
The Voluntaryist

Whole Number 41

"If one takes care of the means, the end will take care of itself."

December 1989

Voluntaryism on the Western Frontier

By Carl Watner

American politicians experienced the same problems in governing their western frontier during the late 18th and early 19th Centuries, as did the English in governing their distant North American colonies during the 16th and 17th 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 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."²

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."³

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 clear-cut, 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. 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."⁴

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 3 miles long and 2 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. 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

continued on page 6

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Potpourri from the Editor's Desk

1. "A Distinction by George Orwell"

According to Orwell the difference between patriotism and nationalism is this: patriotism is devotion to a way of life without wishing to impose it on others; nationalism seeks the dominance of one's own group at the expense of others.

2. "What Will It Be Like for our Children?"

THE WALL STREET JOURNAL (February 17, 1989, p. A2) reports that the Internal Revenue Service "plans to begin matching a State Department list of all Americans applying for passports with its master list of those who filed (tax) returns," in an effort to locate non-filers. The noose tightens again! Twenty or thirty years ago, no one could have imagined the political regulations and political restrictions that we are experiencing today. What will it be like in another twenty or thirty years?

My guess is that the noose will continue to tighten. Work permits will be needed to change jobs. Residential permits will be needed to move. The State will exert more and more control over one's ability to independently earn a living and support a family. Every effort will be made to eliminate independent contractors and self-employed persons. Those caught with untaxed cash or unreported income will not only be penalized and assessed back taxes, as now, but in addition are likely to have all assets on which taxes have not been paid seized and forfeited (this principle has already been established by the RICO law).

3. "Let the Punishment Fit the Crime!"

The following story about a rich man and a poor man appears in Howard Simons' JEWISH TIMES (Houghton Mifflin Co., Boston: 1988, pp. 12-13):

The richest man in town had three children who were thin and scrawny, even though they ate the food prepared by his cook. The poor man's three children, who were robust and healthy, regularly stood outside the rich man's kitchen, absorbing the aroma that wafted from it. As a consequence, the rich man concluded that they were really stealing the vital part of his food. So he went to the rabbi to complain that the poor man should be arrested and punished.

The rabbi, who was not only the teacher, but also the arbiter for the Jewish community, brought in the poor man, and questioned him. "Your children stand outside the window and smell?"

"We are poor and have no money. That's all we do. We don't touch the food. We don't steal it. But they do smell under the window. It's the only pleasure they have."

"But your children," the rabbi said, "look at them. They are healthy and full-bodied. Look at the children of the rich man. I think he is right and we are going to have a trial."

The townsfolk gathered and heard the rich man's complaint. He showed them his children, and the poor man's children. He explained that he believed that they were really somehow stealing the essence of his children's food.

After pondering awhile, the rabbi finally said, "Mr. Rich Man, you are right. They have stolen the essence of the food. What

punishment do you suggest I give the poor man?" So the rich man scratched his head, and said that he did not want them beaten or hit, and that he would be satisfied with compensation in the form of 100 rubles.

The poor man explained that he had no money. "How can I give him what he wants?"

"Never mind," said the rabbi. The rabbi pulled some coins out of his pocket, put them in a bag, and proceeded to make a collection amongst the community of Jews who were watching the trial. Soon he had the 100 rubles. So the rabbi said to the rich man, "Come closer." He held the bag of coins to the rich man's ear, and shook them. "Did you hear the coins? Yes? So now you've been paid. You heard the money, and they smelled the food. That's justice!"

4. "Communism and Anti-Communism"

"If a lifetime of reading history has taught me anything, it is that half the bullies, tyrants, and murderers that have achieved power in the twentieth century did so in the name of Communism; the other half in the name of anti-Communism. At the top levels, where the trigger-pulling power resides...[political] leaders are pretty much interchangeable regardless of the flag they fly." (William Trotter in "Red Dawn over Tweetsie," THE SUN, November 1985.)

5. "Imported Politicians"

In an article about Italian elections for representatives in the European Parliament, it was noted that numerous non-Italians were competing for the seats (WALL ST. JOURNAL, June 16, 1989). Importing politicians doesn't seem odd to Italians. "Why not?" asked one. "All the Italian politicians are corrupt, so these guys can't be any worse."

