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In Two Parts

## Crane/Cato Once More

Part I

### An Open Letter To The Crane Machine

Dear Friends:

And I *mean friends*, for most of you have been and even still are my friends. Some of us have been good friends for many years, and we have fought many joyous battles together, arm-in-arm. Why are we now on opposite sides of the barricades? Why? I can assure you that fighting against you now is not at all joyous, but a very painful experience, as I presume that it is for you. Why? Why have we forsaken each other?

I know what your motivations were for entering the Crane Machine, and they were not power-lust or opportunism. You joined the Crane Machine for the same reason I once did, because you burned with a passion for human liberty, and because you wanted to spend your lives, 24 hours a day, in a noble struggle for the libertarian cause. Having realized that liberty was the only just system for mankind you were not content to remain as parlor libertarians. You wanted to *do* something, to put your considerable talents and energies to work, full-time, to try to achieve the triumph of liberty. You wanted to become "professional libertarians", and when you saw the prospect of jobs and careers opening up as lifelong libertarians, you jumped at the chance.

I don't blame you for that; on the contrary, your motive was a noble one, and probably remains so today. Let us hope that someday there will be a myriad of opportunities and institutions so that all of you can work full time in the libertarian cause.

But, my dear friends, dear brothers and sisters and (alas) *former* comrades, you forgot the pitfalls. In the heady excitement of working full-time as libertarians, as part of a cohesive and well-integrated team, it was easy for you to forget, to lose hold of the larger picture amidst the exciting day-to-day details of working for liberty. As able technicians, it was easy for you to get so wrapped up in the daily technique, the *process* at work, that the ultimate goals and principles began to grow kind of hazy. Didn't they? So that little by little, day by day, the *means* — the razzle-dazzle, the jobs, the excitement, the intake of funds and the output of product, began to be transmuted into the ends themselves. *Didn't they?* Your daily lives, your daily work became the reality, while the reason you entered the whole thing, the very reason for your existence as libertarians in the first place, became ever more remote and ethereal, didn't it?

And so, when Boss Crane, either impelled or followed by his Donor, gave the signal in the spring of '79 to downplay all those now remote principles and go for the big numbers, you went along,

didn't you? I wasn't surprised that you made the shift and went along, but I tell you frankly one thing that still shocks and hurts: That you shifted your gears so damned easily and smoothly, apparently without a second thought or a backward glance. Was it really *that* easy to surrender, my old and dear friends? Didn't you at least have *some* pricks of conscience, some moments of doubt, some second thoughts? Some qualms in the middle of the night, or when you looked at yourselves in the mirror?

I know that most of you are not doing it for the money, because you and I know that, contrary to myth, pay in the the Crane Machine is crummy. I know that it is the *action* that keeps you there, the heady wine of working full-time on behalf of liberty.

But, oh my friends, what good is the action if it has become corrupt? What good is the means if it contradicts and sells out the ends, the goals which once brought you and me together? What good is the process, be it ever so exciting, if it is betraying everything we have long sought to accomplish?

Please, I beseech you in the name of liberty and of all we once meant to each other, to think that you may be mistaken. I plead with you to take off a few days and rethink your present course — in the good old Randian phrase, to "check your premises." To think that you may have allowed yourself to be manipulated by a ruthless politico to betray the cause of liberty rather than advance it. Consider for a moment: surely you must know in your heart that your Boss has total contempt for you just as he has for the entire human race. That he values you only as pawns that he can use to advance his power and his will. Do you think he would spare you for a single moment if it became in his interest to toss you down the tubes? Do you think he is ever moved by a single iota of sentiment, of reverence, of friendship, of love?

And even if you are still blinded by all other considerations, dear technicians, you should at least wake up to the fact that, in the long run, you are on a sinking ship. Eventually, you are going to lose, and I'll tell you why. I don't care if your Boss is backed by a billion dollars. The libertarian movement and the Libertarian Party are not a corporation or a military machine. They are not for sale. Except for the handful of Crane Machine members, we are every one of us independent people. We are all men and women of principle, and we are all passionately devoted to the cause of liberty. And in the LP, every single one of us has a vote. Once they have wakened up fully to what the Crane Machine has been doing, and they are in the process of waking up, believe me, the LP will overthrow the Crane

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## Open Letter — (Continued From Page 1)

Machine, and all the action that has lured and kept you in its clutches will be over, gone, kaput.

And the reason for your defeat is not only that your Machine has been systematically betraying principle. It is because your Boss, the man who aspires to be the leader of a political party, lacks the most important qualification for that post. To be leader of a political machine, one must be well liked and trusted by his own constituents, his party members. Mayor Daley was loved and trusted by his organization, because he clearly liked them, and because he *always kept his word*. And so with Jim Farley, and with all other successful political bosses. They commanded loyalty because their organization liked and trusted them. But Boss Crane is cordially and fiercely detested by almost all LP members who know him. He has a reputation for almost never keeping his word. Honestly, do you think he would keep his word to *you* if he saw some advantage in not doing so? And Crane is not smart enough to even try to mask his contempt for his fellow libertarians or LP members, so that people cotton to him very quickly. How can a person like that succeed in politics?

