

- Memorandum -

**Date:** April 4, 1997  
**To:** Henry Fishburne  
**cc:** Tom Graham  
Geoff Graham  
Andy Beck  
**From:** Vince Graham  
**Subject:** Property Owners Association Documents

Vince,  
- Budgeting, assessments  
(power to tax)?  
- Power to file low severity  
levy "special" assessments?

The establishment of a property owners association can be compared to establishing a mini-government. Covenants, restrictions, by-laws and other documents of the association form the basis of a mini-constitution for the neighborhood.

The brilliant men who founded this country had a clear understanding of the inherent good and evil characteristics of human nature. A typical set of property association documents does not account for many of these characteristics. In documents like *The Federalist Papers*, the founders expressed an understanding of the lust for power, and that once some people get it, they do not want to share it, and are prone to abuse their power arrogantly.

POA Boards are often composed of retired individuals with nothing better to do. Sometimes they develop a strong dislike of anyone they consider the "developer" and go out of their way to show this person as well as their neighbors who's boss. Community cooperation and neighborhood spirit suffers.

Recognizing that imperfections in human character exist, and a governing process is prone to the law of unintended consequences, we seek a "mini-constitution" for POA that incorporates a set of "checks and balances" and promotes civil and honorable behavior with minimal threat of force. We desire a set of community documents as innovative as our plan and code.

Enclosed is an article that spawned an exchange of memorandums between my brother Geoff and me about a possible system of checks and balances. Put on your white founder's wig and give me your thoughts.

Note: the article refers to Robert Heinlein's novel: *The Moon is a Harsh Mistress*. I recommend this as an interesting and fun read.

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## Topic for Spring Forum: Family Structure

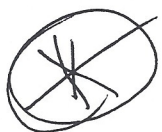
We invite our readers to start thinking about family structure in a free nation, as that will be the topic of our Forum in April '97. We want your ideas, and we seek people to write and present papers on the subject. The specific time and place of the Forum will be announced in the Spring '97 issue.

We assume that government in a free nation will impose no agenda upon family structure and family life. So we will explore questions such as:

- Will most people marry in churches and couple in traditional long-term monogamous

relationships, or will there be Heinlein-style "line marriages," or group marriages? What contracts and what enforcement mechanisms do we foresee?

- What supports, if any, will exist for abandoned partners, notably parents of young children, who find themselves cut off from their expected primary source of support?
- Will there be orphanages? Will children be sold?



### A State Can Be Designed To Shrink by Richard O. Hammer

GEOFF -  
FYI - APPLICABLE  
TO POAS?

Governments grow. This seems inherent. But why not design a government to shrink? I propose that we can.

Consider the idea that Roderick Long put into his Virtual-Canton Constitution: the idea that one house in the legislature might have power only to repeal legislation (while the other house has power only to pass legislation). Roderick adopted this idea from Robert Heinlein's science fiction novel *The Moon is a Harsh Mistress*.

I propose that we can take this idea, generalize it, and build upon it. A part of the government which has power to repeal laws is my favorite part. So why should we limit ourselves to designs for governments with just one of these wonderful parts? Maybe we could build in lots of powers to repeal laws.

This insight, if it is one, is my contribution to our discussion on how we can keep a nation free. Assuming we must set up a government, we can set up one in which the privatizers have more powers than the regulators.

I have the impression that the founders of America knew that they were creating something that they feared, the power to legislate. So they built into the U.S. Constitution ways to limit that power. And

perhaps, in this one regard, government in the U.S. runs as the founders intended: sometimes the legislature gets away with its attempts to pass new laws, and other times those attempts are blocked. But the result is probably something that the founders did not intend: government grows. The checks they built in keep it from growing rapidly, but it does grow slowly. It probably did not occur to them to take the additional step of building in ways to dismantle power.

To illustrate, join me in thinking of these powers in government as numbers, the number 1 (one) and the number 0 (zero). Think of the power to legislate, the power to pass new laws, as the number 1. And think of the power to block new legislation as 0. In America sometimes 1 happens, sometimes 0 happens. But on average we must expect the result to be somewhere between 0 and 1 — a government which is growing. The U.S. Constitution, I assert, constitutes a government bound to grow.

I propose that we libertarians might constitute some powers in government which would be represented as the number minus 1. Minus 1 is the power to repeal legislation. Thus, with the powers existing in government ranging from mi-

nus 1 to plus 1, the result over time does not have to be greater than 0, and might be less than 0, depending upon the relative powers of the branches, and upon how the electorate votes.

