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STOP REAGAN!

The newly burgeoning candidacy for President of Ronald Reagan is a grave danger and a menace to individual liberty, and libertarians should hope that he is knocked out of the box as quickly as possible. The Reagan candidacy is a menace on three levels: (a) the content of a future Reagan presidency; (b) the direction in which the Reagan movement will push the weak-kneed and centrist Ford administration in the coming months; and (c) the illusions that Reaganism will sow among libertarians and among instinctively libertarian voters throughout the country. The fact that this statement will shock and aggravate many libertarians is itself a sign of the gravity and the depth of the illusions that Reaganism has already sown among libertarians across the country.

What is Reagan and why is he a looming menace? In brief, because Reagan is, purely and simply, a **conservative**, with all that that label implies. Being a conservative, Reagan has consistently been an ultra-hawk on foreign policy, constantly pushing toward a war position across the globe; has shown himself to be weak — at the very best — on civil liberties; and has pledged a devotion to domestic and economic free-market policy which is all rhetoric and no action. The fact that Reagan likes to quote from Bastiat means little when ranged alongside his warmongering foreign policy and his lack of concrete action to roll back the State at home.

How long will it take libertarians to realize that, on the scale of important issues, war and foreign policy are far more important than domestic consideration? What benefit would come to liberty from a President who would cut welfare expenditures, but embroil us into a series of wars, or even into the holocaust of World War III? The biggest single enemy of liberty, the biggest threat to the life, liberty and property of Americans and of the entire human race is modern nuclear warfare. We need above all a President who would act to remove the menace of such world destruction from over our heads, and not one who would act to bring such devastation to pass. Yet Reagan is and has long been an ultra-hawk. Furthermore, in addition to the danger of war and military intervention abroad, Reagan, as a good conservative, consistently pushes for greater militarism at home: for increasing military expenditures, and for the grave threat to domestic liberty and to distortions of production and the American economy which such militarism entails.

Every significant leap away from liberty and into statism in the past century has come about as a result of American (and other countries') entry into war, aggression, militarism, and empire. War has been the great killer of human liberty as well as human lives. Yet Reagan would not only bring war far closer but would rivet much further the yoke of militarism upon the lives, liberty, and property of all of us.

It should also be remembered that the power of the President in domestic affairs is strictly limited, limited by a Congress which will remain solidly in Democratic hands. Where the President's power is frighteningly unlimited is in foreign affairs, and that is precisely where Reagan is at his most dangerous — this would-be "Wyatt Earp at the O.K. Corral", as the British delegate to the U.N. spoke of the new conservative-Social Democratic hero, Pat Moynihan. Think: do you want

Ronald Reagan's finger on the nuclear button?

Reagan has been fully consistent with his hawk-conservative image. His was one of the first voices to protest at the alleged surrender to the Russians when the hawk Schlesinger was fortunately booted out of the Secretaryship of Defense. Reagan has opposed even the picayune SALT agreement to limit the arms race, and has consistently pressed for increases in the swollen boondoggle of military spending. On foreign affairs he has attacked *detente* — which at least has defused some of the most hazardous aspects of the Cold War — and has fought the idea of at least normalizing relations with Cuba and of abandoning our collectivist imperialism in the Panama Canal Zone (collectivist in that all the Americans there are employees of the U.S. Army occupation force.)

Neither has Reagan been a stalwart of civil liberties. Can we really trust Reagan to abolish victimless crimes to refrain from bugging and spying on American citizens? Reagan's record in going down the pike with the tyrant Nixon until the very end is scarcely reassuring on his civil libertarian aims. Recently, Reagan has flatly refused to criticize the shameful actions of the FBI in harassing, spying upon, and blackmailing Martin Luther King.

So if Reagan is bad on foreign policy and bad on civil liberties, what's he good on? The budget? But in California, during his eight years as governor Reagan doubled the size of the state budget, and strove to cement the current neo-mercantilist "partnership" between government and business. His free-market rhetoric is fine, but rhetoric divorced from action is not simply unfortunate; it is worse than useless, for it misleads everyone, supporters and opponents of the free economy alike, into believing that Reagan is really an economic libertarian. Four years of Reaganite statism will simply convince **both** sides that a truly substantial rollback of Big Government is impossible; for "even Reagan came out for . . ." will be the universal cry. By spouting libertarian rhetoric that he has no intention to put into reality, Reagan does grave disservice to the libertarian cause, not the least because he has duped many libertarians and quasi-libertarians into following his star.

Finally, even Reagan as contender, let alone as President, is a threat to peace and liberty, for the stronger the showing he makes, the more likely his candidacy will be to push the weak centrist Ford into more and more hawkish positions on foreign policy. What happens in 1975-76 is particularly important because the Ford administration has been stalling on implementing the SALT II "pre-agreement" that Ford and Brezhnev concluded at Vladivostok last year. For the major problem in an arms ceiling accord is the insistence of the U.S. in continuing work on a new "cruise" missile, tipped with nuclear warheads. The problem of the cruise missile is simply this: Russia's greatest fear is that America may proceed to develop a "first strike capability", enabling the U.S. to launch a nuclear war while fending off Soviet retaliatory missiles. Nothing is better calculated to drive the Russians into panicky military actions and arms escalations. Secondly, the best thing about the current nuclear "balance of terror" is that both sides are now able to inspect and verify

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On Nozick's Anarchy, State, And Utopia — I

(Editor's Note: Last Year, Robert Nozick's *Anarchy, State and Utopia* was published, gaining the prestigious National Book Award in 1975. This book, by a Harvard professor of philosophy, defends the minimal, laissez-faire state and attempts to rebut the case for free-market anarchism. A complex work, it is fitting that the book be treated complexly, for the book has two kinds of importance, external and internal to the libertarian movement. Externally, the fame of the work has had great importance in making the topic of libertarianism and anarchism respectable for the first time in philosophy courses and facilities, and paving the way for libertarians to write term papers and dissertations in a previously verboten area. The book has also caused considerable shock and bewilderment in left-liberal intellectual circles. Precisely because the book is by a Harvard professor, it cannot be ignored, as it undoubtedly would had Nozick been a professor at Little Rock State Teachers. It was precisely the anguish at a Harvard man writing such a book that forms a

central theme in the disgusting review of the book in the journal *Political Theory* by the eminent political philosopher Brian Barry.