Consider: the Crane Machine is in a small minority, and it gets smaller by the minute as more and more LPers wake up to the truth and join the ranks of its opponents. The rising, swelling opposition, my friends, is at the gates.

But do not despair, because as the movement grows, the Crane Machine will no longer be the sole means of employment as professional libertarians. Other libertarians, other institutions, other jobs, even other Donors, will spring up, and provide healthy competition at long last for libertarian careers. More and more, the action will be elsewhere. The Death of the Crane Machine will not be the end of the libertarian movement; on the contrary, the movement will be far healthier and stronger as this blight is removed from its midst.

And so, dear old friends, I beseech you, I entreat you, I plead with you, to leave the dank and fetid air of the Crane Machine, to abandon the sweet smell of corruption, to quit the foul Corridors of Power. Come out, get out, and join me in the clean fresh air of freedom. If you leave, I will rejoice, and embrace you, and then once again we can fight for liberty together, arm in arm, as true comrades. My dear lost friends, let us find each other again, so we can sing once more the sweet songs of freedom.

— Murray. ‡

### Part II

## Catogate: Who's the Mole (Or Moles) At Cato?

They seek him here

They seek him there

Cato seeks him everywhere.

Is it a man, a woman, a band, or . . . ?

That damned, elusive Friend of Candor.

— with apologies to *The Scarlet Pimpernel*

In this world we must take our fun where we may. In the titanic struggle now taking place within the LP and the libertarian movement, the struggle over Crane and his Machine and his institutions, there is a fun aspect which we should not overlook. A few days before my own confrontation with Crane and the Cato power elite (see "It Usually Ends with Ed Crane," *Lib. Forum*, Jan.-April 1981), many Cato board members and libertarian periodicals received a missive from a certain anonymous "Friend of Candor" detailing a power struggle within Cato between Crane and Cato Vice-President Bob Formaini. The important point is that F of C obviously had access to top-secret Cato memoranda supposedly seen only by Crane and Formaini themselves. Typical of Cato, paranoia struck, and suspicion fell feverishly on one and all. Such is the atmosphere at Cato that one bigwig half seriously set forth the thesis that Crane *himself* was the Friend of Candor, since the revelation of a Crane/Formaini split served to solidify the Cato board against an "outside" or public enemy, thereby strengthening Crane's hand against my own case. Well, who knows? It is not a hypothesis that can be ruled out of court *a priori*.

But the Friend of Candor letter, apparently, was only Phase I of the underground war. For now *Libertarian Vanguard* has emerged, June 1981 issue, with a veritable battery of revelations about not only Cato, but other Cranian institutions: *Libertarian Review* and SLS. Everyone owes it to himself or herself to rush out and buy this sensational issue. (50¢ from *Libertarian Vanguard*, 1800 Market St., San Francisco, CA 94102).

The issue contains not only an article based on the Friend of Candor letter, but also other articles grounded on damaging secret memoranda from Chris Hocker about LR, and from Crane to Glenn Garvin attempting to impose a more right-wing line on *Inquiry*. I also base much of my own critique of the Cranian SLS power elite on a number of secret SLS memoranda.

The most fun aspect of the Mole Question so far is that the day *Lib. Vanguard* came out, a copy was found on the desk of each and

every Cato staff member when he or she arrived in the morning. Knowing the aggravated paranoia which infects the atmosphere of Cato at even normal times, it would have been great fun to have been a fly on the wall at Cato when Crane & Co., astonished, saw and read this damaging and subversive publication in their very offices. Who did it? Who is the mole or moles at Cato? Frankly, I have no idea. What will Crane do? There was serious talk of changing the locks at Cato, but apparently cooler heads prevailed.

But the moles may be everywhere. For on that same morning, every SLS national officer and libertarian biggie in Washington found a copy of *Vanguard* on his office or at his doorstep. A case can be made that there are moles everywhere, at SLS, at LR, in Washington, even at Mother Wichita itself.

Who *is/* are the Friend of Candor? ‡

## Hallmarks of a Free Society

To the extent that the following conditions are approached in any given society, the people of that society are free. To the extent that these conditions are absent, the people are oppressed.

- No Conscription.
- No Taxation.
- No Censorship.
- No Spying.
- No Restraint of Trade.
- No Registration of Citizens.
- No Travel Restrictions.
- No Laws Against Victimless Acts.
- A Hard Currency.
- Citizens Have the Right to Keep and Bear Arms.

# The Moral Foundations Of Property Rights

By Brian Summers\*

Property rights are human rights. They do not belong to property; they belong to people who hold them with respect to property.

Property rights include a person's rights of possession — the rights to peacefully use property, alter it, consume it, and exclude others. They further include the right to transfer possession by any peaceful means an owner sees fit — to sell, trade, mortgage, let, give, and bequeath. Taken together, these constitute the rights of full private ownership.

