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Palmetto Libertarian Forum

A FORUM FOR MEMBERS OF THE SOUTH CAROLINA LIBERTARIAN PARTY

Lying

A Message from John Harllee

The controversial issue I want to talk about is lying. Specifically, one important type of lying: breaking a promise. This violates one of the two basic rules of civilization: Do What You Say You Are Going To Do. (The other is: Do Not Initiate Force or Fraud).

As much as I am tempted to illustrate this with examples from among the S.C.L.P., I shall not name names or dates or places. I shall merely give illustrations that may, or may not, be recognized by readers and that may or may not be based on actual events. Any resemblance to persons living or dead is purely their own fault.

A promises to attend a meeting to make a presentation that is an essential reason that the meeting is being held. Although a number of people appear, A is not among them. The meeting is unable to deal with the matter that A was supposed to cover, as no one else knows what A has done, or not done. A neither explains nor apologizes.

B is supposed to get out a mailing, and B does get it out - so late that it reaches the libertarians after the event it was supposed to announce. Admittedly, the slowness of the postal monopoly is a contributing factor, but the mailing should have been sent far enough in advance to allow for this. Needless to declare, attendance at the event suffers.

C is elected to party or organizational office and does not perform the duties. This is particularly annoying, because while C is not doing the job, someone else could be holding the office and performing. This is the reason we used to have the Amelia Earhart - Judge Crater rule in the S.C.L.P.: an officer who missed three consecutive state meetings without excuse was assumed to have resigned.

D specializes in the disappearing act: does not return phone calls or answer mail. E is elusive; moves and fails to inform anyone where. F promises to send in his dues, but forgets.

I could go on down the alphabet, but I think you get the idea.

Now, if it were Democrats or Republicans acting this way, no one would be surprised. But libertarians are supposed to be persons of principle. And one of the most important principles is: Keep Your Word.

John Harllee is S.C.L.P. Secretary and Editor of the SOUTHERN LIBERTARIAN MESSENGER.

From the Editor

In this issue of *Palmetto Libertarian Forum* are articles on Lying and Capital Punishment. The first subject is not controversial in the same sense as the second, but I published John Harllee's article because it is both appropriate and timely.

Capital Punishment is truly controversial, with libertarians having a variety of views on the subject. The two articles on Capital Punishment give two different viewpoints on the issue. Other viewpoints exist, and everyone is encouraged to send me their comments.

The first issue of *Palmetto Libertarian Forum* was devoted entirely to the Rights of Children. I asked S.C.L.P. members to send me their views and comments on Tom Tanaka's article, but nobody sent anything. This concerns me, for children's rights is both a complex and a controversial subject. Last year, the children's rights plank of the S.C.L.P. platform was debated at both the April and the August conventions. I was annoyed that most persons with strong opinions on the subject did not come to the public hearing that the Platform Committee held in July specifically for the purpose of debating and discussing the children's rights plank. In fact, I was the only person who showed up. Last fall, several persons told me that we need a place besides the convention floor to discuss controversial subjects.

The main purpose of the *Palmetto Libertarian Forum* is to give all S.C.L.P. members an opportunity to voice their views somewhere besides the convention floor. This newsletter is sent to S.C.L.P. members as well as libertarians in other states. It has been received enthusiastically by libertarians in other states, but not by S.C.L.P. members. The only person who sent me anything on children's rights was Stormy Mon of Denver.

Tom Tanaka's article contained several controversial points. Since nobody wrote me, I must assume either that everyone agreed with everything he said or that most S.C.L.P. members don't care very much about children's rights. I doubt the first is true, and I hope the second isn't true. *If nobody cares about children's rights or other controversial subjects, then I hope nobody wastes time debating these subjects at next spring's state convention. If anybody does care, please send your views to me.*

- D.M.

Capital Punishment

In Self-Defense?

by Diane Carol Bast

When 16-year-old Richard Jahnke fired four 12-guage slugs into his father's chest, public opinion rallied to the boy's defense. A victim of child abuse since age two, Richie's case was viewed by most as a shooting justified as self-defense. Laramie County (Wyoming) District Attorney Tom Carroll was not, however, convinced. He saw the case as "...deliberate, carefully thought-out, classic premeditation." And for Tom Carroll, the bottom line was easily summarized:

"No one but the state has the right to take a life."

While the individual circumstances surrounding the Jahnke case are interesting enough, it is Carroll's suggestion of a state monopoly on the use of deadly force which should command our immediate attention. While that belief has no basis in political or legal theory, it carries the weight of truth-in-practice. An increasing reliance on capital punishment as a tool of justice suggests that, at least in our present society, the state does claim such a right.

