

# THE Libertarian Forum

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## POLITICS '72

1972 - the year of the great quadrennial circus and extravaganza, the one year out of every four when the American public is most attentive to politics, if not to political issues. Where should libertarians stand on the 1972 election?

Already, it is evident that libertarians will be roughly divided into two camps on their attitudes toward the 1972 campaign. One camp, perhaps the majority, takes the purist *non-voting* position: the view that all politicians and parties are evil, the State is evil, and that for any libertarian to vote is to lend his moral sanction to the electoral process and therefore to the State apparatus which rides to power on the strength of that process. The only moral course for the libertarian, this position holds, is therefore not to vote and to promulgate non-voting among the population. The latest manifestation of the non-voting camp is the newly formed League of Non-Voters (Box 1406, Santa Ana, Calif. 92702), organized by Sy Leon and other libertarians in Southern California.

Non-voting - or "voting for oneself" - is the classic anarchist position, and no libertarian can be unsympathetic to an organized drive for non-participation in elections. This is especially true if we consider that all politicians of whatever party are constantly exhorting the electorate: "We don't care *how* you vote, but vote!", which obviously means that they care deeply about being able to claim a "mandate" from a large turnout of voters. A small turnout would deflate any such claim.

Yet there are flaws and dangers in this simplistic non-voting stance. The chief danger is that the moral sanction argument is the *other side of the coin* of the statist argument for the legitimacy of democratic government: that *since* X millions have voted for President or Senator so-and-so, *this means* that these rulers have broad popular support, or even that their rule is "voluntary", and sanctioned by the public. It is precisely this argument that has formed the chief stumbling-block for libertarians in arguing against government action under a democracy.

In arguing against voting as a moral sanction we need only turn to the Founding Father of pure libertarianism, Lysander Spooner. Spooner built a large part of his individualist anarchist position on refuting the notion that voting necessarily means support. Thus Spooner:

"In truth, in the case of individuals, their actual voting is not to be taken as proof of consent, even for the time being. On the contrary, it is to be considered that, without his consent having ever been asked, a man finds himself environed by a government that he cannot resist; a government that forces him to pay money,

render service, and forego the exercise of many of his natural rights, under peril of weighty punishments. He sees, too, that other men practice this tyranny over him by the use of the ballot. He sees further that, if he will but use the ballot himself, he has some chance of relieving himself from this tyranny of others, by subjecting them to his own. In short, he finds himself, without his consent, so situated that, if he use the ballot, he may become a master; if he does not use it, he must become a slave. And he has no other alternative than these two. In self-defense, he attempts the former. His case is analogous to that of a man who has been forced into battle, where he must either kill others, or be killed himself. Because, to save his own life in battle, a man attempts to take the lives of his opponents, it is not to be inferred that the battle is one of his own choosing. Neither in contests with the ballot - which is a mere substitute for a bullet - because, as his only chance of self-preservation, a man uses a ballot, is it to be inferred that the contest is one into which he voluntarily entered; that he voluntarily set up all his own natural rights, as a stake against those of others, to be lost or won by the mere power of numbers. On the contrary, it is to be considered that, in an exigency, into which he had been forced by others, and in which no other means of self-defense offered, he, as a matter of necessity, used the only one that was left to him."

Doubtless the most miserable of men, under the most oppressive government in the world, if allowed the ballot, would use it, if they could see any chance of thereby ameliorating their condition. But it would not therefore be a legitimate inference that the government itself, that crushes them, was one which they had voluntarily set up, or ever consented to."

(Lysander Spooner, "No Treason, No. II", pp. 5-6, in *The Collected Works of Lysander Spooner* (Weston, Mass.: M & S Press, 1971, Volume I).

In short, if the rulers allow us to make this *one* choice, as petty and miserable as it may be, this one say over our political lives, it is not immoral to make use of this opportunity. As I wrote somewhere else, if Richard Cobden and Genghis Khan were running against each other for President, the libertarian would surely have no hesitation supporting and voting for Cobden, despite his falling short of full purity. But if that is so, then the fact that we have no Cobdens, alas!, running now is only a matter of degree; it is still not immoral to use the electoral process when a significant choice presents itself. The use of the electoral

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process is not, then, immoral *per se*, as the non-voting camp would have us believe.

A second error is that the non-voters misconstrue the nature of our problem. The major problem is not whether or not we should vote; the major problem is that, regardless of what we do, the office of the Presidency and other political offices will not, unfortunately, be declared vacant. Regardless of what we do, there will be a President, 100 Senators, etc., come 1973. In that case, what attitude do we take on the question of who occupies these offices? Even if we do not vote ourselves this November, whom do we hope that *others* will vote for? When the ballots begin to trickle in, whom do we cheer for, or whom do we cheer *against*, on Election Night? To argue against voting is not the same thing as arguing that, in public or even in our hearts, we must be completely and totally indifferent to the outcome of the election. Why? What possible moral position holds that we must be neutral in word and deed? Come Election Night, perhaps even Mr. Leon and his colleagues will, in the quiet of their living-rooms, be silently cheering for one rather than the other candidate. If *not*, then they must hold that both candidates are, and must forever be, completely identical, so that there will be literally no difference in the outcome. But since we know from the nature of man that no two people or parties can ever be *totally* identical, that there is always *some* diversity however marginal, it then follows that the idea that there is literally *no* difference between the candidates is a fallacious construction of the nature of man. There is, then, always a difference of sorts; Cobden we would clearly choose over Ghenghis Khan; what then of 1972? We must therefore discard the *a priori* indifferentist position, and begin to examine the parties and candidates to see if the differences are sufficient to merit our taking a stand. And, again, the important question here is not whom we vote for, but whom we support or oppose.