While Nozick's book has aided the libertarian cause externally, it plays no such role within the movement; for here Nozick's main thrust has been to attack the anarchist position. Nozick's anti-anarchism deserves a considered critique, which has already begun in a *Reason* (November, 1975) review by Professor Eric Mack. The *Libertarian Forum* plans to aid in this task by printing, one at a time (because of space considerations) the brilliant critiques of Nozick presented at the Third Libertarian Scholars Conference on October 25 at New York City.

This first essay in the series is by Mr. Randy E. Barnett, a student at Harvard Law School. Mr. Barnett wrote his bachelor's honors thesis at Northwestern University on the philosophy of anarchism.)

Whither Anarchy? Has Robert Nozick Justified The State?

By Randy Barnett

One can appreciate *Anarchy, State & Utopia* on many levels. Its emphasis on individual freedom is a refreshing change of pace. It questions assumptions that have long been sacrosanct. It puts forth a theory of entitlement which is nothing short of remarkable in this day and age. And most importantly, it is being taken seriously by the press and, hopefully, the establishment philosophers as well.

But Professor Nozick has attempted more than this. He has attempted to refute the anarchist position. This is a rare endeavor. Few have taken the anarchist position seriously enough to refute it. Few understand it well enough to do it justice. Dr. Nozick displays an intimate knowledge of the anarchist position and yet he rejects it. His refutation is novel, intricate and many faceted. But does it succeed? In this paper I shall try to outline a few reasons why I think it does not.

Nozick begins by asserting that "Individuals have rights..." (ix).^{*} The purpose of the first part of his book (the only part which we shall treat here) is to see if it is possible to evolve a state or "state-like entity" (118) without any violation of individual rights. He concludes that such a thing is possible and likely as well. I shall confine my examination to the possibility that a state might exist which does not violate individual rights *ab initio*.

"In a state of nature an individual may himself enforce his rights, defend himself, exact compensation, and punish." (12) But an individual may also delegate this right to friends, relatives, or hirelings. A company which specialized in defense of its customers Nozick would call a protective association. (12) The protective association has no rights of action other than the sum of the rights delegated to it by its subscribers. (89) To this point the anarchist has no problem. At least he thinks he has no problem. He has yet to hear what Professor Nozick believes is the content of these individual rights.

Nozick analogizes rights to a sort of boundary which "circumscribes an area in moral space around an individual." (57) What happens if one person does something which risks crossing the boundary of another? Nozick answers that you may prohibit the risky activity provided that "those who are disadvantaged by being forbidden to do actions that only might harm others must be compensated for these disadvantages foisted upon them in order to provide security for the others." (83) This he calls the "principle of compensation." It "requires that people be compensated for having certain risky activities prohibited to them." (83)

It follows from this principle that an individual may be prohibited from using a procedure of enforcing his rights which is risky or unreliable, provided that the principle applies to this type of activity. Nozick gives two parallel justifications for applying the principle to dispute settlement.

Since he maintains that a protective association has no rights of action other than the sum of the rights delegated to it by its subscribers (89), Nozick first seeks to ground his justification on some right held by every individual. He turns hopefully to the notion of "procedural rights." "Each person has a right to have his guilt determined by the least dangerous of the known procedures for ascertaining guilt, that is, by the one having the lowest probability of finding an innocent person guilty." (96) The association's right to prohibit risky procedures, therefore, derives directly from the individual's procedural rights.

Secondly, Nozick insists that the prohibition of "unreliable" procedures is valid even if there were no procedural rights. He contends that epistemic considerations govern the use of retaliatory force. That is, you must know that an aggressor has violated someone's rights before you may retaliate. Use of force on an aggressor without knowing that he is guilty is itself aggression. "If someone knows that doing act A would

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*All parenthetical numbers are from *Anarchy, State & Utopia*, Basic Books, 1974, Robert Nozick.

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arms agreements, and to find out what the other side is doing with its missiles. They are able to do this because both sides have satellites which can spot the deployment of all nuclear and other missiles and strategic bombers. The cruise missiles threaten to destroy that balance because they can be fired with great accuracy from ordinary planes and ordinary submarine torpedo tubes. A U.S. cruise missile would mean that the Soviets would have no way of knowing how many such missiles we had, how they were deployed, or whether we were readying them for a surprise first strike attack against Russia. One of the dangers of Schlesinger is that he was a firm supporter of cruise missile development, which might be ready for actual testing next year. Kissinger is less firmly committed to the cruise missile. The greater the Reagan strength in the primaries, the more the Ford administration will be pushed to proceeding on this menacing course for world peace and for any hope of limiting or eventually reversing the arms race.

And so, while some of the nation's media persist in thinking of libertarians as some sort of ultra-wing of the Reaganite movement (and some libertarians unfortunately agree), libertarians should hope instead for a smashing defeat of Reagan as soon as possible, and his ouster from the Presidential race.

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violate Q's rights unless condition C obtained, he may not do A if he has not ascertained that C obtains through being in the best feasible position for ascertaining this." (106)

On this analysis, a protective association may prohibit others from using procedures which fail to meet some standard of certainty since failure to meet this standard means that the enforcer lacks the requisite knowledge of guilt.

Once you swallow the principle of compensation and its applicability to dispute settlement, the introduction of the minimal state-like entity is all downhill. Nozick envisions one association coming to dominate the market. By his principles, this association would have the right to prohibit all competitors who in its opinion employed risky procedures (provided, of course, "compensation" was paid). Voila! We have a state-like entity which arises without violating anyone's rights, right?

Everything hinges on whether Nozick has successfully outlined an "invisible hand" explanation of the state where no rights are violated in the process. Consequently, Nozick's conception of rights and their basis becomes crucial here. Yet early in the book he apologizes for not presenting a theory of the moral basis of rights. (xiv) Still it is possible to discern a notion of rights being used here.

A right is a freedom to do something, that is, to use property which includes one's body in a certain way unimpinged by external constraints (force or threat of force). The right of self-defense is contained within the concept of right itself. It is simply a means of exercising your right when someone is trying to prevent you from doing so. The fact you have a right of action means you may act in that way even if another attempts to prevent this. Self-defense, then, is implicit in the notion of rights.

