by nuisance and zoning laws be handled on the free market? Were there good historical examples of common law rules which provided the basis for peaceful land use and development, without neighboring property owners feuding with one another? Yes there were, and prime examples of voluntaryist land use controls were found in such private developments as Levittown, N.J., Reston, Virginia, and Columbia, Maryland (developed by The Rouse Company). In Columbia during the early 1960s, The Rouse Company bought over 15,000 acres of land between Baltimore and Washington. This was done without the use of eminent domain or resort to condemnation proceedings. Nevertheless, there were five "holdouts," property owners who would not sell. Imagine what would have happened to these property owners if The Rouse Company had been a government entity. Despite

these objectors, Columbia became one of the largest and finest private communities in the world. Everything proceeded on the basis of mutual consent. Rouse purchased the land from willing sellers, placed deed restrictions upon its future use, and then resold the land to willing buyers. In short, I discovered that there were various ways that private communities have provided "public goods" without interference by coercive governments. Thus, the purpose of this paper is not only to explicate the negative history of political zoning, but to shed light on the positive, voluntaryist approach to private land use controls.

Zoning: A Police Power

There are basically four ways that governments exercise power and control over "privately owned" land. Zoning is a subcategory of one of them. The four methods are: 1) the power of eminent domain (the power of the government to take title to private property by paying a compensation of its own determination); 2) regulation of land use via zoning and nuisance laws which are derived from the state's police power to protect the public; 3) taxation of land; and 4) government expenditures on infrastructure—such as its provision of water, sewerage, and highway systems. Although the last two modes of government operation are as pervasive (and pernicious) as the first two, they are not a matter of concern in this article.

What distinguishes the power of eminent domain from the power of regulation is whether or not government takes title to the land in question. When eminent domain is exercised, the private land owner is dispossessed of the title to the land and is offered some monetary compensation. When a government agency builds an airport runway, it will condemn, and must pay for, the land upon which the runway is situated. Owners of land near the airport will be prevented from building high-rises on their land so that airplanes may approach the runway. Both the original owner of the condemned land and the adjacent property owners lose property rights. In the former case, the original owner loses all right and title to the property in return for whatever compensation the government awards; in the latter, the owner retains title. The portion of his building rights that have been forfeit is not a compensable loss.

Since the power of eminent domain has been discussed in an earlier issue of *The Voluntaryist* (see Whole No. 32, "Property Rights or Eminent Domain?") no extended discussion is necessary here. However, a few additional comments about the contradictory nature of government in the United States are in order. In contrast to most of the constitutions of the fifty states, there is no explicit grant of the power of eminent domain in the United States Constitution. Nevertheless, the courts have always viewed its exercise as an inherent attribute of the federal government's sovereignty. Thus the Fifth Amendment to the Constitution legitimizes the exercise of a power which is not even mentioned in the document it amends. To claim, as the Fifth Amendment does, that private property shall not

be taken for public use without just compensation, means that property rights are not absolute and that the government may take property from an owner without his or her consent. The fact that compensation is to be offered is beside the point. (How can the compensation be termed "just" if the original owner does not want to sell?) Any time that the power of eminent domain is exercised, a theft has occurred. The government has stolen land from a person unwilling to sell.

The constitutions of the fifty states are also the basis for the exercise of each state's police power, and all "private" property in the United States is held subject to the police power. The police power refers to government actions for "the promotion and maintenance of the health, safety, morals, and general welfare of the public. It is grounded in the belief that an overriding public interest of general, widespread benefit asserts a superior claim over private property. Zoning is a perfect example of this principle. When the police power is applied to all citizens and landowners in like manner for broad public benefit, no monetary compensation is due those whose property is 'used' or taken." (For example, the police power is the basis for state seizure and slaughter of diseased animals, and the seizure and destruction of buildings in order to put out large fires.) Since the federal and state courts have consistently upheld zoning as a proper extension of the police power, they have also determined that governments need not be responsible for changes in the value of property due to zoning laws. In other words, the loss of potential market value caused by zoning classifications, does not impair the validity of zoning legislation or impose any obligation upon the legislature to compensate the land owner. Supreme Court Justice Oliver Wendell Holmes summed up the statist view of the police power in two different cases. In 1922, in the Pennsylvania Coal Case he wrote that, "Government could hardly go on if, to some extent values incident to property could not be diminished without paying for every change [caused by] the general law" (269 US 393 at 413). Six years later he wrote: "Property must not be taken without compensation, but with the help of a [legal] phrase (the police power) some property may be taken or destroyed for public use without paying for it, if you do not take too much" (277 US 189 at 209).

Zoning may be defined as the method by which the legislature of a political jurisdiction exercises control over land by dividing or classifying it into certain areas and then subjecting it to particular planning restrictions. Zoning laws now control such matters as how the land may be used (residential, commercial, agricultural, etc.), the type of buildings that may be erected, the size of lots, the width of streets, the height of buildings, and setback requirements (minimum distance of buildings from property lines). In some municipalities there is still no formal zoning, even today. Nevertheless, in a city like Houston, Texas, where this is the case, there are subdivision controls, a minimum housing ordinance, a building code, and seventeen separate land-use ordinances covering things such as trailer parks, rendering plants, and commercial landscaping. In other areas without zoning, there are performance standards. For example, if you have a junkyard on your

land, the local government requires you to screen it off from public view. In most cases, even if there is no zoning, these government regulations amount to the same thing: government control over privately owned resources. In other countries, this is something we call fascism. In short, zoning "permits" the owner to retain title to his land, while dictating the owner's "right" to do certain things if he wishes to develop or use the land.

In areas where zoning only permits one use, government policy effectively dictates how the land may be used, if the land owner is to develop the property. The free market way of accomplishing this would be for neighbors and/or adjacent land owners to negotiate a private covenant under which the property owner in question would agree to forego certain future usages or to restrict the property to a specific use in the future. The difference between this free market approach and that of legislative zoning is that on the free market a person's neighbors would not be able to force the owner to make such promises. Under zoning legislation they do; the majority uses the police power to impose their view of development on the neighborhood. If a landowner uses his land in a manner not consistent with the law, he will either be fined, jailed for contempt (until such time as the landowner agrees to cease and desist the illegal usage), or the land itself will be seized and confiscated by the public authorities in their efforts to end the illegal use. Ultimately, the police power means the courts will uphold the right of the police to kill a person who refuses to abide by the will of the legislature.

Nuisance Law versus Zoning

The Latin legal maxim, 'Sic utere tuo ut alienum non laedas', epitomizes the common law approach to land use controls: "Use your own thing so as to not harm that of another." At English common law, the basic limitations on the use of property were incorporated in the law of nuisance, the action that a landowner could bring if his right to the use of his land was being interfered with. Thus the common law of nuisance was used to resolve land use disputes. At common law, a nuisance was defined as "the substantial interference with the plaintiff's use of his land by the unreasonable conduct of the defendant." Nuisances extended to "everything that endangered life or health, gave offense to the senses, violated the laws of decency, or obstructed the reasonable and comfortable use of property." The general principle (based upon the idea of homesteading, or "a prescriptive easement," as the common law terms it) was that land use prior in time would prevail over latter ones. For example, if neighbors of a landfill found its operation offensive, they would only be able to prevail against it as a nuisance, if their housing development predated the development of the landfill. If the landfill was in operation before their homes were built, its operation would not be prohibited or be deemed a nuisance. Thus, noise, smoke, and offensive odors are not necessarily, in and of themselves, nuisances. Under certain circumstances, one may have an

affirmative easement to maintain a nuisance on one's own land (either by "grant, implication, or prescription").

During the late nineteenth century, the State and its judicial courts took over the law of private nuisance and created a new concept of "public nuisance." This became the bridge that linked the law of private nuisance to the twentieth century law of zoning. In bringing a suit of private nuisance, one or more affected landowners are generally the plaintiffs. In a public nuisance suit, a public officer (zoning or health official) brings suit to abate a nuisance that affects a large number of people. A public nuisance is further removed from that of private nuisance when legislative bodies declare certain kinds of land use to be a public nuisance, even though there are no harmful consequences traditionally regarded as a nuisance. An example of this might be the operation of a hair salon in one's home, thus violating a law which prohibits businesses in a residential district.

The key regulatory device for the enforcement of zoning regulations is the requirement that all new construction or new land uses (and even substantial rehabilitation of existing structures) may not be undertaken until official authorization is given. Zoning or building permits must be obtained before anything is done on the land. Failure to obtain a permit, or failure to comply with the zoning or building codes automatically makes the property a public nuisance. Building codes include regulations regarding the types of materials used in construction, fire safety, and the use of gas, water, and electricity within the building. In addition, housing codes often exist, and are frequently made retroactive. Such codes set out minimum requirements for any buildings in which human beings reside, whether or not newly constructed. Although it may not happen often, people have been evicted from their habitations for failure to meet the specifications of a housing code. At other times, buildings have been torn down by the political authorities because their owners would not obtain building permits or bring their buildings into compliance with the building code. Zoning codes may be applied retroactively, so as to outlaw preexisting, nonconforming uses. The police power of the state, exercised under the guise of zoning, building, and housing codes, is one of the most coercive elements of political government.

A Very Brief History of Zoning

The record of land use controls in the Anglo-American legal system is one of the triumph of the State over private property. The English Parliament, as early as 1588, and again in 1592, passed national land use legislation regarding the size and location of housing. In 1606, in "The Case of the King's Prerogative in Saltpetre," it was decided that a private landowner was obligated to build military fortifications and trenches upon his own land, at his own expense. The "King's prerogative" or "police power" mandated that his efforts were noncompensable since they were in the "public interest" and for "the general welfare."

In the American colonies, a similar ideology prevailed. Colonial land controls took various forms, from the requirements that the colonists construct fences and plant shade trees, to the restrictions in Boston in 1692 that certain industrial uses be confined to particular areas of the city. New York City in the same period approved legislation prohibiting animal slaughterhouses altogether. Government controls existed throughout the 1700s, but came into their own during the nineteenth century. In 1811, the New York City Commissioner's Land Plan compulsorily divided the city into lots 25' x 100'. In 1826, New York City authorities prohibited a church from using its burial ground. "The church sued; and the court, citing protection of community health, upheld the law." During the 1860s, tenement housing reform originated in New York City, where the first regulations outlawing public privies and prohibiting basement occupancy were passed in 1867.

A city law of Modesto, California in 1885 was probably the first modern zoning ordinance in this country. It prohibited the establishment of public laundries or wash houses in certain parts of the city. A similar situation existed in San Francisco, where city authorities objected to the lack of drainage, and the nuisance resulting from the laundry water being turned onto city streets. There, laundries were prohibited, too, unless licensed by the city. On December 28,1885, a Chinese laundryman, Yick Wo, was arrested and prosecuted for operating an unlicensed laundry. The case was appealed to the Supreme Court of California, where his conviction was upheld. Other California litigation, as well as cases decided by the United States Supreme Court, "established the right of municipal authorities to restrict practically any kind of business, the operation of which might be a menace," or a threat to public safety, sanitation, or morals within city boundaries. Under this reasoning, the operation of livery stables was restricted in St. Louis in 1893.

By the beginning of the twentieth century, the agitation for more comprehensive land use controls began. In 1904, Baltimore City passed an ordinance limiting the height of city buildings. Similar laws were passed in Indianapolis, New York, and Boston, where height districts were created that covered the entire city. The most fully zoned city of the time was Los Angeles, where district zoning went into effect in 1909. This legislation, upheld by the state courts in 1911, "established the right of the city to regulate any lawful business, by holding that the power to regulate the carrying on of certain lawful occupations in a city includes the power to confine their operation to certain limits, whenever such restrictions may reasonably be found to protect the public health, morals, safety, and comfort." The Los Angeles law also included a retroactive provision, under which nonconforming uses could be terminated.