Why should anyone have such rights? Why should some people enjoy the possession and use of property at the seeming expense of others? These are questions on which the great debate between capitalism and socialism ultimately turns. Let us examine the answers offered by the defenders of private property.

Some defenders of property appeal to First Amendment rights. They ask, for example, how can the press be free if the government owns all the newsprint, presses, and distribution systems? How can religion be free if the government prints all the books and owns all the buildings? Similar arguments apply to freedom of speech and the right to assemble.

Such arguments, as far as they go, are compelling. But private ownership involves a lot more than the free exercise of First Amendment rights.

Other defenders of property go beyond First Amendment arguments to the assertion that property rights are essential to freedom itself. They contend that freedom — the absence of coercive intervention in peaceful activities — is impossible without private ownership.

But full private ownership is not a prerequisite for many peaceful activities. For some activities, such as swimming at a public beach, the right to use property is often sufficient. The rights to alter, consume, exclude others, sell, trade, mortgage, let, give, or bequeath the beach are usually not required for such peaceful use.

Of course, one can ask whether people should be free to do such things with respect to a beach. But this is merely to rephrase our original question: why should anyone have such property rights?

A few defenders of property base their defense on the right to life. They point out that a person cannot eat without at least implicitly establishing property rights over the food he consumes. Similarly, a person would have trouble keeping warm without some property rights with respect to clothing and shelter.

Here again is an argument that, as far as it goes, is compelling. But certainly a person can eat without the rights to sell, trade, mortgage, let, give away, or bequeath his food. In addition this argument, on the surface at least, applies only to consumer goods. What about the main concern of socialists — the raw materials and capital goods which constitute the means of production? Why should anyone own them?

## Economic Approach: Incentives

Economics provides a comprehensive answer. When the means of production are privately owned in a market economy, businessmen seek to earn profits by cutting costs through the prudent use of scarce resources. The businessman who conserves the most resources, while giving consumers the most for their money, earns the greatest profits. Private ownership fosters efficient production.

Consider, for example, the operation of a privately owned bus company. If the operator has full private ownership — if he is free to choose his routes, adjust his fares in response to market conditions, and bargain with anyone who wishes to work for him — he has every incentive to provide cheap, efficient service. Free market competition, and the possible entry of potential competitors, supplies all the incentives needed to improve service and cut costs through conservation.

The bus owner also has every incentive to maintain his capital stock. If he ever wants to sell his company — or bequeath it to his children — he will maintain his buses in good working order.

The same incentives apply to the professional managers of a company owned by stockholders. If the managers fail to maintain the buses, the price of the company's stock will fall and the management will be replaced by stockholder vote or a corporate takeover — unless, of course, the management is bailed out by government subsidies or the takeover is prevented by threats of antitrust action.

## Wasteful Management

Compare this with the operation of city-run buses. The routes and fares of city-run buses are determined by political pressure. The revenues (and subsidies) are devoured by union monopolies which threaten violence against nonunion workers. With no profit motive, and no need to keep the buses rolling past the next election, deficits soar while the buses fall into desrepair.

Incentives are the key to understanding why "publicly owned" transportation is in constant need of repair, despite huge subsidies. Similarly, incentives explain why collective farms are vastly outproduced by privately owned plots; why unowned air, land, and water are often polluted; why unowned timber, wildlife, fisheries, and grazing lands are rapidly depleted (often to extinction); and why private timber companies plant millions of saplings to try to maintain the productivity (and thus the value) of their land.

But the economic case for private property goes beyond an analysis of incentives. Economics proves that private ownership is a prerequisite for rational economic planning.

## Economic Approach: Calculation

In any advanced society, knowledge is divided among millions of individuals, with no one knowing more than a tiny part. Because of this division of knowledge, scarce resources are misallocated — inadvertently used in ways that fail to contribute the most to consumer welfare. A manufacturer may be unaware that a resource could contribute more if used elsewhere. Those who know of other uses may be unaware of the availability of a resource, or even of its existence.

To correct these misallocations of scarce resources, we need a system that (1) provides a means of discovering misallocations, (2) stimulates people to use the means of discovery, (3) encourages people to transfer control of resources to entrepreneurs who have discovered misallocations, and (4) rewards the correction of misallocations.

All this is accomplished by the free market profit and loss system. Any infringement on property rights reduces this system's efficiency. In particular, "public" ownership of the means of production prevents businessmen from competitively bidding for scarce resources. Without competitive bids, the "prices" of scarce resources become arbitrary, so that no one can calculate the true costs of any project.

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## Property Rights— (Continued From Page 3)

### Freedom and the Right to Life

These economic arguments relate to our previous comments about the right to life. We previously saw that human survival requires at least some property rights in consumer goods. We now see that human survival — at least as we know it — requires economic calculation based on private ownership of the means of production. Economics shows how property rights can, indeed, be based on the right to life.

Economics also sheds further light on the relationship between private property and freedom. Freedom — the absence of coercive intervention in peaceful activities — refers to the range of options (alternatives) a person may peacefully *pursue*. At any particular time in a market economy, this range is pretty much the same for all people. Of course some people, especially the wealthy, have a greater ability to *attain* options (goods, services, jobs). But, in general, these options are available for all to pursue.

