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THE

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Joseph R. Peden, Publisher | Murray N. Rothbard, Editor

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Confronting Leviathan

In the very first issue of **Libertarian Forum** (preview issue dated March 1, 1969), the editor expressed our desire "to unite theory and actions", "to see how the current system may be transformed into the ideal" and "to inspire a truly dedicated movement on behalf of liberty". Inspired by these goals, in the same issue, we commended a suggestion by Gerald Gottlieb of the Center for Democratic Institutions that private citizens create an international "Court of Man" to investigate and publicize, and hopefully stop, violations of human rights by sovereign states.

We commented at the time that "perhaps libertarian foundations and scholars could sponsor further study of Gottlieb's proposal — so libertarian in principle and so feasible in practice". In March 1970 we published further comments on the subject in **Lib Forum** and also an account of three privately created international commissions of inquiry which played a significant role in European history between 1920 and 1940. (See J. R. Peden, "Courts against the State", **Libertarian Analysis**, v. 1 Winter 1970). But as far as we know, libertarians have not responded to our suggestions for more research or action along these lines. If our own ideological compatriots have remained idle, others have not. What follows is a brief description of several projects which have been undertaken with great success in limited areas using the technique of privately sponsored citizens' commissions of inquiry.

1. COURT-WATCHING

One of the oldest libertarian associations in the United States is the Society of Friends, better known as Quakers. The Quakers, though few in numbers, have always been formidable enemies of Statists. From their founding in the 17th century in England, they have been frequent victims of persecution by governmental authorities who refuse to respect any limits on their power. The Quakers are generally an intelligent, virtuous, hardworking people, indomitable in their moral certitude and inner self-possession in the face of tyrants. Pacifists and activists with a passion for the works of peace, reconciliation and justice, they have traditionally been the fine cutting edge of libertarian sentiment in America. They were among the first to struggle against the evils of slavery and racism; they fostered prison reform and abolition of capital punishment; they have continuously fought against imperialism and militarism and supported the extension of civil liberties in all areas. The Quakers have not only been courageous, but also remarkably innovative in their work against the injustices of the State. They were active in the peace movement before Wilson's war, helped to care for the refugees that war produced through the American Friends Service Committee, and were influential in founding the American Civil Liberties Union. More recently they have been active in draft and war tax resistance and, most recently, "court-watching".

In January 1970 The Friends' Suburban Project — sponsored by the Philadelphia Yearly Meeting of Friends (Quakers) — began a systematic monitoring of the municipal courts of Chester, Pa., a city of some 60,000 people, mostly poor and nearly half Black. The "court-watching" consisted of regular attendance by one or more of the project's members at both arraignments and preliminary hearings in the Chester Police and Court Building.

The regular editor, Murray Rothbard, is on a well-earned vacation in Europe. Editorial responsibility for this issue is entirely that of the publisher, Joseph Peden.

The Magistrate's court in Chester had long been noted for its corrupt and illegal procedures, and the court-watchers were able over a six-month period to document these irregularities. They discovered (1) that 64% of all defendents had no legal counselor or attorney; (2) that half the occupants of the city jail were being held because they could not post bond while awaiting trial; (3) that 75% of those brought into court were Blacks or Puerto Ricans; that they invariably had more serious charges and a greater percentage of multiple charges placed against them than did whites; (4) that while 33% of all blacks were remanded for trial, only 14.5% of whites were so honored; (5) that 10% of the blacks paid fines of over $100, but no whites did so.

During their court-watching, the monitors did not attempt to disrupt the court, or even intervene in the cases. They were carefully trained to know what legal procedures were required by Pennsylvania statutes and the rights of defendants and spectators in judicial hearings. They prepared and distributed leaflets on the rights of accused persons and sources of legal aid to defendants and notified the magistrates of their presence. They also met with the city solicitor, police chief and others to explain the purpose of their project — to improve the administration of justice in accordance with the federal and state constitutions.

At first the police reacted as expected and on two occasions arrested monitors — only to have the charges dropped when the court found it necessary to recognize the right of citizens to frequent a public building. It soon became apparent that the presence of white, middle-class court-watchers was creating a new atmosphere in the Chester courts. The magistrates were more attentive to each case, tended to set lower bail, and be less abusive and more considerate of the procedural rights of defendants. The police were more cautious in their testimony, more selective in their arrests, and less abusive to the accused.

A number of more important changes have been made. For the first time, court records are now available for public scrutiny; and public defenders are being appointed for all cases involving indictable offenses. Arraignments are no longer held in secret; the time and place of such hearings are posted publicly and the general public is permitted to witness them. Municipal judges are now sending fewer cases to higher courts; charges are lessened or dropped locally to save time and money for both the state and individual. Perhaps most important of all, a bail bond monopoly shared by two friends of the presiding magistrate has been broken; eight bondsmen are now available to defendants and there is a marked tendency to reduce bail or release the accused on his own recognizance.

While the court-watchers were not entirely free of official harassment, the response of the community has been positive, and many state and local officials rallied to the project's support. The sense of professionalism of the legal fraternity was challenged by the court-watchers, and this proved a powerful stimulus in winning their support for reforms. Libertarians — especially those who believe that government is necessary if only to maintain a system of justice — might well

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support similar projects in their own towns and cities. Certainly the worst tyranny occurs whenever government officials themselves violate the laws they are committed to uphold. This is especially so when the laws are concerned with civil liberties and judicial procedures. The Court-Watching technique is but one relatively inexpensive way in which a few individuals can expand the realm of liberty in their own community. (Those interested in "court-watching" may write for the "Court Action Handbook" — 50 cents per copy — to Friends Suburban Project, Box 54, Media, Pennsylvania 19063).

2. STORMING THE BASTILLE!

One of the most innovative and successful applications of libertarian principles in recent years has been the creation of an international network of civil libertarians who have undertaken the task of monitoring the fate of unfortunate individuals who have, for reasons of conscience, been arrested and imprisoned for their political beliefs. **Amnesty International** was founded in 1961 in London by a British lawyer, Peter Benenson, to mobilize world public opinion in behalf of all "prisoners of conscience" — **bona fide** victims of some State's violation of their human rights as defined by articles 5, 9, 18 and 19 of the Universal Declaration of Human Rights.