By 1913, homeowners and real estate men in Wisconsin, Minnesota, and Illinois had lobbied their respective state legislatures to empower cities of certain size to "establish residential districts from which manufacturing and commercial es-

tablishments would be banned." In New York, the cities of Syracuse and Utica legislated "residence districts" in which buildings other than single or two-family dwellings were prohibited. In December 1913, another official New York City document was released which supported zoning (*Report on the Heights of Buildings*). In 1914, the New York State legislature amended the charter of New York City to permit the City's Board of Estimates to zone the city. It took two years of further agitation by the Fifth Avenue merchants before a zoning resolution was passed on July 25, 1916. (The Fifth Avenue Association, representing those who owned or occupied the city's most expensive retail land, "demanded that the city protect their luxury block from encroachment by the new tall buildings of the garment district.")

During the first two decades of the twentieth century, business and professional groups were instrumental in bringing about local zoning ordinances. For example, the Los Angeles Realty Board was highly supportive of the first city-wide zoning in their city. J. C. Nichols, a nationally prominent builder and developer from Kansas City who relied upon private deed restrictions in his residential subdivisions, pointed out that this was not enough. He said that residential developers required municipal assistance (in the form of zoning laws) to control unregulated development around their privately created communities. Other architects, city planners, engineers, and real estate men all believed in the desirability and "necessity to bring some order out of the chaos that has resulted from the anarchistic development of our cities." Such groups as the National Association of Real Estate Boards, the Chamber of Commerce of the United States, the American Society of Civil Engineers, the American Society of Landscape Architects, and the National Housing Association all banded together to push zoning. Zoning (and building codes) not only eliminated many of the problems traditionally associated with the operation of private deed restrictions, but was a way of eliminating many small competitors in the land development and building industries. These professionals and large scale developers and builders were also joined by city politicians and bureaucrats, who expected that their sphere of influence would be broadened under zoning regulations. Future development could be "regulated" so that city authorities would not be overwhelmed by the demand for municipal services. Most backers of zoning were probably sincerely interested in promoting orderly land use and better communities, but they also saw zoning as a tool to buttress their personal profit and power.

Court Cases on Zoning

Although the courts have occasionally challenged the application of a zoning law to a particular piece of property, they have always upheld the exercise of the government's police power, and have "never held against zoning in any basic sense. This carries forward a tradition from the earlier days, both in this country and England, in which the rule of government" prevailed over private property

rights. The authors of this statement, Linowes and Allensworth, conclude that in Anglo-American law there is no right to use your property as you like: "[H]ere are important constraints on the use of property that suggest that property rights do not exist."

An early twentieth century example of this is the California case of *Hadacheck v. Sebastian*, which was eventually decided by the United States Supreme Court (239 US 394). In 1902, J. C. Hadacheck acquired 8 acres of land, outside the city of Los Angeles. The land, which contained clay deposits, was devoted to the manufacture of brick. Around 1909, after the city had annexed the land on which the brickyard was located, a municipal ordinance was passed which limited brickmaking to certain areas of the city. Hadacheck challenged the law, on the basis that denying him the use of his land as a brickyard lowered the value of his real property by several hundred thousand dollars. Both the California Supreme Court (in 1913) and the US Supreme Court (in 1915) decided that the city had the right to prohibit what hitherto had been a lawful use. "The police power was available to stop nonconforming uses, to deal retroactively with uses incompatible with those allowed by law." According to this reasoning, there is no such thing as private property rights in the United States. At any time, the political authorities, may, under the guise of zoning and the police power, declare a hitherto legal use "nonconforming" and prohibit its exercise. And the prohibition against "ex post facto" laws does not apply because most zoning enforcement is a civil action, not a criminal one.

By the early 1920s the national zoning movement had achieved remarkable results. In September 1921, Secretary of Commerce Herbert Hoover appointed an Advisory Committee on Zoning. Within a year, the Department of Commerce issued a Standard Zoning Enabling Act, which furnished state and local governments a model law under which to empower their towns and cities to exercise the police power to zone. By 1925, over one-quarter of the states had passed similar enabling acts. (Zoning also received a "boost" in 1934, when the Federal Housing Administration was created. Only builders in municipalities with zoning regulations were qualified to receive FHA mortgage insurance.) The supporters of zoning believed that when a test case went before the Supreme Court that the Court would be more inclined to support zoning if it had seen widespread adoption throughout the country. By the end of 1925, zoning had been brought before the highest judicial tribunals in twelve states, and nine of them had upheld the police power. Only in Maryland, New Jersey, and Missouri had zoning been declared unconstitutional.

The constitutionality of comprehensive zoning was upheld in 1926, when the United States Supreme Court decided the case of *Ambler Realty v. the Village of Euclid* (272 US 365). This test case originated in Ohio, where the federal district court judge had "held that zoning ordinances were necessarily unconstitutional because they 'took' property without compensation." The case was a classic one of

commercial real estate being rezoned residential, with a resulting loss of potential property value to the property owner. The Supreme Court had already heard arguments in the case, when Alfred Bettman, a well-known national supporter of zoning and friend of Chief Justice Taft, filed a friend of the court brief. Bettman pointed out that the question before the court was the constitutionality of comprehensive land use regulations, not whether the Village of Euclid had exercised the power of eminent domain (which would require compensation). The Euclid ordinance was "frankly and expressly an exercise of the police power." "The community," Bettman wrote, "was not taking or destroying any property or property rights for public use but was invoking a general power over private property, which [was] necessary for the orderly existence of all government."

"Bettman's brief saved the day for zoning. One justice who had previously been persuaded that use-zoning was unconstitutional changed his mind, and on November 22, 1926, the high court upheld this form of regulation in a momentous four-to-three decision." Justice George Sutherland, who delivered the majority opinion, believed that the exclusion of buildings devoted to business from residentially zoned areas bore "a rational relation to the health and safety of the community." The problem with this justification is that "the health and safety of the community" is as open-ended a concept as "the general welfare." Sutherland justified the exclusion of businesses from residential areas on the grounds that there would be less traffic, children and pedestrians would be safer, that there would be less disorder, and that municipal fire and police protection would be made less difficult and less costly to provide. He also added that "the construction and repair of streets may be rendered easier and less expensive, by confining the greater part of the heavy traffic to streets where business is carried on."

In 1948, the Supreme Court was called upon to adjudicate the issue of public policy versus private covenants. It took a very statist view, upholding the right of the government to abrogate private agreements. In *Shelley v. Kraemer* (334 US 1), the Court held that it would not enforce a private covenant designed to exclude members of the Negro race from a neighborhood. Private covenants contrary to public policy (such as nondiscrimination laws) were not illegal, but the parties to them could not use the state's judicial system to enforce them.

Private Places and Contractual Communities

A covenant is usually a promise not to do something, and in the real estate world a restrictive covenant usually refers to restrictions recorded in the deed of a property. The law of equitable restrictions on land, sometimes termed easements or servitudes, has often been used by real estate developers to assure that the land is used according to a certain scheme. Typically such agreements might provide for residences only, or allow houses of a specified value, certain size, or style of architecture, or protect against the conduct of objectionable businesses, and restrict building to a specified distance from the street and other property lines. Some

covenants "run with the land," (an old practice under the English common law) and others are set out in the sale or purchase agreement.

One of the earliest uses of private covenants was found in St. Louis, Missouri, where during the 1850s and 1860s, nearly one hundred subdivisions or private places were formed within the city. "A private place could encompass one or more streets and was governed by an elected lot association. Not only did each private place own and maintain its streets, but in many cases it also owned the sewers, water mains, and utility easements."

> The rules for each private-place association were laid down in its "indenture," or restrictive covenant. Most covenants were framed by the initial subdivider and contained house set-back requirements, restrictions against multi-family housing, and private building codes. Covenants authorized the collection of annual assessments to pay for the upkeep of the streets, water mains, parks, and other common areas. If a lot owner refused to pay annual assessments, the association had the power to place a lien on the property and sue in a court of equity. In this respect, the private-place is similar to the modern condominium.

David Beito, author of the foregoing quote, adds "The private places carried on functions that everywhere else have been considered essential government services." But of course, they were not governments in the traditional sense. The rights and powers of the homeowner's association ended at the boundary line of the subdivision. They seldom had any control over vacant land bordering their neighborhood. In contrast to the politically coercive methodology of zoning, the developers and owners of private-places respected the property rights of everyone, whether they were inside or outside the boundary of the development.

The private places of St. Louis, and other early subdivisions like Tuxedo Park, New York (1885), Riverside, Illinois (1869), Country Club District (Kansas City, 1906), and River Oaks (Houston, 1925) were the forerunners of today's "new towns." They paralleled the construction of new company towns, such as Gary, Indiana (U.S. Steel, 1906), Kohler, Wisconsin (The Kohler Company, 1916), and Chicopee, Georgia (Chicopee Manufacturing Company, 1924). In time, they have been followed by such mammoth places as Irvine Ranch (93,000 acres in Orange County, California developed by The Irvine Company), California City (90,000 acres in Riverside County, California developed by Kaiser-Aetna), and Valencia (44,000 acres near Los Angeles, California built by Newhall Land and Farming Company). The essential element that links all of these projects is their reliance upon private enterprise. The entrepreneurs who built these places all realized that contractual communities were the key to creating and maintaining value, both for investors and those who chose to live in their new towns.

The Rouse Company and Columbia

Columbia, Maryland, the planned development of The Rouse Company of Baltimore, Maryland, is one of the finest examples of a contractual community in the United States. As of April 1995 there were nine major villages and a Town Center in Columbia, where 81,00 people lived. "Columbia exploded three myths about new towns." The giant developments in California had nearly all started from farm lands owned by family or corporate interests. James Rouse proved that it was possible to assemble enough land to start a new town. Furthermore, he demonstrated that new towns could be financed by private enterprise. Rouse did not resort to federal loan guarantees provided by Congress in 1966 to private developers of new towns. Earlier developments, by contrast, like the three Levittown locations (Long Island, NY, Bucks County, PA, and Burlington County, NJ), relied heavily upon government mortgage money under FHA and Veteran's Authority programs. Finally, Rouse showed that it was possible "to win zoning approval from development-shy suburbanites."

From the very beginning of Columbia, Rouse realized that creating a private community that would be "truly in scale with people" depended upon the profit-motive. "Profit," said Rouse, "hauls dreams into focus with reality. It moderates the temptation toward imposing one's bias on others. You hav[e] to estimate at every step of the way how people are really going to choose, not the way you want them to [choose]." Rouse was convinced that "if you can create an environment that is good enough, people will pay for it." He once stated that "Unless Columbia makes an outrageous profit, it [will be] a failure." Columbia not only had to attract enough inhabitants, who wanted to live and own there, but it had to earn "an outrageous profit," as Rouse termed it, to show the financial community that "new cities are [not] a pointless risk." (Rouse proved his point. The Baltimore *Sun* reported on October 10, 1995 [page 6A] that his company "has earned about $100 million in profits on land sales, primarily in Columbia.")

The idea for a new town midway between Baltimore, Maryland and Washington, D.C. may have occurred to Rouse during the late 1950s. Howard County, Maryland was predominantly farming land at the time. Beginning in 1962, through exceedingly careful control and negotiations, Rouse was able to acquire over 15,000 acres of county real estate with sufficient contiguity to be treated as one entity. He obtained a loan of nearly $25 million from Connecticut General Life Assurance to pay for the 169 parcels he purchased at an average price of $1500 per acre. Once the Howard County government granted "new town" zoning to the project in 1965, another $50 million of long term financing was obtained from such sources as Chase Manhattan Bank and the Teachers Insurance and Annuity Association of America.

To attract industry and to provide jobs for the residents of Columbia, The Rouse Company paid for a four-mile railroad spur and expanded the city beyond its original scope. The General Electric Industrial Park was created on 2139 addi-

tional acres of farms and gravel pits, that Rouse purchased several years after Columbia started. This land cost over $19 million, more than six times the average price per acre Rouse had paid in late 1962 and 1963. With the addition of the acreage for the General Electric Company, Rouse had bought a total of 17,868 acres for $44 million, at an average cost of $2485.

