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# The Voluntaryist

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

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## Conquest or Consent?:

### The Origin of the State—

### An Introduction to Franz

### Oppenheimer's THE STATE

By George H. Smith

Mention the word "anarchy" in polite society and most people will think of chaos. Explain that by "anarchy" you mean a "society without government," and you will be met with blank stares. "Yes," you will be reminded, "that's what we said—chaos."

This identification of anarchy with chaos is deeply imbedded in the popular mind and rarely results from conscious deliberation. It is tacit rather than explicit, part of that amorphous but formidable jumble of folklore, prejudice and dogma that goes by various names: "public opinion," "current opinion," "spirit of the age," "collective consciousness," "common sense," and more.

Anarchy means chaos—this popular myth is self-evident to the popular mind. From this tacit axiom there flows another: government is indispensable to social order, the only thing that stands between civilization and barbarism. Some kind of government, no matter how corrupt or despotic, is always better than no government at all. Indeed, the most serious charge that can be made against a government is that it has degenerated into "anarchy." Fuzzy thinking always benefits the status quo. Man is born into a world of social institutions which he tends to accept as natural and inevitable. Few people are motivated to question the legitimacy of established institutions.

A major task of political philosophy has been to justify the State. Such an enterprise, whatever the outcome, strikes most people as absurd, because it strips the State of its axiomatic status. To ask whether the State should exist reflects a curiosity and skepticism that are foreign to the popular mind. The State simply does exist, like rocks and trees and birds. We might as well ask whether civilization should exist. David Hume put it well:

Any one, who finding the impossibility of accounting for the right of the present [government], by any received system of ethics, should resolve to deny absolutely that right, and assert, that it is not authorized by morality, would be justly thought to maintain a very extravagant paradox, and to shock the common sense and judgment of mankind.

The preceding factors contribute to what I call the tacit legitimation of the State. As an established institution the State enjoys a presumption of legitimacy. Anyone who questions the State on a fundamental level must defeat this presumption. The critic has the burden of proof; he must prove his case beyond a reasonable doubt or be overwhelmed by the current of public opinion and tacit legitimation.

The libertarian critic faces another obstacle. Much of the case for individual liberty is highly abstract—indeed, liberty itself is not a concept that is easily mastered. Some of the essential components of libertarian theory, such as spontaneous order, seem to defy common sense. Philosophic and economic reasoning is not easily digested, nor can it always be chopped into slogans and soundbites.

People are disinclined to labor needlessly, and reasoning is mental labor. Most people will believe cultural folklore rather than strain their brains with original thoughts. As Bertrand Russell once said, most people would rather die than think; in fact, many do.

Not everything is bleak for the libertarian. He is heir to a remarkable system of ideas—a constellation of theories in ethics, politics, economics, sociology, and other disciplines. Intellectuals, as Adam Smith pointed out, are often drawn to a system of ideas because of its aesthetic qualities, and in this regard the theory of liberty has little competition. And as Alexis de Tocqueville says:

What has made so many men, since untold ages, stake their all on liberty is its intrinsic glamour, a fascination it has in itself, apart from all "practical" considerations.... The man who asks of freedom anything other than itself is born to be a slave.

Libertarians have long felt the need to educate themselves in various disciplines, and many have become proficient writers. Despite the best of plans, however, the spread of an ideology is highly susceptible to the slings and arrows of unintended consequences.

Franz Oppenheimer's *THE STATE* is an excellent illustration of unplanned benefits. Though by no means a best-seller, this fairly difficult work has influenced a variety of radical intellectuals. Oppenheimer's influence is measured not by the number of his readers but by their quality. Albert Jay Nock drew liberally from Oppenheimer in his great work, *OUR ENEMY, THE STATE*. Other influential libertarians, such as Walter Grinder and Murray Rothbard, have stressed the importance of Oppenheimer as well, and thereby extended his influence to a much wider audience....

Franz Oppenheimer investigated the origin of primitive states, but he failed to discuss the relevance of his investigation. Even if we assume that all States originated in conquest, does this have any implications for political theory? Anarchists in particular have used the conquest theory as a rationale to condemn the State, but, as we shall see, the conquest theory, or any theory about the origin of the State, does not necessarily lead to particular conclusions about the desirability or legitimacy of the State. To move from a theory of the origin of the State to a theory of the justification of the State would be to commit the "genetic fallacy." How an idea or institution originated is an issue distinct from the present justification of that

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Editor: Carl Watner

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## Conquest or Consent?

