
The Voluntaryist

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

June 1988

Property Rights or Eminent Domain?

By Carl Watner

BOOK REVIEW: Ellen Frankel Paul, PROPERTY RIGHTS AND EMINENT DOMAIN, New Brunswick: Transaction Books, 1987, 276 pp., hdbk., \$26.95.

Only about one-fourth of this book is of interest to voluntaryists; the other three-fourths is filled with legal details of how the power of eminent domain has been exercised. Most of this is irrelevant to our position, for as I noted on page 8 of the December 1987 VOLUNTARYIST, the Fifth Amendment to the Constitution sanctions theft. To claim, as the Fifth Amendment does, that "private property" shall not "be taken for public use without just compensation" implies that property rights are not absolute and that the State may take property from an owner without his or her consent. The fact that the State is supposed to compensate for its taking is beside the point. It is still theft. Ms. Paul does a scholarly job of tracing the judicial and legislative history of eminent domain in the United States, and succeeds in providing ammunition to buttress our argument that the State is a criminal institution. Whether the State provides compensation for the taking of personal property, or whether it refuses to, as when it regulates property under the guise of the police power (health or zoning regulations) is really a distinction without a difference. The principle of taking has already been legitimized. How it is exercised is simply a matter of detail.

There are several critical sections of this book that voluntaryists must grapple with, but I will only deal with three of them. Those are: 1) "The Sovereign's Power of Eminent Domain" (pp. 72-78) which deals with some of the general historical background and the natural law philosophers who argued for the power of eminent domain; 2) "The State: Its Derivation and Limits" (pp. 248-254) in which the author defends her conception of a minimal state; and 3) "Eminent Domain and Police Power: Ideal World" (pp. 254-260) in which the author tries to conceive of a minimal State without the power of eminent domain. (At least two other sections of the book, deserve comment and criticism. They involve the section "Can a Natural Right to Property Be Defended?" (pp. 224-239) in which the author develops a theory of property rights based on human survival and creativity; and the discussion of a "time-frame theory of governmental legitimacy," (pp. 251-253) in which a historical theory of judging governmental legitimacy is offered.)

Eminent domain may be defined as "the 'power of the sovereign to take property for public use without the owner's consent'." (p. 28) In English history, this power stems from the land tenure system imposed upon the Anglo-Saxons by King William after the Norman Conquest of 1066. "The victorious William...declared by force majeure all land in England forfeited to the crown. To his loyal men-in-arms, he distributed these rich spoils of war, but on the condition that various servitude would be owed to the king. Thus the king's vassals were merely owners of various interests, or estates in land, while the king retained dominion over all the lands of the realm." (p. 201) From that time on, the principle that the sovereign ultimately controlled all property under his jurisdiction was embraced. In 1215, the Magna Carta included a statement that no freeman might be "disseized of his Freehold...but by lawful judgement of his Peers, or by the Law of the Land. ... By the time of the American Revolution, English condemnation practice was well established." (p. 72)

That tradition was transmitted to the American colonies and by 1789, the power of the federal and state governments to take property was already accepted. Although the power of eminent domain

is not explicitly granted in the U.S. Constitution, it is implied in the clauses that give Congress authority to establish post offices and post roads, military fortifications, etc. The drafters of the Constitution were familiar with the writings of the natural law theorists, such as Grotius, Pufendorf, Bynkershoek, and Locke. All of them referred to eminent domain as an inherent attribute of the State, though they generally hedged the power with some qualifications that compensation must be paid when property is taken and that property can only be taken for a public necessity or public purpose.

In discussing these natural law theorists, Ms. Paul points out that they all took for granted that the State had the power of eminent domain, even though the individuals comprising the State, did not individually have the right to take property from others without their consent. She asks: "Why did natural right thinkers justify this power?" and concludes "that they found eminent domain to form so much a part of the nature of government that government would be inconceivable without it. Bynkershoek declared, that if the eminent domain power were destroyed, 'no state could survive... that the sovereign has this authority, no man of sense questions'." (pp. 76-77) Ms. Paul recognizes that the power of eminent domain does not follow from the natural law position and states that although the natural law theorists wished to protect individual liberty, "they simply failed to follow through consistently on their principles." (p. 77) "That a polity might be conceivable that lacked the power to dispossess private owners did not occur to Grotius and his contemporaries." (p. 75)

Later in the book, Ms. Paul tries to argue the case for a minimal State without the power of eminent domain. In her section on "Eminent Domain and Police Power: Ideal World," she states that her ideal government would be bereft of such a power. "Far from being inconceivable without eminent domain, government is quite imaginable shorn of its power to confiscate property." (p. 260) It is this statement which we challenge her to debate, but first we should take note of her own waffling on the issue. Lest we be accused of mis-statement or improper juxtaposition, let her words speak for themselves.