The Columbia Park and Recreation Association is the name of the homeowner's association set up by The Rouse Company under the terms of its sales agreements. The Association is a private, nonprofit corporation with a full time manager, professionals, and grounds maintenance staff. The Columbia Association is responsible for the community's buildings, swimming pools, lakes, pathways, parks, and landscaping. To pay for this and other services, such as child and day care, arts and craft classes, tennis and golf clubs, the Association is empowered by private covenant to collect from every property owner in Columbia, an assessment of up to 75¢ per year of $100 assessed valuation. Apartment dwellers have the Columbia Association's levy included as part of their rent. Another arm of the Columbia Association, and which falls under the covenants which govern the residents of Columbia, is the Architectural Committee. This group functions as a review board and must approve all construction plans in advance. It has the power to require changes, or even reject building projects entirely. From a voluntaryist point of view, the only major flaw in the planning for Columbia was that The Rouse Company did not assume the responsibilities for certain public services within the community. The local government of Howard County levies a property tax on homeowners in Columbia, and maintains the streets, the roads, the schools, and provides fire and police protection.

Unlike coercive political government, The Rouse Company could not resort to condemnation proceedings in order to assemble and purchase the properties it needed to form Columbia. In order to prevent land prices from rising as it bought up more and more land, Rouse disguised its intentions by buying through many intermediary agents. Despite the secrecy and their best efforts, the agents employed by Rouse were not able to buy up all the properties in the proposed area. There were five-holdouts, owning some 850 acres, who refused to sell under any conditions or at any price. Finally by 1971, Rouse had paid $3,000 an acre for one 112 acre holdout, which became the site of the Howard County Community College. As of 1995, one of the holdout properties was still undeveloped, and the rest had been privately developed.

As Rouse found out, most people have a price for their land. As one of his real estate agents put it, their "job [was] to find out what it [was]—money, terms, a life estate. Everything can be acquired if you solve all the difficulties." Farmers had to be satisfied that they would be able to harvest their crops that were in the ground. "Several elderly couples insisted on the right to live where they were until they died. One woman would agree only to lease her land for 99 years, giving Rouse an option to buy after that." Another farmer wanted to preserve a life estate on his

property for his horse. On one 810 acre property where a life estate had been preserved for the owner, Rouse had not purchased the timber rights. When the elderly resident threatened to sell his valuable stand of timber, Rouse bought the timbering rights and topsoil for more than $40,000 and let the trees stand. All such problems were overcome by human ingenuity and the respect for individual property rights.

Another example of a contractual community formed in the same manner as Rouse's Columbia is Walt Disney World, an entertainment and resort complex that lies southeast of Orlando, Florida. Disney World consists of 28,000 acres, which encompasses a wildlife preserve of 8200 acres. "To avoid holdouts as well as to keep the land prices in the area from escalating, Walt Disney had by 1964 acquired the land in small parcels using various holding companies. Using middlemen, stealth, and more than 100 dummy corporations, [Disney] went on a secret land-buying spree near Orlando, paying about $400 an acre." One important aspect of the development is that Disney purchased much more land than was needed for, or intended for, Disney World. He wanted "to create a buffer zone" around the theme park "and avoid the motels, fast-food stores and unsightly neon cacophony that developed around Disneyland in California." By being able to control the surrounding environment, Disney management would not only be able to guide future development, but also assure itself of a profit as land around Disney World increased in value. Like Rouse, Disney aimed to show "that through free enterprise you could take virgin land and develop it without any government subsidy."

Conclusion

As these examples of contractual community governance illustrate, there are marketplace institutions that provide many, if not all, the normal services offered by politically sovereign governments. Spencer MacCallum has argued that "there are no longer any political functions being performed at the municipal level and upward in our society that differ substantially from those that we can observe being performed on a smaller scale entirely within the context of normal property relations." There are two major differences between contractual communities and the typical community political government. First, the governing body of a contractual community (usually called a residential community association) does not have the power to levy taxes like its political counterpart. The fees that they charge are based on market place competition, not political whims. Secondly, in a contractual community the relationship between the party that owns the property and the people who live there is based upon an explicit contract entered into by both parties. Such a contract cannot be changed unilaterally, nor by the majority of residents. In political communities, the relationship is non-contractual (what the government would call "constitutional") in nature, and can be changed by the government or a majority of the voters. The institutions of political governance re-

serve to themselves the right of final constitutional interpretation and enforcement by liens, seizures, and imprisonment.

The whole point of contractual governance is to stabilize land uses and property values to the benefit of all parties involved in owning or residing on the land. It pursues this goal in a free market manner by linking ownership, management, and the maintenance of property values. All the parties involved in these arrangements are mutually satisfied or withdraw from them. "The slightest neglect of the public interest or lapse in the form of corruption or oppression" in the contractual community penalizes itself by a decline in rent and property values. By contrast, zoning and political officials suffer no personal loss if their controls don't work. In fact, they sometimes benefit from unworkable regulations, which they themselves obviate through the receipt of payoffs, bribes, or other forms of political intrigue and corruption.

The fact that many people do not view zoning as a destroyer of property rights demonstrates how few people really understand the meaning of private property. Zoning is simply stealing. Not only is its claim to promote the general welfare bogus, but the exercise of the police power effectively negates all private property in land in the United States. "In essence, zoning grants a cadre of public official and favored private [interests] the free exercise of state power to force their designs on the use of someone else's property." Zoning is "legal mumbo jumbo for uncompensated takings under the exercise of the police power." Furthermore, the history of zoning aptly illustrates the truth of Ludwig von Mises' observation that one government intervention must lead to another. Early zoning laws were not aimed at controlling undeveloped land. Later, zoning laws were expanded to include all real property.

Contractual governance of communities, whether residential or commercial, often goes far beyond the scope of public sector regulations. These restrictions, which might include specifying what colors a homeowner can paint the house, do not constitute a violation of property rights because they are contractually set out in the sales and purchase agreement. In the area of land use and planning, "private innovation" has usually preceded "public action." Many features now common to zoning laws were first initiated by private developers. This includes such planning items as the superblock, the cul de sac, set back lines, planting strips, underground utilities, and design and placement of open spaces and provision for recreational amenities.

Land use planners cannot predict all the changes that will come about in the future. As Bernard Siegan noted, in 1913, when New York City planners began their zoning work, they could not anticipate the impact of the automobile or the Great Depression, or even foresee the advent of air conditioning or penicillin. In a free society, land use controls and building codes would exist under the framework of private covenants and insurance company standards (to be met as a precondition to obtaining insurance coverage). Free market decision-making is

usually wiser than that of bureaucrats and politicians because the free market links authority and responsibility: on the free market, the person or organization who makes the decision has to pay for it. The most effective type of voluntary zoning is the result of private covenants, market pricing, and competition. The social potential inherent in the development of property and real estate under voluntaryism is beyond the wit of man to foresee.V

Short Bibliography

David Beito. "Voluntary Associations and the Life of the City." *Humane Studies Review*, Fall 1988.

Gurney Breckenfeld. *Columbia and the New Cities*. New York: Ives Washburn, Inc., 1971.

Carol Christensen. *The American Garden City and the New Town Movement*. Ann Arbor: UMI Research Press, 1978, 1986.

Fred Foldvary. *Public Goods and Private Communities*. Cheltenham, England: Edward Elgar Publishing, 1994.

Robert Linowes and Don Allensworth. *The Politics of Land-Use Law*. New York: Praeger, 1976.

Spencer MacCallum. *The Art of Community*. Menlo Park: Institute for Humane Studies, Inc., 1970.

Mel Scott. *American City Planning Since 1890*. Berkeley: University of California Press, 1971.

Bernard Siegan. "No Zoning Is the Best Zoning." *No Man Is an Island*. San Francisco: Institute for Contemporary Studies, 1975.

Seymour Toll. *Zoned American*. New York: Grossman Publishers 1969.

Gordon Whitnall. "The History of Zoning." *Zoning in the United States. The Annals of the American Academy of Political and Social Science*, vol 155, May 1931.

"Stateless, Not Lawless": Voluntaryism and Arbitration

by Carl Watner
(from No. 84, February 1997)

Introduction

Arbitration is a consensual process whereby two parties to a dispute agree to accept as final the judgment of a third person or persons in settling the matter in question. Arbitration depends upon the consent and voluntary agreement of the disputants, and the willingness of the arbitrator(s) to serve. What distinguishes ar-

bitration from all forms of State judicial settlement of disputes is its totally voluntary nature. Arbitrators are not licensed by the State (at least not yet). The disputing parties select the arbitrators and determine the procedure and rules by which their disagreement will be settled. They may agree in advance of any actual dispute to submit their differences to arbitration or they may simply agree to arbitrate an existing problem. The arbitral award or settlement decided upon by the arbitrator obtains its binding force from the contract or agreement of the parties to arbitrate, and does not require the coercive legal apparatus of the State to be respected or enforced. Nonviolent, non-State punishments may be brought to bear against those who, having promised to arbitrate or honor an arbitral award, refuse to do so. Ostracism, excommunication, and the boycott are arbitral sanctions that function in the spirit of true voluntaryism.

Arbitration is undoubtedly as old as mankind, and is certainly older, as an institution, than the near-monopoly court systems we find in use in the contemporary nation-state. Arbitration has been favored in all the ancient legal systems (Jewish, Roman, Greek, Byzantine, Islamic, and Christian), except that of the Chinese, who believed that "going to law" or court was an evil. (The Chinese, while using mediation and conciliation, have always been reluctant to give third parties the right to make a judgement.) It is probably not an exaggeration, as Jerzy Jakubowski has written, to say that arbitration "is a universal human institution. It is [the] product of a universal human need and desire for the equitable solution of differences inevitably arising from time to time between people by an impartial person having the confidence of and authority from" the disputants themselves.

Wherever arbitration has existed, it has posed a threat to the supremacy of the State judicial system. Consequently, it has been co-opted, regulated, and controlled by the State, making its legal history a complex, and sometimes confusing, tangle. The purpose of this article is to offer an overview of arbitration, both past and current, interpreted from a voluntaryist point of view. Voluntaryists advocate an all voluntary society, where all the affairs of people are undertaken by mutual consent or not at all. In the absence of coercive, tax-supported governments which tend to monopolize the judicial settlement of disputes, arbitration and other voluntary dispute settlement practices would flourish and constitute an integral part of civilized life. The old Law Merchant, which was "voluntarily produced, voluntarily adjudicated, and voluntarily enforced," and the international commercial arbitration practices of today prove that arbitration is a moral and practical alternative to compulsory dispute settlement by the State.

Most people assume that nation-states are prerequisites for producing "law and order," and find it difficult to envision a competitive market in the judicial arena. As voluntaryists already realize, such is not the case. If the truth be known, the compulsory nation-state is destructive, rather than supportive, of property rights and the voluntary social order. Bruce Benson, whose scholarly work in this area I wish to acknowledge, once characterized the American Wild West of the

mid-1800s (where coercive government was either absent or extremely weak) as "stateless, but not lawless." Benson would have us focus on the fact that liberty is the mother, not the daughter, of civilized living. Property, contracts, and customary law existed before State-made law tried to supercede them. As Benson and others have noted, private property is a key characteristic of all societies where custom is the primary source of law, and where reciprocity is the primary impetus for meeting one's obligations.

What does this have to do with arbitration? Arbitration is one of the key sources of voluntary law and order in a society without the State. Every contract or voluntary agreement between two or more people contains within itself the essence of the rules governing the transaction(s) between them. These "home-made" laws or rules derive their power from the consent of the parties, and usually differ markedly from statutory or third-party law (often arbitrarily) imposed upon them by the State with its power of legislative law-making. The essence of this idea can be seen in a conflict between International Business Machines Corp. and Fujitsu Ltd., that occurred during the late 1980s, which included an arbitral award of $833.3 million to IBM. IBM claimed that Fujitsu was copying its software, which then enabled Fujitsu to market computers that were compatible with IBM's. Government-made copyright law did not clearly address the issue of such a complex software-hardware dispute, because technology had forged ahead into areas never before addressed by State-made law. Shedding the courts, their own legal staffs and lawyers, and four years of wrangling over the issue, the two companies decided to appoint two arbitrators to settle the issue. The two arbitrators were given "sweeping powers to shape future software relations between IBM and Fujitsu. The two men, in their own words, will 'constitute the intellectual property law between the two companies.' " (*Wall Street Journal*, Sept. 18, 1987, A1)

The History of Arbitration

While much of this article will focus on the various aspects and significance of domestic and international commercial arbitration, such as the IBM-Fujitsu case, there are important reasons for considering the use of arbitration in other areas of life. Arbitration can be, and has been resorted to, in many other types of situations involving community, club, or congregational disputes, patient complaints against hospitals or doctors, in divorce proceedings, and in attorney-client disputes. Arbitration has been widely used in resolving labor disputes, as well as in settling consumer complaints against retail businesses. Currently in Japan, arbitration is sometimes used to determine the amount of restitution a criminal owes to his or her victim. With a little imagination arbitration can be applied to almost any facet of life. Two examples will suffice to demonstrate.