Thus, as a person accumulates wealth, he doesn't, as a general rule, gain more freedom. But, in a market economy, as *other* people pursue wealth by offering the consumer more goods and services, the consumer's range of options expands. In terms of options, the consumer finds that he has more freedom of choice in a modern shopping center than his grandparents had in a general store.

### The Claiming of Natural Resources

Economics provides compelling arguments for the free market private property system — based on the efficiency of the system itself. But we must still consider the justice of original claims to previously unowned natural resources. If these original claims cannot be justified, the free market will forever be plagued with charges of immorality.

Original claims to property are sometimes defended with a finder-keeper approach. According to this argument, the discoverer of say, an oil field, is its rightful owner.

But if this approach applies to oil fields, it should also apply to the discovery of a continent, planet, or galaxy. Merely being the first to observe something — or putting up the capital that leads to a discovery — seems to be insufficient grounds for full private ownership.

Other claims to property are based on first occupancy. By this argument, the first person to occupy a piece of land is its rightful owner. But merely being the first to set foot on say, Mars, doesn't seem to create a moral claim to the entire planet.

### Lockean Approach

But if the "first occupancy" takes the form of settling and working the land, a strong case can be made for private ownership. In the famous words of John Locke (*Second Treatise of Government*, paragraph 27):

"Though the earth, and all inferior creatures be common to all men, yet every man has a property in his own person. This nobody has any right to but himself. The labor of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature has provided, and left it in, he has mixed his labor with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature placed it in, it has by this labor something annexed to it, that excludes the common right of other men. For this labor being the unquestionable property of the laborer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good left in common for others."

The Lockean idea of acquiring property by mixing labor with unowned resources has been enormously influential, and has spawned many compelling defenses of property rights.

### Self-Ownership

However, the Lockean approach is not without difficulties. For

one, it includes the troublesome concept of self-ownership. Full self-ownership would imply that an individual has a complete set of property rights with respect to himself. Some such property rights are difficult to deny, such as the right to peacefully use our own faculties. But how can we consume ourselves or transfer possession?

Fortunately, the Lockean approach is more firmly based on the concept of people owning their own labor. But what does it mean to "mix one's labor" with natural resources? This metaphor has led to considerable confusion.

For instance, it is sometimes asserted that if an individual "mixes" what he owns (his labor) with what no one owns (an unowned natural resource), it doesn't necessarily follow that he owns the resource. An equally plausible conclusion, it is contended, is that he has simply "discarded" his labor — like a sailor pouring his coffee into the unowned sea.

But "he owns the resource" and "he has discarded his labor" are not the only possible conclusions. We can also conclude that because a person has mixed his labor L with an unowned resource R, he has created the "mix" LR. Thus, if he is entitled to what he has created, we can conclude that he owns LR. But the concept "LR" is, at best, vague.

### The Lockean Proviso

Another difficulty with the Lockean approach is the proviso that private ownership is justified only to the point "where there is enough and as good left in common for others." This proviso, carried to its extremes, reduces to an absurdity.

For example, if oil companies must leave "enough and as good oil in the ground for others," where should they stop? If the last barrel of oil must be left in the ground for our children, then *our* children must leave the last barrel for *their* children, and so on. No one may ever take the last barrel. But if the last barrel is permanently off limits, then anyone taking the next to last barrel would not be leaving "enough and as good in common for others." No one may ever take the next to last barrel. Similarly with all other barrels of oil. Pushed to its limits, the Lockean proviso prohibits anyone from ever taking any nonrenewable scarce natural resource.

### Compensating the "Victims"

Many interpreters of the Lockean proviso don't go this far. However, they often demand that a first appropriator (such as an oil company) be forced to compensate all the "victims" who could have, but didn't, appropriate a given resource.

But who are the victims? Anyone with an oil rig? Anyone who could have invested in exploration? And how much are they being "hurt"? By any amount they say?

More important, is anyone actually being hurt by the first appropriator? I, for one, am glad when someone else discovers oil. I know that, in a free market, it will eventually mean more gas for my car. In the long run, we all benefit from such competitive market processes.

Even in the short run, a potential competitor who doesn't get to the oil first is not being physically coerced by the driller who does. By what right does he demand compensation from an explorer peacefully going about his own affairs?

Some adherents to the Lockean proviso assert that private ownership is fine in principle, but as a practical matter, the "enough and as good" proviso is needed to prevent all resources from falling into private hands. Anyone coming along later, they contend, would effectively be locked out.

But as a practical matter, it is immigration laws, apartheid edicts, tariffs, and other government restrictions that lock people out. It is precisely because private owners are eager to sell and let their property that regulations are imposed by those who wish to prevent such transactions.