Where do rights come from? How are they grounded? Nozick doesn't say and I will not pretend to offer a final answer to this question. But it seems that since the concept of right carries within it the freedom to use property, rights are created along with property ownership. To my way of thinking this is what ownership means. Rights (to use property in a certain way), then, can be homesteaded, exchanged, or bestowed to employ the Lockean trichotomy.

Has Nozick's minimal state violated individual rights? You remember that the reason the dominant protective association has a right to prohibit risky, unreliable enforcement methods is that its members, indeed all people have procedural rights. "Each person has the right to have his guilt determined by the least dangerous of the known procedures for ascertaining guilt, that is, by the one having the lowest probability of finding an innocent man guilty." (96) "The principle is that a person may resist, in self-defense, if others try to apply to him an unreliable or unfair procedure of justice." (102)

But where would such a right come from? Was it homesteaded, exchanged or received as a gift? And does this right of self-defense bear any resemblance to the right of self-defense I discussed earlier? Nozick deals with none of these questions. He simply assumes the existence of procedural rights and then proceeds to speculate on what form they should take. This does not mean that Nozick is wrong. It means only that we have no reason to believe he's right.

At the same time Nozick chides the natural-rights tradition which, he says, "offers little guidance on precisely what one's procedural rights are in a state of nature, on how principles specifying how one is to act have knowledge built into their various clauses, and so on. Yet," he continues, "persons within this tradition do not hold that one may not defend oneself against being handled by unreliable or unfair procedures." (101)

I maintain that this is precisely what the natural rights tradition does hold or, at least, should hold: That there are no natural procedural rights. Let me briefly defend this claim.

In the state of nature one has the right to defend oneself against the wrongful use of force against person or property. But if you commit an aggressive act, the use of force by the victim to regain what was taken from him is not wrongful. If you have stolen a T.V., the rightful owner may come and take it back. You may rightfully resist only if you are

innocent or have some legitimate defense. What are we then to make of procedural rights?

Though only the innocent party may rightfully use self-defense, it is often unclear to neutral observers and the parties involved just who is innocent. As a result there exists the practical problem of determining the facts of the case and then the respective rights of the disputants. But I must stress here that this is a practical question of epistemology not a moral question. The rights of the parties are governed by the objective fact situation. The problem is to discern what the objective facts are, or, in other words, to make our subjective understanding of the facts conform to the objective facts themselves.

The crucial issue is that rights are ontologically grounded, that is grounded in the objective situation. Any subjective mistake we make and enforce is a violation of the individual's rights whether or not a reliable procedure was employed! The actual rights of the parties, then, are unaffected by the type of procedure, whether reliable or unreliable. They are only affected by the outcome of the procedure in that enforcement of an incorrect judgment violates the actual rights of the parties however reliable the procedure might be.

The point is that you have a right of self-defense if you are innocent but not if you are guilty. Only if a procedure finds an innocent man guilty and someone enforces that finding has anyone's rights been violated. You have the right to defend yourself against all procedures if you are innocent, against no procedures if you are guilty. The reliability of the procedures is irrelevant. Unless an innocent person agrees to be bound by the outcome of a judicial proceedings, he retains his right of self defense even after a "reliable" procedure has erred against him.

The purpose of any procedure then, is to induce adherence to the decisions of the arbitrators. The parties and the community must be convinced that there is a good chance of a just decision before they will be willing to bind themselves to any possible outcome. In a culture which held that rights are based on the facts of the case, disputants would demand procedures suited to discover those facts. The better it worked, the more acceptable it would be. Thus procedures would and should be judged on the basis of utility.

Procedures, then, for discovering the fact situation are not to be confused with rights themselves. You only have a right to a procedure, like any other service, if someone, e.g. your protective association has contracted to provide you with it.

What then of Nozick's second line of attack — the epistemic justification. "On this view, what a person may do is not limited by the rights of others. An unreliable punisher violates no right of the guilty person; but he still may not punish him." (107) It is not enough that the guilty party is guilty. The punisher must know he is guilty. One is tempted to label this the 'what you don't know can hurt you' approach.

This approach neatly avoids an assertion of procedural rights and, in addition, is a conscious effort to answer the objection that a guilty person may not defend himself against unreliable procedures and may not punish someone else for using them upon him. (103) Our attention is now shifted from the rights of guilty persons to the "morality" of protective associations. From the question of whether a guilty person can defend himself against his victim we now move to consider whether a third party can protect the guilty person if that third party isn't sure of the client's guilt. "But," as Nozick asks, "does this difference in knowledge make the requisite difference?" (108)

He believes the epistemic problem at least allows the protective association to delay the imposition of penalties on its client until it can determine his guilt. This is provided they pay compensation for the delay if it turns out that his client is guilty. While I am unsure about the rightfulness of this delay, it does not appear to present a major difficulty. Nozick, however, goes on to assert that a person using an unreliable procedure "is in no position to know that the other deserves punishment; hence he has no right to punish him." (106) It is one thing to assert that if a protective association delays sanctions against its guilty client it must compensate the victim for the delay. To claim that the association may rightfully prevent any punishment by an enforcer it deems unreliable is quite another matter.

I leave aside the question of whether anyone has the right to "punish" if by punish we mean something other than "make restitution to victims." If punishment were limited to restitution, this might minimize Nozick's
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visceral reaction against the actions of third parties. For clearly he fears the prospect of persons stealing from or hurting someone and then trying to dig up some past indiscretion by the victim in order to "justify" their aggression.

A restitutional standard would justify the actions of thieves who stole from someone who turned out himself to be a criminal only if the thieves had given their booty to the original victim. If the thieves kept the loot, the fact that the victim was himself a criminal would in no way justify their acts. This is hardly a *carte blanche* for indiscriminate "punishing."

But Nozick's epistemic justification is more than a gut reaction against loopholes for criminals. It sets forth a principle of morality. Unfortunately he doesn't justify this principle beyond its deterrence value on enforcers using unreliable procedures. (105) And even on this point he concedes that "not anything that would aid in such deterrence may be inflicted;" but the true question is the (moral) legitimacy of "punishing after the fact the unreliable punisher of someone who turned out to be guilty." (106)

But while this epistemic consideration may be relevant as a practical problem or even a moral problem, I question its relevance to issues of rights. (And I'm sure Dr. Nozick shares my contention that rights and morals are not co-extensive.) If the nature and moral foundation of rights are what I alluded to earlier — a freedom to use property, created along with property ownership — then epistemic considerations cannot create or alter rights. The right of self-defense we contend is a direct result of an infringement on a property right. Its purpose is to protect and restore what is rightfully owned. Since it is ontologically grounded this right exists against an aggressor independently of whether we know who the aggressor is. Consequently we are entitled to take compensation from the actual aggressor whether or not we are sure of his guilt. That is, the actual guilt or innocence of the suspect as opposed to our subjective knowledge of his guilt determines if taking restitution from him is justified.