This brings us to the real world of 1972, and it brings us also to the other major libertarian camp for this year: the camp that says — DUMP NIXON! The *Lib. Forum* has repeatedly called for the dumping of Mr. Nixon, most recently in the July-August 1971 issue ("Dumping Nixon"), and Mr. Nixon's record is even more monstrous now than it was last summer.

In the first place, other things being equal (which, granted, they rarely are), the libertarian always favors the dumping of an incumbent President and party. If Mr. Nixon and his opponent were simply Mr. X and Y, alike as two peas in a pod, then the libertarian would favor the dumping of the incumbent X. For two reasons: one, because it is always best to overthrow any entrenched machine or President, lest their entrenchment sink ever deeper into society. And two, to punish — to punish the incumbent for the inevitable transgressions and invasions of rights during his term of office.

For the libertarian, then, any incumbent begins his campaign with one strike against him, even if he were simply Mr. X. But Richard Nixon is not simply Mr. X, not just another holder of the Presidential chair; he has compiled a record of malignity on every front, foreign and domestic, that has not been matched since the days of Franklin Roosevelt. Since our last catalog of Nixonite horrors last summer, the President has enormously accelerated the gravity of his sins. The wage-price freeze, suddenly brought to us over television on the night of August 15, catapulted America into the full-fledged economy of fascism, with its panoply of tripartite economic controls under the direction of an all-powerful Executive. The first establishment of peacetime price-wage controls since the unconstitutional NRA of the New Deal, Mr. Nixon's New Economic Policy was by far the biggest single leap into statism since the days of Franklin D. Roosevelt. The displacement of the mar-

ket by central controls through Presidential fiat was accompanied by an equally drastic, and even more savage, repudiation of the dollar's backing in gold, thereby threatening a world-wide depression as a result of international monetary and economic warfare. The re-establishment of fixed exchange rates and the slight devaluation of the dollar in December, has restored some health to the international money market, but the resolution is clearly temporary, since neither the fixity nor the devaluation make any sense while the currencies remain in no way redeemable in gold. Again, President Nixon has aped FDR in his plunge into totally fiat money; the difference being that, after 1934, FDR at least continued to redeem foreign-held dollars in gold; this last shred of soundness in the world's monetary system has not been torn away.

On the crucially important foreign policy front, the *Libertarian Forum* and its editors have been virtually alone, year in and year out, in proclaiming that the Vietnam and Indochina war has *not* been about to "wind down." Even the most ardently anti-imperialist forces on the Left have been completely fooled twice: once, after Lyndon Johnson's retirement and the opening of the Paris peace talks; and next, after the inauguration of Mr. Nixon's "Vietnamization" policy, aided and abetted by Nixon's grandstand announcement of his trip to China. The recent resumption of large-scale bombing of North Vietnam should at last make it crystal-clear that the war in Indochina is *not* over — and that Mr. Nixon has simply been returning to Johnson's discredited policy of pre-1965: that is, providing financial and air support, plus "residual" artillery and other support, while our Indochinese puppet troops absorb the brunt of the fighting on the ground. In short, "Vietnamization", or rather, "Indochinization".

Nixon's seemingly cunning policy was to draw the teeth of American protest by eliminating American ground casualties, and foisting them on the Indochinese, while confining our military action to increasingly devastating bombing of the NLF forces in South Vietnam — thereby avoiding the more spectacular and less politically palatable bombing of the North. That crafty policy — to continue the war while quieting American interest in the proceedings — has now been smashed on the rock that Nixon and his predecessors have always overlooked: the total lack of support for our puppets among the Indochinese population. In particular, the American puppet forces in Cambodia and Laos are on the brink of total defeat. In Cambodia, they virtually hold only Phnom Penh, the capital, and their hold on *that* is increasingly shaky; the rest of the country belongs to the Communist-led National United Front. Nixon's unpopular and disastrous invasion of Cambodia in 1969 has led only to the total defeat of the American puppet forces in that country. Similarly, the even more disastrous American invasion of Laos, an invasion which was ambushed and routed by the North Vietnamese-Pathet Lao forces, has led only to the recent resounding successes for the Pathet Lao in the most strategic areas of Laos: the total conquest of the Plain of Jars and the Boloven plateau. Particularly important here was the conquest of the Plain of Jars in late December, including the wiping out of no less than seven battalions of American-sponsored Thai troops and the severe crippling of three more; and the wiping out of four battalions of CIA-trained Vang Pao mercenaries and the crippling of six more. The American skein has about run out in Laos and Cambodia — and this at only the beginning of the Communist-led offensive of the 1971-72 dry season. In desperation, Richard Nixon turned to the only tactic he knows: punishing the innocent civilians of North Vietnam by mass terror bombing. Nixon hopes that such massive bombings will somehow induce the Communist forces to suspend their operations throughout Indochina, but he will fail just as surely as

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as the similarly aimed Johnson-McNamara bombings failed before.