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## Property Rights— (Continued From Page 4)

### Creation-Transformation Approach

These difficulties with the Lockean approach are overcome by (1) dropping the Lockean proviso and (2) replacing the "mixing" metaphor with the principle that an individual owns whatever he (or his agent) creates from an unowned resource. In this approach, the justification for first ownership is not based on the owner's labor, or on the pain and sacrifice associated with his labor. The justification for first ownership is based on the creation brought forth by the first owner.

But who creates property? In the case of physical resources, at least, no one. But to "mix labor" with an unowned resource is to transform it — to create a transformation. Any person who transforms an unowned resource owns what he creates — he owns the transformation.

Thus, the first person to transform an unowned field into a farm, owns the farm. But plowing (transforming) land doesn't, in this approach, give the farmer ownership of oil lying beneath the land. Only if he pumps the oil to the surface, or creates another transformation in the oil, can he claim to own the transformation — and thus claim full private ownership over the oil he has transformed.

If an individual owns whatever he creates from an unowned resource, he clearly owns whatever he (or his employee) creates from his property. For example, if a farmer pays an employee to transform his oranges into juice, the farmer owns the juice.

### Who Owns the Profits?

And he may sell the juice for whatever price the market will bear. If this price yields a profit, the profit belongs to him because (1) he owns the juice and (2) his decision to transform the oranges created the opportunity to discover the profit.

This last argument may appear to be nothing more than the finder-keeper approach. Our farmer-entrepreneur, after all, discovers the profit (or loss) which results from his decisions — much as an explorer discovers lands as a result of his decisions. They both create their own opportunities to make discoveries.

But there is a fundamental difference. The lands exist whether or not the explorer decides to look for them. The farmer's profit doesn't exist without his decision to transform the oranges. His employee is needed to make the juice, but the farmer's entrepreneurial decisions make the difference between profit and loss.

As a practical matter, the creation-transformation approach assigns property rights in much the same manner as the Lockean approach (without the "enough and as good" proviso). But there is at least one basic difference. Some people interpret the Lockean approach to mean that once labor has been "mixed" with an unowned resource, that resource forever belongs to the "mixer" and his heirs. For someone else to take the resource, he would have to "take" the mixer's "stored up labor." Thus, an abandoned, overgrown farm would forever belong to the farmer's heirs.

The creation-transformation approach, however, assigns property rights only as long as a transformation exists. Our farmer acquires previously unowned land by transforming (clearing and plowing) a field. If he abandons the field and lets it revert to a state of nature, his transformation gradually disappears. When his transformation has completely vanished, his property rights with respect to the field would also vanish.

### The Justice of Current Property Holdings

What do the arguments for private ownership say about the justice of current property holdings? Do they endorse the status quo? Or do they call for a massive transfer ("redistribution") of property rights?

The economic argument supports private ownership *as an institution*. Economics tells us that private property, free trade, and peaceful cooperation promote economic efficiency and enhance human welfare. Thus, the economic approach endorses any property holding that came into being through peaceful means. Property holdings acquired through violence, however, receive no such endorsement because coercion — legal or illegal — disrupts the market process.

But economics says little about the justice of original claims to property — the holdings of those who first claim property from previously unowned resources. For this we must turn to the Lockean and creation-transformation approaches.

These two approaches provide ethical guidelines for acquiring property from a state of nature — guidelines for, in effect, creating property rights. As a corollary, they endorse voluntary transfers of justly acquired property.

But these arguments do not endorse property acquired by immoral means. Violence, conquest, and coercion may create legal "rights" to property, but they do not create moral rights.

To what extent are such immoral means the basis of current property holdings? A detailed answer is beyond the scope of this paper. There are, however, two facts we should bear in mind.

1. The original inhabitants of a territory did not necessarily have a moral claim to all its resources. First occupancy is an insufficient claim to first ownership. Claims to original ownership must be based on creatively transforming ("mixing labor with") natural resources.

2. Most current property holdings are not in the form of raw land. Most of what we own has been *produced* since the advent of capitalism. Even if a native has a valid moral claim to the land on which a skyscraper stands, he cannot claim to have created (and thus own) the skyscraper.

Thus, in general, property holdings arising out of capitalistic (free market) activities are morally justified. And violations of these property rights are to be condemned.

### Legal Plunder

In particular, our arguments condemn the morality of all government transfer programs — subsidies, welfare, and the like. Such programs are nothing more than the indiscriminate *legal plundering* of property that has been justly acquired through peaceful, mutually beneficial, market transactions.

Our arguments further condemn all interference with the peaceful exercise of justly held property rights. By what right does anyone dictate how much rent a landlord may ask for *his* apartment? Or how much an oil dealer may ask for *his* oil? Or what a farmer may grow on *his* land?

And our arguments condemn the seizure ("locking up") of millions of acres of land by various government agencies. By what right does anyone prevent people from peacefully transforming unowned resources? By what right do government officials — who haven't creatively transformed an acre of wilderness — claim property rights over this land?

### Are We Being Practical?

Such ethical considerations, of course, receive little attention from men of practical affairs. Real world decisions, it is widely believed, should be made on practical grounds — with ethical arguments best left to the moral philosopher.