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idea or institution.

This does not mean that historical analysis is irrelevant to a theory of the State. On the contrary, only through historical investigation can we understand the nature of an institution. This is where the analogy between a belief and an institution, as illustrated in the genetic fallacy, breaks down. A belief exists in the mind of the believer, and this belief, whatever its origin or history, can reasonably be examined for coherence, evidence, logic, etc. The same is not true of institutions. We cannot even know what an institution is without some knowledge of its history. Institutions are defined with reference to habitualized patterns of action, and such patterns always imply a past. Social institutions, as such, exist only in the minds of those who perceive them; and we cannot begin to understand why large groups of people share similar mental constructs unless we understand the historical problems and processes that generated a common system of ideas. If sufficiently large numbers of people stopped perceiving the State, that institution would cease to exist. True, persons would still exist who claim to act on behalf of the State, but their coercive actions would no longer enjoy legitimacy in the public eye. Those agents would be indistinguishable from bands of robbers and other outlaws. The coercive actions of the State are distinguished by their legitimacy, and such legitimacy can result from nothing more than the beliefs of individuals. A State without legitimacy could not "tax," it could only steal; it could not wage "war," it could only murder; it could not "conscript," it could only enslave. Like Santa Claus, the State can exist only as long as people believe in it.

Viewed from this perspective, to investigate the origin of the State is to investigate the origin of a belief system.

### Oppenheimer's Account

States have varied considerably in their structure and jurisdiction, but all of them fit the description given by Franz Oppenheimer. The State originates in conquest—the subjugation of peasant farmers by nomadic herdsman. "[T]he cause of the genesis of all States is the contrast between peasants and herdsman, between laborers and robbers, between bottom lands and prairies."

The State originates in conquest, and maintains itself through exploitation. Oppenheimer distinguishes two basic methods of acquiring wealth: the economic means (labor and voluntary exchange) and the political means ("the unrequited appropriation of the labor of others"). This leads

to a succinct description: "The state is an organization of the political means." The State, for Oppenheimer, is organized theft; a method of systematic plunder. This is true but incomplete. The State is a union of thieves, but not all such unions are States. State theft is distinguished by being legitimized; i.e., its coercive actions are generally regarded by the subject population as morally and/or legally proper. This feature is emphasized by Max Weber in his classic discussion of the modern State:

A "ruling organization" will be called "political" insofar as its existence and order is continuously safeguarded within a given territorial area by the threat and application of physical force on the part of the administrative state. A compulsory political organization with continuous operations...will be called a "state" insofar as its administrative staff successfully upholds the claim to the monopoly of the legitimate use of physical force in the enforcement of its order.

### Conquest Theories Of The Origin Of The State

Conquest theories of the origination of the state are nothing new. Some early Christian apologists traced the origin of the Roman Empire to war and conquest, and during the eleventh century, as pope and emperor waged a war of words in the "Investiture Controversy," Pope Gregory VII emphasized the violent origin of earthly kingdoms. Some versions of conquest theory also appeared after the mid-thirteenth century, when the history of governments became a popular subject. According to Tholommeo of Lucca, all governments originated in conquest, but they acquired legitimacy as they became useful.

The conquest theory of State formation entered modern political philosophy in the sixteenth century statement of this thesis in Jean Bodin's *SIX BOOKS OF THE COMMONWEALTH*:

Reason and common sense alike point to the conclusion that the origin and foundation of commonwealths was in force and violence. If this is not enough, it can be shown on the testimony of historians...that the first generations of men were unacquainted with the sentiments of honor, and their highest endeavor was to kill, torture, rob, and enslave their fellows.

Less well known than Bodin's account is that of Blaise Pascal. Man's corrupt nature, thoroughly vitiated by original sin, harbors a desire to rule over others, Pascal argued, but only a few are able to accomplish this. "Might is the sovereign of the world," declared Pascal, and he continued with a clear statement of the conquest theory:

Let us, then, imagine we see society in the process of formation. Men will doubtless fight till the stronger party overcomes the weaker, and a dominant party is established. But when this is once determined, the masters, who do not desire the continuation of strife, then decree that the power which is in their hands shall be transmitted as they please. Some place it in election by the people, others in hereditary succession, etc.