Richard Nixon came to the White House after making crucial promises to the American people: he promised us an end to the war in Vietnam, an end to the draft, prosperity without inflation, a sound fiscal policy, and the preservation of the free market economy. He promised us bread, and he has given us a stone. The war in Indochina goes on, indeed was further expanded into Laos and Cambodia; the draft goes on, with the Kennedy-style lottery put in to allay protest; and we have a long-drawn-out Nixon recession wedded to a continuing high rate of inflation. We have the greatest peace-time deficits in American history and instead of preserving the free economy President Nixon has buried it in an avalanche of wage-price controls. Looming ahead of us we have two cherished plans of the Nixon Administration: a disastrous guaranteed annual income scheme (the Family Assistance Program), and socialized medicine through national health insurance. All this, and also a large increase in executive power and dictation, and Supreme Court appointments who can be counted on to erode and reverse the hard-won civil liberties gains of the Warren Court. All in all, the greatest single leap into collectivism since FDR.

There can be only one reaction of libertarians to the grisly Nixon record: punish, punish, punish. Get him out of office! Retire him to the private life which he so richly deserves.

There is only arrow left to the bow of the libertarian opponent of the Dump-Nixon strategy: might not the Democrat be even worse? He would have to be considerably worse to have us abandon the joy of defeating Richard Nixon, though I concede that that would be logically possible. But in fact any likely Democrat on the horizon is bound to be considerably better. Let us take the vital areas. On the Indochina War, we can expect that any Democrat (except for Jackson and possibly Humphrey) will end the war in short order. On the draft, we have a far better chance for abolition, and certainly for amnesty to draft resisters, with any Democrat (except Jackson) than with our supposedly anti-draft President. On civil liberties, any of the Democrats (except Jackson) will be far superior to Nixon. But what about the economy, it may be asked? What indeed? Considering Nixon's fascist record, it is hardly possible for any of the Democrats to do worse. *Particularly* when we consider the vital strategic fact that no Democratic President would have been able to drum so many statist measures through a rather conservative Congress. If Muskie or McGovern had been President this year, any price controls would have faced a chorus of opposition and would have been rendered unworkable very quickly; and neither man would have as much chance as Nixon to push through FAP or national health insurance. The one area that conservative Republicans have been fairly good on over the years has been government interference in the economy; but their opposition has been totally neutralized by the fact that their "conservative" President, using their own rhetoric and from their own party, has been driving through the collectivist legislation. Only removal of Nixon from office will enable the conservative Republicans to rouse themselves, and once again provide some opposition to socialistic measures by the Executive. Thus, even in the area of the seemingly strongest case for Nixon over a Democrat, we find that absolutely indispensable to the rebirth of a conservative opposition to galloping socialism is the defeat of Richard M. Nixon. Only the nomination of Scoop Jackson by the Democrats would seriously vitiate this argument of "anyone but Nixon."

One of the most heartening political developments of recent months is the recognition by many conservative militants of the strategic necessity of defeating Richard Nixon. Rep. John Ashbrook (R., Ohio) has courageously

decided to enter several early primaries against the President, backed by most of the conservative theorists and organizers, including YAF and the American Conservative Union, *National Review* and *Human Events*. The more votes that Ashbrook rolls up in the primaries, the more embarrassing for the President, and the greater the possibility of a really significant conservative rebellion against Nixon: the running of Ashbrook for President on a "fifth party" ticket. The hurting of Nixon in the primaries will be only symbolic and psychological; it is the running of an independent Ashbrook in selected key states with a large conservative constituency (e.g. Ohio, Illinois, California, Pennsylvania) that could wreck the President's bid for another term. Many of these states are usually so close that a candidate hiving off 10-15% of the conservative vote from Nixon could submarine the President.

The danger is that Ashbrook and the fifth party might be bought off with a few militaristic concessions — since unfortunately the agitation of the conservatives is not so much over price-wage controls or FAP as it is over the China trip and the conservative call for even more expenditure on overkill missiles. But if the conservatives are mad enough and can stay mad, and if Ashbrook builds up considerable support in the primaries, then an independent conservative candidacy could perform the much reviled but generally necessary role of the "spoiler".

All this means that what happens in the Democratic convention becomes of primary political importance to the libertarian. His major goal here is to see to it that the Democrats do not nominate someone totally unacceptable (Jackson, Wilbur Mills, Mayor Sam Yorty of Los Angeles), and that the Democrats are not riven by irresponsible and kooky caucuses (Chisholm) or fifth parties (Spock, McCarthy), though the *threat* of a Spock or McCarthy ticket is a useful means of combatting a Jackson or Humphrey candidacy.

Of the viable candidates, we do not face a spectacularly worthy lot. The *Lib. Forum's* endorsed candidate, Senator William Proxmire (D., Wis.) — one of only *four* Senators to vote against extension of wage-price control authority (the others being Goldwater, Fulbright, and Harris) — bowed out of the race with an eloquent and charming statement to the effect that he had managed to alienate both Big Labor and Big Business and was therefore bereft of campaign funds. Harris' absurd candidacy was over almost as soon as it began, and Birch Bayh (D., Ind.) has been replaced by his Indiana colleague and factional enemy, the even more obscure Vance Hartke. Eugene McCarthy is too erratic to take seriously. This leaves us three candidates: Lindsay, McGovern, and Muskie. The fascination of much of the nation for Lindsay is one of any New Yorker's abiding puzzles; for it is very difficult to mention the name "Lindsay" to *any* New Yorker, be he left, right, or center, and whatever his occupation or income, without unleashing a geyser of abuse. Everyone in New York reviles Lindsay, and with good reason: for he has succeeded in blending an arrogant High Moral Tone with an almost spectacularly inept and bungling administration. We favor peace, amnesty and civil liberties — issues on which Lindsay's record is a good one, but does America deserve Lindsay the Administrator? The danger of a Lindsay candidacy, however, is remote; for he will surely manage to alienate most of the party cadre before he finishes his run. George McGovern, in contrast to Lindsay, has a deadly lack of charisma; worse from the libertarian point of view is McGovern's unrelenting socialist thrust on domestic issues.