How does **Amnesty International** work? At its London headquarters a research staff receives information from a variety of sources as to the names of individuals held captive in various countries for "crimes" which stem from the failure of the governmental authorities to recognize basic human rights, as defined by the Declaration. Information about each individual prisoner is obtained, and each case is carefully considered. A crucial standard is that no prisoner will be helped by **Amnesty International** if he has used violence in exercising his human rights. **AI** supports freedom of thought, conscience, religion, the press and speech; it condemns the use of torture, inhuman or degrading treatment of prisoners; and arbitrary detention, arrest or exile. But it will not support the cause of a prisoner whose resort to violence places him in the status of a common criminal.

Once **AI** is convinced that the prisoner is eligible for support of the organization, the full case study is sent to one of the hundreds of groups located in 28 countries throughout the world. **AI** has about 20,000 members organized into local groups or chapters of from 3 to 15 or more members. Each group presently pays annual dues of $129.00 for 8 memberships ($15.00 for each individual member beyond the 8). At any given time the group is assigned **three** cases — always prisoners of a nationality other than their own, and distributed among the ideological forces of East, West and Third World impartially. Unfortunately, there are oppressive States in all ideological camps so that **AI's** non-partisanship is secure.

With the information provided by the London staff, the **AI** chapter prepares a campaign to persuade the respective State to release its prisoner — to grant amnesty. The methods chosen to achieve this vary with the circumstances; letters to the chief officials of the foreign government; visits to the local embassy and consulates; use of private contacts with local business corporations, churches, professional organizations; publicity in the home media of the group; agitation in parliament and press; visits to foreign office officials asking them to intervene. The art of persuasion passes into the need to make a nuisance of the case; to harrass the bureaucrats, embarass the regime, to make such a stink, internationally, that the government will release the prisoner just to quiet the whole affair. The prisoner is kept informed of the work of his friends and his relatives are encouraged by friendly letters and often financial aid. The essential aim is to free the prisoner — and "quiet" diplomacy is preferred to any premature and fatally damaging politicizing of the case.

Amnesty International has tended to be strongest in Northwestern Europe; there are over 300 chapters in West Germany and almost as many in Sweden; these constitute more than half the total number of chapters. In the United States, it has been slower in developing, probably due to preoccupation with the struggle against the Vietnam war. There are now over 2000 individual members and active chapters exist in New York, Los Angeles, San Diego, Denver, Boulder, Omaha, Columbia, Mo. and Hesston, Kans. Most of the members seem to be college professors and students. It is not necessary to belong to a group; individual members will be assigned a single case to work upon.

The non-partisanship of **AI** is proven by a sampling of the published lists of recent prisoners which have been helped by the organization: these include a Roman Catholic bishop held by the Red Chinese; a Taiwanese city councilman imprisoned for circulating a petition asking clemency for a prisoner of the Chiang-Kai-shek regime; a Watusi monarchist imprisoned by the Republic of Rwanda; Huber Matos, imprisoned by Fidel Castro for over 12 years; a Jehovah's Witness whose missionary work was not appreciated by the Soviet Russian government; Captain Howard Levy, the American Army doctor imprisoned because he refused to teach first aid to Green Berets who would use it as a political weapon.

Amnesty International has not limited itself merely to seeking amnesty for prisoners of consciency. In recent years it has caused a sensation in many quarters by sending investigation teams into certain countries to gather evidence of widespread use of torture and abuse of prisoners by certain governments as a matter of deliberate national policy. Their report of the regular use of torture by Israeli officials in interrogating Arab prisoners was bitterly denounced by the Israeli government and other Zionist sympathizers; the British government was similarly enraged when Amnesty teams publicly reported the use of torture by British troops in Aden, and more recently, in the prison camps of Northern Ireland. Their reports on the atrocious treatment of political prisoners in Greece contributed signigicantly to the forced resignation of Greece from the Council of Europe for violating the European declaration of human rights.

Libertarians in search of a meaningful activity which can involve group or individual creative political work might well consider joining **Amnesty International**. How many of us can say that we helped to free a fellow human from a tyrant's bondage? **Amnesty International** has liberated more than 3500 prisoners of conscience in the last decade. Moreover, Rumanian officials admitted privately that the agitation of Amnesty groups compelled the government of that Communist country to review its prisoner problem — resulting in the liberation of some 2000 political prisoners that were unknown to **AI** and, until then, forgotten by the Rumanian government itself. Write for further information to **Amnesty International**, 200 West 72nd St. New York, New York 10023.

3. J'ACCUSE

In early November 1971 the People's Coalition for Peace and Justice sponsored a series of anti-war events in Washington that included a rally at the White House during which an eviction notice was delivered to its occupant; meanwhile the direction of the nation's attention was focused on the efforts of thousands of young activists to bring the government machinery to a halt by blocking the bridges and highways leading to the center of the city. The result of that escapade war — the illegal arrest and detention of over ten thousand people at the direction of the Attorney-General of the United States!

While the attention of the media was focused on these dramatic and colorful proceedings — right out of the Late Show Nazi war movies — a possibly more important event was in progress elsewhere in Washington — the special hearings held by a private body known as the People's Grand Jury. A broad spectrum of citizens who have been active in anti-war actions in the last decade sat for nearly 25 hours to hear testimony from experts and eyewitnesses about the actual methods of American warfare in Southeast Asia, the secret war in Laos, prison conditions in South Vietnam, the "Operation Phoenix" assassination teams, chemical and biological weaponry, and domestic political repression. Among the jurors were radical activists like Father James Groppi and Sister Elizabeth McAllister; Rosemary Reuther, a Catholic theologian; Bob Eaton, a Quaker recently freed from prison for draft refusal; and Tom Grace, wounded at Kent State. The testimony itself was more or less an updating of similar testimony presented to the Russell War Crimes Tribunal in 1967.