From the defense of private property previously developed and the theory of the legitimate functions of the state derived from that defense, we can now reach some conclusions about the supposedly inherent state powers of eminent domain and police. **The power of eminent domain, the power of the state to seize property against the will of its rightful owner, whether accompanied by the payment of compensation or not is wholly unjustifiable.** (emphasis added) It is only upon utilitarian or pragmatic grounds, and not upon a property rights system as defended here, that eminent domain could conceivably be justified. But, and this is terribly important, pragmatic considerations of efficiency and the like cannot touch fundamental rights. That is, the right to take property stands on a higher moral ground than considerations of efficiency. An innocent person's life ought not to be sacrificed by government even if by taking that life other more numerous deaths could be prevented... Similarly, property ought not to be confiscated from an owner even if that seizure will accommodate a new state office building, a more convenient post office, or a noncircuitous highway. Indeed, by making this juxtaposition it should become apparent that if the case of the innocent person tells so decisively against efficiency considerations, the case is even stronger against property seizures. How can preventing crooked highways ever rise to such moral significance as to override anyone's fundamental right to property?

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Editor: Carl Watner

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Trust Government, Not the Free Market

By Richard J. Maybury

All this talk about liberty is exciting, but let's get serious for a moment. The evidence shows clearly that liberty does not work. Many things are too important to be left to the whims of the free market. Imagine the chaos if our schools, postal system, Social Security, all other essential services were not provided by government.

This is the reasoning behind the need for government intervention. We cannot get along without it. We cannot trust the free market to provide our essential services. But does this reasoning stand up under close scrutiny?

What is the most essential service known to man? Is it schools? Social Security? Police? Roads?

Consider clocks. Is there anything more important than the service they provide?

Imagine a world without clocks. Imagine trying to run a factory with assembly line workers straggling in at all hours of the day.

Imagine a busy airport without clocks. Without the ability to schedule arrivals at evenly spaced intervals, planes short on fuel would enter the landing pattern and find no room on the runways.

Imagine railroads without clocks. Imagine two trains without schedules accidentally converging on an intersection at the same moment.

Imagine giant oil tankers maneuvering in shallow waters without clocks - without the means to predict accurately the tides.

Neither the Industrial Revolution nor the prosperity created by it were possible until clocks had been invented. In a civilization as advanced as ours, the single most important requirement may well be good timing.

Without the ability to tell time, our newspapers, radio, and TV stations would be unable to schedule their activities to meet deadlines. Schools would be unable to conduct classes. Business meetings, appointments and planning would be impossible.

Our civilization would collapse, because we would not be able to organize ourselves.

Yet organization does occur and our civilization does work because we are able to tell time. In fact, we are able to tell time very effectively.

On my wrist is an electronic digital watch. A few years ago such watches cost \$200. Today you can get them for \$20. Despite their low cost and incredible complexity, they are highly accurate.

They are provided by free enterprise.

But suppose they were not provided by free enterprise. Suppose instead that timekeeping were considered too important to be left to the "whims of the free market." What would a digital watch be like if it were a public service produced by government?

Judging by everything else government does, a watch would cost a year's wages and be the size and weight of a manhole cover. It would always run at least six hours slow except when it were running backwards.

If timekeeping were a public service, the DOT (Department of Time) would consume 20 billion tax dollars per year and its army of bureaucrats would regulate every facet of watch production and timekeeping. But no one would question the need for the DOT. After all, there has to be some control, doesn't there?

Imagine the chaos if we had no laws requiring everyone's watch to be set accurately. Factories could not operate. Schools would close. Airlines would crash. Obviously a \$10,000 fine and a year in prison are reasonable penalties for having your watch set wrong.

That's an optimistic assessment of government timekeeping. Realistically, the situation would be a modern version of the one prevailing during the Middle Ages in Europe.

In medieval Europe, timekeeping really was considered too important for the free market. Small personal clocks were available, but government collected huge amounts of tax money to build giant clock towers in the centers of towns.

In Lyons, France, for instance, officials wanted a "great clock whose strokes could be heard by all citizens in all parts of the town. If such a clock were to be made, more merchants would come to the fairs, the citizens would be very consoled, cheerful and happy, and would lead a more orderly life." We still see these kinds of clock towers all over Europe. Big Ben was modeled after them.

If in today's world timekeeping were still considered too important for the free market, individualized timekeeping could even be illegal. No wristwatch, alarm clock, or other timepiece could be privately owned because individuals could never be trusted to govern their own affairs. They might set their clocks wrong.

To make sure everyone was using the correct time, the DOT would subsidize and control the production of one clock for each community. Following the medieval pattern, each clock would be perched atop a mile-high tower in the center of the city and would be the size of the Queen Mary. It would loom over the city like a storm cloud. The ticking would sound like a pile driver.

People would complain about the inconvenience of having to look out their windows whenever they wanted to know the time, so each clock would also be equipped with a chime ringing every fifteen minutes, as in medieval Europe. To be heard everywhere in the city, the chime would be loud enough to reverberate like a thunderclap, rattling doors and windows for miles around. Every fifteen minutes. All day and all night long.

But no one would question the need for this monstrously expensive torture device because individualized timekeeping would not exist, so no one would believe it could exist. Any lunatic who suggested the free market could provide each individual with a highly accurate clock small enough to be worn on the wrist would be laughed out of town. Obviously, everyone would exclaim, even if such a futuristic gadget could be invented, it would cost a fortune; and besides, everyone would have his watch set differently - there would be chaos.