This leaves us with Ed Muskie, the leading contender. We have written that Muskie is grey, colorless, and the favorite of the party hacks. All this is true. But relative to his *confreres*, Muskie is beginning to look pretty good.

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# Purist Deviationism: A Strategic Fallacy

By William Danks

A growing problem exists among many newly radicalized libertarians. In coming to realize the vicious immorality and blatant evil of statism, they often attempt to "purify" themselves from their social and cultural context. They try to cleanse themselves from what is felt to be the all-pervading sickness of their surroundings. This is a mistake. Logically, the idea of stepping out of one's environment is confused. Psychologically, it's an acceptance of collective guilt-by-association. Strategically, in terms of building an effective, relevant libertarian movement, it's the worst sort of fallacy.

The "purification" process has several aspects: 1) removal of oneself from any source of income that comes directly or indirectly from the government, 2) refusal to make use of government services, 3) refusal to become involved in politics, 4) total refusal to co-operate with (i.e. supposedly "sanction") the government in any way, and 5) armed resistance against the state.

Clearly, any of these actions are moral, and can be tactically useful in specific circumstances. The point is, however, that such efforts can not achieve their own ultimate purposes and are positively harmful to both the individuals involved and to the libertarian movement that they ostensibly support.

In the sense that the "purist" desires, it is simply impossible to have an absolutely "non-governmental" income. No matter how "private" one's occupation appears to be, there will always be a certain percentage of one's customers that either work for the state or for a company that does state business. To be consistent the "purist" must view all revenue so derived as "tainted."

Given the nature of our statist economy, there is simply no place to go for someone who "wants nothing to do with the whole rotten mess." The sector of the economy known as "private" is only relatively so, and is degenerating rapidly. Even the so-called "parallel economy" of the libertarian market is infected with some money coming from state sources.

But so what? The only way out of this supposed dilemma is either suicide or total retreatism - two unreasonable options that are in no way morally required of man. A much better alternative, both logically and strategically, is to realize the revolutionary context in which one lives and then act accordingly. The "purists" are correct in feeling that no sanction should be given to the state. Yet, that's exactly what they are doing when they accept the coercive conditions imposed by the state and then try to act "morally" as if they were in a moral context (i.e. volitional freedom). Rand called this the "sanction of the victim." It's what the rulers are counting on.

The same applies to the use of government services. LeFevre and others have pointed out the practical advantages of self-reliance in the face of increasing governmental inefficiency. But the refusal to call the police or fire department, or to ride on public transportation, or to use a library, or attend a state university, is often-times just plain foolish. It's a misidentification of government to view it as some kind of organism with a life of its own. Government is nothing more than a parasite living off the people. When the people make use of a government service they are only reclaiming a little of their own life's blood. Again the moral question is inapplicable. You can't steal from a thief. You can't be a parasite of a parasite - you can only be either a parasite or a host.

In this regard the strategic fallacy of "purism" leads to tremendous alienation of libertarians from the lower and middle classes. By attacking government workers,

welfare-recipients, public-housing residents, food-stamp users, etc. libertarians appear to be attacking the victims of the state (for a brief reminder see Rod Manis' "Government vs. the Poor" - Rampart College pamphlet) and thereby (implicitly) defending the real villain, the state itself. The crucial polarization should always be between the people and the government, not between different groups of people.

Refusal to become involved in politics is impossible. Everyone living in a nation-state is "involved" in politics to the very extent that their life is not theirs to live as they please. When the time comes when a person has a real option to not be involved in politics, then the revolution will be over and we will have won.

Of course, what the "purist" means is refusal to vote, run for office, or support any candidates. Again these are moral choices that anyone is free to make, but also again they are far more harmful than good. Although there will be crisis situations when a non-vote drive can be tactically worthwhile (in terms of publicity and education), the nature of today's social/political context indicates little general value in political celibacy. Libertarians and libertarianism will simply be passed by.

The proper libertarian political activity is abolitionism. A ballot can work two ways. Libertarians should never allow a proposal to pass by that they don't vote against. This will also be the role of libertarian candidates, when and if they are developed - to veto bills. In the meantime selective support should be given to those traditional politicians that are most opposed to the worst aspects of the present system (e.g. Vietnam, the draft, censorship, etc.).

Points 4 and 5 of the "purification" process run together and are the most dangerous to everyone concerned. A case with which I am personally acquainted serves as a good example. A young man recently converted to libertarianism drives a car daily but refuses to get a license. He can't bring himself down to the level of asking the state for permission to drive. The possible penalties if he is caught (which is only a matter of time) - \$1,000 fine and a year in jail.

Of course the young man's position is morally correct. Of course the state is ripping-off the fee it charges for driver's licenses. Of course such license requirements are infringements of liberty. And the young man is quite willing to resist if they try to take him in. Fine. But this is not the place to fight. The price of victory on this issue is too high, the results of the victory would be nearly inconsequential anyway, and most importantly - the issue presents an easy way to put libertarians away without attracting much sympathy for their cause.