Man's corrupted reason can no longer discern the true law of justice, according to Pascal, so mankind is ruled by custom, not reason. Social order requires blind obedience to established laws, solely because they have the force of habitual custom and are routinely accepted by the masses. Custom, declared Pascal forthrightly, "creates the whole

of equity, for the simple reason that it is accepted." The justification of law is self-contained: "it is the law and nothing more."

Pascal thought it hazardous to examine the foundation of law too closely, because those in quest of a justice that is natural and universal will invariably be disappointed as they discover the relativity, inconstancy, and hypocrisy of man-made laws and customs. For example:

Why do you kill me? What! do you not live on the other side of the water? If you lived on this side, my friend, I should be an assassin, and it would be unjust to slay you in this manner. But since you live on the other side, I am a hero, and it is just.

Earthly rulers acquired power through violence and bloodshed, Pascal argued, but people "must not see the fact of usurpation" or they will "shake off the yoke as soon as they recognize it." Law should be obeyed not because it is just but because it is useful to maintain social order: "law was once introduced without reason, and has become reasonable." As Pascal explained, custom is the foundation of governmental legitimacy:

The habit of seeing kings accompanied by guards, drums, officers, and all the paraphernalia which mechanically inspire respect and awe, makes their countenance, when sometimes seen alone without these accompaniments, impress respect and awe on their subjects; because we cannot separate in thought their persons from the surroundings with which we see them usually joined. And the world, which knows not that the effect is the result of habit, believes that it arises by a natural force.

Pascal's discussion is virtually forgotten, yet it is remarkably similar to David Hume's views on custom, the violent origins of government, and utility as the foundation of law. Although Hume's celebrated essays are usually cited as the source of his conquest theory, we find the same interpretation in his youthful (and greatest) work, *A TREATISE OF HUMAN NATURE*:

'Tis certain, that if we remount to the first origin of every nation, we shall find, that there scarce is any race of kings, or form of a commonwealth, that is not primarily founded on usurpation and rebellion, and whose title is not at first worse than doubtful and uncertain. Time alone gives solidity to their right; and operating gradually on the minds of men, reconciles them to any authority, and makes it seem just and reasonable.

In 1750 Anne-Robert-Jacques Turgot delivered a discourse titled *ON UNIVERSAL HISTORY* for the theological faculty at the University of Paris. This pathbreaking work explained social progress as an unintended byproduct of conflict and narrow self-interest. According to Turgot, men's "passions, even their fits of rage, have led them on their way without their being aware of where they were going."

The first [governments] were necessarily the product of war, and thus implied government by one man alone. We need not believe that men ever voluntarily gave themselves one master.

Another Frenchman, the historian Augustin Thierry (1795-1856), asserted that every nation has been "created by the mixture of several races: the race of the

invaders...and the race of those invaded." This view led Thierry and other French liberals, notably Charles Comte and Charles Dunoyer, to develop a theory of class analysis involving two political groups: the rulers and the ruled. Ironically perhaps, these French Liberals influenced the thinking of Karl Marx.

The conquest theory was forcefully defended by Johann Herder, for whom the State originated in war and "conquest by violence," and by Friedrich Nietzsche, who believed that the "State originates in the cruelest way through conquest."

One form of the "external conflict" theory is that advanced by Herbert Spencer, among others, which attributes the formation of the primitive state to the temporary submission to a leader in time of war. Through time these warlords became permanent chieftains and kings, as they legitimated their power by appealing to supernatural powers.

"All national boundaries are in some sense accidental."

—George Melloan, *WALL ST. JOURNAL*,  
Nov. 18, 1996, p. A13

The German sociologist Ludwig Gumplowicz, whom Oppenheimer called the "pathfinder" of modern conquest theory, developed the conquest theory in great detail; indeed, he called it the "corner stone" of sociological theory. "[E]very political organization...begins at the moment when one horde permanently subjugates another."

The State, according to Gumplowicz, begins with the forced subjection of one group by another: "The state...is the subjection of one social group by another and the establishment of sovereignty."