Everybody knows liberty does not work. Essential services must be provided by government.

(Rick Maybury, a well-known freelance writer, is a media associate of the Ludwig von Mises Institute. This article is reprinted from THE FREE MARKET, November 1987.)

CONTRIBUTORS TO THE LeFEVRE BOOK FUND

The following individuals have helped assure the publication of Bob LeFevre's biography. They deserve many thanks. Those who send \$25 or more will receive a complimentary copy of the book when published. Please make your checks payable to the LeFevre Book Fund and mail to The Voluntaryists.

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If Alpha II has no right to seize Beta II's property in a state of nature, then government has no such right. Governments are merely the guarantors of preexisting rights. **No pragmatic considerations could ever justify a government in violating someone's property rights, short of the extreme exigencies of war when government in protecting persons and property may have to march its armies through someone's land.** (emphasis added) Then, certainly, compensation must be paid to those bearing more than their fair share of the burdens of war. **I can discern no theoretical justification for the power of eminent domain in peacetime.** (emphasis added) If government must construct military barracks, courts, and a few office buildings to carry out its limited functions, then it should purchase the land necessary for these installations on the open market just like any other private buyer. Anything else would violate individuals' rights to private property. (pp. 255)

In the first of the above two paragraphs, Ms. Paul explicitly and unreservedly rejects the power of eminent domain. Nevertheless, in the second of the two paragraphs she admits that during war there might be instances in which a State might have to exercise the power. **How does she reconcile these two positions?** If pragmatic considerations (such as winning a war) cannot touch fundamental rights, on what ground is the violation of a property right during war time justified? What is it about the nation-state at war that could justify its use of the power of eminent domain? (It is interesting to note, how the United States government has used emergency war power acts to justify expropriation, such as when the Roosevelt administration confiscated private gold holdings in 1933. There are many examples of the State using war to expand its powers, as Robert Higgs' new book, CRISIS AND LEVIATHAN details. "War is the health of the State.")

Although Ms. Paul does not discuss taxation, other than to classify it as one of the three principal ways in which "governments in the United States exercise control over property" (p. 3, the other two ways are the police power and eminent domain) and to describe it with such rights-violating actions as conscription and depriving people of their property (p. 251), nowhere does she address the critical issue of how her minimal State is to derive financial support for its operations. Either it uses compulsion to raise its revenues or it relies on voluntary support. If it uses compulsion, it would be a rights-violating agency, which she would presumably reject. If it relies on voluntarism what would it do if it did not collect enough funds to sustain its operations? Would it declare a state of emergency akin to war; would it restrict its activities; or would it liquidate and go out of business?

According to Ms. Paul's section on "The State: Its Derivation and Limits," a government is only legitimate when it upholds natural rights. "The minimal state we have just constructed would be scrupulously limited in its functions, limited to the protection of individuals against force and fraud perpetrated by their fellow citizens, the preservation of the society against external aggressors, and the provision of a fair and expeditious court system." (p. 254) While criticizing Adam Smith for his inclusion of a fourth function of government (that of providing public works, such as roads, canals, etc.), she notes that Smith failed to appreciate his own "invisible-hand solutions." "If consumers desire such services, why will the market not provide them...? And if the market does not provide certain of these services, is it not because consumers are unwilling to pay for them...?" (p. 267) Ms. Paul acknowledges that the market is best served where there is free entry by all entrepreneurs and where competition is not limited artificially by restricting the supply of goods and services to one purveyor. However, doesn't she realize that if consumers seriously desire police, courts, and army protection, they will pay for them in the market, just like they do for their other essential services, such as food, shelter and clothing?

It would have helped had Ms. Paul provided us with her definition of the State and delineation of its principal characteristics. In fact, she has failed to justify her minimal State. What can it possibly do that freely associating groups of individuals cannot do? (After all, a State is only people.) If her ideal limited State is non-rights-violating, how would it differ from a private free-market agency of-

Letter to the Editor

Dear Carl,

A quick note to bring to your attention a disagreement I have with you in No. 30, on the Constitution. You state in your "treason" article that "... voluntaryists look upon the State as a criminal institution . . ." Quite so. But if the State is a criminal institution, then it is utterly irrelevant how many people voted for the Constitution or for delegates to vote for (or against) it. By pointing out that the Constitution was put over by a small number of electors, you imply that, had the number been larger, the Constitution might have been acceptable on that grounds. Unfortunately, the only number of electors who might have made the Constitution acceptable is 100% of the people in the U.S. territory, **and** 100% of all those who since have found themselves in the U.S. territory, i.e., unanimous consent. Had unanimous consent been achieved, it - the Constitution - would have been unnecessary.