If a distinction must be made between "statist" and "Anti-statist" actions, let the distinction be a rational and sophisticated one, arrived at through careful "in-context" analysis. A basic division to be considered is whether an action (be it voting, working, etc.) is performed *in* the system in order to bring it down and abolish it, or whether it's performed *for* the system in order to perpetuate and expand it. Therefore it's at least conceivable that virtually any government job (short of something like state executioner) could serve an anti-statist purpose. In extreme circumstances a libertarian could even take such abhorrent jobs as tax-collector or FBI agent and still be actively furthering the anti-statist cause (by internal sabotage, inefficiency, purposely following false leads, etc.). In today's more normal times there is certainly

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There is in his very coolness, his very lack of color and his extreme caution, a happy augury of a President who, like Calvin Coolidge, might just snooze his way through the White House. In short, Muskie looks to have the makings of an inactive President, which, short of a Libertarian Hero who will roll back the New Deal, is about the best that a libertarian can hope for these days. It is difficult to conjure up an image of Muskie girding us all for a further leap into

collectivism, or of Muskie pushing the buttons for another war somewhere in the world.

Two minor serendipities with Muskie. One was his refreshingly honest statement that a Negro could not be elected Vice-President, a welcome bit of candor on an issue mired in hypocrisy and cant; another is the marvellous information that Muskie is disliked by his flinty old mother. What other Presidential candidate in decades can make such a statement? ■

**Libertarians Versus Controls**

The fight of the libertarian movement against the Nixon wage-price controls continues to receive recognition by the media. Increasingly, for example, your editor and John Kenneth Galbraith have been juxtaposed as the major protagonists in the battle over direct controls. Thus, in his review of the second edition of Galbraith's *New Industrial State*, economist Professor Robert Eisner of Northwestern (*Saturday Review*, October 2, 1971, pp. 45-46) found himself torn between the two points of view. After praising Galbraith, Eisner added: "But in an eloquent recent contribution to the Op Ed page of *The New York Times*, Murray Rothbard declared that on August 15 fascism came to America. I winced a bit at the rhetoric, but winced more when President Nixon, in his Labor Day address to the nation, defended his wage-price freeze with an appeal to each American for 'personal sacrifice' and 'faith in his country.' This does have a rather totalitarian ring about it . . . Galbraith, along with many of us, complains at the clear big-business bias in Nixon's new economic policy . . . But what should Galbraith have expected in view of his own compelling arguments on the inextricable interweaving of the mature corporation and the State? Is the moral of all this that we should turn over more power to the government? And will democracy and justice really be served if George Meany's belated protests are heeded and tripartite boards of government, business, and labor set the terms of the transactions by which we work and live? I seem to recall that tripartite boards of this type were indeed the hallmark of Benito Mussolini's overhaul of the Italian economy a few decades ago."

The Galbraith-Rothbard polarization has just appeared in the January, 1972 issue of the *Intellectual Digest*, a well-edited monthly of several hundred thousand circulation. Under the headings: "Economics: left & right", several pages are excerpted from Galbraith's recent book, under the caption of "The Inevitability of Controls". Immediately following Galbraith, there is a condensation of your editor's *Lib. Forum* piece on the freeze of last September, under the caption "Controls Won't Work."

Choose, America: Rothbard or Galbraith!

We are happy to see increasing signs of disaffection from the controls by conservatives, economists, and businessmen. *Human Events*, *National Review*, *the Freeman*, YAF, The American Conservative Union, have all, if sometimes belatedly, taken a stand against the price-wage controls. Without attempting to slight anyone, we might mention: Frank Chodorov, "The Tale of Two Students", *The Freeman*, December, 1971 (it is a pleasure to see this reprint from the eloquent and hard-hitting writings of the great individualist, and to have Chodorov introduced to the current generation); Allan C. Brownfeld, "Phase II: Challenge to Economic Freedom," *Roll Call*, October 28, 1971 (a conservative Washington publication); W. Allen Wallis, "Wage-Price Controls Won't Work," *Wall St. Journal*, December 22, 1971 (from a leading Friedmanite economist); and Hendrik S. Houthakker, "No Use for Controls",

*Barrons*, November 8, 1971 (particularly important as emanating from a former member of Nixon's Council of Economic Advisers. Prof. Houthakker concentrates on the price-raising policies of the federal government in construction and oil.)

Meanwhile, Rothbard's use of the term "fascism" to describe the leap into controls has drawn an anguished outcry from the social-democratic author Theodore Draper, "The Specter of Weimar," *Commentary* (December), Mr. Draper lumps this charge with various left-wing uses of the term for contemporary America. In his easy pointing to the fact that we do not have concentration camps or brownshirts, Draper totally overlooks the fact that I was pointing to the fascist *economy* — though of course it is legitimate to conjecture that a fascist economy may well breed the rest of the fascist trappings. The *Wall St. Journal* (Dec. 20, 1971), while editorially commending the Draper article, is clearly worried about the totalitarian implications of the wage-price freeze, as well as the "evident willingness on the part of many to give up on the individual and on all the enormous potentialities of individual liberty." The *Journal* concludes that "the public's current docility toward the aggrandizement of the state" might well portend "socialism or some Orwellian type of totalitarian horror." ■

**PURIST DEVIATIONISM — (Continued from page 4)**

a place, uncompromised and as *rationaly* pure as possible, for libertarians in *all* parts of their society.

We have only one world to live in, and that's the world we have to win. Libertarianism is the philosophy of reason, justice, peace and freedom. It can not be betrayed by recognizing the facts of reality and acting accordingly. It can only be betrayed by not doing so; by accepting such spuriously self-righteous positions as that of utopian "purism." ■

**The Shaffer Dictionary**

By Butler Shaffer

The following definitions comprise a part of my view of reality, in all its humorous—and often frustrating—manner.