The first is found in Jerold Auerbach's book, *Justice Without Law?*, and describes the effects of an arbitral case in Puritan New England in the early 1640s. The dispute involved the amount to be paid by a Mrs. Hibbens, "wife of a promi-

nent Boston resident," and Mr. Crabtree, who provided carpentry services in her house. When neither of the two could agree on how much Crabtree was due, Mr. Hibbens suggested arbitration. He "chose one carpenter and Crabtree another. The arbitrators set a revised fee, but Mrs. Hibbens remained obdurate." She not only found Crabtree's work unsatisfactory, but cast aspersions on the skills of the two arbitrators, "which diminished their reputation in the community. Church elders approached Mrs. Hibbens, but she remained unmollified. After another arbitration attempt failed, the dispute moved into the First Church of Boston, where Reverend Cotton presided."

The focus of the dispute now shifted "from a disagreement over wages to the stubborn recalcitrance of a church member who did not respect communal fellowship." Not only did Mrs. Hibbens gossip behind the backs of the carpenter-arbitrators, she refused to confront them face-to-face, in a "church way," as required by congregational rules. Ultimately, Mrs. Hibbens' behavior was judged by the entire church membership, "in a process designed to reassert harmony and consensus." As Auerbach pointed out:

> Congregants were free to offer information, opinion, and admonition, but the purpose of individual participation was to encourage a collective congregational judgment, which would isolate offenders, restore them to congregational fellowship, and thereby strengthen communal values. The sanctions of admonition and excommunication were sufficient for this purpose. The church could neither arrest a wrongdoer nor seize his property, but the danger of expulsion, where church and community were virtually co-extensive, loomed ominously. [p. 24]

This was Mrs. Hibbens' fate. She was excommunicated by a vote of the church membership, pronounced "a leprous and unclean person," and deprived of "the enjoyment of all those blessed privileges and ordinances which God hath entrusted his Church withal, which [she had] so long abused."

How many Americans know that George Washington placed an arbitration clause in his Last Will and Testament in 1799? Washington hoped that no conflicts would arise concerning the testamentary disposition of his property. However, he provided that "all disputes (if unhappily any should arise) shall be decided by three impartial and intelligent men, known for their probity and good understanding; two to be chosen by the disputants—each having the choice of one—and the third by the two of those. Which three men thus chosen, shall, unfettered by Law, or legal constructions, declare their intent of the Testators intention; and such decision is to all intents and purposes to be as binding on the Parties as if it had been given in the Supreme Court of the United States." So far as is known the provisions of this clause went unexercised.

Business arbitration in this country and Europe certainly pre-dated Washington's will. Americans used arbitration during the Stamp Act crisis of 1765–66 when their refusal to pay British taxes blocked their access to colonial courts. In

May 1768, the New York Chamber of Commerce appointed an arbitration committee "for the settlement of commercial disputes outside of the courts." Referred to as "the oldest American tribunal," the New York Chamber of Commerce "has continuously, except for a short time at the beginning of [the twentieth] century, maintained some form of arbitration procedure." The New York Stock Exchange, founded in 1792, provided for arbitration in its Constitution of 1817. The oldest arbitral institution in the cotton trade is to be found in Liverpool, England, where the first rules of cotton trading, which included rules governing arbitration, were published in 1863 by the Liverpool Cotton Exchange. Likewise, the first rules of the New York Cotton Exchange, founded in 1870 provided for a court of arbitration. The Dried Fruit Association of New York (now the Association of Food Distributors, Inc.) still maintains an arbitration tribunal which has been in continuous existence since the time of the group's founding in 1906. One of the Association's officials, writing in 1958, pointed out that it was not unusual for a request for arbitration to be received in the morning, and the arbitral award be issued the same afternoon. This was most desirable where the commodity in question was perishable and where it needed to be moved before the free time on the dock expired.

As William Wooldridge has pointed out in his chapter on "Voluntary Justice," arbitration has always played an essential part in the workings of the Law Merchant. For several hundred years, arbitral tribunals composed of merchants and guildsmen settled "the most important trading disputes of England and of much of Europe." The Law Merchant constituted "the body of customary rules and principles relating to merchants and mercantile transactions and adopted by traders themselves for the purpose of regulating their dealings." These institutions were completely voluntary, "and if a man ignored their judgment, he [w]ould not be sent to jail." Their decisions were well-respected, "otherwise people would have never used them in the first place." No one forced a merchant to abide by his agreements or coerced him into honoring an arbitral award. His failure to do so would not place him in jail, but "neither would he long continue to be a merchant." As Wooldrige put it,

> The complete circumvention of official courts, one of the oldest and best established of civilized institutions, and the voluntary forfeiture of what would seem to be the most fundamental and essential characteristic of any court—the ability to enforce its judgments with legal coercion—present interesting questions. … [M]edieval merchants must have considered their interests better served by voluntary submission of disputes to one of their own number than by formal common-law actions. [p. 96]

Clarence Birdseye, author of *Arbitration and Business Ethics* (1926), once guessed that as many business disputes went to arbitration as were settled by the statist courts. He also observed that these commercial arbitrations "had no direct

sanction of law, and were dependent only upon the mutual good faith of the parties for their operation and success." [p. 91] The threat of business sanctions and the desire for reciprocity were the primary motivations businessmen had for voluntarily living up to their promises.

Until the early 1920s, court decisions, some dating back to the seventeenth and eighteenth centuries, governed arbitration proceedings in the United States. Lord Coke's opinion in *Vynior's Case* (Trinity Term, 7 Jac. 1), decided in 1609, formed the basis for the common law doctrine that "1) either party to an arbitration might withdraw at any time before an actual award; and 2) that an agreement to arbitrate a future dispute was against public policy and not enforceable." The precedent established in Vynior's case (from which it was extrapolated that the parties to a dispute "may not oust the court of its jurisdiction"—meaning that courts may not be deprived of their jurisdiction even by private agreement) became "the controlling decision in American arbitration law" until the New York State legislature abrogated the common law doctrine in 1920, and until a federal arbitration statute was passed in 1925. Other states soon followed suit, and for the first time in America, agreements to arbitrate future disputes were "legally binding and judicially enforceable."

These new laws actually undermined the credibility of commercial arbitration. Arbitration had flourished for hundreds of years in the absence of any State-guarantee that arbitration agreements would be enforced by the courts. History had already clearly demonstrated that mercantile conformity to arbitration agreements did not depend upon the existence of the State or its enforcement mechanisms. The Law Merchant had always prohibited appeals of arbitration awards. Arbitration tribunals were designed to avoid unnecessary litigation, as well as to render timely decisions which would not disrupt the pace of business transactions. The laws of the 1920s opened many a Pandora's box by raising a host of questions about how the new statutes would be enforced, and by creating the opportunity to appeal arbitral awards to the courts. As Bruce Benson noted: "[T]he incentives to develop non-legal sanctions [had been] undermined by these statutes. … [I]t does not follow that in the absence of modern arbitration statutes the level of arbitration would be dramatically less than it is today. Lawyers would be less prevalent, and there would be fewer appeals, but because … stronger incentives would exist to develop mechanisms for the imposition of reputation sanctions, arbitration would still be flourishing, even outside existing associations and exchanges."

International Commercial Arbitration

In *Power and Market*, Murray Rothbard pointed out that "the world has lived quite well throughout its existence without a single, ultimate decision-maker over its whole inhabited surface." [p. 3] As an example of how the world fared under this anarchical reign, he could have pointed to the medieval Law Merchant,

which served as an international legal system that governed without the coercive power of a centralized political state. Likewise, its successor today, international commercial law "is still largely enforced without the backing of nation-states." Bruce Benson claims that, "The international Law Merchant can be viewed as a constitutionality established system of governance for the international business community … despite the lack of politically defined geographic boundaries and a centralized authority with coercive power to tax and punish." The most significant contribution of the international Law Merchant lies in the development of arbitration between two businessmen of perhaps different nationalities, conducting business across two or more political boundaries.

The history of modern international commercial arbitration began in Paris, France under the auspices of the International Chamber of Commerce founded in 1921. The ICC International Court of Arbitration was established in 1923, and as of May 1994, had handled some 8000 cases involving international commercial disputes. The rules of the Chamber embrace a number of Law Merchant concepts.

> The ICC rules provide that arbitrators should be selected from different national origins, thereby preserving an international flavor in dispute resolution. So, too, ICC arbitrators are required to be experts in commercial conciliation and in international arbitration, again reviving the commercial sophistication of the merchant judge. Finally, the ICC procedures provide for the speedy settlement of disputes through a flexible conciliation procedure, and, failing that, an adaptable arbitral process. Here, too, the ideal of an expeditious and low cost arbitration process is partially embodied in the ICC Rules.

The primary benefit of using ICC Rules, or the rules of some other arbitration agency, like the American Arbitration Association, is that the parties to a dispute do not have to create their own procedures in an ad hoc manner. The ICC Rules are widely publicized, predictable, and easily used. "The International Court of Arbitration administers and supervises ICC arbitrations from the introduction of a request for arbitration to the rendering of a final Award. Disputes are not settled by the Court itself but by independent arbitrators—appointed or confirmed by the Court—who deal with the merits of a case." The Court of Arbitration serves to protect the integrity of the arbitral process, provides lists of qualified arbitrators, and reviews each award before it is finalized. The National Committees of Arbitration, which function under the ICC, often offer moral assistance in upholding ICC awards, and often form inter-arbitral agreements acceptable to their merchant members.

Jan Paulsson, a French practitioner of international arbitration, writing in the early 1980s claimed that over 90% of all arbitral awards issued under the auspices of the International Chamber of Commerce were complied with. Charles Carabiber in his article in Martin Domke's collection, *International Trade Arbi-*

tration (New York: 1958) noted that, "The private character of arbitration eliminates the possibility of statistics and consequently it is not generally known that 85% of [international] arbitral awards are complied with. This figure was obtained from information given by several arbitration centers of long standing." [p. 163] These ballpark estimates were further confirmed by Rene David, in a 1982 book review of his own book, *Arbitration in International Trade*, which appeared in *The Art of Arbitration*. Regarding compliance with international arbitral awards, David wrote:

> Account must be taken, first of all, of the fact that parties to a contract do in most cases perform their duties under the contract without bothering what the law—any national law—says about the matter. … The losing party will ordinarily voluntarily comply with the arbitration award. He may be dissatisfied, but his commercial reputation is at stake, good faith impels him also to comply; he will abstain from the niceties of some lawyer's law which might perhaps allow him an opportunity to challenge the award. Ninety percent of the arbitral agreements are complied with; ninety percent of the awards are voluntarily performed without raising the question whether they would be enforceable or not "at law." [p. 91]

At the same time that the national movement for statutory arbitration was gaining ground in the United States, there was a similar movement among the major trading nations of the Western world. Under the guise of embracing international treaties to assure the enforcement of international arbitral awards, these nation-States attempted to retain control over the arbitral process. The Geneva Protocol on Arbitration Clauses of September 24, 1923, and the Geneva Convention on the Execution of Foreign Arbitral Awards of September 30, 1927, were the results of these efforts. Essentially these international agreements provided that each contracting State "is required to recognize as binding and to enforce awards rendered in the territory of another contracting State." Some of the difficulties encountered under these treaties were removed with the passage of the New York Convention of June 19, 1958, sponsored by the United Nations. By 1982, nearly sixty nations had signed this document. The New York Convention severely restricted the reasons for questioning a foreign arbitral award by the judiciary of the country in which it was being enforced. "The onus of proving that the award is not enforceable is shifted to the defendant resisting enforcement under the New York Convention."