6. "New Associate Editor"

In recognition of her work for THE VOLUNTARYIST, I've listed my wife, Julie, as Associate Editor. Though I take full responsibility for what appears in these pages, Julie helps edit, proofread, and assists in setting the tone for our publication. My thanks goes out to her for helping to make this a better newsletter.

7. "Internationalization"

"Before August 1914 the inhabitant of London could secure forthwith, if he wished it, cheap and comfortable means of transit to any country or climate without passport or other formality, could then proceed abroad to foreign quarters without knowledge of their religion, language, or customs, bearing coined wealth upon his person, and would consider himself greatly aggrieved and much surprised at the least interference." In commenting on this passage from John Maynard Keynes' THE ECONOMIC CONSEQUENCES OF THE PEACE (1919), Milton Friedman notes

continued on page 5



Hassle or Castle?:

The Story of the House without a Permit As told to Carl Watner by A Voluntaryist

Building codes and regulations are nearly as old as the State, reaching back into history wherever people have settled in towns and cities. They were present in ancient China, three thousand years ago, and Hammurabi's Code of 2100 B.C. declared it a crime for a builder to construct a house which should collapse and cause the death of the owner. In such a case, the builder was to be put to death as punishment for his faulty work. In nearly every situation, the justification for such statist requirements is "public safety." The litany of social ills that building codes are allegedly designed to prevent are—protection against fire ("to prevent the public calamity of conflagration and to conserve life"); protection of structural strength to buildings (to prevent their collapse and injury to the inhabitants); and the protection of the environment to guard against incoming water and outflowing effluents which might cause epidemics and disease.

Each of us probably has his or her own collection of "horror" stories about building codes and zoning regulations—either how they are or are not enforced, how the bureaucrats play favorites, and the absurdities they cause. In every case, they constitute a violation of property rights and would not exist as coercive measures in a voluntary society. At the very most, they would be replaced by restrictive covenants in private deeds and by insurance company standards to be met as preconditions to obtaining coverage. The following true story was related to me by the owners of the house in question, and I have no reason to doubt its veracity.

A number of years ago the couple who recounted this narrative to me purchased a ten acre tract of land for their family. They continued to save for several more years, while planning their dream house—a two-story, 1,900 square foot, single-family dwelling. Finally, they were ready to take the plunge. Their finances were in order, they had the land, and they engaged a contractor who was a close personal friend. Since they felt that it was important to have a well-built, safe house, but didn't think they should have to ask permission to build a home for themselves, they decided to try to build without a building permit. As voluntaryists, they saw no reason why the State should regulate what they would build with their own money, particularly since their family would be the only ones to suffer from a poor job. The house would not be a threat to any neighbors should it burn to the ground. It was to be located in the center of their property, and there would be no other houses within several thousand feet. Though a septic system would have to be installed, and a well drilled, there was no way that these could become public nuisances. Couldn't they be trusted to look out for their own best self-interests? Did the bureaucrats believe they were so stupid as to waste their money and threaten their family? And even if such were the case, why should they be prevented from spending their own hard-earned money the way they saw fit? What right did anyone else have in preventing them from spending 'their' own money on 'their' own property?

The man and his wife wondered whether it was possible in this day and age to actually construct a house without a permit. Would sub-contractors and contractors agree to work on such a structure? Did they think that their building licenses would be yanked if they were found out? Would the house escape detection by the building inspectors (at one point they were told that the county employed at least one inspector as a "bird dog"—whose sole job was to ride around and look for new construction and see if permits had been obtained)?

The first problem they encountered was how to obtain electric power. Normal procedure in their county required obtaining a health permit for the installation of a septic tank and well, because the authorities want to be sure no one locates a house in an area that will not percolate sewage or have a suitable water supply. Next, a building permit for the construction of the residence must be obtained. Once the building permit number

was in hand, the local power company would install temporary power at the job site.