**GREEDY:** one who puts his selfish interests ahead of mine.

**HONOR:** the last refuge of a man whose prejudices have come into conflict with his judgment.

**LOYALTY:** continuing to lend one's support to an institution when no good reason exists for doing so.

**SOCIALISM:** meatless cannibalism.

Also, the idea that we should divide up the wealth of all those who have more than I do.

# On Punishment: Two Comments And A Reply

I

Dear Editor:

I wish to take issue with certain assertions which you made in your October article on "Attica" with regard to capital punishment.

In your view, and I quote, "the libertarian creed states that an aggressor loses his rights to the extent that he has deprived victims of theirs. Hence, it is perfectly proper to exact capital punishment on murderers, who have deprived victims of their right to life, or to exact a lesser punishment which is in some way proportionate to other crimes."

My question is; in your view, is the libertarian "creed" based on the moral concept of justice, or not? If it is based on justice, then by what stretch of the imagination could "a life for a life", or "an eye for an eye", or "a leg for a leg", etc., fill the criteria for justice? In my view, justice is concerned with the *repayment of, or compensation for, values which have been taken away*. If an aggressor breaks my leg, or causes me to lose the use of an eye, how will my breaking *his* leg, or depriving him of the use of *his* eye, compensate me for the loss of the use of mine!

You talk about "punishment" as though it is a necessary and valid part of justice; it is not - in fact punishment is a biblical concept which is quite irrelevant to the concept "justice". My own view, based on the moral concept of justice is that anyone who deprives another of his rightful values, owes a *debt* to the deprived person, which is proportionate to the value loss, and the deprived person has the right to use deferential force in order to obtain compensation (as much as humanly possible). This does not imply "an eye for an eye". You may ask the question, "what then would you have done with a murderer?" Let us assume a rational anarchistic society based on the moral principles of non-sacrifice, non-aggression, and justice, and someone commits a murder. Of course, there is *no way* by which the dead person can ever be recompensed; how then would we apply the principle of justice?

Let us not forget that the victim of the murder is not the *only* person to whom a debt is owed by the murderer. True, the victim is dead, but what of others who may have been deprived of their rightful values as a result of the untimely death of the victim! What of a wife's loss of values, or children, or persons for whom the victim had assumed responsibility? Here at least *some* measure of compensation (albeit insignificant by contrast to the value loss) can be made by the murderer by having him productively employed (in strict security premises), and for the rest of *his* life he pays not only for his own upkeep, but the balance of his earnings he pays to his victim's estate. We can assume that the victim would have lived and accumulated values, for as long as the murderer lives. Of course if the murderer refuses to work, he does not eat, and by so doing he would be depriving himself of his own values. No one has any moral obligation whatsoever to sustain the murderer's life, but *he*, by his dastardly act of aggression, owes a life-long debt. To send him to his own death, is to deny the other persons whom he deprived, of their right to as much compensation *as is humanly possible*.

--Ernestine Perkins

II

Dear Editor:

In the October, 1971 issue of the *Libertarian Forum*, Murray Rothbard endorsed the tough conservative line on the Attica prison riot. Some of Rothbard's factual statements conflict with other accounts I have seen, but rather than

dispute his "facts" I would like to question his theory of punishment.

It is important to understand what punishment is. It is a hardship imposed on someone, (usually someone judged to be an offender) above and beyond mere correction of physical damage or return of stolen property. Punishment is *not* self-defense, it is *not* restitution of property; it is an additional hardship imposed against the will of the recipient.

The recipient of punishment is the victim of coercion imposed on him, usually with the *intention* of harming him and, perhaps, deterring others from breaking the rules of the punishers. The prisoners at Attica were not there for restitution of property, or self-defense, but for punishment.

The form of punishment advocated by liberals is aimed at rehabilitation. As Rothbard rightly observed, the terms of this kind of punishment are determined by the "subjective decisions and whims of the 'humanitarian' overlords of the prison system."

The inmates at rehabilitation centers are not volunteers and they do not know beforehand the length of their imprisonment. Rothbard contends that punishment through rehabilitation is bad because the prisoners "no longer enjoy the certainty of objective punishment" and that, a libertarian world would not be devoid of prisons, but would have more efficient ones run on a competitive private basis.

In order to decide whether punishment through rehabilitation is worse than "objective" punishment, we must know what "objective" punishment means. If it means penal laws written down in books and enforced uniformly, then either 1) there must be unanimity of opinion in society about what the laws should be or 2) there must be a State monopoly to impose one set of laws. Anyone who knows Murray Rothbard knows that he does not advocate State monopoly of anything, so he must think there is unanimity of opinion about penal laws. He must think there is an objective standard which each of us can use to decide the correct amount of punishment appropriate for each particular crime. The fact that there is neither unanimity of opinion nor uniformity of punishment practices (even among libertarians) seems to contradict the notion of a natural criterion for punishment. If such a criterion exists I would like to know what it is.

The only clues Rothbard gives are that the punishment should be proportional to the crime and should somehow fit the crime. This implies a measurement of crime and a measurement of punishment. Such measurements require units to objectively calibrate the subjective experiences of pain and suffering associated with crime or punishment. This assumes not only that pain and suffering can be measured, but that everyone experiences the same degree of pain and suffering from the same punishment.

Many of the arguments that Rothbard so brilliantly expressed against the quest for a just tax in *Power and Market* seem to be equally valid when used against his theory of just punishment. An objective theory of punishment seems to require interpersonal measurement of utility.