Gotaverken vs. General National Maritime

Three arbitral awards rendered in Paris, France on April 5, 1978 will serve to illustrate the working and rules of arbitration of the International Chamber of Commerce, describe their relationship to the New York Convention of 1958, and highlight the issue of party autonomy, by which the arbitration process is divorced

from State-made law. ICC case numbers 2977, 2978, and 3033 involved the Swedish shipbuilder, Gotaverken Arendal AB (the large Gothenburg shipyard) and the buyer of three newly-constructed tankers, the General National Maritime Transport Company (later succeeded by the Libyan General Maritime Transport Organization). The sales contracts included a clause, according to which "all disputes arising from or in connection with the present contract … shall be finally settled by arbitration … [to] be held in Paris and conducted in accordance with the Rules of Conciliation and Arbitration then in force of the International Chamber of Commerce. The award shall be final, binding … and each party agrees to abide by such decision." Construction on the vessels had begun after a $90 million downpayment had been made. Upon completion, Libyan General refused to take delivery or pay the balance outstanding because 1) contract provisions prohibiting the use of components made in Israel had been violated, and 2) certain technical specifications had not been met. Gotaverken rejected these arguments and initiated arbitral proceedings in accord with the contract.

The dispute was submitted to ICC arbitration in Paris, and the arbitral tribunal was composed of a French chairman, a Norwegian, and a Libyan. By a two-to-one decision (which the Libyan arbitrator refused to sign), the tribunal rejected Libyan General's claims. Libyan General was ordered to accept delivery of the ships and to pay the outstanding purchase price, less a reduction amounting to about 2% for deviations from specifications. When Libyan General would not voluntarily comply with the arbitral ruling, Gotaverken petitioned the Svea Court of Appeal for the enforcement of the award in Sweden. Libyan General opposed this request on the ground that it had already begun appeal proceedings in France. It had petitioned the Court of Appeal of Paris to set aside the award. When the Svea Court of Appeal upheld the arbitration, Libyan General then instituted an appeal to the Swedish Supreme Court, asking that the Svea Court's judgment be set aside, or at least held in abeyance until the proceedings before the Court of Appeal of Paris had been decided.

The basis for the Libyan appeals was 1) under French national law governing arbitral awards, the mere fact that an application for setting aside the award was before the Courts caused the award to be temporarily suspended; 2) the arbitral award was self-contradictory in that it acknowledged the vessels failed to meet contract specifications, yet ordered Libyan General to take delivery; and 3) it would subject Libyan General to criminal sanctions in Libya for violation of boycott legislation; and finally 4) the arbitral decision violated the French public order "because it imposed on a foreign contracting party an obligation contrary to the imperative norms of its home country" (i.e., violation of the boycott law). Libyan General's strategy was to challenge the award in France, and thereby argue "that the award was not binding *anywhere* pending its challenge before the courts in the country where it was rendered."

The Svea Court of Appeals upheld the arbitral award in a decision issued December 13, 1978, and the Swedish Court of Appeals affirmed the Svea judgment on August 13, 1979. Both courts agreed that the French courts had no jurisdiction over the arbitration award, even though the arbitration proceedings had taken place on French soil. Article 11 of the ICC Rules (revised as of 1975) provided

> The rules governing the proceedings before the arbitrator shall be those resulting from these Rules and, where these Rules are silent, any rules which the parties (or, failing them, the arbitrator) may settle, and whether or not reference is thereby made to a municipal procedural law to be applied to the arbitration.

Thus, the Swedish courts concluded that *"the challenged award was not French in nationality."* Under both the New York Convention of 1958 and the ICC Rules of Arbitration, the law of the place of arbitration would control the proceedings only in the absence of a specific agreement by the parties. Since in this case the parties had agreed to ICC Rules, the municipal law of France did not apply. Consequently, both the Svea Court of Appeal and the Swedish Supreme Court based their "decision not to take jurisdiction on the principle that parties to international arbitral proceedings are free to select the legal order to which they wish to attach the proceedings, and this freedom extends to the exclusion of any national system of law." Furthermore, they viewed the award as binding on the parties from the moment it was issued in Paris, and hence not appealable because "an award would not be binding if it were liable to an appeal."

The appeal before the Court of Appeal of Paris by Libyan General to set aside the ICC award was declared invalid in a judgment rendered February 21, 1980. The Court of Appeal pointed out that 1) none of the parties or the arbitrators had designated any procedural law to govern the arbitration; 2) therefore the only binding rules were those of the ICC; and 3) the arbitral award could not be considered a French award because there was no connecting link to the French legal system, because neither of the parties were French, nor was the contract to be performed on French soil; and 4) that under the New York Convention of 1958, the winning party need not "as a precondition to enforcement elsewhere, seek confirmation of the award by the courts of the country where it was rendered"; or conversely, the country of the seat of arbitration (in this case, France) need not recognize the arbitral award in order for it to be recognized and enforced elsewhere (in this case, in Sweden). The ultimate effect of all three court decisions (two in Sweden and one in France) was to allow Gotaverken to exercise its right of attachment over the three ships, and to proceed with a judicial auction of the ships in order to satisfy its lien against them.

Party Autonomy or State Control

The decision in the Gotaverken case set off a debate among lawyers, jurists, and academics because it presented the question of whether or not it was possible for parties to international arbitration agreements to structure the proceeding and the resulting award so as to be totally independent of the jurisdiction of any nation-state. Could the parties divorce themselves from State control by private agreement, even though their arbitration proceedings had to occur in the territory of some nation-state? Jan Paulsson came closest to supporting the voluntaryist position when he maintained that "the binding force of an international [arbitral] award [is] derived from the contractual commitment to arbitrate in and of itself, that is to say, without a specific national legal system serving as its foundation." Others, such as F. A. Mann, defended the statist position that nothing is legal except what the State permits. Mann maintained that in reality there was no such thing as international arbitration because every "international" arbitration was "subject to a specific system of national law." As he explained:

> No one has ever or anywhere been able to point to any provision or legal principle which would permit individuals to act outside the confines of a system of municipal law. Every arbitration is subject to the law of a given State. No private person has the right or the power to act on any level other than that of municipal law. Every right or power a private person enjoys is inexorably conferred by or derived from a system of municipal law. [p. 160]

Mann presents some very fundamental questions about the nature of the State. "*Is not every activity occurring on the territory of a State necessarily subject to its jurisdiction*" even if the participants desire to remove themselves from its control? He admits that some States may give the parties more leeway in this regard, but he observes that no State has ever totally abdicated its control over what takes place in its geographic territory. Thus Mann concludes that "No act of the parties can have any legal effect except as the result of the sanction given to it by a [specific State's] legal system." [p. 161] The principle of party autonomy is an illusion, and the municipal law of the seat of the arbitration must be the law governing the arbitral award. As he adds, "It would be intolerable if the country of the seat [of the arbitration] could not override whatever arrangements the parties may have made. The local sovereign does not yield to them except as the result of freedoms granted by himself."

Jakubowski is another who concurs that, "States have adopted the principle of their exclusive jurisdiction to settle disputes between people," but then admits that certain exceptions (one of them being arbitration) have been granted to non-State courts. He says that the State and State courts are clearly necessary, if for no other reason, than they provide the only final means of dispute settlement. As Jakubowski puts it:

> Arbitration could act outside the limits of the State's 'concession', but in such a case the winning party would depend for the performance of obligations established in the arbitral award, on the good will of the other party. Because of the uncertainty of whether the award will be carried out by the losing party, the guarantees of legislation and the assistance of the State are indispensable for arbitration. Practice has shown the limited effectiveness of social pressures (in international trade—the pressure of business circles and professional organizations of businessmen, e.g., chambers of commerce) as a means of enforcing arbitral awards. [p. 178]

Although Jakubowski's evaluation of arbitration history clearly conflicts with that of Benson and Wooldridge, he at least grants that it is possible for transnational arbitration to function in a manner wholly divorced from the State, provided the arbitration process depends only on non-State enforcement mechanisms. Mann, on the other hand, upholds the supremacy of State law, even when the parties want nothing to do with it:

> How do we, how do arbitrators, know that their decision, based on their standards of fairness, is [fairer] than the law? Absolute perfection not being attainable, it is infinitely more dangerous to allow discretion to arbitrators than to compel [the] parties to accept the law, its relative certainty, its authority and, above all, its nondiscriminatory character. *The law is rarely an instrument of oppression.* [p. 176, emphasis added]

The law is always "an instrument of oppression" because, unlike arbitration, it does not require the consent of the parties. There is a need for the final and conclusive settlement of disputes, but it is a false assumption to believe that the coercive State is the only way to achieve this objective. The free market approach to this problem is to let the disputing parties themselves select from among competing agencies, all of which offer dispute settlement services. The voluntaryist position is that competing institutions of final dispute settlement would exist (and, in fact, have existed, as arbitration history proves), would not require the State to function, and that the State's involvement in the process is not supportive, but only destructive.

"An institution of initiated force is not necessary to compel disputants to treat arbitration as binding. The principle of rational self-interest, on which the whole free market system is built, would accomplish this end quite effectively." There is not only a moral satisfaction in acting out one's honesty, but there is an economic benefit, too. Linda and Morris Tannehill point out:

> Men who contract to abide by the decision of a neutral arbiter and then break that contract are obviously unreliable and too risky to do business with. Honest men, acting in their rational self-interest, would check the records of those they did business with and would avoid having dealings with any such individuals. This kind of informal business boycott would be extremely effective in a governmentless society. [p. 66]

In a society without a State, no judicial or arbitration agency would have compulsory jurisdiction, by which they could drag unwilling participants into court. Of course, it would be possible to try a defendant in absentia and issue a boycott judgment against a convicted party. The "convicted" would suffer as a result of the social consequences of his actions, even though no invasive force would be inflicted directly upon him.

The Tannehills have also pointed out that "a court system which has a monopoly guaranteed by the force of statutory law will not give as good quality service as will free market arbitration agencies which must compete for their customers." This is similar to the observation made by Bruce Benson and others that under a customary law system, "the more effective institutional arrangements replace the less effective ones." In other words, where customers are free to migrate between competing judicial and arbitration agencies, they will choose to patronize those that offer the best quality service at the lowest possible prices. As Bruce Benson explained in *The Enterprise of Law*, "there appears to be substantial benefit from not having monopoly [as in a single legal system], just as there is for the production of all other goods and services." [p. 300]

Arbitration and the (Voluntaryist) Sources of Law and Order

Imagine for an instant, as William Vandersteel posited in No. 14 of *The Voluntaryist*, that you had to operate in both your social life and business life as though you had no State courts to resort to in the event that someone caused you a harm or failed to abide by their contractual agreements. You would not be able to employ coercive third-party enforcement measures. Two countervailing tendencies would come into operation. First of all, you would be very careful with whom you had dealings. You would only want to interact with those who had a first-rate reputation and an honorable record of fulfilling their promises in all circumstances. Your second inclination would be to guard your own reputation to the utmost. "Individuals would strive always to act properly and with the highest integrity, knowing that any blemish on their reputation would virtually bar them from participating in any future business ventures."