The state and county had designed their regulations to make it tough to avoid or evade their edicts (ignoring for the moment the penalties and jail sentences they can mete out if you are caught). Regulations prohibited the power company from installing an electric service on any property without first having a building permit number in their records. Not only does this make it extremely difficult to build without a permit (the only alternatives are to go without electricity or to generate your own power), but it also enables the county to place the to-be-constructed residence on their property tax rolls. If building were unregulated, it would be much more difficult for the county tax assessors to keep track of new construction.

So, with this information, the couple examined their options. They needed electricity on the property, but the power company would not furnish it without a building permit. They decided to build a wood shed (some 300 feet from the intended location of their house). It was a 25' x 30' pole building, which technically should have had a building permit, too, before it was constructed. They had the shed up in a few days, let the signs of building be dissipated by the weather, and THEN, in perhaps the only violation of the voluntaryist spirit in their project, they went to the permit department and asked for a permit so they could obtain electricity to the wood shed. The clerk wanted to know how long the shed had been up, and if it had a permit. She was not at all fazed when told that it had been "up a while," and that if it had a permit, the number was not known. She then issued a new building permit for a shed that was already constructed. Since there was no plumbing in the shed, she simply notified the electrical inspection department that they would have to perform an electrical inspection. The couple then had their electrician install a few lights in the shed, and called the inspector, who then came out and gave the shed his approval. Then they called the power company and told them they were ready to have power connected to the shed. This was verified with the county permit department, and within a few days there was electric service at the shed.

There were no county regulations which prevented them from using the electric service as they pleased. If there had been, they would have soon been violated, for the couple had their private electrician run a feeder from the electric service at the shed to the site of their house. There he erected a temporary service panel, with weatherproof outlets for the use of carpenters and for hook-up of the well. The difference between this job site and most normal job sites was that the electric meter for electricity used on the property was at the wood shed, rather than at the house site. (This in itself, was of no particular significance, except that when the permanent power was hooked up to the house, they had to be sure that the feeder from the shed was of sufficient gauge to carry the power needed at the house. Voltage drop and resistance caused by the distance between the house and



shed, and the closest electric company transformer, all had to be calculated in order to insure that there would be enough power (to run all appliances, etc.).

Once the problem of how to get electric power without a permit had been solved, the next step was to see if they had water on the property. Their well driller was not particularly concerned about any county or state regulations, and if he asked anyone about a health permit, it escaped their memory. They simply met with him and told him where they wanted the house. He said that state regulations required a minimum distance of fifty feet between the well and septic tank. In this case, he suggested placing the well on one side of the house, and the septic system on the other. This made good sense, as it would eliminate any possible contamination of the well by sewage. They contracted with him to dig the well. His crew was out within a few days, and they struck 15 gallons of water per minute at a depth of 200 feet.

Now that they were assured of a good supply of water, would they be able to find a septic tank installer who would put in the septic system? Several were contacted on the phone, and point blank refused to do anything without the required health permit. They even wanted to know how anyone could locate the septic system and well, if the county inspector were not involved. (How would the county inspector know? Couldn't these contractors use their reasoning abilities and experiences as well as the next person?) Finally, they hit upon one contractor to whom the regulations meant nothing. He had been doing this work for years and figured that he could do it as well as the next man. The promise of "cash" money, rather than payment by check, also prompted his acceptance of the job. So within a few more weeks they had their septic tank and two drain (leaching) fields installed.

Now they were ready to begin actual excavation of the house. As far as they could determine, the grading and excavation contractors were not required by the law to see a building permit. Anyone can dig a hole or a foundation without a permit; it is only when construction has actually begun that a permit is needed. They made several contacts with foundation and masonry contractors. They were up-front with all of them about building the house without a permit (though they never identified themselves positively until they had talked with them and seen their reaction). None of them seemed perturbed, although most of them warned of the dire consequences of "breaking the law" and being "caught" by the county inspectors. The owners responded to this by telling them that they would be responsible; and in no case did they get the feeling that the subcontractors thought their livelihood would be threatened by the county if they were caught working on a house that had no permit.