As expected, the newspapers carried nothing on the contents of the hearings, but they were videotaped and made available for showing through the Peoples Coalition for Peace and Justice, 917 15th St. NW Washington 20005. The publicizing of war crimes and other related criminal activities of the State and its minions is a crucial part of any libertarian movement. It is the most effective method of minimizing these criminal acts and rallying decent public opinion against them. The People's Coalition understands this and is reportedly planning to convene "people's grand juries" in conjunction with the Daniel Ellsberg trial. A similar body met to publicize the harrassment of anti-war activists during the trial of the Harrisburg 8 — Father Philip Berrigan and friends. So far, these "people's grand juries" have attracted only radical support — liberals have been conspicuous in their absence. The reason is, that such private commissions of inquiry implicitly assert that the courts

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themselves are not impartial but are in fact agencies of the oppressive state apparatus. In the Harrisburg case the judge confirmed this by refusing to accept the fact that the jury was deadlocked, and three times refused to release them from duty. The result was a compromise verdict in which all were acquitted of the conspiracy charges but two were found guilty of sending messages out of prison — a charge they admitted and which has never before been prosecuted in a federal court.

So far the holding of "people's grand juries" has been useful in focusing public attention on the political character of the prosecutions, or the scope of the government's own criminality. But this tactic is appropriate only in relatively restricted circumstances. What might be more useful would be the establishment of permanent privately sponsored "grand juries" which could regularly hold public hearings to expose governmental corruption, inefficiency, and violations of civil liberties. In other words, a libertarian parallel or alternative to the traditional grand juries of the State. —JRP

Arbitration A Fundamental Alternate Institution

By Ralph Fucetola, III

Arbitration is a non-state method of conflict-solving. Historically, arbitration was the professional mediation of disputes within a traditional structure which resulted in a BINDING declaration of rights. This form of adjudication predates the coercive state and generally depended on ostracism and conscience for its binding quality.

With the advent of state-sponsored "justice" several centuries ago, arbitration was neglected and even outlawed. The king would only permit his agents to produce "justice" — and world history tells of the bloody, criminal results, State courts, though, often originated from the nationalization of arbitration institutions. For example, the commercial law aspect of the old English Common Law Courts was taken from the Law Merchant, a type of very successful private arbitration tribunal.

Since the early 1900's, arbitration has undergone a renaissance: governments now permit it — and actively encourage it for international business transactions.

Men have turned to arbitration for one prime reason: arbitrators are usually "persons having special knowledge and experience in foreign trade, commerce, industry, agriculture, transportation, insurance and other related matters as well as law . . ." (Peoples' Republic of China, **Arbitration Decree**). Expertise separates the arbitrator from the judge; an arbitrator is a person who is trusted for his knowledge and reputation, a judge is a political appointee.

Presently in New York City, arbitration tribunals decide more cases each year than the number of commercial cases decided by the United States District Court there. Besides expertise, three other factors encourage this increasing use of arbitration: (1) arbitration is a private matter, thus privacy may be protected; (2) it can be less time-consuming and less expensive than the government's courts; (3) it is primarily based on the CONTRACT (statutory "law" and procedures are of little importance). Libertarians see two other reasons for engaging in arbitration: firstly, private justice, even its present semi-regulated form, is somewhat removed from the state; secondly, arbitration can make use of libertarian principles of law or even a libertarian law code, thus negating some of the worse features of statutory law.

Arbitration is insulated from the state because the legislation which "legalized" it (which recognized the rebirth of arbitration at the hands of various trade associations around the turn of the century) specifically provides that an arbitration award may be enforced by summary process in the state's courts, and, except for blatant procedural defects, the courts will not look into the reasons for the award. The major failing of modern arbitration is conditioned by its "legality": enforcement is often via the state apparatus, rather than the traditional method of ostracism.

Nonetheless, one may structure an arbitration situation so that the state's mailed fist is as far removed as possible by creating an automatic ostracism which forces the wrongdoer to INITIATE legal action (an action which can be defeated by simply producing the arbitration award.) For example, the original arbitration agreement of the Abolitionist Association (which publishes "OUTLOOK, the Libertarian Monthly") provided:

> "The parties, expressing a desire to implement libertarian principles of law . . . within the context of the . . . Partnership Agreement . . . (agree) . . . that any party who refuses to cooperate with the arbitration procedure or decision shall be deemed to have withdrawn from the Partnership; and all parties to this Agreement agree to enforce this provision and hereby appoint each other as attorneys-in-fact, separately and irrevokably, for the sole purpose of enforcing this provision . . ."

The agreement further provided an automatic arbitration procedure which resulted in a decision against any party not cooperating, and forced withdrawal under the arbitration clause, resulting in a loss of investment.

Within a condusive social context, totally private arbitration can be more effective than the semi-statist version which the Abolitionist Association was compelled to use. In ancient Ireland, as Joe Peden noted in his article on non-state justice in Ireland (LIBERTARIAN FORUM, April, 1971), a system of family ties and ostracism enforced arbitration for nearly 1,000 years. This was done within the context of a highly decentralized society in which private professional arbitrators developed an island-embracing common law based on the ideas that no man may initiate violence, and all must keep their agreements.

Variations on ostracism are used by various trade associations to give binding effect to their arbitration decisions when the dispute involves members of the association in those fields in which membership-in-good-standing is necessary for economic survival. Other methods of enforcement have been suggested. An example which readily comes to mind is the joint purchase of a bond or insurance conditioned upon performance of the arbitration decree. This requires that potential parties to a dispute prepare the enforcement method in advance of a dispute. In a truly free market situation, arbitration institutions, credit bureaus, trade associations, bonding agencies, insurance firms and banks would all find it in their interest to work together to provide effective economic sanctions (primarily sophisticated versions of ostracism) against those who flaunt arbitration.

Arbitration is a method of conflict-solving without a state. It is not a method of achieving justice — though it may do so; nor does it necessarily apply correct principles of law. It is concerned with the "private law" created by the contract. Even in the most ideal situation, arbitration tribunals are not private, free market courts of law. Arbitration is primarily a devise for private dispute settlement which works best when the opposing parties value their continuing relationships (to each other or to some concerned group) more than they value prevailing in the dispute. Arbitration is an alternative to an institution — the state's courts — and as such deserves our support and our participation.

The Law Of The Sea

One of the earliest European treaties concerning the use of sea territories was negotiated between Rome and Carthage dividing the western Mediterranean into two mutually exclusive commercial monopoly zones. With the expansion of Roman power the whole Mediterranean became a "Roman lake" in which Rome's exclusive control was challenged only by occasional "pirates". During the medieval period, freedom of the seas was the rule, but in practice the merchant-dominated city-states of Italy and the Baltic region tried, with considerable success, to assert regional sea monopolies. In the 15th century Spain and Portugal received a Papal grant of exclusive sovereignty over all the seas and lands west and east, respectively, of a papally drawn line through the Atlantic. Needless to say, these sovereign claims were challenged by the ships of England, Holland and other European powers, and were a constant source of friction among the maritime powers for centuries.