If we define customary law as a legal system which develops from the bottom up through voluntary arrangements, we will discover that such a system operates in much the same manner as envisioned by Vandersteel. Bruce Benson in his article "The Impetus for Recognizing Private Property and Adopting Ethical Behavior," notes that among small groups of people who frequently interact, there is little need for formal institutional arrangements to insure credible behavior. Everyone is knowledgeable about everyone else's reputation. As the size of the group expands, the likelihood of dealing with someone whose reputation is not known is increased, as well as the probability that some person(s) might not fulfill their promises. "Therefore, for such expansion to occur, each party's commitments to accept commonly accepted norms of behavior must be credible." [p. 51]

If a dispute arises between people belonging to different mutual support groups, the disputants may either resort to violent self-help, abandon their claim against the other party, or attempt to negotiate a peaceful settlement. Mutual support groups, whether family, commercial, or social, not only strengthen the position of the solitary individual, but they also act as a means of sharing the expense of dispute settlement. Violence, whether individual or in concert with others, is almost always more expensive than a peaceful resolution. Thus "acceptance of nonviolent dispute resolution will become a customary obligation that is required for group membership," and the "resort to violence without first trying to achieve a nonviolent solution will result in ostracism by the group." [p. 53]

Arbitration plays a pivotal and important part in this process of peaceful dispute settlement. Benson describes how boycott and ostracism work under the customary law, and it is readily apparent how this applies to arbitration in the absence of a State enforcement apparatus:

> [C]ustomary law is tightly bound with all other aspects of life. Fear of this boycott sanction reinforces the self-interest motives associated with the maintenance of reputation and reciprocal arrangements. It also deters intentional offenses. In other words, because each individual has made an investment in establishing himself as part of the community, (e.g., establishing a reputation), that investment can be "held hostage" by the community, in order to insure that the commitment to cooperate is credible. [p. 54]

Under a customary law system, arbitration "decisions can be enforced without the backing of a centralized coercive authority." [p. 55] The key to dispute settlement process in customary law systems is that the loser must "buy back his reputation" by honoring the arbitral award. Failure to do so will result in his ostracism by the entire group. The individual is faced with the choice of living as a social outcast or honoring his commitment to abide by the result of the arbitration. Under such a system, the same incentives apply to the arbitrator as well as to the disputants. Arbitrators must be acceptable to both sides of a dispute. The arbitrator's "only real power is that of persuasion" and he relies upon the consent of the parties, which he has obtained before hand, to insure that they will abide by his award. The arbitrator is concerned with the fairness of his judgement, since his own reputation and standing in the community are at stake if either party to the arbitration refuses to honor his decision.

Benson also demonstrates how the customary law of non-violent sanctions can operate among members of different support groups, where normally there would be little potential for the boycott sanction to be effectively applied by a member of one group against a member of another group. "Each individual must feel confident that someone from the other group will not be able to take advantage of him and then escape to the protection of that other group. Thus, some sort of

intra-group insurance arrangement becomes desirable" and some sort of formalized dispute settlement apparatus is set up between the groups.

> For instance, in order to develop a group's reputation the membership might bond all members in the sense that they will guarantee payment if a member is judged to be in the wrong in a dispute with someone from the other group. The mutual support group becomes a surety group as well. Membership in a group then serves as a signal of reputable behavior to members of another group, and lack of membership serves as a signal that an individual may not be reputable [or at least that he has no surety backing]. Furthermore, if a member of one group cannot or will not pay off a debt to someone in the other group, [as] established by an acceptable arbitrator, then the debtor's group as a whole will [pay the debt] in order to maintain the benefits of the group's reputation. And as a consequence, the individual for whom the group has had to pay will owe his own group members rather than someone from a separate group. [This is known as subrogation in the contemporary insurance industry. Letters of credit in the banking industry serve the same purpose.] In this way the boycott threat comes into play once again. Members of a group are not going to continue bonding an individual who generates debts to the group's membership but does not pay them off. [By this process of subrogation, the] large long-term benefits of intra-group interaction [and] the self interest incentives to maintain intra-group relationships come [back] into play. [p. 62]

How effective are these non-State sanctions? How do shunning, excommunication and the boycott operate? In his book, *What Is Mutualism?* (1927), Clarence Lee Swartz wrote:

> Under certain circumstances the boycott and its companion, ostracism, may constitute a most drastic penalty. On account of the gregarious habits of human beings, to be put wholly beyond the pale of society would be more painful to many than to be incarcerated in a prison with others. … It is simple; it is easily and inexpensively applied; it involves, theoretically, none of the elements of physical force; and, above all, it is not an invasive act. What more ideal method of correcting the erring tendencies and antisocial activities of our fellow-men can be conceived? [pp. 165–166]

Certainly these observations are true with respect to one of the best known historical examples of excommunication, which involved Baruch Spinoza (1632–1677) in 1656. Spinoza's excommunication, known in Hebrew as a 'kherem' or 'herem', was pronounced by the Jewish rabbis of Amsterdam because he denied the existence of angels, "the immortality of the soul, and God's authorship of the Torah." No Jew was to conduct business with him, stand within four paces of him, or even speak to him. The decree of 'kherem' meant "the virtual expulsion of the person upon whom it was inflicted," and his exclusion "from the religious and

social life of the community." Recognizing the severity of the consequences, the Rabbinic authorities did not permit its use except in the most serious cases.

The Jewish custom of 'kherem' is also the underlying basis for the everyday functioning of the world's diamond bourses. Jews have been involved in the diamond trade since the Middle Ages, congregating in Antwerp and Amsterdam, after they were expelled from Spain in 1492. "The diamond industry has systematically rejected state-created law." In its stead, a highly sophisticated system of private governance has evolved which relies upon mandatory pre-arbitration conciliation and arbitration. There is a striking parallel between Orthodox "Jewish law and the modern organization of the diamond industry." As Lisa Bernstein has noted:

> [U]nder Jewish law, a Jew is forbidden to voluntarily go into the courts of non-Jews to resolve commercial disputes with another Jew. Should he do so, he is to be ridiculed and shamed. Jewish law also provides rules governing the making of oral contracts and lays down rules for conducting commercial arbitration. In the diamond industry, Jewish law provided a code of commercial fair dealing that gradually adapted to meet the industry's changing needs; yet, even as the force of religious law broke down, the system remained strong. [p. 141]

Even today, "the largest and most important" diamond bourse in the United States, the New York Diamond Dealers Club, has a large Jewish membership. Each member, upon joining, agrees "to submit all disputes arising from the diamond business between himself and another member to the club's arbitration system," which is final, binding, and non-appealable to the New York State courts. Should a member violate this agreement, the Club's Floor Committee will impose either a fine or expulsion. In the latter case, the errant member's name and photo are posted in bourses all over the world, so that he is effectively prevented from participating in the foreign diamond trade. The New York Diamond Dealers Club, in turn, is affiliated with the World Federation of Diamond Bourses, which is an organization composed of the world's twenty diamond bourses. Each of these bourses extends trading privileges to members in-good-standing in their local diamond trading club. "As a condition of membership in the federation, each bourse is required to enforce the arbitration judgments of all member bourses." In addition, the World Federation maintains its own board of arbitrators, which is responsible for settling disputes between two or more bourses themselves; and for determining which bourse should hear an arbitration case when the parties to it are members of different bourses.

Conclusion

Arbitration is a universal, human institution which preceded the monopoly system of law embraced by contemporary nation-states. Arbitral anarchy has threatened State supremacy because it offers businessmen or others disaffected

with the State legal system a way of solving their problems without involving the State. As Steven Lazarus put it, arbitration offers a "mechanism by which the debilitating forces of legalistic sovereignty can be circumvented." [p. 174] Throughout history, arbitration has been the hallmark of all customary law systems. The practices of the Law Merchant prove beyond doubt "that custom may have the force of law, as a means of social discipline, although it does not rest on the will of the political sovereign, but on objective standards of reason."

Arbitration is a purely voluntaryist means of settling societal disputes. In an interesting insight on means and ends, Bruce Benson, Murray Rothbard, and others have noted that customary law and the private sector must provide the underlying foundation of property rights for the free market system. It is impossible in the nature of things for a compulsory, monopoly legal system to supply the laws required by a totally competitive system. "Politically dictated rules" and statutory law are "not designed to support the market system; in fact, government-made law is likely to do precisely the opposite." A coercive, non-competitive judicial system simply cannot be made to define property rights because it is based upon the supremacy of the political sovereign. In its absence, a customary law system based on private property and personal property rights would evolve, and arbitration would become one of the major ways of settling disputes.

Joseph Jenkins in his article, "The Peacemakers," highlights the importance of arbitration to humankind. He says that "if men are ever to realize their potentials, they must master the art of living together peacefully. … They must devise means of settling their differences by words instead of swords or … warfare. … [I]t seems … that when the concepts of conciliation, mediation, and arbitration were introduced into human society, an immense stride was made in the problem of enabling people to live peacefully together." He calls arbitrators 'peacemakers' "because they have it within their power to contribute more to the maintenance of good relations between conflicting forces in our society than any other group. …" Mankind "must be mature enough and wise enough to solve their problems without government. … This is the very essence of self-government" and voluntaryism. [pp. 436 and 467]▽

Short Bibliography

Bruce Benson. *The Enterprise of Law: Justice without the State.* San Francisco: Pacific Research Institute for Public Policy, 1990.

Bruce Benson. "The Impetus for Recognizing Private Property and Adopting Ethical Behavior in a Market Economy: Natural Law, Government Law, or Evolving Self-Interest." *6 Review of Austrian Economics*, 1993, pp. 43–80.

Lisa Bernstein. "Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry." 21 *Journal of Legal Studies*, 1992, pp. 115–157.

Mauro Ferrante. "About the Nature (National or A-nanational, Contractual or Jurisdictional) of ICC awards under the New York Convention." Schultz and Van Den Berg, pp. 129–141.

Jerzy Jakubowski. "Reflections on the philosophy of international commercial arbitration and conciliation." In Schultz and Van Den Berg, pp. 175–176.

Joseph Jenkins. "The Peacemakers." 47 *Georgetown Law Journal*, 1959, pp. 435–473.

F. A. Mann. " 'Lex Facit Arbitrum'." In Pieter Sanders, ed. *International Arbitration Liber Amicorum for Martin Domke*, The Hague: Martinus Nijhoff, 1967, pp. 157–183.

Jan Paulsson. "Arbitration Unbound: Award Detached from the Law of Its Country of Origin." 30 *International and Comparative Law Quarterly*, April 1981, pp. 358–387.

Jan C. Schultz and Albert Van Den Berg, eds. *The Art of Arbitration.* Deventer: Kluwer Law and Taxation Publishers, 1982.

Morris and Linda Tannehill. 1970. *The Market for Liberty.* San Francisco: Fox & Wilkes, 1984.

William C. Wooldridge. *Uncle Sam the Monopoly Man.* New Rochelle: Arlington House, 1970.

The Road to Hell Is Paved with Good Intentions: Voluntaryism and the Roads

By Carl Watner
(from No. 92, June 1998)

[Editor's Note: One of the purposes of *The Voluntaryist* is to publish articles which examine the history of private enterprise in various fields of endeavor. In many instances, such as the history of private coinage, individuals, or associations of individuals, have been able to pursue their efforts relatively unhindered; that is, at least until their successful competition with similar government programs became threatening. Obviously, such individuals or associations operate in a legal environment created by the State, but their general obligation among themselves and to the consuming public is generally no different than it would be in a totally free market. Despite the record of private financing and construction of roads throughout much of the nineteenth century in the United States, I had never

carefully examined the history of roads and turnpikes in order to uncover how much voluntaryism actually existed. Unlike private coinage or private schools, it turns out that "private" roads and highways have never really been allowed to function because they have always been hedged with special State restrictions. As this examination of the history of roads and regulations demonstrates, there has never been an opportunity to see how completely voluntary systems might work. In this sense, this issue of *The Voluntaryist* is not typical because it largely concentrates on what the State has done, rather than what private individuals have accomplished.]

Introduction

Roads are the traveled ways between different places wide enough for people, beasts of burden, and wheeled vehicles. Roads undoubtedly date back before recorded history because man has always sought out the most direct and least hazardous routes by which to conduct his trade. Once trade routes were established by the market, it was not long before they were used as highways of conquest. The ancient rulers of the world, whether in China, Persia, or Rome, all recognized that the unity of their empires depended on their ability to move troops in order to subdue rebellious areas or conquer new territories. Roads served as the arteries of the Roman empire. Consequently, Roman soldiers became some of the earliest road engineers and systematic road-builders. Or as *The Encyclopedia of Social Sciences* (XIII, 400) succinctly concluded: "The rise of empires, with their need for military and administrative supervision of the populace, were the most effective stimuli for the building of ancient highways."