Other than that rather subtle point, a very good issue. I am reminded of one of my favorite quotes: "Either the Constitution has authorized such tyranny as we have had, or it has failed to prevent it. In either case, it is unfit to exist." - Lysander Spooner

Peace and Profit
s/Charles Curley

Signatory, Covenant of Unanimous Consent

Dear Charles,

Thanks for writing and pointing out the implications of my criticism of the Constitution. I, of course, was aware of this and this is why this particular article was directed to "Constitutionalists and Patriots," even though it appeared in THE VOLUNTARYIST.

fering protection, defense, and judicial services? The fact is that Ms. Paul does not seem to appreciate either the theoretical or historical significance of the State. All States are born in conquest and as one of the authors she cites in a reference, notes: "the American nation was born in an orgy of expropriation." (footnote 12, p. 160, citing McDonald at p. 31) 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. The State can best be considered as the "institutionalization of conquest." The primordial purpose of the State is "to maintain conquest" and the powers of eminent domain and taxation have always been two of its chief mainstays.

The problem Ms. Paul must recognize is: would she compel people to use the services of her ideal limited State; would she prohibit them from using the services of a competitive defense agency within the same geographic area? Would people be prevented from purchasing court services and police protection from private organizations? If she would, then would she and her ideal limited State not be acting in a rights-violating-manner since it was coercing peaceful individuals? And if she would not provide her ideal limited State with a coercive monopoly, how would it differ from one of many freely competing defense agencies? These questions are not answered in her present book.

When a friend saw me reading this book, he was puzzled about its title, "Property rights **and** eminent domain?" he asked. "Shouldn't it be property rights **or** eminent domain?" The confusion is apparent. Property rights and the State are mutually exclusive. The State must ultimately violate property rights if it is to remain a State. We hope that Ms. Paul might agree (as we think she would) that the power of eminent domain is incompatible with the existence of private property rights. This being the case, we hope she will explain whether her ideal limited government possesses **any**

coercive characteristics. If it does, it is not ideal, and if it does not, then it is not a State. She cannot have it both ways, any more than she can have "property rights **and** eminent domain."
(Editor's Note: Ms. Paul was sent this review before it was published. Her response and your editor's reply appear below.)

Dear Mr. Watner

It was very considerate of you to provide me with an advance copy of your review of my book, PROPERTY RIGHTS AND EMINENT DOMAIN. On the whole, I found it a fair representation of my arguments, and an interesting challenge to my "statist" views, minimal though they be. I wish to address several of the points that you raised.

(1) You perceived a contradiction in my argument that government, since it is merely the guarantor of preexisting rights, cannot legitimately exercise a power of eminent domain, but yet I make an exception in time of war. Perhaps my position was stated too quickly and without sufficient explanation. What I had in mind as a war-time exception would be something akin to what is called in takings law "inverse condemnation." That is where the government infringes upon your land--say, by flooding it--and you sue, claiming that the government has in effect taken your land and that you should, therefore, be compensated. Thus, this seeming exception to my condemnation of eminent domain really isn't one at all, but rather a guarantee that when government trespasses on property and destroys its value or deprives the owner of its use, even in time of war, it must pay.

(2) While I do not address in this book the third power over property that governments claim--i.e., taxation--I do elsewhere. (See: "On Three 'Inherent' Powers of Government," THE MONIST, Vol. 66, No. 4, October, 1983.) In that essay, I reject the power of taxation as illegitimate and tantamount to theft. The conclusion addresses the problem that you raised about a state bereft of the power to tax:

Government is, indeed, conceivably shorn of this power to tax.

A rights-protecting government could garner the meager funds necessary to carry on its limited functions by either user fees--e.g., a person would pay for the use of a courtroom and judge, or pay insurance premiums to the government's fire or police agencies--or by voluntary contributions to such legitimate governmental functions as national defense....

The latter possibility does not seem so outlandish as to be beyond conception, as individuals voluntarily contributed to keep California services functioning in the aftermath of Proposition 13. Without any taxation, indeed, people would be much wealthier than they were after their property taxes were cut in California, and hence, more willing to fund barebones governmental functions like national defense.

(3) The state that I envision would not monopolize its very limited functions. Others would be perfectly free to compete with alternative courts, police, fire services. Such would not be the case with defense, I must concede, because it is difficult to imagine groups choosing to engage in military confrontations or defense policies against varying perceived enemies. You want to support the Contras, he wants to overthrow the South African government, she wants to liberate Eastern Europe, etc.

The advantage of a state over no state, as I see it, is that it sets the framework in which individuals are then free to pursue non-

coercive activities. It, in effect, gives a written system of law to the natural law, that as Locke pointed out, some men are unwilling to recognize or acknowledge in the state of nature. My minimal state would do little more than establish this framework, i.e., setting penalties to the infringement of men's natural rights. Anarchy, as an alternative, is highly problematical because it gives free rein both to those who respect others' rights and those who do not: anything goes. Attempts, like Murray Rothbard's, to control this problem end up looking remarkably like a minimal state.

(4) I am afraid that your last paragraph gained in polemical force at the expense of accuracy. As you point out earlier in the review, I reject eminent domain in my ideal world. This passage claims that I cannot have "property rights **and** eminent domain," to which I heartily agree. This is not a criticism of my position, but rather, **is** my position.

Thank you again for this opportunity to respond to your comments.

Sincerely,

Ellen Frankel Paul

Deputy Director and

Professor of Political Science

Ellen Frankel Paul

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Dear Ms. Paul,

Thank you for taking the time to reply to my review of your book, and for sending your monograph from THE MONIST.