Nozick's epistemic considerations are relevant to whether one who indiscriminately takes restitution from people he's not sure are aggressors (but happens by chance to be right) is a good man. This is a question of morality, not rights. Epistemic considerations are also relevant when we realize that we are likely to aggress against innocent people and be responsible to them if we aren't careful about whom we "punish." This is a practical question, not one of rights.

This analysis, like the analysis of procedural rights, highlights the crucial need for a theory of rights and the difficulties we face in political philosophy without such a theory. The fact is that in laying down my argument, I too fail to provide a detailed theory of the moral basis and nature of rights. The purpose of this treatment, however, is merely to show how essential such a theory is and how starkly divergent conclusions flow from even a slightly different conception of rights.

How then are we to properly view the relationship between procedural safeguards, epistemic considerations for enforcers and the right of self-defense? Perhaps Dr. Nozick's intriguing distinction between moral constraints and moral goals would be of service here. "The side constraints view forbids you to violate these moral constraints in the pursuit of your goals; whereas the view whose objective is to minimize the violation of these rights allows you to violate the rights (the constraints) in order to lessen their total violation in the society." (29) Let me briefly clarify this.

We may take as our moral goal or end a certain state of affairs. Anything which enhances this state of affairs we may do provided we don't violate certain moral side constraints on our actions. Nozick correctly argues that the protection of rights is not a moral goal since this would allow us to violate the rights of a few in order to generally enhance the rights of the many. For example, one may not torture the innocent person to gain information which will prevent the explosion of a bomb even though this would generally enhance the goal of protecting people's rights (in this case the rights of the potential victims). Rights of individuals are moral side-constraints. We may strive to achieve our goals

in any way which does not violate an individual's rights.

I would adapt this view to our discussion here. For practical and moral reasons, procedural fairness and knowledge by enforcers of the guilt of their suspects are moral goals to be striven for. Our efforts to achieve them, however, cannot violate the rights of any individual. To punish a victim for taking restitution from his actual aggressor just because he wasn't sure it really was his aggressor is a violation of that victim's right of self-defense and, therefore, a violation of our moral side-constraint. The right of self-defense, then, dictates that procedural fairness and epistemic certainty are goals, not constraints.

In this discussion, I've tried to show how Professor Nozick has failed to apply his "principle of compensation" to dispute-settlement situations, the lynch-pin of his justification of the ultra-minimal state. But what of this principle of compensation itself? I think Professor Nozick will agree that if it fails there can be no doubt that that the ultra-minimal state is unjustified.

"The principle of compensation requires that people be compensated for having certain risky activities prohibited to them." (83) In other words it is okay for you to forcibly forbid another from engaging in a risky activity provided you compensate him for it. Nozick anticipates our response by pointing out that "it might be objected that either you have the right to forbid these people's risky activities or you don't. If you do, you needn't compensate the people for doing to them what you have a right to do; and if you don't, then rather than formulating a policy of compensating people for your unrightful forbidding, you ought to simply to stop it." (83)

Nozick claims this dilemma is "too short" (83); that there is the middle ground of "prohibit so long as you compensate." This middle ground, he says, is based on a distinction between "productive" exchange which you have a right to engage in and "non-productive" exchange which you do not. Since you have no right to non-productive exchange in the first place, the prohibition of such an exchange isn't a violation of your rights.

In a productive exchange each party is better off than if the other party's activity wasn't done or the other party didn't exist at all. (84) "Whereas if I pay you for not harming me, I gain nothing from you that I wouldn't possess if either you didn't exist at all or existed without having anything to do with me." (84) The principle of compensation merely says that if the prohibition of a non-productive exchange causes you to forego some benefit (other than what you might have charged in the exchange) you are entitled to compensation.

Our concern in this discussion is not so much whether such a distinction exists, but whether such a distinction is relevant to political philosophy or, more particularly, to rights. What seems to have occurred here is an unfortunate mixing of economic explanation with moral imperatives. The concept of an *ex ante* increase in individual psychic utility as a result of exchanges was developed as an axiomatic explanation of why voluntary exchange occurs. It was never intended to serve as a moral or political justification of that exchange. Its use as such disregards the whole notion of title.

If something belongs to me what I own is the title to that object. I may do with it what I wish and that includes exchanging my title for other titles. The reason I exchange is to maximize my psychic utility but this says nothing about my right to make the exchange. In Nozick's example of a blackmailer it is true that the black mailed party would be better off if the blackmailer didn't exist (as opposed to an auto purchaser who would not be better off if G.M. did not exist). But the reason why this is true is because the blackmailer is a free man who has the right to tell what he knows as we all do. Wouldn't a businessman be better off without competition? If a rival company offered to leave the market for a price would the remaining company have the right to prohibit any further competition by the rival simply because the rival was offering a non-productive exchange? I think not.

Nozick admits that even under his principle of compensation, the blackmailer may charge for what he foregoes which Nozick incorrectly assumes to be little or nothing. What the blackmailer foregoes is his right to use his body in any way which he sees fit, i.e. speech. This introduces the fallacy of a "just price." There is no just price for this right or, more precisely, his title to use some property — the body — in a certain way. It

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From The Old Curmudgeon

My New Year's Wish For The Movement

I know it's a hopeless fantasy, but I can dream, can't I? My devout wish for the libertarian movement, and for the state of my own blood pressure, is for a whole year's moratorium on the following:

On Survival. I am sick and tired of reading about how we should all stock up on a year's supply of dried beans, and back-pack it to the hills. Fellas, I've got news for you: I ain't eating any dried beans, and I ain't back-packing it to the hills. I will stick to the market, crippled though it may be, and continue to dine in plush urban comfort on Pepsis, vodka martinis, and veal parmigiana. I have often wondered why our bean-eating back-packers don't really head for the hills and leave the rest of us alone and blissfully outside of their consciousness. The horrible thing is that I have a dark suspicion that our tub-thumping survivalists are themselves spending their time in urban comfort guzzling martinis and wolfing down the aforesaid parmigiana.