The first theoretical challenge to the concept that the seas could be incorporated within the sovereign territory of a state came, appropriately, from a Dutchman, Hugo Grotius. The Dutch had made a mockery of English, Spanish, Portuguese and Scandinavian claims to sovereignty over the high seas. Dutch merchant adventurers refused to recognize any limitations on their right to sail any sea and trade in any port, and backed up their will by daring military-commercial warfare. Grotius' contribution was to provide an argument on natural law principles denying that property rights can exist over sea territories. He asserted that the seas could not properly be enclosed, or delimited, and are therefore unappropriable as private property. The seas were considered a free good,

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open and available to all men, like the air they breathed.

Grotius' argument was not immediately accepted, except by the Dutch, but it entered into the polemics of international law and politics. The United States was one of the first states to officially accept the Grotian doctrine of freedom of the seas, and gradually the other European powers in the 19th century adopted the same position.

Following World War II, a new problem arose due to the advance of technology which permitted drilling for gas and oil in coastal tidewaters. The treasures of the sub-seabed were for the first time becoming open to exploitation and no clear principle of law existed as to the ownership of these resources. In 1942 Venezuela and England negotiated a treaty dividing the sub-seabed mineral resources of the Gulf of Paria between themselves but continuing to recognize the "freedom of the seas" doctrine regarding the sea surface and sea space.

The United States opened a new era in the international law of the sea by the Truman proclamation of Sept. 1945. It asserted that the U. S. considered the "natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the U. S. subject to its jurisdiction and control". While the "freedom of the seas" was upheld, the U. S. also asserted its right to establish "conservation zones" in those areas of the high seas "contiguous to the United States where fishing activities have been or in future may be developed". The aims of the Truman administration seem to have been twofold: to encourage the negotiation of treaties on conservation of fisheries, and domestically, to assert federal jurisdiction over that of the states over the wealth of the tideland oil deposits. But the effect was otherwise. An international "gold rush" began as every coastal nation hurriedly established claims over contiguous seas before others did so. In doing so these other powers often went beyond the limits of American claims in accordance with their own national interests and the geographical conditions prevailing.

All states had recognized that freedom of the seas had some geographic limits. In the 18th century the three mile limit had become the standard limit of full sovereignty — a distance approximating the range of naval cannon at the time. While the U. S. has steadfastly held to this rule since 1793, other nations have variously held a four, six and even a twelve mile limit. At the Geneva conference on the Law of the Sea in 1958, only 23 of the 86 states represented still held to the 3 mile limit. What was clearly happening was that increasing realization of the potential wealth of the sub-seabed, seabed, sea space resources — minerals, fuels, fisheries — was steadily eroding the previous international legal consensus on the limitation of sovereignty over the seas.

As an editor of the New York Times recently put it, the nations of the world now face the very real prospect of "anarchy at sea". Despite conflicting claims, there is no international consensus — hence no recognized international law — on the sovereignty and governance of the sea surface, sea space, sea bed and sub-seabed. Libertarians would argue that the problem is not a question of "anarchy" — the absence of a monopoly of violence within a given territory — but rather the absence of any recognized law of property covering sea territory and sea resources. Men can live and utilize resources without the sovereign state, but no economic progress or human survival is possible where there is no common consensus as to property rights. The very serious problems of conservation of fisheries, pollution control, mining and drilling, laying of cables, and electronic detectors or other gadgets would be greatly simplified if there were recognized demarcations of property and property rights on, in and under the seas. Ideally, what Murray Rothbard calls the "homestead" principle ought to govern the situation. Effective claim, demarcation and productive utilization of any sea surface, sea space, sea bed or subsoil ought to be recognized as establishing a property right. International law already recognizes these principles in the discovery of new lands; the same principles could as easily be applied to the seas and their resources.

Any move in this direction would have to come from a corporation large enough to make its claims effective. The establishment of the "Republic of Minerva" by promoter Mike Oliver and associates is a model of this liberterian approach. Unfortunately, they have chosen to protect themselves from the existing states of the South Pacific by pretending that Minerva is itself a "state" entitled to recognition as a sovereign entity under existing international law. The limited capitalization of the Minerva project probably precluded a successful operation under their real colors — that of a private real estate development corporation. A real breakthrough would have to have the backing of someone like Howard Hughes whose Hughes Tool Company has already invested over $50 million in undersea dredging machinery to mine for manganese on the sea floor. So far, despite the great power of the multinational oil corporations, none has expressed any desire to "homestead" outside the protective covering of a sovereign state.

If future development of the resources of the seas and seabeds will not take place in a pure libertarian framework, what alternatives seem likely?

There is an extremely strong effort being made to create an Oceanic Regime under whose sovereign control all the surface, space, beds, subsoil and resources of the seas would be placed. This plan has been vigorously advocated by the staff of the Center for Democratic Institutions in Santa Barbara under the leadership of Elizabeth Mann Borgese. In 1968 Mrs. Borgese published a draft of a constitution for an Oceanic Regime. Its chief features were that the regime itself would be sovereign and enjoy a judicial capacity in all land states equal to that enjoyed most fully by any of its citizens; in other words it could sue and be sued, own property and conduct its businesses within the territory of any state in the same capacity as a private citizen or a domestic corporation. The Oceanic regime would be governed by various assemblies and commissions elected by its constituent members — which include all states, inter-governmental and non-governmental associations, private corporations holding licenses from the Oceanic Regime, and the regime's own employees. The regime would have total control over the use of sea territories and their resources, including price and quality controls over goods and services, and competitive factors, control over shipping and cargo, and the movement of armed forces operating on the seabed. This monopolization of all ocean spaces and resources beyond a twelve mile limit, would also render all these great resources common property — **res nullius** and **res communis**.