The question here addressed, however, is whether or not the state *ought* to have such a right. Supporters of the death penalty present arguments thinly veiled beneath the guise of deterrence, retribution, economics, or religion -- hardly synonymous with "justice" or "right." A look beyond practicality to the fundamental basis of governmental authority is likely to produce a conclusion far different from that drawn by Tom Carroll.

FROM WHENCE GOVERNMENT AUTHORITY?

Political theories abound as to the source of government power. The theory most conducive to individual liberty, however, is John Locke's formulation of "government as trust," wherein "...only the people as trustor (and beneficiary) have rights; the government as trustee has only duties." The "legislative power" (government) can be no greater than the joint power of every member of society; "... it can be no more than those persons had...before they entered into society." Central to Locke's formulation is the perception of individuals coming together to establish a state, to which they delegate only such powers as are needed to fulfill the responsibilities they require of the government. These individuals cannot, however, give over to the government more power than they themselves can justly claim.

WHAT JUSTIFIES DEADLY FORCE?

The right to the use of deadly force (of which capital punishment is the form most questionable) cannot be separated from the principle of self-defense. That principle, simply stated, accords an individual the right to defend his person and property against a real or reasonably perceived threat. That defense may extend to the use of deadly force, however, only under strictly limited circumstances. These limits, which have their beginnings in common law, are enunciated in statutory and case law as well.

In his classic *ON CRIMINAL LAW* (Mineola, NY: The Foundation Press, Inc., 1969), Rollin Perkins clarifies the principle of self-defense as it pertains to the use of deadly force. There are two restrictions particularly relevant to the argument here. First, Perkins notes that "the danger must be, or appear to be, pressing and urgent. A fear of danger at some future time is not sufficient." (p. 994; emphasis added) Secondly, we find that "...if the defender is able to save himself from harm by the use of nondeadly force, the case is dealt with in that category whether the threatened harm was deadly or nondeadly." (p. 995)

The limits which bound an individual's right to use deadly force are equally applicable to government. Society cannot justify the use of deadly force in "self-" defense unless a pressing and urgent threat (as opposed to some future threat) is perceived, and unless nondeadly force is not as effective a response. The state's imposition of the death penalty is unjustifiable under both criteria.

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DOES SOCIETY ACT IN SELF-DEFENSE?

Our criminal justice system relies heavily on procedural safeguards which guarantee that no single individual or agency of government will function as judge, jury, and hangman in any case brought into the system. A right to trial by jury, based upon the concept of innocent until proven guilty, guarantees that punishment of a criminal cannot occur during or immediately upon the commission of a crine -- by definition, no "criminal" exists at that point. The steps which must be taken to guarantee due process also guarantee that at the time of sentencing there is no threat to society which can be considered "pressing and urgent." The imposition of a death sentence can hardly be viewed as "self-defense."

Additionally, I would challenge Tom Carroll and fellow death penalty advocates to present a strong case for the unique effectiveness of capital punishment over, for example, life imprisonment. Recall that deterrence of whatever sort is not a permissible consideration, for deadly force is not legitimately used to ward off a future threat. References to taxpayer burden or the potential early release of mass murderers are similarly not permissible, for they only suggest faults in the system not appropriately applied to the principle.

Tom Carroll's statement echoes ominously the voices of some of history's most notorious statists. Hitler claimed that "(r)ight exists only when it is created and protected by power and force;" Machiavelli asserted that "no consideration of justice or injustice (nor) humanity or cruelty...should be allowed to prevail" when the "very safety" of society is at stake. Those who seek freedom would do well to look beyond the statists' "practical" arguments, and consider Henry David Thoreau:

> There will never be a really free and enlightened State until the State comes to recognize the individual as a higher and independent power, from which all its own power and authority are derived...

The revocation of the state's self-proclaimed monopoly on the use of deadly force would be an important first step toward that freedom and enlightenment.

Diane Carol Bast is co-editor of NOMOS: STUDIES IN SPONTANEOUS ORDER, which is published bi-monthly by Nomos Press, Inc., 9857 S. Damen, Chicago, IL 60643.

In Defense of Capital Punishment

by David Morris

Does capital punishment have a place in a libertarian society? Is the death penalty ever justified? According to libertarian principles, individuals cannot properly give to the government more power than they themselves can justly claim. Therefore, the real question is: do libertarians ever have the right to execute someone who has committed murder? I believe that they might, but only in certain extreme situations.

First of all, the use of deadly force in self-defense (or in defense of someone else) is justified when necessary; this subject will not be debated here.

In his excellent book *The Ethics of Liberty*, Dr. Murray Rothbard refers to four theories of punishment: *restitution, retribution, deterrence, and rehabilitation.* Rothbard dismisses the latter two, claiming that they should not be the primary considerations in determining punishment. I believe that deterrence is an important element in punishment, and punishment *in general* is a deterrent to crime if it is justly applied. Similarly, rehabilitation has its place, but not as a primary consideration in determining the type of punishment for a particular crime.