On the New Libertarian Country. For over a decade now I have heard the drums beat for the new Eden, an island, natural or man-made, that would live in either anarchistic or Randian bliss. One would think that if man can really learn from experience, then the total and abject failure of each and every one of these cockamamie stunts should have sent all of their supporters a "message"; namely, to come back to the real world and fight for liberty at home. Come to think of it, I don't see very many of the New Countryites shlepping out to Minerva, Abaco, Atlantis, and ocean platform, or a moon of Jupiter. Once again, I would love at least a year of these brethren removing themselves from the consciousness of the rest of us: either by remaining silent and returning to concerns nearer home, or, preferably, really hieing themselves posthaste to the New Atlantis and Randspeed to them.

On Psychobabble. Wouldn't it be great? A whole year of **nothing**, not a

word, not a peep, about "open relationships", "growing as a person", "getting in touch with your feelings", "opening up a space", "non-authoritarian relations", "living free", and all the rest of the malarkey. But, then, what in the world would all our psycholibertarians have to talk about? Well yes, that would be an interesting experiment indeed. Either they would have to painfully make their way to developing an interest in history, current affairs, economics, political philosophy — in short, the real world, or else they would have to descend into a blissful silence (blissful, that is, for the rest of us.)

On Gripping from the Sidelines. It is easier, I suppose, to sit around and pick holes in the 85th word of the eighteenth paragraph of the fourth press release by Roger MacBride or of someone else who actually writes or does something to advance the cause of liberty, than actually to work for liberty yourself. That way, you have the luxury of hugging the mantle of "purity" tightly around your shoulders without having to do anything to move toward a libertarian society. But how about a year of concentrating on one's own constructive action? Again, it would be interesting to see whether a year of abstinence from griping would really clear the decks for constructive work (And, come to think of it, the gripers and the psychobabblers are often one and the same.)

On Reading Science Fiction. There is nothing wrong with science fiction per se, but it has become all too clear that for many libertarians science fiction has taken on a cultic status. A year's abstinence from sci-fi would clear the decks, and clear a lot of minds as well. But for what? What in the world is there to read if you are deprived of science fiction? Well, look around, and maybe a new world of other things to read will be revealed.

An impossible dream, this magnificent moratorium? Perhaps. But maybe if we wait till next year

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has no intrinsic, objectively measurable value. Its only fair price is the freely bargained one. Anything less would mean a right of title has been taken by force from its owner. By definition this is a violation of the blackmailer's rights.

This just price fallacy permeates the whole of Nozick's discussion of "compensation". It confuses the morally permissible exchange with the penalty for violating a right which is compensation. If someone violates another's rights, the victim is entitled to compensation to make up for the transgression. This simply means he is entitled to what was taken from him. We don't pretend that money is the equivalent or even "fair price" for the loss of life or limb. We say only that some attempt must be made to restore to that victim what was taken from him as far as humanly possible.

The crucial distinction here is while voluntarily paying a purchase price makes an exchange permissible, compensation does not make an aggression permissible or justified. It is not permissible to deprive you of free speech provided I "compensate" you. You would have the right to defend yourself. If you were unsuccessful, unable or unwilling to defend yourself, you would then, in addition, have a right to compensation. Put in more analytic terms, voluntariness is a necessary condition for a morally permissible exchange of values. Compensation is not a sufficient condition for justifying or permitting a violation of rights.

Contrary to Nozick's principle of compensation, all violations of rights should be prohibited. That's what right means. The only way rights are abdicated is by consent of the right holder. Nozick rejects this on the grounds that "some factor may prevent obtaining this prior consent or make it impossible to do so. (Some factor other than the victim's refusing to agree)". (71) To this one must reply, "so what?" Practical problems

of obtaining consent sometimes can't be avoided it's true, but this doesn't mean that consent is not required. Nor will an argument from utility suffice since utility we saw can only be applied to moral goals and not to rights which are moral side-constraints (to employ the Nozickian distinction). Nozick is too quick to reject the principle that rights violations are always prohibited.

Whither Anarchy?

Political reality dictates that the practical burden of proof falls on those who wish to make a radical change in society. Anarchists must face this burden. But it is those who seek to impose a state, those who wish to justify their use of force against the individual who face the moral burden of proof.

As I tried to emphasize at the beginning of this paper, there are many reasons why we should be grateful to Robert Nozick for writing this book. Not the least is that he has properly perceived the moral burden of proof. More than this, he has tried to meet that burden. I have tried to determine whether he has succeeded. Has Robert Nozick justified the state? I conclude that he has not, though not for want of an intricate and ingenious effort.

It is essential to his endeavor that he show that the rise of the state violates no individual rights. He has attempted to show this by implicitly redefining rights. The crucial step in this process is the principle of compensation and its application to dispute settlement. I believe that the application of the principle to dispute-settlement via procedural rights and epistemic considerations fails. The principle itself, I contend is grounded on a misguided economic-type explanation rather than a moral argument. Lastly I feel that Nozick's own concepts of moral constraints and moral goals helps us to see where he falls short.

Nozick's book neither claims to be nor succeeds in being the last word on the anarchist-minimal state controversy. For that matter, neither does this paper. I conclude simply that Nozick fails to meet his burden of proof. The state remains unjustified. ■

Recommended Reading

Machan On The Kantian 'Purists.' It was a pleasure to read Professor Tibor Machan's essay in the December Reason, "Libertarianism: Has Its Time Really Arrived?" It is an excellent, lucid, and well-written defense of Roger MacBride and an attack on the arguments of the Left Opposition, whom Machan properly identifies as Kantian moralists: namely, people who "hold onto certain 'intuitive', purely formal moral principles and ask everyone to stick by them, come hell or high water", regardless of consequences, in short the "deontological" view that "virtues could have nothing to do with the consequences of one's conduct, only with the pure basis of its motivation." Machan also correctly points out that these Kantians confuse moral principles with political theory. As Machan writes: "there is no a priori moral principle in terms of which no one with a record of tax avoidance should be denied a place on the (Libertarian) party's ticket. Libertarianism is not an ethical system; it is a political theory . . . Libertarianism includes principles that should govern the administration of political or legal justice, not principles that should govern all private conduct."