On practical grounds, however, those concerned with the future of the free society place themselves at a serious disadvantage by ignoring ethical arguments. The opponents of freedom can always conjure up expedient grounds for further government intervention, confident in the public's ignorance of the economic and historic arguments against such intervention. Unless such expediency is met with compelling moral arguments against the violation of property rights, the would-be controllers will usually have their way ‡

# Against The ERA

By Wendy McElroy

As an individualist-feminist, I find it necessary to oppose the Equal Rights Amendment. The ERA begins "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex," and it appeals to the government, by means of a constitutional amendment, to solve social injustice.

My objections to the ERA are twofold: moral and strategic. Morally, the problem with this reasonable-sounding amendment is that equality under the law cannot be advocated without examining what laws would be extended and what is meant by the word "equality". In a libertarian system of natural law equality would be not only desirable but necessary, since the basis of natural rights is that all individuals have the same claim to their life, liberty and property. But this is not the context of the ERA. Equality under government law means equality under laws that are overwhelmingly unjust in content and totally indefensible in their means of enforcement, i.e. taxation. Such equality would mean that, instead of fifty percent of the people being abused under law, one hundred percent would be abused. In other words, the ERA ensures equal slavery, not equal freedom. The libertarian position must clearly be that *no one* should be subject to *any* unjust law, not that unjust laws should be applied equally.

The concept of equality is also a stumbling block. In the days of Jefferson and Paine, equality clearly meant political equality, or the equality of rights. But with the dominance of socialism — and the predominant political philosophy of feminism is socialist — equality has come to mean social and economic equality. Even if it were possible to ignore that it is largely this second form of equality that is being advocated, it must be emphatically stated that individualist-feminism is not for equality under the law, but for the equal protection of individual rights. These are not identical positions. Historically, they have been antagonistic since most laws have violated rather than protected individual rights. As Rosalie Nichols commented in the ALF Discussion Paper *Are Feminists Capitalistic?*: "As long as there were equal numbers of female and male overseers supervising the female and male slaves dragging their blocks side by side up the escalating Great Pyramid of Statism, then all would be right with 'feminists' in the glorious 'feminist' world according to the socio-economic-equality definition."

To say that equality today means protection of individual rights as it did in the days of the founding fathers is comparable to saying that the word "liberal" today means the same as it did when applied to John Stuart Mill.

Because I believe in individual liberty, I must reject the current notion of equality. Because I am opposed to the government, I cannot act to extend its authority.

But assuming — for the sake of argument — that I did not have these moral objections, I would still oppose the ERA on strategic grounds.

One of the claims of pro-ERA libertarians is that the amendment would not extend unjust laws such as the draft, forced alimony and protective labor legislation. My initial reaction to this statement is incredulity that anyone could believe the government would use a law or constitutional amendment to limit rather than to extend itself; but since my incredulity is not an effective argument, let me quote legal opinions on the matter.

Regarding the draft, the Yale Law Journal (April, 1971) reports: "Under the Equal Rights Amendment, the draft law will not be

invalidated. Recognizing the concern of Congress with maintaining the armed forces, courts would construe the amendment to erase the word 'male' from the two main sections of the act, dealing with registration and induction, thereby subjecting all citizens to these duties." American feminists and ERA proponents have, in fact, often been eager to have conscription of various forms imposed on women. A major target of indignation of the ERA proponents used to be the Supreme Court decision in *Hoyt v. Florida* which allowed exemption of women from jury conscription. [368. U.S. 37 (1961)] Expressly overruled in *Taylor v. Louisiana* [419, U.S. 522 (1975)].

As to alimony, Senator Birch Bayh declared: "... child support, alimony — strike them down? Ridiculous. This [the ERA] would require not that we eliminate child custody or alimony, but that any judge would have to consider the case on its merits." The Yale Law Journal [April, 1971] concurred.

As to protective labor legislation, a Majority Report of the Senate Judiciary Committee declared: "... those laws which confer a special benefit, which offer real protection will, it is expected, be extended to protect both men and women. Examples of laws which may be expanded include laws providing for rest periods, or minimum wage benefits or health and safety protections." In the 1920's there was conflict among feminists over protective labor laws. It was the opinion of the originators and chief proponents of the ERA (the National Woman's Party) that the ERA would extend protective legislation to both sexes.

Another claim of pro-ERA libertarians is that the law will not be used in the private sector. However, it is a longstanding rule of judicial interpretation that "state action" means both governmental activities and numerous private sector activities that are legally treated as though they were governmental. When a private activity is involved with government through some form of license or subsidy (such as all schools, public or private) it would be subject to treatment as if it were governmental. For example, under the HEW rules interpreting Title IX (of the Education Amendment of 1972) federally assisted colleges could not aid, house or cooperate with educationally any single-sex social, recreational, or fraternal associations. In 1974, Congress had to specifically exempt fraternities, sororities and clubs in the HEW appropriations bill. The ERA permits no such exemption.