Roads, like many other human necessities, constitute one of the elements of civilized life. Although roadways seem to have always been supplied by government as one of their essential public services, there is no inherent reason why they could not be provided on a voluntary basis. The few times in history when the roads have been privately administered, such as during the turnpike era in England and the United States, they have remained highly regulated by the States which held jurisdiction over them. The reason for this is simple. National sovereignty demands complete mobility of government agents throughout the geographic territory it encompasses. The provision of roads is one of the most highly guarded prerogatives of governments because roads serve such a variety of governmental objectives. In our modern States, roads are highly politicized: construction contracts reward constituents and contributors for their political support; public routes usually enrich adjacent landowners by their presence; roads are mail routes (known as "post roads" under the U.S. Constitution), public school bus routes, military routes, and a means of delivering emergency aid to devastated areas.

Few people have questioned the assumption that highways and roads should be provided by governments. Nearly everyone of us has been brought up to as-

sume that roads must be paid for out of taxes, yet be available to anyone who chooses to use them. Just because government management and ownership of the roads is a historical fact does not mean that it is necessarily inevitable, or even morally or economically justifiable. As Walter Block explained in his article on "Free Market Transportation": "In advocating a free market in roads, … we shall be arguing that there is nothing unique about transportation; that the economic principles we accept as a matter of course in practically every other arena of human experience are applicable here, too." (214)

What, in fact, do we mean by advocating voluntaryism in roads and highways? First of all, we mean a world in which all land is privately owned, and in which public services, as we know them, no longer exist. Individual land owners or groups of land owners would control ingress and egress to their real estate; transportation corridors would be built and funded privately; consumers would pay for access easements according to mutually arrived at contracts. The critical value of a free market system in roads is that it would provide a "feedback mechanism telling owners how their choices satisfy the consuming public" because no one would be forced to pay for a road or service he didn't want to use. Traffic rules would be determined by owners of the property being used. Unlike our present political system, in which there is no way to determine whether the amount of service and safety is too high or too low, the market system would enable consumers of road services to make their preferences known and felt. If one road was not satisfactory, consumers would use another, or, in cooperation with others, build their own, or do without, much like they do in other areas of their lives now.

The King's Highway

The original status of public ways in both England and the United States was that of private property. The common law held that the private property of land owners abutting a public road went "to the centre of the road." The public or the government did not own the land upon which the road was laid; the public only acquired "the right of passage." The term "the King's Highway" did not refer to an actual road. It was simply the perpetual right of passage "in the sovereign, in himself and his subjects over another's land. It was an easement—a right of way—enjoyed by the public at large from village to village, along a certain customary course of travel." (Webb, 5) If the public and sovereign were to have a right of passage, then the public ways had to be maintained at someone's expense. The common law solution to the question of responsibility was this: "the inhabitants of every parish were bound to keep in repair every road in their parish to which the public had by law a right of access." (Labatut, 40) This meant that individual residents of the parish were required to contribute their unpaid labor to road repair. The residents subject to providing this "statutory labor" were also expected to provide their own road-building materials and/or horse-drawn equipment. Also, land owners, whose property was adjacent to the public roads were "subject to special

assessments for the maintenance of roads immediately serving [their] property. Failure to discharge these financial obligations rendered the individual liable to legal action through the process of 'presentment and indictment' before the appropriate judicial tribunal." (Dearing, 13)

This situation remained practically unchanged in England until well into the nineteenth century. The Highway Act passed by Parliament in 1555 (and not repealed until the 1830s) confirmed the customary obligation of the parishes and the individuals therein to maintain the roadways under their jurisdiction, and to annually appoint an unpaid road surveyor in each parish. In the event that a parish failed to adequately provide for its roadways, Parliament empowered the local justices in quarter sessions to level a special tax. If that failed to raise the necessary funds to improve the roads, then the justices were authorized to levy the tax upon the adjoining parishes. It might be said that the idea for toll roads was implicit in this aspect of the legislation. Before large amounts of through traffic existed, most traffic was local and the expense of road maintenance fell upon those in the parish; but when large amounts of traffic simply passed through a given parish, then adjacent parishes needed to bear some of the expenses of maintaining the roads.

The first tollgate was set up by an act of Parliament in 1663, in Cambridgeshire, on the London-York road. Despite shortcomings, turning a public highway into a turnpike usually resulted in an improvement. Turnpikes did not become popular with the traveling public until well into the eighteenth century. By 1820, about 20,875 miles or one-sixth of the public highways in Great Britain were under turnpike trusts, while the remaining 100,000 miles was under parochial control. Turnpike trusts were created by acts of Parliament, usually for a time span of twenty years, and were granted special authority over a certain stretch of public road. The turnpike authorities had the power to borrow money on the security of the tolls, and the tolls were to be applied to the maintenance of the road and the repayment of the loan. However, the common law liability of the parish for roadway maintenance was never removed, so parishioners were responsible for not only paying tolls, but ultimately for road repairs, in the event that the turnpike trust failed to do their job. This occasionally led to turnpike riots, where the local populace destroyed tollgates, even though destruction of a toll-house was an offense punishable by death. By 1896, all the English turnpike trusts had expired and control of the roads was returned to governmental agencies.

Roads in the Early United States

Road legislation in England's North American colonies followed the pattern set in the mother country. The official governing body of each colony took it upon themselves to lay out the roads and pay for them by means of taxes. The first highway legislation was passed in Virginia in 1632, and provided that the Governor, his counselors, and commissioners of the monthly court should make provisions for the roads. Similar highway laws were enacted in Massachusetts in 1639 (providing

for right-of-way and road construction specifications), Connecticut in 1643, New York in 1664, Maryland in 1666, and New Jersey in 1675. William Penn's 1682 Frame of Government for Pennsylvania made the governor and provincial assembly responsible for "all necessary roads and highways in the province," and in 1697 the individual townships in Pennsylvania were made responsible for the roads within their respective jurisdictions.

John Rae, in his discussion of early American roads pointed out that American colonial and state governments "followed the English practice for maintaining roads by local authorities, and with about the same lack of success. Colonial roads were generally of poor quality; in the northern sectors, in fact, it was likely to be easier to move by sleigh in the winter than by wheeled vehicle in other seasons. Work on the roads was provided by adopting the European practice whereby men paid their highway taxes by labor on the roads. The results were no better in America than in Europe." (Rae, 12) This conclusion is buttressed by one eighteenth century European who traveled throughout the colonies and said of the Americans: "If the mud does not quite cover the tops of your boots when you sit in the saddle, they call it a middling good road!" (Hart, 80) In April 1775, it took a messenger on horseback five full days to ride from Boston to Philadelphia with the news of the Battle of Concord. By the turn of the century, when regular stagecoach schedules had been established between these cities, the condition of the roads had not changed. It still took four days between Boston and New York, and another day and a half to reach Philadelphia. (Hart, 70; Mason, 14)

The financing and administration of roads remained a local function from colonial times to the end of the nineteenth century. Nevertheless, politicians and statesmen at all levels of American government understood the importance of "infrastructural power." William Novak defines this term in his book, *People's Welfare*, as "the capacity of the state to actually penetrate civil society and to implement its political decisions throughout the realm. … Central to this was the control of transportation of people, goods, and messages. … This was the first object of police and modern statecraft. … In the early nineteenth century, American officials embarked on a concrete and extensive campaign to improve and expand state power over public ways. … [P]ublic property and public highways were major preoccupations of the early American state." (Novak, 116, 118) Indeed, Albert Gallatin, in his April 4, 1808 report to the United States Senate on the state of transportation in the United States (in which he urged $20 million of federal financing for road and canal construction) noted that "No other single operation, within the power of the [federal] Government, can more effectually tend to strengthen and perpetuate that Union which secures external independence, domestic peace, and internal liberty." (Rose 27, Mason 20, *Report of the Secretary of the Treasury on Roads and Canals*, S. Doc. 250, 10th Cong., 1st Sess., p. 725)

The process of socializing public spaces in the United States began with the adoption of the legal concept from England that the "sovereign be entrusted with

the ultimate patronage and protection of the common highways." Sovereign control meant that the State had "full power to provide all proper regulations of police to govern the actions of persons using them. It took away from all private persons (adjacent property owners as well as passersby) any private interest in the way." (Novak, 122) Thus it became "an obligation of government to police such public properties, preventing all impediments and nuisances that might 'damnify' the public."

There were a number of ways that early American governments exerted control over the public highways. First, was the imposition of the road tax, known in many places as the statute labor system or as the "corvee," a French term for "forced labor exacted as a tax." As in England, local inhabitants of the town or county were to furnish their personal labor, equipment, and teams of animals to work on the roads for a certain number of days per year. Second, was the general tax obligations affecting all citizens, especially property owners. During most of the nineteenth century, property tax was levied against all real estate. Appropriations for highways and other purposes were made from a general fund. In towns and organized municipalities, property taxes were also levied against real property specifically for street purposes. In addition, special street assessments were imposed against specific parcels of real estate. Outside the cities, landowners were often obliged to pay a special road tax, averaging from one tenth to one third of the total cost of road maintenance or improvements, to the roads abutting their property. (Mason, 49) Third, was the recognition of the power of the State to initiate eminent domain proceedings to condemn and expropriate private property for the use of public ways. Although this power was recognized in the Fifth Amendment to the federal constitution, it was not often resorted to in early America because it required the use of public funds to reimburse land owners for the loss of their property.

Nineteenth century American jurists engaged in creative legalisms to avoid the expenditure of public money. The legal doctrine of 'implied dedication' avoided both the formal expropriation and the payment demanded by eminent domain proceedings. It held that "when a property owner left his land open to public travel for a certain period of time, the courts could infer an intention to dedicate this land to public use." Practically any use of private land for public travel would be accepted as sufficient evidence of implied dedication. The only thing a land owner could do was to close off the use of his land by making the way physically impassable. If this was done then the land owner might be sued for creating a nuisance. The power to remove and abate nuisances and encroachments was "a crucial aspect of sovereignty in early American law and was accomplished by the use of equity injunctions. Indeed, the legal power to abate highway nuisances complemented, and sometimes even surpassed, the [S]tate's power of eminent domain." (Novak, 123–124)

Finally, another legal doctrine evolved which allowed the State to avoid compensating property owners for damages resulting from the public control of the highways. The courts held that the promotion of the public welfare (such as by changes to roadways) could not be held hostage to private damage claims. "If some private individuals were injured as a consequence of public-spirited improvements, early American judges were comfortable leaving them without a remedy." This legal doctrine, *Damnum absque injuria*, was not a hole in American jurisprudence. Rather, it was a solution to the problem of how to avoid compensating private interests for damage done to their private property by the State. (Novak, 131)

The Turnpike Era

Government officials in the United States during the late eighteenth and nineteenth centuries realized that public funds for construction and maintenance of highways were limited. Toll roads offered an alternative to expending taxes on "free" roads because they were financed by private investors in the hope of generating a profit, enhancing land values, and improving the movement of goods to market.

The idea of the turnpike was imported from England, and the first turnpike in America built by a private company extended from Alexandria, Virginia to Snigger's and Vest Gap in the Shenandoah Valley. It was constructed in 1785, renamed the Little River Turnpike in 1805, and continued in operation until 1895 (when turnpikes all over the United States began to be returned to the public sector).

The States, and sometimes counties, themselves, experimented building their own toll roads. The Maryland State legislature authorized the creation of three turnpikes to serve the town of Baltimore in 1787. The "pikes" were to be built and operated by the Baltimore County government. They were turned over to private corporations in 1805. In 1792, the Pennsylvania legislature chartered the Lancaster Turnpike Company. Officially opened in 1794, the Lancaster to Philadelphia Turnpike was 62 miles long, cost $465,000 to build, and had 9 toll gates along its route. It was the first "scientifically designed hard-surface road in the United States." (Shank, 35) Turnpikes were fairly common all over the mid-Atlantic region, and two cities especially, Boston, Massachussetts and Baltimore, Maryland, were well-known for their use of turnpikes (a half dozen or more turnpikes extended from each city to its outlying areas).

Despite their status as private, for-profit corporations, the turnpike companies were highly regulated and only sometimes profitable. In 1816, Virginia established a Board of Public Works to monitor turnpikes within the state similar to the way that public utilities are supervised today. In most other states, acts incorporating turnpike companies included requirements that the State approve the road location, the location of toll gates, the amount of capitalization, and regulate toll rates.