#### Objections Which Will Be Raised

Detractors might say that this in nothing new, because legislatures in the U.S. now have power to repeal laws. That is true. But I think there might be something new in constituting branches which have only the power to repeal laws. If the people holding office in these branches want to appear to be doing something, they must repeal laws. Also, I imagine, numerous incentives may be constituted to hearten the forces of privatization. For instance, we might pay them in proportion to the number of laws they repeal.

Detractors might also say that this idea has never been tested. This concerns me too. It seems possible that special interests could buy the favors of deregulators (to do nothing), just as they buy the favors of regulators (to pass the pork). But I think we can adjust our design to counter this shortcoming. For instance, one mighty power which we could put into the hands of our



friends would be power to repeal laws through national referendum, a power which would require only X% of the vote. And we could set X as low as we dare, as low as we think we could without threatening the constitution (by which, in this usage, I mean the glue) of the nation.

Also, I would assert that the idea has been tested in part in the U.S., in that the U.S. system constitutes many powers to block, if not exactly repeal, legislation. The President can veto; the executive can neglect to prosecute. The Supreme Court and juries can nullify. So, using my little numbers again, the U.S. Constitution gives some officeholders the power of 0. And they use the power of 0, at least some of the time, to our benefit. This suggests that officeholders might also use the power of minus 1, to our benefit, if just we create those offices.

#### Possible Devices

What are the ways that this power to repeal laws might be built into the constitution of a free nation? In passing I have mentioned two: a house of elected representatives with power only to repeal; a provision allowing repeal through referendum.

I do not claim, in this paper, to present a good list of possible devices to repeal legislation. But I can think them up, and so can you. Here are a few:

- Provide a way for minorities to define themselves, and then give those minorities power to repeal legislation, by referendum, requiring Y% of only the minority.
- Give juries the power not only to nullify, but to actively repeal legislation.
- Give rewards to activists who lead successful campaigns to repeal legislation. If taxes cannot be raised, allow for the private financing of these rewards.
- Penalize legislators, from the regulation-creating branch, who vote to pass laws which are then repealed within one year.
- Provide for repeal of legislation during sporting events, if the half-time crowd responds to a such proposal with an ovation exceeding Z decibels.

Perhaps this could be overdone. But I mean to point out that we can find constitutional tools with all the power we want, and more. In general, if detractors complain that a particular minority might fall victim to unfair legislation, then we can respond by constituting a power for that minority to repeal legislation.

#### Say It: We Trust Voluntary Order, We Mistrust Government

This is my main idea, that we take the step which the founders of America did not take: We should announce that we have greater faith in voluntary order than in coerced order, and that therefore we constitute ways to dismantle coerced order.

To illustrate, here I suggest a preamble for the constitution of a new free nation.

*We, the founders of Emergonia, believe that the voluntary and spontaneous order which forms naturally within society almost always serves human needs better than an order which might be coerced by a state. Yet, impelled by the following three circumstances, we find it wise at this time to constitute a state.*

*First: To secure our independence from the other states which presently cover Earth, Emergonia must receive recognition as a peer among states.*

*Second: At the outset the populace of Emergonia will rely upon some institutions of state to fulfill certain of their needs; they have no other experience. While we desire to see these institutions of state replaced by institutions of civil mutual consent, we recognize that growth of voluntary institutions requires time.*

*Third: We recognize that, for reasons beyond our understanding or desire, human society may require some few powers vested in state.*

*Therefore we constitute the State of Emergonia which incorporates, in initial code, those institutions of state to which the populace are initially inured, but which possesses more powers to repeal old code than to enact new code.*

#### The Flexibility of this Power

An advantage of this idea is that it could conceivably be applied to any existing nation or populace. There need be no sudden change. A nation adopting new constitutional powers to repeal laws could keep, for starters all its familiar institutions of state. And, by adopting a timetable of decreasing percentages required to repeal laws, the shrinkage of government could be gradual at first.

The paradigm we in FNF most frequently mention for attaining a free nation, that of leasing an underpopulated area and then populating it with like-minded souls, would not need this constitutional power to repeal laws as much as would a paradigm which included a population of non-libertarians. But still this idea might be useful for a nation composed almost entirely of libertarians, because, heaven knows, even most of us rely in ways upon familiar state institutions.

#### References

Roderick T. Long. I can no longer sort out how many of these ideas originated with Roderick. For starters see his papers in the Proceedings of our first Forum, on Constitutions, which met on 2 October 1993.

Frances Kendall & Leon Louw, *Let The People Govern*. Amagi Publications, 1989.