The establishment of the Oceanic regime is just the beginning of a more ambitious project — a universal world state. As Mrs. Borgese puts it: "An ocean-born, landward-spreading world view may be the world view of the 21st century". From a libertarian viewpoint, the Oceanic regime would be an unmitigated disaster — a projection on a universal scale of the corporate state capitalism which is the antithesis of the free market and a voluntarist society. Yet Mrs. B. and the Center staff have been very successful in promoting their scheme. The Center financed an international conference held in Malta in 1970, and another in the same place in 1971. Experts from many fields related to the law and economics of the sea and its riches read papers, exchanged views, and kept their respective governments informed of trends. In addition to publishing their draft constitution, the Center has published a selection of these papers, and articles indicating the progress of discussions. Their efforts were rewarded when the United Nations decided to call an international conference on the Law of the Sea to be held in 1973.

But whether the U. N. conference will take place as scheduled is now uncertain. At a preliminary meeting called to draw up an agenda, the diplomats fell to squabbling about everything. There is a basic division between the supporters of an Oceanic Regime or reasonable facsimile, and those opposed to that approach. Most of the states which lack a coastline realize that only an Oceanic Regime can guarantee them a piece of the action. But coastal states are extremely reluctant to give up control over their contiguous seas.

The major obstacle to adoption of the Oceanic regime is the day-to-day fact that, regardless of international conferences, individual states are acting on their own to assert sovereignty over the seas. The following cases will illustrate the main trends of the situation:

1. Despite continuing opposition from the United States, Ecuador, Peru and Chile have effectively claimed the right to control all fishing within 200 miles of their coastline. Brazil has followed suit and gone further to claim a 200 mile territorial sea. Iceland has been at odds with Britain since 1948 over fishing rights in the North Atlantic. Iceland has progressively expanded the area over which she claims exclusive fishing privileges. Recently she announced that no foreign fishing would be allowed within a zone fifty miles from her coastline. Six governors of the New England states have been unsuccessfully urging Washington to establish a 200 mile fishing zone off the coast of the U. S.

2. Indonesia and Malayasia have provoked a crisis among the maritime nations by asserting a 20 mile limit for their coastal territorial waters. This means that the Straits of Malacca — a vital international waterway through which some 40,000 ships a year now pass — has been effectively annexed by the two neighboring states. While continuing to respect the right of innocent passage, their claim would limit the movement of foreign warships unless 48 hour notice was given. Both U. S. and Soviet fleets ignored this rule during their maneuvering through the Indian Ocean during the Bangla Desh crisis. Also, maritime states realize that

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such territorial claims over straits were the cause of the third Arab-Israeli war. The Gulf of Aqaba was closed by Egypt and Arabia as part of their territorial waters. The Israelis claimed this to be a violation of international law and attacked. The unilateral assertion of extensions of territorial waters will increase the number of potential armed clashes over access to narrow waterways.

3. An increasing number of states have cooperated in seizing the seabeds and sub-seabed mineral deposits of their contiguous waters. The North Sea was divided into agreed territorial slices by Germany, Britain, Holland, Denmark, France and Norway. While the immediate purpose of this act was to clear the way for exploitation of gas and oil deposits, it has now been extended to policing the sea for pollution control purposes. Italy and Yugoslavia have divided the Adriatic between them, and the Baltic, Black and Mediterranean Seas are in the process of being similarly treated. Canada has asserted its sovereignty over the territorial seas between the large islands north of its frozen land mass, an action viewed with deep suspicion in Washington.

Given the enormous wealth at stake, it seems to me that the coastal states will not surrender their existing claims to the sea territories and seas resources — some of which are already producing revenues and profits. Also, apart from the United States which loosed this scramble and now is trying desperately to control it, the great powers — Russia, China, France, Britain, Japan as well as many secondary powers like India, South Africa, Brazil and Portugal — all these have extensive coastlines which, if extended 200 miles or more offer great potential wealth. Is it likely that these powers will surrender control of that wealth to some Oceanic Regime? I think not.

Thus the pattern for future ownership and control of the world's sea territories and sea resources seems already to be emerging. Annexation of continental shelves, of sea surfaces and sea beds, of sub-seabed and sea space resources by individual states will become the rule. China has already asserted her support for the 200 mile limit claimed by Peru, Brazil, Chile and Ecuador. The many island-states — large and small — will also find this policy in their interest.

With the claims of sovereignty will come the imposition of national laws regarding property rights. The participation by individuals, private or public corporations in exploiting the seas will be governed by local law. This will not be a libertarian solution; but it at least permits a variety of local practices to prevail. It prevents total monopolization of the world's sea resources by an Oceanic Regime and will allow at least some areas to be developed in a free-market framework. Homesteading on the high seas, even if under the cover of state sovereignty, offers some scope for adventurous free-enterprisers. And international law will once again be created, not by artificial ideological constitution-makers, but by a spontaneous recognition of mutual self-interest signified by contracts (treaties) arrived at by negotiation and consensus among the nations of the world. —JRP ▣

Transnational Relations

I

On June 19, 1972 the International Federation of Airline Pilots' Associations conducted a world-wide strike — the first of its kind in history. The pilots hoped to pressure the United Nations and its member governments into taking stronger measures to prevent international airplane hijacking and to cooperate in the apprehension, extradition and punishment of the hijackers.

We suggest that this strike organized by an international federation or professional associations, directed at the several governments of the world, may be an act of great future significance. The piolots' association is just one of nearly 800 international professional associations that have been developing rapidly over the last several decades at a current rate of some 9 per cent per year. The movement to organize individuals internationally by professions began in the 19th century but really caught on after the second world war under the indirect, and sometimes direct influence of the United Nations, especially through its coordinate organizations like UNESCO, FAO and ILO. Voluntary, privately-financed international professional associations originally were organized to sponsor international congresses where scholars, professional experts and related persons could meet to exchange information and theories of mutual interest. Papers were read, discussed and published; joint research projects undertaken; problems aired; personal friendships created and sustained. The international "republic of letters and sciences" which had linked the savants of Europe in medieval, renaissance and 18th century Europe, only to be sadly disrupted by the nationalistic disruptions of the 19th and 20th centuries, seemed about to flourish once again. But now to the older professions based on the traditional liberal arts and sciences, there was added the new professions; the ecologists, economists, pilots, financiers, advertising executives, travel agents, journalists, librarians, sportsmen of various specializations. There are now a minimum of 1,515 international, non-governmental organizations which hold between three and four thousand meetings annually, involving at least a million people, and at least half of these are the work of international professional associations.