Where are the teeth in the building codes and regulatory laws? They obviously rest to a great degree on voluntary compliance on the part of would-be homeowners and/or their general contractors who simply accept that the job can only proceed by getting permission from the appropriate state or county authority. As an aside, it should be mentioned that while the couple's house was in the design and planning stages, they read an article in the local newspaper that described the plight of an able-bodied but unemployed man who was "caught" building his own house. He had applied for a permit to build a tool shed, but actually expanded the shed into living quarters for himself. He was turned in by a neighbor when they realized he was living in the building as he built it. The major complaint of the building inspector was that the man had used ungraded lumber (the lumber was not stamped with its grade, which is used to determine how far apart beams and ceiling joists can be spaced). The wood had come out of another house which had been recently torn down, and the man building the shed/house could not understand why, if it had been suitable in the former house, it could not be used in his. The upshot of the episode was that the man could not afford to build a house according to county requirements, and was told by the county to tear it down if he could not bring it up to code. So far as the newspaper reported, this was being done.

Once their foundation was in, they had to wait for their framing contractor to work the project into his schedule. He did not seem at all concerned about working on a non-permit house, other than the fact that he did not want to lose time on the job if they were

discovered by the authorities. They talked with other sub-contractors, particularly electricians and plumbers. None of them could understand why they did not want to go the permit route, but not one of them ever refused to take the job for lack of a permit. Prices, scheduling, and quality of the work to be performed all went into the selection of these subs, and all of them performed adequately, even though they knew beforehand that they would not be policed by their respective inspectors. They knew that if they did shoddy work, it would come back to haunt them one way or another. A long-established tradesman or contractor in a given area is vitally concerned with his reputation.

The further along they got with the job, the less sub-contractors were concerned about a permit, but the more concerned the owners became. The roofer, the dry-wall finishers, the painters, the floor finishers, none of them ever asked if there was a permit. Once they were through the drying-in stage of the construction (the framing and outside walls were finished, with felt paper on the roof), they felt like sitting ducks. Fortunately, the house was not readily visible from any county roads, but it was located in an area where other construction was taking place. Surely, the building inspector would pass by and hear the carpenters at work, or see a lumber yard truck turning into the driveway to deliver materials. For whatever reason, luck held out.

One of the keys to the successful completion of this house without a permit was the vastly decentralized operation of carpenters, electricians, plumbers, and small contractors, as well as the difficulty of enforcing law. Homes and buildings have been built in this country by their owners or small crews of independent men and women for centuries. Unless the county were to regulate each and every one of them, license all sales of building materials and the outlets where they are sold (and require a purchaser to display his building permit before making a purchase), it would be extremely difficult for the authorities to fully enforce their laws. Regardless of how many inspectors are employed, it is nearly impossible to monitor thousands of home-owners spread over thousands of acres. Inevitably, some unapproved building is going to take place, either by people who knowingly violate the "law," or by people who consider their projects too small to be bothered by permits.

Fortunately, the framing contractor of this house was capable and willing to finish the inside of the house, too. Since he was working on a tight schedule, he completed the house in the unheard of time of less than two months. He had moved on to another job by the time they new owners were moving in.

The owners did have one contact with officialdom, however. The day they were moving in, a strange car appeared in the driveway. Who should it be but the census enumerator, wanting to know their names and mailing address. The census "official" wanted to know how long the house had been there and bemoaned the fact that her job was made so difficult because new houses were going up all the time. How was she to complete her job if she kept discovering new residences that were not shown on her map?

Thus concludes the saga of a house without a permit. Though they had to obtain a permit (after the fact) for the wood shed, it was clearly demonstrated that it was possible for the free man and woman to find a way to freedom if they were determined. Or as Bob LeFevre used to put it, "The man who truly understands freedom, will find a way to be free."

Literature Available

THE POLITICS OF OBEDIENCE	\$7.95
NEITHER BULLETS NOR BALLOTS	\$5.95
A VOLUNTARY POLITICAL GOV'T	\$6.95
ROBERT LE FEVRE (biography)	\$14.95
Table of Contents (Issues 1-40)	\$5.00

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Everybody a Millionaire

By Jorge Amador

April's lottery crazes in Illinois and Pennsylvania illustrated the almost magical lure of the Big Prize. The queues at the local lottery ticket dealer grew longer by the day as the grand prize in Pennsylvania's Super 7 jackpot approached \$100 million. Buyers were still lined up inside the store, out on the sidewalk and around the building five minutes before the drawing that finally produced the big winners.