Machan further points out that representing the Libertarian Party in a campaign is itself not a political act but a private action, a private "business position." "And for purposes of running a campaign so as to bring libertarian political philosophy to the attention of people, the proper and improper moves cannot be evaluated by reference to libertarian political principles. To attempt to do so is to commit an error some philosophers call the category mistake. Imposing the ethics of government on the conduct of private individuals is to confuse the issue very seriously indeed."

More broadly, we might add that grave ethical errors are bound to set in when people divorce themselves from natural law ethics and natural rights political philosophy. Natural law ethics is an integrated system which combines attention to the essence of an act, to its grounding in the nature of man and the universe, and therefore to its natural law consequences. The tragedy of post-classical ethics has been to sunder ethical philosophy into two, equally fallacious and unsatisfactory parts: either utilitarianism, which abandons concern for the moral essence and nature of action to focus only on a "cost-benefit" analysis of its consequences; or into Kantianism or other forms of intuitive ethics, which plucks "absolute" moral principles out of the thin air and without grounding in natural law or regard to consequence. Free-market economists have been, almost entirely, utilitarians, and therefore all too willing to abandon libertarian principles at the drop of an ad hoc hat; and now we have our "purist" Kantians who see "moral principles" under every conceivable bed, and sniff "sellout of principle" at any attempt to set strategic priorities, and to act in the real world to bring about the libertarian ideal. In both cases, with both sets of fallacies, victory of liberty in the real world becomes impossible.

Hamill On The Counter-Culture. It is not often one finds something to recommend in the New York Sunday Times Book Review, so how much the more delightful to find Pete Hamill's superb, trenchant, and hard-hitting attack on two new books lauding the counter-culture (November 30)! (Books by Jim Hougan and Theodore Roszak.) Hamill laces into the mysticism, irrationality, solipsism, and flight from technology and reality of the counter-culture.

Attacking both books as examples of "Doomsday Chic", Hamill points out that Hougan calls for "decadence" and Roszak for mystical religion as their "solutions" for current world problems. Hamill writes: "Theodore Roszak walks the street with the sandwich board that reads, 'religious revival'; Jim Hougan offers 'decadence'; both advocate a form of staring at the bellybutton. In their vision of the world someone else will have to pick up the garbage."

What does Hougan mean by the "decadence" he wants to take over? Quoting from Hougan, "Its edges are defined by a preoccupation with the senses, an affection for the moment, and an insistence upon the supremacy or inconsequentiality of an individual's existence or acts. Decadence takes place at the extremity of self-indulgence, but it is seldom, if ever, marred by self-importance." Hamill's gem of a comment: "Wonderful. Feel like raping a baby? How about driving a knife into the throat of a school teacher? Okay, as long as you have an 'affection for the moment' and your act isn't 'marred by self-

importance.'" Hamill adds: "The counter-culture was really a supermarket, with counters labeled drugs, Marx, rock, Zen and love; the children of the middle class sampled them all frenetically, and now the ruined, demoralized remnants of the guitar army have headed for the woods, to play Nero (a Hougan hero) while the industrial Rome burns."

Rozzak sees and hails the advent of a "new", "evolutionary" "shift of consciousness", a "transformation of human personality." As Hamill writes: "Roszak bases these fantastic claims on the revived interest in the occult, in Oriental religions, in disciplines such as Yoga . . . and all the other faddish examples of quackery, from the Reverend Moon to the Esalen Institute, that exist on the fringe of American Life . . . In flight from the hard, tedious, boring work of truly changing the injustices of the real world, Roszak embraces the antirational with a fervent, hyperbolic, all-forgiving bear hug." In particular, Roszak embraces "the Few", gurus, shamans, "spiritual masters", who, in Hamill's terms "oppose history, technology and reason with myth, magic and mystery". Roszak calls, in his own terms, for "an insurrection of the clowns and gurus, in behalf of their strange, beautiful, and transcendent sanity (sic) . . ."

Hamill's accurate and penetrating conclusion: "But if Hougan's 'Decadence' is a smarmy rationalization for quitting, Roszak's religious revival is infinitely more dangerous. Religion has led to an incredible history of slaughter and destruction; mysticism, with its insistence on passivity, has led millions down the road that ends on the diseased streets of Calcutta. Glib retreat, either to Nero's balcony or the shaman's mountaintop, is just another escape. These books are only additional items for the middle-class supermarket, placed somewhere between acid and zoroastrianism . . ." Hooray!

LP Literature

The national staff, surely one of the jewels of the Libertarian Party, has now published the first three of a projected series of very brief position papers in leaflet form. All are excellent in boiling down the libertarian position into a lucid and succinct form. The first position papers are Professor Ralph Raico's *Civil Liberties*; Murray Rothbard's *Inflation: Its Cause and Cure*; and R. A. Childs, Jr., *Libertarianism*. Roy Childs' scintillating leaflet is particularly important in providing the best brief overall summary of the libertarian position to be found anywhere; all, and especially the Childs piece, are excellent for handing out to friends and acquaintances who are interested in finding out what libertarianism is all about. Single copies of each leaflet are available free, and 100 for \$5, from Libertarian Party, National Headquarters, 1516 P Street, N. W., Washington D. C. 20005.

The superb 1975 L. P. Platform is now also available at the same address for 25¢, and lower prices for bulk quantities.

The national headquarters also publishes the periodical *L. P. News*, brilliantly edited by Bill Evers, which is undoubtedly the best libertarian news magazine. The September-October issue has the best and most judicious reportage available on the L. P. convention. In addition, the issue contains an excellent article by National Chairman Ed Crane pointing to and attacking conservative Kevin Phillips' denunciation of libertarianism, and shows that Phillips, in the course of his polemic, nakedly reveals the cloven hoof beneath conservatism's usual libertarian-sounding rhetoric: Phillips calls explicitly for "Caesarism", for "order, authority and restraint", and maintains that the answer to the world's problems "lies in the power of sword and state." Also: effective tips by LP youth leader Tom Palmer on how to organize Young Libertarian Alliance and Students for MacBride/Bergland chapters on campuses; the Childs' position paper on libertarianism; news of the various state parties; Rothbard's stirring banquet address to the L. P. convention; a summary of changes in the party platform; news on the media coverage of the convention; recommended reading for party activists; and an edited text of MacBride's acceptance speech at the convention.