While many of these associations are relatively free of ideological pressures, other are not. Often they have provided the only neutral forum in which professional persons have been able to meet their fellows from other lands outside the net of international politics and nationalistic restrictions. In many cases these associations have been able to transcend national interests and provide a focus and forum and mechanism by which the policies of nation-states can be effectively challenged. For example, international associations of jurists have been very active in investigating violations of human rights by criminally-minded States; international journalists' and publishers' associations police and publicize attacks upon the freedom of the press; several international sports associations have put effective pressure on the government of South Africa to change its policy of racial segregation which violates, among other things, the professional sportsmen's concept of fair play. Even rather minor groups like the European Union of Ramblers (a federation of hiking clubs) founded in 1969 has, in addition to mapping out international hiking paths throughout Europe, pressured the various European governments to abolish all passport and customs formalities for international hikers and travelers in general.

There is clearly an increasing trend of international professional associations taking action to compel governments to shape their policies and laws in ways which will enhance the work of the professionals, and provide an environment conducive to their respective needs and desires. The strike by the international pilots' association is just the most visible example of the trend. Yet, according to Prof. William M. Evan of the University of Chicago (in an article in **International Associations** No. 2 (1972) published at 1 rue aux Laines, 1000 Brussels, Belgium), there is little systematic research on the role of these associations as components in the present and future international order. Sooner or later the political scientists will take note of their existence, only to integrate them within the network of a state-structured international system. But would this not be an ideal subject for further study by a libertarian scholar? Here are private, voluntary organizations operating in ways that transcend national boundaries, national ideologies and narrow "political" interests. Might not these associations be models for a libertarian world societal structure of the future?

II

Let us now consider another international phenomenon which is already getting widespread attention — the multi-national corporation (MNC).

It is not the far flung geographic dimensions of the multi-national corporation that is new: the 17th and 18th centuries saw business enterprises, centrally directed from London, Amsterdam and elsewhere in Europe, which owned properties, markets and plantations on several continents. Yet, in addition to their being smaller in the magnitude of their capital resources compared to the larger modern MNC, they usually operated within the framework of a national imperial monopoly system in which most of their products, markets and properties were within the political control of their home country. Efforts to break into foreign markets frequently erupted into international wars, or free marketeering (usually called piracy or smuggling).

But the modern MNC finds its factories, mines, plantations, markets, manpower under the control of a multiplicity of sovereign governments which it must deal with individually to secure its centrally directed ends. Operating often under a dozen flags or more, its entrepreneurial tasks become very complex and its efforts to protect itself from the vagueries of so many governments compel it to maintain a "foreign office" equal to that of many nation states — and better than most if it is to avoid grave diffiuclties. The MNC must have a corps of diplomats and intelligence agents to conduct its corporate relations with the various nation-states. These corporate "State departments" and CIA's are usually discreetly hidden under less traditional political nomenclature, but their existence

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Transnational Relations —

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is certain. Occasionally they are exposed to the general public, as in the case of the ITT memos to various Nixon administration officials urging that the U. S. government do something to prevent President Allende of Chile from assuming office after his election. There is some evidence that ITT was prepared to take steps on its own to overthrow the Chilean regime, and more will be revealed in the future. General Motors, with a gross international product surpassed by only three other "corporations" — the United States, West German and Soviet Union governments — set its secret agents to work trying to dig up something with which to blackmail Ralph Nader. Historical literature abounds with well-researched studies of the international policies of United Fruit, Unilever, and the oil companies; and it would be naive to think that corporations with such great economic power as the MNCs are not today using it to manipulate the international political state system for their own ends.

In 1970 Harvard University's Center for International Affairs held a conference on "Transnational Relations". The papers read at the conference are now available (Robert O. Keohane and Joseph Nye, Jr. eds. **Transnational Relations and World Politics**, Harvard University Press, $4.95 paperback). The scholars contributing to this volume challenge the traditional model of international politics in as radical a fashion as the cubists did in the arts, or Galileo and Copernicus once did in astronomy. The message is that multinational corporations, international professional and trade associations are already exercising a controlling influence over the movement of labor, capital, resources and technology across national frontiers; that some 85 MNC have assets greater than some fifty member states of the United Nations; that governments and electorates have little control over the economic destiny of their nations; that nations with the traditional centralized, nationalistic economic structure are doomed when faced with the challenge of transnational corporations which can swiftly move capital, personnel and technology to wherever it will function most efficiently. Special studies on the role of scientists, the transnational role of the Roman Catholic Church, labor unions, and monetary exchange systems are also included.

For libertarians these new international institutions pose new problems. Is the MNC to be feared or cheered from a libertarian perspective? Is the MNC one of the new societal institutions which will replace the state as the norm of large scale socio-economic organization in a libertarian, voluntarist world society? Or is the MNC merely an embryonic form of a new state arising within, and gradually displacing, the older, more familiar but decaying nation-states of our present and recent past? Did not modern Britain, France, Italy, Spain and Germany, and even India, arise from the decadent principalities of the feudal age?

There is no guarantee that a libertarian society would not lapse into statism; and there is no reason to assume that multi-national corporations will retain their present juridical status of private, voluntary corporate societies. Many would go further and say that many nation-states are already merely agents of the large multi-national corporations which are the real sources of political power in society.

Libertarians must give more attention to these problems. We have a decided penchant for regurgitating the problems and analyses of the great libertarian thinkers of the past. But our eyes ought to be equally on the present if we expect to have any impact upon the shaping of the future. It is only a matter of a short time before we will begin to see attempts to engage in international collective bargaining. Multinational corporations are certain to call into being multinational trade unions. The superstructures already exist; the occasion awaits. Where will libertarians stand on this issue? What are the alternatives? Do we expect that American working men will see American corporations shift their capital abroad and close their plants at home and not react? Are we prepared to educate the public on this issue?

Also, how does a person protect himself from the criminal aggressions of large multi-national corporations? We are already deeply involved in the complicated problem of ecological aggressions against the persons and property of individuals who cannot defend themselves against the corporation and its ally — the state.