The likelihood of winning either of these lotteries was, to be charitable, infinitesimal. The probability of any ticket's bearing the winning numbers in Pennsylvania's lottery, for example, was one in 9.6 million. Yet millions of people eagerly stood at the ticket lines for up to six and seven hours, some spending thousands of dollars, for the sake of that tiny chance.

Across the country many millions more spent some \$15.6 billion on state lotteries alone in fiscal year 1988. Add to that the numbers who plow through reams of private offers for the comparably minute chance that they will win the magazine sweepstakes, and you get the picture: the lure of that fortune is big business.

Imagine now a game where *everybody* becomes a millionaire. You spend no time standing in line to buy tickets with absurdly small chances of winning. To win in this contest, you need do nothing more unusual than to go to work and collect your pay—all of it. That's the prize: No tax deductions. No taxes.

If you were of average income and could keep the money that you paid in direct and indirect taxes (at 1987 rates) and put it in a safe bank deposit, at retirement time you would have a nest egg of well over \$2 million. That's not a "chance" at winning \$2 million, but two million actual dollars to your name right in the bank's records. For a family of four, that's \$8 million to share.

Of course, this is not a lottery at all. It is what would follow the abolition of taxation. And it is what THE PRAGMATIST is working for. The game is played in the political arena: the grand prize is tax abolition.

Political movements struggle to interest even a tiny fraction of the population in their programs. Activists of all stripes bemoan the apathy they encounter among a public they often disparage as "ignorant." The dumb, ignorant masses.

But are the masses really so dumb? What the activists seem to forget is that, historically, the vast majority of political parties and movements have offered—and, even when successful, delivered—relatively inconsequential changes to the *status quo*. A few more dollars for "welfare" here, a little less regulation there, a bit less pollution all over. A few less taxes, a little more deficit spending. Or, when the change is really "revolutionary," new faces at the helm and new political elites to replace the old entrenched aristocracy.

Despite the "historic" changes, the people still pay taxes, still sacrifice their sons for presumed national glory, still must ask permission to open a store or build a home. The faces are new, but the details of life under government aren't terribly different. As the old rock song by the *Who* goes, the parting on the left is now a parting on the right. All in all, not quite worth dying for.

Is it any wonder, then, that for the most part the people decline to participate? Who is more ignorant—the activists who invest lifetimes in the hope that they can make a real and positive difference with their program for new rules and new rulers, or the masses who sense that all the rhetoric won't amount to a hill of beans in their pots?

The Fortune Factor

It's a fairly strong case for apathy and "ignorance"...until we add the Fortune Factor. Lotteries demonstrate that the prospect of amassing Big Bucks can shake millions out of their easy chairs and, literally, onto the streets. Could we not harness this phenomenon for a movement that can promise, Everybody a Millionaire? No other political movement—"libertarian," liberal, communist or conservative—can possibly offer so much for so little.

What would it take to abolish taxes? A massive shift in public opinion. An ongoing, insistent and uncompromising demand for

tax abolition from a public motivated to participate by the specific prospect of certain wealth.

Needless to say, questions have to be answered. Despite its legendary profligacy, government does provide some services that people want, so there would have to be a pretty clear idea how these valuable services would continue. Even the glowing prospect of riches pales somewhat if the price is "chaos."

That's where THE PRAGMATIST comes in: to show that the chaos is actually caused by government, and how these valuable services would evolve in the marketplace. Consider a subscription or donation to THE PRAGMATIST (and a select few other outfits that specialize in practical alternatives to government) your "lottery" ticket to riches. Every dollar you spend on THE PRAGMATIST helps us to introduce to more people the idea of tax abolition or the knowledge of how the tax-free society will work.