Moreover, when a private enterprise takes responsibility for a function which the law considers public, that business is subject to government law. Senator John Stennis suggests that religious institutions would be subject to the ERA as well.

There have been many court cases contributing to the blurring of state and private action. In *Shelley v. Kraemer* (1948), the Supreme Court held that obtaining court aid in carrying out a private activity (a restrictive covenant, a zoning matter) converts such private action into a state action. In *Lombard v. Louisiana* (1963), Douglas argued that because a restaurant served the public, it had "no aura of constitutionally protected privacy about it." In *Marsh v. Alabama* (1946), the Supreme Court held that states can require owners of private shopping malls to provide access to members of the public who wish to circulate petitions, although there is no federal requirement that states follow this course. The court held that, because a shopping center is open to the public, a right of speech and petitioning granted in a state constitution could override federal protections for property rights. The court also rejected the shopping center's libertarian claim that it had a first amendment right not to be compelled to turn its property into a forum for view with which it disagreed.

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## Against The ERA— (Continued From Page 6)

Court cases and legal opinions continue, but the conclusion that emerges is that virtually all private activity would be liable to assault under the E.R.A.

One of the problems libertarians have with the ERA is that the wording sounds good. In a libertarian society, equality under the law would *not* be abridged on account of sex, race or religion. But we are not listening to the ERA in a vacuum. In the time of slavery, Southern delegates were fond of using the libertarian-sounding accusation that Northern delegates were immoral to interfere with a Southerner's right to use and disposal of his own property. But these words were not in a vacuum; the property referred to was slaves, other human beings. And to have agreed with this libertarian-sounding argument would have been immoral.

What I suggest as an alternative to the ERA is the repeal of specific unjust laws or simply the advocacy of civil disobedience of those laws. In many states, women convicted of a crime receive a stiffer sentence than men convicted of the same crime. Women should repeal those laws. A girl of fifteen can be sent to reform school for intercourse with a boy of fifteen even though the boy incurs no penalty. Age of consent laws should be repealed. The slogan of individualist-feminism should be "Repeal, repeal, repeal!" If one-half of the energy and money that has been thrown into the ERA had been used to repeal specific laws that oppress women on a state-by-state, perhaps city-by-city level, freedom would have been substantially increased. And it would have been increased by a means that takes power away from government, rather than extending it.

This last statement is the quintessence of individualist-feminism.

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## Contra Reason

Reviewed By Richard A. Cooper

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Arianna Stassinopoulos, *After Reason*, Briarcliff Manor, N.Y.: Stein and Day, 1978. \$10.00.

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Arianna Stassinopoulos is a bell-ringer. She sounds the tocsin of our contemporary civilization and its future rebirth. Her somber tones describe the excesses of the reigning collectivism in the West, remind us of the totalitarian threat from the East, and question the paralysis of parliamentary democracy. Interspersed among her doleful reflections are some dulcet tones, cheerful and even humorous. She closes with a soaring cadenza of hope.

*After Reason* brings a critical eye to bear on the decline of political leadership in the West and the rise of collectivist statism. In sharp contrast to many contemporary observers, she perceives a connection between collectivism and the souring of the parliamentary ideal. Similarly, the "Fin de Siecle" period before the First World War saw an increased irritation with parliamentary democracy and the corruption which went in tandem with interventionism. This anti-parliamentary feeling was one of the streams which fed fascism in Italy, France, Germany, and Spain. The parliamentary question was a major point of contention between the factions who would break up the Socialist International into Communists and Socialists (i.e., between revolutionists and evolutionists). The necessary slowness of debate runs contrary to the fascist cult of action for its own sake, and even to many contemporary Americans who bemoan our "laggard Congress." Energy is the particular problem where action is demanded without thought at the present time. Those who do not care what is done so long as something is done are false friends of democracy and liberty.

The author goes beyond the assertion of a connection between collectivism and the deterioration of democracy by tracing its origins to the growth of statism and bureaucracy. It is the politicization of society which collectivist statism has brought about that has deflated the stock in trade of political authority. Robert Nisbet, whom I studied with, has reflected upon these problems in his book *The Twilight of Authority*. Nisbet believes the solution lies in what he calls "... a new laissez-faire," based upon communities and associations, rather than upon individuals.

The aggrandizement of society by the State was not unforeseen. Herbert Spencer, Auberon Herbert, and Ludwig von Mises, to name but a few, warned us of the total state of the planners. In 1959, Frank Chodorov wrote a book called *The Rise and Fall of*

*Society* which held that social power (autonomous and voluntary) was in an inverse proportion with state power (autocratic and coercive). Chodorov drew on insights of Herbert Spencer's distinction between militant societies (characterized by coercion) and industrial societies (characterized by voluntarism) to show the destruction of social vitality and morality wrought by statism with examples drawn from the establishment of Saul's monarchy and America's welfare state. The American sociologist William Graham Sumner in an 1899 essay, *The Conquest of the United States by Spain* predicted that the Spanish-American War would advance statism in America. Auberon Herbert reflected upon the moral type suited to statism and the very decline of parliamentary institutions which troubles Arianna Stassinopoulos. She neglects what these gentlemen realized: the crucial connection between militarism and the rise of statism.