Clearly we must begin to give greater thought to creating countervailing forces — libertarian in structure and method — to protect individuals from the sheer power exerted by, not only the State, but by any corporate body that begins to act in state-like fashion — coercively in disregard of the natural rights of individuals and the principles of justice. These countervailing forces may take the form of international professional associations, or private commissions of inquiry into the crimes of States and other state-like corporate entities; or it may take the form of supporting the creation of an expanded international law based on contract with international institutions and procedures for enforcement. Other tactics, structural forms, technological innovations will offer possibilities now unimagined. The important thing is that libertarians turn their attention to these problems which will shape the destiny of the next centuries. —JRP ◙

Freedom And The Law

By Bruno Leoni
(Nash Publishing, Los Angeles, 1972)
Reviewed By Gary Greenberg

The Libertarian movement seems to be forever doomed to the tireless debating of Anarcho-capitalism versus Limited Government. After all is said and done, the debate usually snags on the question of objective law and the certainty of knowledge of the laws of the community. Very rarely is any working knowledge of how law developed and how law is practiced ever exhibited.

Those on both sides of the issue who wish to pursue these debates and lack this practical knowledge, ought to call a cease-fire long enough to enable them to read Bruno Leoni's fast reading and informative study FREEDOM AND THE LAW. Written in a manner that is vividly clear for the layman, Leoni examines the major legal systems of Western Civilization, specifically The Common Law and The Code Law.

Common Law is a system of jurisprudence based on a belief in natural law. Common Law holds that there is a set of transcendental values which remain only to be discovered by jurists. The approach of Common Law is to examine disputes on a case by case basis, using the past decisions of jurists as a guide, while applying reason and experience to the facts of the case. A right rule of law exists but it must be found.

Code Law is based on a system that views law as only what is legislated. It is founded on the belief that the source of law is Government. Its proponents assert that the need for certainty and objectivity requires that the rules of law be known in advance and written for all to see. Leoni is clearly in favor of the common law approach to jurisprudence and tries to demonstrate the fallacy of the "certainty" argument offered by the Code advocates as well as the impracticality of the Code compared to the usefulness of the Common Law.

Leonie points out that since the legislature is the source of the written law in Codes, at best Codes offer only a short term certainty. Leoni compares Code advocates to the Keynesians who assert that in the long run we're all dead.

Another intriguing economic argument is made against the code by analogy to the argument against planned economies. Starting from the assumption that Von Mises has proved the impossibility of economic planning in the State-planned economy, Leoni argues that the Code writers try to achieve the same thing as the economic planners, a set of rules to anticipate all the possible interrelations amongst individuals. The author thinks it is more than just a coincidence that those societies that opted for natural law (Rome, England, U. S.) tended to have strong free market-oriented economies, whereas the Code oriented societies (France, Germany, Italy) had weak free market economies.

Both Anarcho-capitalists and Limited Government advocates seem to be heavily involved in a fantasy in which proponents of their side will sit down and write the Libertarian Law Code. This is just an extension of the Code argument. Those who feel that there must be a written law in advance for all situations will profit greatly from reading this book. Hopefully, they will realize that trying to write the **Once and Future Libertarian Law** is akin to convening a conference of libertarian physicists and writing the **One And Only Forever Laws of Libertarian Physics.**

Law is a science. One doesn't impose the laws of a science on people. The laws of science find their way into society through the study of the discipline by the scholars in the field and the general agreement among the scholars that the rules work. The same is true of Jurisprudence. Whether or not people's rights will be respected under the law depends upon what the legal philosophers think about the issues and not whether or not the laws are interpreted by Anarchist judges or Limited Government Judges. I think if this point is grasped, much of the debate between the two sides will fade as the proponents of both views realize that there are much more fruitful purposes to which libertarian energies can be applied. Hopefully this Libertarian version of How-Many-Angels-Can-Dance-On-The-Head-Of-A-Pin will become nothing more than a pleasant diversion. ◙

Localism And Bureaucracy In The 19th Century China

By Murray Rubinstein

Phillip A. Kuhn in his Harvard East Asian series monograph, **Rebellion and Its Enemies in Late Imperial China,** seems to be describing a society and situations remote and foreign from our own. He examines in both a chronological and cross sectional fashion the development, operation and utilization of organizations created for the purposes of local self-policing and local self-defense in South China during the middle decades of the 19th century. The student and advocate of local control and individualism will find more in Kuhn's study than perhaps Kuhn himself realized or intended. Mr. Kuhn gives us a warning that local autonomy and community control are valid objectives and appropriate systems but may become distorted by either alien or ultra-radical ideology — introduced by means of force — or by operations of the central state and its servants.

The author uses historical, narrative, and sociological analysis to create a picture of a central government in decline and its local branches in a state of flux. He first traces the origins of militia demonstrating that local military units of a voluntary nature were part of the Chinese tradition (though traditionally Chinese intellectuals have tried to create the opposite impression — that Chinese were by nature non-militaristic and that the greatest times are those when the military on all levels is least important). He then examines the origin of the systems designed to halt rebellion during the years 1820 to 1860. The major sections of his book are devoted to examining the varieties of local military-civilian defense structures and the means by which central officials utilized these newly created institutions to defeat the Taipings (the "God Worshipers" — a society following a religion that was an amalgam of Christianity, Confucianism, and local folk belief. The Taipings controlled east central China from 1850 to 1864 and seriously threatened the Central Government) the Nien fei (Nien bandits — a group of guerilla style maurauders who controlled the area just north of Taiping territory in the 1850's and 1860's) and the Moslem rebels (Chinese Moslems of Turkic descent who revolted in the 1860's and 1870's and gained control of large parts of modern Sinkiang province).

The main system created by the officials (in charge of local areas but holding Confucian degrees and appointed by the central government) Kuhn shows, grew out of two existing institutions that were considered mutually exclusive in normal times. The **Pao Chia** system was one in which families, neighborhoods, and towns were organized into units designed to police themselves and root out any people whose behavior differed from the norm. It had originated in the Sung dynasty (900-1200) and had been reintroduced by the ruling dynasty. The **tuan tien** system was created to organize village defense against bandit incursion and local uprising. It was created by local clan leaders and gentry (confucian scholar graduates who had either not accepted or not been given a government post). District officials and gentry returned from government service such as Chiang Chung-Yuan were instrumental in integrating both into an interlocked system of local registration (the Pao-Chia element) and local defense. Villages were organized along family lineage lines into "simples" (single village) and "multiplex) (multiple village) organizations. Out of these surveillance-defense units came the "Braves" — irregular troops of local men, and finally personal and provincial armies that became the common armies which suppressed the rebellions in this period and created the mold for the war lord armies of the twentieth century.