What is the chance of winning? We can't say for sure, but bear in mind that one chance in 9.6 million is awfully close to no chance at all, and yet millions play those odds every day. We can add that, in contrast to a lottery, where your chance of winning stays the same regardless of how many people play, the likelihood of everybody winning the tax-abolition contest increases as more new people play and the more that each plays. So play, play often—and, most important, get other people in on the game.

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Potpourri from the Editor's Desk

continued from page 2

that before World War I, immigration into the United States was completely free. "Surely," he writes, "the movement of people is a more important test of the extent of integration of the world than the movement of goods and financial securities." Internationalization of the world economy is to be desired, but it is not to be achieved via technology (such as jet planes, satellites, or computers). "The route is more direct. It is through the elimination of government controls and intervention." (THE COMMONWEALTH, July 15, 1988, p. 380.)

8. "Politics is Politics"

A politician is an artist in the art
of following the wind
of public opinion.
He who follows the wind
of public opinion
does not follow
his own judgment.
And he who does not follow his own
judgment
cannot lead people
out of the beaten path.
He is like
the tail end of the dog
trying to lead the head.
When people stand back
of politicians
and politicians
stand back of the people,
people and politicians
go round in a circle
and get nowhere.

(Peter Maurin in THE CATHOLIC WORKER, May 1989, p. 5.)

9. "Some Sayings"

"Free enterprise will work if you will."—Ray Kroc

"Life will give you whatever you will accept."—Art Williams

"Freedom under the law—the absolute right to do exactly what the state tells you."—J.C. Lister

10. "For Sale"

Kevin and Patricia Cullinane, directors of Freedom School, are looking for a new campus as well as a buyer for their Freedom Country Executive Conference Center and property (10,000 sq. ft. of buildings, located on 60 wooded acres with stream and view

of the Blue Ridge Mountains in upstate South Carolina). They plan to continue teaching Freedom School, but propose to open a new 2-year college based on the work-study-adventure program of their earlier Academy of the Rockies. They would like to find wilderness property (160 acres, minimum) within a 150 mile radius of Spartanburg, SC. All proposals to buy, sell, trade or barter will be considered. Please contact the Cullinanes at 803-472-4111, or write in care of THE VOLUNTARYIST.

11. "The Unknown Deserter"

THE NONVIOLENT ACTIVIST (June 1989) reports that peace activists in Bonn, West Germany, plan to unveil a large marble statue dedicated to the some 15,000 soldiers who were executed for sedition and desertion from Hitler's armies during World War II. "Deserters are not heroes or even anti-heroes, but people who acted responsibly. ...If the war was unjust, a crime against humanity, then why not honor those who refused to participate?"

12. "Markets and Freedom in the Middle Ages"

"Nowadays, the chief way various kinds of 'politicians' domineer the greater part of the Western world is by controlling the currency, which they can expand, contract, and spend at will. Although a free society may, rarely, be preserved when the currency is of paper, and even though money properly so called in the form of coins of precious or semiprecious metal, cannot itself ensure its own protection, yet such money is the strongest buttress of free markets. What is essential for the freedom of trade is that the supply of currency be in the hands of the people at large and not in those of men who seek to impose their rule on others." (A.R. Bridbury in THE MARKET IN HISTORY (1986), p. 129.)



Voluntaryism on the Western Frontier

continued from page 1

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 offences. ...

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, not 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)⁵

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 until 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."⁶

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 travellers 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."⁷ Large numbers of people travelling 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 travelled America's overland trail gave little thought to solving their problems by violence or theft."⁸ 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 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."⁹

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 18th and 19th Centuries. Generally, these involved the leading citizens of the community, and other law-abiding, property-respecting individuals who were concerned with enforcing and re-establishing "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 town(s) with more stable and orderly conditions; and when opposition developed they disbanded."¹⁰

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, voluntarism was successfully practiced on the Western frontier!

Footnotes

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 Voluntarist Tradition," *THE VOLUNTARYIST* No. 23, January 1987.

² *Ibid.*, p. 10.

³ 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).

⁴ 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.