In Point 1 of your letter you wrote that the exception to your condemnation of eminent domain isn't one at all, but rather a guarantee that when government trespasses on property, and destroys its value or use to its rightful owner, then it must pay. Both in your article and book you note that property rights stand higher than questions of efficiency. "Pragmatic questions of efficiency and the like cannot touch fundamental rights." (THE MONIST, p. 536; your book, p. 255) **If this be the case, how do you justify State abrogation of property rights during wartime?** (I presume you are referring to a situation where the landowner objects to the State's movement of soldiers or armaments over his property - for whatever reason [the landowner might object to the State's particular policy, might not see this particular situation as an 'emergency,' or might just be a pacifist objecting to his own involvement in war-like procedures]. The fact that the State might pay for its violation of property rights or for its use is beside the point.)

In Point 3, you note that some of the solutions of free market defense agency advocates end up looking like a minimal state. While this may be akin to the proverbial optimist and pessimist respectively calling a half glass of water either half-full or half-empty, **I still do not understand what happens to your minimal state if no one chooses to voluntarily support it.** Either it has a coercive monopoly over (foreign) defense or it does not. If it does, won't it coercively prevent its citizens from supporting different policies abroad and won't it coercively demand revenue to support its own policy? If it doesn't act coercively in this, or any other areas, then I agree that there is nothing to distinguish it from any other free market defense agency.

By denying the usual attributes (taxation and eminent domain) of sovereignty to the State, you are 'robbing' it of its powers to coerce. But don't you think that if the State has no right to coerce in **any** instance, then it is no longer a State but a free market protection agency? If you reserve to the State the right to coerce in even **one** instance, then it is still a coercive institution, though you label it a 'minimal' one. **Do you agree that your 'minimal' State has the right to coerce in at least one instance? Or, are you attempting to construct your minimal State (as I think you are) such that it has no right to coerce in any instances?**

I hope to run my review and your comments in a forthcoming issue of THE VOLUNTARYIST.

Sincerely,

Carl Watner

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Voluntary Musings

A Column of Iconoclasm

By Charles Curley

*"Nothing can defeat an idea
-- except a better one."
-- Eric Frank Russell*

The Ultimate Argument for Free Speech: "Government cannot function if anyone can say anything at any time."

-- Robert Bork

Why I Signed the New Covenant The New Covenant, A.K.A. the Covenant of Unanimous Consent, is being circulated in over forty countries, and as I write this has some 160 signatories. What is it, and why did I sign it?

The first version of the New Covenant was published by L. Neil Smith in his book, *THE GALLATIN DIVERGENCE*, 1985, Del Rey Books. It has since been amended slightly, so it is reproduced below. Several readers of the book signed it and sent copies to Mr. Smith without prior urging on his part. A bastardisation of it has also been circulated, by a man who does not appear to have understood the original. The real thing is as follows:

A NEW COVENANT*

WE, THE UNDERSIGNED Witnesses to the Lesson of History -- that no Form of political Governance may be relied upon to secure the individual Rights of Life, Liberty, or Property -- now therefore establish and provide certain fundamental Precepts measuring our Conduct toward one another, and towards others:

Individual Sovereignty

FIRST, that we shall henceforward recognize each Individual to be the exclusive Proprietor of his or her own Existence and of all Products of that Existence, holding no Obligation binding among Individuals excepting those to which they voluntarily and explicitly consent;

Freedom from Coercion

SECOND, that under no Circumstances shall we acknowledge any Liberty to initiate Force against another Person, and shall instead defend the inalienable Right of Individuals to resist Coercion employing whatever Means prove necessary in their Judgement;

Association and Secession

THIRD, that we shall hold inviolable those Relationships among Individuals which are totally voluntary, but conversely, any Relationship not thus mutually agreeable shall be considered empty and invalid;

Individuality of Rights

FOURTH, that we shall regard Rights to be neither collective nor additive in Character -- two Individuals shall have no more Rights than one, nor shall two million nor two thousand million -- nor shall any Group possess Rights in Excess of those belonging to its individual Members;

Equality of Liberty

FIFTH, that we shall maintain these Principles without Respect to any person's Race, Nationality, Gender, Sexual Preference, Age, or System of Beliefs, and hold that any Entity or Association, however constituted, acting to contravene them by initiation of Force -- or Threat of same -- shall have forfeited its Right to exist;

Supersedure

UPON UNANIMOUS CONSENT of the Members or Inhabitants of any Association or Territory, we further stipulate that this Agreement shall supersede all existing governmental Documents or Usages then pertinent, that such Constitutions, Charters, Acts, Laws, Regulations, or Ordinances contradictory or destructive to the Ends which it expresses shall be null and void, and that this Covenant, being the Property of its Author and Signatories, shall not be Subject to Interpretation excepting insofar as it shall please them.

SEND TO: 111 East Drake, Suite 7032, Fort Collins, Colorado 80525. PLEASE ENCLOSE TWO DOLLARS to cover processing and archiving. Add SASE for confirmation of receipt.

*Excerpted from Chapter XVII of *THE GALLATIN DIVERGENCE*, by L. Neil Smith, Del Rey Books (a division of Random House), New York, 1985, as amended by unanimous consent, October, 1986.