Primitive peoples, according to Gumplowicz, lived in small kinship groups and followed traditional customary law. Modern law, in contrast, was imposed by the victorious group on their victims; it was institutionalized repression whereby the victorious group could efficiently exploit their victims. There was no room here for a doctrine of natural rights; indeed, natural rights were "overthrown, dead, buried." Similarly, "equality is incompatible with the State and is a complete negation of it."

### Oppenheimer's Critics

The reception given to Oppenheimer's statement of the conquest theory was very mixed. Alexander Rustow, who was influenced by Oppenheimer, agreed that the "bloody deed of superstratification" gave birth to the State. But Rustow regarded a strict conquest theory as "an excessively narrow formulation," though he did concede that the State usually arose during times of war and violence, even if it did not result directly from conquest. Similarly, the historian Fritz Kern regards Oppenheimer's thesis as "in need of much refinement, but, once so revised, contains a sound core."

Edward Sait questions Oppenheimer's account. If the peasants were miserable grubbers of the soil who were barely able to feed themselves, then we must wonder "why the rich herdsmen should wish to conquer the peasants, who, according to Oppenheimer's own description, had no surplus that would attract the cupidity of a plunderer." Sait suggests that States had multiple origins, "arising independently among different peoples at different times."

Elman R. Service is far more critical of Oppenheimer's account. Oppenheimer's thesis, he says, "found little support in anthropology." War is often found during the later stages of State development, but we cannot establish a simple causal relationship. Even when war was a significant factor, other conditions were required to establish a State. In such cases war was not so much a cause as one environmental factor among several.

The most serious problem with Oppenheimer's account is that his conquering herdsmen and conquered peasants appear to have been subjects of States that existed before the conquest. The conquerors, writes MacLeod, were merely "agents in the spread or diffusion of particular ancient forms of the state"; they extended the dominion of an existing State rather than creating a new one. Similarly, according to Elman Service, "the only instances we find of permanent subordination from war are when the government already exists." Morton Fried makes the same point and concludes: "rather than war and military roles being the source of stratification [i.e., the State], it seems that stratification is a provoker of war."

Oppenheimer responds to this line of criticism in an introduction written for the English translation of his book. It is self-evident, he argues, that even small groups of humans will have some kind of authority who functions as a judge and leader. "But this authority is not 'The State' in the sense in which I use the word." If some choose to call any form of government or leadership the State, then Oppenheimer is unwilling to quibble over definitions. But to discuss this kind of State has no bearing on Oppenheimer's thesis. He contends that the sociological concept of the State refers to a definite historical phenomenon—an institution of political domination and economic exploitation—and this is the State that always originated in conquest.

It is interesting to note that Oppenheimer also defends himself against the previous objection in his original text. He considers the possibility that victors and vanquished, previous to their merger into one State, might have previously belonged to separate States. Oppenheimer meets this objection in a curious way; he concedes that "there is no

method of obtaining historical proof to the contrary, since the beginnings of human history are unknown." This means that history must render a verdict of "not proven" on Oppenheimer's conquest theory.

It seems that Oppenheimer, by his own admission, has failed, but actually he is just getting started. The inductive method of history is just one part of Oppenheimer's "philosophy of the State." Another part is the deductive method of economics; when this kind of reasoning is applied to the historical evidence, we must conclude with "absolute certainty that the State, as history shows it, the class State, could not have come about except through warlike subjection."

Oppenheimer's economic argument centers around his refutation of the "law of primitive accumulation," i.e., the theory that attributes the origin of economic classes to a growing population that eventually acquired ownership of all arable land. This meant that latecomers had no choice but to hire themselves out to landowners—hence the origin of economic classes.

Oppenheimer's extensive refutation of this theory and its many variants does not appear in *THE STATE*, but it is a crucial link in his deductive argument. Oppenheimer insists, as a matter of economic law, that a monopoly on land could not have been achieved through voluntary means, since there was plenty of arable land to go around; only conquest can explain the subjugation of large numbers of people and the emergence of a landless underclass of laborers. The primitive State that enforced this differentiation of classes is impossible to explain except through conquest and forced labor. Thus does Oppenheimer combine the deductive reasoning of economics with the inductive reasoning of history.