⁵ Bayard Taylor, *ELDORADO OR, ADVENTURES IN THE PATH OF EMPIRE COMPRISING A VOYAGE TO CALIFORNIA...*, New York: George Putnam, 1850, pp. 100-101.

⁶ Samuel Wiel, "Theories of Water Law," Vol. 27 *HARVARD LAW REVIEW* (1913-1914), pp. 530-544, at p. 540.

⁷ Anderson and Hill, *op. cit.*, p. 21.

⁸ 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.

⁹ Reid, *op. cit.*, 274.

¹⁰ 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*, New York: Da Capo Press, 1969 (originally published 1921).

Freedom Is Available

By R.S. Jaggard, M.D.

Freedom is available. The person who knows the meaning and value of freedom will find a way to be free.

In medicine today, patients and doctors are grumbling and complaining about the restrictions placed on them by the politicians. Patients complain because they can not get the medical care that they want. Doctors complain because they can not practice medicine the way they know they should, but they continue to participate in the collectivist system, grumbling all the way to the bank.

When they caught Willie Sutton, the famous bank robber, and they asked him why he robbed banks, his answer was—That is where the money is. When I ask doctors why they participate in the medicare program, I get the same answer—That is where the money is.

Patients and doctors who ask for money from the politicians, and then complain about the restrictions and loss of freedom, have forgotten the basic rule of history—When you put out your hand to take money from the government, your bare wrist is exposed, and THAT is where they put on the chains.

Having taken the big and easy money from government, patients and doctors are frustrated because they can not use individual intelligence to get—or to perform—good medical service. They are trapped in a mess of regulations whose sole purpose is to serve the politicians.

Patients who are in the medicare program need to remember that they do NOT have ANY right to choice of doctor or choice of treatment. Doctors in the medicare program need to remember that they do NOT have ANY right to perform the best medical treatment for the patient. All medical decisions for all treatments for all patients in the medicare program are subject to review and revision by politicians, who can change the doctor's orders at any time, even before treatment is started. Also, they can "fine" any doctor \$2,000 each and every time the doctor "fails to comply" with political orders, and repeated "violations" will lead to elimination of **any** payments by medicare to that doctor.

Obviously, this means that any doctor in the medicare program MUST follow the political rules in each and every case, and the doctor MUST obey the political paymaster in all treatments for

all cases. Since no person can serve two masters, the doctor in the medicare program does NOT serve the patient and does NOT work for the best interests of the individual patient.

Avoidance of such an ethical disaster and preservation of freedom is easy. DO NOT TAKE THE GOVERNMENT MONEY. Just say, "NO".

When I give this advice, many people respond by saying, Oh, I know that medicare is bad, but it is the only game in town, and I HAVE to be part of it. Patients say—I HAVE to pay the Part B premiums, and I HAVE to pay the medicare supplemental premiums, and I HAVE to pay out two thousand or more dollars a year in insurance, and hope that the politicians will allow me to have some medical care when I need it. Doctors say—I HAVE to follow the medicare rules and treat people the way the politicians tell me to do it, and I HAVE to take the medicare money, to be able to pay my bills and continue in practice.

WRONG!! NOT TRUE!! I am over 65 years old, and I am NOT part of the Social Security system, because I repudiated any and all Social Security "benefits" back in 1974, and I have made no "contributions" to the Social Security System since 1974, although some of my property is forcibly seized each year by government to satisfy their claim for what they call "self-employment tax." I did not sign up for Medicare Part B, so I pay no medicare premiums, thus saving two thousand or more per year. I have never accepted any payment from Medicare or Medicaid, because I have dealt directly with the patients, and only with the patients. Now I do NOT charge my patients who are trapped in the medicare program, and I do NOT have to follow the stupid political rules that prevent a doctor from practicing good medicine. I AM practicing PRIVATE MEDICINE for the benefit of the individual patient, and I AM depending on my patients to help me to pay my bills and continue in practice. If I can do it, any doctor can do it.

I choose freedom. I choose to serve the individual patient, to do the best I can for the individual patient. I know that this is the best course of action for me to follow so that the patient and I can work together, in freedom, for mutual benefit. Freedom is available.

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