Such measurement is impossible. All codes of punishment are arbitrary, whether they be based on the principle of

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"Government is actually the worst failure of civilized man. There has never been a really good one, and even those that are most tolerable are arbitrary, cruel, grasping and unintelligent. Indeed, it would not be far wrong to describe the best as the common enemy of all decent citizens." --- H. L. Mencken.

## ON PUNISHMENT — (Continued from page 6)

"an eye for an eye" or "two eyes for an eye" or any other sadistic scheme. The only way to have a uniform "objective" system of punishment is to impose one of the arbitrary punishment codes by force on the whole society.

This can only be done by a government. It is the realization of this fact, I think, which caused Ayn Rand to reject the doctrine of anarchism. This knowledge is implicit in her definition of government in her essay "The Nature of Government."

"A government is the means of placing the retaliatory use of physical force under objective control - i.e., under objectively defined laws."

This is a correct statement of fact and it gives a clue to the mystery of what it is about government which appeals to Ayn Rand. If you believe in retaliation, the only alternative to a government, which (ideally) retaliates against people in accordance with laws that are written down and enforced equally on everyone, is a system with competing retaliation agencies. These agencies would retaliate against criminals in different ways and in different amounts, which would obviously be inequitable and unfair. If retaliation were permitted in the absence of government, criminals would suffer unequal amounts of punishment for similar crimes and some would suffer more for small crimes than others would for big ones - depending upon the state of mind and whims of the ones determining the punishment. This is unacceptable to Ayn Rand - it isn't objective enough.

Only a government, which enjoys a monopoly on the "right" of retaliation in a geographic area, can lend a sense of impartiality, and uniformity to the administration of punishment and, by so doing, make retaliation seem like justice. It is because Ayn Rand believes in retaliation more than she believes in the right to not be aggressed against, that she is willing to condone the coercive monopoly of government.

Ayn Rand was forced to choose between two mutually exclusive concepts of justice: vindictive vengeance objectively and uniformly administered or the inalienable right of everyone to freedom from aggression. The former requires a coercive government, the latter requires anarchy. Ayn Rand, being basically a hater, chose the former.

I hope that Murray Rothbard will prove to be more devoted to the principle of nonaggression than to the lust for revenge.

--Roy Halliday

### III

#### Editor's Reply:

The comments of Ernestine Perkins and Roy Halliday provide a welcome opportunity to expound a bit on one of the most grievously neglected areas of libertarian theory: the theory of punishment. I hasten to add that the burden of formulating a theory of objective punishment (i.e. punishment that is not simply a whim of the legal code) falls not only upon us, but on *all* legal systems anywhere: be they democratic, socialist, or monarchical. All except the absolute pacifists, who would allow all criminals to go scot free, have to search for a rational principle for punishment of crime.

In the first place, most libertarians, exempting again the absolute pacifists, would certainly agree that the prime focus of punishment must certainly be *restitution* to the victim, forcing the criminal to restore his ill-gotten loot to the person he injured. This, indeed, *was* the prime focus of punishment in ancient times, and it is only with the rise of the modern State that the focus of punishment became payment of a so-called "debt" to "society", while the hapless victim is forced to pay taxes for the support of his persecutor in jail. (On the history of the legal concept of restitution and its decline, see the excellent work by

Stephen Schafer, *Restitution to Victims of Crime*, Chicago: Quadrangle Books, 1960).

My contention, however, is that simple restitution is not enough. In the first place it would grant to the thief a virtual license to steal; if A steals \$5,000 from B, A would rest secure in the knowledge that the worst that could happen to him is that he would have to pay back the \$5,000 (the including of interest and the cost of apprehension doesn't change the magnitudes very much.) Secondly, the restitution concept cannot handle satisfactorily what happens to the criminal who assaults or maims or murders his victim; an attempt to assess a scale of monetary equivalents which he would be forced to pay the victim (or, in the case of murder, his heirs) is grotesque, and was one of the great failings of the ancient law. A beaten man does not simply have to pay medical costs; he loses his dignity, he suffers pain, and he suffers the invasion of his most precious possession: himself.

I hold, instead, that any criminal loses his own rights *to the extent* that he has aggressed against another; in other words, that the victim (or his heirs) can exact a punishment up to whatever may be considered equivalent or proportionate to the extent of the original crime. The attempt to do this is summed up in the famous legal maxim: "let the punishment fit the crime." There is no doubt about the fact that such measurement is often difficult; but it must be attempted nevertheless. The great turn-of-the-century English libertarian Auberon Herbert put the case very well: "... a man has forfeited his own rights (to the extent of the aggression he has committed in attacking the rights of others . . . It may be very difficult to translate into concrete terms the amount of aggression, and of resulting restraint; but all just law seems to be the effort to do this. We punish a man in a certain way if he has inflicted an injury which lays me up for a day; in another way if he takes my life. No doubt the law of every country is most imperfect . . . but there is generally underlying it the view (which is, I think, true) that the punishment or redress - both in civil and criminal matters - should be measured by the amount of aggression; in other words that the aggressor - after a rough fashion - loses as much liberty as that of which he has deprived others." (Auberon Herbert and J. H. Levy, *Taxation and Anarchism*, London: The Personal Rights Association, 1912, p. 38.)