There are three customs that have attended the New Covenant. First, it is circulated exactly as is. No amendments whatsoever, save upon unanimous consent of the signatories. It is, after all their property. Second, a witness should refuse to witness unless the witness believes that the would-be signatory fully understands what it is that he does. Third, no one is asked to sign. Ever. This, as Mr. Smith explains, is to prevent signatories from harassing people at airports. It also provides, I think, an excellent "filter." The only signatories are people with enough gumption to stand up and ask.

A bit of discussion seems in order. First, this is a broad guideline, not an explicit contract. It is full of negatives: we reject the so-called right to initiate force, we deem all statutes which contravene these ends to be null and void, rights are not additive or collective, and so on. As Robert Heinlein's character, Professor Bernardo de la Paz, remarks, a Constitution full of such negatives is a good place to start.

The preamble refers to the Lesson of History, which is that no form of political governance may be relied upon to secure the rights of life, liberty or property. As Thomas Jefferson pointed out in his second inaugural address, we have not yet found Plato's philosopher kings. Indeed, the closest we have ever come to a philosopher king is the Roman Emperor Marcus Aurelius, and his choice of an heir was so flawed that the heir, Commodus, was finally assassinated -- by his favourite concubine.

The preamble is also careful to say that this covenant describes how the signatories will act toward one another and toward other people. Nowhere in the covenant is anyone not a signatory bound or obliged in any way. Indeed, the supersedure clause requires unanimous consent, a difficult goal to achieve. The covenant does describe how its signatories expect to be approached by the outside world: through voluntary agreement and without force or the threat of force. But these are reasonable expectations, on a par with certain standards of cleanliness and courtesy.

The New Covenant has an interesting aspect: it has no procedure for adjudication of disputes under it. Nor does it need them. The Covenant, per se, is a general description only. All it requires is that interactions between people be voluntary. It is sufficient to make this requirement. Any agreements between signatories to the covenant may -- and (I believe) should -- carry their own methods of adjudication. These methods will vary as much as the signatories themselves. Again, this is as it should be.

The New Covenant also has no provision for what we today would call a government. It doesn't even overthrow existing ones, save where unanimous consent is obtained. This is a more stringent requirement than most "democratic" laws. But it certainly does -- implicitly -- assert that the right to secession applies to existing governments, and -- explicitly -- to itself. That is, if you accept the contract theory of government. Not all people do. What it does address to governments, as well as other institutions, is that if they initiate force or threaten to do so, they forfeit their right to exist. The IRS would not survive long under that stricture, but other sections of "the government" might. But all this does is to put the government on notice that civilized behavior is expected of them. What's wrong with that?

The Declaration of Independence holds forth the idea that if a government oppresses the people, it is their right, it is their duty, to overthrow such government and replace it with new guards for their security. The New Covenant is far more radical: it asserts that any government which so much as threatens force forfeits the right to exist.

The Covenant explicitly denies the idea that people should be forced to continue in an arrangement which they find unagreeable. It makes no effort to sanction the violator of a contract. But it also makes no provision requiring anyone to do business with a contract violator! Remember that for four hundred years the London Stock Exchange has operated under its motto: "My word is my bond." Other arrangements between some or all of the signatories

may make provision for the enforcement of contracts, but this one need not.

The covenant does bind its signatories to one action: ".../We shall) defend the inalienable Right of Individuals to resist Coercion employing whatever Means prove necessary in their Judgement..." A pacifist or Robert LeFevre might object to this clause if it were construed to mean physical defense. No such construction is implied. Indeed if the pen is mightier than the sword, then the word processor is mightier than the nuclear bomb. A well reasoned verbal defense of the right to resist coercion is far more useful in the context of the New Covenant than a Uzi machine gun. However, there may be times when the defending Uzi is more welcome. One purpose of the New Covenant is to avoid such times.

Signing the New Covenant might be considered a ritual of passage. Very few people will sign such a document without first having done a lot of thinking about such issues as the nature of man and the proper way for men to interact. But being presented with something to read, never mind sign, brings these issues out and to the forefront. It may get them thinking. That alone makes the project worthwhile.

If nothing else, it makes a damn good opening gambit for conversation. "Have you signed the New Covenant?" sounds a lot more fun than, "What's your sign?"

Worth Remembering "If anyone can show me, and prove to me, that I am wrong in thought or deed, I will gladly change. I seek the truth, which never yet hurt anybody. It is only persistence in self-delusion and ignorance which does harm."

-Marcus Aurelius, second century Philosopher and emperor

On Church and State: "'And pray, sir,' says the sergeant, 'no offence, I hope; but pray what sort of a gentlemen is the devil? For I have heard some of our officers say there is no such person, and that it is only a trick of the parsons to prevent their being broke; for if it were publicly known that there was no Devil, the parsons would be of no more use than we are in times of peace:'"

Henry Fielding
TOM JONES, 1749

For Your Own Good Alcoholism is reported to be responsible for more than 25 times the deaths caused by illegal addictive drugs, such as heroin, cocaine and crack, put together. Almost 24,000 of the 44,000 deaths on America highways last year were caused by drivers who had been drinking. The money value of the damage done by alcohol is put at \$117 billion a year, whatever that means. No one is yet proposing to ban the stuff (maybe they have learned something?) but there are proposals to up the alcohol excise tax -- to pay for the national debt, of course. How about getting congressmen out of their addictive spending habits instead?