Oppenheimer's general methodology has a long and distinguished ancestry; this "theoretical" or "conjectural" history (as the Scottish philosopher Dugald Stewart called it) was used extensively by Adam Smith, David Hume and others in their school. Indeed, a primary function of spontaneous order theory (Smith's "invisible hand") was to explain the historical development of institutions in those case[s] where concrete information is sorely lacking.

### Conquest And Consent

Whatever the historical origin of the State, the historical question is distinct from what political conclusions, if any, can be drawn from it. If the State originated in conquest or some other form of unjust violence (the "force theory," as I shall call it) this historical fact might seem to support libertarian conclusions. But this has proved the exception rather than the rule. The force theory, more often than not, has been used to establish anti-libertarian conclusions.

Let's assume, for the sake of argument, that all States originated in conquest or unjust violence. This force theory is then, at best, a plain historical fact; it does not "speak" or carry any hidden lessons. The facts of history must be interpreted with the aid of theory, and it is this theory that brings "meaning" to history.

Assuming the force theory to be true, what relevance does it have to the social contract argument? In 1739, David Hume remarked on a common piece of political wisdom:

No maxim is more conformable, both to prudence and morals, than to submit quietly to the government, which we find established in the



"I'll never use force to try and make my enemies think the way I think, ... —partly because I don't believe in it, and partly because it's useless. You can't destroy ideas by force, and you can't hide 'em by silence."

—Kenneth Roberts,

OLIVER WISWELL, (1940), p. 59.

country where we happen to live, without inquiring too curiously into its origin and first establishment. Few governments will bear being examined so rigorously.

Some four decades later, shortly after the British had been defeated at Yorktown, the English Clergyman Josiah Tucker complained that this wise maxim of politics—"Not to be very inquisitive concerning the original Title of the reigning Powers"—had been destroyed by John Locke and other defenders of natural rights, social contract, and revolution. The "Lockean System," according to Tucker, derived legitimate political power from consent, but this was a test that no real government could pass. Indeed, as Thomas Paine and other revolutionaries pointed out, European monarchies, far from originating in consent, arose from conquest and wholesale violence.

I cannot digress here to explain the problems in this position. Tucker distorted this part of the Lockean system, but this does not affect the main thrust of his critique. Tucker's major complaint was not against Locke's ideas, but against how the Americans used those ideas. The revolutionaries, Tucker believed, were mere hypocrites who used Locke's principles when they were useful, but later dropped them when they proved embarrassing.

Americans had accused the British of violating their rights by imposing taxes and other measures without the consent of colonial assemblies. But now, having kicked out British government, how would the victorious Americans go about setting up a new government? The Americans had cited Lockean principles in their effort to rid themselves of a government, but would they remain true to those same principles in their effort to establish a new government? Would those inalienable rights of man, which had been ravaged by the old system of government, remain pristine and sacred in the hands of the new government?

No, argued Tucker; this was an impossible task: "the Lockean System is an universal Demolisher of all Civil Governments, but not the Builder of any." Did the victorious Americans give their citizens the choice of living in a state of nature without any government at all? No—this inconvenient bit of Lockean theory was simply ignored by the new rulers. The Americans were given only one choice: "Who should govern, *Americans* or *Englishmen*." Neither the states nor the Continental Congress ruled by the consent of the people:

Was any one of these Civil Governments at first formed, or is it now administered, and conducted according to the Lockean Plan? And did, or doth any of their Congresses, general or provincial, admit of that fundamental Maxim of Mr. Locke, that every Man has an *unalienable* Right to obey no other Laws, but those of his own making? No; no;—so far from it, that there are dread-

ful Fines and Confiscations, Imprisonments, and even Death made use of, as the only effectual Means for obtaining that Unanimity of Sentiment so much boasted of by these new-fangled Republicans, and so little practiced.

Tucker's argument illustrates how theories of the origin of the State played a key role in the development of American revolutionary doctrine. These historical inquiries were not idle exercises, but serious business with explosive potential. When Franz Oppenheimer presented his "conquest theory" of the origin of the State, he simply added one more voice to an historical chorus.