The Polish Question In Roosevelt-Churchill-Stalin Diplomacy

By Leonard P. Liggio*

Ralph Raico's masterful "Winston Churchill: An Appreciation," (*Libertarian Forum*, August 1975) makes some telling points regarding Britain's relations with Poland. Recently released secret diplomatic papers have revealed that Ralph Raico's suspicions about Churchillian foul-play in the death of General Wladyslaw Sikorski, prime minister of the exiled Polish regime in London, were on-target. Britain had broken the German secret codes, and knew of a number of successful German sabotagings of aircraft carrying important Allied officials. In order not to allow the Germans to know that the codes were broken, these people, including Sikorski, died in plane crashes.

What was to be gained by this death? What was the state of Allied relations with Polish officials in July, 1943? Ralph Raico has noted that, after numerous calls by European leaders for a revision of the criminal provisions of the Versailles Treaty of 1919, the British government began at Munich in September 1938 to take the first step toward revision. However, the British government during 1939 drew back from this realistic diplomacy, and, probably at the behest of the American president, gave a blank check to the Polish colonels who ruled the state created by the defeat of Germany and Russia in World War I. As Ralph Raico notes: "Afterwards Churchill himself criticized the guarantee in these terms: "Here was decision at last, taken on the worst possible grounds, which surely lead to the slaughter of tens of millions of people." The British blank-check caused all the deaths of World War II, and without any ability to provide military support for the Poles. The British condemned the Poles to endless years of occupation. Having refused German requests for boundary rectification and extra-territorial railroad passage between Germany proper and East Prussia (divided by West Prussia which had been given to Poland by the World War I Allies), Poland found itself at war without any British aid, except fine words. Meanwhile, the Soviet Union had chosen to re-establish the historic German-Russian entente which had maintained peace in Europe during the 19th century. The Russians took control of the non-Polish White Russian and Ukrainian provinces taken by Poland at the treaty of Riga (1921), by means of the German-Russian protocol of August 23, 1939 and the German-Russian treaty of September 28, 1939. This restoration of traditional diplomacy was broken by the irrational German attack on Russia on June 25, 1941.

Immediately, Russia became an ally of Britain (and its secret ally, the United States, which provided lend-lease to Russia). In Polish-Russian negotiations in July, 1941 between Sikorski, Polish foreign minister August Zaleski, and Soviet ambassador to London, Maisky, the Soviets renounced the treaty with Germany, and agreed to aid Poland's re-establishment of its national frontiers, i.e., frontiers inhabited by Poles, but not areas inhabited by White Russians and Ukrainians formerly under Polish control.

When the U.S. formally entered the war on December 7, 1941, British foreign secretary Eden was in Moscow. U.S. secretary of state Hull wrote to U.S. ambassador to Britain, Winant, that Eden could not make commitments for a post-war settlement. Since that was on December 5, two days before U.S. entry into the war, one might wonder why Hull thought that a non-belligerent, like the U.S., could act as though it was a belligerent? Did Hull know something? In Moscow, Stalin told Eden that Russia hoped to keep the Ukrainian and White Russian areas, while Poland should receive East Prussia. (Eden reported this to Winant who reported to Hull who told Roosevelt by February 4, 1942.) Eden felt that Russia was stronger than the U.S. or Britain had thought, and telegraphed Churchill, who was in Washington, to accept the Russian plan.

Churchill rejected Eden's proposal and said that after the war the U.S. and Britain would be powerful economically and militarily while Russia would be exhausted. Thus, Russia would have to accept peace plans drawn by Roosevelt and Churchill. Was this view something that Churchill picked up at the White House? It seemed to be the keystone to American wartime diplomacy. In May, 1942 Molotov negotiated in London with Eden and again asked recognition of the new borders. Hull

wired his refusal, and the British declined. Molotov then flew to Washington where he dropped his border requests in return for an American promise that the U.S. and Britain would establish a second front in 1942, which would draw away at least forty German divisions from the eastern front. This did not take place and the Russians, after their victory at Stalingrad, felt that the U.S. and Britain would not invade Europe early enough to have any say in Eastern Europe. A "Union of Polish Patriots" was established in Russia in March, 1943, as the Polish army raised in Russia by General Anders had departed to Iran on its way to join the British in the Mediterranean. In April, 1943 the German government, retreating from Russia, announced that it had discovered a mass grave of thousands of Polish soldiers in the Katyn forest, apparently the work of retreating Soviet officials following the German invasion of June, 1941. The Polish government in exile demanded an international investigation, for which the Soviet Union broke off relations with the London Poles. The Russians then set up a Kosciuszko Division of Poles to fight alongside the Russian army. It was at this low point of relations with the London Poles that Sikorski was allowed to die by the Churchill government.

The new Polish exile prime minister, Mikolajczyk, the leader of the militant anti-feudal Peasant Party, held the view that the war would end with U.S. and Britain occupying Germany with 300-400 fresh divisions and a victorious air force, while an exhausted Soviet Union would be dependent on the U.S. for food and reconstruction, and would have to recognize Allied power in Europe. The U.S. at one time had plans for an army of that size, but had long since dropped them as disruptive of domestic support of the war effort, which was why there was no second front in 1942 or 1943. But, Mikolajczyk's view seemed to have been shared by some segments of American policy-making up to that point, especially in the State Department. But, the State Department views were being replaced by those of the White House-Pentagon.

At the Teheran conference in November, 1943 it was agreed not to turn over the White Russian and Ukrainian areas to Poland, and to compensate Poland with German territories. If no Polish exile government would agree, then a Polish government in Poland would be created with a strong Communist component as an assurance of friendly relations with the Soviet Union. On January 2, 1944 Churchill told Mikolajczyk what Chamberlain had wisely told Czech president Benes and which Chamberlain should have told Polish foreign minister, Colonel Beck (which would have saved ten million lives): that the U.S. and Britain would not go to war over the borders of an eastern European country. Mikolajczyk was told that the Allies recognized the changed borders of Poland and was urged to make an agreement with the Soviet Union while he still had a chance. Instead, the Polish government in exile refused to reconstitute itself to exclude fascist elements whom the Allies opposed. The Russians responded by establishing in Lublin a Polish government to which was added Poles from the United States — Professor Oscar Lange, Fr. Orlemanski, and close contact with Leo Krzycki, of the American Clothing Workers' Union and head of the American Slav Congress.