Economic Follies By intent or otherwise, Sierra Leone at least comes up with some humorous non-solutions to its problems. The government has such a shortage of foreign exchange that it can't afford the fuel to generate electricity so that the Ministry of Finance can run its computers. This means that the MoF can't tell us exactly how bad off the country really is. Maybe they could put up signs like Herbert Hoover's supporters did: "Wasn't the Depression Terrible?" Close enough: President Joseph Momoh has declared an economic state of emergency. Oh, really?

In all my years, I have heard a lot of proposals on how to stop inflation, everything from the wacko to the crank to the sane and reasonable. Sierra Leone seems to have stumbled on this one by accident, however, and it might actually work. The government is so short of foreign exchange that they can't pay De La Rue, their currency printers. Oh, the wonders of the free market.

The cash crisis is so bad that even civil servants aren't getting paid: some are owed several months back pay. Good ghu, they might have to get honest jobs! Oh, the horror! Meanwhile, life goes on: the rice farmers are smuggling their crops to Liberia and Guinea, the diamond miners are busy making a currency market under the noses of the MoF bureaucrats, and the government has applied to the IMF for loans. The IMF's advice: buy your foreign currency on the streets, like everybody else. Why should the government be any different?

My Peace

By R.S. Jaggard, M.D.

My Peace is more than just the absence of war. My Peace is that positive attitude in which I recognize that you are an individual person. I respect you, I respect your right to live in Peace, and, I want to work to help you to have a happy and productive life, working as best you can to achieve your own peaceful goals.

My Peace includes the recognition that you have the right to make your own peaceful choices, to work and to create in your own peaceful way, and to peacefully deal with others in willing exchange for mutual benefit.

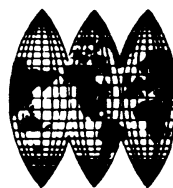
I do NOT want to force you to support those programs that I think are "noble and good." If I recommend that you support a specific program, and you do not support that program in the manner that I think you should, you can be reassured that I will NOT seize your property, and use violence against your person. Instead, I will recognize that I have failed to properly inform you of the advantages for you and the reasons why you should support that program.

Please be aware that this message is very, very different from the usual message of "Peace" that you hear. Many people who call for "Peace" are calling for a condition in which all other persons bow down to them. Many who call for "Peace" have no hesitation in calling for whatever force is necessary to seize your property and/or your service to support programs which they have decided are "noble and good." Their program might be food for the hungry, decent housing, medical care for the sick, or financial aid for those in economic distress. However, the end is predetermined by the means. If ignoble means are used, the result will also be ignoble.

Please be aware that there are some people who claim that they are calling for Peace, when in actual fact they are calling for more tax support (or tax exemption). A person who absolutely refuses to pay the taxes to support any political tax-paid program will be killed. Government is the agency that insists on a monopoly on the use of force within a specified geographic area. Government insists that you pay your taxes, either in cash, by surrender of property, or by surrender of your person (by going to jail). If you should absolutely refuse to pay the tax, and you refuse to allow seizure of your property, and you refuse to go to jail, you will be SHOT.

Some government programs actually do some good for some people. Hitler and Stalin and Mao did some good for some people. They also did a lot of harm to a large number of people. Government programs that do help some people can do so only by hurting a lot of other people, by forcibly seizing the property of honest workers so that benefits can be given to politically-selected persons. Elimination of these programs of force and violence (taxation) will allow people to join together in independent voluntary associations to feed the hungry, provide decent housing, care for the sick, and give financial assistance to the truly needy and deserving people. Voluntary associations can provide genuine help in the manner chosen by the worker who contributes, while at the same time eliminating forced seizure of property and the massive waste of "administrative costs" found in government programs.

Peace - Genuine Peace - through Voluntary Cooperation - is the answer. As an individual, I want to work to avoid using the power of government (taxation) to compel you to support me and/or my programs. I want to work to allow you to make your own peaceful choices.



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THE CONSTITUTION AND UNSOUND MONEY: A Reply to Conrad Braun's "The Constitution and Sound Money"

By Carl Watner

(Editor's Note: This piece was written in response to an article appearing in GOLD STANDARD NEWS, September 1987, as well as correspondence with John Robbins of The Coalition for Sound Money. This and the letter from John Robbins were previously published in GOLD STANDARD NEWS, No. 131, October 1987.)

If we accept the dictionary definition of "sound," then sound money is money that is able to perform its functions as a medium of exchange, which includes acting as a store of value and as a means of economic calculation. A sound money is able to perform its intended functions.

According to the Coalition of Sound Money and Gold Standard, the United States Constitution contains sound money principles. It prohibits the states from making anything but gold and silver legal tender. It empowers, but does not require the federal government to coin money.

Both the language of the Coalition and Gold Standard leads one to conclude that government money in accord with these principles would be a sound money. Is this so?