As we have seen, Josiah Tucker argued that consent theory would deligitimate all existing governments, justify indiscriminate revolution, and land us in anarchy. Tucker was neither the first nor the last to raise the "specter of anarchy" in regard to social contract theory. Indeed, this criticism appeared decades before Locke—in the writings of Sir Robert Filmer, whose works, though not published until 1680, were written four decades earlier. Filmer is best known as John Locke's dead adversary, whose ragged defense of patriarchalism was thoroughly demolished by John Locke, James Tyrrell, and Algernon Sidney. Yet if Radical Whigs found easy pickings in Filmer's positive theories, they encountered serious problems when they tried to rebut his objections to Grotius, Bellarmine, and other carriers of consent theory.

Filmer repeatedly challenged consent theorists to explain why men would ever leave the anarchistic state of nature and voluntarily surrender their rights to government. Any philosopher who begins in a State of Nature is doomed to remain in that condition. We cannot use consent as a bootstrap to lift us out of anarchy, so consent is as unthinkable as anarchy itself.

As Filmer points out, natural rights can be alienated only by consent, so a government is legitimate only if it can trace its authority to the voluntary decisions of individuals. But this theory is historically absurd and theoretically implausible. No government has been established by contract, nor is there any reason why, given the natural right to freedom, any rational person would voluntarily subordinate his will and agree to be ruled by others.

Individual rights and natural liberty—these are the principles of anarchy, according to Filmer; they serve to justify resistance and revolution, but they can never serve as the foundation of government. Sovereignty is an all or nothing affair: there exists no middle ground between absolutism and anarchy.

This formidable argument ("Filmer's Challenge," as I call it) survived in the writings of David Hume, Adam Smith, Edmund Burke, Josiah Tucker, Jeremy Bentham, and other foes of consent theory.

It is in the writings of David Hume that we see Filmer's Challenge combined with a force theory of the State thereby delivering a "one-two" punch to the midsection of consent theory from which it has never fully recovered. In his famous essay, "Of the Original Contract," Hume embraces a force theory of the origin of the State in no uncertain terms: "Almost all the governments, which exist at present, or of which there remains any record in history,

"When a government controls the schools it does not need to control the press."

—Richard Maybury



have been founded originally, either in usurpation or conquest, or both, without any presence of a fair consent, or voluntary subjection of the people." Hume continues:

It is vain to say, that all governments are or should be, at first, founded on popular consent, as much as the necessity of human affairs will admit. This favors entirely my pretension. I maintain, that human affairs will never admit of this consent; seldom the appearance of it. But that conquest or usurpation, that is, in plain terms, force, by dissolving the ancient governments, is the origin of almost all the new ones, which were ever established in the world.... [T]herefore, some other foundation of government must also be admitted.

According to Hume, some people will always resist a new government, and these people must be forcibly suppressed. Over time, however, the government will assume an aura of legitimacy, and most people will obey as a matter of habit. It is therefore correct to say that people acquiesce to a government, but this should not be confused with consent. Consent is possible only where there is choice, and no government can permit obedience to become a matter of choice. Government, for Hume, is legitimate because it serves the "general interests or necessities of society." Consent has nothing to do with this. Like Filmer before him, Hume fears that a consent theory will delegitimize all governments, justify indiscriminate revolution, and so lead to "the disorders which attend all revolutions and changes of government." Consent theory leads to a condition of anarchy and this alone is sufficient to condemn it. Indeed, "nothing is clearer proof, that a theory of this kind is erroneous, than to find, that it leads to paradoxes, repugnant to the common sentiments of mankind, and to the practice and opinion of all nations and all ages."

This *reductio* demolition of consent theory was elevated to an art form in 1756 (eight years after the publication of Hume's essay) by a young Edmund Burke. In A VINDICATION OF NATURAL SOCIETY, Burke presents himself as an anonymous champion of consent theory who argues passionately against the violence, wars, and other brutalities of governments. Governments originate in conquest and violence—"All empires have been cemented in blood." Thus, according to the "sure and uncontested principles" of that "great philosopher," Mr. Locke, "the greatest part of the governments on earth must be concluded tyrannies, impostures, violations of the natural rights of mankind, and worse than the most disorderly anarchies."