Furthermore, the legislatures generally specified the maximum weight of loads, physical characteristics of vehicles, and other conditions of use. State charters also provided for the return of the roads to public status upon abandonment of the charter, failure to maintain the road properly, or after expiration of a fixed period. Sometimes, the states invested in the turnpike companies themselves, by advancing money as "state subscription to the capital stock of the turnpike company," or as an outright subsidy, or as a tax abatement.

Only in very few instances is there any record of non-incorporated turnpikes. One such private turnpike in Baltimore, Maryland was known as The Fifth Avenue Extended Shell Road. It was organized in 1873 through a deed between three private individuals acting as trustees, and the owners of the properties through which the road was to pass. The owners conveyed the land for the turnpike to the trustees, who agreed to construct the road, regulate travel, establish a tollgate, and appoint a gatekeeper. Under the agreement, revenues from the tolls were to be spent according to the following order of priorities: 1) paying the gatekeeper's salary; 2) paying the expenses incurred by the trustees in connection with the turnpike …; and 3) making repairs to the Trap and Sollers Point Road which would be most beneficial to the Fifth Avenue Extended Shell Road." The tollgate was removed in January 1914, when the trustees and property owners allowed the road to become county property. As early as 1900 politicians in Baltimore City had begun campaigning against turnpikes. A Councilman Weinefeld is reported to have said that, "to have a tollgate in the city the size of Baltimore belonged to the Middle Ages." Another critic announced that, "A tollgate anywhere in America is an anachronism, but one at a entrance to a great city [such as Baltimore] is a monstrosity. (Hollifield, 10, 11, 22, 34, 84)

Although public and government perception of turnpikes had changed between their inception in the late 1700s and their demise in the early 1900s, their formation and operation were partly a reflection of community support and involvement for social improvement. "Concerns with the condition of the roads led to the formation of The Society for Promoting and Improvement of Roads and Inland Navigation in 1789. It soon had hundreds of members throughout the mid-Atlantic states." (Mason, 17) Other evidence of public support for better roads during the turnpike era is found in Maryland where "property owners on each route competed against each other for the privilege of giving their land to the turnpike company [for the route]. It was not only considered a matter of prestige but an enhancement of property value for a public road to run through a man's land." The same sentiment was echoed by the Chairman of the Maryland Road Commission in 1922, when Route 301 (Crain Highway, the major north-south artery from Baltimore to southern Maryland) was being mapped out: "If it is not sufficiently advantageous for the property owners to give us the [free] right-of-way, we had better not build the road." (A *History of Road Building in Maryland*, 231–232) Despite compulsory systems of road support in both England and the United

States, other private sector resources, such as private subscriptions and donations by public spirited citizens, were often used during the nineteenth century to supplement the provision of state roads. As William Wooldridge in his survey of private turnpikes concluded: "In large part, America's first passable networks of roads was probably financed by just the people who stood to benefit from them indirectly, aided by tolls from the people who used them." (Wooldridge, 133)

America at the "Crossroads" of the Twentieth Century

Although the federal government had been involved in road and automobile development in minor ways throughout most of the nineteenth century, its role changed as the new century approached. Technological changes, such as the advent of the rubber-tired bicycle by 1870, resulted in the formation of groups of road users such as the League of American Wheelmen in the 1880s, which began agitating for better roads. As the twentieth century began, the support for road improvement spread to automobile enthusiasts. The advocates of "good roads" supported the substitution of money taxes for statute labor, shifting the responsibility for both taxing and administering the roads to larger political units, and the inauguration of state aid and/or federal aid to help support local roads. Such changes did away with the system of decentralized and amateur supervision of road maintenance and construction that had existed in this country since the time of its founding. "By the 1920s, a powerful [political] force had evolved, wedding road builders and the motor industry, in which government and business joined in promoting" roads and highways practically to the exclusion of all other forms of travel. This "highway-motor complex coalesced automakers, cement, asphalt, and steel producers, and petroleum companies into a common purpose. Along the way it added such diverse groups as road contractors, insurance companies, banks, and motel operators, to name but a few." (Goddard, ix)

The extended use of the automobile increased the political agitation for good roads to such an extent that it could not be ignored. The impetus for road reform came from people within the cities, primarily from civic leaders who appreciated "the economic burdens laid on city dwellers and farmers alike by the bad roads." (*American Highways*, 41) Roads could not be improved without adequate funds, and there were only two ways that such money could be raised: voluntarily or coercively, via taxation. Since the roads had always been a governmental responsibility, and since government had always obtained its funding via compulsory taxes, it was no surprise to learn that to improve their roads, the various state legislatures across the country began increasing taxes for that purpose. North Carolina was one of the first states to allow its counties to raise tax rates and to levy a road tax on all property, whether in rural or city areas. By 1902, Mecklenburg County (which includes the city of Charlotte) "was acknowledged to have the best roads in North Carolina, and its citizens were … paying the highest road taxes in the

State: 35¢ per $100 property valuation, plus $1.05 on the poll" tax. (*American Highways*, 41)

Northern states were also involved in the effort to improve their roads. The New Jersey Road Improvement Association and the League of American Wheelmen were the major supporters of the first State-aid legislation in the country, which was approved in New Jersey on April 14, 1891. The law declared that, "The expense of constructing permanently improved roads may reasonably be imposed, in due proportions, upon the State and upon the counties in which they are located." New Jersey State officials reserved the right to approve or reject road improvement plans suggested by county officials. The cost of building new roads or upgrading existing ones was to be split three ways: "one-tenth was to be assessed to the property holders along the road, one-third to the State, and the remainder to the county. The first act appropriated $75,000, as the State's share for the first year's operations." "The New Jersey State-Aid Act was a milestone in the history of highway administration in the United States, for it clearly stated the principle that highway improvement for the general good was an obligation of the State and county, as well as the people living along the highway." (*American Highways*, 43)

At the same time, during the early 1890s, the Federal government was reviving its interest in better roads. Congress began to respond to political pressures to provide some kind of federal assistance to the highways. The Agricultural Appropriation Act of 1893 resulted in the formation of the Office of Road Inquiry, with funding of $10,000. Its purpose was to investigate the condition of roads throughout the United States, to determine the best methods of road-building, and to assist in the dissemination of this information to the States. By 1904, its funding had been increased to $30,000 a year, and its name had been changed to the Office of Public Road Inquiries. This public agency undertook the first national road inventory and included among its other activities such efforts as experimental road building, promotion of college-level programs for road-building engineers, the "loan" of its personnel to certain States or counties for the purpose of improving a given stretch of road, and the establishment of a road- testing laboratory.

Efforts at both the federal and State level culminated in a national policy on federal aid to State highways. The drive for federal aid at first focused on rural mail delivery, which could only be made possible by better roads to the country's farms. The first experimental rural delivery routes were established in 1896, and by 1903 the federal Post Office had 8600 carriers traveling 200,000 miles per day, delivering mail to almost 5 million people. The Post Office Department "made it a rule that rural delivery would be established only along reasonably good roads and that the carrier need not go out on his route unless the roads were in fit condition for travel. These requirements marshaled public opinion on the side of those who wanted better roads." (*American Highways*, 80) At the same time, legislation was introduced in Congress that would have provided $20 million in federal funds to the States and counties for the building of post roads. (Under the bill, rural pub-

lic roads were defined as "any public road over which the United States mail now or may hereafter be transported.") Similar laws were proposed every year for the next thirteen years, until finally in 1916 the first federal-aid bill was passed. It appropriated $25 million for the construction and maintenance of rural post roads, out of which each State would receive at least $65,000. "To receive Federal aid after 1920, each State would have to have a State highway department to administer the Federal funds. [T]he construction and maintenance of the aided roads would remain under State control." (*American Highways*, 86) Under the Federal Highway Act of November 1921, the Federal aid program was designed to create federally designated interstate highways in each State, which would eventually be linked to one another. This interstate system of roads, sponsored primarily by the federal government, but also with matching funds by the States was "the greatest public works project in world history." (Goddard, 183)

Conclusion

The local, state, and federal governments in the United States are essentially just like all other governments the world over. They subsist on taxes and have monopolized the ownership and administration of roads and highways. Without taxes they could not survive; and without control over roads and highways they could not move troops or officials throughout their domains. As a result of these concerns, voluntaryism has played a minor part in the history of the roads. Some of the major advances in road building and administration have come from the private sector, but for the greater part there has never been a time in world or American history when the roads were not socialized and under government control.

Controversies have raged for centuries over who should foot the bill for better roads: the actual road users, property owners, or the public at large? One thing is certain though—everyone loves good roads, but no one really wants to pay for them because they cannot profit from them—because they are not subject to true free market competition. Only a few times in American history have there been advocates of free market roads. In the early 1840s Ralph Waldo Emerson asked in his essay on "Politics" whether statist methods were so perfect that his contemporaries need not devise better ways to achieve their social goals. "When [people] are pure enough to abjure the code of force, they will be wise enough to see how the public ends of the post office, the highway, of commerce and the exchange of property, of museums and libraries, of institutions of art and science can be answered." To Emerson, and others like him, who believe(d) that voluntaryism offers the only moral and practical way to provide roads and highways, the road to hell is not only paved with good intentions, but roofed over with thousands of years of lost opportunities to prove their point.V

Short Bibliography

American Highways, 1776–1976: A History of the Federal-Aid Program, 1976.

Walter Block. "Free Market Transportation." *The Journal of Libertarian Studies*, Summer 1979.

Charles L. Dearing. *American Highway Policy*. 1941.

James J. Flink. *America Adopts the Automobile*. 1970.

Stephen B. Goddard. *Getting There*. 1994.

Val Hart. *The Story of American Roads*. 1950.

William Hollifield. *Difficulties Made Easy: History of the Turnpikes of Baltimore City and County*. 1978.

Jean Labatut and Wheaton J. Lane, eds. *Highways in Our National Life*. 1950.

Philip A. Mason. *A History of American Roads*. 1967.

William J. Novak. *People's Welfare: Law and Regulation in 19th Century America*. 1996.

John B. Rae. *The Road and the Car in American Life*. 1971.

Albert C. Rose. *Historic American Roads*. 1976.

William H. Shank. *Indian Trails to Super Highways*. 1974.

State Roads Commission of Maryland. *A History of Road Building in Maryland*. 1956.

Poyntz Tyler. *American Highways Today*. 1957.

Sidney and Beatrice Webb. *English Local Government: The Story of the King's Highway*. 1913.

William Wooldridge. *Uncle Sam, the Monopoly Man*. 1970.

Fox & Wilkes

Charles James Fox (1749–1806) inherited wealth and guidance from his father, who tutored him in gambling and who advised, "Never do today what you can put off 'till tomorrow." In 1768, just nineteen, the roguish Charles Fox took his seat in Parliament and quickly earned the esteem of his colleagues, Edmund Burke among them. The two joined forces on many causes, including that of the American Revolution, until Burke's horror over the French Revolution occasioned a permanent break. Fox fought for religious toleration, called for abolishing the slave trade, and advocated electoral reform. In defending his views he was a powerful orator, acknowledged as the ablest debater of his day. Neither party nor crown could dissuade him from following his own path. Above all things Fox hated oppression and intolerance, and in his passion for liberty transcended the conventional party politics of his day.

Like Fox, **John Wilkes** (1727–1797), too, could be extravagant in his passions. He married into his money and was an active member of the proudly blasphemous Hellfire Club. A few years after joining Parliament in 1757, he began a weekly journal, *The North Briton*, that became notorious for its wit and wickedness. In the famous issue #45 Wilkes assailed a speech given in the King's name; he was jailed for his temerity. His *Essay on Woman*, an obscene parody of Pope's *Essay on Man*, along with a reprinting of #45, led to further imprisonment and expulsion from Parliament. But the public rioted for his release and kept voting him back into office. Wilkes eventually won substantial damages and set important precedents regarding Parliamentary privilege and seizure of personal papers. After finally being allowed to rejoin Parliament in 1774 as Lord Mayor of London, he introduced libel legislation ensuring rights to jury trial, and continued to fight for religious tolerance and judicial and parliamentary reform. The monument on his grave aptly describes him as a friend of liberty.

Both Fox and Wilkes could be self-indulgent, even reckless in pursuit of their own liberty, but they never let personal foibles hinder them in championing the rights of the individual.