What is unsound about a system of government money, even if it consisted of gold or silver coin? First, it does not originate in a market process. Second, production of government coinage will usually be subsidized by the taxpayers. Thus, government gold and silver coins, even under the best of conditions, constitute monetary socialism, as Mr. Braun has been pointing out. Third, a governmental money system must suffer from the same defects as all government operations: it is bureaucratic, not profit-oriented, and has an unfair advantage in competing with all other private monies. Fourth, since the natural tendency of governments is to inflate, we can expect government money to be debased sooner or later. Fifth, market forces do not necessarily dictate the amount of gold and silver to be coined.

It is this writer's contention that a government money system and government money are always unsound, whether they be in accord with constitutional principles or not.

It is worth pointing out that the powers-that-be do not agree with the constitutional interpretations embraced by Mr. Braun and the Coalition. The Supreme Court has upheld legal tender laws, paper money and abrogation of the gold clause in contracts. My argument holds up regardless of whose interpretation you accept: government money is always unsound. History teaches us that government involvement in money leads to disaster. Government gold and silver coins are simply the first steps down the slippery slope.

Mr. Braun has stated that as a free market advocate he believes the government has no business minting coins. Thus, he should reject that part of the Constitution which is at odds with his free market position.

Either the Constitution legitimizes our current system of monetary socialism or it does not. If the Constitution sanctions such a system, then it is useless so far as a true market-oriented money movement goes. If the Constitution has been powerless to prevent monetary socialism, then it has failed us miserably. In either case we should recognize that it has done a poor job and is inconsistent with the free market ideals we uphold.

The Coalition for Sound Money
708 Pendleton St.
Alexandria, VA 22314
Dear Mr. Watner:

Thank you for your letters requesting an explanation of the "principles of sound money found in the Constitution." You go on to ask, "What justification is there for any sort of government involvement in the monetary sphere?" And finally, "What is the Coalition's definition of 'sound'?"

Let me reply to your questions in reverse order. First, the Coalition's definition of "sound" is the dictionary definition: "able to perform its functions fully; and sound money is able to perform its functions of economic calculation, store of value and medium of exchange. As the Coalition has stated in its literature many times, sound money arises from the market; the history of government intervention in money is the history of making it less than sound.

Which brings us to your second question: "What justification is there for any sort of government involvement in the monetary sphere?" The Coalition believes in "Sound money through freedom." There is no reason for government to be involved in money and banking any further than it is in other businesses: in order to punish fraud. Just weights and measures - that is, weights and measures that are what they purport to be, are required by the moral law. Persons who use unjust weights and measures ought to be subject to punishment, whether they manufacture and sell cereal or coins.

Finally, "what are the sound money principles contained in the Constitution?" There are several. First, the federal government is not empowered to declare anything legal tender. Second, the federal government is not empowered to print money. Third, the state governments are prohibited from coining money or emitting bills of credit. Fourth, the federal government is not required to coin money. Fifth, the federal government is not empowered to engage in banking. Sixth, the federal government is empowered to punish counterfeiting of its own coins and securities. Seventh, the power of state governments to declare anything legal tender is restricted to gold and silver coin. Eighth, the state governments are prohibited from passing any law impairing the obligation of contracts. Ninth, the federal government is not empowered to make any law impairing the obligation of contracts. Tenth, assuming that Articles IX and X are part of the original Constitution, they reserve the right of issuing money to the American people.

Now the Constitution is not, of course, perfect. It does, for example empower the federal government to coin money and to establish post offices and post roads. But those are options that need not be exercised. Monetary freedom as advocated by the Coalition does not require a Constitutional amendment to stop the coining or printing of money by the federal government. It simply requires that 1) the federal government stop doing what is already unconstitutional, i.e., printing money and operating a bank; and 2) cease exercising its constitutional prerogative of coining money, just as it ought to cease borrowing money. Before the Civil War, private coinage was in wide circulation in the United States and there is no reason, either from economics or from Constitutional law, that that cannot occur again.

Thank you for your letters. I hope I have answered your questions adequately.

Sincerely,
John W. Robbins



Make Money, Not War!

By Lorne Strider

I have argued that business people, those who create and produce wealth, are acting morally, and that people who pretend to act in the public interest, i.e., government people, are the bad guys whose actions not only create no wealth, but actually destroy wealth that others have created.

This argument is based upon the obvious fact that business people are producing a product or service that other people want, where government people produce nothing of any value to anyone, and, worse, rob and control those who do produce products and services, thereby diminishing everyone's standard of living.

Kings, queens, presidents, governors, senators, supervisors, tax collectors, dog catchers, zoning administrators, building inspectors, poultry inspectors and thousands of others are all non-producers who live off the labors of honest producers.

The producers want to satisfy consumers and the non-producers want to limit, regulate and destroy what consumers need. In this sense, the producers and the non-producers are in a state of war. Only there are no shots fired because government has all the guns and makes all the rules.

If the capitalists win, the world will fill with eager entrepreneurs tripping over each other trying to serve you and me. If the politicians win there will be no future for anyone save that of servitude, of taxation and war, of shortages and misery.



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