Burke, of course, intended this as satire; by embracing the anarchistic *reductio* of consent theory, he hoped to show its absurdity. But Burke's VINDICATION was so convincing that many took it seriously, thus making it the first modern defense of anarchism. In 1765, as Burke thought of entering Parliament, he wanted to remove all doubt about his satire, so he prefaced the second edition with a disclaimer: his VINDICATION was nothing more than a lesson in "the abuse of reason" as practiced by consent theorists—those who live in the "fairylane of philosophy."

Despite its satirical intent, Burke's VINDICATION presents a compelling historical case for the coercive origin of the State. Burke uses this data to dismiss consent theory, but the same data might be used to dismiss the State. This is precisely what we find in William Godwin's ENQUIRY CONCERNING POLITICAL JUSTICE (1793)—the first comprehensive defense of philosophic anarchism.

Godwin's treatment of the origin of the State is merely a summary of the material contained in Burke's VINDICATION. Godwin agrees with Hume, Burke and others that governments can never be made to conform with consent theory. But where others fled from the anarchistic *reductio* of consent theory, Godwin embraced it. If government cannot be based on consent, then so much the worse for government.

From the above considerations we can see the importance and power of the conquest theory of the State. Although it is not possible to argue directly from the fact that States originated in conquest to their lack of justification, the conquest theory does block the most popular method of justifying the present State: consent theory. If the State originated in conquest and usurpation, it is clear that its citizens, those who are exploited by those who control the political machinery of the State, *did* not, and *would* not, consent to be so exploited. Consent, whether actual or tacit, ceases to be a plausible way of justifying the State....

Oppenheimer's classic gives lovers of liberty everywhere a powerful tool with which to shake up the "common sense" and "received wisdom" of mankind. ▢

[This piece originally appeared as an "Introduction to this Edition" of THE STATE (San Francisco: Fox & Wilkes, 1997). Reprinted by permission of David Brooks. This book is available through Laissez Faire Books, 938 Howard St. # 202, San Francisco CA 94103, Tel. 1-800-326-0996.]

## The Cunning Of Governments

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tion. She said to me, concerning the Nazis, "what they did was not right." And she wept.

Despite such exceptional human beings, the Nazi-German government achieved its objectives of carrying out massive evil because it had the help of a multitude of "the little people," who paid their taxes, sent their sons to the front, and closed their eyes to the savaging of innocent people in their midst.

Are people merely the victims of their government? During the Nuremberg trials of Nazi war criminals it was customary for the accused to say that he was merely following orders established by the government. The accused claimed they were loyal, law-abiding citizens. When faced with an order by one's government one had to obey. Army officers, in particular, invoked the idea of duty. It was one's duty, sometimes they used the term sacred duty, to obey one's government.

Even my fellow villagers in Bavaria believed that it was their duty to obey the government. The government was not merely infinitely bigger and stronger than "the little people" of the village, the villagers also owed a duty to the government. On the basis of this duty they did not question the government's policy of uprooting and murdering Jews who had lived in their midst for centuries. They also did not question the government's right to conscript the

young men, their sons, for military service in the war.

When fully one-half of the village's young men did not return from the war—attesting to the fact that uneducated, backwoods people make excellent cannon fodder—they still did not question their duty to the government. Instead, they erected a plaque in the village square. It was dedicated to the memory of the dutiful obedience of those who did not return. On the plaque is listed the name of each of the village sons who perished in the Second World War. The village thereby remembers, in love and respect, how these sons gave the final measure of devotion to duty.

To me, the sons of the village who perished were my classmates and their older brothers. They had tormented me because I was Jewish. They had broken our dog's leg because he was a Jewish dog. They had made going to school a daily nightmare for me. Then they went off to war, in which they would inflict more torment. In turn, they, their families and their village reaped the harvest of the ultimate torment: death in their own midst.

Were the village sons innately evil? Or were they fairly ordinary sorts of people, who were awash in evil, tormenting Jews when it was a sporting thing to do, going off to war to kill when it was one's duty to do so?

I think they were not innately evil. In many ways they were ordinary people, but their actions were mightily evil. They contributed to their government's pursuit of extraordinary evil, and they did so eagerly. They were not reluctantly evil. They needed little coercing by their government. The remaining villagers, the parents and the sisters of the soldiers, also contributed to evil. They did so by their silence and by their active support of the government and its policies.