*Richard O. Hammer, of Hillsborough, NC, for the time being works full-time on the Free Nation Foundation. In the past he has worked as a residential builder and engineer.*



- Memorandum -



Tuesday, December 10, 1996

**To:** Vince  
**From:** Geoff  
**Re:** Shrinking power of POA

**FILE**

I think you're on to something. How's this for the Ionsborough Code:

Establish a Civil Board of fourteen members -- nine Liberators and five Regulators.

The Liberators possess only the power to delete sections of the code. Sections can be deleted with a minority of only four of nine votes. The Liberators vote once a year directly after the Regulators. The Liberators can vote on sections just reinstated by the Regulators

The five Regulators possess only the power to reinstate previously repealed sections. Sections can only be reinstated by unanimous vote. The Regulators vote on reinstatement once a year.

Once repealed, a section cannot be reinstated for at least two years unless, after one year, unanimous vote among the Liberators send the section back to the Regulators for a special vote.

Members of the Civil Board are elected annually *en mass*, twelve at a time with two members appointed by the developer as long as the developer owns one lot or until the developer elects to forfeit such right -- whichever comes first. A random drawing assigns each elected member to either the Regulators or the Liberators with the two appointees always serving as Liberators. With the exception of the appointees, no member can serve two years in a row, though members can be re-elected after one year's absence.

This type of structure allows the Liberators excessive authority and restricts the Regulators to a purely cautioning role. Random assignment dampens the potential for election of "crusaders" on either side. The presense of two members appointed for their understanding of the Liberty principle ensures guiding voices in the Civil Board's youth



why 14? 9-5? why not 19, 7-3?

Reinstated by unanimous vote?

Seems easily manipulated. Politics comes into play.

What about e- regulations?



- Memorandum -

**Date:** December 11, 1996  
**To:** Geoff Graham  
**From:** Vince Graham  
**Subject:** POA structure

Why 14 members on the Civil Board? Why not 10 with 7 liberators and 3 regulators?

By requiring a unanimous vote to reinstitute legislation, it seems you subject this process to easier manipulation by political pressure. Why not a simple majority, the liberators can still kill the rule.

What about new rules. How do they get passed?

How about some kind of "Manners and Etiquette Civility Code" (needs a better name)? This would be a written set of unenforceable guidelines issued by the Civil Board. Sort of an Emily Post handbook for neighborhoods. Guidelines might include something like clean up after your dog or only put real plants on your front porch.



## - Memorandum -

**FILE**

Wednesday, December 11 1996

**To:** Vince  
**From:** Geoff  
**Re:** POA structure, II

I see your point and agree with you about the unnecessary of a unanimous vote within the regulators. However, I still think a minority 3 to 4 vote should repeal regulations.

I am skeptical of new rules. I feel the Civil Board should address only existing rules. My idea of Civility is directly tied to the number of regulations a society needs -- the more civil, the less rules required.

Perhaps only the developer or president of the POA could propose new rules to the Civil Board and they, by majority vote of all members, could accept them. However, I don't want the Civil Board to possess the power or inclination to create new legislation. That is not their job. If it were even only a tiny facet of their duties, it could grow tyrannical in the far future.

We should imbue in the Civil Board, especially members of the liberators, the duty to advise and help when appropriate -- to inform judgment, not impose judgment. The more they teach individuals in the design process, the more rules they will be able to repeal as they become unnecessary.

How about *Civil Conduct*, with the subtitle "Honoring the Public Realm"? The pamphlet, in addition to outlining civil behavior, could summarize the basic principles in the Architectural Code. When, ultimately, the code is completely repealed, those basic principles (proportion, material use and relation to street) are already incorporated into the unenforceable handbook, thus establishing honorable construction as a behavior directly tied to civil conduct.

I described this general idea to Alan Stump last night. After much discussion, he finally began to understand the value of a "no code" development or society. He was, however, initially doubtful. An all-encompassing, unenforceable handbook might elevate the potential initial consumer resistance.

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**Date:** December 11, 1996  
**To:** Geoff Graham  
**From:** Vince Graham  
**Subject:** Response to POA II

I think we need a mechanism to create new rules for two reasons:

- (1) We are not perfect and therefore may not be able to include the necessary rules in the initial code and C&R documents. We need a process to amend the rules just like the founders created a process to add to the Bill of Rights.
- (2) Few people will buy into your idealistic "the more civil, the less rules required" theory. They are programmed with the "there ought to be a law" mentality. If for no other reason, we need to have a rule making process in place for eye wash.

Besides, any new rules would still have to stand up to the liberators.

I like the name *Civil Conduct*. However, we're talking about the architectural code as well as covenants and restrictions. Should these be combined or kept a part.