The totalitarian threat provokes Arianna Stassinopoulos to ring a message of alarm. She castigates Communism in no uncertain terms for its physical horrors and moral emptiness. For her, as for Bernard-Henri Levy (*Barbarism With A Human Face*) and Jean-Francois Revel (*The Totalitarian Temptation*), the point was made with special force by the testimony of Alexander Solzhenitsyn. The horrifying face behind the humanitarian mask is revealed by chilling quotations from the ex-Prime Minister of Sweden, Olof Palme, and Dr. Lawrence Kolb of the New York State Mental Hygiene Department. Both look upon the welfare state as an instrument for control of persons to obtain "desirable" behavior. Their emphasis upon control and manipulation exposes them to be not humanitarians, but "brutalarians," as their predecessors in Germany, Russia, and Jonestown have demonstrated with pools of blood.

Aside from the gloom and doom, the author provides some rather amusing examples of the ridiculous statements which politicians are prone to emit. Politicians remind me of the blowfish which expands with water to raise its spines so that it can slip out of ticklish situations and then slink away in its normal diminutive size. Americans can take perverse satisfaction in knowing that the British are afflicted with as absurd politicos as we are. Stassinopoulos lacks the Menckonian touch, but her subjects are

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## Contra Reason— (Continued From Page 7)

damned sufficiently as loutish clowns by their own words.

Our author intended to move from the ridiculous to the sublime. Instead, she flung herself off solid ground and into a swamp. I refer to her dedication to mysticism and to her identification of collectivism with rationalism. Let me state forthrightly that I do not share in the least any affection for religion nor theistic belief. Unfortunately, I cannot do justice to this particular clash of ideas in the space available. Therefore, I shall deal with her propositions in strictly logical terms which will command assent, I think, from those who share her religious faith.

First, let us examine her identification of collectivism with rationalism. I presume that she does so because the socialists proclaim themselves the party of reason, science, and truth. She attacks Ludwig von Mises, Friedrich von Hayek, and Sir Keith Joseph for materialism and rationalism. Now, just because the socialists claim to be the party of reason hardly makes them such. After all, they arrogate to themselves the title of the party of the "people," of "democracy," of "freedom," and of "peace."

Furthermore, collectivists have not always even made a pretense to be the party of reason. The fascists certainly did not, and the New Left has paid obeisance to the same cult of primitivism, intuition, and direct action. In fact, a careful historical analysis of collectivists reveals that their attitude towards reason tends to run along the lines of the prevailing mood. Thus, since we live in an era of antirational counterrevolution, the collectivists pay tribute to

feelings, intuitions, emotion, and mystical notions (especially of unity) generally.

The reader is perplexed by the declaration that no one is an atheist nor can be. I would like to use the same reasoning and eliminate all opposition to my ideas with a single, bold stroke of the pen. I suspect that her proposition has something to do with her definition, of more precisely, her lack of a definition of the spiritual. Ideas, morals, and reason all are spiritual: everything she approves, including nature's beauty is spiritual. Given this position, arguments with her will be as unprofitable as those with Freudians and Marxists: all take your very opposition to them and turn it upside down.

Since everything appears to be spiritual there is no great wonder that she perceives a spiritual rebirth of the West. She is very generous, and specifies no particular brand of religion as necessary to the Western rebirth. The importation of Oriental mysticism heartens her, the interest in psychic phenomena particularly cheers her, and she points to the latter as support for her claims of the limitations of reason. Once could interpret these developments as a part of the continuing flight from reason taught by the churches, schools, and popular culture, including cinema and television. True spirituality is quite elusive and so is the determination of what Arianna Stassinopoulos means by spiritual and the spiritual rebirth of the West.

Arianna Stassinopoulos's *After Reason* offers great promise but it is a promise that goes unfulfilled. The clarity of her insights into the decline of democracy is obscured by the occult veil she draws over her remarks upon rationalism and spiritualism. While an interesting effort by a gifted writer, *After Reason* misses the mark.

## For a New Liberty Back

by Richard Cooper

After allowing Rothbard's *For a New Liberty* to go out of print early in 1980, Collier-Macmillan, without informing the author, has finally put a new paper edition back into print. (The bookstores knew, not the author.) While this is officially a new printing rather than a full-fledged new edition, there are a few subtle changes (One change, inevitably, is that the price is up, from \$5.95 to \$6.95.) Most of the changes are simple updating (Warning note: the author was asked to submit his changes in the summer of '79; in the year

and a half since, some of the updating looks rather outdated.) "Libertarianologists," those fascinated by the complex ins-and-outs of the development of the libertarian movement, will be particularly interested in changes in the Appendix, which gives an annotated list of libertarian institutions. *Reason Magazine* and *frontlines* are listed in the Rothbard appendix for the first time; on the other hand, the citation for *Libertarian Review* is considerably less effusive than before. Tune in here for any other developments.

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