How do we begin to approximate proportionality? A few guidelines present themselves. First, in the question of theft, the above criminal A who stole \$5,000 should *also* have \$5,000 taken *from him*. In short, he should have to pay back the victim, B, *not only* the original \$5,000 (plus interest and costs) but also another \$5,000 which is the amount that he forfeits as punishment for the act of aggression. This principle of double payment has been accurately termed by a libertarian wag "two teeth for a tooth." In the case of personal assault, it seems clear that the most precise proportionality is to inflict the exact same beating or assault upon the criminal as he had inflicted on the victim - although, here, too, more must be added to compensate the victim for the terror of uncertainty and sudden invasion of rights that accompanied the original act, and that a simple equivalent beating cannot really equal. In the case of murder, of course, the only equivalent is capital punishment, and it is precisely this fitting of the punishment to the crime that is the rational groundwork for this maximum penalty. The case for prisons is not the prison *per se* but the probable necessity of isolating the criminal from his future victims: the idea that the prisoner should labor in prison until his victim is fully compensated was, again, prevalent in older law, and was Herbert Spencer's suggestion to be restored as the guiding principle of prison punishment. Of course, it should also be noted that in the future libertarian society where *all* land, in-

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cluding streets, is privately owned, much of the need for segregating criminals will be taken care of by not allowing criminals or risky types into various private areas: the rules for admission being of course determined by the land and street owners themselves.

The concept of *vengeance* has received a very bad press in recent decades, but I have never seen a satisfactory refutation of it; invariably the modern punishment theorist quickly dismisses it as "barbaric" before he races on to treat the deterrence (utilitarian) or "reform" (liberal-humanitarian) concepts of punishment. The pseudo-humanitarian concept of "reform" I have already discussed in the "Attica" editorial; and to rely primarily on deterrence leads one into the *genuine* barbarism of — say — advocating capital punishment for stealing an apple and a much *lesser* punishment for murder, since most people have an innate reluctance to commit murder while many people are not loath to steal apples, so that more intensive deterrence is then required. In my view, proportionate vengeance is not only the most just, but also the most *genuinely* humanitarian, of these three alternative theories of punishment. In any case, I see nothing wrong with the desire for vengeance; if a man's infant daughter is cruelly butchered, why should he not desire the butchery of the criminal in return, and why should he not have this desire executed? Professor Schafer well calls this exaction of vengeance "spiritual restitution" to the victim; most libertarians would agree to material restitution of a theft — why not spiritual restitution as well? Schafer writes: "The evil visited on the wrongdoer in punishment is intended . . . to endeavour to compensate the victim for his encroached or destroyed right by offering him some spiritual satisfaction . . . it is generally accepted that one of the tasks of punishment is what might be called 'idealistic damages' or 'spiritual restitution.'" (Schafer, p. 120). (See also the defense of capital punishment by Donald Arwell Zoll, in "A Wistful Goodbye to Capital Punishment," *National Review*, December 3, 1971).

In the libertarian society of the future, however, there would still be a way out for pacifists and quasi-pacifists like Mr. Halliday. For all prosecution would be exercised by the victim or his agents, and not by any sort of "district attorney" presuming to speak for "society" as a whole. If, then, Mr. Halliday were victimized by criminals, he could choose not to exercise his right to punish at all, or may choose to exercise it to any extent less than is his due. (Or, if he were murdered, he could instruct his heirs in advance, by notice, not to do so.) Alternatively, he could make a voluntary contract with the criminal, allowing the wrongdoer to buy his way out of any exacted punishment. If, for example, someone beats up Mr. Halliday,

he could allow the criminal to buy his way out of a retaliatory beating. The situation, then, would be truly libertarian. Pacifists, or others who desire money over precise vengeance, could relieve the criminal of his punishment; those of us who prefer vengeance would of course allow such victims to do so. Why will *they* not allow *us* to exact due punishment? And if they don't, what sort of libertarianism is this? In the libertarian society of the future, moreover, Mr. Halliday could continue to try to convince future victims to become pacifists or quasi-pacifists; while I could continue to persuade them otherwise. No one could compel those victims who are opposed to punishment to exact such punishment; and, similarly, *they* should not be able to prohibit vengeance-bound victims from doing so.

I need only comment on a few observations by Mr. Halliday. First, there is no attempt here to measure subjective pain or utility, but to "measure" objective deeds of aggression and retaliate in kind. Second, Mr. Halliday is really saying that it is impossible to have *any* sort of objective law, or objective law code (not just for punishment) without a coercive monopoly government. Here he is simply falling into Miss Rand's trap. Objective law existed long before government (e.g. in the common law, the law merchant, admiralty law) and was worked out by privately competitive judges long before the State imposed its monopoly. Since law *is* objective, it is discoverable by reason and doesn't need government to formulate it — on the contrary, government, subject as it is to the caprice and whims of legislators, is most unlikely to respect objective law, as history has amply demonstrated. The objective Law Code would be the libertarian law of outlawing aggression against person and property, defining what that property is, setting up rules for trials to determine who the criminals are (e.g. permitting cross-examination of witnesses, etc.), and, in the libertarian society that I envision, all the privately competing courts and defense agencies would be pledged to abide by this objective Code. Any court which flouted this libertarian Code and imposed its own rules would be deemed to be itself guilty of aggression (e.g. courts which decided that all redheads are *ipso facto* criminals.)

Third, Mr. Halliday liberally sprinkles his comment with smear terms: "sadistic", "vindictive", "hater", etc. These are simply that — smear terms — and prove nothing. Not only do I see nothing wrong with "hating" crime and injustice, I hold that genuine love of justice *requires* such hatred. As Professor Zoll writes, "A humane society is a compassionate society, but compassion is only significant in terms of justice, of a sensitivity to the valid claims of men which rest upon the restraints on usurpation, aggression and terror." (Zoll, p. 1354).

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