How cunning are governments? How do governments obtain the support of their citizens? The Nazi-German government had power over its citizens. With that power at its disposal it could brutally enforce virtually every one of its demands upon the villagers. But usually it did not need to use brute force. In the name of duty the government could, and did, demand sacrifices from its citizens. The citizens responded, including donation of the ultimate sacrifice, the lives of their sons. When this ultimate sacrifice was accepted by the government, when the sons died, the citizens did not question the need for such a sacrifice. They did not turn against their government, in consternation and fury—instead, they sanctified the sacrifice. They erected a plaque.

To be regarded as legitimate, governments need the help of their citizens. It is the citizens who erect the plaques. It is the citizens who do the sanctifying. They bring the fresh flowers to the plaque. They stop by the plaque, on their way to and from work, to look at the names of their sons. First, they do so in a spirit of stricken grief and sorrow. Then, over time, their sentiment turns to pride and a measure of satisfac-

"If paying taxes could make a people well off, all the nations of the earth would have been rich long ago."

—Clarence L. Swartz,  
WHAT IS MUTUALISM?  
(New York: 1927, p. 35).

tion in the sons who did their duty for a great cause. They thereby sanctify their sons and the policies of the government.

Without such sanctifications by the citizens, without citizens' donating their support for policies, governments are hollow shells. The cunning of governments consists of getting their citizens to attribute sanctity to government policies, no matter how evil they may be. Coercion alone will not accomplish this, not even in totalitarian countries like Russia before Gorbachev. Government propaganda alone will not accomplish this (although some governments have developed brainwashing to a fine art). Nor is it a matter of leadership alone: Leaders need followers. Followers donate legitimacy to leaders. They do so by using their own autonomy to give or to deny support to the leader. "Leaders" without followers end up in mental hospitals.

When the villagers said they were powerless, "little people" they did not give an accurate description of the support they contributed to the Nazi movement. Throughout Germany the "little people," by the millions, gave both passive and active support to Nazism. Passively, they failed to interfere with the Nazi storm troopers and hooligans who ransacked Jewish homes in the early years of Nazism; and they failed to try to subvert the highly organized extermination campaign when it hit their own neighborhood in the latter years of Nazism. Actively, they collaborated in the Nazi cause by freely joining the Nazi party, by helping to enact its package of programs, by sanctifying its actions, and by donating the lives of their own sons.

The cunning of governments operates by harvesting the contributions of their citizens. The citizens, for their part, have much autonomy to decide what sort of contributions they will make.

A crucial point is how one uses one's autonomy: how one uses the choices one has available. Often we believe we have no autonomy, no freedom to choose, when in fact we have a great amount of autonomy. Even when one lives under an authoritarian government, as in Nazi Germany, or when one finds oneself in a military situation, as American soldiers did in Vietnam, the issue is not whether one has choices, but how one uses the choices one has available. ▢

[Excerpted from Fred E. Katz, *ORDINARY PEOPLE AND EXTRAORDINARY EVIL*, Albany: State University of New York Press, 1993, pp. 40-43. Reprint permission granted by Heather Wentworth, May 30, 1997. Copyright SUNY Press.]

# The Cunning Of Governments And The Contributions Of Citizens

By Fred E. Katz

I was born into a Jewish family in a small village in the north Bavarian part of Germany. When the Nazi regime began its harassment of Jews in the 1930s our non-Jewish neighbors said, after each incident: "There is nothing we could do about it. We are just little people. It's the government."

I visited the village thirty years after most members of my family and of the other Jewish families from the village were murdered in death camps. The villagers again said, "There is nothing we could do about it. We are just little people. It's the government." I am not paraphrasing. These were the exact words (in German) announced once again. The villagers' view of themselves and their world was remarkably stable.

Yet some little people, in some little villages, did do something about it. They hid some of these hounded people. They fed some of these hounded people. They helped some of these hounded people escape.

During the visit to my village I found out that there had been one exception to the pattern of passively leaving Jews to the evil deeds of the Nazi government: A lone woman stood by Jews. She brought

them food. She talked with them. She did not join in the distancing by the rest of the villagers. But she was not able to save anyone or offer much protec-

*continued on page 6*

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