Rothbard defends *restitution* and *retribution* as the most valid theories of punishment. Libertarians should be familiar with the concept of restitution: the requirement that a criminal repay the victim for damages. In order to understand both restitution and retribution, it is necessary to refer to the concept of *proportionality*. According to this principle, as described by Rothbard:

> ...the criminal, or invader, loses his own right *to the extent* that he has deprived another man of his. If a man deprives another man of some of his self-ownership or its extension is physical property, to that extent does he lose his own rights. From this principle immediately derives the proportionality theory of punishment - best summed up in the old adage: "let the punishment fit the crime."[1]

The theory of proportionality applies both to restitution and to retribution. According to Rothbard, a thief who steals $15,000 from someone should be forced to repay the $15,000 plus another $15,000, so that the thief loses his own right to the extent that he deprived the victim of his right. Rothbard then argues for an additional penalty of $15,000 to compensate for the fear and uncertainty that the victim experienced during the commission of the crime.

But what about crimes where money damages are not sufficient: murder, permanent bodily injury, and the destruction of property which cannot be replaced? I believe that some form of retribution is appropriate in these circumstances. In fact, the type of restitution described above is really a form of retribution. A victim whose hand is permanently damaged has a right to damage the criminal's hand and may even have the right to harm the criminal *more than* he has been harmed. If a murder victim could come back to life for a brief period of time, one could argue that the victim would have the right to kill his murderer. Since this is impossible, the victim's will would have to be carried out by someone else.

According to Rothbard:

> Retribution is in bad repute among philosophers, who usually dismiss the concept quickly as "primitive" or "barbaric" and then race on to a discussion of the two other theories of punishment: deterrence and rehabilitation. But simply to dismiss a concept as "barbaric" can hardly suffice; after all, it is possible that in this case, the "barbarians" hit on a concept that was superior to the more modern creeds.[2]

A victim has the right to forgive the criminal, to decline restitution, and to avoid retribution. It may not be wise to do this in most cases. In the case of a violent criminal who has committed many brutal crimes, other individuals certainly have the right to protect themselves from future crimes, and this may involve keeping the criminal safely locked up in prison. This is one situation where the deterrence theory is properly applied.

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Personally, I don't like the idea of killing someone, even if that person killed someone else. I don't believe that capital punishment is appropriate for most cases of wrongful death. I'm not even convinced that the death penalty is appropriate for all cases of murder. A strong case can be made for limiting it to premeditated murder, especially the most brutal cases.

Another consideration is the fact that death is not necessarily the most severe form of punishment. One of the more interesting proposals I've heard is the concept of *Lethe* or oblivion, as proposed by Dr. W. H. Hunter of Clemson, S.C.[3] Convicted murderers could be sentenced to total oblivion: life imprisonment in solitary confinement with no visitors and no chance of parole. After ten years, the criminal could be offered a cup of hemlock (or some other poison) to drink voluntarily. If the prisoner declined the opportunity to commit suicide, this offer could be repeated each year.

All these issues can be debated, but I believe that capital punishment, or something like it, may sometimes be justified.

* * * * * * *

[1] Murray Rothbard, *The Ethics of Liberty* (Atlantic Highlands, N.J.: Humanities Press, 1982), p. 80.

[2] *Ibid.*, P. 90.

[3] William Harvey Hunter, M.D., "An Alternative to Capital Punishment," *The Journal of the South Carolina Medical Association*, January 1985, p. 35.

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A Comment on Children's Rights

by Stormy Mon

I think Walter Block said it best in 1976:

> "A child becomes an adult not when he reaches some arbitrary age, but rather when he DOES something to establish his ownership and control over his own person: namely, when he leaves home, and becomes able to support himself. This criteria is free of all the objections to arbitrary age limits. It is consistent with and an application of the libertarian homesteading theory. By leaving home and becoming his own means of support, the ex-child becomes an initiator, as the homesteader, and owes his improved state to his own actions."

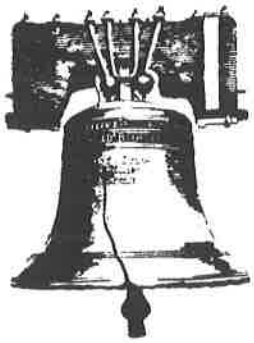
This natural process can take place all at once, or gradually, or through trial and error several times.

* * * * *

Stormy Mon is a libertarian activist from Denver, Colorado.

REMEMBER

The S.C.L.P. Tenth Anniversary Celebration will be held Saturday, Sept. 21, at the Town House on Gervais Street in Columbia. Please send in your $20 registration fee now! The fee includes EVERYTHING: refreshments, luncheon, exhibits, all speakers, entertainment, Mystery Guest, Freedom Around the World, and more!



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