But where the warning and the contemporary relevance? It is this Kuhn is picturing a society in the process of breaking up. Present were many tensions not unfamiliar to us. There was racial and ethnic conflict, rural and urban competition, and finally, the basic tension between the citizen striving for freedom and economic independence and the state trying to control his mind and tax him to his limit of endurance. The local organizations began as independent efforts to solve local problems by local means. The success these efforts had in supressing banditry and in self-policing was seen by the government as a phenomenon that had to be directed or it could easily get out of hand. Thus the officials and the literati came in, creating official structures, introducing confucian precepts and giving the people a feeling they were aiding in an effort beyond the confines of their local area.

Mr. Lindsay proclaims the 51st State. Mr. Rockefeller calls for local government referendums. Mr. Nixon and Senator McGovern say "power to the people". Representatives of the establishment are using the slogans of the masses to create the impression that power will be returned to its rightful place. The Confucian Civil Servants are again at the gate using the people's desire for self-rule to further enslave them. Instead they hope to use populist institutions to preserve and maintain the structure of the state. Kuhn shows us how the state emerged triumphant again in China. Will the new sense of localism, individual consciousness and self-rule be again perverted to the means of the Leviathan? ◼

Hope In Ireland

Life has conquered, the wind has blown away
Alexander, Caesar and all their power and sway;
Tara and Troy have made no longer stay —
Perhaps the English too will have their day.

—Frank O'Connor

Bombing The Dikes

The following are direct quotations from testimony given before the International War Crimes Tribunal summoned to meet in Stockholm and later Copenhagen in 1967 by the world-renowned philosopher and mathematician, Lord Bertrand Russell. Five years later, they may prove to be of more than antiquarian interest.

I

"In April 1945 General Eisenhower proposed to send a "very strongly worded message" to the German High Commissioner for Holland, Seyss-Inquart, telling him that

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Bombing The Dikes —

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"the flooding of large areas of Holland with the resulting destitution, starvation and the enormous loss of life to the population will constitute a blot on his military honor . . . He must be told to cease opening the dikes and take immediate steps to assist in every way the distribution of food . . . and that if he fails in this respect to meet his clear obligations and his humanitarian duty, he and each responsible member of his command will be considered by me as violators of the laws of war who must face the certain consequences of their acts". Confronted by such grave warnings, Seyss-Inquart agreed to stop the destruction of the dikes and cooperate in relief measures. Nevertheless, the barbarism of Seyss-Inquart in destroying the dikes and starving the Dutch civilians made him appear in the eyes of the Western officers as "one of the worst war criminals". He was one of the 24 Nazi leaders executed at Nuremberg."

(Testimony of Prof. Gabriel Kolko)

II

"On May 13, 1953, while armistice negotiations in Korea were bogged down, 20 US F-4's attacked and destroyed the Toksan irrigation dam in North Korea. The Americans also bombed the Chasan, Kuwonga, and Toksang dams and scheduled the bulk of the rest for attack — only the armistice prevented their destruction. The flash flood resulting from the destruction of Toksan dam resulted in a deluge of 27 miles of valley farm lands".

(Source: **Air University Quarterly** VI (1953/54, 40-41.)

III

"Vietnam is a part of the monsoon area, and the rainy season comes in July, August and September. These are the months when the water level is at its highest . . . One who remembers the great disaster which resulted from the breaking of the dike of the Red River in August 1945 which brought death and famine to two million people, and rendered hundreds of thousands of families homeless, can understand just how serious the bombing of dikes during the rainy season can be . . . According to the report of the Vice-President of the Water Conservancy Commission in Hanoi, U. S. bombings of the entire dike network were exceptionally violent and concentrated in the months of July, August and Setpember 1966, when the water level was very high."

(testimony of Tsetsure Tsurishima, member of the Japanese Commission of Inquiry)

IV

"War crimes are the actions of powers whose arrogence leads them to believe that they are above the law. Might, they argue, is right. The world needs to establish and apply certain criteria in considering inhuman actions by great powers. These should not be the criteria convenient to the victor, as at Nuremberg, but those which enable private citizens to make compelling judgements on the injustices committed by any great power. It was my belief, in calling together the International War Crimes Tribunal, that we could do this, and this book is the record of the Tribunal's considerable success. It serves not only as an indictment of the United States by abundant documentation, but establishes the Tribunal as a model for future use."

(Lord Bertrand Russell in his **Introduction** to the Tribunal's published hearings.)

America's Newest Enemies

"My defense, as far as my fellow Christians are concerned, is something like this. A great world power is grown distracted in mind and gigantic in pretension. The nation is fearful of change, racist, violent, a Nero abroad in the world. It seeks, moreover, to legitimize its crimes. It stifles dissent, co-opts protests, orders its best youth into military camps, where methods of murder exhaust the curriculum. Most Christians accede to the orders. Many do so with sore hearts, most are convinced of the necessity of right reason and patience, and they say "Let us work and wait for better days". But some cannot wait while the plague worsens. They confront Caesar's stronghold, his induction centers, troop trains, supply depots. They declare that some property has no right to existence — files for the draft, nuclear installations, slums and ghettos. They insist, moreover, that these condemned properties are strangely linked one to another — that the military invests in world poverty — that Harlem and Hanoi alike lie under the threat of the occupying and encircling power.

These things being so, some Christians insist that it is in rigorous obedience to their Lord that they stand against Caesar and put his idols to the torch. They say, moreover, that it is not they who are guilty — it is Caesar. It is not they who must answer for crimes against humanity — it is he. It is not they whom the unborn will abominate — it is he."

(Father Daniel Berrigan in **No Bars To Manhood**)

"The schoolboy whips his taxed top, the beardless youth manages his taxed horse with a taxed bridle, on a taxed road; and the dying Englishman, pouring his medicine, which has paid seven percent, flings himself back on his chintz bed, which has paid twenty-two per cent, and expires in the arms of an apothecary who has paid a license of a hundred pounds for the privilege of putting him to death." —**Rev. Sydney Smith.**

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