Roosevelt's evasion of the implications of his low manpower military strategy, creating the dominant position of the Soviet Union in Eastern Europe due to the geography of its military strength, caused ambiguities in American diplomacy toward Eastern European countries, especially Poland. Roosevelt's promise to Molotov of a second front in Europe in 1942 meant that he was promising a second front manned by British troops, since American forces were not ready. Since the whole point of Britain's wishing U.S. entry into the war was to spare British troops, the plan for a 1942 second front in Europe was dropped. As the late William L. Neumann, ("Roosevelt's Foreign Policy Decisions, 1940-1945," *Modern Age*, Summer, 1975) shows, U.S. inability to create a full military force due to domestic considerations, created many of the complexities of the wartime and postwar worlds. The original projection of a 400 division

(Continued on Page 8)

Polish Question—

(Continued from Page 7)

army had to be cut to 200 divisions, and finally to less than 100 divisions in the last year of the war.

Roosevelt delayed informing the Poles in London of his acceptance of boundary changes between Russia and Poland. Roosevelt's attitude of evasion caused the London Poles to believe that the United States supported their resistance to serious negotiations with the Soviet Union. In the end, the Soviet Union concluded that the London Poles opposed any attempt to find a basis for good Soviet-Polish relations. Finally, Roosevelt and Churchill became exasperated by the refusal of the London Poles to negotiate with Russia. They concluded that it was necessary for the Russians to form a Polish government friendly to the Soviet Union and willing to negotiate with it.

When Mikolajczyk visited Roosevelt on June 7, 1944, he was told that Poland might receive Silesia, East Prussia, Lvov and Tarnapol, if the London Poles negotiated with the Russians. Stalin wrote Roosevelt on June 24, 1944 that he would meet with Mikolajczyk if the Polish government in exile were reconstructed. At the end of July, the Soviet armies neared Warsaw. The commander of Polish forces in exile, General Kazimierz Sosnkowski, opposed any Polish uprising against the Germans as a waste of Polish forces. But General Bor, commander of the Home Army, started an uprising on August 1, 1944. Mikolajczyk met with leaders of the Lublin government on August 6, with inconclusive results.

During the Churchill-Stalin talks of October, 1944, Churchill had Mikolajczyk return to Moscow. Churchill and Stalin demanded that the Polish London government accept the eastern border changes and called for a coalition of half London and half Lublin governments. Mikolajczyk refused, and was told by Churchill these words — which he should have said in 1939 when Chamberlain gave Poland a blank-check: "Because of quarrels between Poles we are not going to wreck the peace of Europe. In your obstinacy you do not see what is at stake. It is not in friendship that we shall part. We shall tell the world how unreasonable you are. You will start another war in which 25 million lives will be lost. But you don't care." In mid-November, 1944 Roosevelt wrote Mikolajczyk that U.S. accepted compensation for Poland in the west, and Mikolajczyk accepted the American decision about the borders. But he was outvoted by the London Polish government and he resigned.

Having been engaged in a vast miscalculation due to the duplicity of Churchill and Roosevelt, the London Poles refused to accept an accommodation with the Soviet Union, and were criticized as inflexible by Churchill and Roosevelt who made other arrangements during the Yalta Conference of February, 1945. The Lublin government became the dominant element because they accepted the Roosevelt-Churchill-Stalin

Right-Center Chic

The Village Voice (December 1) contains a hilarious and penetrating article by Alexander Cockburn and Jack Newfield, "Know Your Military-Intellectual Complex", which lists the leading figures in the new intellectual fashion of "right-center chic." The lists include the leaders of each of various departments of life and thought. The new right-center alliance is united on several basic political tenets: including admiration for the "new" Nixon of the mid-1960's; opposition to detente and a peaceful foreign policy; anti-Communism; opposition to quota systems; and adherence to Zionism. Some members of the coalition, as the authors point out, "trace their ancestry back to the CIA-funded Congress for Cultural Freedom."

The hero of the group, who appears on almost every one of the lists, is the notorious hawk and "Left-Nixonian", Patrick Moynihan. The right-center journalists include: (along with Moynihan) Robert Bartley (Wall St. Journal), Robert Bleiberg (Barron's), Hobart Rowen (Wash. Post), Harry Schwartz (N.Y. Times), Martin Mayer, Dorothy Rabinowitz, Walter Goodman, Howard K. Smith, Hedley Donovan (Time), and William Safire, among others. "Hitmen" include Moynihan, John Lofton, Pat Buchanan, Kevin Phillips, Evans & Novak, Ralph de Toledano, Ben Wattenberg, Nancy Kissinger, and Albert Shanker. "Institutions" include Commentary, Public Interest, Wall St. Journal, National Review, and parts of the New York Times. And so on. I particularly liked the Cockburn-Newfield lists of "Bores" (Teddy White, Allan Drury, Norman Podhoretz, and Saturday Review); "Theoreticians" (Irving Kristol, Daniel Bell, Sidney Hook, Nathan Glazer, Peter Drucker, Moynihan, and George Meany); "Economists" (Friedman, Greenspan, and Gary Becker); "Academics" (Edward Shils, Robert Tucker, S.I. Hayakawa, Robert Nisbet, S.M. Lipset, Richard Scammon, Ernest van den Haag, Buchanan & Tullock, and Moynihan); "Rabble" (Roy Cohn, Richard Nixon, Martin Abend, and Norman Podhoretz), and "Martyrs", which include James Angleton (CIA), James Schlesinger, and Max Schachtman (former right-wing Trotskyite who later moved to the pro-Cold War wing of the Socialist Party.) "Phobias" of the right-centrists include: Noam Chomsky, Daniel Ellsberg, detente, Philip Roth, and I.F. Stone, while its "Blind Spots" consist (in full) of the CIA, racism, anti-Communist dictatorships, and Elliot Richardson.

There is more, but everyone should see for themselves. □

requirement of friendship toward the Soviet Union.

*Mr. Liggio, teaches history at SUNY, Old Westbury, and was assistant author of Volumes I and II of M. Rothbard's *Conceived in Liberty*. □

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